

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	December 20, 2016	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Facilities Development & Operations		

I. EXECUTIVE BRIEF

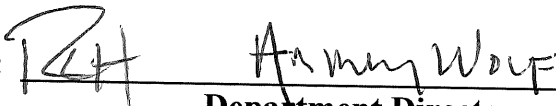

Motion and Title: Staff recommends motion to approve: a Maintenance and Easement Agreement with Arden Homeowners Association, Inc. (HOA) for the installation and maintenance of landscaping and an irrigation system over a portion of the County’s Arden PUD Civic Site.

Summary: In October of this year, the developer of the Arden PUD, Highland Dunes Associates Property, LLC (Developer), conveyed a 25 acre Civic Site to Palm Beach County in satisfaction of a condition of approval of its development order. The Arden PUD is located on the North side of Southern Blvd., west of Seminole Pratt Whitney Blvd. This Civic Site is located along the Southern Boulevard frontage. The Developer is interested in keeping a visually appealing landscape plan along its entire Southern Boulevard frontage, and requested that the County enter into a Maintenance and Easement Agreement allowing the Homeowners Association to maintain the landscaping. The initial landscape planting will be performed by the Developer at its expense. The easement area will be 60’ in width and 1520’ in length and will cover an area of approximately 2 acres. Granting this Easement will relieve the County from the expense of installing and maintaining the landscaping buffer and irrigation system along Southern Blvd. The Maintenance and Easement Agreement will be recorded to provide public notice of its existence. (PREM) District 6 (HJF)

Background and Justification: Arden PUD is a large residential project approved by the Board on October 24, 2013. The ULDC requires the Developer to provide the County with a 25 acre Civic Site which will be located along Southern Boulevard near the entrance to Arden PUD. This easement will benefit the County as it will reduce the County’s cost of installing a code required landscape buffer and maintenance responsibilities.

Attachments:

- 1. Location Map
- 2. Maintenance and Easement Agreement

Recommended By:		12/2/16
	Department Director	Date
Approved By:		
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> * </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

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

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

* No Fiscal Impact

Fixed Asset Number N/A

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Susan Price 12/13/16
OFMB ET 12/9 12/9

Dr. J. Jacobson 12/16/16
Contract Development and Control 12/16/16 TW

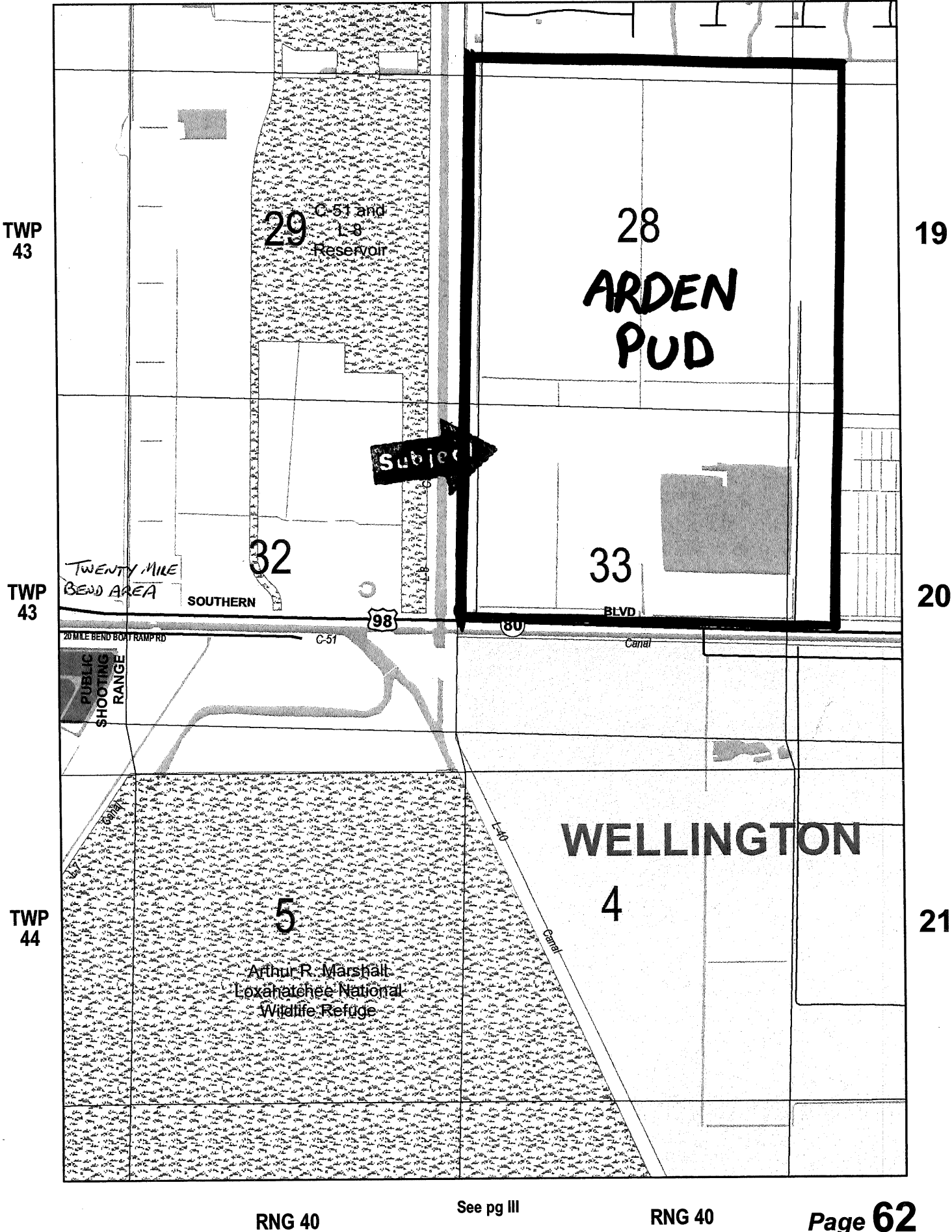
B. Legal Sufficiency:

