

146-50

KATHLEEN E. STANLEY, COUNTY CLERK

**MODIFICATION AND EXTENSION OF AGREEMENT  
FOR CONSTRUCTION AND MAINTENANCE OF STREETS,  
ALLEYS, AND OTHER RIGHTS OF WAY, ETC.**

(Marion Oaks Unit Eleven)

This Modification and Extension Agreement made and entered into this 7th day of FEBRUARY, 1989, by and between **THE DELTONA CORPORATION**, a Delaware corporation authorized to transact business in the State of Florida ("Deltona") and **MARION COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County").

**RECITALS:**

1. On August 17, 1983, Deltona and County entered into an Unrecorded Agreement for Construction and Maintenance of Streets, Alleys, and Other Rights of Way, Etc. (the "Agreement") with respect to a certain plat of a subdivision known as Marion Oaks Unit Eleven, recorded in Plat Book 0 at Pages 214 through 224, inclusive of the Public Records of Marion County, Florida (the "Plat").

2. Deltona has not fully completed construction of all the roads and drainage structures as shown on the Plat.

3. Deltona and County now desire to modify and extend the Agreement consistent with Deltona's present construction schedule and to post a replacement corporate performance bond to assure completion of the improvements in an amount representing the current estimated cost to complete the improvements.

NOW, THEREFORE, in consideration of the premises and mutual benefits which will accrue to the parties hereto in carrying out the terms hereof, it is mutually understood and agreed as follows:

A. Section 1 of the Agreement is modified in the following respects:

1. Deltona will complete the improvements as defined in the Agreement as shown on the map attached hereto and made a part hereof as Exhibit "A" (the "Map"), not later than ten (10) years from the date of execution of this Extension Agreement.

B. Section 2 of the Agreement is modified in the following respects:

1. County acknowledges that the surety bond provided by Deltona in accordance with the Agreement has expired and renewal thereof is no longer possible.
2. County hereby cancels and releases that certain Corporate Performance Bond posted by Deltona in connection with the Agreement and directs that said Corporate Performance Bond shall be returned to Deltona.
3. Deltona herewith tenders and County hereby accepts as replacement for the Corporate Performance Bond released in paragraph 2 of this Section, a Corporate Performance Bond as assurance for the construction and maintenance of the improvements; said Corporate Performance Bond being attached hereto and made a part hereof as Exhibit "A". The Corporate Performance Bond represents the estimated cost of constructing the improvements as reflected on the engineer's certified estimated cost to complete, attached hereto and made a part hereof as Exhibit "B".

C. The Agreement is modified to add new Section 3 to read as follows:

- 3.(a) Upon completion of a portion or all of the improvements, Deltona shall submit to the County Engineer an engineer's certificate of satisfactory completion, in substantially the form attached hereto and made a part hereof as Exhibit "C". The County Engineer, within sixty (60) days of receipt of the certificate, shall submit his recommendations concerning the improvements to the Board of County Commissioners (the "Board").
- (b) Upon receipt by the Board of recommendations from the County Engineer concerning the improvements, the Board shall, within thirty (30) days either: a) notify Deltona in writing of its acceptance of the improvements; or b) notify Deltona in writing of its

refusal to accept the improvements, therewith specifying those conditions which Deltona must fulfill in order to obtain the Board's acceptance of the improvements. However, in no event shall the Board refuse to accept the improvements if they are in fact constructed and submitted for approval in accordance with the requirements of this Agreement. A contest in good faith by County of the interpretation of the satisfactory completion of improvements in accordance with this Agreement shall not constitute failure or refusal of County to perform hereunder.

- (c) Simultaneous with acceptance of a portion or all of the improvements, the Board shall discharge and release the Corporate Performance Bond in an amount attributable to the cost to complete the accepted improvements (in accordance with the unit cost set forth on the engineer's estimated cost to complete), less an amount attributable to assuring the maintenance of the accepted improvements, as provided for in subsection (d) of this Section. The discharge and release shall be in substantially the form attached hereto and made a part hereof as Exhibit "D". The remaining portion of the Corporate Performance Bond will therefore represent the cost to complete the remaining improvements, as well as the assurance of the maintenance of the accepted improvements.
- (d) Deltona shall maintain the improvements for a period of five (5) years from and after the date of written acceptance by the Board of the improvements. To assure the maintenance of the accepted improvements, the Corporate Performance Bond shall remain in full force in an amount equal to twenty percent (20%) of the estimated cost to complete the accepted improvements.
- (e) Deltona shall notify the Board and the County Engineer in writing when the maintenance period has expired; and within thirty (30) days after such notice is given by Deltona to the Board, the Board shall provide a written

discharge and release, insubstantially the form attached hereto as Exhibit "D", of the appropriate portion of Deltona's obligations under the Corporate Performance Bond assuring the maintenance of the accepted improvements and correspondingly the Board shall become responsible for maintenance of the improvements unless, during the thirty (30) day period, the Board or the County Engineer notifies Deltona in writing that the improvements were not maintained by Deltona in a satisfactory condition, excepting such wear and deterioration as may reasonably be expected from normal use. In the event the Board determines that the improvements were not maintained by Deltona in a satisfactory condition during the maintenance period, in its notice to Deltona of this fact, the Board shall specify those conditions which Deltona must fulfill before the Board will become responsible for maintaining the improvements.

