

Prepared by:
Sarah E. Spector, Esq.
P. O. Box 280
Fort Myers, FL 33902-0280

DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT

THIS DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 25th day of June, 2007, by and between by SUNSET CONCEPTS, LLC, a Florida limited liability company, whose address is c/o Gregg A. Fous, 12730 New Brittany Boulevard, Suite 205, Fort Myers, Florida 33907 ("Grantor"), and HANCOCK CREEK SOUTH CENTER PROPERTY OWNER'S ASSOCIATION, INC., a Florida non-profit corporation, whose address is 390 Pondella Road, Suite 4, North Fort Myers, Florida 33903 ("Grantee").

WHEREAS, Grantor is the owner of the real property described in Exhibit "A" attached hereto ("Grantor's Property") upon which a conservation easement ("Conservation Easement"), recorded in Official Records Book 4729, Page 98 of the Public Records of Lee County, Florida, sits and will accommodate drainage for Grantor's Property; and

WHEREAS, the Grantor's Property is located within the Hancock Creek South Center subdivision (the "Subdivision"), the plat of which is recorded in Plat Book 63, Page 85 of the Public Records of Lee County, Florida (the "Plat"); and

WHEREAS, pursuant to the Declaration of Covenants, Conditions, and Restrictions of Hancock Creek South Center, recorded in Official Records Book 3124, Page 1528 of the Public Records of Lee County, Florida, the Grantee is the master property owner's association of the Subdivision, and

WHEREAS, Grantor has obtained a permit from the South Florida Water Management District identified as Environmental Resource Permit 36-02596-S, Application Numbers 040506-21 and 050502-17 ("Permit"); and

WHEREAS, the Permit identifies the Grantee as the operating entity obligated to operate and maintain the surface water management system approved by the Permit; and

WHEREAS, in order to fulfill it's obligation of operation and maintenance of the surface water management system, Grantee must have access to the Conservation Easement on Grantor's Property; and

WHEREAS, drainage from an existing drainage easement created by the Plat (the "Existing Drainage Easement") which serves the entire Subdivision and is operated and maintained by the Grantor is to be accommodated through facilities draining into the Conservation Easement; and

WHEREAS, the parties are desirous of establishing this document to provide the easements and maintenance hereinafter prescribed to allow for proper operation and maintenance of the surface water management system on Grantor's Property and the Existing Drainage Easement serving the Subdivision; and

WHEREAS, the parties desire to set forth their relative obligations with regard to the expense, maintenance, and use of the Easements.

NOW THEREFORE, it is agreed as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated by reference herein.
2. Drainage Easement. Grantor grants to Grantee, its successors and/or assigns, a perpetual non-exclusive drainage and maintenance easement for the benefit of the Existing Drainage Easement which serves the entire Subdivision over, through, under, and across the properties described on Exhibit "B" attached hereto ("Drainage Easement") and the Conservation Easement. Grantee shall have the right to construct, maintain, and use open swales, drainage pipes, and/or other stormwater management structures within the Drainage Easement. Grantee shall also have the right and authority to remove or trim any roots, trees, or other vegetation within the Drainage Easement in order to properly install the stormwater management structures. Grantee, its business invitees, employees, tenants, contractors and guests shall have access to the Drainage Easement and the Conservation Easement for purposes of operation and maintenance of the Drainage Easement and the Conservation Easement as set forth in the Permit.
3. Grantor's Obligations and Costs. Grantor shall not build, construct, or create, or allow others to build, construct, or create, any building or other improvement within the Drainage Easement or the Conservation Easement that is inconsistent with Grantee's benefits hereunder. Grantor shall remain responsible for all property taxes relative to Grantor's Property.
4. Grantee's Obligations and Costs. Grantee shall be responsible for the maintenance of the Drainage Easement and the Conservation Easement and water management structures pursuant to all applicable permits. Grantee will be responsible for fees and costs related to any permits obtained under this Agreement and the cost to record this Agreement in the public records.
5. Notices. Any notice or other communication to be given shall be in writing and shall either be (i) hand-delivered; (ii) sent by Federal Express or a comparable overnight mail service; (iii) sent by telephone facsimile transmission, provided that an original copy of the transmission shall be mailed by regular mail; or (iv) sent by certified mail, return receipt requested, to the other party to this Agreement at that party's address set forth in this Agreement. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is

received, the last address stated herein shall be deemed to continue in effect for all purposes hereunder.