H. J. J. 12/16/16
Assistant County Attorney

C. Other Department Review:

Department Director

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



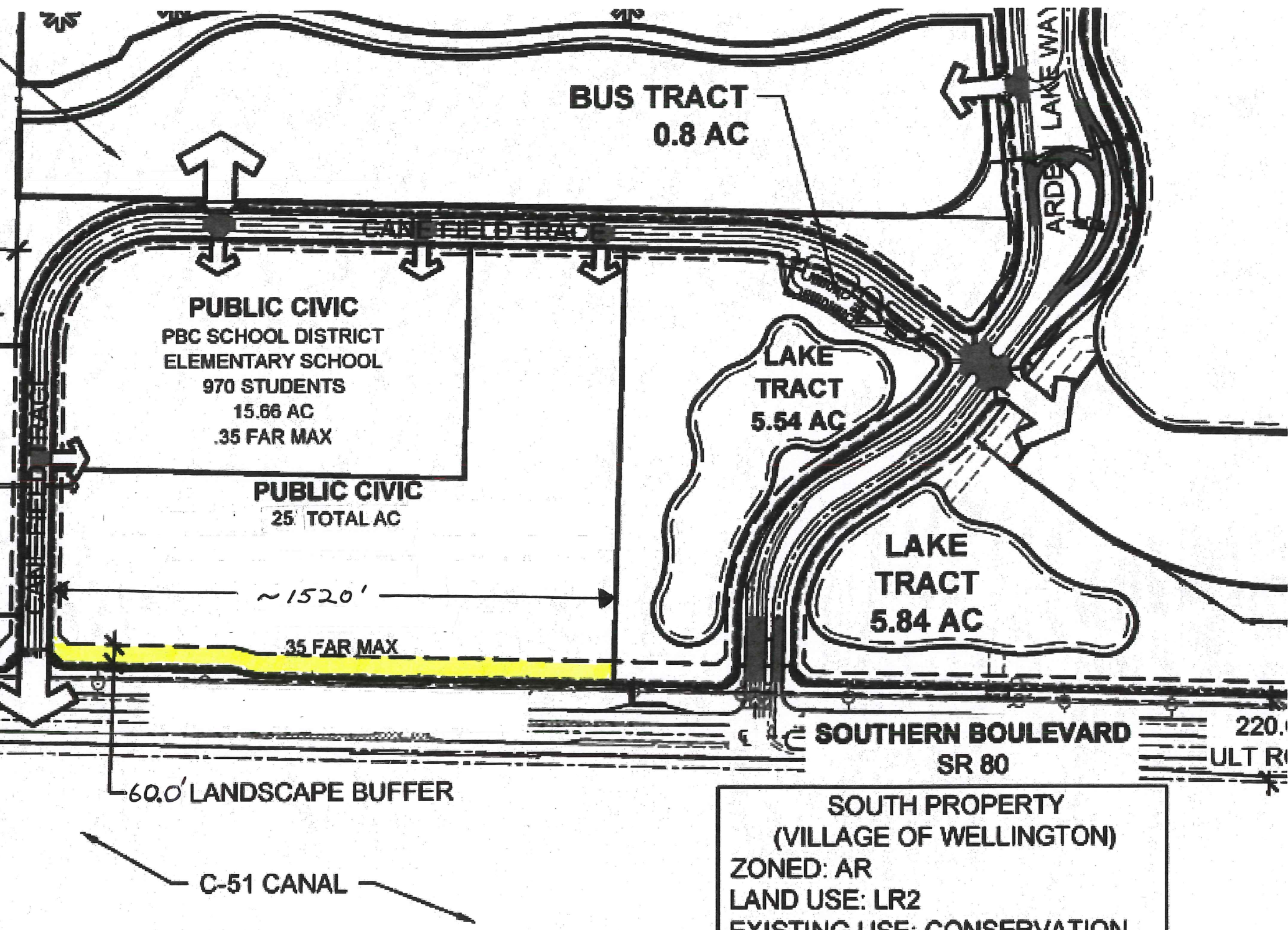
Attachment 1
LOCATION MAP



LOW DENSITY HOUSING
OWNHOMES
120 UNITS
.69 AC GROSS
4.10 AC NET
AC OPEN SPACE
4.50 DU/AC
CAPE BUFFER
CORRIDOR, TYP.
PUBLIC CIVIC
TRAIL HEAD
AC / 163,022 SF
DEPARTMENT

5"W 191.80' (C&M)

URE/POTENTIAL
ONNECTION TO
RAIL NETWORK
CONDITION # 2



SOUTH PROPERTY
(VILLAGE OF WELLINGTON)
ZONED: AR
LAND USE: LR2
EXISTING USE: CONSERVATION
APPROVED USE: CONSERVATION

Attachment 2
Maintenance & Easement Agreement (3)
(12 pages)

Prepared by & Return to:
Peter Banting, Real Estate Specialist
Palm Beach COUNTY
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

Property Control Number: _____

MAINTENANCE AND EASEMENT AGREEMENT

THIS MAINTENANCE AND EASEMENT AGREEMENT ("Agreement") is made this _____ day _____ by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 2633 Vista Parkway, West Palm Beach, FL 33411 (hereafter referred to as "COUNTY") and ARDEN HOMEOWNERS ASSOCIATION, INC., a Florida Corporation not for profit, whose address is 2005 Vista Parkway, Suite 112, West Palm Beach, FL 33411 (hereafter referred to as "HOA").

WHEREAS, COUNTY is the owner of the parcel of real estate described in Exhibit "A" (the "CIVIC SITE") attached hereto and made a part hereof; and

WHEREAS, ARDEN HOMEOWNERS ASSOCIATION, INC. (HOA), is the homeowner's association charged with the maintenance of the common areas of that certain development known as the Arden P.U.D. Plat 1 according to the Plat thereof recorded in Plat Book 122 Pages 32-51 of the Public Records of Palm Beach County, Florida (the "Development" or "Benefitted Property"); and

WHEREAS, HOA has requested and COUNTY has agreed to allow HOA to install and maintain landscaping and irrigation within the south 60 feet of the CIVIC SITE, as described in Exhibit "B" attached hereto and made a part hereof (the "EASEMENT PARCEL"); and

WHEREAS, COUNTY has agreed to grant HOA, its successors and assigns, a nonexclusive easement (the "EASEMENT") to install, replace and maintain landscaping, an irrigation system and related improvements over, under, across and through the EASEMENT PARCEL; and

NOW, THEREFORE, in consideration of the payment of TEN DOLLARS (\$10.00) and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Grant of EASEMENT. COUNTY does hereby grant to HOA, its successors and assigns, a perpetual non-exclusive EASEMENT to construct, install and maintain a landscaping and an irrigation system over, upon, under, through, and across the EASEMENT PARCEL, together with the right for ingress and egress over and across the EASEMENT PARCEL to exercise the rights granted herein. In the event any portion of the EASEMENT PARCEL should be required for COUNTY's use, the parties agree that the COUNTY may modify the configuration of the EASEMENT PARCEL. Such reconfiguration may include, but is not limited to, the removal of the Landscaping as defined in 3.A. below, the placement of future County improvements and possible reduction of the EASEMENT PARCEL area, from time to time, at COUNTY's sole and absolute discretion, whereupon the HOA agrees to enter into a modification of this EASEMENT, as may be required from time to time. COUNTY shall coordinate with HOA if COUNTY elects to remove or relocate any of HOA's improvements that are in conflict with COUNTY's future improvements.

3. Maintenance, Repair and Restoration.

A. HOA, at its sole cost and expense, shall be responsible for the installation, care, watering, fertilizing, replacement and maintenance of the landscaping located or to be located on the EASEMENT PARCEL, including but not limited to all sod, plants, trees, bushes, shrubs, flowers, etc. (collectively referred to as the "Landscaping"). The EASEMENT PARCEL and Landscaping shall be maintained, at all times, in accordance with the plans and permits as approved by COUNTY.

B. HOA, at its sole cost and expense, shall be responsible for the installation, care, replacement and maintenance of the irrigation system to be located on the EASEMENT PARCEL, including but not limited to all irrigation pipes, valves, controllers, equipment, sprinkler heads and appurtenances thereto (the "Irrigation System") so that said Irrigation System remains in good working condition at all times.

C. In the event HOA fails to fulfill its obligations as set forth herein within fifteen (15) days of written notice from COUNTY, the COUNTY may, at its sole option and at HOA's expense, install, replace, or maintain the Landscaping or the Irrigation System located on the EASEMENT PARCEL until HOA fulfills its obligations. If, however, the HOA is negligent in fulfilling its obligations, COUNTY may, at any time after HOA's receipt of said written notice, revoke said EASEMENT and/or seek specific performance of the terms of this Agreement.

D. Landscaping and the Irrigation System installed pursuant to this Agreement shall become the property of the COUNTY. Should the HOA submit to the COUNTY's Planning Zoning and Building Department any landscape and/or irrigation plans that are in excess of the minimum landscape code requirements of COUNTY for approval and

permitting, said plans shall first be submitted for review and approval by the Director of the PBC Department of Parks and Recreation Department, located at 2700 6th Avenue South, Lake Worth, Fl 33461-4727.

4. Other Obligations. HOA shall diligently pursue all work performed hereunder to completion and exercise the rights granted hereunder in a manner that does not unreasonably interfere with and minimizes the impact upon COUNTY's use of the EASEMENT PARCEL.

5. Personal Property. COUNTY shall have no liability or responsibility whatsoever for HOA's improvements, equipment, personal or other property, nor that of any other person or entity, placed upon or located within the EASEMENT PARCEL.

6. Prohibition Against Liens. Neither COUNTY's nor HOA's interest in the EASEMENT PARCEL, nor County's interest in the adjoining property, shall be subject to liens arising from HOA's or any other person or entity's use of the EASEMENT PARCEL, or exercise of the rights granted hereunder. HOA shall promptly cause any lien imposed against the EASEMENT PARCEL or the CIVIC SITE to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes.

