

When recorded, please return to:  
Laurie Hellstrom, City Recorder  
Pleasant View City  
520 Elberta Dr.  
Pleasant View, Utah 84414



\*W3269874\*

## ESCROW AGREEMENT

### For: Peak View Plaza PUD

This Escrow Agreement ("Agreement") is made this 9th, day of December, 2023 ("Effective Date"), by and between Pleasant View City, a municipal corporation of the State of Utah ("City"), and Als Development, LLC, of Ogden, Utah ("Developer"), and Old Republic National Title Insurance Company, of Ogden, Utah, ("Escrow Agent"). City, Developer, and Escrow Agent may be referred to individually as "Party" or collectively as "Parties."

### RECITALS

**WHEREAS** City has granted Developer approvals for the construction of improvements and recordation of a proposed subdivision of land in Pleasant View City, Weber County, Utah. The subdivision is to be known as Peak View Plaza PUD ("Project"). Exhibit A delineates the subdivision area and is attached as Exhibit A. Project contains Weber County Parcel number(s): 190630095; and

**WHEREAS** Developer now desires to enter into this escrow agreement as security for improvements required for a development project, in compliance with the ordinances and standards of the City, and with specific development approval requirements;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parties hereby agree as follows:

### AGREEMENT

- Appoint of Escrow Agent.** Old Republic National Title Insurance Company is hereby appointed Escrow Agent, and as Escrow Agent shall hold, in a separate escrow account, the sum specified in paragraph two (2) of this Agreement, subject to the terms and conditions set forth herein. Should Escrow Agent breach any part of this Agreement, it shall pay to City any damages as the result of its breach, including providing of the funds from the escrow account that were erroneously dispersed to complete the improvements described in this Agreement and reasonable attorney fees and costs.
- Deposit in Escrow.** Developer shall deposit with Escrow Agent in Account No. 14643481 the sum of \$ 697,245.29, which is the amount of money equal to 115% of the cost of

the improvements to be installed as required by the City Subdivision Ordinance, as per the City-approved Engineer's Estimate (see Exhibit B) ("Escrow Amount"). The Escrow Amount shall be divided as shown in Engineer's Estimate.

2.1. Escrow Agent certifies it has received and is in possession of the funds as described above. If at any time prior to completion of the subdivision or acceptance of the improvements by the City, the City determines the amount held by Escrow Agent is not sufficient to complete the required improvements and the contingency and guarantee amounts required, Developer agrees to deposit the additional amounts into the escrow account within 30 days of receiving written or electronic notice from the City. 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.

3. **Application of Escrow Funds.** It is agreed by all Parties that the funds indicated in paragraph two (2) of this Agreement shall be used exclusively for the purpose of paying for the costs, materials, construction, and installation of all improvements required by the City's Subdivision Ordinance and development approvals. The undersigned, including the Escrow Agent, further agree that the funds held in the escrow account shall be distributed by Escrow Agent to Developer only upon written or electronic authorization by an authorized officer of the City. City authorization will be made upon the City's letterhead, indicating review and approval by the City.

4. **Limitation on Application of Funds.** The Developer shall not withdraw from the escrow account, nor shall the Escrow Agent permit any withdrawal from the escrow account, funds identified as guarantee funds in paragraph five (5) below, except as provided in paragraph six (6).

5. **Guarantee Funds.** A guarantee sum equal to 10% of the cost of the improvements to be installed, or \$ 80,353.89, as shown in Exhibit B, shall remain with Escrow Agent for a period of at least one (1) year after the conditional acceptance of the improvements by the City. In the event the escrow funds do not pay for and complete in full all of the improvements required, then, upon demand by the City, Developer agrees to immediately place in escrow account, with Escrow Agent, all additional amounts necessary to complete the improvements. Developer may not use guarantee funds to complete the improvements but must place additional money in escrow account.

5.1. Unless other appropriate security is provided, a 10% guarantee fund shall be held in escrow to warrant and guarantee that the required improvements installed by Developer remain in good condition for a period of one (1) year after the date of conditional acceptance by the City as required by the City Subdivision Ordinance and development approvals.

6. **Default on Improvements.** Should Developer fail to complete the improvements required by the City Subdivision Ordinance and development approvals 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 by the City to complete the improvements required by the City Subdivision Ordinance. The City may also, at its sole discretion and after receiving written request from

the Developer, grant the Developer one (1) additional year to install the improvements by sending the Developer notice of the extension by email, with a copy also sent to the Escrow Agent.

At the end of the required period or 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 for use on the Project at the discretion of the City.

All demands by the City to Developer to perform corrections or completion of improvements shall be made by email, 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 the improvements and charge the Developer such costs, unless Developer 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 30-day period of time respecting the alleged defects or incompletions. The Escrow Agent, upon receiving 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.

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, other than guarantee funds, not used to install the improvements or to pay other costs associated with the completion of the subdivision shall be returned to the Developer.

