

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: November 18, 2008 [X] Consent [] Regular
[] Public Hearing

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 1 to the Standard Potable Water and Wastewater Development Agreement with Vivendi Homes, LLC.

Summary: On March 26, 2007, the County entered into Standard Potable Water and Wastewater Development Agreement (SDA # 02-01117-000) with Vivendi Homes, LLC (Vivendi) for reservation of potable water and wastewater capacity for a small residential project. The Agreement included additional special conditions involving a lift station and certain wastewater improvements that would provide oversizing credits in accordance with the Water Utilities Department's Uniform Policies and Procedures (UPAP). Vivendi subsequently modified their project and desires to modify their Agreement to reflect a revised site plan containing reduced dwelling units, as well as remove the additional conditions. This First Amendment will reduce the number of Equivalent Residential Connections to correspond with the proposed revised site plan and the deletion of additional conditions previously required by the Water Utilities Department. District 3 (MJ)

Background and Justification: The Department Director has been delegated the authority to enter into Standard Development Agreements. Board approval is being sought in this instance because of the need to amend the original Agreement based on the proposed revised site plan.

Attachments:

1. Location Map
2. Two (2) original First Amendment to Standard Potable Water and Wastewater Development Agreement
3. One (1) copy of Standard Potable Water and Wastewater Development Agreement # 02-01117-000

Recommended By: Burt Beards 10/10/08
Department Director Date

Approved By: Shannon B. Boy 10/23/08
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Operating Expense	<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>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:	Fun	Dep	Un	Objec	

Is Item Included in Current Budget? Yes _____ No _____

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:

* The county already received Mandatory Agreement Payment (MAP) with the initial agreement to secure ERC's and has no fiscal impact associated to this agenda item.

April White 10-21-08
 OFMB gm 10/20
 WD 10/20
 CN 10/15/08

Ann J. Javel 10/20/08
 Contract Development and Control

B. Legal Sufficiency:

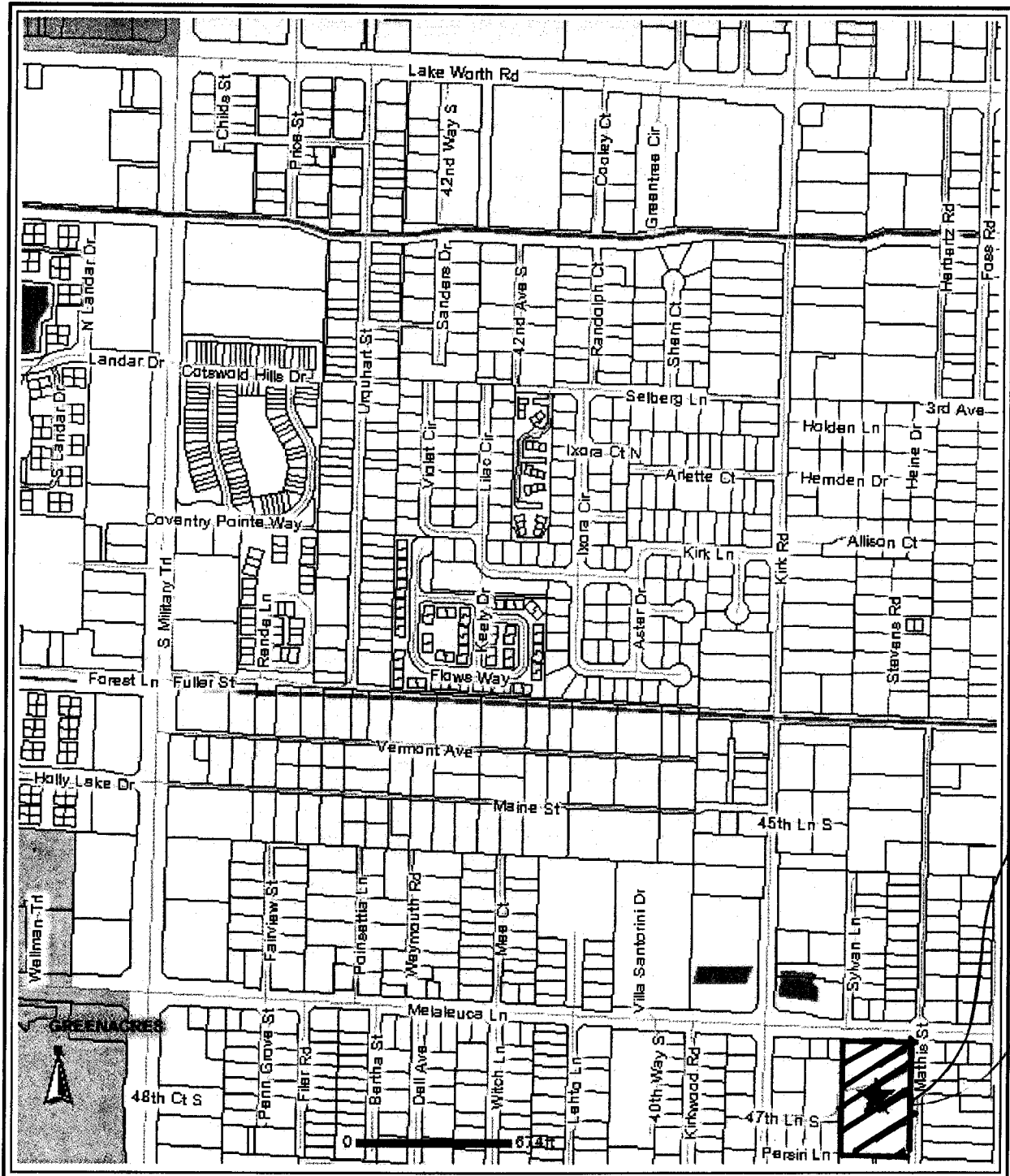
10/23/08
 Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

