

## MAINTENANCE AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the **CITY OF HOLLYWOOD**, a municipal corporation located in Broward County, Florida and organized and existing under the laws of Florida, hereinafter referred to as “**City**,” having an address of 2600 Hollywood Boulevard, Hollywood, Florida 33022, and **RACETRAC PETROLEUM, INC.**, its successors and assigns, hereinafter referred to as “**Developer**,” having an address of 200 Galleria Parkway SE #900, Atlanta, Georgia 30339-5945.

### WITNESSETH:

**WHEREAS**, Developer owns or controls certain property located in the City of Hollywood, Broward County, Florida as shown and described on Exhibit “A” attached hereto and made a part hereof (the “**Property**”); and

**WHEREAS**, for the purpose of conserving the quality, character, value and ambiance of the Property and improvements thereon, the Developer recognizes that it is in the best interest of future Property owners or occupants to maintain the public improvements adjacent to the Property along State Road 84 (Marina Mile Boulevard), according to the terms and conditions as set forth herein; and

**WHEREAS**, the landscape and irrigation improvements adjacent to the Property along State Road 84 are more specifically described in that certain “District Four (4) Amendment Number Seven (7) to State of Florida Department of Transportation Landscape Inclusive Memorandum of Agreement” (the “**Improvements**”) referencing Permit No. 2019-L-491-00009, hereinafter referred to as the “**MMOA Seventh Amendment**,” and

**WHEREAS**, the City as a party to the MMOA Seventh Amendment is obligated to maintain the Improvements, which obligation is being undertaken by the Developer pursuant to this Agreement; and

**WHEREAS**, the maintenance obligations, as described in the MMOA Seventh Amendment, as set forth herein shall run with the land and be assumed by each and every person that may hereinafter acquire an interest in the Property; and

**WHEREAS**, Developer enters into this Agreement with the City pursuant to the requirements imposed on it and accepted by future Property owners or occupants, as a prerequisite to construction of the Improvements referenced herein; and

**WHEREAS**, the parties hereto mutually recognize the need for entering into this Agreement designating and setting forth the responsibilities and obligations hereunder;

**NOW THEREFORE**, for and in consideration of the covenants contained in this Agreement, it is mutually agreed between the parties as follows:

1. The recitals above are true and correct and are incorporated herein by this reference.

2. The Developer, its successors and assigns, agrees to maintain in perpetuity in accordance with the requirements of the MMOA Seventh Amendment the Improvements within the specified areas as set forth below and more fully described on Exhibit "B" attached hereto and incorporated herein by reference:

a) Those landscape and irrigation Improvements along the Property's frontage on State Road 84 within the area illustrated in the MMOA Seventh Amendment; and

b) Those landscape and irrigation Improvements beginning at State Road 84 Mile Post 16.857 to Mile Post 16.932, which is more specifically described under State of Florida Department of Transportation Permit #2019-L-491-00009.

3. The Developer agrees to maintain such landscaping and irrigation Improvements with such maintenance to include, among other things, periodic trimming, cutting, litter pickup, fertilizing and necessary replanting of the landscaping and keeping the other improvements in good and safe order and condition as would be usual and customary for said type of Improvements, all as described in the MMOA Seventh Amendment. In the event that the improvements are damaged or destroyed by hurricane or other casualty or vandalism, the Developer shall promptly repair or replace the damaged or destroyed Improvements.

4. If at any time after the execution of the Agreement it shall come to the attention of the City that the Improvements or a part thereof are not properly maintained pursuant to the terms of the MMOA Seventh Amendment, the City may at its option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the Developer to place the Developer on notice thereof. Thereafter, the Developer shall have a period of thirty (30) calendar days following receipt of the foregoing notice within which to correct the cited deficiencies; provided however that, in the event that the correction of the deficiencies by their nature cannot be completed within thirty (30) calendar days, the Developer shall commence such corrective actions within thirty (30) calendar days and shall diligently continue the same to completion. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

a) Maintain the improvements or a part thereof with City or contractor's personnel and invoice the Developer for reasonable expenses incurred. The Developer hereby grants permission to the City to enter the Property to perform such maintenance. The City may issue an invoice to the Developer for the reasonable costs incurred in performing such maintenance, and if such invoice is not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof;

b) Terminate the Agreement in accordance with Paragraph 10 of this Agreement, remove, by City or contractor's personnel, any or all of the Improvements installed under this Agreement or any preceding agreements, and invoice the Developer the reasonable

cost of such removal and appropriate restorations, and if not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof, or

c) Invoke any rights and remedies allowed at law, in equity or otherwise.

