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ESCROW SUBDIVISION AND FEE AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, _____, between (Developer Name) _____ Of (Developer Address) _____, hereinafter referred to as "Developer"; South Weber City, a municipal corporation and political subdivision of the State of Utah, located in Davis County, hereinafter referred to as "City"; and (Financial Institution) _____ of _____, (Financial Institution's Complete Address) hereinafter referred to as "Escrow".

The above named parties agree as follows:

1. Developer's Purpose for Escrow Agreement. Developer is desirous of developing and recording a proposed subdivision of land in South Weber, Davis County, Utah said subdivision to be known as (must match plat exactly) _____, at approximately (address) _____, in South Weber City, Davis County, Utah, pursuant to City ordinances and agreements.

2. Requirements of City/Incorporation of Final Plans: The City will not accept said subdivision unless adequate provisions are made for the guaranteed construction and installation of the off-site improvements in said subdivision. Said improvements are to be installed in accordance with the specifications of the City Engineer and South Weber City ordinances as described and set forth in the "Land Development Agreement,". Final subdivision plans and all accompanying data required by South Weber City Code, Title 11, which is used to compute the cost of the improvements by the City Engineer, are hereby incorporated.

3. Guarantee of Improvements: The improvements shall be completed to the satisfaction of the City Engineer and according to adopted City standards. To guarantee satisfactory installation and construction of the subdivision improvements within the time set forth in Section 5 below, the Developer has deposited with the Escrow on account an amount equal to the total of the cost of the improvements as determined by South Weber City.

4. Amount of Escrowed Funds: The escrow amount shall be equal to the City Engineer's approved estimated cost of all required public improvements plus 15% of the total cost of all required improvements for contingencies, plus an additional 10% of the total cost of all required improvements as a guarantee fee, for a total of 125% of the City Engineer's approved estimated cost of all required improvements. The escrow amount shall be for the use of the City in the event the developer fails or refuses to install, complete,

construct, repair or replace any required improvement according to City standards, ordinances and Developer Agreement. The decision of the City as to whether an improvement must be installed, constructed, completed, or replaced is final. Should Developer fail to perform its obligations or becomes insolvent before completion of all improvements, then the City may, at its option, apply all sums deposited in escrow against the cost of completing all required improvements and to pay all expenses, including, but not limited to, all un-reimbursed engineering expenses related to the development, the administration fee (.5% (.005) of the total escrow), and court costs and attorney fees.

5. Time Period for Completion: Improvements shall be completed within a period of time not to exceed two (2) years from the date this Escrow Agreement is executed. Upon the independent and separate approval of the City Council pursuant to all applicable laws and ordinances, the time period may be extended an additional two (2) years, or alternate time period as determined by the City, from the expiration date of the original security.

6. Escrow Funds. Developer hereby assigns and sets over to the City all of its right, title and interest in and to the principal of that certain escrow account with Escrow entitled "Trust Account of _____", in the amount of \$ _____, (including the 10% guarantee set out in Section 9 below) which has been deposited with Escrow prior to this Agreement being signed by Escrow: Account No. _____. The City therefore has first priority to these funds for the purposes stated herein.

7. Additional Funds Required: If an additional amount is required to adequately fund the required security, as determined by the City Engineer and acceptable by the City, the Developer shall, upon written request from the City, increase the escrow amount to fully fund the security within thirty (30) days of the date of the City's request. Failure to comply within thirty (30) days will result in the developer being responsible for paying all City costs, attorney fees and court cost associated with obtaining the additional amount.

8. Release of Funds: The City shall have exclusive control over release of the security proceeds and they may be released only upon written approval by the City. The escrow amount may be reduced upon request of the Developer as the improvements are installed and inspected and accepted by the City. The amount of the reduction shall be determined by the City Engineer. Such requests may be made only once every thirty (30) days and no reductions through escrow release shall be authorized until such time as the City Engineer has inspected the improvements and found them to be in compliance with adopted City standards, ordinances and applicable agreements. All escrow releases shall be made only upon the written authorization of the City Engineer. It is agreed that the City shall inspect said improvements before granting initial acceptance. Developer shall be responsible to pay professional fees incurred for inspections. No funds will be released until after the plat of the subdivision has been recorded with the Davis County Recorder's Office. The City shall notify Escrow's agent in writing as to the installation of the improvement and the amount to be released.

Escrow is entitled to release funds from this account only after receiving written notification of approval from the City. If the improvements have not been installed, for whatever reason, to the satisfaction of the City Engineer, City Standards, specifications, agreements and applicable ordinances, and the Developer's time period for doing the work has expired or the repair work of any improvement was an emergency

nature, then upon receipt of written notice from the City, Escrow shall pay over to the City the amount estimated by City to satisfactorily complete or perform the work, plus 10%.

9. **Guarantee:** Ten percent (10%) of the total estimated cost of the improvements shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the subdivision is conditionally accepted by the City. The 10% guarantee, or balance thereof, shall be returned to Developer upon final acceptance, provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability. Final acceptance is determined by the City Council through resolution.

If the City determines that the improvements have not met an acceptable level of service, the Developer shall be responsible to make repair or replacement, as designated by the City. It is agreed that if the developer should fail to make repair or replacement satisfactory to the City, the City shall apply the said 10% toward repair or replacement of such improvements in accordance with City standards. It is agreed that should the sum so retained be insufficient to pay the cost of such repairs or replacements, the Developer will pay the difference on demand. The City shall not issue any building permits until the improvements needing repair or replacement are completed and again accepted.

10. **Final Acceptance:** To receive "Final Acceptance" after the one-year Guarantee Period has expired, Developer must request in writing that the subdivision receive "Final Acceptance" by the City Council. The City Engineer shall inspect the improvements and certify that they have been properly installed and they meet adopted City standards, and shall make recommendation for final acceptance to the City Council. Upon final acceptance by the City Council via resolution, the City will assume full responsibility for ownership and maintenance of improvements. The 10% guarantee (or balance remaining in escrow) shall be returned to Developer upon Final Acceptance.

11. **Reimbursement for Administration Costs:** Upon receipt of the security proceeds, after the expiration of the time period, the costs of completion shall include reimbursement to the City Engineer and all other City departments for the costs of administration of the completion of the improvements.

12. **Improvements:** In the event that the City makes emergency repairs to any of the required improvements during the one-year guarantee period, it shall have the right to notify Escrow of the costs of those emergency repairs and Escrow shall pay those costs out of the escrow account. Escrow shall then notify Developer of the amount of the payment made and Developer shall deposit the funds necessary to replenish the escrow account.

13. **Liability Release:** The Developer agrees to indemnify, defend and hold the City harmless from any and all liability, claims, demands, damages, judgments, fees, and fines which may arise from or are related to the improvements which are installed until such time as the City Council has approved final acceptance of the subdivision, as well as any action or inaction of the Developer associated in any way with the Subdivision.

14. **Street Lighting and Chip Seal Fee:** A subdivision improvements fee for street lighting and chip seal pavement surface treatment shall be charged to the developer prior to the authorization of this agreement and are independent of escrow funds and guarantee. The subdivision improvements fee for street lighting and chip Seal pavement surface treatment shall be charged to the developer in the amount(s) equal to the

City Engineer's approved estimated cost. Developer has paid the sum of \$ _____ in accordance with the terms of this agreement. The City therefore is the holder of these funds and shall expend them for the purposes stated herein upon Final Acceptance of the subdivision.

15. **Administration Fee:** An administration fee of .5% (.005) of the total escrow will be charged to the developer for expenses related to record keeping and processing.

16. **Recording:** This Agreement does not supersede, but implements the Land Development Agreement with the City, which shall be recorded with the subdivision plat with the Davis County Recorder's office, and the South Weber City subdivision ordinances and all other ordinances and regulations applicable to the subdivision of land and construction of homes or other units thereon, and Developer agrees to comply in all respects with the provisions of said agreement and said ordinances. No provisions of this Agreement shall limit the City in its right or remedies under the said Land Development Agreement with the City or said subdivision ordinance or other applicable building ordinances or regulations.

17. **Miscellaneous:** This Agreement does not supersede, but only supplements, the Land Development Agreement. All applicable ordinances, regulations, laws applicable to the Subdivision of land and the construction of homes or other structures shall control, and Developer hereby agrees to comply in all respects with the same. No provision of this Agreement shall limit the City in its right or remedies under the Land Development Agreement or any applicable law or equitable remedy.

WHEREUPON, the parties hereto have signed the day and year first written above;

FINANCIAL INSTITUTION:

Name of Financial Institution _____

Financial Institution's Complete Address _____

Print Escrow's Authorized Agent _____ Title _____

Telephone _____ Fax _____

Email Address _____

Signature of Authorized Agent of Financial Institution

ACKNOWLEDGMENT OF FINANCIAL INSTITUTION:

On the _____ day of _____, _____, personally appeared before me _____, who being by me duly sworn, did say that he/she is the _____ of _____, Escrow named in the foregoing Escrow Agreement, and the Escrow Agreement was signed in behalf of said corporation by his/her signature and said _____ executed the same, and acknowledges that there is a deposit at _____ funds in the amount of \$ _____ pursuant to the terms of this Escrow Agreement.

Notary Public Residing at: _____ My
Commission Expires: _____

DEVELOPER:

Print Developer's Official Name _____ Title _____

Telephone _____ Fax _____

Email Address _____

By: _____ Signature of Authorized Agent of Developer

ACKNOWLEDGMENT OF DEVELOPER IF AN INDIVIDUAL, ASSOCIATION OR PARTNERSHIP:

State of Utah: County of _____

On the _____ day of _____, _____, personally appeared before me _____, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same on behalf of himself as an individual, or an association or partnership. If for an association or partnership, _____ acknowledges himself/herself to be legally authorized to act on behalf of said association or partnership by executing the foregoing Escrow Agreement in his/her capacity as an associate or partner.

Notary Public Residing at: _____ My
Commission Expires: _____

ACKNOWLEDGMENT OF DEVELOPER IF CORPORATION

On the _____ day of _____, _____, personally appeared before me _____, who being by me duly sworn, did say that he/she is the _____ of _____, that the Escrow Agreement was signed in behalf of said corporation by his/her signature and said _____ acknowledged to me that said corporation executed the same.

Notary Public Residing at: _____ My
Commission Expires: _____

SOUTH WEBER CITY:

By City Manager: _____

ATTEST: -City Seal- City Recorder: _____