

**PILOT COST SHARING PROGRAM AGREEMENT  
FOR  
IN LINE CHECK VALVES**

THIS AGREEMENT is made this 21<sup>st</sup> day of December, 2010 by and between:

**CITY OF FORT LAUDERDALE**, a Florida municipal corporation,  
whose principal address is 100 North Andrews Avenue, Fort  
Lauderdale, FL 33301, its successors and assigns ("CITY")

and

**RIVIERA ISLES HOMEOWNER'S ASSOCIATION, INC.**, a  
Florida not-for-profit corporation, whose principal address is 712  
Solar Isle Drive, Fort Lauderdale, FL 33301, its successors and  
assigns ("HOA")

**RECITALS**

A. The Riviera Isles Neighborhood is a single family residential neighborhood in the CITY, located South of East Las Olas Boulevard and geographically bounded on the North by the waters of Sunset Lake, on the West by the waters of Rio Sunset Canal; on the South by the waters of New River; and on the East by the waters of Rio Idlewyld Canal and consists of the residences located on Solar Plaza Drive, Flamingo Drive, Solar Isle Drive and Riviera Isle Drive.

B. The Riviera Isles Neighborhood has for many years experienced the periodic flooding of the Neighborhood with salt water intrusion from the canals through the backflow of periodic high tides into the stormwater drainage system and up through the stormwater catch basin grates and into the streets and private property within the Neighborhood. These periodic high tides generally occur during Spring Tide events, with the highest during spring and fall equinoxes.

C. The CITY has established a set of criteria to determine when various stormwater projects, based on their relative severity, will be implemented. Based on those criteria, the CITY'S Stormwater Management Program Plan has been scheduled to have inline check valves installed within the Neighborhood in fiscal year 2014/15 as a means of curtailing or eliminating the backflow of saltwater intrusion through the stormwater drainage system and into the streets of the Neighborhood;

D. The HOA represents the interests of the Neighborhood and has voiced its concerns to CITY staff, the HOA's District Commissioner and the CITY Commission on numerous occasions seeking an expedited solution to the periodic flooding of the Neighborhood by accelerating the acquisition and installation of an inline check valve system at various locations throughout the Neighborhood.

E. The operational premise underlying an inline check valve system is that the valve permits the stormwater accumulations on the roadways to go through the stormwater drainage lines out toward (outflow) the canals for discharge, while preventing the intruding high tides from the canal from backflowing up through the stormdrainage lines up through the stormwater catch basin grates and into the Neighborhood.

F. As the high tides rise to the level of the stormwater outfall they exert pressure against the one-way inline check valve, preventing the backflow of saltwater intrusion back into the system and up into the Neighborhood beyond.

G. As the high tide recedes, the inline check valves will be opened by the greater pressure being exerted against it by potential stormwater outflow, thus allowing the relatively higher level stormwaters to escape through the stormwater drainage lines and discharge into the adjacent canals.

H. Rather than await the implementation of the inline check valve system, it has been proposed by the HOA that the HOA and CITY implement a pilot cost sharing program for the inline check valves for the Neighborhood whereby the HOA would advance funds to the CITY to accelerate the implementation of the inline check valve system prior to its scheduled introduction in fiscal year 2014/15. Pursuant to this pilot cost sharing program in the event the check valves operate successfully, the CITY would then pay back to the HOA the advanced funds in fiscal year 2014/15, but to the extent that the check valves fail to resolve the salt water intrusion problem, then the CITY would be discharged from its obligation to repay the HOA those funds proportionate to the degree of failure spread out over the twelve (12) check valves.

I. Accordingly, the HOA has requested approval of CITY to enter into a pilot cost sharing program agreement to install twelve (12) inline check valves near the storm water catch basin and grates identified on the attached **Exhibit "A"** to address the periodic tidal flooding occurring in the Neighborhood.

J. At its meeting on August 21, 2010, the CITY Commission directed staff to obtain information regarding a pilot cost sharing program for a new inline check valve system for the Neighborhood.

