



REQUEST FOR BOARD ACTION

ITEM NO. 12.

DATE OF MEETING: May 16, 2011

REQUESTED BY: Michael G. Mack, Director, PCU

SHORT TITLE: Resolution by the Board of Directors of the Rocky Point/Topsail Water and Sewer District Approving a Water Sales Agreement and Bill of Sale and Grant of Utility Easements between Jensen's, Inc. and the Rocky Point/Topsail Water & Sewer District for the Provision of Water Service to the Coastal Plantation community.

BACKGROUND: In September 2010, Jensen's, Inc., owner, developer, and operator of a residential development known as Coastal Plantation in Hampstead, approached PCU about becoming the water purveyor for their residents. Jensen's currently owns and operates a community groundwater system consisting of two treated wells and a water distribution system serving approximately 103 residential lots and associated offices and support buildings with the Coastal Plantation community. They desire to discontinue the ownership and operation of their community water system and transfer ownership of the water distribution system to the District. In return, the District will acquire the water distribution system and agrees to supply public water service to the dwellings and buildings within the Coastal Plantation community.

The terms of the Water Sales Agreement and the Bill of Sale and Grant of Utility Easements forms stipulate Jensen's shall transfer the ownership of their water distribution system to the District; disconnect the distribution system from their well sites; and grant the District a perpetual joint and mutual easement and right of ingress and egress upon the private streets and rights of way located within Jensen's Coastal Plantation property for the installation, operation, repair and maintenance of the distribution system by the District. The District agrees to acquire the water distribution system; install a new water main extension from the District's watermain to a connection point with the Jensen's distribution system; install fire tank filling hydrants at a maximum spacing of 2,000 linear feet; install, own, operate and maintain individual water meters from the existing water distribution system to each individual residential lot; and provide public water supply and billing service to the Coastal Plantation properties. The District agrees to provide these services upon the payment of the District's current Water Capacity Fee by Jensen's for each 3/4 inch water service to be installed.

SPECIFIC ACTION REQUESTED: The Board of Directors of the Rocky Point/Topsail Water and Sewer District is requested to approve the Water Sales Agreement and Bill of Sale and Grant of Utility Easements between Jensen's, Inc. and the District for the provision of public water supply to Coastal Plantation.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

RTB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Rocky Point/Topsail Water and Sewer District Board of Directors that

the attached Water Sales Agreement and Bill of Sale and Grant of Utility Easements between Jensen's, Inc. and the District for the provision of public water supply to Coastal Plantation is approved.

The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ Tate ___ Rivenbark ___ Ward ___ Williams ___

George R. Brown, Chairman 05/16/11
Date

ATTEST 05/16/11
Date

STATE OF NORTH CAROLINA

COUNTY OF PENDER

WATER SALES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of May, 2011, by and between the **ROCKY POINT/TOPSAIL WATER & SEWER DISTRICT**, hereinafter referred to as "District", a body politic formed under the laws of the State of North Carolina, and **JENSEN'S, INC.**, hereinafter referred to as "Jensen's," a privately held company incorporated in the State of Connecticut and duly authorized to do business in the State of North Carolina.

WITNESSETH:

THAT WHEREAS, Jensen's is the owner, developer and operator of a residential development known as Coastal Plantation ("Coastal Plantation") located in Pender County upon real property acquired by Jensen's by virtue of that Deed recorded in Book 362 at Page 133 of the Pender County Register of Deeds ("Jensen's Coastal Plantation Property"); and,

WHEREAS, Jensen's currently owns and operates a community groundwater system (North Carolina Utilities Commission Permit No. NC0471120) upon the developed portions of the Jensen's Coastal Plantation Property, consisting of two treated wells ("Well Sites") and a water distribution system serving approximately 103 residential lots and associated offices and support buildings within the Coastal Plantation community ("Water Distribution System") (collectively referred to hereinafter as "Community Water System"); and,

WHEREAS, the District owns and operates a public water distribution and supply system for portions of Pender County; and,

WHEREAS, Jensen's desires to discontinue the ownership and operation of its Community Water System and transfer ownership of the Water Distribution System to the District; and,

WHEREAS, the District has agreed to acquire the Water Distribution System and to supply public water to the individual dwellings/buildings located within the Coastal Plantation community as existing and planned in the future; and,

WHEREAS, in accordance with this Agreement, Jensen's shall transfer the ownership of its Water Distribution System to the District and shall take steps to disconnect its Water Distribution System from its Well Sites when the District interconnects with the Water Distribution System and has properly tested the system for distribution of potable water; and,

WHEREAS, Jensen's agrees to grant the District, its successors or assigns, a perpetual joint and mutual easement in, over, under, and upon Jensen's private streets and rights of way

located within Jensen's Coastal Plantation Property with the right to erect, construct, install, and lay, and therefore use, operate, inspect, repair, maintain, replace and remove water distribution lines and appurtenant facilities, together with the right of ingress and egress over Jensen's private streets and rights of way to implement these easement rights; and,

