

**COMMUNITY DEVELOPMENT DISTRICT**  
**FACILITIES MAINTENANCE AGREEMENT**

**THIS COMMUNITY DEVELOPMENT DISTRICT FACILITIES MAINTENANCE AGREEMENT** (this "Agreement") is entered into as of 17th day of **January, 2006** by and between the **MOODY RIVER ESTATES COMMUNITY DEVELOPMENT DISTRICT**, an independent special district established pursuant to Chapter 190, Florida Statutes (the "District"), and the **MOODY RIVER ESTATES COMMUNITY ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association").

**RECITALS:**

A. The District has the authority to exercise powers to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for roads, water management, water supply, sewer, street lights, among other powers, including all powers necessary, convenient, incidental or proper in connection with any of the powers, duties, or purposes authorized by Chapter 190, Florida Statutes.

B. The Association is an organization which owns and operates certain recreational facilities located within the area comprised of real property subject to the District. The membership of the Association is comprised solely of property owners within the District and all property owners within the District will be members of the Association. As the Association will be responsible for operating and maintaining certain common areas contiguous to the areas within which the "District Facilities", as such term is defined in Recital "C" below, are or will be located and the Association is located in close proximity to the areas within which the District Facilities are or will be located, and the members of the Association are the direct beneficiaries of the District Facilities, the Association is uniquely positioned and qualified to operate and maintain the District Facilities.

C. The District desires to contract with the Association to operate and maintain the District's landscaping, common areas and buffer tracts depicted on Exhibit A, attached hereto (collectively, the "District Facilities").

D. The District will retain the operation and maintenance responsibilities associated with its storm water management system. These facilities include all lakes, wetlands, conservation areas, connecting pipes, outfall and control structures, aeration and fountain systems that have been constructed as a part of the "master drainage system" and have either been acquired by or conveyed to the District.

E. The Association agrees to operate and maintain the District Facilities, all on the terms and conditions set forth herein.

F. The District and the Association agree that having the Association operate and maintain the District Facilities is in the best interests of the District and the property owners intended to benefit from the District Facilities. Specifically, having the Association operate and

maintain the District Facilities will provide for and facilitate ease of administration, potential cost savings, and the benefits of full time on-site operation and maintenance.

**NOW, THEREFORE,** the District and the Association agree as follows:

1. Recitals. The above recitals are true and correct and incorporated by reference herein.
2. Maintenance.
  - A. The parties acknowledge that it is in both parties' best interest for District Facilities to be kept in a condition reflecting the quality of the development within District and Association. Association shall be responsible for undertaking the maintenance of the District Facilities. Association shall ensure that evidence of insurance required by this Agreement shall be provided to District and Association at the time of execution of any landscape and/or irrigation maintenance contract and at any renewal.
  - B. At all times, Association shall provide for the maintenance of the District Facilities using, at a minimum, standard landscaping practices and procedures for the type of landscaping installed (e.g., turf grass management, ornamentals, trees, etc.). When necessary, Association shall seek the advice of qualified professionals relating to any unusual maintenance events (e.g., extreme weather or bug infestation, etc.).
  - C. The Association shall maintain the District Facilities at a minimum in compliance with all applicable statutes, ordinances, administrative rules and regulations, and permit requirements.
  - D. The Association shall be solely responsible for staffing, budgeting, financing, billing and collection of fees, service charges, etc. necessary to perform the maintenance responsibilities set forth in this Agreement.
  - E. All other operation and maintenance responsibilities for the District Facilities not otherwise addressed in this Agreement, such as the District's stormwater management system, shall remain the sole responsibility of the District.
3. Compensation. District shall pay Association the sum of \$10.00 per year for the performance of the operation and maintenance responsibilities set forth in this Agreement.
4. Term. The term of this Agreement is for a period of five years commencing on **January 17, 2006**, and shall be automatically renewed for additional one-year periods thereafter unless terminated in accordance with this Agreement.

5. Termination. The District and Association shall each have the right to terminate this Agreement upon thirty (30) days written notice with or without cause. Association shall ensure that all contracts with persons or entities performing work on the District Facilities contain a provision that such contract may be terminated, at least as to the work being performed on the District Facilities, upon thirty (30) days written notice without cause. Upon termination, the District and Association shall account to each other with respect to all matters outstanding as of the date of termination.

6. Inspection of Records. Upon request, Association shall make available to District for review at a reasonable time and place, its books and records with respect to the Expenses.

