MARION COUNTY STANDARD FORM
SUBDIVISION MAINTENANCE 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 acceptance of subdivision improvements for county maintenance and the DEVELOPER represents to the COUNTY that the below-listed information is true and correct, and

Developer:_____

Developer's Address:_____

Project Engineer:_____

Ten Percent (10%) of Engineer's estimate_____

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 maintain subdivision improvements, and (2) inducing COUNTY to issue a certification of satisfactory completion of subdivision improvements subject to this maintenance agreement, and

WHEREAS, as a condition precedent to COUNTY acceptance of required subdivision improvements, the COUNTY requires assurance that such improvements will be maintained by the DEVELOPER for a minimum period of two (2) years and thereafter until sixty percent (60%) occupancy of the subdivision, and

WHEREAS, the parties hereto agree that DEVELOPER maintenance shall consist of the continual cleaning, mowing, repairing and replacing of the subdivision improvements, normal wear

and tear excepted and the DEVELOPER seeks to assure its obligations for the maintenance 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 maintenance 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 maintain all subdivision improvements, including 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 maintain the subdivision improvements in accordance with the subdivision improvement plans and the requirements of the COUNTY land development code for a minimum period of two (2) years and thereafter until the subdivision reaches sixty percent (60%) occupancy determined by the issuance of certificates of occupancy. 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. Simultaneously with the execution of this Agreement by the DEVELOPER, the DEVELOPER will attached as ***Exhibit A*** a copy of an irrevocable letter of credit from BANK in a sum equal to ten percent (10%) of the engineer's estimate of subdivision improvements as set forth above and execution of this Agreement by BANK shall serve as evidence to the COUNTY that an irrevocable letter of credit has been issued by BANK. The condition of the Irrevocable Letter of Credit is such that if DEVELOPER should fail to satisfactorily maintain the above mentioned subdivision improvements within the time stipulated herein or fail to comply with any other provision contained in the agreement including the provision to provide COUNTY with a replacement letter of credit, BANK shall pay to COUNTY funds in the irrevocable letter of credit. In this event BANK shall not hold COUNTY responsible for the repayment of such funds thus received by COUNTY. Ninety (90) days prior to the expiration date of the attached letter of credit, DEVELOPER shall submit to the County Transportation Department (department) in writing that final maintenance inspection is required. If final maintenance inspection is not satisfactory then the DEVELOPER shall, no less then forty-five (45) days prior to the expiration date of the attached letter of credit, provide COUNTY with a replacement letter of credit or other assurance acceptable to COUNTY providing for a one(1) year extension of DEVELOPER's maintenance period. This procedure shall be repeated annually thereafter until the said 60% occupancy has been reached.

4. On or before the first anniversary date of this agreement and each anniversary date thereafter, the DEVELOPER shall notify the department in writing that an annual maintenance inspection is required. Inspections shall be performed by the department after receipt of the request

and the department shall submit to DEVELOPER a written report approving the maintenance or stating any deficiencies which are to be corrected. The DEVELOPER shall have thirty (30) days from receipt of said report to make the required corrections. In addition, the COUNTY may notify the DEVELOPER in writing of needed maintenance and the DEVELOPER shall have thirty (30) days to make the required corrections. If the DEVELOPER fails to make necessary corrections within thirty (30) days, COUNTY may declare DEVELOPER in default under this agreement. COUNTY will advise DEVELOPER of default in writing and shall give the DEVELOPER fifteen (15) days to remedy the default.

5. DEVELOPER shall notify the County Transportation Department in writing when the subdivision has reached sixty percent (60%) occupancy and the department will conduct an inspection and submit to DEVELOPER a written report accepting the improvements for county maintenance or stating any deficiencies which are to be corrected before COUNTY acceptance. Upon COUNTY acceptance of subdivision improvements for maintenance, the department will notify BANK in writing and the irrevocable letter of credit will be released.

6. If DEVELOPER defaults in maintenance of the above-mentioned Improvements, BANK shall pay funds in the irrevocable letter of credit to the COUNTY pursuant to instructions to be given to BANK by COUNTY. COUNTY may utilize such funds for the purpose of paying for the COUNTY's costs under this agreement and all or a part of the required maintenance as determined in the sole discretion of the COUNTY.

7. Any controversy arising under this Agreement shall be resolved in accordance with the laws of the State of Florida, keeping in mind that these deposits are given for the protection and benefit of COUNTY to secure the DEVELOPER's obligation to maintain all Improvements.

8. This agreement shall continue in full force and effect until the Improvements are accepted for maintenance by COUNTY. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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

WITNESSES:

By:_____
Print name:_____

By:_____
Print name:_____

BOARD OF COUNTY COMMISSIONERS MARION COUNTY, FLORIDA

_____
_____, Chairman
Date:_____

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 with full authority of said DEVELOPER.

_____
Notary Public

Print Name_____
Commission Number_____
Commission Expires_____

BANK

_____

ATTEST:

By:_____
Print name:_____
Title:_____

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:

Thomas D. MacNamara
Assistant County Attorney
601 SE 25th Avenue
Ocala, Florid 34471
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Revision Date 04-06-04