

# NYE COUNTY AGENDA INFORMATION FORM

Action     Presentation     Presentation & Action

<b>Department:</b> Planning		<b>Agenda Date:</b>	
<b>Category:</b> Timed Agenda Item – 10:00 a.m.		November 16, 2020	
<b>Contact:</b> Brett Waggoner		Phone: 775-751-4249	Continued from meeting of:
<b>Return to:</b> Brett Waggoner	<b>Location:</b> Pahrump Planning		Phone:
<b>Action requested:</b> (Include what, with whom, when, where, why, how much (\$) and terms)			
Public Hearing, discussion and deliberation to adopt, amend and adopt, or reject Nye County Bill No. 2020-15: A Bill proposing to approve a Development Agreement between Nye County and Pahrump Lands, LLC; and Providing for the Severability, Constitutionality and Effective Date Thereof, and other matters properly relating thereto.			
<b>Complete description of requested action:</b> (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)			
If adopted staff recommends an effective date of December 7, 2020.			
<b>Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.</b>			
<b>Expenditure Impact by FY(s):</b> (Provide detail on Financial Form)			
<input checked="" type="checkbox"/> No financial impact			

## Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Verified by MG Date 11-09-20
4.	Date	9. Finance	Date N/A
5.	Date	10. County Manager	<input checked="" type="checkbox"/> Place on Agenda

MG  
ITEM # 11

BILL NO. 2020-15

NYE COUNTY ORDINANCE NO. \_\_\_\_

**SUMMARY:** A Bill proposing to approve a Development Agreement between Nye County and Pahrump Lands, LLC.

**TITLE:** A BILL PROPOSING TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND PAHRUMP LANDS, LLC; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF NYE, STATE OF NEVADA, DOES HEREBY ORDAIN:

1. In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes and Chapter 16.32 of the Nye County Code, a development agreement for Pahrump Lands, LLC, attached hereto, located within the Pahrump Regional Planning District, is hereby approved.
2. **Severability.** If any provision of this Ordinance or amendments thereto, or the application thereof to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of this Ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance and amendments thereto are declared to be severable.
3. **Constitutionality.** If any section, clause or phrase of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this Ordinance shall continue in full force and effect.
4. **Effective Date.** This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 7<sup>th</sup> day of December, 2020.

Proposed on the \_\_\_\_ day of \_\_\_\_\_ 2020.

Proposed by Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

Attest:

---

John Koenig, Chairman  
Nye County Board of  
County Commissioners

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Sandra L. Merlino  
Nye County Clerk and Ex-Officio  
Clerk of the Board

DRAY

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**NYE COUNTY, STATE OF NEVADA**

**AND**

**PAHRUMP LANDS LLC**

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This Development Agreement (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20052020 by and between the County of Nye, State of Nevada (hereinafter the “County”) and \_\_\_\_\_ (hereinafter “”), Pahrump Lands, LLC, a Nevada limited liability company (“Developer”), as the owner of certain real property properties located at \_\_\_\_\_, as commonly known as “\_\_\_\_\_” 351 and more particularly 201 W. Basin Avenue and 150 S. Blagg Road, Pahrump, Nevada, described and shown on Exhibit “A” attached hereto and incorporated herein by reference and further identified as County Assessor’s Parcel Numbers \_\_\_\_\_ (035-331-02, 035-331-68, and 035-331-70 (collectively, the “Property”).

## RECITAL OF PREMISES, PURPOSE AND INTENT

A. A. Developer owns ~~that certain real property described and shown on Exhibit “A” attached hereto and incorporated herein by reference (hereinafter the “Property”) containing, which consists of approximately 70 acres of land, which~~ is the subject of this Agreement. The Property may be expanded, as provided for herein, to include certain other adjacent properties as allowed hereunder and approved by the County.

B. B. The County has authority, pursuant to NRS Chapter 278.0201 to 278.0207 and ~~Nye County~~ Nye County Code, Chapter 16.32, to enter into development agreements with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

C. C. All preliminary processing with regard to this Agreement has been duly completed in conformance with all applicable laws, rules and regulations. The Nye County Board of County Commissioners (hereinafter “BoCC”), having given notice as required by law, held a public hearing on ~~-~~Developer’s application seeking approval of the form of this Agreement and the execution hereof by the BoCC. At that hearing, the BoCC found that this Agreement is consistent with the County’s plans, policies and regulations, including the Pahrump Regional Planning District Master Plan (the “Master Plan”), and that the execution of this Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. D. On the \_\_\_\_\_ day of \_\_\_\_\_, 20062020 the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_\_\_ day of \_\_\_\_\_, 20062020. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

E. E. The County desires to enter into this Agreement in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law and this Agreement, to provide for public services, as limited to and further defined within specific ~~exhibits~~Exhibits attached hereafter, to further the goals and values of the County’s Master Plan, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, and to otherwise achieve

the goals and purposes for which the laws governing development agreements were enacted. The conditions stated in this Agreement will reasonably mitigate the impacts that the development of the Property will have on the citizens of the Pahrump Regional Planning District. The County finds and determines that the conditions of this Agreement were not an inducement for the rezoning of the Property or to any other land use decision relating to the Property.

F. The County finds and determines, and the Developer agrees, that the conditions established in this agreement are unique to the Proposed Development (as defined in this agreement) and were negotiated at arms length between the County and the Developer, and that the conditions of this Agreement have no binding or precedential effect with regard to future development agreements in the County, and cannot be relied upon by the parties to this Agreement, or future applicants for rezoning, subdivision plat, or other land use approvals in other Development Agreements.

This Agreement is consistent with and will implement the goals and objectives of the County Code, Titles 16 and 17, and the Master Plan.

NOW THEREFORE, for and in consideration of the foregoing ~~recitals~~Recitals and of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

## **SECTION 1. DEFINITIONS.**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

“Affiliate” means an entity, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

“Agreement” has the meaning assigned to it in the first paragraph hereof, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

“Applicable Rules” means and refers to:

1. The Zoning Action (defined below);
1. 2. The following provisions of the Nye County Code.

Nye County Code, Title 15, Chapters 15.12 (Flood Damage Prevention), 15.16 (Uniform Construction Codes within the Pahrump Regional Planning District) and 15.20 (Board of Building and Safety Appeals, Pahrump Regional Planning District) as may be amended at any time during the effective date of this agreement by building codes that apply uniformly throughout the Pahrump Regional Planning ~~Distret~~District, and

Title 16, and

Title 17, Chapter 17.04, and

2. ~~3.~~ This Agreement.

The term "Applicable Rules" does not include:

1. ~~1.~~ Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than the County;
2. ~~2.~~ Any fee or monetary payment not governed by this Agreement and prescribed by County ordinance which is uniformly applied to all development and construction subject to the County's jurisdiction, including any increase of fees or monetary payments that are cost based and uniformly applied to all development and construction within the County or a designated service area. This Definition does not preclude the County obtaining full cost recovery for any cost based services or infrastructure that are based on variables such as inflation, construction and consumer price indexing to the extent permitted by Nevada or federal law; or
3. ~~3.~~ Any applicable state or federal law or regulation.

"BoCC" means the Board of County Commissioners.

"Code" means the Nye County Code, as amended by Nye County Ordinances and Resolutions adopted by the BoCC, and including all rules, regulations, standards, criteria, manuals and other references adopted therein.

"County" means the County of Nye, State of Nevada, together with its successors and assigns.

"Developer" means ~~the~~ Pahrump Lands LLC, a Nevada limited liability company, as the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 12.1 of this Agreement.

"District" means ~~Nye County School District~~.

"Discretionary Approval" means an approval that involves the exercise of significant and extensive factual or legal judgment by the County. -Without limiting the generality of this definition, the following types of approvals are considered "discretionary approvals": zone changes, conditional use permits, Master Plan amendments, planned unit developments, special exceptions, waivers, variances, site plans or site development plans, and tentative and final maps.

"District" means Nye County School District.

"Effective Date" means the effective date of an ordinance adopted by the BoCC that approves the execution of this Agreement.

"Engineering Standards" means those standards adopted by the County for the design of roads,

drainage, and other infrastructure, as may be amended from time to time. The Engineering Standards are currently set forth in the "Guidelines for Design and Review of Development Engineering Submissions," pursuant to Nye County Resolution 2005-02.

~~"HOA" means any homeowners' association established within the Proposed Development properly formed and operated in accordance with the provisions of NRS Chapter 116.~~

"Impact Fee" means a charge or fee imposed by the County with respect to new development to finance the costs of a capital improvement or facility expansion necessitated by and attributable to new development. The term does not include expenses required to complete any capital improvements identified and subsequently approved by the Director of Public Works in any studies that are required of the Developer by the County under the ~~Zoning Action~~Land Use or under this Agreement.

"Improvement District" means an entity (other than a township, city or county) organized under Nevada law in which tracts are assessed fees, taxes, special assessments, rates, tolls, charges (including, but not limited to, service charges, standby service charges, charges for the availability of service, annexation charges, or minimum charges) for the construction or maintenance of public improvements. An "improvement district" includes any local improvement district or general improvement district organized or reorganized under NRS Chapters 271, 309, or 318, or any district for the maintenance of roads created organized pursuant to NRS Chapter 320.

"Land Use Application" means any application seeking any approval authorized or required by Title 16 of the Code.

"Master Plan" means the Pahrump Regional Planning District Master Plan Update dated ~~November 19, 2003~~June 7, 2011, as may be amended from time to time.

"Master Traffic Impact Analysis" means a comprehensive traffic study to be prepared in conformance with the ~~Zoning Action~~Land Use and will be required to be approved ~~as along with the approval of the effective date~~first phase of development of this ~~Agreement, as amended or conditioned project~~ and finally approved by the County. ~~The Master Traffic Impact Analysis is attached to this Agreement as Exhibit "B" and is incorporated herein and made a part of this Agreement by this reference.~~

"Merchant Builder" means a commercial developer, homebuilder, apartment developer or other owner of real property within ~~the Proposed~~the Proposed Development that is designated by the Developer, in writing, as authorized to submit Land Use ~~Applitions~~Applications to the County.

"NRS" means the Nevada Revised Statutes.

"Nye County School Board" means the board of trustees for the Nye County School District, as established by NRS chapter 386.

"Pahrump Town Board" means the agency established and charged with various legislative powers governing the Town of Pahrump pursuant to NRS Chapter 269, and in particular NRS § 269.155.

~~"Proposed Development" means all property and development within the boundaries of the~~

subdivision map, as shown on Exhibit C.

“Planning Department” means the Planning and Development Department of the County.

“Planning Director” means the Director of the County’s Planning and Development Department or his designee(s).

“POA” means any property owners’ association established within the Proposed Development properly formed and operated in accordance with Nevada law, including, if applicable, the provisions of NRS Chapter 116.

“Project Transportation Improvements” means street improvements, within the boundaries of the Proposed Development and adjacent to the boundaries of the Proposed Development that are identified in the Master Traffic Impact Analysis as necessary to provide egress and ingress to and from the Proposed Development to existing public roads and to mitigate the traffic impacts of the Proposed Development.

“Property” means that certain real property as described on Exhibit “A” and any approved additions of adjacent property to the Property.

“Proposed Development” means all property and development within the boundaries of the Tentative Subdivision Map, as shown on Exhibit “B”.

“Public Works Director” or “Director of Public Works” means the Director of the County’s Department of Public Works or their designee(s).

“Residential Development” means any proposed development identified in the Proposed Development as compatible with zoning district as established in the Zoning Ordinance, § Title 17, Article III, of the Nye County Code as it refers to Residential Development.

“Subdivision Map” means any instrument under NRS 278 and Title 16 of the Code which legally subdivides property or gives the right to legally subdivide property, including, without limitation, parcel maps, division of land into large parcels, tentative commercial subdivision maps, final commercial subdivision maps, reversionary maps, condominium subdivision maps, or tentative or final residential subdivision maps, for all or a portion of the Proposed Development.

“Technical Drainage Study” means a study prepared in conformance with the Zoning Action Land Use, as amended or conditioned and approved by the Director of Public Works.

“Township” shall mean the unincorporated Township of Pahrump and its successors and assigns as a separate political subdivision within the County.

