

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, (the "Agreement") made this ___ day of _____, 200__, by and among _____, a Florida corporation, with offices at _____ ("company name"), the Environmental Protection Commission of Hillsborough County, created pursuant to Chapter 84-446, Laws of Florida, with offices at 3629 Queen Palm Dr, Tampa, Florida 33619 ("EPC") and _____, with offices at _____ ("Escrow Agent").

WHEREAS, in consideration of the authorization to impact certain wetlands within the _____ project, _____ has agreed to perform or construct the mitigation on certain properties identified on the Mitigation Agreement attached as Exhibit "A" to this Agreement, including monitoring as required and any necessary corrections or modifications to the mitigation in accordance with plans approved by EPC and which are on file with EPC (the "Mitigation"); and

WHEREAS, _____ has agreed to deposit the sum of \$_____, with the Escrow Agent, (The "Funds") representing an amount equal to One Hundred Percent (100%) of the prorated estimate of the cost of the earthwork, planting, monitoring and maintenance portions of the Mitigation within ten (10) days of the execution of this Agreement; and

WHEREAS, the Funds shall be separately released upon the concurrence of EPC that the earthwork, planting, monitoring and maintenance each have been completed as herein set forth; and

WHEREAS, Escrow Agent is agreeable to act as escrow agent without compensation under this Agreement and to disburse the Funds in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises set for the below, the parties agree:

1. Establishment of Escrow Account.

1.1. An escrow account shall be established under this Agreement by _____ with Escrow Agent at _____ who shall hold, invest and distribute the Funds from time to time as hereinafter set forth (the "Escrow Account").

1.2. _____ and EPC agree that the Funds in the Escrow Account are to be used exclusively for the purpose of funding the (earthwork, planting, monitoring and maintenance) stages of the Mitigation required by the Mitigation Agreement between _____ and EPC.

2. Disbursements.

2.1. The Escrow Agent shall disburse all or a portion of the Funds in accordance with the following:

(a) Upon receipt of written confirmation from _____ and EPC that the earthwork has been completed, to the Contractor who has completed the earthwork within five (5) business days of Escrow Agent's receipt of the written confirmation approved by the EPC. The disbursement shall be in an amount set forth in the Request not to exceed \$ _____. The Request shall be in a form substantially similar to that set forth in the attached Exhibit B.

(b) Upon receipt of written confirmation from _____ and EPC that the planting has been completed, to the Contractor or Contractors who has completed the planting within five (5) business days of Escrow Agent's receipt of the written confirmation approved both by _____ and EPC. The disbursement shall be in an amount set forth in the Request not to exceed \$ _____. The Request shall be in a form substantially similar to that set forth in the attached Exhibit B.

(c) Upon receipt of written confirmation from _____ and EPC that the monitoring and maintenance has been completed, to the Contractor or Contractors who has completed the monitoring and maintenance within five (5) business days of Escrow Agent's receipt of the written confirmation approved both by _____ and EPC. The disbursement shall be in an amount set forth in the Request not to exceed \$ _____. The Request shall be in a form substantially similar to that set forth in the attached Exhibit B.

(d) Upon receipt of written notice from EPC that the earthwork and/or planting are not constructed pursuant to the approved "Mitigation" plans to EPC's satisfaction within five years after the Effective Date or within the required timeframes of the "Mitigation" plans, whichever is shorter, to EPC if on that date the Funds have not previously been disbursed in accordance with 2.1 (a) or (b) hereinabove; the disbursement shall be in the amount of the remaining Funds.

(e) If, prior to the release of the Funds pursuant to the provisions of 2.1 (a) or (b) hereinabove, the Escrow Agent receives written notice from either _____ or EPC of a dispute between _____ and EPC, the Escrow Agent shall not release the Funds until this dispute has been settled or resolved to the satisfaction of a court of competent jurisdiction. This provision shall not prevent Escrow Agent from representing ___ in the dispute; nor shall it prevent disbursement pursuant to provision 2.1(a)-(c).

(f) The Escrow Agent shall, at any time, make distribution of the funds upon written direction duly executed by both _____ and EPC. The disbursement shall be

in the amount set forth in such written direction.

(g) Upon receipt of confirmation that the mitigation area has attained the EPC success criteria as presented in the approved plan, the balance of the Funds should be released upon written instructions by the Executive Director.

2.2. Upon proper disbursement of all the Funds, the Escrow Agreement shall terminate.

3. Escrow Agent's Responsibility.

3.1. Upon disbursement of all or any portion of the Funds in accordance with this Agreement, Escrow Agent shall have no further responsibility with respect to the amounts so disbursed. In this regard, it is expressly agreed and understood that in no event shall the aggregate amount of disbursements from the Escrow Account by Escrow Agent exceed the amounts deposited by _____ in the Escrow Account plus accrued interest, as provided herein.

3.2. Escrow Agent shall have the authority to invest and reinvest the Fund's principal and income upon written notice to the EPC Executive Director and pursuant to the Agreement in:

(a) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality thereof having maturities of not more than twelve months from the date of acquisition, or

(b) money market funds collateralized with securities of the types described in clause (a), or

(c) any other type of account insured by the FDIC or FSLIC or similar authorized entity without obligation to split the Funds to stay within FDIC or FSLIC insurance limits.

3.3. _____ and EPC understand and agree that the duties of Escrow Agent are purely ministerial in nature. _____ and EPC further agree that:

(a) Escrow Agent shall not be responsible for the performance by _____ or EPC under this Agreement or any other agreement.

(b) Escrow Agent shall not be liable for any action taken or omitted hereunder or under this Agreement except in the case of its bad faith, gross negligence or willful misconduct.

(c) Escrow Agent shall furnish to _____ and EPC an accounting of the receipts in, and disbursements from, the Escrow Accounts, as requested.

3.4. The Escrow Agent may resign as Escrow Agent at any time upon thirty (30) days prior written notice to _____ and EPC. In the case of the Escrow Agent's resignation, its only duty shall be to hold and dispose of the Escrow Account in accordance with the original provisions of this Agreement until such successor escrow agent shall be appointed. _____ and EPC shall jointly consent and appoint such successor escrow agent. Upon such appointment, the Escrow Agent's only duty shall be to pay over to the successor escrow agent the Funds in escrow pursuant to this Agreement less any portion thereof previously paid out in accordance with this Agreement.

3.5. _____ agrees to indemnify Escrow Agent and its partners, and agents (herein the "Indemnitees") against, and to hold them harmless of and from, any and all loss, liability, cost, damage and expense, any and all loss, limitation, reasonable attorneys' fees, except in the case of Escrow Agent's bad faith, gross negligence, or willful misconduct, which the Indemnitees may suffer or incur by reason of any action, claim or proceeding brought by any third party against the Indemnitees, arising out of or relating in any way to this Agreement, or the performance of its duties hereunder, and including any claim arising out of any mechanic' liens filed in connection with the construction of the Improvements. Any indemnification is subject to and limited by Section 768.28, F.S.

4. Miscellaneous.

4.1. This Agreement encompasses the entire Agreement of the parties and shall not be modified except by an instrument in writing signed by the parties.

4.2. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the proper venue and jurisdiction for any action or claim with respect to this Agreement or any document delivered pursuant hereto shall be in the appropriate court in Hillsborough County, Florida, except as for provided in section 4.3.

4.3. In the event of the receipt of conflicting instructions prior to discharge of the Escrow Agent, Escrow Agent shall commence an arbitration before a single arbitrator acceptable to Escrow Agent under the rules of the American Arbitration Association, whose decision shall be final. Upon receipt of a final decision from the arbitrator, the Escrow Agent shall comply therewith and upon such compliance shall be discharged from all further liability. The decision of the arbitrator shall be final, and may be reduced to judgment by any party hereto or the Escrow Agent. The arbitration must be resolved within 90 days of a request for arbitration. Environmental Protection Commission and _____ (Company) shall pay their own attorney fees and legal costs. The aforementioned parties shall split the Escrow Agent's and arbitrator's reasonable fees and costs.

4.4. All notice required to be given in connection with this Agreement shall be sent via certified mail or overnight express with receipt and addressed as follows:

If to: (Company Name) (Address & Phone Number)

With a copy to: (Address & Phone Number)

If to EPC: Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Dr.
Tampa, Florida 33619
Attn: Legal Department
Phone: (813) 627-2600

If to Escrow Agent: (Address & Phone Number)

IN WITNESS WHEREOF, this Agreement has been executed this day of _____, 200__.

Witnesses:

Company Name

By: _____

(Print Name)

Name: _____

Its: _____

Environmental Protection Commission

of Hillsborough County

(Print Name)

(Print Name)

By: _____

Richard D. Garrity, Ph.D.

Its: Executive Director

(Escrow Agent)

By: _____

Name: _____

Its: _____

EXHIBIT "B"

DRAW REQUEST

DRAW REQUEST # _____
DATE _____

Pursuant to the Escrow Agreement dated _____, 200_, by and among the _____, a Florida Corporation, the Environmental Protection Commission of Hillsborough County, and _____, as Escrow Agent, Escrow Agent is authorized to disburse \$_____ United States Dollars to:

For the purpose of paying:

This draw request may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute only one instrument.

Approved this _____ day of _____, 200_.

Company Name

By: _____
Its: _____

**Environmental Protection Commission
of Hillsborough County**

By: _____
Richard D. Garrity, Ph.D.
Executive Director