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MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
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**THIS DOCUMENT PREPARED BY
AND RETURN TO:**

Roy K. Payne
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295



MAINTENANCE AGREEMENT

This Agreement, entered into this 1 day of August, 2005, by and between the **City of Orlando**, a municipality duly enacted under the laws of the State of Florida, "City", and **Metrowest Master Association, Inc.**, a Florida corporation, authorized to engage in business in the State of Florida, c/o KEV SIMBACK, "Developer".

Recitals

WHEREAS, Developer desires to (1) construct a fountain, specialty pavers, and landscaping within the right-of-way for Westpoint Blvd. south of Hiawassee Road, and (2) construct a brick driveway entrance to Veranda Park within the right-of-way for Hiawassee Road, and (3) construct parking improvements located within the right-of-way for Hiawassee Road and Lake Debra Drive, and (4) construct two, type "9" curb inlets within right-of-way for Lake Debra Drive, "Project." A sketch of the Project is attached hereto as Composite **Exhibit "A"** and incorporated herein; and

WHEREAS, Developer intends to construct the Project as a part of the construction of improvements pursuant to the Veranda Park Master Plan; and

WHEREAS, absent exceptional circumstances, the City would not generally approve of the placement of the Project within existing right-of-way; and

WHEREAS, the City has found exceptional circumstances in this case and has also found that construction and maintenance of the Project will not compromise public safety and traffic flow in the area, and has therefore approved of the Project; and

WHEREAS, in consideration for the City's approval of the Project, Developer has agreed, at its sole cost and expense, to construct, maintain, repair, and operate said Project, in perpetuity, and

WHEREAS, the parties hereto desire to memorialize their agreement.

City Council Meeting: 6-13-05
Item: J-6 Documentary: 250613Job

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Project. In consideration for the City's approval of the Project, Developer agrees, at its sole cost and expense, to construct, maintain, repair and operate the Project, in perpetuity, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.

3. City Permit. The Project shall be permitted consistent with all applicable laws, rules and regulations. Nothing herein shall vest the Project or warrant that the Project will be permitted by the City.

4. City Inspection. City shall have the right, but not the obligation, to inspect the Project to determine whether it has been properly constructed and is being properly maintained. If the City determines, in its sole discretion, that the Project is not being properly maintained, City shall notify Developer in writing of said determination and of the appropriate repair or maintenance activities Developer must undertake. Developer shall have 10 days to make said repairs or accomplish said maintenance activities, after which the City may do so and invoice the Developer for the costs. If Developer fails to pay the invoices within 30 days of receipt thereof, the amount shall become a lien against Developer's property in the same manner as a special assessment lien. City may conduct emergency repairs or maintenance activities on the Project without notice to Developer. The cost of said emergency repairs shall be paid by Developer in the manner described above, including the imposition of liens.

5. Performance and Payment Bonds. Developer shall submit performance and payment bonds with respect to the Project, consistent with City Code and all applicable laws, rules or regulations.

6 Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., by telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: City of Orlando, Florida
400 South Orange Avenue
Orlando, Florida 32801
Attn: City Engineer
Telephone: (407) 246-3222
Telecopy: (407) 246-2266

Developer: Metrowest Master Association, Inc.
1701 Park Center Drive
Orlando, FL 32835
Attn: **Ken Simback, President**
Telephone: (407) 253-0480

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

7 Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida.

8. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the Parties hereto. All obligations of the Parties hereunder shall be binding upon their respective successors-in-title and assigns; provided the covenants and obligations herein are only personal to and enforceable against the Parties or successors-in-title, as the case may be, owning title to the respective properties at the time any liability or claim arising under this Agreement shall have accrued, it being intended that upon the conveyance of title by a Party, the Party conveying title shall thereupon be released from any liability hereunder as to the property conveyed for any breach of this Agreement or claim arising under this Agreement accruing after the date of such conveyance. Notwithstanding any of the foregoing, developer shall not assign its interest in this Agreement without the prior written consent of the City.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the Parties.

10. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, each party shall bear its own costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant

fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

11. Relationship Between the Parties. The Parties acknowledge and agree that the relationship created hereby is solely as a result of and arising from their relationship of Developer and the City as the owners of adjacent properties. It is not intended hereby, and nothing contained herein shall be construed, to establish any other relationship between the parties. Specifically, nothing contained in this Agreement, nor the relationship between the parties which may arise as a result of the provisions of this Agreement, are intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between the Parties.

12. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

13. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

14. Recording of Agreement. Developer shall be responsible for recording this Agreement (including all costs associated therewith) within the Public Records of Orange County, Florida and shall send a copy of said recorded Agreement to the City within 30 days of the execution of this Agreement.

15. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

16. Indemnification. Developer shall indemnify and hold the City harmless from and against any and all courses-of-action, claims, liability or damages that may arise due to Developer's construction, maintenance or operation of the Project.

17. Termination. The City may terminate this Agreement at any time and for any reason, upon 10 days notice to Developer.

18. Right-of-Way Encroachment Agreement. This Agreement is conditioned upon, and shall not become effective until, the City and Developer enter into a Right-of-Way Encroachment Agreement with regards to construction of the Project within public right-of-way.

19. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

“CITY”

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

Phil D. C.
Mayor / Mayor Pro Tem

ATTEST:

Alana C. Brenner
Alana Brenner, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 12th day of July, 2005, by PHIL DIAMOND, as Mayor/Mayor Pro Tem, of City of Orlando, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, on behalf of the City. He/she is personally known to me or has produced _____ as identification.

Denise Holdridge
(Signature of Notary Public)

DENISE HOLDRIDGE
(Typed name of Notary Public)

Notary Public, State of Florida

Commission No. _____

My commission expires:



Denise Holdridge
My Commission DD088837
Expires February 03, 2006

Signed in the presence of Two Witnesses:

Sign Name: Maui J Dooey
Print Name: Maui J Dooey

Sign Name: Cabrina Webb
Print Name: Cabrina Webb

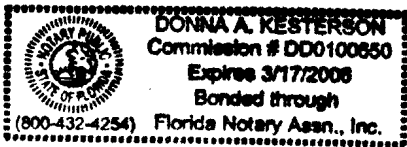
"DEVELOPER" (Corporate Seal)

Metrowest Master Association, Inc.

By: [Signature]
Title: President

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 1 day of August, 2005, by Ken Simback, as President of Metrowest Master Association, Inc., a for profit corporation. He/she is personally known to me or has produced _____ as identification.



[Signature]
(Signature of Notary Public)

Donna A. Kesterson
(Typed name of Notary Public)
Notary Public, State of Florida
Commission No. DD0100650
My commission expires: 3/17/2006