WHEREAS, Jensen's shall execute a Bill of Sale and Grant of Utility Easements substantially in accordance with that form attached hereto and incorporated herein by reference as **Exhibit A**; and,

WHEREAS, the District agrees to provide public water service to the individual dwellings/buildings in Coastal Plantation, consisting of 103 units and related office and supporting buildings, and provide permanent operations and maintenance of the existing water distribution system; and

WHEREAS, the District agrees to provide public water service to the individual dwellings/buildings in the future expansions of Jensen's Coastal Plantation Property as requested by Jensen's; and,

WHEREAS, the District agrees to install a new water main extension from the existing District water main located on U. S. Highway 17 to a connection point with the Jensen's distribution system pursuant to engineering drawings and designs provided by JW Holland Engineering at no cost to Jensen's; and,

WHEREAS, the District agrees to install fire hydrants on the existing Water Distribution System at a maximum spacing of 2,000 linear feet for fire tank filling purposes at no cost to Jensen's; and,

WHEREAS, the District shall install, own, operate and maintain individual water meters from the existing Water Distribution System to each individual residential lot at the boundary line of each residential lot, and thereafter the District shall invoice each residential homeowner for water usage on a monthly basis in accordance with the District's Policies and Procedures; and,

WHEREAS, Jensen's agrees to repair the landscaping disturbed by the District in changing over to its system as well as the road paving; and,

WHEREAS, Jensen's agrees to disconnect its two (2) wells from the current system at no cost to the District; however, the well sites and building/equipment thereon, will remain the property of Jensen's and Jensen's shall have no further obligations to provide a potable water supply to the Jensen's Coastal Plantation Property; and,

WHEREAS, after development of the remainder of the Jensen's Coastal Plantation Property, Jensen's shall convey to the District, at no costs to the District, the water distribution systems specifically serving the future sections of Coastal Plantation.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, the parties do agree as follows:

1. **Provision of public water service:** Jensen's agrees to convey and dedicate its existing Water Distribution System, but not the well sites and building/equipment thereon, to the District at no cost to the District and following such transfer, disconnect its existing water wells located on Jensen's Well Sites in exchange for the District agreeing to provide public water service to the individual dwellings/buildings located within Jensen's Coastal Plantation subdivision and in future expansions of the Jensen's Coastal Plantation Property subject to the terms and conditions set forth herein.
2. **Transition Period:** Jensen's shall be responsible for providing sufficient notice and information to their tenants and assist the District in acquiring completed Water Service Applications from all the residents of Coastal Plantation to establish their billing and service accounts with the District in accordance with the form attached hereto and incorporated herein as **Exhibit B**.
3. **Rate:** The District agrees to accept the ownership, operations, and maintenance of Jensen's Water Distribution System, install fire-fill hydrants on the Water Distribution System, install individual residential water meters, and provide water service to serve the existing individual dwellings/buildings of Jensen's property upon the payment of the District's current Water Capacity Fee (\$3,000 for a ¾" water meter) for each individual dwelling/building to be served by the District. Jensen's shall pay the District's Water Capacity Fee for each ¾" water meter immediately prior to or at installation. Following installation and connection, the District shall monthly invoice each individual homeowner for each dwellings/buildings in accordance with the Rate and Fee Schedule in place at the time of water service, for the availability of water (Base Fee) and the usage of water since (Usage Rate) the last monthly billing cycle. This same financial arrangement for service and payment to the District shall apply to Jensen's future expansions of Jensen's Coastal Plantation Property.
4. **Operation and Maintenance:** District shall have the responsibility for maintenance of the existing and future water lines and other apparatus located upon Jensen's Coastal Plantation Property. Any future water distribution lines to serve the growth area of Jensen's Coastal Plantation Property will be designed in accordance with the Technical Standards and Specifications of the District. Upon approval of the water distribution system design, the new extensions will be permitted in the name of the District, constructed in accordance with the District's specifications, and dedicated to the District upon satisfactory completion of the improvements by Jensen's with appropriate utility easement.
5. **Amendments:** This Agreement may be amended only by written agreement executed by the parties hereto.

6. **Duplicate Originals:** This Agreement shall be executed by the parties hereto in duplicate originals, each of which, when executed, shall constitute an original document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives the day and year first above written.

