



**PERFORMANCE ESCROW AGREEMENT**

For \_\_\_\_\_ Subdivision

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (hereinafter called the "Subdivider"), with its principal place of business at \_\_\_\_\_ and the City of Marietta, a political subdivision of the State of Georgia, (hereinafter called "City"), and \_\_\_\_\_, (hereinafter call "Escrow Agent"), with its principal place of business at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, the Code of the City of Marietta Subdivision Regulations, as amended, require the deposit of a security for performance of construction and installation of improvements in amounts not less than 110% of the actual construction cost; and

**WHEREAS**, the Subdivider has received approval of the construction plans in accordance with the plans and specifications on file with the Department of Public Works, City of Marietta, for \_\_\_\_\_ Subdivision; and

**WHEREAS**, the Subdivider certifies that any and all persons, firms or corporations providing labor and/or materials required for construction of said improvements will be paid in full; and

**WHEREAS**, the Department of Public Works of the City of Marietta has accepted a plat of the said Subdivision to be filed for record subject to the posting of the required performance security; and

**WHEREAS**, the parties have agreed that the Escrow Agent is acceptable to all parties to act in such capacity;

**NOW, THEREFORE**, in consideration of the foregoing premises, it is hereby agreed:

1. The Subdivider has deposited in escrow the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) with the Escrow Agent, to guarantee that the improvements will be constructed as required by the Department of Public Works, City of Marietta Subdivision Regulations, and in accordance with construction plans and specifications for the said Subdivision.
2. The Escrow Agent agrees to hold said funds and to pay out said funds only upon receipt of "Proper Authorization" as hereinafter defined. "Proper Authorization"

shall mean authority in written form from the Department of Public Works, City of Marietta stating that a disbursement is authorized:

- a) To the Subdivider, or to any party designated in writing by the Subdivider, upon delivery of "Proper Authorization" from the Department of Public Works authorizing such payment. The City, through the Department of Public Works, shall issue such "Proper Authorization" when the construction has progressed satisfactorily to the state of development for which payment is made and upon receipt by the City of a certificate to that effect signed by the Subdivider and the Registered Engineer for the subdivision.
  - b) To the City upon delivery of "Proper Authorization" from the Public Works Department, upon its determination that any portion or all of the said improvements have not been constructed, maintained or repaired by the Subdivider in compliance with City rules, regulations and ordinances. The City is authorized, but not obligated, to take over and perform any such uncompleted construction, and to use the escrow funds on deposit with the Escrow Agent for such purposes.
3. A further condition of this Agreement is that the improvements to be made as shown on subdivision plans and specifications approved by the Department of Public Works including surveying, engineering and land clearing for \_\_\_\_\_ Subdivision shall be completed with 12 months from the date of acceptance of this Agreement by the Department of Public Works and all costs incurred in connection therewith shall be paid in full and in accordance therewith and with the documents and specifications referred to therein or attached thereto. Upon acceptance of the improvements by the City, this Agreement shall be null and void; otherwise, it shall remain in full force and effect. If the improvements are not completed within the specified 12-month period, the City is hereby authorized to complete the improvements as specified in Item 2(b) above, using the funds escrowed under this Agreement.
  4. The Escrow Agreement shall not be terminated or otherwise allowed to expire without at least 30 days written notice to that effect from the Escrow Agent to both the City and Subdivider.
  5. If the funds are inadequate to pay for any costs covered by this Agreement, the Subdivider shall pay any and all costs beyond coverage.
  6. The Escrow Agent hereby acknowledges that it holds the funds referred to in Item 1 above and represents that it has no obligation whatsoever to any of the parties hereto except to release said funds within 10 days upon delivery of "Proper Authorization" from the Department of Public Works, and the Subdivider does hereby release and hold the Escrow Agent harmless from any and all claims whatsoever by it against the Escrow Agent for releasing such funds to the City in accordance with the terms thereof.

