



SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____, 20____.

NAME OF SUBDIVIDER: _____
(referred to as "SUBDIVIDER").

NAME OF SUBDIVISION: _____ No. of Lots: _____
(referred to as "SUBDIVISION")

PLAT APPROVAL BY CITY COUNCIL _____

IMPROVEMENT PLANS APPROVED ON: _____
(referred to as "Improvement Plans").

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$ _____

SURETY:

BOND NOS: _____

SURETY: _____

-OR-

IRREVOCABLE STAND-BY LETTER OF CREDIT NO. _____

FINANCIAL INSTITUTION: _____

-OR-

CASH/CERTIFICATE OF DEPOSIT, AGREEMENT DATED: _____

FINANCIAL INSTITUTION: _____

This Agreement is made and entered into by and between the City of Mebane, a municipal corporation of the State of North Carolina, hereinafter referred to as "CITY", and the SUBDIVIDER.

RECITALS

A. SUBDIVIDER has presented to CITY for approval and recordation, a final subdivision map of a proposed SUBDIVISION pursuant to provisions of the Subdivision Act of the State of North Carolina and the CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and the CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this Agreement as the "Subdivision Laws".

B. A tentative map of the SUBDIVISION has been approved, subject to the Subdivision Laws and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the Office of the City Clerk and is incorporated into this Agreement by reference.

C. The Subdivision Laws establish as a condition precedent to the approval of a final map that SUBDIVIDER must have complied with the Resolution of Approval and must have either (a) completed, in compliance with CITY standards, all of the improvements and land development work required by the Subdivision Laws or the Resolution of Approval or (b) have entered into a secured agreement with CITY to complete the improvements and land development within a period of time specified by CITY.

D. In consideration of the approval of a final map for the SUBDIVISION by

the City Council, SUBDIVIDER desires to enter into this Agreement, whereby SUBDIVIDER promises to install and complete, at SUBDIVIDER's own expense, all the public improvement work required by CITY in connection with the proposed SUBDIVISION. SUBDIVIDER has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.

E. Complete Improvement Plans for the construction, installation, and completion of the improvements have been prepared by SUBDIVIDER and approved by the City Engineer. The Improvement Plans numbered as referenced previously in this Agreement are on file in the Office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.

F. An estimate of the cost for construction of the public improvements and performing land development work in connection with the improvements according to the Improvement Plans has been made and has been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement.

G. CITY has adopted standards for the construction and installation of improvements within the CITY. The Improvement Plans have been prepared in conformance with CITY standards in effect on the date of the Resolution of Approval.

H. SUBDIVIDER recognizes that by approval of the final map for SUBDIVISION, CITY has conferred substantial rights upon SUBDIVIDER, including the right to sell, lease, or finance lots within the SUBDIVISION. As a result, CITY will be damaged to the extent of the cost of installation of the improvements by

SUBDIVIDER's failure to perform its obligations to commence construction of the improvements by the time established in this Agreement. CITY shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of a default by SUBDIVIDER. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the SUBDIVISION constitutes an adequate remedy for default by the SUBDIVIDER shall be within the sole discretion of CITY. Such a remedy would normally only be appropriate when no lots have been conveyed pursuant to the approved map.

NOW, THEREFORE, in consideration of the approval by the City Council of the final map of the SUBDIVISION, SUBDIVIDER and CITY agree as follows:

(1) SUBDIVIDER's Obligation to Construct Improvements.

SUBDIVIDER shall:

(a) Comply with all the requirements of the Resolution of Approval, and any amendments thereto, and with the provisions of the Subdivision Laws.

(b) Complete at SUBDIVIDER's own expense, all the public improvement work required by the Resolution of Approval in conformance with approved Improvement Plans within _____ months from date of execution of this Agreement, provided however, that the improvements shall not be deemed to be completed until accepted as provided in Section (17) herein.

(c) Furnish the necessary materials for completion of the public Improvements in conformity with the Improvement Plans.

(d) Acquire, or pay the cost of acquisition by CITY, and dedicate all

rights-of-way, easements and other interests in real property for construction and installation of the public improvements, free and clear of all liens and encumbrances.

The SUBDIVIDER's obligations with regard to acquisition by CITY of off-site rights-of-way, easements and other interests in real property may be subject to a separate Agreement between SUBDIVIDER and CITY. SUBDIVIDER shall also be responsible for obtaining any public or private sanitary sewer, domestic water, drainage, and/or utility easements or authorization to accommodate the SUBDIVISION.