6. Grant Runs with the Land. All of the covenants, terms, agreements, conditions and restrictions set forth in this Agreement are intended to and shall be construed as running with the title to the respective properties of Grantee and Grantor, binding upon, inuring to the benefit of, and enforceable by the parties hereto, their respective successors and assigns.

7. Prevailing Party. In the event of any litigation between the parties arising out of this Agreement or the collection of funds due either party pursuant to this Agreement, the non-prevailing party in such litigation, as determined by a judgment of a court of competent jurisdiction, shall pay all costs incurred by the prevailing party, including without limitation reasonable attorneys' and paralegals' fees and costs incurred, whether such fees and costs are incurred at trial, on appeal or in any bankruptcy proceeding.

8. Governing Law. This Agreement shall be interpreted in accordance with the internal laws of the State of Florida and will be deemed for such purposes to have been made, executed, and performed in the State of Florida. Exclusive venue for any action related to this Agreement shall be in and for the State courts located in Lee County, Florida.

9. Entire Agreement. This Agreement sets forth the entire agreement between the parties relating to the Drainage Easement and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties and there are no agreements, understandings, warranties, or representations among the parties except as otherwise indicated herein.

10. Severability. If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future law by final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof, a provision that is as similar in terms to such provision as is possible to be legal, valid, and enforceable.

11. Interpretation of Agreement. Should any provision of this Agreement require interpretation in any judicial, administrative or other proceeding or circumstance, it is agreed that the court, administrative body or other entity interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the same, it being further agreed that both parties hereto have fully participated in the preparation of this Agreement.

12. Enforcement. In the event Grantee fails to perform any of the covenants, agreements or meet any obligations imposed pursuant to this Agreement, then Grantor shall be entitled to all rights and remedies permitted by law, including without limitation, the right to proceed in equity with a return for injunction or specific performance to enforce its rights under this Grant.

13. Effective Date; Recording. The rights and obligations under this Agreement shall become effective upon execution and the Agreement shall be recorded in the official records of Lee County, Florida. The recording fee of this Agreement shall be paid by the Grantee.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and such counterparts shall together constitute one and the same instrument.

15. WAIVER OF TRIAL BY JURY. BOTH PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO.

IN WITNESS WHEREOF, the said parties have set their hands and seals the day and year first above written.

Signed, Sealed, and Delivered
in The Presence of:



Witness #1

Print: Krista L. Scott



Print: LAURENCE M. SICKLER

"GRANTOR"

SUNSET CONCEPTS, LLC,
a Florida limited liability company

By: 

Gregg A. Fous, Managing Member

STATE OF FL
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25th day of June, 2007 by Gregg A. Faus, as Managing Member of Sunset Concepts, LLC, a Florida limited liability company, on behalf of the limited liability company, who is [] personally known to me or who has [☒] produced FL DL # F200-281-53-283-0 as identification.

My Commission Expires:



Krista L. Scott
Commission # DD532540
Expires April 6, 2010
Bonded Troy Fain Insurance, Inc. 800-385-7019

Krista L. Scott
Notary Public

Krista L. Scott
Print/Type Name of Notary

Signed, Sealed, and Delivered
in The Presence of:

"GRANTOR"

HANCOCK CREEK SOUTH CENTER
PROPERTY OWNER'S ASSOCIATION,
INC., a Florida non-profit corporation

Witness #1

Print: _____

By: _____

Print Name: _____

As Its: _____

Witness #2

Print: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____ of Hancock Creek South Center Property Owner's Association, Inc., a Florida non-profit corporation, on behalf of the corporation, who is [] personally known to me or who has [] produced _____ as identification.

