

**IQ WATER SERVICE AGREEMENT –
LAKE DISCHARGE IRRIGATION SYSTEM**

THIS AGREEMENT (“**Agreement**”) made and entered into the Effective Date, as defined below, by and between **TOWN OF JUPITER ISLAND**, a subdivision of the State of Florida (hereinafter referred to as “**Town**”), and _____, a _____, its successors and assigns (hereinafter referred to as the “**Property Owner**”).

WHEREAS, Property Owner either owns the property set forth in **Exhibit “A”** which is attached hereto and incorporated herein (hereinafter referred to as “**Property**”), or has been granted the authority to control and/or maintain an Irrigation System on the Property; and

WHEREAS, Property Owner has the authority to enter into this Agreement; and

WHEREAS, Property Owner desires to allow the Town to discharge IQ Water into On-Site Stormwater Retention Ponds for irrigation purposes; and

WHEREAS, upon the conditions set forth herein, Town will own and maintain the IQ Water facilities up to the Point of Service and Property Owner will own and/or maintain the Irrigation System on the Property from the Point of Service; and

WHEREAS, Property Owner shall use IQ Water for landscape irrigation purposes only; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and Town hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) “**RPPs**” – the Town’s South Martin Regional Utility Regulations, Policies and Procedures.
 - (b) “**Service**” - the readiness and ability on the part of Town to furnish IQ Water to the Property.
 - (c) “**Point(s) of Service**” – the point where the IQ Water exits the Town System and is discharged into the On-Site Stormwater Retention Pond(s).
 - (d) “**Irrigation System**” – a network of pipes, pumping facilities, storage facilities, sprinkler heads, On-Site Stormwater Retention Ponds, and appurtenances on Property Owner’s side of the Point of Service designed for landscape irrigation purposes. While certain components of the Irrigation System may not be owned by Property Owner, said components are still considered part of the Irrigation System for purposes of this Agreement.

- (e) **“Required Town Facilities”** – IQ Water facilities which are required to be constructed to connect the Town System with the Irrigation System.
- (f) **“Town System”** – The IQ Water facilities owned and operated by Town. The Town System shall include the Required Town Facilities following conveyance of same by Property Owner to Town.
- (g) **“Service Initiation”** – the date IQ Water is supplied by Town for its intended use by Property Owner.
- (h) **“IQ Water”** – reclaimed water that: (i) has received at least secondary treatment and high-level disinfection; (ii) complies with all regulatory standards, including, without limitation, those set forth in F.A.C. Section 62-610, and (iii) is reused after flowing out of a wastewater treatment facility, and other irrigation quality water that may be provided by the Town from different sources from time to time.
- (i) **“On-Site Stormwater Retention Ponds”** – a body or bodies of water designed to collect, store and/or convey stormwater.

3. Property Owner shall submit to Town engineering plans and specifications prepared and sealed by a professional engineer registered in the State of Florida showing the Required Town Facilities. Town will advise Property Owner’s engineer of any sizing requirements as mandated by the RPPs. All such plans and specifications, including hard copy and electronic media, submitted to Town shall be subject to the approval of Town and shall conform to Town’s standards as set forth in the RPPs, and no construction shall commence until Town has approved such plans and specifications in writing. After approval, Property Owner shall construct, at Property Owner’s expense, the Required Town Facilities, as shown on the plans and specifications. Fees, as set forth in the RPPs, shall be levied to cover the cost of the plan review and inspection.

During the installation of the Required Town Facilities, Town may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the Required Town Facilities have been installed in accordance with the approved plans and specifications and the RPPS. Inspection by Town shall in no way relieve Property Owner of its responsibility to install the facilities in accordance with the approved plans and specifications and the RPPS. Complete as-built plans, including hard copy and electronic media, shall be submitted to Town upon completion of construction of the Required Town Facilities.

Town hereby agrees to accept ownership of the Required Town Facilities upon completion of installation of same. Property Owner hereby agrees to transfer to Town title to all Required Town Facilities installed by Property Owner’s contractor up to the Point of Service, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Town of said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of Service by Town, Property Owner shall convey to Town, in a form supplied by Town, the Required Town Facilities as constructed by Property Owner and approved by Town, along with the required Cost Documentation and Owner’s No Lien Affidavit.

Prior to Service Initiation, Property Owner shall convey to Town an easement for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the Required Town Facilities and for ingress and egress for the foregoing purposes. If all or a portion of the easement

area is not owned by Property Owner, then Property Owner shall be responsible for acquiring an easement(s) from the Property Owner(s) to Town for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the Required Town Facilities and for ingress and egress for the foregoing purposes. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Town in a minimum amount of \$50.00 per linear foot of any granted Town easement (based on the length of the centerline of the easement). Said title policy shall confirm the grantor's right to convey such easements or rights-of-way, and further, evidencing Town's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. Town's acceptance of the Required Town Facilities installed by Property Owner shall be in accordance with the provisions as set forth in the RPPS. All installations by Property Owner or its contractor that are conveyed to Town shall be warranted by Property Owner or its contractor for one year from the date of Service Initiation., All Required Town Facilities shall be located within an easement if not located within platted or dedicated public rights-of-way. The Town easements referenced above shall be recorded in the Martin County Public Records.

4. Town's performance under this Agreement is specifically contingent upon Town's acquisition of a permit from Florida Department of Environmental Protection (FDEP) for discharge into On-Site Stormwater Retention Ponds. Town does not guarantee that the FDEP permit will be issued, and any costs incurred by Property Owner prior to Town's acquisition of the FDEP permit shall be at Property Owner's own risk. Property Owner shall also provide Town with evidence from the governing drainage authority that discharge of IQ Water into On-Site Stormwater Retention Ponds is permitted. Property Owner shall comply with all permit conditions set forth in the applicable permit. Property Owner shall be responsible for the design, construction, modification and operation of the Irrigation System, and shall be responsible for ensuring that the Irrigation System is designed, constructed, modified and operated in accordance with rules and regulations of the Health Department, the FDEP, the RPPS, and any other entity with jurisdiction over usage of IQ Water. Prior to Service Initiation, Property Owner shall provide Town a written confirmation of notice to all Property Owners that IQ Water will be utilized in the Irrigation System. Property Owner shall hold harmless, indemnify, and release Town from and against all liabilities, damages, penalties, claims, costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Town as a result of or in any way connected to the operation of the Irrigation System, except where said liabilities, damages, penalties, claims, costs and expenses are the result of the negligent or intentional acts or omissions of Town. Upon the accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Town covenants and agrees that it will allow the connection of the Irrigation System to the Town System (which will include any Required Town Facilities) in accordance with the terms and intent of this Agreement.

5. Property Owner hereby requests and Town agrees to provide to Property Owner via a Lake Discharge System a maximum annual flow of _____ gallons of IQ Water subject to a maximum monthly flow of _____ gallons. Town does not guarantee a continuous availability of IQ Water at the Point of Service nor does the Town guarantee any minimum water level at the On-site Stormwater Retention Ponds. The flow amounts are subject to any usage/withdrawal restrictions imposed by the South Florida Water Management District, FDEP, or any other authority with jurisdiction over water use on the Property. Town may modify and vary the flow rate of IQ Water at the Point of Service while maintaining the maximum monthly flow rate during those months in which such flow is needed. Property Owner shall install an automatic float-controlled shut-off valve assembly at each point of discharge of IQ Water into On-Site Stormwater Retention Ponds. The float elevation shall be in accordance with applicable permit conditions and shall automatically shut off the flow of IQ Water in order to avoid violations of said permit conditions. Each party shall be responsible for complying with all applicable permit conditions. In the event that from time to time, the availability of IQ Water is insufficient to meet the expected system demands, the Town shall allocate available IQ Water hereunder as the Town determines in its discretion.

6. Any modifications to the Irrigation System must be approved by Town. Any change or modification to the level control system for On-Site Stormwater Retention Ponds including overflow weirs/bleeders must be approved in advance by Town. Property Owner shall provide a report to Town, consisting of a log of daily readings of each lake system's water level; in a form acceptable to Town and shall include an electronic version (MS Excel format) on a monthly basis, submitted no later than the 15th of the following month.

7. Property Owner shall be responsible for payment of any and all applicable fees and charges required under RPPS for IQ Water Service. The timely payment by Property Owner of all fees and charges in accordance with the terms set forth herein shall be considered essential to the continued performance by Town of all terms and conditions of this Agreement.

8. Property Owner shall provide Town evidence satisfactory to Town that Property Owner has the authority to enter into this Agreement.

9. Notwithstanding any provision in this Agreement, Town may establish, revise, modify, and enforce rules, regulations, rates and fees covering the provision of IQ Water Service to the Property. All rules, regulations and fees as set forth in the RPPS, shall be binding upon Property Owner, upon any other entity holding by, through or under Property Owner, and upon any customer of the IQ Water Service provided to the Property by Town

10. Property Owner shall not have the right to, and shall not, connect to the Town System until approval for such connection has been granted by Town. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of Property Owner or other than Town. In addition, Property Owner agrees to comply with all rules and regulations of the RPPS, Department of Health, DEP, and/or any other authority with jurisdiction over water use on the Property. The IQ Water provided under this Agreement shall be used for landscape irrigation purposes only and solely on the Property shown in **Exhibit "A"**.

11. Any conveyance, transfer or assignment of this Agreement by Property Owner must be approved in advance by Town.

12. This Agreement shall supersede, null and void all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Town, made with respect to the matter contained herein, and when duly executed, constitutes the entire agreement between Property Owner and Town.

13. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alternations, variations or waiver are expressed in writing and duly signed by the parties hereto.

14. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The exclusive venue for actions arising out of this Agreement is in Martin County, Florida.

