

**MARION COUNTY
SUBDIVISION IMPROVEMENT AGREEMENT
WITH IRREVOCABLE LETTER OF CREDIT**

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 approval of a subdivision (the "Subdivision") and the DEVELOPER represents to the COUNTY that the below listed information is true and correct, and

Developer: HTM Developers LLC, a Florida limited liability company

Developer's Address: 4349 SE 20th Street, Ocala, FL 34471

Project Engineer: Jeff McPherson with Tillman & Associates

Engineer's Estimate of Costs of Improvements: \$229,840.66

Developer's Estimate of Time to Complete All Improvements: June 24, 2022

Subdivision Name: Deer Path North Phase 2

Plat Book _____ Page(s) _____

Bank: SouthState Bank, N.A.

Bank's Address: 1632 East Silver Springs Boulevard, Ocala, FL 34470

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 complete the construction of required subdivision improvements, and (2) inducing COUNTY to approve the plat of the above-described Subdivision for recordation in the Public Records, and

WHEREAS, the failure of DEVELOPER to comply with the terms and conditions of this Agreement may cause COUNTY to take whatever reasonable action may be prudent and appropriate to assure the fulfillment of this Agreement, and

WHEREAS, DEVELOPER has represented to COUNTY that it intends to improve the Subdivision lands by construction of all subdivision improvements required by the Land Development Code of Marion County, Florida, as provided herein, and described in the Project Engineer's Estimate of the Cost of these improvements as set forth above (a copy which is attached hereto as **Exhibit A**, and by this reference made a part hereof), and

WHEREAS, the construction of improvements on the Subdivision lands has not progressed to completion and the DEVELOPER seeks to assure its obligations for the construction of subdivision improvements under this Agreement by arranging and agreeing with BANK for the issuance of an irrevocable letter of credit as a performance guarantee to assure construction of all subdivision improvements,

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and conditions contained herein, and other good and valuable consideration acknowledged by the 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 construct and shall construct or cause to be constructed, as provided in the Project Engineer's COUNTY-approved subdivision improvement plans dated February 7, 2022, and on file with the Office of the County Engineer, all roads, pavement and other improvements, including all catch basins and drainage facilities, monuments, street signs and other improvements of any nature (hereinafter the "Improvements") and in all respects complete the Improvements in accordance with the subdivision improvement plans. All Improvements shall be constructed in accordance with the Land Development Code of Marion County, Florida, in effect on the date of recording of the plat of the Subdivision lands or the date of this agreement, whichever is later. All required Improvements shall be certified by the Project Engineer, who shall be a State of Florida registered engineer, as being constructed consistent with the requirements of the Land Development Code of Marion County. The Subdivision and the lands described in this Agreement are and shall remain privately owned, and the Subdivision Plat shall not contain any dedication of any Subdivision lands or infrastructure to the COUNTY. DEVELOPER shall provide to COUNTY with the final plat, documentation identifying a lawfully established property owner's association that will be responsible for maintenance of all Improvements upon completion of the construction thereof.

3. The DEVELOPER has presented to COUNTY an irrevocable letter of credit in an amount equal to the Engineer's Estimate of the Cost of Improvements attached hereto as **Exhibit A**. A copy of the BANK's irrevocable letter of credit is attached hereto as **Exhibit B**. The condition of the irrevocable letter of credit is such that if DEVELOPER should fail to satisfactorily complete the Improvements within 90 days of the date of this Agreement, the COUNTY, upon first giving DEVELOPER 90 days prior written notice and an opportunity to cure, may draw upon the irrevocable letter of credit, pursuant to instructions to be given BANK by COUNTY, and the BANK shall pay to the COUNTY such funds as are necessary to complete the Improvements based upon the good faith estimate of a Florida licensed general contractor. In the event such funds are not adequate to complete the work based upon such good faith estimate, the BANK shall pay the

full amount of such funds to COUNTY. In such event, COUNTY will not be responsible to BANK for repayment of such funds, and the DEVELOPER shall not be relieved of its obligations under this agreement.

