



**TREMONT CENTER SUBDIVISION, PHASE 1
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, is made and entered into this 20th day of January, 2015, by and between the TREMONTON CITY, a body corporate and politic of the State of Utah, (hereinafter the "City") and Ensign Development Group, LLC and Tremont Center, LLC, (hereinafter "Developer") the City or Developer may be referred to individually as "Party" or collectively as Parties:

WHEREAS, Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah (hereinafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 11 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, TREMONTON CITY, BOX ELDER COUNTY, UTAH AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 3, FROM WHICH THE CENTER OF SECTION 3 BEARS NORTH 01° 21' 17" WEST 2624.27 FEET; THENCE NORTH 01° 21' 17" WEST 331.02 FEET ALONG THE MERIDIONAL CENTERLINE OF SAID SECTION 3 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 88° 38' 12" WEST 33.00 FEET TO A 5/8" REBAR WITH CAP LABELED, "A.A. HUDSON, PLS 375041" SET ON THE WESTERLY RIGHT OF WAY LINE OF 400 WEST STREET; THENCE SOUTH 88° 38' 12" WEST 279.43 FEET TO A 5/8" REBAR WITH CAP; THENCE NORTH 01° 20' 58" WEST 436.10 FEET TO A 5/8" REBAR WITH CAP; THENCE NORTH 88° 42' 55" EAST 279.39 FEET TO A 5/8" REBAR WITH CAP SET ON SAID WESTERLY RIGHT OF WAY LINE OF 400 WEST STREET; THENCE NORTH 88° 42' 55" EAST 33.00 FEET TO SAID MERIDIONAL CENTERLINE OF SECTION 3; THENCE SOUTH 01° 21' 17" EAST 435.67 FEET ALONG SAID CENTERLINE TO THE TRUE POINT OF BEGINNING. CONTAINING 3.13 ACRES OF LAND.

LEGAL DESCRIPTION FOR 400 WEST RIGHT OF WAY DEDICATION.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 11 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, BOX ELDER COUNTY, UTAH AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 3, FROM WHICH THE CENTER OF SECTION 3 BEARS NORTH 01° 21' 17" WEST 2624.27 FEET; THENCE NORTH 01° 21' 17" WEST 49.51 FEET ALONG THE MERIDIONAL CENTERLINE OF SAID SECTION 3 TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 87° 35' 40" WEST 33.01 FEET TO THE WESTERLY RIGHT OF WAY LINE OF 400 WEST STREET; THENCE NORTH 01° 21' 17" WEST 283.11 FEET ALONG SAID RIGHT OF WAY LINE TO A 5/8" REBAR WITH CAP LABELED, "A.A. HUDSON, PLS 375041; THENCE NORTH 01° 21' 17" WEST 435.71 FEET ALONG SAID RIGHT OF WAY LINE TO A 5/8" REBAR WITH CAP; THENCE NORTH 88° 42' 55" EAST 33.00 FEET TO SAID MERIDIONAL CENTERLINE OF SECTION 3; THENCE SOUTH 01° 21' 17" EAST 435.67 FEET ALONG SAID CENTERLINE; THENCE SOUTH 01° 21' 17" EAST 281.51 FEET ALONG SAID CENTERLINE TO THE TRUE POINT OF BEGINNING. CONTAINING 0.54 ACRES OF LAND.

WHEREAS, Developer desires to develop the Property and Developer has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

WHEREAS, the Parties hereto have agreed that the development of the Property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, the City has approved the Final Plat for recording with the Recorder's Office of Box Elder County, Utah, which was submitted by the Developer subject to certain requirements and conditions, which involved the installation of and construction of utilities and other municipal improvements in connection with the Property.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. General Conditions

A. **Development Activities.** The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, pursuant to Utah Code Annotated (hereinafter "U.C.A.") § 10-9a-103(8), but be not limited to, the following: any change in the use of land that creates additional demand and need for public facilities. Furthermore, for purposes of this agreement only, "development activities" shall also include the following: (1) the actual construction of improvements, (2) obtaining a permit therefore, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon, none of which shall occur until execution of the Agreement and City approval of the Final Plat.

