MARION COUNTY STANDARD FORM
SUBDIVISION IMPROVEMENT AGREEMENT
WITH IRREVOCABLE LETTER OF CREDIT
(INDIVIDUAL)

THIS AGREEMENT made and entered into this ____ day of _____, 20___, by, between and among **MARION COUNTY**, a political subdivision of the State of Florida, whose address is 601 SE 25th Avenue, Ocala, Florida 34471, hereinafter referred to as "COUNTY" and the below-listed DEVELOPER and BANK.

W I T N E S S E T H:

WHEREAS, DEVELOPER has made application to the Board of County Commissioners for the approval of a subdivision and the DEVELOPER represents to the COUNTY that the below-listed information is true and correct, and

Developer:_____

Developer's Address:_____

Project Engineer:_____

Engineer's Estimate of Costs of Improvements:_____

Developer's Estimate of Time to Complete All Improvements:_____

Subdivision Name:_____

Plat Book _____ Page(s) _____

Bank:_____

Bank's Address:_____

WHEREAS, it is mutually agreed and understood by the parties to this Agreement that this Agreement is entered into for the purpose of (1) protecting the COUNTY in the event DEVELOPER fails to complete the construction of required subdivision improvements, and (2) inducing COUNTY to approve the plat of the above-described subdivided lands for recordation in the Public Records, and

WHEREAS, the failure of DEVELOPER to comply with the terms and conditions of this Agreement may cause COUNTY to take whatever action may be deemed appropriate to assure the fulfillment of this Agreement, and

WHEREAS, DEVELOPER has represented to COUNTY that it intends to improve said subdivided lands by construction of all subdivision improvements required by the Land Development Code of Marion County, Florida, in effect at the time said plat was recorded, and the DEVELOPER engineer's estimate of the cost of these improvements as set forth above and a copy of such estimate is attached hereto as ***Exhibit A***, and by this reference made a part hereof, and

WHEREAS, the construction of improvements on said lands has not progressed to completion and the DEVELOPER seeks to assure its obligations for the construction of subdivision improvements under this agreement by arranging and agreeing with BANK for the issuance of an irrevocable letter of credit as a performance guarantee to assure construction of all subdivision improvements, now therefore,

IN CONSIDERATION of the mutual covenants and conditions contained herein, and other good and valuable consideration acknowledged by both parties, the parties do hereby promise, agree, and covenant as follows:

1. The recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. The DEVELOPER hereby accepts the obligation to construct and shall construct as provided in the subdivision improvement plans, all roads, pavement and other improvements, including all catch basins and drainage facilities, monuments, street signs and other improvements of any nature, hereinafter Improvements and in all respects complete the subdivision improvements in accordance with the subdivision improvement plans. All required subdivision improvements shall be constructed in accordance with the Land Development Code of Marion County, Florida, in effect on the date of recording of the plat of the subdivided lands or the date of this agreement, whichever is later. All required subdivision improvements shall be certified to as being constructed to Marion County requirements by a registered engineer, and they shall be approved by the County Transportation Department and the Board of County Commissioners. The COUNTY shall not be responsible for roads or other improvements, maintenance or care until the same shall be accepted by the COUNTY, nor shall the COUNTY exercise any control over the Improvements until accepted, except for permitting and inspections.

3. The DEVELOPER has presented to COUNTY an irrevocable letter of credit in an amount equal to the Engineer's Estimate of the Cost of Improvements attached hereto as ***Exhibit A***. A copy of the BANK's irrevocable letter of credit is attached hereto as ***Exhibit B***. The condition of the irrevocable letter of credit is such that if DEVELOPER should fail to satisfactorily complete all subdivision improvements within the time stipulated herein, BANK shall pay COUNTY the funds stipulated in the irrevocable letter of credit pursuant to instructions to be given BANK by COUNTY. In such event, COUNTY will not be responsible to BANK for repayment of such funds, and this will not relieve DEVELOPER of its obligations under this agreement.

4. Upon verification of the completion of construction of all Improvements, the county Transportation Department shall forward a letter to BANK authorizing BANK to release the letter of credit. The BANK shall not release the letter of credit, either all or in part, except in keeping with the provisions of this agreement. Any controversy arising under this Agreement shall be resolved in accordance with the laws of the State of Florida, keeping in mind that the letter of credit was given for the protection and benefit of COUNTY to secure the DEVELOPERS's obligation to complete all Improvements. COUNTY may utilize such funds for the purpose of paying for the COUNTY's costs under this agreement and all, a part or none of the uncompleted Improvements.

5. DEVELOPER agrees to pay BANK such reasonable compensation which shall from time to time be agreed upon in writing by DEVELOPER and BANK. In addition, DEVELOPER agrees to reimburse BANK for any expense, including reasonable attorney's fees incurred by it in the administration of this Agreement. Such compensation and expenses shall not constitute a charge upon the amount held by BANK hereunder.

6. Liability of BANK, or its successors, is expressly limited and so long as BANK, or its successor, accounts and disburses in good faith and in compliance with this Agreement, it shall not be liable for errors of judgment, and DEVELOPER agrees to indemnify BANK, or its successor, for any losses it may suffer in the premises.

7. The COUNTY reserves the right to cancel or terminate this agreement, with or without cause, upon thirty (30) days written notice of termination to the DEVELOPER. The COUNTY reserves the right to cancel or terminate this agreement upon five (5) days written notice in the event the DEVELOPER will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors.

8. DEVELOPER hereby releases the COUNTY and its agents and employees from any claims and damages, now existing or hereafter occurring or related in any way to this agreement. DEVELOPER agrees that the COUNTY shall incur no liability for subdivision improvements by executing this agreement.

9. DEVELOPER does hereby agree to indemnify and hold the COUNTY harmless from and against any and all claims, damages, losses, expenses (including but not limited to attorneys' fees), causes of action, judgments, liabilities arising out or resulting from, in any fashion, the execution of this agreement by the COUNTY. This grant of indemnity shall be irrevocable. The grant of indemnity contained herein is absolute and unlimited.

10. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including attorneys' fees, specifically including any appellate or bankruptcy proceeding related thereto.

11. The undersigned representative of the DEVELOPER hereby represents to the COUNTY that he is fully authorized by the DEVELOPER to represent the DEVELOPER in agreeing to the terms and conditions of this Agreement.

12. This agreement may be amended by mutual written agreement of the parties and only by such written agreement. There are no understandings or agreements by the parties except as herein expressly stated.

IN WITNESS WHEREOF that parties have hereunto set their hands and seals and executed this Agreement on the day and year first above mentioned.

ATTEST:

_____
David R. Ellspermann, Clerk

Approved as to Form and Legal Sufficiency

_____
Marion County Attorney

BOARD OF COUNTY COMMISSIONERS MARION COUNTY, FLORIDA

_____
_____, Chairman
Date:_____

WITNESSES:

By:_____
Print name:_____

By:_____
Print name:_____

DEVELOPER

_____

By:_____
Print Name:_____
Title:_____
Date:_____

STATE OF FLORIDA
COUNTY OF MARION

Before me this ___ day of _____, 20___ personally appeared _____ of DEVELOPER who is personally known to me or has produced _____ (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so all by and with the authority of the DEVELOPER.

_____
Notary Public

Print Name_____
Commission Number_____
Commission Expires_____

ATTEST:

By:_____
Print name:_____
Title:_____

BANK
_____

By:_____
Print name:_____
Title:_____
Date:_____

STATE OF FLORIDA
COUNTY OF MARION

Before me this ___ day of _____, 20___ personally appeared _____ of BANK who is personally known to me or has produced _____ (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so as an officer of said BANK all by and with the authority of the Board of Directors of said BANK.

_____
Notary Public

Print Name_____
Commission Number_____
Commission Expires_____

This Instrument was prepared by
RECORD and RETURN to:
Thomas D. MacNamara
Assistant County Attorney
601 SE 25th Avenue
Ocala, Florid 34471
(352)438-2330

Revision Date 04-06-04