

## PROJECT FUND ESCROW AGREEMENT

**THIS PROJECT FUND ESCROW AGREEMENT** (this "Agreement") is made and entered into as of March 21, 2012, by and among **COLORADO SPRINGS URBAN RENEWAL AUTHORITY** (the "Authority"), a public body corporate and politic duly existing under the laws of the State of Colorado, and **THE CULEBRA PROPERTIES LIMITED LIABILITY COMPANY**, a Colorado limited liability company, in its capacity as lender under the Loan Agreement described (the "Lender"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (together with its permitted successors and assigns, the "Escrow Agent").

WHEREAS, the Authority is a public body corporate and politic and has been duly created, organized, established and authorized by the City of Colorado Springs, Colorado (the "City") to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes (the "Act"); and

WHEREAS, pursuant to the Act, the Authority has the power and authority to borrow money and to apply for and accept loans to accomplish the purposes set forth in the Act, and to give such security as may be required; and

WHEREAS, an urban renewal plan, known as the "Ivywild Neighborhood Urban Renewal Plan" approved June 28, 2011 (the "Urban Renewal Plan") has been duly and regularly approved by the City Council of the City for an urban renewal project (the "Urban Renewal Project") under the Act; and

WHEREAS, in furtherance of the foregoing, the Authority and Ivywild School Inc. (the "Developer") have entered into an Urban Renewal Agreement for Redevelopment of Ivywild Renewal Area dated March 21, 2012 (the "Development Agreement"), to provide for certain costs of the urban renewal project (as more particularly defined herein, the "Capital Project Costs"); and

WHEREAS, for the purpose of funding the Capital Project Costs, the Authority and the Lender have entered into a Loan Agreement dated March 15, 2012 (the "Loan Agreement"), pursuant to which the lender has agreed to loan to the Authority an amount equal to \$778,000.00 (the "Loan"), subject to the conditions set forth therein; and

WHEREAS, in accordance with the Loan Agreement, the Lender is to deposit with the Escrow Agent from proceeds of the Loan an amount equal to \$656,100.00 ("Loan Proceeds"), to be held and disbursed by the Escrow Agent solely in accordance with this Escrow Agreement; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Authority, the Lender, and the Escrow Agent agree as follows:

1. **Definitions.** The following capitalized terms when used in this Escrow Agreement shall have the meanings set forth below.

(a) “Authority Representative” means the Executive Director of the Authority.

(b) “Capital Project Costs” means the costs of planning, designing, engineering, constructing, installing and equipping the Eligible Public Improvements, as defined in the Development Agreement and set forth in Exhibit B thereto.

(c) “Developer” means Ivywild School Inc.

(d) “Development Agreement” means the Urban Renewal Agreement for Redevelopment of Ivywild Renewal Area dated March 21, 2012, between the Authority and the Developer.

(e) “Event of Default” shall have the meaning assigned under the Loan Agreement or the Development Agreement, as the context requires.

(f) “Funding Certificate” means a certificate executed by the Lender and the Authority stating that the Developer has obtained construction financing satisfactory to the Authority and Lender and, as a result, moneys may be disbursed from the Project Fund Escrow Account as otherwise provided herein.

(g) “Lender Representative” means Philip Lane, or such other person as may be designated in writing executed by Philip Lane.

(h) “Pay Application Certification” means the certification required by Section 4.3 of the Development Agreement, which shall include a certification by the Developer that no Event of Default by the Developer then exists under the Development Agreement or the construction financing approved under the Funding Certificate.

(i) “Project Completion/Termination Certificate” means a certificate executed by the Authority Representative stating that the Capital Project Costs have been paid and that the Authority will not make further requisitions from the Project Fund Escrow Account.

2. Concurrently with the execution of this Agreement, the Lender is depositing the Loan Proceeds with the Escrow Agent. The Escrow Agent hereby acknowledges receipt from the Lender of the Loan Proceeds in an amount equal to \$656,100.00. The Escrow Agent agrees to hold such amount in a separate account (the “Project

Fund Escrow Account”) and apply the same, and any earnings thereon, solely in accordance with the provisions of this Project Fund Escrow Agreement.