SIGNATURE PAGES ATTACHED HERETO

SIGNATURE PAGE FOR THE DISTRICT

**ROCKY POINT/TOPSAIL WATER &
SEWER DISTRICT**

By: _____

Title: _____

Attest: _____

SIGNATURE PAGE FOR JENSEN'S

**JENSEN'S, INC.,
A Connecticut corporation**

By: _____

Title: _____

Attest: _____

Prepared by: Kenneth A. Shanklin, Esq.
and SHANKLIN & NICHOLS, LLP
Returned 214 Market Street
To: Post Office Box 1347
Wilmington, NC 28402
Telephone: (910) 762-9400
Telefax: (910) 251-1773

Revenue Stamps: None

Brief Description for Index: Coastal Plantation Water Distribution System

STATE OF NORTH CAROLINA

COUNTY OF PENDER

**BILL OF SALE AND
GRANT OF UTILITY EASEMENTS**

THIS BILL OF SALE AND GRANT OF UTILITY EASEMENTS made and entered into this _____ day of May, 2011, by and between JENSEN'S, INC., hereinafter referred to as "Grantor," a privately held company incorporated in the State of Connecticut, authorized to do business in the State of North Carolina, whose mailing address is 246 Redstone Street, P.O. Box 608, Southington, CT 06489 to the **ROCKY POINT/TOPSAIL WATER & SEWER DISTRICT**, hereinafter referred to as "Grantee" or "District," a body politic duly chartered under the laws of the State of North Carolina whose mailing address is _____, and;

WITNESSETH:

THAT WHEREAS, Grantor is the owner, developer and operator of a residential development known as Coastal Plantation ("Coastal Plantation") located in Pender County upon real property acquired by Jensen's by virtue of that Deed recorded in Book 362 at Page 133 of the Pender County Register of Deeds ("Jensen's Coastal Plantation Property"); and,

WHEREAS, Grantor currently owns and operates a community groundwater system (North Carolina Utilities Commission Permit No. NC0471120) upon the developed portions of the Jensen's Coastal Plantation Property, consisting of two treated wells ("Well Sites") and a water distribution system serving approximately 103 residential lots and associated offices and support buildings within the Coastal Plantation community ("Water Distribution System") (collectively referred to hereinafter as "Community Water System"); and,

WHEREAS, the District owns and operates a public water distribution and supply system for portions of Pender County; and,

WHEREAS, Grantor desires to discontinue the ownership and operation of its Community Water System and transfer ownership of the Water Distribution System to the District, excluding, however, the well sites, pumps and appurtenant equipment located upon the well sites; and,

WHEREAS, the District has agreed to acquire the Water Distribution System and to supply public water to the individual dwellings/buildings located within the Coastal Plantation community as existing and planned in the future; and,

WHEREAS, in accordance with a Water Sales Agreement between the parties hereto dated May ____, 2011, Jensen's agrees to transfer the ownership of its Water Distribution System, but not including the well sites and building/equipment located thereon, to the District and shall take steps to disconnect Grantor's Water Distribution System from Grantor's Well Sites when the District interconnects with the Water Distribution System and has properly tested the system for distribution of potable water; and,

WHEREAS, Grantor agrees to grant the District, its successors or assigns, a perpetual joint and mutual easement in, over, under, and upon Grantor's private streets and rights of way located within Grantor's Coastal Plantation Property with the right to erect, construct, install, and lay, and therefore use, operate, inspect, repair, maintain, replace and remove water distribution lines and appurtenant facilities, together with the right of ingress and egress over Grantor's private streets and rights of way to implement these easement rights; and,

WHEREAS, the District agrees to provide public water service to the individual dwellings/buildings in Coastal Plantation, consisting of 103 units and associated offices and support buildings, and provide permanent operations and maintenance of the existing water distribution system; and

WHEREAS, Grantor has developed three sections of Coastal Plantation, which are

shown on various maps recorded in the Pender County Register of Deeds and described as follows:

SECTION ONE OF JENSEN'S COASTAL PLANTATION

MAP BOOK 21 at PAGE 80: Map of Survey of Section One, Jensen's Coastal Plantation, Topsail Township, Pender County, North Carolina, Surveyed and Mapped 1982 through 1985, Johnie C. Garrason, Registered Land Surveyor No. L-1347, Wilmington, NC

DEDICATION OF ROADS IN JENSEN'S COASTAL PLANTATION

MAP BOOK 27 at PAGE 79: Map of Survey of Road Dedications for Jensen's Inc., Topsail Township, Pender County, North Carolina, Surveyed and Mapped October through December 1991, Johnie C. Garrason, Registered Land Surveyor No. L-1347, Wilmington, NC

SECTION TWO OF JENSEN'S COASTAL PLANTATION

UNRECORDED PLAT MAP OF SURVEY DATED JAN.-MAR. 1992: Map of Survey of Jensen's Coastal Plantation Section Two prepared and signed by Johnie C. Garrason, Registered Land Surveyor, which map was not recorded. However, this map refers to Map Book 27, Page 79 which is the **Map of Survey of Road Dedications for Jensen's Inc. referenced above** which dedicated part of Lob Lolly Trail.