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



VIVENDI HOMES, LLC

Map Scale 1:8088

Map produced on 9/24/2008

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: MARK FALLON, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT,
8100 FOREST HILL BLVD, WPB, FL 33413

SDA # 02-01117-000

**FIRST AMENDMENT TO STANDARD POTABLE WATER AND
WASTEWATER DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO STANDARD POTABLE WATER AND
WASTEWATER DEVELOPMENT AGREEMENT is made and entered into this**
_____ day of _____, 2008, by and between Palm Beach County, a
political subdivision of the State of Florida, hereinafter referred to as "County" and
VIVENDI HOMES, LLC, a Florida limited liability company, hereinafter referred to as
"Property Owner."

WITNESSETH:

WHEREAS, on March 26, 2007, County, through its lawful designee, entered into a
Standard Potable Water and Wastewater Development Agreement, hereinafter referred to as
"SDA", for the provision of potable water and wastewater service to certain property owned
by Property Owner; and

WHEREAS, the SDA was recorded in the Official Records at Book 21568, and Page
1830; and

WHEREAS, the SDA contained "Additional Conditions" which included an oversized
lift station and deepened gravity sewer system with related oversizing connection fee
credits; and

WHEREAS, Property Owner made revisions to the Site Plan and reduced the number of
dwelling units thereby removing the need for the "Additional Conditions"; and

WHEREAS, the parties desire to amend the SDA to provide for the decrease of
capacity reservation and removal of paragraph 15 "Additional Conditions".

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

1. The SDA is hereby amended by decreasing the original **14.60** ERCs for the subject
property by **12.25** ERCs to **2.35** ERCs.
2. The SDA is hereby amended to remove paragraph 15, "Additional Conditions".
3. Each and every other term of the SDA shall remain in full force and effect and the
SDA is hereby reaffirmed as modified herein.
4. County shall duly record this Amendment to the SDA.

THE REMAINDER OF THIS PAGE INTENTIONLLY LEFT BLANK

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:

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

By: _____
Clerk & Comptroller (or Deputy Clerk)

By: Addie L. Greene, Chairperson
Chair *AG*

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Bevin A. Beaudet, *(M)*
Department Director or Designee

WITNESSES:

MA

Mark Leibowitz
Typed or Printed Name

Jorge Fernandez

JORGE FERNANDEZ
Typed or Printed Name

PROPERTY OWNER:

By: *OB*
Signature

Olivier Bibas
Typed or Printed Name

HNJ MEMBER
Title

[Corporate Seal]

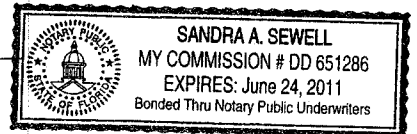
NOTARY CERTIFICATE

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 9th day of September 2008
by Olivier Bibas, of Vivendi Homeo LLC, a
corporation, on behalf of the company. He/she is personally
known to me or has produced Driver License as identification.

Sandra A. Sewell
Signature of Notary

Typed, Printed, or Stamped Name
of Notary



Notary Public
Serial Number DD 651286



POTABLE WATER AND WASTEWATER

CFN 20070154060
OR BK 21568 PG 1830
RECORDED 03/30/2007 09:29:24
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1830 - 1838; (9pgs)

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: MARK FALLON, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT.
8100 FOREST HILL BLVD, WPB, FL 33413

SDA # 02-01117-000

STANDARD POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT (SDA)

THIS AGREEMENT made and entered into this 26th day of MARCH, 2007, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility", and VIVENDI HOMES, LLC, a Florida limited liability company, 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 or is about to develop the Property by erecting thereon residential or non-residential improvements; and

WHEREAS, Property Owner desires to construct 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" - generally, the point where the pipes or meters of Utility are connected with pipes of Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Equivalent Residential Connection (ERC)" - a system capacity equivalency unit which corresponds to the peak demand of the 5/8" x 3/4" meter sub-category of the single-family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the system demand for various sized connections for the purpose of assessing fees;
 - (e) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees plus applicable Franchise Fees payable to Utility upon submission of an SDA or renewal agreement for each ERC (or ERIC) represented in the Agreement;

POTABLE WATER AND WASTEWATER

This is not a contract

- (f) "Service Initiation" - the date a potable water meter or wastewater connection is requested;
- (g) "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;
- (h) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERC, a TAA equal to sixty months of Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;
- (i) "Standard Development Renewal Agreement (SDRA)" - an agreement between Utility and Property Owner extending the capacity reservation for unused ERCs/ERICs in a Standard Development Agreement for an additional five (5) years; and
- (j) "Franchise Fee" - A percentage surcharge applied to all of the Utility's fees for Customers within portions of the Utility's Service Area with said fees collected by Utility and distributed to another governmental entity.

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 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 Owner's 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 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 in addition 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

POTABLE WATER AND WASTEWATER

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.

Further, in order to give an additional and supplementary notice to all the future Property Owners of any of the Property of the rights of Utility to provide the Property with potable water and wastewater facilities and services, Property Owner hereby covenants and agrees to have the above restrictive covenant or its equivalent included in the general subdivision restrictions and to place the same of record in the Public Records of Palm Beach County, Florida.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Utility covenants and agrees that it will allow 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 Utility.
5. Property Owner is required to pay Guaranteed Revenue Fees plus applicable Franchise Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, Property Owner agrees to pay in accordance with the UPAP:
 - (a) a MAP per each ERC for the requested capacity upon submission of this Agreement; and
 - (b) a TAA per each ERC for the requested capacity upon Service Initiation.

Utility has advised Property Owner that construction of additional potable water and wastewater facilities will be completed in phases designed to coincide with the need for service to Property Owner and other Property Owners in the service area. Utility should not be expected to provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Potable Water and Wastewater Agreement is:

Potable Water:	\$140.76 per ERC x	14.60 ERCs =	\$2,055.10
Wastewater:	\$197.52 per ERC x	14.60 ERCs =	\$2,883.79
		Franchise Fee	\$0.00
		TOTAL	\$4,938.89

Upon receipt of the MAP, Utility agrees to reserve 14.60 ERCs of Potable Water and Wastewater system capacity for Property Owner until MARCH 31, 2012, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

Property Owner acknowledges that it is the sole responsibility of Property Owner to provide payment of a new MAP at the then current fees thirty (30) days before the expiration of the original five-year term. Should multiple assignments exist for this Agreement, each assignee must submit the appropriate MAP for any unconnected ERCs related to the assignee's ERCs. Should Property Owner or assignee fail to submit a new MAP payment for their respective

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unconnected ERCs, Property Owner acknowledges and agrees that Utility may unilaterally execute a document evidencing termination and partial release of this Agreement except for the rights, duties, or obligations as set forth in Paragraphs 3, 4, 8, 9, 10, 13, and 14 of this Agreement and record the document in the public records of Palm Beach County, Florida.