3. Subject to the provisions of paragraph 5 hereof, amounts on deposit in the Project Fund Escrow Account shall be applied solely to Capital Project Costs.
4. Subject to the provisions of paragraphs 5, 6 and 7 hereof, upon receipt by the Escrow Agent of a fully executed Funding Certificate, moneys on deposit in the Project Fund Escrow Account shall be disbursed by the Escrow Agent to the Authority in accordance with requisitions, substantially in the form set forth in Exhibit A attached hereto, signed by the Authority Representative, certifying that all amounts drawn will be applied to the payment of Capital Projects Costs, accompanied by a fully-executed Pay Application Certification. The Escrow Agent shall disburse amounts on deposit in the Project Fund Escrow Account solely in accordance with the directions of Authority and Lender given by persons at the time designated and authorized to act on behalf of the Authority and Lender, respectively, as indicated on Exhibits B-1 and B-2 hereto, or in another written certificate furnished to the Escrow Agent by Authority and Lender, as applicable, and containing the specimen signature of such person and signed on behalf of the Authority and Lender, as applicable.
5. On the date that is the earlier of (a) March 1, 2015, or (b) the date that the Escrow Agent receives from the Authority a Project Completion Certificate, the Escrow Agent shall transfer all amounts then on deposit in the Project Escrow Fund Account to the Lender. The Lender agrees to immediately: (i) apply any such moneys received from the Escrow Agent to payment of principal of the Loan, (ii) recalculate any amount of interest to come due on the Loan as set forth in the then effective Lender Invoice, and (iii) provide a revised Lender Invoice providing for the same to the Authority.
6. Upon receipt of written notice from the Lender of the occurrence of an Event of Default, no further disbursements shall be made to the Authority from the Project Fund Escrow Account until such time as the Lender has provided written notice that such Event of Default has been cured or waived. The Escrow Agent shall be entitled to rely upon a written statement of the Lender Representative as evidence of an occurrence of an Event of Default and also as evidence of a cure or waiver of the same.
7. The Authority hereby agrees to give written notice to the Lender and to the Escrow Agent upon the occurrence of an Event of Default by the Developer under the Development Agreement. Upon receipt by the Escrow Agent of such a notice, notwithstanding any other provisions herein, all requisitions from the Project Fund Escrow Account shall require the prior written consent of the Lender. It is acknowledged that the Authority may determine, in its sole discretion, not to requisition funds from the Project Fund Escrow Account at any time that an Event

of Default by the Developer under the Development Agreement occurs and is continuing.

8. It is acknowledged that amounts on deposit in the Project Fund Escrow Account will be invested in the Escrow Agent's Money Market Deposit Account as identified in Exhibit C hereto unless otherwise instructed in writing by the Authority and Lender. All interest earnings on moneys on deposit in the Project Fund Escrow Account shall remain in the Project Fund Escrow Account and be disbursed as provided herein.
9. The Escrow Agent agrees to perform only those duties specifically set forth in this Agreement and no implied duties or obligations shall be read into this Agreement. The Escrow Agent shall have no duty to exercise any discretionary right, remedy, power or privilege granted to it by this Agreement, or to take any affirmative action under this Agreement, unless specifically directed to do so under this Agreement or as otherwise directed to do so by the Authority and the Lender in writing, and shall not, without the prior written approval of the Lender and the Authority, consent to any departure by any party from the terms of this Agreement, or amend, modify, supplement or terminate, or agree to any surrender of, this Agreement or the Project Fund Escrow Account; provided, however, that the Escrow Agent shall not be required to take any action which requires it to expend or advance its own funds, exposes the Escrow Agent to personal liability or which is contrary to this Agreement, or any other agreement or instrument relating to the Project Fund Escrow Account or applicable law.
10. Neither the Escrow Agent nor any of its directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it or them under this Agreement, or in connection with this Agreement, except for its or their own gross negligence or willful misconduct.
11. The Escrow Agent shall be entitled to rely on any communication, instrument, paper or other document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons.
12. The Authority shall: (a) pay to the Escrow Agent a fee for its services hereunder in the amount of \$500 for upfront costs plus \$1,500 per year so long as funds are held in the Project Fund Escrow Account; (b) reimburse the Escrow Agent, on demand, for all reasonable costs and expenses actually incurred by the Escrow Agent in connection with the administration and enforcement of this Agreement; and (c) solely to the extent permitted by law, indemnify and hold harmless the Escrow Agent from and against any and all losses, costs, claims, damages, penalties, causes of action, suits, judgments, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses actually incurred) actually incurred by the Escrow Agent in connection with this Agreement, unless such liability shall be finally adjudicated to be directly caused by the willful misconduct or gross negligence on the part of the Escrow Agent or its agents or

