

NYE COUNTY AGENDA INFORMATION FORM

☒ Action ☐ Presentation ☐ Presentation & Action

Department: Planning		Agenda Date:	
Category: Timed Agenda Item – 10:00 a.m.		August 17, 2021	
Contact: Brett Waggoner	Phone: 775-751-4249	Continued from meeting of:	
Return to: Brett Waggoner	Location: Pahrump Planning	Phone: 775-751-4249	
Action requested: (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. 2021-08: A Bill proposing to adopt a first amendment to the Development Agreement between Nye County and Spring Mountain Raceway, LLC; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto.			
Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures) Staff recommends adoption with an effective date of September 6, 2021.			
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.			
Expenditure Impact by FY(s): (Provide detail on Financial Form)			
No financial impact			

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal <i>Verified ST</i>	Date <i>8-11-21</i>
4.	Date	9. Finance	Date <i>WJA</i>
5.	Date	10. County Manager	Date

☒ Place on Agenda
ST

ITEM # 8

BILL NO. 2021-08

NYE COUNTY ORDINANCE NO. ____

SUMMARY: A Bill proposing to adopt a first amendment to the Development Agreement between Nye County and Spring Mountain Raceway, LLC.

TITLE: A BILL PROPOSING TO ADOPT A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND SPRING MOUNTAIN RACEWAY, 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, an amended development between Nye County and Spring Mountain Raceway, 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 ____ day of _____, 2021.

Proposed on the ____ day of _____, 2021.

Proposed by Commissioner _____.

Adopted on the ____ day of _____, 2021.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

Attest:

Debra Strickland, Chair
Nye County Board of
County Commissioners

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

DRAFT

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT**

BY AND BETWEEN

NYE COUNTY, STATE OF NEVADA

AND

SPRING MOUNTAIN RACEWAY LLC

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DRAFT

This First Amendment to the Development Agreement (the "Agreement") is made and entered into this ____ day of _____, 2021 by and between the County of Nye, State of Nevada (hereinafter "County") and Spring Mountain Raceway LLC (hereinafter "Developer"), as owner of certain real property generally located at 3601 S. Highway 160, Pahrump, Nevada, and commonly known as "Spring Mountain Motorsports Ranch" or "Spring Mountain Raceway" and more particularly described as County Assessor's Parcel Numbers 027-741-12, 027-741-13, 027-741-14, 027-741-15, and 027-741-16, 027-741-19, 027-441-16, 027-441-12 and 027-441-13. If any terms, conditions or covenants of this Agreement conflict with the Development Agreement entered into on May 19th, 2014, this Agreement shall control.

RECITAL OF PREMISES, PURPOSE AND INTENT

A. Developer owns that certain real property described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") containing approximately 620.03 acres of land, which is the subject of this Agreement.

B. The County has authority, pursuant to Nevada Revised Statutes (NRS) Chapter 278.0201 to 278.0207 and Nye County Nye County Code (NCC), 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 19th day of May, 2014 the BoCC adopted Ordinance No. 471 approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the 9th day of June, 2014. 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 to govern the development of the Property 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.

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 for the Pahrump Regional Planning District (PRPD).

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.

“Amendment” means a mutually agreed to written document entered into by the County and the Developer that modifies this Agreement. All proposed amendments shall be considered by the BoCC for adoption or rejection.

“Applicable Rules” means and refers to:

1. The Zoning Action (defined below);
2. The following provisions of the Nye County Code as they existed on the Effective Date;

Nye County Code, Title 5, Chapter 12.08 (Excavations and Encroachments), 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, (Subdivisions)

Title 17, (Zoning) and

3. 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.

"Assignee" means a person, partnership, joint venture, firm, company or other organization, other than a Merchant Builder or an Affiliate.

"BoCC" means the Nye County 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 Spring Mountain Raceway LLC, as the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 3.8 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, or site development plans, and tentative maps.

“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 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 Titles 16 and 17 of the Nye County Code.