K. At its meeting on October 5, 2010, the CITY Commission directed staff to develop a change order for the installation of check valves and associated improvements for the Neighborhood as a pilot cost sharing program to determine the effectiveness of this product to eliminate tidal flooding with the CITY agreeing to commit to a regularly scheduled maintenance program.

L. At its meeting on October 19, 2010, the City Commission approved Change Order No. 1 to the Annual Storm Drainage Contract with the CITY'S Annual (FY 2010/11) Stormwater Management Contractor, Gonzalez Pavement Equipments, Inc., in the amount of \$73,940.22 for the acquisition and installation of seven (7) check valves to be installed on a Solar Isle Drive and on a portion of Solar Plaza Drive, with the HOA advancing \$36,970.11 to the CITY to fund half of the change order prior to the start of construction; and

M. At its meeting on November 16, 2010, the City Commission approved Change Order No. 2 in the amount of \$57,612.73 for the acquisition and installation of five (5) additional check valves to be installed at various locations throughout the Neighborhood, the locations of which are set forth on Exhibit "A" attached hereto, totaling twelve (12) valves in the pilot cost sharing program, with the HOA providing for the entire funding amount of Change Order No. 2 prior to the start of construction.

N. Implementation of this pilot cost sharing program to accelerate acquisition and installation of a system of inline check valves throughout the Neighborhood to prevent the saltwater backflow resulting from extremely high tides intruding into and flooding the Neighborhood is deemed to be in the best public interest and serves a valid municipal purpose.

NOW, THEREFORE, in consideration of the mutual covenants and conditions exchanged herein between the parties and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby ratified and confirmed and incorporated herein.

2, **Definitions.** The following terms, as used and referred to herein, shall have the meaning set forth below, unless the context indicates otherwise.

*City Engineer* means the CITY'S Engineer, or designees within the Office of the City Engineer.

*City Manager* means CITY's Chief Executive Officer, its City Manager, or his or her designee.

*Check Valve* means the CheckMate inline check valve manufactured by Tideflex Technologies, a division of Red Valve, Inc. The Check Valve is designed to eliminate backflow from rising tides in the waterways adjoining the HOA boundaries infiltrating the storm drainage infrastructure to the point where it overflows beyond the stormwater catch basin grates.

*Contract Administrator* means the CITY'S Public Works Director, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

*Contractor* means Gonzalez Pavement Equipments, Inc., the CITY'S Annual (FY 2010/11) Stormwater Management Program contractor and the contractor through whom the CITY will acquire and install the inline check valve system throughout the Neighborhood.

*Effective Date* means the first day of the month next succeeding the date upon which the Agreement is executed by both the proper CITY officials as well as the proper officials on behalf of the HOA.

*HOA* means the Riviera Isles Homeowner's Association, Inc., a Florida not-for-profit corporation as an voluntary homeowners' association for the Riviera Isles Neighborhood.

*Operational Failure* means, as to a Check Valve installed pursuant to Pilot Project, that there is evidence of salt water intrusion above the level of the stormwater drainage catch basin grate, as determined during a non-rain event that coincides with high tides during a Spring Tide event. An Operational Failure is further subject to the terms and conditions set forth in Paragraph 8 hereof.

*Operational Success* means, as to a Check Valve installed pursuant to the Pilot Project, that there is no salt water intrusion above the level of the stormwater drainage catch basin grate as determined during a non-rain event that coincides with high tides during a Spring Tide event.

*Neighborhood* means the Riviera Isles Neighborhood.

*Project 11613* means the CITY'S 2010/11 Annual Storm Drainage Contract for citywide capital improvements to the stormwater management system.

*Pilot Project* means the installation of new stormwater drainage basins with rim and catch grates, drainage pipes, baffles, manatee grates, Check Valves and site restoration at the twelve (12) outfall locations in the Neighborhood pursuant to the terms of this Agreement with such locations being identified in Exhibit "A" attached hereto and made a part hereof.

