

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>	<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><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>	<u><u>0</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Budget Account No.:	Fund _____	Dept. _____	Unit _____	Rev Source _____	

Is Item Included in Current Budget? Yes X No _____

Reporting Category N/A

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

This item has no fiscal impact.

C. Department Fiscal Review: See Equities

III. REVIEW COMMENTS

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

Termination of the agreement results in a loss of guaranteed revenue charges of \$5,498 paid by KSM on a monthly basis.

Jim O'Neil 12-20-07
OFMB
12/20/07 CN 12/18/07

Jim A. Jewett 12-20-07
Contract Development and Control
12/20/07

B. Legal Sufficiency:

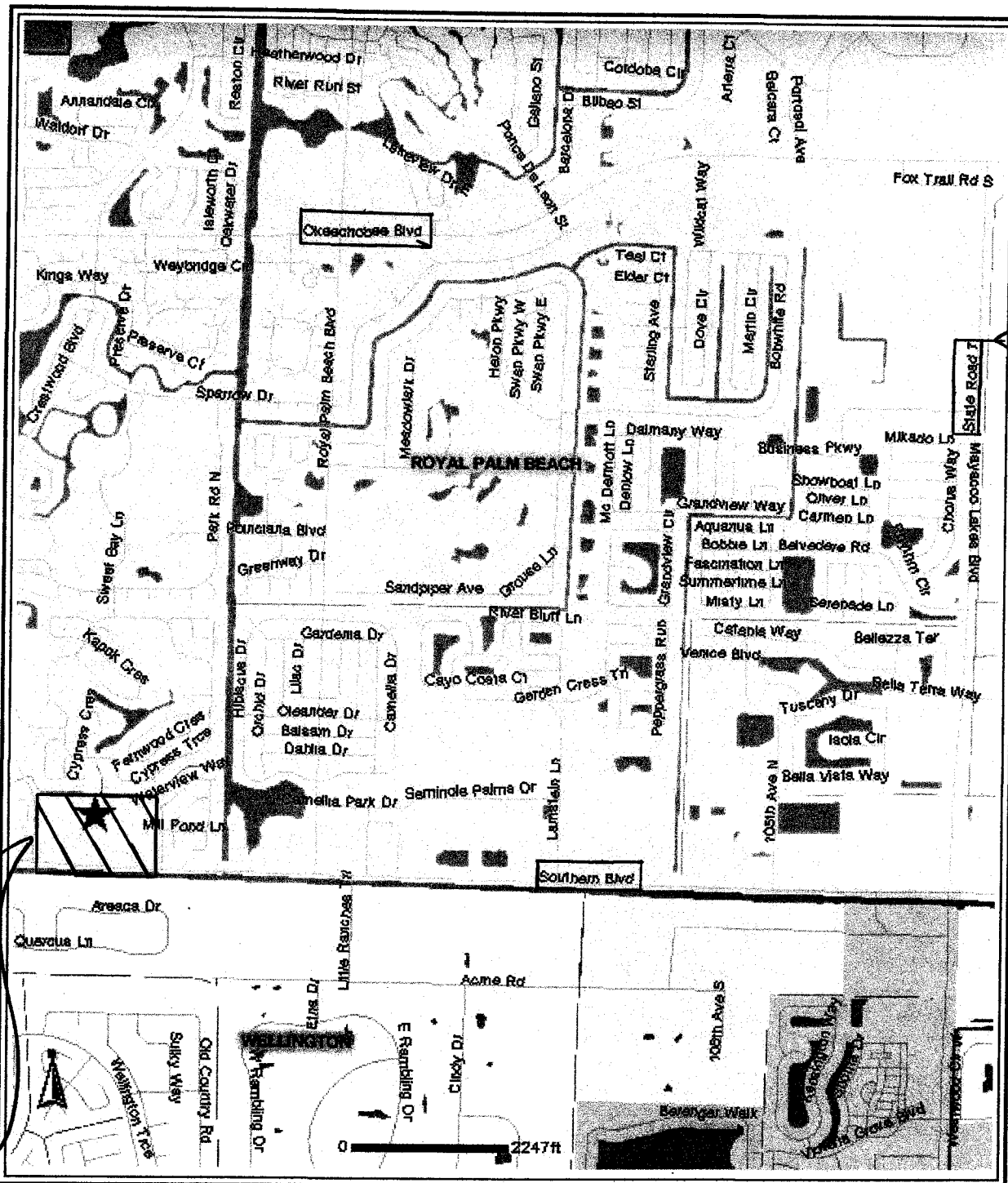
James C. [Signature] for Mike Loukes
Assistant County Attorney

C. Other Department Review:

Department Director

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

Attachment 1



KSM Holding, LLC

Map Scale 1:26960

Map produced on 11/19/2007

TERMINATION OF DEVELOPER AGREEMENT

THIS TERMINATION OF DEVELOPER AGREEMENT is made this ____ day of _____, 20__, by Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County."

WITNESSETH

WHEREAS, on February 21, 2006, The Village of Royal Palm Beach (hereinafter "Village") and KSM Holding, LLC (hereinafter "Property Owner") entered into a Developer Agreement (hereinafter "Agreement"), for the provision of central water and wastewater services to those parcels of property described in **Exhibit "A"**, which is attached hereto and incorporated herein (hereinafter, collectively, the "Property"); and

WHEREAS, the Agreement was recorded in the Official Records of Palm Beach County, Florida, at Official Record Book 20021/Page 1370; and

WHEREAS, on April 27, 2006, in conjunction with the County's purchase of the Village's water and wastewater assets, the Agreement was assigned to and assumed by County in an Assignment and Assumption of Developer Agreements between the Village of Royal Palm Beach and County (County Resolution No. R2006-2660); and

WHEREAS, Property Owner has failed to timely make guaranteed revenue payments as required by Section 8 of the Agreement; and

WHEREAS, County has notified Property Owner of the failure to timely make guaranteed revenue payments and Property Owner has failed to respond to County; and

WHEREAS, County wishes to terminate the Agreement.

NOW THEREFORE, County states as follows:

1. The foregoing statements are true and correct and are incorporated herein by specific reference.
2. The Agreement is hereby terminated by County due to the failure of Property Owner to timely make guaranteed revenue payments as required in Section 8 of the Agreement. Any and all unused equivalent residential connections for potable water supply and wastewater removal reserved under the Agreement are hereby deemed lapsed.
3. County shall duly record this Termination of Developer Agreement for the Property in the Public Records of Palm Beach County, Florida.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, County has executed this Notice of Termination of Developer Agreement on the date written above.

