

APR 07 1992 *aa/ldh*

RESOLUTION NO. 92-M-18

A RESOLUTION PERTAINING TO ORANGE COUNTY PROCEDURES FOR PERFORMING MINISTERIAL DUTIES; AUTHORIZING THE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA (THE "CHAIRMAN") TO ACCEPT PERFORMANCE BONDS IN CONJUNCTION WITH CERTAIN PROJECTS AND APPROVE FORM MUNICIPAL SERVICE TAXING UNIT ("MSTU") AGREEMENTS; DELEGATING TO THE CHAIRMAN AUTHORITY TO APPROVE PLATS WHICH HAVE RECEIVED PRELIMINARY SUBDIVISION PLAN APPROVAL FROM THE BOARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 107 of Article I of the Orange County Charter the establishment and adoption of policy is the responsibility of the legislative branch of the Orange County Government;

WHEREAS, Article II of the Orange County Charter more particularly sets forth the duties and powers of the Orange County Board of County Commissioners (hereinafter the "Board") as the legislative branch of the Orange County Government;

WHEREAS, Section 207 of Article II of the Orange County Charter states that the duties of the Board include but are not limited to: (1) enacting ordinances; (2) enacting resolutions; (3) enacting administrative codes; (4) approving capital budgets; (5) considering conducting continuing studies in the operation of county programs and services; and (6) enacting of countywide ordinances;

WHEREAS, Section 302 of Article III of the Orange County Charter details the duties of the County Chairman, as head of the executive branch of the Orange County Government, which duties include, but are not limited to, the management and operation of all elements of county government under the jurisdiction of the Board, consistent with the policies, ordinances and resolutions enacted by the Board;

WHEREAS, Section 302(d)(4) of Article III, of the Orange County Charter further specifies that the County Chairman shall be responsible for the execution of all contracts and legal documents.

AGREEMENT

REIMBURSABLE MAINTENANCE OF RETENTION POND AREAS

THIS AGREEMENT entered into by Orange County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), _____, (hereinafter referred to as the "Developer"), and _____, (hereinafter referred to as the "Association").

WITNESSETH

WHEREAS, certain real property located in Orange County has been platted as _____ in Plat Book _____ Page(s) _____ of the Public Records of Orange County, Florida, (hereinafter the "Property"); and

WHEREAS, the County finds that it is a valid county purpose under the laws of the State of Florida, to provide minimum maintenance service of the retention areas, located on Tract(s) _____ of the Property; and

WHEREAS, the Board of County Commissioners of Orange County (hereinafter referred to as the "Board"), has determined that the establishment of the Municipal Service Taxing Unit or Benefit Unit (hereinafter referred to as the "MSTU") for the purpose of generating revenue to provide for minimum maintenance of the retention areas is feasible and in the public interest; and

WHEREAS, the Developer and/or the Association have the ability and have requested to perform minimum maintenance services for the retention areas themselves; and

WHEREAS, the County is willing to contract with the Developer and/or the Association to perform said minimum maintenance services until such time as it becomes apparent to the County that said minimum maintenance services are not being adequately performed.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I
SERVICES TO BE PERFORMED

1. The County shall adopt those Resolutions as are necessary to establish an MSTU in order to provide the Developer and/or the Association with funding for the minimum maintenance services to be performed in the retention areas.

2. The Developer and/or the Association shall perform minimum maintenance services in the retention areas, which maintenance shall be limited to _____

Such maintenance will not include curb and paved roadway maintenance and repair, signage maintenance and repair, or the maintenance of or replacement of landscaping improvements.

Annual inspection and certification of function shall be performed by a licensed professional engineer. Certifications shall be submitted to the appropriate Water Management District and to the managers of Orange County Highway Maintenance Department.

3. The Developer and/or the Association understand and agree that any maintenance or repairs outside of the scope of the minimum maintenance services described in paragraph 2 of this Article shall not be funded with MSTU revenues.

4. The responsibility for maintenance of the drainage systems and retention-detention ponds shall be that of the Developer or the Association; provided, however, that at such time as the Association is established, it shall by resolution or other appropriate documentation

- a. assume all obligation under this agreement for the maintenance and upkeep of the drainage systems and retention-detention ponds and
- b. absolve and hold harmless the Developer from any and all responsibility for the maintenance and upkeep of the drainage systems and retention-detention ponds. Once the Association has become legally effective, resolution adopted as aforesaid, and said resolution forwarded to the County, the Developer shall have no further obligation under this agreement of any kind in connection with the drainage systems or retention-detention ponds.

ARTICLE II
PAYMENTS AFTER IMPLEMENTATION OF
THE MSTU FUNDING MECHANISM

1. After the County has implemented the MSTU mechanism for collection and disbursement of funds, the Developer and/or the Association may seek payment from such MSTU funds collected in accordance with this Article.

2. The Developer and/or Association shall render the minimum maintenance services described in Article I, and shall submit invoices to the County for such services on a monthly basis. The County shall make payment to the Developer and/or the Association within fifteen (15) working days after approval of submitted reimbursement requests which shall include invoices of the Developer and/or Association regarding the cost to the Developer and/or Association for materials and services expended or used by the Developer and/or Association in the performance of such maintenance services. Such invoices may include the cost for insurance required of the Developer and/or Association by this maintenance agreement. The county shall retain an amount of the assessment collected as a fee to cover administrative costs, governmental collection charges, and inspection fees. In addition, part of the assessment collected shall be set aside to fund a contingency reserve for the cost involved in the maintenance, repair and/or replacement of concrete structures and/or underdrains.

Orange County shall pay for minimum maintenance services rendered during any fiscal year using monies collected within that fiscal year under the MSTU, exclusive of funds contained in the contingency reserve. At any time the services to be provided by the Developer and/or the Association hereunder will cost more than the monies collected for the fiscal year, then the Developer and/or the Association will provide the maintenance services at their sole expense. For maintenance, repair and replacement of concrete structures and/or underdrains Orange County shall pay for those services using monies collected and maintained in the contingency reserve fund.. At any time the services to be provided by the Developer and/or the Association hereunder for concrete structures and underdrains will cost more than the monies collected and maintained in the contingency reserve fund, then the Developer and/or the Association will provide such services at their sole expense. The MSTU assessment rate will not exceed the rate approved by the Board for the MSTU retention ponds maintained by the Orange County Highway Maintenance Department.

ARTICLE III

TERM OF CONTRACT

1. The term of this Contract shall remain in force as long as the MSTU is in existence.
2. After the County has implemented the MSTU mechanism for collection and disbursement of funds, any one of the parties may terminate this Agreement thirty (30) days after receipt by the other party of written notice of intent to terminate. In the event of termination, the County shall pay for services rendered, prorated to the date of termination, which amount shall not exceed the maximum amount payable under this Agreement. Moreover, said payment shall be made in the same way services are paid for under this Agreement. If payments are made to the Developer and/or Association before services are rendered, the Developer and/or Association shall remit to the County all excess money paid, prorated to the date of termination.
3. It is further agreed that in the event the MSTU assessment funds to finance this Agreement become unavailable through the MSTU, the obligations of each party hereunder may be terminated upon no less than twenty-four hours notice in writing to the other party. The County shall be the final authority as to the availability of funds and as to how any available funds will be allocated among its various service providers.
4. After receipt of a notice of termination, and except as otherwise agreed upon, the Developer and/or the Association shall:
 - a. Stop working under the Agreement on the date and to the extent specified, in the notice of termination.
 - b. Place no further orders or subcontracts for materials or services under this Agreement except as may be necessary for completion of such portion of the work under the

ARTICLE IV
ASSIGNMENT AND SUBCONTRACTS

1. The parties deem the services to be rendered by the Developer and/or the Association to be personal in nature. Neither the Developer nor the Association may assign the ultimate rights or duties to provide maintenance under this Agreement to other parties without written permission of the County. Provided, however, this provision shall not act to prohibit the Developer and/or the Association from entering into subcontracts for the performance of any or all of the services called for under this Agreement.