*Riviera Isles Neighborhood* means that single family residential neighborhood in the CITY, located South of East Las Olas Boulevard and geographically bounded on the North by the waters of Sunset Lake; on the West by the waters of Rio Sunset Canal; on the South by the waters of New River; and on the East by the waters of Rio Idlewyld Canal and consists of the residences located on Solar Plaza Drive, Flamingo Drive, Solar Isle Drive and Riviera Isle Drive.

*Riviera Isles 2011 Loan* means the principal sum of \$94,582.84 loaned by the HOA to the CITY for the Pilot Project, the principal sum to be repaid in accordance with Paragraphs 6, 7 and 8 hereof, together with interest at the rate of 2.05% per annum.

*Spring Tide* means an event that occurs during the full moon phase and new moon phase when the Earth, Sun and Moon are in alignment.

*Stormwater Management Program Enterprise Fund* means the enterprise fund established pursuant to CITY Code, Chapter 25, Article IV, Stormwater Management Program and is funded with stormwater management utility fees.

*Term* means the term of this Agreement from the Effective Date through April 15, 2015.

**3. Acceleration of Pilot Project.** Absent this Agreement, the stormwater project to protect the Riviera Isles Neighborhood from the backflow of tidal waters through the stormwater outfalls was scheduled to be undertaken in fiscal year 2014/2015. The HOA is desirous of accelerating the timing of the Pilot Project to

commence as soon as possible. CITY is desirous of accommodating the desires of the HOA and therefore agrees to accelerate the Pilot Project as of the Effective Date hereof, subject to the terms and conditions hereinafter set forth.

**4. Installation.** Upon delivery of the Check Valves from the manufacturer, CITY shall undertake the Pilot Project, including the installation of the Check Valves by the City's Contractor in accordance with the manufacturer's installation and operation manual at the locations indicated on the attached **Exhibit "A"**. CITY shall complete the installation of the twelve (12) Check Valves no later than April 15, 2011. By written agreement between Contract Administrator, on behalf of the CITY, and HOA, the location of the Check Valves as indicated on the attached **Exhibit "A"** may be revised.

**5. HOA Advance of Funds for Pilot Project.** In exchange for the CITY implementing the Pilot Project, HOA shall loan the CITY the sum of \$94,582.84 to be used by the CITY for the Pilot Project ("Riviera Isles 2011 Loan"). The \$94,582.84 shall be deposited to the Stormwater Management Program Enterprise Fund to be used for the acquisition of the Check Valves in accordance with the terms hereof.

**6. Repayment.** Subject to the terms hereof, CITY shall be obligated to repay the funds loaned by the HOA, together with interest thereon at the rate of 2.05% per annum on or before December 31, 2014.

**7. Conditions of Repayment or Discharge.**

**7.1** CITY shall be obligated to repay the Riviera Isles 2011 Loan, or a prorated portion thereof, to the extent that the Pilot Project or its individual components (i.e. each Check Valve installation shall constitute a separate component) are experiencing Operational Success. The City Engineer shall verify Operational Success or Operational Failure of the Check Valves during the Spring Tide high tides.

**7.2** CITY shall be discharged from the obligation to repay the prorated portion of the Riviera Isles 2011 Loan to the extent that the Pilot Project or its individual components (i.e. each Check Valve installation shall constitute a separate component) are found to be an Operational Failure that rises to the dignity of an event that discharges the CITY'S obligation to repay as set forth in Paragraphs 7 and 8 hereof. The City Engineer shall verify Operational Success or Operational Failure of the Check Valves during the Spring Tide high tides.

**7.3** For example, in the event that 10 out of the 12 Check Valves are found to be an Operational Success and 2 out of the 12 Check Valves are found to be an Operational Failure, then CITY would be obligated to pay to HOA on or before December 31, 2014 10/12ths (0.8333) of \$94,582.84 or \$78,815.88, together with interest at the rate of 2.05% per annum. As to the Check Valves determined to be an Operational Failure, CITY would be discharged from its obligation to repay the 2/12ths (0.1667) of \$94,582.84 or \$15,766.96, together with accrued interest thereon.

