



# CITY OF NORTH SALT LAKE

## ESCROW AGREEMENT

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between: The City of North Salt Lake, a municipal corporation of the State of Utah located in Davis County, hereinafter referred to as "City"; \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as "Developer"; and \_\_\_\_\_ (Bank, Surety Company, etc.) of \_\_\_\_\_ (Address), hereinafter referred to as "Assurance Agent."

### Recitals

A. Developer desires to enter into this Agreement as security for Developer's compliance with ordinances, rules, regulations, requirements, and standards of City.

B. Developer desires to **delay** completion of all or some improvements required by City Subdivision and Land Use ordinances for subdivisions prior to the final plat recordation of (Subdivision Name & Phase) in the office of the County Recorder.

C. The City of North Salt Lake agrees to waive City Subdivision and Land Use ordinance requirements that Developer must complete and shall sign the Subdivision plat based on promises and representations made in this Agreement;

Now, therefore, the parties hereto mutually agree as follows:

1. **Appointment of Assurance Agent.** \_\_\_\_\_ is hereby appointed Assurance Agent and shall hold, in a separate escrow account, the sum specified in Paragraph 2 of this Agreement, subject to the terms and conditions hereinafter set forth.

2. **Security.** The Developer shall deposit in Escrow with the Assurance Agent, the sum of \$ \_\_\_\_\_, equal to the amount approved by the City Engineer's Construction Cost Estimate, plus 10% warranty, attached herein as **Exhibit A**. The Assurance Agent shall hold such for the purpose of a required warranty and guarantee by City that 1) Developer installs all improvements required by City's Subdivision and Land Use ordinances and by City Council and 2) every part of the improvements installed by Developer remain in good condition for a period of one year after date of conditional acceptance of all required improvements, which shall be the date of the final start of warranty construction completion inspection report by City personnel. A warranty period of one year, as outlined and allowed by State law, may apply when the City Engineer or designee determines that Developer allowed one or more of the following circumstances to occur in the Subdivision: 1) the use of native material for backfill of any improvements, 2) paving of roads without providing compaction test results for every 12 inches of lift, 3) backfilling during extreme drought conditions or times of frost or excessive moisture, 4) improper curing of concrete, and 5) placement of concrete during extreme hot or cold conditions. Developer hereby warrants that this amount is equal to the cost of all improvements required by

said Subdivision and Land Use ordinances plus 10%. Assurance Agent hereby certifies possession of funds in the sum described herein. If, at any time prior to completion of the Subdivision improvements or acceptance of same by City, the Community Development Director or designee determines that, and recommends to City Manager, the amount held in security (exclusive of the 10% reserve) is not sufficient to complete needed improvements, Developer agrees to obtain additional security within ten days of receiving written notice from City. Assurance Agent shall disburse the funds from the Account, where applicable, less any fees and other amounts as set forth herein, for the purposes as set forth in this Agreement upon receipt of written instructions of the City Manager. Such instructions shall indicate the amount of disbursement, the payee(s) of the disbursement and whether they are joint payees, and to whom, where, and how Assurance Agent shall deliver the disbursement.

**3. Application of Escrow Funds.** All parties to this Agreement further agree to use the funds indicated in Paragraph 2 of this Agreement exclusively for the purpose of paying costs of labor and materials for: 1) the installation of all improvements required by City's Subdivision and Land Use ordinances and by City Council, or 2) the repair, replacement, or maintenance of improvements during the warranty period following conditional acceptance of all improvements required by City's Subdivision and Land Use ordinances. Assurance Agent shall not release any funds to Developer or any other person, business, or corporation without first receiving written authorization from the City Manager. Upon completion and final acceptance of all improvements, only the City Manager may notify Assurance Agent to release all remaining funds.

**4. Conditional Acceptance.** At such time as Developer completes improvements required by City ordinances, Developer shall provide detailed as-built plans of Subdivision to City's Public Works Department that show completed improvements and indicate locations, dimensions, materials, and other information City may require. Plans shall indicate that completed improvements are in accordance with construction plans filed with the final plat. Developer shall also provide a table of said as-builts for ease of providing such information to municipal departments and future property owners. The table shall be in ink on reproducible paper while the detailed as-builts shall comply with submittal standards and in a form approved by the City Engineer, and Developer shall ensure delivery of both to City's Public Works Department either by personal delivery or certified mail. At such time as Developer completes improvements, either in whole or in part, required by City, Developer shall submit written requests to City's Public Works Department for inspection of said improvements. Upon receipt of Developer's written request, City Personnel shall inspect improvements to verify compliance with applicable City standards. After inspection and verification that improvements fully comply with said standards, City inspectors shall notify the Community Development Director or designee, recommending acceptance of said improvements, who may then recommend to City Manager to authorize a reduction in the amount held by Assurance Agent for costs of specific improvements accepted. ***At no time shall City authorize a reduction of escrow funds to a level lower than ten percent of the original amount until final acceptance.***

**5. Default on Improvements.** Should Developer fail to make improvements required by City within one year of the effective date of this Agreement, City may declare funds on deposit with Assurance Agent forfeited and use proceeds of account to install improvements required by City. ***City Council*** may also, at its sole discretion, ***for good cause***, and after written request from Developer, grant Developer one additional year to install required improvements by send-ing Developer written notice of the extension by certified mail, with a copy also sent to Assurance Agent. If Developer does not complete required improvements by the end of the additional year, Assurance Agent shall forfeit to City the funds to complete as much of the remaining improvements as possible.

After successful installation of improvements and all other requirements of City and this Agreement, Assurance Agent shall return to Developer any unused funds, as applicable, upon

written authorization from the City Manager. If, at any time during construction or warranty period, the funds held by Assurance Agent are inadequate, as determined by the City Engineer or designee, to complete improvements or correct defects in materials or deficiencies in workmanship of improvements, Developer shall deposit funds with the Assurance Agent such sums as determined by City as necessary to complete, repair, or replace improvements and fund the security amount required in Paragraph 6. City may not issue building permits in Subdivision if costs of improvements and escrow amount fall below the required amount in this Agreement to properly complete all improvements and guarantee their materials and proper installation for the required warranty period.

**6. Retention of Escrow Funds.** A sum equal to 10% of the total required escrow amount, or \$ \_\_\_\_\_, shall remain with Assurance Agent during the one-year warranty after conditional acceptance by City of all improvements in Subdivision. Assurance Agent shall not release the 10% funds on deposit to Developer until after the end of the required warranty period, City accepts Subdivision after making a final inspection of improvements to ensure they remained in good condition and are not in need of repair or replacement, and notifies Assurance Agent in writing of acceptance.

**7. Application and Return of 10% Escrow.** If City finds any defects in material or deficiencies in workmanship of improvements for Subdivision during the warranty period, City shall make demand upon Developer to promptly resolve such issues, by repairing or replacing every applicable part of such improvements and making written request to City's Public Works Department for reinspection of same with no cost to City. A determination for necessity of repairs and maintenance of work rests with the Community Development Director upon recommendation of City's Public Works Director or designee. The Community Development Director's decision upon the matter shall be final and binding upon Developer. If Developer fails to correct identified defects or complete improvements within sixty days of receipt date of such notice and demand, or other timeframe as deemed appropriate by City Engineer due to weather or other unforeseen conditions, City may draw from remaining funds in Developer's escrow account to offset costs for completing or contracting such work on improvements, together with 15% in addition thereto for administrative costs, after noticing Developer of such intent. Developer may then request in writing, through certified mail to City Recorder and Assurance Agent, a hearing before City Council within thirty days of said notice regarding alleged defects, deficiencies, or incomplete improvements. The hearing shall be for the purpose of determining the amount of time Developer shall have to complete improvements or required repairs.

Upon receiving written notification from City that Developer failed to install, repair, or replace any improvements identified by City and that City requires a release of funds for compensation of costs incurred through correcting same, Assurance Agent shall release to City (or subcontractor specified by City) from escrow account the cost of said work up to the total amount of remaining security funds. Upon demand of the City Manager, Developer shall pay directly to City any shortfall between actual costs for such work and remaining security funds. All parties shall hold Assurance Agent harmless for its payments to City or subcontractor.

**8. Termination of Escrow.** One year, or two when applicable, after City grants conditional acceptance of all required improvements within Subdivision and said improvements remain substantially free from latent defects, Developer may submit a written request to City's Public Works Department for an end of warranty inspection. City may then grant final acceptance of Subdivision after receiving a written report from City inspectors verifying inspection, correction by Developer of **any** defects and/or deficiencies, and compliance of improvements. City shall notify Assurance Agent of final acceptance, and Assurance Agent shall release to Developer any monies still held in escrow account, and the City Manager shall discharge Assurance Agent of its obligations to City. Upon completion and final acceptance of all improvements, only the City Manager may notify Assurance Agent to release all remaining escrow funds.

9. **Miscellaneous.** This Agreement does not supersede, but implements, Developer's Subdivision Improvement Agreement with City in accordance with all municipal codes 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 provisions of said ordinances and agreements. If any party breaches any terms of this Agreement, the breaching party shall pay, to the non-breaching party, reasonable attorney's fees incurred, regardless of whether the fees incurred were before or after the filing of such a suit.

In witness whereof, the parties identified herein executed this Agreement the day and year first above written.

**CITY OF NORTH SALT LAKE, a Municipal Corporation of the State of Utah**

\_\_\_\_\_  
Ken Leetham, City Manager

ATTEST:

City Seal

\_\_\_\_\_  
Linda Horrocks, City Recorder

In witness whereof, the parties identified herein executed this Agreement the day and year first above written.

**FINANCIAL INSTITUTION:**

Name of Financial Institution: \_\_\_\_\_

Financial Institution Complete Address: \_\_\_\_\_

Authorized Assurance Agent: \_\_\_\_\_

Account Number: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

The financial institution indicated above hereby agrees to act as Assurance Agent, according to the terms described herein, and to accept and to be bound by said terms as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Assurance Agent Signature

\_\_\_\_\_  
Printed Name

**ACKNOWLEDGEMENT OF FINANCIAL INSTITUTION**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, personally appeared before me

\_\_\_\_\_, who being by me duly sworn, did say that he/she is the  
(Assurance Agent)

\_\_\_\_\_, of \_\_\_\_\_, Escrow named in the foregoing  
(Title) (Bank or Surety Co.)

Escrow Agreement, and the Escrow Agreement was signed in behalf of said corporation by

his/her signature and said \_\_\_\_\_ executed the same, and  
(Assurance Agent)

acknowledges that there is a deposit at \_\_\_\_\_, funds in the amount of \$ \_\_\_\_\_ pursuant to the terms of this Escrow Agreement.

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

In witness whereof, the parties identified herein executed this Agreement the day and year first above written.

**DEVELOPER:**

Name of Developer: \_\_\_\_\_ Title: \_\_\_\_\_

Developer Complete Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

The Developer indicated above hereby agrees to the terms described herein, and to accept and to be bound by said terms as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Authorized Agent of Developer Signature

\_\_\_\_\_  
Printed Name

**ACKNOWLEDGEMENT OF DEVELOPER** *(If individual, association, or partnership)*

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the above instrument, who duly acknowledged to me and has executed the as an individual, or an association or partnership and 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: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGEMENT OF DEVELOPER** *(If corporation)*

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 acknowledged to me that said corporation executed the same.

(Title)

(Corporation.)

NOTARY PUBLIC: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Exhibit A  
Engineer's Estimate of Improvements

Exhibit B  
Approved Final Construction Plans