

FORCE MAIN MAINTENANCE AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 2019, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

VANTAGE HOMEOWNERS ASSOCIATION, INC., a Florida Not For Profit Corporation with offices located at 4755 Technology Way, Ste 210, Boca Raton, FL 33431 hereinafter referred to as "ASSOCIATION."

WITNESSETH:

WHEREAS, ASSOCIATION is the owner of real property located on the 251 NW 36th Ave in the City of Pompano Beach, Florida, identified by the following folio number: 484232190020 ("Property"); and

WHEREAS, ASSOCIATION submitted a major site plan application to CITY to develop 150 new single-family homes, a pool, cabana, gazebos, tot lot, a bicycle lane, and associated landscaping, which was assigned Planning and Zoning No. 15-12000029 and approved by the Planning and Zoning Board on December 16th, 2015 ("Project"); and

WHEREAS, the Project requires the ASSOCIATION to install a force main sewer line and related facilities (collectively referred to as "Sewer Line"), as specifically described and depicted in the Sewer Line Plan attached hereto as Exhibit A, under West Atlantic Boulevard, which is owned by the Florida Department of Transportation ("FDOT"), to connect to the CITY's sewer system on the south side of West Atlantic Boulevard; and

WHEREAS, FDOT will not permit a private entity such as ASSOCIATION to install and own a sewer line under right-of-way that it owns but instead requires utility providers such as the CITY to install and own the sewer line; and

WHEREAS, CITY, to facilitate the Project, has agreed to: (1) execute the FDOT permit application attached hereto as Exhibit B which is required by FDOT and (2) authorize ASSOCIATION and/or its agents/contractors to install the Sewer Line as “Utility Builder” for CITY;

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. CITY COMMITMENTS.

FDOT regulations allow for a utility provider such as CITY to authorize a private entity such as ASSOCIATION or a contractor to install a sewer line under FDOT right-of-way so long as CITY signs the FDOT permit application and is responsible to FDOT for maintenance of the sewer line. CITY agrees to sign the FDOT permit application in conjunction with ASSOCIATION, so the Sewer Line can be installed by ASSOCIATION’s contractor. CITY also agrees to serve as a proxy for the Sewer Line and be responsible to FDOT to maintain the Sewer Line once installed. CITY may, at any time, decide to assume the maintenance obligations for the Sewer Line by providing ninety (90) day written notice to ASSOCIATION and provided CITY shall not reduce sewer services to ASSOCIATION or otherwise adversely affect ASSOCIATION by its assumption of maintenance obligations. Additionally, should the FDOT right-of-way be acquired by the City, the Association shall obtain a revocable licensee agreement with the City for the Sewer Line within 30 days of notice from the City. The revocable license agreement shall

supersede the presiding agreement and shall run with the Property and be binding upon any future purchasers, transferees, or owners of the Property.

2. ASSOCIATION OBLIGATIONS.

During the term of this Agreement, ASSOCIATION shall be directly responsible to CITY for installation and continuing maintenance of the Sewer Line as set forth herein.

3. TERM.

The term of this Agreement shall run in perpetuity unless modified as set forth herein. During the term of this Agreement, ASSOCIATION shall be obligated to maintain the Sewer Line and the FDOT surrounding property in good condition as reasonably determined by the CITY/FDOT. The ASSOCIATION shall establish a direct point of contact with full authority, expertise, licensure and credentials required by local and state governing authorities to investigate and reasonably act upon any reported public health, safety or welfare risk associated with the Sewer Line. Should the CITY/FDOT reasonably determine that the ASSOCIATION has failed to maintain the Sewer Line, or that the public's health, safety or welfare is at risk in relation to the Sewer Line, then ASSOCIATION's established point of contact shall be directly contacted and notified in writing and given a reasonable opportunity to cure the issue. In the event ASSOCIATION fails to timely cure the issue to CITY's/FDOT's satisfaction as requested, CITY may effectuate the required maintenance/repair/replacement, as the case may be, and may (1) seek reimbursement of the actual costs for the maintenance/repair/replacement from the ASSOCIATION or, in the event of dissolution of the ASSOCIATION, the homeowners within the Vantage neighborhood and (2) record a lien against the ASSOCIATION or homeowners within the Vantage neighborhood. Such remedies shall not limit the CITY from taking other legal action to obtain maintenance/repair/replacement of the Sewer Line and to recover any and all costs

incurred in obtaining maintenance/repair/replacement of the Sewer Line. Notice shall be via the ASSOCIATION'S established point of contact and sent in writing, in accordance with Paragraph 13 hereof. In the event any maintenance issue arises with the Sewer Line, CITY shall cooperate and assist ASSOCIATION in its efforts and sign any required permits or applications required by FDOT to repair any damage to the Sewer Line or replace the Sewer Line.

4. ASSIGNMENT.

The Agreement shall run with the Property and be binding upon any future purchasers, transferees, or owners of the Property. In the event ASSOCIATION sells or otherwise transfers ownership of the Property, the new owner or transferee must accept responsibility for the obligations contained in this Agreement by signing a written Assignment.

5. MAINTENANCE.

ASSOCIATION agrees to operate, repair and/or replace the Sewer Line and appurtenances and adjacent property, during the term of this Agreement, at its sole cost and ensure that the Sewer Line is in good working condition, as reasonably determined in the CITY's sole discretion. In the event CITY is made aware of damage or a functional issue with the Sewer Line, CITY shall notify ASSOCIATION immediately and ASSOCIATION shall be obligated to commence work on remediating the damage or functional issue upon receipt of notice from the CITY. ASSOCIATION assumes all risks in the operation and maintenance and/or replacement of the Sewer Line and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, regardless whether occasioned by the ASSOCIATION, its officers, employees, contractors or agents. ASSOCIATION further agrees that it shall not make any

alteration to the Sewer Line that would increase the Sewer Line size or capacity or any other substantial alteration without the CITY's prior written consent.

6. INDEMNIFICATION.

A. ASSOCIATION shall indemnify, defend and hold harmless the CITY/FDOT and its officials, agents and employees from and against any and all claims, losses, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from this Agreement.

B. ASSOCIATION shall be solely responsible and answerable for damages related to all accident or injuries to person or property arising out of or caused in the performance of the Project done pursuant to this Agreement by or on behalf of ASSOCIATION. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in § 768.28, Florida Statutes.

7. INSURANCE.

ASSOCIATION shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect ASSOCIATION, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise in relation to the Sewer Line during the term of this Agreement. The insurance policy shall contain a sixty (60) day cancellation clause period and a Certificate of Insurance shall be furnished to the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "C."

8. AMENDMENTS.

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

9. SURRENDER UPON TERMINATION.

Upon termination of this Agreement, ASSOCIATION shall remove or otherwise abandon, at ASSOCIATION's own expense, the Sewer Line and, thereafter, the Agreement shall be considered abandoned and terminated. Upon completion of ASSOCIATION's removal or abandonment, the condition of the right-of-way shall be such that it is safe and not a hazard and in its original condition or better as determined by the CITY and FDOT.

10. NONWAIVER.

Failure of the CITY to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties in writing.

11. TERMINATION.

This Agreement may be terminated only for the reasons and according to the process described in Section 3. It is expressly understood by the parties that CITY may terminate this Agreement due to failure by the ASSOCIATION to maintain the Sewer Line or ASSOCIATION's Sewer Line poses a risk to the public's health, safety or welfare as determined by CITY. ASSOCIATION shall be solely responsible for any expenses incurred to remove its personal property including equipment, with no right to compensation of any kind from CITY. Where

ASSOCIATION's use poses a risk to the public's health, safety or welfare, the ASSOCIATION shall receive written notice to immediately cease and desist such use and shall promptly remove or fix the Sewer Line as determined by CITY, in the CITY's sole discretion.

12. NOTICES.

Any notice or demand under the terms of this Agreement or by any statute or ordinance that must be given or made by a party hereto shall be via the ASSOCIATION'S point of contact and in writing and shall be given by certified mail to the other party at the address set forth below or to such other address as such party may from time to time designate by notice, except where otherwise provided. ASSOCIATION shall notify the City in writing and shall be given by certified mail provided the point of contact changes.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061

COPY TO: City Attorney
City of Pompano Beach
Post Office Box 2083
Pompano Beach, Florida 33061

FOR ASSOCIATION:
Carlos López, President
4775 Technology Way, Suite 210
Boca Raton, FL, 33431
Ph: 561-869-1800

13. MISCELLANEOUS PROVISION.

It is expressly understood and agreed that no real or personal property is leased to ASSOCIATION as this is not a Lease.

14. LAWS AND ORDINANCES.

ASSOCIATION shall observe all laws and ordinances of the city, county, state and federal governing authorities directly relating to the Sewer Line.

15. RECORDATION OF AGREEMENT.

This Agreement shall be recorded in the Public Records of Broward County, Florida, at the ASSOCIATION's expense, with a copy given to CITY. Upon termination of the Agreement, a written termination shall be recorded in the Public Records Broward County, Florida, at the ASSOCIATION's expense, with a copy given to CITY.

16. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL

A. The Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance. CITY and ASSOCIATION submit to the jurisdiction of state and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise, but the ASSOCIATION and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

C. By entering into this Agreement, the Parties expressly waive any rights either party may have to a trial by jury of any litigation related to this agreement. If a party fails to withdraw a request for a jury trial in a lawsuit arising out of this Agreement after written notice by the other

party of violation of this section, the party making the request for jury trial shall be liable for the reasonable attorneys' fees and costs of the other party in contesting the request for jury trial, and such amounts shall be awarded by the court in adjudicating the motion.

17. NO THIRD PARTY BENEFICIARIES.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. 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 any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

18. NONDISCRIMINATION.

ASSOCIATION shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

19. CONTINUITY.

This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

20. PUBLIC RECORDS.

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The ASSOCIATION shall comply with Florida's Public Records Law, as amended. Specifically, ASSOCIATION shall:

(1) Keep and maintain public records required by the CITY in order to perform the service.

(2) Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the ASSOCIATION does not transfer the records to the CITY.

(4) Upon completion of the Sewer Line installation, transfer, at no cost to the CITY, all public records in possession of the ASSOCIATION, or keep and maintain public records required by the CITY to perform the service. If the ASSOCIATION transfers all public records to the CITY upon completion of the installation, the ASSOCIATION shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the ASSOCIATION keeps and maintains public records upon completion of the contract, the ASSOCIATION shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

B. Failure of the ASSOCIATION to provide the above described public records to the CITY within a reasonable time may subject ASSOCIATION to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com

21. FORCE MAJEURE.

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of ASSOCIATION be deemed Force Majeure.

22. ENTIRE AGREEMENT AND INTERPRETATION.

A. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no

deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

B. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and ASSOCIATION and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of one party, and therefore construed against either party.

C. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2019 by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

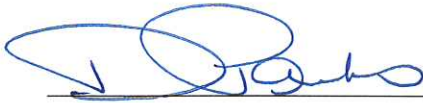
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"ASSOCIATION":

Witnesses:

VANTAGE HOMEOWNERS ASSOCIATION, INC



By:



Denise Parks

Print Name

ALEJANDRO DELFINO

Typed or Printed Name

Larissa Rutsch

LAERISSA RUTSCH

Print Name

Title:

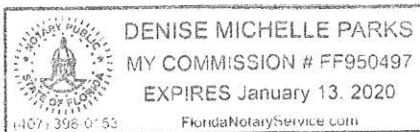
REGISTERED AGENT

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 9th day of October, 2019, by Alejandro Delfino as Registered Agent of Vantage Home Owners Association, Inc. Florida Incorporation, on behalf of ASSOCIATION. He/she is personally known to me or who has produced identification. (type of identification) as

NOTARY'S SEAL:





NOTARY PUBLIC, STATE OF FLORIDA

Denise Parks

(Name of Acknowledger Typed, Printed or Stamped)

FF 950497

Commission Number

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10/9/19
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