ATTEST:

Clerk & Comptroller (or Deputy Clerk)

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

By: _____
Addie L. Greene, Chairperson 12/17/07

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Bevin A. Beaudet, Department Director

EXHIBIT "A"

TRACT "A"

A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF CYPRESS HEAD UNIT 2, PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 74, PAGE 48, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; THENCE, SOUTH 01°12'44" WEST, ALONG THE SOUTHERLY PROLONGATION OF THE WEST LINE OF SAID CYPRESS HEAD UNIT 2, PLAT 1, A DISTANCE OF 31.34 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF CRESTWOOD BOULEVARD, ACCORDING TO THAT CERTAIN DEED, RECORDED IN OFFICIAL RECORDS BOOK 5655, PAGE 420, SAID PUBLIC RECORDS, SAID POINT ALSO BEING ON A CURVE CONCAVE WEST, HAVING A RADIUS OF 903.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 71°29'04" WEST; THENCE, SOUTHERLY, ALONG SAID CURVE AND SAID EAST RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 19°43'40", A DISTANCE OF 310.92 FEET TO THE POINT OF TANGENCY; THENCE, SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 365.82 FEET; THENCE, SOUTH 88°36'39" EAST, DEPARTING SAID RIGHT-OF-WAY LINE, A DISTANCE OF 139.18 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1530.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°57'28", A DISTANCE OF 452.83 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°01'59", A DISTANCE OF 244.92 FEET TO A POINT ON A CURVE CONCAVE NORTH, HAVING A RADIUS OF 55.00 FEET AND WHOSE RADIUS POINT BEARS NORTH 67°08'13" EAST; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 131°35'40", A DISTANCE OF 126.32 FEET TO A POINT ON A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 04°12'55" WEST; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°34'09", A DISTANCE OF 44.84 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 2030.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°32'42", A DISTANCE OF 657.05 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 470.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°09'17", A DISTANCE OF 107.91 FEET; THENCE, SOUTH 88°36'20" EAST, A DISTANCE OF 21.56 FEET TO THE INTERSECTION THEREOF WITH THE WEST BOUNDARY OF CYPRESS HEAD SUBDIVISION - UNIT ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 41, PAGE 90, SAID PUBLIC RECORDS; THENCE, NORTH 01°32'41" EAST, ALONG SAID PLAT BOUNDARY, A DISTANCE OF 109.63 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 930.00 FEET; THENCE, NORTHWESTERLY, ALONG SAID CURVE AND CONTINUING ALONG SAID PLAT BOUNDARY AND THE NORTHERLY PROLONGATION THEREOF, THROUGH A CENTRAL ANGLE OF 27°32'52", A DISTANCE OF 447.14

FEET TO THE INTERSECTION THEREOF WITH THE SOUTH BOUNDARY OF SAID CYPRESS HEAD UNIT 2, PLAT 1; THENCE, NORTH 88°29'16" WEST, ALONG SAID SOUTH PLAT BOUNDARY, A DISTANCE OF 999.52 FEET; THENCE, NORTH 88°48'51" WEST, CONTINUING ALONG SAID SOUTH PLAT BOUNDARY, A DISTANCE OF 704.03 FEET TO THE POINT OF BEGINNING.

CONTAINING: 24.97 ACRES, MORE OR LESS.

AND

TRACT "B"

A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF CYPRESS HEAD UNIT 2, PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 74, PAGE 48, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; THENCE, SOUTH 01°12'44" WEST, ALONG THE SOUTHERLY PROLONGATION OF THE WEST LINE OF SAID CYPRESS HEAD UNIT 2, PLAT 1, A DISTANCE OF 31.34 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF CRESTWOOD BOULEVARD, ACCORDING TO THAT CERTAIN DEED, RECORDED IN OFFICIAL RECORDS BOOK 5655, PAGE 420, SAID PUBLIC RECORDS, SAID POINT ALSO BEING ON A CURVE CONCAVE WEST, HAVING A RADIUS OF 903.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 71°29'04" WEST; THENCE, SOUTHERLY, ALONG SAID CURVE AND SAID EAST RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 19°43'40", A DISTANCE OF 310.92 FEET TO THE POINT OF TANGENCY; THENCE, SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 365.82 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUE SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 178.00 FEET TO THE INTERSECTION THEREOF WITH THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 80 (SOUTHERN BOULEVARD), ACCORDING TO THAT CERTAIN DEED RECORDED IN OFFICIAL RECORDS BOOK 5420, PAGE 399, SAID PUBLIC RECORDS, THENCE, SOUTH 88°48'51" EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 648.93 FEET; THENCE, SOUTH 88°29'16" EAST, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 1067.20 FEET; THENCE NORTH 46°31'26" EAST, CONTINUING ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 49.16 FEET TO THE INTERSECTION THEREOF WITH THE WEST BOUNDARY OF CYPRESS HEAD SUBDIVISION - UNIT ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 41, PAGE 90, SAID PUBLIC RECORDS; THENCE NORTH 01°32'41" EAST, ALONG SAID WEST PLAT BOUNDARY, A DISTANCE OF 305.44 FEET; THENCE, NORTH 88°36'20" WEST DEPARTING SAID WEST PLAT BOUNDARY, A DISTANCE OF 21.56 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 470.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°09'17", A DISTANCE OF 107.91 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 2030.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°32'42", A DISTANCE OF 657.05 FEET

TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET, THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $02^{\circ}34'09''$, A DISTANCE OF 44.84 FEET TO A POINT ON A CURVE, CONCAVE NORTH, HAVING A RADIUS OF 55.00 FEET AND WHOSE RADIUS POINT BEARS NORTH $64^{\circ}27'27''$ WEST; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $131^{\circ}35'40''$, A DISTANCE OF 126.32 FEET TO A POINT ON A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH $01^{\circ}32'09''$ EAST; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $14^{\circ}01'59''$, A DISTANCE OF 244.92 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 1530.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $16^{\circ}57'28''$, A DISTANCE OF 452.83 FEET; THENCE, NORTH $88^{\circ}36'39''$ WEST, A DISTANCE OF 139.18 FEET TO THE POINT OF BEGINNING.

CONTAINING: 10.26 ACRES, MORE OR LESS.

TOTAL TRACTS "A" & "B" CONTAINING 35.23 ACRES, MORE OR LESS.

DEVELOPER AGREEMENT

THIS AGREEMENT, made and entered into this 9/17 day of January, 2006, by and between KSM Holding, LLC hereinafter referred to as "Developer," and VILLAGE OF ROYAL PALM BEACH, a Florida municipal corporation, hereinafter referred to as "Village."

WHEREAS, Developer owns or controls lands located in Palm Beach County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph, and hereinafter referred to as the "Property," and Developer intends to develop the Property by erecting thereon individually metered residential units, general service units, or a combination of these; and

WHEREAS, Developer desires that the Village provide central water distribution and wastewater collection service for Developer's Property herein described; and

WHEREAS, the Village is willing to provide, in accordance with the provisions of this Agreement and Village's Uniform Water and Wastewater Service Policy, central water and wastewater services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate water supply and wastewater collection and disposal service from the Village.

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Village 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 used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "*Consumer Installation*" - All facilities ordinarily on the consumer's side of the point of delivery.
 - (b) "*Contribution-in-aid-of-Construction (CIAC)*" - The sum of money and/or the value of the property represented by the cost of the water distribution and wastewater collection systems, including lift stations, constructed or to be constructed by a Developer or owner, which Developer or owner transfers, or agrees to transfer, to Village at no cost to Village, in order to induce Village to provide utility service to specified property.
 - (c) "*Development Phase*" - A subdivision or construction phase of the construction of utility facilities on the Property.
 - (d) "*Equivalent Residential Connection*" (*ERC*) - A factor used to convert a given

average daily flow (ADF) to the equivalent number of residential connections. For this purpose, the average daily flow of one equivalent residential connection (ERC) is estimated at 350 gallons per day (gpd). The number of ERC's contained in a given ADF is determined by dividing that ADF by 350 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in the Village's Uniform Water and Wastewater Service Policy.

A residential, commercial, or industrial consumer may, thus, require a larger number of gallons per day than 350, depending upon water demand characteristics.

- (e) "*Guaranteed Revenue*" - An amount of money sufficient to defray Village's cost of maintaining stand-by service availability for Developer.
- (f) "*Notice to Proceed*" - A document executed by Developer expressing a formal order, pursuant to the Developer Agreement, for specific water and/or wastewater service.
- (g) "*Point of Delivery*" - The point where the pipes or meter(s) of the Village are connected with the pipes of the consumer. Unless otherwise indicated, the point of delivery shall be the customer's side or discharge side of the water meter(s) that will be utilized for delivery of water service, and the wastewater main or last manhole owned and operated by Village for wastewater service.

