

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>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 _____

Reporting Category N/A

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

The cash and/or credits the developer would have received from over-sizing the potable water and wastewater lines are being "returned" to WUD in lieu of the developer actually constructing and installing reclaimed water lines to his project.

C. Department Fiscal Review: Debra M. West

III. REVIEW COMMENTS

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

Mr. Dink 8-9-06
OFMB

Debra M. West
Contract Development and Control
8/10/06

B. Legal Sufficiency:

This item complies with current County policies.

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

FIRST AMENDMENT TO POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT, made and entered into this ___ day of _____, 2006, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "County," and **WHITWORTH ESTATES PUD, LLC**, hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, County and Property Owner entered into a Potable Water and Wastewater Development Agreement ("Agreement") on July 18, 2005 (SDA 03-01020-001); and

WHEREAS, County and Property Owner wish to amend the Agreement to add certain special conditions, relating to the construction by Property Owner of a 16" potable water main along Lyons Road right-of-way, the oversizing credits applicable to the construction of this water main, and the contribution of these oversized credits towards County's construction of a 20" reclaimed water main along the Property's frontage on Atlantic Avenue.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and County hereby covenant and agree as follows:

1. The foregoing statements are true and correct and are incorporated herein by specific reference.
2. Section 15 of the Agreement, "Additional Conditions", is hereby amended to read:
 - A. Prior to first permanent Service Initiation, the Property Owner shall design and construct approximately 2,600 linear feet of 16 inch potable water main along Lyons Road right-of-way from Atlantic Avenue to LWDD Canal L-33.
 - B. The Property Owner agrees to apply all oversizing credits for the above 16 inch potable water main, as determined in accordance with UPAP, as a contribution in lieu of construction, toward a 20 inch reclaimed water main along the Property's frontage on Atlantic Avenue.
 - C. Property Owner and County acknowledge the existence of a companion Reclaimed Water Development Agreement, submitted concurrently to the Palm Beach County Board of County Commissioners for approval.
3. All other provisions of the Agreement are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, Property Owner and County 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: _____
Tony Masilotti, Chairman

[SEAL]

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: [Signature]
Department Director (N)

WITNESSES:

[Signature]

Sheree Katzman
Type or Print Name

[Signature]

TERI GOVINSO
Type or Print Name

PROPERTY OWNER:

By: [Signature]

Signature
Managing Member
Title

Garrett Bender
Typed or Printed Name

[Corporate
Seal]

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY PALM BEACH


The foregoing instrument was acknowledged before me this 21 day of July, 2006
by Garrett Bender, of Whitworth Estates PUD, LLC
a Florida corporation, on behalf of the corporation. He/she is personally known to me or has
produced N/A as identification.

[Signature]
Signature of Notary

Sheree Katzman
Typed, Printed, or Stamped Name
of Notary

Notary Public

Serial Number

NOTARY PUBLIC-STATE OF FLORIDA
 Sheree Katzman
Commission # DD250887
Expires: SEP 17, 2007
Bonded Thru Atlantic Bonding Co., Inc.

RECLAIMED WATER

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

RECLAIMED WATER DEVELOPMENT AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility", and WHITWORTH ESTATES PUD, LLC, 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 and own, at Property Owner's sole cost and expense, reclaimed water facilities on Property Owner's side of the Point of Service, hereinafter referred to as "Irrigation System"; and

WHEREAS, upon the conditions set forth herein, Utility desires to construct and own, at Utility's sole cost and expense, the reclaimed water facilities up to the Point of Service, including a 6" meter, for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this Agreement 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, Property Owner shall use only reclaimed water for irrigation purposes; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties 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 reclaimed water to the Property;
 - (c) "Point of Service" - generally, the point where the pipes of Utility are connected with the pipes to be owned and operated by Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Service Initiation" - the date a reclaimed water meter is requested;
 - (e) "Reclaimed Water" - water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a wastewater treatment facility;

SDA # 03-90004-000

RECLAIMED WATER

- (f) "Equivalent Residential Irrigation Connection (ERIC)" - a system capacity equivalency unit which corresponds to the peak reclaimed water demand of the 5/8" x 3/4" meter subcategory of the single family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the reclaimed water system demand for various sized connections for the purpose of assessing fees and reserving capacity. For the purpose of this Agreement, one ERIC = 500 gallons/day;
 - (g) "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 (the MAP is zero dollars as of the Effective Date);
 - (h) "Guaranteed Revenue Fee" - the fee designated 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 (the Guaranteed Revenue Fee is zero dollars as of the Effective Date);
 - (i) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERIC, a TAA equal to sixty months Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERIC shall be due and payable for such ERIC. The TAA for each ERIC will be determined at the time of Service Initiation (the TAA is zero dollars as of the Effective Date);
 - (j) "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;
 - (k) "Franchise Fee" - A percentage surcharge applied to all of Utility's fees for Customers within portions of Utility's Service Area with said fees collected by Utility and distributed to another governmental entity (the Franchise Fee is zero dollars as of the Effective Date);
 - (l) "Irrigation System" - A network of pipes, pumping facilities, storage facilities, sprinkler heads, and appurtenances on the Property Owner's side of the Point of Service designed to convey and apply Reclaimed Water; and
 - (m) "Effective Date" - shall be the date this Agreement is ratified by the Palm Beach County Board of County Commissioners.
3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate and expand the Utility-owned reclaimed water 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 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.

RECLAIMED WATER

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 reclaimed water facilities; that in the event Utility is required or desires to install any of its reclaimed water 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 installations; 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, 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 reclaimed water facilities and services to the Property described in **Exhibit "A"** and in addition to any property to which reclaimed water service is actually rendered by Utility. All occupants of any residential 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 reclaimed water service from the aforesaid Utility, and shall pay for 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 residential 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 reclaimed water service from any source other than that provided by Utility.

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 reclaimed water 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 and Utility, Utility covenants and agrees that it will allow the connection of the reclaimed water Irrigation System installed by Property Owner to the reclaimed water facilities of Utility in accordance with the terms and intent of this Agreement. Such connection and reclaimed water usage shall be in accordance with rules and regulations of the Health Department, the Department of Environmental Protection and the UPAP. As of the Effective Date, there are no connection fees or service initiation fees required for reclaimed water. In addition, there shall be no charge associated with the placement of the reclaimed water meter by 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. As of the Effective Date, the Guaranteed Revenue Fees are zero dollars. Therefore, Property Owner agrees to pay in accordance with the UPAP:
 - (a) a MAP per each ERIC for the requested capacity upon submission of this Agreement (zero dollars as of the Effective Date); and
 - (b) a TAA per each ERIC for the requested capacity upon Service Initiation (zero dollars as of the Effective Date.)

Utility has advised Property Owner that construction of additional off-site Utility-owned reclaimed water 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 will not provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Reclaimed Water Agreement is:

RECLAIMED WATER

Reclaimed Water:	\$0.00 per ERIC x	2,400.00 ERICs =	\$0.00
		Franchise Fee	\$0.00
		TOTAL	\$0.00

Upon receipt of the MAP, Utility agrees to reserve 2,400.00 ERICs of Reclaimed Water system capacity for Property Owner through August 14, 2011, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

At the time of Service Initiation, the applicable ERICs will be deducted from said reservation. Upon approval of Utility, the total number of ERICs may be increased up to 10% of the original reservation or by ten (10) ERICs, 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. Any adjustment which is greater than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERICs may be adjusted downward however, no refund or credit will be given by Utility to Property Owner for said downward adjustment.

- 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 Irrigation System and the off-site reclaimed water systems for the Property as set forth in Special Condition #2 found in Section 15 below. 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 of the Irrigation System 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 reclaimed water Irrigation System as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied to cover the cost of the plan review and inspection. As of the Effective Date, these fees equal \$500.00 for inspection, and \$750.00 for plan review. Property Owner shall be required to pay connection fees and as set forth in the UPAP for each connection. As of the Effective Date of this Agreement, the connection fees are zero dollars.

During the construction of the reclaimed water Irrigation System 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 Irrigation System 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 covenants and agrees to design and/or modify its Irrigation System, at its sole cost, to accept reclaimed water from Utility, and to design and operate said system within the guidelines for reclaimed water as outlined in the then current UPAP, the Palm Beach County Reclaimed Water Ordinance and State and Federal law.