**7.4** Notwithstanding the operational failure of a Check Valve amounting to a discharge of the CITY'S obligation to repay, HOA will remain on the Stormwater Capital Improvement Program list for the fiscal year 2014/15 as

to such "failed" Check Valves as if HOA had, as to the "failed" valves, not participated in this Pilot Program.

## **8. Additional Criteria for Operational Failure.**

**8.1** In order for an event to be an Operational Failure, the presence of salt water intrusion above the level of the stormwater drainage catch basin may not be the result of salt water intrusion resulting from a defective seawall, the overflow of saltwater over the seawall cap, percolating rise in the level of the surrounding groundwater, saltwater intrusion through meter boxes or emanating from a source other than the particular Check Valve in question (e.g. from another stormdrainage catch basin). In the absence of an Operational Failure of a Check Valve verified by the City Engineer, there shall be a presumption of Operational Success.

**8.2** In order for a Check Valve to be deemed an Operational Failure that would give rise to a discharge of the CITY from its obligation of repayment, there must be three (3) or more events of Operational Failure within any rolling twelve (12) month period, or, as to the balance of the term, as to any portion of the last twelve (12) months under the term of this Agreement. The discharging of a proportionate share of the indebtedness for an Operational Failure would only be to the prorated share of the principal and interest corresponding the Check Valve meeting all the criteria for an Operational Failure.

## **9. Source of Repayment Funds.**

**9.1** The Loan or Advance of Funds for the Pilot Project by the HOA shall not be deemed to constitute general obligations or a pledge of the faith and credit of the CITY, the State of Florida or any political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable solely from the Stormwater Management Program Enterprise Fund in the manner and to the extent herein provided.

**9.2** HOA covenants and agrees that it shall not have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the CITY or any other political subdivision of the State of Florida or taxation in any form on any real or personal property to repay the Riviera Isles 2010 Loan or the interest thereon, nor shall HOA be entitled to payment of such principal and interest from any other funds of the CITY other than as set forth under Paragraph 9.1 above, all in the manner and to the extent herein provided. The Riviera Isles 2011 Loan shall not constitute a lien upon any real or personal property of or in the CITY.

## **10. Maintenance and Repair.**

**10.1** CITY has already inspected the stormwater outfall drainage lines by closed circuit television. Before the installation of the Check Valve in any location, CITY shall file an engineering certificate with respect to the stormwater outfall drainage lines from the catch basins to the outfall certifying that the line is not leaking and is in good working order.

**10.1** The manufacturer of the Check Valve has indicated that the valves should be inspected and maintained on a quarterly basis. Notwithstanding the manufacturer's recommendation, during the term of this Agreement, CITY shall be obligated to inspect each Check Valve on a bi-monthly (every other month) schedule and maintain the Check Valves in such a manner as to clear the stormwater drainage outfall and Check Valves of any debris, barnacle growth or other obstructions that hinder the intended operation of the Check Valves as represented by the manufacturer.

**10.2** The Contract Administrator shall prepare and distribute quarterly reports to the HOA and City Commission regarding the maintenance and repair history of the Check Valves and observance of events of Operational Successes and Operational Failures.

**10.3** As it relates to any "failed" valves, CITY shall be obligated to pursue all warranties from the manufacturer on such "failed" valves.