My Commission Expires:

Notary Public

Print/Type Name of Notary

STATE OF _____
COUNTY OF _____

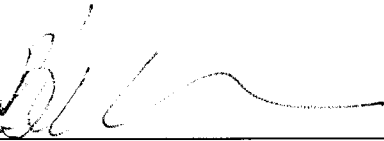
The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by Gregg A. Faus, as Managing Member of Sunset Concepts, LLC, a Florida limited liability company, on behalf of the limited liability company, who is [] personally known to me or who has [] produced _____ as identification.

My Commission Expires: _____

Notary Public

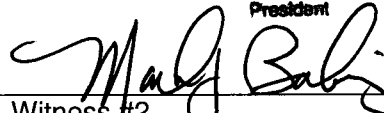
Print/Type Name of Notary

Signed, Sealed, and Delivered
in The Presence of:




Witness #1

Print: **BLAIR K. ROBINSON**
President



Witness #2

Print: **MARK J. RABICZ**

~~GRANTOR~~ "GRANTEE" 
HANCOCK CREEK SOUTH CENTER
PROPERTY OWNER'S ASSOCIATION,
INC., a Florida non-profit corporation

By: 

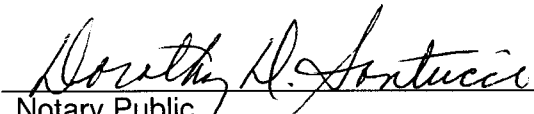
Print Name: **E.J. Stern**

As Its: **Director**

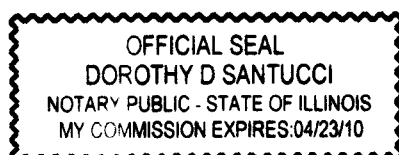
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this 23rd day of July, 2007 by E.J. Stern, _____ of Hancock Creek South Center Property Owner's Association, Inc., a Florida non-profit corporation, on behalf of the corporation, who is ☒ personally known to me or who has [] produced _____ as identification.

My Commission Expires: 4/23/2010


Notary Public

Dorothy D. Santucci
Print/Type Name of Notary



Prepared by and Return to:
Sarah E. Spector, Esq.
Henderson, Franklin, Starnes & Holt, P.A.
P.O. Box 280
Fort Myers, FL 33902

**MORTGAGEE JOINDER AND CONSENT TO
DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT**

WHEREAS, FIRST AMERICAN BANK, an Iowa state banking company, (the "Mortgagee") is the owner and holder of the following security instrument from SUNSET CONCEPTS, LLC, a Florida limited liability company (the "Mortgagor"):

That certain Mortgage Deed and Security Agreement from Sunset Concepts, L.L.C., a Florida limited liability company, as Mortgagor, to Bankatlantic, as Mortgagee, which mortgage and indebtedness was assigned to First American Bank on March 4, 2004 and recorded in Official Records Book 4225, Page 622 in the Public Records of Lee County, Florida, on March 12, 2004, and amended by that certain Amended and Restated Mortgage, Security Agreement and Assignment of Rents from Sunset Concepts, L.L.C., a Florida limited liability company, and Brixton Development LLC, a Florida limited liability company, as Mortgagors, to First American Bank, an Iowa, state banking company, as Mortgagee, dated November 30, 2005, and recorded on November 30, 2005 as Instrument Number 2005000144598 in the Public Records of Lee County, Florida, and modified by a Mortgage and Loan Documents Modification Agreement, Mortgage Spreader Agreement and Release of Lands dated June 30, 2006 and recorded as Instrument Number 2006000268158 on July 6, 2006 in the Public Records of Lee County, Florida;

(the "Mortgage") which Mortgage encumbers that certain parcel of land described in Exhibit "A" thereto (the "Property") and all appurtenances thereto as described therein; and

WHEREAS, the Mortgagor intends to subject the Property to the terms and provisions of the Drainage Easement and Maintenance Agreement ("Agreement") by recording same in the Public Records of Lee County, Florida.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound hereby, the Mortgagee agrees and declares as follows:

1. The Mortgagee hereby consents to the subjection of the Property to all of the provisions, terms and conditions contained in the Agreement.

