

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter “**Agreement**”) is entered into on this 21<sup>st</sup> day of May, 2013 between Bald Mountain Development, LLC (hereinafter “**BMD**”) and the City of Cedar Hills (hereinafter “**the City**”), together with their respective principals, agents, attorneys, and representatives (hereinafter collectively referred to as the “**Parties**”).

### RECITALS

A. BMD previously entered into three separate Escrow Agreements for Subdivision Improvements in Cedar Hills (hereinafter “**Escrow Agreements**”) in conjunction with BMD’s work on improvements for Avanyu Acres Plats B, C, and D. Under the identical terms of the three escrow agreements, the escrow funds were intended to guarantee the installation and completion of the required subdivision improvements, and release of the funds was conditioned upon either the City’s need to complete, repair, or commence said improvements or upon BMD’s demonstration that such improvements were completed.

B. On March 19, 2008, the City commenced that certain litigation against BMD captioned City of Cedar Hills v. Bald Mountain Development, LLC et al., Case No. 080400920 (J. Howard), and asserted in its Complaint that BMD had failed to complete, repair, and/or commence improvements for Plats B-D and that the City was entitled to access the escrow funds and to complete, repair, and/or commence these improvements. BMD subsequently filed its Answer, Counterclaim, and Demand for Jury (hereinafter “**Counterclaim**”) on April 10, 2008, asserting inter alia that BMD had completed the approved improvements for Plats B-D and that it was entitled to the escrow funds for these plats. The parties are currently engaged in litigating their respective claims.

C. The parties to this agreement acknowledge the expense and delay of continuing this litigation and desire to compromise and settle any and all claims that have been or could have been asserted regarding the March 19, 2008 Complaint and April 10, 2008 Counterclaim and to stipulate to their respective rights to the escrow funds.

### AGREEMENT

In order to give effect to the foregoing, and in consideration of the promises contained in this Agreement, and for other good cause and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. BMD admits and warrants that the City is entitled under the terms and conditions of the escrow agreements for Plats B, C, and D to demand a total of \$90,000 from the escrowed funds to complete, repair, and/or commence improvements, and authorizes Title West to release said funds to the City to complete, repair, and/or commence the improvements in these plats that the City deems a priority.

2. The City admits and warrants that BMD is entitled under the terms and conditions of the escrow agreements for Plats B, C, and D to the release of the escrow funds remaining in escrow for Plats B, C, and D after the \$90,000 contemplated in paragraph 1 above has been released to the City, and authorizes and approves Title West to release said funds to BMD.

3. Mutual Release. The Parties, including without limitation their respective partners, agents, trustees, attorneys, insurers, assigns, representatives, heirs, and executors and administrators, do hereby acknowledge full and complete satisfaction of, and do hereby fully and finally settle, release, and discharge each other individually and collectively from any and all claims, demands, rights, liabilities, contractual obligations, and causes of action of any nature under any laws of any jurisdiction, known or unknown, fixed or contingent, at law or in equity, including without limitation any rights of subrogation, contribution, indemnification, or apportionment that may exist in law or equity or by contract, arising out of those claims made in or related to the City's March 19, 2008 Complaint and BMD's April 10, 2008 Counterclaim.

4. Entire Agreement. Each Party to this Agreement understands, acknowledges, and agrees that this Agreement constitutes the entire agreement among the Parties regarding the subject matter hereof, and that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except in a writing executed by all Parties.

5. Severability. Any provision of this Agreement that is deemed to be illegal and/or unenforceable shall be severed from this Agreement, without affecting the validity of the remainder of the Agreement.

6. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and together constitute the same Agreement whether each Party executes a separate counterpart. Captions are for convenience only and do not express, limit or expand any provision or the intent of this Agreement.

7. Enforcement. Enforcement of this Agreement shall be governed by the laws of the State of Utah, and any action concerning this Agreement must be brought in the Fourth Judicial District Court for the State of Utah.

8. Confidentiality. The Parties agree that they will not disclose, or cause, or permit to be disclosed hereafter, the facts giving rise to their claims and the terms of this Agreement, except to the Court, to the escrow holder Title West, in compliance with lawful orders or subpoenas, or for the purpose of enforcing this Agreement should that ever become necessary.

9. Authority to Execute. The person executing this Agreement on behalf of each Party hereby represents that he or she has full authority to execute the Agreement, and that all necessary actions for him or her to enter into this Agreement have heretofore been completed.

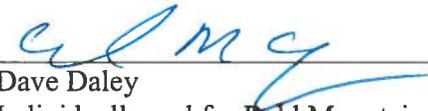
10. Attorney's Fees and Costs. Both Parties agree to pay for their own attorney's fees and costs, accrued or yet to be accrued, arising out of or connected in any way to the above-referenced litigation, Case No. 080400920 (J. Howard). Should it be necessary for any Party to this Agreement to initiate further legal proceedings to enforce this Agreement or adjudicate any

issues under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees, costs and disbursements.

THE UNDERSIGNED HAVE READ AND SOUGHT THE ADVICE OF COUNSEL WITH RESPECT TO THE FOREGOING, AND HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THESE TERMS.

DATED this 20 day of May, 2013.

  
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Rex Daley  
Individually and for Bald Mountain  
Development, LLC

  
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Dave Daley  
Individually and for Bald Mountain  
Development, LLC

DATED this 21<sup>st</sup> day of May, 2013.

  
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Gary Gygi, Mayor  
On behalf of the City of Cedar Hills