employees. The obligations of the Authority under this section shall survive the termination of this Agreement, the resignation or removal of the Escrow Agent, and the discharge of the other obligations of the Authority under this Agreement.

13. The Escrow Agent may at any time resign and be discharged of the duties and obligations created by this Agreement by giving notice to the Lender and the Authority by an instrument in writing addressed and delivered to the Lender and the Authority. Such resignation shall take effect upon the date specified in such notice, unless a successor has not been appointed, in which event such resignation shall take place upon the appointment of a successor and acceptance by such successor of such appointment. The Escrow Agent may be removed at any time with or without cause by an instrument in writing duly executed by or on behalf of the Lender and the Authority. If the parties shall not have appointed a successor Escrow Agent prior to the expiration of thirty (30) days following the effective date of the notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief, and any such resulting appointment shall be binding upon the parties.
14. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.
15. If there is any dispute between Lender and the Authority as to the disposition of the Loan Proceeds, Escrow Agent shall continue to hold the Project Fund Escrow Account subject to the order of a court of competent jurisdiction as to the disposition thereof or, at the option of Escrow Agent at any time after Escrow Agent becomes aware of such dispute, Escrow Agent may deposit the Loan Proceeds with the clerk of a court of competent jurisdiction and commence an action in the nature of an interpleader for a determination of the respective rights of the parties and, in such case, recover Escrow Agent's reasonable out of pocket costs and expenses, including a reasonable third party attorney's fee.
16. The Escrow Agent agrees to maintain its books and records relevant to the amounts on deposit held by it in the Project Fund Escrow Account from time to time pursuant hereto in accordance with corporate trust industry practice and the terms and provisions hereof. The Escrow Agent agrees that each of the Authority and Lender may at any time upon reasonable advance request and during normal

business hours examine or copy the books and records of the Escrow Agent with respect to the Project Fund Escrow Account.

17. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflicts of law principles except to the extent that Federal laws may prevail.
18. All written notices, certificates or other communications shall be sufficiently given and shall be deemed to be given on the date on which the same shall have been mailed by certified first class mail, postage prepaid, return receipt requested, commercial delivery service, overnight courier, telecopier or facsimile transmission, air or other courier, or hand delivery addressed as follows:

If to the Authority: Colorado Springs Urban Renewal Authority  
110 S. Weber St. Suite 104  
Colorado Springs, CO 80903

With a copy to: Dan S. Hughes, Esq  
524 S. Cascade Ave. Suite 2  
Colorado Springs, CO 80903

If to Lender: The Culebra Properties Limited Liability Company  
Attn: Philip R. Lane, Manager  
102 N. Cascade Suite 610  
Colorado Springs, Co 80903

With a copy to: Ben Sparks  
Sparks, Wilson, Borges, Brandt & Johnson PC  
24 S. Weber St. Suite 400  
Colorado Springs, CO 80903

If to the Escrow Agent: Wells Fargo Bank, National Association  
1740 Broadway  
MAC C7300-107  
Denver, Colorado 80274  
Phone: 303-863-6450  
Fax: 303-863-5645

If to Developer: Ivywild School Inc.  
1647 S. Tejon Street  
Colorado Springs, Colorado 80905

With a copy to:

Paul Benedetti  
2730 Iliff Street  
Boulder, Colorado 80305

19. This Escrow Agreement shall not be amended without the written agreement of all parties hereto.
20. This Escrow Agreement, when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest and/or the legal representative of the respective parties hereto, including all purchasers, lessors, and subsequent owners of any of the property described herein.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement as of the day and year first above written.

