

**CONSTRUCTION, MAINTENANCE AND ESCROW AGREEMENT FOR  
SUBDIVISION IMPROVEMENTS**

THIS AGREEMENT is entered into this 3<sup>rd</sup> day of September, 2014 by Mangrove Bay Development, LLC, a Florida limited liability company (hereinafter "Developer"), the City of Naples, a municipal corporation of the State of Florida, (hereinafter the "City") and Coleman, Yovanovich & Koester, P.A., a Florida professional association (hereinafter "Escrow Agent"), and is joined by the Mangrove Bay Homeowners' Association, Inc., a Florida not-for-profit corporation (the, "Association").

- A. Developer has, simultaneously with the delivery of this Agreement, applied for the approval by the City of a certain plat of a subdivision to be known as: Mangrove Bay (the "Plat").
- B. The subdivision will include certain improvements which are required by City ordinances, as set forth in a site construction cost estimate ("Estimate") prepared by Jay Westendorf of Omega Consulting Group, 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. Section 54-75 of the City's Code of Ordinances requires the Developer to provide appropriate guarantees for the construction and maintenance of the Required Improvements.
- D. Developer will fund the cost of the Required Improvements with cash-on-hand.
- E. Developer and the City have acknowledged that the amount Developer is required to guarantee pursuant to this Agreement is \$2,958,595.70, and this amount represents 110% of the Developer's engineer's estimate of the construction costs for the Required Improvements ("Escrow Amount"). The Escrow Amount has been funded by the Developer as evidenced by the attached receipt executed by Escrow Agent.

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

- 1. Developer has commenced work on the Required Improvements pursuant to specifications that have been approved by the City Manager or his designee, and Developer will complete such construction within twelve (12) months from the date of approval of the Plat. If the Developer fails to complete the Required Improvements, then the Association shall be required to complete the Required Improvements and shall, at the Associations expense, retain the engineer of record to oversee the proper completion and certification of such improvements.
- 2. Developer hereby authorizes Escrow Agent to hold the Escrow Amount in escrow, pursuant to the terms of this Agreement.
- 3. Escrow Agent agrees to hold the Escrow Amount in escrow to be disbursed only pursuant to this Agreement.
- 4. The escrowed funds shall be released to the Developer on a monthly basis (but not more than once per month) and paid to the Developer, in amounts due for work performed as of the date of the draw request, upon receipt by Escrow Agent of: (i) written certification from Developer's engineer (with a courtesy copy to the City Manager) that the work for which Developer seeks disbursement from the Escrow Funds has been performed in substantial accordance with the City's requirements; and (ii) a copy of the draw request submitted to Developer from the Developer's site work contractor for such completed work (with a courtesy copy to the City Manager). However, the sum of \$321,760.00 shall

remain in escrow as a Developer guaranty of maintenance of the Required Improvements for a period of one (1) year pursuant to Paragraph 11 of this Agreement.

In the event that Developer and Association shall both fail to comply with the requirements of this Agreement, then the Escrow Agent agrees to pay to the City immediately upon demand the balance of the funds held in escrow by the Escrow Agent, as of the date of the demand, provided that upon payment of such balance to the City, the City will have executed and delivered to the Escrow Agent in exchange for such funds a statement to be signed by the City 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 City, 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 City, 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 City 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 City may sustain on account of the failure of the Developer to carry out and execute the above-mentioned development work; and
  - (d) The City will promptly repay to the Escrow Agent any portion of the funds drawn down and not expended in completion of the said development work.
5. Any written notice to the Escrow Agent by the City specifying what amounts are to be paid to the Developer shall constitute authorization by the City to the Escrow Agent for release of only those specified funds to the Developer. Payment by the Escrow Agent to the Developer of the amounts specified in any letter of authorization by the City to the Escrow Agent shall constitute a release by the City and Developer of the Escrow Agent for the specified funds disbursed in accordance with the letter of authorization from the City. Nothing in this paragraph shall require a letter of authorization from the City in order for Escrow Agent to disburse portions of the Escrow Amount to Developer.
  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 City Manager or his designee for compliance with the City's Code of Ordinances.
  7. The City 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 Required Improvements; or b) notify the Developer in writing of his refusal to approve the Required 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 City Manager or his designee refuse preliminary approval of the Required 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 City, 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 and the Association.

9. Nothing in this Agreement shall make the Escrow Agent liable for any funds other than those placed in deposit by the Developer in accordance with the foregoing provisions; provided, that the Escrow Agent does not release any monies to the Developer or to any other person except as stated in this Agreement. In the event Escrow Agent shall receive conflicting demands for the Escrow Amount, Escrow Agent shall promptly: (i) with the consent of all parties, submit the matter to arbitration at the cost and expense of the City and Developer; or (ii) by interpleader, or otherwise, seek an adjudication of the matter by court proceeding. In addition, Escrow Agent may resign as Escrow Agent at any time on giving notice to the City and Developer of its desire to resign; provided, however, that resignation by Escrow Agent shall not take effect sooner than thirty (30) days after Escrow Agent gives notice of resignation unless a successor escrow agent has been designated by the City and Developer and the then-remaining Escrow Amount has been delivered to the successor escrow agent. On receiving the notice of termination of the duties of Escrow Agent, the City and Developer shall immediately designate a successor escrow agent, and Escrow Agent shall deliver within ten (10) business days thereafter the then-remaining Escrow Amount to the successor escrow agent.
10. The Association and Developer jointly and severally agree to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses other than those arising out of the gross negligence or misconduct of Escrow Agent, including reasonable costs of investigation, counsel fees, and disbursements that may be imposed upon Escrow Agent or incurred by Escrow Agent in connection with its acceptance of its appointment hereunder or in the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof.
11. The Developer and Association shall maintain all Required Improvements for one year after preliminary approval by the City Manager or his designee. After the one year maintenance period by the Developer and upon submission of a written request for inspection, the City Manager or his designee shall inspect the Required Improvements and, if found to be still in compliance with the City's Code of Ordinances as reflected by final approval by the City, the Escrow Agent's responsibility to the Board under this Agreement shall be terminated. The Developer's and Association's responsibility for maintenance of the Required Improvements shall continue unless or until the City accepts maintenance responsibility for and by the City.
12. All notices, demands, requests, or other communications made pursuant to this Agreement shall be in writing and either hand delivered, delivered by overnight courier, or mailed through the United States Postal Service by certified or registered mail, return receipt requested to the party to which the notice, demand, request, or communication is being made, as follows:

To Developer: Mangrove Bay Development, LLC  
Attention: Jon Rubinton, Manager  
201 Goodlette-Frank Road South  
Naples, Florida 34102

To City: City of Naples  
Attention: City Manager  
735 8<sup>th</sup> Street South  
Naples, Florida 34102

To Escrow Agent: Coleman, Yovanovich & Koester, P.A.  
Attention: Matthew L. Grabinski, Esq.  
4001 Tamiami Trail N., Suite 300  
Naples, Florida 34102

To the Association: Mangrove Bay Homeowners' Association, Inc.  
Attn: Jon Rubinton, President  
201 Godlette-Frank Road South  
Naples, Florida 34102

or to such other address as may be designated by a party by giving written notice to all other parties. Any notice demand, request or other communication shall be deemed to be given upon actual receipt in the case of hand delivery, or delivery by overnight courier.

13. 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 Escrow Agent.

IN WITNESS WHEREOF, the City, the Developer, and the Escrow Agent have caused this Agreement to be executed by their duly authorized representatives this 3rd day of September, 2014.

WITNESSES AS TO DEVELOPER:

  
Print Name: Celine S. Boyer

  
Print Name: DAVID SEXTON

DEVELOPER:

Mangrove Bay Development, LLC,  
a Florida limited liability company

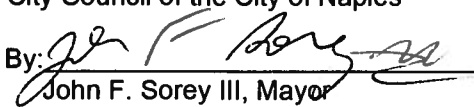
By: Selpan-Mangrove, LLC,  
a Florida limited liability company  
Its: Manager

  
By: Jon Rubinton, Manager

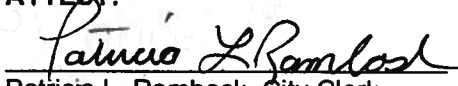
CITY:

City of Naples,  
a municipal corporation of the State of Florida

By: City Council of the City of Naples

  
By: John F. Sorey III, Mayor

ATTEST:

  
Patricia L. Rombosk, City Clerk

APPROVED AS TO FORM AND LEGALITY:

  
Robert D. Pritt, City Attorney

**WITNESSES AS TO ASSOCIATION:**



Print Name: Celine S. Boyer



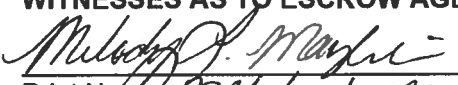
Print Name: DANIEL SEXTON

**ASSOCIATION:**

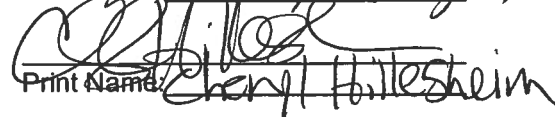
Mangrove Bay Homeowners' Association, Inc.

By:   
Jon Rubinton, President

**WITNESSES AS TO ESCROW AGENT:**



Print Name: Melody J. Mayhew



Print Name: Cheryl Hiltstein

**ESCROW AGENT:**

Coleman, Yovanovich & Koester, P.A.,  
a Florida professional association

By:   
Matthew L. Grabinski, Vice-President

Escrow Receipt

The undersigned Escrow Agent, acknowledges receipt of \$2,958,595.70 from Mangrove Bay Development, LLC, constituting the "Escrow Funds" required by that certain Construct, Maintenance and Escrow Agreement for Subdivision Improvements ("Escrow Agreement") by and between Mangrove Bay Development, LLC, a Florida limited liability company (hereinafter "Developer"), the City of Naples, a municipal corporation of the State of Florida, (hereinafter the "City") and Coleman, Yovanovich & Koester, P.A., a Florida professional association (hereinafter "Escrow Agent"), pertaining to the subdivision located in the City of Naples and known as *Mangrove Bay*.

**ESCROW AGENT:**

Coleman, Yovanovich and Koester, P.A.

By:   
Matthew L. Grabinski, Vice President

Date: 9/2/14