(e) Commence construction of the improvements by the time established in Section (22) of this Agreement and complete the improvements by the deadline stated in Section (1) (b) above, unless a time extension is granted by the CITY as authorized in Section (22).

(f) Install street name signs conforming to CITY standards. Permanent street name signs shall be installed before acceptance of the improvements by CITY.

(2) Security. SUBDIVIDER shall at all times guarantee SUBDIVIDER's performance by furnishing to CITY, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by CITY for the purposes and in the amounts as follows:

(a) to assure faithful performance of this Agreement in regard to said improvements in an amount of 125 % of the estimated cost of the improvements.

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another

approved security, the replacement shall: 1) comply with all the requirements for security in this Agreement; 2) be provided to the City Engineer to be filed with the City Clerk and, upon filing, 3) shall be deemed to have been made a part of and incorporated into this Agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

(4) Alterations to Improvement Plans.

a. Any changes, alterations or additions to the Improvement Plans not Exceeding ten percent (10%) of the original estimated cost of the improvements, which are mutually agreed upon by CITY and SUBDIVIDER, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvement, SUBDIVIDER shall provide improvement security for faithful performance as required by Section (3) of this Agreement for one hundred twenty five percent (125%) of the total estimated cost of the improvements as changed, altered, or amended, minus any completed partial releases allowed by Section (6) of this Agreement.

b. The SUBDIVIDER shall construct the improvements in accordance with CITY standards in effect at the time of adoption of the Resolution of Approval. CITY reserves the right to modify the standards applicable to the SUBDIVISION and this Agreement, when necessary to protect the public safety or welfare or comply with applicable state or federal law or CITY zoning ordinances. If SUBDIVIDER requests and is granted an extension of time for completion of the improvements, CITY may apply the standards in effect at the time of the extension.

(5) Inspection. SUBDIVIDER shall at all times maintain proper facilities and safe access for inspection of the public improvements by CITY inspectors and to the shops wherein any work is in preparation. Upon completion of the work, SUBDIVIDER shall request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City . At the option of City, such inspections and certifications may be made by a duly licensed engineer contracted by Developer. No improvements shall be finally accepted by the City unless all aspects of the work have been inspected and completed in accordance with the Improvement Plans. When applicable law requires an inspection to be made by CITY at a particular stage of the work of constructing and installing such improvements, CITY shall be given timely notice of SUBDIVIDER's readiness for such inspection and SUBDIVIDER shall not proceed with additional work until the inspection has been made and the work approved. SUBDIVIDER shall bear all costs of inspection and certification. No improvements shall be deemed completed until accepted by the City pursuant to Section (17) herein.

(6) Release of Securities. The securities required by this Agreement shall be released as follows:

(a) Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

(b) The City Engineer may release a portion of the security given for faithful performance of improvement work as the improvement progresses upon application thereof by the SUBDIVIDER; provided, however, that no such release shall be for an amount less than twenty-five percent (25%) of the total improvement security given for faithful performance of the improvement work and that the security shall not be reduced to an amount less than fifty percent (50%) of the total improvement security given for faithful performance until final completion and acceptance of the improvement work. In no event shall the City Engineer authorize a release of the improvement security which would reduce such security to an amount below that required to guarantee the completion of the improvement work and any other obligation imposed by this Agreement.

(c) CITY may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

(7) Injury to Public Improvements, Public Property or Public Utilities Facilities. SUBDIVIDER shall replace or repair or have replaced or repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of North Carolina, or any agency or political subdivision thereof, or by CITY or any public or private utility corporation or by any combination of

such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

(8) Permits. SUBDIVIDER shall, at SUBDIVIDER's expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

(9) Default of SUBDIVIDER.

(a) Default of SUBDIVIDER shall include, but not limited to,

(1) SUBDIVIDER's failure to timely commence construction of this Agreement;

(2) SUBDIVIDER's failure to timely complete construction of the improvements;

(3) SUBDIVIDER's failure to timely cure any defect in the improvements;

(4) SUBDIVIDER's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which SUBDIVIDER fails to discharge within thirty (30) days;

(5) the commencement of a foreclosure action against the SUBDIVISION or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or

(6) SUBDIVIDER's failure to perform any other obligation under this Agreement.

(b) CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER's obligations under this Agreement. CITY shall have

the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate CITY's damages in event of default by SUBDIVIDER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, CITY's damages for SUBDIVIDER's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by CITY for the completion of the public improvements in accordance with the improvement plans and specifications contained herein.

In the event of SUBDIVIDER's default under this Agreement, SUBDIVIDER authorizes CITY to perform such obligation twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the entire cost of such performance by CITY.

CITY may take over work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby. In such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for performance of the work.

c. In the event that SUBDIVIDER fails to perform any obligation

hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including but not limited to fees and charges of architects, engineers, attorneys, other professionals, and court costs.

d. The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of SUBDIVIDER.

(10) Warranty. SUBDIVIDER shall guarantee or warranty the work done pursuant to this Agreement for a period of one year after final formal acceptance of the SUBDIVISION by the City against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, or constructed by SUBDIVIDER fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should SUBDIVIDER fail to act promptly or in accordance with this requirement, SUBDIVIDER hereby authorizes CITY, at CITY's option, to perform the work twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the cost of such work by CITY. Should CITY determine that urgency requires repairs or replacements to be made before SUBDIVIDER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and SUBDIVIDER shall pay to CITY the cost of such repairs?

(11) SUBDIVIDER Not Agent of CITY. Neither SUBDIVIDER nor any of SUBDIVIDER's agents, contractors or subcontractors are or shall be considered to be agents of CITY in connection with the performance of SUBDIVIDER's obligations under this Agreement.

(12) Injury to Work. Until such time as the improvements are accepted by CITY, SUBDIVIDER shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all improvements required by this Agreement are fully completed and accepted by CITY, SUBDIVIDER will be responsible for the care, maintenance of, and any damage to such improvements. CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by SUBDIVIDER.

(13) Environmental Warranty. Prior to the acceptance of any dedications or improvements by CITY, SUBDIVIDER shall certify and warrant that neither the property to be dedicated nor SUBDIVIDER is in violation of any environmental law and neither the property to be dedicated nor the SUBDIVIDER is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither SUBDIVIDER nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. SUBDIVIDER has not caused or permitted the release of, and has

no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. SUBDIVIDER's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. SUBDIVIDER shall give prompt written notice to CITY at the address set forth herein of:

(a) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;

(b) Any claims made or threatened by any third party against CITY or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and

(c) SUBDIVIDER's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which is it is intended, transferability or suit under any environmental law.

(14) Other Agreements. Nothing contained in this Agreement shall preclude CITY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to

the provisions of the CITY ordinances providing therefore, nor shall anything in this Agreement commit CITY to any such apportionment.

(15) SUBDIVIDER's Obligation to Warn Public During Construction. Until formal final acceptance of the improvements, SUBDIVIDER shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.

(16) Vesting of Ownership. Upon formal final acceptance of the work by CITY , ownership of the improvements constructed pursuant to this Agreement shall vest in CITY.

(17) Final Acceptance of Work. Acceptance of the work on behalf of CITY shall be made by the City upon recommendation of the responsible Engineer after final completion and inspection of all improvements. The City shall act upon the Engineer's recommendation within sixty (60) days from the date the responsible Engineer certifies that the work has been finally completed, as provided in Section (6). Such acceptance shall not constitute a waiver of defects by CITY. Final acceptance shall be memorialized by the execution of a certificate of acceptance by the Public Works Director of the City which said certificate shall be filed with the City Clerk with a copy to the Developer. All warranties and indemnities shall run from the date of said certificate of acceptance. As to streets within the corporate limits, such acceptance shall also be deemed acceptance for maintenance by the City.

(18) Indemnity/Hold Harmless. CITY or any officer or employee hereof shall not be liable for any injury to persons or property occasioned by reason of the acts

or omissions of SUBDIVIDER, its agents, or employees, contractors and subcontractors in the performance of this Agreement. SUBDIVIDER further agrees to protect, defend, indemnify and hold harmless CITY, its officials, boards and commissions, and members thereof, agents and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of SUBDIVIDER, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands causes of action, liability, or loss arising out of the sole active negligence of the CITY, its officials, boards, commissions, the members thereof, agents, and employees, including all claims, demands, causes of action, liability, or loss because of, arising out of, in whole or in part, the design or construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said SUBDIVISION, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other public improvements. Acceptance by CITY of the improvements shall not constitute as assumption by CITY of any responsibility for any damage or taking covered by this Section. CITY shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or maps, regardless of any negligent action or inaction taken by CITY in approving the plans or map, unless the particular improvement design was specifically required by CITY over written objection by SUBDIVIDER submitted to the City Engineer before approval of the

particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After acceptance of the improvements, the SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, SUBDIVIDER shall not be responsible for routine maintenance. Provisions of this section shall remain in full force and effect for three (3) years following the acceptance by CITY of the improvements. It is the intent of this Section that SUBDIVIDER shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that CITY shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this Section.

SUBDIVIDER shall reimburse CITY for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by CITY in enforcing the provisions of this Section.

(19) Personal Nature of SUBDIVIDER'S Obligations. All of SUBDIVIDER's obligations under this agreement are and shall remain the personal obligations of SUBDIVIDER notwithstanding a transfer of all or any part of the property within the SUBDIVISION subject to this Agreement, and SUBDIVIDER shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the SUBDIVISION or to any other third party without the express written consent of CITY.

(20) Sale or Disposition of SUBDIVISION. Seller or other

SUBDIVIDER may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the SUBDIVIDER may request a release or reduction of the securities required by this Agreement. Nothing in this novation shall relieve the SUBDIVIDER of the obligations under Section (18) for the work or improvement done by SUBDIVIDER.

(21) Time of the Essence. Time is of the essence in the performance of this Agreement.

(22) No Vesting of Rights. Performance by SUBDIVIDER of this Agreement shall not be construed to vest SUBDIVIDER’s rights with respect to any change in any zoning or building law or ordinance.

(23) Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States mail. Notices shall be addressed as follows unless a written change of address is filed with the City:

Notice to CITY: City of Mebane
106 E. Washington Street
Mebane, NC 27302

Notice to SUBDIVIDER: _____

Notice to SURETY: _____

(24) Compliance With Laws. SUBDIVIDER, its agents, employees, contractors and subcontractors shall comply with all federal, state and local laws in the performance of the improvements and land development work required by this Agreement.

(25) Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

(26) Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

(27) Litigation or Arbitration. In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.

(28) Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into in the terms of this Agreement.

(29) Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.

(30) Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

(31) Jurisdiction. Jurisdiction of all disputes over the terms of this Agreement shall be in the County of Alamance, State of North Carolina.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date hereinabove first written; by CITY, by and through its Mayor.

SUBDIVIDER

(Proper Notarization of SUBDIVIDER's signature is required and shall be attached)

CITY OF MEBANE

By: _____
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

**CITY OF MEBANE
STANDARD FORM
SUBDIVISION
FAITHFUL PERFORMANCE BOND**

NAME OF SUBDIVISION: _____

NAME OF SUBDIVIDER: _____

NAME OF SURETY: _____

EFFECTIVE DATE: _____

AMOUNT OF BOND: _____

BOND NUMBER: _____

PREMIUM: _____

KNOW ALL MEN BY THESE PRESENTS: That the person, firm, corporation, entity, or otherwise, named on line 2 above, without regard to gender and number, hereinafter referred to as **PRINCIPAL**, and the corporation named on Line 3 above, a corporation authorized to do business in the State of North Carolina and presently possessed of authority under Title 6 of the United States Code to do business under Sections 6 to 13 thereof, in the aggregate amounts hereof, hereinafter referred to as **SURETY**, are jointly and severally held and firmly bound unto the City of Mebane, a municipal corporation of the State of North Carolina, hereinafter referred to as **CITY**, in the sum mentioned on Line 5 above, for the faithful performance of that certain **SUBDIVISION IMPROVEMENT AGREEMENT** between **PRINCIPAL** and **CITY** regarding the subdivision named on Line 1 above, as required by the provisions of the Subdivision Map Act and **CITY** ordinances, resolutions, rules, and regulations, for the

payment of which sums well and truly to be made, PRINCIPAL and SURETY hereby bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that if the said PRINCIPAL shall faithfully perform the covenants, conditions, and agreements contained in that certain SUBDIVISION IMPROVEMENT AGREEMENT between PRINCIPAL and CITY regarding the subdivision named on Line 1 of Page 1 hereof, which said Agreement is by this reference incorporated herein, on its part to be kept and performed, in a manner and form therein specified, and shall furnish material in compliance with the specifications and perform all that certain work and improvement in said CITY which is more particularly described in said SUBDIVISION IMPROVEMENT AGREEMENT, then the obligation with respect to the faithful performance is by this reference incorporated herein.

The said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the SUBDIVISION IMPROVEMENT AGREEMENT or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waiver notice of any such change, extension of time, alteration or addition to the terms of the SUBDIVISION IMPROVEMENT AGREEMENT, the work, the specifications or any feature or item of performance thereunder. In the event it becomes necessary for CITY to bring an action to enforce this bond, SURETY shall pay CITY's reasonable attorney's fees and court costs in connection therewith.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have executed this instrument on the date mentioned on Line 4 of Page 1 hereof.

