

**THIS INSTRUMENT PREPARED BY AND  
RETURN TO:**

**Department of Transportation  
1500 Monroe Street  
Fort Myers, Florida 33901**

**STRAP NO:**

**PROPERTY ADDRESS:**

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**ALTERNATIVE MATERIALS CONSTRUCTION,  
MAINTENANCE AND HOLD  
HARMLESS AGREEMENT**

This Agreement is made on \_\_\_\_\_, \_\_\_\_\_ by and between Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida, 33990 (County), and \_\_\_\_\_, whose address is \_\_\_\_\_ (Owner).

**WHEREAS**, Owner is the fee title holder to the property located in Lee County and specifically described in Exhibit "A"; and

**WHEREAS**, County has maintenance jurisdiction over the road bordering Owner's property described in Exhibit "A". This road is commonly known as \_\_\_\_\_; and

**WHEREAS**, Owner has obtained County approval for construction on the property described in Exhibit "A" in accordance with permit number \_\_\_\_\_; and

**WHEREAS**, in order to improve the aesthetic appearance of the construction approved under the County permit and enhances the property marketability, the Owner desires to use \_\_\_\_\_, rather than the standard construction materials required by the Lee County Land Development Code; and

**WHEREAS**, the County does not object to the Owner's use of alternative construction materials, as long as the Owner agrees to maintain, repair and replace the alternative construction materials in perpetuity and at no cost to the County.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement and such other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. Owner will install improvements using alternative construction materials within the County maintained right-of-way adjacent to the property described in Exhibit "A", in

accordance with the plans and specifications depicted in attached Exhibit "B", as approved by the County through the appropriate permitting process. Exhibit "B" identifies the affected right-of-way and type of alternative materials that will be installed.

2. Owner agrees to perpetually maintain the improvements installed as indicated on Exhibit "B", at no cost to the County. This includes timely replacement of damaged or broken materials and the avoidance of uneven pavement surfaces. Owner is required to perform all maintenance at his expense.

3. In the event the Owner fails to make timely repairs, the parties agree that the County may revoke the underlying County approval for the improvements. The County agrees to provide the Owner with 30 days written notice, identifying the repairs necessary, before revoking the permit.

4. Owner may alter the improvements within the right-of-way area, provided prior approval for the alteration is obtained from the Lee County Department of Transportation (DOT). Approval to alter the improvements will not diminish the Owner's responsibility for continued maintenance. Upon approval of the alteration, Exhibit "B" will also be deemed modified. However, DOT is under no obligation to approve a proposed alteration.

5. Owner agrees to prevent the creation of any obstructions or conditions that may be dangerous to the public.

6. Owner agree to indemnify, hold harmless and defend the County and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Owners, or the Owners' agents, consultants, employees or subcontractors during the installation or maintenance of the improvements identified in Exhibit "B" or as contemplated by this Agreement. This includes any cost related to these actions.

7. Owner agrees to assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident.

8. Owner agrees to assume all responsibility for loss because of neglect or violation of any state or federal law or local government rule, regulation or order. The Owner will give all required notices relating to the improvement or its maintenance contemplated by this Agreement to the proper authorities. In addition, Owner will obtain all necessary permits and licenses and pay all appropriate fees.

9. Owner agrees to repair any damage that may occur to any adjoining building, structure, utility easement, roadway, County property or private property during the course of this work. Owner also agrees to repair, restore or rebuild any damage to County property caused by the installation, construction or maintenance of the improvements contemplated by this Agreement.

10. If the right-of-way adjacent to the Owner's property is widened, repaired, replaced or reconstructed, then the Owner agrees to remove, relocate or replace the improvements as determined appropriate by the County, upon 30 days written notice. The cost

of relocation, removal or replacement of the Owner's improvements be borne entirely by the Owner.

11. If the County, or its contractor, needs to make any roadway improvements on an expedited basis, where the normal period of 30 days notice is not appropriate or possible, then Owner agrees to allow the County to remove the improvements. However, Owner understands and agrees that replacement of the improvements will be at Owners expense.

12. If any public utility, including water, sewage, gas, electric, telephone or cable, is scheduled for placement, replacement, repair or reconstruction within the right-of-way adjacent to the property described in Exhibit "A", and this activity requires the removal or relocation of the improvements identified in Exhibit "B", then Owner agrees to remove and replace the improvements at his sole expense within 30 days of receiving written notice.

13. This Agreement will continue in full force and effect until either the Board of County Commissioners adopt a resolution vacating the road right-of-way adjacent to the Owner's property or a written notice terminating this Agreement is delivered to each party. If the Owner terminates this Agreement, then the County may, by written notice delivered within 30 days after receipt of Owner's termination notice, require Owner to remove, at Owner's sole expense, all improvements placed within the right-of-way in accordance with this Agreement.

14. This Agreement runs with the property described in Exhibit "A".

15. This Agreement is binding upon and inures to the benefit of the parties, their respective legal representatives, successors and assigns.

16. Owner may assign the rights and obligations set forth in this Agreement. Owner understands Owner will remain responsible for compliance with the terms of this Agreement until the assignee provides written documentation, acceptable to the County Attorney's Office, accepting responsibility for compliance with the terms and conditions of this Agreement, including indemnification. However, a transfer in the title to the property described in Exhibit "A" carries with it the responsibility for compliance with this Agreement as though the Agreement were a covenant on the property, with no further action by the successor titleholder.

17. This Agreement will be construed and enforced in accordance with Florida Law.

18. This Agreement constitutes the entire Agreement between the parties and may not be modified except by written agreement executed with the same formality.

In witness of the above, the parties execute this Agreement.

WITNESSES:

OWNER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

**STATE OF FLORIDA**

**COUNTY OF LEE**

The foregoing Agreement was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_. He/she is personally known to me or has produced the following identification: \_\_\_\_\_.

\_\_\_\_\_  
**Notary Signature**

\_\_\_\_\_  
**Printed Name**

**ATTEST: LEE COUNTY, FLORIDA**

CHARLIE GREEN, CLERK

By:

\_\_\_\_\_  
**Deputy Clerk**

By:

\_\_\_\_\_  
**Dave Loveland , Director  
Department of Transportation**

**APPROVED AS TO FORM**

By:

\_\_\_\_\_  
**Lee County Attorney**

Cc: DOT Operations  
DOT ROW Section