

## BLACKSTONE ESTATES PARK AGREEMENT

Dated as of \_\_\_\_\_ (“Effective Date”)

### Art. 1 PARTIES, RECITALS.

**§1.01 Parties.** This Residential Construction Tax Credit Agreement (the “Agreement”) is by and between:

<b>Developer</b>	JC Blackstone, LLC (“Developer”) A Nevada limited liability company 5400 Equity Avenue Reno, Nevada 89502 ATTN: KDH Builders
<b>County</b>	County of Washoe (“County”) A political subdivision of the State of Nevada 1001 E. 9 <sup>th</sup> Street Reno, NV 89512 ATTN: Community Services Department

Individually, Developer and County may be referred to as a “Party” and collectively, as the “Parties”.

### §1.02 Recitals

- A. Developer plans to develop a residential subdivision in Spanish Springs, Nevada to be known as Blackstone Estates, which may include the construction of up to 161 Medium Density Suburban (“MDS”) residential dwelling units in Blackstone Estates and 119 Medium Density Suburban (“MDS”) residential dwelling units in Sugarloaf Ranch to be made part of Blackstone Estates, all to be serviced by one (1) neighborhood park to be constructed by Developer pursuant to the May 7, 2019 Amendment of Conditions Case No. WAC19-0002 for Tentative Subdivision Map Case No. TM15-001 (“Conditions of Approval”), attached hereto as **Exhibit 1 (excerpted)**.
- B. Nevada Revised Statutes NRS 278.4983 is a law relating to the residential construction tax (“RCT”), providing the manner for its imposition, establishing its use for the purpose of providing for the acquisition, improvement and expansion of neighborhood parks or the installation or improvement of facilities in existing or new neighborhood parks, and setting its rate at one percent (1%) of the valuation of each building permit issued, or \$1,000 per residential dwelling unit or mobile home, whichever is less, and providing other matters properly relating thereto.

- C. County has adopted by ordinance a RCT, Washoe County Code Sections 20.435 to 20.467, pursuant to NRS 278.4983, to impose a tax upon the construction of apartment houses, residential dwelling units and mobile-home lots for the purpose of funding parks, playgrounds and recreation, as well as a method for its collection.
- D. The estimated RCT to be generated by the construction of the Blackstone Estates Subdivision and the Sugarloaf Ranch Subdivision are as follows:

Number of Units	Zoning Classification	Residential Construction Tax	Total Est. Tax
161 Blackstone Estates	MDS	\$1,000 per unit	\$ 161,000
119 Sugarloaf Ranch	MDS	\$1,000 per unit	\$ 119,000
			\$ 280,000

NOW THEREFORE, the Parties agree as follows.

**Art. 2 PARK TO BE CONSTRUCTED; TAX CREDIT REIMBURSEMENT AUTHORIZED.**

**§2.01 Park Design and Construction.** Developer agrees, at its own expense and risk, to design and construct the Park as provided below.

¶2.01.A Location and size. The Park shall be built in the location depicted on the tentative map and at the size required by the Amended Conditions of Approval, Condition 1.y (“Applicable Condition”), as described in **Exhibit 1**.

¶2.01.B Prior approvals. Developer has submitted and the County has approved the conceptual design and layout of the subject Park, which is attached to this Agreement as **Exhibit 2**. The Parties agree that any additional minor comments will be addressed at the Building Permit stage. Any changes requested by the County after a building permit has been issued shall be considered change orders subject to the provisions of ¶2.01.C.2.

¶2.01.C Pursuit of construction; change orders; risks.

1. Developer agrees to commence and complete construction in accordance with the Applicable Condition.

2. Developer assumes all risks associated with cost overruns and change orders, neither of which need be approved by the County, it being understood that Developer shall construct the Park in accordance with the plans and specifications approved by the County; provided, however, all costs, fees and expenses incurred by Developer related to any change orders requested by County to the approved design plan shall be paid for by County, in cash, upon completion of construction of the Park and Developer providing to County such reasonable documentation to support any such costs, fees and expenses incurred in connection with any such change orders.

3. All risk of loss or destruction of work or facilities in progress shall be borne by Developer; provided, however, that the homeowners association shall undertake maintenance of, insurance and risk of loss to the Park upon receipt of written notice of completion of construction from Developer that the improvements related to the Park site are completed and recordation of a deed conveying the Park to the Homeowner's Association. A Park Maintenance Plan shall be included in the Homeowner's Association CC&Rs. The roles and responsibilities of the maintenance of the Park will be outlined in a subsequent and separate Maintenance Agreement between Washoe County and the Homeowners Association. This Maintenance Agreement must be completed and approved by the Washoe County Board of County Commissioners before the park is conveyed to the Homeowner's Association.

¶2.01.D Inspections; final inspection; final amounts of reimbursement.

1. County agrees that, at its sole cost and expense, it shall assign an inspector to monitor and inspect the construction of all improvements related to the Park for compliance with the approved plans and specifications in order to facilitate its timely and orderly completion.

2. Not later than five (5) days prior to completion of construction of the Park, Developer shall provide a written notice of completion to the County and County shall cause a final inspection within five (5) business days. Any items not in conformance with the approved plans and specifications shall be noted on a "punch list" and promptly completed by Developer. Developer shall issue a notice of completion of construction to County upon completion of any items on a punch-list or, if no items were noted, on the date set forth in the five (5) day notice provided for in the first sentence of this paragraph.

3. Upon completion of the "punch list," Developer shall submit proof of the actual costs of construction and the Operations Division Director shall determine a final reimbursement amount for the Park not to exceed two hundred eighty thousand dollars (\$280,000).

¶ 2.01.E Construction standards, practices and indemnification.

1. Developer warrants, represents and agrees that all improvements constructed by Developer hereunder (i) shall be built in accordance with plans and specifications approved by the County; (ii) shall be built in compliance with Applicable Law, including that the Park equipment shall be placed in the Park based upon standards set by the U.S. Consumer Product Safety Commission; (iii) shall be constructed in a workmanlike manner; (iv) shall be built with new materials (unless otherwise agreed) which shall be free from faults and defects; and (v) shall be free from the release of hazardous substances as defined NRS 40.504 and 40.505.

2. Developer shall follow best management practices regarding the management of the staging, storage and work sites and shall at all times keep the premises free from accumulation of waste materials, and at the completion of the work shall remove all waste materials, rubbish, tools, supplies and equipment.

3. Each Party hereby agrees to indemnify, defend, and hold the other Party harmless against any and all liability, claims, costs, or expenses arising directly or indirectly: out of a

breach of the covenants, representations, and warranties by the indemnifying Party to the other Party to this Agreement. Developer shall hold harmless, indemnify and defend County from and against any and all claims, demands, and losses of third parties arising out of or related to the design and construction of the improvements specified herein, resulting from the actions of Developer or any consultants or subcontractors under their direction and control.

4. County does not waive and intends to assert all NRS Chapter 41 limitations on liability.

¶2.01.F No agency, partnership or joint venture. It is specifically understood and agreed to by and between the Parties that (i) the improvements made hereunder are private and the County has no interest in or responsibilities for, or due to, third parties concerning any improvements; (ii) Developer shall have full power over and exclusive control over them; and (iii) County and Developer hereby renounce the existence of any form of agency relationship, joint venture, partnership or other co-relationship and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between County and Developer.

**§2.02 RCT Payment and Reimbursement Schedule.** Upon completion of the Park, Developer shall submit invoices to County evidencing the total cost of design and construction. Developer shall be entitled to reimbursement of Blackstone and Sugarloaf subdivision residential dwelling units RCT payments for (a) the total cost of design and construction, or (b) one thousand dollars (\$1,000) per house completed in the Blackstone Estates and Sugarloaf Ranch subdivisions, up to two hundred eighty thousand dollars (\$280,000), whichever is less. The Parties agree that Developer is likely to complete the Park before County has collected RCT funds for a sufficient number of residential dwelling units to offset the cost of Park construction up to the agreed upon limit of reimbursement.

County shall collect RCT funds from Developer for the Blackstone and Sugarloaf subdivisions at the time of building permit issuance for each residential dwelling unit in accordance with the usual procedures and practices of County. On a quarterly basis after completion of the Park, Developer shall submit an accounting using the form attached as **Exhibit 3** which includes the following information: (a) the total amount of reimbursement due under this Agreement; (b) the amount of RCT funds paid; (c) the requested reimbursement for the period which shall not exceed the amount of RCT funds paid but not reimbursed; and (d) the balance of (b) and (c). The County shall issue reimbursement to Developer within 30 days following receipt of an accounting.

**Art 3. TERM, DEFAULT, NOTICE AND REMEDIES.**

**§3. 01 Expiration of this Agreement.** This Agreement expires and automatically terminates after the park is completed and when the full amount of the approved credits have been issued.

**§3.02 Obligations on expiration or termination; survival.** The provisions regarding maintenance, indemnifications, remedies, attorneys' fees, governing law and jurisdiction survive the termination and expiration of this Agreement.

### **§3.03 Excuse due to force majeure.**

¶3.03.A. Except as provided elsewhere herein, if a “force majeure” makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other Party of the nature of the force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other Party immediately when it becomes possible to commence efforts to cure the default.

¶3.03.B A “force majeure” is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; or a lawsuit challenging the validity or approval of this agreement if an order is entered prohibiting performance by the obligated party, and so long as the obligated party defends such lawsuit with reasonable diligence; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of a violation of the prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

¶3.04.C. A force majeure is deemed to cease for purposes of this Agreement and a Party is deemed to be in breach of an obligation or cure when it becomes possible for the obligated party to commence to perform the obligation or cure.

### **§3.05 Default, notice and right to cure.**

¶3.05. A. Default. Subject to §3.04, a default occurs when (i) any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; (ii) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; (iii) any Party repudiates, breaches or fails to perform any covenant, material term or provision in this Agreement; (iv) an event required to occur does not occur by the time required; or (v) any Party misrepresents a material fact, or omits to state a material fact, for the purpose of inducing another Party to act or which is relied on by another Party in deciding a course of action during the administration of this Agreement.