B. **Time Limitations for Improvements.** All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, streetlights, and trails shall be installed as shown on the Final Plat and in full compliance with the standards and specification of the City, at the time of approval of the Final Plat, subject to a two (2) year time limitation from the date of approval of the Final Plat, which is in compliance with Chapter 2.05 of the Tremonton City Land Use and Development Code. In the event that the Developer commences or performs any construction pursuant hereto after the passage of two (2) years from the date of approval of the Final Plat, the Developer shall resubmit the Final Plat and documentation supporting a new guaranty bond to the City Engineer for reexamination. Pursuant to U.C.A. § 10-9a-603, the City may then require the Developer to comply with the approved standards and specifications of the City at the time of resubmission.

After two (2) years from the date of approval of the Final Plat, if any development improvements have not been completed, the City, at its sole discretion, may use the guaranty bond money to complete development improvements.

C. **Building Permit Issuance.** No building permit for the construction of any structure within the development shall be issued by the City until all individual lots in the development are staked by licensed surveyor, the public water lines and stubs to each lot,

charged fire hydrants, sanitary sewer lines and stubs to each lot, street lights and public streets (including all weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City.

D. **Certificate of Occupancy.** No Certificates of Occupancy shall be issued by the City for any structure within the development until gas lines to the structure are installed, street signs are installed, and all electrical lines are installed.

E. **Financial Responsibilities of Developer.** Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, trails and other public improvements required by this Development as shown on the Final Plat and other approved documents pertaining to this Development on file with the City.

F. **Utility Line Installments.** Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line, all electrical lines, and all communication conduits.

G. **Inspection by City Officials.** The installation of all utilities shown on the Final Plat shall be inspected by the Engineering Department and/or Public Works Department of the City and shall be subject to such department's approval. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Tremonton City Public Works Standards shall supersede the Final Plat and Construction Drawings, unless written exceptions have been made.

H. **Form of Recorded Drawings.** The Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Tremonton. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

I. **Developer Compliance with EPA and other Regulations.** The Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any

governmental authority or any third Party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer that he must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City of first receives a notice of such claim under the Utah Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

J. **City Ownership Rights.** The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as property owner. The City's rights as owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations and requirements associated with activities on the City Property by the Developer as an easement recipient.

K. **Developer Vesting.** Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on the Final Plat, without interference from the City, so long as development is completed in accordance with the plans specifically shown on the Final Plat and pursuant to the statutory requirements codified by Utah State and Tremonton City Codes. Furthermore, following execution of the Agreement, Developer's right to develop and construct in accordance with the statutory requirements at the time of execution of the Agreement shall be deemed vested.

II. Special Conditions

A. **Streets**

1. That the City pay a proportionate share in the amount of \$9,176.75 for constructing the eight (8) foot sidewalk on 400 West Street.

B. Ground Water, Subdrains and Water Rights

1. That the Developer preserves and restores in the event of any damage subdrain lines. The City has provided the developer with a copy of the general vicinity of the known subdrain lines.

C. Development Construction Permit

1. That the Developer obtains a UPDES permit from the State of Utah.

D. Improvement Guarantees

1. That the Developer provide an cash bond prior to January 31, 2015 as required by Section 2.05.045 Bond for Improvements of the Tremonton City Land Use Code. The City shall administer the release of the bond in accordance with aforementioned Section of the Tremonton City Land Use Code.

E. Fee In Lieu Payments for Chip Seal and Fog Coat

1. That the Developer make a fee in lieu for payment in the amount of \$12,062.25 for chip seal and fog coat as required by Section 2.05.015 of the Tremonton City Land Use Code prior to January 31, 2015.

F. Streetlights

1. That the Developer make a fee in lieu for payment in the amount of \$15,250.00 for installation of street lights as required by Section 2.06.055 of the Tremonton City Land Use Code on 400 West Street prior to January 31, 2015 and, that the Developer install conduits for the street lights in locations approved by the Land Use Authority Board at the time other public improvements are installed.

G. Master Development Site Plan and Overlay Zoning Ordinance

1. That the Developer and subsequent property owners acknowledge and agree to comply with the requirements contained in the Master Site Plan Development Agreement and Tremont Center Mixed Use Overlay Zone.

III. Miscellaneous

A. Construction Site Safety. The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation

Requirements, OSHA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed.

B. Construction Site Waste. The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

C. Compliance with City Building Inspector, City Engineer, and City Public Works Director. The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

D. Consequences of Developer non-compliance with Final Plat and the Agreement. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement, and the City may withhold such building permits and certificates of occupancy as it deems necessary to ensure performance in accordance with the terms of the Agreement.