7. Notice, Permits. HOA shall give COUNTY ten (10) days written notice prior to commencement of construction. Any improvements constructed pursuant to this EASEMENT shall be constructed at HOA's sole cost and expense in accordance with all permits related thereto and applicable statutes, codes, rules, regulations, and ordinances, shall be diligently pursued to completion, and shall be maintained in a presentable fashion.

8. No Dedication. This EASEMENT is for the use and benefit of HOA, its successors, and assigns and is not intended and shall not be construed as a dedication to the HOA of any portion of the EASEMENT PARCEL.

9. Indemnity. HOA, its successors and assigns shall indemnify, defend and hold the COUNTY harmless from and against any damages, liability, actions, claims or expenses (including reasonable attorney's fees and expenses at trial and all appellate levels) arising out of exercise of the rights granted hereby and use of this EASEMENT by any person whomsoever, including, without limitation, loss of life, personal injury and/or damage to property arising from or as a result of any occurrence in or upon the EASEMENT PARCEL or in connection with the use or operation of the BENEFITTED PROPERTY, or otherwise. Notwithstanding the above, HOA's indemnification shall not extend to actions by COUNTY or by any third parties who are acting under rights granted to them pursuant to Section 16 herein.

10. Insurance.

A. HOA's general contractor shall, during the actual construction activities of the improvements, keep in full force and effect Comprehensive General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability, and Workers Compensation covering all employees in accordance with Chapter 440 of the Florida Statutes. The General Liability policy shall include coverage for the Parcel, Operation, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. In addition, the general contractor shall maintain Business Automobile Liability at a limit of liability not less than ONE MILLION DOLLARS (\$1,000,000) Each Occurrence for all owned, non-owned and hired automobiles. In the event the general contractor does not own any automobiles, the general contractor shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis.

Except for Workers Compensation, all insurance policies shall name COUNTY as an Additional Insured. A Certificate of Insurance evidencing all such insurance coverages shall be provided to COUNTY prior to the commencement of construction by any of HOA's contractors or subcontractors, such Certificate indicating at least thirty (30) days prior notice of cancellation or adverse material changes in coverage.

B. HOA shall provide, maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, bodily injury and property damage liability coverage, and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the EASEMENT PARCEL, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. In addition, HOA shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event HOA does not own any automobiles, HOA shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis.

Except for Workers Compensation, all insurance policies shall name COUNTY as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by COUNTY. A Certificate of Insurance evidencing such insurance coverage shall be provided to COUNTY prior to the commencement of any work pursuant to this EASEMENT. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of HOA under this Agreement. Furthermore, HOA shall and hereby does hold

COUNTY harmless from any loss or damage incurred or suffered by COUNTY due to HOA's failure to maintain such insurance. The amount of the insurance required hereby shall be increased every ten (10) years by the increase over such ten (10) year period of the Consumer Price Index.

11. Reservation of Rights. COUNTY hereby retains all rights relating to the EASEMENT PARCEL not specifically conveyed by this EASEMENT including the right to use the EASEMENT PARCEL and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional easements in the EASEMENT PARCEL or the right to use the improvements therein.

12. Covenant Running With Land. All of the benefits, burdens, covenants and agreements herein shall constitute covenants running with the land, shall be binding upon and/or shall accrue to the benefit of COUNTY and HOA and their respective successors and assigns, having or hereafter acquiring any right title or interest in or to all or any portion of the BENEFITTED PROPERTY or the EASEMENT PARCEL.

13. Assignability. This EASEMENT is an easement appurtenant to the BENEFITTED PROPERTY and may not be transferred or assigned separately or apart from the BENEFITTED PROPERTY.