At the time of Service Initiation, the applicable ERCs will be deducted from said reservation. Upon approval of Utility, the total number of ERCs may be increased up to 10% of the original reservation or by ten (10) ERCs, whichever is greater, by an amendment to this Agreement. The MAP required for the amendment shall be paid at the rate applicable to the original Agreement. Any amendments to the SDA shall be binding upon both Utility and Property Owner and subject to all applicable rules and regulations of Utility; however, any amendments will not extend the original five (5) year term of the Agreement. Any adjustment which is greater than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERCs may be adjusted downward however, no refund or credit will be given by Utility to Property Owner for said downward adjustment.

6. Property Owner hereby agrees to construct and to transfer ownership and control up to the Point of Service to Utility, at no cost, the on-site and off-site potable water distribution, and wastewater collection systems referred to herein. Upon acceptance of said facilities, Utility hereby agrees to accept ownership of the potable water and wastewater facilities for operation and maintenance purposes. Property Owner shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida, showing the on-site and off-site potable water distribution and wastewater collection systems for the Property. Utility will advise Property Owner's engineer of any sizing requirements as mandated by the UPAP. Such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase shall conform to a master plan for the development of the Property and such master plan shall be submitted to Utility concurrent with or prior to submission of plans for the first phase. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, Property Owner shall cause to be constructed, at Property Owner's expense, the potable water distribution, and wastewater collection systems as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied by Utility to cover the cost of plan review and inspection. Property Owner shall also be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

During the construction of the potable water distribution and wastewater collection systems by Property Owner, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the system has been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Property Owner of his responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media when utilized, shall be submitted to Utility upon completion of construction.

Property Owner hereby agrees to transfer to Utility title to all potable water distribution and wastewater collection systems installed by Property Owner's contractor pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of the said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of service by Utility, Property Owner shall convey to Utility by Bill of Sale in a form supplied by Utility the complete on-site and off-site potable water distribution and wastewater collection system as constructed by Property Owner and approved by Utility, along with the required Cost Documentation and Property Owner's No Lien Affidavit. Subsequent to construction of the facilities and prior to receiving a meter(s) from Utility, 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. 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:

POTABLE WATER AND WASTEWATER

- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and
- \$150,000 for a Utility-owned wastewater lift station (if not constructed within an existing utility easement).

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 Utility. Utility's acceptance of the potable water distribution and wastewater collection system installed by Property Owner shall be in accordance with the provisions as set forth in the UPAP. All installations by Property Owner or its contractor shall be warranted for one year (or five years in the case of lift station pumps and motor assemblies) from date of Final DEP Certification. Mortgagees holding liens on such properties shall be required to release such liens, subordinate their position, or join in the granting of the easements or rights-of-way. All potable water distribution and wastewater collection facilities shall be located within an easement if not located within platted or dedicated rights-of-way.

Property Owner hereby agrees to pay to Utility Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, Franchise Fees, and any other applicable fees as set forth in the UPAP at the then current rate.

The timely payment by Property Owner of all fees in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of the terms and conditions of this Agreement. The construction and 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 right, title, claim, or interest in and to the potable water and wastewater facilities transferred to or owned by Utility.

7. 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. Any mortgagee or lien holder having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. Property Owner must submit either a title policy or a letter from an attorney licensed to do business in Florida confirming that there is no mortgage or lien on the Property. The title policy or letter must be issued within thirty (30) days of submittal of the SDA.
8. 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.
9. 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 Standard Development Agreement.

POTABLE WATER AND WASTEWATER

10. Property Owner or his assignee shall not have the right to and shall not connect to the potable water and wastewater facilities of Utility until approval for such connection has been granted by Utility. 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 Property Owner or other than Utility.

11. Property Owner acknowledges and agrees that the transfer or assignment of this Agreement upon the sale, conveyance, transfer or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP. Property Owner further acknowledges and agrees that documenting the transfer or assignment of this Agreement in a form acceptable to Utility is the sole responsibility of Property Owner. Failure to provide documentation to Utility of an assignment or transfer within thirty (30) days after the sale, conveyance, transfer, or assignment of the Property, or any portion thereof, may result in the cancellation of the capacity reserved and/or loss of the Mandatory Agreement Payment identified herein.

12. 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:

PO Box 3882
Hallandale Beach, FL 33008-3882;

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.

13. 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.

14. 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 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.

