

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-323

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN MIAMI-DADE COUNTY, PALACE MANAGEMENT GROUP, LLC, AND CITY OF CORAL GABLES, FOR THE WATER FACILITIES ASSOCIATED WITH THE PALACE PROJECT AT 50 ANDALUSIA AVENUE.

WHEREAS, The Palace is undertaking the permitting work necessary for the construction of the Senior Housing project; and

WHEREAS, as part of the permitting process, The Palace is required to enter into a Water Facility Agreement with Miami-Dade Water and Sewer for the provisions of water service to the new project; and

WHEREAS, since the City is the owner of the site, the Water Facility Agreement also needs to be executed by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That the City Commission does hereby authorize the City Manager to enter into an Agreement with Miami-Dade County and Palace Management Group, LLC for the water facilities associated with the Palace Project at 50 Andalusia Avenue.

SECTION 3. That this Resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS SEVENTEENTH DAY OF NOVEMBER,
A.D., 2009.

(Moved: Cabrera / Seconded: Anderson)
(Yea: Cabrera, Kerdyk, Withers, Anderson, Slesnick)
(Unanimous: 5-0 Vote)
(Agenda Item: C-14)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

Greenberg Traurig

Mario J. Garcia-Serra
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garcia-serram@gtlaw.com

November 10, 2009

Mr. Patrick G. Salerno
City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

**Re: The Palace at Coral Gables / Request for City Execution of WASD
Agreement**

Dear Mr. Salerno:

As you are aware, the Palace Group, is currently doing the permitting work necessary for the construction of the Palace at Coral Gables Senior Housing project. As part of this process, the Palace Group is required to enter into a Water Facilities Agreement with the Miami-Dade Water and Sewer Department for, the provision of water service to the new project. Since the City of Coral Gables is the fee simple owner of the site, the Water Facilities Agreement also needs to be executed by the City Manager on behalf of the City. Please note that all obligations of the Agreement, including the construction of the necessary improvements and the payment of the required water and sewer connection charges, are the sole and exclusive responsibility of the Palace Group, as developer of the project. Accordingly, I ask that you please request the necessary approval from the City Commission so that you may execute the Water Facilities Agreement on behalf of the City. I have enclosed a copy of the Agreement with this letter. Three (3) originals, executed by the Palace Group, were previously provided to Assistant City Manager Maria Alberro Jimenez and will also need to be executed by the City

Best regards,



Mario J. Garcia-Serra

cc: Ms. Maria Alberro Jimenez, Assistant City Manager
Mr. Jacob Shaham
Mr. Luis Leon
Lucia A. Dougherty, Esq.

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THE PALACE AT CORAL GABLES, ID# 20023

**AGREEMENT
FOR
WATER FACILITIES
BETWEEN
MIAMI-DADE COUNTY
AND
THE PALACE MANAGEMENT GROUP, LLC
AND
CITY OF CORAL GABLES**

This instrument prepared by:

Michael Suchogorski
New Business Supervisor
New Business Section
Miami-Dade Water and Sewer Department
3575 S. LeJeune Road
Miami, Florida 33146-2221

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THIS AGREEMENT, made and entered into at Miami-Dade County, Florida, this _____ day of _____, 2009 by and between **Miami-Dade County**, a political subdivision of the State of Florida, hereinafter designated as the "**COUNTY**", whose mailing address is: c/o Miami-Dade Water and Sewer Department, P.O. Box 330316, Miami, Florida 33233-0316, and **The Palace Management Group, LLC**, a Florida limited liability company, and **City Of Coral Gables**, a municipal corporation of the State of Florida, hereinafter collectively designated as the "**DEVELOPER**", whose mailing address is: 11355 SW 84 Street, Miami, Florida 33173.

WITNESSETH:

WHEREAS, the **DEVELOPER** desires water service to be rendered to property owned by the **DEVELOPER**, and

WHEREAS, the **Miami-Dade Water and Sewer Department**, hereinafter designated as the "**DEPARTMENT**", operates the water system owned by the **COUNTY**.

NOW, THEREFORE, in consideration of the mutual covenants entered into between the parties hereto to be made and performed and in consideration of the benefits to accrue to each of the respective parties, it is covenanted and agreed to as follows:

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1. **DEVELOPER'S PROPERTY.** The DEVELOPER owns a certain tract of land in Miami-Dade County, Florida, which is legally described in **Exhibit "A"** attached hereto and made a part hereof, hereinafter sometimes described as the "**DEVELOPER'S** property". The DEVELOPER has requested that the **DEPARTMENT** render water service to the **DEVELOPER'S** property and the **COUNTY** agrees to do so subject to the terms, covenants and conditions contained herein.

2. **WAIVER.** No delay or failure to exercise a right under this Agreement or any other Agreement shall impair or shall be construed to be a waiver thereof. No waiver or indulgence of any breach of this Agreement or series of breaches shall be deemed or construed as a waiver of any other breach of same or as voiding or altering any other obligation of the parties under this Agreement or any other Agreement. No order or directive given by the **COUNTY** or its agents shall be considered as waiving any portion of this Agreement unless done in writing by a person having actual authority to grant such waiver.

