

CITY OF COCONUT CREEK, FLORIDA
WATER AND WASTEWATER AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 200__ by and between _____, a _____, hereinafter referred to as "**DEVELOPER**", and the CITY OF COCONUT CREEK, Florida, a municipal corporation, hereinafter referred to as "**CITY**."

WHEREAS, the **DEVELOPER** owns or controls lands located in Broward County, Florida, as described in Exhibit "A", attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as "Property," and **DEVELOPER** has or is about to develop the Property by erecting thereon single family residential buildings, multi-family residential buildings, commercial improvements, industrial improvements, institutional, recreational or other uses; and,

WHEREAS, in order to meet the financing and general requirements of certain private agencies and certain Federal, State and local governmental agencies, such as, but not limited to, the Florida Department of Environmental Protection (DEP) and Broward County Health Department, the Veterans' Administration, the Federal Housing Administration, and private lending institutions, it is necessary that adequate water and wastewater facilities and services be provided to serve the Property and to serve the occupants of each residence, building, or unit constructed or located on the Property; and,

WHEREAS, the **DEVELOPER** is desirous of promoting the construction of central water and wastewater facilities by the **CITY** so occupants of each residence, building, or unit constructed or located therein will receive adequate water and wastewater service; and,

WHEREAS, the **CITY** is willing to provide, in accordance with the provisions and stipulations hereinafter set out, central water and wastewater facilities, and to extend such facilities by way of water distribution mains and wastewater collection and transmission mains, and to thereafter operate such facilities so that the occupants of each residence, building, or unit constructed on the Property will receive an adequate water and wastewater services from the **CITY**; and,

WHEREAS, it is acknowledged that the **CITY** has entered into an **Agreement** with Broward County, Florida, for the supply of potable water to be furnished pursuant to this **Agreement** and the Amendments to **Agreement** and it is agreed that the **DEVELOPER** is a third party beneficiary of said **Agreement**. A copy of said **Agreement** and Amendments to **Agreement** are recorded in Broward County OR Book #5507, pps 938-946, and O.R. Book #19127, pps 0077-0080 and OR Book #22863, pps 0213-0223 and referenced as Exhibit "B," and,

WHEREAS, it is acknowledged that the **CITY** has entered into an **Agreement** as amended, with Broward County, Florida, for the transmission and treatment of wastewater to be furnished pursuant to this **Agreement** and it is agreed that the **DEVELOPER** is a third party beneficiary of said **Agreement**, and any Amendments thereto. A copy of said **Agreement**, and any Amendments thereto, are recorded in Broward County O.R. Book #9913, pps 74-121, and O.R. Book #22798, pps 0270-0279, and O.R. Book #22798 pps 0214-0269, and referenced as Exhibit "C."

NOW, THEREFORE, for and in consideration of the promises, the mutual undertaking and agreements herein contained and assumed, the **DEVELOPER** and the **CITY** hereby covenant and agree follows:

1. The foregoing statements are true and correct and are incorporated herein by reference.

2. **DEFINITIONS.**

The following definitions and references are given for the purpose of interpreting the terms as used in this **Agreement** and all exhibits and amendments hereto and apply unless the context indicates a different meaning:

- a. AGREEMENT - Shall mean this WATER AND WASTEWATER AGREEMENT, and any amendments hereto and all applicable exhibits hereto;
- b. Consumer Installation - All facilities on the consumer's side of the point of delivery;
- c. Customer Class - For purposes of ERC equivalent values, customer class shall include single family, multi-family, mobile home, commercial, industrial office, motel/hotel and restaurant classes to be determined based on the **CITY's** Water and Wastewater Rate Ordinance, the permitted land use and the zoning of the Property. If the customer class is indeterminable based on the Water and Wastewater Rate Ordinance, land use and zoning, then the City Engineer shall determine, at the time of Final Plat approval, which customer class shall be used for ERC equivalent values for said Property.
- d. Developer - Each and every owner, its successor and assigns, of every parcel of land located within the Property set forth on Exhibit "A";
- e. Equivalent Residential Connection (ERC) - Shall mean a property consuming 350 gallons of water per day;
- f. Final Plat - Shall be that definition as set forth in Division 2, Section 13-166, Chapter 13 of the Land Development Code of the City of Coconut Creek, Florida;
- g. Hydraulic Share - That fraction of the hydraulic capacity of the water and wastewater facilities. The hydraulic capacity being the quantity of water or wastewater capable of being delivered by the aforementioned facilities under approved design pressures and operating conditions.
- h. Lot or Tract - Each building site as platted for record or as shown on the site plan and/or plat;
- i. Point of Delivery - That point for water where the meter(s) of the **CITY** are connected with the pipe(s) of the consumer. For sewer, the point of delivery shall be that point where the pipe(s) cross consumer's lot or tract line;
- j. Property - all the land described in Exhibit "A;"
- k. Service Area - That area as defined in the Agreements between Coconut Creek and Broward County for potable water

and transmission and treatment of wastewater, those agreements referenced as Exhibits "B" and "C" respectively.

