

TRI-PARTY AGREEMENT

THIS AGREEMENT is by and between DEEP CREEK PLANTATION DEVELOPMENT COMPANY (hereinafter referred to as "Developer"), BANK OF NORTH FLORIDA (hereinafter referred to as "Lender") and NASSAU COUNTY, FLORIDA (hereinafter referred to as "County").

WITNESSETH:

WHEREAS, Developer is the fee simple owner of certain real property located in Nassau County, Florida (referred to herein as the "Subject Property") and more particularly identified as

DEEP CREEK PLANTATION, a subdivision according to the plat thereof as recorded at Plat Book 7, pages 239-250, public records of Nassau County, Florida; and

WHEREAS, Developer has covenanted and agreed with the County to construct roadways and drainage facilities and other improvements (hereinafter collectively referred to as the "Improvements") based upon development plans and specifications pertaining to said subdivision (hereinafter collectively referred to as the "Specifications") prepared by Harbor Civil Services, Inc., Project No. 91915, dated November 2005, and being on file with the County Engineer; and

WHEREAS, Developer has obtained a loan from the Lender for the purpose of developing and improving the Subject Property by the installation of the Improvements; and

WHEREAS, pursuant to Nassau County Ordinance 99-17, Roadway & Drainage Standards, Section 12, financial assurance of completion of the Improvements in accordance with the Specifications is to be provided to the County; and

WHEREAS, the County is authorized by County rules and regulations to regulate such development and to require and receive such financial assurance; and

WHEREAS, the Developer in accordance with Nassau County Ordinance 99-17 Roadway & Drainage Standards, Section 12, as amended through date of this Agreement, desires to enter into this Agreement; and

WHEREAS, it is the purpose of this Agreement to set forth clearly the understanding and agreement of the parties with respect to the foregoing matters.

NOW THEREFORE, in consideration of the premises hereof and the covenants contained hereafter, the parties do agree as follows:

1. Developer represents and Lender acknowledges as follows:
 - (a) Developer has entered into contracts with K. T. Carter Contracting, Inc. (roads), and with Ed Waters & Sons Contracting Co., Inc. (bridges) (hereinafter collectively referred to as the "Contractors") for the

construction and installation of the Improvements in accordance with the Specifications and that these contracts with the Contractors have been conditionally assigned to Lender pursuant to the Loan Agreement (as defined below); and

- (b) The Contractors' fixed price contracts for construction of the Improvements to completion are:

	Cost of Improvements	Less Mobilization Paid to Date	Balance to Complete
K T Carter Contracting, Inc.	\$2,510,588.00	\$321,750.00	\$2,188,838.00
Ed Waters & Sons Contracting Co., Inc.	\$1,192,880.00	\$196,594.79	\$996,285.21
Cost to Complete Improvements			\$3,185,123.21
+15% (To be held in escrow)			\$477,768.48
Assured Cost of the Improvements			\$3,662,891.69

- (c) That the Improvements will be completed on or before February 28, 2008, and
- (d) That the loan described hereinbefore includes an amount equal to the Cost of Improvements for such construction and installation of the Improvements, which sum shall be held by said Lender pursuant to this Agreement and released only in accordance with paragraph 2 hereof.

2. The Lender hereby agrees that, so long as there is no default under the Loan Agreement dated February 28, 2007 as amended from time to time (the "Loan Agreement"), entered into between Developer and Lender (which is incorporated herein by this reference), the Lender hereby agrees it will disburse to Developer the Cost of Improvements for the construction and installation of the Improvements only on the following terms and conditions:

- (a) Disbursement shall be made by the Lender to the Developer, subject to the terms and conditions of the Loan Agreement, based upon Requests for Payment submitted from the Contractors as to the percentage of work completed to date of request for disbursement, the percentage of work remaining to be done and the cost of said remaining work.
- (b) The Bank's third-party inspector shall confirm that work to date of request has been completed in accordance with Specifications and in compliance with pertinent requirements of the County by signing the Request for Payment.

3. The Lender and the County acknowledge that the Developer's contract with Contractors provides for a holdback of ten percent (10%) on the amount of each partial payment to be made under the terms of said contract. The parties hereto agree that nothing contained in this Agreement shall obligate Developer to pay Contractors said ten percent (10%) holdback prior to completion of the Improvements.

