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# MARION COUNTY STANDARD FORM
# SUBDIVISION MAINTENANCE AGREEMENT
# WITH ESCROW AGENT
## (INDIVIDUAL)

**THIS AGREEMENT** made and entered into this ____ day of _____, 20___, by, between and among **MARION COUNTY**, a political subdivision of the State of Florida, whose address is 601 SE 25th Avenue, Ocala, Florida 34471, hereinafter referred to as "COUNTY" and the below-listed DEVELOPER and BANK.

## W I T N E S S E T H:

**WHEREAS,** DEVELOPER has made application to the Board of County Commissioners for the acceptance of subdivision improvements for county maintenance and the DEVELOPER represents to the COUNTY that the below-listed information is true and correct, and

Developer:_____

Developer's Address:_____ City _____ **FL** State

Project Engineer:_____

Ten Percent (10%) of Engineer's estimate_____

Subdivision Name:_____

Plat Book _____ Page(s) _____

Bank:_____

Bank's Address:_____ City _____ **FL** State

Escrow Account No.:_____

**WHEREAS,** it is mutually agreed and understood by the parties to this Agreement that this Agreement is entered into for the purpose of (1) protecting the COUNTY in the event DEVELOPER fails to maintain subdivision improvements, and (2) inducing COUNTY to issue a certification of satisfactory completion of subdivision improvements subject to this maintenance agreement, and

**WHEREAS,** as a condition precedent to COUNTY acceptance of required subdivision improvements, the COUNTY requires assurance that such improvements will be maintained by the DEVELOPER for a minimum period of two (2) years and thereafter until sixty percent (60%) occupancy of the subdivision, and

**WHEREAS,** the parties hereto agree that DEVELOPER maintenance shall consist of the continual cleaning, mowing, repairing and replacing of the subdivision improvements, normal wear and tear excepted and the DEVELOPER seeks to assure its obligations for the maintenance of subdivision improvements under this agreement by arranging and agreeing with BANK for the establishment of an escrow account as a performance guarantee to assure maintenance of all subdivision improvements, and BANK has consented to act as Escrow Agent, now therefore,

**IN CONSIDERATION** of the mutual covenants and conditions contained herein, and other good and valuable consideration acknowledged by both parties, the parties do hereby promise, agree, and covenant as follows:

1. The recitals set forth above are true and correct and are incorporated into this Agreement by this reference.

2. The DEVELOPER hereby accepts the obligation to maintain all subdivision improvements, including all roads, pavement and other improvements, including all catch basins and drainage facilities, monuments, street signs and other improvements of any nature, hereinafter Improvements and in all respects maintain the subdivision improvements in accordance with the subdivision improvement plans and the requirements of the COUNTY land development code for a minimum period of two (2) years and thereafter until the subdivision reaches sixty percent (60%) occupancy determined by the issuance of certificates of occupancy. The COUNTY shall not be responsible for roads or other improvements, maintenance or care until the same shall be accepted by the COUNTY, nor shall the COUNTY exercise any control over the Improvements until accepted, except for permitting and inspections.

3. Simultaneously with the execution of this Agreement by the DEVELOPER, the DEVELOPER will pay or cause to be paid, to BANK, a sum equal to ten percent (10%) of the engineer's estimate of subdivision improvements as set forth above and execution of this Agreement by BANK shall serve as evidence to the COUNTY that payment has in fact been made by DEVELOPER to BANK. BANK shall hold all funds paid by DEVELOPER as a performance guarantee of satisfactory maintenance of all Improvements as determined by COUNTY. Written consent and instructions from COUNTY delivered to BANK approving and authorizing DEVELOPER to withdraw funds shall be required and shall be conclusive evidence and proof to BANK of DEVELOPER's right to withdraw funds so approved and authorized and shall absolve BANK from any liability for release of said funds. All required subdivision improvements shall be maintained in accordance with the Land Development Code of Marion County, Florida, in effect on the date of recording of the plat of the subdivided lands.

4. On or before the first anniversary date of this agreement and each anniversary date thereafter, the DEVELOPER shall notify the County Transportation Department (department) in writing that an annual maintenance inspection is required. Inspections shall be performed by the department after receipt of the request and the department shall submit to DEVELOPER a written report approving the maintenance or stating any deficiencies which are to be corrected. The DEVELOPER

shall have thirty (30) days from receipt of said report to make the required corrections. In addition, the COUNTY may notify the DEVELOPER in writing of needed maintenance and the DEVELOPER shall have thirty (30) days to make the required corrections. If the DEVELOPER fails to make necessary corrections within thirty (30) days, COUNTY may declare DEVELOPER in default under this agreement. COUNTY will advise DEVELOPER of default in writing and shall give the DEVELOPER fifteen (15) days to remedy the default.

5. DEVELOPER shall notify the County Transportation Department in writing when the subdivision has reached sixty percent (60%) occupancy and the department will conduct an inspection and submit to DEVELOPER a written report accepting the improvements for county maintenance or stating any deficiencies which are to be corrected before COUNTY acceptance.

6. If DEVELOPER defaults in maintenance of the above-mentioned Improvements, BANK shall pay funds in the irrevocable letter of credit to the COUNTY pursuant to instructions to be given to BANK by COUNTY. COUNTY may utilize such funds for the purpose of paying for the COUNTY's costs under this agreement and all or a part of the required maintenance as determined in the sole discretion of the COUNTY.

