

EXHIBIT #1

Escrow Account Agreement & instructions
(Sample Document)

Date: _____, 20__

Escrow Officer: _____ (Person), of _____ (Escrow Agent)

The Town of Cave Creek, Arizona, a municipal corporation (the "Town") whose address is 37622 North Cave Creek Road, Cave Creek, AZ 85331, and _____ (Development Company), L.L.C., an Arizona Limited Liability Corporation ("_____" or "Developer" interchangeably), whose address is _____, _____, AZ 85xxx, hereby employ _____ (Escrow Agent), as Escrow Agent in connection with the development of a _____ known as _____ (Project) at _____ (Avenue/Street/Road) to _____ (Avenue/Street/Road) and _____ (Avenue/Street/Road), Cave Creek, Maricopa County, Arizona.

Recitals

A. WHEREAS, the Developer has agreed pursuant to that certain Development Agreement dated as of _____, 20__ and recorded in the Official Records of Maricopa County, Arizona on _____, 20__, as Instrument No. _____ (the "Development Agreement") to undertake the construction and installation of the Town Improvements in accordance with the Plans (each of the foregoing terms, as defined in the Development Agreement) approved by the Town and;

B. WHEREAS, pursuant to the Town of Cave Creek Municipal Code ("subdivision Ordinance") the Developer must provide assurances for the construction of the required Public Improvements and an escrow Account is a permissible form of assurance under the Subdivision Ordinance and;

C. WHEREAS, Developer has agreed to establish an escrow account for the purposes of assuring completion of the Public Improvements in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties agree as follows:

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.

Exhibits:

- a. Final Plat or Site Plan Approved/signed _____.
- b. Letter from _____ (Financial Institution) acknowledging an account in the name of the Town of Cave Creek, surety Deposit for _____ (Project) in the amount of \$_____.
- c. Certified Engineer’s Estimate of Construction Cost for the required Public Improvements.

3. Deposit of Funds. The Developer shall deposit at _____ (Financial Institution) the amount of \$_____ (“the Escrow Funds”) in accordance with and subject to the provisions of the Subdivision Ordinance (the “Ordinance”). The Ordinance requires developers to provide the Town with a financial guarantee to assure the completion of the required Public Improvements.

All funds received in the Escrow Account shall be deposited on or before _____, 20____, in a segregated account with _____ (Financial Institution) at _____, _____, AZ 85xxx, said Escrow Account being held in the name of: Town of Cave Creek.

4. Escrow funds Deposit and Restrictions. The Town and Developer agree that the Escrow Funds shall be deposited in an interest bearing account (or accounts necessary to ensure that the funds are fully insured) and shall be released upon completion of the required Public Improvements pursuant to this Escrow Agreement. All interest shall accrue to the developer at such times as _____ (Financial Institution) pays interest, but shall remain in Trust.

The deposit of the Escrow Funds will be made to install the required Public Improvements for the _____ (Name of Project). The Escrow Account is evidence that funds are available to the Town (or _____ (Person/Developer/Corporation) who is responsible for installing such required Public Improvements) for withdrawal by the Town when it becomes necessary for the Town to withdraw the funds to allow _____ (Person/Developer/Corporation) to construct the required Public Improvements. The Escrow Funds shall not be used or pledged by the Developer for any purpose during the period the Escrow Account is in effect. Upon completion and acceptance of the required Public Improvements, as shall be determined by the Town Manager or Acting Town Manager in writing, any accrued interest shall be immediately release to the Developer.

5. Disbursements. The Town and Developer agree to the following process for payment of Escrow Funds.

The Developer shall, promptly upon its completion of a portion of the Public Improvements and upon dedication and acceptance by the Town of the Public Improvements, deliver a copy of an invoice to the Town and Escrow Agent. Within Five (5) days after the date of delivery of each such invoice, the Town and the Developer shall deliver to the Escrow Agent a draw request ("Draw Request") indicating the amount of the invoice to be paid by the Escrow Agent from the Escrow Funds and/or any objections by either party may have to such invoice. If either party fails to deliver such Draw Request within such five (5) day period, the party(ies) failing to deliver such Draw Request shall be deemed to have unconditionally approved of the full amount of the invoice delivered to the Escrow Agent and to have instructed the Escrow Agent to pay such invoice in full.

a. An Escrow Agent shall, within three (3) days after the delivery of the applicable Draw Request(s), or within three (3) days after the expiration of the foregoing five (5) day period, whichever occurs first, pay to the payee under such invoice the amount indicated in such Draw Request(s) and shall provide written confirmation of such payment to the Town and the Developer.

b. In the event that either party disputes any portion of an invoice: (i) the Escrow Agent shall pay all undisputed portions of such invoice within the above-indicated three (3) day period for payment; (ii) the Town and the Developer shall meet and attempt in good faith to resolve to their mutual satisfaction any objections to the proposed disbursement within five (5) days following the Escrow Agent's receipt of the objection; and (iii) the Town and the Developer shall instruct the Escrow Agent as to their agreement with respect to the payment of the objected amounts within three (3) days following the expiration of the foregoing five (5) day agreement period. To be deemed timely and validly delivered to the Escrow Agent, an objection to any invoice must include the specific reason(s) for the objection and the amount of the disbursement being objected to, together with an indication of the amount, if any, of the requested disbursement that is not being objected to. Unless a party objects to the entire amount of the proposed disbursement, even if an objection is timely made, the Escrow Agent shall be authorized to disburse from the Escrow Account the amount that is not the subject of the objection.

6. Holdbacks. The Escrow Agent shall hold back from each draw request an amount equal to ten (10) percent of the request. Such amount shall remain in escrow until such time as all public improvements have been completed, dedicated and accepted pursuant to the Development Agreement and the terms of this Agreement.

7. Notices. Unless otherwise specifically provided therein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or upon confirmed facsimile transmission, as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

Town Manager, Town of Cave Creek
37622 North Cave Creek Road
Cave Creek, AZ 85331
Facsimile No.: (480) 488-2263

WITH A COPY TO:

Town Attorney, Town of Cave Creek
37622 North Cave Creek Road
Cave Creek, AZ 85331
Facsimile No.: (480) 488-2263

IF TO DEVELOPER:

WITH A COPY TO:

IF TO ESCROW AGENT:

8. Termination of Obligation. The Escrow Account will terminate on _____, _____, 20__ unless it is terminated sooner by the completion of the land development activities (required Public Improvements) described within. The Town shall hold the Escrow Funds pending installation of the required Public Improvements as required by the Subdivision Ordinance. The Town shall not and does not by entering into this Escrow Agreement, assume any duty to complete the required Public Improvements beyond the availability of the Escrow Funds in the Escrow Account. Should any Escrow Funds held by the Town exceed the cost to install the required Public Improvements, the excess shall be returned after completion installation of the required Public Improvements to the Developer.

9. Required Improvements. The required Public Improvements governed by this Escrow Agreement and the Escrow Account are set forth in the Development Agreement and further detailed in Exhibit C of this agreement:

10. 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 even the breach is not remedied within seventy-two (72) hours, the Escrow Agreement is canceled and any and all money and documents deposited with the Escrow Funds shall be released to the Town to assure the appropriate installation of the required Public Improvements. Notice of a breach is considered given when sent by facsimile to the party in breach of the Escrow Agreement.

11. Effective Date. This Escrow Agreement shall be effective when executed by both parties and the Town receives written documentation form _____ (Financial Institution) evidencing that: (1) funds in the amount of \$_____ were deposited in a segregated account; (2) the account is in the name of the Town of Cave Creek as deposit for _____ (Project's) required Public Improvements and (3) the deposited funds shall not be withdrawn unless approved/released by the Town. The Town received a letter from _____ (Financial Institution) this _____ day of _____, 20____ evidencing the above.

12. Clarification of Duties. _____ (Person) serves as an Escrow Agent/Officer ONLY in conjunction with these instructions and cannot give legal advice to any party hereto.

13. Entire Agreement. This Escrow Agreement constitutes the entire Agreement between the parties and shall not be changed or added to.

14. 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.

15. 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.

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

17. Authority. The Developer represents and warrants to the Town (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 in authorized and empowered to bind the Developer.

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

Zoning Ordinance

Exhibit 1

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the day and year written above in Section three (3).

_____ (Development, L.L.C.),
ARIZONA
An Arizona Limited Liability Corporation

TOWN OF CAVE CREEK,
an Arizona Municipal Corporation

By: _____

By: _____

Its: _____

Its: _____

Accepted and agreed, this _____ day of _____, 20__ Approved as to Form:

By: _____
Escrow Agent

By: _____
Town Attorney

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20__

by _____ the _____, of _____

(Development), L.L.C., an Arizona Limited Liability Corporation, for and on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss.
County of Maricopa)