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 Utility-owned reclaimed water 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 either a paid title policy for the benefit of Utility in a minimum amount of \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement), or a certificate of title from an attorney licensed to practice in the State of Florida. Said title policy or certificate of title shall confirm the Grantor's right to convey such easements or rights-of-way, and further, shall confirm Utility's right to the continuous enjoyment of such easements or rights-of-way for those

RECLAIMED WATER

purposes set forth in this Agreement. The use of easements granted by Property Owner may be used by other utilities as long as such use is approved by Utility. Mortgagees holding liens on such properties shall be required to subordinate their position, or join in the granting of the easement or rights-of-way. All Utility-owned reclaimed water 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 other fees as set forth in the UPAP at the then current rate. As of the Effective Date of this Agreement, the Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, and Franchise Fees are zero dollars.

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. Property Owner shall not have any present or future right, title, claim, or interest in and to the reclaimed water facilities owned by Utility.

7. Upon submission of this Agreement, Property Owner, at its 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 DA.
8. Property Owner agrees with Utility that all reclaimed water facilities owned by Utility to use in connection with providing reclaimed water 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, except as given pursuant to the terms of this Agreement. In addition, Utility shall have the exclusive right and privilege to provide reclaimed water service 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 reclaimed water 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 reclaimed water 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.
10. Property Owner or his assignee shall not have the right to and shall not connect to the reclaimed water facilities of Utility until approval for such connection has been granted by Utility, which approval shall not be unreasonably withheld. The parties hereto further agree that the expense of construction, operation, and maintenance of the Irrigation System shall be the sole cost and expense of Property Owner or other than Utility. In addition, Property Owner or its Assignee agrees to comply with all rules and regulations of the UPAP, HRS, and DEP pertaining to the Reclaimed Water Irrigation Systems.
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

RECLAIMED WATER

and/or loss of the Mandatory Agreement Payment identified herein. As of the Effective Date of this Agreement, the Mandatory Agreement Payment is zero dollars.

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:

**1000 NW 17th Ave
Delray Beach, FL 33445;**

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, Florida 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 reclaimed water facilities and services to any phased area and/or to the Property as a whole.
14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void all previous agreements or representations either verbal or written heretofore in effect between Property Owner and Utility made with respect to the matter contained herein, 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. Special Conditions:

1. The Property Owner commits to connect for irrigation purposes to the Utility's Reclaimed Water System in accordance with UPAP and the Mandatory Reclaimed Water Service Area Ordinance. Notwithstanding the above, Utility has no objection to Property Owner providing irrigation to the Property by alternative means (including using the Property's lake system) prior to the availability of Utility's Reclaimed Water system to the Property and prior to the approval required under Section 10 above. Property Owner shall be responsible for any regulatory approvals required for any such alternative irrigation system. Property Owner shall be required to abandon any alternative irrigation system and connect to the Utility's Reclaimed Water system following the availability of Utility's reclaimed water system to the Property and following the approval required under Section 10 above. Abandonment of any alternative irrigation system and connection to the County's Reclaimed Water system shall occur within sixty (60) days following notice to Property Owner of the approval required under Section 10.
2. The Property Owner agrees to design and obtain all necessary permits, at no cost to Utility, for the installation of approximately 3,500 linear feet of 20 inch reclaimed water main along Atlantic Avenue from Florida's Turnpike to the west Property line in accordance with UPAP. Property Owner shall obtain final plan approval for this project from Utility within ninety (90) days of the Effective Date of this Agreement. The permitting for this project shall be completed within one hundred eighty (180) days of final plan approval by Utility. It shall not be considered a breach of this Agreement by Property Owner if the final plan approval or permitting is not completed in a timely manner due to government delays in permitting when said delays are not caused by the Property Owner or its agents.
3. Utility acknowledges that the Property Owner will not be required to extend any off-site reclaimed water mains, and that Utility is solely responsible for the cost and installation of such mains, subject to the Special Conditions related to the contribution of oversizing credits toward a 20 inch reclaimed water main along the Property's frontage on Atlantic Avenue, as stated in the companion Amendment to the Potable Water and Wastewater Development Agreement.
4. Property Owner and Utility acknowledge the existence of a companion Amendment to the Potable Water and Wastewater Development Agreement (DA # 03-01020-001)

RECLAIMED WATER

submitted concurrently to the Palm Beach County Board of County Commissioners for approval.

