



Interoffice Memorandum

August 27, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" line.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
September 11, 2018 BCC Meeting
Escrow Agreement for Utility Work Associated with the
College Suites at Woodbury PD
Contact Person: Andres Salcedo, P. E.
Assistant Director, Utilities Department
407-254-9719**

The developer, Core Orlando Colonial, LLC, as part of their infrastructure improvements for the College Suites at Woodbury PD, has the obligation to reconstruct a wastewater force main within Orange County right-of-way, remove the wastewater force main from the Central Florida Expressway Authority (CFX) right-of-way, and restore the CFX right-of-way, including the restoration of the CFX perimeter fence and landscaping.

The developer has agreed to post a surety to guarantee funds are available to pay for the design, permitting, and construction of the developer's obligations. The developer has requested to post such surety in the form of a cash escrow in the amount of \$170,000.

The County Attorney's Office and the Comptroller's Office staff reviewed the escrow agreement and find it legally sufficient. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Escrow Agreement by and among Core Orlando Colonial, LLC, Orange County, and Orange County Comptroller for utility work associated with the College Suites at Woodbury PD in the amount of \$170,000.

District 5.

BCC Mtg. Date: September 11, 2018

This instrument prepared by:

Anthony J. Cotter.
Orange County Attorney's Office
201 South Rosalind Ave., 3rd Floor
Orlando, Florida 32801

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of the date of latest execution ("Effective Date"), by and among **Core Orlando Colonial, LLC**, a Delaware limited liability company, whose principal place of business is 540 West Madison Street, Suite 2500, Chicago, Illinois 60661 ("**Developer**"); **Orange County**, a charter county and political subdivision of the State of Florida, whose principal place of business is 201 South Rosalind Avenue, Orlando, Florida 32801 ("**County**") (Developer and County may collectively be referred to herein as the "**Principals**"); and the **Orange County Comptroller**, in its capacity as Escrow Agent, whose principal place of business is 201 South Rosalind Avenue, 4th Floor, Orlando, Florida 32801 ("Escrow Agent").

WITNESSETH:

WHEREAS, Developer is building a student housing development located in Orange County, Florida (the "Project"); and

WHEREAS, the Project is located within County's wastewater service area; and

WHEREAS, Orange County Code section 37-4(a)(2)a. requires all new development in County's urban service area or functional equivalent, as provided for in the Orange County Comprehensive Policy Plan, must connect to County's wastewater system; and

WHEREAS, pursuant to Orange County Code section 37-3(e), County has the authority to enter into agreements with developers or other entities addressing specific requirements for constructing improvements to County's wastewater system; and

WHEREAS, Developer has undertaken the obligation to reconstruct a wastewater force main within Orange County right-of way from the Project to a point of connection with County's wastewater system, remove the wastewater force main from its original location within the Central Florida Expressway Authority ("CFX") right-of-way, and restore the CFX right-of-way, including the restoration of the CFX perimeter fence and landscaping; and

WHEREAS, Developer has agreed to post a surety to guarantee funds are available to pay for the design, permitting, and construction of the relocation of the wastewater force main, from the CFX right-of-way to the County right-of-way, restoration of the CFX perimeter fence and landscaping to CFX design specifications, and the restoration of the CFX right-of-way impacted by the construction of the wastewater force main in its original location, as shown on

Exhibit "A" attached to this Escrow Agreement, and incorporated in this Escrow Agreement by this reference; and

WHEREAS, Developer has agreed to post such surety in the form of a cash escrow; and

WHEREAS, County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent, in accordance with the terms and provisions of this Escrow Agreement; and

WHEREAS, Escrow Agent has agreed to serve as escrow agent in accordance with this Escrow Agreement; and

WHEREAS, the Principals desire that Escrow Agent hold and release the Escrowed Funds, subject to the terms and conditions set forth in this Escrow Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Escrow Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Principals and Escrow Agent, and intending to be legally bound, the parties to this Escrow Agreement represent, warrant, covenant, and agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated in this Escrow Agreement by this reference.

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent**. By this Escrow Agreement, the Principals retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent (and in no other capacity) with respect to the Escrowed Funds, as defined in this Escrow Agreement, and by executing this instrument Escrow Agent accepts such retention.

3. **Escrowed Funds**. No later than five days after the Effective Date of this Escrow Agreement, Developer shall deliver funds in the amount of One Hundred Seventy Thousand Dollars (\$170,000.00) (the "**Escrowed Funds**") to Escrow Agent, the approximated amount of Developer's costs for design, permitting, and construction of a wastewater force main within the County right-of-way, and including the restoration of the CFX perimeter fence and landscaping, and restoration of CFX right-of-way impacted by the removal and relocation of the wastewater force main from portions of CFX right-of-way to County right-of-way, as shown on **Exhibit "A,"** (collectively the "**Force Main Construction**") with all work to be performed in accordance with County standards, with the exception of the CFX perimeter fence and landscaping, which are to be installed in accordance with CFX design standards. In this Escrow Agreement the Obligation to complete the Force Main Construction is referred to as "**Developer's Obligations**." Within five days of receipt, Escrow Agent will place the Escrowed Funds into an escrow account (the "**Escrow Account**") to be held, administered, distributed, and released as provided for in this Escrow Agreement. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice to each of the Principals within five days after receipt of the Escrowed Funds.

4. **County Claim(s) on Escrowed Funds**. County may use all or a portion of the Escrowed Funds, as it deems reasonably necessary, in the following circumstances and subject to the following conditions:

A. In the event County reasonably determines that Developer has not commenced the Force Main Construction or is not diligently pursuing completion of the Force Main Construction in a commercially reasonable manner (a “Default”), then County shall send written notice of its determination of the Default including specific information forming the basis of the Default (a “Default Notice”). Developer has five days from the receipt of a Default Notice to cure the Default. During the existence of a Default beyond the applicable notice and cure period, County may take the following actions.

(i) County may notify Developer of County’s intent to undertake the construction activities and the estimated timeline and estimated cost for commencement and completion of the Force Main Construction (the “County Construction Notification”).

(ii) County may withdraw all or a portion, as it deems necessary, of the Escrowed Funds for completion of the Force Main Construction in accordance with the County Construction Notification after presentation to Escrow Agent of a statement signed by the Orange County Mayor or a duly authorized representative stating: (a) “Developer has received a County Construction Notification;” and (b) “The subject draw request is required to pay only the actual amounts billed by third parties to Orange County for all or a portion of the Developer’s cost of the Force Main Construction.” Any funds not used by County must be placed back in the Escrow Account or released as provided in Section 5 below, as applicable.

B. The choice to assume performance of the Force Main Construction and use the Escrowed Funds during the existence of an uncured Default is solely in County’s discretion, subject to the limitations set forth in this Escrow Agreement. Should County choose to use the Escrowed Funds to complete the Force Main Construction, it will do so only to the extent the Escrowed Funds are sufficient to complete that task (unless County chooses to incur the additional cost to complete the task or complete a portion of the task) and will not assume liability for, nor obligation to, complete Developer’s Obligations.

5. **Escrow Term and Release of Escrowed Funds.** Notwithstanding anything to the contrary in this Escrow Agreement, the Escrowed Funds shall be held by Escrow Agent for a period (the “Escrow Term”) commencing on the Effective Date and expiring on the date that the County accepts ownership of the relocated wastewater force main (the “Completion Date”). The escrow established by this Escrow Agreement shall terminate and the balance of the Escrowed Funds will be disbursed to Developer, within a reasonable period, but in any case no later than thirty days after the Completion Date. Notwithstanding the foregoing, the Escrow Term will not apply to any portion of the Escrowed Funds that is subject to any active or pending draw request(s) pursuant to Section 4 above; rather, unused funds subject to any such active or pending draw request(s) will be disbursed to Developer within thirty days following County’s final payment for the Force Main Construction.

6. **Termination.** This Escrow Agreement and all of the parties’ rights and obligations pursuant hereto shall automatically terminate upon the earlier of (i) the delivery of all of the Escrowed Funds to County pursuant to Section 4 hereof, or (ii) delivery of the balance of

the Escrowed Funds to Developer pursuant to Section 5 hereof. In the event this Escrow Agreement has not been terminated within one year of the Effective Date (the "Review Date"), the Principals shall determine within sixty days of the Review Date whether conditions have changed in such a manner as to change the original conditions behind and intent of this Escrow Agreement. If the Principals' mutually agree that such changes have occurred, the Principals will jointly prepare and execute a Notice of Termination, and will send the Notice to Escrow Agent. On the effective date of the Notice of Termination this Escrow Agreement will terminate, and all of the Principals' rights and obligations pursuant to this Escrow Agreement will automatically terminate no later than ninety days after the Review Date, and Escrow Agent shall immediately deliver the balance of the Escrowed Funds to County unless otherwise instructed in writing by a notice jointly signed by the Principals.

7. **Indemnification of Escrow Agent; Sovereign Immunity.** The parties agree that the duties of Escrow Agent are purely ministerial in nature and are expressly limited to the matters in this Escrow Agreement for which Escrow Agent is expressly obligated. Developer and County hereby indemnify Escrow Agent and agree to 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, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence, willful misconduct, or breach of trust of Escrow Agent. In connection therewith, Developer and County shall, to the extent allowable by law, indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained in this Escrow Agreement is intended as, nor shall constitute, a waiver by County or Escrow Agent of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

8. **No Constructive Knowledge.** Escrow Agent will not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then will only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent will not be charged with any constructive knowledge whatsoever.

9. **Capacity of Escrow Agent.** The Principals expressly agree that Escrow Agent will not act under this Escrow Agreement in any capacity as Clerk to the Orange County Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

10. **No Overdraw.** Notwithstanding any provision of this Escrow Agreement seemingly to the contrary, Escrow Agent will not make payment of an amount in excess of the balance in the Escrow Account.

11. **No Obligation to Pay Interest.** Notwithstanding any provision of this Escrow Agreement to the contrary, Escrow Agent will not be required to make any interest payment on any balance in the Escrow Account.

12. **No Liability for Developer's Obligations.** The execution of this Escrow Agreement does not relieve Developer of its obligation to complete, to County's satisfaction, the Force Main Construction or obligate County or Escrow Agent to undertake or complete the Force Main Construction and does not imply or require that either County or Escrow Agent assume any liability for Developer's Obligations or any other responsibility of Developer.

13. **Notices.** All notices, consents, approvals, waivers, and elections which any party is required or desired to make or give under this Escrow Agreement must be in writing and will be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested; (ii) by hand delivery to the named individuals representing the party to be notified; or (iii) by private parcel delivery services for which receipt is provided to the notifying party. Notices, including notice of change of address, must be addressed to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to Developer: Core Orlando Colonial, LLC
1643 N. Milwaukee Ave., 5th Floor
Chicago, IL 60647
Attn: Marc Lifshin, Manager

With a copy to: Roberts McGivney Zagotta LLC
305 N. Peoria St., Ste. 200
Chicago, IL 60607
Attn: Michael S. Roberts

As to County: County Administrator
201 S. Rosalind Avenue, 5th Floor
P.O. Box 1393
Orlando, FL 32803-1393

With a copy to: Orange County Utilities Department
9150 Curry Ford Rd.
Orlando, FL 32825-7600
Attn: Director

As to Escrow Agent: Orange County Comptroller
201 S. Rosalind Avenue, 4th Floor
P.O. Box 38
Orlando, FL 32802-0038
Attn: Director of Finance and Accounting

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, or delivery, thereof as aforesaid.

14. **Governing Law.** The parties agree that this Escrow Agreement is entered into and delivered in the State of Florida. This Escrow Agreement will be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Escrow

Agreement will lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

15. **Entire Agreement, Modification.** This Escrow Agreement contains the entire understanding and agreement between the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Escrow Agreement. Neither Escrow Agent nor the Principals will be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and the Principals.

16. **Recording; Binding Effect.** This Escrow Agreement may not be recorded in the Public Records of Orange County, Florida. This Escrow Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, successors and assigns until such time as County determines, in its sole discretion, that Developer's Obligations have been fulfilled.

17. **Waiver.** The failure of any party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement may not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

18. **Counterparts.** This Escrow Agreement may not be executed in counterparts.

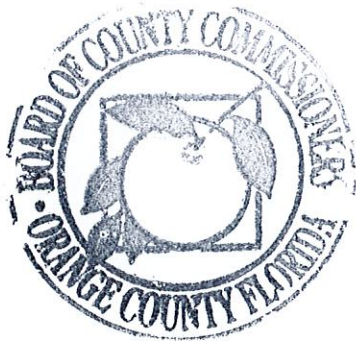
19. **Time.** Time is of the essence in connection with this Escrow Agreement and each provision hereof.

20. **Construction.** All parties to this Escrow Agreement participated fully and equally in the negotiation and preparation hereof. The fact that one of the parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement must not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

21. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming the Principals 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. The parties agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to Developer and County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent. The Principals expressly agree that each will bear the cost of its own attorney's fees for any action arising out of or in connection with this Escrow Agreement. The parties waive their rights to a jury trial.

22. **Captions; Days.** The captions contained in this Escrow Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Escrow Agreement or the intent of any provision contained herein. Each reference to "day" or "days" means calendar days, unless otherwise stated.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement or caused this Escrow Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.



COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Execution Date: 9.11.18

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Laheia Lewis*
for Deputy Clerk

DEVELOPER:

CORE ORLANDO COLONIAL LLC

By: CORE CAMPUS MANAGER LLC
A Delaware limited liability company

Its: Manager

By: _____

Marc Lifshin
Manager

Execution Date: 8/9/18

WITNESSES: Signed, sealed, and delivered in
the presence of:

[Signature]
CRYSTAL GERNER

Name:

Ari Richman

Name: Ari Richman

STATE OF IL
COUNTY OF COOK

SWORN and subscribed to freely and voluntarily for the purposes therein expressed before me
by Marc Lifshin, as Manager of CORE CAMPUS MANAGER LLC, Manager of CORE
ORLANDO COLONIAL LLC, a Delaware limited liability company, who is known by me to be
the person described herein and who executed the foregoing this 9 day of August,
2018. He is personally known to me or has produced _____ as
identification and did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 9 day
of August, 2018

(NOTARY SEAL)



[Signature]
Notary Public Signature

Melissa L. Sheahan
(Name typed, printed or stamped)

DEVELOPER:

CORE ORLANDO COLONIAL LLC

By: CONVEXITY MANAGEMENT LLC
A Delaware limited liability company

Its: Manager

By: [Signature]

Name: DAVID P NELSON

Its: Vice President

Execution Date: 8-9-18

WITNESSES: Signed, sealed, and delivered in the presence of:

[Signature]

Name: KAITLIN FUMARCO

[Signature]

Name: KIMBERLY EISEMAN FELD

STATE OF IL
COUNTY OF COOK

SWORN and subscribed to freely and voluntarily for the purposes therein expressed before me by David P Nelson, as Vice President of CONVEXITY MANAGEMENT LLC, Manager of CORE ORLANDO COLONIAL LLC, a Delaware limited liability company, who is known by me to be the person described herein and who executed the foregoing this 9 day of August, 2018. He is personally known to me or has produced _____ as identification and did/did not take an oath.

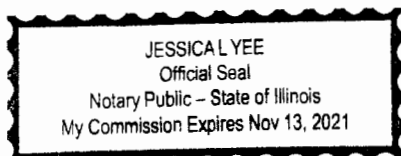
WITNESS my hand and official seal in the County and State last aforesaid this 9 day of August, 2018.

(NOTARY SEAL)

[Signature]
Notary Public Signature

Jessica L Yee

(Name typed, printed or stamped)



Signed, sealed, and delivered in the presence of: **ESCROW AGENT:**

Attest: Craig A. Stopysa

Print Name: Craig A. Stopysa

Title: Senior Minutes Coordinator

By: Phil Diamond

Phil Diamond, CPA

County Comptroller

Execution Date: 9-14-18

Attest: Jennifer Lara-Klimetz

Print Name: Jennifer Lara-Klimetz

Title: Senior Minutes Coordinator

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