

Prepared by and return to:
Osama Elshami
Director of Utilities and Engineering
City of Coconut Creek
4800 West Copans Road,
Coconut Creek, Florida 33063

WASTEWATER (ONLY) AGREEMENT

This WASTEWATER AGREEMENT ("Agreement"), is entered into on this _____ day of _____, 20__, by and between Dina T. Kessarlis and Kirk Richardo Robertson, having a principal address of 7301 NW 39th Avenue, Unincorporated Broward County, Florida, hereinafter collectively referred to as "OWNER," and the City of Coconut Creek, Florida, a municipal corporation, with a principal address of 4800 W. Copans Rd., Coconut Creek, FL 33063, hereinafter referred to as "CITY."

WITNESSETH

WHEREAS, the OWNER owns land located in unincorporated Broward County, Florida, as described in Exhibit A, "Property," attached hereto and made a part hereof and hereinafter referred to as "Property," and OWNER has developed the Property by constructing thereon a single-family residential structure and thereby has constructed wastewater improvements upon the Property, as required to serve such use; and

WHEREAS, Broward County, through the issuance of its permit number 1500810, has authorized the use of Well Water to serve the water needs of the Property and the OWNER desires to connect to CITY's wastewater facilities to provide wastewater services to the occupants of such residence located on the Property; and

WHEREAS, the OWNER wishes to have such wastewater services and is required to execute a Wastewater Agreement, or an amendment thereto, setting forth such reasonable provisions governing the OWNER's responsibility pertaining to the installation of wastewater service facilities, the connection of consumer installations to the CITY's facilities, the manner and method of payment of Impact Fees and other expenses that may be associated with the work; standards of construction or specifications;

unanticipated engineering errors and/or omissions; rules, regulations, and procedures of the CITY; and other reasonable obligations; and

WHEREAS, in accordance with the provisions hereinafter set out, the CITY is willing to provide access to CITY wastewater infrastructure, and for the OWNER to extend and connect such facilities to those constructed to serve the Property, and for the CITY to thereafter receive title to certain facilities as public improvements so that the occupants of each residence, building, or unit located on or constructed on the Property will receive adequate wastewater service from the CITY.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1: WHEREAS CLAUSES.

The foregoing "Whereas" clauses are hereby ratified and confirmed as true and correct, and are incorporated herein as if set forth in full.

SECTION 2: LAWS INCORPORATED HEREIN.

- a. Chapter 13 of the Code of Ordinances of the City of Coconut Creek entitled "Land Development Code," Article II, "Subdivision Regulations," Division 2, "Subdivision Plat Requirements," Sections 13-169 through 13-169.15, as may be amended, and the relevant Broward County Ordinances, Florida Department of Environmental Protection (hereafter referred to as "FDEP"), and Florida Department of Health in Broward County (hereinafter referred to as "BCHD") ordinances, rules, and regulations pertaining to wastewater facilities and services are hereby specifically incorporated into this Agreement by reference. OWNER hereby covenants and represents that he/she has read and understands the aforementioned laws, and that he/she hereby agrees to abide by all of the rules, regulations, terms, and conditions contained therein, and as may be amended. Where more specific provisions exist in this Agreement and such are in direct

conflict with those provisions depicted in the CITY's Code of Ordinances, the provisions contained in this Agreement will control; otherwise the provisions must be interpreted together to achieve the greatest protection for the public welfare.

- b. The CITY, its successors and/or assigns, may amend, revise, and enforce from time to time the rate or rate schedules for water and/or wastewater as may be reasonable. Rates charged to the OWNER or user(s) of the Property will at all times be identical to rates charged for the same classification of service as are, or may be, in effect at the relevant time throughout the CITY's service area. The rules and regulations relating to furnishing the wastewater service to consumers may be established, amended, or revised by the CITY from time to time in the future. Same are binding upon the OWNER, upon any person or other entity holding by, through, or under the OWNER, an interest in the Property, and upon any user or consumer of the wastewater service provided to the Property by the CITY. Such rules and regulations may relate, but are not limited to, the right to discontinue the service under specified and reasonable conditions, and the type and quantity of material permitted to be discharged into the CITY's wastewater collection and transmission facilities.

SECTION 3: DEFINITIONS.

The following definitions are in addition to those incorporated by reference from the Code of Ordinances, referred to in Section 2, "Laws Incorporated Herein," above.

