

SAMPLE

ESCROW ACCOUNT AGREEMENT AND INSTRUCTIONS

*[*Note: The brackets and Italics throughout the document indicate that the appropriate information needs to be inserted into the document.]*

Date: *[Insert Date (i.e., Month, day and year)]*

Escrow Officer: *[Insert Name of Officer, of Insert Name of Bank]*

The CITY OF PEORIA, ARIZONA, a municipal corporation (the “City”) whose address is 8401 W. Monroe Street, Peoria, AZ 85345, and *[INSERT NAME OF DEVELOPMENT]*, an Arizona *[Insert Type of Company, Corporation, etc.]* (“*[Insert Company Name]*” or the “Developer” interchangeably), whose address is *[Insert Full Address, City, State, Zip Code]*, hereby employ *[Insert Name of the Escrow Officer]* of *[Insert Name of the Bank]*, as Escrow Agent in connection with the development of a *[Insert Type of Development]* known as *[Insert Name of the Project]* Project at *[Insert Full Address of Project,]*, Peoria, Maricopa County, Arizona. (The City and the Developer are collectively known as the “Parties”).

RECITALS

This Escrow is predicated upon the following facts:

A. The Developer is developing a *[Insert type of Project]* known as *[Insert Name of the Project]* Project, and desires to provide the City a financial guarantee to assure the completion of the required Public Improvements at *[Insert Location of Improvements]*;

B. Pursuant to the City of Peoria City Code Subdivision Regulations (“Subdivision Regulations”) the Developer must provide assurance for construction of the required Public Improvements and an Escrow Account is a permissible form of assurance under the Subdivision Regulations; and

C. The Developer desires to provide the required Public Improvements and has established an Escrow Account for such purpose.

NOW, THEREFORE, in consideration of the foregoing premises, the parties hereto state the Escrow Account shall be subject to the following terms and conditions, which shall be complied with on or before *[Insert Required Project Improvements Completion Date]*.

Escrow Account/Funds:

Amount: *[Insert Numerical Dollar Amount of Escrow Account Funds]* US
[Insert Typed-out Dollar Amount of Escrow Account Funds]

GENERAL PROVISIONS

1. Incorporation of Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. Incorporation of Exhibits. The following documents are referred to in this Escrow Account Agreement and Instructions (“Escrow Agreement”) and are attached hereto and made a part of this Escrow Agreement by this reference.

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--|
| A | Agreement to Install A Improvements Form |
| B | City of Peoria Subdivision Regulations (Specifically § 24-108) |
| C | Final Plat Approved/Signed <i>[Insert Approval Date]</i> |
| D | Letter from <i>[Insert Name of Bank]</i> Acknowledging an Account in the Name of the City of Peoria, as Surety Deposit for <i>[Insert Name of Project]</i> in the amount of \$ <i>[Insert Dollar Amount of Escrow Account Funds]</i> |

3. Deposit of Funds. All funds received in the Escrow Account shall be deposited on or before *[Insert Date which Escrow Account Funds are Deposited]*, in a segregated account with *[Insert Name of Bank]* at *[Insert Full Address of Bank (i.e., Address, City, State, Zip Code)]*, said Escrow Account Funds are being held in the name of:

City of Peoria
Surety Deposit for *[Insert Name of Project]* Project’s Required Public Improvements

The Developer shall deposit at *[Insert Name of Bank]* the amount of \$*[Insert Numerical Dollar Amount of Escrow Account Funds]* (the “Escrow Account Funds”) in accordance

with and subject to the provisions of Article V § 24-108 of the Subdivision Regulations. In part § 24-108 requires developers to provide the City a financial guarantee to assure the completion of the required Public Improvements.

4. Escrow Account Funds Deposit and Restrictions. The City agrees that the Escrow Account Funds on deposit with [*Insert Name of Bank*] shall be deposited in an interest bearing account and shall only be used as payment for the required Public Improvements pursuant to this Escrow Agreement. All interest shall accrue to the Developer at such times as [*Insert Name of Bank*] pays interest, but shall remain in Trust.

The deposit of the Escrow Account Funds will be made to assure the City that funds are available to the City for withdrawal by the City in the event it becomes necessary for the City to withdraw the funds to complete construction of the required Public Improvements. The Escrow Account Funds shall not be used or pledged by the Developer for any purpose during the period the Escrow Account is in effect. Upon completion of the required Public Improvements, as shall be determined by the City Engineer or his designee in writing, all money in the Escrow Account, plus any accrued interest, shall be immediately released to the Developer.

In the event the Developer fails to complete the required Public Improvements within the specified time period and upon notice by the City to the Developer, the Escrow Account Funds shall be immediately, without further action paid over to the City for use in completion of the required Public Improvements.

5. Termination of Obligation. The Escrow Account will terminate on [*Insert Date of One Year from the Completion Date of the Required Public Improvements*], unless it is terminated sooner by the completion of the land development activities (required Public Improvements) described in Section six (6) below. The City shall hold the Escrow Account Funds pending completion of the required Public Improvements as required by the Subdivision Regulations. If the required Public Improvements are not completed by [*Insert Required Public Improvements Completion Date*], then all Escrow Account Funds shall be released to the City to assure the appropriate completion of the required Public Improvements. The City shall not thereafter, and does not by entering into this Escrow Agreement, assume any duty to complete the required Public Improvements beyond the availability of the Escrow Account Funds in the Escrow Account. The City shall not be obligated to repay the funds disbursed to it from the Escrow Account. Should any Escrow Account Funds held by the City exceed the cost to the City of completing the required Public Improvements, the excess shall be returned after completion of the required Public Improvements to the Developer.

6. Required Improvements. The required Public Improvements governed by this Escrow Agreement and the Escrow Account are as follows:

[*List Required Public Improvements*]

* Public Street Improvements

- * Public Water System
- * Public Sewer System

7. Breach and Remedy. In the event of a breach of this Escrow Agreement by either party, such breach shall be corrected within seventy-two (72) hours of notice of occurrence. In the event the breach is not corrected within seventy-two (72) hours, the Escrow Agreement is canceled and any and all money and documents deposited with the Escrow Account Funds shall be released to the City to assure the appropriate completion of the required Public Improvements. The City shall hold the Escrow Account Funds pending completion of the required Public Improvements as required by the Subdivision Regulations. Notice of a breach is considered given when sent by facsimile to the party in breach of the Escrow Agreement.

8. Effective Date. This Escrow Agreement shall be effective when executed by both parties and the City receives written documentation from *[Insert Name of Bank]* evidencing that: (1) funds in the amount of \$*[Insert Numerical Dollar Amount of Escrow Account Funds]* were deposited in a segregated account; (2) the account is in the name of the City of Peoria as surety deposit for *[Insert Name of Project]* Project's required Public Improvements; (3) the deposited funds shall not be withdrawn unless approved/released by the City; and (4) if the required Public Improvements are not completed by *[Insert Required Public Improvements Completion Date]*, the deposited funds shall be released to the City. The City received a letter from *[Insert Name of Bank]* this _____ day of _____, 2004.

9. Clarification of Duties. *[Insert Name of Escrow Officer]* Person serves as an Escrow Agent/Officer ONLY in connection with these instructions and cannot give legal advice to any party hereto.

10. Headings. The description headings of the paragraphs of this Escrow Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

11. Entire Agreement. This Escrow Agreement constitutes the entire Agreement between the Parties and shall not be changed or added to. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

12. Severability. If any provision of this Escrow Agreement is declared void or unenforceable, the provisions shall be severed from this Agreement, the remainder of the Agreement shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

13. Governing Law. This Escrow Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

14. Authority. The Developer represents and warrants to the City (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this Escrow Agreement on behalf of the Developer is authorized and empowered to bind the Developer.

UNLESS AND UNTIL THE CITY RECEIVES WRITTEN DOCUMENTATION FROM [INSERT NAME OF BANK] BANK EVIDENCING THAT: (1) FUNDS IN THE AMOUNT OF \$[INSERT NUMERICAL DOLLAR AMOUNT OF ESCROW ACCOUNT FUND] WERE DEPOSITED IN A SEGREGATED ACCOUNT; (2) THE ACCOUNT IS IN THE NAME OF THE CITY OF PEORIA AS SURETY DEPOSIT FOR [INSERT NAME OF PROJECT] PROJECT'S REQUIRED PUBLIC IMPROVEMENTS; (3) THE DEPOSITED FUNDS SHALL NOT BE WITHDRAWN UNLESS APPROVED/RELEASED BY THE CITY; AND (4) IF THE REQUIRED PUBLIC IMPROVEMENTS ARE NOT COMPLETED BY [INSERT REQUIRED PUBLIC IMPROVEMENTS COMPLETION DATE], THE DEPOSITED FUNDS SHALL BE RELEASED TO THE CITY, THIS ESCROW AGREEMENT IS NULL AND VOID.

THIS ESCROW AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR SUCCESSORS AND ASSIGNS.

THIS ESCROW AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AN ORIGINAL, AND BE EFFECTIVE AS SUCH.

THE SIGNATURES HERETO CONSTITUTE INSTRUCTION TO THE ESCROW AGENT AND [INSERT NAME OF BANK] BANK THAT ALL THE TERMS AND CONDITIONS CONTAINED IN THIS ESCROW AGREEMENT HAVE BEEN READ AND UNDERSTOOD.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year written above in Section eight (8).

[Insert Name Developer], L.L.C.,
an Arizona [Insert Type of Company]

CITY OF PEORIA, ARIZONA,
a municipal corporation

By: _____

By: _____

Its: _____

Its: _____

Accepted and agreed, this ____ day of _____, 200__.

Approved as to Form:

By: _____
Escrow Agent

City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 200__, by [*Insert Name*], the [*Insert Position/Office*] of [*Insert Company*], an Arizona [*Insert Type of Company/Corporation*], for and on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 200__, by _____, _____ for the City of Peoria, Arizona, a municipal corporation.

Notary Public

My Commission Expires:
