

AGREEMENT
AMONG THE CITY OF WESTON &
_____ **DEVELOPMENT DISTRICT**
AND
_____ **ASSOCIATION, INC.**

FOR CONSENT TO WITHDRAW WATER FROM WATER BODIES IN
THE CITY OF WESTON AND INDEMNIFICATION OF
THE CITY AND THE _____ DEVELOPMENT DISTRICT

This Agreement (the "Agreement") made and entered into this ____ day of _____, _____, among the City of Weston, a Florida municipal corporation, (the "City"), the _____ Development District, (the "____ DD") and _____ Maintenance Association, Inc., a Florida not-for-profit corporation, (the "Grantee")

WITNESSETH:

WHEREAS, the Grantee, owner of the property located at _____, **Weston, FL 333** has applied for a permit from the South Florida Water Management District ("SFWMD") to withdraw water for irrigation purposes from a water body owned by the ____ DD and the City for use on the Grantee's property only; and

WHEREAS, in order to obtain the SFWMD permit, the City and ____ DD must grant access to the water body; and

WHEREAS, pursuant to Resolution No. 2006-41 of the City of Weston, in order for access to be granted to a water body for irrigation purposes, the Grantee must agree to indemnify, defend and hold the City and ____ DD harmless for all claims arising to or connected with the Grantee's withdrawal or the subsequent use of the water from the lake; and

WHEREAS, the Grantee is willing to indemnify, defend and hold the City and ____ DD harmless as set forth herein.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. RECITALS.

Each and every WHEREAS clause set forth above is a true and correct recital and representation, and is incorporated herein as if set forth in full.

SECTION 2. INDEMNIFICATION AND HOLD HARMLESS.

The Grantee does hereby release and agree to hold harmless the City and the ____ DD, together with the officers, employees, agents, servants, representatives and volunteers of these entities (collectively, "Grantor") from and against any manner of actions, injuries, liabilities, controversies, damages, rights, judgments, claims and demands of any nature whatsoever, at law or in equity, that the Grantee has now or may have in the future, for or by reason of the Grantee's withdrawal of water from a water body in the City of Weston, regardless of any negligence or comparative negligence on the part of Grantor.

The Grantee does hereby agree to defend Grantor against any manner of actions, injuries, liabilities, controversies, damages, rights, judgments, claims and demands of any nature whatsoever, at law or in equity, made or suffered by any person as a result of my withdrawal of water from a water body in the City of Weston, regardless of any negligence or comparative negligence on the part of Grantor. The Grantee agrees to indemnify Grantor for any losses Grantor suffers as a result of any manner of actions, injuries, liabilities, controversies, damages, rights, judgments, claims and demands of any nature whatsoever, at law or in equity, made or suffered by any person as a result of my withdrawal of water from a water body in the City of Weston, regardless of any negligence or comparative negligence on the part of Grantor. In furtherance of this agreement to defend and indemnify Grantor, the Grantee agrees that it will pay for an attorney selected by Grantor to defend Grantor if Grantor so chooses.

SECTION 3. WAIVER OF CLAIM.

The Grantee agrees to waive any claim against Grantor arising from the Grantee's withdrawal of water from a water body in the City of Weston, including any claim for negligence.

SECTION 4. COVENANT NOT TO SUE.

The Grantee covenants not to sue Grantor for any claim arising from the Grantee's withdrawal of water from a water body in the City of Weston.

SECTION 5. MISCELLANEOUS PROVISIONS.

5.1 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, understandings and agreements between the parties and may not be changed, altered or modified except by an instrument in writing signed by all parties against whom enforcement of such change will be sought. In the event that any term or provision of this Agreement shall be determined by an appropriate judicial authority to be illegal or otherwise invalid, such provisions shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

5.2 This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any action to enforce this Agreement shall be in Broward County, Florida. The parties expressly waive all rights to trial by jury for any disputes from or in any way connected with this Agreement. The parties agree and understand that this waiver is a material contract term. This Agreement is not subject to arbitration. In the event of any litigation concerning this Agreement, each party shall be responsible for its own costs and expenses, including attorney's fees.

5.3 The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one or more of the parties than the other.

5.4 The parties agree that each party is not the employee, agent or representative of the other parties. The parties agree that none of the provisions of this Agreement are intended to create, nor shall it be deemed or construed to create, any relationship other than that of independent entities contracting with each other solely for the purpose of affecting the provisions of this Agreement. Neither the parties hereto, nor any of each parties' prospective members, employees or agents, shall be construed to be the agent, employee, partner, joint venturer or representative of the other party.

5.5 Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand-delivered or by facsimile transmission with proof of receipt, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it has been changed by written notice in compliance with the provision of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the parties designate the following as the respective places for giving of notice:

FOR GRANTEE: _____

Telephone: _____
Facsimile: _____

FOR GRANTOR: John R. Flint, City Manager
City of Weston
17200 Royal Palm Boulevard
Weston, Florida 33326
Telephone: (954) 385-2000
Facsimile: (954) 385-2012

With a copy to: Jamie Alan Cole, Esq., City Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

5.6 Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the other party for whom he or she is signing, and to bond and obligate such party with respect to all provisions contained in the Agreement.

5.7 Neither this Agreement, nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstances by either party without the prior written consent of the other party.

5.8 The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

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AGREEMENT AMONG THE CITY OF WESTON, _____ DEVELOPMENT DISTRICT AND _____ ASSOCIATION, INC. FOR CONSENT TO WITHDRAW WATER FROM WATER BODIES IN THE CITY OF WESTON AND INDEMNIFICATION OF THE CITY AND THE _____ DEVELOPMENT DISTRICT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City of Weston, signing by and through its City Manager, authorized to execute same; _____ Development District, signing by and through its District Manager, authorized to execute same; and _____ Association, Inc. authorized to execute same through its signatory.

ATTEST:

Patricia A. Bates, MMC, City Clerk

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

By: _____
Jamie Alan Cole, City Attorney
____ day of _____, _____

CITY OF WESTON

By: _____
John R. Flint, City Manager
____ day of _____, _____

By: _____
Karl C. Thompson, P.E., City Engineer
____ day of _____, _____

(CITY SEAL)

ATTEST:

Patricia A. Bates, MMC, District Clerk

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

By: _____
Jamie Alan Cole, District Attorney
____ day of _____, _____

_____ **DEVELOPMENT DISTRICT**

By: _____
John R. Flint, District Manager
____ day of _____, _____

By: _____
Karl C. Thompson, P.E., City Engineer
____ day of _____, _____

(DISTRICT SEAL)

AGREEMENT AMONG THE CITY OF WESTON, _____ DEVELOPMENT DISTRICT AND _____ ASSOCIATION, INC. FOR CONSENT TO WITHDRAW WATER FROM WATER BODIES IN THE CITY OF WESTON AND INDEMNIFICATION OF THE CITY AND THE _____ DEVELOPMENT DISTRICT.

_____ ASSOCIATION, INC.

WITNESSES:

By: _____

_____, President

_____ day of _____, _____

Signature

Print Name

Signature

Print Name