

**CONSTRUCTION DEPOSIT AGREEMENT**

Fonn Villas Civic Association, Inc. (FVCA) requires a deposit (Deposit) from the Builder (Builder) for the construction of any Major Construction project, as defined in the Addendum to Guidelines for Architectural and Neighborhood Standards (Guidelines). The execution of this "Construction Deposit Agreement" is a condition of the acceptance by the FVCA, through its Architectural Controls Committee (ACC) and its Architectural Standards Committee (ASC), of an Application for Major Construction by the Lot owner. This executed agreement is one of the "Required Materials Check List" of that Application for Major Construction. Under no circumstances shall any construction be commenced prior to the final approval of the Application for Major Construction by FVCA.

PROPERTY ADDRESS: \_\_\_\_\_

LOT OWNER: \_\_\_\_\_

BUILDER: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City, Zip: \_\_\_\_\_

Tel. No: \_\_\_\_\_

Fax No: \_\_\_\_\_

E-mail: \_\_\_\_\_

PROJECT:    *New Residential Unit* construction        [   ]  
                 *Major addition to existing Building(s)*        [   ]

PLANS FOR PROJECT: Architect/Designer: \_\_\_\_\_

Reference or Project Number: \_\_\_\_\_

For and in consideration of the mutual covenants set forth in this Agreement, the Lot Owner and BUILDER hereby agree as follows:

1. BUILDER agrees to submit to FVCA, upon execution of this Agreement, a certified check in the amount of the applicable deposit:

*New Residential Unit* construction: \$7,500.  
*Addition to existing Building*: \$4,000.

No interest on the Deposit shall be paid to the Builder.

2. Builder agrees to complete this construction Project in a timely manner and in accordance

with the approved Application and this Agreement. Notwithstanding the approval of the Application, Builder also agrees to complete this Project in accordance with the Fonn Villas Restrictions (Restrictions) and Guidelines for Architectural and Neighborhood Standards (Guidelines). It is Builder's responsibility to notify the Association promptly of any conflict between the approved Application and the Restrictions or the Guidelines. Upon determining the existence of any such conflict, the Builder shall be required to refrain from continuing the Project until the conflict is resolved to the satisfaction of the FVCA.

3. Prior to commencement of construction, Builder must give written notice to all property Lot owners adjacent to the project Lot and the Lot owner of property directly across the street, as well as the Lot owner of the Lots on either side of the Lot immediately across the street of (a) the date construction will commence, and (b) emergency telephone number(s) of the Builder and/or the Builder's superintendent in charge of construction at the site. For corner lots, the owners across both the main and side street must be notified. Builder must provide the FVCA's ASC Chair with copies of the notification letters to each applicable property Lot owner prior to commencing construction. Builder should obtain from the FVCA the names and addresses of all owners to be notified. Builder and Lot owner shall rely on the information provided by the FVCA and shall not be required to make an independent investigation of Deed Records or other information as to actual Lot owner of such lots.
4. Upon completion of the foundation slab forms and before pouring the foundation slab, Builder shall provide the ASC Chair with a "Form Survey" executed by a licensed professional land surveyor showing the location of the *Improvements* to be constructed for the Project prior to proceeding with pouring the foundation slab. The ASC Chair shall have five (5) business days from the date of receipt of a "Form Survey" to object in writing to the location or height of the foundation slab. If the "Form Survey" shows that the foundation slab would not be in compliance with the approved Application for Major Construction and Restrictions, Lot owner agrees to have the Builder modify the foundation slab forms such that the foundation slab will be in compliance with the approved Application and Restrictions. After modification, Builder shall provide a new "Form Survey" to the ASC Chair for approval.
5. Once the framing of the roof is completed, Builder shall provide the ASC Chair a written "Height Certification" issued by a licensed professional land surveyor, architect or engineer verifying compliance with the height limitation of the approved Application and Guidelines. All measurements shall be from the *Benchmark* elevation, as required by the Guidelines, and as provided to the ASC Chair upon the submission of the Application. The ASC Chair shall have five (5) business days from the date of receipt of a "Height Certification" to object in writing to the height of the *Structure(s)*. If the height of a *Structure(s)* exceeds the height limitation of the approved Application for Major Construction and Guidelines, Lot owner agrees to have the Builder modify the *structure(s)* to comply with the height limitation of the approved Application for Major Construction and Guidelines prior to proceeding with further construction. Upon completing the necessary modification, Builder shall provide a new "Height Certification" to the ASC Chair for approval. The Fonn Villas specific "Height Certification" form is in Exhibit C.
6. Upon completion of all of the *Structure(s)*, Builder shall submit to the ASC Chair an "As-Built Survey". The ASC Chair shall have five (5) business days from the date of receipt of an "As-Built Survey" to object in writing to any non-compliance issues. Lot owner and Builder shall take action to remedy all *Improvements* deemed by the ACC, in its sole

discretion, to be out of compliance with the approved Application for Major Construction, the Guidelines, or Restrictions. Upon completion of any necessary remediation, Builder shall provide a new "As-Built Survey" to the ASC Chair for approval. Variances cannot be granted by the ACC in order to accomplish this compliance. Variances can only be granted SUBSEQUENT to filing an Application and PRIOR to the initiation of any demolition and/or construction as set out in the Guidelines.

7. The Deposit shall be held by the Association to assure compliance with this Agreement. Builder acknowledges that the Restrictions and Guidelines include rules and regulations relating to construction including, by way of example and not in limitation, employee/subcontractor vehicle parking, starting and ending times for construction work, and maintenance of the construction site. A violation of any of the rules or regulations set forth in either the Restrictions or the Guidelines may result in a written notice to Builder. Any violation of the same rules or regulations after written notice is given to Builder may result in the forfeiture of a portion of the Deposit as set out in "Failure to Follow Rules and Regulations" (Schedule A, Section 2) attached to this Agreement.
8. All or any portion of the Deposit may be forfeited by Builder for violations of this Agreement, or other violations of the Restrictions and/or Guidelines than those addressed in paragraph 7 above. A schedule of the forfeitures for the other types of violations is set forth in "Forfeiture Schedule" (Schedule A, Section 1). No prior notice is required for a forfeiture resulting from a violation set forth in "Forfeiture Schedule".
9. The Deposit shall be refunded to Builder as follows:
  - a. In the case of a new *Residential Unit* construction, within thirty (30) days of the date of receipt by the FVCA of a written notice by the Builder that the Project is substantially complete. For purposes of this subparagraph, the date of substantial completion of a new *Residential Unit* shall be the date on which the new *Residential Unit* may be occupied.
  - b. In the case of a major addition to an existing *Building*, within thirty (30) days of the date of receipt by the FVCA of a written notice from the Builder that the addition has been substantially completed. For purposes of this subparagraph the date of substantial completion of any addition shall be the date on which the addition may be used for its intended purpose.
  - c. The date the FVCA receives written notice from the Builder shall not initiate the timetable for issuing a refund if, within thirty (30) days of the date of receipt of the written notice, the FVCA, acting reasonably and in good faith, determines that the *Building(s)* cannot be occupied or used for its intended purpose. In that event, the Builder shall be required to issue a new written notice of substantial completion.
  - d. If the FVCA determines that there are deviations from the approved Application for Major Construction or non-compliance with the Restrictions or Guidelines, the Deposit shall not be refunded until all deviations are brought into compliance with the approved Application for Major Construction, the Restrictions, and Guidelines.
10. Builder acknowledges that the Deposit is required to be paid in an effort to assure compliance

with the provisions of this Agreement, the Restrictions and the Guidelines, but that the forfeiture of all or any portion of the Deposit shall be in addition to, not in lieu of, all other remedies available to the Association for violations of this Agreement, the Restrictions and/or the Guidelines. The FVCA expressly reserves all remedies for non-compliance with the provisions of this Agreement, the Restrictions and/or the Guidelines, whether or not all or any portion of the Deposit is forfeited.

11. The parties agree that all disputes, claims or controversies arising out of or relating to this Construction Deposit Agreement shall first be mediated by a mediator who is a member of the Association of Attorney-Mediators.

Notwithstanding the foregoing, the provisions of this paragraph shall not be applicable to a suit for injunctive relief initiated by the FVCA based upon the contention that the construction of an *Improvement* is proceeding in violation of this Agreement, the Restrictions, and/or the Guidelines.

**NOTE:** For the purposes of this agreement, email between designated email addresses shall serve as written notifications and communications.

EXECUTED on the date(s) set forth below; to be effective when executed by both parties.

**FONN VILLAS CIVIC ASSOCIATION, INC.**

Date: \_\_\_\_\_ Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**BUILDER**

Date: \_\_\_\_\_ Builder Name: \_\_\_\_\_  
Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**OWNER**

Date: \_\_\_\_\_ Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Email Address: \_\_\_\_\_

**FOR ASSOCIATION USE ONLY**

Deposit:

Received on: \_\_\_\_\_; By: \_\_\_\_\_

Received From (Name and Company Name): \_\_\_\_\_

Certified Check: \_\_\_\_\_ (Check No.)

Amount: \_\_\_\_\_

Refund Amount: \_\_\_\_\_

Check No. \_\_\_\_\_

Delivered to: \_\_\_\_\_; Date: \_\_\_\_\_; or

Mailed to: \_\_\_\_\_; Date: \_\_\_\_\_.

**SCHEDULE A**

**Construction Deposit Agreement**  
**Section 1 Forfeiture Schedule**

**Failure to Obtain Approval and/or Deviating from Approved Plans**

Improvements not in approved location with no encroachments	\$1,000 each occurrence
Improvements not in approved location and with encroachments (including height violation)	\$2,500 each occurrence
Failure to provide <i>benchmark</i> elevation prior to commencing construction	\$1,000
Failure to submit "Form Survey" prior to <i>pouring foundation slab</i>	\$2,000
Failure to submit "Height Certification" at the completion of framing	\$2,000
Failure to complete construction within twelve (12) month period unless approval is granted in writing to extend construction period	\$400 for each additional month
Failure to provide the "As-Built Survey"	\$2,000
Failure to notify all adjoining property owners as stipulated	\$500

Fonn Villas Civic Association, Inc.

Schedule A

Construction Deposit Agreement

Section 2

Failure to follow rules and regulations

One written warning will be given for failure to observe each of the following rules and regulations. After the first warning is given, Builder will forfeit an amount equal to \$300 for the second violation, \$400 for the third violation, \$500 for the fourth violation, increasing by \$100 for each subsequent violation for each written notice given for failure to observe any of the rules and regulations listed below.

- Failure to observe starting and ending times for project work.
- Failure to observe stipulated parking requirement for all vehicles.
- Failure to maintain clean work site, which includes keeping grass and weeds cut
- Failure to keep streets and gutters clean from all debris.
- Failure to service portable toilet facility and to locate it in designated areas.
- Failure to screen portable toilet facility.
- Failure to locate dumpster in driveway.
- Failure to maintain required screening fence and silt barrier.
- Failure to display in an unobstructed location at the front of the property an "in case of emergency" sign in the standardized format or the improper posting of more than one sign.
- Failure to post the rules and regulations stipulated in the approval letter, in both English and Spanish, in a place that every employee/sub-contractor will see, including, but not limited to, the prescribed starting and ending times for construction activity and the requirement to park on one side of the street.