

COMMON AREA COMPLETION SECURITY AGREEMENT

[§11018.5(a)(2) or 11230]

RE 613 (Rev. 6/05)

ASSOCIATION

NAME OF OWNERS ASSOCIATION

ADDRESS, CITY, STATE, ZIP CODE

SUBDIVIDER/DEVELOPER

NAME OF SUBDIVIDER/DEVELOPER

ADDRESS, CITY, STATE, ZIP CODE

SUBDIVISION

NAME OF SUBDIVISION

COUNTY

TYPE OF SUBDIVISION

DRE FILE NUMBER

ESCROW HOLDER

NAME OF ESCROW-HOLDER

ADDRESS, CITY, STATE, ZIP CODE

ESCROW ACCOUNT NUMBER

PART ONE — COMMON AREA COMPLETION SECURITY AGREEMENT

1. This Common Area Completion Security Agreement (“Agreement”) is made this _____ day of _____, _____, by and between the Subdivider/Developer and the Association identified above.

2. **Recitals.**

A. **Property to Which Agreement Applies.** Subdivider/Developer is the owner of certain real property described as:

Records of _____ County, California (herein “the Subdivision”).

B. **Public Report.** Subdivider/Developer has applied for a California Department of Real Estate Public Report (“Public Report”) covering the Subdivision. Prior to obtaining the Public Report, the Subdivider/Developer is required pursuant to the provisions of Business and Professions Code § 11018.5(a)(2) or 11230 to make and retain in full force and effect arrangements assuring completion, free of all liens and claims, of certain common area improvements listed on the Planned Construction Statement attached to this Agreement as Exhibit “A” (“Improvements”).

3. **Secured Obligation.** Subdivider/Developer shall complete or cause to be completed, at Subdivider’s/Developer’s sole expense, the Improvements, free of all liens and claims, on or before the latest completion date specified on Exhibit “A”, or an extension thereof given in writing by the Association to the Subdivider/Developer. The Improvements shall be completed substantially in accordance with the plans and specifications for the Improvements identified as _____ on file with _____, as the same may be modified from time to time pursuant to Part One, Paragraph 7, below.

4. **Security.** To secure the timely completion of the Improvements free of all liens and claims, the Subdivider/Developer has procured the issuance of the:

Surety bond in the sum of _____ Dollars (\$ _____),
to the Association, as obligee,

Letter of credit in the sum of _____ Dollars (\$_____), to the Escrow Holder identified above, for the benefit of the Association,

Set-aside letter in the sum of _____ Dollars (\$_____) (“Funds”) to the Escrow Holder, for the benefit of the Association,

A copy of which is attached to this Agreement as Exhibit “B”, or

Cash deposit in the sum of _____ Dollars (\$_____) has been deposited with the Escrow Holder for the benefit of the Association.

The term “Security” as used in this Agreement refers to the cash deposit, surety bond, letter of credit, or set-aside letter identified above, together with any funds drawn thereunder held by the Escrow Holder. Subdivider/Developer warrants that, as of the date hereof, the amount set out in Exhibit “A” for each Improvement suffices for completion of the Improvement free of all liens and claims.

