

CONTRACT

THIS CONTRACT (this "Agreement") is entered into by and between Isles of Sarasota Homeowners Association, Inc. (the "Association"), a Florida corporation not-for-profit responsible for the improvement, operation and maintenance of the Association property in accordance with the Declaration of Covenants, Conditions, and Restrictions for Isles of Sarasota recorded in the Official Records of Sarasota County, Florida at Instrument # 2005165352 on July 27, 2005 and whose address is c/o Mr. William Crosley, Manager, 5901 Benevento Drive, Sarasota, Florida 34238 and _____ (the "Contractor"), whose address is _____, on this ____ day of _____, 20__ (the "Effective Date").

In consideration of the mutual covenants hereinafter set forth, the Association and the Contractor agree as follows:

1. **SCOPE OF WORK.** The Contractor shall furnish and pay for all necessary labor, materials, equipment, tools, construction equipment and transportation, and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work, in the removal, replacement, repair or improvement of , but not limited to the following (the "Work"):

See Contractor's Proposal dated _____, attached hereto and incorporated herein.

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. The Contractor shall be responsible to the Association for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a subcontract with the Contractor. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor warrants to the Association that the Work will be of good quality, free from defects not inherent in the quality required or permitted, and that the Work will conform with all requirements of this Agreement.

The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 1 employees on the Work and other persons who may be affected thereby;
- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and
- 3 other property at the site or adjacent thereto.

Contractor shall give all notices and comply with all laws, rules, regulations, ordinances, building codes, requirements and orders of city, county, state and federal authorities, which are applicable to the Work. Contractor shall furnish without any extra charge any additional materials and labor which may be

required to comply with the above. Contractor shall obtain, at Contractor's cost, any and all necessary permits for the Work.

2. **CONTRACT TIME.** Execution of this Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract. Contractor agrees to immediately prepare for the performance of its Work and be prepared to begin such Work as soon as instructed by the Association. Contractor will carry on its Work promptly and efficiently. The Work shall be completed by _____, 201____, subject to authorized written change orders and adjustments, based on the Association's notice to proceed issued no later than _____, 201____. **Time is of the essence of this Agreement.** Any breach of same shall go to the essence hereof, and Contractor, in agreeing to complete the Work within the time herein mentioned, has taken into consideration and made allowances for all hindrances and delays but does not account for time lost due to acts of God, nature or delays by the Association. Association shall not be liable to Contractor for delays.

3. **CONTRACT PRICE.** The cost of the Work shall be as follows:

\$ _____

4. **PAYMENT PROCEDURES.** Association shall pay Contractor in accordance with the following draw schedule:

- A. _____% upon _____
- _____ % upon _____
- _____ % upon _____
- _____ % upon _____
- 100%

No payments shall be due Contractor unless and until the Contractor furnishes the Association an executed WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT from Contractor, each employee furnishing labor, and any subcontractor or supplier to Contractor, in accordance with Section 713.20, Florida Statutes, and, upon completion of the Work, an executed WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT from Contractor, each employee furnishing labor and any subcontractor or supplier to Contractor, in accordance with Section 713.20, Florida Statutes. Finally, the Contractor shall not be entitled to final payment unless and until Contractor has furnished the Association a fully executed CONTRACTOR'S FINAL PAYMENT AFFIDAVIT in accordance with Section 713.06, Florida Statutes.

Contractor shall make payments promptly to its laborers, vendors, subcontractors and to material suppliers used by it in the performance of its Work. The Association may also withhold any payment due to Contractor on account of defective or deficient Work not remedied, claims filed, reasonable evidence indicating probability of filing claims, failure of Contractor to make payments properly to laborers, subcontractors, suppliers or laborers, or the reasonable belief of the Association that the Work to be performed under this Agreement that remains unfinished cannot be completed for the balance then unpaid.

5. **SCHEDULING.** The onsite Manager should be contacted before commencing any work. If a staging area is needed, the Manager will designate an appropriate area. Any work requiring loud or

unusual noise, i.e. saws, drills, hammers, shall not be performed before 9:00 a.m. EST and shall not continue past 4:00 p.m. EST Monday through Friday unless approved by the Association in advance.

6. **CHANGES.** Changes in the Work may be accomplished after execution of the Contract, and without invalidating this Agreement, only by written Change Order, signed by both parties in advance of commencing or furnishing such change and when so made, the value of the Work or materials added or omitted and any extension or deduction from the time of completion necessitated thereby shall be computed and determined by Contractor, subject to the written approval and acceptance by the Association, and the amount so determined shall be paid the Contractor as follows: 50% deposit prior to commencement of the additional work associated with the change and the remaining 50% paid upon completion of the change in the work, notwithstanding other payments provisions in this Contract, or deducted from the Contract Price at time of completion.

7. **CORRECTION OF WORK.** Contractor shall promptly correct Work rejected by the Association or failing to conform to the requirements of this Agreement, whether observed before or after completion and whether or not installed, in place or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for any consultant's services and expenses made necessary thereby. The Contractor shall commence correction of the Work within five (5) days after the date of written notice from the Association.

If, within one year after completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of this Agreement, the Contractor shall correct it promptly after receipt of written notice from the Association. This period of one year shall be extended with respect to portions of Work first performed after completion by the period of time between completion and the actual performance of the Work. The obligations under this subparagraph shall survive acceptance of the Work under this Agreement and termination of this Agreement. The Association shall give such notice promptly after discovery of the condition.

The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of this Agreement and are neither corrected by the Contractor nor accepted by the Association. If the Contractor fails to correct nonconforming Work within a reasonable time, the Association may correct it. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Association, the Association may remove it and the Contractor agrees to pay the Association for all costs incurred therewith. If the Association prefers to accept Work which is not in accordance with the requirements of this Agreement, the Association may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8. **INSURANCE.** Contractor shall secure, pay for, and maintain such liability and other insurance coverage as appropriate for the Work being performed, including CGL coverage in an amount of at least \$1 million, and as will provide protection from claims which may arise as a result of Contractor's performance of the Work for the following: claims under workers' compensation, disability benefits or other similar employee benefits acts; claims for damages because of bodily injury, occupational disease or sickness, or death of Contractor's employees; claims for damages because of bodily injury, occupational disease or sickness, or death of persons other than Contractor's employees; claims for damages insured by reasonably available personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any reason; claims for damages other than to the Work itself because of injury to or destruction of

tangible property wherever located, including loss of use resulting therefrom; claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle. Prior to commencing its Work, Contractor shall furnish the Association certificates of coverage for such insurance, which name the Association as an additional insured under such policies. These certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies shall not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Association.

9. **BONDS**. Before commencing the Work, the Contractor shall obtain a Payment and Performance Bond from a Surety licensed to issue such bonds in the State of Florida. The Payment and Performance Bond shall cover the full and faithful performance of the Contractor's obligations under this Agreement and the payment of all obligations arising under this Agreement up to the Contract Price

10. **INDEMNITY**. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Association, its agents and employees, or any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees and court costs, arising out of or resulting from Contractor's performance or non-performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified under this paragraph by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts The Contractor acknowledges that ten (\$10.00) dollars has been included in the Contractor's bid, which represents the cost to the Association for the provision of the indemnification required in accordance with this paragraph and that such indemnification shall not exceed \$1 million.

11. **LIENS**. Contractor will save and keep the Work and Association's property free from all construction liens by its laborers, subcontractors or suppliers. If Contractor fails to remove such lien(s) by bonding or otherwise within thirty (30) days or if Contractor records a lien against the Association property, the Association may retain sufficient funds, out of any money due or thereafter to become due to Contractor to pay the same, including reasonable attorney's fees and the cost of any lien bonds that the Association may elect to obtain.

12. **WARRANTY**. Contractor expressly warrants all Work, workmanship and materials, whether by manufacturer warranty or otherwise, for a period of _____ (___) years from completion of the Work.

13. **INTEGRATION**. This Agreement incorporates Contractor's Proposal dated _____ (the "Contractor's Proposal") and constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No change, waiver or modification of this Agreement shall be valid unless in writing and signed by both parties. If this Agreement conflicts with the Contractor's Proposal, this Agreement shall govern and control.

14. **SUCCESSORS AND ASSIGNS.** The Association and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. Neither party to this Agreement shall assign this Agreement as a whole without written consent of the other. In case the Contractor, on written consent of the Association, assigns all or any part of any money due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement.

15. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Florida. Jurisdiction and venue for any action involving a dispute arising under this Contract or any action interpreting or enforcing any provision of this Agreement, shall lie exclusively in a court of competent jurisdiction located in Sarasota County, Florida.

16. **DISPUTE RESOLUTION.** All disputes arising under this Agreement shall be resolved through litigation. The prevailing party in any such action shall be entitled to collect from the other party its reasonable attorneys' fees, including paralegal fees and appellate attorneys' fees, and all costs incurred in prosecuting or defending any such action. The prevailing party shall be deemed to be the party who recovers a net recovery or has this Agreement interpreted or enforced in its favor or consistent with its position in the litigation.

17. **SEVERABILITY.** If any part or portion of this Agreement is, for any reason, held or declared to be inoperative or void, it is the intent of the parties that the remainder of this Agreement, after exclusion of such inoperative or invalid part, shall remain valid as if such excluded part had never been included.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Association

Contractor

By: _____

By: _____

Printed Name: _____

Printed Name: _____

As its: _____

As its: _____