D. Except as expressly modified herein, the Agreement shall continue in full force and effect and Deltona and County hereby ratify and confirm each of the covenants, agreements, conditions and stipulations therein.

E. The Agreement as herein modified, may not be further modified or amended except by an instrument in writing executed by Deltona and County.

IN WITNESS WHEREOF, The Deltona Corporation and Marion County, Florida have executed this Modification and Extension Agreement as of the day and year first above written by their duly authorized officers.

Signed, sealed and delivered  
in the presence of:

Marion County

Sharon J. Hummerhielm

THE DELTONA CORPORATION

By: Earle D. Cortright, Jr.  
Earle D. Cortright, Jr.  
Executive Vice President

Attest: Sharon J. Hummerhielm  
Sharon J. Hummerhielm  
Assistant Secretary

SIGNATURES CONTINUED ON NEXT  
PAGE



The original unrecorded Map, attached as Exhibit "A"  
to the Modification and Extension of Agreement  
for Construction and Maintenance of Streets, Alleys,  
and Other Rights of Way, Etc. is on file with the  
Marion County Engineering Department.

## EXHIBIT A

**CORPORATE PERFORMANCE BOND**

(Marion Oaks Unit Eleven)

KNOW ALL MEN BY THESE PRESENTS:

That **THE DELTONA CORPORATION**, a Delaware corporation authorized to transact business in the State of Florida (hereinafter "Principal") is held and firmly bound unto **MARION COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter "County") in the penal sum of Two Million Two Hundred Ninety Six Thousand Six Hundred Fifty-Seven and No. 100 Dollars (\$2,296,657) for the payment of which Principal binds itself, its successors and assigns to the faithful performance of that certain written unrecorded Agreement for Construction and Maintenance of Streets, Alleys and Other Rights of Way, Etc., dated the 17th day of August, 1973, as modified by that certain Modification and Extension Agreement, dated the \_\_\_\_ day of \_\_\_\_\_, 1989, (collectively the "Agreement"), given by Principal (in said Agreement called "Deltona") to County for the construction and maintenance of improvements as defined in said Agreement with respect to the plat of that certain subdivision known as Marion Oaks Unit Eleven; said Agreement being incorporated herein by reference.

NOW, THEREFORE, the conditions of this obligation are such that, if Principal shall in all respects comply with the terms and conditions of said Agreement, within the time therein specified, and shall in every respect fulfill its obligations thereunder, this obligation shall be void; otherwise the same shall remain in full force and virtue. Principal agrees that said County shall have the right to construct, or pursuant to public advertisement and receipt and acceptance of bids, cause to be constructed said improvements in case Principal should fail or refuse to do so in accordance with the terms of said Agreement. In the event said County shall exercise and give effect to such right, Principal shall be liable hereunder to pay to and indemnify the County, upon completion of such construction, the final cost to the County thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which County may sustain on account of a failure of the Principal to carry out and execute all the provisions of said Agreement. A contest in good faith by Principal of the interpretation of its obligations under this Bond and the Agreement shall not constitute failure or refusal of Principal to perform hereunder.

IN WITNESS WHEREOF, Principal has executed these presents this 18th day of January, 1989.

Address:  
3250 S.W. Third Avenue  
Miami, Florida 33129

**THE DELTONA CORPORATION**

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

*Earle D. Cortright, Jr.*  
Earle D. Cortright, Jr.  
Executive Vice President

Attest: \_\_\_\_\_

*Sharon J. Hunmerhielm*  
Sharon J. Hunmerhielm  
Assistant Secretary

**EXHIBIT B**

## CERTIFIED ESTIMATED COST TO COMPLETE

**DATE:** December 2, 1988

**TO:** The Deltona Corporation  
3250 S.W. Third Avenue  
Miami, Florida 33129

Attention: Mr. C. E. Hinkley  
Vice President  
Construction & Development

**SUBJECT:** Certified Estimated Cost to Complete, Proposed Work at  
Marion Oaks Unit ELEVEN, Marion County, Florida

Dear Mr. Hinkley:

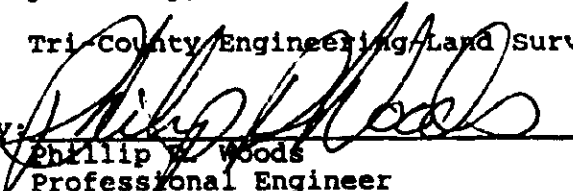
In accordance with your request, we are submitting this certification for the estimated cost to complete the subject project. This estimate as shown in Exhibit "1", attached hereto, (the unrecorded original of which is on file with the Marion County Engineering Department) is based on the paving and drainage plans as previously provided to Marion County, Florida. The estimated 1998 cost assumes an inflation factor of forty-one percent (41%) per schedule as provided by the Division of Florida Land Sales, Condominiums and Mobile Homes.

<u>Items of Work</u>		<u>Estimated Cost</u>
Streets and		
Drainage	1988 Cost	\$ 1,628,835
	1998 Cost	\$ 2,296,657

I hereby certify that to the best of my knowledge and belief, the above cost to complete estimates are an accurate and complete representation of the costs to complete the improvements in Schedule Area or Areas as depicted on the Map, attached to the Modification and Extension Agreement as Exhibit "A".

Respectfully,

Tri-County Engineering Land Surveying

By:   
Phillip Woods  
Professional Engineer  
(Registered Engineer No. 35231)

(SEAL)

12/2/88

EXHIBIT C



CERTIFICATE OF SATISFACTORY COMPLETION

County Engineer  
Marion County, Florida  
3230-D S.E. Maricamp Road  
Ocala, Florida 32671

Re: Marion Oaks Unit \_\_\_\_\_, as recorded in Plat Book \_\_\_\_\_  
at Pages \_\_\_\_\_ through \_\_\_\_\_, inclusive of the Public Records  
of Marion County, Florida

Sir:

I hereby certify that I have inspected that portion of the above-described subdivision identified as Schedule Area No. \_\_\_\_\_ in that certain Agreement for Construction and Maintenance of Streets, Alleys and Other Rights of Way, Etc. entered into between The Deltona Corporation and Marion County, Florida, dated \_\_\_\_\_, as modified and extended (the "Agreement") and found that all improvements as shown on the approved Preliminary Paving and Drainage Plans, the Final Plans and Profiles, and the Standard Specifications for Paving, Drainage and Related Facilities for Marion County Subdivision Regulations (Standard Specifications) which were in effect on \_\_\_\_\_ (the date of approval of the above described subdivision) including approved changes, are fully and satisfactorily complete.

I further certify that I have examined the results of the required Quality Control Test made by an independent testing laboratory on the improvements in Schedule Area No. \_\_\_\_\_ and found that the required work was completed on or before \_\_\_\_\_, and the results of the tests conform to the requirements of the Standard Specifications.

Copies of such tests have been previously submitted to the County.

I am forwarding herewith two (2) prints of the Improvement Plan of subject subdivision which has been revised to show the improvements as actually constructed including dimensions and elevations. Field changes, if any, have been identified as such. The plan has been certified as correctly indicating actual conditions of construction.

By: \_\_\_\_\_  
Professional Engineer  
(Registered Engineer No. \_\_\_\_\_)

Date: \_\_\_\_\_

EXHIBIT D

**DISCHARGE AND RELEASE  
OF  
CORPORATE PERFORMANCE BOND**

This Discharge and Release of Corporate Performance Bond is given this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by **MARION COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County").

**RECITALS:**

1. On \_\_\_\_\_, 1989, The Deltona Corporation, a Delaware corporation authorized to transact business in the State of Florida ("Deltona") and County entered into a Modification and Extension of Agreement for Construction and Maintenance of Streets, Alleys and Other Rights of Way, Etc. (the "Modification") with respect to a certain plat of a subdivision known as Marion Oaks Unit \_\_\_\_\_.

2. In accordance with the Modification, Deltona, as Principal tendered and County accepted a Corporate Performance Bond, dated the \_\_\_\_ day of \_\_\_\_\_, 1989, as assurance for the construction and maintenance of the improvements. In accordance with the the Modification, County has contemporaneously herewith accepted a portion or all of the improvements assured by the Corporate Performance Bond and Deltona, as Principal, is entitled to a discharge and release from the Corporate Performance Bond of an amount attributable to the cost to complete the accepted improvements or an amount attributable to the assurance of the maintenance of the accepted improvements, as applicable.

NOW, THEREFORE, in consideration of Deltona's faithful performance of the Corporate Performance Bond, County does hereby provide as follows:

1. The above Recitals are true and are incorporated herein.

2. The amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) is hereby discharged and released from that certain Corporate Performance Bond, dated the \_\_\_\_ day of \_\_\_\_\_, 1989.

3. That the remaining portion of the Corporate Performance Bond shall remain in full force.

DULY ADOPTED by the Board of County Commissioners of Marion County, Florida, in regular session this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**BOARD OF COUNTY COMMISSIONERS  
OF MARION COUNTY, FLORIDA**

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

Chairman

Attest: \_\_\_\_\_

Clerk

**EXHIBIT E**