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RECLAIMED WATER

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:

Clerk (or Deputy Clerk)

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

By: _____
Tony Masilotti, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

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

WITNESSES:

Sheree Katzman
Typed or Printed Name

Dan Lewson

TERRY GOVIMSON
Typed or Printed Name

PROPERTY OWNER:

By: _____
Signature
Garrett Bender
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 21 day of July, 2006
by Garrett Bender, of WHITWORTH ESTATES PUD, LLC, a
PA. LLC, on behalf of the LLC. He/she is personally
known to me or has produced N/A as identification.

Signature of Notary

NOTARY PUBLIC-STATE OF FLORIDA
Sheree Katzman
Commission # DD250887
Expires: SEP 17, 2007
Bonded Thru Atlantic Bonding Co., Inc.

Typed, Printed, or Stamped Name
of Notary

Notary Public

Serial Number

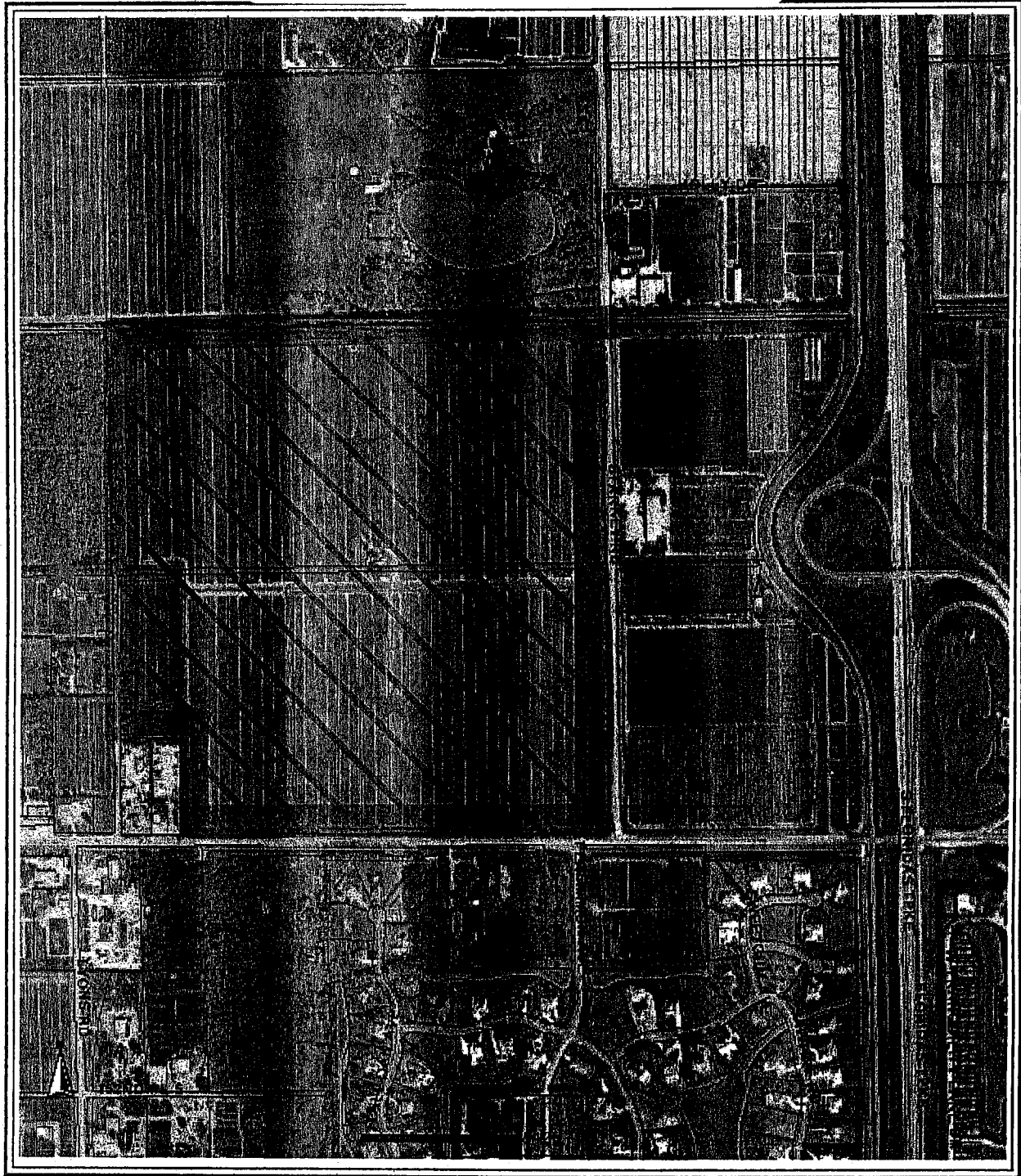
RECLAIMED WATER

EXHIBIT "A"
LEGAL DESCRIPTION

A CERTAIN PARCEL OF LAND LYING IN SECTION 17, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL ALSO LYING IN BLOCK 17, PALM BEACH FARMS COMPANY PLAT NO. 1, AS RECORDED IN PLAT BOOK 2, PAGES 26-28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CALCULATED WEST ONE-QUARTER (1/4) CORNER OF AFORESAID SECTION 17 AS PER THE PALM BEACH COUNTY SURVEY DEPARTMENT SECTIONAL BREAKDOWN OF SAID SECTION 17; THENCE N 89°27'41" E, ALONG THE EAST-WEST ONE-QUARTER (1/4) SECTION LINE OF SECTION 17, A DISTANCE OF 166.54 FEET TO A POINT ON THE WEST LINE OF BLOCK 17, THENCE N 01°03'00" W, DISTANCE OF 7.91 FEET TO A POINT ON THE SOUTH LINE OF LAKE WORTH DRAINAGE DISTRICT (L.W.D.D.) L-33 CANAL AS PER CHANCERY CASE 407 (O.R.B. 6495, PG. 761), THE NORTH 35.64 FEET OF TRACTS 73 THROUGH 80, BLOCK 17; THENCE S 89°01'50" W, ALONG THE SOUTH LINE OF SAID NORTH 35.64 FEET OF TRACTS 73 THROUGH 80, A DISTANCE OF 2550.94 FEET TO A POINT ON THE WEST LINE OF THE EAST 40.00 FEET OF TRACTS 73, 88, 105 AND 120, SAID LINE ALSO BEING THE WESTERLY RIGHT OF WAY LINE OF STARKEY ROAD PER D.B. 716, PG. 592, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE S 01°07'06" E, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 2748.60 FEET TO A POINT ON A LINE WHICH LIES 40.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTH LINE OF THE SOUTHEAST (S.E.) ONE QUARTER (1/4) OF SECTION 17; THENCE S 89°18'02" W, ALONG SAID PARALLEL LINE, A DISTANCE OF 223.69 FEET TO A POINT WHICH LIES 40.