1. Water Distribution and Wastewater Collection and Transmission Facilities - Shall mean those facilities contemplated to be constructed under this **Agreement** and more specifically as follows:

i. On-site Facilities: Each **DEVELOPER** shall be responsible for the design, installation, inspection and testing of the complete water distribution and wastewater collection and transmission facility located in the right-of-way or rights-of-way adjoining or within the boundaries of the **DEVELOPER's** Property. The term "complete water distribution and wastewater collection and transmission facility" as used herein, shall include all component parts of a water distribution system, including valves, fittings, laterals, hydrants and all appurtenances as shown upon the approved design for the installation of such water distribution system. The wastewater collection and transmission facility shall include all collection and transmission lines, manholes, force mains, gravity mains, lift stations, including the sites for same, and all other appurtenances as shown upon the approved design for the installation of such wastewater collection and transmission system.

ii. Off-site Facilities: - The location, size or proposed density of **DEVELOPER's** property may make service to such Property dependent upon the extension of off-site water distribution and wastewater collection and transmission facilities. For the purpose of this **Agreement**, the term "off-site" shall be defined as those water distribution lines, wastewater collection and transmission lines, force mains, water tank(s) pumping stations, valves, fittings, laterals, hydrants and all appurtenances necessary to connect **DEVELOPER's** Property with the water distribution and wastewater collection and transmission facilities of the **CITY**. Said system shall distribute to **DEVELOPER's** Property an adequate quantity of water under adequate pressure and collect and transmit wastewater collected on **DEVELOPER's**

Property to an approved treatment plant or disposal site;

m. Water and Wastewater Extension Policy - That certain document that provides for and creates a uniform method of determining the water and wastewater impact fees to be paid by the **DEVELOPER**, within the service area, all as more particularly set forth in Exhibit "D" attached hereto and made a part hereof.

n. Water and Wastewater Impact Fees - The sum of money for which the **DEVELOPER** agrees to pay for the debt service charges and impact fees for securing water and wastewater capacity from Broward County and to pay for the design and construction of water and wastewater facilities and other backbone improvements outside the scope of the **DEVELOPER's** financial obligations; and as payment for water and wastewater facilities on any **CITY** - owned property which is necessary to serve the **DEVELOPER's** area. The payment by the **DEVELOPER** of such fee to the **CITY** shall be a condition precedent to the rendering of water and wastewater service by the **CITY**.

o. Water and Wastewater Service - The readiness and ability on the part of the **CITY** to furnish water and wastewater service to each lot or tract. Thus the maintenance by the **CITY** of adequate pressure at the point of delivery with potable water shall constitute the rendering of water service, and the maintenance of a connection providing for the adequate collection and transmission of wastewater shall constitute the rendering of wastewater service. Wastewater service refers to sanitary sewer service.

3. CITY MAINTENANCE AND OPERATION OF FACILITIES.

The **DEVELOPER** hereby grants and gives to the **CITY**, its successors and assigns, the exclusive right or privilege to construct, own, maintain and operate said facilities in, under, upon, over and across the present and future streets, roads, terraces, alleys, easements, reserve utility strips and utility sites, and any public places as provided and dedicated to public use in recorded plats, or as provided for in agreements, dedications, or grants made otherwise and independent of said recorded plats.

DEVELOPER hereby further agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property; that the foregoing grants shall be for such period of time as the **CITY** or its successors or assigns require such rights, privileges or easements in the construction, ownership, maintenance, operation or expansion of the water distribution and wastewater collection and transmission facilities. The locations; however, should the **CITY** install any of its facilities outside of a dedicated easement area, the **DEVELOPER** covenants and agrees that the **CITY** will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with existing uses of the are in which the facilities have been installed. In any event, **DEVELOPER** agrees to provide an easement for the actual location of said facilities.

The **CITY** hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its water distribution and wastewater collection and transmission facilities in any of the easement areas; and that the **DEVELOPER** in granting the easement herein, or pursuant to the terms of this **Agreement**, shall have the right to grant nonexclusive rights, privileges and easements to other persons, firms or corporations to provide to the Property any utility services other than water service or wastewater service.

4. CONNECTION OF FACILITIES AND COMMENCEMENT OF SERVICES BY CITY.

Upon accomplishment of all of the prerequisites to be performed by the **DEVELOPER** as contained in this **Agreement**, the **CITY** covenants and agrees that it will connect the water distribution and wastewater collection facilities installed by the **DEVELOPER** to the water distribution and wastewater collection and transmission facilities of the **CITY**, in accordance with the terms and intent of this **Agreement**. Such connection, shall at all times be in accordance with rules, regulations, and orders of the Florida Department of Environmental Protection (DEP), or any other governmental agency or department which has jurisdiction thereof.

The **CITY** agrees that once it provides water and wastewater services to the Property, and the **DEVELOPER** or others have connected

consumer installations to the **CITY**'s water distribution and wastewater collection and transmission system, the **CITY** will continuously provide water regulations or amendments thereto, of the Florida Department of Environmental Protection (DEP) and Broward County Health Department and other governmental agencies having jurisdiction over the water distribution and wastewater collection and transmission facilities and services of the **CITY**. Notwithstanding anything herein to the contrary, the **CITY** shall not be responsible for any delays in connections, commencement of service or interruptions of service due to fires, casualties, accidents, power failures, maintenance work, breakdowns, damage to equipment or facilities, civil or military authority, strikes, war, riot, unusual weather conditions, judgments of any court, Act of God, and any such delay in connection or commencement of service. Interruption of service shall not constitute a breach of this **AGREEMENT** nor impose any liability upon the **CITY** unless otherwise directed by the City Engineer.