“Uniform” means applicable throughout the County or the Pahrump Regional Planning District.

“Unit Fee” means a voluntary contribution by the Developer and its successors or assigns per designated increment of development, designed to mitigate the impacts of the development. A unit fee may be applied as provided in this Agreement. If this Agreement is silent about the application of a unit fee, the unit fee may be applied in any manner chosen by the Nye County

Commission in its sole discretion.

~~"Zoning Action" means the date and action taken by the BoCC with respect to (application numbers), together with all applicable conditions, and any subsequent approvals by the County that amend or revise the action taken by the BoCC with respect to (application numbers).~~

"Zoning Ordinance" means the Zoning Ordinance of the Pahrump Regional Planning District, County Code Title 17.

## **SECTION 2. GENERAL PURPOSE AND INTENT.**

This Agreement is predicated upon the following facts and findings:

**2.1 County Intent.** The County desires to enter into this Agreement in conformity with the requirements of NRS 278.0201 and as otherwise permitted by law and this Agreement to provide for public services, public uses and urban infrastructure, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Proposed Development and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, to reasonably mitigate the impacts that the development of the Property will have on the citizens and lands of the Pahrump Regional Planning District, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

**2.2 Developer Intent.** In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. Based upon the nature of the Proposed Development, the type and extent of the public improvements and infrastructure to the Proposed Development to be provided by Developer, and the type and extent of the public and private improvements to be provided within the Proposed Development, the Developer's decision to commence development of the Proposed Development is based on expectations of proceeding and the right to proceed with the Proposed Development in accordance with this Agreement, and the Applicable Rules and the Zoning Action. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer agrees without protest to the requirements, limitations, or conditions imposed by the Agreement and the Zoning Action.

**2.3 Incorporation of Recitals.** The foregoing ~~recitals~~Recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

## **SECTION 3. GENERAL PROVISIONS.**

### **3.1 Binding Agreement.**

— This Agreement shall run with the land described in Exhibit “A” of this Agreement and shall be binding on and inure to the benefit of the parties hereto and their successors and assigns, including any future and subsequent purchasers.

**3.2 Reliance on ~~Zoning Action~~Land Use and Applicable Rules.**— The County and Developer agree that Developer will be permitted to carry out and complete the entire Proposed Development in accordance with the uses and densities approved ~~by~~with the ~~Zoning Action~~Tentative Map and in accordance with this Agreement, the Applicable Rules, and the ~~existing NC~~ zoning district development standards—and Section 3.3 below.

**3.3 Modification of Applicable Rules.**— The County and Developer acknowledge and agree that the ~~Zoning Action~~Tentative Map approval is specific to the Proposed Development and may not be amended, modified or changed with respect to the Proposed Development without the express written consent of Developer and ~~County, except as otherwise explicitly provided in this Agreement.~~ ~~the County, except as otherwise explicitly provided in this Agreement.~~ It is recognized by both the County and Developer, and hereby allowed by this Agreement, that there may be certain retailers and/or end users that require much larger and/or different building configurations than what is shown on the Tentative Map initially included in this Agreement. Unless the alternate size and/or configuration unreasonably affects the overall densities, traffic and parking capacities, or drainage conditions, these alterations will be considered “nonmaterial modifications” as defined in Section 4.3.

In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to Developer or to the development of the Proposed Development for the duration of this Agreement, except in those limited circumstances provided below.

### **3.4 Application of Subsequently Enacted Rules.**

— Except as provided below, no standard, policy, resolution or regulation regarding subdivision, land use, zoning, growth management, timing and phasing of construction, or construction methods shall be imposed by the County upon the Proposed Development, except those in effect at the time of the ~~Zoning Action~~Tentative Map approval. County may hereafter, during the term of this Agreement, apply to the Proposed Development only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after this Effective Date that:

- (a) — ~~(a)~~ are not in conflict with the Applicable Rules; or
- (b) — ~~(b)~~ that are permitted by ~~subsection~~Section 3.5, below.

### **3.5 Imposition of New Fees or Standards.**

— Notwithstanding the terms of Section 3.3, above:

- (a) — ~~(a)~~ The Proposed Development is subject to all of the following regulations,

fees, or other requirements in effect now or in the future:

- (1) ~~(1)~~ uniform cost-based fees subject to any credits or offsets required by the fee ordinances or Nevada law; and
- (2) ~~(2)~~ all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
- (3) ~~(3)~~ uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
- (4) ~~(4)~~ uniform estimated costs for completing required public improvements that are used to calculate costs for subdivision improvement agreements, maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and
- (5) ~~(5)~~ uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the ~~Pahrump~~Pahrump Regional Planning District or the County to all substantially similar types of development projects and properties; and
- (6) ~~(6)~~ uniform impact fees adopted by the BoCC, applied to vertical Building Permit applications only, except as provided in Section 8 of this Agreement; and
- (7) ~~(7)~~ the Engineering Standards; and
- (8) ~~(8)~~ uniform laws and regulations that are reasonably necessary to protect the public health, safety or welfare; and
- (9) ~~(9)~~ new or changed County ordinances, regulations, plans or policies specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of ~~Section~~Sections 3.5 through~~and~~ 3.6 of this Agreement are applicable.

(b) ~~(b)~~ Notwithstanding the foregoing, should the County adopt or amend new ordinances, rules, regulations or policies that exceed the limitations of the foregoing Section 3.2, the County may provide written notice to Developer within thirty (30)

days of adoption or amendment of the same to allow Developer sufficient time to conduct due diligence. If the County provides the above stated notice, Developer may accept or not accept such new or amended matters by giving written notice. If Developer fails to give such written notice within thirty (30) days of receipt of notice by the County, such ordinances, rules, regulations or policies are deemed accepted by the Developer. The County and Developer may execute an amendment to this Agreement evidencing Developer's acceptance of any new or amended ordinance, rule, regulation or policy.

### **3.6 Conflicting Federal or State Rules.**

In the event that any conflicting federal or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, this Agreement shall remain in full force and effect as to those provisions not affected.

### **3.7 Cooperation in Performance.**

The parties hereto agree to cooperate with each other in good faith and to take such additional actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate, to fully effectuate and carry out the terms, provisions, purposes and intent of this Agreement. Notwithstanding the foregoing, OwnerDeveloper shall not have a guaranteed right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from OwnerDeveloper.

### **3.8 Assignment.**

(a) .

(a) Developer shall not sell, transfer, ground lease or assign the Subject Property or this Agreement in whole or in part to any person, affiliate, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") without the written consent of the County. Said written consent will not be unreasonably withheld by the County.

(b) (b) The With respect to any assignment under Section 3.8(a), the Assignee shall assume in writing all obligations of Developer hereunder, and provide substitute security in a form and an amount acceptable to the County for any security previously provided by Developer in compliance with the Code, if any. for said assigned portion.

(c) (c) The Assignee shall assume all duties and obligations of Developer.

(d) (d) The County reserves the right to require documentation of the financial stability of any Assignee prior to the closing of the transaction. The County has the right to approve, approve with conditions, or disapprove such transfer in order to ensure that the Transferee has the same ability to fulfill the obligations of this

Agreement as ~~the~~ Developer.

(e) ~~(e)~~ Except as expressly provided herein, no assignment or transfer of any portion of the Proposed Development shall relieve Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement. The County may, in its sole discretion, release ~~the~~ Developer of one or more of such obligations in ~~a~~ writing agreed to and executed by the County.

(f) ~~(f)~~ This ~~subsection~~ Section 3.8 shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against sub-divided parcels ~~of real property~~ within the Property.

(g) ~~(g)~~ Subject to ~~subsection~~ Subsections 3.8(a) through (f) above, Developer has full discretion and authority to transfer, assign or encumber the Proposed Development or portions thereof, in connection with financing transactions that are related to the ~~Subject~~ Property, without the permission of or notice to ~~the~~ County. All such financing transactions shall be subject to the terms and conditions of this Agreement.

### **3.9 Amendment of Agreement:**

Except as otherwise permitted by NRS Chapter 278 and this Agreement, this Agreement may be amended from time to time, but only upon the mutual written consent of the parties hereto. ~~All~~ Any ~~amendments that have less than a 10% affect on any factors such as traffic count, density, drainage quantities, etc., may be approved administratively by the Planning Director. All other~~ proposed amendments shall be considered solely by the BoCC for adoption or rejection, provided however that the BoCC reserves the right to require ~~the~~ Developer to consult with the Pahrump Town Board and/or the Nye County School Board if a proposed amendment would, in the BoCC's opinion materially affect either of those entities.

### **3.10 Indemnity; Hold Harmless:**

Except as expressly provided in this Agreement, Developer shall hold the County, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct operations of Developer or those of its agents, employees, which relate to the development of the Proposed Development. Developer agrees to and shall defend the County and its officers, agents, employees, and representatives from actions for damages caused by reason of Developer's activities in connection with the development of the Proposed Development. Developer agrees to indemnify, hold harmless, and provide and pay all costs, attorneys fees, and damages related to a defense for the County in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section 3.10 shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the County, its officers, agent, employees, or representatives.

### **3.11 Binding Effect of Agreement.**

       The burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties' respective successors in interest and the Property which is the subject of this Agreement.

### **3.12 Relationship of Parties.**

       It is understood that the contractual relationship between the County and Developer is such that Developer is not an agent of the County for any purpose and the County is not an agent of Developer for any purpose.

### **3.13 Entire Agreement.**

       This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all of any part of the subject matter hereof.

### **3.14 Waivers.**

       All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the County and/or Developer, as the case may be.

### **3.15 Recording; Amendments.**

       Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Nye County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of the County and Developer in a form suitable for recordation in the Official Records of Nye County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the County and Developer and shall be recorded in the Official Records of Nye County, Nevada.

The Clerk of the Nye County Commission must record any agreement with a federal, state or local agency that is executed in full or partial fulfillment of any requirement of this Agreement, within a reasonable time after approval of the agreement, with the County Recorder. The applicant shall provide a true, signed original agreement to the Clerk of the Nye County Commission for this purpose.

### **3.16 Headings; Exhibits; Cross References.**

       The ~~recitals~~Recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All ~~exhibits~~Exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an ~~exhibit~~Exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such ~~exhibit~~Exhibit. All references in this Agreement to sections and exhibits shall be to ~~sections~~Sections and ~~exhibits~~Exhibits to this

Agreement, unless otherwise specified.

### **3.17 Sales and Use Tax**

To the extent allowed under applicable laws, Developer shall accept, and shall require Merchant Builders to accept, delivery of all construction and related materials within the boundaries of the ~~Proposed Development~~ [County](#).

## **SECTION 4. PLANNING, DEVELOPMENT AND MAINTENANCE OF THE PROPOSED DEVELOPMENT.**

### **4.1 Permitted Uses, Density, Height and Size of Structures.**

Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the ~~land~~[Property](#). The County agrees that the Proposed Development may be developed to the density and with the land uses and development standards set forth in the ~~the~~ [applicable](#) zoning classification under § 17.04. ~~the~~ of the Code, as otherwise limited or conditioned pursuant to the BoCC approval of the ~~Zoning Action~~[Land Use](#).

It is recognized by both the County and Developer, and hereby allowed by this Agreement, that there may be certain retailers and/or end users that require much larger and/or different building configurations than what is shown on the Tentative Map initially included in this Agreement. Unless this alternate size and/or configuration unreasonably affects the overall densities, traffic and parking capacities, or drainage conditions, these alterations will be considered “nonmaterial modifications” as defined in Section 4.3.

### **4.2 Effect of Amendments.**

The County acknowledges that Developer is anticipating that the entire Property will be developed in accordance with Nye County Code, Chapter 17.04 development standards provided for pursuant to the applicable zoning district ~~the~~, with any future amendments thereto, provided however, that the Proposed Development shall be developed in accordance with the Applicable Rules as set forth herein.

### **4.3 Modifications to Subdivision Map.**

Developer shall have the right to have nonmaterial modifications to the Proposed Development reviewed and acted upon administratively by the Planning Director.

(a) ~~(a)~~—A nonmaterial modification is a modification requested by ~~the~~ Developer that:

(1) ~~(1)~~—meets or exceeds the requirements and intent of the ~~the~~ [applicable](#) zoning district development standards ~~the~~ and

(2) ~~(2)~~—does not decrease the amount of open space provided ~~by more than~~

10%; and

(3) (3) does not increase the amount of land area covered by this Agreement; ~~and which may include certain adjacent properties added by Developer as allowed and approved by Nye County to become a part of this Agreement; and~~

(4) (4) does not ~~involve~~ require BoCC approval under the Applicable Rules for a ~~relocation of~~ new land use classifications (e.g., residential, commercial, industrial); and ~~classification~~

(b) A nonmaterial modification includes any rearrangement of the internal street pattern that ~~increases~~promotes the efficiency of traffic patterns, ~~increases~~promotes the efficiency of utility services, and improves drainage patterns, as determined by the Planning Director after consultation with the Nye County Department of Public Works.

(c) A non-material modification includes any rearrangement or modification of the location of an approved use with the Proposed Project and construction of any applicable Off-Site Improvements applicable to the modified phase of development, as provided in Section 6.7(c).

(d) A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within thirty (30) days. If Developer is aggrieved by the ~~Director's decisions~~Director's decision, Developer may appeal that decision in accordance with § 16.36.080.E of the Code.

(e) A material modification includes any modification that does not qualify as a nonmaterial modification, and shall be processed as an amendment to this Agreement.

#### 4.4 Subdivision Maps:

(a) :

(a) Except as provided in ~~subsection Subsection 4.4(b) of this section~~, the ~~Parties~~parties agree that any Subdivision Maps required or requested by Developer or ~~a~~ Merchant Builder in connection with the Proposed Development shall be reviewed and considered for approval in accordance with the Applicable Rules.

(b) (b) The County agrees to accept and timely process all ~~subdivision maps~~Subdivision Maps requested by ~~the~~ Developer in accordance with the Applicable Rules. Developer agrees that ~~the~~ County may require one or more of the following prior to the recordation of a ~~final map~~Final Map:

(1) (1) County approval of any material amendment to the Master Traffic Impact Analysis; and

(2) ~~Copy of any required Environmental Report for the Property; and~~

(2) (3) ~~County approval of and conformance to the existing approved Technical Drainage Study; and~~

(3) (4) ~~Land dedications and Developer's execution of subdivision improvement, maintenance and warranty agreements with the County to assure such development; and~~

(4) (5) ~~BoCC approval of a resolution or similar statement indicating the County's intent to create a Improvement District to develop infrastructure in the Proposed Development, or in the absence thereof, land dedications and Developer's execution of the County's standard Design and Review Guidelines to assure such development. Nothing in this Agreement requires the County to approve an Improvement District.~~

#### 4.5 Maintenance of Public and Common Areas

(a) :

(a) The County hereby agrees that, except for any sidewalks, landscaped areas, landscape appurtenances, and street lights constructed at the option of Developer, located inside ~~the~~ public ~~right~~rights-of-way, all of the dedicated public roadways and curbs which are within or adjacent to the Proposed Development will be maintained by the County as required by law. All landscaping and street lighting within the public rights-of-way within or adjacent to the Proposed Development shall be privately maintained by ~~HOA~~the POA in accordance with ~~NRS Chapter 116 requirements~~Nevada law and the declarations recorded against the Proposed Development providing certain standards and regulations relating to, but not limited to, reserve accounts and liability insurance. Appropriate encroachment agreements shall be entered for all such landscaping.

(b) (b) Developer and any Merchant Builder shall maintain, in good repair and condition, ~~all privately maintained on-site improvements, in accordance with the requirements of NRS Chapter 116~~Nevada law and the declarations affecting the Property until such time as the ~~HOA~~POA assumes responsibility for the same and Developer no longer retains control of the Board of Directors of the ~~HOA~~. ~~HOA~~POA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of ~~NRS Chapter 116~~Nevada law and the declarations affecting the Property.

(c) (e) Developer and any Merchant Builder agrees that prior to the release of any ~~final maps~~Final Map for recording, Developer will cause to be formed one or more ~~homeowner's associations~~POA's within the Proposed Development. With respect to any ~~final map~~Final Map, Developer will cause the formation of a master association governing the ~~property~~Property incorporated in the ~~map~~Final Map. Such ~~associations~~POA's will be responsible to maintain in good condition and

repair all of the landscaping and other facilities which the County requires to be maintained by such ~~associations~~POA's as a condition of approval, including all developed and undeveloped landscaped areas such as parks and park facilities, trail corridors, drainage easements, sight visibility zones, and any landscaping on public rights of way. Developer agrees that such ~~homeowner's association~~POA's shall be created pursuant to declarations of covenants and restrictions recorded against the applicable portions of the Proposed Development and that such ~~association~~POA's shall have the power to assess the subject landowners to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Developer further agrees that such declarations will contain a covenant running to the benefit of the County, and enforceable by the County, that such facilities will be maintained in good condition and repair. Such ~~associations~~POA's will be Nevada not-for-profit corporations with a board of directors elected by the subject landowners, provided, however, that so long as Developer owns any land covered by such declarations, Developer may control the board of directors of such ~~association~~POA's.

(d) ~~(d)~~ The master declaration must be executed and recorded with the ~~offiee~~Office of the Nye County Recorder, concurrently with (or promptly following) the recording of ~~any final map~~the Proposed Development's Final Map, in a manner acceptable to the County and must include the following provisions:

- (1) ~~(1)~~ a Maintenance Plan (outlined in Section 4.6 below); and
- (2) ~~(2)~~ must indicate that the Maintenance Plan cannot be materially amended by the board of directors of the ~~association~~master POA without the written consent of the County; and
- (3) ~~(3)~~ must provide that the master declaration cannot be ~~exercised or~~ amended in any manner that would defeat or materially alter the Maintenance Plan; and
- (4) ~~(4)~~ must provide that in the event the ~~homeowner's association~~master POA fails to maintain the improvements in accordance with the provisions of the Maintenance Plan, the County may exercise its rights under the Master (or other) declaration, including the right of the County to levy assessments on the property owners for cost incurred by the County in maintaining the improvements, which assessments shall constitute liens against the land and the individual lots within the subdivision which may be executed upon and have the same priority as liens for real estate taxes.

(e) ~~(e)~~ The County shall have the right to review the master declaration for the sole purpose of determining its compliance with the provisions of this Section 4. Such review shall be performed by ~~by~~ County within a reasonable time so as to not delay the recording of the Final Map.

#### 4.6 Maintenance Plan.

(a)

(a) The master declaration will provide for a plan of maintenance of such improvements ("Maintenance Plan").

(b) ~~(b)~~ The ~~Maintenance Plan~~ must be:

(1) ~~(1)~~ adopted by the ~~HOA~~master POA; and

(2) ~~(2)~~ reviewed for compliance with applicable laws by the County District Attorney's office; and

(3) ~~(3)~~ reviewed by the Director of Planning; and

(4) ~~(4)~~ if the ~~Mainteance~~Maintenance Plan involves the maintenance of improvements abutting or within the public rights of way, reviewed by the Director of Public Works.

(c) ~~(c)~~ The County and ~~HOA~~master POA may modify such standards as they from time to time agree.

#### **4.7 Additional Property.**

Developer may not include property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. Said approval shall be solely in the discretion of the BoCC. If Developer requests additional property to be included, the BoCC must reconsider additional impacts of the proposed additional development and must ensure that all impacts are appropriately mitigated through Developer contributions, impact fees, and any other allowable revenue source. Furthermore, the BoCC reserves the right to adjust the terms of this Agreement as a condition for allowing the addition of property to this Agreement.

#### **4.8 Phasing Schedule.**

~~(a) In accordance with this section, the Developer is proposing a phasing schedule to give notice to the County its intent to Phase the Proposed Development.~~

~~(b) The number of dwelling units or non-residential floor area shall not exceed the maximum number permitted for any time period as established in the phasing schedule, except that:~~

~~(1) any unused increment of development during any time period established in the phasing schedule may be applied to the next or subsequent periods of the phasing schedule; and~~

~~(2) the BoCC may approve additional dwelling units or non-residential floor area during any time period if it finds, in its sole discretion, that there are adequate public facilities and services to accommodate the additional~~

development.

(3) ~~Developer shall provide a quarterly report of the construction that has been completed to the Planning Director. The report may include a summary of activity for the previous quarter and projections for the next quarter.~~

Phasing schedule for \_\_\_\_\_ subdivision

Unit	Number of Units	Year	Construction of Offsite Infrastructure

## SECTION 5 REVIEW AND DEFAULT

### 5.1 Frequency of Reviews; ~~Biennial Review~~

Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may request, pursuant to written notice to Developer, to review the development at least once every twenty-four (24forty-eight (48) months during the term of this Agreement. In the event the BoCC provides such notice, Developer shall have thirty (30ninety (90) days to provide a written report to the BoCC containing the reporting requirements stated below.

Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation: (i) data showing the total number of acres and/or commercial/residential units built and approved on the date of the report; (ii) specific densities within each project and within the Proposed Development as a whole; and (iii) the status of development within the Proposed Development and the anticipated phases of development for the next calendar year. In the event Developer fails to submit such a report, Developer shall be in default of this Agreement. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford reasonable time for response, however, not less than forty-five (45) days.

### 5.2 Opportunity to be Heard

The report required by this Section 5 shall be considered solely by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. The County and Developer shall each be permitted an opportunity to be heard orally and in writing before the BoCC regarding performance of the parties under this Agreement.

### 5.3 General Provisions-Default

In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other a notice of the noncompliance in writing with not less than thirty (30) days notice of to cure the default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such period shall not be less than the thirty (30) days. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) (a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend to terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the BoCC.
- (b) (b) Amendment or Termination by County. Following consideration of the evidence presented before the BoCC and a finding that a substantial default has occurred by Developer and remains uncorrected, the County may amend or terminate this Agreement. In the event of default by Developer, the County shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of Developer's obligations hereunder under the procedures set forth in this Section 5.3 and Section 5.5. The County also reserves the right to terminate this Agreement and pursue collection and/or performance of any of Developer's obligations that were required by this Agreement up to the point of termination. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Developer, as determined under the Applicable Rules and Nevada Law, existing or received as of the date of the termination and to the extent that Developer has performed its obligations under this Agreement. Developer shall have sixty (60) days after receipt of written notice of termination to institute legal action pursuant to Section 5.5 hereof.
- (c) (c) Termination by Developer. In the event the County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section 5.3. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of the County's obligations hereunder under the procedures set forth in this Section 5.3 and Section 5.5.
- (d) (d) Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or

proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

#### **5.4 Unavoidable Delay, Extension of Time.**

Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than the County) to perform acts or deeds necessary to the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. In addition, nonperformance of a party hereunder shall be excused as a result of the failure of the other party to perform under this Agreement which failure of the other party actually causes such nonperformance. If written notice of any such delay is given to the County within ~~thirty~~<sup>(30)</sup>~~sixty~~<sup>(60)</sup> days after the commencement thereof, an automatic extension of time, unless otherwise objected to by the County within ~~thirty~~<sup>(30)</sup>~~sixty~~<sup>(60)</sup> days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between the County and Developer. Any such extensions of time shall have no effect upon the timing of and the conclusions reached in the reviews to be conducted pursuant to Section 5.1 above.

#### **5.5 Legal Action.**

The County and Developer agree that they would not have entered into this Agreement if either were to be liable for damages under or with respect to this Agreement that would be greater than without this Agreement. Accordingly, the County and Developer may pursue any course of action or equity available for breach, except that neither party shall be liable to the other or to any other person for any monetary damages for a breach of this Agreement that are greater than such damages or liability would have been without this Agreement pursuant to the Applicable Rules. Prior to the institution of any legal action, the party seeking legal action must give the ~~thirty~~<sup>(30)</sup>~~sixty~~<sup>(60)</sup> day notice of default as set forth in Section 5.3. Following such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be overturned or overruled if its decision is clearly arbitrary and capricious. Judicial review of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada- Department 2 (Pahrump).

#### **5.6 Notices.**

All notices required by this Section 5 shall be sent in accordance with Section 9.

#### **5.7 Applicable Laws; Attorneys' Fees.**

This Agreement shall be construed and enforced in accordance with the laws of the State of

Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

## **SECTION 6. INFRASTRUCTURE OBLIGATIONS**

### **6.1 Generally**

(a)

(a) Developer shall provide the infrastructure described in this Section 6.

(b) All bonds, including performance bonds, that are required to provide financial assurance for the provision or maintenance of infrastructure pursuant to this Agreement or the Applicable Rules must be issued by an entity that has at least an AAA rating with A.M. Best obtained by Developer to cover One Hundred and Fifteen percent (115%) of the estimated cost of infrastructure identified by any Master Studies or the County Engineer. For purposes of this subsection, "AAA rating" means a rating or "AAA" or the highest rating of financial stability that is available under the A.M. Best rating system.

### **6.2 Open Space, Parks And Public Facilities**

(a) General. Developer shall design and construct the open space and parks described in For purposes of this Section. All such facilities shall meet the requirements of the Applicable Rules and be available for the nonexclusive use of the residents of the Proposed Agreement, the term "Phase of Development".

(b) Parks. At no cost to the County or Township, Developer shall design, construct and provide access to the approximately \_\_\_\_\_ acres of park and open space identified in the \_\_\_\_\_ Subdivision Map, as depicted in Exhibit C attached hereto.

(c) Each park required by this Section shall include at least the following amenities, unless the requirement is waived by the BoCC: open fields, trees and other plantings, irrigation, picnic areas, jogging and walking paths, and other apparatuses designed to serve the residents" shall mean any portion of the Proposed Development on a non-exclusive basis.

(c) (d) In addition to the amount of open space and park area that is provided by the Developer, the Developer and County agree that Developer shall contribute, to the County for the benefit of the Township, a unit fee in the amount of Three Hundred and Sixty One Dollars (\$361.00) for each building permit issued for a residential unit within the Developer, in its sole discretion, determines to identify and then improve as a distinct component of the overall Proposed Development. The County agrees that this fee is to be used by Township to operate, construct and/or maintain any public parks owned and operated by the Township.

## **6.32 Police Services.**

- (a) ~~Developer shall contribute a unit fee to the County in the amount of One Hundred and Fifty Dollars (\$150.00), upon the issuance of a building permit for each residential unit in the Proposed Development. Any revenue received from these "unit" fees shall be placed in a County's capital expenditures fund for the sole purpose of funding the needs of the Nye County Sheriff's office.~~
- (b) ~~The developer shall construct or contribute to the following, without any credit or offset against impact fees: [INSERT]~~

~~. Other than a cash contribution of \$20,000.00 to be made prior to completion of the final phase of development of the Proposed Project, Developer shall not be required to construct or make any contributions for Police Services other than what is required through normal impact fees.~~

## **6.43 Fire Protection.**

- (a) ~~Other than a cash contribution of \$20,000.00 to be made prior to completion of the final phase of development of the Proposed Project, Developer shall not be required to construct or make any contributions for Fire Protection Services other than what is required through normal impact fees: [INSERT]~~

~~(b) The developer shall construct or contribute to the following, without any credit or offset against contributions for Fire Protection Services other than what is required through normal impact fees: [INSERT]~~

## **6.54 Schools.**

- (a) ~~Developer and Nye County School District acknowledge that Nye County has adopted Resolution No. 2004-32 at the request of the District imposing a residential construction tax (the "Tax") as authorized by NRS 387.331. District and Developer agree that the Tax will be imposed and paid pursuant to Resolution 2004-32, as may be amended from time to time.~~
- (b) ~~The developer shall construct or contribute to the following, without any credit or offset against impact fees: [INSERT]~~

~~. Developer shall not be required to construct or make any contributions for Public School Services other than what is required through normal impact fees.~~

## **6.65. Water.**

The parties acknowledge that the Developer has adequate certificated water rights for the Property and the County ~~currently has, since public water services will be provided by the current water and sanitation district servicing this area as specified in the Tentative Map approval, will assert no role in the allocation of water to people in Pahrump.~~ services.

## **6.76. Sanitary Sewer.**

Developer shall provide~~acknowledges that~~ sanitary sewer system facilities ~~required~~provided by the Zoning Action~~current water and sanitation district as specified in the Tentative Map approval~~. The County has no ~~obligations~~obligations, and is not obligated to pay any financial costs, associated with obtaining the construction or maintenance of sanitary sewer facilities or the acquisition of rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required ~~in this Section~~.

~~IF THE PROPOSED DEVELOPMENT INCLUDES A WASTEWATER TREATMENT FACILITY: ]~~

~~With respect the location, design and operation of the proposed wastewater treatment facility, the Developer shall ensure full compliance with applicable Nevada State laws and regulations, and in particular, the implementation of NAC 445A.285 Locating a Treatment Works and Nevada Division of Environmental Protection WTS-21, in which they state:~~

### Under NAC 445A.285

~~"1. In locating the site for a treatment works, the designer shall attempt to select a site that is not:~~

- ~~(a) Within 984.3 feet (300 meters) of an occupied dwelling or other building.~~
- ~~(b) Within the limits of a 100 year floodplain unless protected from the flood to the satisfaction of the Department.~~
- ~~2. No site may be approved by the Department without having first been approved by local government."~~

### Under NDEP WTS-21

~~"e) The structures may be located within 200 feet but not less than 25 feet away from a major highway, dwelling, or other building whose use is not compatible with wastewater treatment provided that:~~

- ~~1) The air from all structures which are designed to contain sewage, screening, grit, sludge or chemicals at the wastewater facility is captured and treated as approved by DEP."~~

~~The Developer shall submit to Nye County Planning and Public Works Departments a site development plan for the facility and adjacent park/open space to ensure zero odor emission and~~

~~adequate setback and buffer from residential neighborhood and dwellings. Developer further agrees that compatibility of the proposed treatment process with the present and planned future land use, including noise, potential odors, air quality, and anticipated sludge processing and disposal techniques must be reviewed and approved by Nye County Planning and Public Works Departments; and any non-conformance of such under NAC 445A.285 and Nevada Division of Environmental Protection WTS-21 criteria shall be fully disclosed to the potential home buyers and affected residents.~~

## **6.87 Transportation.**

**(a)** :

**(a)** Traffic Studies. A Master Traffic Impact Analysis ~~was approved prior to the execution of this Agreement.~~ (TIA) shall be reviewed and approved by the County along with the approval of the first Phase of Development of any portion of the Property. Amendments and supplements to the ~~the Master Traffic Analysis~~ TIA shall be submitted by Developer for review and approval by ~~County~~ the County as necessitated by any future Phase of Development. The County may, but is not required, to approve any such amendments if they conform to the Applicable Rules and this Agreement. Any changes to the approved TIA must be reviewed and approved by the Director of Public Works.

**(b)** ~~(b)~~ Definitions.

**(1)** ~~(1)~~ “Roadway Off-Site Improvements” shall mean mitigation measures and improvements to intersections and roadways located outside of the Proposed Development, as identified ~~in~~ subsection 6.7(c), below.

**(2)** ~~(2)~~ “On-Site Improvements” shall mean mitigation measures and improvements to intersections and roadways located within each Phase of Development of the Proposed Development.

**(3)** ~~(3)~~ “Access Roads” shall mean paved access roads having a minimum of two (2) through lanes ~~and a left turn lane~~, necessary to provide ingress and egress for each Phase of Development, as identified in ~~sub~~section Subsection 6.7(e), below.

**(c)** ~~(e)~~ Off-Site Improvements. Developer agrees to provide ~~off-site improvements~~ Off-Site Improvements as required by the approved ~~Master Traffic Impact Analysis.~~ TIA. The County and Developer agree and acknowledge that Developer's sole responsibility with regards to Off-Site ~~improvements~~ Improvements shall be limited to those Off-Site Improvements set forth in the approved ~~Master Traffic Impact Analysis.~~ TIA and necessary for each Phase of Development of the Property then under vertical improvement (for example, the erection of walls or

structures as opposed to grading). Each Phase of Development shall generally include those Off-Site Improvements adjacent to or which shall directly serve that applicable Phase of Development and extend from the boundary of the Property and run to and include the nearest Access Road within the Proposed Development, or, as the case may be, run from and include any applicable Access Roads, as approved by the Director of Public Works. Certificates of Occupancy will not be issued by the County for Improvements in any Phase of Development until the applicable Off-Site Improvements have been completed and accepted by the County.

(d) (d) On-Site Improvements. The County acknowledges it has approved the internal roadway network of the Proposed Development as described in the ~~Zoning Action when County approved the Tentative Map~~Tentative Map when the County approved the Tentative Map. Amendments and additions to existing roadway networks, and roadway networks for subsequent Phases of Development will be included in the submissions for any amendments to the Tentative Map, as also provided in Section 4 above, or in any commercial subdivision map that replaces the Tentative Map. Developer acknowledges it shall be responsible for all internal public and private roadway costs and expenses, as identified in the approved ~~Master Traffic Impact Analysis~~TIA and set forth in this Agreement.

(e) (e) Access Roads. The County agrees that ~~Developers~~Developer's obligations, as they relate to Access Roads, shall be limited to the specific improvements set forth in the ~~Final Plan~~TIA and which are necessary due to the requirements of the Proposed Development. Developer acknowledges it shall be responsible for all Access Roads that may be identified in the ~~Master Traffic Impact Analysis~~TIA.

(f) (f) Future Performance Bonds. As required by law, as a condition of approval of any ~~final map~~Phase of Development, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to roadways set forth in said ~~final map~~Phase of Development, which are identified in the Agreement and/or ~~Master Traffic Impact Analysis~~the approved TIA. Specific bond amounts will be identified in the subdivision improvement agreements.

(g) (g) Impact Fees. Developer shall be subject to impact fees for streets and highways and shall pay said impact fees at the rate adopted by the County in compliance with all local, state and federal laws, and any future adjustments thereto. Developer may deduct or otherwise apply a credit towards any impact fees addressed by the ~~Master Traffic Impact Analysis~~TIA. Developer shall be credited for any overpayment of impact fees or shall pay the balance of any under payment of impact fees. In assessing such impact fees, ~~the~~ Developer shall be given credits for any transportation improvements it provides under the terms of the ~~agreement~~Agreement that are a part of the County's capital improvement plan as adopted. Developer remains subject, however, to impact fees for streets and highways that are adopted and established by the County at the time as of the date the BoCC adopts Ordinance No. approving this Agreement (the

“Approval Date”) and which shall not change for a period of ten (10) years from the Approval Date. Thereafter, any building permit is requested by Developer change in connection with the Proposed Development. the amount of the impact fees shall be tied to changes in the Consumer Price Index (CPI – All Urban Consumers) on each anniversary of the Approval Date for the then following year, but no increase in any given year shall exceed two percent (2%).

(h) ~~(h)~~ Access/Egress Plan. ~~30~~ Fifteen (15) days prior to the start of any construction, Developer shall establish and submit to the Director of Public Works for approval an access/egress plan for construction related traffic. The County reserves its right to require ~~the~~ Developer to modify or make changes to its access/egress plan if at any time, in the opinion of the County, any proposed temporary routes have not best served the needs of the residents. ~~The~~ Developer agrees to adhere to the approved access/egress plan and any modification of the access/egress plan approved by the Director of Public Works thereafter, and ensure that the same access/egress plan is adhered to by all ~~merchant builders~~Merchant Builders, contractors and subcontractors.

## **6.98 Storm Drainage**

(a) ~~–~~

(a) Technical Drainage Study. ~~Developer has submitted to the County a~~ A Master Technical Drainage Study ~~shall be reviewed and approved for this development by the County along with the Proposed~~ approval of the first Phase of Development and for the County's review of any portion of the Property. Any changes to the approved Master Technical Drainage Study must be reviewed and ~~approval~~ approved by the Director of Public Works.

(b) ~~(b)~~ Definitions.

(1) ~~(1)~~ “Off-Site Improvements” shall mean mitigation measures and improvements to drainage located outside of the Proposed Development.

(2) ~~(2)~~ “On-Site Improvements” shall mean mitigation measures and improvements to drainage located within each ~~phase~~Phase of ~~the Proposed~~ Development.

(c) ~~(e)~~ Off-Site and On-Site Improvements. Developer agrees to provide Off-Site and On-Site Improvements as required by the approved Technical Drainage Study. Developer shall not be responsible for the cost to complete any Off-Site Improvements that are applicable to the Cottage Grove project. Any cost incurred by Developer for completing any Cottage Grove Off-Site Improvements shall be credited toward any impact fees or other fees applicable to the Proposed Development.

(d) ~~(d)~~ **Acquisition of Off-Site Rights-of-Way.** Developer shall be responsible for the cost of acquisition of any right-of-way corridor, if such property must be acquired in order to provide said flood control or ~~stormwater~~storm water management measures identified in the approved Technical Drainage Study. The County has no obligations, and is not obligated to pay any financial costs, associated with constructing off-site roads or obtaining rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required in this Section~~—~~6.8.

## **6.109 Assurance for Completion and Maintenance of Improvements.**

(a) ~~—~~ .

(a) As a condition of approval of any ~~final map~~Final Map, Developer shall provide performance bonds or cash-in-lieu for all Off-Site and On-Site improvements as provided by the ~~final map~~Final Map and/or that are identified in this Agreement and/or the approved Master Traffic Impact Analysis and the approved Technical Drainage Study. Such bond amounts or cash-in-lieu shall reflect 115% of the total engineer estimated cost for the work ~~as determined or applicable to that Phase of Development as~~ approved by the Director of Public Works, and shall be adjusted no less frequently than every ~~two~~four (4) years, for inflation and escalation in construction cost using published and generally accepted cost index. If the financial institution will not approve an automatic inflationary increase, the adjusted amount shall be in the form of a bond replacement. In the case of cash-in-lieu, the adjusted amount shall be in the form of an additional cash payment to ~~Nye~~the County.

(b) ~~(b)~~ As required by law, as a condition of approval of any ~~final map~~Phase of Development, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to utilities set forth in said ~~final map~~Phase of Development, which are identified in the Agreement and/or Master Traffic Impact Analysis and/or Technical Drainage Study. Specific bond amounts will be identified in the subdivision improvement agreements.

## **SECTION 7. SPECIAL IMPROVEMENT DISTRICTS.**

The County may consider any applications for ~~developer~~Developer initiated special improvement districts which may be identified as material to the development of the Proposed Development. The ~~Parties~~parties agree, however: (i) that nothing contained in this Section~~7~~ or elsewhere in this Agreement constitutes in any way a pre-approval or authorization of any such developer initiated special improvement districts; and (ii) any ~~developer~~Developer initiated special improvement district must be processed and approved pursuant to all applicable State and County laws, policies and procedures.

## **SECTION 8. IMPACT FEES.**

**8.1** The Proposed Development is subject to impact fees and shall pay said impact fees at the rate adopted by the County in compliance with all local, state and federal laws, and any future adjustments thereto—upon the application and receipt of any vertical building permit.

**8.2** Developer shall pay the difference between any unit fees and impact fees payable for the same infrastructure category, and may offset any unit fees against the new impact fees for the same infrastructure. For purposes of this ~~section~~Section 8, an "offset" means an offset against the impact fee, but does not require a reimbursement for overpayment of impact fees or other ~~other~~ contributions to infrastructure. ~~The~~ Developer shall be given credits for:

- (a) ~~(a)~~ any capital improvements it provides under the terms of the ~~agreement~~Agreement that are a part of the ~~funded~~budgeted portion of the County's capital improvement plan as adopted; ~~and~~
- (b) ~~(b)~~ any "unit" fees paid pursuant to Section 6; ~~and~~
- (c) any Off-Site Improvements cost that is applicable to the Cottage Grove Off-Site Improvements and not reimbursed to Developer by the County.

**8.3** Developer remains subject to impact fees that are adopted by ~~County at the time any building permit is requested by Developer~~the County as of the Approval Date and as set forth in connection with the Proposed Development.Section 6.7(g).

## SECTION 9. NOTICES.

All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. ~~Notices shall be addressed as follows:~~

To the County:

County of Nye,  
A political subdivision

250 N. Hwy 160, Suite 1  
Pahrump, Nevada 89060  
Attention: Planning Director

To Developer:

Pahrump Lands, LLC  
c/o BHHS Nevada Properties  
7475 W. Sahara Ave., Suite 100  
Las Vegas, Nevada 89117  
Attention: Mason Harvey

With Copy to:

Kaempfer Crowell  
1980 Festival Plaza Dr., Suite 650  
Las Vegas, Nevada 89135  
Attention: Douglas R. Malan, Esq.

Either party may change its address and/or contact persons by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

## **SECTION 10. SEVERABILITY OF TERMS.**

If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

## **SECTION 11. DURATION OF AGREEMENT.**

- 11.1 This Agreement shall expire ~~five (5)~~ten (10) years after the Effective Date.
- 11.2 The BoCC may, in its sole discretion, extend the term of this Agreement upon the following conditions:
  - (a) ~~(a)~~ Developer provides written notice of such extension to the County prior to the expiration of the original term of this Agreement; and
  - (b) ~~(b)~~ Developer is not in default of this Agreement.
- 11.3 If approved by the BoCC, the extension shall be granted in writing after:
  - (a) ~~(a)~~ notice of intention to amend the Agreement has been published as provided in NRS 278.0205; and
  - (b) ~~(b)~~ the BoCC has approved an ordinance approving the extension that includes:

(1) (1) a statement of the justification for the extension; and

(2) (2) the duration of the extension; and

(3) (3) any further conditions agreed to by the BoCC and the applicant, which conditions may be incorporated by reference in the ordinance.

—

~~DRH~~

In Witness Whereof, this Agreement has been executed by the parties on the day and year first above written.

COUNTY:

Board of County Commissioners

DEVELOPER:

XPahrump Lands, LLC,  
a Nevada limited liability company

By:By:

John Koenig, Chairman

By:By:

Name: Mason Harvey

Mason B. Harvey, CHTD.

Title: Manager

SUBSCRIBED AND SWORN TO before me

on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

2020.

Attest:

County Clerk

Notary Public in and for said County and State

By:

By:

DRAG

**EXHIBIT A**

**[Legal Description of Property Subject To Agreement]**

**EXHIBIT B**

**[Master Traffic Impact Analysis]**

**EXHIBIT C**

**[Subdivision Map]**

A portion of the N ½, NE ¼ of Section 16, T20S, R53E, M.D.M., Nye County, Nevada, containing approximately 70.0 acres.



BILL NO. 2020-15

NYE COUNTY ORDINANCE NO. \_\_\_\_

**SUMMARY:** A Bill proposing to approve a Development Agreement between Nye County and Pahrump Lands, LLC.

**TITLE:** A BILL PROPOSING TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND PAHRUMP LANDS, LLC; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF NYE, STATE OF NEVADA, DOES HEREBY ORDAIN:

1. In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes and Chapter 16.32 of the Nye County Code, a development agreement for Pahrump Lands, LLC, attached hereto, located within the Pahrump Regional Planning District, is hereby approved.
2. Severability. If any provision of this Ordinance or amendments thereto, or the application thereof to any person, thing or circumstance is held to be invalid, such invalidity shall not affect the validity or provisions or applications of this Ordinance or amendments thereto which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance and amendments thereto are declared to be severable.
3. Constitutionality. If any section, clause or phrase of this Ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this Ordinance shall continue in full force and effect.
4. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval, and publication as required by law, to wit, from and after the 7<sup>th</sup> day of December, 2020.

Proposed on the \_\_\_\_ day of \_\_\_\_\_ 2020.

Proposed by Commissioner \_\_\_\_\_.

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

Attest:

---

John Koenig, Chairman  
Nye County Board of  
County Commissioners

---

Sandra L. Merlino  
Nye County Clerk and Ex-Officio  
Clerk of the Board

DRAFT

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
NYE COUNTY, STATE OF NEVADA  
AND  
PAHRUMP LANDS LLC**

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This Development Agreement (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the County of Nye, State of Nevada (the “County”) and Pahrump Lands, LLC, a Nevada limited liability company (“Developer”), as the owner of certain real properties located at 351 and 201 W. Basin Avenue and 150 S. Blagg Road, Pahrump, Nevada, described and shown on Exhibit “A” attached hereto and incorporated herein by reference and further identified as County Assessor’s Parcel Numbers 035-331-02, 035-331-68, and 035-331-70 (collectively, the “Property”).

## **RECITAL OF PREMISES, PURPOSE AND INTENT**

A. Developer owns the Property, which consists of approximately 70 acres of land, and is the subject of this Agreement. The Property may be expanded, as provided for herein, to include certain other adjacent properties as allowed hereunder and approved by the County.

B. The County has authority, pursuant to NRS Chapter 278.0201 to 278.0207 and Nye County Code, Chapter 16.32, to enter into development agreements with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

C. All preliminary processing with regard to this Agreement has been duly completed in conformance with all applicable laws, rules and regulations. The Nye County Board of County Commissioners (hereinafter “BoCC”), having given notice as required by law, held a public hearing on Developer’s application seeking approval of the form of this Agreement and the execution hereof by the BoCC. At that hearing, the BoCC found that this Agreement is consistent with the County’s plans, policies and regulations, including the Pahrump Regional Planning District Master Plan (the “Master Plan”), and that the execution of this Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. On the \_\_\_\_\_ day of \_\_\_\_\_, 2020 the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2020. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

E. The County desires to enter into this Agreement in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law and this Agreement, to provide for public services, as limited to and further defined within specific Exhibits attached hereafter, to further the goals and values of the County’s Master Plan, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, and to otherwise achieve the goals and purposes for which the laws governing development agreements were enacted. The conditions stated in this Agreement will reasonably mitigate the impacts that the development of the Property will have on the citizens of the Pahrump Regional Planning District. The County finds and determines that the conditions of this Agreement were not an inducement for the rezoning of the Property or to any other land use decision relating to the Property.

F. The County finds and determines, and the Developer agrees, that the conditions established in this agreement are unique to the Proposed Development (as defined in this agreement) and were negotiated at arms length between the County and the Developer, and that the conditions of this Agreement have no binding or precedential effect with regard to future development agreements in the County, and cannot be relied upon by the parties to this Agreement, or future applicants for rezoning, subdivision plat, or other land use approvals in other Development Agreements.

This Agreement is consistent with and will implement the goals and objectives of the County Code, Titles 16 and 17, and the Master Plan.

NOW THEREFORE, for and in consideration of the foregoing Recitals and of the mutual covenants and promises set forth herein, the parties do hereby agree as follows:

## SECTION 1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

**“Affiliate”** means an entity, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

**“Agreement”** has the meaning assigned to it in the first paragraph hereof, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

**“Applicable Rules”** means and refers to:

1. The following provisions of the Nye County Code.

Nye County Code, Title 15, Chapters 15.12 (Flood Damage Prevention), 15.16 (Uniform Construction Codes within the Pahrump Regional Planning District) and 15.20 (Board of Building and Safety Appeals, Pahrump Regional Planning District) as may be amended at any time during the effective date of this agreement by building codes that apply uniformly throughout the Pahrump Regional Planning District, and

Title 16, and

Title 17, Chapter 17.04, and

2. This Agreement.

The term "Applicable Rules" does not include:

1. Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than the County;
2. Any fee or monetary payment not governed by this Agreement and prescribed by

County ordinance which is uniformly applied to all development and construction subject to the County's jurisdiction, including any increase of fees or monetary payments that are cost based and uniformly applied to all development and construction within the County or a designated service area. This Definition does not preclude the County obtaining full cost recovery for any cost based services or infrastructure that are based on variables such as inflation, construction and consumer price indexing to the extent permitted by Nevada or federal law; or

3. Any applicable state or federal law or regulation.

**“BoCC”** means the Board of County Commissioners.

**“Code”** means the Nye County Code, as amended by Nye County Ordinances and Resolutions adopted by the BoCC, and including all rules, regulations, standards, criteria, manuals and other references adopted therein.

**“County”** means the County of Nye, State of Nevada, together with its successors and assigns.

**“Developer”** means Pahrump Lands LLC, a Nevada limited liability company, as the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 12.1 of this Agreement.

**“Discretionary Approval”** means an approval that involves the exercise of significant and extensive factual or legal judgment by the County. Without limiting the generality of this definition, the following types of approvals are considered "discretionary approvals": zone changes, conditional use permits, Master Plan amendments, planned unit developments, special exceptions, waivers, variances, site plans or site development plans, and tentative and final maps.

**“District”** means Nye County School District.

**“Effective Date”** means the effective date of an ordinance adopted by the BoCC that approves the execution of this Agreement.

**“Engineering Standards”** means those standards adopted by the County for the design of roads, drainage, and other infrastructure, as may be amended from time to time. The Engineering Standards are currently set forth in the "Guidelines for Design and Review of Development Engineering Submissions," pursuant to Nye County Resolution 2005-02.

**“Impact Fee”** means a charge or fee imposed by the County with respect to new development to finance the costs of a capital improvement or facility expansion necessitated by and attributable to new development. The term does not include expenses required to complete any capital improvements identified and subsequently approved by the Director of Public Works in any studies that are required of the Developer by the County under the Land Use or under this Agreement.

**“Improvement District”** means an entity (other than a township, city or county) organized under Nevada law in which tracts are assessed fees, taxes, special assessments, rates, tolls, charges (including, but not limited to, service charges, standby service charges, charges for the availability of service, annexation charges, or minimum charges) for the construction or maintenance of public

improvements. An "improvement district" includes any local improvement district or general improvement district organized or reorganized under NRS Chapters 271, 309, or 318, or any district for the maintenance of roads created organized pursuant to NRS Chapter 320.

**“Land Use Application”** means any application seeking any approval authorized or required by Title 16 of the Code.

**“Master Plan”** means the Pahrump Regional Planning District Master Plan Update dated June 7, 2011, as may be amended from time to time.

**“Master Traffic Impact Analysis”** means a comprehensive traffic study to be prepared in conformance with the Land Use and will be required to be approved along with the approval of the first phase of development of this project and finally approved by the County.

**“Merchant Builder”** means a commercial developer, homebuilder, apartment developer or other owner of real property within the Proposed Development that is designated by the Developer, in writing, as authorized to submit Land Use Applications to the County.

**“NRS”** means the Nevada Revised Statutes.

**“Nye County School Board”** means the board of trustees for the Nye County School District, as established by NRS chapter 386.

**“Pahrump Town Board”** means the agency established and charged with various legislative powers governing the Town of Pahrump pursuant to NRS Chapter 269, and in particular NRS § 269.155.

**“Planning Department”** means the Planning and Development Department of the County.

**“Planning Director”** means the Director of the County’s Planning and Development Department or his designee(s).

**“POA”** means any property owners’ association established within the Proposed Development properly formed and operated in accordance with Nevada law, including, if applicable, the provisions of NRS Chapter 116.

**“Project Transportation Improvements”** means street improvements, within the boundaries of the Proposed Development and adjacent to the boundaries of the Proposed Development that are identified in the Master Traffic Impact Analysis as necessary to provide egress and ingress to and from the Proposed Development to existing public roads and to mitigate the traffic impacts of the Proposed Development.

**“Property”** means that certain real property as described on **Exhibit “A”** and any approved additions of adjacent property to the Property.

**“Proposed Development”** means all property and development within the boundaries of the Tentative Subdivision Map, as shown on **Exhibit “B”**.

**“Public Works Director”** or **“Director of Public Works”** means the Director of the County’s

Department of Public Works or their designee(s).

**“Residential Development”** means any development identified in the Proposed Development as compatible with Title 17, Article III, of the Nye County Code as it refers to Residential Development.

**“Subdivision Map”** means any instrument under NRS 278 and Title 16 of the Code which legally subdivides property or gives the right to legally subdivide property, including, without limitation, parcel maps, division of land into large parcels, tentative commercial subdivision maps, final commercial subdivision maps, reversionary maps, condominium subdivision maps, or tentative or final residential subdivision maps, for all or a portion of the Proposed Development.

**“Technical Drainage Study”** means a study prepared in conformance with the Land Use, as amended or conditioned and approved by the Director of Public Works.

**“Township”** shall mean the unincorporated Township of Pahrump and its successors and assigns as a separate political subdivision within the County.

**“Uniform”** means applicable throughout the County or the Pahrump Regional Planning District.

**“Unit Fee”** means a voluntary contribution by the Developer and its successors or assigns per designated increment of development, designed to mitigate the impacts of the development. A Unit fee may be applied as provided in this Agreement. If this Agreement is silent about the application of a unit fee, the unit fee may be applied in any manner chosen by the Nye County Commission in its sole discretion.

**“Zoning Ordinance”** means the Zoning Ordinance of the Pahrump Regional Planning District, County Code Title 17.

## **SECTION 2. GENERAL PURPOSE AND INTENT**

This Agreement is predicated upon the following facts and findings:

**2.1 County Intent.** The County desires to enter into this Agreement in conformity with the requirements of NRS 278.0201 and as otherwise permitted by law and this Agreement to provide for public services, public uses and urban infrastructure, to promote the health, safety and general welfare of the County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Proposed Development and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County in a way that provides the highest economic benefit and least fiscal cost to its citizens, to reasonably mitigate the impacts that the development of the Property will have on the citizens and lands of the Pahrump Regional Planning District, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

**2.2 Developer Intent.** In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer

acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. Based upon the nature of the Proposed Development, the type and extent of the public improvements and infrastructure to the Proposed Development to be provided by Developer, and the type and extent of the public and private improvements to be provided within the Proposed Development, the Developer's decision to commence development of the Proposed Development is based on expectations of proceeding and the right to proceed with the Proposed Development in accordance with this Agreement and the Applicable Rules. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer agrees without protest to the requirements, limitations, or conditions imposed by the Agreement.

**2.3 Incorporation of Recitals.** The foregoing Recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

## **SECTION 3. GENERAL PROVISIONS**

**3.1 Binding Agreement.** This Agreement shall run with the land described in Exhibit "A" of this Agreement and shall be binding on and inure to the benefit of the parties hereto and their successors and assigns, including any future and subsequent purchasers.

**3.2 Reliance on Land Use and Applicable Rules.** The County and Developer agree that Developer will be permitted to carry out and complete the entire Proposed Development in accordance with the uses and densities approved with the Tentative Map and in accordance with this Agreement, the Applicable Rules, and the existing NC zoning district development standards and Section 3.3 below.

**3.3 Modification of Applicable Rules.** The County and Developer acknowledge and agree that the Tentative Map approval is specific to the Proposed Development and may not be amended, modified or changed with respect to the Proposed Development without the express written consent of Developer and the County, except as otherwise explicitly provided in this Agreement. It is recognized by both the County and Developer, and hereby allowed by this Agreement, that there may be certain retailers and/or end users that require much larger and/or different building configurations than what is shown on the Tentative Map initially included in this Agreement. Unless the alternate size and/or configuration unreasonably affects the overall densities, traffic and parking capacities, or drainage conditions, these alterations will be considered "nonmaterial modifications" as defined in Section 4.3.

In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to Developer or to the development of the Proposed Development for the duration of this Agreement, except in those limited circumstances provided below.

**3.4 Application of Subsequently Enacted Rules.** Except as provided below, no standard, policy, resolution or regulation regarding subdivision, land use, zoning, growth management, timing and phasing of construction, or construction methods shall be imposed by the County upon

the Proposed Development, except those in effect at the time of the Tentative Map approval. County may hereafter, during the term of this Agreement, apply to the Proposed Development only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after this Effective Date that:

- (a) are not in conflict with the Applicable Rules or
- (b) are permitted by Section 3.5, below.

**3.5 Imposition of New Fees or Standards.** Notwithstanding the terms of Section 3.3, above:

- (a) The Proposed Development is subject to all of the following regulations, fees, or other requirements in effect now or in the future:
  - (1) uniform cost-based fees subject to any credits or offsets required by the fee ordinances or Nevada law; and
  - (2) all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
  - (3) uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
  - (4) uniform estimated costs for completing required public improvements that are used to calculate costs for subdivision improvement agreements, maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and
  - (5) uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the Pahrump Regional Planning District or the County to all substantially similar types of development projects and properties; and
  - (6) uniform impact fees adopted by the BoCC, applied to vertical Building Permit applications only, except as provided in Section 8 of this Agreement; and
  - (7) the Engineering Standards; and
  - (8) uniform laws and regulations that are reasonably necessary to protect the

public health, safety or welfare; and

- (9) new or changed County ordinances, regulations, plans or policies specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of Sections 3.5 and 3.6 of this Agreement are applicable.
- (b) Notwithstanding the foregoing, should the County adopt or amend new ordinances, rules, regulations or policies that exceed the limitations of the foregoing Section 3.2, the County may provide written notice to Developer within thirty (30) days of adoption or amendment of the same to allow Developer sufficient time to conduct due diligence. If the County provides the above stated notice, Developer may accept or not accept such new or amended matters by giving written notice. If Developer fails to give such written notice within thirty (30) days of receipt of notice by the County, such ordinances, rules, regulations or policies are deemed accepted by Developer. The County and Developer may execute an amendment to this Agreement evidencing Developer's acceptance of any new or amended ordinance, rule, regulation or policy.

**3.6 Conflicting Federal or State Rules.** In the event that any conflicting federal or state laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, this Agreement shall remain in full force and effect as to those provisions not affected.

**3.7 Cooperation in Performance.** The parties hereto agree to cooperate with each other in good faith and to take such additional actions, including the execution and delivery of documents and instruments, as may be necessary or appropriate, to fully effectuate and carry out the terms, provisions, purposes and intent of this Agreement. Notwithstanding the foregoing, Developer shall not have a guaranteed right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from Developer.

**3.8 Assignment.**

- (a) Developer shall not sell, transfer, ground lease or assign the Property or this Agreement in whole or in part to any person, affiliate, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") without the written consent of the County. Said written consent will not be unreasonably withheld by the County.
- (b) With respect to any assignment under Section 3.8(a), the Assignee shall assume in writing all obligations of Developer hereunder, and provide substitute security in a form and an amount acceptable to the County for any security previously provided by Developer in compliance with the Code, if any, for said assigned portion.
- (c) The Assignee shall assume all duties and obligations of Developer.
- (d) The County reserves the right to require documentation of the financial stability of

any Assignee prior to the closing of the transaction. The County has the right to approve, approve with conditions, or disapprove such transfer in order to ensure that the Transferee has the same ability to fulfill the obligations of this Agreement as Developer.

- (e) Except as expressly provided herein, no assignment or transfer of any portion of the Proposed Development shall relieve Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement. The County may, in its sole discretion, release Developer of one or more of such obligations in writing agreed to and executed by the County.
- (f) This Section 3.8 shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against sub-divided parcels within the Property.
- (g) Subject to Subsections 3.8(a) through (f) above, Developer has full discretion and authority to transfer, assign or encumber the Proposed Development or portions thereof, in connection with financing transactions that are related to the Property, without the permission of or notice to the County. All such financing transactions shall be subject to the terms and conditions of this Agreement.

**3.9 Amendment of Agreement.** Except as otherwise permitted by NRS Chapter 278 and this Agreement, this Agreement may be amended from time to time, but only upon the mutual written consent of the parties hereto. Any amendments that have less than a 10% affect on any factors such as traffic count, density, drainage quantities, etc., may be approved administratively by the Planning Director. All other proposed amendments shall be considered solely by the BoCC for adoption or rejection, provided however that the BoCC reserves the right to require Developer to consult with the Pahrump Town Board and/or the Nye County School Board if a proposed amendment would, in the BoCC's opinion materially affect either of those entities.

**3.10 Indemnity; Hold Harmless.** Except as expressly provided in this Agreement, Developer shall hold the County, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct operations of Developer or those of its agents, employees, which relate to the development of the Proposed Development. Developer agrees to and shall defend the County and its officers, agents, employees, and representatives from actions for damages caused by reason of Developer's activities in connection with the development of the Proposed Development. Developer agrees to indemnify, hold harmless, and provide and pay all costs, attorneys fees, and damages related to a defense for the County in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section 3.10 shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the County, its officers, agent, employees, or representatives.

**3.11 Binding Effect of Agreement.** The burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties' respective successors in interest and the Property which is the subject of this Agreement.