PRINCIPAL

PRINCIPAL

SURETY _____

SURETY _____

(Notarial acknowledgement of execution by ALL PRINCIPALS and SURETY must be attached.)

**CITY OF MEBANE
STANDARD FORM
SUBDIVISION
PAYMENT BOND
(LABOR & MATERIALS)**

NAME OF SUBDIVISION: _____

NAME OF SUBDIVIDER: _____

NAME OF SURETY: _____

EFFECTIVE DATE: _____

AMOUNT OF BOND: _____

BOND NUMBER: _____

PREMIUM: _____

KNOW ALL MEN BY THESE PRESENTS: That the person, firm, corporation, entity, or otherwise, named on line 2 of Page 1 hereof without regard to gender and number, hereinafter referred to as PRINCIPAL, and the corporation named on Line 3 of Page 1 hereof, a corporation authorized to do business in the State of North Carolina and presently possessed of authority under Title 6 of the United States Code to do business under Sections 6 to 13 thereof, in the aggregate amounts hereof, hereinafter referred to as SURETY, are jointly and severally held and firmly bound unto and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used, in, upon, for or about the performance of the work contracted to be executed or performed under the terms of that certain SUBDIVISION IMPROVEMENT AGREEMENT hereinafter mentioned and all persons, companies or

corporations renting or hiring teams or implements, or machinery, for contributing to said work to be done, all persons who performed work or labor upon the same, and all persons who supply both work and materials, and whose claim has not been paid by PRINCIPAL in the just and full sum mentioned on Line 5 of Page 1 hereof for the payment whereof, well and truly to be made, said PRINCIPAL and SURETY bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION is such that whereas the above-bounden PRINCIPAL has entered into a SUBDIVISION IMPROVEMENT AGREEMENT with the City of Mebane, a municipal corporation of the State of North Carolina, hereinafter referred to as CITY, for the construction of public improvements in the subdivision named on Line 1 of Page 1 hereof, which said SUBDIVISION IMPROVEMENT AGREEMENT is by this reference incorporated herein.

NOW THEREFORE, if the above-bounden PRINCIPAL, contractor, person, company or corporation, or his or its subcontractor or subcontractors, fails to pay for any materials, provisions, provender, or the supplies, or teams used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work for labor, SURETY on this bond will pay the same, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought on this bond, a reasonable attorney's fee which shall be awarded by the Court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

This bond is executed and filed to comply with the provisions of the Subdivision Map Act; and all CITY ordinances, resolutions, rules and regulations supplemental thereto; and all amendments thereto; and shall inure to the benefit of any and all materialmen, persons, companies or corporations entitled to file claims under and by virtue of the provisions thereof.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have executed this instrument on the date mentioned on Line 4 of Page 1 hereof.

PRINCIPAL

PRINCIPAL

SURETY _____

SURETY _____

(Notarial acknowledgement of execution by ALL PRINCIPALS and SURETY must be attached.)

Sample Bond

BANK/SECURITY LOGO
ADDRESS

BOND NUMBER _____

SUBDIVISION IMPROVEMENT PERFORMANCE BOND

STATE OF _____
COUNTY OF _____

KNOWN ALL MEN BY THESE PRESENTS: That we, (*Developer name and address*), as Principal, and (*Bank/Security Company, Address*), as Surety, are held and firmly bound unto the City of Mebane, North Carolina, as Obligee, in penal sum of (*spelled out amount*), for payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a certain written agreement with the City of Mebane, North Carolina, dated this the ____ day of _____, 2005, to construct or cause to be constructed all streets and drainage facilities in connection with the development of the subdivision known as (*Subdivision section/name*).

The Principal agrees that said improvements and appurtenances thereto shall be constructed in accordance with approved plans as per the City of Mebane, North Carolina, standards.

It is hereby expressly agreed that this bond is also given and made as a guarantee against defective materials and/or workmanship in the construction of said improvements for one year following completion, provided however, that no suit or action or proceeding by reason of any defect whatever shall be brought upon this bond after two (2) years following the final acceptance of said improvements by the City of Mebane, North Carolina.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall faithfully perform the said Agreement and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said agreement and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Agreement and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect.

The Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on the bond, and it does hereby waive notice to any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

Any notice of default or claim under this bond should be sent by Certified Mail to the Surety at its executive office at (*Bank/Security Company, Address*).

Signed, sealed and dated this the ____ day of _____, 2005.

(*Developer name*)

(*Bank/Security Company, Address*)

By: _____
(*Name and position of signatory*)

By: _____
(*Name and position of signatory*)