5. **DEVELOPER OBLIGATIONS.**

DEVELOPER hereby covenants and agrees to construct and transfer ownership and control of the on-site water distribution and wastewater collection and transmission systems referred to herein to the **CITY** at no cost to the **CITY**. Unless otherwise directed by the City Engineer.

a. Preparation of Plans and Specifications. The **DEVELOPER** shall submit to the **CITY** detailed engineering plans, prepared and sealed by a professional engineer registered in the State of Florida, showing the on-site water distribution system and wastewater collection and transmission facilities proposed to be installed to provide service to consumers within the Property.

The **DEVELOPER** shall also submit to the **CITY** specifications, prepared and sealed by an engineer registered in the State of Florida, governing the material to be used and the methods and manner of installation. All such plans and specifications submitted shall be subject to the approval of the **CITY** and no construction shall commence until the **CITY** has approved such plans and specifications in writing and issued a permit for construction pursuant to the applicable governing Ordinances of **CITY**.

b. Construction of Facilities by DEVELOPER. After the approval of plans and specifications, the **DEVELOPER** shall cause to be constructed, at THE **DEVELOPER**'s own cost and expense, the water distribution and wastewater collection and transmission facilities as shown on the plans and specifications, or as the same may be modified and approved from time to time. Such facilities shall include those on-site elements and the hydraulic share of the off-site elements applicable to the **DEVELOPER**'s Property. Complete "as-built" plans shall be submitted to the **CITY** by the **DEVELOPER**, upon completion of construction.

During the construction of the water distribution and wastewater collection and transmission facilities by the **DEVELOPER**, the **CITY** shall have the right to inspect such installation to determine compliance with the plans and specifications and any applicable City Ordinances. The **CITY** shall control the quality of the installation and further shall be entitled to perform the standards tests for infiltration, exfiltration, line and grade and all other normal engineering tests to determine that the facilities have been installed in accordance with the approved plans and specifications, in accordance with any applicable City Ordinances and in accordance with good engineering practices.

The **DEVELOPER** may also be required to construct or finance all or a portion of the off-site water distribution and wastewater collection and transmission facilities in order to provide a physical interconnection of **DEVELOPER**'s Property with the facilities of the **CITY** at their then present terminus. Such eventualities are covered by provisions in Exhibit "D" herein under the heading of "Refundable Advances". If the **CITY** requires facilities before the **DEVELOPER** requires said facilities, the **DEVELOPER** shall pay the hydraulic share applicable to the **DEVELOPER**'s Property, upon receipt of notice to pay from the **CITY**.

c. Transfer of Title and Ownership. By this **Agreement**, the **DEVELOPER** hereby transfer to the **CITY**, title to all water distribution and wastewater collection and transmission facilities installed by the **DEVELOPER** or the **DEVELOPER**'s contractor, pursuant to the provisions of this **Agreement**. Such

conveyance shall take effect pursuant to Division 3 and 4 of Article II, Chapter 13 of the Coconut Creek Land Development Code. Included in the approval and acceptance of the system by the **CITY** Engineer, shall be documentation demonstrating the **DEVELOPER's** compliance with the above-referenced sections of the Land Development Code. As further evidence of said transfer of title, and upon the completion of the installation and prior to the rendering of service by the **CITY**, the **DEVELOPER** shall convey to the **CITY** at the request of the **CITY** by "Bill of Sale," in form satisfactory to the City Attorney and City Engineer, the complete on-site water distribution and wastewater collection and transmission facilities. The **DEVELOPER** shall further cause to be conveyed to the **CITY** all easements and rights-of-way covering areas in which water and wastewater facilities are installed, by recordable document in form satisfactory to the City Attorney and City Engineer.

The **DEVELOPER** shall also convey, by Warranty Deed, any and all lift station or pumping station sites forming an integral part of the wastewater collection and transmission facilities. All conveyance of easements, rights-of-way, or Warranty Deeds shall be accompanied by evidence of title, satisfactory to the **CITY**, establishing the **DEVELOPER's** right to convey such easements, rights-of-way or Warranty Deeds and further evidencing the **CITY's** right to the continuous enjoyment of such easements, rights-of-way or Warranty Deed properties to the exclusion of any other person in interest. The **CITY** agrees that the acceptance of the water distribution and wastewater collection and transmission facilities installed by the **DEVELOPER** shall constitute the assumption of responsibility by the **CITY** for the continuous operation and maintenance of such systems from that date forward. Mortgagees, if any, holding prior liens on such properties shall be required to release such liens, subordinate their position or join in the grant dedication of the easements, rights-of-way or Warranty Deeds, prior to acceptance of said dedication, easement, rights-of-way or deed by the **CITY**. All water distribution or wastewater collection and transmission facilities, save and except consumer installations, shall be covered by easements, rights-of-way, or Warranty Deeds.