2. The Developer and/or the Association shall have the right to enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the County; provided however, that no provision of this clause and no such subcontract shall be deemed in any event or manner to provide for the incurrence of any obligation of the County beyond the amount of funds collected by the County under the MSTU less County administration fees. The parties acknowledge that the Developer and/or the Association are independent contractors and are not agents of the County.

ARTICLE V
INSURANCE AND INDEMNIFICATION

1. The Developer and/or the Association shall indemnify and hold the County harmless from all claims for personal injury and property damage that may arise from or be related to errors, omissions or negligent acts of the Developer, the Association, or the employees, subcontractors or agents of the Developer and/or the Association, during the performance of services under this Agreement.

2. Notwithstanding this indemnification and not by way of waiver of such indemnification, the Developer and/or the Association shall require that each and every subcontractor or agent employed by the Developer and/or the Association for performance of services under this Agreement has obtained and will retain throughout the term of their performance of services under their agreement with the Developer and/or the Association, the following insurance coverage:
 - a. Workers' Compensation Coverage for their employees in the amount of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) for employers' liability and statutory limits for workers' compensation;

 - b. Comprehensive General Liability Coverage including, but not limited to, contractual, products and completed operations, in amounts not less than ONE MILLION AND NO/100 (\$1,000,000.00) for combined single limit, personal injury and property damage per occurrence or the equivalent and the County shall be added as an additional named insured to the policy;

ARTICLE VI

RECORDS

1. The Developer and/or the Association shall keep orderly and complete records of its account and operations and shall open these records to inspection by County personnel at reasonable hours during the entire term of this Agreement, plus three (3) years after the ending date of this Agreement, or if audit findings have not been resolved at the end of these three (3) years, the records shall be retained until resolution of the audit findings. Any person duly authorized by the County shall have access to, and the right to examine any of said records during said period.

2. Upon the implementation of the MSTU funding mechanism by the County, the Developer and/or the Association shall maintain financial records related to such funds paid under this Agreement and submit annual financial reports to the County.

ARTICLE VII

SAFEGUARDING INFORMATION

1. The Developer and/or the Association shall not use or disclose any information concerning a recipient of services under this agreement for any purpose not in conformity with the Federal and County Regulations except on written consent of the recipient, his attorney or his responsible parent or guardian.

ARTICLE VIII

OTHER CONDITIONS

1. The Developer and/or Association shall not be required to erect fencing of any type around the retention ponds.

2. Any alterations, variation, modifications, additions and waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by the parties and attached to the original Agreement. The parties agree to renegotiate this Agreement if revision of any applicable laws or regulations make changes in this Agreement necessary.

3. The parties agree that (where applicable) as the _____
_____ subdivision expands, the additional Units and Phases, as the case may be, may be permitted to add to and join in this Agreement under the same terms and conditions as set forth herein. The addition of Units and Phases shall be by amendment to this Agreement which shall include the Plat name and plat book and page number of the property and shall be executed with the formality required in Section 2 of this Article.

4. The name of the official payee to whom the County shall issue checks, when necessary

6. The Developer and/or the Association shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state and local laws and shall comply with all fire, health and other applicable regulatory codes.

ARTICLE X
EFFECTIVE DATE

1. This Agreement shall become effective upon the latter of the execution dates indicated below.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the latter of the dates indicated below.

ORANGE COUNTY, FLORIDA

BY: _____

Linda W. Chapin
County Chairman

DATE: _____

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

BY: _____

Deputy Clerk

FOR THE USE AND RELIANCE
OF ORANGE COUNTY ONLY.
APPROVED AS TO FORM

DEVELOPER —

BY: _____

AS ITS: _____

DATE: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 199_____, by _____ as an individual/officer/agent, on behalf of himself/ _____ a corporation/ _____ a partnership. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 199_____.

Notary Public
My Commission Expires:

HOMEOWNERS ASSOCIATION —

BY: _____

AS ITS: _____

DATE: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 199_____, by _____ as an individual/officer/agent, on behalf of himself/ _____ a corporation/ _____ a partnership. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.