

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, \_\_\_\_\_, ("\_\_\_\_\_", "Owner," or "Applicant"), and \_\_\_\_\_, ("Escrow Agent").

### RECITALS

A. \_\_\_\_\_ is the owner or developer of that certain property located in the City of Miami Beach and legally described on Exhibit "A" attached hereto (the "Property"). \_\_\_\_\_ is in the process of completing construction of a project, which is named "\_\_\_\_\_", and related improvements on the Property, (the "Project").

B. In its governmental and regulatory capacity, the City of Miami Beach, (the "City"), has required \_\_\_\_\_ to install \_\_\_\_\_ improvements, (the "Improvements"), as is or will be shown on a plan, mutually agreed to by both \_\_\_\_\_ and the City, which has been submitted or will be submitted at a later date, as a condition to the City's issuance of a final certificate of occupancy for the \_\_\_\_\_ Project.

C. \_\_\_\_\_ has requested the issuance of a \_\_\_\_\_ for the \_\_\_\_\_ Project.

D. The City has agreed to issue a \_\_\_\_\_ for the Project on the condition that \_\_\_\_\_ place in escrow with Escrow Agent the aggregate dollar amount required to fund the Improvement and, if within \_\_\_\_\_ months of the date of this Agreement, \_\_\_\_\_ has not \_\_\_\_\_, then the escrowed funds will be deemed a performance bond/surety which would be released to the City in accordance with the terms and provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. \_\_\_\_\_ agrees that the foregoing recitals are true and correct and are incorporated herein as if repeated at length.

2. The City and \_\_\_\_\_ have agreed that the aggregate dollar amount required to install the Improvements is \$\_\_\_\_\_, and \_\_\_\_\_ has deposited with Escrow Agent such amount (the "Escrowed Money"). The Escrow Agent hereby acknowledges receipt of the Escrowed Money and agrees to hold the same in trust and disburse the Escrowed Money in accordance with the terms of this Agreement. Escrow Agent shall not be obligated to invest the Escrowed Money in an interest-bearing account.

3. Escrow Agent shall hold the Escrowed Money and disburse same as follows:

(a) If \_\_\_\_\_ months after the date of this Agreement, the City Manager submits a signed statement to Escrow Agent stating that \_\_\_\_\_ has not submitted to City applications for permits for the Improvements, Escrow Agent shall disburse the Escrowed Money to the City.

(b) If \_\_\_\_\_ months after the issuance of the necessary permits for the agreed upon Improvements, the City Manager submits a signed statement to the Escrow Agent stating that \_\_\_\_\_ has not completed the installation of the agreed upon Improvements, Escrow Agent shall disburse the Escrowed Money to the City.

(c) In the event 3(a) or (b) have not occurred, and \_\_\_\_\_ completes the agreed upon Improvements, Escrow Agent shall return the Escrowed Money to \_\_\_\_\_ after it has been provided evidence that the City has issued a final inspection approval of the agreed upon Improvements and the necessary permits have been closed. Escrow Agent shall give written notice to City of its receipt of such evidence, and of its release of the Escrowed Money.

4. Monies released to the City under paragraphs 3(a) or (b) above shall be used by the City for any lawful purpose on which the City is authorized to act. Release of the funds held in escrow to the City does not release the Owner or Applicant from the requirement of installing the Improvements. If the Owner or Applicant does not install the Improvements by the deadline provided in paragraph 3(b) above, or as extended by City, which extensions shall not unreasonably be withheld, City may administratively revoke or suspend the certificate of occupancy of Owner or Applicant for the Project, until such time as the Improvements are completed, or may impose as liquidated damages against the Owner or Applicant such sums as remain in escrow to accomplish compliance with the requirements hereof.

5. All notices and/or written statements given or made pursuant hereto, or for the purposes of invoking or enforcing any of the provisions hereof, shall be in writing (by a party or by such party's attorney), and shall be sent by (i) personal delivery, (ii) delivery by a recognized overnight courier, (iii) United States mail, postage prepaid, registered or certified mail, or (iv) facsimile, with proof of transmission, addressed as follows:

If to \_\_\_\_\_: \_\_\_\_\_  
\_\_\_\_\_

With Copy to:

If to City: Planning Director  
City of Miami Beach  
1700 Convention Center Drive  
Planning Department, 2nd Floor  
Miami Beach, FL 33139  
Telephone: (305) 673-7000, Ext. 6150  
Fax: (305) 673-7559

With Copy to: City Attorney  
City of Miami Beach  
Office of the City Attorney  
1700 Convention Center Drive, 4th Floor  
Miami Beach, Florida 33139  
Attention: Gary M. Held, Esq.  
Telephone: (305) 673-7000, Ext. 6532  
Facsimile: (305) 673-7002

If To Escrow Agent:

Personal delivery or overnight courier shall be effective upon receipt or as of the date of first attempted delivery, and notice by mail shall be effective upon deposit in the United States mail in the manner above described, and notice by facsimile shall be effective upon transmission. Any of the foregoing addresses may, at any time by giving ten (10) days' prior written notice to the other addressees, designate any other address in substitution of the foregoing address. All notices from \_\_\_\_\_ to the Escrow Agent shall be copied to the City, and all notices from the City to the Escrow Agent shall be copied to \_\_\_\_\_.

6. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all constituting only one agreement. The parties further acknowledge and agree that signatures of the parties hereto on copies of this Agreement transmitted by facsimile machine shall be deemed originals for all purposes hereunder, and shall be binding upon the parties hereto.

7. The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross negligence or willful misconduct. \_\_\_\_\_ indemnifies and holds harmless the Escrow Agent from and against any loss, liability, damage, claim, cost, fee or expense whatsoever (including reasonable attorney's fees at all trial and appellate levels) the Escrow Agent may incur or be exposed to in its capacity as escrow agent hereunder except for gross negligence or willful misconduct. If there be any dispute as to disposition of any proceeds held by the Escrow Agent pursuant to the terms of this Agreement, the Escrow Agent is hereby authorized to interplead said amount with any court of competent jurisdiction and thereby be released from all obligations hereunder. The parties acknowledge that Escrow Agent is the law firm representing \_\_\_\_\_, and that Escrow Agent shall have the right to

represent \_\_\_\_\_ in any dispute among the parties hereto with respect to the Escrowed Money or otherwise. Upon delivery of the Escrowed Money pursuant to this Agreement, Escrow Agent's obligations hereunder shall terminate.

8. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to principles of conflicts of law.

9. This Agreement is binding on all successors in interest and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth above.

\_\_\_\_\_:

**By:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**ESCROW AGENT:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved

\_\_\_\_\_  
Planning Director                      Date

Approved as to form and language and for execution

\_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_