

# EXHIBIT J

RESOLUTION NO. 35-78

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION NO. 16-78, AS AMENDED BY RESOLUTIONS NO. 19-78 AND NO. 20-78, RELATING TO THE APPLICATION OF SANDER B. WEINSTOCK FOR TENTATIVE APPROVAL OF A PLANNED UNIT DEVELOPMENT, RESTATING THE CONDITIONS UPON WHICH TENTATIVE APPROVAL WAS GRANTED, AND GRANTING FINAL APPROVAL OF SAID PLANNED UNIT DEVELOPMENT AS TO PHASES I AND III.

o o o

WHEREAS, SANDER B. WEINSTOCK submitted an application on or about October 31, 1977 for tentative approval of a planned unit development for certain real property upon which he holds a contract to purchase consisting of approximately 26.6 acres and more particularly described as follows, to-wit:

The South 176.0 feet of Lot 110, all of Lots 111 through 119 inclusive and the North half of Lot 120, PALM BEACH ESTATES, as recorded in Plat Book 8, page 3, Public Records of Palm Beach County, Florida,

EXCEPTING THEREFROM the following 100' x 200' parcel:

BEGINNING at a point on the easterly line of a public right-of-way 100.0 feet wide known as State Road 1A, said point being the North line of Lot 120 of said PALM BEACH ESTATES, run thence South 88°03'26" East 200.0 feet; thence South 1°41'34" West 100.0 feet; thence North 88°03'26" West 200.0 feet; thence North 1°21'34" East 100.0 feet to the POINT OF BEGINNING,

said application and the supporting documentation submitted therewith having been submitted in accordance with the provisions of Article VII of Ordinance 2-74, as amended, and;

WHEREAS, the Zoning Commission of the Town of Palm Beach reviewed said application and filed a report, and the Town Council thereafter conducted public hearings with respect to said application on February 23, March 9, March 14 and April 18, 1978, at which time all interested parties were afforded an opportunity to be heard, and;

WHEREAS, the Town Council in accordance with Section 7.33 of Ordinance 2-74, as amended, did make the following findings of fact which were included within Resolution No. 16-78, to-wit:

1. The Planned Unit Development Plan, as submitted and thereafter amended, is basically consistent with the statement of general objectives of a planned unit development as set forth in Section 7.10, except as enumerated in paragraph 2 below.

2. The Planned Unit Development Plan, as submitted and amended, departs from the principles contained within the comprehensive plan and its implementing zoning ordinance and, in the opinion of the Town Council, such departures are not deemed to be in the public interest. The departures include, but are not limited to the following:

(a) The bulk of the westernmost structures proposed for Phases I and II is excessive, thereby producing an oppressive walled-in effect upon the public in a transition zone.

(b) Although the Planned Unit Development Plan, as submitted and amended, does include an adequate amount of open space, common open space, and landscaped open space located in a satisfactory manner, the proposed plan does not include adequate provisions to insure that said open space areas will be maintained as such.

(c) The Planned Unit Development Plan, as submitted and amended, makes adequate provision for public services, furthers the amenities of light and air, recreation and visual enjoyment except insofar as physical and visual penetration to the beach area is concerned, but does not provide adequate control over vehicular traffic.

(d) The Planned Unit Development Plan, as submitted and amended, is not compatible with the neighboring development existing to the North in that the buildings are not adequately landscaped-screened.

(e) The Planned Unit Development Plan, as submitted and amended, does not assure adequate space between buildings within Phases I and II, thus posing the threat of having an adverse effect upon the neighborhood.

(f) The Planned Unit Development Plan, as submitted and amended, does not assure adequate front yard setbacks in Phases I and II, thus posing the threat of having an adverse effect upon the neighborhood.

(g) The Planned Unit Development Plan, as submitted and amended, contemplates a vertical wall approximately 10 feet high along a significant part of the property line and does not provide adequate protection for the abutting public property to the south and will have an adverse effect upon such public property.

(h) The Planned Unit Development Plan, as submitted and amended, includes an extra story not otherwise permitted by the zoning regulations, which extra story is characterized as a "basement". Adequate limitations on the use of these "basements" is not included within the Plan.

(i) The Planned Unit Development Plan, as submitted and amended, does not include adequate provisions for the limitation of use of the area lying West of State Road 11A.

(j) The Planned Unit Development Plan, as submitted and amended, does not include adequate provisions for time-phasing constraints over a period of years, including sufficient performance bonds as necessary.

(k) The Planned Unit Development Plan, as submitted and amended, does not include adequate provisions for the protection of the natural beach dune vegetation, and further, as proposed, does pose a serious threat to the ocean-front dune.

(l) The Planned Unit Development Plan, as submitted and amended, will not protect the interests of the public and the residents and owners of the proposed Planned Unit Development unless the Plan is modified as hereinafter suggested.

and

WHEREAS, the Town Council, after deliberation and after carefully evaluating both the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, did find in Resolution No. 16-78 that the Planned Unit Development Plan was in the best interests of the Town of Palm Beach, and did grant tentative approval to said Plan subject to certain conditions therein set forth; and

WHEREAS, certain of the conditions imposed by the Town Council as set forth in Resolution No. 16-78 were subsequently modified and amended by Resolutions No. 19-78 and No. 20-78; and

WHEREAS, the Plan submitted by Sander B. Weinstock for Final Approval of Phases I and III contains certain variations from the Plan tentatively approved by Resolution No. 16-78, and as thereafter amended by Resolutions No. 19-78 and No. 20-78, but that said variations have been found by the Town Council to be in conformity with the principles contained within the comprehensive plan and to be in the public interest and to better protect the interests of the public

and residents and owners of the proposed Planned Unit Development provided that the conditions hereafter stated are fully complied with; and

WHEREAS, it is desirable that all of the conditions imposed by the Town Council as set forth in Resolutions No. 16-78, No. 19-78 and No. 20-78 and which remain applicable to the Final Approval of Phases I and III as well as the tentative approval of Phase II of said Planned Unit Development be restated for purposes of clarity;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1.

That Phases I and III of the plan for Planned Unit Development as submitted by Sander B. Weinstock on October 31, 1977, and as thereafter amended, for the property commonly referred to as "Parcel 1, Sloan's Curve" be granted Final Approval, and that Phase II be granted tentative approval, all subject to the following conditions not included within said Plan as submitted:

"Condition No. 1 - Phase III - 'Town Houses and Single Family Dwellings' Plan Modification.

A. The Phase III development is approved in principle as shown on the Plan presented to the Town Council on September 20, 1978, marked Exhibits 'D' and 'E'. The minimum paved street width of the private street shown on the Exhibit drawing for Phase III shall be 24 feet.

B. The Single Family project 'Zero Datum' for measuring the heights of the single family residences as proposed in Phase III shall be + 7.5, United States Coastal and Geodetic Survey Datum.

C. No single family dwelling in Phase III shall exceed a height of 35 feet above the Zero Datum of + 7.5 United States Coastal and Geodetic Survey Datum. Additionally, the height of each single family dwelling proposed in Phase III shall not be higher than 25 feet above the average finished

grade of the lot upon which it is located. Further, no single family dwelling in Phase III shall exceed two stories in height, but such dwelling may have an underground automobile parking basement, provided that it fully complies with the definition of a basement as contained in the Town's Zoning Ordinance.

D. In the event that the single family dwellings proposed to be constructed on the single family lots in Phase III do not comply in every respect to all 'RB' district zoning regulations contained in the Town's Zoning Ordinances (other than the provision governing the minimum width of a lot fronting on a private road), then each variance from said 'RB' regulations must first be approved by the Town Council before a permit is issued by the Town Building Department.

E. The Town House project 'Zero Datum' for measuring the height of the townhouses as proposed in Phase III will be + 19.0', United States Coastal and Geodetic Survey Datum. The townhouses shall not exceed two stories and/or 30 feet in height above said townhouse project Zero Datum.

F. No screen enclosures shall be constructed over swimming pools or yard areas in Phase III.

G. The Applicant acknowledges that the Town cannot furnish police enforcement of any type of automobile parking regulation on the private roads contained within Phase III and will so advise the purchasers of units contained within this Phase".

"Condition No. 2 - Phase III - Garden Wall and Landscape Plan Modification.

The 4-foot high tiered garden wall adjacent to the public road right of way as depicted in Exhibit 'E' to be located in Phase III bordering Sloan's Curve, shall be situated not less than 6 feet inside of the property line to permit landscaping on the street side of the wall. Said landscaping shall include shade trees placed outside of the wall at sufficient intervals, in the opinion of the Town officials, to serve as an effective visual buffer. (See Exhibit #9, 'Typical Section', as revised by Exhibits 'D' and 'E', for the type of landscape treatment required on the street side of the wall.)"

"Condition No. 3 - Phase I and Phase II - Building Spacings and Height.

The two buildings in Phase I shall have the project Zero Datum elevation of said buildings measured from + 19', United States Coastal and Geodetic Survey Datum, said buildings shall have a maximum of six stories of apartments, plus a basement story; the total building height shall not exceed 65 feet above the Zero Datum. The two buildings in Phase II shall have the project Zero

Datum elevation of said buildings measured from + 19', United States Coastal and Geodetic Survey Datum, said buildings shall have a maximum of five stories of apartments, plus a basement story; the total building height shall not exceed 55 feet above the Zero Datum".

"Condition No. 4 - Phase I and Phase II - Front Yard Setbacks.

Front yard setbacks for the two buildings in Phase I shall have a minimum front yard setback of 225 feet. Front yard setbacks for the two buildings in Phase II shall have a minimum front yard setback of 200 feet. The maximum east-west dimension of all buildings in Phases I and II shall not exceed 210 feet".

"Condition No. 5 - Building Design at South Property Line.

At the south property line abutting Phipps Ocean Park, the Applicant's side yard setback area which extends from said south property line to the proposed underground parking structure shall have a berm installed at a slope no steeper than one horizontal to one vertical; said berm shall extend from the finished grade at the top of the parking structure to a point not to exceed two feet above the existing ground level of Phipps Ocean Park; said berm shall be retained by a 4 foot high retaining wall, measured from the existing grade level on Phipps Ocean Park side; and said wall shall extend 2 feet above the finished grade line on the Applicant's side. This berm must be landscaped with natural plant growth and must be maintained at all times in a proper manner. No external illumination from any garage, driveway or parking lot shall unduly affect the use of the Park".

"Condition No. 6 - Trespassing at South Property Line.

The Applicant must agree that there will be no trespassing by Applicant or his agents, either accidentally or intentionally, nor will there be any deposit of soil or building materials on the Phipps Ocean Park property during the course of the proposed construction. Further, there shall be no permanent accessibility point provided from the Applicant's property to the Phipps Ocean Park property".

"Condition No. 7 - Basement Uses.

Uses of basements in all buildings shall be limited to entrance foyers, pool cabanas, sauna and exercise rooms, storage and utility rooms, transformer vaults, entrances to parking areas, one resident manager's office in Phase I and Phase II and other uses not involving 'Habitable space' as defined in Ordinance 2-74, as amended".



"Condition No. 8 - Conceptual Landscape Plan Design.

The Conceptual Landscaping Plan, identified as Exhibits #10 and #11, and the remarks made by Mr. Bradshaw of Walter Taft Bradshaw and Associates, Inc. at the Town Council meeting of March 9, 1978, as reported in the official court reporter's transcript of said meeting, are made a part of the record as a substantive assurance of what will be accomplished by the landscaping at the time of the issuance of the Town's Certificate of Occupancy. However, due to extensive modifications in building location, the Conceptual Landscape Plan as submitted will have to be updated and a new Conceptual Landscape Plan submitted by the Applicant for approval by the Town Council prior to the issuance of any building permits. In order to obtain approval, the new Conceptual Landscape Plan must show the same quality of landscape treatment, must be annotated in the same manner as to details, and must achieve the same objectives as the original Conceptual Landscape Plan. Upon approval of this new Conceptual Landscape Plan, said Plan will replace the Conceptual Landscape Plan identified as Exhibits #10 and #11 referred to herein, and referred to in Conditions 9, 10, 11 and 12. There will be no requirement by the Town for additional landscaping west of State Road 1A. To achieve the purpose of protecting the community during construction of Phase III 'Town Houses', the perimeter visual sight screen planting and garden wall proposed on the Conceptual Landscape Plan shall be installed immediately following the lot clearing and removal of natural vegetation in connection with the commencement of construction of Phase III".

"Condition No. 9 - Large Structure Trees.

The Conceptual Landscape Plan, identified in Condition No. 8 above, contains reference to 'Large Structure Trees', which term identifies certain trees on said Plan, and said term shall be defined as trees having a height of not less than 15 feet and a spread of not less than 12 feet at the time of planting. Minor variations from this requirement may be permitted for certain species of trees, but not as a general rule. It shall be the general intention of the landscaping requirements that the buildings and activities within the Planned Unit Development be visually buffered to the maximum extent possible from external view".

"Condition No. 10 - Detailed Landscaping Plan - Initial Approval.

No Town building permit to commence construction will be issued until a detailed landscaping plan has been submitted to and approved by the Town Council, which plan shall meet the requirements of the Conceptual Landscape Plan and objectives outlined by Mr. Bradshaw, as fully specified in Condition No. 8 above, and which shall include sizes,

The driveway to Town Houses and Single Family Dwelling phase III shall be eliminated, and access to phase III shall occur through phases I and II. The intent of this condition is to have only two driveway entrances/exits from State Road A1A to the entire PUD-B Development. The northernmost of said entrance/exit driveways shall not occur northward of the center line of Phase II. Internal driveways shall provide access to all phases".

"Condition No. 15 - Driveway Entrance/Exits"

The design architect shall give particular attention to an architectural design in phases I and II which will preclude a monotonous repetition of the architectural style of buildings now located south of Sloan's Curve. The Town's Architectural Commission is requested to give special consideration to this matter when reviewing each phase of this project".

"Condition No. 14 - Architectural Style of Buildings"

There shall be no construction of any nature permitted west of State Road A1A, including tennis courts, nor vehicular parking".

"Condition No. 13 - Area West of State Road A1A"

In furtherance of Conditions No. 1, No. 2 and No. 8 as set out herein, it is a specific condition that the landscaping along Sloan's Curve, as presented by Mr. Bradshaw, shall include a tiered type of landscaping with large structure trees acceptable to the Town Building Official and the president of the Town Council. This type of landscape treatment is shown on the exhibit entitled 'Vegetation Profile from A1A' in numbered areas 1, 2 and 3, and as revised by Exhibits 'D' and 'E'".

"Condition No. 12 - Tiered Landscaping - Sloan's Curve"

No Town Certificate of Occupancy will be issued for any phase until Town officials, by final site inspection, have determined that the landscaping, as provided for that phase, meets the specifications of said council-approved landscape plan".

"Condition No. 11 - Landscape Plan - Final Site Inspection"

numbers and distances on center for hedges and trees, and shall include other pertinent information as required by the Town Council. Concurrent with the issuance of said Building Permit, the applicant shall secure, as evidenced by contract, all of the plant material specified on the plan at 4 feet or more in height which will be needed for implementing said landscape plan. Furthermore, said landscaping shall be reserved for exclusive use of the Applicant. Evidence of said reserved exclusive use must be provided to the Town".

"Condition No. 16 - Order of Construction Commencement.

The Applicant agrees that Phase I 'Apartments' and the Townhouses in Phase III 'Townhouses and Single Family Dwellings' shall be commenced simultaneously. Further, that no permit may be issued for the commencement of construction for Phase II 'Apartments' until fifty (50) per cent of the total number of townhouse units in Phase III 'Townhouses and Single Family Dwellings' are dried-in (roofing is weather-tight)".

"Condition No. 17 - Dune Preservation.

No portion of the land area or vegetation east of the 'Dune Protection Line' shown in red pencil on the Applicant's Exhibit A submitted to the Town Council on May 2, 1978 shall be disturbed. This 'Dune Protection Line' shall be permanently monumented by the Applicant to the satisfaction of the Town. A 10-foot high barbed wire fence shall be constructed by the Applicant parallel to and not less than 2 feet westward from the 'Dune Protection Line', such fence to extend from the South to the North line of the Applicant's property and to be maintained in good condition throughout each of the three phases of construction. Provided, however, that upon the completion of each construction phase (or if access to the beach area is required during construction) fencing in front of the applicable phase may be removed subject to the installation of walkways as hereinafter provided and fence returns to preserve the integrity of the fencing in front of the remaining phases where construction has not been completed. Any disturbance or damage to the area east of said 'Dune Protection Line' shall be immediately repaired and restored by the Applicant prior to the continuation of construction. Further, Applicant shall pay to the Town for each such disturbance during construction which is attributable to the Applicant the sum of \$10,000 as and for liquidated damages, the extent of actual damages for such disturbance not being easily ascertainable due to the fragile nature of dune area and vegetation east of said dune and the uncertain nature of the corrective action which may be required to repair or correct such disturbance. All access to the beach over the 'Dune Protection Line' shall be by walkways shown on a drawing submitted to the Building Official prior to the construction of such walkways".

"Condition No. 18 - Provision of Utility Easements and Facilities and Attributable Costs.

The Applicant agrees to provide necessary utility easements for all the existing and proposed Town-owned and private utility-owned facilities which are essential to serve the development. Furthermore, the Applicant or his assigns shall be responsible for its pro-rata share of traffic and/or

No. 16-78 as amended by Resolution No. 19-78 and Resolution

All other items and conditions of said Resolution

Section 4.

time of submission.

drawings and specifications as required by the Town at the

application for final approval of phase II, shall submit all

The applicant, at the time of submission of the

Section 3.

cessory structures and uses.

of the property with apartment ac-

Consisting of the two principal resi-

42 months

Phase II

area of the property.

Consisting of town houses and single

12 months

Phase III

tures and uses.

Consisting of southernmost two

12 months

Phase I

Maximum Time After Date  
of Tentative Approval

Filing applications for final approval:

The following periods of time are established for

Section 2.

The applicant shall provide a deed restriction in  
the form of a covenant running with the land which  
will guarantee the retention of the area of land  
shown as 'open space' and/or 'landscaped open space'  
in phases, I, II and III as permanent open space,  
unless the Town Council should, upon application  
of the landowner, amend said plan with respect to  
said open space areas".

"Condition No. 19 - Open Space Covenants.

public utility improvement cost borne by the Town  
and directly attributable to the proposed develop-  
ment. The applicant's share shall not exceed a  
fraction of the costs involved, the numerator of  
which fraction is the proposed number of dwelling  
units in the project and the denominator of which  
is the total number of dwelling units served or  
benefited by the improvement whether directly or  
indirectly. Said costs shall be determined prior  
to issuance of a building permit for each phase".

No. 20-78 are ratified and confirmed except as herein modified.

Section 5.

The Town Clerk is directed to furnish a certified copy of this Resolution, by certified mail, to the Applicant.

PASSED AND ADOPTED in regular, adjourned session assembled on the 10th day of October, 1978.

Walter L. Ketchum  
Michael P. Johnson  
Robert McGee  
Charles H. Wainwright  
Thom M. Neenan  
Town Council

APPROVED:

William B. Cudde  
Mayor

ATTEST:

Grace J. Peters  
Town Clerk

# EXHIBIT K

RESOLUTION NO. 27 -79

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION NO. 16-78, AS AMENDED BY RESOLUTION NOS. 19-78, 20-78, AND 35-78, RELATING TO THE APPLICATION OF SANDER B. WEINSTOCK FOR TENTATIVE AND FINAL APPROVAL OF A PLANNED UNIT DEVELOPMENT; RE-ADOPTING THE CONDITIONS UPON WHICH TENTATIVE APPROVAL WAS GRANTED; AMENDING CONDITIONS NOS. 14 AND 16 OF SAID TENTATIVE APPROVAL; AND GRANTING FINAL APPROVAL OF SAID PLANNED UNIT DEVELOPMENT AS TO PHASE II, SUBJECT TO SAID CONDITIONS AND AMENDED CONDITIONS.

o o o

WHEREAS, Sander B. Weinstock submitted an application on or about October 31, 1977 for tentative approval of a planned unit development for certain real property upon which he holds a contract to purchase consisting of approximately 26.6 acres and more particularly described as follows, to-wit:

The South 176.0 feet of Lot 110, all of Lots 111 through 119 inclusive, and the North half of Lot 120, PALM BEACH ESTATES, as recorded in Plat Book 8, page 3, Public Records of Palm Beach County, Florida,

EXCEPTING THEREFROM the following 100' x 200' parcel:

BEGINNING at a point on the easterly line of a public right-of-way 100.0 feet wide known as State Road 1A, said point being the North line of Lot 120 of said PALM BEACH ESTATES, run thence South 88°03'26" East 200.0 feet; thence South 1°41'34" West 100.0 feet; thence North 88°03'26" West 200.0 feet; thence North 1°21'34" East 100.0 feet to the POINT OF BEGINNING,

said application and the supporting documentation submitted therewith having been submitted in accordance with the provisions of Art. VII of Ordinance No. 2-74, as amended, and;

WHEREAS, the Zoning Commission of the Town of Palm Beach reviewed said application and filed a report, and the Town Council thereafter conducted public hearings with respect to said application on February 23, March 9, March 14 and April 18, 1978, at which time all interested parties were afforded an opportunity to be heard, and;

WHEREAS, the Town Council in accordance with Sec. 7.33 of Ordinance No. 2-74, as amended, did make findings of fact which were included within Resolution No. 16-78; and

WHEREAS, the Town Council, after deliberation and after carefully evaluating both the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, did find in Resolution No. 16-78 that the planned unit development plan was in the best interests of the Town of Palm Beach, and did grant tentative approval of said plan subject to certain conditions therein set forth; and

WHEREAS, certain of the conditions imposed by the Town Council as set forth in Resolution No. 16-78 were subsequently modified and amended by Resolution Nos. 19-78, 20-78, and 35-78; and

WHEREAS, the plan submitted by Sander B. Weinstein for Final Approval of Phases I, II and III contains certain variations from the plan tentatively approved by Resolution No. 16-78, and as thereafter amended by Resolution Nos. 19-78, 20-78 and 35-78, but that said variations have been found by the Town Council to be in conformity with the principles contained within the comprehensive plan and to be in the public interest and to better protect the interests of the public and residents and



owners of the proposed planned unit development provided that the conditions hereafter stated are fully complied with; and

WHEREAS, it is desirable that conditions numbered 1 through 19 imposed by the Town Council as set forth in Resolution Nos. 16-78, 19-78, 20-78 and 35-78, and which remain applicable to the Final Approval of Phases I, II and III of said planned unit development, be hereby confirmed and re-adopted as if the same were included herein, with the exceptions of conditions numbered 14 and 16, which are amended herein;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Sec. 1: -- Phases I, II and III of the plan for a planned unit development as submitted by Sander B. Weinstein on October 31, 1977, and as thereafter amended, for the property commonly referred to as "Parcel 1, Sloan's Curve" be granted Final Approval, all subject to the conditions included within Town Resolution Nos. 16-78, 19-78, 20-78 and 35-78, numbered 1 through 19, excepting however Conditions No. 14 and No. 16, which are hereby amended to read as follows:

"Condition No. 14 - Architectural Style of Buildings.

The design architect shall give particular attention to an architectural design in Phases I and II which will preclude a monotonous repetition of the architectural style of buildings now located south of Sloan's Curve. The Town's Architectural Commission is requested to give special consideration to this matter when reviewing each phase of this project. In order to preserve proper architectural appearance of the buildings at all times, there will be no storm shutters or any other

closures installed at the outside balcony line of the buildings:.

"Condition No. 16 - Order of Construction Commencement

The Applicant agrees that Phase I 'Apartments', and the Townhouses in Phase III 'Townhouses and Single Family Dwellings' shall be commenced simultaneously".

Sec. 2: -- All other items and conditions of said Resolution No. 16-78, as amended by Resolution Nos. 19-78, 20-78 and 35-78 are ratified and confirmed except as herein modified.

Sec. 3: -- The Town Clerk is directed to furnish a certified copy of this Resolution, by certified mail, to the Applicant.

PASSED AND ADOPTED in a regular, adjourned session assembled on the 11th day of September, 1979.

John M. Meulen

Robert M. Grace

Abigail M. Ransom

Walter L. Rattiner

Town Council

APPROVED:

Wash Fitchie  
Mayor

ATTEST:

Grace T. Peters  
Town Clerk

# EXHIBIT L

# SLOAN'S CURVE

2100 SOUTH OCEAN BOULEVARD  
PALM BEACH, FLORIDA 33480  
TELEPHONE: (305) 588-7384, 588-3343



October 7, 1981

Mr. Robert Moore,  
Building Official  
Town of Palm Beach  
P. O. Box 2029  
Palm Beach, FL 33480

Re: Certificates of Occupancy for Phases II & III

Dear Mr. Moore:

The following is agreed as per the meeting among Mr. Hadley, you and me on this date:

- .01 - The Certificates of Occupancy will be issued for our Phases II & III projects regardless of the status of the A1A (South County Road) roadwork, as shown on approved drawing prepared by The Lawrence Group, numbered 7731 and 7733, dated 8/18/80 and approved by the Town of Palm Beach.

The reason that this work will not be completed is that the Town's Public Works Department will not issue work permits for the west portion until FP&L completes the installation of their underground transmission lines in this area.

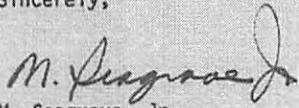
- .02 - We herein agree that upon notification from the Public Works Department, we will continue and complete the roadway work as shown on the above-referenced drawings as expeditiously as possible. Please note that a 30-day curing time is needed on the asphalt before the slurry seal coat and striping can be applied.
- .03 - We have been assured that any damage to the existing sprinkler system, landscaping, etc., caused by the installation of the FP&L transmission line installation will be restored or corrected at no cost to us.

(Cont'd.....)

Mr. Robert Moore,  
Building Official  
Town of Palm Beach  
October 7, 1981  
Page Two

If you have any question on the above or feel that this is not as we agreed, please contact our office immediately.

Sincerely,



M. Seagrave, Jr.

b

cc: S. Weinstock  
D. Jacobson  
S. Hadley  
F. Hamlin (State of Fla. DOT)  
Hyder Paving

# EXHIBIT M

# TOWN OF PALM BEACH UTILITY UNDERGROUNDING ASSESSMENT METHODOLOGY

OCTOBER 13, 2009



## *Florida Office*

7380 Sand Lake Road  
Suite 500  
Orlando, FL 32819  
Tel: (407) 352-3958  
Fax: (888) 326-6864

## *Corporate Office*

27368 Via Industria  
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## *Regional Offices*

Phoenix, AZ  
Sacramento, CA  
Antelope Valley, CA  
Los Angeles, CA  
Oakland, CA  
Orange County, CA

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# Executive Summary

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Willdan Financial Services has been retained by the Town of Palm Beach (the Town), in accordance with Resolution No. 25-09, to develop a methodology that reflects the special and peculiar benefit received by properties within the Town from the proposed undergrounding of overhead utilities.

The methodology described herein will be the basis for establishing non ad-valorem assessments for undergrounding overhead facilities within specific neighborhoods and areas throughout the Town. Since it is currently unknown which specific areas or neighborhoods will have their overhead utilities undergrounded and when those projects might occur, the method of assessment presented in this Report assumes the entire Town will be undergrounded at the same time. This assumption allows for the development of a benefit nexus methodology that differentiates the special benefits received by various properties in the Town. The developed methodology can be used throughout the Town and at various times and for various Districts specially created for the purposes of funding the undergrounding of utilities.

As part of the creation of this benefit methodology, Willdan Financial conducted fieldwork and surveyed the entire Town to accurately incorporate the characteristics of the Town and the relationship between properties within the Town and the overhead utilities proposed to be undergrounded. Fieldwork is an essential component in the development of an utility undergrounding assessment program to account for the fact that some areas of the Town may already have a portion of their utilities undergrounded; and, therefore, do not benefit to the same degree as properties whose utilities are currently transmitted through overhead facilities. In addition to the fieldwork conducted, Willdan Financial also created a parcel database of all properties within the Town, categorized those properties based on their land use codes (DOR codes), and utilized our GIS capabilities to differentiate neighborhoods with overhead utilities versus neighborhoods that have already been undergrounded.

Once a certain area is identified for the undergrounding of its overhead utilities, an assessment program will be created to finance the cost and the methodology described herein will be the basis for determining each parcel's non ad valorem assessment. The methodology presented in this Report will be applied to each specific project area. Because each undergrounding project will have different costs and will benefit a particular set of properties, the resulting assessment program and rates will vary for each project area. It is anticipated that the methodology will need to be augmented through the incorporation of the cost estimate for the utility undergrounding and specific boundaries of the assessment program to calculate each benefiting parcel's assessment.

# Proposed Public Facilities

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Utilities, as used in this report, include power lines, phone lines, cable television and fiber optic lines. The undergrounding of overhead utility lines within the Town includes the costs associated with, but not limited to, trenching, horizontal directional drilling, installing new utility vaults, conduits and transformers, laying conduit lines into trenches, re-paving streets, switching services to underground systems and removing existing overhead poles and wires.

The benefit methodology presented in this Report focuses on the facilities located in public rights-of-way and the costs associated with installation of such facilities. The Town also anticipates developing assessments or other financing mechanisms related to costs of connecting private property to the undergrounded utilities. As these on-site costs can be highly variable depending upon site specific conditions, it is recommended that a cost allocation approach for on-site costs be developed when each project area has been identified and detailed on-site requirements can be determined.

# Benefit Analysis

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Florida law requires non ad-valorem assessments be based on the special and peculiar benefit properties receive from the improvements. “Special Benefit” is a particular and distinct benefit over and above general benefits conferred to the public at large. Florida law does not specify the methodology or formula that may be used in calculating assessments; however, the assessment methodology must be reasonable and not arbitrary.

It is necessary to identify the special benefit provided to properties within the Town as a result of undergrounding overhead utilities. The distribution of electricity and other utilities are generally available to all properties in the Town. However, placing overhead electrical lines and other utilities underground will provide direct and special benefit to properties and such special benefit supports funding the undergrounding projects through assessment programs.

There are several distinct direct and special benefits that will be provided to properties within the Town as a result of undergrounding the Town’s overhead utilities: improved safety, improved reliability and improved neighborhood aesthetics. Each of these benefits is discussed below.

The removal of utility poles and overhead lines provides an improved **safety** benefit by reducing the potential of hazardous conditions in the event of natural disasters. Severe tropical storms, hurricanes, and other natural disasters can cause poles and/or overhead lines to fall and impact property, and possibly cause live electric lines to be exposed. Downed electric lines pose a potential threat of fire and potential injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The undergrounding of the overhead facilities will also improve the **reliability** of utility services received by properties within the Town. Based on a report entitled *Out of Sight Out of Mind?*, Edison Electric Institute (2006), the undergrounding of overhead utilities substantially reduces the frequency of power outages, when compared to the frequency of outages occurring with overhead networks. Parcels will also specially benefit from new upgraded utility lines, cables, and appurtenant facilities installed through the proposed utility undergrounding. This will provide a higher level of reliability of utility services, and reduces exposure to the elements that could cause potential damage and speed deterioration to facilities resulting in potential interruptions services.

In addition to the safety and reliability benefits provided by undergrounding utilities, removing the overhead facilities and utility poles will eliminate a heavy visual concentration of electric lines and communication facilities. This will improve the overall **neighborhood aesthetics** for all properties within a project area.

# Method of Assessment

Assessment Methodology is the analysis of a project or service, in this case from the proposed undergrounding of the existing overhead utilities, to determine the special and peculiar benefits (special benefits) received by a property. The method of assessment is determined by an analysis of the benefit a property receives from the proposed undergrounding of existing overhead utilities in comparison to the benefit received by other properties benefited by the project. There are three categories of special benefit that properties within the project areas receive as a result of the undergrounding of overhead utilities. These three categories of benefit include: 1) improved safety, 2) improved reliability, and 3) improved neighborhood aesthetics. To establish an equitable benefit nexus it is necessary to relate each property's proportional special benefits to the special benefits of all other properties within a project area. This method of apportionment utilizes a weighted method of apportionment known as an Equivalent Benefit Unit (EBU) methodology that uses a single-family residence with overhead utilities as the basic unit of benefit, or 1.0 EBU.

Collectively, the three categories of special benefit listed above reflect the overall proportional special benefits that properties within a project area, which is assumed to be the entire Town for purposes of this Report, will receive from the undergrounding of the overhead utilities. Properties within the Town are assigned Safety EBUs, Reliability EBUs, and Aesthetic EBUs to distinguish the degree of special benefits received by different properties for each of the three categories of special benefit, respectively. The allocation of EBUs to each property not only provides a means to differentiate the level of special benefit received between properties, but also provides a basis to apportion the total cost of the proposed undergrounding between the three categories of special benefit equitably. Therefore, the total sum of EBUs was calculated to determine the percentage of EBUs assigned to each category of special benefit. In the representative case below, we have a total of 26,596 EBU's consisting of three types, Safety, Reliability and Aesthetics. The Benefit column shows the proportionate percentage of each relative to the whole. Distributing the cost of the project based on the weighted total of equivalent benefit units for each category fairly and reasonably apportions the cost of the proposed utility undergrounding among the benefited property owners. .

Category of Special Benefit	EBUs	Benefit Allocation
Improved Safety	31,697	59.51 %
Improved Reliability	10,368	19.46 %
<u>Improved Aesthetics</u>	<u>11,200</u>	<u>21.03 %</u>
<b>TOTAL</b>	<b>53,265</b>	<b>100.00 %</b>

The benefit allocation numbers presented above are calculated assuming the entire Town will be undergrounded at the same time and are provided as an example of application of the benefit methodology. Utilizing the same benefit methodology discussed herein, the benefit percentage attributable to each of the three special benefit categories will vary based on the number of parcels within the area to be undergrounded and their EBU assignment. As such, the percentage calculated for each category will reflect the unique characteristics of the specific project area to be undergrounded and the special benefits conferred on affected properties within that project area.

For each Category of Benefit, the following discussion identifies parcels that benefit, the assignment of EBUs, and related equations to determine a parcel's EBUs.

## IMPROVED SAFETY

Properties specially benefit from the improved safety of undergrounding overhead utilities in two distinct ways: 1) the elimination of the potential for poles or overhead lines adjacent to a property to fall and damage property or expose “live” electrical lines, and 2) the elimination of the potential for poles or overhead lines to be downed within the neighborhood restricting ingress and egress to and from the property. A single-family residence lot that is adjacent to overhead facilities has been assigned a base unit of benefit for improved Safety equal to 1.0 Safety EBU. The base Safety EBU evenly accounts for the two components of improved safety. Therefore, the analysis uses 0.50 equivalent benefit units for the improved safety to the property and 0.50 equivalent benefit units for the improved safety/access to the neighborhood.

The Town’s zoning and land use codes provide standards for development. The Town’s Residential Low Density Zoning requires a minimum lot size equal to 10,000 square feet for the development of a single family residence. Existing developed single family lots that are less than the minimum lot size and original lots that were legally created but do not meet the current zoning standards have been assigned 1.0 Safety EBU since a residence already exists on developed property and the development of existing non-conforming lots is allowed under the Town’s regulations. Condominium complexes, multi-family residences, and non-residential properties, as well as certain estate homes may span a greater area along the streets that have overhead utilities and/or utility poles proposed to be undergrounded. Therefore, an equivalency must be developed to proportionately assign EBUs to these properties, when compared to the baseline 10,000 square feet single family residential lot that has been assigned 1.0 Safety EBU. Based on this equivalency, some properties, including certain single-family residences, have been assigned additional Safety EBUs in recognition of the additional special benefit to those parcels in comparison to the baseline 1.0 EBU single family residential lot .

In identifying the amount of assigned Safety EBUs for each parcel; overhead facilities, including utility lines and poles, along secondary streets and alleyways are considered to be adjacent to all properties on both sides of the secondary street and alleyway that front the overhead facilities due to the narrow widths of the secondary streets and alleyways. In addition, utility poles are considered a part of the overhead facilities; therefore, properties that only front utility poles are assigned a minimum of 1.0 Safety EBU.

Conversely, some parcels are already adjacent to undergrounded utilities, and, therefore, do not benefit to the same extent when compared to parcels currently adjacent to overhead utilities. Properties that do not have overhead facilities adjacent to their property along the public rights-of-way shall be assigned Safety EBUs equal to one-half (1/2) of the Safety EBU calculation, identified above, to reflect the improved overall safety of the neighborhood that specially benefit these properties as identified herein. This benefit analysis does not specifically address or recognize whether a parcel has an on-site underground lateral line from the right-of-way to a building. On-site costs and issues will need to be addressed in the context of each specific project and project area.

Each condominium complex was assigned Safety EBUs on a complex by complex basis and the total Safety EBU assignment to the condominium complex was then apportioned evenly to each condo within the complex. For single-family residences, multi-family properties, and non-residential properties, the EBUs calculated were assigned to the applicable parcel number. **Table 1** outlines the safety EBU calculations.

**Table 1: Safety EBU Calculation**

Land Use	Overhead Utilities	Lot Size (square feet)
Single Family	Yes	Lot Size / 10,000, rounded down to nearest whole number; minimum of 1.0 EBU
	No	(Lot Size / 10,000, rounded down to nearest whole number) / 2; minimum of 0.5 EBU
Condominium	Yes	0.5 EBU + 0.5 EBU x [(Complex Lot Size / 10,000) / condos in Complex]
	No	0.5 EBU
Multi-Family	Yes	0.5 EBU x units + 0.5 EBU x (Lot Size / 10,000)
	No	0.5 EBU x units
Non-Residential	Yes	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No	0.5 EBU x (Lot Size / 10,000); minimum of 0.5 EBU
Vacant	Yes	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No	0.5 EBU x (Lot Size / 10,000); minimum of 0.5 EBU

**IMPROVED RELIABILITY**

The benefit from the distribution of electricity, other utilities, and the underground wires and cables is essentially equivalent for each single-family residence. Further, since all of the single-family lots have the same ability to use utilities and each single-family parcel benefits from the increased reliability that undergrounding provides, each single-family residential property has been assigned (1.0) Reliability EBU to account for the failure in any one or more of the following systems, resulting in an interruption in services: 1) primary distribution lines; 2) secondary distribution lines, or 3) local distribution lines that provide connections to a property’s utilities.

The improved reliability from the undergrounding of utilities will specially benefit each household of a condominium and multi-family complex, and each employee of a non-residential property. Since there are more units and/or occupants within condominium complexes, multi-family properties, and non-residential properties, these properties receive a different level of benefit than a single-family residence from the improved reliability of undergrounded utility services. Not only does the entire property benefit from the improved reliability, but every unit within a condominium complex or multi-family property, and all non-residential property will also benefit from the improved reliability. It is evident that each condominium in a complex, each unit of a multi-family property, and all non-residential property would be impacted by an interruption in services as a result from a power outage. Therefore, for residential properties, a reasonable comparison of benefit can be derived by using population density factors between a single-family residences, and condominiums /multi-family properties within the Town. For non-residential properties, an acreage equivalency was used to assign equivalent benefits units to capture the benefit associated with non-residential parcels when compared to a baseline single-family residential lot.

Using a population density factor approach for residential properties provides a reflection of the level of use of the facilities by each residential land use type, and therefore the special benefit that each property receives. Population density factors for residential properties were calculated using data obtained from the 2000 census. In comparing densities between different residential properties, condominiums are categorized as multifamily residences since the typical size of each property type is similar and, therefore, would generate similar population densities.

For non-residential properties, an acreage equivalency was used to assign equivalent benefits units for the benefit of reliability, which equitably captures the relative benefit associated with non-residential parcels when compared to a baseline single-family residential lot.

Properties already adjacent to undergrounded utilities will have their Reliability EBU discounted by 1/3<sup>rd</sup> to account for the reliability these properties already receive from the undergrounding of their local utilities connections. **Table 2** outlines the reliability EBU calculations.

**Table 2: Reliability EBU Calculation**

Land Use	Overhead Utilities	Density Factor	Lot Size (square feet)
Single-Family	Yes	2.36/2.36 = 1	1.0 EBU x Density Factor
	No		0.67 EBU x Density Factor
Condominium	Yes	1.55/2.36 = 0.65	1.0 EBU x Density Factor
	No		0.67 EBU x Density Factor
Multi-Family	Yes	1.55/2.36 = 0.65	1.0 EBU x Density Factor x units
	No		0.67 EBU x Density Factor x units
Non-Residential	Yes	N/A	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No		0.67 EBU x (Lot Size / 10,000); minimum of 0.67 EBU
Vacant	Yes	N/A	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No		0.67 EBU x (Lot Size / 10,000); minimum of 0.67 EBU

**IMPROVED NEIGHBORHOOD AESTHETICS**

Removing the overhead utilities will improve the overall aesthetics of an individual property as well as the neighborhood aesthetics for all properties within a defined project area by eliminating a heavy concentration of electric lines and communication facilities. Therefore, a single family residence adjacent to overhead utilities has been assigned 0.5 EBUs for the improved aesthetics of its property and 0.5 EBUs for the improved aesthetics of the property’s neighborhood, for a total assignment of 1.0 Aesthetic EBU.

However, similar to reliability, residential properties in the Town receive different levels of benefit due to the different types of residential land uses within the Town, which result in different population densities. As such, a benefit comparison of population density ratios can be established between the various residential properties within the Town. Therefore, similar to Reliability, EBUs for aesthetics were assigned to residential properties based on the density factors shown previously.

For non-residential properties, an acreage equivalency was used to assign equivalent benefits units for the benefit of neighborhood aesthetics, which equitably captures the benefit associated with non-residential parcels when compared to a baseline single-family residential lot.

Properties, whose utilities are adjacent to utilities already undergrounded, will only be assigned Aesthetic EBUs equal to one-half (1/2) of the Aesthetic EBU calculation, identified above, for the improved aesthetics of the property's neighborhood. **Table 3** outlines the aesthetics EBU calculations.

**Table 3: Aesthetic EBU Calculation**

Land Use	Overhead Utilities	Density Factor	Lot Size (square feet)
Single-Family	Yes	2.36/2.36 = 1	(Lot Size / 10,000, rounded down to nearest whole number) x Density Factor; minimum of 1.0 EBU
	No		[(Lot Size / 10,000, rounded down to nearest whole number) x Density Factor] / 2; minimum of 0.5 EBU
Condominium	Yes	1.55/2.36 = 0.65	1.0 EBU x Density Factor
	No		0.5 EBU x Density Factor
Multi-Family	Yes	1.55/2.36 = 0.65	1.0 EBU x Density Factor x units
	No		0.5 EBU x Density Factor x units
Non-Residential	Yes	N/A	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No		0.5 EBU x (Lot Size / 10,000); minimum of 0.5 EBU
Vacant	Yes	N/A	1.0 EBU x (Lot Size / 10,000); minimum of 1.0 EBU
	No		0.5 EBU x (Lot Size / 10,000); minimum of 0.5 EBU

## SPECIAL CASES AND EXCEPTIONS

### Parcels over Ten Acres

While parcels throughout the Town benefit from the undergrounding of nearby utilities, parcels over 10 acres benefit to a lesser degree due to diminished return of benefit. Parcels receive diminished return of benefit because as the parcel's total acreage increases, the parcel tends to have a lower frontage-to-acreage ratio. This lower ratio directly results in less special benefit than that of the neighboring smaller parcels. In order to account for the difference in total special benefit, the acreage for these larger parcels has been adjusted. To calculate these parcels' adjusted acreage, the parcel's total frontage is multiplied by the minimum lot depth pursuant to the Town's zoning ordinances for Low Density Residential lots (200 feet).