Neither the **DEVELOPER**, nor any person or other entity holding title to any of the Property, shall have any present or future right, title, claim or interest in and to the Fee or to any of the water distribution and wastewater collection and transmissions facilities and properties of the **CITY**. All prohibitions applicable to the **DEVELOPER**, are applicable to all subsequent owners, persons or entities.

d. Facilities Retained by DEVELOPER. Whenever the development of the subject Property involves one consumer or a unity of title of several consumers and, in the opinion of the **CITY**, ownership by the **CITY** of the internal water distribution and wastewater collection and transmission facilities is not necessary then, at the option of the **CITY**, the **DEVELOPER** shall retain ownership and the obligation for maintenance of such facilities as consumer installations. Whenever the **DEVELOPER** retains ownership and the obligation to maintain such facilities the **CITY** may impose reasonable requirements to assure that infiltration into the **CITY**'s wastewater collection and transmission system is at all times within allowable limits. The **DEVELOPER** shall repair, at its own cost and expense, the internal wastewater collection and transmission facilities to avoid, at all times, excessive infiltration into such on-site wastewater collection and transmission facilities.

e. Water and Wastewater Impact Fee. In addition to the transfer of ownership and control of the on-site water distribution and wastewater collection and transmission facilities, the **DEVELOPER** hereby agrees to pay to the **CITY** the Water and Wastewater Impact Fee which is set forth in Exhibit "D". **DEVELOPER** specifically agrees to pay the prevailing impact fee prior to issuance of any permits by the City. **DEVELOPER** specifically agrees and acknowledges that it will be bound by the terms and conditions of the **CITY**'s water and wastewater extension policy as the same may be amended prior to issuance of permit. The payment by the **DEVELOPER** of the sum set forth in Exhibit "D", in accordance with the terms and the manner set forth therein, shall be considered essential to the continued performance by the **CITY** of the terms and conditions of this **Agreement**. Said Water and Wastewater Impact Fee shall be utilized by the **CITY** to pay

for the debt service charges and impact fees for securing the water and wastewater capacity from Broward County and to pay for the design and construction of other water and wastewater facilities and other backbone improvements outside the scope of the **DEVELOPER's** financial obligation and as payment for water and wastewater facilities on any **CITY** owned property as may be necessary to service **DEVELOPER's** area.

Payment of the Water and Wastewater Impact Fee does not and will not result in the **CITY** waiving any of its water and wastewater charges, rates, rules and regulations, and their enforcement shall not be affected in any manner whatsoever by the **DEVELOPER** paying the Fee.

6. **OTHER GOVERNMENTAL APPROVALS.**

The parties hereto recognize that prior to the time the **CITY** may actually commence upon a program to carry out the terms and conditions of this **Agreement**, the **CITY** must obtain approval from various federal, state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of water and wastewater facilities.

7. **CITY OWNERSHIP OF FACILITIES.**

The parties agree that all water distribution and wastewater collection and transmission facilities used, useful or held for use in connection with providing water service and wastewater service to the Property, shall at all times remain in the sole, complete and exclusive ownership of the **CITY**, its successors or assigns. Any person or entity owing any part of the Property or any residence, building, or unit constructed or located thereon, shall not have any right, title, claim or interest in and to such facilities, or any part of them, for any purpose, except as otherwise provided in this **Agreement**, including the furnishing of water and wastewater service to other persons or entities located within or beyond the limits of the Property.

The **DEVELOPER** agrees that it shall not (the words "shall not" being used in the mandatory definition) engage in the business or businesses of providing water and wastewater services to the Property without the **CITY's** consent during the period of time the **CITY**, its successors and assigns provide water or wastewater services to the

property. It is the intention of the parties hereto, that under the foregoing provision and also other provisions of this **Agreement**, that the **CITY** shall have the sole and exclusive right and privilege to provide water and wastewater service to the Property and to the occupants of each residence, building or until constructed thereon.

8. **WATER AND WASTEWATER RATES AND REGULATIONS.**

The **CITY**, its successors or assigns, may amend, revise, and enforce from time to time the rate or rate schedules as shall be reasonable. Rates charged to the **DEVELOPER** or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service as are or may be in effect throughout the **CITY's** service area. However, rates charged for property serviced outside the **CITY's** municipal boundaries shall be 25% higher than those rates inside municipal boundaries.

The initial water and wastewater rates, including any increase or decrease thereof, and the rules and regulations established, amended, or revised and enforced by the **CITY** from time to time in the future, shall be binding upon the **DEVELOPER**, upon any person or other entity holding by, through or under the **DEVELOPER** and upon any user or consumer of the water service and wastewater service provided to the Property by the **CITY**.

The **CITY** also retains the right to promulgate from time to time reasonable rules and regulations relating to the furnishing of water service and wastewater service to consumers within the area encompassed by this **Agreement**. The rules and regulations may relate to, but are not limited to, the right to discontinue the service under specified and reasonable conditions, and the type and quantity of material permitted to be discharged into the **CITY's** wastewater collection and transmission facilities.

9. **CONNECTION TO CONSUMER INSTALLATIONS BY DEVELOPER.**

The **DEVELOPER**, or any owner of any parcel of the Property, or any occupant of any residence, building, or unit located thereon, shall not have the right to and shall not connect any consumer to the water distribution and wastewater collection and transmission facilities of the **CITY** until formal written application has been made by the prospective user and approved by the **CITY** in accordance with the rules and regulations of the **CITY** in effect at the time of said application.

The ultimate responsibility for connecting the consumer installation to the lines of the **CITY** at the point of delivery is that of the **DEVELOPER** or parties other than the **CITY**, however the parties agree as follows:

a. All consumer installation connections must be inspected by the **CITY** before backfilling and covering of any pipes;

b. Notice requesting an inspection of a consumer installation connection may be given by the plumber, contractor or **DEVELOPER** to the **CITY**;

c. If the **DEVELOPER** does not comply with the foregoing inspection provisions, the **CITY** may refuse service to a connection that has not been inspected until the **DEVELOPER** complies with these provisions.

The parties hereto further agree that the costs or expenses of constructing any and all consumer installations and all costs and expenses of operating, repairing and maintaining any consumer installation shall be that of the consumer and not the **CITY**.

10. **PROHIBITION AGAINST SEPTIC TANKS, WATER WELLS.**

The **DEVELOPER** and, the owners and occupants of the buildings on the **DEVELOPER**'s Property are hereby prohibited from installing or maintaining any septic tanks except as permitted by the **CITY** for temporary purposes; and are further prohibited from installing or maintaining any water wells except as permitted by the **CITY** for temporary purposes, or as permitted by the **CITY** for irrigation purposes.

11. **DEVELOPER'S SCHEDULE OF CONNECTIONS.**

The parties acknowledge that the **CITY** is not guaranteeing water and wastewater service by execution of this WATER AND WASTEWATER **Agreement** until and unless the **CITY** obtains the necessary wastewater treatment and transmission capacity from Broward County pursuant to the provisions of Exhibit "C" and also obtains the necessary volumes of potable water from Broward County pursuant to Exhibit "B". The **DEVELOPER** shall give to the **CITY** a schedule of the dates when the water distribution and wastewater collection and transmission facilities are needed. The **CITY** shall then obtain water and wastewater service from Broward County according to the schedule provided by the **DEVELOPER**.

If the **DEVELOPER** requests water and wastewater service at a date earlier than indicated in its schedule, the **CITY** is not responsible for providing said water and wastewater service. However, the **CITY** shall make all reasonable attempts to secure said water and wastewater service.

If the **DEVELOPER** does not require water and wastewater service at the time indicated on its schedule, the **CITY** reserves the right to divert said service to other users of the water and wastewater system.

It is the **DEVELOPER's** responsibility to notify the **CITY**, in writing, of its inability to meet the schedule dates of requested water and wastewater service. At that time, the **CITY** may, at its discretion, amend the schedule.

12. **AMENDMENTS TO PLANS AND SPECIFICATION.**

In the event the **DEVELOPER**, subsequent to the execution of this **Agreement**, alters any plans and specifications of the proposed system, acquires additional Property or alters the densities of the Property, an amendment to this **Agreement** shall be executed by the parties. Said amendment shall be negotiated and executed prior to the commencement of service to those areas altered by the **DEVELOPER**. Said amendment shall be recorded in the Public Records of Broward County, Florida at the expense of the **DEVELOPER**.

13. **TERM OF THIS AGREEMENT.**

In no event shall the term of this **Agreement** extend beyond five (5) years from the date of execution. It is contemplated that all construction and development of the Property under the provisions of this **Agreement** shall be completed within the five-year term. In the event the **Agreement** terminates under this paragraph, then the **Agreement** shall either be extended or renegotiated at the sole discretion of the **CITY**.

14. **ASSIGNABILITY.**

This **Agreement** shall be binding upon and shall inure to the benefit of the **DEVELOPER**, the **CITY** and their respective assigns and corporate successors by merger, consolidation or conveyance. However, in the event the **DEVELOPER** has not paid for and delivered to the **CITY** any and all Water and Wastewater Impact Fees to be paid pursuant to this **Agreement**, as set forth in this **Agreement**, then this **Agreement**

shall be sold, conveyed, assigned, transferred or otherwise disposed of by the **DEVELOPER** without the written consent of the **CITY**.

15. **NOTICE.**

Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to the address indicated on the signature page of this **AGREEMENT**.

16. **PREFERENCE OF AGREEMENT, FULL AND COMPLETE TERMS, VARIATIONS.**

This **Agreement** supersedes all previous **Agreements** and representations, either verbal or written, heretofore in effect between the **DEVELOPER** and the **CITY**, made with respect to the matters herein contained. When duly executed, this **Agreement** constitutes the full and complete agreement between the **DEVELOPER** and the **CITY**. No additions, alterations, variations or waivers of the terms of this **Agreement** shall be valid, without the express written and executed consent of the parties.

17. **GOVERNING LAW.**

This **Agreement** shall be governed by the Ordinances of the City of Coconut Creek and the laws of the State of Florida, and it shall be and become effective immediately upon execution of the parties hereto.

18. **ENFORCEMENT.**

In the event the **CITY** is required to enforce this **Agreement** by court proceedings or otherwise, the **CITY** shall be entitled to recover court costs, including reasonable attorney's fees.

19. **TITLES TO PARAGRAPHS.**

The title of each paragraph in this **Agreement** is for purposes of clarity and ease of reading only and is not to be construed as a substantive portion of the **Agreement**.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in their corporate names, by their duly authorized officers and their respective seals affixed, this ____ day of _____, 200____ .

DEVELOPER:

(CORPORATE SEAL)

a _____ corporation
(Insert name and state of corporation).

ATTEST:

_____, Secretary

(Print / type / stamp name of ___ - sec)

By: _____
_____, President

(Print / type / stamp name of __ - pres.)

WITNESS:

(Print/ type / stamp name of witness)

WITNESS:

(Print/ type / stamp / name of witness)

(CITY SEAL)

CITY OF COCONUT CREEK,
a Florida municipal corporation

By: _____
John P. Kelly, City Manager

ATTEST:

Barbara S. Price, City Clerk

APPROVED AS TO LEGAL FORM:

Print/ type / stamp / name of CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

On this ____ day of _____, 200____, before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____, and _____ the _____ -president and _____ -secretary, respectively of _____, a _____ corporation, who acknowledged before that they executed the foregoing Water and Wastewater Agreement for and on behalf of said corporation. He/she/they are personally known to me or have produced _____ and _____, respectively, as identification.