E. No Waiver of Regulation(s). Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

F. Severability of Waivers. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

G. **City Council Budgetary Discretion.** All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Tremonton City Council, in its discretion.

H. **Covenants Run with the Land.** This Agreement shall run with the Property, including any subsequent, approved, amendments to the Final Plat of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

I. **Liability Release.** With limitations pursuant to Utah Code Annotated § 10-9a-607, in the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

J. **Default and Mediation.** Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either Party shall fail to perform according to the terms of this Agreement, such Party may be declared in default. In the event that a Party has been declared in default hereof, such defaulting Party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in Paragraph III.D of this Agreement.

L. **No Third-Party Beneficiaries.** Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third Party or Parties, and no third Party or Parties shall have any right of action hereunder for any cause whatsoever.

M. **Applicable Laws.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Tremonton, Utah.

N. **Notice.** Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Tremonton City
102 S. Tremont Street
Tremonton, UT 84337

With a copy to: Ericson & Shaw, LLP
1047 South 100 West, Suite 190
Logan, UT 84321

If to the Developer: Tremont Center, LLC
12 West 100 North
Tremonton, UT 84337

*Ensign Development Group, LLC
170 South Main St., #1600
Salt Lake City, UT 84101*

Notwithstanding the foregoing, if any Party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such Party shall do so by giving the other Parties to this Agreement written notice of such change.

O. **Word Meanings.** When used in this Agreement, words of the masculine gender shall include the feminine and neutral gender, and when the sentence so indicates, words of the neutral gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning and as if prepared by all Parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the Parties hereto pertaining to the matters addressed in this Agreement.

P. **Complete Agreement.** There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the Parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

Q. **Property Owner as Party.** The Owner is made a Party to this Agreement solely for the purpose of subjecting the Property to the covenants contained in this Agreement. The City

and the Developer expressly acknowledge and agree that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

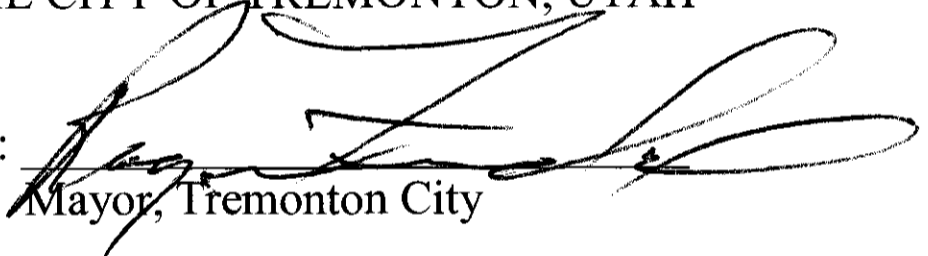
Developer expressly acknowledges and agrees that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

R. **Greenbelt Taxes.** Pursuant to Utah Code Annotated § 10-9a-603(3), The City shall require payment of all Greenbelt Taxes, if applicable, prior to Recordation of the Final Plat.

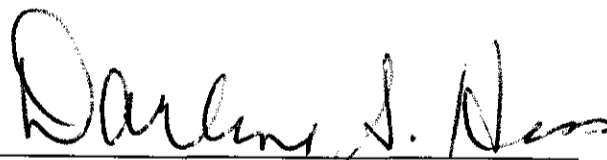
S. **Recording.** The City and Developer/Owner are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of the Agreement, and the Developer/Owner agrees to execute any such instruments upon reasonable request.

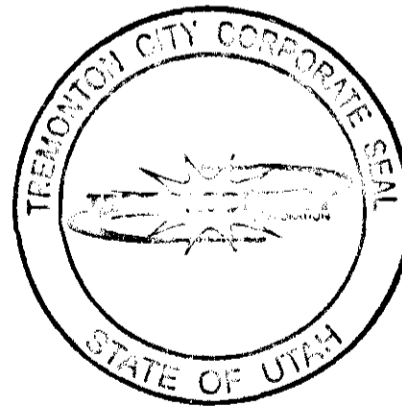
T. **“Arms Length” Transaction.** The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Contract as independent Parties and that the same is in all respects an “arms-length” transaction.