4. In the event that the Developer fails to complete the Improvements within the time prescribed, or defaults under the Loan Agreement and fails to correct or cure said default within thirty (30) days, the County agrees to cause all of the Improvements to be completed, in which case the Lender shall be obligated to pay (irrespective of any default on the part of the Developer or any cause of action or defense the lender may have against the Developer or irrespective of any claim, potential claim or cause of action of Contractors or any subcontractors) the actual cost of said work to the County, as certified by the County not to exceed the Available Funds as defined herein. For purposes hereof, the "Available Funds" shall mean the Assured Cost of the Improvements less an amount equal to the aggregate Cost of the Improvements previously disbursed by Lender under the Loan Agreement. Provided, however, the County shall not exercise this election to cause the Improvements to be completed until it has first notified the Lender of the County's intention to do so, and allowed the Lender the first option to cause the Improvements to be completed. In the event that the Lender does not agree within thirty (30) days to itself cause the Improvements to be completed in accordance with all provisions of this Agreement, then in such event the County agrees to do so, with the cost of said work to be paid as set forth herein. The "cost of said work" shall include all claims, costs, expenses, construction engineering and inspection services, damages, injury or loss, including engineering, legal and contingent costs which the County may sustain on account of the failure of the Developer to perform in accordance with the Specifications within the time specified. It is expressly understood that the County, in completing any of the work involved, has the right, in its sole discretion, to have said work done by others, and is not in any manner committed to complete the work involved by or through its own agencies or employees. Disbursements shall be made by the Lender as work progresses based on the percentage of work completed with a 10% retainage as certified by the County and by the Lender's Inspecting Engineer (who shall have a construction industry background) with the most conservative percentage controlling. The Lender shall, upon certification and demand by the County under the provisions of this paragraph disburse the monies within three (3) working days after the date of certification and demand hereunder by the County and disbursements by Lender pursuant to this paragraph shall constitute advances under the Note and Mortgage, as defined in the Loan Agreement. In the event that the funds provided by Lender hereunder are not sufficient to pay for the cost of completing all or part of the Improvements, the Developer hereby agrees to indemnify and hold the County and the Lender harmless, and to fund all costs exceeding the Assured Cost of Improvements, including reasonable attorney's fees incurred in the collection of any sums due under this Agreement.

5. The parties hereto agree that in seeking to enforce any of its rights under the provisions of this paragraph, the County shall be entitled to specific performance on the

part of the Lender who hereby waives its right to object to the appropriateness or legal or equitable sufficiency of said remedy.

6. The Lender agrees to promptly notify the County in the event of any default by the Developer under the Loan Agreement, said notification to include a description of the default and the date, or dates, on which said default occurred. In the event of any default under the Loan Agreement which is not cured by the Developer within thirty (30) days after the occurrence of such default, the County may exercise all rights hereunder, including those rights set forth in paragraph 4.

7. The Developer shall cause the homeowners association for Deep Creek Plantation to maintain the roads and drainage facilities.

8. Any notice required to be given or documents required to be delivered by the terms of this Agreement shall be deemed properly given or delivered if hand delivered, or if mailed to the proper party or parties by United States Mail, return receipt requested, at the following addresses:

DEVELOPER: Deep Creek Plantation Development Company
Lee D. Wedekind, Jr., President
5345 Ortega Boulevard, Suite 7
Jacksonville, FL 32210

AND

James L. Shroads
Attorney at Law
914 Atlantic Avenue, 2E
Fernandina Beach, FL 32034

LENDER: Bank of North Florida
Michael Green, Executive Vice President
135 West Bay Street
Jacksonville, FL 32202

COUNTY: Nassau County, Florida
David Hallman, County Attorney
96161 Nassau Place
Yulee, FL 32097

9. In any litigation resulting from or pertaining to this Agreement, the prevailing party shall recover its reasonable attorney's fees and court costs at both the trial and appellate level.

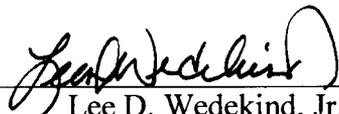
10. This Agreement shall be binding on the parties hereto, their heirs, personal representatives, successors and assigns.

