

**MAINTENANCE AND
PERFORMANCE BONDS**

**CITY OF AUSTELL
MAINTENANCE BOND**

FOR _____ SUBDIVISION

KNOWN ALL MEN BY THESE PRESENTS, that Subdivider, _____, (hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the State of Georgia, as Surety, are hereby held and firmly bound unto the City of Austell, a political subdivision of the State of Georgia (hereinafter referred to as Obligee), in the just and full sum of _____ dollars (\$ _____) to the payment of which sum, well and truly made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into an Agreement and is obligated under the terms under the City of Austell Code of Ordinances for the maintenance of roads, water lines, sewer lines, and storm drainage facilities located in the subdivision known as _____ for a period beginning at the start of construction and until accepted by the City of Austell. The obligations of the Principal pursuant to the City of Austell Code of Ordinances are set forth on the attached sheet and made a part of this Bond.

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall faithfully perform the Agreement and obligations under the City of Austell Code of Ordinances on his part and shall fully indemnify and save harmless the Obligee from all costs and damages which the Obligee may suffer by reason of failure on Principal's part, not to exceed the penal sum of this bond, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, however, it shall be a condition precedent to any right of recovery hereunder that, in the event of any default on the part of the Principal, a written statement of the particular facts showing the date and nature of such default shall be given to the Obligee to the Surety within a reasonable time not to exceed ten (10) days from the date the Obligee becomes aware of the default and shall be forwarded by registered mail to the Surety at the address listed below.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

PRINCIPAL

SURETY

SEAL

SEAL

Excerpt from the City of Austell Code of Ordinances:

Section 20-54. Maintenance bond.

A maintenance bond, letter of credit, cash bond, or other equivalent form of security as approved by the City Attorney, running in favor of the City of Austell, in a minimum amount of five thousand dollars (\$5,000.00) or any amount equal to at least ten (10) percent of the actual construction improvement cost, whichever is greater, shall be posted with the City of Austell by all subdividers or persons where street or other improvements are made and offered to the City of Austell for acceptance and maintenance except as noted in this section. Twenty five (25) percent of the actual construction improvement total cost or five thousand dollars (\$5,000.00), whichever is greater, shall be posted with the City of Austell by all subdividers or persons where street or other improvements are made requiring bridges, box culverts, or pipes with diameters equal to or greater than forty eight (48) inches, and offered to the City of Austell for acceptance and maintenance. The maintenance bond, cash bond, letter or credit, or other equivalent form of security shall guarantee all improvements against defects in design, material, and workmanship and further guarantee that all such improvements shall be maintained in first class condition for the required period and faithful performance by the subdivider or other person of all provisions of this chapter.

- (1) Any bond, except cash bond, letter of credit, or other equivalent form of approved security shall be on forms supplied by the City of Austell and shall not be terminated or otherwise allowed to expire without at least thirty (30) days prior written notice to that effect to both the City of Austell and the subdivider or person. Such bond, cash bond, letter of credit, or other equivalent form of approved security along with evidence of payment of the required premiums shall be filed with the City of Austell.
- (2) Such bond, cash bond, letter of credit, or other equivalent form of security shall be posted prior to commencement of the maintenance bond period and following installation of the improvements and inspection and approval by the City of Austell of the method of installation. No final plat shall be approved or recorded by Cobb County or Douglas County and no lots shall be sold by the subdivider until and unless a satisfactory bond is posted.
- (3) Separate bonds required by this section shall be required for each subdivision unit, phase, or like entity approved by the City of Austell pursuant to this chapter.

(Ordinance of February 6, 2006)

Section 20-55. Maintenance.

The subdivider or person shall maintain all improvements in the subdivision to be dedicated to the City of Austell for a minimum of one (1) year from the date of written notification from the City of Austell commencing the one (1) year maintenance period of such improvements and inspection and approval by the City of Austell of method of installation, whichever is longer. No dedication of improvements shall be accepted by the City of Austell until the expiration of one (1) year from such date and inspection and determination by the City of Austell of such time that

all improvements are in first class condition and meet all City of Austell specifications and requirements in this chapter.

- (1) At the end of the maintenance period, the City of Austell may inspect the development, and shall inspect at the written request, submitted at the end of the tenth (10th) month of the maintenance period or thereafter prior to expiration of the maintenance period, by the subdivider or the person. If the improvements to be dedicated are free from defects and comply with City of Austell specifications and requirements under this chapter, dedication of the improvements shall be accepted by the City of Austell for permanent maintenance by the City of Austell. The subdivider or person shall be notified in writing of the acceptance and any security shall be released.
- (2) If upon inspection as provided in subsection (1) of this section, the City of Austell determines that work or repairs are needed in order for the improvements to meet City of Austell specifications or requirements under this chapter, the subdivider or person shall be notified in writing by the Public Works department of the deficiencies, failure to comply, or violations. Thereafter, the subdivider or person shall have sixty (60) days from receipt of such notification to correct such deficiencies, noncompliance, or violations. If the deficiencies, noncompliance, or violations are not corrected within such time, then the maintenance bond, cash bond, letter of credit, or equivalent form of approved security posted by the subdivider shall be forfeited and called upon up to the cost of the repairs or the total cost of correcting the deficiencies, noncompliance, or violations, then the subdivider shall pay any and all costs beyond bond coverage.
- (3) The subdivider shall pay to the City of Austell for each inspection, subsequent to the initial inspection provided under subsection (1) of this section, a re-inspection fee in amount set from time by the Mayor and City Council to defray the cost of inspection. A copy of the schedule of re-inspection fees shall be maintained in the office of the City Clerk and the Public Works department.
- (4) If a period of eighteen (18) months elapses from the commencement of the maintenance period for any subdivision and defects, noncompliance, or violations still exist to the extent that the subdivision has not been accepted by the City of Austell, the City of Austell is authorized to withhold the issuance of any and all permits or to refuse any inspection to any subdivider or person on the project in dispute or any other project in which the subdivider or person have a financial interest, or both, who violates or fails to comply with this chapter.

