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Water Management Agreement

MAS

This Agreement, made this 12th day of April, 2006 is between The Lake Doctors, Inc., a Florida Corporation, hereinafter called "THE LAKE DOCTORS" and

NAME Nassau County Board of County Commissioners

ADDRESS P.O. Box 1010

CITY Fernandina Beach STATE FL ZIP 32035 PHONE (904) 491-7380

Hereinafter called "CUSTOMER"

REQUESTED START DATE: _____
PURCHASE ORDER #: _____

The parties hereto agree to follows:

- A. THE LAKE DOCTORS agrees to manage certain lakes and/or waterways from the date of execution of this Agreement through **September 30, 2006** in accordance with the terms and conditions of this Agreement (**numbers 11 and 13 DO NOT apply**) in the following location:

One (1) pond associated with Nassau County Governmental Complex, Yulee, Florida.

Includes **minimum of one (1) inspection and treatment, as necessary each month**, for control and prevention of noxious aquatic weeds and algae. **The Lake Doctors reserves the right to impose a fuel surcharge as may be necessary.**

Term of agreement shall be from acceptance date until September 30, 2006. Adjustments to the monthly fee will be made on an annual basis with written notice 60 days prior to September 30th. Contingent upon stocking of triploid grass carp to control underwater weeds.

Attached Dispute Language Addendum A and Appropriation/Payment and Billing Addendum B forms an integral part of this agreement.

- B. CUSTOMER agrees to pay THE LAKE DOCTORS, its agents or assigns, the following sum for specified aquatic management services:

1.	Underwater and Floating Vegetation Control Program	\$	<u>75.00 monthly</u>
2.	Shoreline Grass and Brush Control Program	\$	<u>INCLUDED</u>
3.	Additional Treatments, if required	\$	<u>INCLUDED</u>
4.	Written Monthly Service Reports	\$	<u>INCLUDED</u>
5.	Free Call-Back Service	\$	<u>INCLUDED</u>
6.	Stocking of 15 Triploid Grass Carp upon FWC approval	\$	<u>120.00</u>
7.	Pollution Liability Insurance	\$	<u>INCLUDED</u>
	Total of Services Accepted	\$	<u>75.00 monthly</u>

\$0.00 of the above sum-total shall be due and payable upon execution of this Agreement, the balance to be paid upon completion of work in monthly installments of **\$75.00**, plus any taxes, including sales use taxes, fees or charges that are imposed by any governmental body relating to the service provided under this Agreement.

- C. THE LAKE DOCTORS uses products which, in its sole discretion, will provide effective and safe results.
- D. THE LAKE DOCTORS agrees to commence treatment within **15 days**, weather permitting, from the date of receipt of this Agreement and/or required government permits.
- E. The offer contained herein is withdrawn and this Agreement shall have no further force and effect unless executed and returned by CUSTOMER to THE LAKE DOCTORS on or before **April 30, 2006**.
- F. The terms and conditions appearing on the reverse side form an integral part of this Agreement, and CUSTOMER hereby acknowledges that he has read and is familiar with the contents thereof.

THE LAKE DOCTORS, INC.