**3.12 Relationship of Parties.** It is understood that the contractual relationship between the County and Developer is such that Developer is not an agent of the County for any purpose and the County is not an agent of Developer for any purpose.

**3.13 Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all of any part of the subject matter hereof.

**3.14 Waivers.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the County and/or Developer, as the case may be.

**3.15 Recording; Amendments.** Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Nye County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of the County and Developer in a form suitable for recordation in the Official Records of Nye County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the County and Developer and shall be recorded in the Official Records of Nye County, Nevada.

The Clerk of the Nye County Commission must record any agreement with a federal, state or local agency that is executed in full or partial fulfillment of any requirement of this Agreement, within a reasonable time after approval of the agreement, with the County Recorder. The applicant shall provide a true, signed original agreement to the Clerk of the Nye County Commission for this purpose.

**3.16 Headings; Exhibits; Cross References.** The Recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All Exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an Exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such Exhibit. All references in this Agreement to sections and exhibits shall be to Sections and Exhibits to this Agreement, unless otherwise specified.

**3.17 Sales and Use Tax.** To the extent allowed under applicable laws, Developer shall accept, and shall require Merchant Builders to accept delivery of all construction and related materials within the boundaries of the County.

## **SECTION 4. PLANNING, DEVELOPMENT AND MAINTENANCE OF THE PROPOSED DEVELOPMENT**

**4.1 Permitted Uses, Density, Height and Size of Structures.** Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the Property. The County agrees that the Proposed Development may be developed to the density and with the land uses and development standards set forth in the applicable zoning classification under §17.04 of the Code, as otherwise limited or conditioned pursuant to the BoCC approval of the Land Use.

It is recognized by both the County and Developer, and hereby allowed by this Agreement, that there may be certain retailers and/or end users that require much larger and/or different building configurations than what is shown on the Tentative Map initially included in this Agreement. Unless this alternate size and/or configuration unreasonably affects the overall densities, traffic and parking capacities, or drainage conditions, these alterations will be considered “nonmaterial modifications” as defined in Section 4.3.

**4.2 Effect of Amendments.** The County acknowledges that Developer is anticipating that the entire Property will be developed in accordance with Nye County Code, Chapter 17.04 development standards provided for pursuant to the applicable zoning district, with any future amendments thereto, provided however, that the Proposed Development shall be developed in accordance with the Applicable Rules as set forth herein.

**4.3 Modifications to Subdivision Map.** Developer shall have the right to have nonmaterial modifications to the Proposed Development reviewed and acted upon administratively by the Planning Director.

- (a) A nonmaterial modification is a modification requested by Developer that:
  - (1) meets or exceeds the requirements and intent of the applicable zoning district development standards; and
  - (2) does not decrease the amount of open space provided by more than 10%; and
  - (3) does not increase the amount of land area covered by this Agreement; which may include certain adjacent properties added by Developer as allowed and approved by Nye County to become a part of this Agreement; and
  - (4) does not require BoCC approval under the Applicable Rules for a new land use classification.
- (b) A nonmaterial modification includes any rearrangement of the internal street pattern that promotes the efficiency of traffic patterns, promotes the efficiency of utility services, and improves drainage patterns, as determined by the Planning Director after consultation with the Nye County Department of Public Works.
- (c) A non-material modification includes any rearrangement or modification of the location of an approved use with the Proposed Project and construction of any applicable Off-Site Improvements applicable to the modified phase of development, as provided in Section 6.7(c).
- (d) A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within thirty (30) days. If Developer is aggrieved by the Director's decision, Developer may appeal that decision in accordance with § 16.36.080.E of the Code.

(e) A material modification includes any modification that does not qualify as a nonmaterial modification, and shall be processed as an amendment to this Agreement.

#### **4.4 Subdivision Maps.**

(a) Except as provided in Subsection 4.4(b), the parties agree that any Subdivision Maps required or requested by Developer or a Merchant Builder in connection with the Proposed Development shall be reviewed and considered for approval in accordance with the Applicable Rules.

(b) The County agrees to accept and timely process all Subdivision Maps requested by Developer in accordance with the Applicable Rules. Developer agrees that the County may require one or more of the following prior to the recordation of a Final Map:

- (1) County approval of any material amendment to the Master Traffic Impact Analysis; and
- (2) County approval of and conformance to the existing approved Technical Drainage Study; and
- (3) Land dedications and Developer's execution of subdivision improvement, maintenance and warranty agreements with the County to assure such development; and
- (4) BoCC approval of a resolution or similar statement indicating the County's intent to create a Improvement District to develop infrastructure in the Proposed Development, or in the absence thereof, land dedications and Developer's execution of the County's standard Design and Review Guidelines to assure such development. Nothing in this Agreement requires the County to approve an Improvement District.

#### **4.5 Maintenance of Public and Common Areas.**

(a) The County hereby agrees that, except for any sidewalks, landscaped areas, landscape appurtenances, and street lights constructed at the option of Developer, located inside public rights-of-way, all of the dedicated public roadways and curbs which are within or adjacent to the Proposed Development will be maintained by the County as required by law. All landscaping and street lighting within the public rights-of-way within or adjacent to the Proposed Development shall be privately maintained by the POA in accordance with Nevada law and the declarations recorded against the Proposed Development providing certain standards and regulations relating to, but not limited to, reserve accounts and liability insurance. Appropriate encroachment agreements shall be entered for all such landscaping.

- (b) Developer and any Merchant Builder shall maintain, in good repair and condition, all privately maintained on-site improvements, in accordance with the requirements of Nevada law and the declarations affecting the Property until such time as the POA assumes responsibility for the same and Developer no longer retains control of the Board of Directors of the POA. POA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of Nevada law and the declarations affecting the Property.
- (c) Developer and any Merchant Builder agrees that prior to the release of any Final Map for recording, Developer will cause to be formed one or more POA's within the Proposed Development. With respect to any Final Map, Developer will cause the formation of a master association governing the Property incorporated in the Final Map. Such POA's will be responsible to maintain in good condition and repair all of the landscaping and other facilities which the County requires to be maintained by such POA's as a condition of approval, including all developed and undeveloped landscaped areas such as parks and park facilities, trail corridors, drainage easements, sight visibility zones, and any landscaping on public rights of way. Developer agrees that such POA's shall be created pursuant to declarations of covenants and restrictions recorded against the applicable portions of the Proposed Development and that such POA's shall have the power to assess the subject landowners to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Developer further agrees that such declarations will contain a covenant running to the benefit of the County, and enforceable by the County, that such facilities will be maintained in good condition and repair. Such POA's will be Nevada not-for-profit corporations with a board of directors elected by the subject landowners, provided, however, that so long as Developer owns any land covered by such declarations, Developer may control the board of directors of such POA's.
- (d) The master declaration must be executed and recorded with the Office of the Nye County Recorder, concurrently with (or promptly following) the recording of the Proposed Development's Final Map, in a manner acceptable to the County and must include the following provisions:
  - (1) a Maintenance Plan (outlined in Section 4.6 below); and
  - (2) must indicate that the Maintenance Plan cannot be materially amended by the board of directors of the master POA without the written consent of the County; and
  - (3) must provide that the master declaration cannot be amended in any manner that would defeat or materially alter the Maintenance Plan; and
  - (4) must provide that in the event the master POA fails to maintain the improvements in accordance with the provisions of the Maintenance Plan, the County may exercise its rights under the Master (or other) declaration,

including the right of the County to levy assessments on the property owners for cost incurred by the County in maintaining the improvements, which assessments shall constitute liens against the land and the individual lots within the subdivision which may be executed upon and have the same priority as liens for real estate taxes.

- (e) The County shall have the right to review the master declaration for the sole purpose of determining its compliance with the provisions of this Section 4. Such review shall be performed by County within a reasonable time so as to not delay the recording of the Final Map.

#### **4.6 Maintenance Plan.**

- (a) The master declaration will provide for a plan of maintenance of such improvements ("Maintenance Plan").
- (b) The Maintenance Plan must be:
  - (1) adopted by the master POA; and
  - (2) reviewed for compliance with applicable laws by the County District Attorney's office; and
  - (3) reviewed by the Director of Planning; and
  - (4) if the Maintenance Plan involves the maintenance of improvements abutting or within the public rights of way, reviewed by the Director of Public Works.
- (c) The County and master POA may modify such standards as they from time to time agree.

**4.7 Additional Property.** Developer may not include property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. Said approval shall be solely in the discretion of the BoCC. If Developer requests additional property to be included, the BoCC must reconsider additional impacts of the proposed additional development and must ensure that all impacts are appropriately mitigated through Developer contributions, impact fees, and any other allowable revenue source. Furthermore, the BoCC reserves the right to adjust the terms of this Agreement as a condition for allowing the addition of property to this Agreement.

### **SECTION 5        REVIEW AND DEFAULT**

**5.1 Frequency of Reviews.** Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may request, pursuant to written notice to Developer, to review the development at least once every forty-eight (48) months during the term of this Agreement. In the event the BoCC provides such notice, Developer shall have ninety (90) days to provide a written

report to the BoCC containing the reporting requirements stated below.

Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation: (i) data showing the total number of acres and/or commercial/residential units built and approved on the date of the report; (ii) specific densities within each project and within the Proposed Development as a whole; and (iii) the status of development within the Proposed Development and the anticipated phases of development for the next calendar year. In the event Developer fails to submit such a report, Developer shall be in default of this Agreement. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford reasonable time for response, however, not less than forty-five (45) days.

**5.2 Opportunity to be Heard.** The report required by this Section 5 shall be considered solely by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. The County and Developer shall each be permitted an opportunity to be heard orally and in writing before the BoCC regarding performance of the parties under this Agreement.

**5.3 General Provisions-Default.** In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other a notice of the noncompliance in writing with not less than sixty (60) days to cure the default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such period shall not be less than the sixty (60) days. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend to terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the BoCC.
- (b) Amendment or Termination by County. Following consideration of the evidence presented before the BoCC and a finding that a substantial default has occurred by Developer and remains uncorrected, the County may amend or terminate this Agreement. In the event of default by Developer, the County shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of Developer's obligations hereunder under the procedures set forth in this Section 5.3 and Section 5.5. The County also reserves the right to terminate this Agreement and pursue collection and/or performance of any of Developer's obligations that were required by this Agreement up to the point of termination. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Developer, as determined under the Applicable Rules and Nevada Law, existing or received as of the date of the termination and to the extent that Developer has

performed its obligations under this Agreement. Developer shall have sixty (60) days after receipt of written notice of termination to institute legal action pursuant to Section 5.5 hereof.

- (c) **Termination by Developer.** In the event the County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section 5.3. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of the County's obligations hereunder under the procedures set forth in this Section 5.3 and Section 5.5.
- (d) **Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

**5.4 Unavoidable Delay, Extension of Time.** Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than the County) to perform acts or deeds necessary to the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. In addition, nonperformance of a party hereunder shall be excused as a result of the failure of the other party to perform under this Agreement which failure of the other party actually causes such nonperformance. If written notice of any such delay is given to the County within sixty (60) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by the County within sixty (60) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between the County and Developer. Any such extensions of time shall have no effect upon the timing of and the conclusions reached in the reviews to be conducted pursuant to Section 5.1 above.

**5.5 Legal Action.** The County and Developer agree that they would not have entered into this Agreement if either were to be liable for damages under or with respect to this Agreement that would be greater than without this Agreement. Accordingly, the County and Developer may pursue any course of action or equity available for breach, except that neither party shall be liable to the other or to any other person for any monetary damages for a breach of this Agreement that are greater than such damages or liability would have been without this Agreement pursuant to the Applicable Rules. Prior to the institution of any legal action, the party seeking legal action must give the sixty (60) day notice of default as set forth in Section 5.3. Following such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be overturned or overruled if its decision is clearly arbitrary and capricious. Judicial review

of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada- Department 2 (Pahrump).