¶3.05.B. Notice and right to cure. In the event of the default, the non-defaulting Party shall provide notice and the defaulting Party shall have THIRTY DAYS or such other time frame agreed upon between the Parties from the date that the notice is deemed given to cure the default.

### **§3.06 Remedies.**

¶3.06.A. Remedies by County: In the event of a default by Developer, County may (i) terminate this Agreement; (ii) suspend any counter-performance due hereunder; and/or (iii) bring an action for damages or injunctive relief; or (iv) pursue any other remedy specifically provided in this Agreement or afforded by law.

¶3.06.B Remedies by Developer. In the event of a default by County, Developer may (i) suspend any counter performance due hereunder; (ii) terminate this Agreement; (iii) bring an action for damages or injunctive relief; or (iv) pursue any other remedy specifically provided in this Agreement or by law. Any election by Developer under this Paragraph 3.06B shall not affect the right of Developer to recover funds expended on Park improvements.

¶3.06.C. Remedies cumulative. All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity. The election of any remedy does not constitute a waiver of any other remedy.

**§3.07 Waivers.** Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving Party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

## **Art 4. GENERAL TERMS**

**§4.01 Assignment and Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and any assignees or delegates if the assignment or delegation is permitted and the assignee assumes all obligations under this Agreement as to the property transferred to the assignee. Unless otherwise specifically identified in this Agreement, there are no third party beneficiaries intended by this Agreement and no third parties have any standing to enforce any of the provisions of this agreement.

### **§4.02 Notices; when deemed sufficiently given**

¶4.02.A. Formal notices, demands and communications between the Parties must be in writing and must be sent to the addresses stated in Article 1 above, or to any address or number subsequently communicated to the sending party in writing, and copies must also be delivered to:

For notices to County:

Washoe County  
C/O Regional Parks and Open Space  
1001 E. 9<sup>th</sup> Street  
Reno, NV 89512

For notices to Developer:

JC Blackstone, LLC  
Attn: KDH Builders  
5400 Equity Avenue  
Reno, Nevada 89502

¶4.02.B Notices to successors shall be made either to the addresses on file with County or to the resident agents on record with the Nevada Secretary of State.

¶4.02.C. If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt, whichever is earlier.

¶4.02.D If notice is sent by courier, or overnight delivery service (Federal Express, UPS Overnight, U.S. Postal Priority Mail), it will be deemed sufficiently given when delivered to the address as indicated in the records of the courier or service.

**§4.03 Further documents** Each Party agrees to honor any reasonable requests by the other Party to complete, execute and deliver any document necessary to accomplish the purposes hereof at the expense of the requesting party.

**§4.04 Approvals not to be unreasonably withheld** Unless otherwise specified (such as with the words "sole discretion") wherever this Agreement requires the approval of a party, or any of a party's officers, agents or employees, such approval shall not be unreasonably withheld.

**§4.05 Attorney's fees & costs.** The prevailing party in any dispute concerning this Agreement shall be entitled to reasonable attorney's fees and costs.

**§4.06 Timing provisions.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays, and state or national holidays, unless the period of time specifies business days, provided that if the date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

**§4.07 Applicable law; jurisdiction and venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada and venue for any such action shall be in Washoe County, Nevada.

**§4.08 Severability**

¶4.08.A. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be upon agreement of the parties. If any term or provision of this Agreement or the

application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement and the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

¶4.08.B To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

#### **§4.09 Construction of Agreement.**

¶4.09.A Titles and headlines of this Agreement are intended for editorial convenience and are not to be construed as a part of this Agreement.

¶4.09.B The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.”

¶4.09.C Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural.

¶4.09.D The Parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding interpretation of terms, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman.

**§4.10 Modifications and Amendments.** This Agreement may not be modified, amended, altered or changed in any respect whatsoever except by further agreement in writing, duly executed by the Parties.

**§4.11 Authority to execute.** Each person who signs this Agreement below warrants and represents that he or she has the legal capacity to enter into this Agreement and if signing in a representative capacity, has the actual authority to bind the principal for which he or she signs and that his or her signature has the effect of binding the principal.

#### **§4.12 Entire Agreement; Attachments; recording**

¶4.12.A This Agreement (together with attachments and documents incorporated by reference) contains the entire agreement between the Parties hereto and supersedes any and all prior agreements, negotiations, arrangements or understandings regarding the same subject matter as this Agreement, which are null and void.



¶4.12.B. All attachments hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

¶4.12.C This Agreement shall not be recorded, but either party may cause a memorandum of this Agreement to be filed stating the names of the parties, date of the Agreement, property description, and the general nature of the terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto or a representative or either have set their hands and subscribed their signatures as of the date and year indicated, but with the effective date indicated above.

JC Blackstone, LLC, a Nevada limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_,  
Manager

STATE OF NEVADA        )  
                                          ) SS  
COUNTY OF WASHOE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared before me a Notary Public, \_\_\_\_\_ of JC Blackstone, LLC, a Nevada limited liability company, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledge to me that he executed the instrument.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**Washoe County**

\_\_\_\_\_  
Chair,  
Washoe County Commission

**Attest:**

\_\_\_\_\_  
Washoe County Clerk