- a. Project Equivalent Residential Connection ("ERC"). OWNER is limited to 1 ERC(s) for the Property, as the same is/are defined in the CITY's Code of Ordinances, and calculated using the latest Broward County Water and Wastewater Services ("BCWWS") Equivalent Residential Unit factors, as provided in Section 38.18 "Water and Wastewater Services Rates, Fees, and Charges," Broward County Code of Ordinances, as amended. The calculation of ERCs, along with any currently existing ERC entitlements upon the Property, as applicable, and the anticipated timeframe for connection is attached hereto and incorporated herein as Exhibit B, "Schedule of Connection."
- b. Wastewater Impact Fee ("Impact Fee") per ERC. The Impact Fee per ERC for

Wastewater ONLY is \$3,489.95, half of the ERC for BOTH Water and Wastewater. In accordance with the CITY's Code of Ordinances, said Connection Fee may be adjusted by the City Engineer as per Section 6, "Connection Fee Adjustment Formula," of this Agreement. In the event OWNER desires to connect to CITY's water transmission lines in the future, OWNER will need to execute an agreement to that effect.

- c. Property. Property means the real property that is depicted on the map including parcel number(s) and/or legal description in Exhibit A, "Property," attached hereto and made a part hereof.

SECTION 4: OWNER OBLIGATIONS.

- a. General. OWNER, on behalf of himself/herself and such successors/assigns, hereby covenants and agrees to construct all of the on-site and off-site wastewater collection and transmission systems, as needed to provide such service(s) to the Property. OWNER, on behalf of himself/herself and such successors/assigns, further agrees to transfer ownership and control of certain new infrastructure that is determined by CITY to be used as part of the public infrastructure, specifically that tangible personal property which physically connects to the CITY's clean-out for wastewater infrastructure (in this instance the CITY's Manhole), to the CITY at no cost. If the OWNER fails to satisfactorily construct the infrastructure or otherwise satisfactorily constructs it, but fails to transfer that certain infrastructure and corresponding utility easement(s) via necessary legal documents, on forms approved by the City Attorney, at the time of execution of this Agreement, the City may terminate wastewater services to OWNER.

- 1) The CITY is not required to accept title to any component part of the wastewater collection and transmission facilities as constructed by the OWNER until the CITY Engineer has approved the construction of said lines and accepted the tests to determine that such construction is in accordance with applicable provisions of the CITY's Code of Ordinances, and final approval has been received by any other

agency having jurisdiction. Said approval is made as required in the Coconut Creek Code of Ordinances and will be evidence of the CITY's acceptance of said lines as a prerequisite to the CITY's ownership, operation, and maintenance.

2) The CITY reserves the right to refuse connection and/or to immediately terminate service to OWNER without notice to OWNER if OWNER engages in unauthorized use of said services, and will not resume service until such time as the terms and conditions of this Agreement have been fully satisfied by the OWNER and all required fees are paid.

- b. Plans and Construction of Facilities by OWNER. It is OWNER's obligation to furnish to the CITY accurate information with regard to matters of engineering, construction of buildings and dwellings and proposed densities. The OWNER is responsible for any increase in the CITY's construction or operating costs resulting from any engineering errors or changes in plans or specifications furnished by OWNER to the CITY. Plans and specifications must be submitted and approved for compliance with applicable CITY Ordinances and industry-accepted engineering standards. After the approval of the OWNER's plans and specifications by the CITY, the OWNER must cause to be constructed, at the OWNER's own cost and expense, the wastewater collection and transmission facilities as shown on the approved plans and specifications, or as the same may be modified and approved by CITY. Complete "as built" plans must be submitted to the CITY by the OWNER upon completion of construction of said facilities.
- c. Easements, Rights-of-way, and Access. The OWNER, on behalf of himself/herself and such successors/assigns, must also convey to the CITY any and all easements, rights-of-ways, and any right of access that the CITY may need in order to allow the CITY's representatives and agents to access and maintain CITY's public infrastructure existing over, across, and/or under the Property. Such legal documents must be provided on forms approved by the CITY Attorney, and evidence the CITY's right to the continuous access to and usage of such easements, rights-of- way, and/or real property. The conveyances, whether

or not located on the Property, must be made without cost to the CITY. The CITY reserves the right to require such additional rights in the Property as needed to facilitate wastewater services thereupon or to adjacent properties.

- d. Facilities Retained by OWNER. Notwithstanding any provision herein, all facilities installed by the OWNER located upstream of the clean out (in this case the Manhole, and also known as the OWNER's side of the point of collection), must not be transferred to the CITY and will remain the property of the OWNER. Such private installation remains the maintenance responsibility of the OWNER and nothing herein is intended nor may construed to shift those obligations to the CITY.

SECTION 5: IMPACT FEE ADJUSTMENT FORMULA.

The Wastewater Impact Fee as defined in Section 3, "Definitions," hereof, has been structured by the CITY and may be increased from time to time to reflect increases in the construction cost of water distribution and wastewater collection and transmission facilities and related debt services and other fees charged by Broward County. The Impact Fee set forth herein will be automatically adjusted based upon increases in utility construction costs as evidenced by the quarterly construction cost index published in Engineering News Record Magazine, entitled "U.S. - 20 Cities Construction Cost Index." The CITY may adjust the Impact Fee set forth herein on a quarterly basis, effective January, April, July, and October of each year. The construction cost index of April 2021 which was used for the purposes of calculating the above Impact Fee is 11627.94.

SECTION 6: COMMENCEMENT OF SERVICES BY CITY.

- a. As a condition precedent to commencement of services described herein, OWNER understands that the CITY must contract with Broward County for CITY's ability to obtain necessary volumes of wastewater capacity pursuant to a Large User Wastewater Agreement between Broward County and the CITY, effective on May 23, 1989, and as subsequently amended. The terms and conditions contained in the aforementioned Large User Wastewater Agreement

are hereby adopted and incorporated by reference herein.

- b. Furthermore, OWNER expressly agrees that CITY is not responsible for any delays in connections, commencement of service, or interruptions of service due to fires, casualties, accidents, power failures, maintenance work, breakdowns, damage to equipment or facilities, civil or military authority, strikes, war, riot, unusual weather conditions, judgments of any court, Acts of God, health pandemics, or any event of force majeure. Interruption of service or delay in connection or commencement of service does not constitute a breach of this Agreement.

SECTION 7: OWNER'S SCHEDULE OF CONNECTION.

- a. The OWNER has set forth in Exhibit B, "Schedule of Connection," attached hereto, a schedule of the dates when the wastewater services are needed. The CITY will use its best efforts to provide wastewater service according to the schedule provided by the OWNER; however, the CITY makes no guarantee as to the schedule.
- b. In the event the OWNER requests wastewater service at a date earlier than those dates set forth in Exhibit B, "Schedule of Connection," the CITY is not responsible for providing wastewater service on the earlier date. The CITY will, however, make reasonable efforts to secure the wastewater service on the alternative date; without any guarantee by the CITY.
- c. In the event the OWNER does not require wastewater service on the date(s) set forth in Exhibit B, "Schedule of Connection," the CITY reserves the right to divert said service to other users of the wastewater system, indefinitely.

SECTION 8: CITY'S EXCLUSIVE RIGHT TO PROVIDE WASTEWATER SERVICE.

The OWNER agrees that he/she must not engage in the business or businesses of providing wastewater services to the Property without the CITY's consent during the period of time the CITY, its successors and/or assigns, provide wastewater services to the Property. It is the intent of the parties hereto, that under the provisions of this Agreement, that the CITY has the sole and exclusive right and privilege to provide

wastewater service to the Property and to the occupants of each residence, building, or unit constructed thereon.

SECTION 9: PROHIBITION AGAINST SEPTIC TANKS.

The OWNER and the subsequent owners and occupants of the buildings on the OWNER's Property are hereby prohibited from installing or maintaining any septic tanks except as may be permitted by the CITY, in writing, for temporary purposes. In the event CITY approves the continuation and maintenance of a septic tank for temporary purposes, such terms and conditions will be negotiated and formally memorialized as an amendment hereto.

SECTION 10: INDEMNIFICATION.

In consideration of CITY undertaking to provide the services outlined herein to OWNER'S Property, OWNER must at all times indemnify, hold harmless, and agree to defend, or pay for an attorney selected by the CITY Attorney to defend -- at the CITY Attorney's option-- the CITY, its officers, agents, servants, and employees (collectively referred to as CITY) against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused in whole or in part by intentional or negligent acts or omissions of OWNER, his/her employees, agents, servants, or contractors, without limitation, of any nature whatsoever resulting from injuries or damages sustained by any person or property related to the matters contemplated by this Agreement. In addition, OWNER hereby forever discharges and fully releases CITY and any other person chargeable under the CITY'S authority from any liability, demands, damages, causes, expenses, actions and causes of action, arising from any act or omission on the part of the CITY in the course of providing the services described hereunder, of whatsoever kind or character including, but not limited to, those for costs and reasonable attorneys' fees, which the OWNER now has or may hereafter have on account of all injuries, direct or indirect, or death, arising or to arise, and caused by or resulting from this Agreement. Nothing herein is intended to serve as a waiver of sovereign immunity by CITY, nor will anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other

contract. This Section will survive the natural expiration or early termination of this Agreement.

