

## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (this “Agreement”) is made and entered into on this \_\_\_\_ day of June, 2023, (the “Effective Date”), among, DRI/Maple Coral Gables, LLC, a Delaware limited liability company (“Developer”), whose address is 3715 Northside Parkway, Building 200, Suite 800, Atlanta, Georgia 30327, the City of Coral Gables, Florida, a municipal corporation (the “City”), \_\_\_\_\_ (“Escrow Agent”), whose address is \_\_\_\_\_, and Kimley-Horn and Associates, Inc., a North Carolina corporation (“Project Engineer”), whose address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601. Developer, the City, Escrow Agent, and Project Engineer are each referred to herein as a “Party” and collectively as the “Parties.”

### **RECITALS**

A. The Developer is party to that certain Sewer Improvement Agreement (the “Sewer Improvement Agreement”) dated June \_\_\_\_, 2023 to fund and manage the design, construction, installation and conveyance of the Sewer Improvements (unless otherwise defined herein, all capitalized terms used in this Agreement shall have the meanings assigned to the same in the Sewer Improvement Agreement).

B. The Sewer Improvements are required in order to provide sewer service to the new building proposed to be built by the Developer as well as to enhance the capacity of the City sewer infrastructure.

C. The Developer has entered into a contract with the Project Engineer for the design of the Sewer Improvements and entered into a contract with Maple Multi-family SE Contractor, LLC (“MFSE,” and together with Project Engineer, the “Contractors”) for the construction of the sewer improvements (collectively, the “Contractor Agreements”).

D. The Developer desires that the Escrow Funds (as defined herein) be held in escrow by Escrow Agent, subject to the terms and conditions set forth herein and the Sewer Agreements.

E. Escrow Agent is willing to act as the holder of the funds deposited to an account to be maintained by Escrow Agent according to this Agreement and the Sewer Agreements and to distribute those funds as set forth herein and therein (the “Escrow Funds”).

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated into this Agreement.

2. **Escrow Funds.** The Developer shall deposit the Escrow Funds as required by the Sewer Improvement Agreement with Escrow Agent. Escrow Agent shall deposit the Escrow Funds in a non-interest bearing account at \_\_\_\_\_ subject to the terms and conditions contained in this Agreement and the Sewer Improvement Agreement.

3. **Disbursement of Escrow Funds.** Consistent with any of the applicable Contractor Agreements, the Developer agrees that the Escrow Funds shall be disbursed to the Project Engineer

and Contractor and other parties in accordance with the Sewer Improvement Agreement and the following terms:

a. The Developer acknowledges that the sole purpose of the deposits with Escrow Agent shall be to pay reimbursement requests for the design, permitting, administration and construction of the Sewer Improvements in accordance with the Sewer Improvement Agreement.

b. The Developer acknowledges that the Escrow Funds administered by the Escrow Agent shall be so managed that all reimbursement/pay requests from the Project Engineer and Contractor and other parties shall be forwarded to the Developer and to the Project Engineer.

c. The Project Engineer shall review AIA or EJCDC-format pay requests ("Pay Requests") from the Contractor (or any parties other than the Project Engineer) and will certify as complete (i) the portion of the Sewer Improvements that has been constructed subsequent to receiving each Pay Request, and (ii) shall confirm that such Pay Request conforms to the payment terms of the Contractor Agreements in that the work being indicated as complete on the Pay Request is indeed complete, that the invoices provided by the Contractor or other parties supporting such Pay Request adequately support such Pay Request, and that the lien waivers provided by the Contractor or other parties conform to Escrow Funds released for the preceding Pay Request.

d. The Project Engineer shall provide written certification to the Developer prior to the disbursement for any Pay Request to the Contractor (or any parties other than the Project Engineer) that (i) the Pay Request for the Sewer Improvements is fair and reasonable and that it matches the work progress through the date of the Pay Request in accordance with the applicable payment terms of the Contractor Agreements, this Agreement, the Sewer Improvement Agreement, and any other applicable agreement, (ii) the Pay Request conforms to the terms of the Contractor Agreements, and (iii) the invoices provided by the requestor/invoicing party supporting such Pay Request adequately support such Pay Request ("Invoice Approval").

e. Within five (5) business days after receipt of a Pay Request, the Project Engineer shall provide such written certification to the Developer and Contractor, provided that the Pay Request is complete and accurate. If the Pay Request is not accurate or cannot be substantiated, it shall be returned to the appropriate requestor/invoicing party for adjustment.

f. After receipt of an Invoice Approval, Contractor may submit the Invoice Approval to Escrow Agent along with its approved Pay Request and Escrow Agent shall in reliance on the Invoice Approval and upon written consent from the Developer, pay the Pay Request pursuant to the terms of the Contractor Agreements, copies of which are attached to the Sewer Improvement Agreement as composite Exhibit "B", by withdrawing the certified amount from the Escrow Funds and issuing a check made payable to the requestor/invoicing party, as necessary, to be delivered by overnight mail.

g. After final payments have been made to the requestor/invoicing party, any surplus remaining in the Escrow Funds Account shall be refunded to the Developer. Within thirty (30) days of receipt by the Developer of written certification from the Project Engineer that the Sewer Improvements have been completed and accepted and conveyed to the City of Coral Gables,

the Developer shall issue written notice to Escrow Agent to refund the surplus remaining in the Escrow Funds Account to the Developer.

4. **Duties of Escrow Agent in the Event of Uncertainty.** In the event Escrow Agent is uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from the Developer or from third persons with respect to the Escrow Funds or any other sums or things which may be held hereunder, which, in its sole opinion, are in conflict with any provisions of this Agreement, Escrow Agent shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by the Developer and said third persons, or by a final order or judgment of a court of competent jurisdiction.

5. **Liability of Escrow Agent.**

a. Escrow Agent does not have, and will not have, any interest in the Escrow Funds but is serving only as an escrow holder and has only possession of the Escrow Funds.

b. Escrow Agent shall have no liability or responsibility to any party regarding the financial failure or bankruptcy of such institution; provided, however, that such institution is a banking institution duly licensed under the federal or state banking laws.

c. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it; nor as to the identity, authority, or rights of any person executing the same and shall otherwise not be liable for any mistakes of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

d. It is agreed that the duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the safekeeping of the Escrow Funds and for the disposition of same in accordance with this Agreement. The Developer hereby agrees to indemnify, defend and hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or changes of any character or nature (including, without limitation, reasonable attorneys' fees, paralegals' fees and costs incurred in all trial and appellate proceedings or otherwise if no litigation is instituted) which it may incur or with which it may be threatened directly or indirectly arising from or in any way connected with Escrow Agent's performance of its duties hereunder unless caused by its willful misconduct or gross negligence.

e. Escrow Agent shall not be liable to either Developer or the City, or their respective officers, directors, shareholders, managers, affiliates, members, representatives, partners, agents, employees, parent companies, related companies, subsidiaries, successors, heir and assigns, for any action taken or for any mistake of fact or error of judgment, or for any acts or omissions of any kind unless caused by Escrow Agent's willful misconduct or gross negligence.

f. This Escrow Agreement sets forth exclusively the duties of Escrow Agent

with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent. Escrow Agent shall not refer to, and shall not be bound by, the provisions of any other agreement with respect to the subject matter hereof.

6. **Default.** In the event either the Project Engineer or the Contractor declares the Developer to be in default under the terms of the Contractor Agreements, and the Developer fails to remedy the default within the notice and cure period provided in the Contractor Agreements, then the City, in its sole discretion, shall have the right to use the Escrow Funds to complete the Sewer Improvement Work, as consideration to the City for taking an assignment of the Developer's rights and obligations under the Contractor Agreements. Also, to the extent the Performance Bond Surety calls upon the City as an obligee under the Performance Bond to make payment of any balance due under the Contractor Agreements, the City may use the Escrow Funds for such purpose. In the event of a default, and upon written notice of the default from the Developer or City to Escrow Agent, Escrow Agent shall acknowledge the City's rights to the escrowed funds for the reasons set forth above and Escrow Agent's obligation to tender the funds to the City at the City's written request.

7. **Disputes.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrow Funds, Escrow Agent shall, at its option, either: (1) tender the Escrow Funds to the registry of the appropriate court; or (2) disburse the Escrow Funds in accordance with the court's ultimate disposition of the case, and the Developer hereby indemnifies, defends and holds Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorneys' and paralegals' fees and court costs at all trial and appellate levels. In the event Escrow Agent tenders the Escrow Funds to the registry of an appropriate court and files an action of interpleader naming the Developer and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and the Developer hereby indemnifies, defends and holds Escrow Agent harmless from and against any damages or losses arising in connection therewith, including, but not limited to, all costs and expenses incurred by Escrow Agent in connection with the filing of such action, including, but not limited to, attorneys' and paralegals' fees and court costs at all trial and appellate levels.

8. **Binding Agreement.** This Agreement shall be binding upon thereto and their respective successors and assigns. This Agreement may be executed in counterparts, all of which counterparts shall be deemed to be a single document. Signature pages received by facsimile transmission or electronic mail shall be deemed to be an original document.

9. **Notice.** Each notice or communication under this Agreement shall be delivered and deemed received in accordance with the Sewer Improvement Agreement.

10. **Term of Agreement.** This Agreement shall remain in effect unless and until it is canceled in any of the following manners: (a) upon written notice given by the Developer of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event cancellation shall take effect no earlier than twenty (20) business days after notice to Escrow Agent of such cancellation; or (b) Escrow Agent may resign at any time upon giving notice to the Developer of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than twenty (20) business days after the giving of notice of resignation; or (c) upon compliance with all provisions as set forth in this Agreement.

11. **Cancellation of Designation of Escrow Agent or Resignation of Escrow Agent.**

In the event the Developer fails to agree to a successor escrow agent within the period described hereinabove, Escrow Agent shall have the right to deposit the Escrow Funds into the registry of an appropriate court and request judicial determination of the rights of the Developer, by interpleader or other appropriate action, and the Developer indemnifies, defends and holds Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorneys' and paralegals' fees and court costs at all trial and appellate levels. Upon termination of the duties of Escrow Agent in either manner set forth above, Escrow Agent shall deliver the Escrow Funds to the newly appointed escrow agent designated by the Developer, and, Escrow Agent shall not otherwise have the right to withhold the Escrow Funds from said newly appointed escrow agent.

12. **Resignation of Escrow Agent.** Escrow Agent may resign and be discharged from its duties and obligations hereunder by giving notice of such resignation to the Parties, specifying the date upon which such resignation shall take effect; provided, however, that such date shall be not less than thirty (30) days from the date of such notice. Developer and the City shall also have the right, by mutual agreement, to terminate the appointment of Escrow Agent hereunder by giving to it notice of such termination, specifying the date upon which such termination shall take effect and designating a successor Escrow Agent. In any such event, Developer and the City shall, by mutual agreement, reasonably approve and designate a successor Escrow Agent to such resigning or terminated Escrow Agent. Upon written demand of a successor Escrow Agent, the Escrow Funds shall be turned over and delivered to such successor Escrow Agent who shall, thereupon, be bound by all of the provisions hereof.

Unless Escrow Agent discharges any of its duties under this Escrow Agreement in violation of specific terms of this Escrow Agreement in a grossly negligent manner or is guilty of willful misconduct with regard to its duties under this Escrow Agreement, Escrow Agent shall not be liable to Developer, the City or any other person or entity for any action taken or loss suffered by Developer, the City or such other person or entity, nor for any mistake of fact, error of judgment, or for any actions or omissions of any kind. Except with respect to the foregoing limited liability exceptions, Developer and the City, jointly and severally, shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings, or other expenses, fees, or charges of any character or nature, public or private, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Escrow Agreement, and shall indemnify Escrow Agent against any and all expenses, including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity, both at the trial and appellate levels. The provisions of this paragraph shall survive the termination of this Escrow Agreement

13. **Effect of Modification, Cancellation or Rescission of this Agreement.** Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by the Developer and Escrow Agent. In no event shall any modification of this Agreement, which shall affect the rights or duties of Escrow Agent, be binding on Escrow Agent unless it shall have given its prior written consent.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all other agreements, whether written or verbal, which may exist between

the parties.

15. **Authority.** Each Party warrants and represents to the other Party that it has full right and authority to enter this Escrow Agreement, and that the person signing this Escrow Agreement on behalf of such Party is duly authorized by all necessary company documents or operating agreements (as applicable) to do so.

16. **Applicable Law and Proper Venue.** In the event of a dispute between the parties regarding the terms hereof, which terms shall be construed pursuant to Florida law, the same shall be resolved in the courts of Miami-Dade County, Florida, which courts shall have exclusive jurisdiction. **THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, LAWSUIT, CLAIM OR COUNTERCLAIM ARISING OUT OF, OR RELATING TO, THIS ESCROW AGREEMENT.** In no event shall Developer be liable to the City for consequential, special, indirect or punitive damages.

17. **Attorneys' Fees.** The prevailing party in any lawsuit or other proceeding arising out of, relating to, or connected with, this Escrow Agreement shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred before suit, during suit, during mediation, at trial, or at the appellate level. The prevailing party shall also be entitled to recover all attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule or guideline, as well as nontaxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, electronic research costs, court reporter fees and mediator fees, regardless of whether such costs are otherwise taxable.

18. **Consideration.** The Parties acknowledge and agree that this Escrow Agreement is fully and adequately supported by consideration and is fair and reasonable.

19. **Construction of the Agreement.** The Parties acknowledge and agree that: (i) each Party has participated fully in the negotiation and preparation of this Escrow Agreement, and (ii) each Party has carefully reviewed this Escrow Agreement and is entering into same freely. Accordingly, this Escrow Agreement shall not be more strictly construed against either Party. In construing this Escrow Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

20. **Invalid or Inconsistent Provisions.** Invalidation of any one of these provisions by judgment of court shall not affect any of the other provisions of this Escrow Agreement, which shall remain in full force and effect.

21. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Escrow Agreement.

22. **Counterparts.** This Escrow Agreement may be executed in several counterparts, and/or by the execution of counterpart signature pages which may be attached to one or more counterparts of this Escrow Agreement, and all so executed shall constitute one Escrow Agreement binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the

original or the same counterpart. In addition, any counterpart signature page may be executed by any Party wherever such Party is located, and may be delivered by telephone facsimile transmission or electronic mail, and any such facsimile or electronic mail transmitted signature pages may be attached to one or more counterparts of this Escrow Agreement, and such faxed or e-mailed signature(s) shall have the same force and effect, and be as binding, as if original signatures executed and delivered in person.

23. **Waiver.** A Party hereto may, at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in writing signed by such Party. No waiver shall reduce the rights and remedies of such Party by reason of any breach of any other Party. No waiver by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

24. **Modification; Termination.** Subject to the other provisions hereof, this Escrow Agreement may not be amended, modified or terminated except by written agreement of the Parties.

25. **Waiver of Conflict.** The City acknowledges that Greenberg Traurig represents Developer in the negotiation and execution of this Escrow Agreement and other matters. The City acknowledges and agrees that nothing in this Escrow Agreement, or in the consummation of this Escrow Agreement, shall create any basis for the City to assert a conflict of interest or objection such as to prevent Greenberg Traurig from representing Developer in any capacity, even in the event of a dispute between Developer and the City arising out of the Sewer Improvement Agreement or this Escrow Agreement.

**[SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF**, the undersigned have set their hands and seals to this Agreement on the date above.

WITNESS:

Print Name: \_\_\_\_\_

**DRI/Maple Coral Gables, LLC,**  
a Delaware limited liability company

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

STATE OF FLORIDA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, \_\_\_\_\_ this day of \_\_\_\_\_, 2023, by \_\_\_\_\_ the \_\_\_\_\_ of DRI/Maple Coral Gables, LLC, on behalf of the limited liability company, who  is personally known to me or who  has produced \_\_\_\_\_ as identification.

Notary Public – State of Florida

Notary Seal: \_\_\_\_\_



WITNESS:

Print Name: \_\_\_\_\_

**City of Coral Gables,**  
a municipal corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA )

) ss.

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, \_\_\_\_\_ this day of \_\_\_\_\_, 2023, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Coral Gables, on behalf of the municipal corporation, who  is personally known to me or who  has produced \_\_\_\_\_ as identification.

Notary Public – State of Florida

Notary Seal: \_\_\_\_\_

WITNESS:

**[ESCROW AGENT]**

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA )

) ss.

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, \_\_\_\_\_ this day of \_\_\_\_\_, 2023, by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_ on behalf of said \_\_\_\_\_, who  is personally known to me or who  has produced \_\_\_\_\_ as identification.

Notary Public – State of Florida

Notary Seal: \_\_\_\_\_

WITNESS:

**Kimley-Horn and Associates, Inc.**, a North Carolina corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, \_\_\_\_\_ this day of \_\_\_\_\_, 2023, by \_\_\_\_\_ the \_\_\_\_\_ of Kimley-Horn and Associates, Inc., on behalf of the corporation, who  is personally known to me or who  has produced \_\_\_\_\_ as identification.

Notary Public – State of Florida

Notary Seal: \_\_\_\_\_