**11. Notice.** Any notice, demand, request or other communication with respect to this Agreement shall be in writing and shall not be effective for any purpose unless the same be given by hand delivery, or by a nationally recognized overnight courier, or by mailing same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below or at such other address or addresses and to such other person or firm as may from time to time be designated

AS TO CITY: City of Fort Lauderdale Contract Administrator  
Albert Carbon, Director of Public Works  
P.O. Drawer 14250  
Fort Lauderdale, FL 33302-4250

With copy to: City Manager  
City of Fort Lauderdale  
P.O. Drawer 14250  
Fort Lauderdale, FL 33302-4250

With copy to: City Attorney  
City of Fort Lauderdale  
P.O. Drawer 14250  
Fort Lauderdale, FL 33302-4250

AS TO HOA: Tamara Tennant, President  
Riviera Isles Homeowner's Association, Inc.  
712 Solar Isle Drive  
Fort Lauderdale, FL 33301

**12. Compliance with Laws and Regulations.** CITY shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Fort Lauderdale, and of any other public authority that may be applicable to performance of the Pilot Project under this Agreement.

**13. Entire Agreement.** This Agreement, together with any other agreements entered into contemporaneously herewith, constitutes and represents the entire Agreement and any other agreements between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Agreement may be amended, supplemented, modified or discharged only upon an amendment in writing executed by all of the parties hereto.

**14. Interpretation of Agreement; Severability.** If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

**15. No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**16. No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**17. Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort.

**18. Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**19. Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or



interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, the parties expressly waive whatever other privilege to venue it may otherwise have.

**20. Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone be deemed Force Majeure.

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

Safesa Ali  
Safesa Ali  
[Witness type or print name]

H. Skarududa  
Karina Skarudaki,  
[Witness type or print name]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE,  
a Florida municipal corporation

By J.P. Seiler  
John P. "Jack" Seiler, Mayor

By Allyson C. Love  
Allyson C. Love, Acting City Mngr.

ATTEST:

Jonda K. Joseph  
Jonda K. Joseph, City Clerk

Approved as to form:

Robert B. Dunckel  
Robert B. Dunckel,  
Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 14 day of January, 2010, by JOHN P. "JACK" SEILER, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)



Safeea A. Maloney  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

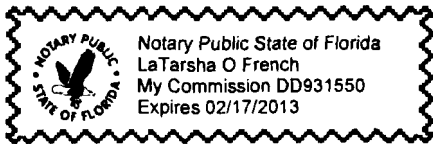
Safeea A. Maloney  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: Dec. 4, 2014  
EE21991  
Commission Number

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 13 day of January, 2010, by ALLYSON C. LOVE, Acting City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. She is personally known to me and did not take an oath.

(SEAL)



LaTarsha O. French  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgment)

LaTarsha O. French  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: 2/17/2013  
DD931550  
Commission Number

WITNESSES:

RIVIERA ISLES HOMEOWNER'S ASSOCIATION, INC., a Florida corporation

[Signature]

Cyril S. Spiro  
[Witness print or type name]

[Signature]

THOMAS R. GIORDANO  
[Witness print or type name]

Tamara Tennant  
Tamara Tennant, President

ATTEST:

(SEAL)

Jean Giordano  
Jean Giordano, Secretary

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, 2010, by **Tamara Tennant**, President and **Jean Giordano**, Secretary of RIVIERA ISLES HOMEOWNER'S ASSOCIATION, INC, a Florida corporation. They are personally known to me or have produced Florida Drivers License as identification and did not take an oath.