THE CITY OF TREMONTON, UTAH

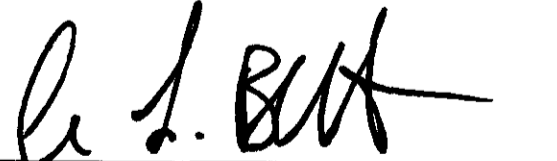
By: 
Mayor, Tremonton City

ATTEST:


City Recorder



APPROVED AS TO CONTENT:


City Engineer

APPROVED AS TO FORM:

DADE
City Attorney

DEVELOPER:

By: [Signature]

Print Name: Robert Jensen

OWNER:

By: [Signature]

Print Name: Robert Jensen

DEVELOPER:

By: [Signature]

Print Name: Micala Copener
member - Tremont Center LLC

OWNER:

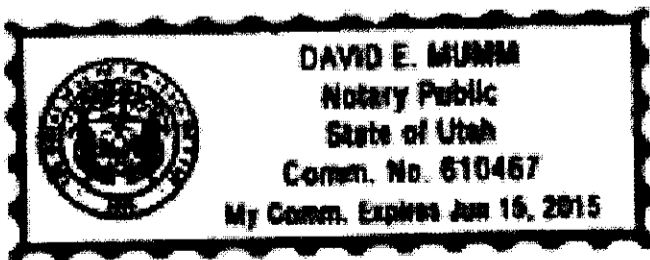
By: [Signature]

Print Name: Micala Copener
member - Tremont Center LLC

Developer/Owner Acknowledgment

State of Utah)
County of CACHE)

On this 25th day of FEB, in the year 2015, before me David E. Murray
a notary public, personally appeared Robert Jensen,
and proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to
this instrument, and acknowledge executing the same.



[Signature]
Notary Public

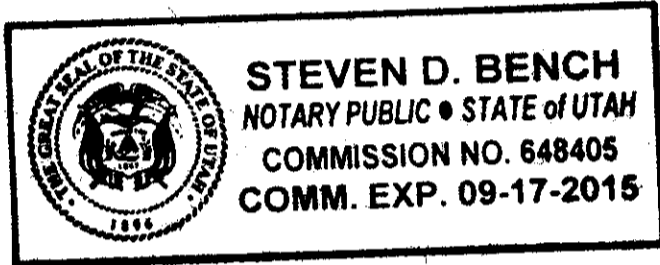
Developer/Owner Acknowledgment

State of Utah)
County of BOX ELDER §

On this 25 day of FEB, in the year 2015, before me STEVEN D BENCH
a notary public, personally appeared MICAH CAPENER,
and proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to
this instrument, and acknowledge executing the same.

[Handwritten Signature]

Notary Public



Owner Acknowledgment

State of Utah)
County of BOX ELDER §

On this 2 day of MARCH, in the year 2015, before me STEVEN D BENCH
a notary public, personally appeared Roger Fridal, Mayor, and proved on the basis of
satisfactory evidence to be the person(s) whose name(s) subscribed to this instrument, and
acknowledge executing the same.

[Handwritten Signature]

Notary Public

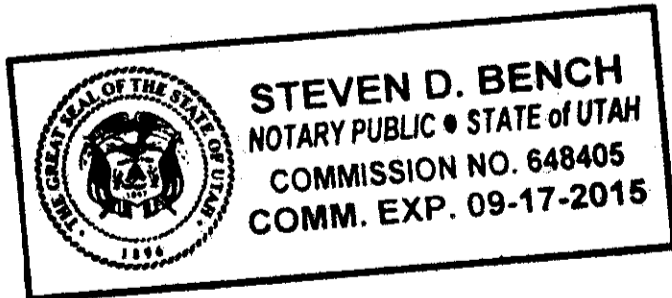


EXHIBIT "A"
CONSTRUCTION/IMPROVEMENT GUARANTEE:

The Bond guaranteeing the Developer's timely and proper installation and warranty of required improvements shall be equal in value to at least one hundred-ten (110) percent of the cost of the required improvements, as estimated by the City Engineer contained in Exhibit "B". The purpose of the bond is to enable the City to make or complete the required improvements in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it receives adequate assurances that the improvements shall be completed in a timely and proper manner. The additional ten (10) percent shall be used to make up any deficiencies in the bond amount and to reimburse the City for collection costs, including attorney's fees, inflationary costs, etc.