7. **Completion of Guarantee.** Once the guarantee period has been completed, no sooner than one (1) year after the City has given Conditional Acceptance of the improvements, at the request of the Developer, the City shall perform a final inspection, and, if the required improvements remain substantially free from latent defects during the guarantee period, the City shall certify such fact to Escrow Agent, who shall release to the Developer any funds still held in the escrow account, and Escrow Agent shall be discharged of its obligations to the City. Should defects be identified by the City, the Developer shall make necessary repairs or corrections at the sole cost of Developer, and, once accepted by the City, funds shall be released as found herein.

8. **Conflicts.** This Agreement is intended to be in harmony with all Federal and State laws, and City ordinances, codes, procedures, regulations, and rules "Laws." If any provision herein is contrary to or inconsistent with any Laws, the provisions of Laws shall govern. In the event of any conflict between the terms of this Agreement and those of any document entered into prior to this Agreement, this Agreement shall govern.

9. **Severability.** If any portion of this Agreement is held to be unenforceable, any enforceable portion thereof and the remaining provisions shall continue in full force and effect. No rule of strict construction shall be applied against any Party. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision.

10. **Default.** Parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting Party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, whether such costs and expenses are incurred with or without suit or before or after judgment.

11. **Force Majeure.** No Party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) herein so long as and to the extent to which any delay or failure in the fulfillment of such obligation is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God, or acts, omissions or delays in acting by any financial institution, governmental authority, or the other party. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Parties of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable.

12. **Agreement to Run with the Land.** It is intended by Parties that this Agreement shall run with the land described herein and shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors in interest and assigns.

13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties hereto relative to the subject matter hereof and shall not be modified or amended except by a written instrument executed by all the Parties.

14. **Contact Information.** Any notices, requests, or demands required or desired to be given hereunder shall be made to the Parties as follows:

For Developer:	<u>David Laloli</u>	Name
	<u>ALS Development</u>	Company Name
	<u>448 S 2360 W</u>	Address
	<u>Ogden, Utah 84404</u>	City, state, zip
	<u>dave@ipaveutah.cm</u>	email

For City: Amy Mabey, City Administrator  
Pleasant View City  
520 W. Elberta Dr.  
Pleasant View, UT 84414  
amabey@pleasantviewcity.com

For Escrow Agent: Kerri Jo Christoffersen \_\_\_\_\_ Name  
Old Republic National Title Company \_\_\_ Company Name  
5732 S 1475 E #100 \_\_\_\_\_ Address  
Ogden, Utah 84403 \_\_\_\_\_ City, state, zip  
kerrijo@oldrepublictitle.com \_\_\_\_\_ email

Any party may change its address by giving written notice to the other parties in accordance with the provisions of this section.

15. **Exhibits to this Agreement.** Exhibits to this Agreement are enumerate as follows:

15.1. Exhibit A – Subdivision Area

15.2. Exhibit B – Engineer’s Estimate

16. **Assignment.** This Agreement shall not be further assigned or in any way transferred without first obtaining the written consent of the non-assigning Party, which consent shall not be unreasonably withheld.

*(continued on next page)*









**EXHIBIT A**

**SUBDIVISION AREA**

All of Peakview Plaza PUD

**EXHIBIT B  
ENGINEER'S ESTIMATE**

PEAKVIEW PLAZA PUD

December 2022

IMPROVEMENT COMPLETION ASSURANCE SUMMARY



	TOTAL COST FOR IMPROVEMENTS	TOTAL COST FOR IMPROVEMENTS
CULINARY WATER SUBTOTAL	\$ 148,370.00	\$ 2,800.00
SECONDARY WATER SUBTOTAL	44,180.00	44,180.00
SANITARY SEWER SUBTOTAL	80,250.00	1,800.00
STORM DRAIN SUBTOTAL	45,750.00	45,750.00
SITE & STREET IMPROVEMENTS SUBTOTAL	484,985.90	484,985.90
MISCELLANEOUS SUBTOTAL (Not subject to warranty)	8,000.00	8,000.00
<b>TOTAL IMPROVEMENTS COST</b>	<b>\$ 811,535.90</b>	<b>\$ 587,515.90</b>
5% CONTINGENCY	40,576.80	29,375.80
10% WARRANTY	80,353.59	80,353.59
<b>TOTAL GUARANTEE AMOUNT</b>		<b>647,245.28</b>

City Engineer Review & Recommendation

Dana Q. Shuler  
 Dana Q. Shuler, P.E. - Jones & Associates  
 City Engineer

12/08/2022  
 Date

**PEAKVIEW PLAZA PUD**

**COST ESTIMATE FOR IMPROVEMENT COMPLETION ASSURANCE SETUP**

Dave Laloli

NO.	LINE ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST FOR IMPROVEMENTS	QUANTITY COMPLETE	QUANTITY REMAINING	TOTAL COST REMAINING
<b>CULINARY WATER SYSTEM</b>								
1	Furnish and install 8" C-900 DR-18 waterline (includes bedding and testing)	587	l.f.	\$ 50.00	\$ 29,350.00	587	-	\$ -
2	Furnish and install 8" gate valve	4	ea.	3,500.00	14,000.00	4	-	-
3	Furnish and install fire hydrant assembly	3	ea.	8,500.00	25,500.00	3	-	-
4	Connect new waterline to existing waterline	1	ea.	3,200.00	3,200.00	1	-	-
5	Furnish and install 2" service tap	6	ea.	5,000.00	30,000.00	6	-	-
6	Furnish and install 6" fire line connection	6	ea.	1,800.00	10,800.00	6	-	-
7	Furnish and install 6" fire line	6	ea.	4,500.00	27,000.00	6	-	-
8	Concrete collar for valve	7	ea.	400.00	2,800.00	-	7	2,800.00
9	Imported backfill (3' wide x 3' cover avg)	260	ton	22.00	5,720.00	260	-	-
					<b>CULINARY WATER SUBTOTAL</b>	<b>\$ 148,370.00</b>		<b>\$ 2,800.00</b>

<b>SECONDARY WATER SYSTEM</b>								
10	Furnish and install 6" C-900 DR-18 waterline (includes bedding and testing)	710	l.f.	\$ 38.00	\$ 26,980.00	-	710	\$ 26,980.00
11	Connect new waterline to existing waterline	1	ea.	2,800.00	2,800.00	-	1	2,800.00
12	Irrigation Meter Box / Point of Connection	6	ea.	2,400.00	14,400.00	-	6	14,400.00
					<b>SECONDARY WATER SUBTOTAL</b>	<b>\$ 44,180.00</b>		<b>\$ 44,180.00</b>

<b>SANITARY SEWER SYSTEM</b>								
13	Furnish and install 8" ASTM D-3034 SDR 35 sewer line	506	l.f.	\$ 60.00	\$ 30,360.00	506	-	\$ -
14	Furnish and install 8"x6" service wye	6	ea.	2,200.00	13,200.00	6	-	-



NO.	LINE ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST FOR IMPROVEMENTS		TOTAL COST REMAINING
					QUANTITY COMPLETE	QUANTITY REMAINING	
15	Furnish and install 4' diameter manhole	2 ea.		5,500.00	11,000.00	2	-
16	Furnish and install 5' diameter manhole	1 ea.		6,500.00	6,500.00	1	-
17	Connect to existing manhole	1 ea.		3,200.00	3,200.00	1	-
18	Concrete collar for manhole	3 ea.		600.00	1,800.00	3	1,800.00
19	Imported backfill (4' wide x 6' cover avg)	645 ton		22.00	14,190.00	645	-
<b>SANITARY SEWER SUBTOTAL</b>					<b>\$ 80,250.00</b>		<b>\$ 1,800.00</b>

<b>STORM DRAIN SYSTEM</b>							
20	Furnish and install 18" RCP	142 l.f.		\$ 75.00	\$ 10,650.00	-	142 \$ 10,650.00
21	Furnish and install curb inlet	11 ea.		2,900.00	31,900.00	-	11 31,900.00
22	Connect to existing manhole/structure	1 ea.		3,200.00	3,200.00	-	1 3,200.00
<b>STORM DRAIN SUBTOTAL</b>					<b>\$ 45,750.00</b>		<b>\$ 45,750.00</b>

<b>SITE &amp; STREET IMPROVEMENTS</b>							
23	Clear and grub for new roadway	1 l.s.		\$ 5,000.00	\$ 5,000.00	-	1 \$ 5,000.00
24	Cut/fill	1,700 c.y.		10.00	17,000.00	-	1,700 17,000.00
25	Scarify native, compact to 95% proctor	52,172 s.f.		0.20	10,434.40	-	52,172 10,434.40
26	Furnish and install granular borrow	1,840 ton		27.50	50,600.00	-	1,840 50,600.00
27	Furnish and install untreated base course	3,557 ton		30.00	106,710.00	-	3,557 106,710.00
28	Construct hot mix asphaltic concrete pavement	1,215 ton		95.00	115,425.00	-	1,215 115,425.00
29	Furnish and install concrete curb and gutter	1,235 l.f.		35.00	43,225.00	-	1,235 43,225.00
30	Furnish and install 4" private concrete flatwork (includes 4" thick UTBC)	7,747 s.f.		12.00	92,964.00	-	7,747 92,964.00
31	2700 North Connection	1 l.s.		30,000.00	30,000.00	-	1 30,000.00
32	Seal coat	5,451 s.y.		2.50	13,627.50	-	5,451 13,627.50
<b>SITE &amp; STREET IMPROVEMENTS SUBTOTAL</b>					<b>\$ 484,985.90</b>		<b>\$ 484,985.90</b>

**MISCELLANEOUS (not included in guarantee)**



NO.	LINE ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL COST FOR IMPROVEMENTS	QUANTITY COMPLETE	QUANTITY REMAINING	TOTAL COST REMAINING
33	Prepare and implement SWPPP and temporary controls	1	l.s.	8,000.00	8,000.00	-	1	8,000.00
MISCELLANEOUS SUBTOTAL					\$ 8,000.00			\$ 8,000.00

PROJECT TOTAL = \$ 811,535.90      REMAINING TOTAL = \$ 587,515.90