

**DEVELOPMENT AGREEMENT**  
**FOR**  
**Shoshone Village**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into as of the 20<sup>th</sup> day of November, 2018, by and between **TOOELE COUNTY**, a political subdivision of the State of Utah, hereinafter referred to as the "County," and **BRK&H, LLC**, a Utah limited liability company, hereinafter referred to as the "Developer."

**RECITALS**

A. Developer owns or has the right to acquire approximately 119.43 acres of land located within the County, which property is more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "Property").

B. Developer desires to develop the Property as a mixed-use project with the majority of the acreage to be developed as a residential subdivision to be known as Shoshone Village (the "Project"). A concept plan of the Project is attached hereto as **Exhibit "B"** (the "Concept Plan"), depicting the general layout of 174 residential lots.

C. Developer has submitted or will submit to the County the necessary application(s) to obtain the zoning and subdivision approvals required for the Project (the "Applications").

D. Developer and the County desire to enter into this Agreement to confirm their understandings regarding the Project and provide Developer with the desired assurances to move forward with the design and development of the Project. Certain public policy reasons for entering into this Agreement are summarized as follows (collectively, the "Public Policies"):

- (i) In 2017 Tooele County Health Department (TCHD) received the results of a Septic Tank Ground Water Pollution Study which took several years to complete. This study spurred TCHD to change septic tank rules and to encourage the creation of new, or the expansion of current waste water systems.
- (ii) The County has limited economic, water and human resources.
- (iii) The County desires to protect precious economic, water and human resources and has hence, established a working relationship with Stansbury Park Improvement District (SPID) to allow annexation of additional areas of North Eastern Tooele County into the SPID to prepare the way for a private sector funded installation of expanded waste and drinking water systems.
- (iv) The County recognizes that resources cannot be protected, and waste & drinking water systems cannot be expanded or developed based on the land development economics of rural residential zones - RR-1 and RR-5.

- (v) The County and TCHD recognize that the Utah Division of Drinking Water's interpretation of rules governing the number and type of drinking water wells in Rural Residential Zones has made it economically unreasonable for property owners to improve their land.
- (vi) The County recognizes the importance of facilitating development of affordable residential and commercial properties to enhance the quality of life and economic development for current and future residents.
- (vii) The County has used development agreements as a tool to incentivize real estate development in the past.
- (viii) The County chooses to use Area Specific Development Agreements to meet the following objectives:
  - a. Expanding the SPID Waste Water System to protect ground water.
  - b. Create new, Utah Division of Drinking Water regulated, private water systems.
- (ix) This new infrastructure will enhance the quality of life, economy and environment for current and future citizens of the County.
- (x) The Project is intended to be designed, developed, and constructed by Developer in a manner that will satisfy and further these Public Policies.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the Recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Recitals & Public Policies. The above-stated Recitals and Public Policies are incorporated herein and made a part of this Agreement.
2. Effective Date. This Agreement shall become effective on the date it is recorded in the Tooele County Recorder's Office after being executed by Developer and the County (the "Effective Date").
3. Affected Property. The Property that is the subject of this Agreement is described in the legal descriptions attached hereto as Exhibit "A." This Agreement shall be recorded against the Property.
4. Approval of Zoning by County Commission. As a condition precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time, and in the event that, the Tooele County Commission, in the independent exercise

of its legislative discretion, elects to approve the proposed rezoning of the Property from RR-5 to R-1-12. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the County Commission in deciding whether to approve or deny the application for the rezoning of the Property.

5. Offsite Developer Dedication. In connection with the development of the Project, a third-party water and sewer provider (the "Offsite Developer") shall construct and dedicate to the appropriate service provider all offsite public improvements that are reasonably necessary for the Project in accordance with the County Code. Except as otherwise provided in Section 9 below (regarding sewer and water systems) or in a separate improvement/reimbursement agreement, Offsite Developer shall be entitled to fair reimbursement or compensation (through impact fee credits or otherwise) for conveyances or dedications relating to "system improvements" as opposed to "project improvements" as such terms are defined under state law.
6. Developer Dedication. In connection with the development of the Project, Developer shall construct and dedicate to the appropriate service provider all on site public improvements that are reasonably necessary for the Project in accordance with the County Code. Except as otherwise provided in Section 9 below (regarding sewer and water systems) or in a separate improvement/reimbursement agreement, Developer shall be entitled to fair reimbursement or compensation (through impact fee credits or otherwise) for conveyances or dedications relating to "system improvements" as opposed to "project improvements" as such terms are defined under state law.
7. Phased Development. The Project will be developed in a logical sequence as determined by the Developer. Each phase of the development shall comply with the reasonable conditions of approval consistent with the County Code and state law.
8. Density. So long as Developer fulfills the conditions set forth in this agreement, the residential portion of the Project will receive density approvals of 0.33 acre per unit (also stated as 3 units per acre) with a mix of lot sizes ranging from 10,000 square feet to 22,000 square feet. However, if Developer fails to fulfill the conditions of this agreement, County may, at its sole discretion, vacate the subdivision and rezone the property to its prior zoning designation.
9. Conditions of Approval. In exchange for the density assurances provided in Section 7 above, Developer shall, at its sole cost and expense, design and construct on site sewer and water system facilities having the design, location, and capacities reasonably approved by the County. The Offsite Developer shall, at its sole cost and expense, design and construct offsite sewer and water system facilities having the design, location, and capacities reasonably approved by the County. The County shall have no obligation to pay for any portion of the costs of such facilities, or to otherwise reimburse Developer or Offsite Developer for such costs, even if they qualify as "system" improvements under Utah law. No certificates of occupancy will be issued for the Project unless and until these improvements, and all other improvements required by the County Code, have been installed and accepted by the County. Nothing in this Section 8 shall be construed to prevent or prohibit the Developer or the Offsite Developer from collecting reimbursements from other property owners or developers who

connect to or otherwise make use of the sewer and water system facilities constructed by Developer and or Offsite Developer.

10. Approvals. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures set forth in the County Code, including, without limitation, timely approval of the Applications submitted by Developer to obtain the necessary zoning/plat approvals to secure the Density rights set forth in this Agreement as well as the County's completion of the road bordering the subdivision on the south.
11. Amenities. Developer shall construct and improve the park(s) or other recreational amenity(ies) reasonably required by the County within the Project.
12. Maintenance. Prior to the sale of any lot in the Project, Developer shall create a Home Owners Association which shall be responsible for the maintenance of the common/open spaces in the development. In the alternative, Developer shall either contract or annex into the boundaries of the Stansbury Park Service Agency (or another local governmental entity) for maintenance of the common/open spaces in the development.
13. Improvements; Plats/Phases.
  - a. At the time of plat recordation for each phase, the Developer and/or Owner of the subject phase shall be responsible for the installation and dedication to the County of all onsite water, sewer, storm drainage, and road improvements sufficient for the development of the portion of the property depicted on the plat in accordance with the County regulations.
  - b. All roadways within the Property shall be public roadways, which shall be constructed in accordance with the applicable County ordinances and regulations, and the approved construction drawings.
  - c. The County shall provide all public services to the Property (including, without limitation, storm drain, road maintenance, snow removal, etc., but excluding maintenance of common/open spaces) and maintain the related improvements, including roads, that are specifically intended to be public upon dedication to the County and acceptance in writing by the County at the end of the warranty period, so long as the improvements meet the standards set forth in the County Code for public improvements. The County shall provide all such municipal services to the Property at the same levels of service, and on the same terms and rates, as provide to other residents and properties in the County.
  - d. Developer and County shall share equally the construction costs for a pedestrian underpass across unnamed road to be constructed along the southern border of the Property, sometimes referred to as the Tooele Parkway.
14. Performance and Warranty Bonds. For any improvements required to be installed pursuant to this Agreement and/or County regulations, the Owner(s) and/or Developers of the subject

phase/plat shall be required to satisfy the generally-applicable requirements regarding warranty bonds as set forth in the County Code. For the sake of clarity, after the County grants final plat approval for a phase of the Project, Developer can install all onsite infrastructure improvements prior to recording the final plat, and then record the final plat and bond only for the warranty of such improvements upon the County's acceptance of such infrastructure improvements into warranty.

15. Title – Easement for Improvements. The County Engineer shall approve the alignment of all roads and utility lines and shall approve all descriptions of land, rights of way, and easements to be dedicated and conveyed to the County. The Owner of the subject phase of development shall acquire and provide to the County, for review and approval, a title report from a qualified title insurance company covering such land, rights of way, and easements for each phase.
16. Fees. The County may charge fees that are generally applicable to developments in the County, including but not limited to subdivision, site plan, and building permit review fees, connection fees, impact fees, service charges and fees and assessments. The County will not charge and fees relating to sewer and water service including connection, impact, and service fees.
17. Plat Approval. As Plans are approved, the owner of the subject phase/plat shall be required to record a Final Plat with the Tooele County Recorder, pay all recording fees, and comply with all applicable County regulations regarding such phase/plat. Upon receiving Final Plat approval, the owner of the subject phase/plat may proceed to develop and construct the subject phase/plat. Upon completion of construction of the subject phase/plat, the Owner of such phase/plat shall record the subject phase/plat and bond for infrastructure improvements for the warranty period in an amount acceptable to County.
18. Termination of Agreement. The term of this Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect until the earlier of the following events: (i) certificates of occupancy have been issued for all dwelling units to be constructed in the Project, or (ii) ten (10) years from the date on which this Agreement is recorded with the Tooele County Recorder's Office; provided, however, that if Developer is not in breach of any material provisions of this Agreement when said 10-year period expires, and any portions of the Project have not been completely built-out, then this Agreement shall automatically be extended for an additional period of five (5) years. When public improvements have been constructed and accepted by County (after expiration of applicable warranty periods), the subject Owner/Developer shall be released from and have no continuing obligations with respect to such improvements.
19. Early Termination of Agreement. At any time prior to commencement of construction of public improvements, the subject Owner/Developer may at its sole discretion terminate this Agreement and be released from and have no continuing obligations with respect to such improvements.

20. Multiple Owners; Successors and Assigns.

- a. Multiple Owners. Different portions of the Property may be owned by different persons or entities now or in the future (“Owners”). At the time each phase is developed, the Owner(s) of each such phase shall be responsible for satisfying all requirements applicable to such phase (including, without limitation, the requirements of this Agreement and the County Code), and the owner(s) of other portions of the Project shall not be held responsible for satisfying such requirements. No owner shall be liable or responsible for the actions, breaches, or defaults of a different owner.
- b. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer and future owners with respect to the portion of the Project they own. If any portion of the Property is transferred (“Transfer”) to a third party (“Transferee”), the transferor and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer, the transferor provides to County a letter from Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to County prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as Developer or Owner under this Agreement and the transferor shall be released from any further obligations under this Agreement as to the transferred property. In all events, this Agreement shall run with and benefit the Property.

21. Individual Lot or Unit Sales. Notwithstanding the provisions of the preceding paragraph, a transfer by Developer or a builder of a lot or residential dwelling located on the Property within a County-approved and recorded plat shall not be deemed a Transfer as set forth above so long as the obligations of the Developer/Owner with respect to such lot or dwelling unit have been completed. In such event, the subject Developer/Owner shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

22. Default.

- a. Events of Default. Upon the happening of one or more of the following events or conditions the subject Owner, Developer or County, as applicable, shall be in default (“Default”) under this Agreement:
  - i. a warranty, representation, or statement made or furnished by an Owner or Developer under this Agreement, or an exhibit is intentionally false or misleading in any material respect when it was made;
  - ii. a determination by County made upon the basis of substantial evidence that Developer or Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement; or
  - iii. any other event, condition, act, or omission, by any Party that violates the terms of, or materially interferes with, the intent and objectives of this Agreement.

b. Procedure Upon Default.

- i. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes significant action to begin curing such Default within such thirty-day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in subsection (c) below. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.
- ii. Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed, or stopped any required performance or effort to cure a Default.

- c. Breach of Agreement. Upon Default as set forth in this Section, County may declare the subject Owner to be in breach of this Agreement and County, until the breach has been cured by the subject Owner, may do any of the following: (i) refuse to process or approve any application for subdivision or site plan approval regarding the Project; or (ii) refuse to approve or to issue any additional building permits or certificates of occupancy for any building within the Project. In addition to such remedies, the non-defaulting party (County or Developer/Owner --as the case may be) may pursue specific performance. Furthermore, either the County or Developer (in the case of a default by the County) may pursue whatever additional remedies it may have at law or in equity, including, without limitation, monetary damages.

23. Vested Rights. To the maximum extent permissible under the laws of Utah and at equity, the County and Developer intend that this Agreement be construed to grant Developer all vested rights to develop the Project in fulfillment of the terms and provisions of this Agreement and the laws and ordinances that apply to the Property as of the effective date of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are contractual and are in addition to those rights that exist under statute, common law and at equity. If the County adopts different ordinances in the future, Developer shall have the right, but not the obligation, to elect to submit a development application under such future ordinances, in which event the development application will be governed by such future ordinance(s). By electing to submit a development application under a new future ordinance, however, Developer will not be deemed to have waived its right to submit or process other development applications under the County ordinances that apply as of the effective date of this Agreement.



24. Reserved Legislative Powers. This Agreement shall not limit the future exercise of the police powers of the County to enact ordinances, standards, or rules regulating development or zoning. Nothing herein shall be construed to limit the ability of the County to exercise its police powers to enact zoning ordinances, so long as Developer's vested rights, as set forth in this Agreement, are honored to the fullest extent allowed by applicable law.
25. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the development of the Property, and all prior agreements and understandings are merged, integrated, and superseded by this Agreement.
26. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:
- a. Exhibit A Properties Legal Description
  - b. Exhibit B Conceptual Layout
27. Federal and State Requirements. If any portion of the Property is located in areas with sensitive lands that are regulated by state and federal laws, development of that portion of the Property shall comply with all such regulations, which pertain to issues including but not limited to wetlands, sovereign lands, sensitive lands, historical preservation, flood plains, and high-water tables.
28. General Terms and Conditions.
- a. Incorporation of Recitals. The Recitals contained in this Agreement are hereby incorporated into this Agreement as if fully set forth herein.
  - b. Recording of Agreement. This Agreement shall be recorded at Developer's expense to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. Developer shall be responsible for ensuring that this Agreement is recorded and shall not hold the County liable for failure to record.
  - c. Severability. Each and every provision of this Agreement shall be separate, severable, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.
  - d. Amendment of Agreement. This Agreement shall not be amended except in written form mutually agreed to and signed by both parties. No change shall be made to any provision of this Agreement or any condition set forth in any exhibit hereto unless this Agreement or exhibit are amended pursuant to a vote of the County Council taken with the same formality as the vote approving this Agreement.
  - e. Unlawful Exactions. By entering into this Agreement, Developer does not waive, but does hereby expressly reserve, the right to challenge any unlawful exactions (as defined by state law) that the County may seek to impose or require.



- f. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.
  - g. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed in counterpart form and delivered by facsimile or email (pdf format), then an original shall be provided to the other party within seven days.
29. Obligations Run with the Land. The agreements, rights and obligations contained in this Agreement shall: (i) inure to the benefit of the Parties; (ii) be binding upon the Parties and their respective successors, successors-in-title, heirs and assigns; and (iii) run with the Property.


*Signature Page Follows*

IN WITNESS WHEREOF, this Agreement has been executed by County and a duly authorized representative of Owner/Developer, as of the date first written above.

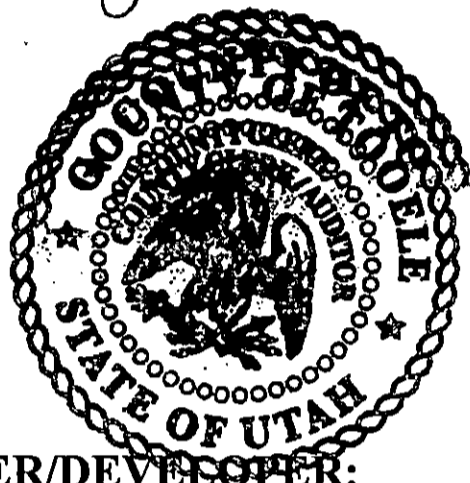
**THE COUNTY:**

Attest:

Tooele County

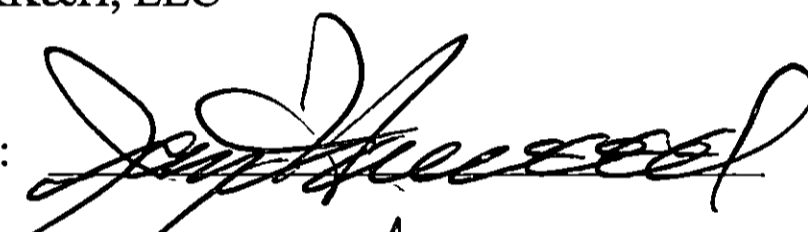
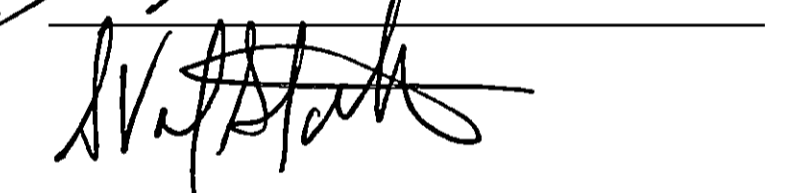
  
Marilyn K. Gillette, Clerk/Auditor

  
Wade B. Bitner, Commission Chairman



**OWNER/DEVELOPER:**

BRK&H, LLC

By:   
Its: 

State of Utah            )  
                                  :SS  
County of Tooele        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, as Manager/Member of BRK&H, LLC.

Notary Public

SEAL:

\_\_\_\_\_

**Exhibit A****Legal Description of the Property****03-007-0-0020 – 12.24 Acres**

BEG AT A PT WH LIES S 24'21" E ALG THE W LI OF THE NE 1/4 OF SEC 3, T3S, R4W, SLB&M, A DISTANCE OF 606.66 FT FR THE N 1/4 COR OF SD SEC 3; AND RUN TH N 81°55'26" E, A DISTANCE OF 2,665.11 FT; TH S 24'31" E, A DISTANCE OF 201.80 FT; TH S 81°55'26" W, A DISTANCE OF 2,665.12 FT TO SD W LI; TH N 24'21" W ALG SD W LI, A DISTANCE OF 201.81 FT TO THE POB. (OUT OF 3-7-12 FOR 2005 YEAR.) 12.24 AC

**03-007-0-0036 – 62.22 Acres**

BEG AT A PT WH LIES S 24'21" E ALG THE W LI OF THE NE 1/4 OF SEC 3, T3S, R4W, SLB&M, A DISTANCE OF 606.66 FT FR THE N 1/4 COR OF SD SEC 3; AND RUN TH N 81°55'26" E, A DISTANCE OF 2,665.11 FT; TH S 24'31" E, A DISTANCE OF 201.80 FT; TH S 81°55'26" W, A DISTANCE OF 2,665.12 FT TO SD W LI; TH N 24'21" W ALG SD W LI, A DISTANCE OF 201.81 FT TO THE POB. (OUT OF 3-7-12 FOR 2005 YEAR.) 12.24 AC

**A Portion of 03-007-0-0037 – 44.97 Acres**

BEG AT A PT WH LIES N 89°40'40" E ALG THE N LI OF THE NW 1/4 OF SEC 3, T3S, R4W, SLB&M, A DISTANCE OF 1,039.50 FT FR THE NW COR OF SD SEC 3; AND RUN TH N 89°40'40" E ALG SD N LI, A DISTANCE OF 1,601.75 FT TO THE N 1/4 COR OF SD SEC 3; TH S 24'21" E A LG THE E LI OF SD NW 1/4 OF SEC 3, A DISTANCE OF 1124.89 FT; TH S 89°40'10" W, A DISTANCE OF 1,602.28 FT; TH N 24'08" W, A DISTANCE OF 1,125.13 FT TO THE POB. OUT OF 3-7-19 FOR 2008 YEAR 41.25 AC---LESS 0.013 AC TO TOOELE COUNTY (#346109) . BALANCE O F 3-7-25 AFTER 3-7-29 FOR 2011 YEAR. 41.237 AC----TOGETHER WITH THE ADJACENT PORTION OF THE NORTH 100 FEET IN THE EASTERNMOST PORTION OF THE CORRIDOR FROM DROUBAY ROAD TO SR-36. (ORDINANCE 2013-14 ENTRY # 389362). OUT OF 3-7-29, 3-7-30 AND ROAD FOR

**Exhibit B**

Conceptual Plan/Layout