Village shall, according to the terms and conditions thereof, own all pipes and appurtenances to the point of delivery, unless otherwise agreed upon. The pipes and appurtenances inside the point of delivery shall belong to others.

- (h) "*Property*" - The area or parcel of land described in Exhibit "A" by legal description, and as shown on Exhibit "D" attached hereto and made a part hereof.
- (i) "*Service*" - The readiness and ability on the part of Village to furnish and maintain water and wastewater service to the point of delivery for each lot or tract.

3. Assurance of Title - Within a period of forty-five (45) days after execution of this Agreement, or prior to Developer issuing a Notice to Proceed to Village, at the expense of Developer, Developer agrees to deliver to Village a copy of the Title Insurance Policy or an opinion of title from a qualified attorney-at-law, with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

4. Applicable Charges - In addition to the contribution of any water distribution and wastewater collection systems, where applicable, and further to induce Village to provide water and wastewater service, Developer hereby agrees to pay to Village the following connection charges:

- (a) *Plant Capacity Charges* - The contribution of Developer's portion of the cost of construction of treatment plants, described in Exhibit "B". The amount of said charges shall be adopted by resolution of the Village Council.
- (b) *Application Charge* - A charge which reflects the actual administrative cost of preparation of this Developer Agreement, plus preliminary engineering costs, as described in Exhibit "B". The amount of said charge shall be adopted by resolution of the Village Council.
- (c) *Plan Review Charge* - A charge which reflects the actual cost of reviewing and approving governmental agency applications, construction/engineering plans, and shop drawings as described in Exhibit "B". The amount of said charge shall be adopted by resolution of the Village Council.
- (d) *Inspection Charge* - A charge which reflects the actual cost of inspection of water and wastewater facilities installed by Developer, as described in Exhibit "B". The amount of said charge shall be adopted by resolution of the Village Council.
- (e) *Meter and Backflow Prevention Device Charges* - The applicable charges for water meters, backflow prevention devices and/or meter and backflow prevention device installations of sufficient capacity for all single-family, residential, multi-family, mobile home, commercial installation, or any other connection requiring a measuring device.

Payment of the connection charges does not and will not result in Village waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. Village shall not be obligated to refund to Developer any portion of the value of the connection charges for any reason whatsoever, except for that which may be provided for in Exhibit "C" (CIAC, if applicable), nor shall Village pay any interest or rate of interest upon the connection charges paid.

Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to any charges paid or to any of the water or wastewater facilities and properties of Village, and all prohibitions applicable to Developer with respect to no refund of charges and otherwise, are applicable to all persons or entities, except for that which may be provided in Exhibit "C" (CIAC, if applicable).

Any user or consumer of water and wastewater service shall not be entitled to offset any bill or bills rendered by Village for such service or services against the required charges paid. Developer shall not be entitled to offset the connection charges against any claim or claims of Service Company, including claims for breach of contract, damages or charges of the like of Village.

5. Payment - Developer shall pay, in full, plant capacity charges for all capacity reserved hereunder at the time of permit approval. This payment may be for entire project or specific phases.

However, plant capacity shall be reserved only for that amount of capacity for which plant capacity charges have been paid. In the event Developer elects to pay plant capacity charges in phases, he shall pay such plant capacity charges in full for each phase prior to the commencement of each such phase.

6. Equivalent Residential Connections Reserved - The parties agree that the capacity needed to provide service to the Property is 195 equivalent residential connections (ERC's) for potable water supply and 195 equivalent residential connections (ERC's) for wastewater removal. Developer agrees that the number of units of capacity reserved hereby shall not exceed the number of units of development for which capacity is reserved hereby pursuant to Exhibits "B" and "C".

7. Notice to Proceed - The parties recognize that before Village can begin to carry out this Agreement, Developer must pay to Village all required charges as shown in attached Exhibits and provide Village with a written Notice to Proceed, when appropriate. It is understood and agreed that Village shall be allowed a financially feasible reasonable period of time to construct facilities necessary to provide water and wastewater service to the Property after receipt of the written Notice to Proceed.

8. Guaranteed Revenues - Village charges and collects guaranteed revenues from property owners, builders and/or Developer in order to defray Village's costs for ownership, operation and maintenance of non-used and useful utility facilities as outlined in Village's Uniform Water and Wastewater Service Policy. Village shall invoice Developer and Developer shall pay plant capacity guaranteed revenues on all phases of Developer's project commencing at the time that Developer executes a Developer Agreement with the Village. Developer shall pay main extension or line guaranteed revenue charges at the time that on-site and/or off-site lines for each phase are accepted by Village for ownership, operation and maintenance. Developer understands that capacity is guaranteed for Developer's needs only for and to the extent that guaranteed revenues are paid. Stated otherwise, if Developer elects not to pay guaranteed revenues on all phases of his construction project, he understands that he risks capacity not being available for Developer's needs for such phase(s) when Developer needs same. A lapse in the timely payment of guaranteed revenues shall result in a lapse of all remaining reserved capacity. As active connections are made, the guaranteed revenue charge obligation of Developer shall be proportionately reduced. The guaranteed revenue charges shall be invoiced to Developer by Village the first of each month for the preceding month.

9. On-Site Installation - To induce Village to provide water treatment and wastewater collection and disposal facilities, and to continuously provide consumers located on the Property with water and wastewater services, unless otherwise provided for herein, Developer hereby covenants and agrees to construct and to transfer ownership and control to Village, as a contribution-in-aid-of-construction, the on-site water distribution and wastewater systems referred to in Exhibit "C" (CIAC, if applicable) herein, as amended from time to time by Service Company. The term "on-site water distribution and wastewater collection systems" means and includes all water distribution and supply mains, lines and pipes, and related facilities, and wastewater collection lines, collection facilities and equipment, including pumping stations, constructed within the boundaries of Developer's Property, adequate in size to serve each lot or unit within the Property or as otherwise

required by Village, which are referred to in Exhibit "C" (CIAC, if applicable) hereof, and will be dedicated by Developer to Village.

Developer shall cause to be prepared *five (5)* copies of the applications for permits and *nine (9)* sets of finalized engineering plans prepared and sealed by a professional engineer registered in the State of Florida, along with a copy of the final estimate of quantities covering all contract items that are to be dedicated to the Village. Plans shall show the on-site water distribution and wastewater collection systems proposed to be installed to provide service to consumers within the Property. Such plans will also show the interconnection of such on-site facilities to the off-site facilities of the Village, or off-site facilities that may be constructed by Developer or others and given to the Village. Such detailed plans may be limited to the first development phase only, and subsequent phases may be furnished from time to time. However, each such development phase shall conform to a master plan for the development of the Property, and such master plan shall be submitted to Village concurrent with or prior to submission of engineering plans for the first development phase. Developer reserves the right to modify his master plan any time in such manner as to not unduly interfere with Village's existing facilities and, upon modification, shall submit *nine (9)* copies of the modified plan to Village. The cost of any modifications to Village's existing systems or to its master plan that are caused by Developer's modifications or changes shall be borne by Developer. Developer shall cause his engineer to submit specifications governing the material to be used and the method and manner of installations. All such plans, specifications and shop drawings submitted to Village's engineer shall meet the approval of Village, which approval shall not be unreasonably withheld. Village reserves the right to review the revised master plan and recalculate the connection charges that are to be paid by Developer at the time the revised master plan is submitted. No construction shall commence until Village and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Developer, Developer shall submit to Village *one (1)* copy of water and/or wastewater service permit(s) and approved plans. If construction commences prior to all such approvals and any other approvals required hereunder, Village shall have no responsibility to accept such lines or facilities, nor to perform routine inspections of such lines or facilities, and Village may elect to terminate this Agreement and/or not provide required service to Developer until such time as Developer obtains such required approvals and Village has witnessed all of its required inspections and tests.