4. Upon verification of the completion of construction of all Improvements, the Office of the County Engineer shall, within ten (10) days after verification of completion of the Improvements, forward written instructions to BANK authorizing BANK to release and cancel the letter of credit and/or shall deliver the original letter of credit to BANK, whichever the BANK shall require. Should the COUNTY fail to timely provide notice as aforesaid, the DEVELOPER may deliver to the BANK a true and correct copy of any verification of completion letter or certificate from the COUNTY, which the BANK may, in good faith, rely upon and may thereafter release and cancel the letter of credit. The BANK shall not release and/or cancel the letter of credit, either all or in part, except in keeping with the provisions of this Agreement. Any controversy arising under this Agreement shall be resolved in accordance with the laws of the State of Florida, acknowledging that the letter of credit is being given for the protection and benefit of COUNTY to secure the DEVELOPER's obligation to complete all Improvements. In the event of any conflict between the terms of the letter of credit and this Agreement, the terms of this Agreement shall control. COUNTY may only draw upon the letter of credit and utilize such funds for the purpose of paying for the commercially reasonable costs to complete the Improvements and for no other purpose or use.

5. For and in consideration of the issuance of the letter of credit, 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 direct and actual out-of-pocket expense, including reasonable attorneys' fees reasonably incurred by it in the administration of this Agreement. Such compensation and expenses shall not constitute a charge upon the letter of credit.

6. Liability of BANK, or its successors, is expressly limited and so long as BANK, or its successor, accounts for and disburses the letter of credit funds in good faith and in compliance with this Agreement, 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.

7. 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. Any termination by the COUNTY of this Agreement shall entitle the BANK to immediately release and cancel the letter of credit without further instruction from the COUNTY and/or the DEVELOPER.

8. 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, save and except for claims or damages arising out of willful, wanton or bad faith acts on the part of the COUNTY. DEVELOPER agrees that the COUNTY shall incur no liability for the Improvements by executing this Agreement.

9. DEVELOPER does hereby agree to indemnify and hold the COUNTY harmless from and against any and all claims, damages, losses, out-of-pocket expenses (including but not limited to attorneys' fees), causes of action, judgments and/or liabilities directly arising out of, or in connection with an uncured default on the part of DEVELOPER of the terms and provisions of this Agreement. This grant of indemnity shall be irrevocable. The grant of indemnity contained herein is absolute and unlimited.

10. 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.

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

12. 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.

[SIGNATURE PAGES IMMEDIATELY FOLLOWS THIS PAGE]

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

DEVELOPER: HTM Developers LLC, a
Florida limited liability company

Witness Signature

By: _____
(signature)

Print name: _____

Witness Printed Name

Title: Manager

Witness Signature

Date: _____

Witness Printed Name

STATE OF _____
COUNTY OF _____

Before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____
20____, personally appeared _____, _____ of
_____ 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 DEVELOPER
all by and with the authority of the Board of Directors of said DEVELOPER.

Print/Type Name: _____

Notary Public in and for the County and State
aforesaid.

My Commission Expires: _____

Serial No., if any: _____

BANK: SouthState Bank, N.A.

Witness Signature

By: _____
(signature)

Print name: Rusty Branson

Witness Printed Name

Title: Senior Vice President

Witness Signature

Date: _____

Witness Printed Name

STATE OF _____
COUNTY OF _____

Before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____
20____, personally appeared _____, _____ of
_____ 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.

Print/Type Name: _____

Notary Public in and for the County and State
aforesaid.

My Commission Expires: _____

Serial No., if any: _____

ATTEST:

BOARD OF COMMISSIONERS
MARION COUNTY, FLORIDA

Gregory C. Harrell, Clerk

Carl Zalak, III, Chairman

Date: _____

Approved as to Form
and Legal Sufficiency:

P.P. / S. Ward

Marion County Attorney