7. Insurance.

A. Association shall ensure that the following language is included in all contracts with persons or entities performing work on the District Facilities:

*“Contractor shall, throughout the performance of its Services pursuant to this Agreement, maintain:*

*1) Occurrence basis comprehensive general liability insurance (including broad form contractual coverage) and automobile liability insurance, with minimum limits of \$1,000,000 and \$1,000,000, respectively, combined single limit per occurrence, protecting it, the Moody River Estates Community Development District and the Moody River Estates Community Association from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of Contractor's Services under this Agreement or from or out of any act or omission of Contractor, its officers, directors, agents, and employees; and*

*(2) Workers' compensation insurance as required by applicable law (or employer's liability insurance with respect to any employee not covered by workers' compensation).*

*(3) All such insurance required by this section shall be with companies and on forms acceptable to Moody River Estates Community Association and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days prior written notice thereof is furnished to Association; the insurance required under this section shall name as additional insureds the Moody River Estates Community Development District and the Moody River Estates Community Association and their officers, supervisors, employees, consultants, parents, and subsidiaries. Certificates of insurance (and copies of all policies, if required by the Moody River Estates Community Association) shall be furnished to the Moody River Estates Community Association. In the event of any cancellation or reduction of coverage, Contractor shall obtain substitute coverage as required under this Agreement, without any lapse of coverage*

*to the Moody River Estates Community Development District or the Moody River Estates Community Association whatsoever."*

- B. The Association shall procure at its expense and at all times include the District as an additional named insured on comprehensive liability insurance policies to cover the operation and maintenance responsibilities set forth in this Agreement. Comprehensive liability insurance shall be in amounts determined by the District Manager.

8. Indemnification. Association shall ensure that the following language is included in all contracts with persons or entities performing work on the District Facilities: "*Contractor agrees to indemnify and hold harmless the Moody River Estates Community Development District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, any negligent act or omission, or willful misconduct, of the Contractor or its employees or agents.*" In the event Association enters into a contract for performance of work within the District Facilities which does not include such provision, or in the event the Association through its own employees performs work on the District Facilities, Association agrees, in consideration of Ten \$10.00 Dollars, the receipt and sufficiency of which is accepted, to indemnify and hold harmless District and its officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, any negligent act or omission, or willful misconduct, of the Contractor, its employees or agents, or the Association, its employees or agents. This Section does not pertain to any incident arising from the sole negligence of the District.

9. Negotiation at Arm's Length. This Agreement has been negotiated fully between the parties as an arms length transaction. The parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party.

10. Amendment. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

11. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

12. Notices. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by Federal Express or First Class Mail, postage prepaid, to the parties, as follows:

A. If to Association: Moody River Estates Community Association  
c/o MERITAGE HOMES  
12631 WESTLINKS DR. #7  
FORT MYERS, FL 33913  
Attn: DAW THRON

B. If to District: Moody River Estates Community  
Development District  
15730 RED FOX RUN  
FORT MYERS, FL 33912  
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
Attn: Michael C. Eckert

13. Applicable Law; Venue. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Any litigation arising out of this Agreement shall be in the court of appropriate jurisdiction in Lee County, Florida.

14. Enforcement. A default by either party under this Agreement shall entitle the other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

15. Attorneys' Fees. In the event either party is required to enforce this Agreement or any provision hereof through court proceedings or otherwise, the prevailing party shall be entitled to recover from the non-prevailing party all fees and costs incurred, including but not limited to reasonable attorneys' fees incurred prior to or during any litigation or other dispute resolution, and including fees incurred in appellate proceedings.

16. Assignment. This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other. Any purported assignment without such approval shall be void.

17. Limitations on Governmental Liability. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

18. Binding Effect; No Third Party Beneficiaries. The terms and provisions hereof shall be binding upon and shall inure to the benefit of District and Association. This Agreement

is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all antecedent and contemporaneous negotiations, undertakings, representations, warranties, inducements and obligations are merged into this Agreement and superseded by its delivery. No provision of this Agreement may be amended, waived or modified unless the same is set forth in writing and signed by each of the parties to this Agreement, or their respective successors or assigns.

20. Execution in Counterparts. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

21. Effectiveness. This Agreement shall take effect upon the execution by the last signing party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Community Development District Facilities Maintenance Agreement on the day and year first above written.

**MOODY RIVER ESTATES  
COMMUNITY DEVELOPMENT  
DISTRICT**

Attest:

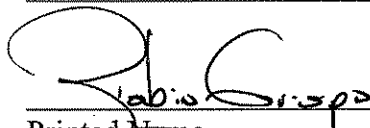
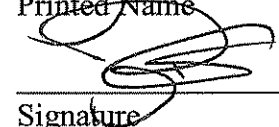
By: 

Its: Chairman/Vice Chairman

  
Secretary/Assistant Secretary

Witnesses:

**MOODY RIVER ESTATES  
COMMUNITY ASSOCIATION, INC.**

  
Printed Name  
  
Signature

By: 

Its: Director of Community Association

Printed Name