

MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____ 20____,
by and between CENTRAL BROWARD WATER CONTROL DISTRICT a political
subdivision of the State of Florida, hereinafter referred to as "The District," and
_____, a _____
qualified to do business in the State of Florida hereinafter referred to as "The
Developer".

RECITAL

- A. The District is a political subdivision of the State of Florida charged with the responsibility of effecting drainage within its geographical boundaries.
- B. The Developer is a _____ developing that project known as, _____, which development is situated entirely within the geographical boundaries of the District.
- C. As a part of the development of _____ intends to install lakes, canals, underground storage and treatments systems, dry retention/detention areas, drainage pipes and other types of water courses for storm water management including floodplain storage, conveyance and treatment.
- D. The District requires that such storm water facilities be properly maintained and the Developer has agreed to effect such maintenance and the parties desire to reduce such agreement to writing.

NOW, THEREFORE, in consideration of the mutual promises each to the other running, and other good and valuable consideration, the parties agree as follows:

- A. The Developer shall be responsible for and shall bear the cost of maintaining in good condition, as the same is hereinafter defined, all lakes, canals, swales, retention/detention areas, berms, grading, exfiltration trenches, control structures, catch basins, manholes, headwalls, underground storage systems, sodded banks, aquatic plants, retaining walls, drainage pipes and drainage channels, hereinafter collectively referred to as "storm water facilities", which may be on or about the real property described on Exhibit "A" attached hereto.

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- B. The Developer shall also be responsible for the constant maintenance and care for areas designated for RETENTION, DETENTION, and TREATMENT quantitatively described in Exhibit "B" attached hereto. Said Exhibit "B" shall be prepared by a registered Professional Engineer in the State of Florida.
- C. That "good condition" shall be that standard of care and maintenance as may be established from time to time by the District and shall be deemed to include, but not limited to, the control of weeds and other nuisance and invasive vegetation, control of erosion, and the maintenance of slopes, depth, aquatic vegetation, sodded slopes, and percolation capacity of seepage areas.
- D. That the District will have the right and authority to enter upon and cross over the property described on Exhibit "A" hereto for the purpose of inspecting the storm water facilities, and in the event that the District determines that the maintenance of said storm water facilities do not meet the standards established by the District, notice will be given by the District, to the Developer and the Developer will be given a period of 15 days from and after the mailing of such notice within which to remedy such defect or obtain from the District, in writing, an extension, for good cause shown, of the time within which to remedy such defect, failing either of the foregoing, the District may, at its option, correct such defect for and on behalf of the developer.
- E. That in the event that the District is required to perform such maintenance on behalf of the Developer, then and in such event, the District shall be deemed to have a lien against the Developer's property, which lien will be inferior only to any existing first mortgage then encumbering said property, ad valorem taxes, and such other liens, impositions and assessments as may be given priority by applicable statutes, and said liens shall be for all reasonable costs incurred by the District together with interest thereon computed at 18 percent (18%) per annum. Any lien pursuant to this paragraph shall be effective upon recording in the Broward County Public Records. In the further event that the District is required to foreclose its lien, the and in such event, the District will be entitled additionally to receive its reasonable attorney fees and costs expended in connection with such foreclosure or collection procedure.
- F. The Developer has acquired the stormwater management permits as required by the District and acknowledges that said permits shall be renewed every five years from the date the permit is issued pursuant to the District's regulations and any amendments thereto based on the following inspection schedule:

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- a. Above-ground wet and dry retention/detention systems, drainage structures and piping, water control structures, outfall structures, perimeter berms and aquatic vegetation: every five years
- b. Underground storage systems, exfiltration trenches, and other seepage systems: every year.

Each inspection shall be performed by a registered Professional Engineer. The five year renewal shall include a certification statement from the Professional Engineer and include the appropriate documentation from each inspection event per the frequencies described above. Actual inspection and reporting frequencies will be documented in the permit conditions as necessary based on site-specific operational and maintenance requirements.

- G. Should the Developer subdivide the property described on Exhibit "A" hereto, the Developer's obligation to maintain shall devolve upon the individual purchasers or the subdivided parcels, their heirs, successors, and assigns, and shall be a covenant to run with the land. Regardless of whether or not the Developer subdivides such property, their obligation to maintain shall be binding upon its heirs, successors, and assigns, and shall be a covenant running with the land.
- H. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For the Developer:

For the District:
Mike Crowley, District Manager
Central Broward Water Control District
8020 Stirling Road
Hollywood, Florida 33024

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- I. Amendment. No modification, amendment, or alteration of the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- J. Assignment. The Developer shall not transfer, assign or subcontract the activities provided for in this Agreement without the prior written consent of the District.
- K. Compliance with Laws. The Developer shall, without additional expense to the District, be responsible for obtaining any necessary licenses and for complying with any and all applicable federal, state, county and municipal laws, codes and regulations in connection with the performance of the activities described herein.
- L. Third Party Beneficiaries. Neither the Developer nor the District intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- M. Waiver of Breach. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- N. Indemnification. Developer agrees to indemnify and hold District harmless, to extent provided by law, from any and all liability incurred now or in the future as a result of any injury, death or property damages because of the existence of or the failure to maintain the encroachment.
- O. Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless either party elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

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- P. Joint Preparation. The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- Q. Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- R. Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth judicial Circuit of Broward County, Florida. By entering into this Agreement, the parties hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of this Agreement. In any action to enforce the terms of this Agreement, whether suit be brought or not, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- S. This agreement shall be placed of record among the Public Records of Broward County, Florida, the Developer to bear the cost.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witness by: CENTRAL BROWARD WATER CONTROL DISTRICT

By _____
Manager/Secretary and/or Chair/Vice Chair
(SEAL)

As to District

WITNESSES:

As to Developer

By _____
President
(SEAL)

Attest _____
Secretary

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STATE OF _____)

COUNTY OF _____)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments personally appeared _____ of _____ to me known to be the persons described in and who executed the foregoing Maintenance Agreement and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the county and state last aforesaid this ____day of _____, 20____.

Notary Public

My commission expires:

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STATE OF FLORIDA)

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COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments personally appeared _____, as Secretary of the CENTRAL BROWARD WATER CONTROL DISTRICT, known to be the person described in and who executed the foregoing Maintenance Agreement and acknowledged before me that they executed the same.

WITNESS my hand and official seal in the county and state last aforesaid this ____ day of _____ 20_____.

Notary Public, State of Florida at Large

My commission expires:

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EXHIBIT "A" ATTACHED TO AND MADE A PART OF THAT CERTAIN
MAINTENANCE AGREEMENT BY AND BETWEEN CENTRAL BROWARD WATER
CONTROL DISTRICT AND _____, DATED _____, 20 _____.

LEGAL DESCRIPTION

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EXHIBIT "B"

RETENTION/DETENTION AREAS, AS DESIGNATED ON THE APPROVED PAVING AND DRAINAGE PLANS, SHALL BE MAINTAINED AT A MINIMUM VOLUME OF _____.

Certified by _____

State of Florida Registration number _____

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