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CITY OF CORAL GABLES
OFFICE OF THE CLERK

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT, made and entered into this 17th day of September 2007, by and between the CITY OF CORAL GABLES, a municipal corporation of the State of Florida, (hereinafter called the "CITY"), and SUNRISE HARBOUR HOMEOWNERS ASSOCIATION, (hereinafter called the "ASSOCIATION").

1. STATEMENT OF BACKGROUND AND PURPOSE:

1. The CITY is the fee title owner of certain rights-of-way located in the City of Coral Gables, Miami-Dade County, Florida, which property is more particularly described as the triangular area at E. Sunrise Avenue and the cul-de-sac areas of Sunrise Terrace, Sunrise Court and Sunrise Place in the Sunrise Harbour Subdivision; and
2. The ASSOCIATION wishes to place pavers and landscaping in the triangular area at E. Sunrise Avenue and the cul-de-sac areas of Sunrise Terrace, Sunrise Court and Sunrise Place as described in Exhibit "A"; and
3. The ASSOCIATION is requesting that the CITY approve the pavers and landscaping

encroachments, which the ASSOCIATION recognizes may subject the CITY to certain liabilities. As consideration for the CITY's actions in taking such actions, the ASSOCIATION is entering into this Maintenance Agreement. By entering into this Agreement, the ASSOCIATION agrees that sufficient consideration exists to bind it to this Agreement and, should a dispute between the parties arise concerning this Agreement, the ASSOCIATION agrees not to contest the adequacy or legality of the consideration. After full and complete review of existing law, the ASSOCIATION also waives any defense to enforcement of the Agreement based on an argument that this Maintenance Agreement is illegal, void or contrary to public policy; and

4. The CITY will allow these improvements only if the ASSOCIATION will agree:
 - i. to maintain the proposed encroachment in good repair at all times, and at the ASSOCIATION's expense;
 - ii. that the design and construction of facilities improvement or alterations shall be owned by the ASSOCIATION, but conform to the CITY's standards and regulations. The CITY shall have the right, but not the obligation to make engineering inspections of all the construction work performed by the ASSOCIATION under the terms of this Agreement. Such inspections shall not be construed to constitute any guarantee on the part of the CITY as to the quality and condition of materials and workmanship. Any inspections by the CITY shall not relieve the ASSOCIATION of any responsibility for proper construction of said facilities in accordance with approved plans and

specifications. Furthermore, any inspections by the CITY shall not relieve the ASSOCIATION of any responsibility for the quality and condition of materials and workmanship;

- iii. that the ASSOCIATION shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for all facilities contemplated in this Agreement;
- iv. that certain federal, state and county agencies may require that CITY be named as permittee for certain construction activities even though the ASSOCIATION's contractor will actually perform the work. To insure that the CITY will incur no costs or liability as a result of being named permittee on such permits, the ASSOCIATION shall provide sufficient security as acceptable to the CITY which shall indemnify and protect the CITY from all claims, actions, judgments, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the ASSOCIATION pursuant to such permits. The security shall be furnished prior to the start of construction and shall be in an amount equal to the CITY's cost estimate for the permit work. The ASSOCIATION shall have sixty (60) days to resolve any claims by a permittee. Otherwise, the CITY shall be entitled to pay said claims for the security. The ASSOCIATION shall be liable for all costs in excess of the security.

NOW, THEREFORE, for good and valuable consideration, receipt of which is

hereby acknowledged, the parties hereto hereby agree as follows:

1. The foregoing statement of background and purpose is incorporated herein in its entirety.
2. The ASSOCIATION hereby agrees that it shall be responsible for the maintenance of the landscaping and pavers as approved by the City Commission of the City of Coral Gables pursuant to Resolution No. 2007-12 at Sunrise Harbour Subdivision, at the E. Sunrise Avenue triangles and at the cul-de-sacs on Sunrise Terrace, Sunrise Court and Sunrise Place, which provides in pertinent part:
 - A. That the encroachments are to be approved by the Public Works Department or the Landscape Encroachment Review Committee;
 - B. That the ASSOCIATION maintain the encroachments in good condition at all times, at its expense;
 - C. That the ASSOCIATION replace the encroachments at its expense in the event the Public Works Department must issue a permit for utility cut in that area;
 - D. That the proposed encroachments shall be constructed in accordance with the Florida Building Code, and all other pertinent codes;
 - E. That the ASSOCIATION reserve unto the CITY the right to remove, add, maintain or have the ASSOCIATION remove any of the improvements within the right-of-way, at the ASSOCIATION's expense;
 - F. That the ASSOCIATION saves the CITY harmless against claims against the

CITY resulting from the negligent acts or omissions of the Sunrise Harbour Homeowners Association.