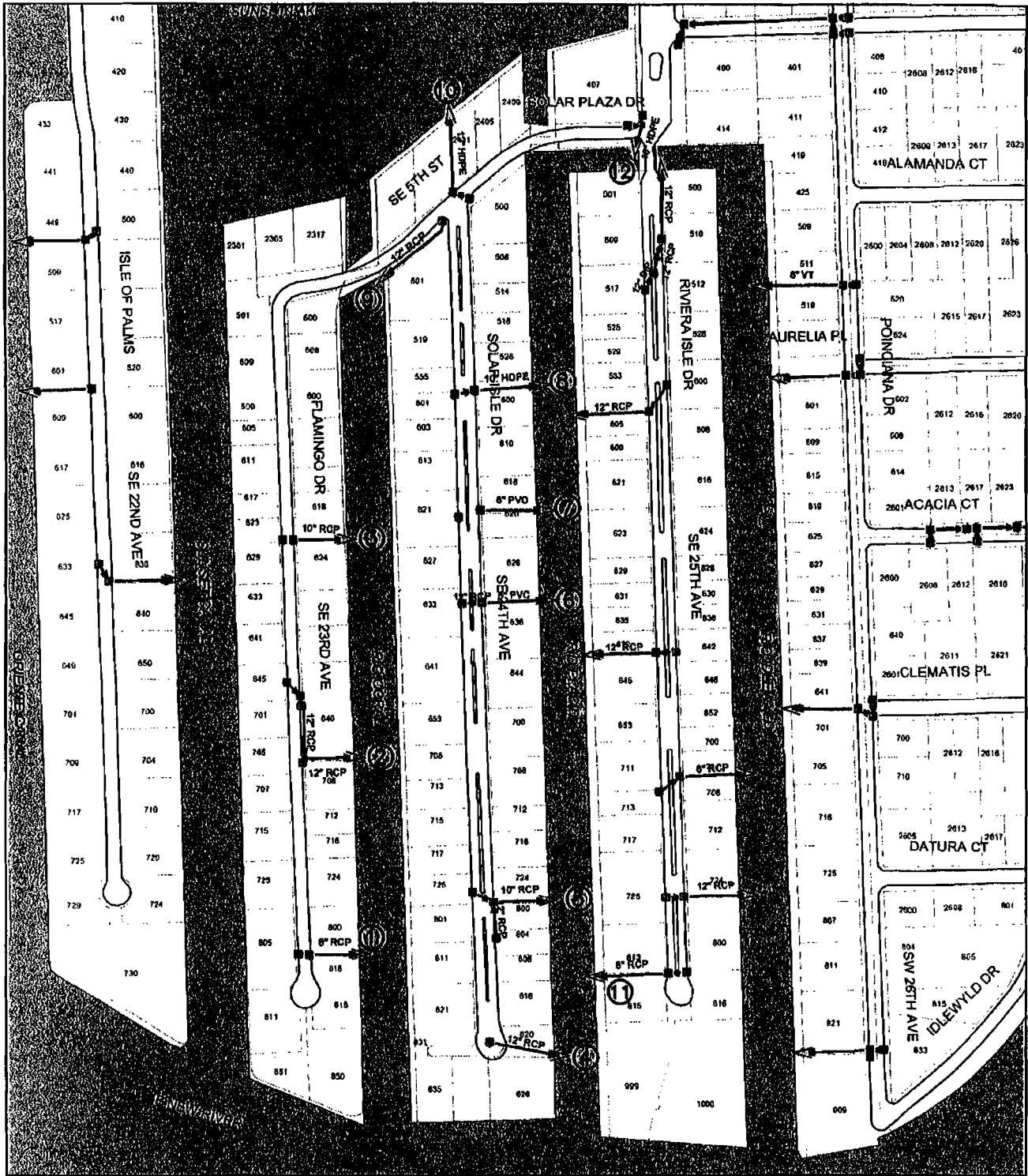
(SEAL)

NOTARY PUBLIC-STATE OF FLORIDA  
Tina M. Coley  
Commission # DD831306  
Expires: NOV. 30, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

Tina M. Coley  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: Nov. 30th 2012  
DD831306  
Commission Number



City of Fort Lauderdale  
Storm Atlas Sheet

# RIVIERA ISLES STORM WATER MAP

LEGEND	
	Inlet (Shaded by Ownership)
	Manhole
	Pump Station
	Outlet
	Junction Box
	Endpoint
	GPS Captured Hole (Woopler)
	GPS Captured Hole (City)
	City Storm Water Line
	County Storm Water Line
	State Storm Water Line
	Private Storm Water Line
	Perforated Pipe (Shaded By Ownership)
	Abandoned
	Proposed
	Inactive

INLINE CHECKMATE VALVE



1 Inch equals 275 feet

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## EXHIBIT A