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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2008

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess, County Manager

Agenda Item No. 8(R)(1)(B)

Resolution No. R-1347-08

Subject: Resolution authorizing the execution of a release of a restrictive covenant pertaining to water and sewer service for a property located at 8240 SW 102 Street

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RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution authorizing the execution of a release of a restrictive covenant pertaining to water and sewer service for a property located at 8240 SW 102 Street. The restrictive covenant was written into an agreement dating back to 1960 (Attachment A) between the previous property owner, the Arvida Corporation and its subsidiaries Arvida Realty Company, Kendall Center Inc., Dawal Company, Westland Inc. (collectively, ARVIDA) and the former General Waterworks Corporation.

SCOPE OF AGENDA ITEM

This agenda item is for the release of restrictive covenant contained in the subject agreement (Attachment B).

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to the County.

TRACK RECORD/MONITOR

This agenda item does not require monitoring.

BACKGROUND

In 1979, Miami-Dade County purchased General Waterworks Corporation becoming its successor in interest to the restrictive covenant pertaining to water and sewer service for a property located at 8240 SW 102 Street. A recent title search for the property revealed that this restrictive covenant prohibiting the use of septic tanks remains in effect.

The agreement containing the restrictive covenant was executed in 1960 between the property owner and General Waterworks. At that time, it was projected that a public gravity sewer system would be installed connecting the property to the public sewer system. However, a public sewer system was never installed. The current property owner is utilizing a septic tank for wastewater service. The County does not have a gravity sewer main located close to the property for connection, pursuant to Section 32-78 of the Miami-Dade County Code which requires a building or premises to connect to an abutting sewer main. Therefore, the attorney for the current property owner requests a release from the restrictive covenant.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 2, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(B)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(B)
12-2-08

RESOLUTION NO. **R-1347-08**

RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A RELEASE OF RESTRICTIVE COVENANT IN AN AGREEMENT AND DECLARATION OF RESTRICTIONS BETWEEN ARVIDA CORPORATION, ARVIDA REALTY COMPANY, KENDALL CENTER, INC., DAWAL COMPANY, WESTLAND, INC. AND THE FORMER GENERAL WATERWORKS CORPORATION

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves execution of a release of restrictive covenant in an Agreement and Declaration of Restrictions between Arvida Corporation, Arvida Realty Company, Kendall Center, Inc., Dawal Company, Westland, Inc. and the former General Waterworks Corporation; in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Carlos A. Gimenez** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman **aye**
Barbara J. Jordan, Vice-Chairwoman **aye**

Jose "Pepe" Diaz	**absent**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**aye**	Dennis C. Moss	**aye**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. SED

Sarah E. Davis

ATTACHMENT "A"

AGREEMENT
and

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, ARVIDA CORPORATION, a Delaware corporation, and ARVIDA REALTY CO., KENDALL CENTER, INC., DAWAL CO., and WESTLAND, INC., all Florida corporations, all of said corporations being hereinafter referred to collectively as "Arvida," own certain lands in the area hereafter described in Dade County, Florida, and

WHEREAS, Arvida desires to have water service and sewer service available for said lands, and GENERAL WATERWORKS CORPORATION, a Delaware corporation, desires to cause PENINSULA UTILITIES CORPORATION, a Florida corporation, said General Waterworks Corporation and Peninsula Utilities Corporation being hereinafter referred to collectively as "General," to make such service available under the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and the undertakings of General herein, Arvida hereby establishes, declares, and prescribes the following agreements, covenants, restrictions and conditions which shall apply to and be covenants running with the land now or hereafter owned by said Arvida Corporation, Arvida Realty Co., Kendall Center, Inc., Dawal Co., and/or Westland, Inc. in the following described area:

(a) In Township 54 South, Range 39 East

All of Sections 25, 34, 35 and 36;

(b) In Township 54 South, Range 40 East

All of Section 30 lying South of Snapper Creek Canal;

All of Sections 31 and 32;

All of Section 33, EXCEPTING AND EXCLUDING

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Tracts 97 to 102, inclusive, and Tracts 123 to 128, inclusive, of Dade County Development Company's Subdivision of Section 33, Township 54 South, Range 40 East, according to the Plat thereof, recorded in Plat Book 1, page 84, of the Public Records of Dade County, Florida.

