

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2011-

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN MIAMI-DADE COUNTY, PALACE MANAGEMENT GROUP, LLC, AND THE CITY OF CORAL GABLES FOR THE WATER FACILITIES ASSOCIATED WITH THE PALACE PROJECT AT 45 AND 50 ANDALUSIA AVENUE, CORAL GABLES, FLORIDA.

WHEREAS, the Palace Management Group, LLC (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 (the “Agreement”) with Miami-Dade Water and Sewer for the provisions of water service to the new project; and

WHEREAS, as authorized by Resolution No. 2009-323, the City executed the Agreement; however, the Agreement has expired by its terms and the Palace is requesting the City to enter into a new agreement; and

WHEREAS, the City, as owner of the site, is a required signatory to the Water Facility Agreement.

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

SECTION 1. That the foregoing “Whereas” clauses are here hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. The Agreement for Water Facilities is hereby approved (the “Agreement”) in substantially the form attached hereto as Exhibit “A”.

SECTION 3. That the City Commission does hereby authorize the City Manager to execute the Agreement with such modifications from the terms as may be approved by the City Manager and City Attorney and are necessary to implement the intent of this Resolution.

SECTION 4. That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SECOND DAY OF MARCH, A.D., 2011.

(Moved: / Seconded:)
(Yeas: / Nays:)

(Vote:)
(Agenda Item:)

APPROVED:

DONALD D. SLESNICK II
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

LOURDES ALFONSIN-RUIZ
ACTING CITY ATTORNEY

**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**

THIS **AGREEMENT**, made and entered into at Miami-Dade County, Florida, this _____ day of _____, 2011 by and between **Miami-Dade County**, a political subdivision of the State of Florida, hereinafter designated as the “**COUNTY**”, whose mailing address is: 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, hereinafter designated as the “**DEVELOPER**”, whose mailing address is: 11355 SW 84 Street, Miami, Florida 33173.

W I T N E S S E T H:

WHEREAS, the **DEVELOPER** desires water service to be rendered to property owned by the **City of Coral Gables**, hereinafter designated as the “**CITY**”, but leased under a long term ground lease by **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:

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

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'S** property is within the sewer service area of the **CITY**. 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 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, two thousand eight (2,008) square feet of full service restaurant and two thousand one hundred four (2,104) square feet of retail store space, previously connected to the **COUNTY'S** water systems and the **CITY'S** sewer system representing an average daily gallonage credit of two thousand two hundred eighteen (2,218) gallons, and intends to construct and connect one hundred ninety-eight (198) adult congregate living units, a forty-five (45) bed nursing/convalescent facility, two thousand three hundred seventy-six (2,376) square feet of retail store space, one thousand one hundred seventy-five (1,175) square feet of beauty shop, one thousand three hundred seventy-eight (1,378) square feet of health spa/gym space (no showers), representing a total average daily gallonage of twenty-two thousand two hundred sixty-nine (22,269) gallons. Therefore, the agreed average daily gallonage increase is twenty thousand fifty-one (20,051) gallons, resulting in combined water and sewer connection charges in the amount of one hundred forty thousand one hundred fifty-six dollars and forty-nine cents (\$140,156.49). However, 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 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 and/or connects 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), to 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 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 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.

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**.

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 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 permittor. 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 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 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 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.

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 **CITY** is the owner of the property interest to be conveyed, subject only to the ground lease to **DEVELOPER** and other 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 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>
Water mains	25

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"** 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:

- 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 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.

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 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 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 that certain Agreement for "The Palace at Coral Gables, ID# 20023"

dated December 10, 2009, recorded in Official Record book 27122 at Page 4837 of the Public Records of 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.

35. **FLORIDA LAW.** This Agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

36. **SEVERABILITY.** If any section, subsection, sentence, clause or provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected by such invalidity.

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

print name

signature

print name

By: _____
Zaba S. Castro, Esq., New Business Manager
For: John W. Renfrow, P.E., Director
Miami-Dade Water and Sewer Department

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by **Zaba S. Castro, Esq., New Business Manager**, for **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

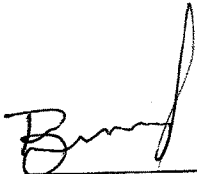
print name

Serial Number


THE PALACE AT CORAL GABLES, ID# 20023a

WITNESSETH:

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


signature

Ruben Perez
print name


signature

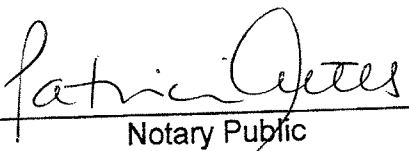
Zared Zana
print name

By: 
signature of managing member

Jacob Shaham
print name

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, who is personally known to me or and has/has not produced _____ as identification and did/did not take an oath.


Notary Public

Patricia Artiles
print name

Serial Number _____
NOTARY PUBLIC-STATE OF FLORIDA
Patricia R. Artiles
Commission #DD773903
Expires: MAY 16, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

NOTARY PUBLIC-STATE OF FLORIDA
Patricia R. Artiles
Commission #DD773903
Expires: MAY 16, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

THE CITY OF CORAL CABLES, FLORIDA, AS THE FEE SIMPLE OWNER OF THE PROPERTY AND LANDLORD UNDER THE GROUND LEASE WITH THE DEVELOPER DATED JULY 14, 2008, HEREBY CONSENTS TO THE FOREGOING AGREEMENT: PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE FOREGOING AGREEMENT BE DEEMED TO IMPOSE ANY OBLIGATIONS UPON THE CITY OR AFFECT THE CITY'S FEE SIMPLE INTEREST IN THE PROPERTY.

ATTEST

CITY OF CORAL GABLES,
A FLORIDA MUNICIPAL CORPORATION

By: _____ (SEAL)

By: _____ (SEAL)

Walter Foeman, City Clerk
print name

Patrick G. Salerno, City Manager
print name

Approved for Form and Legal Sufficiency: _____
City Attorney

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by **Patrick G. Salerno**, as **City Manager** and **Walter Foeman**, 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 as has/has not/have/have not produced _____ as identification and did/did not take an oath.

Notary Public

print name

Serial Number

Approved for Legal Sufficiency:

Assistant County Attorney

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

LEGAL DESCRIPTION

PARCEL I:

PARCEL A:

Lots 35 through 43, 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, and Tract "B" of "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 through 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 through 14, 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.

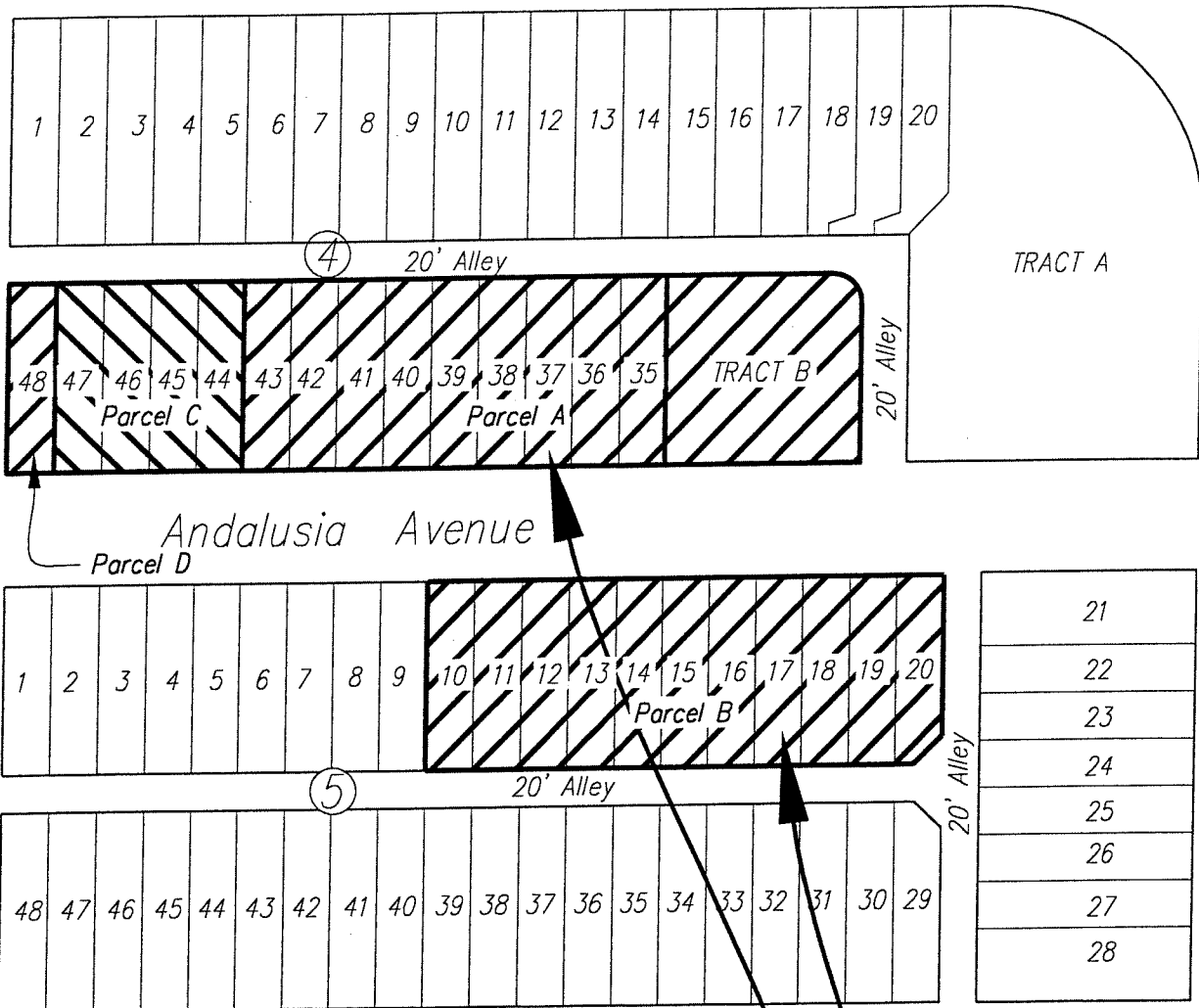
PARCEL II:

Lots 44 through 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.

S.W. 24th. Street (Coral Way)

Galiano Street

S.W. 37th. Avenue (Douglas Road)



"THE PALACE AT CORAL GABLES"

EXHIBIT "A - 1"
LOCATION SKETCH

SCALE: N.T.S.

--THIS IS NOT A SURVEY--
MIAMI-DADE WATER & SEWER DEPARTMENT

AGREEMENT # 20023a
"THE PALACE AT CORAL GABLES"

Folio No. 03-4117-005-1120
03-4117-005-1070
03-4117-005-0890

CITY OF CORAL GABLES, MIAMI-DADE COUNTY, FLORIDA
Sec. 17 54 41 Date: 08/20/07

**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 (GPD)</u>
RESIDENTIAL LAND USES	
Single Family Residence	220 gpd/unit (under 3001 sq. ft)
	320 gpd/unit (3001-5000 sq. ft.)
	550 gpd/unit (over 5,000 sq. ft.)
Townhouse Residence	180 gpd/unit
Apartment	150 gpd/unit
Mobile Home Residence/Park	180 gpd/unit
Duplex or Twin Home Residence	180 gpd/unit
COMMERCIAL LAND USES	
Barber Shop	15 gpd/100 sq. ft.
Beauty Shop	25 gpd/1 00 sq. ft.
Bowling Alley	100 gpd/lane
Dentist's Office	20 gpd/100 sq. ft.
Physician's Office	20 gpd/100 sq. ft.
Bar and Cocktail Lounge	20 gpd/100 sq. ft.
Restaurant	
a) Full Service	100 gpd/100 sq. ft.
b) Fast-Food	50 gpd/100 sq. ft.
c) Take-Out	100 gpd/100 sq. ft.
Hotel or Motel	100 gpd/room
Office Building (County)	5 gpd/100 sq. ft.
Office Building (Other)	5 gpd/100 sq. ft.
Motor Vehicle Service Station	10 gpd/100 sq. ft.
Shopping Center/Mall	
a) Retail/Store	10 gpd/100 sq. ft.
Stadium, Racetrack, Ballpark, Fronton, Auditorium, etc.	3 gpd/seat
Retail/Store	10 gpd/100 sq. ft.
Theater	
a) Indoor Auditorium	3 gpd/seat
b) Outdoor Drive-in	5 gpd/space
Camper or R.V. Trailer Park	150 gpd/space
Banquet Hall	15 gpd/100 sq. ft.
a) With Kitchen	50 gpd/100 sq. ft.

THE PALACE AT CORAL GABLES, ID# 20023a

TYPES OF LAND USES

GALLONS PER DAY (GPD)

Car Wash	350 gpd/bay
a) Hand-Type	5,500 gpd/bay
b) Automated (drive through)	145 gpd/washer
Coin Laundry	15 gpd/100 sq. ft.
Country Club	50 gpd/100 sq. ft.
a) With Kitchen	10 gpd/100 sq. ft.
Funeral Home	450 gpd/unit
Gas Station/Convenience Store/Mini-Mart	1,750 gpd/unit
a) w/ Single Automated Car Wash	10 gpd/100 sq. ft.
Health Spa or Gym	20 gpd/100 sq. ft.
Veterinarian Office	15 gpd/cage
Kennel	60 gpd/slip
Marina	
Food Preparation Outlet (Bakeries, Meat Markets, Commissaries, etc.)	35 gpd/100 sq. ft.
Pet Grooming	55 gpd/100 sq. ft.
INDUSTRIAL LAND USES	
Airport	
a) Common Area/Concourse	5 gpd/100 sq. ft.
b) Retail/Store	10 gpd/100 sq. ft.
c) Food Service	see restaurant use
House of Worship	10 gpd/100 sq. ft.
Hospital	250 gpd/bed
Nursing/Convalescent Home	150 gpd/bed
Public Park	
a) With toilets only	5 gpd/person
b) With toilets and showers	20 gpd/person
Other Residential Institution/Facility	CLF: 75 gpd/bed
	JAIL: 150 gpd/bed
	OTHER: 100 gpd/person
School	
a) Day care/Nursery	20 gpd/100 sq. ft.
b) Regular School (with or without cafeteria)	12 gpd/100 sq. ft.
Public Swimming Pool Facility	30 gpd/person
Industrial	
a) Warehouse/Spec. Building	1 gpd/100 sq. ft.
b) Mini Storage	1.5 gpd/100 sq. ft.
c) Industrial - Wet	20 gpd/100 sq. ft.
d) Industrial - Dry	2.5 gpd/100 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, warehouse, etc.).

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	14,850	2011 - 2012
45-beds nursing/convalescent facility	6,750	2011 - 2012
2,376 sq-ft retail store space	237	2011 - 2012
1,175 sq-ft beauty shop	294	2011 - 2012
1,378 sq-ft health spa, gym	138	2011 - 2012
<u>Demolish:</u>		
2,008 sq-ft full service restaurant	-2,008 (credit)	
2,104 sq-ft retail store space	-210 (credit)	