11. Time is of the essence in the performance of any of the obligations or covenants as herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Tri-Party Agreement this 9th day of July, 2007.

DEVELOPER:

Deep Creek Plantation Development Company
A Florida corporation

By: 
Lee D. Wedekind, Jr.
Its: President

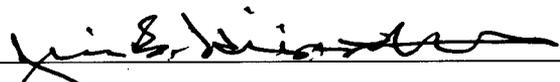
LENDER:

Bank of North Florida

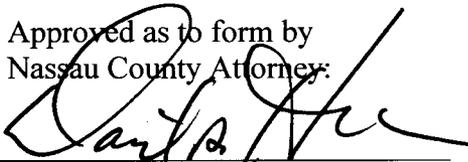
By: 
Michael A. Green
Its: Executive Vice President
Attest N/A
Its: _____

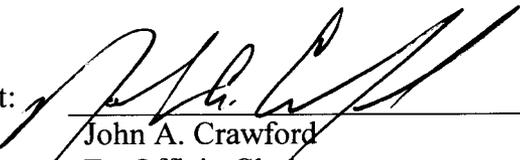
COUNTY:

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

By: 
Its: **Jim R. Higginbotham**
Chairman

Approved as to form by
Nassau County Attorney:


David A. Hallman

Attest: 
John A. Crawford
Its: Ex-Officio Clerk

**ATTEST AS TO CHAIRMAN'S
SIGNATURE ONLY**

REVIEWED: GENE KNAGA, DEPUTY COMPTROLLER

 7/23/07

James L. Shroads
Attorney at Law
14 Atlantic Avenue 2E
Ft. Lauderdale Beach
Florida 32034

phone 904 491 6346

phone 904 491 6356

email jshroads@bellsouth.net

FAX TO:
FROM

904.548.4669
904.491.6356 [fax]
904.491.6346 [voice]
2

No. PAGE(s):

memorandum

DATE: July 18, 2007
TO: Ms. Brenda Linville, office of the Nassau County Clerk of Circuit Court
FROM: James L. Shroads
RE: Deep Creek Plantation, Tri-Party Agreement

Please see attached letter, per our phone conversation of July 18, 2007. Please contact me if you have any questions.



James L. Shroads

Attorney at Law
914 Atlantic Avenue 2E
Fernandina Beach
Florida 32034

Phone: 904 491 6346

Fax: 904 491 6356

July 18, 2007

Nassau County Clerk of the Circuit Court
attn: Ms. Brenda Linville
P.O. Box 456
Fernandina Beach, FL 32035-0456

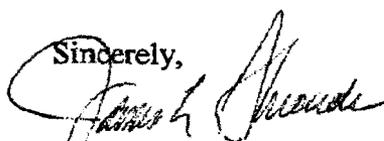
[via fax 904.548.4669 & US Mail]

Dear Ms. Linville.

When the Tri-Party Agreement was being prepared within my office, the signature authority of Bank of North Florida was unknown, and we included a signature line for an "Attestation" of the signatory individual of the bank. Michael A. Green, as Executive Vice-President of the Bank of North Florida, signed the Tri-Party Agreement, and I am assured that Mr. Green has all requisite authority to execute that document without the requirement of an attestation. Consequently, you are authorized to mark the attestation line "n/a" and the document is complete.

Please contact me if you have any questions.

Sincerely,



James L. Shroads
Attorney

cc: Bank of North Florida,
attn: Mr. Michael A. Green

James L. Shroads

Attorney at Law

914 Atlantic Avenue 2E
Fernandina Beach
Florida 32034

Phone: 904 491 6346

Fax: 904 491 6356

July 18, 2007

Nassau County Clerk of the Circuit Court
Attn: Ms. Brenda Linville
P.O. Box 456
Fernandina Beach, FL 32035-0456

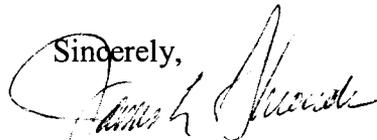
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Please contact me if you have any questions.

Sincerely,



James L. Shroads
Attorney

cc: Bank of North Florida,
attn: Mr. Michael A. Green