

LRECD - 100 Dated: 5-21-98
Prepared By & Return To:
Clinton R. Yerkes
Loxahatchee River District
2500 Jupiter Park Drive
Jupiter, FL 33458
(561) 747-5700

STANDARD IRRIGATION QUALITY WATER AGREEMENT
1998 Revision

THIS AGREEMENT MADE AND ENTERED INTO this _____ day of _____
_____,
_____, by and between LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT, herein referred to as the "District", and _____

_____, authorized to do business in the State of Florida, its successors and assigns, herein referred to as "Owner", with regard to the property described in Exhibit "A" attached hereto and made a part hereof, (the "Property").

IN CONSIDERATION of the covenants and agreements herein set forth, the receipt and sufficiency of such consideration being hereby acknowledged as adequate, the parties agree as follows:

1. PROVISION OF IRRIGATION QUALITY WATER AVAILABILITY. The District shall provide "Reclaimed Water" availability as defined in the Department of Environmental Protection rule Chapter 62-610.100, 62-610.200, and 62-610.300, Florida Administrative Code, incorporated herein by reference, (herein referred to as the "Reuse Rule") in the amount of _____ gallons per day ("G.P.D.") (herein referred to as the "Requested G.P.D."). Reclaimed Water shall be referred to hereafter as "Irrigation Quality" or "I.Q." Water. Owner shall have no obligation to take such Irrigation Quality Water, but it shall be provided as set forth herein, and Owner shall pay the charges set forth in Paragraph 4 herein regardless of whether or not Owner takes Irrigation Quality Water when available. The Requested G.P.D. will be delivered during a portion of the 24 hour period as the operational requirements of the District may necessitate.

2. COMMENCEMENT DATE. Availability of the Requested G.P.D. is scheduled to commence on the first of _____, _____, (herein referred to as "Commencement Date"), unless an earlier or later Commencement Date is mutually agreed to between the parties or unless a later Commencement Date is necessitated by the unavailability of the Irrigation Quality Water.

3. APPLICATION FEE. Upon signing this Agreement, Owner shall pay to the District the sum of \$_____ as the "Application Fee". The Application Fee is based on the greater of (a) six (6) months of charges at the I.Q. Rate for the Requested G.P.D., or (b) \$18,000.00. The Application Fee is nonrefundable and is the property of the District along with any and all interest accrued thereon. The Application Fee is applied to the payments due from Owner once I.Q. Water delivery begins.

4. I.Q. RATE AND INCREASE. The Owner agrees that Owner shall pay to the District the sum of 27.0 cents per 1,000 gallons (herein referred to as "I.Q. Rate") for the Requested G.P.D. Said billing of the I.Q. Rate shall be made monthly as delivered, or such other billing cycle period as the District may determine. The District shall have the right to increase the I.Q. Rate from time to time hereunder, upon providing thirty (30) days prior written notice of costs increase. Any increase in the I.Q. Rate shall only arise from the District's increase in costs representing (a) operation and maintenance of the facilities including capital expenses and replacements to supply the Irrigation Quality Water, and/or (b) any capital improvements required to the facilities or the District's treatment plant and related processes resulting from any change or alteration of the specifications for the Irrigation Quality Water as set forth in Paragraph 1 herein.

5. I.Q. FACILITIES.

a) District I.Q. Line and Facilities. Owner will prepare, at Owner's cost, plans and specifications for the lines and facilities to bring a delivery line from the existing District I.Q. Facilities to the District Metering Station (herein referred to as the "District I.Q. Line"), and plans and specifications for the on-site facilities to receive the Irrigation Quality Water at the Owner's side of the District Metering Station (herein referred to as "Owner I.Q. Facilities"). Owner shall submit these plans and specifications in order to obtain all construction and operating permits required by both Owner and District for the construction, delivery, use for irrigation, monitoring, and storage of Irrigation Quality Water. Owner shall also obtain any rights-of-way, easements, or permits to bring and maintain the delivery line from the existing District I.Q. Facilities to the District Metering Station. District will cooperate as necessary in the permitting process. Owner shall prepay all engineering and permitting costs incurred either by Owner or the District. All costs, tests, fees, engineering feasibility or other requirements of any Permitting Agency will be solely those of the Owner, provided that District or Owner will not be required to change the construction, delivery, or storage requirements for Irrigation Quality Water to any standard or requirement over and above the existing Reuse Rule. The Owner, at Owner's sole cost shall construct the District I.Q. Line from the existing District I.Q. Facilities to the District Metering Station. A final inspection shall be conducted by District to insure conformance with the approved plans and specifications and generally accepted construction and engineering standards. The District I.Q. Line shall be completed and transferred to the District prior to the completion of the golf course. The District I.Q. Line, upon completion, shall be conveyed to the District by provision of the following items: (1) Bill of Sale, (2) Grant of Easement, (3) Maintenance Bond or Letter of Credit, (4) As Built Drawings, and (5) Certification by Project Engineer.

b) District Metering Station. The Owner shall design, permit, construct, and install, at Owner's cost, an on-site metering station (herein referred to as "District Metering Station"). Owner will grant to the District, for no additional consideration, a general warranty deed for the District Metering Station area, and an ingress-egress easement for the installation, maintenance, operation, and monitoring of any such on-site District I.Q. Lines and District Metering Station. Owner shall prepay all costs for the design, permitting, construction, and installation of the District Metering Station as determined by the District, including the meter, meter valve, actuator, controls, and telemetry system.

c) Owner I.Q. Facilities. The Owner shall be solely responsible to design, construct, own, operate and maintain the facilities necessary to pump to the District Metering Station and to receive the Irrigation Quality Water at the Owner's side of the District Metering Station, and to provide all necessary transmission, storage, pumping, and irrigation facilities on-site (herein referred to as the "Owner I.Q. Facilities"). Owner shall construct and complete all of the Owner I.Q. Facilities prior to the completion of the golf course. All Owner I.Q. Facilities shall be constructed at the Owner's expense in accordance with final plans and specifications approved by the District and the Department of Environmental Regulation. Owner shall comply with the provisions of the Reuse Rule such as signage, spray regulations, and color coding.