### The Breaker's Hotel

Similar to other large parcels, the parcels associated with the Breaker's Hotel specially benefit from the undergrounding of overhead facilities, however, since these parcels serve as one property, the adjusted acreage for all parcels associated with the Breaker's Resort are combined and adjusted as one large parcel.

### Bifurcated Lots

Certain parcels within the Town have a portion of their property bifurcated as a result of South Ocean Boulevard. These properties were treated as special cases and were assigned EBUs based on the contiguous acreage associated with these properties.



# Diagram

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A Diagram showing the boundaries of the Town, the dimensions of the subdivisions of land within the Town (as they existed at the time of the creation of this Report), and parcels adjacent to overhead utilities and is illustrated below. Each of the subdivisions of land, parcels, or lots has been given a separate number on the Diagram, which corresponds with the assessment number shown within the parcel database.

# Parcel Database




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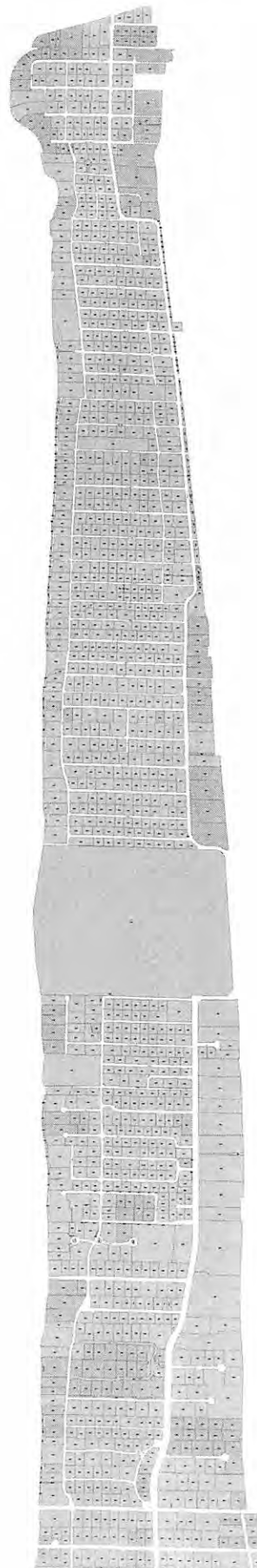
A parcel database identifying each parcel's equivalent benefit unit assignment for each of the three categories of special benefit has been provided to the Town under separate cover and by reference is made part of this Report.

The parcel database references each parcel within the Town by an assessment number. The assessment numbers appearing within the parcel database correspond with the subdivisions and parcels of land and their numbers shown on the Assessment Diagram.

# TOWN OF PALM BEACH UTILITY UNDERGROUNDING



## LEGEND

-  Utility Facilities Already Undergrounded
-  Utility Facilities Not Undergrounded
-  1 Assessment Number



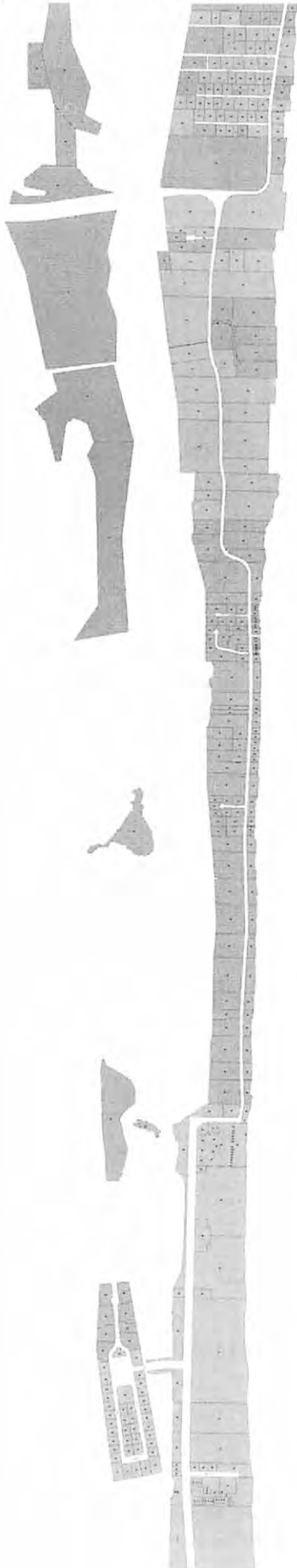
# TOWN OF PALM BEACH UTILITY UNDERGROUNDING

## LEGEND

-  Utility Facilities Already Undergrounded
-  Utility Facilities Not Undergrounded
- 1 Assessment Number



TOWN OF PALM BEACH  
UTILITY UNDERGROUNDING





**LEGEND**  
■ Utility Facilities Already Undergrounded  
■ Utility Facilities Not Undergrounded  
1 Assessment Number

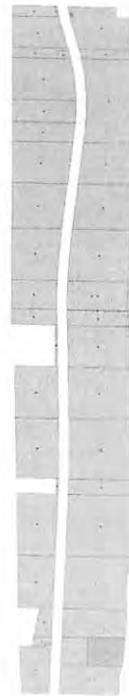


# TOWN OF PALM BEACH UTILITY UNDERGROUNDING



## LEGEND

-  Utility Facilities Already Undergrounded
-  Utility Facilities Not Undergrounded
- 1 Assessment Number



# EXHIBIT N



# TOWN OF PALM BEACH

## Utility Undergrounding Assessment Methodology Update

June 2, 2017





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# 1. EXECUTIVE SUMMARY

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## 1.1 BACKGROUND

Raftelis Financial Consultants was retained by the Town of Palm Beach (Town) to update the 2009 Utility Undergrounding Assessment Report (2009 Report) based on the most recent Palm Beach County Property Appraiser parcel data for the Town and to take into consideration any new developments within the Town or areas that were already undergrounded separately through previous assessment programs. The methodology described herein, reflects the special and peculiar benefit received by properties within the Town from the proposed undergrounding of overhead utilities.

The methodology described herein will be the basis for establishing non ad-valorem assessments for undergrounding overhead utility lines within the areas of Town that have not yet been undergrounded. The method of assessment presented in this Report takes the total utility project costs of the proposed Town-wide utility undergrounding and apportions the total cost to each parcel based on the special benefit received. This approach allows for the development of a benefit nexus methodology that differentiates the special benefits received by various properties in the Town within the proposed assessment program. The methodology can be used to identify the total obligation of each parcel as well as the annual obligation of each parcel based on the proposed financing.

Fieldwork is an essential component in the development of a utility undergrounding assessment program to account for the fact that some areas of the Town may already have a portion of their utilities undergrounded; and, therefore, do not benefit to the same degree as properties whose utilities are currently transmitted through overhead facilities. As part of the original creation of the benefit methodology in 2009, fieldwork was conducted and the entire Town was surveyed to accurately incorporate the characteristics of the Town and the relationship between properties within the Town and the overhead utilities proposed to be undergrounded at that point in time. This update did not include any additional or new fieldwork and incorporates the previous fieldwork that was performed as part of the original 2009 Report. Prior to debt financing, property owners whom have undergrounding portions of overhead facilities adjacent to their property may request an adjustment to their equivalent benefit allocation to reflect the appropriate proportionate benefit received by the assessment program. As part of this updated report, the entire parcel database was updated to account for the most recent data provided by the Property Appraiser. The updated database captured new parcels, changes in land use and development status and new property ownership.

## **2. PROPOSED PUBLIC FACILITIES**

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### **2.1 FACILITIES**

Utilities, as used in this report, include power lines, phone lines, cable television and fiber optic lines, as well as spare conduit for future use of utility services. The undergrounding of overhead utility lines within the Town includes the costs associated with, but not limited to, trenching, horizontal directional drilling, installing new utility vaults, conduits and transformers, laying conduit lines into trenches, re-paving, repairing, patching or painting streets as may be needed, laterals for switching services to underground systems and removing existing overhead poles and wires. The benefit methodology presented in this Report focuses on the facilities serving the area proposed to be assessed which are located in public rights-of-way and easements and the costs associated with installation of such facilities.

## 3. BENEFIT ANALYSIS

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### 3.1 NON-AD VALOREM ASSESSMENTS

As established by Florida case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992). The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service is:

*whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).*

This logical relationship to property test defines the line between those services that can be funded by special assessments and those failing to satisfy the special benefit test. Florida law does not specify the methodology or formula that must be used in calculating assessments; however, the assessment apportionment methodology must be fair and reasonable.

Once an identified service or capital facility satisfies the special benefit test, the assessed amount is required to be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement. Generally, a special assessment, whether imposed for capital projects or services, is collected on the annual ad valorem tax bill. Under such statutory collection procedure, the special assessment is characterized as a "non-ad valorem assessment." See § 197.3632(1)(d), Fla. Stat.

First, it is necessary to identify the special benefit provided to properties within the Town as a result of undergrounding overhead utilities serving or available to serve those properties. The distribution of electricity and other utilities are generally available to all properties in the Town. However, placing overhead electrical lines and other utilities underground will provide direct and special benefit to properties and such special benefit supports funding the undergrounding projects through assessment programs. The design, construction, and installation of the underground utility improvements will provide a special benefit to all affected properties located within the assessment area of the Town by protecting and enhancing the value, use, enjoyment, commercial and residential attractiveness and viability of such properties by improving and enhancing safety, reliability and aesthetics, as described below.

There are several distinct direct and special benefits that will be provided to properties within the Town as a result of undergrounding the Town's overhead utilities: improved safety, improved reliability and improved aesthetics. Each of these benefits is discussed below.

The removal of utility poles and overhead lines provides an *improved safety* benefit by reducing the potential of hazardous conditions occurring on benefited property in the event of natural disasters. Severe tropical storms, hurricanes, and other natural disasters can cause poles and/or overhead lines to fall and impact property, and possibly cause live electric lines to be exposed. Downed electric lines and vegetation overgrowth onto electric lines pose a potential threat of property fire and potential injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The undergrounding of the overhead facilities will also *improve the reliability* of utility services

received by properties within the Town. Based on Florida Power & Light's 2015 Reliability Report, the undergrounding of overhead utilities reduces the frequency of power outages, when compared to the frequency of outages occurring with overhead networks. Parcels will also specially benefit from new upgraded utility lines, cables, and appurtenant facilities installed through the proposed utility undergrounding. This will provide a higher level of reliability of utility services, and reduces exposure to the elements that could cause potential damage and speed deterioration to facilities resulting in potential interruptions.

In addition to the safety and reliability benefits provided by undergrounding utilities, removing the overhead facilities and utility poles will eliminate a heavy visual concentration of electric lines and communication facilities. Overall this will **improve the *aesthetics*** for all properties within a project area by enhancing the value, use, enjoyment, commercial and residential attractiveness and viability of such properties.

## 4. METHOD OF ASSESSMENT

Assessment Methodology is the analysis of a project or service, in this case from the proposed undergrounding of the existing overhead utilities, to determine the special and peculiar benefits (special benefits) received by a property. The method of assessment is determined by an analysis of the benefit a property receives from the proposed undergrounding of existing overhead utilities in comparison to the benefit received by other properties benefited by the project. Funding the undergrounding of facilities through an assessment program is a common practice utilized by agencies and it is common industry practice to determine the degree of benefit between affected parcels through three primary categories of benefit. These three categories of benefit include: 1) improved safety, 2) improved reliability, and 3) improved aesthetics. To establish an equitable benefit nexus, it is necessary to relate each property's proportional special benefits to the special benefits of all other properties within a project area. This method of apportionment utilizes a weighted method of apportionment known as an Equivalent Benefit Unit (EBU) methodology that defines an equivalent benefit unit for each category of benefit as the basic unit of benefit, or 1.0 EBU.

Collectively, the three categories of special benefit listed above reflect the overall proportional special benefits that properties will receive from the undergrounding of the overhead utilities within the assessment program. Properties within the Town are assigned Safety EBUs, Reliability EBUs, and Aesthetic EBUs based upon property use and other site specific characteristics to distinguish the degree of special benefits received by different properties for each of the three categories of special benefit, respectively. Each category of benefit is allocated EBUs independent of each other and the total utility undergrounding cost assigned to each category is based on the percent of total benefit units derived within each category. The total EBUs per category of benefit is a function of the special benefits received by each parcel and; therefore, reflect the amount of special benefit parcels receive from the proposed utility undergrounding. The assessment program cost assigned to each category of benefit is then apportioned to benefitting parcels based on each parcel's EBU assignment in relation to the total EBUs within the corresponding category. **Table 4-1** identifies the total EBUs for each category and the assessment program cost<sup>1</sup> assigned to each category.

Table 4-1: Assessment Cost Allocation

Category of Special Benefit	EBUs	Percentage of EBUs	Project Cost Allocation <sup>1</sup>	Annual Debt <sup>2</sup>	Assessment Rate <sup>3</sup>
Improved Safety	6,942	30.8%	\$27,730,400	\$1,625,300	\$256.53
Improved Reliability	8,647	38.4%	34,539,200	2,024,400	\$256.53
Improved Aesthetics	6,942	30.8%	27, 730,400	1,625,300	\$256.53
<b>Total</b>	<b>22,531</b>	<b>100.0%</b>	<b>\$90,000,000</b>	<b>\$5,275,000</b>	<b>\$769.59</b>

<sup>1</sup> The Project cost was allocated between Improved Safety, Reliability, and Aesthetics at 30.8%, 38.4%, and 30.8%, respectively based on the number of EBUs calculated for each category.

<sup>2</sup> Annual debt for each category is the portion of the annual debt payment for the proposed utility undergrounding project. The annual debt payment assumes a total project cost of \$90M at a 4.31% interest rate over a 30-year repayment period.

<sup>3</sup> The Assessment Rate includes provisions for statutory early payment discounts of 5.0%, tax collector fees of 2.0% and \$100,000 annually for administrative costs. The total assessment program related costs amount to \$504,576 each year.

For each Category of Benefit, the following discussion identifies parcels that benefit, the assignment of EBUs, and related equations to determine each parcel's assignment of EBUs.

## 4.1 IMPROVED SAFETY

Properties specially benefit from the improved safety of undergrounding overhead utilities in two distinct ways: 1) the elimination of the potential for poles or overhead lines adjacent to a property to fall and damage property from falling or exposing "live" electrical lines and 2) the elimination of the potential for poles or overhead lines to be downed within the neighborhood restricting ingress and egress to and from the property. A single-family residential lot that is adjacent to overhead facilities has been assigned a base unit of benefit for improved Safety equal to 1.0 Safety EBU. The base Safety EBU evenly accounts for the two components of improved safety. Therefore, the analysis uses 0.50 equivalent benefit units for the improved safety to the property and 0.50 equivalent benefit units for the improved access to the property.

