

# OWNER/DEVELOPER'S AGREEMENT FOR CONSTRUCTION AND WARRANTY OF REQUIRED OFF-SITE IMPROVEMENTS

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as the "Owner/Developer" and Hillsborough County, a political subdivision of the State of Florida, hereinafter referred to as the "County."

## Witnesseth

**WHEREAS**, the Board of County Commissioners of Hillsborough County has adopted Site Development Regulations, set forth in the Land Development Code ("LDC") pursuant to the authority contained in Chapters 125, 163 and 177, Florida Statutes; and

**WHEREAS**, pursuant to the LDC, the off-site improvement facilities required in connection with the site development project known as \_\_\_\_\_(hereafter referred to as the "Project") are to be installed under guarantees posted with the County; and

**WHEREAS**, the Site Development Regulations authorize the County to accept ownership and/or maintenance responsibility of off-site improvement facilities constructed by the Owner/Developer in conjunction with site development projects in Hillsborough County, provided that the improvement facilities meet County standards and are warranted against defects in workmanship and materials for a period of two (2) years; and

**WHEREAS**, the Owner/Developer has filed or will file with the Hillsborough County Development Review Division of the Development Services Department drawings, plans, specifications and other information relating to the construction of off-site roads, streets, grading, sidewalks, stormwater drainage systems, water, wastewater and/or reclaimed water systems and/or easements and rights-of-way, in accordance with the specifications found in the aforementioned LDC and required by the County, in conjunction with the Project; and

**WHEREAS**, the Owner/Developer agrees to build and construct the aforementioned off-site improvements under guarantees posted with the County; and

**WHEREAS**, pursuant to the LDC, the Owner/Developer will request the County to accept, upon completion, the improvements for maintenance as listed below and identified as applicable to the Project:

\_\_\_\_\_

The improvements listed in this paragraph are hereafter referred to as the "County Off-Site Project Improvements"; and

**WHEREAS**, the County requires the Owner/Developer to warranty the aforementioned County Off-Site Project Improvements against any defects in workmanship and materials and agrees to correct any such defects which arise during the warranty period; and

**WHEREAS**, the County requires the Owner/Developer to submit to the County an instrument guaranteeing the performance of said warranty and obligation to repair.

**NOW, THEREFORE**, in consideration of the intent and desire of the Owner/Developer as set forth herein, to gain acceptance for ownership and/or maintenance by the County of the aforementioned County Off-Site Project Improvements, the Owner/Developer and County agree as follows:

1. The terms, conditions and regulations contained in the LDC, are hereby incorporated by reference and made a part of this Agreement.
2. The Owner/Developer agrees to well and truly build, construct and install the off-site project improvements in connection with the Project within \_\_\_\_\_(\_\_\_\_\_) months from and after the date that the Board of County Commissioners accepts the performance bond rendered pursuant to paragraph 4 below, in accordance with the drawings, plans, specifications and other data and information filed with the Hillsborough County Development Review Division of Development Services Department by the Owner/Developer.
3. The Owner/Developer agrees to warranty the County Off-Site Project Improvements against failure, deterioration or damage resulting from defects in workmanship and materials, for a period of two (2) years following the date of acceptance of said improvements for maintenance by the County. The Owner/Developer further agrees to correct within the above described warranty period any such failure, deterioration, or damage existing in the improvements so that said improvements thereafter comply with the technical specifications contained in the LDC established by the County.
4. The Owner/Developer agrees to, and in accordance with the requirements of the LDC does hereby deliver to the County, an instrument ensuring the performance and a separate instrument providing a warranty of the obligations described in paragraphs 2 and 3 respectively above, specifically identified as:
  - a. Letters of Credit, number \_\_\_\_\_, dated \_\_\_\_\_, and number \_\_\_\_\_, dated \_\_\_\_\_ with \_\_\_\_\_ by order of \_\_\_\_\_,
  - b. A Performance Bond, dated \_\_\_\_\_ with \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, and  
A Warranty Bond, dated \_\_\_\_\_ with \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, and
  - c. Cashier/Certified Checks, number \_\_\_\_\_, dated \_\_\_\_\_ and number \_\_\_\_\_ dated \_\_\_\_\_ which shall be deposited by the County into a non-interest bearing escrow account upon receipt. No interest shall be paid to the Subdivider on funds received by the County pursuant to this Agreement.

Copies of said letters of credit, performance and warranty bonds or cashier/certified checks are attached hereto and by reference made a part hereof.

