

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Acct No.: Fund ___ Dept. ___ Unit ___ Object _____
 Program _____

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

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 2/10/06

III. REVIEW COMMENTS

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

Jim Smith 7-24-06
 OFMB
 [Handwritten initials and dates: JH 7-24-06, [initials] 7-20-06]

Jim J. [unclear] 7/25/06
 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

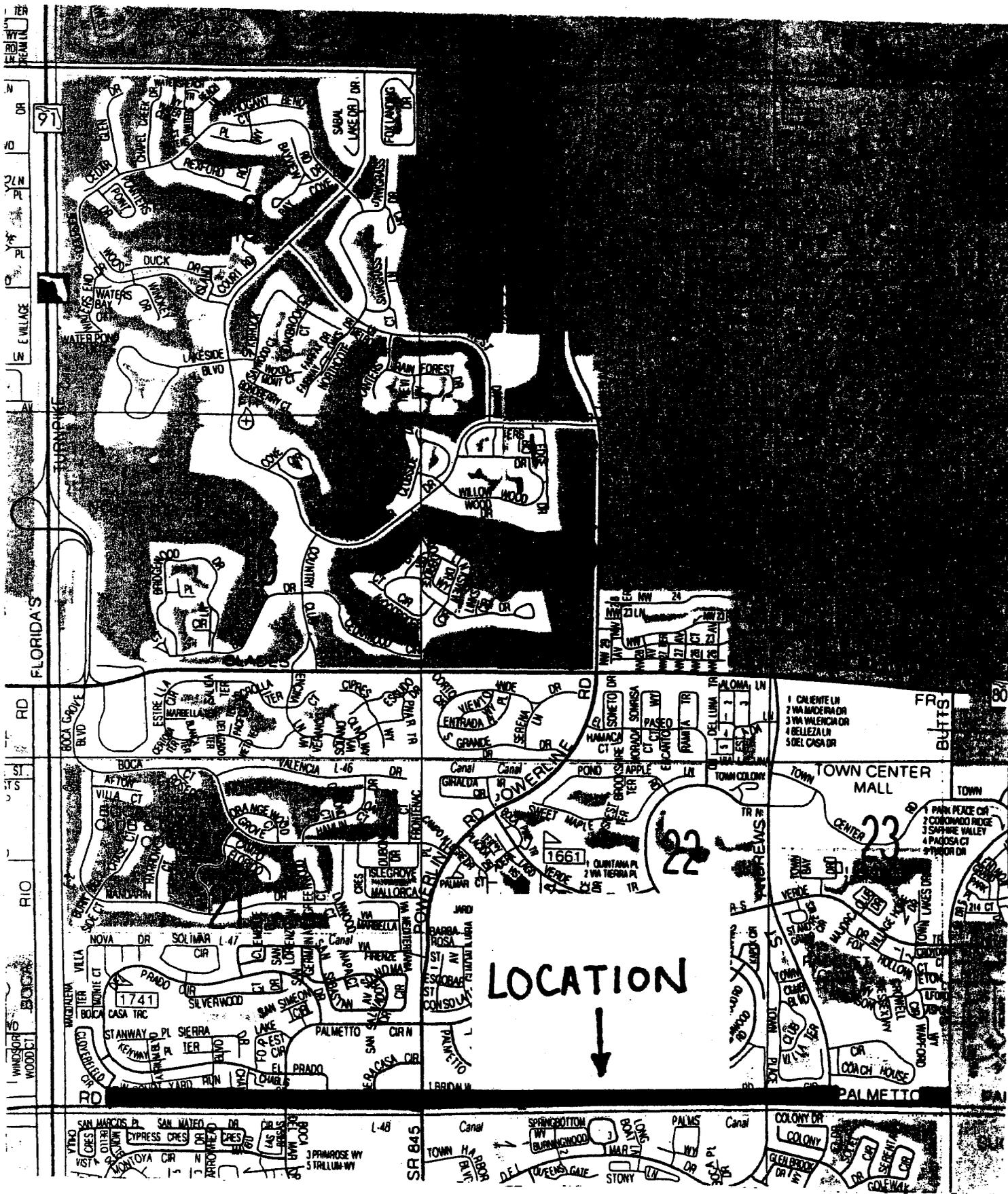
Paul F. [unclear] 7/27/06
 Assistant County Attorney

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.



LOCATION SKETCH

From: Andrew Hertel
To: Gary Gregory
Date: 7/7/2006 6:42:45 AM
Subject: Fwd: Boca Del Mar Improvement Assoc. Inc.

>>> Kate Scott 3/14/06 9:05:29 AM >>>

Hello Andy,

FYI: Commissioner McCarty has granted the Boca Del Mar Improvement Association, Inc. a one year extension of time to complete the work contemplated by the Agreement R2005-0439 Beautification.

Kate (Freddie) Scott
Aide to Commissioner Mary McCarty
561-276-1220
kfscott@co.palm-beach.fl.us

1 AMENDMENT TO FINANCIAL ASSISTANCE AGREEMENT DATED MARCH 1, 2005
2 WITH BOCA DEL MAR IMPROVEMENT ASSOCIATION, INC., FOR
3 BEAUTIFICATION IN THE COUNTY'S RIGHT OF WAY FOR PALMETTO PARK
4 ROAD

5 THIS AMENDMENT is made to the Financial Assistance Agreement (R2005-
6 0439) dated March 1, 2005, by and between BOCA DEL MAR IMPROVEMENT
7 ASSOCIATION, INC., a not-for-profit corporation of the State of Florida, hereinafter
8 "ASSOCIATION", and PALM BEACH COUNTY, a political subdivision of the State of
9 Florida, hereinafter "COUNTY".

10 WITNESSETH:

11 WHEREAS, on March 1, 2005, **ASSOCIATION** and **COUNTY** entered into a
12 Financial Assistance Agreement (R2005-0439) providing for reimbursement funding of
13 the cost of ASSOCIATION'S wishes to install beautification in the swales of the
14 COUNTY's right of way for Palmetto Park Road from the Florida's Turnpike to Military
15 Trail, hereinafter "IMPROVEMENTS"; and

16 WHEREAS, R2005-0439 provided for a completion date of December 31, 2006;
17 and

18 WHEREAS, an extension of that completion date has been requested by
19 ASSOCIATION due to hurricane related problems, and

20 WHEREAS, the completion date of the **IMPROVEMENTS** has been delayed due
21 to hurricane related problems; and

22 WHEREAS, **COUNTY** and **ASSOCIATION** desire to amend the December 31,
23 2006 completion date for an additional twelve (12) month period to December 31, 2007.

24 NOW, THEREFORE, in consideration of the mutual covenants, promises, and
25 agreements herein contained, the parties agree as follows:

26 1. Paragraph 9 of Financial Assistance Agreement R2005-0439 is
27 amended as follows:

28 9. All installation of these IMPROVEMENTS shall be
29 completed and final invoices submitted to COUNTY no later than
30 December 31, 2007, and COUNTY shall have no obligation to
31 ASSOCIATION or any other entity or person for any cost incurred
32 thereafter.

33 2. It is the intent of the parties hereto that this AMENDMENT shall not
34 become binding until the date executed by the Board of County
35 Commissioners of Palm Beach County.

36 3. All other provisions of the Financial Assistance Agreement dated
37 March 1, 2005, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective on the day first above written.

BOCA DEL MAR IMPROVEMENT ASSOCIATION, INC.