**WITNESS**, the hands and official seals of the parties hereto on the day and year first above written.

\_\_\_\_\_  
SUBDIVIDER

\_\_\_\_\_  
ESCROW AGENT

\_\_\_\_\_  
Name:

Title:\_\_\_\_\_

\_\_\_\_\_  
Name:

Title:\_\_\_\_\_

(CORPORATE SEAL)

(CORPORATE SEAL)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

## Applicable Code Sections for Performance and Maintenance Bonds

### City of Marietta, Cobb County, Georgia

**728.07.** Final plats shall conform substantially to the preliminary plat as approved. If desired by the applicant, the final plat may constitute only a portion of an approved preliminary plat provided that such portion conforms to all requirements of these obligations. At the time the final plat is submitted for approval, the applicant shall provide a maintenance bond or other acceptable performance guarantee for a period of 12 months after the final plat is approved in the amount of 10% of the total cost of the subdivision improvements. The applicant shall be responsible for repairing streets and related subdivision improvements which may be damaged or fail due to improper installation for a period of 12 months from the date of the final plat approval by the Mayor and Council. All required subdivision improvements shall comply with Public Law 101-336, the Americans with Disabilities Act of 1990. Any improvements which do not comply with said Act shall be redone at the applicant's expense and final approval of the plat shall not be given until such work is completed in compliance with the Act. All plans submitted to the City for review shall contain a certificate that said improvements fully comply with the American with Disabilities Act of 1990, Public Law 101-336, as amended and the City will rely upon such certificate in approving preliminary and final plats.

**728.08.A.15.** A certificate of approval by the Public Works Director upon determination that a maintenance bond or agreement has been posted by the applicant and that the applicant has complied with 1 of the following alternatives:

a)

All utilities and other improvements have been installed in accordance with the requirements of these regulations.

b)

A bond or certified check or other acceptable guarantee has been posted with the City in significant amount to insure completion of improvements.

**730.01.G.1 and 2.** *Paving Specifications.* Unless otherwise specifically set forth herein, all of the materials, method of construction and workmanship for work covered in reference to street construction shall conform to the latest specifications of the Georgia Department of Transportation.

1.

Residential local streets—The base course shall consist of 5 inches of crushed stone base material thoroughly compacted and brought to grade. The base shall be primed with 0.25 gallon of R.C. 70 bituminous prime material per square yard and the prime shall be cured until it does not pick up under traffic, in no case shall the curing period be less than 24 hours. After the prime is cured, 2 inches of "B" binder shall be applied. A final 1 inch of "F" topping

with a tack coat shall be applied to the binder course at the rate of 0.05 gallon per square yard shall be applied as a wearing course when any of the following occurs:

a)

Ninety percent of the houses on the street are completed.

b)

The maintenance agreement or bond between the developer and the City is within 1 month of expiring.

c)

The Public Works Director approves or orders the final topping course to be applied.

2.

Streets other than local residential streets—One of the following combinations of base course, binder, and topping must be used:

a)

Eight-inch crushed stone base, 2 inches of "B" binder and 1½ inches of "F" topping; or

b)

Six inches crushed stone base, 3½ inches "B" binder and 1½ inches of "F" topping.

c)

Prime and tack shall be placed in the same amount and time frame as for residential local streets outlined above. The final topping coat shall be applied when 1 of the following occurs:

1)

Ninety percent of the lots are developed or 90% of the development is complete where land is not subdivided.

2)

The maintenance agreement or bond between the developer and the city is within 1 month of expiring.

3)

The Public Works Director approves or orders the final topping course to be applied.



**SECURITY INFORMATION SHEET**

**Project:** \_\_\_\_\_

**Land Lot(s):** \_\_\_\_\_ **District:** \_\_\_\_\_

**Type of Security:** **Maintenance:** \_\_\_\_\_ **Performance:** \_\_\_\_\_

**Bond:** \_\_\_\_\_ **Letter of Credit:** \_\_\_\_\_ **Escrow:** \_\_\_\_\_

**Amount of Security:** \_\_\_\_\_

**Starting Date:** \_\_\_\_\_ **Expiration Date:** \_\_\_\_\_

**Security Holder:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Telephone #:** \_\_\_\_\_

**Project Owner:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Telephone #:** \_\_\_\_\_

**Note: If performance security, explain below what part of construction is being secured:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_