All required improvements shall be completed and pass City inspections within one (1) year of the date that the Final Plat is recorded. Required improvements for plats recorded between November 1st and March 31st shall be completed by the next October 1st. For example, the required improvements for a plat recorded on February 6th, shall be completed by October 1st, in the same calendar year. Failure to meet this time frame may result in forfeiture of the bond. A written agreement to extend the completion of the improvements may be granted by the Land Use Authority Board where due to circumstances as determined by the Land Use Authority Board would delay the completion of required improvements.

All subdivision improvements shall be completed by qualified contractors in accordance with Title III General Public Works Construction Standards and Specifications. No work may be commenced on improvements intended to be dedicated to the City without approved construction drawings and a pre-construction meeting with the City.

The Bond shall be an escrow bond, or cash bond in favor of the City. The requirements relating to each of these types of bonds are detailed below. The City Attorney shall approve any bond submitted pursuant to this section. The City Attorney reserves the right to reject any of the bond types if it has a rational basis for doing so. Escrow bonds shall be held by a federally insured bank, savings and loan or credit union or a title insurance underwriter authorized to do business in the State of Utah. A developer may use a cash bond by tendering the required bond amount in cash or certified funds to the City, partial releases may be made from the cash bond as allowed for other bond types, but shall retain ten (10) percent of the bond through the warranty period for any repairs necessary prior to final approval at the end of the warranty period. If no repairs are required at the end of the warranty period the remaining portion of the bond shall released to the Developer. The City shall not pay any interest on funds held as a cash bond.

MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City, for a period of one (1) years from the date of completion and final inspection by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee is made in accordance with the Tremonton City Land Use Code and/or the Utah Code Annotated, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements and other public properties, including, without limitation, all curbing, sidewalks, trails, drainage pipes, culverts, catch basins, drainage ditches and landscaping and all other improvements contained in Exhibit "B" of this Agreement. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department.

The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City until one (1) year following the final inspection. The Developer shall also correct and repair or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. The City may require the Developer to guarantee and warrant that any repairs remain free from defect for a period of one (1) year following the date that the repairs pass City inspection. The City may retain the Developer's guarantee until the repairs have lasted through the warranty period, and may take action on the bond if necessary to properly complete the repairs. In the event the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said one (1) year period which are unrepaired at the termination of said period shall remain the responsibility of the Developer.

REPAIR GUARANTEE:

The Developer agrees to hold the City, harmless for a one (1) year period, commencing upon the date of completion and final inspection by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Developer furthermore commits to make necessary repairs to said public improvements, to include, without limitation, all improvements contained in Exhibit "B" of this Agreement, roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the

changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the “maintenance guarantee” and “repair guarantee” provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

EXHIBIT "B" CITY ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS



JONES & ASSOCIATES
Consulting Engineers

Initial Escrow Estimate

February 10, 2015

Mr. Steve Bench
Tremonton City
102 South Tremont Street
Tremonton, Utah 84337

RE: Tremont Center - Phase 1 (ShopKo)

Steve,

I have completed a review of the cost estimate for the above referenced subdivision and have made any changes to the estimate as necessary. Changes will be noted on the attached cost estimate submitted by the developer. The recommended escrow amounts are as follows.

Description	Initial Amount in Escrow	Previous Amount Released	Current Amount to Release	Escrow Remaining
Culinary Water System	\$28,868.00	\$0.00	\$0.00	\$28,868.00
Sanitary Sewer System	\$13,340.00	\$0.00	\$0.00	\$13,340.00
Storm Drain System	\$13,600.00	\$0.00	\$0.00	\$13,600.00
Streets	\$47,635.00	\$0.00	\$0.00	\$47,635.00
Sidewalk	\$16,114.00	\$0.00	\$0.00	\$16,114.00
Miscellaneous Items	\$12,149.18	\$0.00	\$0.00	\$12,149.18
10% Contingency	\$13,170.62	\$0.00	\$0.00	\$13,170.62
Totals	\$144,876.80	\$0.00	\$0.00	\$144,876.80

<u>Prepaid Items</u>	
Chip Seal and Fog Coat	\$12,062.25
Street Lights	\$15,250.00
Totals	\$27,312.25

Sincerely,

Chris Breinholt, P.E.
Jones & Associates Engineering

EXHIBIT "C" TREMONT CENTER SUBDIVISION PHASE 1

