

PIONEERING AGREEMENT

This Pioneering Agreement (hereinafter referred to as "Agreement") is entered into as of this [Day] day of [Month] __, 20__, by and between [Developer] __, a [Type of Entity] __ with its principal offices located at [Address] __ (hereinafter referred to as "Developer") and Brian Head Town, a municipal corporation and political subdivision of the State of Utah with its principal offices located at 56 N Hwy 143, Brian Head, UT 84719 (hereinafter referred to as the "Town").

RECITALS

WHEREAS, Developer owns certain parcels of property located in Brian Head, Iron County, Utah, specifically [Iron County Parcel Numbers] consisting of [Number of Acres] acres and further described in Exhibit A attached hereto (hereinafter referred to as the "Property");

WHEREAS, Developer has obtained approvals from the Town to develop the Property into a [Type of Development] commonly known as [Name of Development]. However, development of the Property is subject to the installation of offsite [Type of Improvements] improvements (the "Project Improvements") identified on Exhibit B attached hereto.

WHEREAS, the Project Improvements will provide direct benefit to other developers and owners of surrounding properties (the "Benefitted Properties") when they develop their properties. The Benefitted Properties are identified by tax parcel number and owner in Exhibit C attached hereto.

WHEREAS, Developer desires to be reimbursed for a proportionate share of the costs associated with the design, construction and installation of the Project Improvements as the Benefitted Properties connect and/or utilize the improvements;

WHEREAS, Town is willing to administer reimbursement payments from the owners of the Benefitted Properties in accordance with the terms and provisions of this Agreement; and

WHEREAS, this Agreement is entered into to ensure the orderly development of real property within Town limits, while maintaining and enhancing property values.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto contract, covenant, and agree as follows:

AGREEMENT

1. Necessity of Improvements. Developer expressly acknowledges that the Project Improvements are necessary for development of [Name of Development] and are lawful conditions precedent for the approval and development of [Name of Development].
2. Developer's Obligation. Developer shall install the Project Improvements at Developer's cost and expense including all costs and expenses associated with engineering, planning, surveying, design, materials, labor, easements, property, construction costs, and bonding relating to the Project Improvements, in accordance with the construction plans approved

by the Town for the development of [Name of Development] and/or required by Town ordinances and regulations (the "Pioneering Costs"). Pioneering Costs shall bear no interest from the date hereof to date of payment.

3. Approval, Inspection, and Acceptance. Developer and its assigns shall install the Project Improvements and post applicable bonds and improvement completion assurances in accordance with Town ordinances to guarantee the installation of the Project Improvements according to Town ordinances, regulations, and standards. The Project Improvements shall be approved by the Town and inspections shall be conducted by the Town to ensure that the Project Improvements are constructed per Town standards. Upon completion, Developer shall deliver to Town a set of as-built plans of the Project Improvements (in both paper and electronic format) with the verified actual amount of the Pioneering Costs of the Project Improvements. Upon successful completion of the Project Improvements and acceptance in writing by the Town, Developer shall also provide an Improvement Warranty in accordance with Town ordinances to ensure that the Project Improvements remain in good condition and free from defects for a period of one (1) year. Upon successful completion, approval by the Town, and posting of an Improvement Warranty by Developer, the Town shall accept, own, operate, and maintain the Project Improvements. Developer shall dedicate to the Town ownership of all facilities, easements, and property necessary to properly operate and maintain the Project Improvements and shall not retain any ownership interest therein, unless Town ordinances, agreements, or regulations provide otherwise.
4. Collection of Pioneering Costs. Upon notification from Developer that a benefitted property is applying to connect to the Project Improvements, the Town will require owners of the Benefitted Properties that develop their land or apply for building permits to pay to the Town their proportionate share of the Pioneering Costs of the Project Improvements prior to granting development or subdivision approval or issuing building permits. The proportionate share shall be determined by the Town at the sole discretion of the Town based upon the number of Benefitted Properties or other relevant factors of each respective Benefitted Property. Developer is ultimately responsible to notify the Town in a timely fashion of any Benefitted Properties that are developing and are required to remit proportionate share of the Pioneering Costs. In no event shall Town be liable for failure to make collection; it being understood and agreed that Town will use its best efforts to make such collection. In the event that a Benefitted Property initiates a legal claim denying obligation to remit payment of their proportionate share of the Pioneering Costs under this Agreement, the Town is not responsible to pursue legal recourse against the Benefitted Property. Developer may seek whatever legal remedy against a Benefitted Property that the Developer believes they are entitled to under this Agreement.
5. Distribution of Pioneering Costs Received. The funds collected shall be paid by the Town to the Developer within 60 days of collection, unless the payment is made under protest by the owner of the Benefitted Property or the payment is the subject of a lawsuit (filed or threatened), complaint, advisory opinion, or appeal. In such a case, the Town will retain the funds until such time as the matter is resolved. When the matter is

resolved, the Town shall disburse the funds to Developer within 60 days. Nothing in this Agreement shall preclude Developer from arranging for up-front financial contributions for the Project Improvements from the owners of the Benefitted Properties. It is the responsibility of the Developer to maintain a valid mailing address on file with the Town at all times. In the event that the Town remits a payment to the Developer and it is returned to the Town due to the Developer's failure to update their mailing address with the Town, the Developer has 30 days to update their mailing address with the Town, after which period the funds will be returned to the Benefitted Property from which they were collected and the Town will no longer be obligated to collect or remit payment under this agreement.

6. Duration of Pioneering Costs for all improvements. If a development application is made after 10 years from the date hereof, there shall be no required payment of Pioneering Costs related to the offsite public improvements identified on Exhibit B as a pre-condition of development approval or issuance of a building permit.
7. Full Compensation. The Developer hereby agrees it shall not be entitled to any reimbursement, compensation, incentive, or other payment from the Town related to the Project Improvements. Nothing in this Agreement, however, shall preclude Developer from obtaining reimbursements or impact fee credits for "system improvements" or oversized public improvements requested or required by the Town in relation to the Project. If the Town requires Developer to upsize or extend any of the Project Improvements, the parties may negotiate a separate reimbursement agreement to be submitted to the Town for approval. Such upsizing costs, however, are not part of this Agreement.
8. Choice of law. This Agreement shall be interpreted and enforced under the laws of the State of Utah.
9. Authority. Each individual executing this Agreement hereby represents and warrants that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified.
10. Recitals and Exhibits Incorporated. Each recital set forth above, and each exhibit attached to and referred to in this Agreement, is hereby incorporated by reference.
11. Counterparts and Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
12. Entire Agreement. This Agreement constitutes and comprises the entire understanding of the parties hereto, and supersedes any previous written or oral communication or representation related to the subject matter hereof

13. Amendment. This Agreement may only be amended by written instrument signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BRIAN HEAD TOWN

Bret Howser, Town Mgr

Attest:

Nancy Leigh, Clerk

DATED this ____ day of _____, 20__.

[DEVELOPER]

By: _____

Name (Print):

Its:

State of Utah

County of _____

On the _____ day of _____, 20__, personally appeared before me _____, of _____, whose identity has been proven on the basis of satisfactory evidence, and after being duly sworn acknowledges that he had authority to execute the foregoing Pioneering Agreement, for the purposes stated therein, and did so of his own voluntary act.

Notary