SECURITY INFORMATION SHEET

Project: _____

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

Type of Security: Maintenance Performance Bond
 Letter of Credit Escrow

Amount of Security: \$ _____

Starting Date: _____ Ending Date: _____

Security Holder: _____

Contact Person: _____
Telephone Number: _____

Project Owner: _____

Contact Person: _____
Telephone Number: _____

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

**CITY OF AUSTELL
PERFORMANCE BOND**

FOR _____ SUBDIVISION

(ATTACH CERTIFIED COPY OF VALID POWER OF ATTORNEY FOR ATTORNEY-IN-FACT)

KNOWN ALL MEN BY THESE PRESENTS, that Subdivider, _____, (hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the State of Georgia, as Surety, are hereby held and firmly bound unto the City of Austell, a political subdivision of the State of Georgia in the just and full sum of _____ dollars (\$ _____) to the payment of which sum, well and truly made, the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in compliance with the City of Austell Code of Ordinances, as amended, entitled Subdivisions, the said Principal has applied to the City of Austell for approval of a certain plat of a subdivision to be known as _____ showing certain areas to be dedicated as easements, streets, and other rights-of-way in said plat and containing improvements shown on the approved construction plans and specifications on file with the City of Austell.

WHEREAS, under said subdivision regulations, the said Principal may furnish a good and sufficient Performance Bond in an amount not less than one hundred ten (110) percent of the estimated construction cost of improvements, from a Surety company licensed to do business in the State of Georgia, to guarantee that the construction and completion of the required improvements within said subdivision, and the payment of all persons, firms, or corporations supplying labor, materials, and supplies used in the completion of said improvements.

NOW, THEREFORE, the condition of this obligation is that the said Principal, its successors, legal representatives, or assigns, within three hundred sixty five (365) days after approval of the final plat by the Public Works department, shall construct and complete the required improvements, in accordance with the City of Austell Development Regulations, approved construction plans, and specifications for said work on file with the same office, and shall promptly make payments to all persons, firms, or corporations supplying labor, materials, and supplies used in the completion of the improvements contained or connected with said subdivision.

In the event that any of the provisions of this Agreement or the City of Austell Development Regulations are violated by the Principal, or by any of the subcontractors, the City of Austell may serve written notice upon the Principal and the Surety of the failure to comply and the Surety shall have the right to take over and perform the contract; provided, however, that the Surety does not commence performance thereof within ten (10) days from the date of the mailing to Surety of the notice of failure, the City of Austell may take over the work and prosecute the

same to completion and/or for the account at the expense of the Principal. The Principal and his Surety shall be liable to the City of Austell for any excess costs including additional legal or professional services occasioned the City of Austell thereby, and in such event that the City of Austell may take possession and utilize in completing the work, such materials, appliances, and plants as may be on the site of the work and necessary thereof. Should the Surety select to exercise its right of completion, the remainder of the improvements contemplated herein shall be completed within thirty (30) days from the date of such notice by the City of Austell.

This Agreement shall not be terminated or otherwise allowed to expire without at least thirty (30) days written notice to that effect from the Surety to both the City of Austell and Subdivider.

If the funds are inadequate to pay for any costs covered by this Agreement, the Subdivider shall pay any and all costs beyond coverage.

IN WITNESS WHEREOF, the said Principal has caused these presents to be signed by its _____ and attested by its Secretary and its corporate seal hereto affixed, and the said Surety has caused the same to be executed in its name and its corporate seal hereto affixed by its Attorney-in-Fact duly authorized to do so on this ____ day of _____, 20__.

Signed, sealed, and delivered the day and year written above.

Secretary Name (Type or Print)

Principal Name and Title (Type or Print)

Secretary Signature

Principal Signature

CORPORATE SEAL

Surety Name (Type or Print)

Attorney-in-Fact Name (Type or Print)

Surety Name Signature

Attorney-in-Fact Signature

CORPORATE SEAL

Accepted by:

City of Austell (Print or Type)

Date

Signature

SECURITY INFORMATION SHEET

Project: _____

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

Type of Security: Maintenance Performance Bond
 Letter of Credit Escrow

Amount of Security: \$ _____

Starting Date: _____ Ending Date: _____

Security Holder: _____

Contact Person: _____

Telephone Number: _____

Project Owner: _____

Contact Person: _____

Telephone Number: _____

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