NOTARY PUBLIC, State of Florida

(Typed/ printed / stamped name of Notary)

(N. P. SEAL)

My Commission number is: _____
My Commission expires: _____

STATE OF FLORIDA
COUNTY OF BROWARD

On this ___ day of _____, 200____, before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared JOHN P. KELLY, as City Manager, and BARBARA PRICE, as City Clerk, both of the CITY OF COCONUT CREEK, a Florida municipal corporation, who acknowledged before that they executed the foregoing Water and Wastewater Agreement for and on behalf of the CITY OF COCONUT CREEK. The said JOHN P. KELLY, and BARBARA PRICE, are personally known to me or have produced _____ and _____, respectively, as identification.

NOTARY PUBLIC, State of Florida

(N. P. SEAL)

(Typed/ printed / stamped name of Notary)

My Commission number is: _____
My Commission expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"

Large User Water Agreement and Amendments as recorded in Broward County OR Book #5507, pps 938-946, and O.R. Book #19127, pps 0077-0080 and OR Book #22863, pps 0213-0223.

EXHIBIT "C"

Large User Wastewater Agreement and Amendments as recorded in Broward County OR Book #9913, pps 74-121, and O.R. Book #22798, pps 0270-0279, and O.R. Book #22798 pps 0214-0269.

EXHIBIT "D"

WATER AND WASTEWATER EXTENSION POLICY

1. PURPOSE

The **CITY** hereby established this Water and Wastewater Extension Policy for the purpose of creating a uniform method of determining the Water and Wastewater Impact Fee to be paid by **DEVELOPERS** within the Service Area. The **CITY** declares that this **Agreement** has as its goal, the establishment of a uniform method of determining such Fees to the end that all such Fees shall be non-discriminatory and uniform among consumers and prospective consumers in the area located within the municipal boundaries of the City of Coconut Creek. Fees for consumers outside the municipal boundaries shall be reasonable in accordance with the general policies of the City of Coconut Creek.

2. AVAILABILITY

The provisions of this Water and Wastewater Extension Policy are available to consumers and property owners throughout the service area, subject to matters of economic feasibility.

3. APPLICABILITY OF WATER AND WASTEWATER IMPACT FEE

The **CITY** requires the payment of the Water and Wastewater Impact Fee as described below. The requirement by the **CITY** for such Fee is declared to be for the purpose of securing water and wastewater facilities and other backbone improvements outside the scope of the **DEVELOPER's** financial obligation; and as payment for water and wastewater facilities on any **CITY**-owned property which is necessary to serve the **DEVELOPER's** area. The payment by the **DEVELOPER** of such fee to the **CITY** shall be precedent to the rendering of water and wastewater service by the **CITY**.

4. **WATER AND WASTEWATER IMPACT FEES**

The Water and Wastewater Impact Fee, as set forth herein shall be \$ _____ per Equivalent Residential Connection. The **CITY** may increase this impact fee from time to time based upon Broward County's increase to the CITY in debt services and impact fees to secure capacity for water and wastewater service and other capital improvements needed to improve transmission lines within the **CITY** to service the **DEVELOPER'S** area, and said increases may also be based on other necessary criteria. The **DEVELOPER** will be charged the prevailing impact fee at the time of issuance of engineering permit. In cases of lands being developed by multiple out parcels/units each out parcel/unit shall pay the prevailing impact fee at the time it is permitted.

The Water and Wastewater Impact Fees shall be assessed against each Site Plan developed by the DEVELOPER. Payment of said impact fees shall be made according to Exhibit "E" of this **Agreement**. No engineering/building permit will be issued for any lot or parcel in each Final Plat included in the area described in Exhibit "A" until said Water and Wastewater Impact Fee as described in Exhibit "E" has been paid.

The customer class as shown in the following ERC schedule will be determined based on the water and wastewater rate ordinance, the permitted land use and zoning of the property.

ERC SCHEDULE SHALL FOLLOW THE MOST UP TO DATE

EQUIVALENT RESIDENTIAL FACTOR SCHEDULE

PROVIDED BY BROWARD COUNT PUBLIC WORKS DEPARTMENT,

OFFICE OF ENVIRONMENTAL SERVICES.

It shall be the **CITY's** policy to apportion the cost of the water and wastewater facilities on a pro rata basis against the property receiving service from such main transmission lines located off-site as to the **DEVELOPER's** Property. Since each **DEVELOPER** draws from the hydraulic capacity of such lines, the **CITY** will require that the **DEVELOPER** pay his Property's hydraulic share of the cost of the off-site water distribution and wastewater collection and transmission facilities through which service is rendered to **DEVELOPER's** Property. Said costs shall be changed from time to time in accordance with any amendments as set forth in Paragraph 12 of the **Agreement**. This portion of the **CITY's** Water and Wastewater Extension Policy is referred to as **DEVELOPER's** "hydraulic share of off-site facilities."

The **CITY** further declares that the Fee for the **DEVELOPER's** hydraulic share of off-site facilities will be applicable to the **DEVELOPER's** Property whether or not the water distribution and wastewater collection and transmission facilities have been previously constructed. It is the intent of this section to apportion the costs of off-site water distribution and wastewater collection and transmission facilities on a hydraulic share basis irrespective of whether such water distribution and wastewater collection and transmission facilities have been previously constructed or are proposed to be constructed.

