

This instrument prepared by, and after recording, please return to:

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**WATER MANAGEMENT SYSTEM
SHARED COST AND MAINTENANCE AGREEMENT**

AGREEMENT made and entered into as of the 10th day of February, 1997, by and between PELICAN STRAND MASTER PROPERTY OWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter "Master Association"); PELICAN STRAND COMMERCIAL ASSOCIATION, INC., a Florida not-for-profit corporation (hereinafter "Commercial Association"); and PELICAN STRAND, LTD., a Florida limited partnership (hereinafter "Declarant").

WHEREAS, Master Association was formed for the purpose set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Strand, which is recorded in Official Records Book 2212, Pages 15-17, at seq., of the Public Records of Collier County, Florida (the "Pelican Declaration"), and which Pelican Declaration encumbers the property described therein (the "Pelican Strand Property"); and

WHEREAS, Commercial Association was formed for the purposes set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Strand Commercial Parcel, which is recorded in Official Records Book 412, Pages 132, at seq., of the Public Records of Collier County, Florida (the "Commercial Declaration"), and which Commercial Declaration encumbers the property described therein (the "Commercial Property"); and

WHEREAS, Declarant is the developer of the property commonly known as Pelican Strand (hereinafter "Pelican Strand"), as recorded in Plat Book 10A, Pages 10A, inclusive, of the Public Records of Collier County, Florida (the "Declarant Property"); and

WHEREAS, Declarant also will operate the Pelican Strand Golf & Country Club located adjacent to the Pelican Strand Property (the "Country Club Property"); and in that capacity, shall hereinafter be referred to as "Country Club"; and

WHEREAS, Master Association, Commercial Association, Country Club, and Declarant (each of which may hereinafter be individually referred to as "Party" and collectively as the "Parties") have

certain common interests in connection with the purposes for which they were formed or in connection with the property which they own;

WHEREAS, the Parties wish to enter into this Agreement for the purposes of defining certain agreements and obligations, each to the other, regarding maintenance functions and cost sharing.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, TEN (\$10.00) DOLLARS paid by each of the Parties to the other, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Master Association, Commercial Association, Country Club and Declarant covenant and agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The Master Association Property, the Commercial Property, the Country Club Property, and the Declarant Property (collectively the "Properties" or individually a "Party's Property") are or will be subject to a common plan and permit for the management of surface water, as approved and permitted by the South Florida Water Management District ("SFWMD"), together with easements for the same.
3. The Pelican Declaration and the Commercial Declaration both anticipate that a Water Management System (therein defined, and incorporated herein) would service the Pelican Strand Property, and perhaps other properties as well.
4. The Parties hereby agree that unless an owning party otherwise requests, the interrelating Water Management System for the Properties shall be maintained by Master Association or its designee, subject to the joint and several agreements set forth herein by Commercial Association, Country Club, and Declarant to (a) comply with all permits, rules and regulations of the SFWMD applicable to that portion of the Water Management System located upon each Party's Property, as such permits, rules and regulations may be amended from time to time, (b) permit Master Association access at all reasonable times to those portions of each Party's Property dedicated to the Water Management System, and (c) reimburse Master Association for (i) portions of the maintenance cost of the Water Management System in excess of the day to day maintenance costs for routine maintenance of the system's water quality, mowing and regular erosion control, and (ii) maintenance and repair costs for the Water Management System which are the result of the negligence, neglect or willful misconduct of a Party. The maintenance costs incurred by Master Association in maintaining the Water Management System in excess of the routine, day to day maintenance costs (collectively the "Shared Costs") shall include, by way of illustration and not in limitation, the cost of control station replacement, replacement of drainage outfalls, lake

dredging and compliance with additional regulatory requirements imposed upon the owner or user of the system on and after the date of this Agreement. The Shared Costs incurred by Master Association shall be paid to Master Association by Commercial Association, Country Club Association, and Declarant in accordance with the following schedule:

- a. In consideration for Master Association's maintenance of the Water Management System, Commercial Association shall pay Master Association ten percent (10%) of the total Shared Costs.
- b. In consideration for Master Association's maintenance of the Water Management System, Country Club Association shall pay Master Association forty-five percent (45%) of the total Shared Costs.
- c. The remaining forty-five percent (45%) of the total Shared Costs shall be paid by Master Association.

In the event that Master Association should receive any monies from any third party owning or maintaining properties outside of the Property as a result of said third party's use of the Water Management System, all said monies shall be applied against the costs of maintenance and operation of the Water Management System as a whole so that all parties hereto receive some benefit therefrom, and not solely to Master Association's account.