SECTION 11: STANDARD TERMS AND CONDITIONS.

- a. Term of the Agreement. This Agreement will commence upon the full execution of the parties and will continue in perpetuity so long as wastewater services are available to OWNER. With five (5) business days written notice to the address designated for OWNER hereunder, the Agreement may be terminated by CITY, as a non-exclusive remedy, for OWNER's material breach of any term and/or condition provided herein. In the event of termination, any ERC(s) bought and paid for through the full or partial payment of Impact Fees outlined in Exhibit B, "Schedule of Connection," hereof will run with the land in perpetuity as an entitlement benefiting the Property.
- b. Assignment. A conveyance of the Property during the term of this Agreement will act as an assignment of the OWNER's covenants, obligations and agreements hereunder, and the acceptance of a deed to the Property by any third party will constitute an acceptance of the terms hereof and assumption of the obligations contained herein. OWNER must notify CITY immediately upon assignment or sale of Property during the term of this Agreement.
- c. Amendments. Amendments substituting the information contained within Exhibit B, "Schedule of Connection," with an updated exhibit may be processed administratively and the City Manager is authorized to execute same without City Commission approval. However, amendments pertaining to all other terms and conditions of this Agreement, not approved by the City Commission, must be formally approved by the City Commission via resolution, and executed and recorded in the same fashion as the original Agreement.
- d. Interpretation of Agreement. The title of each paragraph in this Agreement is for purposes of clarity and ease of reading only and are not to be construed as a substantive portion of the Agreement, and are not intended to be used as aids to interpretation and are not binding on the parties. All parties to this

Agreement have been represented by their individual legal counsel and participated in the drafting of this Agreement; therefore, the language must not be construed in favor of one (1) party over the other.

- e. Attorney's Fees. In the event of litigation to enforce the terms of this Agreement, the non-prevailing party will be liable to the prevailing party for all reasonable costs, expenses, attorneys' fees and damages at the trial and appellate levels, up to and including the U.S. Supreme Court, which may be incurred or sustained by the prevailing party by reason of the non-prevailing party's breach of any of the provisions of this Agreement.
- f. No Waiver. A waiver of any breach of any provision of this Agreement will not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor will any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.
- g. Severability. The invalidity of one (1) or more of the phrases, sentences, clauses or sections contained in this Agreement does not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- h. Counterparts. OWNER and CITY have executed or have caused this Agreement, with the specified Exhibits attached hereto, to be duly executed, which execution may be in several counterparts, each of which counterpart must constitute an original executed copy of this Agreement when read with the other original counterparts.
- i. Notice. Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses, below. Notice shall be deemed received by the party for whom it is intended after the USPS certified mail process is completed and/or hand delivery.

CITY

City Engineer
City of Coconut Creek
4800 West Copans Road

Coconut Creek, FL 33063

*With a copy to the City Attorney at the same address.

OWNER

Dina T. Kessarlis and Kirk Richardo Robertson
7301 NW 39th Avenue
Unincorporated Broward County, FL 33073

- j. Jurisdiction and Venue. This Agreement is entered into and is to be performed in the State of Florida. CITY and OWNER agree that the law of the State of Florida governs the rights, obligations, duties, and liabilities of the parties to this Agreement and will govern the interpretation of this Agreement. For purposes of this Agreement, the parties agree that venue for any action hereunder is exclusively in the Seventeenth Judicial Circuit Court located in Broward County, Florida.
- k. Recordation. This Agreement, and any amendments hereto, must be recorded in the Public Records of Broward County, Florida, for the purpose of placing all current or subsequent owners and/or occupants of buildings, structures and units located on or within the OWNER's Property who are connected to or who will be connected to said wastewater collection and transmission facilities of the CITY, on notice of these provisions to the same extent and with the same force and effect as if said owners and/or occupants had joined in the execution of this Agreement, and if applicable, amendment hereto. The cost of recording this Agreement, and any amendments, will be borne by the OWNER. The acquisition or occupancy of any portion of the Property that is connected to or will be connected to the wastewater collection and transmission facilities of the CITY will be deemed conclusive evidence of the fact the said owners and/or occupants have accepted and consented to the terms and conditions contained herein and are bound by them.

[Signatures to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Wastewater (ONLY) Agreement to be executed on the dates as set forth next to their signatures below.

CITY OF COCONUT CREEK,
a Florida Municipal Corporation

(CITY SEAL)

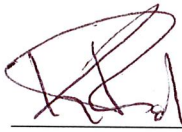
By: _____
City Manager (date)

ATTEST:

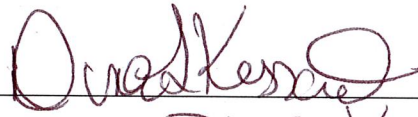
City Clerk (date)

APPROVED AS TO LEGAL FORM:

City Attorney (date)



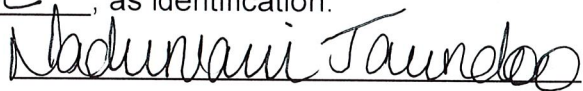
Print Name: Kirk Robertson
Date: 3/23/2022

OWNER(s):


Print Name: Dina Kessarlis
Date: 3/23/2022

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing Wastewater (ONLY) Agreement was acknowledged before me by means of physical presence or online notarization, this 23rd day of March, 2022 by Kirk Robertson and Dina Kessarlis. The signor is personally know to me or have produced FDL, as identification.



NOTARY PUBLIC, State of Florida

EXHIBIT A – Description of Property

Legal Description:

A portion of Tract 41, Block 83, Palm Beach Farms Company Plat No. 3, as recorded in Plat Book 2, pages 45 thru 54 of the Public Records of Palm Beach County, Florida; more particularly described as follows:

Commencing at the Southwest corner of said Tract 41; thence run on an assumed bearing of East 433.89 feet along the South line of said Tract 41 to the Point of Beginning; thence run N 0°30'00" W 220.00 feet to a point; thence run East 191.69 feet to a point on the East line of said Tract 41; thence run S 2°08'00" E 220.17 feet along said East line of Tract 41 to the Southeast corner of said Tract 41; thence run West 198.00 feet along said South line of Tract 41 to the Point of Beginning.

Said lands situate, lying and being in Broward County, Florida.

Location Map & Site Address:



Parcel ID:

4742 32 01 0174

Address:

7301 NW 39 AVENUE,
UNINCORPORATED FL 33073

EXHIBIT B – Schedule of Connection

Section 1. Calculation and Payment of ERCs.

- (a) OWNER acknowledges and accepts the CITY's ERCs calculations, designations associated therewith, and will be paid for same upon execution of this Agreement.
- (b) In the event Property is platted or additional structures are constructed on Property, or the use of Property intensifies as determined by the CITY, the ERCs will be re-evaluated and a fee paid at the then-prevailing rate for the increase in ERCs, if any.
- (c) Since OWNER is only requesting a wastewater connection at this time, the Wastewater Impact Fee is fifty (50%) of the standard ERC of \$6,979.90, or \$3,489.95. A duly executed agreement and payment of all fees by OWNER to CITY are conditions precedent to the rendering of wastewater service by CITY to OWNER'S Property. Therefore, it is expressly agreed that any services rendered prior to the execution of this Agreement will be back-billed on a pro-rated basis and due upon execution of this Agreement.
- (d) Any properties located outside the limits of the CITY's municipal boundaries are subject to a surcharge as provided in Section 20-82, "Schedule of rates, fees and charges," in the City's Code of Ordinances, as amended. The OWNER expressly agrees to this provision and acknowledges that the ERCs fee may escalate over time, as provided for in the Agreement.

Section 2. ERC Equation.

- (a) 1 Single Family House: 1 Unit x 1 ERC per unit= 1 ERC.
- (b) Meter Size: 5/8".

Section 3. Calculation of Monthly Water Consumption.

- (a) Per Broward County's Equivalent Residential Unit Factors, the conversion of one (1) ERC is equal to 246 gallons per day (gpd) maximum day water demand. 246 gpd x 30.45 days (in 1 month) = 7,483.32 gpm.

Section 4. Amount Due.

1 ERCs = \$3,489.95 (for wastewater only)

Section 5. Date of Connection.

Date Services Commenced: April 2022