The **DEVELOPER** may also be required to advance all or a portion of the off-site water distribution and wastewater collection and transmission facilities in order to provide a physical interconnection of the **DEVELOPER's** Property with the facilities of the **CITY** at their then present terminus. Such eventualities are covered by provisions

in this Water and Wastewater Extension Policy under the heading of "Refundable Advances" If the **CITY** requests the facilities before the **DEVELOPER** requires them, the **DEVELOPER** shall pay its hydraulic share upon receipt of notice to pay from the **CITY**.

It is warranted and represented by the **CITY** to the **DEVELOPER** that a water and wastewater system is located within the municipal boundary to which the **DEVELOPER** may connect at the cost provided herein. Further, that the said water and wastewater facilities have sufficient capacity for the project contemplated by the **DEVELOPER** and known as _____ . Such warranty and representation is subject to the **CITY** contracting with Broward county for said wastewater capacity, pursuant to Exhibit "C" as amended and is further subject to obtaining necessary volumes of potable water from Broward County, pursuant to Exhibit "B" as amended.

5. **REFUNDABLE ADVANCES**

The **CITY** may require, in addition to the contribution provisions set forth herein, a refundable advance by **DEVELOPER**. The purpose of this advance is to further temporarily defray the cost of any off-site extension of water distribution and wastewater collection and transmission facilities necessary to connect the **DEVELOPER's** Property with the terminus of the **CITY's** facilities. As set forth elsewhere in this Water and Wastewater Extension Policy, the **DEVELOPER** shall always be responsible for its "hydraulic share" of the cost of off-site facilities. However, this water and Wastewater Extension Policy recognizes instances in which **DEVELOPER** may be required to advance the hydraulic share applicable to other undeveloped property in order that off-site facilities may be constructed to serve the **DEVELOPER's** Property and at the same time be sized in accordance with the **CITY's**

master water and wastewater system plan. All amounts expended by the **DEVELOPER**, over and above the **DEVELOPER**'s hydraulic share for off-site facilities shall be refunded to the **DEVELOPER** in accordance with the terms and conditions of a refunding agreement between the parties, to be entered into before **DEVELOPER** obtains any permits for the construction of said off-site facilities. The provisions of the refund agreement shall be based upon the connection of other properties served by the off-site facilities installed by the **DEVELOPER**, to the extent of their hydraulic share.

Notwithstanding the provisions of this section, the **CITY** may limit the life of such refund agreement to a term of not more than five (5) years. Following the expiration of the refund agreement, any refund not made to the **DEVELOPER** will have lapsed and thereafter, such refund agreement will be cancelled. In no event shall the **DEVELOPER** recover an amount greater than the difference between the capitalized cost of such off-site improvements and the **DEVELOPER**'s own hydraulic share of such improvements. The **CITY** shall not include any interest upon the refund of the **DEVELOPER**'s advance.

6. **WATER AND WASTEWATER IMPACT FEE ADJUSTMENT FORMULA -
ESCALATION PROVISIONS**

The Water and Wastewater Impact Fee schedule set forth herein has been structured by the **CITY** with regard to the present level of construction costs of water distribution and wastewater collection and transmission facilities. The impact fee schedule may vary from time to time to reflect variances in the construction cost of water distribution and related debt services and impact fee charges by Broward County, Additionally, the **CITY** hereby declares that the schedule of Water and Wastewater Impact Fees set forth herein shall be

automatically adjusted based upon increases in utility construction costs as evidenced by the quarterly construction cost index published in Engineering News Record Magazine, entitled "U.S. -w20 Cities Construction Cost Index." As a base, the published index for the most recent quarter reported: _____ shall be used. Regardless of the foregoing, the **CITY** shall automatically adjust the Water and Wastewater Impact Fees set forth herein on a quarterly basis, effective January 1, April 1, July and October 1 of each year.

7. **OBLIGATIONS OF THE CITY OF COCONUT CREEK**

The **CITY** shall maintain copies of this Water and Wastewater Extension policy for inspection by any property owner, **DEVELOPER**, builder or prospective consumer desiring information regarding the cost of connection to the water distribution and wastewater collection and transmission facilities of the **CITY**.

The **CITY** shall maintain "as-built" information on its water distribution and wastewater collection and transmission facilities, for the purpose of providing information concerning the location of its water distribution and wastewater collection and transmission facilities.

The **CITY** shall install all meters upon the request of prospective consumers, providing that Water and Wastewater Impact Fees, as described herein and meter set charges as set forth in the **CITY'S** Ordinances have been paid in accordance with the provisions of this Water and Wastewater Extension Policy.

8. **OBLIGATIONS OF DEVELOPER**

It shall be **DEVELOPER'S** obligation to furnish to the **CITY** accurate information with regard to matters of engineering, construction of buildings and dwellings and proposed densities. The **DEVELOPER** is responsible for any increase in the **CITY'S** construction

or operating costs resulting from any engineering errors or changes furnished to the **CITY**.