5. Each Shared Cost payment shall be due and payable to Master Association within fifteen (15) days after the issuance of a statement for such cost by Master Association. Any Shared Costs payment not received by Master Association within fifteen (15) days from the date when due shall accrue and bear interest, until paid, at a rate equal to the lesser of the maximum rate permitted by law or 18% per annum.
6. In the event Commercial Association or Country Club should fail to reimburse Master Association for their respective share of the Shared Costs in accordance with this Agreement, Master Association shall have a lien against the Commercial Association Property or Country Club Property, as applicable to the defaulting Party, to secure the delinquent payment, which lien may be foreclosed in the same manner as a mortgage. The lien rights created herein shall be continuing and perpetual, and shall have priority over the interest of any subsequent transferees or lienholders of the Properties; provided, however, the lien rights created hereunder shall at all times be subject and inferior to the lien of any first mortgage encumbering the Properties, or any one of them, or any portion thereof, which is recorded prior to the recording of a lien pursuant to paragraph 7 hereinbelow; and further provided that said Claim of Lien shall be inferior to the lien of all mortgages of record prior to the date of recordation of

this Shared Cost and Maintenance Agreement. This subordination is intended to be self executing, however Master Association agrees to provide Commercial Association, Country Club, or Declarant, upon reasonable request, written confirmation of such subordination in connection with any first mortgage financing to be placed upon a Party's Property, or any portion thereof.

7. Master Association shall have the right, but not the obligation in order to perfect the lien granted to it pursuant to paragraph 6 hereinabove, to record a claim of lien in the Public Records of Collier County, describing the defaulting Party's Property and stating the amount due and secured thereby. The lien and lien rights granted to Master Association by this Agreement shall also secure reasonable costs and attorneys fees in the collection of all delinquent payments due hereunder, including costs and attorneys fees on appeal. In the event of a default in payment of the Shared Costs by Commercial Association or Country Club, the defaulting Party hereby agrees to pay Master Association all reasonable attorneys fees incurred by Master Association in connection with the collection of such delinquent payment, whether or not suit is filed in connection therewith. Upon full payment of sums secured by the lien created herein, Master Association shall provide a release of lien in recordable form for those delinquent payment for which a claim of lien has been recorded in of the Public Records of Collier County.
8. Each of the Parties agrees to strictly abide by and comply with and not to violate or permit a violation of the laws, ordinances, regulations and permits relating to the Water Management System.
9. In the event Master Association should default in its maintenance obligations assumed hereunder for the maintenance of the Water Management System, other than a default occasioned by the violation of this Agreement by Commercial Association or Country Club, or by the non-payment of Shared Costs by Commercial Association or Country Club, then Commercial Association, Country Club, or Declarant may, after not less than ten (10) days prior to notice of such default to Master Association, and Master Association's failure to cure such default, carry out those maintenance obligations for which Master Association is in default and issue a statement to Master Association for the cost of performing such maintenance function on behalf of Master Association. In the event Master Association does not reimburse the performing Party within fifteen (15) days of receiving a cost statement from the performing Party, the performing Party shall have the right to pursue an action for damages against the Master Association. In that event, the prevailing party shall be entitled to reimbursement for all reasonable attorneys' fees incurred, including those to any appeal.

10. In the event any one or more of the owner's of the Pelican Strand, Commercial, Country Club, and Declarant Properties, or any portion thereof, is permitted to draw upon any portion of the Water Management System for irrigation purposes, including the use of effluent purchased by Master Association from the Collier County Water - Sewer District pursuant to any agreement for delivery and use of treated wastewater effluent for spray irrigation hereafter executed (an "Effluent Agreement"), each such use shall be subject to the owner's full compliance with all applicable laws, ordinances, rules, regulations and permitting requirements. If effluent is utilized to irrigate the Property of more than one Party hereto, then unless said Parties may otherwise agree, the use of effluent shall only be permitted through metered connections approved by Master Association for which the owner of each such property (a "Metered User") shall reimburse Master Association for such irrigation in accordance with the following schedule (the "Irrigation Charge"); Master Association shall read the meter of each Metered User of the Water Management System, total the usage of all Metered Users for the period and calculate each Metered User's percentage share of total use. This percentage share shall then be applied to Master Association's total costs of purchasing effluent and maintaining the effluent distribution and storage system downstream of the point of delivery by the District for same period, the result of which shall be the Metered User's Irrigation Charge.
11. If effluent is utilized for irrigation, each Metered User hereby releases and holds Master Association harmless against any and all damage to foliage or other property or for injury to any person caused by the use of effluent. Each Metered User hereby acknowledges that effluent contains chemicals which may not be suitable for use in all types of vegetation, and hereby releases and holds Master Association harmless from and against any and all damage to foliage and property which may be caused by the use of effluent, except direct damage caused by Master Association's gross negligence or willful misconduct.
12. In the event of payment of an Irrigation Charge is not received by Master Association within fifteen (15) days from the date Master Association renders a statement for same, Master Association may, after fifteen (15) days notice to the defaulting Metered user and the Metered User's failure to cure such default, either discontinue the availability of the Water Management System for irrigation use by the defaulting Metered User either by disconnecting the defaulting Metered User's irrigation system from the Water Management System or by such other names as Master Association may deem necessary, and/or Master Association may file a lien against the defaulting Metered User's property in the manner set forth in paragraph 7 hereinabove.