15. Additional Conditions:

(a) Prior to the first permanent Service Initiation, Property Owner shall design and construct, as required by Utility, the following additional oversized wastewater system improvements, including all related appurtenances, per the design standards set forth in the UPAP:

- (1) An oversized lift station with appurtenances.
- (2) A deepened gravity sewer system with manhole stub outs, near the NW, NE and SE corners of the Property.

(b) The total oversizing connection fee credit amount and/or cash reimbursement shall not exceed \$100,536.50

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.

This is a true and correct copy

WITNESSES:

Signature Nancy M. May
Typed or Printed Name **NANCY M. MAY**

Signature Anna M. Daniels
Typed or Printed Name **ANNA M. DANIELS**

PALM BEACH COUNTY

By: [Signature]
County Administrator or Designee

WITNESSES:

Signature [Signature]
Typed or Printed Name **[Name]**

Signature _____
Typed or Printed Name _____

PROPERTY OWNER:

By: [Signature]
Signature OLIVER Bibas
Typed or Printed Name **OLIVER Bibas**
Title **MANAGING MEMBER**

{ Corporate }
Seal }

NOTARY CERTIFICATE

STATE OF Florida
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 6 day of March, 2007
by Oliver Bibas. He/she is personally known to me or has produced
FL DL B120640493060 as identification.

My Commission Expires: July 30 2010

Signature of Notary Geraldine E. Wilkes
Typed, Printed, or Stamped Name of Notary **Geraldine E. Wilkes**



Notary Public
Serial Number _____

WATER UTILITIES DEPARTMENT APPROVAL

By: Debra M. West
Director of Finance and Administration
PBC Water Utilities Department

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

POTABLE WATER AND WASTEWATER

EXHIBIT "A"
LEGAL DESCRIPTION

LOT A, LESS THE NORTH 49 FEET OF THE WEST 85.42 FEET AND THE NORTH 40 FEET OF THE WEST 222.11 FEET OF THE EAST 232.11 FEET; AND A TRIANGULAR PARCEL AS DESCRIBED IN RIGHT-OF-WAY DEED IN O.R. BOOK 6997, PAGE 1887, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND LESS THE EAST 10 FEET FOR MATHIS ROAD, LOTS B TO D, INCLUSIVE, LESS THE EAST 10 FEET FOR MATHIS ROAD, BLOCK 111, THE PALM BEACH FARMS CO. PLAT NO. 7, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, IN PLAT BOOK 5, PAGE 72.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

OK
03/15/07
G

This is a certified copy

THIS IS

CONSENT AND JOINDER OF MORTGAGEE/LIENHOLDER

Banco Popular North America, a(n) corporation, existing under the laws of the State of New York and authorized to do business in the State of Florida, hereby certifies that it is the mortgagee/lienholder under a mortgage from VIVENDI HOMES, LLC, a(n) _____, dated 9/18/06, filed 9/26/06, and recorded in Official Record Book 20893, Page, 0250, as modified by Mortgage Modification Agreement dated _____; filed _____ and recorded in Official Record Book _____, Page _____, all in the Public Records of Palm Beach County, Florida, and hereby consents to and joins in the execution of the Agreement between Palm Beach County and VIVENDI HOMES, LLC, a Florida limited liability company, for the provision of potable water, wastewater, and/or reclaimed water service to the property described in Exhibit "A" to the Agreement and further consents to and joins in the granting of utility easements to Palm Beach County as provided for in the aforesaid agreement with Palm Beach County.

Banco Popular North America, as mortgagee aforesaid, consents to the recording by _____ or Palm Beach County, Florida, in the Public Records of Palm Beach County, Florida of the contract.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 6 day of March, 2007.

WITNESSES:

Edith Quaya
Signature
Edith Quaya
Typed or Printed Name

Signature

Typed or Printed Name

Danny Martin
a(n) _____
authorized to do business in the State of Florida.

By: Vice President
Title

Danny Martin
Typed or Printed Name

NOTARY CERTIFICATE

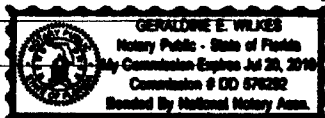
STATE OF Florida
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 6 day of March, 2007 by Danny Martin. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: _____

Geraldine E. Wilkes
Signature of Notary

Serial Number _____



Typed, Printed, or Stamped Name