

wear and tear excepted, the City will release the remaining amount of the Letter of Credit.

Section 5. Failure to Install Improvements/Failure of Warranty.

If (a) Installation/Acceptance of the Improvements has not occurred within two (2) years after the date of this Agreement, or (b) the Improvements are not free of defects (normal wear and tear excepted) for one (1) year after Installation/Acceptance, then the City may unilaterally (without consent or approval of any kind from Developer) at any time thereafter may demand and receive from the Issuer the (remaining or full) amount of the Letter of Credit (full or any amount). The City shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the proceeds of the Letter of Credit as is required (in the City's sole opinion) to satisfactorily complete installation of the Improvements and/or to repair any defects therein, including (without limitation) the cost of any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to effect such work. Any balance of the proceeds of the Letter of Credit remaining after payment of all such costs, fees, and expenses, and a reasonable reserve, in an amount determined by the City, shall be paid to Developer. Notwithstanding the foregoing, prior to making a demand upon the Letter of Credit, the City agrees to provide Developer sixty (60) days' written notice of any defects or noncompliance in the Improvements and allow Developer to cure any such defect or noncompliance within such period.

Section 6. No Waiver or Estoppel.

This Agreement is irrevocable unless revoked by the mutual consent of Developer and the City. Neither this Agreement nor deposit of the Letter of Credit by Developer and the acceptance of the Letter of Credit or this Agreement by the City, shall constitute a waiver or estoppel by or against the City concerning the Improvements; nor shall any such matters in any way relieve Developer from the obligations to (a) timely achieve satisfactory Installation/Acceptance of the Improvements, or (b) fully perform under the Warranty, regardless of whether or not the Letter of Credit is adequate to pay for the satisfactory Installation/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty. If the Letter of Credit is inadequate to pay for the cost of Improvements for whatever reason, Developer agrees to pay such deficiency independent of this Agreement, which amount may include any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to affect such work. Additionally, no further permits or approvals shall be issued with respect to the Subdivision or to the Developer until such deficiency is cured.

Section 7. Limitation on Issuer's Duties.

The Issuer of the Letter of Credit has no duty, responsibility, or liability whatsoever to affect the physical installation of the Improvements. Issuer's only duty hereunder is to hold and distribute the Letter of Credit in accordance with the terms and provisions of the Letter of Credit, provided, however, such Issuer shall be responsible and/or liable for disbursements of the Credit that occur