

PLEASE RETURN TO:
Central Broward Water Control District
8020 Stirling Road
Hollywood, Florida 33024

MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the **CENTRAL BROWARD WATER CONTROL DISTRICT**, a political subdivision of the State of Florida, with a business address of 8020 Stirling Road, Davie, FL 33024, hereinafter referred to as the "District," and the **TOWN OF DAVIE, FLORIDA**, a municipal corporation of the State of Florida, with a business address of 6591 Orange Drive, Davie, FL 33314, hereinafter referred to as the "Developer."

RECITALS

- 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 municipal corporation redeveloping that area known as, the Downtown Davie project contained within the Davie Community Redevelopment Agency's Westside Improvement Area, which development is situated entirely within the geographical boundaries of the District.
- C. As a part of the project, the Developer intends to install landscaping along the top of bank of the N-7 eastern canal bank to serve as a natural and visual barrier along the canal.
- D. In order to install such landscaping along the N-7 canal bank, the Developer sought a variance from the District seeking relief from the District's criteria requirements which compels such canal area to be cleared of all trees and shrubbery.
- E. As a condition of approval of the Developer's variance application, the District requires the Developer to properly maintain the installed landscaping so as not to impair or impede the drainage facilities within which the landscape has been installed, and the Developer voluntarily accepted this condition and 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. All recitals set forth above are incorporated herein and made a specific part of this Agreement.
- B. The Developer shall be responsible for and shall bear the cost of maintaining in good condition, the landscaping installed along the N-7 canal as the same is defined in the permit

issued by the District which may be on or about the real property described on **Exhibit "A"** attached hereto.

- 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, the landscaping that the Developer has installed located on the top of the bank. Additionally, the Developer shall have the maintenance obligation to maintain a four foot (4') strip of clearance from the top of bank as often as is necessary to ensure this area remains clear of vegetation and debris, but no less than twice per year.
- D. That the parties 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 landscaping and drainage facilities, and in the event that the District determines that the maintenance of said landscaping does 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 fifteen (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 at the Developer's expense.
- 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 necessary permits as required by the District, or such other regulatory authority.
- G. The Developer's maintenance obligation as set forth herein shall be binding upon its successors in interest of the Developer, their heirs, successors, and assigns, and shall be a covenant to run 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:

Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314

For the District:

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

- 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.
- 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

EXHIBIT “A”

SKETCH & LEGAL DESCRIPTION

The South 1100 feet of the West 50 feet of the Property described as the West ½ of Tract 41 of Section 27, Township 50 South, Range 41 East, of EVERGLADES LAND SALES COMPANY SUBDIVISION of Sections 27 and 34 and the West ½ of sections 26 and 35, Township 50 South, Range 41 East, according to the Plat thereof, recorded in Plat Book 2, Page 34, of the Public Records of Miami-Dade County, Florida; said lands situate, lying and being in Broward County, Florida.