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ERNEST D ROWLEY, WEBER COUNTY RECORDER  
18-JUN-12 12:51 PM FEE \$1.00 DEP SGC  
REC FOR: PLEASANT VIEW CITY

**SUBDIVIDER'S ESCROW AGREEMENT**  
(undispersed construction loan funds)

Agreement made this 14<sup>th</sup> day of June, 20\_12\_ between Pleasant View City, a municipal corporation of the State of Utah located in Weber County, hereinafter called "City", and Country Fields Development, LLC of Ogden Utah, hereinafter called "Subdivider", and Bank of Utah of Ogden Utah, hereinafter called "Escrow Agent".

**Recitals**

Recitals

A. Subdivider has received approval from the City for the subdivision of and construction of improvements on certain land in Pleasant View City to be known as the Country Fields Phase 3 Subdivision.

B. Subdivider has requested to make said improvements by filing necessary guarantees or deposits in escrow to cover those improvements.

C. Subdivider now desires to enter into this escrow agreement as security for his compliance with the ordinances, rules, regulations, requirements, and standards of the City.

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

1. **Appointment of Escrow Agent.** Bank of Utah is hereby appointed Escrow Agent, and as the Escrow Agent agrees to hold, in a separate escrow account, the sum specified in paragraph two (2) of this agreement, subject to the terms and conditions hereinafter set forth. By executing this document, Escrow Agent agrees to be bound by all the terms and conditions set forth herein as well as the Pleasant View City ordinances governing subdivisions.

2. **Deposit in Escrow.** Subdivider shall deposit with Escrow Agent in account # the sum of \$ 227,110.45, to cover 115% of the entire cost of all improvements required by the City Subdivision Ordinance. The 115% shall be divided as follows: \$ 197,487.35, which shall be equal to the cost of improvements, and \$ 29,623.11, which shall be equal to the 15% reserve fund. City agrees that Escrow Agent may permit the amount required to be placed into the escrow account by Subdivider to be held by Escrow Agent in the form of undispersed loan funds from Escrow Agent to Subdivider. City agrees to this solely as an accommodation to the Subdivider (so interest does not begin to accrue on funds Subdivider may be borrowing from Escrow Agent) and only upon the express representations and guarantees by Escrow Agent as contained herein. Should Escrow Agent permit escrow funds to be held as undispersed loan funds, Escrow Agent agrees that the undispersed loan funds of Subdivider shall be guaranteed for use in connection with this Escrow Agreement, and that no default of the loan or any action by Subdivider shall prevent Escrow Agent from funding the entire escrow account with the full amount provided herein. Escrow Agent acknowledges that City is a third party beneficiary of the escrow funds and that the funds must be used for the purposes stated in this Escrow Agreement unless expressly released in writing by City. Unless other appropriate security is provided, a 10% reserve fund shall be held in escrow to warrant and guarantee that the improvements installed by Subdivider will remain in good condition for a period of one year after date of the final inspection and

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conditional acceptance by the city as required by the City Subdivision Ordinance. The cost of the improvements shall be verified or determined by the City engineer for each improvement item. Escrow Agent hereby certifies it has received and is in possession of \$ 227,110.45 \_\_\_\_\_ dollars described herein. If at any time prior to completion of the subdivision or acceptance of the improvements by the City, the City determines the amount held in escrow (exclusive of the 10% reserve) is not sufficient to complete the needed improvements, Subdivider agrees to put such additional amounts into the escrow within 30 days of receiving written notice from the City. Should Escrow Agent breach any part of this Escrow Agreement it shall pay to City any damages as the result of its breach, including providing of the funds needed to complete the improvements contemplated herein and reasonable attorney fees and costs.

**3. Application of Escrow Funds.** It is agreed by all parties to this agreement that the sum of money indicated in paragraph two (2) of this agreement shall be used exclusively for the purpose of paying for the costs and materials and the construction and installation of all improvements required by the City's Subdivision Ordinance. The undersigned, including the Escrow Agent, further agree that the money held in the escrow account shall be distributed to appropriate contractors and subcontractors only upon written authorization by the Subdivider by an authorized officer of the City. Such written authorization will be made upon the City's stationary, indicating review and approval by the City.

**4. Limitation on Application of Funds.** The Subdivider shall not withdraw from the escrow account, nor shall the Escrow Agent permit any withdrawal from the escrow account funds identified as reserve funds in paragraph two (2) above, except as provided in paragraph 6 herein.