**ESCROW AGENT**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By Gretchen L. Middents  
Gretchen Middents, Vice President

**AUTHORITY**

COLORADO SPRINGS URBAN  
RENEWAL AUTHORITY

By \_\_\_\_\_  
Susan Wood-Ellis, Chair

Attest:

By \_\_\_\_\_  
Chuck Miller, Executive Director/Secretary

**LENDER**

THE CULEBRA PROPERTIES LIMITED  
LIABILITY COMPANY, a Colorado  
limited liability company

By \_\_\_\_\_  
\_\_\_\_\_



IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement as of the day and year first above written.

**ESCROW AGENT**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Gretchen Middents, Vice President

**AUTHORITY**

COLORADO SPRINGS URBAN RENEWAL AUTHORITY

By Susan K. Wood-Ellis  
Susan Wood-Ellis, Chair

Attest:

By Chuck Miller  
Chuck Miller, Executive Director/Secretary

**LENDER**

THE CULEBRA PROPERTIES LIMITED LIABILITY COMPANY, a Colorado limited liability company

By Philip L. [Signature]  
M. [Signature]

**EXHIBIT A**  
Requisition No. \_\_\_\_\_

**Colorado Springs Urban Renewal Authority  
Project Fund Escrow Account  
(Ivywild Project)**

The undersigned certifies that he/she is the Authority Representative under that certain Project Fund Escrow Agreement dated as of March 21, 2012 (the "Escrow Agreement") between Colorado Springs Urban Renewal Authority (the "Authority"), The Culebra Properties Limited Liability Company (the "Lender") and Wells Fargo Bank, National Association (the "Escrow Agent").

All capitalized terms used in this requisition shall have the respective meanings assigned in the Escrow Agreement.

The undersigned Authority Representative hereby makes a requisition from the Project Fund Escrow Account held by the Escrow Agent under the Escrow Agreement, and in support thereof states:

1. The amount requisitioned is \$ \_\_\_\_\_.

2. The name and address of the person, firm, or corporation to whom payment is due or has been made is as follows:

\_\_\_\_\_  
\_\_\_\_\_

3. Payment is due to the above person for (describe nature of the obligation):

\_\_\_\_\_

4. The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Escrow Account as Capital Project Costs in accordance with the Escrow Agreement, and have not been the basis of any previous withdrawal.

5. The Authority hereby confirms that, with respect to all Capital Project Costs to be paid from amounts requisitioned hereunder, the Authority's representative has reviewed and confirmed all invoices submitted for payment as any Capital Project Costs to be paid from amounts requisitioned hereunder.

6. Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Authority Representative

In the event required by Section 7 of the Project Fund Escrow Agreement, the undersigned hereby consents to the foregoing requisition, on behalf of the Lender.

By \_\_\_\_\_  
Lender Representative

EXHIBIT B-1


**Certificate as to Authorized Signatures  
Account #**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the **COLORADO SPRINGS URBAN RENEWAL AUTHORITY**, are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B-1 is attached, on behalf of the **COLORADO SPRINGS URBAN RENEWAL AUTHORITY**.

Name / Title

Specimen Signature

Susan Wood-Ellis  
Name

  
Signature

Chair  
Title

Charles Miller  
Name

  
Signature

Executive Director  
Title

James Rees  
Name

  
Signature

\_\_\_\_\_  
Title

Mary Kay Burnett  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

EXHIBIT B-2

**Certificate as to Authorized Signatures**  
**Account #**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of **THE CULEBRA PROPERTIES LIMITED LIABILITY COMPANY** and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B-2 is attached, on behalf of **THE CULEBRA PROPERTIES LIMITED LIABILITY COMPANY**.

Name / Title

Specimen Signature

PHILIP LANE

Name



Signature

MANAGER

Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title