5. **Improvements Account.** If the Security is a set-aside letter, the funds set aside by the Issuer thereof (“Funds”) will be retained in an account controlled and administered by the Issuer. The Subdivider/Developer hereby grants the Association a security interest in the Funds to secure the Subdivider’s/Developer’s performance of its obligations to the Association under this Agreement. Without the express written consent of the Association, the Subdivider/Developer shall not request or receive disbursement of any installment from the Improvements Account except for labor and materials actually performed or used in the construction of the Improvements for which the installment is requested. Ten percent (10%) or more of each installment or ten percent (10%) or more of the funds set-aside (“retention”) shall be retained in the Improvements Account. Without the express written consent of the Association, the Subdivider/Developer shall not request or receive the disbursement of any portion of the retention until all of the Improvements have been completed, free of all liens and claims and (i) the statutory period for recording mechanics lien claims for the Improvements has expired, or (ii) the Association has been provided with a policy of title insurance, in an amount not less than the cost of the completed Improvements, insuring that the Improvements as completed are free of liens and claims. If at any time the funds in the Improvements Account are or become insufficient for completion of the Improvements, free of all liens and claims, sufficient additional funds to complete the Improvements lien free shall be deposited by or on behalf of Subdivider/Developer into the Improvements Account.
6. **Delay in Completion.** The Subdivider/Developer may extend for up to six months the time to complete the improvements as a result of delays caused by acts of God, of Independent contractors, inclement weather, labor trouble, acts of public utilities, public bodies, or inspectors (but not related to possible defects in contractor’s performance), or other contingencies unforeseen by Subdivider/Developer and beyond Subdivider’s/Developer’s reasonable control. The Subdivider/Developer shall notify in writing the Commissioner, the Association and any escrow holder of such extension. The Subdivider/Developer may extend completion for longer periods of time upon approval of the Association. No extension under this section shall be effective unless the Subdivider/Developer assures that a security arrangement exists to cover such extension.
7. **Plan Modifications.** Subdivider/Developer shall have the right without the consent of the Association to make alteration to the plans and specifications and to the Improvements (i) to meet the requirements of building codes and other government regulation of construction; (ii) to meet the requirements of the government agencies having jurisdiction over the construction; and (iii) to make minor changes, including, without limitation changes in fixtures, electrical outlets and switches, hardware, and surface finishes, provided such changes or alterations do not result in an Improvement of lesser quality and value than was provided for in the original plans and specifications. Except as provided by this Section, Subdivider/Developer shall not alter the plans and specifications applicable to any improvement without Association’s consent, and shall construct the Improvements in conformity with such plans and specifications, unless Subdivider/Developer has obtained the written consent of the Association to make such alterations, which consent shall not be unreasonably withheld by the Association.
8. **Insurance.** Subdivider/Developer bears the risk of loss for each Improvement until lien-free completion of that Improvement. Subdivider/Developer shall, at all times until completion of the Improvements, maintain in full force and effect a policy or policies of property insurance containing the usual terms and restrictions on coverage which protects the Subdivider/Developer against loss or damage to the Improvements from loss or other casualty covered under course of construction insurance. Subdivider/Developer shall, at all times until completion of the Improvements, maintain in full force and effect a policy or policies of Worker’s Compensation insurance to protect the Subdivider/Developer from claims and damages from Worker’s Compensation claims arising from the completion of the Improvements.

9. **Performance of Obligations.** If the Subdivider/Developer fails to perform the Subdivider's/Developer's obligation under Part One, Paragraph 3 of this Agreement, the Association shall have the right, whether through enforcement of the Security, demand upon funds drawn thereunder held by the Escrow Holder, or otherwise, to receive such sums as may be required to satisfy the obligation of the Subdivider/Developer under Part One, Paragraph 3 of this Agreement, and the Subdivider/Developer shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents as may be required to cause such sums to be paid to the Association. Any amount received by the Association directly from the Subdivider/Developer or from proceeds of the Security shall be credited against any claim by the Association arising out of the Subdivider's/Developer's failure to perform the Subdivider's/Developer's obligations under this Agreement. Upon full and final performance by Subdivider/Developer of Subdivider's/Developer's obligations under this Agreement, the Association shall, without regard to any other disputes or negotiations then existing, immediately take any and all actions and execute any and all documents reasonably necessary to cause the Security to be released and exonerated.
10. **Provisions for Arbitration of Conflicts.** In the event there is a dispute between the Subdivider/Developer and the Association with respect to this Agreement, of the enforcement, exoneration, or release of the security, the issue or issues shall, at the request of either Subdivider/Developer or Association, be submitted to arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") before an arbitrator selected from the panels of the arbitrators of said AAA. In the event of referral to arbitration, Subdivider/Developer will remit the fee to initiate the arbitration. The parties agree, however, that the costs of arbitration shall ultimately be borne as determined by the arbitrator. The parties further agree to abide by the determination of the arbitrator with respect to the enforcement, exoneration or release of the Security and with respect to payment of the costs of arbitration.
11. **Attorney's Fees.** In any action or proceeding arising out this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees.
12. **Obligations of Parties; Assignment.** This Agreement and the rights and obligations of each of the parties are personal to such parties and may not be transferred or assigned without the prior written consent of the other, except that Subdivider/Developer may assign its rights under this Agreement to a successor in interest as part of a transfer of the Subdivision in its entirety. Subdivider/Developer may also assign its rights under this Agreement to the Issuer of the Security. Such assignment does not make the assignee liable for any of Subdivider's/Developer's obligations pursuant to this Agreement, unless such obligations have been specifically assumed by the assignee in writing. Any assignment in violation of this Section shall be void.
13. **Binding Upon Successors.** This Agreement and the rights and duties of the parties shall be binding upon and shall inure to the benefit of the successors in interest, and assigns of the respective parties.
14. **Laws of California.** This Agreement shall be construed and governed by the laws of the State of California.
15. **Delivery of Agreement.** Subdivider/Developer shall furnish the Association with an executed copy of this Agreement and the Instructions to Escrow Depository along with evidence of the security deposited with Escrow no later than ten (10) days after the closing of the first sale of a lot in the Subdivision owned by the Subdivider/Developer.
16. **Complete Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter covered in this Agreement.

PART TWO — INSTRUCTIONS TO ESCROW DEPOSITORY

This constitutes joint escrow instructions of the Subdivider/Developer and the Association, which instructions are irrevocable except as modified by written supplemental instructions executed by the Subdivider/Developer and the Association. The Subdivider/Developer and the Association are the only principals in this escrow.

Escrow Holder hereby acknowledges receipt of the cash deposit, surety bond, letter of credit, or set-aside letter described in Part One, Paragraph 4 of the foregoing Common Area Completion Security Agreement. Unless otherwise specifically stated herein, the capitalized terms in these instructions shall have the same meaning as set forth in the foregoing agreement.

Nothing contained in these instructions imposes any duty on the Escrow Holder to interpret Business and Professions Code §11018.5(a)(2) or 11230, to audit in any way the Subdivider's/Developer's discharge of its duties or obligations with respect to the Improvements, or to verify the truth of the statements made in any notices given to the Escrow Holder by the Subdivider/Developer or the Association. Except as otherwise provided by law, the duties of the Escrow Holder are to receive, hold, release, or draw upon the Security in accordance with the following instructions. These instructions may be modified by the written joint or mutual instructions of the principals. Escrow Holder hereby agrees to comply with the terms and provisions of these instructions.

1. Return Of The Security To The Subdivider/Developer.

- A. If the Escrow Holder receives a demand from the Subdivider/Developer for the return of the Security, which demand is accompanied by the Subdivider's/Developer's statement that all of the Improvements have been completed, free of all liens and claims and (i) the statutory period for recording mechanics lien claims for the Improvements has expired, or (ii) the Association has been provided with a policy of title insurance, in an amount not less than the cost of the completed Improvements, insuring that the Improvements as completed are free of liens and claims, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and the certificate to the Association, or its authorized agent, together with a statement notifying the Association that the Association's written objection to return of the Security to the Subdivider/Developer must be received by the Escrow Holder within forty (40) days after delivery of the demand and statement to the Association.
- B. If within forty (40) calendar days after such delivery, the Association delivers to the Escrow Holder the Association's written objection to the return of the Security to the Subdivider/Developer, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand and statement to the Association, or its authorized agent, the Association does not deliver to the Escrow Holder the Association's written objection to the return of the Security to the Subdivider/Developer, then the Escrow Holder shall promptly deliver the Security to the Subdivider/Developer.

2. Remittance Of The Security To The Association.

- A. If the Escrow Holder receives a demand from the Association for the remittance of the Security, or some specified portion thereof, which demand is accompanied by a written statement signed by an officer of the association that, as of forty (40) days following the latest completion date specified in the Planned Construction Statement attached to this Agreement as Exhibit "A," or an extension thereof given in writing by the Association to the Subdivider/Developer, the Improvements have not been completed free of all liens and claims, then, within fifteen (15) calendar days of receipt of the demand and statement, the Escrow Holder shall deliver a copy of the demand and the statement to the Subdivider/Developer, together with a statement notifying the Subdivider/Developer that the Subdivider's/Developer's written objection to remittance of the Security to the Association must be received by the escrow holder within forty (40) days after delivery of the demand and statement to the Subdivider/Developer.
- B. If within forty (40) calendar days after such delivery, the Subdivider/Developer delivers to the Escrow Holder the Subdivider's/Developer's written objection to the remittance of the Security to the Association, then the Escrow Holder shall continue to hold, release, or draw upon the Security in accordance with these instructions. If within forty (40) calendar days after the Escrow Holder delivers the demand and statement to the Subdivider/Developer, the Subdivider/Developer does not deliver to the Escrow Holder the Subdivider's/Developer's written objection to the remittance of the Security to the Association, then:
 - 1) If the Security is a surety bond, the Escrow Holder shall promptly deliver the Security to the Association;
 - 2) If the Security is a letter of credit, the Escrow Holder shall promptly present the Security for payment of that portion of the Security specified in Association's demand by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand.
 - 3) If the Security is a set-aside letter, the Escrow Holder shall promptly make demand in compliance with the set-aside letter to the issuer of the set-aside letter for payment of that portion of the Security specified in the Association's demand, and upon receipt of payment promptly remit to the Association that portion of the Security specified in the Association's demand;
 - 4) If the Security is or has become a cash deposit, the Escrow Holder shall promptly remit to the Association that portion of the Security specified in the Association's demand.

3. Release Of The Security Upon Joint Instructions.

If the Escrow Holder receives written instructions from both the Subdivider/Developer and the Association directing the Escrow Holder to return the Security to the Subdivider/Developer or to remit the Security, its proceeds or some portion of the proceeds to the Association, the Escrow Holder shall promptly comply with the instructions.

4. **Conflicting Instructions.**

In any of the circumstances described in subparagraphs A through E, below, the Escrow Holder shall, at its sole discretion, either (1) interplead the Security, (2) retain the Security until the Security is returned to the Subdivider/Developer or remitted to the Association in accordance with these instructions, or (3) retain the Security until the Security is disposed of in accordance with written supplemental instructions executed by the Subdivider/Developer and the Association or the order of a court of competent jurisdiction:

- A. The Association timely objects in writing to a demand by the Subdivider/Developer for the return of the Security;
- B. The Subdivider's/Developer's demand for the return of the Security is not accompanied by the statement described in Part Two, Paragraph 1-A, above;
- C. The Subdivider/Developer timely objects in writing to a demand by the Association for remittance of all or any portion of the Security;
- D. The Association's demand for remittance of the Security is not accompanied by the statement described in Part Two, Paragraph 2-A, above; or
- E. The Escrow Holder receives conflicting instructions from the parties to this escrow.

5. **Pending Return Or Remittance Of The Security.**

- A. If the Security is a letter of credit, and if the issuer of the letter of credit has not extended the time for drawing upon the letter of credit by extending or reissuing the letter of credit and depositing the extension or reissued letter of credit with the Escrow Holder, then fifteen (15) calendar days prior to the expiration of the time for drawing upon the letter of credit, the Escrow Holder shall present the Security for payment in full by presenting the Security and a sight draft drawn under and in compliance with the letter of credit to the issuer of the letter of credit, and upon receipt of payment handle the proceeds of the Security as a cash deposit. The Escrow Holder shall notify the Association and the Subdivider/Developer upon receipt of proceeds of a draw on the letter of credit.
- B. If the Security is or has become a cash deposit, the Escrow Holder is hereby instructed to deposit all funds deposited in the above - numbered escrow in a federally insured interest-bearing account or accounts, in the name of the Escrow Holder for the benefit of the Association. The parties hereto agree and understand that said funds are under the control of Escrow Holder and that no withdrawals or additions may be made by anyone other than Escrow Holder. The interest earned on said account is for the benefit of the Subdivider/Developer only, and the Escrow Holder shall cause the interest earned on said account to be paid to the Subdivider/Developer. Taxpayer Identification Number shall be furnished by Subdivider/Developer in order for Escrow Holder to open an account for a cash deposit. Escrow shall furnish the parties with account information within five days of opening.
- C. If the Security is a surety bond, the Escrow Holder shall retain the Security until the Security is returned to the Subdivider/Developer in accordance with these instructions or disposed of in accordance with the order of a court of competent jurisdiction.
- D. If the Security is a set-aside letter, the Subdivider/Developer has granted the Association a security interest in the funds set aside to secure the Subdivider's/Developer's obligations to the Association to complete the Improvements, and the Escrow Holder hereby acknowledges such security interest.

6. **Notices.**

Delivery of all notices and other documents described in these Instructions to Escrow Depository or in the foregoing Common Area Completion Security Agreement shall be made by overnight or same-day commercial delivery service or by United States mail, certified or registered, postage prepaid. All such notices and documents shall be deemed delivered, given and received: (a) the day of sending via same-day commercial delivery service; (b) the following business day after sending via overnight commercial delivery service; or (c) three (3) calendar days after deposit in the United States mail. All such notices shall be addressed as set forth on page 1 of this Common Area Completion Security Agreement and Instructions to Escrow Depository; provided that the Association, the Subdivider/Developer and the Escrow Holder may at any time change their respective address for notices and other documents described herein by sending to the other two parties a written notice specifying the new address.

7. Counterparts.

This Common Area Completion Security Agreement and Instructions to Escrow Depository may be executed in counterparts, and all counterparts together shall be construed as one document.

SUBDIVIDER/DEVELOPER

SIGNATURE	TITLE	DATE
➤		

ASSOCIATION

SIGNATURE	TITLE	DATE
➤		

ESCROW HOLDER

SIGNATURE	TITLE	DATE
➤		