**5. Retention of Escrow Funds.** A sum equal to 10% of the total required escrowed amount, or \$ 19,748.74 \_\_\_\_\_, shall remain with Escrow Agent for a period of one year after the conditional inspection and acceptance by the City. In the event the funds so provided herein do not pay for and complete in full all of the specified improvements required, then Subdivider agrees to forthwith place in escrow with Escrow Agent all additional amounts necessary to so complete such improvements. Subdivider may not use reserve funds to complete the improvements but must place additional money in escrow if the original amount placed in escrow is not sufficient to complete the improvements.

**6. Default on Improvements.** Should the Subdivider fail to make the improvements required by the City Subdivision Ordinance within two (2) years of the effective date of this agreement, the City may declare the funds on deposit with the Escrow Agent forfeited, and the proceeds of the account may be used to install the improvements required by the City Subdivision Ordinance. The City may also, at its sole discretion and after written request from the Subdivider, grant the Subdivider one (1) additional year to install the improvements by sending the Subdivider written notice of the extension by certified mail, with a copy also sent to the Escrow Agent.

At the end of the additional year, if the improvements have not been completed, the funds on deposit with the Escrow Agent shall be forfeited and the City may use the funds to install the improvements if sufficient funds are available to complete the improvements. If the funds remaining in escrow are not sufficient to complete the improvements the funds remaining in escrow shall be forfeited to the City and the City shall have no obligation to proceed with installation of improvements.

After the successful completion of the improvements and all other requirements of the City subdivision ordinance and this agreement, any funds in the escrow account not used to install the improvements or pay other costs associated with the completion of the subdivision shall be returned to the Subdivider. If at any time the money held by the Escrow Agent is not adequate to complete the subdivision improvements, the Subdivider shall deposit with the Escrow Agent such sums as determined by the City Engineer as are needed to complete the subdivision improvements and to fund the security amount required. The City shall not issue any building permits in the subdivision if the cost of improvements and the security amount falls below the amount required in this agreement.

**7. Application and Return of 10% Security.** All demands by the City to subdivider to perform corrections or completion of improvements shall be made by certified mail, with a copy also sent to the Escrow Agent. If the defect is not corrected or improvements are not completed within 30 days following service of such demand, the City may correct the defect or complete improvements and charge the Subdivider such costs, unless Subdivider requests in writing, served by certified mail, with a copy likewise served upon the Escrow Agent by certified mail, a hearing before the Pleasant View City Council within the aforementioned 30-day period of time respecting the alleged defects or incompletions. The Escrow Agent shall, upon receiving written notification from the City of the defect and that the City has incurred the cost of correcting the defect, shall pay to the City or to the subcontractor as specified by the City from the Escrow account the cost of correcting the defect, and the Escrow Agent shall be held harmless by the parties for its payments to the City or subcontractor.

Once the guarantee period has been completed, no sooner than one year after the City has made the conditional acceptance of the improvements, the city shall perform a final inspection and if the required improvements remain substantially free from latent defects, the City shall certify such fact to the escrow agent, who shall release to the subdivider any monies still held in the escrow account, and the escrow agent shall be discharged of its obligations to the City.

**8. Miscellaneous.** This agreement does not supersede, but implements the Subdivider's Agreement with Pleasant View City in accordance with the City subdivision ordinance and all other ordinances and regulations applicable to the subdivision of land and the construction of homes or other units thereon, and Subdivider agrees to comply in all respects with the provisions of said ordinances and agreements. If any party shall breach any term of this agreement, the breaching party shall pay to the non-breaching party reasonable attorney fees incurred whether the fees are incurred before or after a suit is filed.

In witness whereof the parties have executed this agreement the day and year first above written.

DEVELOPER

By: [Signature]  
Developer

IN WITNESS WHEREOF, the developer has caused these presents to be executed this 15th day of June, 2012, and has acknowledged to me that he executed the same.

Karen Yoshimura Devries  
NOTARY PUBLIC



ESCROW AGENT

Agent Company: BANK OF UTAH

Representative: Christina Thurnwald (print)

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

By: [Signature]  
Agent Representative

IN WITNESS WHEREOF, the Escrow Agent has caused these presents to be executed this 15th day of June, 2012 and has acknowledged to me that he executed the same.

Karen Yoshimura Devries  
NOTARY PUBLIC



PLEASANT VIEW CITY

By: [Signature]  
City Administrator

Attest: [Signature]  
City Recorder