After approval of the plans, specifications and shop drawings by Village and appropriate regulatory agencies, Developer, or the engineer of record, shall set up a pre-construction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Village.

Developer shall provide to Village's inspector a minimum of forty-eight (48) hours notice, excluding weekends and holidays, prior to commencement of construction. Developer shall cause to be constructed, at Developer's own cost and expense, the water distribution and wastewater collection systems as shown on the approved plans and specifications.

During the construction of the water distribution and/or wastewater collection systems by Developer, Village shall have the right to inspect such installations to determine compliance with the

approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. Village, engineer of record and utility contractor shall be present for all standard tests for pressure, exfiltration, line and grade, infiltration and all other normal engineering tests, to determine that the systems have been installed in accordance with the approved plans and specifications, good engineering practices, and American Water Works Association criteria, as well as other federal, state and local regulations which are applicable. Developer agrees to pay to Village, or Village's authorized agent, a sum to cover the actual cost of all inspections of installations made by Developer or Developer's contractor, which charge shall be in conformance with Village's fees and charges resolution adopted by the Village Council.

Upon completion of construction, Developer's engineer of record shall submit to Village a signed copy of the certification of completion submitted to the appropriate regulatory agencies and certified to Village. If certification is for the water distribution system, a copy of the bacteriological results and a sketch showing locations of all sample points shall be included. The engineer of record shall also submit to Village ammonia mylars of the as-built plans prepared and certified by the engineer of record, and ammonia mylars of the recorded plat, including the dedication sheet(s).

By these presents, Developer hereby covenants to transfer to Village title to all water distribution and wastewater collection systems installed by Developer or Developer's contractor shown in Exhibit "C" (CIAC, if applicable) of this Agreement dealing with those sanitary collection and potable water supply facilities that will be transferred from Developer to Village, pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Village issues its final letter of acceptance. As further evidence of said transfer of title, upon the completion of the installation, but prior to the issuance of the final letter of acceptance and the rendering of service by Village, Developer shall:

- (a) Convey to Village, by notarized bill of sale in form satisfactory to Village's Counsel, the water distribution and wastewater collection systems listed in Exhibit "C" (CIAC, if applicable) as constructed by Developer and approved by Village.
- (b) Provide Village with copies of invoices from contractors and from suppliers of materials for installation of the utility systems being dedicated to Village, including engineering design and inspection fees so paid.
- (c) Furnish proof satisfactory to the Village that the installation of the facilities and all contractors, subcontractors, materialmen, laborers and engineers have been paid in full (i.e., by release of liens or other appropriate means).
- (d) Warrant to Village that all utility facilities installed by Developer have been constructed in accordance with approved plans and specifications, and in compliance with all governmental and regulatory agency laws, rules and regulations, and that the said facilities have been constructed in a good and workmanlike manner.
- (e) Warrant and/or guaranty to Village that all utility facilities being dedicated to Village

against faulty workmanship and defective materials for a period of one (1) year from the date of Village's final letter of acceptance. Also, Developer shall assign any and all warranties and/or maintenance bonds and the right to enforce same to Village which Developer obtains from any contractor constructing the water and wastewater systems. Developer shall remain secondarily liable on such warranties. If Developer does not obtain such written warranty and/or maintenance bond from its contractor and deliver same to Village, which warranty and/or maintenance bond shall be for a minimum period of one (1) year, then in such event, Developer, by the terms of this Agreement, covenants to indemnify and save harmless the Village for any loss, damages, costs, claims, suits, debts or demand by reason of defects in the systems for a period of one (1) year from the date of the final letter of acceptance by Village.

- (f) Provide Village with all appropriate operation/maintenance and parts manuals.
- (g) Further cause to be conveyed to Village, free and clear of all encumbrances, all utility easements and rights-of-way covering areas in which water and wastewater systems are installed, or otherwise required, in recordable form satisfactory to Village's Counsel, on Village's standard easement form. If applicable, Village may require joinder of any mortgagee and any condominium association, cooperative or other vendee of the Property.
- (h) Grant easement or deed to Village, in recordable form, a twenty-five (25) foot by twenty-five (25) foot minimum site, or as otherwise required by Village, for any lift stations constructed on Developer's Property, along with recordable ingress/egress easements, and satisfactory to Village's Counsel. Developer shall provide a title insurance policy or opinion of attorney as to title of all such easements and rights-of-way.

Village agrees that the issuance of the final letter of acceptance for water distribution and wastewater collection systems installed by Developer shall constitute the assumption of responsibility by Village for the continuous operation and maintenance of such systems from that date forward, subject to the terms and conditions contained herein, except as set forth above.

Whenever the development of the subject Property involves one consumer or a unity of title of several consumers, and/or in the opinion of Village, ownership by Village of the internal water distribution and wastewater collection systems is not necessary or proper, then at the option of Village, Developer shall retain ownership and the obligation for maintenance of such on-site water facilities located on the discharge side of a master meter and of such on-site wastewater facilities located on the consumer's side of the point of delivery, as shown in Exhibit "C" (CIAC, if applicable).

In the event Developer receives service for water and/or wastewater facilities not owned by Village, then Village shall have the unconditional option at any time to acquire, at no cost to Village, the ownership of such facilities constructed by Developer. Village shall exercise its option to acquire ownership of the aforementioned facilities by giving written notice to Developer, its

successors and assigns, of its intention to exercise said option. Within twenty (20) days upon receipt of written notice from Village, Developer, its successors and assigns, shall transfer, at no cost to Village, ownership and shall be responsible for the maintenance of the facilities after the transfer of ownership between the parties is completed.

In the event that Village, for whatever reason, does not take possession, ownership and control of the on-site facilities constructed by Developer, and provides master metered service to Developer for the use of several consumers within the on-site facilities, Developer shall be required to:

- (i) Maintain water quality at each individual outlet which is in compliance with all primary and secondary standards promulgated by the Florida Department of Environmental Protection and/or County Health Department. At no time shall such water quality standards be required to be in excess of those attained at Village's point of delivery to the master meter.
- (ii) Institute a program of line flushing in order to help in the reduction of sedimentary deposits in Developer's on-site lines, and reduce the possibility that water quality standards will fall below those required by subsection (i) above. Such line flushing shall be conducted in accordance with reasonable engineering standards as necessary to meet the objectives as outlined herein. Such flushing shall occur at a minimum of not less than *once (1)* monthly. Developer shall provide Village a minimum of forty-eight (48) hours notice of the time and place of such flushing. Village shall send its representative to observe such flushings and record the amount of water used for that purpose as indicated by the meter. Developer shall be solely and directly responsible for the cost of all water used in the flushing of his on-site facilities, such billing and collection to be conducted, in accordance with the provisions of Village's approved tariff.
- (iii) Developer shall be responsible for maintaining all on-site water and wastewater facilities, in accordance with reasonably prudent engineering standards. Village shall have the right to inspect the facilities of Developer during reasonable business hours upon twenty-four (24) hours notice to Developer. If Village determines that Developer has failed to comply with the provisions of this section, Village shall provide an explanation of the reason for such violation, at which point Developer shall have twenty (20) days or such other time as is reasonably necessary to correct the deficiency. Upon failure to do so, Village shall have the power and right to discontinue service, in accordance with the provisions of its approved tariff for non-payment of bills.

10. Off-Site Installation - Developer may be required to construct, at his sole expense, or may be required to compensate Village for construction of certain off-site water and/or wastewater facilities in order to connect Developer's on-site facilities to Village's existing water and/or wastewater systems. In addition, Developer may, at Village's election, be required to dedicate all or a portion of said off-site water and/or wastewater facilities to Village for ownership, maintenance

and operation.

All provisions in Section 9 above, entitled "On-Site Installations", pertaining to specifications, plans, permits and approvals, including, without limitation, the provisions of Paragraph 9(a) and 9(h) above, shall also be applicable to all off-site water and wastewater facilities construction.

11. Easements - Developer hereby grants and gives to Village, its successors and assigns, but subject to the terms of this Agreement, the exclusive right or privilege to construct, own, maintain, or operate the water and wastewater facilities to serve the Property; and the exclusive right or privilege to construct, own, maintain, alter, replace or operate said facilities in, under, upon, over and across the present and future streets, roads, alleys, easements, reserved utility strips and utility sites, and any public place as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise, and is independent of said record plats. Developer shall obtain any and all necessary off-site easements that may be required in order to carry out the terms, conditions and intent hereof, at Developer's expense, and shall convey same to Village, in accordance with this paragraph. Mortgagees, if any, holding prior liens on the Property or the Property encumbered by such easements shall be required to release such liens, subordinate their position or join in the grant or dedication of the easements or rights-of-way, or give to Village assurance by way of a "non-disturbance agreement," that in the event of foreclosure, mortgagee would continue to recognize the easement rights of Village, as long as Village complies with the terms of this Agreement. All water distribution and wastewater collection facilities, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated roads or rights-of-way for utility purposes.

Developer hereby further agrees that the foregoing grants or promises of grants include the necessary right of ingress and egress to any part of the Property upon which Village is constructing or operating such facilities; that the foregoing grants shall be for such period of time as Village or its successors and assigns require such rights, privileges, or easements in the construction, ownership, maintenance, operation, or expansion of the water and wastewater facilities; that in the event Developer and Village agree that Village is to install any of its water or wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Developer or the owners shall grant to Village, without cost or expense to Village, the necessary easement or easements for such "private property" installation; provided all such "private property" installations by Village shall be made in such a manner as not to interfere with the then primary use of such "private property." Village covenants that it will use due diligence in ascertaining all easement locations; however, should Village install any of its facilities outside a dedicated easement area, Village will not be required to move or relocate any facilities lying outside a dedicated easement area, so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed, and so long as Village obtains a private easement for such facility location, which Developer will give if same is within his reasonable power to do so. The use of easements granted by Developer to Village shall not preclude the use by other utilities of these easements, such as for cable television, telephone, electric, or gas utilities, or as otherwise agreed to by Village.

In the event Developer fails to actually deliver such easement, this document shall serve as Village's authorization to substitute this Agreement as a recorded easement sufficient for Village's needs.

Village hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its facilities in any of the easement areas. However, this provision shall not be constructed so as to require Village to restore those improvements constructed, installed or planted within the utility easement which are not in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the use of utility easements.

12. Agreement to Serve - Upon the completion of construction of the on-site and off-site water and wastewater facilities required hereunder by Developer, its inspection, the issuance of the final letter of acceptance by Village, and when all appropriate governmental agency approvals have been received, and when utility systems are in compliance with Village's Uniform Water and Wastewater Service Policy, and the other terms of this Agreement, Village covenants and agrees that it will connect or oversee the connection of the water distribution and wastewater collection facilities installed by Developer to the central facilities of Village, in accordance with the terms and intent of this Agreement. Such connection shall, at all times, be in accordance with rules, regulations and order of the applicable governmental authorities. Village agrees that once it provides water and wastewater service to the Property, and Developer or others have connected consumer installations to its system, that thereafter Village will continuously provide, at its cost and expense, but in accordance with the other provisions of this Agreement, including its Uniform Water and Wastewater Service Policy, its rules and regulations and rate schedules, water and wastewater service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Village.

13. Application for Service: Consumer Installations - Developer, or any owner of any parcel of the Property, or any occupant of any residence, building or unit located thereon, shall not have the right to and shall not connect any consumer installation to the facilities of Village until formal written application has been made to Village by the prospective user of water and/or wastewater service or either of them, in accordance with the then effective rules and regulations of Village, and approval of such connection has been granted.

Although the responsibility of connecting the consumer installation to the meter and/or lines of Village at the point of delivery is that of the Developer or entity other than Village, with reference to such connections, the parties agree as follows:

- (a) Application for the installation of water meters and backflow preventers shall be made forty-eight (48) hours in advance, not including Saturdays, Sundays and holidays.
- (b) All consumer installation connections must be inspected by Village before backfilling and covering of any pipes.

- (c) Notice to Village requesting an inspection of a consumer installation connection may be given by the plumber or Developer, and the inspection will be made within twenty-four (24) hours, not including Saturdays, Sundays and holidays, provided the water meter and backflow preventer have been previously installed.
- (d) If Village fails to inspect the consumer installation connection within forty-eight (48) hours, not including Saturdays, Sundays and holidays, after such inspection is requested by Developer or the owner of any parcel, Developer or owner may backfill or cover the pipes without Village's approval, and Village must accept the connection as to any matter which could have been discovered by such inspection.
- (e) If Developer does not comply with the foregoing inspection provisions, Village may refuse service to a connection that has not been inspected until Developer complies with these provisions.
- (f) The cost of constructing, operating, repairing or maintaining consumer installations shall be that of Developer or a party other than Village.
- (g) If a kitchen, cafeteria, restaurant or other food preparation or dining facility is constructed within the Property, Village shall have the right to require that a grease trap be constructed, installed and connected so that all wastewaters from any grease-producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of Village. Size, materials, and construction of such grease trap shall be approved by Village.

Any water which is directed to a grease trap shall have sufficient cooling time so as not to exceed 80E F upon entering said grease trap.

All garbage can wash-down areas shall be designed so as to provide a six (6") inch high curb around said wash-down area, and shall be no greater than six (6") inches larger than the can on any side. All surrounding drainage shall be directed away from the can-wash area. Can-wash water shall not be directed to any grease trap.

All gas stations, automobile service bays or any other use for which Village determines may cause oil or grease to enter Village's wastewater system by way of floor drains or other means shall provide a sufficiently sized and designed oil/grease trap as approved by Village.

Where and as possible, residential laundry wastes shall be disposed of by means of an interceptor tank and absorption bed or drainfield. Such installations shall be in accordance with the design standards of Chapter 10D-6, Florida Administrative Code.

Village reserves the right to periodically inspect all oil/grease traps and to require Developer, his successors, heirs or assigns to pump out said oil/grease traps in order to restore proper operation of this facility.

Developer agrees that wastewater to be treated by Village from Developer's Property will consist of domestic wastewater only, and further agrees that it will not allow any abnormal strength wastewater to flow from Developer's Property to Village's wastewater treatment facility that will cause harm to the treatment process. In addition, Developer further agrees that no wastewaters, fluids or other substances and materials which contain any hazardous, inflammable, toxic and/or industrial constituents, in whole or in part, regardless of the concentrations (i.e., strengths) of said constituents, shall be discharged into Village's sanitary wastewater collection/transmission system. Developer grants to Village the right to sample Developer's wastewater, as referred to hereinabove, to verify Developer's compliance with this paragraph. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the consumer will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

14. Service Company's Exclusive Right to Utility Facilities - Developer agrees with Village that all water and wastewater facilities accepted by Village in connection with providing water and wastewater services to the Property (including fire service), shall at all times remain in the sole, complete and exclusive ownership of Village, its successor and assigns, and any person or entity owning any part of the Property, or any residence, building or unit constructed or located thereon, shall not have any right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water and wastewater services to other persons or entities located within or beyond the limits of the Property. Developer may provide, in accordance with Village's Uniform Water and Wastewater Service Policy, for the availability of those water services to the Property, which constitute "non-domestic" uses, such as for irrigation purposes.

