

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the Nassau County Board of County Commissioner ("County") and the Amelia Island Plantation Community Association, Inc. (AIPCA").

WITNESSETH:

WHEREAS, the AIPCA is seeking a permit from the Florida Department of Transportation to construct a roundabout within the State Road A1A right-of-way approximately 215 feet north of the existing Racquet Park Drive; and,

WHEREAS, the AIPCA received approval from the County for the proposed roundabout pursuant to Ordinance 2010-09 adopted September 13, 2010; and,

WHEREAS, the AIPCA plans to relocate property owner gate access to the new roundabout and construct new access points into Amelia Island Plantation to Beach Wood Road on the east and to Sea Marsh Road on the west; and,

WHEREAS, the AIPCA plans to enhance the roundabout with certain improvements that are in addition to the normal Florida Department of Transportation design standards for roundabouts and that are excluded from State maintenance upon acceptance of the constructed roundabout for maintenance including but not limited to concrete pavers in the truck apron, special landscaping in the center island, splitter islands and along the roundabout shoulders, irrigation, ornamental lighting including tree and landscape lighting and general overhead illumination and underground conduits for irrigation, communication lines and electrical services ("enhancements"); and,

WHEREAS, the AIPCA agrees to consolidate the maintenance commitments that currently exist in the three party agreement among Amelia Island Company, Nassau County and the Florida Department of Transportation under a Maintenance Agreement dated September 17, 2001 for two existing A1A roundabouts, one located at the entrance to the Spa and Shops and the other located at the intersection of Beach-Lagoon Road and Sea Marsh Road with SR A1A with the Maintenance Agreement for the new roundabout; and,

WHEREAS, the County agrees to execute a Maintenance Agreement with the Florida Department of Transportation for said roundabouts and the permitted enhancements; and,

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS & EXHIBITS

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. TERM

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date. This Agreement shall automatically renew for successive and continuing one (1) year terms unless terminated by the County upon thirty (30) days notice.

4. COMPLIANCE

The AIPCA shall perform this Agreement, including, without limitation, its obligations to operate, maintain and repair the enhancements, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Florida Department of Transportation, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and Nassau County, Florida ("Governmental Law").

5. FLORIDA DEPARTMENT OF TRANSPORTATION PERMITS

In performance of this Agreement, the AIPCA may be required to obtain one or more Florida Department of Transportation ("Department") permits which may include a copy of this Agreement as an exhibit. Notwithstanding the inclusion or incorporation of this Agreement as part of any such Department permits, this Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the parties. Should any term or provision of this Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of this Agreement shall control unless specifically noted otherwise in any such Department permit.

6. OPERATION, MAINTENANCE & REPAIR

A. From the Effective Date of this Agreement, the AIPCA shall continually operate, maintain and repair the enhancements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the County to operate, maintain, repair or improve the enhancements, said obligations to remain the sole responsibility of the AIPCA.

B. If the County determines that the AIPCA is not operating, maintaining and repairing the enhancements in accordance with the terms and provisions of this Agreement, the County shall deliver written notification of such to the AIPCA. The AIPCA shall have thirty (30) days from the date of the County's written notice, or such other time as the County and the AIPCA mutually agree in writing, to correct the deficiency and provide the County with written notice of the same ("Notice of Correction").

C. If the County determines that the deficiency remains after receipt of the AIPCA's Notice of Correction, the County, at its sole discretion, may: (1) provide the AIPCA with written authorization granting such additional time as the County deems appropriate to correct the deficiency; or (2) correct the deficiency at the AIPCA's sole cost and expense. Should the County elect to correct the deficiency, the County shall provide the AIPCA with an invoice for the costs incurred by the County to correct the deficiency and the AIPCA shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. If at any time in the sole determination of the County, the integrity or safety of the Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the County may perform such maintenance and repairs it deems appropriate under the circumstances. The County shall attempt to notify the AIPCA prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare. The County shall provide the AIPCA with written notice of the emergency maintenance and repairs performed by the County and an invoice for the same. The AIPCA shall pay the invoice in accordance with the "Payment" section of this Agreement.

