

LRECD - 101 Dated: 5-21-98
Prepared By & Return To:
Kris.Dean, P.E.
Loxahatchee River District
2500 Jupiter Park Drive
Jupiter, FL 33458
(561) 747-5700

STANDARD IRRIGATION QUALITY WATER AGREEMENT- RETAIL

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"). References herein to the "Rule" or "Rules" shall mean the Rules of the Loxahatchee River Environmental Control District, which are hereby incorporated by reference.

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. START UP FEE. Upon signing this Agreement, Owner shall pay to the District the sum of \$ _____ as the "Start Up Fee". The Start Up Fee is based on the greater of (a) six (6) months of charges at the Retail I.Q. Rate for the Requested G.P.D., or (b) \$3,500.00. The Start Up Fee is nonrefundable and is the property of the District along with

any and all interest accrued thereon. The Start Up Fee is for the administrative, legal, engineering, inspection and initial operational expenses.

4. RETAIL I.Q. RATE AND INCREASE. The Owner agrees that Owner shall pay to the District the sum of 45.0 cents per 1,000 gallons per day (herein referred to as "Retail I.Q. Rate"), in accordance with District Rule 31-10, for the Requested G.P.D. Said billing of the Retail 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 Retail I.Q. Rate from time to time hereunder, upon providing thirty (30) days prior written notice of costs increase. Any increase in the Retail 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) General. 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"), plans and specifications for an on-site metering station (herein referred to as "District Metering Station"), 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 pay 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.

b) District I.Q. Line and Facilities. The Owner, at Owner's sole cost shall design, permit, construct and install 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 Commencement Date. 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.

c) District Metering Station. The Owner shall be solely responsible to 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, an easement 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. The District Metering Station, 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. Owner shall pay 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.

d) 1. Owner I.Q. Facilities. The Owner shall be solely responsible to design, construct, own, operate and maintain the facilities necessary to receive the Irrigation Quality Water at the Owner's side of the District Metering Station, and to provide all necessary transmission, storage, pumping, metering, 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 Commencement Date. All Owner I.Q. Facilities shall be constructed at the Owner's expense in accordance with final plans and specifications approved by the District. Owner shall comply with the provisions of the Reuse Rule such as signage, back flow prevention, spray regulations, and color coding.

2. Association Responsibility. The Owner shall require the property owners association to have the ultimate responsibility and payment for the operation, maintenance, repair and replacement of the Owner I.Q. Facilities and provide disclosures to prospective purchasers and property owners by having clauses in the purchase contracts and property owners declaration documents in substantially the following language of Paragraph 5.d)3.:

3. Irrigation Quality ("I.Q.") Water Facilities. The Association shall be responsible in perpetuity for the I.Q. Water payment and the operation, maintenance, repair and replacement of the Owner I.Q. Facilities located throughout the Association's common areas and upon all of the Lots, in accordance with the standards, rules and regulations of the regulatory agencies, including the District. The Association shall have access upon all Lots for such purposes. The Association shall provide written notice to the District at least thirty (30) days prior to the removal or major alteration of the Owner I.Q. Facilities.

6. 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.

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

8. 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.

9. 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.

10. RECORDATION. A copy of this Agreement or Memorandum thereof 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.

11. 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.

12. 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
in the presence of:

LOXAHATCHEE RIVER ENVIRONMENTAL
CONTROL DISTRICT

WITNESS
Print Name _____

By: _____
D. ALBREY ARRINGTON
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 D. ALBREY ARRINGTON, 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: _____
data:\dev\forms\iq\retailiq.doc