

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 10, 2013 Consent [] Regular [X]
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Potable Water and Wastewater Development Agreement with Fairways, L.L.C.

Summary: On December 6, 2011, the Board of County Commissioners (BCC) approved a Potable Water and Wastewater Development Agreement (R2011-1973) with Fairways, LLC (Fairways) for the Reflection Bay Project located on the southwest corner of Century Village Boulevard and Haverhill Road. This Amendment extends the expiration date of the Agreement from December 31, 2016 to March 5, 2018; allows the remaining Mandatory Agreement Payment (MAP) to be paid in four (4) equal installments through June 5, 2014; and provides for a pro-rated refund of the MAP if Fairways is prohibited from developing the property by a court of competent jurisdiction finding that the BCC's quasi-judicial process was conducted improperly, its decision was not supported by the record or by the BCC's revocation of its zoning approvals. Staff is recommending these changes due to postponements by the BCC to consider the Development Order Abandonment Application, Official Zoning Map Amendment, and the Requested Use Application. Fairways has made an initial MAP payment of \$22,156.74. Chapter 3.1.6 of the Water Utilities Uniform Policy and Procedures allows for a refund within 12 months of execution of the Developer Agreement. District 2 (MJ)

Background and Justification: The Department's Uniform Policy and Procedures Manual (UPAP) contains a SDA form that is utilized in most instances for development agreements, and which can be executed at the department level. BCC approval is being sought for this agreement due to the non-standard conditions contained herein.

Attachments:

- 1. Two (2) Original First Amendment to Potable Water and Wastewater Development Agreement
- 2. One (1) Copy Agenda Item 3K-1 (R2011-1973), December 6, 2011
- 3. One (1) Copy Potable Water and Wastewater Development Agreement DA#01-01221-000

Recommended By: *Bella Beaubien* 8/22/13
Department Director Date

Approved By: *Sharon G. Payne* 9/3/2013
Assistant County Administrator Date

II, FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<u>0</u>	0	<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>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Dept. _____ Unit _____ Object _____

Is Item Included in Current Budget? Yes _____ No X

Reporting Category N/A

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

Change in fiscal impact is indeterminable at this time. It will depend on if the project is canceled and when it is canceled. If the project is not canceled there is no change in the fiscal impact previously approved by the Board.

C. Department Fiscal Review: Ent

III. REVIEW COMMENTS

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

W. H. [Signature]
OFMB 8/22/13
JB 8/13

Dr. J. Jacobet [Signature]
Contract Development and Control
8-28-13 B Wheeler

B. Legal Sufficiency:

[Signature] 8/29/13
Assistant County Attorney

C. Other Department Review:

Department Director

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

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

THIS FIRST AMENDMENT made and entered into this _____ day of _____, 2013, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "Utility," and **Fairways, L.L.C.**, a Florida limited liability company, hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Utility and Property Owner entered into a Potable Water and Wastewater Development Agreement dated December 6, 2011 ("Agreement") which is recorded in Official Record Book 24902/Page 314 of the Public Records of Palm Beach County, Florida; and

WHEREAS, the Agreement conditioned the payment of a portion of the MAP (as defined therein) upon approval of the Master Plan of the Property by the Board of County Commissioners (the "Board"); and

WHEREAS, the Board approved the Development Order Abandonment Application, Official Zoning Map Amendment and the Requested Use Application, as set forth in County Resolutions Nos. R2013-0207, R2013-0208, and R2013-0209, which were filed March 5, 2013, with the Palm Beach County Clerk and Comptroller; and

WHEREAS, the development approvals are the subject of a pending lawsuit, Case No. 2013-CA-0005809-XXXX-MB AO, filed in the Fifteenth Judicial Circuit in Palm Beach County, Florida; and

WHEREAS, due to the postponement of hearings by the Board and other factors, the development approval for the Property, originally scheduled for early 2012, was postponed until early 2013; and

WHEREAS, due to the unique circumstances regarding the development approval process for this Property and the pending lawsuit, Property Owner has requested certain modifications to the Agreement, including: (1) payment of the remaining MAP payments on a installment basis; (2) the extension of the expiration date of the Agreement until March 5, 2018; and (3) the ability to receive a refund of all or a portion of the MAP should the Property Owner be unable to develop the Property; and

WHEREAS, due to unique circumstances involving this Property, Utility is agreeable to the changes requested by the Property Owner.

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 and are incorporated herein by specific reference.
2. Section 15.a is replaced in its entirety with the following:

Notwithstanding anything to the contrary herein, payment of the MAP required under this Agreement shall be made in five installments. The first MAP installment payment, to coincide with the 48.5 ERCs required for Phase 1 of the development of the Property, was received on October 19, 2011. The remaining four MAP installments, to coincide with the additional 479.8 ERCs necessary for the additional phases of the development of the Property, shall be due and payable on September 30, 2013, December 5, 2013, March 5, 2014, and June 5, 2014.

The remaining four MAP installments shall be determined utilizing rates in effect at the time of payment. Failure to pay any of the remaining four MAP installments in a timely manner shall result in the revocation of any reserved capacity under this Agreement for which a MAP payment has not yet been received. The expiration date for all capacity reserved under this Agreement, whether associated with the first MAP installment payment or any of the additional four MAP installment payments, shall be March 5, 2018.

3. A new Section 15.c is added to the Agreement to read as follows:

If, at any time during the term of this Agreement, Property Owner is prohibited from developing the Property in accordance with the Master Plan by (i) a court of competent jurisdiction finding (a) that the Board's quasi-judicial process was conducted improperly or (b) its decision was not supported by the record or (ii) the Board's revocation of the zoning approvals, then Property Owner shall, upon request, be entitled to receive a refund of the MAP payments previously made by Property Owner. The refund shall be prorated based on the date of the request, as set forth below:

- Request made on or before March 5, 2014 –full MAP refund
- Request made between March 6, 2014 and March 5, 2015 –80% MAP refund
- Request made between March 6, 2015 and March 5, 2016 –60% MAP refund
- Request made between March 6, 2016 and March 5, 2017 –40% MAP refund
- Request made between March 6, 2017 and March 5, 2018 –20% MAP refund

4. All other provisions of the Agreement, dated December 6, 2011, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Property Owner and Utility have executed or have caused this First Amendment to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this First Amendment.

ATTEST:

SHARON R. BOCK, CLERK
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

[SEAL]

Approved as to Form and Legal
Sufficiency

Approved as to Terms and Conditions

By: _____
County Attorney

By: Boris Beaulieu
Department Director

WITNESSES:

PROPERTY OWNER:

Jeanne Newman
Type or Print Name

By: Andrew Waldman
Signature
MANAGER
Title

Jonna J. Archer
Type or Print Name

Andrew Waldman
Typed or Printed Name

[Corporate
Seal]

NOTARY CERTIFICATE

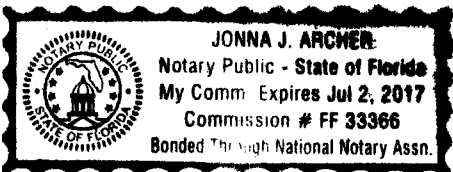
STATE OF FLORIDA
COUNTY PALM BEACH

The foregoing instrument was acknowledged before me this 14th day of August, 2013 by Andrew Waldman, of Fairways, LLC a corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Jonna J. Archer
Signature of Notary

Jonna J. Archer
Typed, Printed, or Stamped Name of Notary

Notary Public



Serial Number _____

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

M/SA 6-1
B opposed
R-2011-1973

Meeting Date: December 6, 2011

Consent [X]
Public Hearing []

Regular []

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

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Potable Water and Wastewater Development Agreement (Agreement) with Fairways, L.L.C.

Summary: Fairways, L.L.C (Fairways) owns property located on the Southwest corner of Century Village Blvd. and Haverhill Rd. In order to provide potable water and wastewater concurrency reservations for new developments, the Department requires property owners to enter into a formal development agreement with the Department. While the Department Director has been delegated the authority to enter into Standard Development Agreements (SDAs), Board approval is being sought in this case due to the timing of fee payments associated with the development of the property. Fairways has requested the option of remitting a portion of the fees due with this Agreement and the balance of the Mandatory Agreement payment within 30 days following the approval of the Master Plan for the property, if approved. Fairways has also requested other changes to the form of the SDA based on provisions in a '1968 Agreement' related to the property entered into between Century Village, Inc. and Century Utilities, Inc. (1968 Agreement) which are predecessors in interest to Fairways and the County, respectively. These changes relate to the continuous provision of service to the property. This Agreement supersedes all other provisions of the 1968 Agreement. Under the terms of the Agreement, remittal of the partial payment does not exempt Fairways from any subsequent fee change. District 1 (MJ)

Background and Justification: The UPAP contains a SDA form that is utilized in most instances for Development Agreements, and which can be executed at the Department level. However, Board approval is being sought for the Agreement due to changes to the form SDA requested by Fairways.

Attachments:

1. Location Map
2. Two (2) Original Development Agreements - DA No. 01-01221-000

Recommended By:

Bud Bunn
Department Director

11/7/11
Date

Approved By:

Bud Weir
Assistant County Administrator

11/22/11
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<i>See below</i>		<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Dept. _____ Unit _____ Object _____

Is Item Included in Current Budget? Yes _____ No _____

Reporting Category N/A

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

* The Agreement only affects the timing of fee payments associated with the development of the property. The Agreement does not change the total fees due.

C. Department Fiscal Review: Debra M. West

III. REVIEW COMMENTS

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

Fee total is estimated at \$241,348.57 which will be collected at the time of connection.

[Signature] 11/16/11
OFMB *[Signature]* 11/14/11

[Signature] 11/16/11
Contract Development and Control
11-16-11 *[Signature]*

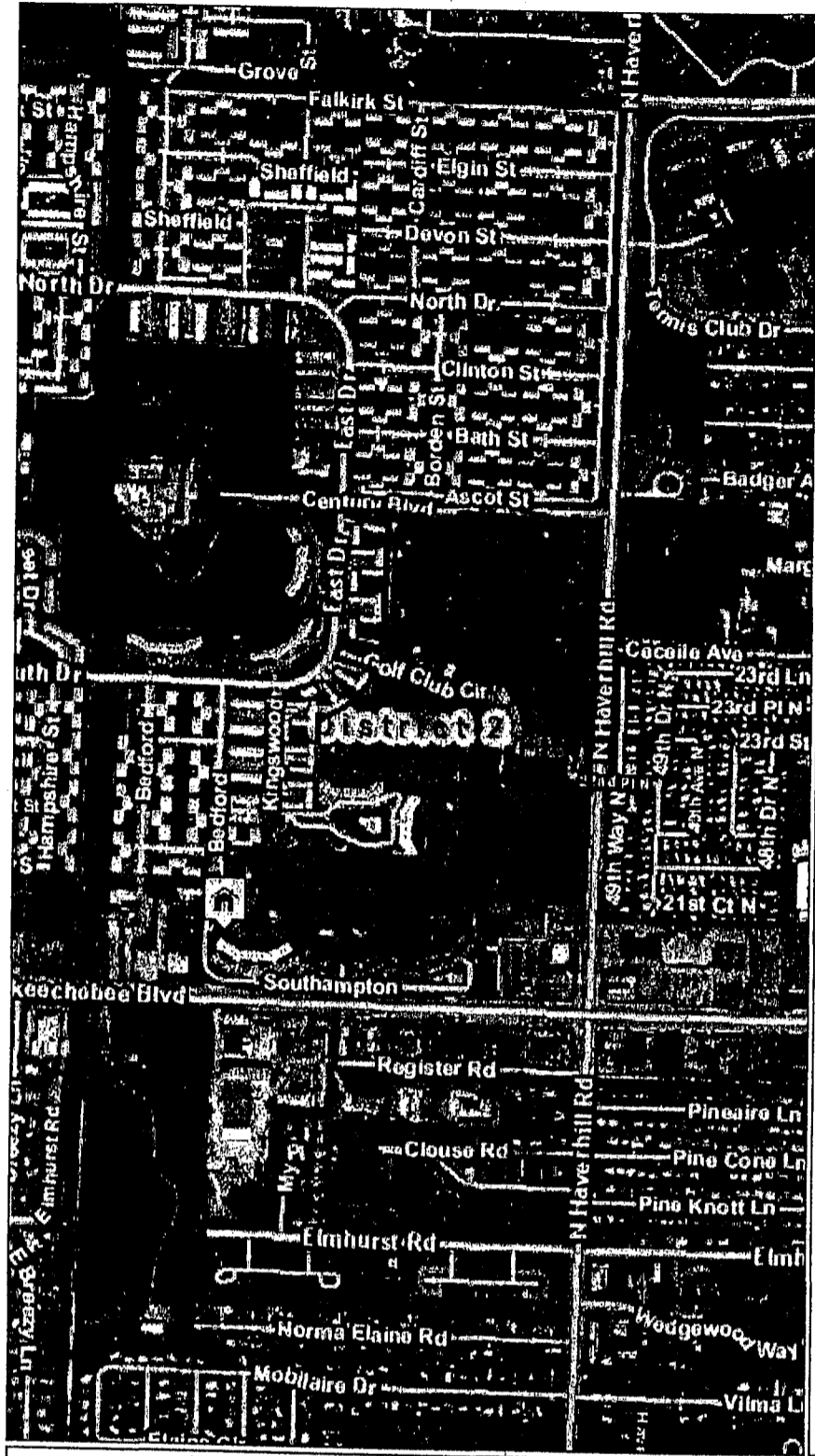
B. Legal Sufficiency:

[Signature] 11/17/11
Assistant County Attorney

This Contract complies with our contract review requirements.

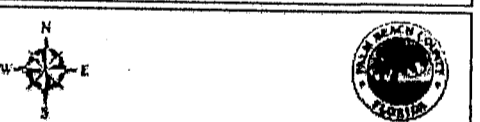
C. Other Department Review:

Department Director



Layer Information	
XY (Long,Lat)	XY: -80.1252487,26.7081909
Parcels	Distance: 0 ft
Parcel Number:	00424323400360000
Area(sqft):	3055909.71
Acres:	70.15
Owner:	FAIRWAYS LLC
Location:	2750 GOLF CLUB CIR
Mailing:	1255 S MILITARY TRL STE 200
City:	DEERFIELD BEACH
State:	FL
Zipcode:	33442
Roads	Distance: 97 ft
SegmentId:	32652
Left Range:	5400 - 5498
Right Range:	5401 - 5499
Street:	Fairway St
L/R Zipcode:	33417/33417
L/R Muni:	UNINCORPORATED/UNINCORPORATED
RESP_AUTH:	PRI
TFARE_ROW:	NA
Speed Limit:	35
Lanes:	2
CFCC:	NA
Commission	Distance: 0 ft
Districts	District: 2

Fairways LLC / Reflection Bay 00424323400360000
 produced by: myGeoNav



POTABLE WATER AND WASTEWATER

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

R 2011 19 73

POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of DEC 06 2011, 20____, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "Utility", and **FAIRWAYS, L.L.C.**, 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;

DA # 01-01221-000

POTABLE WATER AND WASTEWATER

- (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

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

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

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:	\$190.08	per ERC x	<u>528.30</u>	ERCs =	<u>\$100,419.26</u>
Wastewater:	\$266.76	per ERC x	<u>528.30</u>	ERCs =	<u>\$140,929.31</u>
			Franchise Fee		<u>\$0.00</u>
			TOTAL		<u>\$241,348.57</u>

Upon receipt of the MAP, Utility agrees to reserve 528.30 ERCs of Potable Water and Wastewater system capacity for Property Owner until December 31, 2016, which term shall be extended in accordance with the UPAP, as may be amended from time to time, upon a determination by Utility that the Utility has sufficient capacity within its system to provide for the extension, 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

POTABLE WATER AND WASTEWATER

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 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:

1255 S Military Trail, Suite 200
Deerfield Bch., FL 33442;

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. Except as provided in Section 15.b of this Agreement, 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. Notwithstanding anything to the contrary within this Agreement, payment of the MAP required under this Agreement shall be made in two installments (the "First MAP Installment" and the "Second MAP Installment"). The First MAP Installment shall coincide with Phase 1 of the development of the Property, which requires 48.5 ERCs. The First MAP Installment is \$22,156.74, and shall be submitted prior to the Effective Date of this Agreement. The Second MAP Installment shall coincide with additional phases of the development of the Property, and shall include all additional ERCs required for the development of the Property (479.8 ERCs). The Second MAP Installment shall be submitted within thirty (30) days following the approval of the Master Plan for the Property by the Board of County Commissioners. The Second MAP Installment shall be determined utilizing rates in effect at the time of payment. Failure to pay the Second MAP Installment in a timely manner shall result in the revocation of all reserved capacity under this Agreement except for that capacity associated with the First MAP Installment. The expiration date for all capacity reserved under this Agreement (whether associated with the First MAP Installment or the Second MAP Installment) shall be five (5) years from the Effective Date of the Agreement. Refunds shall only be given in accordance with Section 3.1.6 of the UPAP, as may be amended.

POTABLE WATER AND WASTEWATER

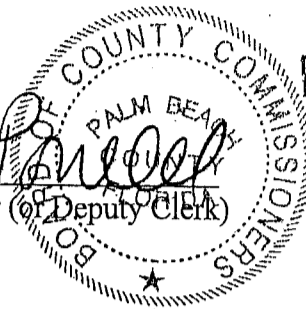
- b. Property Owner and Utility acknowledge that there is a prior agreement related to water and sewage service to the Property dated November 1, 1968, between Century Village, Inc., and Century Utilities, Inc, which is recorded at Official Record Book 1688/Page 1465 of the Public Records for Palm Beach County, Florida (the "1968 Agreement.") Property Owner and Utility acknowledge that the 1968 Agreement requires the continued provision of potable water service to the Property, upon a determination that Utility has sufficient capacity to provide such service, and where Property Owner is in compliance with all the terms of and rates established by this Agreement, UPAP, any SDRA, or otherwise established by the Board of County Commissioners.
16. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Property Owner(s), its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

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POTABLE WATER AND WASTEWATER

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

ATTEST: [Signature]
Clerk & Comptroller (or Deputy Clerk)



R 2011 19 73 DEC 06 2011

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

By: [Signature]
Shelley Vana, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
Bevin A. Beaudet,
Department Director or Designee

WATER UTILITIES DEPARTMENT
FINANCE AND ADMINISTRATION
APPROVAL

By: [Signature]
Director of Finance and Administration
PBC Water Utilities Department

WITNESSES:

[Signature]
ADAM GALICKI
Typed or Printed Name
[Signature]
Judy D. Provence
Typed or Printed Name

PROPERTY OWNER:

By: [Signature] MGR
Signature
FAIRWAYS LLC
Typed or Printed Name
MANAGING MEMBER
Title

[Corporate Seal]

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19th day of OCTOBER, 2011, by ANDREW C. WALDMAN. He/she is personally known to me or has produced FL DL as identification.

My Commission Expires:



Serial Number

[Signature]
Signature of Notary

Typed, Printed, or Stamped Name

POTABLE WATER AND WASTEWATER

EXHIBIT "A"
LEGAL DESCRIPTION

REFLECTION BAY
LEGAL DESCRIPTION

A PORTION OF TRACT 36, "CENTURY VILLAGE PLAT NO. FOURTEEN", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGES 156 AND 157, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 23, TOWNSHIP 43 SOUTH, RANGE 42 EAST; THENCE NORTH 00°00'00" EAST, ALONG THE EAST LINE OF SAID SECTION 23, A DISTANCE OF 656.00 FEET; THENCE NORTH 89°57'11" WEST, AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 23, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°57'11" WEST, ALONG THE SOUTH LINE OF SAID TRACT 36, AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 865.99 FEET; THENCE NORTH 00°00'00" EAST, ALONG THE WEST LINE OF SAID TRACT 36 AND THE SOUTHERLY EXTENSION THEREOF, A DISTANCE OF 663.25 FEET; THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 572.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 319.85 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, AT WHICH THE RADIUS POINT BEARS NORTH 25°55'24" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 565.00 FEET AND A CENTRAL ANGLE OF 44°37'43", A DISTANCE OF 440.09 FEET; THENCE NORTH 76°45'00" WEST, ALONG A NON-RADIAL LINE, A DISTANCE OF 227.22 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, AT WHICH THE RADIUS POINT BEARS NORTH 66°24'52" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 340.00 FEET AND A CENTRAL ANGLE OF 20°40'18", A DISTANCE OF 122.67 FEET; THENCE SOUTH 76°45'00" EAST, ALONG A NON-RADIAL LINE, A DISTANCE OF 227.22 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, AT WHICH THE RADIUS POINT BEARS NORTH 82°56'53" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 565.00 FEET AND A CENTRAL ANGLE OF 07°03'07", A DISTANCE OF 69.54 FEET TO THE POINT OF TANGENCY; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 655.00 FEET; THENCE NORTH 78°41'24" WEST, A DISTANCE OF 229.46 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 35.00 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 200.00 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1290.82 FEET AND A CENTRAL ANGLE OF 08°34'42", A DISTANCE OF 193.26 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 720.41 FEET AND A CENTRAL ANGLE OF 17°09'24", A DISTANCE OF 215.72 FEET TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 1290.82 FEET AND A CENTRAL ANGLE OF 08°34'42", A DISTANCE OF 193.26 FEET TO THE POINT OF TANGENCY; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 506.00 FEET (THE LAST FIFTEEN DESCRIBED COURSES BEING COINCIDENT WITH THE BOUNDARY OF SAID TRACT 36); THENCE SOUTH 45°00'00" EAST, ALONG THE WEST RIGHT-OF-WAY LINE OF HAVERHILL ROAD, AS RECORDED IN OFFICIAL RECORDS BOOK 7711 AT PAGE 1368 OF SAID PUBLIC RECORDS, A DISTANCE OF 55.15 FEET; THENCE SOUTH 00°00'00" WEST, ALONG SAID WEST LINE, A DISTANCE OF 2187.95 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA, AND CONTAIN 57.539 ACRES, MORE OR LESS.

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OK
10/20/11 G