15. Town shall have the right to terminate IQ Water Service in the event of non-compliance by the Property Owner with any of the conditions of this Agreement. Either party may terminate the Agreement by providing the other six (6) months notice of termination.

16. Notwithstanding anything in this Agreement to the contrary, the Town shall not be liable to the Property Owner or any other party for any damages, including, but not limited to, direct, indirect,

consequential or special damages, for the failure of the Town to deliver IQ Water to the Property Owner pursuant to this Agreement.

17. In the event the Property Owner fails to perform any of its obligations in this Agreement (the “**Property Owner’s Work**”), in addition to all of the Town’s other remedies set forth in this Agreement or provided by law, the Town shall have the right, but not the obligation, to perform all or any part of Property Owner’s Work on behalf of the Property Owner following ten (10) days’ prior notice to the Property Owner with an opportunity to cure (except in the event of an emergency which shall not require a notice to cure) (the “**Self-Help Remedy**”). In the event the Town so chooses the Self-Help Remedy, the Town shall include in the monthly invoice to the Property Owner for IQ Water service the cost incurred by the Town in performing the Property Owner’s Work (the “**Self-Help Cost**”).

18. Pursuant to the Town’s RPPs, delinquent utility fees, charges and collection costs are automatic statutory liens upon the real property or premises serviced by the Town, without the requirement of recording notice of lien. Such liens shall be prior to all other liens on such real property or premises except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Such liens, when delinquent for more than thirty (30) days, may be foreclosed by the Town in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

19. This Agreement may not be assigned without the prior written consent of Town, and may only be assigned to a successor in interest of Property Owner to the Property. As a consequence of the unique nature of providing for utility service to the Property, no part of this Agreement may be assigned separately from the whole of the Agreement.

20. All notices provided for herein shall be in writing and transmitted by mail or by courier and, if to Property Owner shall be mailed or delivered to Property Owner at:

[INSERT]

and if to Town, shall be mailed to Town at:

Town Property Owner
SMRU / Town of Jupiter Island
P.O. Box 395
Hobe Sound, FL 33475
grauth@tji.martin.fl.us

21. This Agreement shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Town, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between the Property Owner and Town. No additions, alterations or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto. Property Owner acknowledges that staff and employees of Utility have no authority to bind Town or agree to any additions, alterations or variations of terms of this Agreement or the RPPs, which can only be added to, altered or varied by the Town Commission.

22. The titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

23. If any provision of this Agreement or the application thereof to any person or circumstances shall be held by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remaining provisions of this Agreement and the validity, enforceability, and application of such provisions to other persons or circumstances shall not be impaired thereby, but such remaining provisions of this Agreement shall be interpreted, applied and enforced so as to achieve, as near as may be, the purposes and intent of this Agreement to the greatest extent permitted by applicable law.

24. Unless otherwise specifically provided herein, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. In any representation, warranty, or covenant by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

25. This Agreement shall be construed and interpreted under the laws of the State of Florida, without giving effect to principles of conflict of laws, except where specifically pre-empted by Federal law. Venue with respect to any state or federal litigation or dispute in connection with this Agreement shall lie exclusively in Martin County, Florida.

IF OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROPERTY OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE TOWN CLERK, WHO IS OWNER'S CUSTODIAN OF PUBLIC RECORDS, AT:

**Office of the Town Clerk
Town of Jupiter Island
2 S.E. Bridge Road
Hobe Sound, Florida 33475
772-545-0100
kkogos@tji.martin.fl.us**

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date executed by Town (“**Effective Date**”).

Authentication

Town Clerk
(TOWN SEAL)

THE TOWN OF JUPITER ISLAND
By: _____
Its Mayor
Effective Date: _____

PROPERTY OWNER

Date: _____

Sign: _____
Printed Name: _____

For an individual acting in his or her own right:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, _____ (date) by _____ (name of person acknowledging), who is personally known to me or who has produced _____ (type of identification) as identification.

[Notary Seal]

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Serial number, if any)

For a corporation:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, _____ (date) by _____ (name of officer or agent, title of officer or agent) of _____ (name of corporation), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification.

[Notary Seal]

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Serial number, if any)

For a limited liability company:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, _____ (date) by _____ (name of member, manager, officer or agent, title of member, manager, officer or agent) of _____ (name of company), a _____ (state or place of formation) limited liability company, on behalf of the company, who is personally known to me or has produced (type of identification) as identification.

[Notary Seal]

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Serial number, if any)

For a partnership:

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, _____ (date) by _____ (name of acknowledging partner or agent), partner (or agent) on behalf of _____ (name of partnership), a _____ (state or place of formation) partnership. He/she is personally known to me or has produced (type of identification) as identification.

[Notary Seal]

(Signature of person taking acknowledgment)

(Name typed, printed or stamped)

(Serial number, if any)

EXHIBIT "A"

LEGAL DESCRIPTION