5. It is understood between the parties hereto that Improvements within the public rights-of-way covered by this Agreement may be removed, relocated or adjusted at any time in the future and as determined to be necessary by the City. The Developer shall be given thirty (30) calendar days' notice to remove said Improvements after which time the City may remove same. However, other than actions deemed necessary by the City for the immediate protection of public safety, City agrees to provide notice to the Developer of its concerns regarding the continuation of any of the Improvements, and the City and Developer shall work cooperatively to attempt to address the City's concerns while retaining the Improvements.

6. The provisions of this Agreement shall be binding upon and inure to the benefits of successors in title to the Property.

7. The parties agree that this Agreement and Exhibits, upon execution of same, shall be recorded by Developer among the public records of Broward County, Florida. When so recorded, owners and occupants of the Property shall be on notice of each and every provision of this Agreement, and this Agreement shall be of the same force and effect as if said owners and occupants had joined with the parties to this Agreement in the execution hereof; and the acquisition or occupancy of any part of the Property shall be deemed conclusive evidence of the fact that the owners have consented to and accepted the Agreement herein contained and have become bound hereby.

8. City and Developer agree to deliver to each other, from time to time as reasonably requested in writing, within fifteen (15) business days after receipt of such request, an estoppel certificate stating that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement is in full force and effect as modified, and stating the modifications), the status of Developer's performance hereunder and such other information as City or Developer may reasonably require with respect to the status of this Agreement and of the Improvements.

9. Developer, its successors and assigns, and future property owners of the Property shall indemnify and hold harmless City and its officers and employees from all suits, actions, claims and liability arising solely out of the Developer's negligent performance of the work under this Agreement, or Developer's failure to maintain the Improvements referenced herein in conformance with the standards described in Paragraph 4 above, provided that any such claim, damage, loss or expense is attributed to bodily injury, sickness, disease, personal injury or death, or the injury to or destruction of tangible property, including the loss of use resulting therefrom. Nothing in this Agreement shall be construed to limit the rights, privileges or immunities accorded to the City under the doctrine of sovereign immunity or as set forth in Florida Statutes Section 768.28.

10. This Agreement may be terminated by the City if the Developer fails to perform its duties under Paragraph 3, following thirty (30) days written notice. This Agreement may also be modified or terminated by mutual consent of the Developer, its successor and assigns, and the City, which consent shall be evidenced in a written document recorded in the Public Records of Broward County, Florida.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the day and year first above written.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE)

**City**

ATTEST:

CITY OF HOLLYWOOD, FLORIDA

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

BY: \_\_\_\_\_  
JOSH LEVY, MAYOR

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida, only.

\_\_\_\_\_  
DOUGLAS R. GONZALES,  
CITY ATTORNEY

**Developer**

WITNESSES:

RACETRAC PETROLEUM, INC.

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

\_\_\_\_\_  
Print Name

TITLE: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of Racetrac Petroleum, Inc.

\_\_\_\_\_  
NOTARY PUBLIC

Print: \_\_\_\_\_

Commission No.: \_\_\_\_\_

My commission expires:

Personally known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

## **EXHIBIT “A”**

### **DESCRIPTION OF THE “PROPERTY”**

Parcel A of PORT 95 COMMERCE PARK PLAT, according to the plat thereof, as recorded in Plat Book 144, Page 2 of the Public Records of Broward County, Florida. Said land lying in the City of Hollywood, Broward County, Florida.

**EXHIBIT “B”**

**LOCATION OF IMPROVEMENTS TO BE MAINTAINED BY  
DEVELOPER**

**THE PUBLIC IMPROVEMENTS IDENTIFIED AND CONTAINED IN THE AREAS SPECIFIED IN SECTION 2 OF THIS AGREEMENT AND MORE FULLY DESCRIBED IN THE FOLLOWING PROJECT DRAWINGS FOR “THE RACE TRAC PROJECT” LISTED BELOW AND ATTACHED HERETO:**

**FOR STATE ROAD 84 (MARINA MILE BOULEVARD):**

*FLORIDA DEPARTMENT OF TRANSPORTATION  
PERMIT #2019-L-491-00009*

*THOMAS ENGINEERING GROUP, LLC  
MICHAEL D. GROSSWIRTH, PLA  
LANDSCAPE ARCHITECT  
SHEETS L1.0*

*L2.0*

*L2.1*

*L2.2*

*L2.3*

*L3.0*

*L3.1*

*L3.2*

*L3.3*

*JULY 30, 2019*