2. The ASSOCIATION shall give the CITY thirty (30) days prior written notice of its intention to remove all or any part of said improvements and propose the replacement material therefore, and the CITY shall within ten (10) days from the receipt of said notice either approve the plan as submitted or designate both the items to remain and/or an alternate material acceptable to the CITY, the cost of which shall not exceed the cost of sod, and upon the completion of the removal and replacement so designated, the ASSOCIATION shall be released from all duties and liabilities hereunder related to the items covered in the above notice. All work shall be preceded by the required permits being obtained from the CITY by the ASSOCIATION, or its qualified agent. A returnable bond shall be posted by the permittee to protect other existing improvements if any.

3. **HOLD HARMLESS**

The ASSOCIATION shall save the City of Coral Gables harmless from any liability or damage arising out of the maintenance, usage or operation of the above mentioned improvements. In addition to saving the CITY harmless as herein provided, the ASSOCIATION shall provide the CITY with a Certificate of Insurance naming the CITY as an additional insured in the following amounts:

A. Commercial General Liability Insurance, including completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with

limits of \$500,000 combined single limit per occurrence for bodily injury and property damage. Said policy or policies shall name the CITY as additional insured and shall reflect the hold harmless provision contained herein.

- B. Other (or increased amounts of) insurance which the CITY shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of 90 days after notice thereof or the next annual renewal of any policy being increased (as applicable).
- C. All policies shall contain waiver of subrogation against the CITY where applicable and shall expressly provide that such policy or policies are primary over any other collectable insurance that the CITY may have.
- D. All of the above insurance is to be placed with Best-rated (A-) VI, or better insurance companies, qualified to do business under the laws of the State of Florida.
- E. The CITY shall be named as an additional insured under all policies. Said policies shall contain a severability of intent or a cross liability clause without obligation for premium payment by the CITY. The CITY reserves the right to request a copy of the required policies for review.
- F. All policies shall provide for 30 days notice to the CITY prior to cancellation or material changes. Said notice shall be made to:

City Manager
City of Coral Gables
City Hall
405 Biltmore Way

Coral Gables, Florida 33134

With a copy to:

City Attorney
405 Biltmore Way
Coral Gables, Florida 33134

Risk Management Division
2801 Salzedo Street
Coral Gables, FL 33134

G. The ASSOCIATION shall furnish Certificates of Insurance to the Risk Management Division and the Office of the City Attorney, prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the CITY is named as an additional insured and that the ASSOCIATION has obtained insurance in the type, amount, and classification required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the CITY as provided in subsection F.

H. Compliance with the foregoing requirements shall not relieve or limit the ASSOCIATION of its liability and obligations under this Section or under any other portion of this Agreement.

4. **INDEMNIFICATION**

The ASSOCIATION does hereby agree to fully indemnify and save harmless the CITY, its Mayor, Commissioners, employees and agents, from any and all liability claims, losses, causes of action or damages, including attorney's fees and costs, which may arise

as a result of the ASSOCIATION's omissions, willful, unlawful or negligent act(s) in its use, maintenance or operation of the prescribed property, and shall obtain insurance to satisfy the indemnification provisions in this section. The ASSOCIATION shall pay all claims and losses of any nature whatsoever in connection herewith and shall defend all suits in the name of the CITY, when applicable, and shall pay all costs and judgments including attorney's fees which may issue thereupon including all administrative trial and appellate proceedings brought by any person or entity. The indemnification and hold harmless provision shall include, but not be limited to, all of the following:

- A. Damages awarded to any person or party.
- B. Attorney's fees and costs incurred in defending such claims. The CITY may use the attorney or law firm of its choice in which event the ASSOCIATION will pay such firm the fees it charges the CITY, provided such fees are reasonable in light of the prevailing market rate for similar legal services. Such fees shall be deemed reasonable if they are no greater than the fees that the ASSOCIATION pays other counsel for representation in similar cases. If the City Attorney's Office provides the defense, the ASSOCIATION will reimburse the CITY at the prevailing market rate for similar legal services.
- C. Attorney's fees and costs of any party that a court orders the CITY to pay.

5. **NOTICE**

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by registered

mail addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

In the case of notice or communication to the CITY:

The City of Coral Gables
Office of the City Manager
405 Biltmore Way
Coral Gables, Florida 33134

In the case of notice or communication to the ASSOCIATION:

Sunrise Harbour Homeowners Association,
c/o Omar Pasalodos
100 East Sunrise Avenue
Coral Gables, Florida 33133

6. FORCE MAJEURE

Should either party be prevented from performing any obligations herein, including but not limited to water service, due to or resulting from a force majeure or inevitable accident or occurrence, such party shall be excused from performance. As used herein, force majeure shall mean an act of God which includes but is not limited to: sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are un-preventable by either party and shall include but not be limited to: strikes, lockouts, other industrial disturbances, wars,

blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints and restrictions, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, or otherwise, and other causes reasonable beyond the control of either party, whether or not specifically enumerated herein.

7. NON-DISCRIMINATION

The ASSOCIATION agrees that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical disability, in the use of the DEMISED PREMISES and improvements thereof.

8. AMENDMENTS

The CITY and the ASSOCIATION, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement. Any and all amendments shall be effective only if in writing and signed by the CITY and the ASSOCIATION and shall be incorporated as part of this Agreement.

9. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida.

10. SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause

or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by the deletion thereof.

11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

All parties hereby agree to comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including the Americans with Disabilities Act, as applied to this Agreement.

12. WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver is in writing and signed by the CITY and the ASSOCIATION. The failure of any party to insist upon strict performance of any of the provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants or conditions, but the same shall continue and remain in full force and effect.

ASSIGNMENT OF AGREEMENT

This Agreement shall not be transferred, assigned or otherwise conveyed to any other party without the express written consent of the CITY or its designee.

ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties.

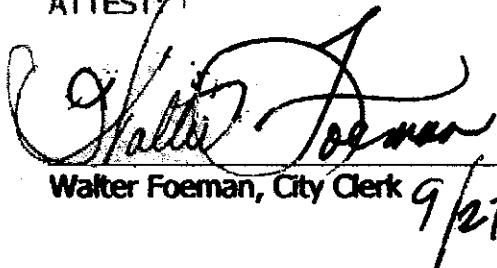
15. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the

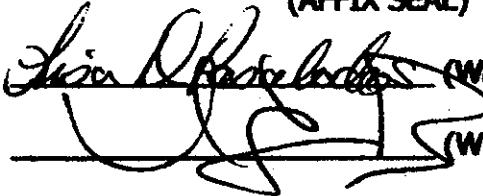
day and year first written.

ATTEST:


Walter Foeman, City Clerk 9/21/01

ATTEST:

Cathy Sugarbaker
Cathy Sugarbaker, Secretary
(AFFIX SEAL)


(Witness)

(Witness)

As to:

CITY OF CORAL GABLES

By: 

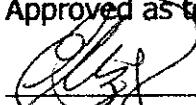
David L. Brown, City Manager

As to:

**SUNRISE HARBOUR
HOMEOWNERS
ASSOCIATION**


Omar Pasalodos
President

Approved as to form


Elizabeth M. Hernandez,
City Attorney

Prepared By: Elizabeth M. Hernandez, City Attorney
405 Biltmore Way, Coral Gables, Florida 33134

Exhibit "A"

Those portions of right-of-way of East Sunrise Avenue which lie at its intersections with both Sunrise Court and Sunrise Terrace; together with those portions of right-of-way of Sunrise Place, Sunrise Court, and Sunrise Terrace, which lie within the cul-de-sacs that are at the southerly terminus of each one, as they appear on the Revised Plat of Sunrise Harbour, as recorded in Plat Book 65, at page 22, of the Public Records of Miami-Dade County, Florida.