

MAINTENANCE AGREEMENT

This Agreement is made and entered into this 7th day of December, 2011 (the "Effective Date"), by and between:

VILLAGE WALK OF BONITA SPRINGS COMMUNITY DEVELOPMENT DISTRICT, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, being situated in the City of Bonita Springs and Lee County, Florida, (the "District"); and

VILLAGE WALK HOMEOWNERS ASSOCIATION, INC., a Florida non profit corporation, (the "Association").

RECITALS

WHEREAS, the District is a local government organized and existing in accordance with the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended;

WHEREAS, the District, pursuant to the responsibilities and authorities vested in it by Chapter 190, Florida Statutes, desires to proceed with the discharge of its duties, including but not limited to, the management of District facilities, including the funding, the operation and the maintenance of the water management system within the 648.79-acre VILLAGE WALK master planned residential community located within the City of Bonita Springs, Florida (the "Project");

WHEREAS, the District shall employ, and fix the compensation of, a district manager. The district manager shall have charge and supervision of the works of the district and shall be responsible for preserving and maintaining any improvement or facility constructed or erected pursuant to the provisions of this act, for maintaining and operating the equipment owned by the district, and for performing such other duties as may be prescribed by the board;

WHEREAS, the water management system includes, without limitation, the drainage system, water management culverts, water control structures, perimeter berms, water management ponds and lakes, and associated littoral plantings, swales, catch basins, manholes and related improvements, owned by the District or which the District is responsible for maintaining (collectively, the "Improvements");

WHEREAS, the District and the Association desire to provide for operation and maintenance of the Improvements; and

WHEREAS, the Association on behalf of and for the benefit of its members has agreed to provide, pursuant to the terms of the Agreement, certain operation and maintenance services and materials;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for Ten and no/100ths Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and subject to the terms and conditions hereof, the District and the Association agree as follows:

1. **Recitals.**

The above recitals are deemed true and correct to the best of the knowledge of the parties and are incorporated into this Agreement.

2. **Performance.**

The District and the Association hereby agree, as follows:

(A) the Association shall provide, and be solely responsible for all costs and liabilities that are associated with or arise out of, the operation and maintenance of the Improvements (the “**Maintenance Services**”);

(B) the Maintenance Services shall be provided by the Association in a competent and professional manner using qualified and experienced employees or contractors with such frequency as is necessary and reasonable in the industry and under the circumstances in order to ensure that the Improvements are properly maintained and continue to function with their intended purpose. In addition, since each of the Improvements may require different types of maintenance and materials, the maintenance intervals and the time periods within which maintenance tasks must be performed and the materials to be used by the Association shall be flexible and adjusted periodically depending on the condition of each of the Improvements and particular maintenance needs;

(C) the Maintenance Services shall be provided by the Association in strict compliance with all governmental entities’ and agencies’, permits, requirements, rules, acts, statutes, ordinances, orders, regulations and restrictions, including but not limited to the following entities, if applicable, (a) the District; (b) South Florida Water Management District; (c) Florida Department of Environmental Protection; (d) Collier County, Florida; and (e) any municipality with jurisdiction, either now or in the future;

(D) the Maintenance Services shall be provided by the Association without interfering in any way with or encumbering the use, access, ingress, egress, easement, right-of-way, dedication, ownership or other right or interest of the District in the Improvements or in the real property where each Improvement is located; and

(E) the Association shall timely pay all invoices, or other manner of billing, for all persons or entities with whom the Association may have contracted or arranged to provide services or materials in fulfillment of its obligations under this Agreement, including the District as provided for in Sections 4 and 5 herein.

(F) the Association shall report periodically to the District Manager on the Association's provision of Maintenance Services so that the District Manager may report to the District Board on the management, including preservation and maintenance, of the Maintenance Services.

3. **The Association's Responsibility for Acts of Force Majeure.**

The District and the Association agree that the Maintenance Services herein assumed by the Association shall not include by way of example, but not limitation, the repair or replacement of the Improvements that are damaged as a result of a hurricane, tornado, windstorm, freeze damage, fire, drought or flooding.

4. **Emergency Intervention by the District.**

In the event of an emergency, as determined by the District in its reasonable sole discretion, and regardless of any language in this Agreement to the contrary or any language in any contract or arrangement that the Association may have with third parties concerning the Maintenance Services for the Improvements, the District reserves the unilateral and exclusive right to implement or initiate, without advance notice, the following:

(A) the provision of maintenance services or materials for any one or more of the Improvements; and

(B) the removal, modification, relocation, or replacement, as the case may be and in the District's sole discretion, of one or more of the Improvements.

Further, in such event, the Association agrees that upon the District's commencement of a maintenance program or provision of maintenance services or materials for any one of the Improvements pursuant to this section, the District shall issue to the Association a written invoice for the costs incurred pursuant to this section, and the Association shall pay said invoice in full within thirty (30) calendar days following receipt of the invoice. A failure to timely pay the invoice in full shall be deemed a material breach of this Agreement.

5. **Remedies, Default, & Specific Performance.**

The District may elect any of one or more of the following remedies, as well as any other remedies available in law or equity, if the Association should default in carrying out the terms and conditions of this Agreement, namely:

(A) **Default by Association.** If the Association should fail to comply with the terms of Section 2 of this Agreement, including the failure or refusal to furnish or perform any one or more of the required Maintenance Services, and such failure shall continue for thirty (30) days or more from the date of receipt of a written notice of default from the District, then, in that event, the District, at its sole discretion and without further notice, may elect to (i) initiate a maintenance program or provide such maintenance services and materials and thereby assume full maintenance responsibility as to some or all of the Improvements, or (ii) remove, modify,

relocate or replace, as the case may be and in the District's reasonable sole discretion, one or more of the Improvements. Provided, however, should any failure of the Association to comply with Section 2 of this Agreement result in a permit violation, the District shall have the right to immediately take such action necessary to abate or remediate the violation and all such costs shall be reimbursed by the Association in the manner and time provided herein.

(B) Discontinuation and Reimbursement by Association. At such time as the District should commence a maintenance program or provide maintenance services or supplies for one or more of the Improvements under this section, and upon receipt of the oral or written notice from the District, the Association shall promptly discontinue the provision of Maintenance Services as to same until such time as is otherwise agreed to in writing by and between the parties hereto, and regardless of any contracts or arrangements with third parties into which the Association may have entered to perform Maintenance Services. Further, in such event, the Association agrees that upon the District's commencement of a maintenance program or provision of maintenance services or materials for any one of the Improvements and every year thereafter on or about September 30th, the District shall issue to the Association a written invoice setting forth the estimated amount of money the District reasonably calculates it will need to have on hand, for the next twelve (12) months, in order to implement and carry out its maintenance program or provision of maintenance services or materials. The Association shall pay said invoice in full within thirty (30) calendar days following receipt of the invoice. A failure to timely pay the invoice in full shall be deemed a material breach of this Agreement.

(C) Other Remedies and Opportunity to Cure. At the sole discretion of the District, a breach or material default by the Association under this Agreement, including a failure to timely pay an invoice, shall entitle the District to all remedies available in law or equity or in an administrative tribunal, which shall include but not be limited to the right of damages. However, except for emergency situations (as so reasonably determined by the District), before the District may initiate legal action for the Association's failure or default under this Agreement, the District shall provide advance written notice to the Association of the nature of the alleged failure or default and afford a thirty (30) calendar day cure period, and the Association shall have thirty (30) calendar days following the date of receipt of said notice to cure the alleged failure or default through appropriate and substantive remedial action.

6. Indemnification.

The Association does hereby indemnify and hold the District harmless of and from any and all loss or liability that the District may sustain or incur by reason of the Association's assumption of the Maintenance Services for the Improvements, including any that may result from or arise out of the Association's misfeasance, malfeasance, non-feasance, negligence, gross negligence, willful misconduct, or material breach, with said indemnification and hold harmless to include but not be limited to: (i) direct costs and damages; and (ii) any and all injuries or damages sustained by persons or damage to property, including such reasonable attorney's fees and costs (including all appellate, arbitration, or mediation proceedings) that may be incurred by the District that relate thereto. Provided, however, it is understood that this section does not indemnify the District for the Association's misfeasance, malfeasance, non-feasance, negligence, gross negligence, willful misconduct, or material breach if same is caused

by or at the direction of the District, or authorize the Association to select or provide legal counsel on behalf of the District.

7. **Insurance.**

The Association shall be required, on or before the date of the execution of this Agreement and without any interruption or lapse thereafter, to provide to the District certificates of insurance reflecting insurance coverage for the Association as follows:

(i) The Association shall make the District an additional insured and certificate holder under the policies of insurance identified on Exhibit "A" attached hereto and made a part hereof; and

(ii) a statement that the insurance coverage represented by each certificate of insurance shall not be terminated, canceled or reduced unless thirty (30) days prior written notice of such termination, cancellation or reduction (or ten (10) days if terminated or canceled for non-payment) is mailed by first class U.S. Mail to the District.

8. **Term of Agreement.**

This Agreement shall take effect as of the Effective Date first written above. Unless terminated as otherwise permitted in this Agreement, the term of this Agreement shall expire on midnight of December 31st of the year that is five (5) years following the year of the Effective Date first written above. This Agreement shall automatically renew for additional five (5) year periods, commencing at 12:01 a.m. on January 1st of the following year, unless the Association provides written notice before 5:00 p.m. on April 1st of the year in which the then-current term will expire that the Association intends not to renew for an additional term.

In addition to the rights and methods of termination established pursuant to any other provision of this Agreement, the District may terminate this Agreement at any time for any reason in its sole discretion by providing at least ninety (90) days written notice to the Association of its intent to terminate this Agreement pursuant to this provision.

9. **Miscellaneous Provisions.**

9.1 **Time of the Essence:** Time is of the essence with respect to this Agreement.