15. Exclusive Right to Provide Service - Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory fashion) engage in the business or businesses of providing potable water or wastewater services to the Property during the period of time Village, its successors and assigns, provide water and wastewater services to the Property, it being the intention of the parties hereto that under the foregoing provision and also the provisions of this Agreement, Village shall have the sole and exclusive right and privilege to provide water and wastewater services to the Property and to the occupants of each residence, building or unit constructed thereon, except for the providing by Developer, from its own sources and lines of water, for irrigation purposes.

16. Rates - Village agrees that the rates to be charged to Developer and individual consumers of water and wastewater services shall be those set forth in the rate schedule(s) of Village. However, notwithstanding any provision in this Agreement, Village, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedule(s) so established and enforced, and shall, at all times, be reasonable and subject to regulations as may be provided by law. Rates charged to Developer or consumers located upon the Property shall, at all times, be identical to rates charged for the same classification of service as are or may be in effect throughout the service area of Village.

Notwithstanding any provision in this Agreement, Village may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering water and wastewater services to the Property. All provisions of the Village's Uniform Water and Wastewater Service Policy, as amended from time to time, are made a part of and control the terms of this Agreement. However, all such rules and regulations so established by Village shall, at all times, be reasonable and subject to such regulations as may be provided by law or contract.

Any such initial or future increased rates, rate schedule(s) and rules and regulations established, amended or revised and enforced by Village from time to time, in the future, as provided by law, shall be binding upon Developer; upon any user or consumer of water and wastewater services provided to the Property by Village.

17. **Binding Effect of Agreement** - This Agreement shall be binding upon and shall inure to the benefit of Developer, Village, and their respective assigns and successors by merger, consolidation, conveyance, or otherwise, subject to the terms and conditions of this Agreement as contained herein. Developer understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Developer to third parties without the written consent of Village, except in the case of a bona fide sale of Developer's Property, or other valid transfer or assignment of Property, including, without limitation, the transfer or assignment of the Property as a result of a judicial proceeding, such as mortgage foreclosure or sale, and assignment for the purposes of obtaining financing. In any such case, Developer shall provide a notice of evidence of such assignment, or partial assignment as the case may be, to Village; and Village shall have the right to renegotiate the terms of this Agreement with assignee or transferee. Such approval to sale, transfer or assignment shall not be unreasonably withheld. Nothing herein shall preclude sales of individual units and assignment of rights of water and wastewater service pertaining thereto.

18. **Notice** - Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Developer shall be mailed or delivered to Developer at:

KSM Holding, LLC
1064 ½ North Haverhill Road
West Palm Beach, FL 33417

and if to Village at:

Village of Royal Palm Beach
1050 Royal Palm Beach Boulevard
Royal Palm Beach, Florida 33411

19. **Laws of Florida** - This Agreement shall be governed by the laws of the State of Florida, and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable.

20. Costs and Attorney's Fees - In the event Village or Developer are required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees, including fees on appeal.

21. Force Majeure - In the event that the performance of this Agreement by Village is prevented or interrupted in consequence of any cause beyond the control of Village, including, but not limited to, acts of God or of the public enemy, war, national emergency, allocation, or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, any and all governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order of decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

22. Indemnification - Developer agrees to indemnify and hold Village harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) to which Village may become subject by reason of or arising out of Developer's breach or non-performance of this Agreement. This indemnification provision and all warranty provisions shall survive the actual connection to Village's water and wastewater systems.

23. Recordation of Agreement - Upon completion of execution of this Agreement by Developer and Village, Village shall, at Developer's expense, cause this Agreement to be recorded with the Clerk of the Court of Palm Beach County.

MISCELLANEOUS PROVISIONS

24. The rights, privileges, obligations and covenants of Developer and Village shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

25. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Village, made with respect to the matters herein contained, and when duly executed, fully constitutes the agreement between Developer and Village. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by all signatures herein.

26. Whenever the singular number is used in this Agreement, and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

27. Exhibits mentioned herein have been signed or initialed by the duly authorized officers, agents or attorneys of the parties hereto, and are hereby incorporated herein by reference and made a part hereof as fully as if set forth herein.

28. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

29. The submission of this Developer Agreement for examination by Developer does not constitute an offer but becomes effective only upon execution thereof by Village.

30. Notwithstanding the gallonage calculations that could be made hereunder relative to the ERC's by and execution hereof, Developer agrees that the intention of this Agreement is to reserve a given number of units of capacity for the property described in Exhibit "A", and not for purposes of any other calculations.

31. It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered equally applicable under another for the interpretation of this Agreement.

32. The parties hereto recognize that prior to the time Village may actually commence upon a program to carry out the terms and conditions of this Agreement, Village may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of Village. The Village agrees that it will diligently and earnestly, at Developer's sole cost and expense, make the necessary and proper applications to all governmental authorities, and will pursue the same to the end, and that it will use its best efforts to obtain such approval. Developer, at his own cost and expense, agrees to provide necessary assistance to Village in obtaining the approvals provided for herein. Upon execution of this Agreement, Village may require the payment of a reasonable fee to defray Village's legal, engineering, accounting, administrative and contingent expenses.

33. Regardless of where executed, this Agreement shall be construed according to the laws of the State of Florida.

34. In the event that relocation of existing water and wastewater utilities are necessary for Developer, Developer will reimburse Village in full for such relocations.

35. Failure to insist upon strict compliance of any of the terms, covenants or conditions herein shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

36. Village shall, at all reasonable times and hours, have the right of inspection of Developer internal lines and facilities. This provision shall be binding on the successors and assigns of Developer.

37. This Agreement is binding on the successors and assigns of the parties hereto, including any governmental purchaser of Village. This Agreement shall survive the sale of Village to any party.

38. Notwithstanding anything herein to the contrary, Developer shall pay Village the higher of either the actual cost to Village or Developer's pro rata share of the actual cost of providing potable water service and wastewater service to Developer's Property or the charges provided for herein.

39. There shall be no liability, whatsoever, on Village for failure to deliver water and/or wastewater service to Developer according to Developer's needs or schedules. This Agreement constitutes a promise of good faith and not a timetable for delivery of utility services.

40. Each party hereby agrees to grant such further assurances and provide such additional documents as may be required, each by the other, in order to carry out the terms, conditions and comply with the express intention of this Agreement.

IN WITNESS WHEREOF, Developer and Village 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.

WITNESSES:

Diane DeBorck

Witness Signature

DAVE DI SANTO

Witness Printed Name

Jacqueline Dary

Witness Signature

Jacqueline Dary

Witness Printed Name

Robin Cochrane

Witness Signature

Robin Cochrane

Witness Printed Name

Jacqueline Dary

Witness Signature

Jacqueline Dary

Witness Printed Name

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

VILLAGE:

*Village of Royal Palm Beach,
a Florida Municipal Corporation*

David B. Farber

By: **David B. Farber, Village Manager**

DEVELOPER: **KSM Holding, LLC**

Peter Maharaj

By: **Peter Maharaj, Managing Member**

JOINDER AND CONSENT OF PROPERTY OWNER
(If other than Developer):

By:

MORTGAGEE JOINDER
(If applicable):

Witness Signature

By:

Witness Printed Name

Witness Signature

Witness Printed Name

MORTGAGEE JOINDER
(If applicable):

Witness Signature

By:

Witness Printed Name

Witness Signature

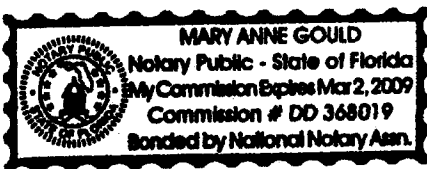
Witness Printed Name

FOR VILLAGE:

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21st day of February, 2006, by **David B. Farber, Village Manager**, who is personally known to me or who has produced a Florida driver's license as identification and who did/did not take an oath.