3. **DEVELOPER ACKNOWLEDGMENT.** The DEVELOPER hereby acknowledges and agrees that any right to connect the **DEVELOPER'S** property to the City of Coral Gables (**CITY**) sewer system is subject to the terms, covenants and conditions set forth in the Settlement Agreement between the **State of Florida Department of Environmental Protection**, hereinafter designated as the "**DEP**", and the **COUNTY** dated July 27, 1993, the First Amendment to Settlement Agreement between **DEP** and the **COUNTY** dated December 21, 1995, the First Partial Consent Decree and the Second and

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Final Partial Consent Decree entered in United States of America Environmental Protection Agency (EPA) vs. Metropolitan Dade County (Case Number 93-1109 CIV- Moreno), as currently in effect or as amended or modified in future agreements and all other current, subsequent or future agreements, the consent order between **DEP** and the **COUNTY** filed on April 4, 2004, court orders, judgments, consent orders, consent decrees and the like entered into between the **COUNTY** and the United States, State of Florida and/or any other governmental entity, and all other current, subsequent or future enforcement and regulatory actions and proceedings.

4. PROVISION OF SERVICE AND CONNECTION CHARGES. The **COUNTY** will provide an adequate domestic water supply for the **DEVELOPER'S** property. The **DEVELOPER** shall pay water and sewer connection charges for all those units to be constructed on the **DEVELOPER'S** property subject to the limitations specified herein. The **DEVELOPER** acknowledges that, to the extent that water or sewer service will ultimately be rendered to the **DEVELOPER'S** property by a volume customer, the **DEVELOPER** is a new retail user provided water or sewer service from a volume customer, and acknowledges that it is responsible for payment of connection charges; however, in the event that water or sewer is provided directly by the **COUNTY**, the **DEVELOPER** acknowledges that it is a new retail customer of the **COUNTY** and accordingly also liable for payment of connection charges. The **DEVELOPER** may be considered both a new retail customer and a new retail user provided service by a volume customer in the event that the **COUNTY** provides water service to the **DEVELOPER'S** property and a volume customer provides sewer service, or vice-versa. The connection charges are based on the average

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daily gallons for the various building units and/or use as shown on **Exhibit "B"** attached hereto and made a part hereof, multiplied by the applicable rates established by the **COUNTY**. The **DEVELOPER** intends to demolish, or has completed demolition of, four thousand one hundred twelve (4,112) square feet of retail store space (dry uses only), and one (1) restaurant previously connected to the **COUNTY'S** water and the **CITY'S** sewer systems representing an average daily gallonage credit of five hundred fifty-five (555) gallons, and intends to construct and connect one hundred ninety-eight (198) adult congregate living units, a forty-five (45) bed nursing/convalescent facility, ten thousand five hundred (10,500) square feet of retail store space (dry uses only), a four (4) seat beauty shop, and one thousand three hundred (1,300) square feet of health spa/gym space (no showers), representing a total average daily gallonage of twenty-seven thousand six hundred thirty-five (27,635) gallons. Therefore, the agreed average daily gallonage increase is twenty-seven thousand eighty (27,080) gallons, resulting in water and sewer connection charges in the amount of one hundred eighty-nine thousand two hundred eighty-nine dollars and twenty cents (\$189,289.20). The **DEPARTMENT** shall allow the gallonage credits for the previously existing and connected structure shown above that will be or has been demolished within the **DEVELOPER'S** property. However, it is the **DEVELOPER'S** sole responsibility to provide the **DEPARTMENT** with sufficient evidence of completed demolition, which shall include the type, size, and/or number of units for said previous structures using **Exhibit "B"**, subject to review and approval of the **COUNTY** prior to the **DEPARTMENT** allowing any gallonage credits. Water and sewer connection charges shall be calculated at the rates in effect at the time of actual connection to the **COUNTY'S** water system. The **DEPARTMENT'S** current connection charge rates are one

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dollar and thirty-nine cents (\$1.39) and five dollars and sixty cents (\$5.60) per gallon per day for water and sewer, respectively. The water and sewer connection charge rates are subject to revision by the Board of County Commissioners at any time. The **DEPARTMENT** shall not, under any circumstances, render water service to the property until such time as the fees and/or charges specified herein have been paid in full.

5. **OTHER USES ON THE PROPERTY.** If the **DEVELOPER** constructs buildings other than those outlined in paragraph 4 above, or otherwise changes the use of structures built such that paragraph 4 is no longer an accurate description of the uses at the **DEVELOPER'S** property, the **COUNTY** shall determine if additional capacity is needed, as calculated using **Exhibit "B"** attached hereto. If additional capacity is required, connection charges, computed at prevailing rates, capacity allocation, if available, and construction connection charges, if any, shall be required to be paid by the **DEVELOPER**. If requested by the **DEPARTMENT**, the **DEVELOPER** shall provide the **COUNTY** a list of all tenants and building units and/or use prior to the installation of any water meters by the **COUNTY** for the **DEVELOPER'S** property.

6. **POINTS OF CONNECTION.** The **COUNTY** owns and operates a twelve (12) inch water main located in Andalusia Avenue, west of S.W. 37 Avenue (Douglas Road), from which the **DEVELOPER** shall connect and install a twelve (12) inch water main westerly in Andalusia Avenue to Galiano Street, interconnecting to the existing twelve (12) inch water main at that location, and providing separate abutting service connections for

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each building within the **DEVELOPER'S** property. Other points of connection may be established subject to approval of the **DEPARTMENT**.

7. **DESIGN AND CONSTRUCTION OF FACILITIES.** The **DEVELOPER** at its own cost and expense shall cause to be designed, constructed and installed all of the necessary water facilities provided for in this Agreement unless otherwise specified. The facilities shall include any and all water mains, valves, fittings, fire hydrants, firelines, service connections, service lines, shutoffs, meter boxes, air release valves, and all appurtenances thereto for a complete installation. The final design and construction of the facilities shall meet the requirements set forth in the latest revision of the **DEPARTMENT'S** "Rules and Regulations" for water and/or sewer service, shall be in accordance with the latest revision of the **DEPARTMENT'S** "Design and Construction Standard Specifications and Details", and shall be subject to approval by the **DEPARTMENT**.

8. **INSPECTION.** The **COUNTY** shall have the right but not the obligation to make engineering inspections of all the construction work performed by the **DEVELOPER** under the terms of this Agreement including private facilities not to be conveyed to the **COUNTY**. Such inspections shall not be construed to constitute any guarantee on the part of the **COUNTY** as to the quality and condition of materials and workmanship. Any inspections by the **DEPARTMENT** shall not relieve the **DEVELOPER** of any responsibility for proper construction of said facilities in accordance with approved plans and specifications. Furthermore, any inspections by the **DEPARTMENT** shall not relieve the **DEVELOPER** of responsibility for the quality and condition of materials and workmanship.

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9. **TESTS.** During construction and at the time when various tests are required, the **COUNTY'S** engineer or its authorized representative, together with the **DEVELOPER'S** engineer and contractor, shall jointly be present to witness tests for determination of conformance with approved plans and specifications. The **DEVELOPER** shall notify the **COUNTY** a minimum of twenty-four (24) hours in advance of the tests.

10. **CONSTRUCTION MEETINGS.** The **COUNTY** reserves the right to schedule construction meetings with the **DEVELOPER'S** representatives (Engineer, Project Manager, Construction Superintendent and others) at a place designated by the **COUNTY** with respect to project related matters upon twenty-four (24) hours notice.

11. **SUBCONTRACTORS AND CONSULTANTS.** The **COUNTY** reserves the right, at any time, to bar any subcontractor or consultant employed by the **DEVELOPER** from engaging in any sort of work or activity related to this Agreement, if such be in the interests of the **COUNTY**. In the event the **COUNTY** rejects any subcontractor or consultant, said subcontractor or consultant will immediately cease work on anything related to this Agreement. The **DEVELOPER** shall not be entitled to compensation for any monies previously paid to any subcontractor or consultant if said subcontractor or consultant is rejected by the **COUNTY**.

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12. **COMPLIANCE WITH ALL LAWS.** The **DEVELOPER**, at its own cost and expense, shall comply with all applicable laws, statutes, rules, and ordinances in carrying out the activities contemplated herein.

13. **APPROVALS AND PERMITS.** The **DEVELOPER** shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for all facilities contemplated in this Agreement. Notwithstanding anything else contained herein to the contrary, this Agreement shall not constitute or be interpreted as a waiver of any requirements of any other agency of Miami-Dade County and/or any requirements of the Code of Miami-Dade County. The **DEVELOPER** is responsible for obtaining all permits as may be required for the work contemplated herein pursuant to the Code of Miami-Dade County.

14. **COUNTY AS PERMITTEE.** Certain federal, state and county agencies, including but not limited to the State of Florida Department of Transportation, the South Florida Water Management District, the U.S. Army Corps of Engineers and the Florida East Coast Railroad may require that the **COUNTY** be named as permittee for certain construction activities even though the **DEVELOPER'S** contractor will actually perform the work. To insure that the **COUNTY** will incur no costs or liability as a result of being named permittee on such permits, the **DEVELOPER** shall provide sufficient security as acceptable to the **COUNTY** which shall indemnify and protect the **COUNTY** from all claims, actions, judgements, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the **DEVELOPER** pursuant to such permits. The security shall be

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furnished prior to the start of construction and shall be in an amount equal to the **COUNTY'S** cost estimate for the permit work. The **DEVELOPER** shall have sixty (60) days to resolve any claims by a permittee. Otherwise, the **DEPARTMENT** shall be entitled to pay said claims from the security. The **DEVELOPER** shall be liable for all costs in excess of the security.

15. **WATER SERVICE LINES.** Any water service lines two (2) inches or less in diameter that are required for the **DEVELOPER'S** property which will be directly connected to existing mains owned by the **COUNTY** shall be installed by **COUNTY** personnel only. The **DEVELOPER** hereby agrees to pay to the **COUNTY** its standard water service line installation charge, permit fees and service fees prior to any such installation.

16. **OWNERSHIP OF WATER METER.** The **COUNTY** shall own and install the required water meter as a part of any water service installation. Ownership by the **COUNTY** shall terminate at the outlet side of each water meter. The **DEVELOPER** shall pay all applicable installation fees.

17. **TREATMENT AND TRANSMISSION CAPACITY.** In addition to the covenants and conditions set forth herein, water service to be rendered by the **COUNTY** is subject to the following:

- a. available water by the **COUNTY**.

However, in no event will the **COUNTY** be obligated to supply any more water capacity in any one year than is called for by the building connection schedule attached hereto and

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made a part hereof as **Exhibit "C"**. Any variation from said connection schedule which results in increased yearly demand on the water resources facility capacity of the **COUNTY** not specifically provided for in **Exhibit "C"** shall be subject to the written approval and consent of the **DEPARTMENT** and shall be dependent on the availability of the water resource and the various restrictions placed on the supply of water by local, state and federal government agencies and the physical limitations on the **COUNTY'S** supply and treatment capacity. If the **DEVELOPER** does not utilize the yearly amount of water facility allocation specified in **Exhibit "C"**, said amount will be available to the **DEVELOPER** in the next calendar year subject to the limitations and provisions specified herein.

18. **ALLOCATION OF CAPACITY.** The **COUNTY** agrees to include the aforesaid allocation in its regional water supply. However, it is mutually agreed and understood by the **COUNTY** and the **DEVELOPER** that the allocation of capacity by the **COUNTY** does not guarantee the ability of the **COUNTY** to supply water for the **DEVELOPER'S** property. Capacity allocation is subject to local, state and federal agencies and other regulatory bodies having jurisdiction. In connection therewith, the **DEVELOPER** agrees that the **COUNTY** shall not be liable or in any way responsible for any costs, claims or losses incurred by the **DEVELOPER** as a result of actions by regulatory bodies, which are related to capacity allocation.

19. **FACILITIES EASEMENTS.** If the facilities contemplated herein or any portion thereof are installed within private property outside of public right-of-way, the facilities shall be installed in the center of a twelve (12) foot wide easement for water

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facilities requiring a twenty-five (25) foot minimum vertical clearance above the finished grade. The **DEPARTMENT** shall have twenty-four (24) hour access to the easement for emergency purposes. If the facilities are not located in platted easements, then easements shall be granted to the **COUNTY** by the **DEVELOPER** prior to the **COUNTY'S** installation of a water meter to the **DEVELOPER'S** property. The **DEVELOPER** may not place any pavers or other structures in an easement area which would prevent the **DEPARTMENT**, at its sole discretion, from making full use of the easement, and the **DEVELOPER** shall remove same, at the **DEVELOPER'S** cost, at the direction of the **COUNTY**. The **DEVELOPER** may place pavers or other structures in the easement area if such pavers or other structures can be removed, with minimal effort by the **DEPARTMENT**, in the event that such pavers or other structures need to be removed in order for the **DEPARTMENT** to make use of the easement; the **DEVELOPER** places such pavers or other structures in the easement area at his own risk, and the **DEPARTMENT** shall not be liable for any costs incurred by the **DEVELOPER** in replacing any such pavers or other structures removed by the **DEPARTMENT**.

20. **CONNECTION/FRONTAGE BY OTHERS.** Parties other than the **DEVELOPER** who own property, other than the **DEVELOPER'S** property, which has frontage to any water main installed pursuant to this Agreement, may apply to the **COUNTY** for connections to said water main. If said parties actually connect and/or abut said facilities, the **COUNTY** will impose a construction connection charge equal to thirty dollars (\$30.00) for the twelve (12) inch water main, multiplied by the front foot length of the connecting/abutting property which fronts and/or abuts the water main as measured along