9.2 **Notices:** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including facsimile) and shall be (as elected by the person giving such notice) hand delivered by prepaid express overnight courier or messenger service, or mailed by certified (postage prepaid), return receipt requested, to the following addresses:

AS TO THE DISTRICT:	VILLAGE WALK OF BONITA SPRINGS Community Development District c/o Special District Services, Inc.
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2501A Burns Road
Palm Beach Gardens, FL 33410
Attention: District Manager

AS TO THE ASSOCIATION: VILLAGE WALK Homeowners Association, Inc.
15321 Latitude Drive
Bonita Springs, Florida 34135.
Attention: Property Manager

9.3 **Entire Agreement:** The parties agree that this instrument embodies the complete understanding of the parties with respect to the subject matter of this Agreement and supersedes all other agreements, verbal or otherwise. This Agreement contains the entire understanding between District and Association and each agrees that no representation was made by or on behalf of the other that is not contained in this Agreement, and that in entering into this Agreement neither party relied upon any representation not herein contained.

9.4 **Amendment and Waiver:** This Agreement may be amended only by a written instrument signed by both parties. If any party fails to enforce their respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights as stated in this Agreement.

9.5 **Severability:** The parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of the State of Florida or with any federal law or regulation, such provision shall be severable, with all other provisions remaining valid and enforceable.

9.6 **Controlling Law:** This Agreement shall be construed under the laws of the State of Florida.

9.7 **Authority:** The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this Agreement.

9.8 **Costs and Fees:** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the prevailing party shall be entitled to recover from the other all costs incurred, including reasonable attorney's fees and costs for trial, alternate dispute resolution or appellate proceedings.

9.9 **Successors and Assignment:** The rights and obligations created by this Agreement shall be binding upon and inure to the benefit of District and Association, and their respective successors and assigns. This Agreement may not be assigned without the written consent of all parties, and such written consent shall not be unreasonably withheld.

9.10 **No Third-Party Beneficiaries:** This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof,

to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

9.11 **Arm's Length Transaction:** This Agreement has been negotiated fully between the parties in an arm's length transaction. The parties participated fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are deemed to have drafted, chosen and selected the language, and the disputed language will not be interpreted or construed against any party.

9.12 **Execution of Documents:** Each party covenants and agrees that it will at any time and from time to time do such acts and execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such documents reasonably requested by the parties necessary to carry out fully and effectuate the transaction or performance herein contemplated.


9.13 **Captions:** The captions for each section of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope of intent of this Agreement, or the intent of any provision hereof.


9.14 **Counterparts:** This Agreement may be executed in counterparts, each of which shall be and be taken to be an original, and all collectively deemed one instrument.

IN WITNESS WHEREOF, the parties hereto execute this Agreement and further agree that it shall take effect as of the Effective Date first above written.

ATTEST:

**VILLAGE WALK OF BONITA
SPRINGS COMMUNITY
DEVELOPMENT DISTRICT**


_____, Secretary


By: 
_____, Chair
Scott Brooks

Address:
c/o Special District Services, Inc.
2501A Burns Road
Palm Beach Gardens, FL 33410

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 7th day of DECEMBER, 2011, by Scott Brooks, as Chair of the Board of Supervisors for **VILLAGE WALK OF BONITA SPRINGS COMMUNITY DEVELOPMENT DISTRICT**, who is personally known _____, or has produced _____ as identification, who being duly sworn, deposes and says that the aforementioned is true and correct to the best of his or her knowledge.


Frances J. Ware
Notary Public

My commission expires:
NOTARY PUBLIC-STATE OF FLORIDA
 Frances J. Ware
Commission # EE056920
Expires: MAR. 23, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 7th day of DECEMBER 2011, by LODD WODEASKA, as Secretary for **VILLAGE WALK OF BONITA SPRINGS COMMUNITY DEVELOPMENT DISTRICT**, who is personally known _____, or has produced _____ as identification, who being duly sworn, deposes and says that the aforementioned is true and correct to the best of his or her knowledge.

Frances J. Ware
Notary Public

My commission expires:
NOTARY PUBLIC-STATE OF FLORIDA
 Frances J. Ware
Commission # EE056920
Expires: MAR. 23, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

WITNESSES:

[Signature]
Print Name: SCOTT BROOKS
[Signature]
Print Name: CHRIS HASTY

VILLAGE WALK HOMEOWNERS
ASSOCIATION, INC.,
a Florida non profit corporation

By: [Signature]
Name: Richard McCormick
Title: Vice president

(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF LEE) SS:

The foregoing instrument was acknowledged before me this 7th day of DECEMBER, 2011, by Richard McCormick as VP of the **VILLAGE WALK HOMEOWNERS ASSOCIATION, INC.**, who is personally known to me, or has produced _____ as identification, who being duly sworn, deposes and says that the aforementioned is true and correct to the best of his or her knowledge.

[Signature]
Notary Public

My commission expires:

NOTARY PUBLIC-STATE OF FLORIDA
Todd R. Wodraska
Commission #DD964923
Expires: MAR. 01, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

EXHIBIT "A"

Association Insurance Policies