Improved Safety provides a benefit to each affected lot within the assessment program; therefore, the average lot size of all properties within the assessment program was calculated, equal to 8,700 square feet, to determine the baseline measurement of one EBU for the category of Improved Safety. All developed parcels up to 8,700 square feet that are adjacent to overhead facilities have been assigned a minimum of 1.0 Safety EBUs and parcels without overhead facilities adjacent to its property are assigned a minimum of 0.5 Safety EBUs. In addition, all developable vacant lots up to 8,700 square feet are also assigned a minimum of 1.0 Safety EBU as each lot has ability to develop. Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet span a greater area that may be exposed to overhead facilities along streets, alleys or easements along its properties. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, additional Safety EBUs were assigned to parcels greater than 8,700 square feet in 0.5 increments, in recognition that the difference in special benefit between one additional square foot versus two additional square feet is negligible on a square foot basis. However, using 0.5 EBUs increments corresponds to an additional 4,350 square feet above 1.0 EBU and reflects a noticeable variance in size to assign additional benefit units to capture the increase in special benefit received by these parcels. For example, a parcel with 15,225 square feet would be assigned 1.5 EBUs ( $15,225/8,700 = 1.75$  EBUs; rounded down to nearest 0.5 EBUs = 1.5 EBUs).

In identifying the amount of assigned Safety EBUs for each parcel, overhead facilities, including utility lines and poles, along secondary streets, alleyways and rear easements are considered to be adjacent to all properties on either side due to the narrow widths of the secondary streets, alleyways and rear easements. In addition, utility poles are considered a part of the overhead facilities; therefore, properties that only front utility poles are also assigned a minimum of 1.0 Safety EBU.

Conversely, some parcels are already adjacent to undergrounded utilities and, therefore, do not benefit to the same extent when compared to parcels currently adjacent to overhead utilities. Properties within the boundaries of the utility undergrounding project area that do not have overhead facilities adjacent to their property along the secondary streets, alleyways and rear easements shall be assigned Safety EBUs equal to one-half (1/2) of the Safety EBU calculation to reflect the reduced benefit received by the parcel. The 0.5 EBU accounts for the benefit associated with the improved safety of undergrounding facilities within the local neighborhood/area of the parcel.

Based on this method of assessment, each condominium complex was assigned Safety EBUs by first assigning Safety EBUs to the condominium complex. Once the Safety EBUs for the complex was derived, the total Safety EBUs were apportioned evenly to each condo within the complex. Therefore, depending on the size of the complex and the number of units within the complex, condo parcel EBU assignments will vary from complex to complex. For single-family residences, multi-family properties,



and non-residential properties, the EBUs calculated were assigned to the applicable parcel number. Table 4-2 outlines the safety EBU calculations.

Table 4-1: Safety EBU Calculation

Land Use	Overhead Utilities	Safety EBU Assignment
Single-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	(Lot Size / 8,700) / 2; rounded down to nearest 0.5, minimum of 0.5 EBU
Condominium	Yes	(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex, minimum of 1.0 EBU per complex
	No	0.5 x [(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex] , minimum of 0.5 EBU per complex
Multi-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5
Non-Residential	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU
Vacant	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5, minimum of 0.5 EBU

## 4.2 IMPROVED RELIABILITY

The benefit from the distribution of electricity, other utilities, and the underground wires and cables is essentially equivalent for each single-family residence. Further, since all of the single-family lots have the same ability to use utilities and each single-family parcel benefits from the increased reliability that undergrounding provides, each single-family residential property has been assigned (1.0) Reliability EBU to account for the failure in any one or more of the following systems, resulting in an interruption in services: 1) primary distribution lines; 2) secondary distribution lines, or 3) local distribution lines that provide connections to a property's utilities.

It is evident that each condominium in a complex, each unit of a multi-family property, and all non-residential property would be impacted by an interruption in services due to a power outage and therefore specially benefit from the improved reliability. Since there are more units, square footage and/or occupants within condominium complexes, multi-family properties, and non-residential properties, these properties receive a different level of benefit than a single-family residence from the improved reliability of undergrounded utility services. For condominium complexes and multi-family properties, not only does the entire property benefit from the improved reliability, but every unit receives utility services and benefits from the improved reliability.

Therefore, a reasonable comparison of benefit for condominiums and multi-family units can be derived by using population density factors as a proxy for comparing the typical dwelling sizes between single-

family residences and condominiums/multi-family units within the Town. On average, condominiums and multi-family residences are smaller dwelling units than single-family residences, which is reflected through the density factors for each land use type. Within the Town, Single-family Residences have a density factor of 2.04 persons per household, whereas, condominiums and multi-family residences have a density factor of 1.56 based on the 2010 census. With single-family properties assigned a Reliability EBU equal to 1.0, the density factors are used to assign a proportionate benefit equivalency to each individual condominium and multi-family unit by taking the ratio of  $1.56/2.04 = 0.76$  EBUs. As such, each condominium and multi-family unit are assigned 0.76 EBUs for improved reliability.

When comparing non-residential land use types to the baseline EBU of a single-family residence lot, the density factor is not applicable and therefore, EBUs are assigned based on acreage (8,700 square feet). Non-residential properties are assigned improved Reliability EBUs based on the size of the lot, as the lot size of each these properties directly correlates to the amount of potential improvements utilizing and benefiting from the increased reliability.

Although certain parcels may be adjacent to a portion of undergrounded facilities, their services are still provided through overhead utilities within their neighborhood. In addition, there are instances where a property may have their utilities undergrounded and ready to receive service, but are still currently being served by overhead lines that connect to their property or their point of connection to their undergrounded utilities. **Table 4-3** outlines the reliability EBU calculations.

**Table 4-2: Reliability EBU Calculation**

Land Use	Density Factor	Reliability EBU Assignment
Single-Family	$2.04/2.04 = 1.00$	$1.0 \text{ EBU} \times \text{Density Factor} = 1.00 \text{ EBU}$
Condominium	$1.56/2.04 = 0.76$	$1.00 \text{ EBU} \times \text{Density Factor} = 0.76 \text{ EBU}$
Multi-Family	$1.56/2.04 = 0.76$	$1.0 \text{ EBU} \times \text{Density Factor} \times \text{Units}$
Non-Residential	N/A	Lot Size / 8,700; minimum of 1.0 EBU, rounded down to nearest 0.5
Vacant	N/A	Lot Size / 8,700; minimum of 1.0 EBU, rounded down to nearest 0.5

### 4.3 IMPROVED AESTHETICS

Removing the overhead utilities will improve the overall aesthetics to an individual property and the neighborhood aesthetics for all properties within a defined project area by eliminating a heavy concentration of electric lines and communication facilities. Like the Safety benefit category, a single-family residence adjacent to overhead utilities has been assigned 0.5 EBUs for the improved aesthetics of its property and 0.5 EBUs for the improved aesthetics of the property's neighborhood, for a total assignment of 1.0 Aesthetic EBU. 1.0 EBU equals the average town-wide lot size of 8,700 square feet.

Developed single family, non-residential and vacant lots less than the minimum lot size have been assigned a minimum of 1.0 Aesthetics EBU. Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet has more area benefiting from improved aesthetics. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, additional Aesthetic EBUs were assigned to parcels greater than 8,700 square feet in 0.5 increments, in recognition that the difference in special benefit between one additional square foot verses two additional square feet is negligible on a square foot basis. However, using 0.5 EBUs increments corresponds to an additional 4,350 square feet above 1.0 EBU and reflects a noticeable variance in size to assign additional benefit units to capture the increase in special benefit received by these parcels.

Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet span a greater area along the streets that have overhead utilities and/or utility poles proposed to be undergrounded. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, parcels greater than 8,700 square feet have been assigned additional Aesthetic EBUs, in 0.5 increments, in recognition of the proportionate special benefits received by these parcels.

Properties within the boundaries of the utility undergrounding project area that do not have overhead facilities adjacent to their property along the secondary streets, alleyways and rear easements shall be assigned Safety EBUs equal to one-half (1/2) of the Safety EBU calculation to reflect the reduced benefit received by the parcel. The 0.5 EBU accounts for the benefit associated with the improved safety of undergrounding facilities within the local neighborhood/area of the parcel.

Based on this method of assessment, each condominium complex was assigned Aesthetic EBUs by first assigning Aesthetic EBUs to the condominium complex. Once the Aesthetic EBUs for the complex was derived, the total Aesthetic EBUs were apportioned evenly to each condo within the complex. Therefore, depending on the size of the complex and the number of units within the complex, condo parcel EBU assignments will vary from complex to complex. For single-family residences, multi-family properties, and non-residential properties, the EBUs calculated were assigned to the applicable parcel number. **Table 4-4** outlines the Aesthetic EBU calculations.

Table 4-3: Aesthetic EBU Calculation

Land Use	Overhead Utilities	Aesthetics EBU Assignment
Single-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	(Lot Size / 8,700) / 2; rounded down to nearest 0.5, minimum of 0.5 EBU
Condominium	Yes	(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex, minimum of 1.0 EBU per complex
	No	0.5 x [(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex], minimum of 0.5 EBU per complex
Multi-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5
Non-Residential	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU
Vacant	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU

#### 4.4 SPECIAL CASES AND EXCEPTIONS

##### 4.4.1 Golf Course Parcels and the Breakers

While parcels throughout the Town benefit from the undergrounding of nearby utilities, certain parcels that make up the golf courses and the Breakers benefit to a lesser degree due to diminished return of benefit as the parcel's total acreage increases. The parcel(s) have a lower frontage-to-acreage ratio and as the parcel size increases, most the parcel's area is either the golf course itself or passive park-like facilities that do not utilize utilities. In order to account for the difference in total special benefit, the parcels associated with golf courses and parcels associated with the Breakers resort were combined as one property, respectively. To calculate these parcels' acreage, the parcel's total frontage was multiplied by a lot depth of 200 feet based on the typical depth of Low Density Residential lots throughout the Town.

##### 4.4.2 Non-Assessable Obligation

Certain neighborhoods within the Town have either already created an assessment program to undergrounded its overhead facilities (Everglades Island and Via Fontana) or are currently in the process of creating a utility undergrounding assessment program (Nightingale and Lake Towers). Due to the timing of these assessment programs, appurtenant facilities remain at the termination points of these project areas which will be undergrounded once this utility undergrounding assessment program is completed. As such, an indirect reliability benefit exists within this utility undergrounding assessment program associated with the termination points of these other assessment programs. Each termination point is assigned 1 Reliability EBU to account for this indirect benefit resulting from different timing of the undergrounding projects for a total of 7 Reliability EBUs. The obligation associated with these 7 Reliability EBUs will not be assessed against any parcel within the proposed utility undergrounding assessment program and will be excluded from the assessment.

#### **4.4.3 *Bifurcated Lots***

Certain parcels within the Town have a portion of their property bifurcated as a result of South Ocean Boulevard. These properties were treated as special cases and were assigned EBUs based on the acreage of both lots associated with these properties as one contiguous parcel for assigning EBUs.

#### **4.4.4 *Undevelopable parcels***

Vacant parcels that cannot be developed due to size of property or zoning restrictions or are parcels associated with conservation land dedicated to wildlife habitat preservation are exempt from the proposed utility undergrounding assessments because these parcels do not confer any measurable special benefit from the improvements.

#### **4.4.5 *Parking spaces, storage and condominium cabanas***

Certain parcels are legally subdivided lots that are associated with auxiliary improvements, such as, deeded parking spaces, storage units, and condominium cabanas. As such, these types of parcels are exempt from the assessment because other associated parcels are assessed as the primary parcel of benefit.

## 5. DIAGRAM

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A Diagram showing the boundaries of the proposed Utility Undergrounding Project, the dimensions of the subdivisions of land within the Town (as they existed at the time of the creation of this Report), is on file with the Town and by reference is considered part of this report.

## **6. PARCEL DATABASE**

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A parcel database identifying each parcel's equivalent benefit unit assignment for each of the three categories of special benefit has been provided to the Town under separate cover and by reference is made part of this Report.

# EXHIBIT O





# TOWN OF PALM BEACH

## Utility Undergrounding Assessment Methodology Update

June 12, 2017



RAFTELIS

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# 1. EXECUTIVE SUMMARY

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## 1.1 BACKGROUND

Raftelis Financial Consultants was retained by the Town of Palm Beach (Town) to update the 2009 Utility Undergrounding Assessment Report (2009 Report) based on the most recent Palm Beach County Property Appraiser parcel data for the Town and to take into consideration any new developments within the Town or areas that were already undergrounded separately through previous assessment programs. The methodology described herein, reflects the special and peculiar benefit received by properties within the Town from the proposed undergrounding of overhead utilities.

The methodology described herein will be the basis for establishing non ad-valorem assessments for undergrounding overhead utility lines within the areas of Town that have not yet been undergrounded. The method of assessment presented in this Report takes the total utility project costs of the proposed Town-wide utility undergrounding and apportions the total cost to each parcel based on the special benefit received. This approach allows for the development of a benefit nexus methodology that differentiates the special benefits received by various properties in the Town within the proposed assessment program. The methodology can be used to identify the total obligation of each parcel as well as the annual obligation of each parcel based on the proposed financing.

Fieldwork is an essential component in the development of a utility undergrounding assessment program to account for the fact that some areas of the Town may already have a portion of their utilities undergrounded; and, therefore, do not benefit to the same degree as properties whose utilities are currently transmitted through overhead facilities. As part of the original creation of the benefit methodology in 2009, fieldwork was conducted and the entire Town was surveyed to accurately incorporate the characteristics of the Town and the relationship between properties within the Town and the overhead utilities proposed to be undergrounded at that point in time. This update did not include any additional or new fieldwork and incorporates the previous fieldwork that was performed as part of the original 2009 Report. Prior to debt financing, property owners whom have undergrounding portions of overhead facilities adjacent to their property may request an adjustment to their equivalent benefit allocation to reflect the appropriate proportionate benefit received by the assessment program. As part of this updated report, the entire parcel database was updated to account for the most recent data provided by the Property Appraiser. The updated database captured new parcels, changes in land use and development status and new property ownership.

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## 2. PROPOSED PUBLIC FACILITIES

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### 2.1 FACILITIES

Utilities, as used in this report, include power lines, phone lines, cable television and fiber optic lines, as well as spare conduit for future use of utility services. The undergrounding of overhead utility lines within the Town includes the costs associated with, but not limited to, trenching, horizontal directional drilling, installing new utility vaults, conduits and transformers, laying conduit lines into trenches, re-paving, repairing, patching or painting streets as may be needed, laterals for switching services to underground systems and removing existing overhead poles and wires. The benefit methodology presented in this Report focuses on the facilities serving the area proposed to be assessed which are located in public rights-of-way and easements and the costs associated with installation of such facilities.

## 3. BENEFIT ANALYSIS

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### 3.1 NON-AD VALOREM ASSESSMENTS

As established by Florida case law, two requirements exist for the imposition of a valid special assessment: (1) the property assessed must derive a special benefit from the improvement or service provided; and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. See *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992). The test to be applied in evaluating whether a special benefit is conferred on property by the provision of a service is:

*whether there is a "logical relationship" between the services provided and the benefit to real property. Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951).*

This logical relationship to property test defines the line between those services that can be funded by special assessments and those failing to satisfy the special benefit test. Florida law does not specify the methodology or formula that must be used in calculating assessments; however, the assessment apportionment methodology must be fair and reasonable.

Once an identified service or capital facility satisfies the special benefit test, the assessed amount is required to be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement. Generally, a special assessment, whether imposed for capital projects or services, is collected on the annual ad valorem tax bill. Under such statutory collection procedure, the special assessment is characterized as a "non-ad valorem assessment." See § 197.3632(1)(d), Fla. Stat.

First, it is necessary to identify the special benefit provided to properties within the Town as a result of undergrounding overhead utilities serving or available to serve those properties. The distribution of electricity and other utilities are generally available to all properties in the Town. However, placing overhead electrical lines and other utilities underground will provide direct and special benefit to properties and such special benefit supports funding the undergrounding projects through assessment programs. The design, construction, and installation of the underground utility improvements will provide a special benefit to all affected properties located within the assessment area of the Town by protecting and enhancing the value, use, enjoyment, commercial and residential attractiveness and viability of such properties by improving and enhancing safety, reliability and aesthetics, as described below.

There are several distinct direct and special benefits that will be provided to properties within the Town as a result of undergrounding the Town's overhead utilities: improved safety, improved reliability and improved aesthetics. Each of these benefits is discussed below.

The removal of utility poles and overhead lines provides an *improved safety* benefit by reducing the potential of hazardous conditions occurring on benefited property in the event of natural disasters. Severe tropical storms, hurricanes, and other natural disasters can cause poles and/or overhead lines to fall and impact property, and possibly cause live electric lines to be exposed. Downed electric lines and vegetation overgrowth onto electric lines pose a potential threat of property fire and potential injury due to electric shock and can restrict ingress and egress of residents and emergency services.

The undergrounding of the overhead facilities will also *improve the reliability* of utility services

received by properties within the Town. Based on Florida Power & Light's 2015 Reliability Report, the undergrounding of overhead utilities reduces the frequency of power outages, when compared to the frequency of outages occurring with overhead networks. Parcels will also specially benefit from new upgraded utility lines, cables, and appurtenant facilities installed through the proposed utility undergrounding. This will provide a higher level of reliability of utility services, and reduces exposure to the elements that could cause potential damage and speed deterioration to facilities resulting in potential interruptions.

In addition to the safety and reliability benefits provided by undergrounding utilities, removing the overhead facilities and utility poles will eliminate a heavy visual concentration of electric lines and communication facilities. Overall this will **improve the aesthetics** for all properties within a project area by enhancing the value, use, enjoyment, commercial and residential attractiveness and viability of such properties.

## 4. METHOD OF ASSESSMENT

Assessment Methodology is the analysis of a project or service, in this case from the proposed undergrounding of the existing overhead utilities, to determine the special and peculiar benefits (special benefits) received by a property. The method of assessment is determined by an analysis of the benefit a property receives from the proposed undergrounding of existing overhead utilities in comparison to the benefit received by other properties benefited by the project. Funding the undergrounding of facilities through an assessment program is a common practice utilized by agencies and it is common industry practice to determine the degree of benefit between affected parcels through three primary categories of benefit. These three categories of benefit include: 1) improved safety, 2) improved reliability, and 3) improved aesthetics. To establish an equitable benefit nexus, it is necessary to relate each property's proportional special benefits to the special benefits of all other properties within a project area. This method of apportionment utilizes a weighted method of apportionment known as an Equivalent Benefit Unit (EBU) methodology that defines an equivalent benefit unit for each category of benefit as the basic unit of benefit, or 1.0 EBU.

Collectively, the three categories of special benefit listed above reflect the overall proportional special benefits that properties will receive from the undergrounding of the overhead utilities within the assessment program. Properties within the Town are assigned Safety EBUs, Reliability EBUs, and Aesthetic EBUs based upon property use and other site specific characteristics to distinguish the degree of special benefits received by different properties for each of the three categories of special benefit, respectively. Each category of benefit is allocated EBUs independent of each other and the total utility undergrounding cost assigned to each category is based on the percent of total benefit units derived within each category. The total EBUs per category of benefit is a function of the special benefits received by each parcel and; therefore, reflect the amount of special benefit parcels receive from the proposed utility undergrounding. The assessment program cost assigned to each category of benefit is then apportioned to benefitting parcels based on each parcel's EBU assignment in relation to the total EBUs within the corresponding category. Table 4-1 identifies the total EBUs for each category and the assessment program cost<sup>1</sup> assigned to each category.

Table 4-1: Assessment Cost Allocation

Category of Special Benefit	EBUs	Percentage of EBUs	Project Cost Allocation <sup>1</sup>	Annual Debt <sup>2</sup>	Assessment Rate <sup>3</sup>
Improved Safety	6,942	30.8%	\$27,730,400	\$1,625,300	\$256.53
Improved Reliability	6,942	30.8%	\$27,730,400	\$1,625,300	\$256.53
Improved Aesthetics	6,942	30.8%	\$27,730,400	\$1,625,300	\$256.53

<sup>1</sup> The Project cost was allocated between Improved Safety, Reliability, and Aesthetics at 30.8%, 38.4%, and 30.8%, respectively based on the number of EBUs calculated for each category.

<sup>2</sup> Annual debt for each category is the portion of the annual debt payment for the proposed utility undergrounding project. The annual debt payment assumes a total project cost of \$90M at a 4.31% interest rate over a 30-year repayment period.

<sup>3</sup> The Assessment Rate includes provisions for statutory early payment discounts of 5.0%, tax collector fees of 2.0% and \$100,000 annually for administrative costs. The total assessment program related costs amount to \$504,576 each year.

For each Category of Benefit, the following discussion identifies parcels that benefit, the assignment of EBUs, and related equations to determine each parcel's assignment of EBUs.



## 4.1 IMPROVED SAFETY

Properties specially benefit from the improved safety of undergrounding overhead utilities in two distinct ways: 1) the elimination of the potential for poles or overhead lines adjacent to a property to fall and damage property from falling or exposing "live" electrical lines and 2) the elimination of the potential for poles or overhead lines to be downed within the neighborhood restricting ingress and egress to and from the property. A single-family residential lot that is adjacent to overhead facilities has been assigned a base unit of benefit for improved Safety equal to 1.0 Safety EBU. The base Safety EBU evenly accounts for the two components of improved safety. Therefore, the analysis uses 0.50 equivalent benefit units for the improved safety to the property and 0.50 equivalent benefit units for the improved access to the property.

Improved Safety provides a benefit to each affected lot within the assessment program; therefore, the average lot size of all properties within the assessment program was calculated, equal to 8,700 square feet, to determine the baseline measurement of one EBU for the category of Improved Safety. All developed parcels up to 8,700 square feet that are adjacent to overhead facilities have been assigned a minimum of 1.0 Safety EBUs and parcels without overhead facilities adjacent to its property are assigned a minimum of 0.5 Safety EBUs. In addition, all developable vacant lots up to 8,700 square feet are also assigned a minimum of 1.0 Safety EBU as each lot has ability to develop. Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet span a greater area that may be exposed to overhead facilities along streets, alleys or easements along its properties. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, additional Safety EBUs were assigned to parcels greater than 8,700 square feet in 0.5 increments, in recognition that the difference in special benefit between one additional square foot versus two additional square feet is negligible on a square foot basis. However, using 0.5 EBUs increments corresponds to an additional 4,350 square feet above 1.0 EBU and reflects a noticeable variance in size to assign additional benefit units to capture the increase in special benefit received by these parcels. For example, a parcel with 15,225 square feet would be assigned 1.5 EBUs ( $15,225/8,700 = 1.75$  EBUs; rounded down to nearest 0.5 EBUs = 1.5 EBUs).

In identifying the amount of assigned Safety EBUs for each parcel, overhead facilities, including utility lines and poles, along secondary streets, alleyways and rear easements are considered to be adjacent to all properties on either side due to the narrow widths of the secondary streets, alleyways and rear easements. In addition, utility poles are considered a part of the overhead facilities; therefore, properties that only front utility poles are also assigned a minimum of 1.0 Safety EBU.

Conversely, some parcels are already adjacent to undergrounded utilities and, therefore, do not benefit to the same extent when compared to parcels currently adjacent to overhead utilities. Properties within the boundaries of the utility undergrounding project area that do not have overhead facilities adjacent to their property along the secondary streets, alleyways and rear easements shall be assigned Safety EBUs equal to one-half (1/2) of the Safety EBU calculation to reflect the reduced benefit received by the parcel. The 0.5 EBU accounts for the benefit associated with the improved safety of undergrounding facilities within the local neighborhood/area of the parcel.

Based on this method of assessment, each condominium complex was assigned Safety EBUs by first assigning Safety EBUs to the condominium complex. Once the Safety EBUs for the complex was derived, the total Safety EBUs were apportioned evenly to each condo within the complex. Therefore, depending on the size of the complex and the number of units within the complex, condo parcel EBU assignments will vary from complex to complex. For single-family residences, multi-family properties,

and non-residential properties, the EBUs calculated were assigned to the applicable parcel number. Table 4-2 outlines the safety EBU calculations.

Table 4-1: Safety EBU Calculation

Land Use	Overhead Utilities	Safety EBU Assignment
Single-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	(Lot Size / 8,700) / 2; rounded down to nearest 0.5, minimum of 0.5 EBU
Condominium	Yes	{Complex Lot Size / 8,700; rounded down to nearest 0.5} / condos in Complex, minimum of 1.0 EBU per complex
	No	0.5 x [{Complex Lot Size / 8,700; rounded down to nearest 0.5} / condos in Complex], minimum of 0.5 EBU per complex
Multi-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5
Non-Residential	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU
Vacant	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5, minimum of 0.5 EBU

## 4.2 IMPROVED RELIABILITY

The benefit from the distribution of electricity, other utilities, and the underground wires and cables is essentially equivalent for each single-family residence. Further, since all of the single-family lots have the same ability to use utilities and each single-family parcel benefits from the increased reliability that undergrounding provides, each single-family residential property has been assigned (1.0) Reliability EBU to account for the failure in any one or more of the following systems, resulting in an interruption in services: 1) primary distribution lines; 2) secondary distribution lines, or 3) local distribution lines that provide connections to a property's utilities.

It is evident that each condominium in a complex, each unit of a multi-family property, and all non-residential property would be impacted by an interruption in services due to a power outage and therefore specially benefit from the improved reliability. Since there are more units, square footage and/or occupants within condominium complexes, multi-family properties, and non-residential properties, these properties receive a different level of benefit than a single-family residence from the improved reliability of undergrounded utility services. For condominium complexes and multi-family properties, not only does the entire property benefit from the improved reliability, but every unit receives utility services and benefits from the improved reliability.

Therefore, a reasonable comparison of benefit for condominiums and multi-family units can be derived by using population density factors as a proxy for comparing the typical dwelling sizes between single-

family residences and condominiums/multi-family units within the Town. On average, condominiums and multi-family residences are smaller dwelling units than single-family residences, which is reflected through the density factors for each land use type. Within the Town, Single-family Residences have a density factor of 2.04 persons per household, whereas, condominiums and multi-family residences have a density factor of 1.56 based on the 2010 census. With single-family properties assigned a Reliability EBU equal to 1.0, the density factors are used to assign a proportionate benefit equivalency to each individual condominium and multi-family unit by taking the ratio of  $1.56/2.04 = 0.76$  EBUs. As such, each condominium and multi-family unit are assigned 0.76 EBUs for improved reliability.

When comparing non-residential land use types to the baseline EBU of a single-family residence lot, the density factor is not applicable and therefore, EBUs are assigned based on acreage (8,700 square feet). Non-residential properties are assigned improved Reliability EBUs based on the size of the lot, as the lot size of each these properties directly correlates to the amount of potential improvements utilizing and benefiting from the increased reliability.

Although certain parcels may be adjacent to a portion of undergrounded facilities, their services are still provided through overhead utilities within their neighborhood. In addition, there are instances where a property may have their utilities undergrounded and ready to receive service, but are still currently being served by overhead lines that connect to their property or their point of connection to their undergrounded utilities. **Table 4-3** outlines the reliability EBU calculations.

**Table 4-2: Reliability EBU Calculation**

Land Use	Density Factor	Reliability EBU Assignment
Single-Family	$2.04/2.04 = 1.00$	$1.0 \text{ EBU} \times \text{Density Factor} = 1.00 \text{ EBU}$
Condominium	$1.56/2.04 = 0.76$	$1.00 \text{ EBU} \times \text{Density Factor} = 0.76 \text{ EBU}$
Multi-Family	$1.56/2.04 = 0.76$	$1.0 \text{ EBU} \times \text{Density Factor} \times \text{Units}$
Non-Residential	N/A	Lot Size / 8,700; minimum of 1.0 EBU, rounded down to nearest 0.5
Vacant	N/A	Lot Size / 8,700; minimum of 1.0 EBU, rounded down to nearest 0.5

#### 4.3 IMPROVED AESTHETICS

Removing the overhead utilities will improve the overall aesthetics to an individual property and the neighborhood aesthetics for all properties within a defined project area by eliminating a heavy concentration of electric lines and communication facilities. Like the Safety benefit category, a single-family residence adjacent to overhead utilities has been assigned 0.5 EBUs for the improved aesthetics of its property and 0.5 EBUs for the improved aesthetics of the property's neighborhood, for a total assignment of 1.0 Aesthetic EBU. 1.0 EBU equals the average town-wide lot size of 8,700 square feet.

Developed single family, non-residential and vacant lots less than the minimum lot size have been assigned a minimum of 1.0 Aesthetics EBU. Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet has more area benefiting from improved aesthetics. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, additional Aesthetic EBUs were assigned to parcels greater than 8,700 square feet in 0.5 increments, in recognition that the difference in special benefit between one additional square foot versus two additional square feet is negligible on a square foot basis. However, using 0.5 EBUs increments corresponds to an additional 4,350 square feet above 1.0 EBU and reflects a noticeable variance in size to assign additional benefit units to capture the increase in special benefit received by these parcels.

Condominium complexes, multi-family properties, non-residential properties, undeveloped parcels, as well as certain single family residential lots exceeding the baseline square footage of 8,700 square feet span a greater area along the streets that have overhead utilities and/or utility poles proposed to be undergrounded. Therefore, the benefit received by these properties is proportionately greater when compared to properties assigned 1.0 EBU. Based on this equivalency, parcels greater than 8,700 square feet have been assigned additional Aesthetic EBUs, in 0.5 increments, in recognition of the proportionate special benefits received by these parcels.

Properties within the boundaries of the utility undergrounding project area that do not have overhead facilities adjacent to their property along the secondary streets, alleyways and rear easements shall be assigned Safety EBUs equal to one-half (1/2) of the Safety EBU calculation to reflect the reduced benefit received by the parcel. The 0.5 EBU accounts for the benefit associated with the improved safety of undergrounding facilities within the local neighborhood/area of the parcel.

Based on this method of assessment, each condominium complex was assigned Aesthetic EBUs by first assigning Aesthetic EBUs to the condominium complex. Once the Aesthetic EBUs for the complex was derived, the total Aesthetic EBUs were apportioned evenly to each condo within the complex. Therefore, depending on the size of the complex and the number of units within the complex, condo parcel EBU assignments will vary from complex to complex. For single-family residences, multi-family properties, and non-residential properties, the EBUs calculated were assigned to the applicable parcel number. **Table 4-4** outlines the Aesthetic EBU calculations.

Table 4-3: Aesthetic EBU Calculation

Land Use	Overhead Utilities	Aesthetics EBU Assignment
Single-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	(Lot Size / 8,700) / 2; rounded down to nearest 0.5, minimum of 0.5 EBU
Condominium	Yes	(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex, minimum of 1.0 EBU per complex
	No	0.5 x [(Complex Lot Size / 8,700; rounded down to nearest 0.5) / condos in Complex], minimum of 0.5 EBU per complex
Multi-Family	Yes	Lot Size / 8,700; rounded down to nearest 0.5
	No	0.5 x (Lot Size / 8,700); rounded down to nearest 0.5
Non-Residential	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU
Vacant	Yes	Lot Size / 8,700; rounded down to nearest 0.5, minimum of 1.0 EBU
	No	0.5 x (Lot Size / 8,700); rounded to nearest 0.5, minimum of 0.5 EBU

#### 4.4 SPECIAL CASES AND EXCEPTIONS

##### 4.4.1 Golf Course Parcels and the Breakers

While parcels throughout the Town benefit from the undergrounding of nearby utilities, certain parcels that make up the golf courses and the Breakers benefit to a lesser degree due to diminished return of benefit as the parcel's total acreage increases. The parcel(s) have a lower frontage-to-acreage ratio and as the parcel size increases, most the parcel's area is either the golf course itself or passive park-like facilities that do not utilize utilities. In order to account for the difference in total special benefit, the parcels associated with golf courses and parcels associated with the Breakers resort were combined as one property, respectively. To calculate these parcels' acreage, the parcel's total frontage was multiplied by a lot depth of 200 feet based on the typical depth of Low Density Residential lots throughout the Town.

##### 4.4.2 Non-Assessable Obligation

Certain neighborhoods within the Town have either already created an assessment program to underground its overhead facilities (Everglades Island and Via Fontana) or are currently in the process of creating a utility undergrounding assessment program (Nightingale and Lake Towers). Due to the timing of these assessment programs, appurtenant facilities remain at the termination points of these project areas which will be undergrounded once this utility undergrounding assessment program is completed. As such, an indirect reliability benefit exists within this utility undergrounding assessment program associated with the termination points of these other assessment programs. Each termination point is assigned 1 Reliability EBU to account for this indirect benefit resulting from different timing of the undergrounding projects for a total of 7 Reliability EBUs. The obligation associated with these 7 Reliability EBUs will not be assessed against any parcel within the proposed utility undergrounding assessment program and will be excluded from the assessment.

#### **4.4.3 Bifurcated Lots**

Certain parcels within the Town have a portion of their property bifurcated as a result of South Ocean Boulevard. These properties were treated as special cases and were assigned EBUs based on the acreage of both lots associated with these properties as one contiguous parcel for assigning EBUs.

#### **4.4.4 Undevelopable parcels**

Vacant parcels that cannot be developed due to size of property or zoning restrictions or are parcels associated with conservation land dedicated to wildlife habitat preservation are exempt from the proposed utility undergrounding assessments because these parcels do not confer any measurable special benefit from the improvements.

#### **4.4.5 Internal condominium parking spaces, common areas, storage units and condominium cabanas**

Certain parcels within a condominium complex are legally subdivided lots that are associated with auxiliary improvements, such as, deeded parking spaces, storage units, and condominium cabanas. As such, these types of parcels are exempt from the assessment because other associated parcels are assessed as the primary parcel of benefit.

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## 5. DIAGRAM

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A Diagram showing the boundaries of the proposed Utility Undergrounding Project, the dimensions of the subdivisions of land within the Town (as they existed at the time of the creation of this Report), is on file with the Town and by reference is considered part of this report.

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## 6. PARCEL DATABASE

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A parcel database identifying each parcel's equivalent benefit unit assignment for each of the three categories of special benefit has been provided to the Town under separate cover and by reference is made part of this Report.



# EXHIBIT P

**RESOLUTION NO. 090-2017**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RELATING TO THE UNDERGROUND UTILITY IMPROVEMENTS; DESCRIBING THE PROPERTY TO BE INCLUDED WITHIN THE PROPOSED UNDERGROUND UTILITY ASSESSMENT AREA AND THE LOCAL IMPROVEMENTS TO BE PROVIDED THEREIN; PROVIDING CERTAIN LEGISLATIVE FINDINGS; DETERMINING THE ESTIMATED CAPITAL COST OF THE UNDERGROUND UTILITY IMPROVEMENTS; ESTABLISHING THE METHOD OF ASSESSING THE PROJECT COST AGAINST THE PROPERTIES THAT WILL BE BENEFITTED THEREBY; ESTABLISHING OTHER TERMS AND CONDITIONS OF THE ASSESSMENTS; DIRECTING THE TOWN MANAGER TO PREPARE A PRELIMINARY ASSESSMENT ROLL; ESTABLISHING A PUBLIC HEARING TO CONSIDER IMPOSITION OF THE PROPOSED IMPROVEMENT ASSESSMENTS AND THE METHOD OF THEIR COLLECTION; DIRECTING THE PROVISION OF NOTICE; PROVIDING FOR APPLICATION OF THE IMPROVEMENT ASSESMENT PROCEEDS; DECALRING THE TOWN'S INTENT FOR REIMBURSEMENT FROM BOND PROCEEDS; AND PROVIDING FOR AN EFFECTIVE DATE.

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AS FOLLOWS:**

**ARTICLE I**

**DEFINITIONS AND CONSTRUCTION**

**SECTION 1.01. DEFINITIONS.** This Resolution constitutes the Initial Assessment Resolution as defined in the Code. All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Code. As used in this Resolution, the following terms shall following meanings, unless the context hereof otherwise requires.

**"Adjacent Property"** means those Tax Parcels that abut existing overhead utility facilities. When existing overhead utility facilities lie along either side of a street, alleyway or utility easement,

the Tax Parcels on both sides of the street, alleyway or utility easement are deemed to abut the overhead utility facilities.

**"Adjusted Prepayment Amount"** means the amount required to prepay the Improvement Assessment for each Tax Parcel located in the Underground Utility Assessment Area (1) following issuance of the any Temporary Original Obligations, as computed pursuant to Section 4.03(B) hereof and revised annually pursuant to Section 4.04(I) hereof, (2) following the issuance of any Permanent Original Obligations, as computed pursuant to Section 4.03(C) hereof and revised annually pursuant to Section 4.04(I) hereof, and (3) following the issuance of any Refunding Obligations, as computed pursuant to Section 4.03(D) hereof and revised annually pursuant to Section 4.04(I) hereof.

**"Aesthetic EBU"** means "aesthetic equivalent benefit unit," the standard unit to be used in calculating the relative amount of special benefit allocated to the improved aesthetics to be derived by each Tax Parcel from the Underground Utility Improvements.

**"Annual Debt Service Component"** means the amount computed for each Tax Parcel pursuant to Section 4.04(E) hereof.

**"Annual Debt Service Factor"** means the factor computed pursuant to Section 4.04(D) hereof.

**"Assessment Report"** means that certain "Town of Palm Beach Utility Undergrounding Assessment Methodology Update," dated as of June 2, 2017, prepared by Raftelis Financial Consultants, Inc., which report and its incorporated parcel database is approved and hereby incorporated herein by reference.

**"Assessment Period"** means the time period estimated by the Town during which Improvement Assessments are imposed for any portion of the Obligations that remain outstanding

unless otherwise prepaid pursuant to Sections 4.05, 4.06, or 4.07 hereof. The Assessment Period shall be set by the Board at or following the public hearing established in Section 2.01 hereof.

**"Capital Cost"** means all or any portion of the expenses that are properly attributable to the acquisition, design, installation, and construction of the Underground Utility Improvements (including any demolition, environmental mitigation, and relocation) and imposition of the Improvement Assessments under generally accepted accounting principles and including reimbursement to the Town for any funds advanced for Capital Cost and interest on any interfund or intrafund loan for such purposes.

**"Code"** means Chapter 90, Article II of the Town of Palm Beach code of ordinances, concerning Special Assessments.

**"Collection Cost"** means the estimated cost to be incurred by the Town during any Fiscal Year in connection with the collection of the Improvement Assessments.

**"Collection Cost Component"** means the amount computed for each Tax Parcel pursuant to Section 4.04(F) hereof.

**"Condominium Complex"** means a condominium community created by a declaration of condominium pursuant to Chapter 718, Florida Statutes.

**"Condominium Common Area Parcel"** means a Tax Parcel including one or more "common elements," as defined in section 718.103, Florida Statutes within a Condominium Complex, the taxable value of which has been attributed to either Residential Condominium Property or Non-Residential Condominium Property by the Property Appraiser.

**"Debt Service Amount"** means the amount computed pursuant to Section 4.04(A) hereof.

**"Density Factor"** means a factor based upon a comparison of the average persons per household for each type of Residential Property within the Town derived from the 2010 U.S. census

data, which factor is used as a proxy for comparing the typical dwelling unit size and use of Residential Property and the comparative reliability special benefit accruing to such properties. The Density Factors for Residential Property are as follows: (i) Single Family Residential Property -- 1.0; (ii) Residential Condo Property -- .76; and (iii) Multi-Family Residential Property -- .76.

**"Dwelling Unit"** means a building or a portion thereof that is designed for residential occupancy.

**"EBU"** means "equivalent benefit unit," the standard Assessment Unit to be used in calculating the relative amount of special benefit to be derived by each Tax Parcel from the Underground Utility Improvements as computed by summing each Tax Parcel's assigned Safety EBUs, Reliability EBUs, and Aesthetic EBUs and as more specifically described in the Assessment Report and the incorporated parcel database.

**"EBU Land Value"** means the average Lot Size of all Tax Parcels within the Underground Utility Assessment Area, which the Town has computed is equal to 8,700 square feet of land area based upon the Palm Beach County Property Appraiser's ad valorem tax roll database.

**"Excluded Neighborhoods"** means the Everglades Island Assessment Area established in Resolution 161-2013, the Via Fontana Assessment Area established in Resolution 127-2012, the Lake Tower Assessment Area, as described in composite Appendix D, to be created by the Town by subsequent resolution, and the North Nightingale Trail/La Puerta Way Assessment Area, as described in composite Appendix D, to be created by the Town by subsequent resolution.

**"Excluded Parcels"** means undevelopable Tax Parcels, distinct Tax Parcels that contain only parking spaces, storage units, or condominium cabanas and serve as auxiliary improvements to a primary improvement on another Tax Parcel, and those Tax Parcels within the Excluded Neighborhoods.

**"Final Assessment Resolution"** means the resolution described in Sec. 90-86 of the Code which shall confirm, modify or repeal this Resolution and which shall be the final proceeding for the imposition of the Improvement Assessments within the Underground Utility Assessment Area.

**"Funding Agreement"** means the agreement pursuant to which the Town agrees to deliver the Obligations against payment therefore by the purchaser or underwriter of such Obligations.

**"Improvement Assessment" or "Assessment"** means an annual special assessment imposed against property located within Underground Utility Assessment Area to fund the Project Cost of the Underground Utility Improvements, and related expenses, computed in the manner described in Section 4.04 hereof.

**"Initial Prepayment Amount"** means the amount computed pursuant Section 4.03(A) hereof for each Tax Parcel located in the Underground Utility Assessment Area to prepay the Improvement Assessment prior to issuance of the Original Obligations.

**"Lot Size"** means the total land area of each Tax Parcel expressed in square feet as reflected in the Palm Beach County Property Appraiser's ad valorem tax roll database and adjusted by any applicable Parcel Adjustment Factor. Tax Parcels containing golf courses under common ownership, the Breakers Palm Beach, and contiguous parcels under common ownership that are bifurcated by South Ocean Boulevard shall be combined and treated as one Tax Parcel for determining Lot Size.

**"Modified Debt Service Amount"** means the amount computed pursuant to Section 4.04(C) hereof.

**"Multi-Family Property"** means a building or a portion thereof that contains more than one Dwelling Unit on a single Tax Parcel, including, but not limited to, apartments, townhouses, triplexes, and quadraplexes.

**"Non-Adjacent Property"** means all Tax Parcels within the Underground Utility Assessment Area that are not Adjacent Property or Excluded Parcels.

**"Non-Residential Condominium Property"** means a Tax Parcel of Benefited Property constituting a Condominium "unit," as defined in section 718.103, Florida Statutes, which does not contain a Dwelling Unit.

**"Non-Residential Property"** means all Tax Parcels within the Underground Utility Assessment Area that are not Residential Property or Excluded Parcels, including but not limited to, commercial, industrial, institutional, and vacant properties.

**"Obligations"** means Original Obligations or Refunding Obligations.

**"Original Obligations"** means Temporary Original Obligations and Permanent Original Obligations.

**"Parcel Adjustment Factor"** means the adjustment made to the Lot Size for Tax Parcels that contain open areas of golf courses and the open space areas of the Breakers Palm Beach, as computed by multiplying the Tax Parcel's total front footage (the number of lineal feet the Tax Parcel abuts the road upon which the Underground Utility Improvements are to be constructed) by 200, which is the Town's typical lot depth for low density residential.

**"Permanent Original Obligations"** means notes, bonds or other evidence of indebtedness including but not limited to, notes, bonds, commercial paper, capital leases or any other obligations issued, incurred, or applied to finance a portion of the Project Cost of the Underground Utility Improvements or refinance any Temporary Original Obligations, and are secured or payable, in whole or in part, by proceeds of the Improvement Assessments.

**"Prepayment Modification Factor"** means the factor computed pursuant to Section 4.04(B) hereof.

**"Proforma Obligations"** means a proforma of the Permanent Original Obligations prepared by the Town or its financial advisor utilizing the following assumptions: (A) the principal amount of the Permanent Original Obligations is sufficient to fund (1) the Project Cost of the Underground Utility Improvements, (2) payment of the estimated Transaction Cost for the Permanent Original Obligations, (3) amounts to be deposited in any reserve account established for the Permanent Original Obligations, and (4) any other amounts deemed necessary by the Town or its financial advisor, related to the Underground Utility Improvements; (B) the Permanent Original Obligations are payable in substantially equal annual payments over the Assessment Period from their date of issuance; (C) the Permanent Original Obligations bear interest at rates that, in the reasonable judgment of the Town or its financial advisor (taking into consideration possible interest rate fluctuations between the date on which such proforma is prepared and the estimated date for issuance of the Permanent Original Obligations), may be available on the estimated issuance date for the Permanent Original Obligations; and (D) the Permanent Original Obligations will bear interest at a rate one-half (0.5%) percentage point in excess of the estimated interest rate such Obligations will actually bear.

**"Project Cost"** means (A) the Capital Cost of the Underground Utility Improvements, (B) the Transaction Cost associated with the Obligations attributable to the Underground Utility Improvements, (C) interest accruing on such Obligations for such period of time as the Town deems appropriate, (D) the debt service reserve fund or account, if any, established for the Obligations attributable to the Underground Utility Improvements, and (E) any other costs or expenses related thereto.

**"Refunding Obligations"** means a series of bonds or other evidence of indebtedness including but not limited to, notes, bonds, commercial paper, capital leases or any other obligations



of the Town issued, incurred, or applied to refund all or any portion of the Permanent Original Obligations or any indebtedness issued to refinance the Permanent Original Obligations.

**"Reliability EBU"** means "reliability equivalent benefit unit," the standard unit to be used in calculating the relative amount of special benefit allocated to the improved service reliability to be derived by each Tax Parcel from the Underground Utility Improvements.

**"Residential Condominium Property"** means a Tax Parcel containing a Dwelling Unit within a Condominium Complex, as defined in Section 718.103(27), Florida Statutes.

**"Residential Property"** means collectively Single Family Residential Property, Multi-Family Residential Property, and Residential Condominium Property.

**"Safety EBU"** means "safety equivalent benefit unit," the standard unit to be used in calculating the relative amount of special benefit allocated to the improved safety to be derived by each Tax Parcel from the Underground Utility Improvements.

**"Single Family Residential Property"** means a detached Dwelling Unit on an individual Tax Parcel, plus duplexes and zero lot line houses.

**"Statutory Discount Amount"** means the amount computed for each Tax Parcel pursuant to Section 4.04(G) hereof.

**"Tax Parcel"** means a parcel of property to which the Property Appraiser has assigned a distinct ad valorem property tax identification number.

**"Tax Roll"** means the real property ad valorem tax assessment roll maintained by the Property Appraiser for the purpose of the levy and collection of ad valorem taxes.

**"Temporary Original Obligations"** means that portion of the loan or loans from any short-term finance program, incurred by the Town to (A) finance all or a portion of the Project Cost of the

Underground Utility Improvements on an interim basis, and (B) finance the payment of any Transaction Cost for the issuance of the Temporary Original Obligations.

**"Termination Point"** means the point where the utility facilities placed underground in an Excluded Neighborhood pursuant to an existing or planned utility undergrounding assessment program terminate and connect to the existing overhead facilities.

**"Transaction Cost"** means the costs, fees and expenses incurred by the Town in connection with the issuance and sale of any series of Obligations, including but not limited to (A) rating agency and other financing fees; (B) the fees and disbursements of bond counsel and disclosure counsel, if any; (C) the underwriters' discount; (D) the fees and disbursements of the Town's financial advisor; (E) the costs of preparing and printing the Obligations, the preliminary official statement, the final official statement, and all other documentation supporting issuance of the Obligations; (F) the fees payable in respect of any municipal bond insurance policy; (G) administrative, development, credit review, and all other fees associated with any pooled commercial paper or similar interim financing program; and (H) any other costs of a similar nature incurred in connection with issuance of such Obligations.

**"Underground Utility Assessment Area"** means the property more particularly described in Section 3.01 and Appendix C hereof.

**"Underground Utility Assessment Roll"** means the Assessment Roll as defined in the Code relating to the Project Cost of the Underground Utility Improvements.

**"Underground Utility Improvements"** means a Local Improvement as defined in the Code and hereby more specifically defined as the following utility infrastructure improvements to be designed, acquired, constructed, or installed by or through direction from the Town within the Underground Utility Assessment Area: removal of overhead utility lines and facilities for electricity,

telephone, cable, and fiber optics; acquisition of land and/or easements associated with the project; design, acquisition, installation, and construction of underground utility vaults, conduits, transformers, and other necessary facilities (underground and on the surface) to facilitate placement underground of all local electrical distribution lines, telephone lines, cable lines, and fiber optics to provide such essential services to properties within the Underground Utility Assessment Area; design, acquisition, installation, and construction of necessary facilities to connect the improvements on each Tax Parcel, including, but not limited to, meter conversions (for meters that are currently in compliance with all applicable codes), service laterals, and any looping of onsite lines in conformance with all utility standards; and property restoration, landscaping, and other utility and utility related improvements.

**"Uniform Assessment Collection Act"** means Sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

**SECTION 1.02. INTERPRETATION.** Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Resolution; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Resolution. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

**SECTION 1.03. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) Pursuant to Article VIII, Section 2(b) of the Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the Town Council has all powers of local self-government to

perform municipal functions and to render municipal services except when prohibited by law and such power may be exercised by the enactment of legislation in the form of Town ordinances.

(B) The Town Council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the Town Council may legislate on any subject matter on which the Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c) and (d) of section 166.021(3), Florida Statutes, are not relevant to imposition of assessments related to the Underground Utility Improvements within the Town.

(C) The Town Council has enacted the Code to provide for the creation of Assessment Areas and authorize the imposition of Assessments to fund the cost of Local Improvements that benefit the property located therein.

(D) The Town Council desires to create the Underground Utility Assessment Area as an Assessment Area and to fund Project Cost of the Underground Utility Improvements, which is a Local Improvement as defined in the Code.

(E) As set forth in more detail in the Assessment Report, the design, acquisition, construction, and installation of the Underground Utility Improvements will provide a special benefit to all Tax Parcels located within the Underground Utility Assessment Area by protecting and enhancing the value, use, enjoyment and commercial attractiveness and viability of such property by improving and enhancing: (1) property safety by reducing the potential of hazardous conditions occurring on these properties and the ingress and egress to these properties from downed poles, lines, and other overhead utility facilities in the event of storms and other natural disasters and reducing the potential for fires occurring on such properties emanating from the overhead utility facilities due to vegetative overgrowth, storms, and other causes; (2) reliability of utility services provided to these

properties by reducing the frequency of utility outages once placed underground, replacing the current utility infrastructure with new, upgraded lines, cables, and appurtenant facilities to be installed through the Underground Utility Improvements; and (3) aesthetics of these properties and their immediate surrounding areas by removing the overhead utility facilities, which will eliminate a heavy visual concentration of utility lines and poles.

(F) Pursuant to Florida Power & Light Company's 2017 Status/Update Report on Storm Hardening/Preparedness and Distribution Reliability, dated as of March 1, 2017, underground utility facilities provide the greatest utility service reliability. For example, in 2016 Florida Power & Light reported that customers served by underground utilities experienced average outages of just 17.2 minutes compared to 80.4 minutes for customers served by overhead utilities and 57.6 minutes for customers served by a combination of underground and overhead utilities. Even with storm hardened overhead utility facilities in place, Florida Power & Light Company's data dating back to 2012 demonstrates a similar increased reliability benefit from undergrounded utilities as compared to overhead utility facilities or combined overhead and underground utility facilities.

(G) The Underground Utility Improvements are projected to be designed, constructed, and installed throughout the Underground Utility Assessment Area over an 8-year build out period. This build-out period is required due to the extensive coordination, traffic control, and mobilization needed during the project construction. Due to the magnitude of the Underground Utility Improvements project, an 8-year build out period is a fair and reasonable time period for realization of the special benefits that will be provided to the Tax Parcels within the Underground Utility Assessment Area. Additionally, even though the Underground Utility Improvements project is not planned to be substantially complete throughout the Underground Utility Assessment Area for eight years, all properties will receive a special benefit, at a certain level, upon the initiation of the project

as the overhead utility lines within the Town-wide utility grid begin to be placed underground and providing some increased safety, aesthetics, and reliability to Tax Parcels within the Underground Utility Assessment Area.

(H) The Town Council hereby finds and determines that the Assessments to be imposed in accordance with this Initial Assessment Resolution provide an equitable method of funding the Underground Utility Improvements by fairly and reasonably allocating the cost to specially benefitted property, based upon the amount of Equivalent Benefit Units or EBUs attributable to each parcel of property in the manner hereinafter described.

(I) It is fair and reasonable and proportionate to the special benefit received to apportion the Project Cost of the Underground Utility Improvements based upon EBUs because the aesthetic, safety, and reliability benefits received are substantially proportional to the assessed Tax Parcel's Lot Size, density, and type of development as expressed in EBUs and as more particularly described in the Assessment Report.

(J) It is fair and reasonable to split the Project Cost of the Underground Utility Improvements among the three special benefit components – safety, reliability, and aesthetics – based upon the proportionate numbers of EBUs in each category.

(K) Although all Tax Parcels within the Underground Utility Assessment Area will be specially benefitted by the Underground Utility Improvements, as described above, due to their closer physical proximity to the existing overhead utility facilities, Adjacent Property will receive greater safety and aesthetic special benefits than Non-Adjacent Property. Accordingly, it is fair and reasonable to assign less Safety EBUs and Aesthetic EBUs to Non-Adjacent Property in acknowledgement of this lesser level of special benefit.

(L) It is fair and reasonable and proportionate to the special benefit received for safety and aesthetics to assign Safety EBUs and Aesthetic EBUs to the Tax Parcels based upon Lot Size because a larger sized property will span a greater area that may be exposed to existing overhead facilities along abutting streets, alleys, and easements that are being removed and replaced as a part of the Underground Utility Improvements and, accordingly, receive a proportionately greater benefit as compared to properties with smaller Lot Size.

(M) It is fair and reasonable to assign a minimum of one (1) Safety EBU and one (1) Aesthetic EBU for Adjacent Property or a minimum of one-half (.5) Safety EBU and one-half (.5) Aesthetic EBU for Non-adjacent Property because, regardless of their actual Lot Sizes, all such properties within the Underground Utility Assessment Area receive a baseline special benefit from the Underground Utility Improvements.

(N) Due to the similar size and use of Single Family Residential Properties, the reliability special benefit, as described above, is substantially the same for each Dwelling Unit located on a Tax Parcel of Single Family Residential Property. Accordingly, it is fair and reasonable and proportionate to the reliability special benefit received to assign all Dwelling Units located on Tax Parcels of Single Family Residential Property one (1) Reliability EBU per Dwelling Unit.

(O) In contrast, all Tax Parcels of Multi-Family Property and Residential Condominium Property within the Underground Utility Assessment Area will receive a different level of reliability special benefit than Single Family Residential Property since these properties are generally smaller, more compact and have less occupant density than Single Family Residential Property. Accordingly, it is fair and reasonable to assign Reliability EBUs to Multi-Family Property and Residential Condominium Property by using a Density Factor as a proxy for the typical Dwelling Unit sizes to acknowledge that these generally smaller Dwelling Units receive a lesser reliability special benefit.

(P) Because Density Factor data is not available for Non-Residential Property, it is fair and reasonable to use Lot Size to assign Reliability EBUs to these properties to account for the greater amount of special benefit accruing to larger Non-Residential Properties from the provision of the Underground Utility Project because a larger sized property can accommodate a greater amount of potential improvements utilizing and benefitting from the increased utility reliability and, accordingly, receive a proportionately greater benefit as compared to properties with smaller Lot Size.

(Q) Condominium property constitutes a unique form of real property ownership comprised of condominium units, to which there may be an appurtenant undivided share of common areas within the Condominium Complex. It is fair and reasonable and in accordance with section 718.120, Florida Statutes, to attribute the EBUs associated with any Condominium Common Area Parcels to the Tax Parcels of Residential Condominium Property or Non-Residential Condominium Property to which such Condominium Common Area Parcels are appurtenant.

(R) The Underground Utility Improvements necessarily includes some surface level facilities, such as switch boxes, which will be located on or adjacent to some properties within the Underground Utility Assessment Area. These properties will still receive an aesthetic special benefit proportionate to their Lot Size because the Underground Utility Improvements will eliminate a heavy visual concentration of utility lines and poles; it is not possible to eliminate all surface level utility facilities and the switch boxes and other like facilities that will be maintained are far less obtrusive, are close to the ground, and are more visually pleasing.

(S) Some Tax Parcels within the Underground Utility Assessment Area contain large open areas, such as golf courses and the Breakers Palm Beach. To account for the diminished return of benefit to such Tax Parcels as their total amount of open space acreage that does not consume



utilities increases, it is fair and reasonable to combine all related Tax Parcels as one parcel and apply a Parcel Adjustment Factor in acknowledgement of the lesser amount of special benefit accruing to these open areas due to the lower frontage to acreage ratio applicable to these properties.

(T) Some Tax Parcels within the Town have petitioned the Town to institute a utility undergrounding project for their immediate neighborhood, which is similarly being funded with special assessments imposed by the Town on the specially benefitted properties. Because those Tax Parcels within these Excluded Neighborhoods have already relocated or begun the process of relocation of their overhead utility facilities underground and are currently paying or will pay an annual special assessment, it is fair and reasonable to exclude these parcels from the Underground Utility Assessment Area. However, due to the timing of the utility undergrounding projects, the Underground Utility Improvements will provide an indirect reliability benefit to the Excluded Neighborhoods associated with the Termination Points where the underground utility facilities within the Excluded Neighborhoods connect or will connect to the utility grid serving the rest of the Town. Therefore, to account for this indirect reliability benefit, it is fair and reasonable to assign one (1) Reliability EBU to each Termination Point associated with the Excluded Neighborhoods for a total of seven (7) Reliability EBUs. The monetary obligation associated with these seven (7) Reliability EBUs will not be funded from the proceeds of the Improvement Assessments.

(U) Certain Tax Parcels within the Town are undevelopable due to property specific constraints or legal restrictions. Additionally, there are distinct Tax Parcels within the Town that contain only parking spaces, storage units, or condominium cabanas and serve as auxiliary improvements to a primary improvement on another Tax Parcel. It is fair and reasonable to exclude these Tax Parcels from the Underground Utility Assessment Area because they will receive little, if any, special benefit from the Underground Utility Improvements.