EXCEPTING AND EXCLUDING

All that part of Tract 86 lying South of Snapper Creek Canal and Tracts 103, 104, 105, 106, 107, 118, 119, 120, 121 and 122 in Section 33, Township 54 South, Range 40 East, according to the Plat of Dade County Development Company's Subdivision as recorded in Plat Book 1, page 84, of the Public Records of Dade County, Florida, also Lots 5 to 25, inclusive, in Block 1, Lots 1 to 25, inclusive, in Block 2; Lots 1 to 23, inclusive, in Block 3, and Lots 1 to 23, inclusive, in Block 4, of Coral Shore, a Subdivision according to the Plat thereof, recorded in Plat Book 20, page 62, of the Public Records of Dade County, Florida.

All of Section 34 lying South of Brown Drive;

All of the S 1/2 of Section 35 lying westerly of the Florida East Coast Railway Spur Line right-of-way, EXCEPTING AND EXCLUDING

All of the S 3/4 of the SW 1/4 of Section 35, Township 54 South, Range 40 East, lying South of the Southerly right-of-way line of Snapper Creek Canal, less the East 310 feet of the SE 1/4 of the SE 1/4 of the SW 1/4 of said Section 35 lying Northwesterly of the F. E. C. Railway Right-of-way and that part of the S 3/4 of the W 1/4 of the SE 1/4 of said Section 35 lying West of the F. E. C. spur tracks and south of the South right-of-way line of Snapper Creek Canal, Dade County, Florida.

(c) In Township 55 South, Range 39 East

All of Sections 1, 2, 3, 10, 11, 12, 13, 14 and 15.

(d) In Township 55 South, Range 40 East

All that part of Sections 3, 10 and 15 lying West of the Florida East Coast Railway right-of-way;

All of Sections 4, 5, 6, 7, 8, 9, 16, 17 and 18.

All that part of Section 2 lying West of the Florida East Coast Railway right-of-way, EXCEPTING AND EXCLUDING

All of the S 3/4 of the SW 1/4 of Section 35, Township 54 South, Range 40 East, lying North of the Northerly right-of-way line of Snapper Creek Canal, subject to the East 35 feet thereof to be dedicated;

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AND ALSO EXCEPTING AND EXCLUDING

All that part of the E 3/4 of the N 1/2 of the NW 1/4 of Section 2, Township 55 South, Range 40 East, lying north and west of the F. E. C. Railway right-of-way less the north 50 feet for road purposes and all that part of the NW 1/4 of the SE 1/4 of the NW 1/4 of Section 2, Township 55 South, Range 40 East, lying north and west of the F. E. C. Railway right-of-way less begin at the N. W. corner of the SE 1/4 of the NW 1/4 of Section 2, Township 55 South, Range 40 East, run southerly 371.38 feet along the west line of the SE 1/4 of the NW 1/4 of said Section 2 to the point of intersection of the northwesterly right-of-way line of the F. E. C. Railway, thence run northeasterly 810 feet along the northwesterly line of the F. E. C. Railway to a point, thence run northwesterly 300 feet at right angles to said Northwesterly R. O. W. line of F. E. C. Railway to a point, thence run southwesterly 558.83 feet on a line 300 feet parallel at right angles of the said northwesterly R. O. W. line of the F. E. C. Railway to point of intersection of the west line of the NE 1/4 of the NW 1/4 of said section 2, thence run southerly 19.88 feet to the Point of Beginning.

