

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**
H. PAUL BRAZIL, P.E., DIRECTOR OF PUBLIC WORKS
TOWN OF PALM BEACH
P.O. BOX 2029
PALM BEACH, FLORIDA 33480

**WALL MAINTENANCE AGREEMENT
STORMWATER DRAINAGE BARRIER**

THIS WALL MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of this _____ day of, _____ 20____, by and between _____, whose address is _____ ("PERMITTEE"), _____, whose address is _____, Palm Beach, FL 33480 ("ADJACENT PROPERTY OWNER") and the TOWN OF PALM BEACH, a Florida municipal corporation, whose address is P.O. Box 2029, Palm Beach, Florida 33480 (the "TOWN").

RECITALS:

WHEREAS, PERMITTEE is the owner of record title to the following described real property situated, lying, and being in the Town of Palm Beach, Palm Beach County, Florida, more fully described as follows (the "PERMITTEE's Property"):

Street Address:
See attached **Exhibit "A"**

Property Control No.:

Legal Description:

WHEREAS, ADJACENT PROPERTY OWNER is the owner of record title to the following described real property situated, lying, and being in the Town of Palm Beach, Palm Beach County, Florida, more fully described as follows (the "ADJACENT PROPERTY OWNER's Property"):

Street Address:

Property Control No.:

Legal Description.:

WHEREAS, in connection with the proposed development of the PERMITTEE's Property pursuant to the plans delivered to the TOWN, the TOWN's Code requires that a stormwater barrier be constructed on PERMITTEE's Property for purposes of stormwater retention and soil retention ("Wall").

WHEREAS, as of the date of this Agreement, no such Wall exists on the _____ side of PERMITTEE's Property.

WHEREAS, as of the date of this Agreement, a retaining wall / stormwater barrier is built on the ADJACENT PROPERTY OWNER'S property to the _____ ("Adjoining Property") of the PERMITTEE's Property as shown on the sketch attached hereto as Exhibit "A", which, in its current form,

will satisfy the requirements for the PERMITTEE's site development and stormwater management system pursuant to Section 86 of the TOWN'S Code.

WHEREAS, at the PERMITTEE's request, the TOWN has agreed to waive the requirement that a similar barrier be constructed on the PERMITTEE's Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the mutuality, receipt, and sufficiency of which being hereby acknowledged, PERMITTEE and the TOWN do hereby mutually agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporate by reference.
2. PERMITTEE's Acknowledgement of Requirement for a Stormwater Barrier. The PERMITTEE hereby acknowledges and agrees that, as a condition to the development of PERMITTEE's property, the TOWN's Code requires that a Wall be constructed on PERMITTEE's Property for purposes of stormwater retention and soil retention.
3. TOWN's Waiver of Requirement. Subject always to the terms and conditions of this Agreement, the TOWN agrees to waive the requirement that a Wall / Stormwater Barrier be constructed on PERMITTEE's Property for purposes of stormwater retention and soil retention.
4. PERMITTEE's Obligation to Construct Wall / Stormwater Barrier. Upon the occurrence of any of the following events, the TOWN's waiver set forth in Paragraph 3 above shall automatically terminate, and the PERMITTEE shall be immediately required to construct, at PERMITTEE's sole cost and expense, a Wall on the PERMITTEE's Property for purposes of stormwater retention and soil retention, which Wall must satisfy all of the then applicable requirements for the PERMITTEE's site development and stormwater management system pursuant to Section 86 of the TOWN'S Code:
 - (a) the Wall on the Adjoining Property ceases to exist for any reason; or
 - (b) the Wall on the Adjoining Property is modified, altered, damaged or improperly maintained so that it no longer satisfies the then applicable requirements for the PERMITTEE's site development and stormwater management system pursuant to Section 86 of the TOWN'S Code, as determined by the TOWN in its sole and absolute discretion; or
 - (c) the occurrence of any event or condition which causes the Wall on the Adjoining Property to no longer satisfy the then applicable requirements for the PERMITTEE's site development and stormwater management system pursuant to Section 86 of the TOWN'S Code, as determined by the TOWN in its sole and absolute discretion.

Upon the occurrence of any of the events specified in this Paragraph 4, the TOWN will provide written notice to the PERMITTEE at the address for the PERMITTEE's Property (the "Notice to Proceed"). Within 90 days from receipt of the Notice to Proceed from the TOWN, the PERMITTEE shall commence construction of a Wall on the PERMITTEE's Property for purposes of stormwater retention and soil retention, which Wall must satisfy all of the then applicable requirements for the PERMITTEE's site development and stormwater management system pursuant to Chapter 86 of the TOWN'S Code. PERMITTEE shall, at PERMITTEE's sole cost and expense, continuously and diligently pursue the completion of the Wall, which shall be fully completed no later than 120 days after PERMITTEE's receipt of the Notice to Proceed from the TOWN. The Wall shall be completed in a good and workmanlike manner and in accordance with all applicable Town ordinances, including, without limitation, Section 86 of the TOWN'S Code. PERMITTEE shall be responsible, at PERMITTEE's sole cost and expense, for the prompt payment of all costs and expenses arising from or relating to the construction of such Wall. PERMITTEE shall also be responsible, at PERMITTEE's sole cost and expense, for pursuing with the TOWN any modifications to PERMITTEE's stormwater management plan and permit to the extent necessary as a result of the construction of such Wall. At all times PERMITTEE shall be responsible for any and all measures necessary to provide required stormwater and soil retention on PERMITTEE's property. Upon the completion of the Wall in accordance with this Agreement, and PERMITTEE's payment in full of all costs and expenses incurred in connection with the construction of such Wall, and completion of any necessary modifications to PERMITTEE's stormwater management plan and permit, this Agreement shall terminate and shall cease to be of any further force or effect.

5. PERMITTEE's Default. If PERMITTEE shall fail to timely perform any of its obligations under this Agreement, including, without limitation, failure to timely complete the construction of the Wall on PERMITTEE's Property within 120 days after PERMITTEE's receipt of the Notice to Proceed from the TOWN and in a manner consistent with all applicable requirements of this Agreement, then the same shall constitute an event of default under this Agreement.
6. TOWN's Remedies. Upon the occurrence of any event of default under this Agreement, the TOWN shall have the following rights and remedies:
 - (a) to refer this matter to the TOWN's Code Enforcement Board, which shall have the right to levy a Code Enforcement fine against the PERMITTEE at the rate of up to Two Hundred Fifty and 00/100 Dollars (\$250.00) per day, which fine, as computed from the date the event of default first occurred, together with costs of collection including reasonable attorneys' fees, shall be a charge on the PERMITTEE's Property and shall be a continuing lien upon the PERMITTEE's Property. Said lien shall be evidenced by a claim of lien recorded in the Public Records of Palm Beach County, Florida. Such lien may be foreclosed in the same manner as is provided for the foreclosure of mortgages upon real property, and all costs of such foreclosure, including, but not limited to, reasonable attorneys' fees and costs, at all levels of the proceeding, shall also be secured by said lien. Any such Code Enforcement fine, together with costs and reasonable attorneys' fees as aforesaid, shall also be the personal obligation of the PERMITTEE; or
 - (b) the TOWN shall have the right, but not the obligation, at PERMITTEE's sole cost and expense, to construct a Wall on the PERMITTEE's Property in the manner required by this Agreement (and the TOWN is hereby granted an easement for this purpose), and all costs and

expenses incurred by the TOWN in connection with the construction of such Wall, including, but not limited to, the cost of all materials and the fees and costs paid by the TOWN to third parties performing such work as well as employment costs the TOWN pays to its employees who perform such work, shall be reimbursed to the TOWN by the PERMITTEE within fifteen (15) days from the TOWN's demand. All such costs and expenses, together with interest at the highest rate permitted by applicable law from the date of the TOWN's demand, and together with costs of collection including reasonable attorneys' fees, shall be a charge on the PERMITTEE's Property and shall be a continuing lien upon the PERMITTEE's Property. Said lien shall be evidenced by a claim of lien recorded in the Public Records of Palm Beach County, Florida.

Such lien may be foreclosed in the same manner as is provided for the foreclosure of mortgages upon real property; and all costs of such foreclosure, including, but not limited to, reasonable attorneys' fees and costs, at all levels of the proceeding, shall also be secured by said lien. All such costs and expenses, together with interest and costs and reasonable attorneys' fees as aforesaid, shall also be the personal obligation of the PERMITTEE; or

(c) to pursue any other rights or remedies available to the TOWN at law or in equity, including, without limitation, injunctive relief or specific performance.

7. Covenant. This Agreement and the provisions hereof shall be deemed covenants running with and binding the PERMITTEE's Property, shall be binding upon PERMITTEE and its successors-in title, heirs, personal representatives, successors and assigns, and shall inure to the benefit of and be enforceable by the TOWN, and its successors and assigns.

8. Severability. In the event any provision of this Agreement is determined to be illegal or legally unenforceable, such determination shall have no effect upon the remaining terms and provisions hereof, and the remaining terms and provisions hereof shall continue in full force and effect.

9. Amendment. This Agreement may be amended only upon the execution and recordation in the Public Records of Palm Beach County, Florida, of an instrument executed by the TOWN and the PERMITTEE, or their respective successors and assigns.

10. Recording. This Agreement shall be recorded in the Public Records of Palm Beach County, Florida, at the sole cost and expense of PERMITTEE.

PERMITTEE:

By: _____

Print Name: _____

Witness #1: _____

Witness #2: _____

Print Name: _____

Print Name: _____

Address: _____

Address: _____

By: _____

Print Name: _____

Witness #1: _____

Witness #2: _____

Print Name: _____

Print Name: _____

Address: _____

Address: _____

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ who is personally known to me or produced
_____ as identification.

NOTARY STAMP:

Signature of Notary Public

Printed Name of Notary Public

Commission Number

ADJACENT PROPERTY OWNERS:

By: _____

Print Name: _____

Witness #1: _____

Witness #2: _____

Print Name: _____

Print Name: _____

Address: _____

Address: _____

By: _____

Print Name: _____

Witness #1: _____

Witness #2: _____

Print Name: _____

Print Name: _____

Address: _____

Address: _____

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ who is personally known to me or produced
_____ as identification.

NOTARY STAMP:

Signature of Notary Public

Printed Name of Notary Public

Commission Number

ATTEST:

TOWN OF PALM BEACH

Kirk Blouin, Town Manager

Witness #1: _____

Print Name: _____

Address: 360 S. County Road Palm
Beach, FL 33480

Witness #2: _____

Print Name: _____

Address: 360 S. County Road Palm
Beach, FL 33480

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ who is personally known to me or produced
_____ as identification.

NOTARY STAMP:

Signature of Notary Public

Printed Name of Notary Public

Commission Number

RECOMMEND APPROVAL:

Patricia Strayer, P.E., Town Engineer

Date

APPROVED AS TO LEGAL FORM AND SUFICIENCY:

Joanne M. O'Connor, Town Attorney

Date