



PERFORMANCE ESCROW AGREEMENT

For _____ Subdivision

Account # _____

THIS AGREEMENT, entered into this ____ day of _____, 20____, between _____ (hereinafter called the "Subdivider"), with its principal place of business at _____ and the County of Cobb, a political subdivision of the State of Georgia, (hereinafter called "County"), and _____, (hereinafter called "Escrow Agent"), with its principal place of business at _____.

WITNESSETH:

WHEREAS, the Subdivision and Development Regulations of the Cobb County Code of Ordinances and Resolutions, as amended, requires 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 Community Development Agency for the improvements within _____ 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 Community Development Agency 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 Cobb County Subdivision Regulations, construction plans, and specifications for 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 Cobb County Community Development Agency Director 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 Community Development Agency Director authorizing such payment. The County, through the Community Development Agency Director, 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 County of a certificate to that effect signed by the Subdivider and the Registered Engineer for the subdivision and upon proof satisfactory to the County that all bills therefore have been paid to date, including but not limited to bills for surveying, engineering, land clearing, construction of improvements, and materials which are included in the plan of development.
 - (b) To the County upon delivery of "Proper Authorization" from the Community Development Agency Director, upon his determination that any portion or all of the said improvements have not been constructed, maintained, or repaired by the Subdivider in compliance with County rules, regulations, and ordinances. The County 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.
 - (c) To any person or corporation upon direction from the County, through the Community Development Agency Director, such funds be paid for any labor and/or materials used in constructing the improvements. The County will direct such payments if it determines that claims for labor and/or materials are just and unpaid. The Subdivider hereby consents to any such payments and authorizes and ratifies any such action on the part of the County and agrees to protect and save harmless the County from any claims of any persons, as defined under the Ordinance, whosoever on account of any improvements which have not been completed or paid for.
3. A further condition of this Agreement is that the improvements to be made as shown on subdivision plans and specifications approved by the Community Development Agency including surveying, engineering, and land clearing for _____ Subdivision shall be completed within 12 months from the date of acceptance of this Agreement by the Community Development Agency Director 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 County, 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 County is hereby authorized to complete the improvements as specified in Item 2(b) above or the County Ordinance, using the funds escrowed under this Agreement.
4. The Escrow Agreement shall not be terminated or otherwise allowed to expire without the express prior written consent of the County, in its sole discretion.

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 Community Development Agency Director, 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 County in accordance with the terms thereof.

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

COBB COUNTY, GEORGIA

By: _____
Community Development Agency Director

SUBDIVIDER: _____

By: _____

Title: _____

ESCROW AGENT: _____

By: _____

Title: _____

(Corporate Seal)

(Corporate Seal)

Approved as to form:

By: _____
County Attorney's Office



SECURITY INFORMATION SHEET

Project: _____

Land Lot(s): _____ **District:** _____

Type of Security: Maintenance: _____ Performance: _____

Bond: _____ Letter of Credit: _____ Escrow: _____

Amount of Security: _____

Starting Date: _____

Security Holder: _____

Contact Person: _____

Telephone #: _____

Project Owner: _____

Contact Person: _____

Telephone #: _____

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