AND ALSO EXCEPTING AND EXCLUDING

And begin at the northwest corner of the NW 1/4 of the NW 1/4 of the NE 1/4 of Section 2, Township 55 South, Range 40 East, thence east along the north line of the NW 1/4 NW 1/4 NE 1/4 of said Section 2 for a distance of 338.8 feet to a point, thence south parallel to the west line of the NE 1/4 of the said Section 2 for a distance of 279.51 feet to the intersection thereof with the northwesterly R. O. W. line of the F. E. C. Railway, thence southwesterly along the northwesterly R. O. W. line of the F. E. C. Railway for a distance of 450.6 feet, more or less, to the intersection thereof with the west line of the NE 1/4 of said Section 2, thence north along the west line of the NE 1/4 of said Section 2 for a distance of 572 feet to the Point of Beginning, less the North 50 feet thereof reserved for road purposes, Dade County, Florida,

said lands being hereinafter referred to as Service Area Lands, and General hereby agrees thereto:

1. Peninsula Utilities Corporation, its successors or assigns, shall have the exclusive right to supply, and shall supply as hereinafter provided, all water and sanitary sewer service that may be required on the Service Area Lands.

2. The use of septic tanks and the use of individual wells on the Service Area Lands except for swimming pools, air conditioning and/or irrigation purposes is hereby prohibited. This restriction shall not be construed as prohibiting the use of dry wells and grease traps.

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3. The water service and sewer service provided by Peninsula Utilities Corporation, its successors or assigns, shall meet all requirements of, and, if applicable, shall have the approval of the Federal Housing Administration, Veterans Administration and the Florida State Board of Health, and the quality of water service and sewer service rendered and the rates therefor shall be within the standards provided by the Operating Agreement entered into by Peninsula Utilities Corporation and The First National Bank of Miami, dated March 2, 1960, and filed for record March 4, 1960, in the Office of the Clerk of the Circuit Court of Dade County, Florida, under Clerk's File No. 60R-42986, and recorded in Official Records Book 1938, Page 522, as the same may from time to time be legally amended, or within the standards and rates provided by any governmental regulatory body having jurisdiction over Peninsula Utilities Corporation, or by governmental franchise, provided, that if the water system and the sewer system herein contemplated become the property of and are operated by any governmental authority or agency, then such service and the rate standards shall be deemed to be complied with.

4. As a condition precedent to any obligation of Peninsula Utilities Corporation to supply water service and sewer service pursuant to paragraph 1 above, Peninsula Utilities Corporation may require the usual and customary contributions toward the cost, construction and installations necessary to supply said water service and sewer service, provided, however, that this Agreement shall not be construed as obligating the present or future owners of the Service Area Lands to make such contributions. If such contributions are not made to Peninsula Utilities Corporation, then Peninsula Utilities Corporation shall nevertheless retain the exclusive right to supply water service and sanitary sewer service to the land in question, but Peninsula Utilities Corporation shall not be obligated to do so.

5. Arvida Corporation and General Waterworks Corporation shall have the right, without the concurrence or permission of any other person, firm, corporation, or public authority, to alter, amend, revoke and/or

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cancel in whole or in part from time to time this Agreement and Declaration of Restrictions and all the terms and provisions hereof.

IN WITNESS WHEREOF the undersigned have caused these presents to be signed in their corporate names by their proper officers this 25th day of March, 1960.

ARVIDA CORPORATION

By _____ Vice President

Attest: _____ Assistant Secretary

ARVIDA REALTY CO.

By _____ President

Attest: _____ Assistant Secretary

KENDALL CENTER, INC.

By _____ Vice President

Attest: _____ Assistant Secretary

DAWAL CO.

By _____ Vice President

Attest: _____ Assistant Secretary

WESTLAND, INC.

By _____ Vice President

Attest: _____ Assistant Secretary

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GENERAL WATERWORKS CORPORATION

By _____

Attest: _____

PENINSULA UTILITIES CORPORATION

By _____

Attest: _____

STATE OF FLORIDA)
)
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared JOHN H. WEIR, and ROBERT B. COLE, Vice President and Assistant Secretary, respectively, of ARVIDA CORPORATION, a Delaware corporation, KENDALL CENTER, INC., DAWAL CO., and WESTLAND, INC., all Florida corporations, and President and Assistant Secretary, respectively, of ARVIDA REALTY CO., a Florida corporation, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporations, and that the said instrument is the act and deed of said corporations.