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the route of the main. The **COUNTY** will also impose construction connection charges on such other parties if said water main is required in accordance with guidelines and criteria established by the **DEPARTMENT**, in order to provide adequate service for the fronting/abutting property. Said construction connection charges will not be required or collected from other parties for single-family residences occupied or under construction prior to the date of this Agreement. The **COUNTY** shall repay said construction connection charges to the **DEVELOPER** within one hundred eighty (180) days of receipt of same. However, the **COUNTY'S** liability for repayment to the **DEVELOPER** shall be limited to those amounts actually collected from others. This provision shall remain in effect for a period of twelve (12) years from the date of the Absolute Bill of Sale for the water main facilities constructed by the **DEVELOPER**. Per annum simple interest as established and authorized by **Section 687.01, Florida Statutes** will accrue on all construction connection charges from the date of the Absolute Bill of Sale for the water main facilities constructed by the **DEVELOPER** to the date of payment by the connecting/abutting party. The interest rate used shall be the rate established by **Section 687.01, Florida Statutes** at the time of payment by the connecting/abutting party. It shall be the **DEVELOPER'S** responsibility to provide the **COUNTY** with current mailing addresses during the twelve (12) year period. In accordance with the **DEPARTMENT'S** "Schedule of Water and Wastewater Fees and Charges" the **DEPARTMENT** shall retain a "Developer Repayment Fee" currently in the amount of 2.5% of the gross repayment amount established herein. This fee is subject to revision by the Board of County Commissioners at any time. The fee percentage used will be the current rate at the time of the payment.

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21. **CONVEYANCE OF TITLE.** Conveyance of all easements shall be by separate instruments in recordable form as approved by the **COUNTY** and shall be accompanied by a written opinion of title by an attorney licensed to practice law in the State of Florida, which states that the **DEVELOPER** is the owner of the property interest to be conveyed, subject only to liens, encumbrances and restrictions as are acceptable to the **COUNTY**. The opinion shall also state that upon execution by the **DEVELOPER**, a valid and enforceable easement will be vested to the **COUNTY**. The **DEVELOPER** shall pay for all recording fees and for all documentary stamps. The details for all conveyances are specified hereinabove. Failure of the **DEVELOPER** to provide proper conveyances shall be cause for the **COUNTY** to refuse to render service to the **DEVELOPER'S** property.

22. **DRAWINGS AND CONVEYANCE DOCUMENTS.** Following completion of the water facilities contemplated herein for **COUNTY** ownership, the **COUNTY** shall provide conveyance documents, which may include bills of sale, releases of lien, grants of easement for execution by the **DEVELOPER**. The properly executed documents shall be delivered to and accepted by the **COUNTY** prior to the rendition of water service by the **COUNTY**. The **DEVELOPER** shall pay for all recording fees and for all documentary stamps. These conveyances shall be accompanied by copies of paid bills and/or lien waivers, releases, or satisfactions from all persons who performed work on the **DEVELOPER'S** property and all persons who incorporate materials into the property, together with a breakdown of the actual cost of said facilities. Concurrently, the **DEVELOPER** shall furnish the **COUNTY** with one (1) set of mylar as-built drawings showing specific locations and depths among other things, of all facilities as located by a

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licensed surveyor, along with five (5) prints of the as-built drawings which have been sealed by a surveyor and certified by the engineer of record. Approval by the **COUNTY** of all required conveyance documents, drawings and survey specified herein shall constitute final acceptance by the **COUNTY** of said facilities. After final acceptance, the facilities shall remain at all times the sole, complete, and exclusive property of the **COUNTY** and under the exclusive control and operation of the **COUNTY**.

23. **WARRANTY AND MAINTENANCE BOND.** The **DEVELOPER** warrants that the water facilities to be owned by the **COUNTY** shall be free from defects in materials and workmanship for a period of one (1) year from final acceptance by the **COUNTY**. Simultaneously with the conveyance of the water facilities, the **DEVELOPER** shall deliver to the **COUNTY** an executed maintenance bond, which guarantees the warranty. If it becomes necessary to repair and/or replace any of the facilities during the initial one (1) year period, then the warranty as to those items repaired and/or replaced shall continue to remain in effect for an additional period of one (1) year from the date of final acceptance by the **COUNTY** of those repairs and/or replacement. The bond shall be in the amount equal to the sum of those portions of the actual cost of construction of said facilities as follows:

<u>Types of Facilities</u>	<u>Percentage of Actual Construction Cost</u>
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Water mains	25
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The bonds shall have as the surety thereon only such surety company as is acceptable to the **COUNTY** and which is authorized to write bonds of such character and amount under the laws of the State of Florida. A surety company must have a **Best's Key Rating Guide General Policyholder's Rating of "A" or better and a Financial Category of Class "V"**

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or better or be acceptable to the **COUNTY**. The attorney-in-fact or other officer who signs a bond must file with such bonds a certified copy of his power-of-attorney authorizing him to do so. The Maintenance Bond may be written with the **DEVELOPER'S** contractor as "Principal" and the **DEVELOPER** and the **COUNTY** as "Co-obligees" or the **COUNTY** as sole "Obligee". In the alternative, the **DEVELOPER** may be named as "Principal" and the **COUNTY** as "Obligee". The Maintenance Bond shall remain in force for one (1) year following the date of final acceptance by the **COUNTY** of the work done pursuant to this Agreement to protect the **COUNTY** against losses resulting from any and all defects in materials or improper performance of work. If there is no building construction underway within the **DEVELOPER'S** property at the time of conveyance, the **COUNTY** shall have the right to require that the term of the Maintenance Bond be extended for a period not to exceed an additional two (2) years. Upon demand by the **COUNTY**, the **DEVELOPER** shall cause to be corrected all such defects which are discovered within the warranty period or periods as set forth above, failing which the **COUNTY** shall make such repairs and/or replacements of defective work and/or materials and the **DEVELOPER** and/or its Surety shall be liable to the **COUNTY** for all costs arising therefrom. The **DEVELOPER** also warrants that it shall be solely responsible for the repair of any damages to said facilities caused by persons in its employment.

24. **TERM OF AGREEMENT.** Both the **DEVELOPER** and the **COUNTY** recognize that time is of the essence and that this Agreement shall be deemed null and void and unenforceable if the **DEVELOPER** fails to comply with any of the following conditions, where applicable:

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- a. After execution of this Agreement, work on the water facilities shall commence within three hundred sixty-five (365) days from the execution date. Work shall be considered to have commenced and be in active progress when engineering drawings are submitted to the **DEPARTMENT** for review and approval, and, upon the **DEPARTMENT'S** issuance of said approval, a full complement of workmen and equipment is present at the site to diligently incorporate materials and equipment into the construction of the water facilities throughout the day on each full working day, weather permitting.
- b. Once the **DEVELOPER** commences work on the water facilities, said work cannot be suspended, abandoned, or not in active progress for a period exceeding three hundred sixty-five (365) days.
- c. The remedies specified herein are cumulative with and supplemental to any other rights which the **COUNTY** may have pursuant to the law or any other provision of this agreement.

25. **INDEMNIFICATION CLAUSE.** The **DEVELOPER** shall indemnify and hold harmless the **COUNTY** and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **COUNTY** or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the **DEVELOPER** or its employees, agents, servants, partners, principals, contractors and/or subcontractors. The **DEVELOPER** shall pay all claims and losses in connection therewith and shall

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investigate and defend all claims, suits or actions of any kind or nature in the name of the **COUNTY**, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The **DEVELOPER** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the **DEVELOPER** shall in no way limit the responsibility to indemnify, keep and save harmless and defend the **COUNTY** or its officers, employees, agents and instrumentalities as herein provided.

26. **FORCE MAJEURE.** Should either party be prevented from performing any obligations herein, including but not limited to water service, due to or resulting from a force majeure or inevitable accident or occurrence, such party shall be excused from performance. As used herein, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by either party and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints and restrictions, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, or otherwise, and other causes reasonably beyond the control of either party, whether or not specifically enumerated herein.

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27. **SERVICE CHARGES.** The **DEVELOPER** agrees to pay to the **COUNTY** the prevailing service charges for water supply and fire protection within the **DEVELOPER'S** property as may be applicable until the responsibility for payment of said charges is properly transferred in accordance with the **COUNTY'S** regulations.

28. **USE OF FACILITIES BY COUNTY.** The **COUNTY** reserves the right to make full use of the water facilities to be owned by the **COUNTY** as contemplated herein to serve other customers at any time.

29. **OPINION OF TITLE.** With the execution of this Agreement, the **DEVELOPER** at its own expense shall deliver to the **DEPARTMENT** an opinion of title for the **DEVELOPER'S** property, issued by a qualified attorney licensed to practice law in the State of Florida, which states that the **DEVELOPER** owns fee simple title to the property referred to herein.

30. **BACTERIOLOGICAL TESTS AND INDEMNIFICATION.** DEP requires that prior to the rendition of any new water service by the **DEPARTMENT**, bacteriological tests must be performed. It is the responsibility of the **DEVELOPER** to comply with all such requirements and to obtain all necessary approvals. In addition, the use of floating meters for construction purposes is subject to State of Florida requirements and approval by the **COUNTY**. The **DEVELOPER** may request approval for the use of floating meters prior to actual conveyance of title to the facilities to the **COUNTY**. However, the **COUNTY** may be required to execute documents to the Miami-Dade County Department of Environmental

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Resources Management (**DERM**) or State of Florida Department of Health (**DOH**), which state that the **COUNTY** has accepted title to the facilities. If the **COUNTY** is required to execute such documents, the **DEVELOPER** agrees to indemnify and hold the **COUNTY** harmless from and against all claims, actions, judgments, damages, loss, cost and expense including reasonable attorney's fees which may be incurred by the **COUNTY** in connection with the rendition of water service through the facilities constructed and installed by the **DEVELOPER** prior to conveyance of title to the **COUNTY**, including but not limited to those that result from failure to properly maintain and repair the water facilities.

