

IMPACT FEE ESCROW AGREEMENT

Palm Beach County (hereinafter “the County”), _____ (hereinafter “the Builder”) and _____ (hereinafter “the Escrow Agent”) a banking association in _____ [city] _____, _____ [state] _____ (hereinafter “the Parties”), in consideration of the mutual covenants contained in this Agreement, hereby agree as follows:

1. Purpose. The Builder is currently building _____ in Palm Beach County, Florida in the development known as _____. Pursuant to the Palm Beach County Unified Land Development Code, Article 10 (hereinafter “Article 10”), the County requires that the Builder pay Palm Beach County impact fees at the time that building permits are issued to the Builder. The Builder may be entitled to certain applicable adjustments of impact fees payable or to certain credits against the impact fees payable. The exact amount of such credits or adjustments has not been determined at this time and, therefore, the exact amount of the impact fees payable in connection with the issuance of building permits is not determined at this time. The intent of the Parties is for the Builder to make adequate payment, in escrow, to insure the payment of the impact fees once they are determined. The Builder anticipates an adjustment of impact fees due to the following specific reason(s):
 - (a) _____
 - (b) _____
 - (c) _____

2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (hereinafter “the Account”) at _____, a national banking association, located at _____ (hereinafter “the Bank”) to be held pursuant to the terms of this Agreement. The Escrow Agent warrants that it meets or exceeds the indicated threshold levels from at least two of the following five approved rating services:
 - A. Sheshunoff Quarterly listing – 50
 - B. IDC Bank Financial Quarterly listing – 125
 - C. Veribanc, Inc. listing – 3 Star Green Rating
 - D. Standard & Poor’s listing – Single A
 - E. Moody’s listing – Single A

The Escrow Agent agrees that it will at all times during the term of this Agreement maintain the minimum peer group rating standard. The Escrow Agent further agrees that if, at any time during the term of this Agreement, it fails to maintain minimum ratings from at least two of the five rating services above, it will immediately notify the County in writing. At the County’s sole option, the Agreement may thereafter continue for the remainder of the term or be terminated and the account closed pursuant to instructions from the County.

The account shall be an interest bearing account. If the escrowed funds, or a portion thereof, are released to the County, all interest earned by such funds while in escrow shall accrue to the County. If the County is not entitled to the funds, or a portion thereof, the interest earned by such funds shall accrue to the Builder. The Builder shall pay all costs, fees and expenses of the Bank and the Escrow Agent arising from or in connection with the Account.

3. The Escrow Agent Reporting Requirements. Each month during the term of this Agreement, the Escrow Agent shall issue to the County and the Builder a current statement of account activity for the period, including starting balance, deposits into the account, withdrawals from the account, interest earned on the account, and ending balance.
4. Deposit of Estimated Fees. As a condition precedent to the issuance of any building permit to the Builder, the Builder shall deposit the total amount of estimated impact fees applicable to such permit in the amount determined by the County pursuant to its Impact Fee Tables contained in Article 10, incorporated by this reference as if fully set forth herein, as may be amended from time to time. The Builder shall evidence such deposit by delivering to the County, or to the appropriate municipality as may be directed by the County, a sworn receipt and two copies (a form of which is attached hereto as Exhibit "A") executed by the Escrow Agent, which receipt shall contain a brief legal description of the affected property and the total amount of the fees deposited with the Escrow Agent. The Builder shall pay all other applicable impact fees directly to the County, or to the appropriate municipality as may be directed by the County, prior to the issuance of any building permit.
5. Disbursement of Escrowed Funds. The Escrow Agent shall hold the escrowed funds until it receives written notice from the County as to the amount of impact fees due. The notice from the County shall establish the amount due the County from escrow funds. Within ten (10) days after receipt of notice from the County as to the impact fees due and payable, the Escrow Agent shall disburse the required impact fees to the County and shall disburse the remaining amount, if any, to the Builder. All accrued interest earned on the escrow account shall be prorated between the Builder and the County based upon the amount due to each.
6. Term of Agreement. This Agreement shall be effective and binding on the parties upon approval and execution by the County. The Builder shall diligently pursue establishment of any impact fee adjustment or grant of credit against impact fees payable and acknowledges and agrees that the Builder is responsible for submitting to the Impact Fee Coordinator documentation in support thereof as set forth in Article 10 as it may from time to time be amended. The Builder further acknowledges and agrees that in the event the amount of credit or adjustment has not been established within two years from the effective date of this Agreement, the entire amount of impact fees paid into the Escrow Account, and all accrued interest, shall be disbursed to the County.
7. Dispute Resolution. In the event of dispute between the County and the Builder concerning disposition of funds from the Escrow Account, the Builder may, at its option, appeal the decision of the County concerning distribution of the escrowed funds by filing a letter of appeal pursuant to the procedures set forth in Article 10 of the Unified Land Development Code as it may be amended from time to time. Notwithstanding such an appeal, the Parties agree that the Escrow Agent shall disburse funds in accordance with written instructions from the County. Upon such disbursement by the Escrow Agent, all liability on the part of the Escrow Agent shall terminate, except to the extent of accounting for any items previously delivered out of escrow. The County and the Builder agree that the Escrow Agent shall not be liable to any person for its acts pursuant to this Agreement other than for the Escrow Agent's willful breach of this Agreement or the Escrow Agent's gross negligence.

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8. Standard Provisions.

- A. Additional Instruments. Each of the Parties shall from time to time at the request of the other, execute, acknowledge and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.
- B. The Entire Agreement. This Agreement constitutes the entire understanding of the Parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
- C. Modification. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.
- D. Waiver. The failure of any of the Parties to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.
- E. Situs and Venue. The Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue will be in Palm Beach County.
- F. Partial Invalidity. If any provisions of this Agreement are held to be invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.
- G. Notices. Unless otherwise specified, all notices required under this Agreement shall be made and transmitted in writing by U.S. mail to:

For the County

Mr. Willie Swoope
Impact Fee Coordinator
100 Australian Avenue, Rm 352
West Palm Beach, FL 33406

For the Builder

For the Escrow Agent

- H. Time of the Essence. Time is of the essence in every particular, including the agent's reporting requirement set forth in paragraph 3 above, and particularly where the obligation to pay money is involved.
- I. Captions. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

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IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____ 200__ .

BUILDER:

Witnesses (2):

[Signature]

[Signature]

[Typed or Printed Name]

[Typed or Printed Name]

Date: _____, 200__

Telephone: _____

[Signature]

[Typed or Printed Name]

PR No: _____

Petition No: _____

Witnesses (2):

ESCROW AGENT:

[Signature]

[Signature]

[Typed or Printed Name]

[Typed or Printed Name]

[Signature]

Date: _____, 200__

Telephone: _____

[Typed or Printed Name]

PALM BEACH COUNTY

Witnesses (2):

Willie M. Swoope, Impact Fee Coordinator

[Signature]

Date: _____, 200__

[Typed or Printed Name]

Telephone: (561) 233-5014

[Signature]

[Typed or Printed Name]

CERTIFIED RECEIPT
EXHIBIT "A"

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Escrow Agent, who, being by me first duly sworn, deposes and says:

1. Escrow Agent hereby acknowledges that it has received the following sums to be held by Escrow Agent pursuant to the Impact Fee Escrow Agreement dated _____, 200__ in connection with Lot ____, Block ____ of the development known as _____, Zoning Petition _____, in connection with the application for a building permit for a single family residence containing _____ square feet of enclosed floor space. The Plan Review and/or Petition numbers are: _____.

School Impact Fee Escrow Amount	\$ _____
Road Impact Fee Escrow Amount	\$ _____
Park Impact Fee Escrow Amount	\$ _____
Fire-Rescue Impact Fee Escrow Amount	\$ _____
Library Impact Fee Escrow Amount	\$ _____
Public Buildings Impact Fee Escrow Amount	\$ _____
Law Enforcement Impact Fee Escrow Amount	\$ _____

2. Escrow Agent acknowledges that this Affidavit is being given as an inducement to Palm Beach County to issue one or more building permits.

Further Affiant sayeth not.

SWORN TO BEFORE ME this _____ day of _____, 200__ .

NOTARY PUBLIC

My commission expires: