

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "**Escrow Agreement**") is made to be effective as of February 6, 2018 (the "**Effective Date**"), among GILA COUNTY, a political subdivision of the State of Arizona ("**County**"), Terry Gorton acting as agent for both Javelina Sky Development LLC and Woodshire at Elk Rim LLC ("**Developer**"), and National Bank of Arizona, ("**Escrow Agent**") (collectively the "**Parties**").

RECITALS

The Developer is developing a project ("**Project**") requiring certain Public Improvements ("**Improvements**") more particularly described in documents on file with the Gila County Division of Public works. **Exhibit "A"** is the Cost Estimate of the Improvements. **Exhibit "B"** is the legal description pertaining to the Project. .

A. The Developer is required to provide financial assurance to the County for the installation and completion of such Improvements to the Project as to meet minimum standards of design and construction pursuant to Gila County Subdivision Regulations and other applicable laws before plats for Projects may be recorded. To meet such financial assurances, Escrow Agent shall receive the sum of two hundred and eighty-seven thousand one hundred and seventy seven and no/100 dollars (\$287,177.00) (the "**Funds**") from the Developer. The Funds shall be held by Escrow Agent and retained in the Escrow in accordance with this Escrow Agreement.

B. The Parties intend that Escrow Agent is to: (1) hold the Funds, in trust, for the benefit of County and Developer, with interest accruing to be added to the Funds; and (2) distribute the Funds as provided and directed in this Escrow Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

AGREEMENTS

1. INCORPORATION OF RECITALS. The foregoing Recitals are incorporated herein by reference as agreements of the Parties.

2. APPOINTMENT OF ESCROW AGENT. County and Developer appoint National Bank of Arizona to serve as Escrow Agent under this Agreement, and the Escrow Agent hereby accepts such appointment, on the terms subject to the conditions set forth herein.

3. DEPOSIT OF FUNDS: Within five (5) days following the execution of this Agreement, the Developer shall deliver or cause to be delivered the Funds to the Escrow Agent in accordance with the terms and conditions hereof, and the Escrow Agent shall acknowledge receipt of such amount upon receipt thereof by written notice to the Parties. The Funds shall be

held hereunder by the Escrow Agent for the purposes contemplated by this Agreement. The Escrow Agent shall hold the Funds pursuant to the terms of this Agreement in a separate account (the "**Escrow Account**") until the entirety of the Funds have been released pursuant to the terms and conditions of this Agreement.

4. INVESTMENT OF FUNDS. The Escrow Agent shall invest the Funds in accordance with such written instructions and directions as may from time to time be provided to the Escrow Agent by the Parties; provided, however, that the Funds shall at all times be invested in investment options that are insured by the Federal Deposit Insurance Corporation or a similar governmental agency, or in direct obligations of, or obligations fully guaranteed by, the United States of America or any agency thereof which are traded on established markets and have a maturity of thirty (30) days or less. If the Escrow Agent does not receive written instructions from the Parties with respect to the investment of the Funds, the Escrow Agent shall invest the Funds in any investment options that comply with the immediately preceding sentence, and which do not involve any early withdrawal charges or penalties (it being understood that the Escrow Agent will initially invest the Funds in its "Business Money Market" product). In no event shall the Escrow Agent have any obligation to advance funds. The Escrow Agent shall not be responsible for any loss due to interest rate fluctuation. In no event shall the Escrow Agent have any obligation to provide investment advice of any kind. The Escrow Agent shall not be liable or responsible for any loss resulting from any deposit or investment that complies with the requirements of this Section, other than because of the breach of this Agreement, noncompliance with law, bad faith, willful misconduct or negligence of the Escrow Agent.

5. DISBURSEMENTS OF FUNDS.

5.1 The Developer's Right to Draw Against the Funds. The Developer shall have the right to make periodic draws against the Funds to pay for work as it is partially completed (the "**Draws**"). The right to receive Draws shall be subject to the following:

i. The Developer shall give written notice to the County and Escrow Agent of its intention to make a Draw together with reasonable documentation to support the basis for the Draw which will include sealed and stamped test results to the extent applicable and a verification from an engineer that the work identified in the Draw has been performed (the "**Notice**").

ii. The Notice will be sent to the County engineer who will then make first-hand personal observation of the partially-finished improvements justifying the Draw and give written confirmation that such work has been done if it has been done. This confirmation will be sent to the Gila County Division of Public Works Director who will approve or disapprove of the disbursement, and if he approves it, he will send it to the Gila County Manager. The County manger will then approve or disapprove of the Draw by giving written notice to the Developer and Escrow Agent. The County shall not unreasonably withhold or delay approval, and shall only withhold approval for the portion of the Draw related to any objection it may have.

iii. Ten percent has been added to the total estimated cost of improvements as a Partial Assurance Addition. It is understood by the parties that after the disbursement of all of the funds for the Improvements, this ten percent will remain in the Escrow Account which will be disbursed as described in this Escrow Agreement.

iv. If the County approves all or part of the Draw, then Escrow Agent shall disburse payment of the amount approved to the Developer, or the Developer's payees if elected by the Developer.

v. If the County objects to all or a portion of the Draw, the Developer, Construction Manager, and County shall promptly meet and confer to attempt to resolve the reason(s) for the County's objection. If the parties are unable to resolve the reason(s) for the County's objection within five (5) business days after the date the objection is given, then such matter (a "**Dispute**") shall be resolved by another construction engineer or construction manager reasonably acceptable to all parties as soon as possible (such person being referred to herein as the "Neutral"). Costs and Fees of the Neutral shall be borne equally by the County and the Developer.

5.2 Disbursement Upon Completion. Upon completion of the Improvements to the Project and payment of all outstanding Draws (as confirmed by Developer) and final approval of completion of the Improvements to the Project by the Gila County Board of Supervisors, any remaining Funds including the Partial Assurance Addition, with the accrued and then unpaid interest thereon, shall thereafter be promptly paid and released by Escrow Agent to the Developer. All noted defects shall be corrected before final acceptance by the County following inspection. Final acceptance shall be in writing by the County following the submission of written approval by the County Engineer to the County.

5.3 Failure of the Developer to Complete Improvements for the Project. In the event the Developer fails to complete the Improvements for the Project, the County shall provide written notice of default to the Developer with a copy to Escrow Agent. The Developer shall have forty-five (45) days from such notice to cure any default. If the Developer fails to cure any default after notice, the County shall have the right to request from Escrow Agent, payments to the County, or its designees, of any remaining Funds from the Escrow Account as are necessary to complete the Improvements for the Project. Escrow Agent shall process such payments as set out in section 5.1 above as if the County were the Developer except that no Partial Assurance Addition shall be required of the County and any previous Partial Assurance Addition may be used by the County to complete the Improvements to the Project. The County shall not thereafter, and does not by entering into this Escrow Agreement, assume any duty to complete the required Improvements for the Project beyond the availability of the Funds in the Escrow Account. The County shall not be obligated to repay the funds disbursed to it from the Escrow Account. Any remaining Funds in the Escrow Account after completion of the Improvements by the County shall be returned to the Developer.

5.4 Other County Rights. Approval of a Draw by the County or Neutral shall not affect County's rights and requirements concerning acceptance by the County for maintenance or the County's rights concerning latent defects.

6. GENERAL PROVISIONS REGARDING ESCROW AGENT.

6.1 Amendments to Escrow Agreement. No change of this Escrow Agreement shall be of any effect unless such change is approved, in writing, by the County and the Developer. In the event conflicting demands are made or notices served upon Escrow Agent with respect to this Escrow Agreement and such are not resolved in a reasonable time, then the Parties expressly agree that Escrow Agent shall have the absolute right at Escrow Agent's election to file a suit in interpleader and obtain an order from the Court requiring the Parties to interplead and litigate in the Court their several claims and rights among themselves. In the event such interpleader suit is brought, Escrow Agent shall ipso facto be fully released and discharged from all obligations to further perform all duties or obligations imposed upon Escrow Agent in the Escrow Agreement, and the Parties jointly and severally agree to pay all reasonable costs, expenses, and reasonable attorneys' fees expended or incurred by Escrow Agent, the amount thereof to be fixed and a judgment therefor entered by the court in such suit.

6.2 Release of Escrow Agent. Except as otherwise provided in this Escrow Agreement, Escrow Agent shall not be held liable for the identity, authority, or rights of any person executing any documents deposited in the Escrow except Escrow Agent's acceptance of this Escrow Agreement, or for the County's or the Developer's failure to comply with any of the provisions of any agreement, contract or other instrument deposited in escrow in accordance herewith and Escrow Agent's duties under this Escrow Agreement shall be limited to the safekeeping of such money, instruments, or other documents received by Escrow Agent as escrow holder, and for the disposition of same in accordance with this Escrow Agreement.

6.3 Indemnity of Escrow Agent. Except for Escrow Agent's breach of contract, fraud or negligence, the County and the Developer further agree, jointly and severally, to indemnify and hold Escrow Agent harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations, and liabilities of any kind or nature which in good faith Escrow Agent may incur or sustain about or arising out of this Escrow Agreement.

6.4 Escrow Transaction. It is agreed by the Parties to this Escrow Agreement that, so far as Escrow Agent's rights and liabilities are concerned, this transaction is an escrow and not any other legal relation.

6.5 No Responsibility. Escrow Agent is not responsible for the sufficiency or amount of funds to be deposited in the Escrow (except to the extent deposited with Escrow Agent).

6.6 Customer Identification. TIN Certification and Tax Withholding and Reporting.

- a) The parties hereto agree that for all federal, state, local and foreign tax reporting purposes, all interest or other income earned from the

investment of the Funds in any calendar year shall be reported as taxable income of the Developer. The Developer shall be responsible for paying taxes (including any penalties and interest thereon) on its portion of all interest earned on the Funds and for filing all necessary tax returns with respect to such income. Upon expiration of the Term of this Agreement, or as soon as practicable thereafter, the Escrow Agent shall disburse to the Developer 100% of the interest earned on the Funds during such calendar year. The Developer understands that, in the event a tax identification number is not certified to the Escrow Agent, certain provisions of the Internal Revenue Code of 1986, as amended from time to time, may require withholding of a portion of any interest or other income earned on the Funds. It is understood that the Escrow Agent shall be responsible for income reporting only with respect to income earned on investment of funds which are a part of the Funds, and is not responsible for any other reporting. The Escrow Agent will be permitted to withhold and pay to the appropriate taxing authority a portion of any amount of cash payable to the Developer under this Agreement that the Escrow Agent in its reasonable determination believes is required to be withheld and paid to the applicable taxing authority at the time of distribution of such amounts to the Developer.

- b) At the time of or prior to execution of this Agreement, any party to this Agreement providing a tax identification number for tax reporting purposes shall provide to the Escrow Agent a completed IRS Form W-9 (for United States Persons) or IRS Form W-8 (for non-United States persons), and every individual executing this Agreement on behalf of the Developer, if requested, a copy of a driver's license, passport or other form of photo identification acceptable to the Escrow Agent. Each party to this Agreement agrees to provide to the Escrow Agent such organizational documents and documents establishing the authority of any individual acting in a representative capacity as the Escrow Agent may require complying with its established practices, procedures and policies. If any party to this Agreement fails to provide any such organizational documents or documents establishing authority, or any individual executing this Agreement on behalf of the Developer fails to provide to the Escrow Agent an acceptable form of identification, within 10 days after the Escrow Agent requests the same, the Escrow Agent is authorized, notwithstanding any other provision of this Agreement to the contrary, to place the Escrow Funds in a non-interest-bearing deposit account until such documents are received by the Escrow Agent.
- c) To help the government fight the funding of terrorism and money laundering activities, Federal laws require all financial institutions to obtain, verify and record information that identifies each individual or entity that opens an account. Therefore, the Escrow Agent must obtain

the name, address, taxpayer or other government identification number and other information, such as date of birth for individuals, for each individual and business entity that is a party to this Agreement. For individuals signing this Agreement on their own behalf or on behalf of another, the Escrow Agent requires a copy of a driver's license, passport or other form of photo identification. For business and other entities that are parties to this Agreement, the Escrow Agent will require such documents as it deems necessary to confirm the legal existence of the entity.

6.7 The Escrow Agent shall be entitled to its usual and customary fees. Such fees shall be paid by the Developer.

7. NOTICES. All notices, demands or requests required or permitted hereunder shall be in writing and shall be effective five (5) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid:

Developer: Terry Gorton acting as agent for both Javelina Sky Development LLC and Woodshire at Elk Rim LLC, P.O. Box 1195, Pine, Arizona 85544.

Gila County: Gila County Manager, 1400 East Ash Street, Globe, Arizona 85501.

Escrow Agent: National Bank of Arizona, 25 S. Highway 92, Sierra Vista, Arizona 85645.

Developer, County or Escrow Agent may change its address for notice by giving notice in the manner provided above. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall not change the stated effective date. Any telephone numbers provided in this Escrow Agreement are for aiding informal communications only, and notices shall not be effective if provided orally. If Escrow has opened, a copy of any notice given to a Party shall also be given to Escrow Agent.

8. ASSIGNMENT. None of the Parties may assign their rights or obligations under this Escrow Agreement without the prior written consent of the other Parties.

9. SUCCESSORS. Subject to the limitations set forth in this Escrow Agreement, this Escrow Agreement shall be binding on and inure to the benefit of the Parties' respective successors and assigns.

10. HEADINGS. The headings in this Escrow Agreement are for reference only and shall not limit or define the meaning of any provision of this Escrow Agreement.

11. TIME OF ESSENCE. Time is of the essence of this Escrow Agreement. The foregoing to the contrary notwithstanding, if this Escrow Agreement requires any act to be done or action to be taken on a date that falls on a Saturday, Sunday or legal holiday, such act or

action shall be deemed to have been validly done or taken if done or taken on the next succeeding day that is not a Saturday, Sunday or legal holiday.

12. WAIVER. The waiver by any Party of any right granted under this Escrow Agreement shall not be deemed a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

13. ENTIRE AGREEMENT. This Escrow Agreement contains the entire understanding of the Parties with respect to the subject matter hereof.

14. AMENDMENT. This Escrow Agreement cannot be altered or amended except pursuant to an instrument, in writing, signed by the Parties.

15. NO THIRD-PARTY BENEFICIARY. No term or provision of this Escrow Agreement is intended to be, nor shall any such term or provision be constructed to be, of the benefit of any person, firm, corporation or other entity not a party hereto. No such other person, firm, corporation or entity shall have any right or cause of action hereunder.

16. SEVERABILITY. If any provision of this Escrow Agreement or any portion of any provision of this Escrow Agreement shall be deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Escrow Agreement shall be deemed severable from all other provisions hereof.

17. ATTORNEYS' FEES. If there is any litigation between the Parties to enforce or interpret any provisions hereof or rights arising hereunder, the losing party in such litigation, as determined by the court, shall pay the prevailing party, as determined by the court, all costs and expenses, including, without limitation, reasonable attorneys' fees incurred by the prevailing party, such fees to be determined by the court sitting without a jury.

18. GOVERNING LAW. This Escrow Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arizona.

19. COUNTERPARTS. This Escrow Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

20. ISRAEL BOYCOTT CERTIFICATION. Developer and Escrow Agent hereby certify that they are not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel as defined by A.R.S. §35-393.01.

21. LEGAL ARIZONA WORKERS ACT COMPLIANCE. The Parties hereby warrant their compliance with all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). If any Party uses any subcontractors in performance of this contract, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of the contract subject to penalties up to and including

termination of this contract. Each party retains the legal right to inspect the papers of any other party and its subcontractors who work on the contract to ensure that it or its subcontractors are complying with this warranty.

22. EFFECTIVE DATE. The Parties have executed this Escrow Agreement to be effective as of the Effective Date.

23. CANCELLATION FOR CONFLICT OF INTEREST. This Agreement is subject to the cancellation for conflict of interest under A.R.S. § 38-511.

24. COMPLETION OF IMPROVEMENTS. The Developer shall complete the Improvements to the Project within one year of the Effective Date.

The balance of this page is left blank intentionally.

Signature Page For Escrow Agreement

National Bank of Arizona

By: _____

Date: _____

NATIONAL BANK OF ARIZONA
25 S HIGHWAY 92
SIERRA VISTA AZ 85635

GILA COUNTY

Chairman of the Gila County Board of Supervisors

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____
Deputy Gila County Attorney

Javelina Sky Development LLC

By: _____
Terry Gorton – Designated Manager

Date: _____

JAVELINA SKY DEVELOPMENT LLC
TERRY GORTON – DESIGNATED
MANAGER
PO BOX 1195
PINE, AZ 85544

Woodshire at Elk Rim LLC

By: _____
Phil Peterson – Acting as Agent

Date: _____

WOODSHIRE AT ELK RIM LLC
PHIL PETERSON – DESIGNATED
MANAGER
3550 N. CENTRAL AVENUE, SUITE 1101
PHOENIX, AZ 85012
P (602) 265-4400
F (602) 263-8078

Brookfield Communities LLC

By: _____
Phil Peterson – Acting as Agent

Date: _____

BROOKFIELD COMMUNITIES LLC
PHIL PETERSON – DESIGNATED
MANAGER
3550 N. CENTRAL AVENUE, SUITE 1101
PHOENIX, AZ 85012
P (602) 265-4400
F (602) 263-8078

Exhibit "A"

Elk Rim
Cost Estimate
Project No. 17-04
January 9, 2018

No.	Description	Quantity	Unit	Unit Cost	Total Cost
A) Paving					
1	Clearing and Grubbing	1	L.S.	\$2,000	\$2,000
2	Excavation (cut)	750	C.Y.	\$15	\$11,250
3	Subgrade Prep	2,683	S.Y.	\$3	\$8,049
4	2" AC Pavement	295	TON	\$90	\$26,550
5	10" ABC	746	C.Y.	\$30	\$22,380
6	Sawcut, Tack & Join	135	L.F.	\$5	\$675
7	Remove AC Pavement	29	S.Y.	\$4	\$116
A) Sub-Total Paving					\$71,020
B) Drainage					
1	18" Storm Drain	50	L.F.	\$40	\$2,000
2	Rip Rap Slope Protection d50=6"	25	C.Y.	\$100	\$2,500
3	Rock Swale d50=6"	92	C.Y.	\$100	\$9,200
4	Rip Rap Splash Pad	2	C.Y.	\$100	\$200
5	Headwall, Type "L", M.A.G. 501-1	1	EA.	\$2,500	\$2,500
6	Headwall, "U" Type, M.A.G. 501-5	3	EA.	\$2,500	\$7,500
7	Retaining Wall	1,380	S.F.	\$20	\$27,600
B) Sub-Total Drainage					\$51,500
C) Water Distribution					
1	2" PVC Water Main	468	L.F.	\$25	\$11,700
2	6" PVC Water Main	90	L.F.	\$30	\$2,700
3	6" D.I.P. Water Main	60	L.F.	\$50	\$3,000
4	8" PVC Water Main	12	L.F.	\$50	\$600
5	2" Valve, Box & Cover	2	EA.	\$400	\$800
6	6" Valve, Box & Cover	2	EA.	\$1,200	\$2,400
7	8" Valve, Box & Cover w/ Meg-A-Lug Restraint	1	EA.	\$1,500	\$1,500
8	8" x 6" Tee w/ Meg-A-Lug Restraint	2	EA.	\$500	\$1,000
9	2" x 2" Tee	1	EA.	\$250	\$250
10	2" Tap, Valve, Box & Cover	1	EA.	\$400	\$400
11	6" x 6" Tapping Sleeve, Valve, Box & Cover	1	EA.	\$2,500	\$2,500
12	2" X 45° Bend	2	EA.	\$250	\$500
13	2" X 90° Bend	1	EA.	\$250	\$250
14	6" X 90° Bend	2	EA.	\$500	\$1,000
15	6" Fire Hydrant (Complete)	1	EA.	\$4,000	\$4,000
16	Blow Off Assembly	2	EA.	\$1,000	\$2,000
17	Pressure Reducing Valve & Vault	1	EA.	\$25,000	\$25,000
18	Double Water Service	9	EA.	\$800	\$7,200
19	Remove 2.5" Bend	1	EA.	\$200	\$200
C) Sub-Total Water Distribution					\$67,000
D) Low Pressure Sewer					
1	1.5" Low Pressure Sewer Main	610	L.F.	\$25	\$15,250
2	1.5" Sewer Service Connection	18	EA.	\$600	\$10,800
3	In-Line Flushing Connection	1	EA.	\$1,000	\$1,000
4	Terminal Flushing Connection	1	EA.	\$1,000	\$1,000
5	Water / Sewer Crossing	70	L.F.	\$25	\$1,750
6	2.5" x 1.5" Reducer	1	EA.	\$250	\$250
7	1.5" X 45° Bend	3	EA.	\$250	\$750
D) Sub-Total Low Pressure Sewer					\$26,050
E) Signing					
1	Yield Sign R1-2 30" x 30" W/ 2 Street Name Signs	1	EA.	\$350	\$350
2	Curve Sign W1-1L 30" x 30"	1	EA.	\$250	\$250
E) Sub-Total Signing					\$600
F) Miscellaneous Costs					
1	Dry Utility Trench, Complete	1	LS	\$10,000	\$10,000
2	Gas Trench Complete	1	LS	\$5,000	\$5,000
3	Construction Survey	1	LS	\$15,000	\$15,000
4	SWPPP NOI and Implementation	1	LS	\$3,000	\$3,000
5	Quality Control	1	LS	\$7,500	\$7,500
6	Offsite Traffic Improvements	1	LS	\$5,000	\$5,000
F) Sub-Total Miscellaneous Costs					\$45,500
Sub-Total A THRU F					\$261,670
Total =					\$261,070



Exhibit "B"

Property Legal Description

Parcel # : 301-69-196

LOT 1 REPLAT OF TRACT B PORTAL PINE CREEK CYN UNIT 4 PER PLAT 729 A & B;
W1/2 SEC 25 & E1/2 SEC 26 T12N R8E;=2.00 AC M/L(OUT OF 301-69-183)

Parcel # : 301-69-197

LOT 2 TRACT B PORTAL PINE CREEK CYN UNIT 4 PER PLAT 729A & B;W1/2 SEC 25
& E1/2 SEC 26 T12N R8E;=2.00 AC M/L(OUT OF 301-69-183)