31. **ASSIGNMENT OF AGREEMENT.** No right to any water service commitment provided for in this Agreement shall be transferred, assigned or otherwise conveyed to any other party without the express written consent of the Director of the **DEPARTMENT** or his designee except as noted below. The consent of the **DEPARTMENT** shall not be required in connection with the sale, lease or other conveyance of property or any residential units or commercial establishments to any party who will be the ultimate user of the property, including but not limited to a bona fide purchaser, lessee, resident or occupant. The intent of this paragraph is to require consent of the **DEPARTMENT** for assignments or transfers of any water capacity allocation to any party who holds such property as an investment for resale or who intends to develop for sale a portion of the **DEVELOPER'S** property, so that the **COUNTY** can adequately determine the demand for water capacity and plan for the fair and equitable allocation of water capacity among the residents of Miami-Dade County. Consent, when required, shall not unreasonably be withheld by the **DEPARTMENT**. If the **DEVELOPER'S** property is transferred or conveyed, the **DEVELOPER** shall remain liable

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to the **COUNTY** for all sums of money and all obligations due hereunder unless released in writing by the **COUNTY**.

32. ENTIRE AGREEMENT. This Agreement supersedes all previous agreements and representations, whether oral or written, between the **DEVELOPER** and the **COUNTY** and made with respect to the matters contained herein and when duly executed constitutes the complete Agreement between the **DEVELOPER** and the **COUNTY**.

33. NOTICE. All notices given pursuant to this Agreement shall be mailed by United States Postal Service registered or certified mail to the parties at the addresses specified on page two (2) of this Agreement or addresses otherwise properly furnished.

34. RECORDING OF AGREEMENT. This Agreement is being recorded in the public records of Miami-Dade County, Florida, for the particular purpose of placing all owners and occupants, their successors and assigns, upon notice of the provisions herein contained. The **DEVELOPER** shall pay all recording fees.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officials as of the day and year above written.

WITNESSETH:

MIAMI-DADE COUNTY

signature

By: _____

print name

**John W. Renfrow, P.E., Director
Miami-Dade Water and Sewer
Department**

signature

print name

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by **John W. Renfrow, P.E., Director**, of the Miami-Dade Water and Sewer Department, who is personally known to me and did not take an oath.

Notary Public

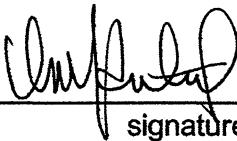
Serial Number

print name

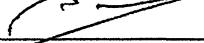
THE PALACE AT CORAL GABLES, ID# 20023

WITNESSETH:

THE PALACE MANAGEMENT GROUP,
LLC, A FLORIDA LIMITED LIABILITY
COMPANY



signature

By: 

signature of managing member

Lisette M. Hunter
print name

Jacob Shacham
print name

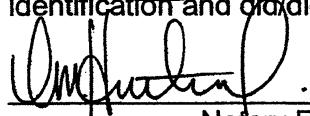


signature

Isabel Zapata
print name

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 10 day of
September, 2009, by Jacob Shacham, who is
personally known to me or and has/hasn't produced _____ as
identification and did/did not take an oath.



Notary Public

Lisette M. Hunter
print name

L. M. HUNTER
Notary Public, State of Florida
My comm. exp. Sep. 7, 2010
Comm. No. DD 593007

Serial Number

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ATTEST:

CITY OF CORAL GABLES,
A FLORIDA MUNICIPAL CORPORATION

By: _____ (SEAL) By: _____ (SEAL)

**STATE OF FLORIDA
COUNTY OF MIAMI - DADE**

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Patrick G. Salerno, as **City Manager** and _____, as **City Clerk**, of **City of Coral Gables**, a Florida municipal corporation, on behalf of the **City**. He/She/They is/are personally known to me or has/hasn't/have/haven't produced _____ as identification and did/did not take an oath.

Notary Public

Serial Number

Print name

Approved for Legal Sufficiency:

Assistant County Attorney

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**EXHIBIT "A" OF AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
THE PALACE MANAGEMENT GROUP, LLC
AND
CITY OF CORAL GABLES**

LEGAL DESCRIPTION

PARCEL A

Lots 35, thru 43, Block 4, "CORAL GABLES CRAFTS SECTION", according to the plat thereof, as recorded in Plat Book 10 at Page 40, and Tract B per "PAGES REPLAT OF A PORTION OF BLOCK 4 CORAL GABLES CRAFTS SECTION", according to the plat thereof, as recorded in Plat Book 51 at Page 32, of the Public Records of Miami-Dade County, Florida.

PARCEL B

Lots 15, thru 20, Block 5, "CORAL GABLES CRAFTS SECTION", according to the plat thereof, as recorded in Plat Book 10 at Page 40, of the Public Records of Miami-Dade County, Florida.

Lots 10, thru 14, Block 5, "CORAL GABLES CRAFTS SECTION", according to the plat thereof, as recorded in Plat Book 10 at Page 30, of the Public Records of Miami-Dade County, Florida.

PARCEL C

Lots 43, thru 47, Block 4, "CORAL GABLES CRAFTS SECTION", according to the plat thereof, as recorded in Plat Book 10 at Page 40, of the Public Records of Miami-Dade County, Florida.

