

## RECLAIMED WATER USE AGREEMENT

THIS RECLAIMED WATER USE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between **WAKULLA COUNTY, FLORIDA**, (“**County**”) and **WILDWOOD GOLF, LLC**, a Florida Limited Liability Company, (“**Customer**”).

### RECITALS

1. **County** operates a publicly owned wastewater treatment facility capable of producing reclaimed water, which is suitable for irrigation and other applications in accordance with federal, state and local laws, statutes, ordinances, rules, and regulations.
2. **County** desires to supply reclaimed water to **Customer** for reuse purposes in accordance with this Agreement.
3. **Customer** desires to receive, accept, and use such reclaimed water in accordance with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, **County** and **Customer** hereby agree as follows:

1.0 DEFINITIONS: For purposes of this Agreement, the following terms shall have the indicated definitions:

- 1.1 “Applicable Law” shall mean all federal, state and local laws, statutes, and ordinances, and all rules and regulations of any governmental or regulatory agency, applicable to the Reuse Site or the use of Reclaimed Water. The term shall include both current and future laws, statutes, ordinances, rules, and regulations, and all amendments thereto.
- 1.2 “Application System” shall mean the storage, transportation, and irrigation systems constructed, installed, and owned by **Customer**, on the **Customer** side of the Delivery Point that are used for acceptance, distribution and use of the Reclaimed Water. The Application System shall include those improvements and facilities identified in Exhibit A, which is attached hereto and by reference incorporated herein.
- 1.3 “Delivery Point” shall mean the Point of connection to the Reclaimed Water System at which the Reclaimed Water is delivered by **County** and accepted by **Customer** for the intended use. The location of the Delivery Point will be subject to agreement by the parties.
- 1.4 “Delivery System” shall mean all facilities required for transportation of the Reclaimed Water from **County’s** wastewater treatment facility to the Delivery Point.

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- 1.5 “Permits” shall mean all licenses, permits, and other approvals, of any kind whatsoever, from any government or governmental agency, whether federal, state or local, necessary or convenient for the treatment, production, transmission or delivery, storage or use of the Reclaimed Water.
- 1.6 “Reclaimed Water” shall mean the treated effluent produced by **County**’s wastewater treatment facilities which is transported by **County** to the Delivery Point for reuse by **Customer**.
- 1.7 “Reuse Site(s)” shall mean that certain real property on which **Customer** will reuse the Reclaimed Water. Each Reuse Site will be determined and agreed upon by the **County** and **Customer**.
- 1.8 “Treatment Facility” shall mean that certain facility for the processing of Reclaimed Water provided to **Customer** under this Agreement.

### 2.0 TERM

**County** shall deliver a minimum of 340,000 gallons per day to the Delivery Point located at the existing pond near the South edge of the property along US Highway 98. (Pond is specifically situated at 30 degrees, 07 minutes and 44.52 seconds North and 84 degrees, 21 minutes and 36.82 seconds West), and **Customer** shall accept and use the Reclaimed Water as provided in this Agreement for a period of twenty (20) years (“Initial Term”) commencing on the date that the Reclaimed Water is first delivered to **Customer** by **County**. **Customer** agrees to accept and dispose of a maximum of 1,000,000 gallons of reuse water per day from the County upon the terms outlined in sections 7.1 through 7.6 of this agreement. One Hundred and Eighty (180) days prior to the end of the Initial Term and any subsequent extension of that Initial Term, the parties shall attempt to negotiate an extension, or further extension, of this Agreement and the price to be paid for the Reclaimed Water during such extension period. If the parties are not able to successfully negotiate an extension and applicable price for the Reclaimed Water prior to the end of the Initial Term or any subsequent extension thereof, this Agreement shall terminate on the last day of the Initial Term or subsequent extension thereof.

### 3.0 USE OF RECLAIMED WATER

- 3.1 **Customer** shall use Reclaimed Water delivered by **County** for irrigation purposes to offset existing ground water withdrawals as permitted by the Northwest Florida Water Management District and approved by the Florida Department of Environmental Protection (FDEP) within the Reuse Site and for any other purposes permitted by Applicable Law. **County** shall deliver to **Customer** and **Customer** agrees to accept a minimum volume of approximately 124,100,000 gallons of Reclaimed Water per year
- 3.2 **Customer**, for the term of this agreement, shall not sell, lease, convey, or transfer any portion from Water Use permit Numbers T199500427, T199500027, T199500428, T199501218, T199502274 and T199407347

- or their subsequent renewal or modification, to any other permit, person or entity, any right of use, authorization, or quantity of ground water which is not required to meet demand as a result of this reuse water agreement.
- 3.3 **Customer** represents and warrants that it will not apply, deliver or allow the discharge of any reclaimed Water in any manner other than that specified in this Agreement.
  - 3.4 **Customer** shall construct and install an Application System adequate to accept and properly reuse the volume of Reclaimed Water provided by **County**.
  - 3.5 **Customer** will comply with all applicable federal, state and local laws, rules, regulations and guidelines, related to the performance under this Agreement.
  - 3.6 **Customer** shall not resell or transfer any portion of the Reclaimed Water or allow it to be used for potable water uses.
  - 3.7 Indemnification: To the extent permitted under Section 78.28, Florida Statutes, the **County** agrees to indemnify and hold harmless **Customer** from and against all liabilities, claims, damages, expenses or actions, either at law or equity, caused or incurred as a result of the negligent or wrongful act or omissions by the **County**, its agents, employees, or other persons whose acts or omissions the **County** may be liable during the **County's** performance under this Agreement.
  - 3.8 To the extent permitted under Section 78.28, Florida Statutes, the **Customer** agrees to indemnify and hold harmless **County** from and against all liabilities, claims, damages, expenses or actions, either at law or equity, caused or incurred as a result of the negligent or wrongful act or omissions by the **Customer**, its agents, employees, or other persons whose acts or omissions the **Customer** may be liable during the **Customer's** performance under this Agreement.

#### 4.0 TREATMENT AND DELIVERY OF RECLAIMED WATER

- 4.1 Treatment Facility: **County** shall design, permit, construct, operate and maintain the Treatment Facility, which shall be capable of producing Reclaimed Water for public access reuse in conformance with Applicable Law.
- 4.2 Quantity of Reclaimed Water: To the extent possible per engineering standards and naturally available to treat, **County** shall provide to the Delivery Point a total, minimum volume of approximately 124,100,000 gallons of Reclaimed Water per year, at an average rate of approximately 340,000 gallons per day, during the term of this Agreement.
- 4.3 Reclaimed Water Quality: All Reclaimed Water delivered under this Agreement shall conform to current applicable water quality standards in applicable Laws and in applicable Permits. **County** shall perform required water quality monitoring as required by 62.610 FAC and will promptly notify **Customer** when the Reclaimed Water does not meet, or has a

significant potential of failing to meet, such quality standards. **County** shall be responsible for the cost and labor of all testing of the Reclaimed Water and shall pay for any monitoring which is required, including the installation of monitoring wells and soil tests. Should **Customer** desire to monitor water quality, **County**, upon written request by **Customer**, shall grant **Customer** reasonable access to its wastewater treatment facilities for the collection of samples. **County** shall not be responsible for injury or damages incurred by **Customer**, its employees, servants, representatives, or agents while on **County's** property. **Customer** shall not be responsible for injury or damages incurred by **County**, its employees, servants, representatives, or agents while on **Customer's** property.

- 4.4 Delivery System: **County** shall design, permit, own, construct, operate and maintain the portion of the Delivery System from the Reclaimed Water discharge point at the Treatment Facility to the Delivery Point and shall obtain and maintain any and all Permits necessary for the production of the Reclaimed Water and its delivery to the Delivery Point. The Delivery Point, Meter Location, and Testing Site will be established near the southwest corner of the **Customer's** property, **County's** responsibility for ownership and maintenance will terminate at the edge of the right-of-way.
- 4.5 Reuse Sites: Reuse Sites will be determined and agreed upon by the **County** and **Customer**, and such other areas as may be approved by the **County**.
- 4.6 Application System: **County** shall, at its own expense, design, permit, construct, own, operate and maintain the conveyance system to connect the two existing lined ponds on **Customer's** property with each other in such a manner as to allow both ponds to be used as additional storage capacity for the **County's** reuse system, using only one delivery point. **Customer** shall, in accordance with the terms of this Agreement and at no cost to the **County**, design, permit, construct, own, operate and maintain the Application System, including without limitation all taps and connections thereto, in a manner that complies with all Applicable Laws and Permits. All pumping stations, mains, lines and other facilities necessary to transport the Reclaimed Water from the Delivery Point, to store the Reclaimed Water pending reuse, and to reuse the Reclaimed Water shall at all times remain the sole, complete, and exclusive property of, and under the control of, **Customer** during the term of this Agreement and **Customer** shall be responsible for maintenance of the same. If any portion of the **Customer's** application system fails, the **Customer** shall be responsible to repair or replace such parts within 30 days, failing which **County** may, at **Customer** expense, repair or replace such parts as to have the application system operational.
- 4.7 Metering: **County** shall provide a meter for installation at the Delivery Point so that the volume of Reclaimed Water delivered may be measured. **County** shall be responsible for installing the **County** furnished meter and providing and installing the necessary pipes, valves, strainer, fittings, drains, cover, box, and appurtenances necessary to connect the Application System to the Delivery System at the Delivery Point, at the **County's** expense. The meter

shall be tested by **County** for accuracy at its discretion or upon request by **Customer**, and test results shall be provided to both parties. If the test is requested by **Customer** and the meter is found to be operating properly and recording Reclaimed Water flows within acceptable industry standards for accuracy, the cost of such testing shall be paid by **Customer**; otherwise, the cost of such testing shall be paid by **County**.

- 4.8 Delivery under Adverse Conditions: Both parties recognize that adverse weather conditions or unforeseen circumstances may result in a need for greater (or lesser) volumes of Reclaimed Water than provided for in this Agreement. In such event, **Customer** shall have the right to request additional volumes of Reclaimed Water, and **County** will attempt to provide such volumes, subject to reasonable availability, but will not be obligated to provide such volumes. If the Delivery System or the Treatment Facility fails or requires maintenance or repairs, the delivery of Reclaimed Water under the requirements of this Agreement may be interrupted or limited in quantity. In such event, **Customer** may be required to provide an alternate water source for irrigation as needed, until the emergency situation is corrected. For this reason, **Customer** shall not abandon their wells, but rather maintain them in a standby mode. The permit for **Customer**'s well should be kept in place but modified to be on standby so that it can be used in the event of situations described above.
- 4.9 Systems Charges and Tap Fees: No system charges shall be applicable to **Customer** in relation to delivery and reuse of Reclaimed Water under this Agreement. **Customer** shall be responsible for installation of all approved taps or connections to Delivery System; therefore, no tap fees shall be applicable to this Agreement.

## 5.0 COUNTY PROPERTY

- 5.1 County Property: Materials purchased and installed by the **County** on the **Customer**'s property as project costs, remain the property of the **County** for the term of this Agreement. **Customer** will have the use of **County** property for the authorized purpose of this Agreement. Both parties understand and agree that the provisions of this section will survive termination of this Agreement for any reason.
- 5.2 **Customer** is responsible for the implementation of adequate maintenance procedures to keep **County** property in good operating condition.
- 5.3 Upon termination of this Agreement, through default by **Customer**, the **County** may elect, in its sole discretion, to accept from **Customer** the return of all or any portion of **County** property, or to receive payment from **Customer** of an amount equal to the full purchase price, less depreciation calculated on straight-line basis using a twenty (20) year life, commencing upon the date construction is complete, unless terminated or amended in writing by the parties, for all or any of the **County** property.

- 5.4 Non-Profit Through Sale: **Customer** will deduct an amount equal to **County** funding, minus accumulated depreciation, for all or any portion of the project from the sale price if at any time after the effective date of this Agreement the **Customer** divests itself of assets encompassing all or any portion of the project. Depreciation will be calculated on a straight-line basis using a twenty (20) year life, commencing upon the date construction is completed, unless terminated or amended in writing by the parties, for all or any of the **County** property.
- 5.5 Right to Access and Use Irrigation System: In the event of a natural disaster or other unforeseen circumstances, and under the **Customer's** supervision, the **County** shall have the express and implied warranty to access and operate, at the **County's** expense, the **Customer** irrigation system in a manner that will allow the **County** to maintain compliance with all applicable federal and state permits.
- 5.6 Indemnification: **Customer** shall indemnify and hold **County**, its officials, officers and employees, harmless from any and all claims, actions, losses, liability, suits, proceedings, costs, expenses, and damages arising from its application, use, discharge or disposition of the Reclaimed Water, except to the extent the Reclaimed Water fails to meet water quality standards of Applicable Laws and applicable Permits when initially delivered to the Delivery Point. Such costs and expenses shall include, but shall not be limited to, reasonable attorneys' fees and all costs of defense and litigation, including appellate proceedings.
- 5.7 Assignment: This Agreement shall not be assigned by **Customer** without prior written consent of **County**, provided, however, that such assignment shall not relieve **Customer** of any limitation, duty, responsibility, or other obligation imposed on **Customer** by this Agreement until such time as **County** approves the assignment.
- 5.8 Easements: The **Customer** shall convey all appropriate easements to the **County** that shall remain in effect for the duration of this Agreement.

## 6.0 LIABILITY OF COUNTY

**County** shall not be liable or responsible to **Customer** or to any other person as a result of any damage or injury to property or person caused or arising in any way as a result of acts of God, strikes, walkouts, or other industrial disturbances, acts of public enemy, wars, blockades, riots, acts of Armed Forces, epidemic, delays by carriers, inability to obtain materials or right-of-way on reasonable terms, acts of public authorities, acts of vandals or other third parties, or any other causes whether or not of the same kind enumerated herein, which are not reasonable within the control of **County**. Further, in no event shall **County** be liable to **Customer** or to any other person for any consequential, incidental, or punitive damages as a result of damage or injury to property or persons, regardless of whether such damage or injury was the result of acts or failures to act of **County**, its officers, elected officials, employees, agents, and other persons acting under its direction or control, or third parties. If suit is brought against **Customer** by any

individual or entity claiming damages as a result of water quality issues that can be traced to the reuse water delivered to **Customer** by **County**, **County** agrees to join in the suit to defend **Customer** and be responsible for all costs of any defense or litigation.

## 7.0 PAYMENT TO COUNTY FOR RECLAIMED WATER

- 7.1 For the first two years, commencing on the date that the Reclaimed Water is first delivered to **Customer** by **County**; there will be no charge for reclaimed water delivered by **County** to **Customer's** Delivery Point in order for **Customer** to recover costs associated with the modifications/additions to their Application System.
- 7.2 Beginning the 25<sup>th</sup> month through and including the 48<sup>th</sup> month following the date that the Reclaimed Water is first delivered to **Customer** by **County**, **County** will bill **Customer** a monthly usage charge based on the meter reading of the meter described in 4.7 above. The base rate per 1,000 gallons of Reclaimed Water delivered to the **Customer's** Delivery Point will then be \$0.02, as adjusted per 7.5 below, for the initial 340,000 gallons per day for the months of March, April, May, June, July, August and September and for the initial 200,000 gallons per day for the months of October, November, December, January and February. All amounts received by **Customer** at the delivery point in addition to these amounts will be at no cost to **Customer**.
- 7.3 Beginning the 49<sup>th</sup> month through and including the 120<sup>th</sup> month following the date that the Reclaimed Water is first delivered to **Customer** by **County**, **County** will bill **Customer** a monthly usage charge based on the meter reading of the meter described in 4.7 above. The base rate per 1,000 gallons of Reclaimed Water delivered to the **Customer's** Delivery Point will then be \$0.04, as adjusted per 7.5 below, for the initial 340,000 gallons per day for the months of March, April, May, June, July, August and September and for the initial 200,000 gallons per day for the months of October, November, December, January and February. All amounts received by **Customer** at the delivery point in addition to these amounts will be at no cost to **Customer**.
- 7.4 Beginning the 121<sup>st</sup> month through the remainder of this agreement, **County** will bill **Customer** a monthly usage charge based on the meter reading of the meter described in 4.7 above. The base rate per 1,000 gallons of Reclaimed Water delivered to the **Customer's** Delivery Point will then be \$0.06, adjusted per 7.5 below, for the initial 340,000 gallons per day for the months of March, April, May, June, July, August and September and for the initial 200,000 gallons per day for the months of October, November, December, January and February. All amounts received by **Customer** at the delivery point in addition to these amounts will be at no cost to **Customer**.
- 7.5 The rate per 1,000 gallons of Reclaimed Water may be adjusted from time to time when **County** can show that the costs associated with the delivery of the

Reclaimed Water warrant an adjustment. However, the rate will never be allowed to increase more than the percent reflected in the Consumer Price Index (CPI) for the period of time since the last adjustment in the usage rate.

- 7.6 Payment for Reclaimed Water will be made to **County** within 30 days of receipt of the monthly invoice. Payments not made within thirty days shall incur late charge of 1.5% per month. The **County** may use any remedy at law available to them for failure of **Customer** to pay the monthly invoice when due.

## 8.0 EXCLUSIVE RIGHT OF COUNTY

**Customer** hereby agrees that it will not contract or otherwise agree with any person other than **County** for the disposal, delivery or application of reclaimed water on or to the Reuse Site unless such contract or agreement is approved by the **County**.

## 9.0 DISCLAIMER OF WARRANTIES

**County** disclaims all express warranties and specifically does not represent or warrant that the Reclaimed Water delivered to **Customer** shall increase productivity of the Reuse Site(s) or result in any changes to the land, crops or vegetation. Further, the water quality analysis or treated wastewater samples during negotiations leading to this Agreement served merely to indicate the general quality of Reclaimed Water which will be delivered to **Customer** and create no warranty that the Reclaimed Water delivered by **County** will conform thereto. **County** further disclaims any implied warranties of merchantability or fitness of the Reclaimed Water delivered under this Agreement for any purposes.

## 10.0 MISCELLANEOUS

- 10.1 This Agreement, together with all amendments and addenda hereto if any, sets forth all of the rights and duties of the Parties with respect to the subject matter hereof, and replaces any and all previous Agreements or understandings, whether written or oral, relating thereto. All amendments hereto shall be in writing and signed by persons duly authorized to bind the Parties.
- 10.2 Signature of any persons to this Agreement shall be deemed a representation that the signatory is duly authorized to bind the party for which that signatory purports to act.
- 10.3 This agreement was made and executed in Wakulla County, Florida, and shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida. Venue for any litigation between the parties shall be in the courts of Wakulla County, Florida.
- 10.4 Headings used in the Agreement are solely for the convenience of the parties, and the parties agree that they shall be disregarded in the construction of this Agreement.

- 10.5 **Customer** further agrees that it shall cause any party that undertakes the care and maintenance of the Reuse Site to agree in writing to be bound by all agreements, limitations, duties, responsibilities and other obligations imposed on **Customer** by this Agreement.
- 10.6 All notices required or authorized under this Agreement shall be given in writing and shall be served by mail or by hand delivery to the parties at the addresses listed below:

**To County:**

Benjamin H. Pingree, County Administrator  
Wakulla County  
P.O. Box 1263  
Crawfordville, Florida 32326

**To Customer:**

Wildwood Country Club  
3870 Coastal Highway  
Crawfordville, Florida 32327

- 10.7 The failure of either party to insist upon the other party's compliance with its obligation under this Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.
- 10.8 If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, this Agreement is declared severable.
- 10.9 Nothing in this Agreement will be construed to benefit any person or entity not a party to this Agreement.
- 10.10 In the event litigation is necessary to enforce this agreement, the prevailing party shall be entitled to an award of cost and reasonable attorney fees.

IN WITNESS THEREOF, **County** and **Customer** have caused this Agreement to be executed by their duly authorized representatives effective the year and day first set forth above.

Attest:

WAKULLA COUNTY

\_\_\_\_\_  
Brent X. Thurmond  
County Clerk

By: \_\_\_\_\_  
Howard Kessler  
County Chairman, BOCC

SEAL

\_\_\_\_\_  
Witness as to **Customer**

Wildwood Golf, LLC  
A Florida Limited Liability Company

\_\_\_\_\_  
Witness as to **Customer**

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
(Type or print name and title of signatory)

\_\_\_\_\_  
Ron Mowrey  
**County Attorney**