

THE DELLS OF MARION OAKS ESCROW AGREEMENT

This agreement (“Agreement”) is made on October 8, 2018, between The Dells of Marion Oaks, LLC, a Michigan Limited Liability Company, with its principal office at 1295 Maxfield Road, Brighton, MI 48114 (“Developer”), and Select Title Company, a Michigan corporation, with an office at 6870 Grand River Ave, Brighton, MI 48114 (“Escrow Agent”), on the terms and conditions set forth below.

1. Background.

a. Developer intends to establish a condominium project in accordance with the Michigan Condominium Act, MCL 559.101 *et seq.* (“Act”), to be known as The Dells of Marion Oaks (“Development”), which is to be part of a larger condominium development to be known as Marion Oaks Development, located in Marion Township, Livingston County, Michigan, pursuant to a master deed, condominium bylaws, a subdivision plan, and other condominium documents (“Condominium Documents”). Developer intends to enter into preliminary reservation agreements substantially in the form attached as Exhibit A (“Reservation Agreement”) with various buyers (“Buyers”) for the purchase of condominium units in the Development (“Units”), which may require that the deposits made by Buyers be held in escrow for the period specified with an escrow agent. The parties desire to enter into this escrow agreement to establish an escrow account for the benefit of Developer and each Buyer who makes a deposit under a Reservation Agreement.

b. Under the Reservation Agreement, Escrow Agent will act as an independent party under the provisions of this Agreement and of the Act, for the benefit of Developer and Buyers and not as the agent of any party.

2. Deposit of Funds.

a. Developer shall, promptly after receipt, deliver to Escrow Agent all sums deposited with it under a Reservation Agreement (“Deposit”), together with a fully executed copy of the Reservation Agreement and a receipt signed by Buyer for the Condominium Documents furnished to Buyer by Developer, if any. Unless Escrow Agent gives its prior written consent, no Reservation Agreement shall be amended or modified in any manner that, in the opinion of Escrow Agent, will increase its liability or materially change its duties as described in this Agreement.

b. Once the Master Deed for the Development has been prepared, Developer shall furnish a copy of it to Escrow Agent, together with copies of the other Condominium Documents requested by Escrow Agent. After it has had an opportunity to review the documents, Escrow Agent may, at its sole discretion, elect to continue the escrow, to transfer all funds held by it to another qualified Escrow Agent selected by Developer, or return to each Buyer the funds that have been deposited by that Buyer, in full satisfaction of its duties under this Agreement.

3. Release of Funds. The Deposit paid to Escrow Agent shall be held and delivered to Developer or to Buyer only on the following conditions:

a. On Withdrawal by Buyer. The Deposit shall be delivered to Buyer under the following circumstances:

i. If a Buyer withdraws from a Reservation Agreement before signing a binding document to purchase a Unit, Escrow Agent shall, within three business days from the date of receipt of notice of the withdrawal, deliver to Buyer the Deposit.

ii. If a Reservation Agreement is contingent on a condition that fails to be completed, Escrow Agent shall, on notice of withdrawal by Buyer or Developer, deliver to Buyer the Deposit.

iii. If a Buyer is preliminarily rejected by Developer in accordance with the Reservation Agreement, Escrow Agent shall, on notice of withdrawal by Buyer or Developer, deliver to Buyer the Deposit.

However, if Developer files with Escrow Agent a written objection to the withdrawal request of a Buyer that claims an interest in the Deposit, Escrow Agent shall hold or dispose of the Deposit as provided in Section 5.

b. On Default by Buyer. If a Buyer defaults in making any payments required by a binding Reservation Agreement or in fulfilling any other obligations under the Reservation Agreement for fifteen days after written notice by Developer to Buyer, Escrow Agent shall release the Deposit to Developer in accordance with the terms of the Reservation Agreement. If Buyer files a written objection to the notice of default with Escrow Agent that claims an interest in the Deposit, Escrow Agent shall hold or dispose of the funds as provided in Section 5.

c. On Conveyance of Title. On the closing of the conveyance of title to a Unit from Developer to a Buyer, Escrow Agent shall release to Developer all sums held in escrow under the Reservation Agreement, provided Escrow Agent has received a certificate signed by a licensed professional engineer or architect confirming:

i. that Buyer's Unit under the terms of the Condominium Documents is substantially complete; and

ii. that the common elements that, under the terms of the Condominium Documents, are "must be built" are substantially complete or, if the elements or facilities are not substantially complete, that sufficient funds to finance substantial completion of those common elements are retained in escrow or other adequate security has been arranged.