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTHWEST (S.W.) ONE-QUARTER (1/4) OF SECTION 17; THENCE N 89°58'59" W, ALONG SAID PARALLEL LINE, A DISTANCE OF 1075.29 FEET; THENCE N 00°00'00" E, A DISTANCE OF 1358.03 FEET; THENCE N 90°00'00" W, A DISTANCE OF 1335.55 FEET TO A POINT ON THE WEST LINE OF BLOCK 17, AFORESAID PALM BEACH FARMS COMPANY PLAT NO. 1, THENCE N 01°03'00" W, ALONG SAID LINE, A DISTANCE OF 1348.58 FEET TO THE POINT OF BEGINNING.

OK
08/01/06 G



Whitworth Estates PUD, LLC

Map Scale 1:10110

Map produced on 7/17/2006

WC

SDA # 03-01020-001
Conversion from UCRA
dated October 7, 2004

CHARGE #123 RETURN VIA WILL CALL #113
ATTN: MARK FALLOU, CONTRACT MANAGEMENT,
PFC WATER UTILITIES DEPT.,
1100 FOREST HILL BLVD, WPT, FL 33413

Attachment 4

FN 20050444796
JR BK 18924 PG 0381
RECORDED 07/19/2005 09:34:15
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0381 - 390; (10pgs)

STANDARD POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT (SDA)

THIS AGREEMENT made and entered into this 18th day of JULY, 2005, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility", and WHITWORTH ESTATES PUD, LLC, 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;

POTABLE WATER AND WASTEWATER

(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;

(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 the County 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 Department's fees for Customers within portions of the Department's utility Service Area with said fees collected by the Department 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 the 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 the 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

POTABLE WATER AND WASTEWATER

with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation, or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all potable water and wastewater facilities and services to the Property described in Exhibit "A" and in addition to any property to which potable water and wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their potable water and wastewater service from the aforesaid Utility and shall pay for the 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 the 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. The 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 AND WASTEWATER