CUSTOMER

Signed Mark A. Seymour

Signed Jim B. Higginbotham Dated 4/12/06

Mark A. Seymour, Sales Manager

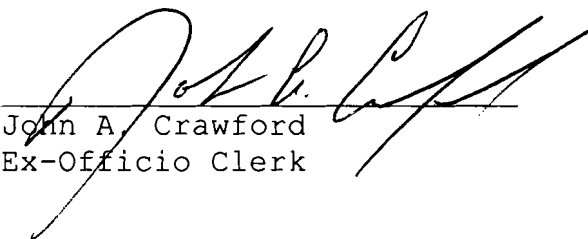
Name Jim B. Higginbotham

OFFICE COPY/ CUSTOMER COPY

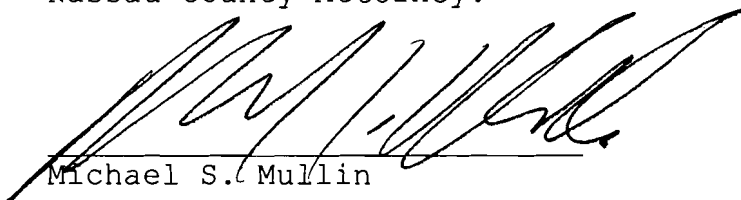
TERMS AND CONDITIONS

1. The Underwater and Floating Vegetation Control Program will be conducted in a manner consistent with good water management practice using the following methods and techniques when applicable.
 - a. Periodic treatments to maintain control of noxious submersed, floating and emersed aquatic vegetation and algae. Examples of undesirable vegetation may include, but are not limited to: hydrilla, naiad, algae, bladderwort, water hyacinth, water lettuce and duckweed. (CUSTOMER understands that some beneficial vegetation may be required in a body of water to maintain a balanced aquatic ecological system).
 - b. When deemed necessary by THE LAKE DOCTORS and approved by CUSTOMER, the planting and/or nurturing of certain varieties of plants, which for various reasons, help to maintain ecological balance.
 - c. Determination of dissolved oxygen levels prior to treatment, as deemed necessary, to ensure that oxygen level is high enough to allow safe treatment. Additional routine water analysis and/or bacteriological analysis may be performed if required for success of the water management program.
 - d. Where applicable, treatment of only one-half or less of the entire body of water at any one time to ensure safety to fish and other aquatic life. However, THE LAKE DOCTORS shall not be liable for loss of any exotic or non-native fish or vegetation.
 - e. CUSTOMER understands and agrees that for the best effectiveness and environmental safety, materials used by THE LAKE DOCTORS may be used at rates equal to or lower than maximum label recommendations.
 - f. Triploid grass carp stocking, if included, will be performed at stocking rates determined by THE LAKE DOCTORS, within Florida Fish and Wildlife Conservation Commission permit guidelines.
 - g. CUSTOMER agrees to provide adequate boat access. Failure to provide adequate boat access may require re-negotiation or termination of this Agreement.
 - h. Control of weeds and algae may take 30-90 days depending upon species, materials used and environmental factors.
2. Under the Shoreline Grass and Brush Control Program, THE LAKE DOCTORS will treat border vegetation to the water's edge including, but not limited to torpedograss, cattails, and other emergent vegetation such as woody brush and broadleaf weeds. Many of these species take several months or longer to fully decompose. CUSTOMER is responsible for any desired physical cutting and removal.
3. CUSTOMER agrees to inform THE LAKE DOCTORS in writing if any lake or pond areas have been or are scheduled to be mitigated (planted with required or beneficial aquatic vegetation). THE LAKE DOCTORS assumes no responsibility for damage to aquatic plants if CUSTOMER fails to provide such information in a timely manner. Emergent weed control may not be performed within mitigated areas, new or existing, unless specifically stated by separate contract or modification of this Agreement. CUSTOMER also agrees to notify THE LAKE DOCTORS, in writing, of any conditions which may affect the scope of work and CUSTOMER agrees to pay any resultant higher direct cost incurred.
4. If at any time during the term of this Agreement, CUSTOMER feels THE LAKE DOCTORS is not performing in a satisfactory manner, or in accordance with the terms of this Agreement, CUSTOMER shall inform THE LAKE DOCTORS, by certified mail, return receipt requested, stating with particularity the reasons for CUSTOMER'S dissatisfaction. THE LAKE DOCTORS shall investigate and attempt to cure the defect. If, after 30 days from the giving of the original notice, CUSTOMER continues to feel THE LAKE DOCTORS performance is unsatisfactory, CUSTOMER may terminate this Agreement by giving notice ("Second Notice") to THE LAKE DOCTORS and paying all monies owing to the effective date of termination. In this event, the effective date of termination shall be the last day of the month in which said second notice is received by THE LAKE DOCTORS.
5. Federal and State regulations require that various water time-use restrictions be observed during and following some treatments. THE LAKE DOCTORS will notify CUSTOMER of such restrictions verbally and/or by posting the restrictions at several readily visible locations on the perimeter of each body of water at the time of treatment. It shall be CUSTOMER responsibility to observe the restrictions throughout the required period. CUSTOMER understands and agrees that, notwithstanding any other provision of the Agreement, THE LAKE DOCTORS does not assume any liability for failure by any party to be notified of, or to observe, the above regulations.
6. THE LAKE DOCTORS shall maintain the following insurance coverage and limits: (a) Workman's Compensation with statutory limits; (b) Automobile Liability; (c) Comprehensive General Liability, including Property Damage, Completed Operations and Product Liability. A Certificate of Insurance will be provided upon request. A Certificate of Insurance naming CUSTOMER as "Additional Insured" may be provided at CUSTOMER'S request. CUSTOMER agrees to pay for any additional costs of insurance requirements over and above that provided by THE LAKE DOCTORS.
7. Neither party shall be responsible for damages, penalties or otherwise for any failure or delay in performance of any of its obligations hereunder caused by strikes, riots, war, acts of God, accidents, governmental orders and regulations, curtailment or failure to obtain sufficient material, or other force majeure condition (whether or not of the same class or kind as those set forth above) beyond its reasonable control and which, by the exercise of due diligence, it is unable to overcome. Should THE LAKE DOCTORS be prohibited, restricted or otherwise prevented or impaired from rendering specified services by any condition, THE LAKE DOCTORS shall notify CUSTOMER of said condition and of the excess direct costs arising therefrom. CUSTOMER shall have thirty (30) days after receipt of said notice to notify THE LAKE DOCTORS in writing of any inability to comply with excess direct costs as requested by THE LAKE DOCTORS.
8. CUSTOMER warrants that he or she is authorized to execute the Water Management Agreement on behalf of the riparian owner and to hold THE LAKE DOCTORS harmless for consequences of such service not arising out of the sole negligence of THE LAKE DOCTORS.
9. CUSTOMER understands that, for convenience, the annual investment amount has been spread over a twelve-month period and that individual monthly billings do not reflect the fluctuating seasonal costs of service.
10. THE LAKE DOCTORS agrees to hold CUSTOMER harmless from any loss, damage or claims arising out of the sole negligence of THE LAKE DOCTORS. However, THE LAKE DOCTORS shall in no event be liable to CUSTOMER, or others for indirect, special or consequential damages resulting from any cause whatsoever. The Lake Doctors reserves the right to impose a fuel surcharge as may be necessary.
11. Upon completion of the term of this Agreement, or any extension thereof, **this Agreement shall be automatically extended for a period equal to its original term unless terminated by either party.** If required, THE LAKE DOCTORS may adjust the monthly investment amount after the original term. THE LAKE DOCTORS will submit written notification to CUSTOMER 30 days prior to effective date of adjustment. If CUSTOMER is unable to comply with the adjustment, THE LAKE DOCTORS shall be notified immediately in order to seek a resolution. If necessary, CUSTOMER may terminate this Agreement according to the procedure outlined in #4 above.
12. THE LAKE DOCTORS reserves the right to impose a service charge of 1 ½ percent per month on past due balances and/or cancel the Agreement.
13. ~~Should CUSTOMER become delinquent, THE LAKE DOCTORS may place the account on hold for non-payment and CUSTOMER will continue to be responsible for the monthly investment amount even if the account is placed on hold. Service may be reinstated once the entire past due balance has been received in full. Should it become necessary for THE LAKE DOCTORS to bring action for collection of monies due and owing under this Agreement, CUSTOMER agrees to pay collection costs, including, but not limited to, reasonable attorneys fee (including those on appeal) and court costs, and all other expenses incurred by THE LAKE DOCTORS resulting from such collection action.~~
14. This Agreement is assignable by CUSTOMER upon written consent by THE LAKE DOCTORS.
15. This Agreement constitutes the entire agreement of the parties hereto and no oral or written alterations or modifications of the terms contained herein shall be valid unless made in writing and accepted by an authorized representative of both THE LAKE DOCTORS and CUSTOMER.

ATTEST:


John A. Crawford
Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:


Michael S. Mullin

**ADDENDUM TO WATER MANAGEMENT AGREEMENT
NASSAU COUNTY GOVERNMENTAL COMPLEX, FEBRUARY 2, 2006**

From: Joyce Bradley
Sent: Thursday, December 22, 2005 11:28 AM
To: Billy Howard

Any dispute arising under this Contract shall be addressed by the representatives of the County and the Contractor as set forth herein. Disputes shall be set forth in writing to the County Administrator with a copy to the Building Maintenance Director and Contract Manager and provided by overnight mail, UPS, FedEx, or certified mail, with a response provided in the same manner prior to any meetings of representatives. The initial meeting shall be with the County Administrator and the Building Maintenance Director or their designee, the Contract Manager, and a representative of the Contractor. If the dispute is not settled at that level, the County Attorney shall be notified in writing by the Contract Manager and the County Attorney and the County Administrator, the Contract Manager and the Building Maintenance Director or their designee(s) shall meet with the Contractor's representative(s). Said meeting shall occur within sixty (60) days of the notification by the County Administrator. If there is no satisfactory resolution, the claims disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if not disposed of by agreement as set forth herein, shall be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by the Contractor. If either party initiates a Court proceeding, and the Court orders, or the parties agree to, mediation, the cost of mediation shall be borne by the Contractor. Contractor shall not stop work during the pendency of mediation or dispute resolution. No litigation shall be initiated unless and until the procedures set forth herein are followed.

ADDENDUM B TO WATER MANAGEMENT AGREEMENT NASSAU COUNTY GOVERNMENTAL COMPLEX

Appropriation

Appropriations necessary for the funding of this Water Management Agreement shall be adopted annually by the County during the regular budget process. Non-appropriation by the County will cause this agreement to terminate and no charges, penalties or other costs shall be assessed.

Payment and Billing

Payments shall be made after review and approval by the County within forty-five (45) days from receipt of the invoice by Finance, in accordance with Florida Statute section 218, entitled the Florida Prompt Payment Act.