



CASH IN LIEU OF BOND AGREEMENT

THIS AGREEMENT, made and entered this ____ day of _____, 2011, by and between _____, whose mailing address is _____, (hereinafter referred to as the “Developer”) and **THE CITY OF MESQUITE**, a political subdivision of the State of Nevada, (hereinafter referred to as the “City”), and _____, whose mailing address is _____, (hereinafter known as the “Financial Institution”):

WITNESSETH

WHEREAS, the Developer has agreed to do and perform certain work, consisting of the construction of off-site improvements for a _____ project on APN _____ commonly called _____; consisting of but not limited to: grading, street improvements, may include pavement and base, sidewalk, curb and gutter, street lights, ramps, driveways, street signs, painted crosswalks, painted lanes, drop inlets, drainage pipes or culverts, sewer lines, water lines, power lines, phone lines, and utility services to each lot or dwelling and other improvements consisting of _____ at the following general street location _____, and including the following streets _____, in accordance with that certain Off-Site Improvements Agreement between the Developer and the City, dated the ____ day of _____, 2011, a copy of which is attached hereto, marked as **Exhibit “A”** and by referenced made a part hereof; and

WHEREAS, in said Off-Site Improvement Agreement, the Developer agreed to execute a surety and performance bond (which must cover project completion as well as payment for all labor and materials related thereto) in favor of the City, securing to the City the faithful performance of all terms and conditions thereof on the Developer’s part to be performed; and

WHEREAS, the Developer may make a cash deposit, equal in amount to the surety and performance bond which would otherwise be required, in a local financial



institution, provided that a proper agreement is entered into by and between the Developer, the City, and the Financial Institution; and

WHEREAS, the developer desires to make such cash deposit in lieu of the aforesaid surety and performance bond, and the City desires to accept such cash deposit in satisfaction of the Developer's obligation to provide such bond; and

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree to as follows:

1. The Developer hereby represents that it has heretofore established with the Financial Institution a separate account, designated _____, in the amount of _____ Dollars (\$ _____) as security to assure payment for all labor and materials and for the faithful performance of all terms and conditions of the aforesaid Off-Site Improvements Agreement on the Developer's part to be performed, said sum to be received, held, and disbursed by the Financial Institution hereby verifies that said account has been established and the aforesaid sum has been deposited therein and agrees that said sum will be held and disbursed by it in accordance with the terms hereof and for no other purpose than herein stated.
2. Funds deposited in said account may be withdrawn only upon drafts or requests for withdrawals signed jointly by the City Clerk/Treasurer or his/her designated deputy, and by some person designated by the Developer.
3. It is contemplated that monthly payments may be made to the Developer from time to time out of said account as the work on said improvements progressed according to the percentage of the work completed and the amount to be paid as determined by the City; provided, however, that there shall at all times be a ten percent (10%) retention of the funds in said account, until all of the off-site improvements called for in said Off-Site Improvement Agreement have been completed, costs for all labor and materials related thereto have been paid and all improvements are accepted by the City as being properly constructed in accordance with approved plans and standards.
4. In the event said off-site improvements are not completed to the satisfaction of the City within the time prescribed in said Off-Site Improvements Agreement or in the event the costs of labor and materials related thereto has not been properly paid and the City desires to exercise its option to issue to the Financial Institution written notice of such default and exercise of such options, and

thereafter drafts on said account or requests for the withdrawal of funds therefrom shall be valid and binding and shall be honored by the Financial Institution upon the sole signature of the City Clerk/Treasurer or his/her designated deputy.

5. It is acknowledged by the Developer that the sum provided for in paragraph 1 above is based upon the estimated cost of the improvements including all labor and materials as called for in said Off-Site Improvements Agreement. It is understood and agreed that, in the event the actual cost of said improvements shall exceed such sum, the Developer is in no way relieved by this Agreement from the obligation of paying the amount of such excess.
6. It is understood and agreed that neither Financial Institution by executing this Agreement nor any of its affiliates, make any representation or commitment whatsoever to be guarantor, surety, principal or to be otherwise directly or indirectly responsible for the construction or the financing of the construction of the above described off-site improvements except as expressly provided by this Agreement.
7. It is understood and agreed that the money deposited, as herein provided, is a security interest and that the City's claim to said funds shall be prior to that of any creditor, referee, receiver or trustee in the event of insolvency or bankruptcy; and that in such event, said funds shall not be administered by any receiver, referee, or trustee, but shall be paid and distributed according to the terms of this Agreement. This Agreement with attachment shall be placed on public record to perfect said security interest.
8. Upon final acceptance by the City Council for the City of Mesquite of all the off-site improvements called for in said Off-Site Improvements Agreement, this Agreement shall become null and void and of no further force or effect, and all funds remaining in said account shall belong to the Developer.
9. This Agreement and all of the provisions hereof shall be binding upon and shall insure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns.



IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed by their duly authorized representative, this Agreement in triplicate the day and year first above written.

CITY OF MESQUITE, NEVADA:

FINANCIAL INSTITUTION:

By: _____
(Signature)

By: _____
(Signature)

Bill Tanner, Public Works Director

(Name Printed)

APPROVED AS TO FORM:

By: _____
(Signature)

Cheryl Truman Hunt, City Attorney

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

_____ (Financial) did personally appear before me on this
_____ of _____, 2011, and proved to me, a notary public to
be the person whose name is subscribed to the above instrument who acknowledged that
he/she executed the instrument freely and voluntarily and for the purposes set forth therein.

(Notary Public Signature)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

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