LOT REVISIONS FOR JENSEN'S COASTAL PLANTATION

MAP BOOK 35 at PAGE 145: Mobile Home Lot Survey for Jensen's, Inc., Topsail Township, Pender County, NC, Surveyed March 5, 2003, Gairy Canady Land Surveying No. L-2904, Richlands, NC

SECTION THREE OF JENSEN'S COASTAL PLANTATION

MAP BOOK 39 at PAGE 102: Map of Survey of Section 3, Jensen Coastal Plantation, Topsail Township, Pender County, North Carolina, Surveyed February 15, 2005, for Jensen's Residential Communities, Arnold W. Carson, PLS, PC, Wilmington, NC

AND, WHEREAS, the District agrees to provide public water service to the individual dwellings/buildings in the future expansions of Jensen's Coastal Plantation Property as requested by Grantor; and,

NOW, THEREFORE, Grantor, for and in consideration of the sum of \$10.00 and other good and valuable considerations paid to Grantor by Grantee., receipt of which is specifically acknowledged by Grantor, Grantor has bargained and sold and by these presents does bargain, sell and convey to Grantee, its successors and assigns, in consideration of the terms, conditions and covenants set forth herein, the parties do agree as follows:

Bill of Sale and Conveyance of Water Distribution System;

1. Grantor sells and conveys to Grantee all existing valves, water lines, mains, and laterals used in the Grantor's Water Distribution System for the transfer of potable water in the sundry phases and sections of Coastal Plantation, but not including the well sites and building/equipment thereon, especially as shown on the above referenced maps of phases and sections of Coastal Plantation;

Grant of Utility and Access Easements Rights and Privileges:

2. Grantor grants to Grantee a mutual and non-exclusive right, in conjunction with Grantor, as the developer of Coastal Plantation, with respect to Grantor's right, title and interest in and to utility easements, private streets and rights of way with respect to the existing water lines, mains and laterals used in the distribution of water in the service area of Coastal Plantation, especially as shown on the above referenced recorded maps;
3. Together with a mutual and non-exclusive utility easement to construct, maintain, replace, repair and continue in place water utility lines and mains within the right of way of the private streets as shown on the above referenced maps of Coastal Plantation;
4. Together with a mutual and non-exclusive temporary utility easement to construct, maintain, replace, repair and continue in place existing water utility lines and mains within the right of way of the private streets in unrecorded sections and phases of Coastal Plantation existing as of the date hereof which roads are shown on the preliminary plans, which temporary grant of easement in the roads of unrecorded sections or phases of Coastal Plantation shall merge into the actual street location once the recorded maps for same are recorded by Grantor, or its successors;
5. Together with the exclusive right and franchise to sell water, install pipes along and under the subject property within the right of way and easement areas granted for that purpose, to install pumps, meters, valves, fire hydrants, and make other necessary installments in order to distribute and sell water to Coastal Plantation, its successors in interest or assigns or any other person, parties or entities in lawful possession of the property comprising Coastal Plantation Community; and,
6. Together with the exclusive right and franchise to construct, operate and maintain a potable water supply system in Coastal Plantation which is the subject matter of the Agreement, which franchise right shall not prohibit the installation of private wells for irrigation and other non-potable water uses that do not interfere with the District's water distribution system;
7. Excluding, however, from this conveyance any and all rights, title and interest of the Grantor to its Well Sites as shown on the recorded maps of Coastal Plantation

and all pumps and other appurtenant equipment located thereon.

TO HAVE AND TO HOLD the aforesaid personal property, easements and rights unto Rocky Point/Topsail Water & Sewer District as Grantee, and its successors and assigns, in fee simple forever, excluding, however, the Grantor's Well Sites.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed by their duly authorized representatives the day and year first above written.

[ACKNOWLEDGMENT PAGES FOLLOW]

ROCKY POINT/TOPSAIL WATER & SEWER DISTRICT

By: _____

Title: _____

Attest: _____

NORTH CAROLINA, PENDER COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **ROCKY POINT/TOPSAIL WATER & SEWER DISTRICT.**

*Place Official Seal
this line*

Use Blue Ink

Witness my hand and official stamp or seal, this ____ day of May, 2011..

Official Signature of Notary Public
(Please sign exactly as Commissioned)

Print Name exactly as Commissioned:

My Commission expires: _____

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

JENSEN'S, INC.,
A Connecticut corporation

By: _____

Title: _____

Attest: _____

CONNECTICUT, _____ COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **JENSEN'S, INC.**

*Place Official Seal
this line*

Use Blue Ink

Witness my hand and official stamp or seal, this ____ day of May, 2011..

Official Signature of Notary Public
(Please sign exactly as Commissioned)

Print Name exactly as Commissioned:

My Commission expires: _____