9. **EASEMENTS AND RIGHTS-OF-WAY**

As a prerequisite to the construction of any water distribution or wastewater collection and transmission facility proposed to be connected to the facilities of the **CITY**, the **DEVELOPER** shall grant to the **CITY** easements of rights-of-way corresponding with the installation of the proposed facilities. The grant or conveyance shall be in form satisfactory to the City Attorney and City Engineer. The conveyances, whether or not located on the property set forth in Exhibit "A", shall be made without cost to the **CITY**. The **CITY** reserves the right to require such easement or right-of-way to the point at which the meter is proposed to be installed or at the "point of delivery of service", being the point at which the facilities of the **CITY** joins with the consumer's installation.

10. **METER SET CHARGES**

The **CITY** will charge to each prospective consumer requesting water and wastewater service, a meter installation fee otherwise known as a meter set charge, to defray the **CITY**'s cost of the meter, meter appurtenances and cost of installation. The meter set charge shall be based on the current City Ordinance establishing said meter set charge at the time of meter installation. The **CITY** will require the payment of such meter set charge concurrently with the request by prospective consumers for the meter installation.

11. **TRANSFER OF CONTRIBUTED PROPERTY - BILLS OF SALE**

Each **DEVELOPER** who has constructed portions of the water distribution and wastewater collection and transmission facilities on **DEVELOPER**'s own Property, prior to connection with the **CITY**'s existing

facilities, shall convey such component parts of water distribution and wastewater collection and transmission facilities to the **CITY** at no cost to the **CITY**. Evidence of said transfer shall be by bill of sale in form satisfactory to the City's Attorney and City Engineer. In addition, evidence as may be required by the **CITY** that the water distribution system and wastewater collection and transmission facilities proposed to be transferred to the **CITY** is free of all liens and encumbrances.

Any facilities in the category of consumer installations located on the discharge side of the water meter or on the consumer's side of the point of delivery of service shall not be transferred to the **CITY** and shall remain the property of the **DEVELOPER**. Each consumer installation shall remain the maintenance responsibility of **DEVELOPER**.

The **CITY** shall not be required to accept title to any component part of the water distribution or wastewater collection and transmission facilities as constructed by the **DEVELOPER** until the **CITY's** engineer has approved the construction of said lines and accepted the tests to determine that such construction is in accordance with applicable provisions of Coconut Creek Land Development Code. Said approval shall be made as required in the Coconut Creek Land Development Code and shall be evidence of the **CITY's** acceptance of said lines for the **CITY's** ownership, operation and maintenance.

The **CITY** reserves the right to refuse connection and to deny the commencement of service to any consumer seeking to be connected to portions of the water distribution and wastewater collection and transmission facilities installed by the **DEVELOPER** until such time as the provisions of this paragraph have been fully met by the **DEVELOPER**.

12. **WATER AND WASTEWATER AGREEMENT REQUIRED.**

Each **DEVELOPER** shall be required to execute a "**DEVELOPER AGREEMENT**" setting forth such reasonable provisions governing the **DEVELOPER's** and the **CITY's** responsibility pertaining to the installation of service facilities; the manner and method of payment of Water and Wastewater Impact Fees; standards of construction or specifications; time commitments to "take and use water and wastewater services"; engineering errors and omissions; rules, regulations and procedures of the **CITY**; prohibitions against improper use of the **CITY's** facilities and other matters normally associated with the contained in the WATER AND WASTEWATER AGREEMENT. Nothing contained in such WATER AND WASTEWATER AGREEMENT shall be in conflict with this Water and Wastewater Extension Policy. Notwithstanding anything hereinabove set forth to the contrary, it shall be mandatory that a WATER AND WASTEWATER AGREEMENT be executed by every **DEVELOPER**.

13. **EXTENSIONS OUTSIDE SERVICE AREA.**

Developers of property which lies outside the **CITY's** service area may apply to the **CITY** for the extension of water distribution and wastewater collection and transmission facilities to said Property. The **CITY** shall not be obligated to provide service outside of its service area, but may elect to do so upon terms and conditions similar to those contained in this Water and Wastewater Extension Policy. However, the **CITY** may require additional Water and Wastewater Impact Fees should the same be reasonably required in order to maintain the same level of water and wastewater service within the service area.

14. **WARRANTY OF CITY.**

The Water and Wastewater Impact Fees, and all other charges, costs, obligations and duties of the **DEVELOPER** are hereby set and

established by the herein WATER AND WASTEWATER AGREEMENT and this Water and Wastewater Extension Policy.

All funds received by the **CITY** as a result of the Water and Wastewater Impact Fees shall be held by the **CITY** in restricted accounts and be used for no purpose other than for water distribution and wastewater collection and transmission facilities and any appurtenances thereto.

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EXHIBIT "E"

ERC PAYMENT SCHEDULE

The developer anticipates that water and sewer connection to this subdivision will require a total of _____ ERC's.

Payment of _____ ERC connection fees shall be made to the **CITY** three (3) days after AGREEMENT acceptance by the **CITY**.

ACREAGE CHARGES

Notwithstanding, any other provisions in this agreement to the contrary, **CITY** and **DEVELOPER** agree that acreage fees will be waived due to the **DEVELOPER'S** participation in **CCPEC** (Coconut Creek Pollution Elimination Company).

SCHEDULE OF RATES, CHARGES AND FEES

The monthly water and wastewater usage rates, meter installation charges and miscellaneous fees are payable to the **CITY** as required, are subject to adjustment and are established in Sec 20-82, City of Coconut Creek Code of Ordinances.

Revised with OE changes 1-25-05

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