**5.6 Notices.** All notices required by this Section 5 shall be sent in accordance with Section 9.

**5.7 Applicable Laws; Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

## **SECTION 6. INFRASTRUCTURE OBLIGATIONS**

**6.1 Generally.**

- (a) Developer shall provide the infrastructure described in this Section 6.
- (b) All bonds, including performance bonds, that are required to provide financial assurance for the provision or maintenance of infrastructure pursuant to this Agreement or the Applicable Rules must be issued by an entity that has at least an AAA rating with A.M. Best obtained by Developer to cover One Hundred and Fifteen percent (115%) of the estimated cost of infrastructure identified by any Master Studies or the County Engineer. For purposes of this subsection, "AAA rating" means a rating or "AAA" or the highest rating of financial stability that is available under the A.M. Best rating system.
- (c) For purposes of this Agreement, the term "Phase of Development" shall mean any portion of the Proposed Development that Developer, in its sole discretion, determines to identify and then improve as a distinct component of the overall Proposed Development.

**6.2 Police Services.** Other than a cash contribution of \$20,000.00 to be made prior to completion of the final phase of development of the Proposed Project, Developer shall not be required to construct or make any contributions for Police Services other than what is required through normal impact fees.

**6.3 Fire Protection.** Other than a cash contribution of \$20,000.00 to be made prior to completion of the final phase of development of the Proposed Project, Developer shall not be required to construct or make any contributions for Fire Protection Services other than what is required through normal impact fees.

**6.4 Schools.** Developer shall not be required to construct or make any contributions for Public School Services other than what is required through normal impact fees.

**6.5. Water.** The parties acknowledge that the Developer has adequate certificated water rights for the Property and the County, since public water services will be provided by the current water and sanitation district servicing this area as specified in the Tentative Map approval, will assert no role in the allocation of water services.

**6.6. Sanitary Sewer.** Developer acknowledges that sanitary sewer system facilities provided by the current water and sanitation district as specified in the Tentative Map approval. The County has no obligations, and is not obligated to pay any financial costs, associated with obtaining the construction or maintenance of sanitary sewer facilities or the acquisition of rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required.

## **6.7 Transportation.**

- (a) **Traffic Studies.** A Master Traffic Impact Analysis (TIA) shall be reviewed and approved by the County along with the approval of the first Phase of Development of any portion of the Property. Amendments and supplements to the TIA shall be submitted by Developer for review and approval by the County as necessitated by any future Phase of Development. The County may, but is not required, to approve any such amendments if they conform to the Applicable Rules and this Agreement. Any changes to the approved TIA must be reviewed and approved by the Director of Public Works.
- (b) **Definitions.**
  - (1) **Roadway Off-Site Improvements** shall mean mitigation measures and improvements to intersections and roadways located outside of the Proposed Development, as identified in Subsection 6.7(c), below.
  - (2) **On-Site Improvements** shall mean mitigation measures and improvements to intersections and roadways located within each Phase of Development of the Proposed Development.
  - (3) **Access Roads** shall mean paved access roads having a minimum of two (2) through lanes, necessary to provide ingress and egress for each Phase of Development, as identified in Subsection 6.7(e), below.
- (c) **Off-Site Improvements.** Developer agrees to provide Off-Site Improvements as required by the approved TIA. The County and Developer agree and acknowledge that Developer's sole responsibility with regards to Off-Site Improvements shall be limited to those Off-Site Improvements set forth in the approved TIA and necessary for each Phase of Development of the Property then under vertical improvement (for example, the erection of walls or structures as opposed to grading). Each Phase of Development shall generally include those Off-Site Improvements adjacent to or which shall directly serve that applicable Phase of Development and extend from the boundary of the Property and run to and include the nearest Access Road within the Proposed Development, or, as the case may be, run from and include any applicable Access Roads, as approved by the Director of Public Works. Certificates of Occupancy will not be issued by the County for Improvements in any Phase of Development until the applicable Off-Site Improvements have been completed and accepted by the County.

(d) On-Site Improvements. The County acknowledges it has approved the internal roadway network of the Proposed Development as described in the Tentative Map when the County approved the Tentative Map. Amendments and additions to existing roadway networks, and roadway networks for subsequent Phases of Development will be included in the submissions for any amendments to the Tentative Map, as also provided in Section 4 above, or in any commercial subdivision map that replaces the Tentative Map. Developer acknowledges it shall be responsible for all internal public and private roadway costs and expenses, as identified in the approved TIA and set forth in this Agreement.

(e) Access Roads. The County agrees that Developer's obligations, as they relate to Access Roads, shall be limited to the specific improvements set forth in the TIA and which are necessary due to the requirements of the Proposed Development. Developer acknowledges it shall be responsible for all Access Roads that may be identified in the TIA.

(f) Future Performance Bonds. As required by law, as a condition of approval of any Phase of Development, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to roadways set forth in said Phase of Development, which are identified in the Agreement and/or the approved TIA. Specific bond amounts will be identified in the subdivision improvement agreements.

(g) Impact Fees. Developer shall be subject to impact fees for streets and highways and shall pay said impact fees at the rate adopted by the County in compliance with all local, state and federal laws, and any future adjustments thereto. Developer may deduct or otherwise apply a credit towards any impact fees addressed by the TIA. Developer shall be credited for any overpayment of impact fees or shall pay the balance of any under payment of impact fees. In assessing such impact fees, Developer shall be given credits for any transportation improvements it provides under the terms of the Agreement that are a part of the County's capital improvement plan as adopted. Developer remains subject; however, to impact fees for streets and highways that are adopted and established by the County as of the date the BoCC adopts Ordinance No. \_\_\_\_\_ approving this Agreement (the "Approval Date") and which shall not change for a period of ten (10) years from the Approval Date. Thereafter, any change in the amount of the impact fees shall be tied to changes in the Consumer Price Index (CPI – All Urban Consumers) on each anniversary of the Approval Date for the then following year, but no increase in any given year shall exceed two percent (2%).

(h) Access/Egress Plan. Fifteen (15) days prior to the start of any construction, Developer shall establish and submit to the Director of Public Works for approval an access/egress plan for construction related traffic. The County reserves its right to require Developer to modify or make changes to its access/egress plan if at any time, in the opinion of the County, any proposed temporary routes have not best served the needs of the residents. Developer agrees to adhere to the approved

access/egress plan and any modification of the access/egress plan approved by the Director of Public Works thereafter, and ensure that the same access/egress plan is adhered to by all Merchant Builders, contractors and subcontractors.

## **6.8 Storm Drainage.**

- (a) **Technical Drainage Study.** A Master Technical Drainage Study shall be reviewed and approved for this development by the County along with the approval of the first Phase of Development of any portion of the Property. Any changes to the approved Master Technical Drainage Study must be reviewed and approved by the Director of Public Works.
- (b) **Definitions.**
  - (1) “**Off-Site Improvements**” shall mean mitigation measures and improvements to drainage located outside of the Proposed Development.
  - (2) “**On-Site Improvements**” shall mean mitigation measures and improvements to drainage located within each Phase of Development.
- (c) **Off-Site and On-Site Improvements.** Developer agrees to provide Off-Site and On-Site Improvements as required by the approved Technical Drainage Study. Developer shall not be responsible for the cost to complete any Off-Site Improvements that are applicable to the Cottage Grove project. Any cost incurred by Developer for completing any Cottage Grove Off-Site Improvements shall be credited toward any impact fees or other fees applicable to the Proposed Development.
- (d) **Acquisition of Off-Site Rights-of-Way.** Developer shall be responsible for the cost of acquisition of any right-of-way corridor, if such property must be acquired in order to provide said flood control or storm water management measures identified in the approved Technical Drainage Study. The County has no obligations, and is not obligated to pay any financial costs, associated with constructing off-site roads or obtaining rights-of-way, permits, easements, or other interests not owned by Developer necessary to construct the facilities required in this Section 6.8.

## **6.9 Assurance for Completion and Maintenance of Improvements.**

- (a) As a condition of approval of any Final Map, Developer shall provide performance bonds or cash-in-lieu for all Off-Site and On-Site improvements as provided by the Final Map and/or that are identified in this Agreement and/or the approved Master Traffic Impact Analysis and the approved Technical Drainage Study. Such bond amounts or cash-in-lieu shall reflect 115% of the total engineer estimated cost for the work applicable to that Phase of Development as approved by the Director of Public Works, and shall be adjusted no less frequently than every four (4) years, for inflation and escalation in construction cost using published and generally accepted cost index. If the financial institution will not approve an automatic inflationary

increase, the adjusted amount shall be in the form of a bond replacement. In the case of cash-in-lieu, the adjusted amount shall be in the form of an additional cash payment to the County.

(b) As required by law, as a condition of approval of any Phase of Development, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to utilities set forth in said Phase of Development, which are identified in the Agreement and/or Master Traffic Impact Analysis and/or Technical Drainage Study. Specific bond amounts will be identified in the subdivision improvement agreements.

## **SECTION 7. SPECIAL IMPROVEMENT DISTRICTS**

The County may consider any applications for Developer initiated special improvement districts which may be identified as material to the development of the Proposed Development. The parties agree, however: (i) that nothing contained in this Section 7 or elsewhere in this Agreement constitutes in any way a pre-approval or authorization of any such developer initiated special improvement districts; and (ii) any Developer initiated special improvement district must be processed and approved pursuant to all applicable State and County laws, policies and procedures.

## **SECTION 8. IMPACT FEES**

**8.1** The Proposed Development is subject to impact fees and shall pay said impact fees at the rate adopted by the County in compliance with all local, state and federal laws, and any future adjustments thereto upon the application and receipt of any vertical building permit.

**8.2** Developer shall pay the difference between any unit fees and impact fees payable for the same infrastructure category, and may offset any unit fees against the new impact fees for the same infrastructure. For purposes of this Section 8, an "offset" means an offset against the impact fee, but does not require a reimbursement for overpayment of impact fees or other contributions to infrastructure. Developer shall be given credits for:

- (a) any capital improvements it provides under the terms of the Agreement that are a part of the budgeted portion of the County's capital improvement plan as adopted;
- (b) any "unit" fees paid pursuant to Section 6; and
- (c) any Off-Site Improvements cost that is applicable to the Cottage Grove Off-Site Improvements and not reimbursed to Developer by the County.

**8.3** Developer remains subject to impact fees that are adopted by the County as of the Approval Date and as set forth in Section 6.7(g).

## **SECTION 9. NOTICES**

All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To the County:

County of Nye,  
A political subdivision  
250 N. Hwy 160, Suite 1  
Pahrump, Nevada 89060  
Attention: Planning Director

To Developer:

Pahrump Lands, LLC  
c/o BHHS Nevada Properties  
7475 W. Sahara Ave., Suite 100  
Las Vegas, Nevada 89117  
Attention: Mason Harvey

With Copy to:

Kaempfer Crowell  
1980 Festival Plaza Dr., Suite 650  
Las Vegas, Nevada 89135  
Attention: Douglas R. Malan, Esq.

Either party may change its address and/or contact persons by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

## **SECTION 10. SEVERABILITY OF TERMS**

If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

## **SECTION 11. DURATION OF AGREEMENT**

**11.1** This Agreement shall expire ten (10) years after the Effective Date.

**11.2** The BoCC may, in its sole discretion, extend the term of this Agreement upon the following conditions:

- (a) Developer provides written notice of such extension to the County prior to the expiration of the original term of this Agreement; and

(b) Developer is not in default of this Agreement.

**11.3** If approved by the BoCC, the extension shall be granted in writing after:

(a) notice of intention to amend the Agreement has been published as provided in NRS 278.0205; and

(b) the BoCC has approved an ordinance approving the extension that includes:

(1) a statement of the justification for the extension; and

(2) the duration of the extension; and

(3) any further conditions agreed to by the BoCC and the applicant, which conditions may be incorporated by reference in the ordinance.

In Witness Whereof, this Agreement has been executed by the parties on the day and year first above written.

COUNTY:

Board of County Commissioners

By: \_\_\_\_\_

John Koenig, Chairman

Attest:

County Clerk

By: \_\_\_\_\_

DEVELOPER:

Pahrump Lands, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_

Name: Mason Harvey

Mason B. Harvey, CHTD.

Title: Manager

SUBSCRIBED AND SWORN TO before me  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public in and for said County and State

EXHIBIT "A"

A portion of the N 1/2, NE 1/4 of Section 16, T20S, R53E, M.D.M., Nye County, Nevada, containing approximately 70.0 acres.



# Exhibit "B"