(ASSOCIATION SEAL)

BOCA DEL MAR IMPROVEMENT ASSOCIATION, INC.
BY ITS BOARD OF DIRECTORS

ATTEST:

By: Thomas C. Buehons
ASSOCIATION SECRETARY

By: Paul McDem
PRESIDENT

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: Gelfand L. Aye, P.A. no opinion provided
ASSOCIATION ATTORNEY

PALM BEACH COUNTY

(COUNTY SEAL)

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

ATTEST:

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
DEPUTY CLERK

By: _____, CHAIR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
ASSISTANT COUNTY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

BY: SkullConnell

1 **FINANCIAL ASSISTANCE AGREEMENT WITH BOCA DEL MAR IMPROVEMENT**
2 **ASSOCIATION, INC., FOR BEAUTIFICATION IN THE COUNTY'S RIGHT OF WAY**
3 **R2005-0439 FOR PALMETTO PARK ROAD**
4

5 **THIS AGREEMENT is made and entered into this _____ day of**
6 **MAR 01 2005**, 200__, by and between BOCA DEL MAR IMPROVEMENT
7 **ASSOCIATION, INC., a not-for-profit corporation of the State of Florida, hereinafter**
8 **"ASSOCIATION", and PALM BEACH COUNTY, a political subdivision of the State of**
9 **Florida, hereinafter "COUNTY".**

10 **WITNESSETH:**

11 **WHEREAS, ASSOCIATION wishes to design and install beautification (subject**
12 **to addressing drainage considerations) in the swales of the COUNTY's right of way**
13 **for Palmetto Park Road from Florida's Turnpike to Military Trail, hereinafter**
14 **"IMPROVEMENTS"; and**

15 **WHEREAS, COUNTY believes that these efforts by ASSOCIATION serve a**
16 **public purpose in the enhancement of the appearance of the right of way and wishes**
17 **to support ASSOCIATION's efforts to install the IMPROVEMENTS by providing**
18 **reimbursement funding provided by Florida Power and Light Company and**
19 **Commission District 4 Funds for Improvements in an amount not to exceed ONE**
20 **HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00); and**

21 **WHEREAS, after installation, ASSOCIATION will be responsible for the**
22 **perpetual maintenance of the IMPROVEMENTS; and**

23 **NOW, THEREFORE, in consideration of the mutual covenants, promises, and**
24 **agreements herein contained, the parties agree as follows:**

- 25 1. **The above recitals are true, correct and are incorporated herein.**
26 2. **COUNTY agrees to provide to ASSOCIATION reimbursement funding in**
27 **an amount not to exceed ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS**
28 **(\$150,000.00).**

1 **3. COUNTY agrees to reimburse ASSOCIATION the amount established in**
2 **paragraph 2 for costs (materials and labor) associated with the installation of the**
3 **IMPROVEMENTS, upon ASSOCIATION's submission of acceptable documentation**
4 **needed to substantiate their costs for the IMPROVEMENTS. COUNTY will use its**
5 **best efforts to provide said funds to ASSOCIATION on a reimbursement basis within**
6 **forty-five (45) days of receipt of all information required in Paragraph 6, below.**

7 **4. COUNTY's obligation is limited to its payment obligation and COUNTY**
8 **shall have no obligation to any other person or entity.**

9 **5. ASSOCIATION agrees to assume all responsibility for design, bidding,**
10 **contract preparation, and contract administration for the installation of the**
11 **IMPROVEMENTS, including payment(s) to contractor(s), pursuant to all applicable**
12 **governmental laws and regulations and will comply with all applicable governmental**
13 **landscaping codes and permitting requirements in the selection and installation of**
14 **the IMPROVEMENTS. ASSOCIATION agrees to install the IMPROVEMENTS**
15 **substantially in accordance with the plans, specifications and costs as permitted by**
16 **COUNTY. ASSOCIATION also agrees to assume financial responsibility for the**
17 **completion of any portions of the IMPROVEMENTS that are not fully-funded by the**
18 **amount set forth in Paragraph 2, above. Otherwise, the COUNTY will have the final**
19 **determination of the eligibility for reimbursement of any changes. Substantial**
20 **variations from the permitted plans shall require prior written approval from**
21 **COUNTY Engineer's Office. The final permit drawings must be signed and sealed by**
22 **a Florida Registered Landscape Architect experienced in roadway planting and**
23 **familiar with COUNTY's Streetscape Standards Manual.**