2. The Mortgagee hereby agrees that in the event of foreclosure on the Mortgage or any other action which may have the effect of terminating the easement created by the Agreement or the Agreement itself, the Mortgagee will not pursue termination of either.

3. Other than as specifically provided herein, this Consent shall not be construed as a limitation on the operation or effect of the Mortgage nor the consent of the Mortgagee to any action which may be undertaken by any party to the Agreement, if such action otherwise would require the approval of the Mortgagee pursuant to the terms of the Mortgage.

4. All the terms and conditions of the Mortgage not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, has caused this Mortgagee Joinder and Consent to be executed this 13th day of March, 2008.

Signed, Sealed, and Delivered
in The Presence of:

FIRST AMERICAN BANK,
an Iowa state banking company

[Signature]

Witness #1

Print: [Signature]

By:

Print Name:

As Its:

[Signature]
Douglas R. Bass
President

[Signature]

Witness #2

Print: Jasmina Kadie

STATE OF IOWA
COUNTY OF POK

The foregoing instrument was acknowledged before me this 13th day of MARCH, 2008 by AMY LUCIA, as Executive Assistant of First American Bank, an Iowa state banking company, on behalf of the bank, who is ☒ personally known to me or who has ☐ produced _____ as identification.

My Commission Expires: 6/15/2009



[Signature]
Notary Public

AMY LUCIA
Print/Type Name of Notary

EXHIBIT "A"

Block 6634 of that certain subdivision known as Hancock Creek South Center, according to the plat thereof, as recorded in Plat Book 63, Pages 85-86, of the Public Records of Lee County, Florida.

EXHIBIT "B"


DESCRIPTION: (Drainage Easement)

A 25.00 feet wide Drainage Easement lying in part of Block 6634, Hancock Creek South Center, a Subdivision located in Sections 4 and 5, Township 44 South, Range 24 East, City of Cape Coral, Lee County, Florida, as recorded in Plat Book 63, Pages 85 and 86, of the Lee County Public Records, described as follows:

Commencing at the Southeast corner of Tract "A", Block 6633, of the aforesaid Hancock Creek South Center; thence run North along the East line of said Tract "A" for 135.41 feet to a point of curvature; thence run Northwesterly along the East line of said Tract "A" for 34.51 feet along the arc of a curve concave Southwesterly, with a radius of 100.00 feet, a delta of $19^{\circ}46'32''$, a chord bearing of $N.09^{\circ}53'16''W.$ and a chord distance of 34.34 feet to a point of reverse curvature; thence run Northwesterly along the East line of said Tract "A" for 144.39 feet along the arc of a curve concave Northeasterly, with a radius of 305.00 feet, a delta of $27^{\circ}07'28''$, a chord bearing of $N.06^{\circ}12'48''W.$ and a chord distance of 143.05 feet to a point of reverse curvature; thence run Northeasterly along the East line of said Tract "A" for 141.15 feet along the arc of a curve concave Northwesterly, with a radius of 900.00 feet, a delta of $08^{\circ}59'09''$, a chord bearing of $N.02^{\circ}51'21''E.$ and a chord distance of 141.01 feet to the point of beginning; thence continue Northeasterly along the East line of said Tract "A" for 25.00 feet along the arc of a curve concave Westerly, with a radius of 900.00 feet, a delta of $01^{\circ}35'31''$, a chord bearing of $N.02^{\circ}25'58''E.$ and a chord distance of 25.00 feet; thence run $N.86^{\circ}36'50''E.$ for 184.94 feet to the West line of a Wetland Conservation Easement "P" Revised as recorded in Official Records Book 4729, Pages 98 through 103, Public Records of Lee County, Florida; thence run $S.02^{\circ}10'22''E.$ along the West line of said Wetland Easement for 25.01 feet; thence run $S.86^{\circ}36'50''W.$ for 184.83 feet to the point of beginning.

Said tract contains 4,621 square feet, more or less.

Bearings are based on the aforesaid Plat of Hancock Creek South Center.



John B. Harris

P.S.M. #4631

May 23, 2007

