

Escrow Agreement for Completion of Improvements

THIS ESCROW AGREEMENT FOR COMPLETION OF IMPROVEMENTS (this “**Agreement**”) is made and entered into as of the first date executed below (the “**Effective Date**”) by and among **Eagle Mountain City**, a municipal corporation of the State of Utah (the “**City**”), _____, the undersigned owner of real property located within the City (“**Developer**”) and _____, the undersigned escrow agent (“**Escrow Agent**”).

RECITALS:

A. Developer owns legal title to the real property known as _____ (the “**Project**”), which is more particularly described on the Subdivision Plat attached hereto as Exhibit “A” (the “**Subdivision Plat**”).

B. Developer has requested that the City record the Subdivision Plat for the Project before completion of the subdivision and infrastructure improvements (the “**Improvements**”) that are required as a condition of the Project approval, as set forth on the Improvements Completion List attached hereto as Exhibit “B”, and which Improvements are further detailed and depicted in the engineering drawing for the Project as approved and stamped by the City.

C. The City is willing to record the Subdivision Plat on Developer’s promise to install the Improvements as specified in this Agreement, and on Developer’s deposit into an escrow account controlled by Escrow Agent the estimated cost to install the Improvements.

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals above, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Developer’s Completion**. Developer irrevocably acknowledges its obligation to install the Improvements without cost to the City and hereby agrees to satisfactorily complete the installation of the Improvements in a good, workmanlike, lien-free manner within one (1) year after the Effective Date of this Agreement (“**Completion Date**”). If the Deposit (defined below) is inadequate to pay for the cost of Improvements for whatever reason, Developer agrees to pay such deficiency, which amount may include any and all incidental construction, legal, administrative or engineering fees or expenses incurred by the City to complete such work. The City may withhold all permits or approvals for the Project or Developer until such deficiency is cured.

Section 2. **Repairs.** Developer agrees that all responsibility for repairs and maintenance of the Improvements remains with Developer until such Improvements are accepted by the City and until expiration of the applicable warranty period.

Section 3. **Escrow Account.** To assure and guaranty the satisfactory and timely installation of the Improvements, Developer has caused to be deposited the sum of _____ (the “**Deposit**”) into the segregated FDIC insured deposit account controlled by Escrow Agent, which is designated as Account No. _____ (the “**Escrow Account**”). Developer shall pay all escrow fees and other charges charged by Escrow Agent in connection with the Escrow Account. **ESCROW AGENT HEREBY ACKNOWLEDGES THE DEPOSIT AND THE ESTABLISHMENT OF THE ESCROW ACCOUNT, AND HEREBY IRREVOCABLY AGREES TO HOLD AND DISBURSE THE DEPOSIT ONLY UPON WRITTEN APPROVAL OF THE CITY IN ACCORDANCE WITH THE EXPRESS TERMS OF THIS AGREEMENT.**

Section 4. **Partial Releases.** Developer may request that City approve partial releases from the Escrow Account from time to time upon completion by the Developer of portions of the Improvements. Any requests for partial releases shall be made in writing to the City Engineer. The Escrow Agent shall only make partial releases from the Escrow Account upon written approval of the partial release and authorization by the City Engineer to release such funds.

Section 5. **Release of Deposit.** Once the Improvements have been installed to the satisfaction of the City, the City agrees to execute a written release of the remainder of the Escrow Account (“**Final Release**”) authorizing the remaining funds to be disbursed to the Developer by the Escrow Agent. If the Improvements are not completed to the satisfaction of the City by the Completion Date, the City shall have the option to: (1) certify in writing to the Escrow Agent that the Improvements have not been completed and direct the Escrow Agent to disburse the remainder of the funds in the Escrow Account to the City, without co-signature or other authorization of the Developer, to be used by the City for the completion of the Improvements; or (2) give the Developer an extension of time at the discretion of the City in which to complete the Improvements. If the City exercises its option to require disbursement of the funds remaining in the Escrow Account to the City, the Escrow Agent shall forthwith, and no later than fifteen (15) business days after receipt of notice to do so from the City, disburse all remaining funds held in the Escrow Account to the City.

Section 6. **No Waiver or Estoppel.** This Agreement is irrevocable unless revoked by the mutual consent of Developer and the City. In no event shall the City’s extension of time to complete the Improvements or any delay in exercising its rights and interest in and to the Deposit be considered a relinquishment, waiver or abandonment of the City’s right to payment of the Deposit.

Section 7. **Limitation on Escrow Agent’s Duties.** Escrow Agent shall have no duty, responsibility or liability whatsoever to effect the physical installation of the Improvements. Escrow Agent’s only duty is to hold and distribute the Deposit in accordance with the terms and provisions of this Agreement.

Section 8. **Inspection.** The City shall have the right to inspect Improvements during installation.

Section 9. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(i) **Attorneys' Fees.** In the event any action or proceeding is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover its costs, expert witness fees, and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial or on appeal.

(j) **Notice.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (a) Federal Express (or other established express delivery service which maintains delivery records), (b) hand delivery, or (c) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or such other addresses as the Parties may designate from time to time:

To City: Eagle Mountain City
c/o City Recorder
1650 E. Stagecoach Run
Eagle Mountain, UT 84005

With a copy to: Eagle Mountain City
c/o City Engineer
2565 North Pony Express Parkway
Eagle Mountain, UT 84005

To Developer: _____

To Escrow Agent: _____

Such communications may also be given by email or facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notwithstanding any other requirements, notices shall be deemed effective upon actual receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery. Upon at least ten days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

- (k) Time of Essence. Time is the essence of this Agreement.
- (l) Assignment. Developer may not assign or otherwise convey its rights or delegate its duties under this Agreement without the express written consent of the City.
- (m) No Partnership. City and Developer do not by this Agreement in any way or for any purpose create a partnership or joint venture with each other.
- (n) Benefit of Agreement. The benefits and protection provided by this Agreement shall inure solely to the City. City shall not be liable for any claim or obligation of Developer. City may, in its sole and absolute discretion, interplead the Deposit (full or any amount thereof) with a court pursuant to Utah R. Civ. P. 67 and Utah Code Ann. § 76-27-4.
- (o) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any such writings, shall be deemed to refer to and include the Agreement and all exhibits and writings.

DATED the _____ day of _____, 20_____ .

(DEVELOPER)

Signature: _____

Print Name: _____

Title: _____

DATED the _____ day of _____, 20_____ .

(ESCROW AGENT)

Signature: _____

Print Name: _____

Title: _____

STATE OF _____)

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COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who represented to me that (s)he had authority to and did execute the this document on behalf of Escrow Agent.

Notary Public of Utah

DATED the _____ day of _____, 20_____.

EAGLE MOUNTAIN CITY

Tom Westmoreland, Mayor

ATTEST:

Fionnuala B. Kofoed, MMC, City Recorder

Approved as to form:

City Attorney

Exhibit A

Exhibit B