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EXHIBIT "B" OF AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
THE PALACE MANAGEMENT GROUP, LLC
AND
CITY OF CORAL GABLES

SCHEDULE OF DAILY RATED GALLONAGE FOR VARIOUS OCCUPANCY

<u>TYPES OF LAND USES</u>	<u>GALLONS PER DAY</u>
Adult Congregate Living Unit / Residential Type Institution or Facility (Not a Nursing Home or Convalescent Home)	100 gpd/person
Airport	5 gpd/passenger <i>PLUS</i> 10 gpd/employee
Apartment	200 gpd/unit
Banquet Hall	25 gpd/seat
Barber Shop	10 gpd/100 sq. ft.
Bar and Cocktail Lounge	25 gpd/seat (stool)
Beauty Shop	75 gpd/chair
Bowling Alley	100 gpd/lane
Camper or R.V. Trailer Park	150 gpd/space
Car Wash	
a) Recycling-Type	750 gpd/bay
b) Hand-Type	1,000 gpd/bay
Coin Laundry	175 gpd/washer
Country Club	25 gpd/member
Dentist Office	275 gpd/dentist
Duplex or Twin Home Residence	250 gpd/unit
Factory	
a) With showers	20 gpd/100 sq. ft.
b) Without showers	10 gpd/100 sq. ft.
Food Preparation Outlet (Bakeries, Meat Markets, Commissaries, etc.)	(350 gpd minimum) 50 gpd/100 sq. ft.
Funeral Home	10 gpd/100 sq. ft.
Gas Station / Convenience Store / Mini-Mart	450 gpd/unit
Health Spa or Gym	
a) With showers	35 gpd/100 sq. ft.
b) Without showers	20 gpd/100 sq. ft.
Hospital	250 gpd/bed
Hotel or Motel	100 gpd/room

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<u>TYPES OF LAND USES (CONTINUED)</u>	<u>GALLONS PER DAY</u>
House of Worship	3 gpd/seat
Kennel	30 gpd/cage
Laundromat	175 gpd/washer
Marina	40 gpd/boat slip
Mobile Home Residence / Park	300 gpd/unit
Motor Vehicle Service Station	10 gpd/100 sq. ft.
Nursing / Convalescent Home	150 gpd/bed
Office Building	10 gpd/100 sq. ft.
Pet Grooming	10 gpd/100 sq. ft. <i>PLUS</i> 75 gpd/tub
Physician Office	250 gpd/physician
Public Park	
a) With toilets	5 gpd/person
b) With showers and toilets	20 gpd/person
Public Swimming Pool Facility	10 gpd/person
Restaurant	(350 gpd minimum)
a) Full-Service	50 gpd/seat
b) Fast-Food	35 gpd/seat
c) Take-Out	50 gpd/100 sq. ft.
School	
a) Day care / Nursery	5 gpd/student
b) Regular School	10 gpd/student
c) With cafeteria, add	5 gpd/student
d) With showers, add	5 gpd/student
e) Teachers and Staff	15 gpd/person
Shopping Center (dry uses only)	5 gpd/100 sq. ft.
Show Rooms	10 gpd/100 sq. ft.
Single Family Residence	350 gpd/unit
Speculation Building	20 gpd/1,000 sq. ft.
Stadium, Racetrack, Ballpark, Fronton, Auditorium, etc.	3 gpd/seat
Store (dry uses only)	5 gpd/100 sq. ft.
Theater	
a) Indoor Auditorium	3 gpd/seat
b) Outdoor Drive-in	5 gpd/space
Townhouse Residence	250 gpd/unit
Veterinarian Office	250 gpd/veterinarian <i>PLUS</i>
a) With kennels	30 gpd/cage
Warehouse	
a) Regular or Industrial	20 gpd/1,000 sq. ft.
b) Storage or Mini Warehouse	5 gpd/1,000 sq. ft.

LEGEND:

gpd - gallons per day
sq. ft. - square feet

NOTES:

- 1) Sewage gallonage refers to sanitary sewage flow on a per unit and/or use basis for average daily flow in gallons per day.
- 2) Condominiums shall be rated in accordance with the specific type of use. (i.e. apartment, townhouse, etc.)

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EXHIBIT "C" OF AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
THE PALACE MANAGEMENT GROUP, LLC
AND
CITY OF CORAL GABLES

BUILDING CONNECTION SCHEDULE

<u>TYPE AND NUMBER OF UNITS</u>	<u>GALLONAGE (gpd)</u>	<u>COMPLETION OF BUILDING CONNECTION</u>
<u>Construct and connect:</u>		
198 adult congregate units	19,800	2009 - 2010
45-beds nursing/convalescent facility	6,750	2009 - 2010
10,500 sq-ft retail store space (dry uses only)	525	2009 - 2010
4-seat beauty shop	300	2009 - 2010
1,300 sq-ft health spa, gym (no showers)	260	2009 - 2010
<u>Demolish:</u>		
1 restaurant	-350 (credit)	
4,112 sq-ft retail store space (dry use only)	-205 (credit)	