7. Any controversy arising under this Agreement shall be resolved in accordance with the laws of the State of Florida, keeping in mind that these deposits are given for the protection and benefit of COUNTY to secure the DEVELOPER's obligation to maintain all Improvements.

8. DEVELOPER agrees to pay BANK such reasonable compensation which shall from time to time be agreed upon in writing by DEVELOPER and BANK. In addition, DEVELOPER agrees to reimburse BANK for any expense, including reasonable attorney's fees incurred by it in the administration of this Agreement. Such compensation and expenses shall not constitute a charge upon the amount held by BANK hereunder.

9. BANK shall have the authority to invest or reinvest all or part of the escrow account funds from time to time in accordance with the following:

A. BANK shall invest only in interest-bearing time deposits in banks organized under the laws of Florida, in national banks organized under the laws of the United States and doing business and situated in Florida, and bonds, notes and other obligations of the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends.

B. All interest or income earned on such investments of the escrow funds shall be added to and remain a part of the escrow account.

10. BANK will receive, keep and account for all sums of money in an account separate from other monies of DEVELOPER except as may be provided otherwise by the directions or written consent of the COUNTY. BANK will furnish COUNTY with an accounting of the Escrow Account at such time as may be requested by COUNTY.

11. BANK shall have the right to resign at any time after thirty (30) days notice to DEVELOPER and COUNTY, and DEVELOPER shall, within such period of time, appoint a successor Escrow Agent which shall be acceptable to COUNTY to succeed BANK. If, within thirty (30) days after notice of resignation has been given by BANK, a successor to BANK shall not have been appointed, the BANK shall notify COUNTY who shall appoint a successor.

12. Liability of BANK, or its successors, is expressly limited and so long as BANK, or its successor, accounts and disburses in good faith and in compliance with this Agreement all monies received by it, it shall not be liable for errors of judgment, and DEVELOPER agrees to indemnify BANK, or its successor, for any losses it may suffer in the premises. The BANK shall be accountable only for the monies actually received by it and shall not be charged with or responsible for collecting any payments DEVELOPER may be obligated to make to BANK hereunder.

13. This agreement shall continue in full force and effect until the Improvements are accepted for maintenance by COUNTY. The COUNTY reserves the right to cancel or terminate this agreement, with or without cause, upon thirty (30) days written notice of termination to the DEVELOPER. The COUNTY reserves the right to cancel or terminate this agreement upon five (5) days written notice in the event the DEVELOPER will be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors.

14. DEVELOPER hereby releases the COUNTY and its agents and employees from any claims and damages, now existing or hereafter occurring or related in any way to this agreement. DEVELOPER agrees that the COUNTY shall incur no liability for subdivision maintenance by executing this agreement.

15. DEVELOPER does hereby agree to indemnify and hold the COUNTY harmless from and against any and all claims, damages, losses, expenses (including but not limited to attorneys' fees), causes of action, judgments, liabilities arising out or resulting from, in any fashion, the execution of this agreement by the COUNTY. This grant of indemnity shall be irrevocable. The grant of indemnity contained herein is absolute and unlimited.

16. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred including attorneys' fees, specifically including any appellate or bankruptcy proceeding related thereto.

17. The undersigned representative of the DEVELOPER hereby represents to the COUNTY that he is fully authorized by the DEVELOPER to represent the DEVELOPER in agreeing to the terms and conditions of this Agreement.

18. This agreement may be amended by mutual written agreement of the parties and only by such written agreement. There are no understandings or agreements by the parties except as herein expressly stated.

**IN WITNESS WHEREOF** that parties have hereunto set their hands and seals and executed this Agreement on the day and year first above mentioned.

**ATTEST:**

_____
David R. Ellspermann, Clerk

**Approved as to Form and Legal Sufficiency**

_____
Marion County Attorney

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

_____
_____, Chairman
Date:_____

**DEVELOPER**

_____

**WITNESSES:**

By:_____
Print name:_____

By:_____
Print name:_____

By:_____
Print Name:_____
Title:_____
Date:_____

**STATE OF FLORIDA**
**COUNTY OF MARION**

Before me this ____ day of _____, 20____ personally appeared _____ of DEVELOPER who is personally known to me or has produced _____ (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so with full authority of said DEVELOPER.

_____
Notary Public
Print Name_____
Commission Number_____
Commission Expires_____

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**BANK**

_____

**ATTEST:**

By:_____
Print name:_____
Title:_____

By:_____
Print name:_____
Title:_____
Date:_____

**STATE OF FLORIDA**
**COUNTY OF MARION**

Before me this ___ day of _____, 20___ personally appeared _____ of BANK who is personally known to me or has produced _____ (type of identification) as identification and who executed the foregoing instrument, and who acknowledged that he/she did so as an officer of said BANK all by and with the authority of the Board of Directors of said BANK.

_____
Notary Public

Print Name_____
Commission Number_____
Commission Expires_____

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This Instrument was prepared by:
Record and Return to:
Thomas D. MacNamara
Assistant County Attorney
601 SE 25th Avenue
Ocala, Florid 34471
(352) 438-2330