

## CONSTRUCTION, MAINTENANCE AND ESCROW AGREEMENT FOR SUBDIVISION IMPROVEMENTS

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by (description of entity) (hereinafter "Developer"), THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, (hereinafter "The Board") and \_\_\_\_\_ (hereinafter "Lender").

### RECITALS:

- A. Developer has, simultaneously with the delivery of this Agreement, applied for the approval by the Board of a certain plat of a subdivision to be known as: \_\_\_\_\_.
- B. The subdivision will include certain improvements which are required by Collier County ordinances, as set forth in a site construction cost estimate ("Estimate") prepared by \_\_\_\_\_, a copy of which is attached hereto and incorporated herein as Exhibit 1. For purposes of this Agreement, the "Required Improvements" are limited to those described in the Estimate.
- C. Sections 10.02.05 C. and 10.02.04 of the Collier County Subdivision Code Division of the Unified Land Development Code requires the Developer to provide appropriate guarantees for the construction and maintenance of the Required Improvements.
- D. Lender has entered into a construction loan agreement with Developer dated \_\_\_\_/\_\_\_\_/\_\_\_\_, Account No. \_\_\_\_\_ (the "Construction Loan") to fund the cost of the Required Improvements.
- E. Developer and the Board have acknowledged that the amount Developer is required to guarantee pursuant to this Agreement is \$\_\_\_\_\_, and this amount represents 110% of the Developer's engineer's estimate of the construction costs for the Required Improvements.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter set forth, Developer, the Board and the Lender do hereby covenant and agree as follows:

- 1. Developer will cause the water, sewer, roads, drainage and like facilities, the Required Improvements, to be constructed pursuant to specifications that have been approved by the County Manager or his designee within \_\_\_\_\_ months from the date of approval of said subdivision plat.
- 2. Developer hereby authorizes Lender to hold \$\_\_\_\_\_ from the Construction Loan, in escrow, pursuant to the terms of this Agreement.
- 3. Lender agrees to hold in escrow \$\_\_\_\_\_ from the Construction Loan, to be disbursed only pursuant to this Agreement. Lender acknowledges that this Agreement shall not constitute a draw against the Construction Loan fund, but that only such funds as are actually disbursed, whether pursuant to this Agreement or a provision of the Construction Loan, shall accrue interest.
- 4. The escrowed funds shall be released to the Developer only upon written approval of the County Manager or his designee who shall approve the release of the funds on deposit not more than once a month to the Developer, in amounts due for work done to date based on the percentage completion of the work multiplied by the respective work costs less ten percent (10%); and further, that upon completion of the work, the County Manager or his designee shall approve the release of any remainder of escrowed funds except to the extent of \$\_\_\_\_\_ which shall remain in escrow as a Developer guaranty of maintenance of the Required Improvements for a minimum period of one (1) year pursuant to Paragraph 10 of the Agreement.

However, in the event that Developer shall fail to comply with the requirements of this Agreement, then the Lender agrees to pay to the County immediately upon demand the balance of the funds held in escrow by the Lender, as of the date of the demand, provided that upon payment of such balance to the County, the County will have executed and delivered to the Lender in exchange for such funds a statement to be signed by the County Manager or his designee to the effect that:

- a) Developer for more than sixty (60) days after written notification of such failure has failed to comply with the requirements of this agreement;
  - b) The County, or its authorized agent, will complete the work called for under the terms of the above-mentioned contract or will complete such portion of such work as the County, in its sole discretion shall deem necessary in the public interest to the extent of the funds then held in escrow;
  - c) The escrow funds drawn down by the County shall be used for construction of the Required Improvements, engineering, legal and contingent costs and expenses, and to offset any damages, either direct or consequential, which the County may sustain on account of the failure of the Developer to carry out and execute the above-mentioned development work; and
  - d) The County will promptly repay to the Lender any portion of the funds drawn down and not expended in completion of the said development work.
5. Written notice to the Lender by the County specifying what amounts are to be paid to the Developer shall constitute authorization by the County to the Lender for release of only those specified funds to the Developer. Payment by the Lender to the Developer of the amounts specified in a letter of authorization by the County to the Lender shall constitute a release by the County and Developer of the Lender for the specified funds disbursed in accordance with the letter of authorization from the County.
  6. The Required Improvements shall not be considered for preliminary approval until a statement of substantial completion by Developer's engineer along with the final project records have been furnished to be reviewed and approved by the County Manager or his designee for compliance with the Collier County Subdivision Regulations.
  7. The County Manager or his designee shall, within sixty (60) days of receipt of the statement of substantial completion, either: a) notify the Developer in writing of his preliminary approval of the improvements; or b) notify the Developer in writing of his refusal to approve the improvements, therewith specifying those conditions which the Developer must fulfill in order to obtain the Director's approval of the Required Improvements. However, in no event shall the County Manager or his designee refuse preliminary approval of the improvements if they are in fact constructed and submitted for approval in accordance with the requirements of this Agreement.
  8. Should the funds held in escrow be insufficient to complete the Required Improvements, the Board, after duly considering the public interest, may at its option complete the Required Improvements and resort to any and all legal remedies against the Developer.
  9. Nothing in this Agreement shall make the Lender liable for any funds other than those placed in deposit by the Developer in accordance with the foregoing provisions; provided, that the Lender does not release any monies to the Developer or to any other person except as stated in this Escrow Agreement to include closing the account, or disbursing any funds from the account without first requesting and receiving written approval from the County.

10. The Developer shall maintain all Required Improvement for one year after preliminary approval by the County Manager or his designee. After the one-year maintenance period by the Developer and upon submission of a written request for inspection, the County Manager or his designee shall inspect the Required Improvements and, if found to be still in compliance with the Code as reflected by final approval by the Board, the Lender's responsibility to the Board under this Agreement is terminated. The Developer's responsibility for maintenance of the Required Improvements shall continue unless or until the Board accepts maintenance responsibility for and by the County.
11. All of the terms, covenants and conditions herein contained are and shall be binding upon the respective successors and assigns of the Developer and the Lender.

IN WITNESS WHEREOF, the Board and the Developer have caused this Agreement to be executed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

<b>SIGNED IN THE PRESENCE OF:</b>	<b>(Name of Entity) (Developer)</b>
<b>Witness:</b>	<b>By: _____</b>
<b>Printed Name:</b>	<b>Printed Name/Title (President, VP, or CEO) (Provide Proper Evidence of Authority)</b>
<b>Witness:</b>	
<b>Printed Name:</b>	
<b>SIGNED IN THE PRESENCE OF:</b>	<b>(Name of Entity) (Lender)</b>
<b>Witness:</b>	<b>By: _____</b>
<b>Printed Name:</b>	<b>Printed Name/Title (President, VP, or CEO) (Provide Proper Evidence of Authority)</b>
<b>Witness:</b>	
<b>Printed Name:</b>	
<b>ATTEST: _____</b>	
<b>CRYSTAL K. KINZEL, CLERK</b>	<b>BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA</b>
<b>By: _____ Deputy Clerk</b>	<b>By: _____ Chairman</b>
<b>Approved as to form and legality:</b>	
<b>_____</b>	
<b>Scott A. Stone</b>	
<b>Assistant County Attorney</b>	