

**AGREEMENT BETWEEN PALM BEACH COUNTY
AND KENDALL RIVIERA COMPANY, INCORPOR-
ATED, FOR THE CONSTRUCTION OF SANITARY
SEWAGE COLLECTION AND WATER DISTRIBUTION
TREATMENT AND SERVICE FACILITIES.**

THIS AGREEMENT, made and entered into this *29th* day of *April*, 1972, by and between Palm Beach County, Party of the First Part, a political subdivision of the State of Florida, hereinafter sometimes designated as "THE COUNTY" and Kendall Riviera Company, Incorporated, a corporation organized and existing under the laws of the State of Florida, its successors or assigns, parties of the second part, hereinafter sometimes designated as "THE DEVELOPER."

WHEREAS, THE DEVELOPER now has deposit receipt contract to purchase property in Palm Beach County and desires to provide for collection facilities for sanitary sewage and liquid wastes, and to provide water distribution, treatment and service facilities; and

WHEREAS, THE DEVELOPER is not desirous of operating and maintaining said water distribution treatment and service facilities and sewage collection facilities for its property; and

WHEREAS, THE DEVELOPER desires to make a contribution in aid of construction for a water distribution, treatment and service facility and sewage collection facilities in conjunction with the development of its property; and

WHEREAS, THE DEVELOPER has requested THE COUNTY to take ownership of the water distribution, treatment and service facilities, and

sewage collection facilities, and to operate and maintain said facilities; and

WHEREAS, THE COUNTY agrees to operate and maintain the facilities at its own expense; and

WHEREAS, THE COUNTY feels that an agreement between THE DEVELOPER and THE COUNTY for THE COUNTY'S ownership and maintenance of said water distribution, treatment and service facilities and sewage collection facilities will provide for the health, safety and general welfare of the citizens of Palm Beach County;

THEREFORE, in consideration of the mutal promises made by the parties hereto, and in further consideration of the payment of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. DEFINITIONS AND REFERENCES

a. "Property" - all the land described in Exhibit A, attached hereto and made a part hereof.

b. "Service Area" - refers to the Property and any adjacent or neighboring lands thereto which THE COUNTY may be able to provide water and sewer utility services.

c. "Point of Delivery" - that point on the periphery of THE DEVELOPER'S property where the water pipes or meters and sewer lines of THE COUNTY are connected with the water and sewer installations of THE DEVELOPER.

d. "Water Utility Service" - the readiness and ability on the part of THE COUNTY to furnish water to each residential or commercial unit within THE DEVELOPER'S property, and upon receipt of ownership of the Water Installations for the sum of One Dollar (\$1. 00) from THE DEVELOPER, the operation and maintenance of same. THE COUNTY'S responsibility for operation and maintenance shall be limited to that portion of the Water Installations located within easements or dedicated rights-of-way.

e. "Sewer Utility Service" - the readiness and ability on the part of THE COUNTY to collect and treat sewage from the point of delivery, and upon receipt of ownership of the Sewer Installations for the sum of One Dollar (\$1. 00) from THE DEVELOPER, the operation and maintenance of same. THE COUNTY'S responsibility for operation and maintenance shall be limited to that portion of the Sewer Installations located within easements or dedicated rights-of-way.

f. "Water Installations" - all facilities on THE DEVELOPER'S side of the point of delivery. These shall include, without limiting the foregoing, all mains, lines, valves, fire hydrants, booster pumps, water services, main line meters, all real and personal property and all interests therein, rights and easements of any nature whatever relating to the subject Water Installations and necessary or convenient for the operation and maintenance thereof.

g. "Water Services" - all pipes, fittings, etc. , going from the water main to the property line of the individual units within the property.

H. "Water Plant" - any plant, facility or property associated therewith, useful or necessary or having the present capacity for future use in connection with the development of sources, treatment or purification of water, and without limiting the foregoing, shall include wells, storage tanks, raw water mains, water treatment facilities, all real and personal property and all interests therein, rights and easements of any nature whatever relating to the subject plant and necessary or convenient for the operation and maintenance thereof.