6. I.Q. WATER DELIVERY.

a) Phase In. In the interest of water conservation, it is agreed by both parties that, if I.Q. Water is available to Owner as determined by the District, Owner shall take delivery of I.Q. Water prior to the Commencement Date, and shall pay the I.Q. Rate only for the amount of I.Q. Water actually delivered.

7. ALLOCATION OF IRRIGATION QUALITY WATER AVAILABILITY. If more water is available as determined by the District and Owner desires to receive it, then it shall be delivered at no cost to Owner. In the event that from time to time, the availability of Irrigation Quality Water is insufficient to meet the expected demand, the District shall allocate available Irrigation Quality Water hereunder on a proportional basis with all its Irrigation Quality Water customers, provided however, the District shall use its best efforts not to oversell its Irrigation Quality Water. If the Requested G.P.D. is not available, then Owner shall only be obligated to pay based on the pro rata share of the lesser flow which is available. Failure of Owner to take Irrigation Quality Water when available from the District shall not relieve Owner from paying the charges set forth in Paragraph 4 herein.

8. TERM. The term of this Agreement shall run for twenty (20) years from the date hereof.

9. DEFAULT; LIEN; ATTORNEY'S FEES; VENUE. Upon failure of the Owner to pay any monies due under this Agreement for any period greater than thirty (30) days from the date they become due, the Owner shall be deemed in default and the District shall terminate this Agreement without prejudice to the District's rights and remedies set forth in its Charter, Rules, or herein. The District shall have a lien on the Property and premises served by it for all charges under this Agreement, until paid, which lien shall be prior to all other liens, except that such lien shall be on parity with the lien of state, county, and municipal taxes, and any lien for charges for services created pursuant to Section 159.17, Florida Statutes. Such lien shall be perfected by the District by recording in the official records of the county in which the Property is located a claim of lien in form substantially as provided in Section 713.08, Florida Statutes. A copy of the claim of lien shall be served as provided in Section 713.18, Florida Statutes, within ten (10) days after the claim of lien is recorded. If thirty (30) days after service has been made liens created under this section remain delinquent, such liens shall be foreclosed by the District in the manner provided by the laws of Florida for the foreclosure of mortgages on real property, and the District shall be entitled to reasonable interest and attorneys' fees and other court costs. The District shall bring legal action against Owner to collect monies due and in default, and/or to obtain injunctive and/or declaratory relief. In the event of any litigation arising hereunder, the prevailing party shall be entitled to recovery of costs and reasonable attorney's fees. Any such litigation shall have jurisdiction and venue in Palm Beach County, Florida. It is mutually agreed by and between the respective parties to hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out of or in any way connected with this Agreement.

10. TRANSFERABILITY OF AGREEMENT. The Irrigation Quality Water to be provided under this Agreement may not be transferred from the Property to any other property, but ownership of the Property may change from time to time and the Agreement shall run with the Property.

11. RECORDATION. A copy of this Agreement or Memorandum may be filed in the public records of the county where the Property is located. If this Agreement is terminated before the end of its term, then a Notice of Termination signed by Owner and the District, and recorded shall discharge this Agreement of public record.

12. INDEMNIFICATION. In the event the Owner shall fail to comply with any rule, regulation, or order of any Federal, State, County, Municipality, or other agency, or commit a violation of any permit granted with regard to the construction, operation, maintenance, or use of the Irrigation Quality Water on the Property, Owner shall indemnify the District, its officers, governing board, employees and agents against all claims, demands, causes of action, suits, judgments, fines, penalties, or losses, including all costs suffered or incurred by the District by reason of such failure or violation.

13. GENERAL PROVISIONS.

a) Authority. Owner agrees to furnish promptly upon demand, a corporate resolution, proof of due authorization by partners, or other appropriate documentation evidencing the due authorization of Owner to enter into this Agreement.

b) Captions. The captions inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope of intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

c) Amendment. This Agreement may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

d) Severability. If any clause, provision or portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Agreement that in lieu of each such clause, phrase, provision or portion of this Agreement that is invalid or unenforceable, there be added as a part to this Agreement a clause, phrase, provision or portion as similar in terms to such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, _____.

Signed, Sealed and Delivered
ENVIRONMENTAL in the presence of:

LOXAHATCHEE RIVER
CONTROL DISTRICT

WITNESS
Print Name _____

By: _____
RICHARD C. DENT, II
EXECUTIVE DIRECTOR

WITNESS
Print Name _____

(DISTRICT SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by RICHARD C. DENT, II, Executive Director, on behalf of the Loxahatchee River Environmental Control District. He is personally known to me or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA
Print Name _____
My Commission Expires:

Signed, Sealed and Delivered
in the presence of:

OWNER: _____

WITNESS
Print Name _____

BY: _____

TITLE: _____

WITNESS
Print Name _____

ATTEST: _____

TITLE: _____

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____,
_____, by _____, as _____
and _____, as _____ on
behalf of _____.
He/She/They are personally known to me or produced _____
as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA
Print Name _____
My Commission Expires: