

**GUARANTY**

THIS GUARANTY (“Guaranty”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, a corporation /limited liability company (strike which ever is inapplicable) formed under the laws of the State of \_\_\_\_\_ and having a principal office at \_\_\_\_\_ (“hereinafter sometimes referred to as “Guarantor” or “Developer”), to and for the benefit of ORLANDO UTILITIES COMMISSION, a statutory commission created and existing under the laws of the State of Florida and having a principal office located at 100 W Anderson , Orlando, Florida 32801 (“hereinafter sometimes referred to as “Obligee” or “OUC”).

**RECITALS**

WHEREAS, pursuant to the terms of agreement attached hereto as Exhibit "A", and hereby incorporated by reference herein and, in compliance with the terms thereof, the Guarantor has agreed to construct the following capital improvements (include project name, project address, all work request numbers, utility plan # and date):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, the Guarantor have entered into a construction contract (together, as amended, altered, varied or supplemented, the “ Construction Contract”) with

\_\_\_\_\_ (Contractor’s name and address), hereinafter sometimes referred to as "Obligor"(collectively, the Guarantor and Obligor shall be referred to as the “Parties), to construct the above-listed capital improvements in accordance with the terms of agreement attached hereto as Exhibit “A”, and;

WHEREAS, the Guarantor agrees to guarantee the payment and performance of the Obligor under the Construction Contract for the above-listed capital improvements.

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor and Obligee agree as follows:

Section 1. Guarantor hereby irrevocably, unconditionally and absolutely guarantees to the Obligee, its successors and assigns that each and every payment and performance obligation and other liability of the Obligor now or hereafter arising under the Construction Contract, including but not limited to all obligations and liabilities of the Obligor under any and all covenants, representations, duties and warranties made or given by the Obligor under the Construction Contract, under any and all liquidated or stipulated damage provisions of the Construction Contract and under any and all indemnities given by the Obligor under the Construction Contract (collectively the "Obligations") will be promptly paid and satisfied in full when due and without offset, and performed and completed when due or required. If at any time Obligor fails, neglects or refuses to timely or fully perform any of the Obligations as expressly provided in the terms and conditions of the Construction Contract, and if within fifteen (15) days after written notice of such failure and the expiration of any grace period applicable with respect thereto under the Construction Contract, Obligor has not, in the case of the failure to perform a payment obligation under the Construction Contract, made such payment in full or, in the case of a failure to perform any other of the Obligations, commenced and diligently pursued corrective action to the extent required by the Construction Contract, then upon receipt of written notice from Obligee specifying the failure, Guarantor shall perform, or cause to be performed, any such obligation, responsibility, or undertaking as required pursuant to the terms and conditions of the Construction Contract, including without limitation all payment obligations under the Construction Contract.

Section 2. The obligations of the Guarantor hereunder are absolute and unconditional and shall remain in full force and effect until all Obligations of the Obligor have been paid, performed and completed in full, irrespective of (a) defenses arising out of the validity or regularity of (i) the execution of, and proceedings surrounding the execution of, the Construction Contract, or (ii) the creation or incurring by the Obligor of any of the Obligations; or (b) any other circumstances whatsoever occurring in bankruptcy, insolvency or similar proceedings (with or without notice to or knowledge of Obligor or Guarantor) or which constitute an equitable or legal discharge of a guarantor or surety generally; (c) any assignment, amendment, modification or termination of the Construction Contract.

Section 3. The Guarantor agrees that all construction work will be done under and subject to inspection and approval of and in accordance with construction plans and specifications approved by and on file in the OUC Water Engineering Section and further agrees to require the Obligor to comply therewith.

Section 4. The Guarantor agrees that OUC shall incur no liability or responsibility and shall be held harmless from any and all payments or other claims of whatever nature arising out of the performance of the Construction Contract between the Guarantor and the Obligor.

Section 5. The Guarantor agrees to maintain in proper operation the capital improvements for a period of one (1) year following final approval of said construction by OUC. Further, the Guarantor agrees to guarantee the construction work of the Obligor against any defect of materials or workmanship for one (1) year following final approval of the construction

work by OUC.

Section 6. OUC agrees to accept conveyance from Guarantor, to own and to maintain proper operation of the capital improvements after a period of one (1) year following final approval of said construction by OUC.

Section 7. Guarantor hereby waives the defenses under this Guaranty of promptness, diligence, presentment, demand for payment, protest, notice of dishonor, notice of default, notice of acceptance, notice of intent to accelerate, notice of acceleration, notice of the incurring of the Obligations created under or pursuant to the Construction Contract and all other notices whatsoever.

Section 8. Guarantor agrees that this is a guaranty of payment and performance and not merely a guaranty of collection. The liability of Guarantor under this Guaranty shall not be conditional or contingent upon the pursuit of any remedy against Obligor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if any time any payment to Obligor by Guarantor under the Construction Contract is rescinded or must otherwise be returned by Obligor for any reason, including, without limitation, upon the insolvency, bankruptcy or dissolution of Guarantor or otherwise, all as though such payment had not been made.

Notwithstanding any payment or payments made by Guarantor hereunder, Guarantor shall not be entitled to exercise or enforce any subrogation rights arising by reason of payments made under this Guaranty, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from Obligor or any other person in respect of payments made by Guarantor hereunder, until all amounts owing to Obligor on account of the Obligations and all amounts owing hereunder are paid in full.