1 **6. ASSOCIATION will obtain or provide all labor and materials necessary**
2 **for the design and installation of the IMPROVEMENTS. ASSOCIATION may seek**
3 **reimbursement following the completion of: 1. Design and upon permitting by the**
4 **COUNTY, and 2. Installation of the IMPROVEMENTS (as inspected and approved by**
5 **the COUNTY). COUNTY shall have the final determination of eligibility for**
6 **reimbursement. ASSOCIATION shall furnish the Manager, Streetscape Section, of**
7 **COUNTY's Department of Engineering and Public Works with a request for payment**
8 **supported by the following:**

9 **For Paragraph 6, Item 1 above, "Design and upon permitting", a copy of the**
10 **final design plans along with a copy of the COUNTY permit; and**

11 **For Paragraph 6, Item 2 above, "Installation of the IMPROVEMENTS",**

- 12 **a. A statement from a Florida Registered Landscape Architect that the**
13 **IMPROVEMENTS have been inspected and were installed substantially**
14 **in accordance with the permitted plans for the IMPROVEMENTS, and;**
15 **b. A Contract Payment Request Form and a Contractual Services**
16 **Purchases Schedule Form, attached hereto and incorporated herein as**
17 **Exhibit "A" (pages 1 and 2) which are required for each and every**
18 **reimbursement requested by ASSOCIATION. Said information shall list**
19 **each invoice paid by ASSOCIATION and shall include the vendor**
20 **invoice number, invoice date, and the amount paid by ASSOCIATION.**
21 **ASSOCIATION shall attach a copy of each vendor invoice paid by**
22 **ASSOCIATION along with a copy of the respective check and shall**
23 **make reference thereof to the applicable item listed on the Contractual**
24 **Services Purchases Schedule Form. Further, the Program**
25 **Administrator and the President of the ASSOCIATION, or his designee**
26 **shall also certify that each vendor invoice listed on the Contractual**
27 **Services Purchases Schedule Form was paid by ASSOCIATION as**
28 **indicated.**

1 **7. ASSOCIATION shall maintain adequate records to justify all charges,**
2 **expenses, and costs incurred in performing the IMPROVEMENTS for at least three**
3 **(3) years after the completion of such IMPROVEMENTS. COUNTY shall have access**
4 **to all books, records and documents as required in this Section for the purpose of**
5 **inspection or audit during normal business hours.**

6 **8. ASSOCIATION agrees to be responsible for the perpetual maintenance**
7 **of the IMPROVEMENTS following their installation and shall be solely responsible**
8 **for obtaining and complying with all necessary permits, approvals, and**
9 **authorizations from any federal, state, regional, or COUNTY agency which are**
10 **required for the subsequent maintenance of the IMPROVEMENTS.**

11 **9. All installation of these IMPROVEMENTS shall be completed and final**
12 **invoices submitted to COUNTY no later than December 31, 2006, and COUNTY shall**
13 **have no obligation to ASSOCIATION or any other entity or person for any cost**
14 **incurred thereafter unless the time for completion is extended by modification of this**
15 **Agreement as provided herein.**

16 **10. ASSOCIATION recognizes that it is an independent contractor, and not**
17 **an agent or servant of COUNTY or its Board of County Commissioners. In the event**
18 **a claim or lawsuit is brought against COUNTY, its officers, employees, servants or**
19 **agents, relating to the IMPROVEMENTS or any item which is the responsibility of**
20 **ASSOCIATION, ASSOCIATION hereby agrees to indemnify, save and hold harmless**
21 **COUNTY, its officers, employees, servants or agents, and to defend said persons**
22 **from any such claims, liabilities, causes of action and judgments of any type**
23 **whatsoever arising out of or relating to the existence of the IMPROVEMENTS or the**
24 **performance by ASSOCIATION as may relate to this Agreement. ASSOCIATION**
25 **agrees to pay all costs, attorney's fees and expenses incurred by COUNTY, its**
26 **officers, employees, servants or agents in connection with such claims, liabilities**
27 **or suits except as may be incurred due to the negligence of COUNTY.**

1 **11. ASSOCIATION shall, at all times during the term of this Agreement (the**
2 **installation and existence of the IMPROVEMENTS), maintain in force its status as an**
3 **insured corporation, and shall provide evidence of this insurance prior to COUNTY's**
4 **execution of this Agreement.**

5 **12. As provided in F.S. 287.132-133, by entering into this Agreement or**
6 **performing any work in furtherance hereof, ASSOCIATION certifies that its affiliates,**
7 **suppliers, sub-contractors, and consultants who perform work hereunder, have not**
8 **been placed on the convicted vendor list maintained by the State of Florida**
9 **Department of Management Services within 36 months immediately preceding the**
10 **date hereof. This notice is required by F.S. 287.133(3)(a).**

11 **13. ASSOCIATION shall require each contractor engaged by ASSOCIATION**
12 **for work associated with this Agreement to maintain:**

13 **a. Workers' Compensation coverage in accordance with Florida**
14 **Statutes, and;**

15 **b. Commercial General Liability coverage, including vehicle coverage,**
16 **in combined single limits of not less than ONE MILLION AND 00/100**
17 **DOLLARS (\$1,000,000.00). COUNTY shall be included in the coverage**
18 **as an additional insured.**

19 **c. A payment and performance bond for the total amount of the**
20 **improvements in accordance with Florida Statute 255.05.**

21 **14. In the event of termination, ASSOCIATION shall not be relieved of**
22 **liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the**
23 **contract by ASSOCIATION; and COUNTY may withhold any payment to**
24 **ASSOCIATION for the purpose of set-off until such time as the exact amount of**
25 **damages due COUNTY is determined. In the event ASSOCIATION elects to**
26 **discontinue its maintenance obligation for the IMPROVEMENTS under this**
27 **Agreement, it shall be the obligation of ASSOCIATION to restore, if necessary, the**
28 **area of the IMPROVEMENTS on COUNTY's right-of-way to a condition acceptable to**
29 **COUNTY Engineer, which shall be in accordance with Federal, State and COUNTY**

1 standards for road construction and/or maintenance. In the event ASSOCIATION fails
2 to restore the area of the IMPROVEMENTS to a condition acceptable to COUNTY
3 Engineer, COUNTY may undertake such restoration and ASSOCIATION shall be
4 liable for the costs of such restoration.

5 15. ASSOCIATION's termination of this AGREEMENT shall result all
6 obligations of COUNTY for funding contemplated herein to be canceled.

7 16. COUNTY and ASSOCIATION agree that no person shall, on the grounds
8 of race, color, national origin, sexual orientation, religion or creed, sex, age, or
9 handicap be discriminated against in performance of the Agreement.

10 17. COUNTY may, at COUNTY's discretion and for the duration of
11 IMPROVEMENTS, install signs within the public property or easement, notifying the
12 public that the IMPROVEMENTS were funded with COUNTY dollars.

13 18. In the event that any section, paragraph, sentence, clause, or provision
14 hereof is held invalid by a court of competent jurisdiction, such holding shall not
15 affect the remaining portions of this Agreement and the same shall remain in full
16 force and effect.