L. "Water Distribution System" - all facilities necessary, useful or connected with the distribution of water from the water plant to the point of delivery.

J. "Sewer Services" - the installation of wyes and sewer pipes from the sewage collection main to the property line of the individual units within the property.

K. "Sewer Collection System" - all facilities necessary for the collection of sewage and/or conveyance of same from the point of delivery to the Sewer Plant for treatment and disposal.

L. "Sewer Installations" - all sewer facilities on THE DEVELOPER'S side of the point of delivery including any and all pumping stations or lift stations required to be installed on THE DEVELOPER'S side of the point of delivery in order for sewage to be pumped to the Sewer Plant. The Sewer Installations shall extend from the point of delivery to the property line of the individual units within THE DEVELOPER'S property and shall include, without limiting the generality of the foregoing, all pumping stations, lift stations, valves, force mains, intercepting sewers, pressure lines, mains, all necessary appurtenances and equipment, and all sewer mains and sewer

services for the reception and collection of sewage from the aforesaid units to the point of delivery, including all real and personal property and easements of any kind whatsoever relating to the Sewer Installations and necessary or convenient for the operation thereof.

m. "Developer's Engineer" - engineers or engineering firms licensed to practice engineering in the State of Florida as shall be employed for such purpose by THE DEVELOPER.

2. DEVELOPMENT MASTER PLAN

THE DEVELOPER hereby agrees to submit Development Master Plan to the Office of the County Engineer for approval covering its property. Such Master Plan will have clearly shown thereupon, the following data, where applicable:

- a. The location of all streets, easements, and other public rights-of-way.
- b. The location and placement of the Sewer Installations and Water Installations.
- c. The number of units to be built on the property during the various development periods.
- d. The character of the units and expected population or estimated flow of water or sewage to and/or from any unit designed for uses other than domestic.
- e. A flow chart indicating the number of proposed connections to the systems, and the anticipated flow of the sewage to the Sewer Collection System and the water consumption by the residential units of the development

or portions thereof.

f. A description and drawings of any portions of land within the development with an intended use different from the rest of the adjacent land such as golf courses, etc. .

g. Any other meaningful information necessary to arrive at estimates of water flow demands and/or amount and character of sewage.

It is understood that THE DEVELOPER may submit its Subject Master Plan in sections as the land may be developed in stages by THE DEVELOPER. Approval of each individual section by the County Engineer, shall, however, be required prior to the preparation or approval of construction plans.

3. CONSTRUCTION PLANS

A. Water and Sewer Installation

Upon approval of the complete applicable section of the Master Plan by the County Engineer as per paragraph 2 above, THE DEVELOPER agrees to provide complete construction plans and specifications for the Water and Sewer Installations designed to serve the section or sections of land being developed as described in the portion of the total Master Plan previously submitted and approved. It is understood that each set of plans and specifications submitted according to the conditions herein set forth shall be subject to the same revisions and approvals by the County Engineer and shall be considered independently from any formerly approved set of plans. Such approval shall not be unreasonably withheld. All construction plans and specifications shall be in full accord with the minimum rules and regulations established by THE COUNTY and State Boards of Health and/or any other regulating agency having jurisdiction.

B Sewage Pumping Stations.

THE DEVELOPER agrees to provide complete construction plans and specifications for the sewage pumping stations to connect its sewer installation to Sewer Collection System at the point of delivery.

All mains, storage tanks and other equipment must be designed to be compatible with all existing fire codes or any other codes adopted by the Board of County Commissioners of Palm Beach County, prior to the construction thereof. Fire hydrants and distribution systems shall meet appropriate National Fire Protection Association standards, and in any event shall be capable of providing not less than 500 gallons of water per minute.

4. CONSTRUCTION

A. Water and Sewer Installations .

The Water and Sewer Installations shall be constructed by THE DEVELOPER in full accordance with the plans and specifications previously approved by the County Engineer and such construction shall be performed under the inspection of THE DEVELOPER'S Engineer and the observation of the County Engineer or his designated agent.

B. Sewage Pumping Stations

The Sewage pumping stations shall be built by THE DEVELOPER on its property in full accordance with the plans and specifications previously approved by the County Engineer under the inspection of THE DEVELOPER'S Engineer and the observation of the County Engineer or his agent.

C. Inspection of Construction by County Personnel

THE DEVELOPER hereby agrees to allow representatives of the County Engineer's Office to be present during all phases of construction. THE COUNTY representatives are hereby granted the right, by THE DEVELOPER, to stop construction being performed through THE DEVELOPER'S Engineer if the work is defective, if the contractor fails to supply sufficient skilled workmen or suitable materials or equipment and/or if construction deviates from the previously approved plans and specifications. THE COUNTY shall be held harmless from any claims arising out of delays caused by the stoppage of construction by THE COUNTY representatives as hereinabove described, unless THE COUNTY is found to have erred in interpreting the conditions of this sub paragraph which results in a stoppage of construction.

D. Supervision of Construction

Construction of the Sewage Pumping Stations and Water and Sewer Installations shall be under the inspection of THE DEVELOPER'S Engineer and periodical inspections of the construction shall be coordinated with THE COUNTY and THE DEVELOPER by THE DEVELOPER'S Engineer. Upon completion of the construction, THE DEVELOPER'S Engineer shall certify that the construction has been completed substantially in accordance with the plans and specifications set forth for the construction of the system and approved by State Boards of Health and the County Engineer. THE DEVELOPER'S Engineer shall also be responsible for the provision of one (1) set of as-built stable reproducibles and three (3) sets of prints to the County Engineer's Office which shall, immediately upon approval, become the property of THE COUNTY. Subject plans must meet the approval of the County Engineer.

Approval of change orders during construction by the County Engineer or his designated representative shall be a condition precedent to their implementation and said approval shall not be^{un} reasonably withheld.

All engineering work and construction costs in connection with engineering plans, approvals, observations, and inspections and construction of the Water and Sewer Installations and the Sewage Pumping Stations to serve the Property will be at the sole cost and expense of THE DEVELOPER or other than THE COUNTY.

5. WATER AND/OR SEWER INSTALLATIONS

The responsibility for construction and connecting the Water and/or Sewer Installations to the lines of the Water Distribution and/or Sewer Collection System at the point of delivery is that of THE DEVELOPER or other than THE COUNTY.

6. GENERAL PROVISIONS

A. Sewer Installations

THE DEVELOPER shall dispose of all sewage collected in the property or portion thereof by and through THE COUNTY'S Collection System and THE COUNTY shall accept and/or dispose of such sewage by and through its system to the extent specified herein.

1. THE DEVELOPER agrees to use all of the Sewer Installations in accordance with the rules and regulations of the State Board of Health. THE DEVELOPER shall be subject to all the existing rules and regulations governing types of wastes which may be allowed to enter the system or any other regulations which may hereafter be established by either the State or County Boards of Health or by resolution or ordinance by THE COUNTY with the intent to safeguard the operation of sewage treatment facilities.

It is expressly understood that THE COUNTY may disapprove any connections if flows or waste expected to proceed from such connections are suspected to be injurious to its Sewer Plant or waste treatment process.

On notification to THE DEVELOPER, THE COUNTY shall have the right to collect samples of sewage and industrial wastes at various locations within THE DEVELOPER'S facilities at any time for the purpose of making laboratory analysis of these wastes.

THE DEVELOPER shall supply THE COUNTY with a list of the producers of industrial wastes, if any, connected to THE DEVELOPER'S facilities and at least once each year bring this list up to date. THE DEVELOPER shall require that each major producer of industrial wastes submit to THE COUNTY bi-annually a complete laboratory analysis of a composite sample and shall include the following data: temperature, pH, suspended solids, dissolved solids, 5-day B. O. D. , fats and oils (ether extraction), A. S. T. M. flash point, CN (where indicated) and phenols (where indicated) or any other data which the County Engineer requests.

If at any time THE DEVELOPER shall not comply with the restrictions imposed upon it in the preceding portion of the Section 5, or if THE DEVELOPER shall create any condition which THE COUNTY should determine destructive to any of its installations which carry and dispose of material discharged by THE DEVELOPER into facilities of THE COUNTY, THE COUNTY shall give thirty (30) days notice to THE DEVELOPER to discontinue such harmful operation or practice within which period THE DEVELOPER shall agree to comply.

2. Sewer Utility Service

Any rate charged by THE COUNTY to users of the Sewer Collection System shall not exceed the maximum rate charged by THE COUNTY for any other like user of THE COUNTY's Sewer Collection System.

7. WATER DISTRIBUTION SYSTEM AND PLANT

The Water Distribution System to be designed and built by THE COUNTY shall be of sufficient size to serve the Property as shown by the appropriate portion of the Master Plan without serious losses in pressure.

A. Degree of Treatment

The water treatment facilities to be built by THE COUNTY will be designed to provide the amount of treatment required by all health, and/or regulatory agencies and the County Engineer.

B. Fire Protection

It is the obligation of THE COUNTY to THE DEVELOPER to supply water for domestic use and to make reasonable efforts to supply water for fire protection. THE DEVELOPER agrees to hold THE COUNTY harmless as a result of systems failure, or for damages resulting from lack of pressure or damage resulting from lack of sufficient water deliverable. THE COUNTY agrees to exercise reasonable management practices and to exert whatever effort necessary to maintain a complete and usable facility. However, THE COUNTY does not obligate itself, either expressly or impliedly, to provide or maintain in the Water System a supply

of water sufficient or under pressure adequate for fire protection or extinguishment purposes, and will not be liable for any injury, damage or loss by fire which may be suffered or sustained by any person residing, visiting, or owning or having property in the Property or in the vicinity thereof, whether or not such injury, damage or loss shall be claimed, asserted or alleged to have resulted from or to have been caused by or contributed to be reason of the supply of water in the Water System having at any time been insufficient or under pressure inadequate for fire protection or extinguishment purposes.

C. Metering

The installation of water meters, meter boxes and fittings shall be the responsibility of THE DEVELOPER; all costs thereof shall be borne by THE DEVELOPER, its customers or others than THE COUNTY. The meters shall be as specified by THE COUNTY.

D. Water Utility Service Rates

Any rate charged by THE COUNTY to users of the Water Distribution System shall not exceed the maximum rate charged by THE COUNTY for any other like user of THE COUNTY'S Water Distribution System.

8. LOCATION AND SIZE OF WATER PLANT

THE COUNTY will construct a water treatment plant on County-owned property of sufficient size to meet the requirements for service set forth in THE DEVELOPER'S Master Plan.

9. TRANSFER OF TITLE TO THE COUNTY

THE DEVELOPER agrees to give to THE COUNTY clear title to the Water and Sewer Installations and Pumping Stations at that point in time when the Sewer and Water Installations and Pumping Stations have been established so as to be capable of providing Water and Sewer Utility Service, by deed and upon payment of the sum of One Dollar (\$1.00) by THE COUNTY TO THE DEVELOPER.

10. SEWAGE AND WATER CAPACITY RESERVATION

THE COUNTY agrees to receive, reserve capacity for, and dispose of up to 0.050 million gallons per day (MGD), of sanitary sewage and liquid waste collected in the Property and pumped therefrom the Sewer Collection System and to deliver potable water for a maximum of 200 dwelling units on THE DEVELOPER'S property from the Water Plant.

11. CONTRIBUTION IN AID OF CONSTRUCTION

THE COUNTY will provide a portion of the monies necessary to expand THE COUNTY'S Water Plant and to construct water and sewer mains to the Property. THE DEVELOPER will contribute as an aid of construction a sum of \$ 27,000.00 to aid in the expansion of the Water Plant and the construction of water and sewer mains of sufficient capacity to supply water and sewer utility service to the Property. This agreement shall be evidenced by the tender of an irrevocable letter of credit in the amount of \$ 27,000.00 addressed to THE COUNTY from THE DEVELOPER prior to the signature of this Agreement by THE COUNTY. THE COUNTY will draw upon the aforesaid letter of credit as construction of the system

and plant progresses, but in no event commencing earlier than August 20th, 1972, and on a pro-rata basis of total project cost. Last payment by THE DEVELOPER shall be when THE COUNTY completes the Water Distribution and Sewer Collection Systems on or before October 1, 1972.

12. REMEDIES

In the event a party shall fail to perform any of its covenants hereunder, the other party shall have, in addition to, and without prejudice, to any other rights or remedies it may have, the immediate right to a mandatory injunction or such other judicial process or order as shall be necessary and proper for enforcing the performances thereof. THE COUNTY shall not be liable to THE DEVELOPER for its inability to carry out the terms and conditions hereof due to an act of God, war, strike, catastrophe or other circumstances beyond the control of THE COUNTY.

13. EXTENT OF AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings oral or written with reference to the subject matter hereof that are not merged herein, and superseded hereby. No alteration, change or modifications of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto set forth. This Agreement, regardless of where executed, shall be governed and construed according to the laws of the State of Florida.

14. ASSIGNMENT

The rights and duties of THE DEVELOPER under this Agreement shall run with the land and be binding on his successors and assigns in interest,

and shall not be assigned prior to compliance by THE DEVELOPER with the provisions of Paragraph 11 hereof without the consent of THE COUNTY, which consent, if given, shall be evidenced by resolution of the Palm Beach County Board of County Commissioners. THE COUNTY hereby agrees to allow THE DEVELOPER to apply the capacity reservation and service obligation of THE COUNTY to other property of THE DEVELOPER within the area bounded on the south by the L-5 canal, on the west by Haverhill Road, on the north by Southern Boulevard, and on the east by Kirk Road, or in any future expanded service area of THE COUNTY from its facilities at Palm Beach International Airport, or to other property of THE DEVELOPER outside the service area of THE COUNTY from its facilities at Palm Beach International Airport if and only if THE DEVELOPER pays for any and all costs of connecting facilities from said property to the point of connection as contemplated herein for the property under deposit receipt contract to purchase.

15. HOLD HARMLESS CLAUSE

THE DEVELOPER agrees to hold and save harmless THE COUNTY from any litigation resulting in a final judgment for damages, including reasonable attorneys fees and court costs resulting from the effects of the improper introduction by THE DEVELOPER or its users under this Agreement into and through the Sewer Collection System of any solid, liquid, gas or other effluent as described in Section 6.1 of this Agreement, which may cause damage, either within or without aforesaid facilities including but not limited to, undesirable matter and explosions.

THE COUNTY agrees to hold and save harmless THE DEVELOPER from any litigation resulting in final judgment for damages, including reasonable attorney fees and court costs resulting from THE COUNTY's negligence in the operation of the Sewage Collection and Water Distribution Systems and Water Plant.

Any temporary cessation of disposal of sewage caused by an act of God, fire, strike, casualty, civil or military authority, insurrection or riot, shall not constitute a breach of this Agreement on the part of THE

COUNTY and THE COUNTY shall not be liable to THE DEVELOPER or its inhabitants for any damage resulting from such cessation of disposals.

16. CONNECTION TO MALEY FORCE MAIN

THE DEVELOPER has the duty and responsibility to pay any and all connection charges associated with the connection of the Sewer Collection system to the Maley force main. These charges will be due as connections are made for each equivalent residential unit in THE DEVELOPER'S property, and shall not exceed the sum of \$ 4,000 for the entire project.

IN WITNESS WHEREOF, THE COUNTY has caused these presents to be executed by its Chairman and attested and its official seal to be hereunto affixed by the Palm Beach County Clerk, and THE DEVELOPERS have caused this agreement to be duly executed in several counterparts as of the day and year first hereinunder entered, each of which counterparts shall be considered an executed original, and in making proof of this agreement, it shall not be necessary to produce or account for more than one counterpart.

ATTEST:
JOHN B. DUNKLE, Clerk

BY [Signature]
Deputy Clerk

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

BY [Signature]

ATTEST:

KENDALL RIVIERA COMPANY, INC.

BY [Signature]
Secretary

BY [Signature]
C. W. Kendall, President