Section 9. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Construction Contract shall also toll the statute of limitations applicable to Guarantor's liability under this Guaranty.

Section 10. Guarantor additionally represents and warrants to Oblige as follows:

(a) Guarantor is a corporation fully organized, validly existing, authorized to do business and in good standing under the laws of the state of its incorporation.

(b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guaranty and carry out its obligations hereunder. The execution, delivery, and performance of this Guaranty have been duly and validly authorized and no other

corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guaranty or the transactions contemplated hereby.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.

(d) This Guaranty, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guaranty, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies.

(e) As of the date hereof, the execution, delivery, and performance of this Guaranty does not and will not (i) result in a default, breach or violation of the certificate or articles of incorporation or bylaws of Guarantor or, to the best of Guarantor's knowledge after due inquiry, any provision of any applicable law, rule, statute, legislation or order of any governmental authority, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guaranty, or (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty.

Section 11. No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor, Obligee and any permitted assignee of Obligee's rights hereunder, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Obligee and any permitted assignee of Obligee's rights hereunder.

Section 12. This Guaranty is a continuing guaranty and (i) shall remain in full force and effect until satisfaction in full of all of the Obligations, (ii) shall be binding upon Guarantor and its successors and (iii) shall inure to the benefit of and be enforceable by Obligee and its successors and assigns. Neither Guarantor nor Obligee may assign its rights or delegate its duties without the written consent of the other party except that the Obligee may collaterally assign its rights hereunder for the benefit of its financing parties. Obligee agrees to give at least 10 days written notice to Guarantor of any such collateral assignment other than in connection with the initial financing of the Project.

Section 13. This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida, excluding rules governing conflicts of laws.

Section 14. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) facsimile (followed by registered or certified United States mail, postage prepaid) as follows:

To Guarantor:       Name:  
                          Address:  
  
                          Phone No.:  
                          Fax No.:

With a copy to:     Name:  
                          Address:  
  
                          Phone No.:  
                          Fax No.:

To Obligee:         Steven M. Lockington  
                          Orlando Utilities Commission  
                          P.O. Box 3193  
                          Orlando, Florida 32802  
                          Phone No.: 407-434-2557  
                          Fax No.: 407-434-2621

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

Section 15. In the event that any of the provisions, or portions or applications thereof, of this Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Obligee and Guarantor shall negotiate an equitable adjustment in the provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

Section 16. This Guaranty may be executed in any number of counterparts, each of which when so executed shall be deemed to constitute one and the same Guaranty.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Guaranty as of the date first written above.

Guarantor:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED:

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

Name: Steven M. Lockington

Title: Manager, Water Engineering

## **EXHIBIT "A"**

### **AGREEMENT**

It is hereby agreed that the Developer shall adhere to the following terms for any water facilities to be designed and constructed by the Developer for the purpose of having Orlando Utilities Commission (OUC) own and maintain these facilities.

#### **DESIGN:**

The Developer shall be responsible for the design of all onsite water facilities, including water mains, domestic services, and fire protection. Actual design should be coordinated through the appropriate fire protection authority and material shall comply with the Distribution System Construction Standards Manual (copies available from OUC).

#### **PERMITS:**

The Developer is responsible to obtain and comply with necessary permits as required by the appropriate regulatory agencies. The Developer shall obtain proper certification through the Florida Department of Environmental Protection (FDEP) before any services are activated.

#### **EASEMENTS:**

All on-site OUC water facilities (mains, services, meters, fire hydrants, etc) will be located within a utility easement in accordance with current OUC guidelines. The developer is to furnish all necessary information to prepare and document this easement. Any questions or comments are to be referred to OUC Property and Right of Way Department.

#### **CONSTRUCTION:**

The Developer shall furnish and install all water mains, valves, fittings, hydrants, services and appurtenances in according with OUC Water Distribution System Construction Standards Manual (copies available from OUC) and the approved construction plans. An OUC inspector will verify the materials furnished and work performed for compliance with the plans and specifications. Prior to setting meters the Developer shall provide to OUC an accurate record of the nature, location, and dimension of all work.

**Deeded Improvements**

Water system improvements that will be deeded to Orlando Utilities Commission, and pertinent related information shall be listed below. Quantity shall indicate feet of each diameter of water main or casing pipe installed, or the number of each size domestic service or fire hydrant installed. Total cost shall include the pipe, fittings, and installation.

**Job Title:**

**OUC Work Order #:**

**OUC Project Reviewer:**

**OUC Inspector**

**Consulting Engineer:**

**Developer:**

**Installing Contractor:**

**Completion Date:**

Description of Work	Quantity	Total Cost	Remarks
" D.I. Water Main			
" D.I. Water Main			
" D.I. Water Main			
" D.I. Water Main			
" PVC Water Main			
" PVC Water Main			
"Domestic Service			
"Domestic Service			
"Fire Hydrants			
"Casing Pipe			

**Project Total Cost \$**

**Return To:**

\_\_\_\_\_  
 (OUC Project Reviewer)  
**Orlando Utilities Commission**  
**Water Engineering**  
**P.O Box 3193**  
**Orlando, Fl 32802**

**Signatures**

**Developer** \_\_\_\_\_  
 (Owner and date)

**Quantities Verified By:** \_\_\_\_\_  
 (OUC Inspector and date)

**Costs Verified By:** \_\_\_\_\_  
 (OUC Project Reviewer and date)