

**APPENDIX 8-2**

**PAYMENT BOND**

Amount: \_\_\_\_\_

Bond No. \_\_\_\_\_

CONTRACTOR (Name and Address):

SURETY (Name and Address):

OBLIGEE (Name and Address):

SUBDIVISION IMPROVEMENTS: TO BE COMPLETED AS PER THE DOCUMENTS IDENTIFIED ON EXHIBIT 1-A ATTACHED HERETO AND MADE A PART HEREOF.

DESCRIPTION (Name and Location):

DATE:

Company \_\_\_\_\_

Company \_\_\_\_\_

Signature \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Address: \_\_\_\_\_

(SEAL)

(SEAL)

(Any additional signatures appear on page 2.)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT OR BROKER:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Obligee to pay for labor, materials and equipment furnished for use in the completion of the Subdivision Improvements which are incorporated herein by reference.

2. With respect to the Obligee, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants and

2.2 Defends, indemnifies and holds the Obligee harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the completion of the Subdivision Improvements, provided the Obligee has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Obligee Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly for all the sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 13) and sent a copy, or notice thereof, to the Obligee, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

a. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Obligee, within 90 days after having last performed labor or lost furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

b. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

c. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 13) and sent a copy, or notice thereof, to the Obligee stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by Obligee to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Obligee, within 30 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts within 30 days after receipt of the claim.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. By the Contractor furnishing and the Oblige accepting this Bond, they agree that all funds earned by the Contractor in the completion of the Subdivision Improvements are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Oblige's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to Oblige, Claimants or others for obligations of the Contractor that are unrelated to the Subdivision Improvements. The Oblige shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Subdivision Improvements or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (a) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.b, or (b) on which the last labor or service was performed by anyone relating to the Subdivision Improvements, whichever of (a) or (b) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. In the event the Surety fails to perform its obligations hereunder in a timely manner, the Oblige may commence legal proceedings in a court of competent jurisdiction in the location where the Subdivision Improvements are situated, and the Surety shall be responsible for the payment of all the Oblige's attorneys' fees and costs incurred in such proceeding, which attorneys' fees and costs shall be in addition to, and not limited in any manner by, the principal amount of this Bond.

13. Notice to the surety, the Oblige or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Oblige or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted therefrom, and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 16. DEFINITIONS

16.1 Claimant: An individual or entity having a direct contract with the Contractor or

with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the completion of the Subdivision Improvements. The intent of this Bond shall be to include, without limitation in terms of "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the completion of the Subdivision Improvements, architectural and engineering services required for the performance of the work of the Contractor and the Contractor's subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

16.2 Subdivision Improvements: Those improvements identified in Exhibit I-A attached hereto.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company \_\_\_\_\_

Company \_\_\_\_\_

Signature \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Address: \_\_\_\_\_

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