Potable Water: \$99.24 per ERC x 385.80 ERCs =	<u>\$38,286.79</u>
Wastewater: \$183.72 per ERC x 385.80 ERCs =	<u>\$70,879.18</u>
SUBTOTAL	<u>\$109,165.97</u>
Less: Previous UCRA Map Paid	<u>108,034.13</u>
TOTAL MAP DUE	<u>\$1,131.84</u>

Upon receipt of the MAP, Utility agrees to reserve 385.80 ERCs of potable water and wastewater system capacity for Property Owner until **OCTOBER 31, 2009**, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

Property Owner acknowledges that it is the sole responsibility of Property Owner to provide payment of a new MAP at the then current fees thirty (30) days before the expiration of the original five-year term. Should multiple assignments exist for this Agreement, each assignee must submit the appropriate MAP for any unconnected ERCs related to the assignee's ERCs. Should Property Owner or assignee fail to submit a new MAP payment for their respective unconnected ERCs, Utility shall execute and record a "Termination and Partial Release of Standard or Non Standard Potable Water and Wastewater Development Agreement Due to Non-Renewal."

At the time of Service Initiation, the applicable ERCs will be deducted from said reservation. Upon approval of the 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 the 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 the 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,

POTABLE WATER AND WASTEWATER

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 the 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 the 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:

- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement), and
- \$150,000.00 for a Department-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 the 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 the Utility. A 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

POTABLE WATER AND WASTEWATER

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.

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 the 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. The sale, conveyance, transfer, or assignment of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP.

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:

140 NE 4th Ave, Delray Beach, FL 33483-3827;

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097.

13. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.

14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations, or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.

POTABLE WATER AND WASTEWATER

15. Additional Conditions:

None

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This is not a certified copy

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.

WITNESSES:

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

Anna M. Daniels
Anna M. Daniels
Typed or Printed Name

PALM BEACH COUNTY

By: [Signature]
County Administrator or Designee

WITNESSES:

[Signature]
Terry Glass
Typed or Printed Name

Sheree Katzman
Sheree Katzman
Typed or Printed Name

PROPERTY OWNER:

[Signature]
Signature
Teri Gerson
Typed or Printed Name
Managing Member
Title

{ Corporate Seal }

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY PALM BEACH

The foregoing instrument was acknowledged before me this 27 day of June, 2005 by Teri Gerson, of WATER UTILITIES DEPARTMENT PBC LLC, a FLORIDA LLC, on behalf of the Company. He/she is personally known to me or has produced _____ as identification.

[Signature]
Signature of Notary
Sheree Katzman
Typed, Printed, or Stamped Name of Notary
Notary Public
Serial Number _____

NOTARY PUBLIC-STATE OF FLORIDA
Sheree Katzman
Commission # DD250887
Expires: SEP 17, 2007
Bonded thru Atlantic Bonding Co., Inc

WATER UTILITIES DEPARTMENT APPROVAL

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

A CERTAIN PARCEL OF LAND LYING IN SECTION 17, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL ALSO LYING IN BLOCK 17, PALM BEACH FARMS COMPANY PLAT NO. 1, AS RECORDED IN PLAT BOOK 2, PAGES 26 THROUGH 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CALCULATED WEST ONE-QUARTER (1/4) CORNER OF AFORESAID SECTION 17 AS PER THE PALM BEACH COUNTY SURVEY DEPARTMENT SECTIONAL BREAKDOWN OF SAID SECTION 17; THENCE NORTH 89°27'41" EAST ALONG THE EAST-WEST ONE-QUARTER (1/4) SECTION LINE OF SECTION 17, A DISTANCE OF 166.54 FEET TO A POINT ON THE WEST LINE OF BLOCK 17; THENCE NORTH 01°03'00" WEST, A DISTANCE OF 7.91 FEET TO THE POINT OF BEGINNING ON THE SOUTH LINE OF LAKE WORTH DRAINAGE DISTRICT (L.W.D.D.) L-33 CANAL AS PER CHANCERY CASE 407 (O.R.B. 6495, PG. 761), THE NORTH 35.64 FEET OF TRACTS 73 THROUGH 80, BLOCK 17; THENCE SOUTH 89°01'50" WEST, ALONG THE SOUTH LINE OF SAID NORTH 35.64 FEET OF TRACTS 73 THROUGH 80, A DISTANCE OF 2605.94 FEET TO A POINT ON THE WEST LINE OF THE EAST 40.00 FEET OF TRACTS 73, 88, 105 AND 120, SAID LINE ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF STARKEY ROAD PER D.B. 716, PG. 592, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE SOUTH 01°07'06" EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 2748.60 FEET TO A POINT ON A LINE WHICH LIES 40.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTH LINE OF THE SOUTHEAST (S.E.) ONE QUARTER (1/4) OF SECTION 17; THENCE SOUTH 89°18'02" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 225.69 FEET TO A POINT WHICH LIES 40.00 FEET NORTH OF, AND PARALLEL TO, THE SOUTHWEST (S.W.) ONE-QUARTER (1/4) OF SECTION 17; THENCE NORTH 89°58'59" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 2043.89 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF TRACT 114, BLOCK 17, AFORESAID PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE NORTH 01°01'05" WEST ALONG SAID WEST TRACT LINE, A DISTANCE OF 514.37 FEET, MORE OR LESS, TO A POINT ON THE SOUTH LINE OF THE NORTH 240.00 FEET OF TRACT 113, BLOCK 17, PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE SOUTH 89°09'51" WEST, ALONG SAID SOUTH LINE OF THE NORTH 240.00 FEET OF SAID TRACT 113, A DISTANCE OF 342.29 FEET, MORE OR LESS, TO A POINT ON THE CENTERLINE OF THE 30 FOOT PALM BEACH FARMS COMPANY PLATTED ROAD EASEMENT, SAID POINT ALSO BEING ON THE WEST LINE OF BLOCK 17 OF SAID PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE NORTH 01°03'00" WEST, ALONG SAID BLOCK LINE, A DISTANCE OF 2197.18 FEET TO THE POINT OF BEGINNING.

CONTAINS 159.33 ACRES, MORE OR LESS.

FUTURE WEST ATLANTIC AVENUE RIGHT-OF-WAY AREA EQUALS 5.41 ACRES, MORE OR LESS.

FUTURE LYONS ROAD RIGHT-OF-WAY AREA EQUALS 0.757 ACRES, MORE OR LESS.

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11/11/05

CONSENT AND JOINDER OF MORTGAGEE/LIENHOLDER

Colonial Bank, N.A. a national banking association existing under the laws of the State of Florida and authorized to do business in the State of Florida, hereby certifies that it is the mortgagee/lienholder under a mortgage from Whitworth Estates PUD, LLC dated 2/25/05, filed 3/03/05 and recorded in Official Record Book 18206, Page 1662, as modified by Mortgage Modification Agreement dated [redacted] filed [redacted] and recorded in Official Record Book [redacted] Page [redacted] all in the Public Records of Palm Beach County, Florida, and hereby consents to and joins in the execution of the Agreement between Palm Beach County and WHITWORTH ESTATES PUD, LLC, for the provision of potable water, wastewater, and/or reclaimed water service to the property described in Exhibit "A" to the Agreement and further consents to and joins in the granting of utility easements to Palm Beach County as provided for in the aforesaid agreement with Palm Beach County.

Colonial Bank, N.A. as mortgagee aforesaid, consents to the recording by Whitworth Estates PUD, LLC of Palm Beach County, Florida, in the Public Records of Palm Beach County, Florida of the contract.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 28th day of June, 2005.

WITNESSES:
Signature: [Signature]
Typed or Printed Name: Kimberly J. Kretschman
Signature: [Signature]
Typed or Printed Name: Karen E. Navarro

Colonial Bank, N.A. a national banking association authorized to do business in the State of Florida.
By: [Signature]
Title: Senior Vice President
Patrick Tacker
Typed or Printed Name

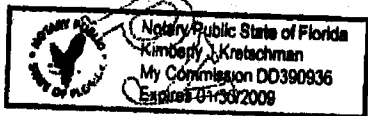
NOTARY CERTIFICATE

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 28 day of June 2005, by Patrick Tacker, Sr. Vice President, on behalf of the Colonial Bank. He/she is personally known to me or has produced as identification.

My Commission Expires: 11/30/09
Serial Number: 00390934

[Signature]
Kimberly J. Kretschman
Typed, Printed, or Stamped Name



February 2005