For purposes of section 3(c)(ii), “substantially complete” common elements shall be evidenced by certificates of the type described in Section 4.

d. Release of Funds Escrowed for Completion. On furnishing to Escrow Agent a certificate from a licensed professional architect or engineer evidencing substantial completion in accordance with the pertinent plans of the common element for which funds or other security have been deposited in escrow, Escrow Agent shall release to Developer the amount of the funds or other security specified by the issuer of the certificate as being attributable to the substantially completed items. However, if the amounts remaining in escrow after any such partial release will be insufficient in the opinion of the issuer of the certificate to finance substantial completion of any remaining incomplete items for which funds or other security have been deposited in escrow or for “must be built improvements,” Escrow Agent shall release only the amount in escrow in excess of the estimated cost to substantially complete to Developer. Notwithstanding any release of escrowed funds authorized or required under this section, Escrow Agent may refuse to release if it, in its sole judgment, has sufficient cause to believe that the certificate confirming substantial completion or determining the amount necessary for substantial completion is incorrect.

e. Interest Earned on Escrowed Funds. Escrow Agent shall be under no obligation to earn interest on a Deposit it holds. If interest on such sums is earned, however, all such interest shall be separately accounted for by Escrow Agent, be part of the Deposit, and be held in escrow and released as and when the Deposit is released.

f. Other Adequate Security. If Developer requests that all of the Deposits or any part of them be delivered to it before it otherwise becomes entitled to receive them, Escrow Agent may release all sums to Developer only if Developer has placed with Escrow Agent an irrevocable letter of credit drawn in favor of Escrow Agent in form and substance satisfactory to Escrow Agent and securing full repayment of the sums or has placed with Escrow Agent other substitute security permitted by law and approved by Escrow Agent. Escrow Agent may, at its sole discretion, present any letter of credit deposited pursuant to this section for payment without prior notice to or consent of Developer.

g. Incomplete Elements or Facilities. If Escrow Agent is holding in escrow funds or other security for completion of incomplete common elements under MCL 559.203b(7), it shall be administered by Escrow Agent as follows:

i. Escrow Agent shall, on request, give all statutorily required notices under MCL 559.203b(7).

ii. If Developer, the Marion Oaks Development Condominium Association, and any other party or parties asserting a claim to or interest in the Deposits enter into a written agreement satisfactory to Escrow Agent in its terms and

conditions (as determined by Escrow Agent in its absolute and sole discretion) for the disposition of the Deposits or security in escrow under MCL 559.203b(7), Escrow Agent shall release the Deposits or security in accordance with the terms of the parties' written agreement.

iii. Failing written agreement as provided in section 3(g)(ii), Escrow Agent shall be under no obligation to release any Deposits or security, in which event Escrow Agent may initiate an interpleader action in circuit court in the county where the Development is located naming Developer, the Links of Marion Oaks Condominium Association, the Marion Oaks Development Condominium Association, and all other claimants and interested persons as parties and deposit all funds or other security in escrow under MCL 559.203b(7) with the clerk of the court in full acquittance of its responsibilities under this Agreement.

4. Proof of Completion. Escrow Agent may require reasonable proof of the occurrence of any of the events, actions, or conditions stated above before releasing any sums held by it pursuant to this Escrow Agreement to either a Buyer or to Developer. Whenever Escrow Agent is required to confirm that a common element is substantially complete in accordance with the pertinent plans and specifications, it may base the confirmation entirely on a certificate to that effect of a licensed professional architect or engineer. Likewise, all estimates and determinations of the cost to substantially complete any incomplete common element for which escrowed funds are being specifically maintained under section 3(d) of this Agreement shall be made entirely by a licensed professional engineer or architect, and the determination of all amounts to be retained or maintained in the escrow account for the completion of any of the common elements shall be based entirely on the determinations and estimates furnished by the engineer or architect. No inspections of the Development or any portion of it by any representative of Escrow Agent shall be deemed necessary, nor must Escrow Agent make any cost estimates or determinations, and Escrow Agent may rely entirely on the certificates, determinations, and estimates described above in retaining and releasing all escrowed funds under this Agreement.

5. Conflicting Claims. If Escrow Agent receives conflicting instructions or claims to a Deposits held in Escrow, it may take any one or more of the following actions:

a. It may release all or any portion of the Deposit to the party that it, in its sole judgment, determines is entitled to receive the funds under the provisions of this Agreement.

b. It may hold all or any portion of the Deposit affected by the conflicting instructions or claims in escrow and take no further action until otherwise directed, either by mutual written instructions from all interested parties or by final order of a court of competent jurisdiction.

c. It may initiate an interpleader action in the circuit court in the county where the Development is located naming all interested persons as parties and depositing all

or any portion of the Deposit affected by the adverse claims with the clerk of that court in full acquittance of its responsibilities under this Agreement.

6. Rights and Liabilities of Escrow Agent. On delivery of the Deposits deposited with Escrow Agent under this Escrow Agreement and performance of the obligations and services stated above, Escrow Agent shall be released from any further liability, and it is expressly understood that liability is limited by the terms and provisions in this Agreement and that, by execution of this Agreement, Escrow Agent is acting in the capacity of a depository and is not, as such, responsible or liable for the sufficiency, correctness, genuineness, or validity of the documents submitted to it or for the marketability of title to any Unit in the Development. Escrow Agent is not responsible for the failure of any bank it uses as an escrow depository for funds received by it under this Agreement.

Further, Escrow Agent is not a guarantor of performance by Developer under the Condominium Documents or any Reservation Agreement, and Escrow Agent undertakes no responsibilities for the nature, extent, or quality of the performance or the conformity of the performance to the terms of the documents, plans, and specifications for the Development with local or state laws or in any other particular. So long as Escrow Agent relies in good faith on any certificate, cost estimate, or determination of the type described in Section 3, Escrow Agent shall have no liability to Developer, any Buyer, or any other party for any error in a certificate, cost estimate, or determination.

Except in instances of gross negligence or willful misconduct, Escrow Agent's liability under this Agreement shall in all events be limited to return, to the party or parties entitled to them, of the funds retained in escrow or the security replacing them.

7. Notices. All notices required or permitted by this Agreement and all notices of change of address shall be deemed sufficient if personally delivered or sent by certified mail, postage prepaid and return receipt requested, addressed to the recipient at the address shown below the party's signature to the Reservation Agreement. For purposes of calculating time periods under the provisions of this Agreement, notice shall be deemed effective on personal delivery or receipt of the certified mail, whichever applies.

8. Effective Date. The parties have signed this Agreement and it shall be effective as of the date that first appears above.

[Signatures on the following page.]

SELECT TITLE COMPANY

/s/ 

By: William T. Russell

Its: U.P.

Dated: 10/8/18

THE DELLS OF MARION OAKS, LLC

/s/ 

By: Jack Lansing, II

Its: Manager

Dated: 10/9/18

EXHIBIT A

THE DELLS OF MARION OAKS PRELIMINARY RESERVATION AGREEMENT

The Dells of Marion Oaks, LLC, a Michigan Limited Liability Company (“Developer”), and _____ (“Depositor”), enter into this agreement (“Agreement”) subject to the following conditions:

1. *Reservation of the Unit.* The Depositor reserves the right to purchase exclusive ownership of Unit No. _____ of The Dells of Marion Oaks, a residential condominium project located in Marion Township, Livingston County, Michigan, as shown on the site plan for the project prepared by Boss Engineering, the consulting engineers, together with the undivided percentage interest in the common elements of the project appurtenant to that Unit from the Developer.
2. *Purchase Price.* The purchase price of the Unit shall be \$ _____, subject to adjustment by the Developer when the costs of labor and materials for the construction of the Depositor's Unit can be more accurately ascertained. The Depositor acknowledges and agrees that the price specified in this Agreement is only an estimate and that the Developer may raise or lower the price.
3. *Reservation Deposit.* In consideration of this reservation, the Depositor deposits \$ _____ to be held by Select Title Company as the escrow agent under an escrow agreement, a copy of which is attached as Exhibit A and incorporated in this Agreement by reference.
4. *Transfer of the Deposit.* The Depositor agrees that, on the request of the Developer, the Depositor will sign and give to the Developer formal purchase documents for the Unit that specify in greater detail the precise conditions of the purchase, together with all the obligations of the seller and the buyer. Any additional deposits required by the formal purchase documents will be made as specified in those documents. All deposits made under this Agreement shall be treated as though originally made under the purchase documents, pursuant to MCL 559.184.
5. *Credit Information.* The Depositor agrees to promptly submit, on request by the Developer, any personal and financial information that the Developer requires to determine whether the Depositor should be preliminarily accepted for participation in the project. If the Depositor is rejected, this Agreement shall immediately terminate and the deposit shall be refunded to the Depositor without further liability on the part of either party. Preliminary acceptance by the Developer shall not be deemed as (a) final approval for purchase or (b) final credit approval for mortgage financing purposes. The right of final approval is reserved as specified in the formal documents of purchase.
6. *Default.* If the Depositor does not (a) execute and deliver formal documents of purchase or (b) deliver the personal or financial information the Developer requires within 15 days after the Developer's request, this Agreement shall, at the Developer's option, terminate and the deposit shall be fully refunded to the Depositor without further liability on the part of either party.
7. *Cancellation Rights.* If the Depositor desires to withdraw the reservation before signing the formal documents of purchase, this Agreement shall terminate immediately on written notice to the Developer by the Depositor and the deposit shall be fully refunded within three business days after the Developer receives the notice without further liability on the part of either party. If the Developer elects not to proceed with the project as a condominium, in whole or in part, or for any other reason desires to withdraw as a party to

this Agreement, this Agreement shall terminate immediately on written notice to the Depositor by the Developer and the deposit shall be fully refunded without further liability on the part of either party.

- 8. *Effect of the Agreement.* This Reservation Agreement is not a purchase agreement. No lien of any sort is acquired by the Depositor either on the Unit covered by this Agreement or on the project site. The liability of the Developer under this Agreement is limited to the return of the deposit without interest.

Developer:
THE DELLS OF MARION OAKS, LLC

Dated: _____

By: Jack Lansing, II
Its: Manager

Depositor(s):

Dated: _____

Print Name: _____
Home Telephone: _____
Business Telephone: _____
Address: _____

Depositor(s):

Dated: _____

Print Name: _____
Home Telephone: _____
Business Telephone: _____
Address: _____