WITNESS my signature and official seal at Miami, in the County of Dade and State of Florida, this 28th day of March, 1960.

_____
Notary Public State of Florida at Large

My commission expires:

Notary Public, State of Florida at Large.
My Commission Expires [illegible]
Bonded by American Surety Co. of N. Y.

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STATE OF PENNSYLVANIA)
)
COUNTY OF PHILADELPHIA)

Before me, the undersigned authority, personally appeared HOWARD BUTCHER, III, and JAMES A. JENNINGS, President, and Secretary, respectively, of GENERAL WATERWORKS CORPORATION, a Delaware corporation, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officer's for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Philadelphia, in the County of Philadelphia and State of Pennsylvania, this 1st day of April, 1960.

Elizabeth H. Lukens
Notary Public State of Pennsylvania
My commission expires:
ELIZABETH H. LUKENS, Notary Public
PHILA. PHILA. CO., PA
My Commission Expires Feb. 21 1961

STATE OF FLORIDA)
)
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared H. E. Keeting, and James A. Jennings, President, and Asst. Secretary, respectively, of PENINSULA UTILITIES CORPORATION, a Florida corporation, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Miami, in the County of Dade and State of Florida, this 5th day of April, 1960.

George S. Patterson Jr.
Notary Public State of Florida at Large
My commission expires:

State of Florida, County of Dade.
This instrument was filed for record the 28 day of Apr. 1960 at 3:40 P.M. and duly recorded in OFFICIAL RECORDS Book 2031 on Page 688 File No. 70043
E. B. LEATHERMAN
Clerk Circuit Court
By E. Chapman D.C.

61c 1/4

Attachment B

This instrument prepared by:
Sarah E. Davis, Esq.
Assistant County Attorney
Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, FL 33128

RELEASE OF RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS:

THIS RELEASE is made this ___ day of _____, 2008 by MIAMI-DADE COUNTY, a political subdivision of the State of Florida (hereinafter, the "County") as the successor in interest to General Waterworks Corporation, which was the successor in interest to Peninsula Utilities Corporation.

WHEREAS, the Agreement and Declaration of Restrictions (the "Agreement") executed on March 25, 1960 and recorded in Official Records Book 2031, Pages 682-688 of the Public Records of Miami-Dade County, Florida encumbers the property legally described as:

See Exhibit A attached hereto

(hereinafter, the "Property").

WHEREAS, the Agreement contains a restrictive covenant in Paragraph 2 on the third page of the Agreement, which states: "The use of septic tanks and the use of individual wells on the Service Area Lands except for swimming pools, air conditioning and/or irrigation purposes is hereby prohibited" (the "Restrictive Covenant"), where "Service Area Lands" includes the Property;

WHEREAS, the Restrictive Covenant has no force or effect by virtue of the fact that there is no public sewer system available to which the Property could connect, and septic tanks are the only available sewage disposal option for the Property;

NOW THEREFORE, KNOW YE, that Miami-Dade County, as the successor in interest to General Waterworks Corporation, which was the successor in interest to Peninsula Utilities Corporation, hereby cancels, exonerates and discharges the Property from the Restrictive Covenant placed upon it through Paragraph 2 of the Agreement to be forever released and discharged from effect and operation thereof.

Notwithstanding, Miami-Dade County, by this release of the Restrictive Covenant, does not release or disclaim any interest or right that it may have in the Property, and the Agreement shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, Miami-Dade County has executed this Release on the date and year first above written.

ATTEST:
Harvey Ruvin
Clerk of the Board

By: _____
Deputy Clerk

MIAMI-DADE COUNTY

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Mayor

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this _____ day of _____, 2008 by Carlos Alvarez, County Mayor, who is personally known to me.

_____
Notary Public State of Florida at Large

_____
Print or stamp name of Notary Public
My Commission Expires:

Approved as to form and legal sufficiency:

_____
Assistant County Attorney

EXHIBIT A

Continental Homes, Lot 8 Block 6, Plat Book 70-12.

A/K/A: 8240 S.W. 102nd Street, Miami, Florida 33156