(Seal)



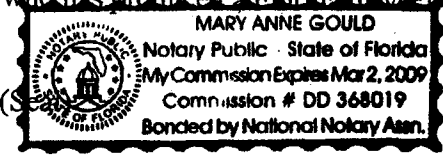
Mary Anne Gould

NOTARY PUBLIC, State of Florida

FOR DEVELOPER:

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13th day of February, 2006, by Peter Makasay, (name and title/position) on behalf of _____ (name of Developer/corporation) who is personally known to me or who has produced a Florida driver's license as identification and who did/did not take an oath.



Mary Anne Gould
NOTARY PUBLIC, State of Florida

FOR PROPERTY OWNER (If applicable):

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is personally known to me or who has produced a Florida driver's license as identification and who did/did not take an oath.

(Seal)

NOTARY PUBLIC, State of Florida

FOR MORTGAGEE (If applicable):

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, (name and title/position) on behalf of
_____ (name of Mortgagee) who is personally known to me or who has
produced a Florida driver's license as identification and who did/did not take an oath.

(Seal)

NOTARY PUBLIC, State of Florida

FOR MORTGAGEE (If applicable):

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, (name and title/position) on behalf of
_____ (name of Mortgagee) who is personally known to me or who has
produced a Florida driver's license as identification and who did/did not take an oath.

(Seal)

NOTARY PUBLIC, State of Florida

LEGAL DESCRIPTION OF PROPERTY

SEE ATTACHED

DEVELOPER: *KSM Holding, LLC*

[Handwritten Signature]
Witness Signature

[Handwritten Signature]
By: **Peter Maharaj, Managing Member**

[Handwritten Name]
Witness Printed Name

[Handwritten Signature]
Witness Signature

[Handwritten Name]
Witness Printed Name

TRACT "A"

A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF CYPRESS HEAD UNIT 2 PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 74, PAGE 48, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; THENCE, SOUTH 01°12'44" WEST, ALONG THE SOUTHERLY PROLONGATION OF THE WEST LINE OF SAID CYPRESS HEAD UNIT 2 PLAT 1, A DISTANCE OF 31.34 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF CRESTWOOD BOULEVARD, ACCORDING TO THAT CERTAIN DEED, RECORDED IN OFFICIAL RECORDS BOOK 5655, PAGE 420, SAID PUBLIC RECORDS, SAID POINT ALSO BEING ON A CURVE CONCAVE WEST, HAVING A RADIUS OF 903.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 71°29'04" WEST; THENCE, SOUTHERLY, ALONG SAID CURVE AND SAID EAST RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 19°43'40", A DISTANCE OF 310.92 FEET TO THE POINT OF TANGENCY; THENCE, SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 365.82 FEET; THENCE, SOUTH 88°36'39" EAST, DEPARTING SAID RIGHT-OF-WAY LINE, A DISTANCE OF 139.18 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1530.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 16°57'28", A DISTANCE OF 452.83 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°01'59", A DISTANCE OF 244.92 FEET TO A POINT ON A CURVE CONCAVE NORTH, HAVING A RADIUS OF 55.00 FEET AND WHOSE RADIUS POINT BEARS NORTH 67°08'13" EAST; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 131°35'40", A DISTANCE OF 126.32 FEET TO A POINT ON A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 04°12'55" WEST; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°34'09", A DISTANCE OF 44.84 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 2030.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°32'42", A DISTANCE OF 657.05 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 470.00 FEET; THENCE, EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°09'17", A DISTANCE OF 107.91 FEET; THENCE, SOUTH 88°36'20" EAST, A DISTANCE OF 21.56 FEET TO THE INTERSECTION THEREOF WITH THE WEST BOUNDARY OF CYPRESS HEAD SUBDIVISION-UNIT ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 41, PAGE 90, SAID PUBLIC RECORDS; THENCE, NORTH 01°32'41" EAST, ALONG SAID PLAT BOUNDARY, A DISTANCE OF 109.63 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 930.00 FEET; THENCE, NORTHWESTERLY, ALONG SAID CURVE AND CONTINUING ALONG SAID PLAT BOUNDARY AND THE NORTHERLY PROLONGATION THEREOF, THROUGH A CENTRAL ANGLE OF 27°32'52", A DISTANCE OF 447.14 FEET TO THE INTERSECTION THEREOF WITH THE SOUTH BOUNDARY OF SAID CYPRESS HEAD UNIT 2 PLAT 1; THENCE, NORTH 88°29'16" WEST, ALONG SAID SOUTH PLAT BOUNDARY, A DISTANCE OF 999.52 FEET; THENCE, NORTH 88°48'51" WEST, CONTINUING ALONG SAID SOUTH PLAT BOUNDARY, A DISTANCE OF 704.03 FEET TO THE POINT OF BEGINNING.

CONTAINING: 24.97 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

Exhibit A (1)

PAGE 21A OF 26

TRACT "B"

A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 41 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF CYPRESS HEAD UNIT 2 PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 74, PAGE 48, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; THENCE, SOUTH 01°12'44" WEST, ALONG THE SOUTHERLY PROLONGATION OF THE WEST LINE OF SAID CYPRESS HEAD UNIT 2 PLAT 1, A DISTANCE OF 31.34 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF CRESTWOOD BOULEVARD, ACCORDING TO THAT CERTAIN DEED, RECORDED IN OFFICIAL RECORDS BOOK 5655, PAGE 420, SAID PUBLIC RECORDS, SAID POINT ALSO BEING ON A CURVE CONCAVE WEST, HAVING A RADIUS OF 903.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 71°29'04" WEST; THENCE, SOUTHERLY, ALONG SAID CURVE AND SAID EAST RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 19°43'40", A DISTANCE OF 310.92 FEET TO THE POINT OF TANGENCY; THENCE, SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 365.82 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUE SOUTH 01°12'44" WEST, CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 178.00 FEET TO THE INTERSECTION THEREOF WITH THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 80 (SOUTHERN BOULEVARD), ACCORDING TO THAT CERTAIN DEED RECORDED IN OFFICIAL RECORDS BOOK 5420, PAGE 399, SAID PUBLIC RECORDS; THENCE, SOUTH 88°48'51" EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 648.93 FEET; THENCE, SOUTH 88°29'16" EAST, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 1067.20 FEET; THENCE NORTH 46°31'26" EAST, CONTINUING ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 49.16 FEET TO THE INTERSECTION THEREOF WITH THE WEST BOUNDARY OF CYPRESS HEAD SUBDIVISION-UNIT ONE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 41, PAGE 90, SAID PUBLIC RECORDS; THENCE NORTH 01°32'41" EAST, ALONG SAID WEST PLAT BOUNDARY, A DISTANCE OF 305.44 FEET; THENCE, NORTH 88°36'20" WEST, DEPARTING SAID WEST PLAT BOUNDARY, A DISTANCE OF 21.56 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 470.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°09'17", A DISTANCE OF 107.91 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 2030.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°32'42", A DISTANCE OF 657.05 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°34'09", A DISTANCE OF 44.84 FEET TO A POINT ON A CURVE CONCAVE NORTH, HAVING A RADIUS OF 55.00 FEET AND WHOSE RADIUS POINT BEARS NORTH 64°27'27" WEST; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 131°35'40", A DISTANCE OF 126.32 FEET TO A POINT ON A CURVE CONCAVE SOUTH, HAVING A RADIUS OF 1000.00 FEET AND WHOSE RADIUS POINT BEARS SOUTH 01°32'09" EAST; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°01'59", A DISTANCE OF 244.92 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTH, HAVING A RADIUS OF 1530.00 FEET; THENCE, WESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 16°57'28", A DISTANCE OF 452.83 FEET; THENCE, NORTH 88°36'39" WEST, A DISTANCE OF 139.18 FEET TO THE POINT OF BEGINNING.

CONTAINING: 10.26 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

TOTAL CONTAINING: 35.23 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD

Exhibit A(2)

Page 21 B of 26

APPLICABLE CHARGES

Developer agrees to pay Village the following charges which have been adopted by resolution of the Village Council. Developer understands that plant capacities are only reserved upon payment by Developer of applicable charges to Village.

This project consists of a mixed use project to be constructed in 1 phase. The following payment schedule outlines the applicable charges to be paid at this time for plant capacity to be reserved.

PLANT CAPACITY CHARGES

1. *Water.* The following formula was used to determine Developer's share of water plant capacity:

Customer Category	Number of Connections	Meter Size	Charge per Meter	Total Charges
Residential	23	5/8 in	\$1,780.00	\$40,940.00
Multi-Family	124	5/8 in	\$1,330.00	\$164,920.00
Commercial	6	1 ½ in	\$13,350.00	\$80,100.00
Commercial	2	2 inch	\$30,260.00	\$60,520.00

2. *Wastewater.* The following formula was used to determine Developer's share of wastewater plant capacity:

Customer Category	Number of Connections	Meter Size	Charge per Meter	Total Charges
Residential	23	5/8 in	\$2,060.00	\$47,380.00
Multi-Family	124	5/8 in	\$1,540.00	\$190,960.00
Commercial	6	1 ½ in	\$15,450.00	\$92,700.00
Commercial	2	2 inch	\$35,020.00	\$70,040.00

Total Plant Capacity Charges \$ 747,560.00

Exhibit "B" - Page 1 of 3

OTHER APPLICABLE CHARGES

The Developer agrees to pay, in order to induce Village to provide service, the following application charges, recording charges, plan review charges, inspection charges, and legal fees, which have been adopted by resolution of the Village Council and which may be changed from time to time:

3. *Application Charges.* Village imposes an application charge to its administrative costs of **\$300.00**, plus preliminary engineering costs. The application charge and preliminary engineering costs shall be paid by Developer prior to execution of a Developer Agreement to permit the Village to process and complete preliminary engineering for the development. Developer shall pay the actual engineering costs incurred or to be incurred by Village for each phase of the development.

4. *Recording Charges.* Village imposes a recording charge equal to its actual cost. Developer agrees to pay Village, prior to Village's acceptance of lines and facilities, the actual recording charges. Said charges are those established by the Clerk of the Circuit Court of Palm Beach County.

5. *Plan Review Charges.* Village imposes a plan review charge equal to one (1%) per cent of the construction cost, either actual or estimated, of the subject water and wastewater facilities as installed by Developer for each phase of the development, or **\$200.00**, whichever is greater. Developer agrees to pay Village the plan review charge prior to Village's acceptance of lines and facilities. A two hundred dollar (\$200.00) non-refundable deposit shall accompany Developer's submittal of plans to the Village, which shall be credited against the plan review charge.

6. *Inspection Charges.* Village imposes an inspection charge equal to two (2%) per cent of the construction cost, either actual or estimated, of the subject water and wastewater facilities as installed by the Developer for each phase of the development. Developer agrees to pay same prior to Village's acceptance of lines and facilities from Developer.

7. *Legal Fees.* Developer agrees to pay Village the greater of \$250.00 or the actual cost to deter part of its legal fees and costs in the negotiation and preparation of this Agreement.

WITNESSES:

[Handwritten Signature]
Witness Signature

[Handwritten Name]
Witness Printed Name

[Handwritten Signature]
Witness Signature

[Handwritten Name]
Witness Printed Name

WITNESSES:

[Handwritten Signature]
Witness Signature

DAVE DiSANTO
Witness Printed Name

[Handwritten Signature]
Witness Signature

[Handwritten Name]
Witness Printed Name

DEVELOPER: *KSM Holding, LLC*

[Handwritten Signature]
By: Peter Maharaj, Managing Member

VILLAGE:

Village of Royal Palm Beach, a Florida Municipal Corporation

[Handwritten Signature]
By: David B. Farber, Village Manager

Exhibit "B" - Page 3 of 3

**WATER AND WASTEWATER SYSTEM CONTRIBUTIONS
IN AID OF CONSTRUCTION**

The Developer shall install the following pipe, mains and appurtenances thereto and dedicate same to Village. Said installations are to be in accordance with the preliminary plans drawn by **Simmons & White, Inc.** Inc. being water and wastewater plans dated **January 18, 2006.**

Water: All facilities constructed in development of the site will be dedicated to the Village in accordance with the Village Uniform Water and Wastewater Service Policy, Village Code and Minimum Engineering Design and Construction Standards.

Wastewater: All facilities constructed in development of the site will be dedicated to the Village in accordance with the Village Uniform Water and Wastewater Service Policy, Village Code and Minimum Engineering Design and Construction Standards. Developer is to provide a Generator for each Lift Station in accordance with the Village Utilities Minimum Engineering Design and Construction Standards.

WITNESSES:

[Signature]
Witness Signature

[Name]
Witness Printed Name

[Signature]
Witness Signature

[Name]
Witness Printed Name

WITNESSES:

[Signature]
Witness Signature

DANE DI SANTO
Witness Printed Name

[Signature]
Witness Signature

[Name]
Witness Printed Name

DEVELOPER: ***KSM Holding, LLC***

[Signature]
By: **Peter Maharaj, Managing Member**

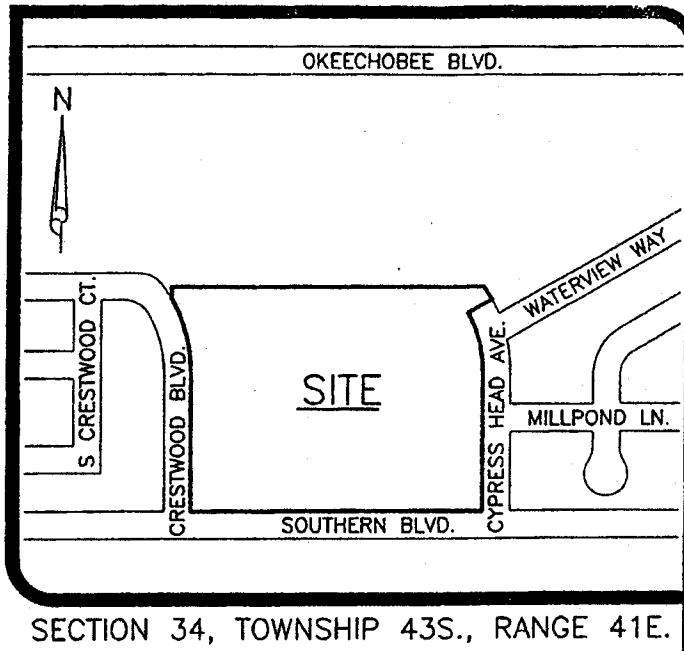
VILLAGE:

Village of Royal Palm Beach, a Florida Municipal Corporation

[Signature]
By: **David B. Farber, Village Manager**

Exhibit "C"

LOCATION MAP



SECTION 34, TOWNSHIP 43S., RANGE 41E.

WITNESSES:

[Signature]
Witness Signature

[Printed Name]
Witness Printed Name

[Signature]
Witness Signature

[Printed Name]
Witness Printed Name

DEVELOPER: *KSM Holding, LLC*

[Signature]
By: Peter Maharaj, Managing Member

Exhibit "D"