



**IMPROVEMENT CONSTRUCTION
AND PERFORMANCE GUARANTEE AGREEMENT
(Constructed Prior to Recording – City Held Escrow Form)**

SHEDHORN SUBDIVISION

THIS AGREEMENT made and entered into this day of 22 day of Nov, 2017, by and between the Elk Ridge City, Utah, hereinafter called "City" and Brad Turner hereinafter called "Developer".

WHEREAS, the Developer desires to develop, construct and/or sell building lot(s) within the Shedhorn Subdivision, a subdivision located within the City of Elk Ridge, Utah, and;

WHEREAS, City Ordinances require, as a condition of approval of the subdivision, the installation of those certain improvements, to be constructed at the expense of the Developer and;

WHEREAS, prior to granting approval through recording of the Final Plat, the Developer is required to post a performance guarantee, as assurance that all subdivision improvements will be completely installed and that said construction will be carried out in a timely and workmanlike manner, or complete construction of improvements prior to recording the Final Plat;

NOW THEREFORE, in consideration of the following mutual promises and covenants, it is agreed as follows:

1. The Developer agrees to install all improvements within said subdivision as are identified in Exhibit "A", which Exhibit is attached hereto and by this reference, made a part hereof. Said improvements shall be constructed in accordance with City standards, as set forth in the Development Code, City Standards and Specifications and typical details, as shown on those certain detail sheets contained in Exhibit "A", to be constructed at the sole expense of the Developer.
2. In accordance with the Subdivision Ordinance, construction of the required improvements shall be completed prior to September 12, 2018; provided, that the City Council, upon a showing of good and sufficient cause by the developer and in accordance with Section 10-15D-2 of the Development Code, may act to extend the time of performance.
3. As the Developer has chosen to construct the required improvements prior to recording the Final Plat with the exception of the trail with a 2% slope and the associated infiltration system along the edge of the trail along Canyon View Drive. A guarantee of performance shall not be required per Utah Code 10-9A-604.5 with the exception of a Durability guarantee in the form of a surety bond, letter of credit or escrow account provided by the Developer for a period of one year beginning after the completion and acceptance of the improvements by the City Council and guarantee of performance for the full value of type ii slurry seal on improved streets approximately one year after initial paving is completed.

The Developer agrees to complete the pavement of the trail and the associated infiltration system in the spring of 2018 weather permitting.

As per Section 10-16-7 of the Development Code entitled "**Durability Retainage**": A retainage of not less than Ten percent (10%) of the estimated construction cost, (\$1,027.50), shall be secured in an escrow account for a period of not less than one (1) year following the date of acceptance of the improvements by the City, as per engineering recommendation. The Developer has chosen to provide the durability retainage to the City of Elk Ridge to hold in escrow.

Following acceptance of the initial construction improvements by the City and concurrently with the Durability Retainage surety, the Developer agrees to pay the full value of the placement of type II slurry seal on the pavement patch and paved trail. The cost of the slurry seal for the pavement patch and trail is estimated at \$0.50 a square foot for a total of 2,863 square feet. The amount being \$1,431.50, which shall be remitted to the City of Elk Ridge to complete the placement of the type II slurry seal.

4. The Developer agrees to be bound by the determinations of the City Engineer with respect to the construction of improvements, as required under this Agreement. All costs in monitoring this agreement through inspection services relating to the subdivision shall be charged to the Developer and paid to the City prior to release of the Performance Guarantee. Engineering and inspection and administrative costs have been calculated in the table below.

Performance Guarantee

Construction Guarantee (100% of Construction Cost or Remaining Work if Applicable) (Record Final Plat After Completion of Improvements No Construction Guarantee Required)	\$10,275.00 For Information only
Type II Slurry Seal (Required concurrently with Durability)	\$1,431.50*
Durability Retainer (10% Estimated Construction Cost)	\$1,027.50
Engineering and Inspection (6% of Construction)	\$616.50
Administration (5% of Engineering and Inspection)	\$30.83
Durability Inspection (5% of Durability or Min. \$500.00 Paid to City)	\$500.00

Performance Guarantee Timing

Construction Guarantee (100% of Construction Cost or Remaining Work if Applicable, required prior to recording)	0.00
Type II Slurry Seal (Required concurrently with Durability)	\$1,431.50*
Performance Guarantee (Engineering Inspection and Administration required prior to construction)	\$647.33
Durability Retainer (Required at time of acceptance of improvements by City)	\$1,027.50
Durability Inspection (5% or Min. \$500.00. Paid to City at the time Durability Retainer is posted)	\$500.00

*Elk Ridge will apply a protective slurry seal to the patch and trail approximately one year after initial paving is completed as directed by the Public Works Director. The cost of the slurry seal is estimated at \$0.50 a square foot for a total of 2,863.

5. The Developer agrees that in the event he does not: (a) complete all improvements within the time period specified under paragraph two above, or secure an extension of said completion date, (b) construct said improvements in accordance with City standards and as set forth in Paragraph one above, and (c) pay all claimants for material and labor used in the construction of said improvements, the City shall be entitled to declare the developer(s) in default, request and receive the funds held by the guarantor as surety and utilize the monies obtained to install or cause to be installed any uncompleted improvements and/or to pay any outstanding claims, as applicable. Provided however, that the City shall not be responsible for any work

beyond the amount of funds so provided. Any funds remaining after completion of the improvements shall be returned to the Guarantor. The Developer further agrees to be personally liable for any cost of improvements above the amount made available under the terms of this agreement.

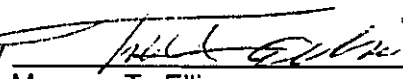
6. The Developer agrees to be responsible for all improvements covered by this agreement until final inspection of the same has been performed by the City, and a final acceptance and release has been issued by the City Council. In addition, the Developer agrees to repair any defect in the design, workmanship or materials in the subdivision improvements, which becomes evident during a period of one year following the acceptance of the improvements by the City Council (Durability Testing Period). A one year durability and testing period shall also be in effect from the city acceptance of the placement of the type II slurry seal. If during the testing period, any subdivision improvement shows unusual depreciation, or if it becomes evident that required work was not done, or that the material or workmanship used does not comply with accepted standards, said condition shall, within a reasonable time, be corrected. If such corrections are not made, the City Council, in accordance with the provisions of the Subdivision Ordinance, may declare the Developer "in default", request and receive funds held by the Guarantor as a durability retainer and utilize the monies obtained to repair or cause to be repaired any defective improvements and reimburse the City for such other costs as it may incur in the administration or enforcement of the agreement.

7. The City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring to the work or improvements specified in this agreement, nor shall any officer or employee thereof, be liable for any persons or property injured by reason of said work or improvements, but all of said liabilities shall be assumed by the Developer.


8. The defaulting party shall pay all costs, including reasonable attorney's fees, which may arise from enforcing the provisions of this agreement.

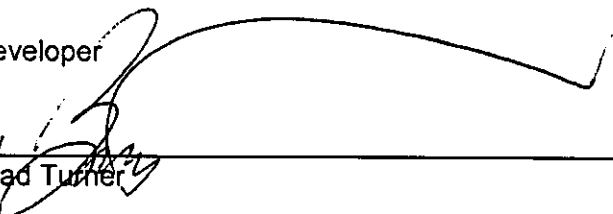
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day, month, and year first above written.

Elk Ridge City, Utah

By 
Mayor - Ty Ellis

Attest:


City Recorder

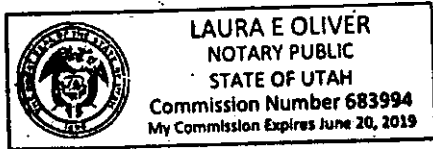
Developer
By 
Brad Turner

ACKNOWLEDGEMENT

STATE OF UTAH)
 : SS
COUNTY OF UTAH)

On the 22 day of November, 2017, personally appeared before me
_____, the signer of the above instrument, who duly acknowledged to me
that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal



Laura E Oliver
Notary Public

Residing at: 610 E Park Dr
Elk Ridge, UT 84657

My Commission Expires: 6/20/19