5. Once construction is completed, the Owner/Developer shall submit a written certification, signed and sealed by the Engineer-of-Record, stating that the off-site project improvements are constructed in accordance with:

- a. The plans, drawings, and specifications submitted to and approved by the County's Development Review Division of the Development Services Department; and
- b. All applicable County regulations relating to the construction of improvement facilities.

An authorized representative of the County's Development Review Division of the Development Services Department will review the Engineer's Certification and determine if any discrepancies exist between the constructed improvements and said certification.

6. Should the Owner/Developer seek and the County grant, pursuant to the terms contained in the LDC, an extension of time period established for construction of those improvements described in paragraph 2, the Owner/Developer shall provide the County with an instrument ensuring the completion of said improvements within the extended period. The instrument shall be in the form of a letter of credit, performance bond, escrow agreement, or cashier/certified check, as required by the LDC.

7. In the event the Owner/Developer shall fail or neglect to fulfill its obligations under this Agreement as set forth in paragraph 2 and as required by the LDC, the Owner/Developer shall be liable to pay for the cost of construction and installation of the improvements to the final total cost including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which the County may sustain as a result of the failure of the Owner/Developer to carry out and execute all of the provisions of this Agreement and the provisions of the LDC.

8. In the event the Owner/Developer shall fail or neglect to fulfill its obligations under this Agreement as set forth in paragraph 3 and as required by the LDC, the Owner/Developer shall be liable to pay for the cost of reconstruction of defective improvements to the final total cost, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which the County may sustain as a result of the Owner/Developer's failure or neglect to perform.

9. The County agrees, pursuant to the terms contained in the LDC, to accept the County Off-Site Project Improvements for maintenance upon proper completion, approval by the County's Development Review Division of the Development Services Department, and the submittal and approval of all documentation required by this Agreement and the LDC.

10. In the event that the improvement facilities are completed prior to the end of the construction period described in paragraph 2, the Owner/Developer may request that the County accept the County Off-Site Project Improvements for maintenance at the time of completion. In addition to the submittal, inspections, and approvals otherwise required by this Agreement and the LDC, the Owner/Developer shall accompany its request for acceptance with a new or amended warranty instrument, in a form prescribed by the LDC, guaranteeing the obligations set forth in paragraph 3 for a period of two years from the date of final inspection approval. Provided that said warranty instrument is approved as to form and legal sufficiency by the

County Attorney's Office, the County's Development Review Division of the Development Services Department may accept the new or amended warranty instrument on behalf of the County, and release the original warranty instrument received pursuant to this Agreement, where appropriate. All portions of this Agreement pertaining to the warranty shall apply to any new or amended warranty instrument accepted pursuant to this paragraph.

11. If any article, section, clause or provision of this Agreement may be deemed or held invalid by any court of competent jurisdiction for any reason or cause, the same shall not affect or invalidate the remaining portions of this Agreement, which shall remain in full force and effect.

12. This document contains the entire agreement of these parties. It shall not be modified or altered except in writing signed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, effective as of the date set forth above.

ATTEST:

Owner/Developer:

\_\_\_\_\_  
Witness Signature

By \_\_\_\_\_  
Authorized Corporate Officer or Individual  
(Sign before Notary Public and 2 Witnesses)

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Printed Name of Witness

\_\_\_\_\_  
Address of Signer

\_\_\_\_\_  
Phone Number of Signer

CORPORATE SEAL  
(When Appropriate)

VICTOR D. CRIST  
Clerk of the Circuit Court

BOARD OF COUNTY COMMISSIONERS  
HILLSBOROUGH COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair

**Representative Acknowledgement**

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as  
(day) (month) (year) (name of person acknowledging)  
\_\_\_\_\_ for \_\_\_\_\_.  
(type of authority,...e.g. officer, trustee, attorney in fact) (name of party on behalf of whom instrument was executed)

Personally Known OR  Produced Identification

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

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

(Notary Seal)

\_\_\_\_\_  
(Commission Number)

\_\_\_\_\_  
(Expiration Date)

**Individual Acknowledgement**

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.  
(day) (month) (year) (name of person acknowledging)

Personally Known OR  Produced Identification

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

\_\_\_\_\_  
(Signature of Notary Public - State of Florida)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

(Notary Seal)

\_\_\_\_\_  
(Commission Number)

\_\_\_\_\_  
(Expiration Date)