17 19. All notices required to be given under this Agreement shall be in
18 writing, and deemed sufficient to each party when sent by United States Mail,
19 postage prepaid, to the following:

20 AS TO COUNTY

21 Manager, Streetscape Section
22 Palm Beach County Department of
23 Engineering and Public Works
24 Post Office Box 21229
25 West Palm Beach, Florida 33416-1229

26 AS TO ASSOCIATION

27 President, Boca Del Mar Improvement Association, Inc.
28 6018 SW 18th Street, #C8
29 Boca Raton, FL 33433

1 **20. This Agreement shall be construed and governed by the laws of the**
2 **State of Florida. Any and all legal action necessary to enforce this Agreement shall**
3 **be held in Palm Beach County. No remedy herein conferred upon any party is**
4 **intended to be exclusive of any other remedy, and each and every other remedy shall**
5 **be cumulative and shall be in addition to every other remedy given hereunder or now**
6 **or hereafter existing at law or in equity or by statute or otherwise. No single or**
7 **partial exercise by any party of any right, power, or remedy shall preclude any other**
8 **or further exercise thereof.**

9 **21. Any costs or expenses (including reasonable attorney's fees)**
10 **associated with the enforcement of the terms and conditions of this Agreement**
11 **shall be borne by the respective parties; provided, however, that this clause pertains**
12 **only to the parties to the Agreement.**

13 **22. Except as expressly permitted herein to the contrary, no modification,**
14 **amendment, or alteration in the terms or conditions contained herein shall be**
15 **effective unless contained in a written document executed with the same formality**
16 **and equality of dignity herewith.**

17 **23. Each party agrees to abide by all laws, orders, rules and regulations and**
18 **ASSOCIATION will comply with all applicable governmental landscaping codes in**
19 **the maintenance and replacement of the IMPROVEMENTS.**

20 **24. The parties to this Agreement shall not be deemed to assume any**
21 **liability for the negligent or wrongful acts, or omissions of the other party (or**
22 **parties). Nothing contained herein shall be construed as a waiver by COUNTY, by**
23 **any of the parties, of the liability limits established in Section 768.28, Florida**
24 **Statutes.**

25 **25. ASSOCIATION shall promptly notify COUNTY of any lawsuit-related**
26 **complaint, or cause of action threatened or commenced against it which arises out**
27 **of or relates, in any manner, to the performance of this Agreement.**

1 **26. The parties expressly covenant and agree that in the event any of the**
2 **parties is in default of its obligations under this Agreement, the parties not in default**
3 **shall provide to the defaulting party thirty (30) days written notice before exercising**
4 **any of their rights.**

5 **27. The preparation of this Agreement has been a joint effort of the parties,**
6 **and the resulting document shall not, solely as a matter of judicial constraint, be**
7 **construed more severely against one of the parties than the other.**

8 **28. ASSOCIATION has the authority to enter into this Agreement, and to**
9 **perform the obligations contained herein.**

10 **29. This Agreement represents the entire understanding among the parties,**
11 **and supersedes all other negotiations, representations, or agreements, either written**
12 **or oral, relating to this Agreement.**

13 **30. A copy of this Agreement shall be filed with the Clerk of the Circuit**
14 **Court in and for Palm Beach County, Florida.**

15 **31. This Agreement shall take affect upon execution and the effective date**
16 **shall be the date of execution.**

17
INTENTIONALLY LEFT BLANK

1 IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective
2 on the date first above written.

BOCA DEL MAR IMPROVEMENT ASSOCIATION, INC.

(ASSOCIATION SEAL)

BOCA DEL MAR IMPROVEMENT
ASSOCIATION, INC.
BY ITS BOARD OF DIRECTORS

7 ATTEST:

8 By: Matthew C. Paul
9 ASSOCIATION SECRETARY

By: Paul McDermott
PRESIDENT

12 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

13 By: [Signature]
14 ASSOCIATION ATTORNEY
15

PALM BEACH COUNTY

18 (COUNTY SEAL)

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

R2005-0439

MAR 01 2005

20 ATTEST:

21 DOROTHY H. WILSON, CLERK

22 By: Judith Cross
23 DEPUTY CLERK
24
25

By: Tony Mastrotti
Tony Mastrotti, Chairman, CHAIR

26 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

27 By: Malone R. Pettit
28 ASSISTANT COUNTY ATTORNEY

29 APPROVED AS TO TERMS AND CONDITIONS

30 BY: [Signature]
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