14. Notices. All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

14.1 COUNTY:
Palm Beach COUNTY
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Fax No.: (561) 233-0210

With a copy to:
COUNTY Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401-4791
Fax No.: (561) 355-4398

and

Parks & Recreation Department
Attn: Director
John Prince Park
2700 Sixth Avenue South
Lake Worth, FL 33461
Telephone 561-966-6650
Fax 561-242-6930

14.2 HOA:

Arden Homeowners Association, Inc.
Attn: Thomas C. Tischer
2005 Vista Parkway
Suite 112
West Palm Beach, FL 33411

15. Matters of Record. This EASEMENT is granted without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the EASEMENT PARCEL, and all other easements, restrictions, conditions, encumbrances and other matters of record.

16. Default. In the event HOA fails or refuses to perform any term, covenant, or condition of this EASEMENT and fails to cure such failure or refusal to perform after receipt of written notice from the COUNTY providing a thirty (30) day time frame to cure, COUNTY shall have any specific remedy set forth in this EASEMENT, or, if a specific remedy is not set forth in this EASEMENT, COUNTY shall have, in addition to any other remedies provided at law or in equity, the right to revoke the EASEMENT.

17. Governing Law & Venue. This EASEMENT shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this EASEMENT shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

18. Construction. No party shall be considered the author of this EASEMENT since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this EASEMENT shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such holding shall not affect the remaining portions of this EASEMENT and the same shall remain in full force and effect.

19. Entire Understanding. This EASEMENT represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this EASEMENT.

20. Time of Essence. The parties expressly agree that time is of the essence in this EASEMENT and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

21. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Agreement.

HOA has submitted to COUNTY a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the HOA does not have a written non-discrimination policy or one that conforms to the COUNTY's policy, it has acknowledged through a signed statement provided to COUNTY that HOA will conform to the COUNTY's non-discrimination policy as provided in R-2014-1421, as amended.

22. Effective Date of EASEMENT. This EASEMENT is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

23. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of COUNTY or HOA.

24. Office Of The Inspector General. Palm Beach County has established the Office of the Inspector General. 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 audit, investigate, monitor, and inspect the activities of the parties or entities with which the COUNTY enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the COUNTY or receiving COUNTY funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names on the dates set forth below.

Attest:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

Signed and delivered
in the presence of:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

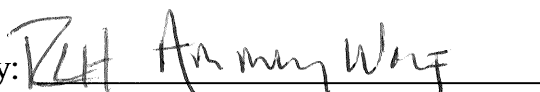
By: 
Assistant County Attorney

COUNTY:

PALM BEACH COUNTY, a political
subdivision of the State of Florida


By: _____
Paulette Burdick, Mayor

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Department Director

HOA:

ARDEN HOMEOWNERS ASSOCIATION, INC,
a Florida Corporation not for profit

By: 
Thomas C. Tischer, President


Witness Signature

Kathryn O'Farrell
Print Witness Name

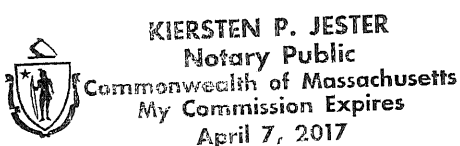

Witness Signature


Danielle Wiencek
Print Witness Name

STATE OF MASSACHUSETTS }
COUNTY OF SUFFOLK }

Before me personally appeared Thomas C. Tischer, who is personally known to me, or who has produced _____ as identification, and who executed the forgoing instrument as President of the Arden Homeowners Association, Inc., a Florida corporation not for profit, and severally acknowledged to and before me that he executed such instrument as such officer of said corporation, and that the seal affixed to the forgoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

Witness my hand and official seal this 12th day of October, 2016.




Notary Public
State of Massachusetts
Commission No. _____

Print Name
My commission expires: _____

EXHIBIT “A”

PUBLIC CIVIC / PARK SITE

TRACT C-1, ARDEN P.U.D. PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 122, PAGES 32 THROUGH 51, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 1,090,089 SQUARE FEET / 25.025 ACRES, MORE OR LESS.

EXHIBIT “B”

EASEMENT PARCEL

THE SOUTH 60 FEET OF TRACT C-1, ARDEN P.U.D. PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 122, PAGES 32 THROUGH 51, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA.