

DRAFT

AGREEMENT FOR SUBDIVISION IMPROVEMENTS AND ESCROW AS FINANCIAL SECURITY

This Escrow Agreement for Subdivision Improvements (“Agreement”) is made between the City of Laramie, Wyoming, a Municipal Corporation (“City”), and _____ (“Subdivider”) and _____ (“Escrow Agent”). This Agreement is effective upon the date of the last signature below.

RECITALS

1. Subdivider seeks approval from the City for the final plat depicted in Exhibit A (“Plat”).
2. Pursuant to Laramie Municipal Code (“LMC”) 15.16 – Subdivisions and 15.18 - Improvements, City approval of the Plat requires Subdivider to construct certain public improvements associated with the Plat, as set out in Exhibit B (“Improvements”) and Exhibit C (“Construction Plans”).
3. City and Subdivider agree that the estimates on Exhibit B for the cost to construct the Improvements are reasonable.
4. Pursuant to LMC 15.18.070 – Reduction of Security for Public Improvements, Subdivider must provide security for the construction of the Improvements in an amount not less than 125% of the estimated cost of the Improvements set out in Exhibit B. Any changes to the to Improvements which increase the estimated price of construction of the Improvements may require additional security at the sole discretion of the City.
5. Pursuant to LMC 15.18.070 – Reduction of Security for Public Improvements, one acceptable form of such security is this Agreement, which establishes and governs an escrow account designed to make certain Subdivider has funds available for Subdivider’s construction of the Improvements and Subdivider’s warranty of the Improvements and, in the event of default by Subdivider, makes available those funds to the City to construct the Improvements.

THEREFORE, in consideration of the mutual obligations in this Agreement, and incorporating the Recitals into this Agreement, the parties agree as follows:

1. Escrow Agreement. The Subdivider shall, simultaneously with this Agreement, deposit \$_____ (representing 125% of the costs of construction set out in Exhibit B) into an escrow account (“Escrow Account”) with the undersigned Escrow Agent, which Escrow Account all parties agree will be governed by the terms of this Agreement. All costs of the Escrow Account and its administration shall be the responsibility of Subdivider, and such costs may be the subject of a separate agreement between the Subdivider and the Escrow Agent. In the event of a conflict between the terms of such separate agreement and this Agreement, the terms of this Agreement shall control.
2. Subdivider to construct Improvements. Subdivider shall construct the Improvements

according to 15.16 – Subdivisions and 15.18 – Improvements, as shown in the approved plans and detailed in Exhibit C.

3. Subdivider to employ third party inspector.

4. City’s right to inspect construction. Subdivider shall during construction make all work on the Improvements available to the City for inspection and shall communicate regularly with the City about the status of the construction in order that the City and may knowledgeable schedule inspections.

5. Deadline for completion of Improvements. Subdivider shall finish construction of the Improvements within 24 months of the effective date of this Agreement.

6. Interim payments. Before completion of the Improvements, Subdivider may periodically apply to the Escrow Agent for payment (“Interim Payment Application”) from the Escrow Account for the amount of construction Subdivider has completed through the date of the Interim Payment Application. Interim Payment Applications may be submitted no more frequently than ~~thirty days~~ monthly.

7. Interim payments and Retainage. If the Interim Payment Application satisfies the requirements of Paragraph ___ of this Agreement, Escrow Agent shall pay to the Subdivider from the Escrow Account 90% of the amount requested in the Interim Payment Application. The remaining 10% shall be retained in the Escrow Account (“Retainage”), to be disbursed only at completion of the Improvements, as set out in Paragraph __ of this Agreement.

8. Interim payment requirements. The Escrow Agent shall pay 90% of the amount requested in the Interim Payment Application from the Escrow Account to the Subdivider only if the Interim Payment Application:

A. Includes a detailed description of the construction work which has been completed through the date of the Interim Payment Application.

B. Includes lien waivers from all contractors, workers, or material suppliers who worked on or supplied materials to the construction for which the Interim Payment Application seeks payment.

C. Is accompanied by a written authorization by the City that the Interim Payment Application is satisfactory to the City and the City has no objection to payment.

9. Final payment and requirements. Upon completion of the Improvements, Subdivider shall apply to the Escrow Agent for payment (“Final Payment Application”) from the Escrow Account for construction of all Improvements. Escrow Agent shall pay the entire amount requested in the Final Payment Application, together with all Retainage amounts held in the Escrow Account pursuant to Interim Payment Applications, if any, only if the Final Payment Application:

A. Includes a detailed description of the construction work which has been completed through the date of the Final Payment Application.

B. Includes lien waivers from all contractors, workers, or material suppliers who worked on or supplied materials to the construction for which the Final Payment Application seeks payment.

C. Is accompanied by a written authorization by the City that the Final Payment Application is satisfactory to the City and the City has no objection to payment.

D. Is accompanied by a written authorization by the City that all public improvements have been inspected and accepted per City code 15.18.050.

E. Is accompanied by a written authorization by the City that a warranty of public improvements is in place per City code 15.18.060.

10. Escrow Account after final payment. After final payment to the Subdivider for construction of the Improvements, pursuant to Paragraph ___ of this Agreement, Escrow Agent may maintain all remaining funds in the Escrow Account through the end of Subdivider's two-year warranty period for the Improvements as set out in Paragraph ___ if the Subdivider chooses to use the Escrow Account for warranty.

12. Subdivider's warranty. Subdivider warrants that all of the Improvements shall be free from defects for two years after _____ ("Warranty Period"), and agrees Subdivider will cure such defects at Subdivider's expense.

13. Subdivider's duty to cure defects during warranty period. City shall give Subdivider written notice of any defect in the Improvements found during the Warranty Period. That written notice must be sent during the Warranty Period. Subdivider has 60 days to cure that defect.

14. Payments from Escrow Account for warranty work. If there are funds remaining in the Escrow Account after final payment pursuant to Paragraph ___, Subdivider may apply to the Escrow Agent for payment from the Escrow Account for warranty work Subdivider has performed ("Warranty Work Application"). Escrow Agent shall pay the amount requested for that warranty work only if the Warranty Work Application:

A. Includes a detailed description of the construction work which has been completed through the date of the Warranty Work Application.

B. Includes lien waivers from all contractors, workers, or material suppliers who worked on or supplied materials to the construction for which the Warranty Work Application seeks payment.

C. Is accompanied by a written authorization by the City that the Warranty Work Application is satisfactory to the City and the City has no objection to payment.

15. Closing of Escrow Account. Escrow Agent may close the Escrow Account when:

A. There are no more funds in the Escrow Account, or

B. The Warranty Period has expired; or

C. The Subdivider establishes another form of acceptable financial security allowed by LMC 15.18.030.C – Financial Security, and this fact is confirmed to the Escrow Agent in writing by the City.

When Escrow Agent or the City believes any of the above conditions are met, the Escrow Agent or the City must provide the other party 30 days' written notice before closing the Escrow Account.

16. Events of Default by Subdivider. Subdivider agrees that it is in default under this Agreement if:

A. Subdivider fails to complete construction of the Improvements within 24 months of the effective date of this Agreement.

B. Subdivider fails to remedy defects in construction of the Improvements pursuant to its warranty obligations.

C. Subdivider becomes insolvent or declares bankruptcy.

D. The property covered by the Plat is foreclosed upon or otherwise assigned or conveyed in lieu of foreclosure.

17. Payment to City upon an event of default. If City declares an event of default under Paragraph __, City shall declare that in a written notice delivered to both Subdivider and Escrow Agent, and 30 days after the date of that written notice Escrow Agent shall pay to the City all funds in the Escrow Account.