7. MAINTENANCE OF TRAFFIC

A. The AIPCA shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the

Manual on Uniform Traffic Control Devices; (3) the Department's Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.

B. If the AIPCA fails to perform MOT as required herein, the County, within its discretion, may elect to perform MOT at the AIPCA's sole cost and expense. Should the County perform MOT, the County shall provide the AIPCA with an invoice for the costs incurred by the County and the AIPCA shall pay the invoice in accordance with the "Payment" section of this Agreement.

8. PAYMENT

All County invoices submitted for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the County by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

9. INDEMNIFICATION

A. To the maximum extent permissible under applicable Florida law, the AIPCA shall promptly defend, indemnify, hold the County harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the County's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include, without limitation, all civil and criminal environmental liability arising, directly or indirectly from the Environmental Investigation and Remediation Work, under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The AIPCA's duty to defend, indemnify and hold the County harmless specifically does not encompass indemnifying the County for its negligence, intentional or wrongful acts, omissions or breach of contract. Additionally, the AIPCA, or its successors or assigns shall maintain insurance coverage naming the County as an additional insured as follows:

1. Commercial General Liability Insurance. Commercial General Liability insurance coverage (ISO or comparable Occurrence Form) (Modified Occurrence or Claims Made forms are not acceptable) shall be purchased for the life of the contract.

The Limits of this insurance shall not be less than the following limits:

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|--|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Personal & Advertising Injury Limit | \$1,000,000 |
| Fire Damage Limit (any one fire) | \$ 50,000 |
| Medical Expense Limit (any one person) | \$ 5,000 |
| Products & Completed Operations Aggregate Limit | \$2,000,000 |
| General Aggregate Limit (other than Products & Completed Operations) Applies Per Project | \$2,000,000 |

2. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

| | |
|---|-------------------------|
| <u>Part One – Workers' Compensation Insurance – Unlimited</u> | |
| Statutory Benefits are provided in the Florida Statutes and | |
| <u>Part Two – Employer's Liability Insurance</u> | |
| Bodily Injury by Accident | \$100,000 Each Accident |
| Bodily Injury by Disease | \$500,000 Policy Limit |
| Bodily Injury by Disease | \$100,000 Each Employee |

*If leased employees are used, policy must include an Alternate Employer's Endorsement

- 3. Automobile Liability Insurance. Automobile Liability insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

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|-----------------------|---|
| Combined Single Limit | \$1,000,000 Each Accident |
| OR | |
| Split Limits | \$ 500,000 Bodily Injury-Per Person |
| | \$1,000,000 Bodily Injury-Per Accident |
| | \$ 500,000 Property Damage-Per Accident |

Covered Automobiles shall include any auto owned or operated by the insured including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business.

- 4. Excess Liability Insurance. Excess Liability (Umbrella Form) insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

| | |
|-----------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Aggregate Limit | \$1,000,000 |

If any of the insurance referenced above contains deductible(s), penalty(ies) or self insured retention(s) provision(s), the insured shall be solely responsible for payment of such deductibles(s), penalty(ies) and/or self-insured retention(s).

B. The AIPCA shall notify the County in writing immediately upon becoming aware of any Liabilities. The AIPCA's obligation to defend, indemnify and hold the County harmless from any Liabilities, or at the County's option to participate and associate with the County in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the County's written notice of claim for indemnification to the AIPCA. The AIPCA's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

10. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the County's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Fla. Stat. (2010). The County's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the County as a direct result of the County's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2010).

11. NOTICE

All notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

County : Nassau County Board of County Commissioners
 Attention: Nassau County Manager
 96135 Nassau Place
 Yulee, Florida 32097

AIPCA: Amelia Island Plantation Community Association, Inc.
 Attention: Executive Director and Registered Agent
 P.O. Box 15729
 Amelia Island, Florida 32035

12. GOVERNING LAW

This Agreement shall be governed in all respect by the laws of the State of Florida.

13. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties shall lie exclusively in a state court of appropriate jurisdiction in Nassau County, Florida.

B. The AIPCA and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

14. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

15. ASSIGNMENT

The AIPCA may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the County except AIPCA may transfer the rights, duties and obligations provided in this agreement as related to the maintenance of enhancements for the Spa and Shops roundabout to the Omni Amelia Island LLC who is the successor to the Amelia Island Company with respect to the agreement between the Florida Department of Transportation, Nassau County and Amelia Island Company dated September 17, 2001. The County has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the AIPCA from delegating its duties hereunder, but such delegation shall not release the AIPCA from its obligation to perform this Agreement.

16. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

17. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in this Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

18. ENTIRE AGREEMENT

This instrument, together with the attached exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

19. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

20. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

21. INTERPRETATION

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

22. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

23. SEVERANCE

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

24. COMPUTATION OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

25. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement consisting of six (6) pages.

Nassau County Board of County Commissioners

By: Walter J. Boatright
Walter J. Boatright, Chairman

Date: 11-29-10

Witness: Brenda K. Linville

Printed Name: Brenda K. Linville

Witness: Peggy Snyder

Printed Name: Peggy Snyder

Date: 11-29-10

ATTESTATION: Only to Authenticity as to Chairman's Signature:

John A. Crawford 12-1-10
John A. Crawford
Ex-Officio Clerk

Legal Review:

By: David Hallman
David Hallman, County Attorney

11-29-10

Amelia Island Plantation Community Association, Inc.

By: Robert S. Bolan

Robert S. Bolan, President

Date: Nov 29, 2010

Witness: Peggy L. Harris

Printed Name: Peggy L. Harris

Date: 11/29/10

Witness: William R. Moore

Printed Name: William R. Moore

Date: Nov 29, 2010

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/15/2010

PRODUCER (904) 285-6469
 Bushong Insurance Associates, Inc.
 P.O. Box 1399
 Ponte Vedra Beach FL 32004-
 INSURED
 Amelia Island Plantation Community
 c/o Amelia Island Management
 P.O. Box 15729
 Fernandina Beach FL 32035-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

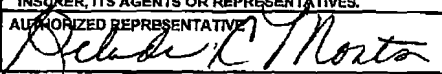
| | |
|--|--------|
| INSURERS AFFORDING COVERAGE | NAIC # |
| INSURER A: Columbia Casualty Company | |
| INSURER B: Progressive Express Ins. | |
| INSURER C: American Guar. & Liab. Ins. | |
| INSURER D: Florida Hospitality Mut | |
| INSURER E: | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | ADD'L LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|------|-----------|---|-----------------------|----------------------------------|-----------------------------------|--|
| A | | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR _____ Products & Completed Oper _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC Agg. Included in Gen Agg. | CWP419866009 | 01/01/2010 | 01/01/2011 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ |
| B | | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS _____ | 03342591-4 | 01/18/2010 | 01/18/2011 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO _____ | | / / | / / | AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$ |
| C | | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE _____ <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0 | AUC297296407150273407 | 01/01/2010 | 01/01/2011 | EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$ \$ \$ |
| D | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER | WC30600052572010 | 01/01/2010 | 01/01/2011 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |
| | | | | / / | / / | |
| | | | | / / | / / | |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Certificate Holder is an Additional Insured as Respects General Liability, Automobile and Umbrella subject to policy terms and conditions with regard to Maintenance Agreement for roundabout within the State Road A1A right-of-way approximately 215 north of the existing Racquet Park Drive.

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| <p>CERTIFICATE HOLDER</p> <p>() - () - Charlotte Young Nassau County Board of County Commissioners Contract Management Office Fernandina Beach FL 32034-</p> | <p>CANCELLATION</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.</p> <p>AUTHORIZED REPRESENTATIVE </p> |
|---|--|

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.