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

“Master Traffic Impact Analysis” means a comprehensive traffic study prepared in conformance with the Zoning Action and approved as of the effective date of this Agreement, as amended or conditioned 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, Affiliate or Assignee that is designated by the Developer, in writing, as authorized to submit Land Use and Building Permit 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.

"Pahrump Valley Fire & Rescue Services Substation" means a building containing a minimum of 1,000 square feet of gross floor area capable of accommodating two (2) to four (4) persons operating on a 24-hour basis, and contains appropriate square footage for a minimum of two bays for accommodation of fire-rescue vehicles.

"Planning Department" means the Planning Department of Nye County and/or any successor to the Planning Department of Nye County.

"Planning Director" or "Director of Planning" means the Director of the Nye County Planning Department or their designee(s).

"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 in Exhibit "A" attached to this agreement.

"Proposed Development" means all property and development as shown on Exhibit A.

"Public Works Director" or "Director of Public Works" means the Director of the Nye County Department of Public Works or their designee(s).

"Residential Development" means any proposed development identified by the Proposed Development as compatible with the Mixed Use (MU) zoning district as established in the Zoning Ordinance, § 17.04.410 of the Code.

"Subdivision Map" means any instrument under NRS 278 and Title 16 of the NCC 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, as amended or conditioned and approved by the Director of Public Works.

"Township" shall mean the unincorporated Town 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 BoCC in their sole discretion.

“Zoning Action” means the date and action taken by the BoCC with respect to Zone Change Application No. ZC-14-0001, 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 Zone Change Application No. ZC-14-0001.

"Zoning Ordinance" means the Zoning Ordinance of the Pahrump Regional Planning District, NCC 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 utility 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, the Applicable Rules and any 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 any Zoning Action.

Nye County Bill No. 2021-08 First Amendment to the Development Agreement with Spring Mountain Raceway, LLC. _Clean Version

2.3 Acknowledgment of Uncertainties

The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Proposed Development be developed in the manner contemplated by this Agreement. Among such circumstances is the unavailability of water or other limited natural resources, Federal regulation or air and water quality, and similar conditions. It is not the intent of the parties nor shall this Section be construed as excusing the County or the Developer of any obligation hereunder of depriving the County or Developer of any right under this Agreement, which can be performed.

2.4 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 through the specified duration of this Agreement.

3.2 Reliance on Zoning Action 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 herein and in accordance with this Agreement and the Applicable Rules.

3.3 Modification of Applicable Rules.

County and Developer acknowledge and agree that this Agreement 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. In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to Developer or 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. 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) that are permitted by subsection 3.5, below.

3.5 Imposition of New Fees or Standards.

Notwithstanding the terms of Section 3.3 and 3.4, 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; and
 - (6) uniform impact fees adopted by the BoCC, 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, including, but not limited to, air quality standards; 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 Section 3.5 through 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, 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. 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 right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from Owner.

3.8 Assignment.

- (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.
- (b) 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.
- (c) The Assignee shall assume all duties and obligations of Developer
- (d) 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 Assignee has the same ability to fulfill the obligations of this Agreement as the 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, unless the Developer is released in a written consent agreed to and executed by the County. 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) This subsection shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.
- (g) Subject to subsection (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 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 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 affect either of those entities.

3.10 Indemnity; Hold Harmless.

Except as expressly provided in this Agreement, Developer shall hold 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 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, (including waiving any claims it has against the County), and provide and pay all costs, attorneys fees, and damages related to a defense for 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 shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of County, its officers, agent, employees, or representatives.

3.11 Binding Effect of Agreement.

Subject to the provisions of Section 3.8 of this 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 County and Developer is such that Developer is not an agent of County for any purpose and 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 County and/or Developer, as the case may be. The BoCC may adopt a resolution setting forth the types of waivers for which staff has the discretion to grant. In the absence of such resolution, all waivers must be approved by the BoCC.

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 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. 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 Proposed Development.

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 all of the permitted uses of the land. 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 Mixed Use (MU)/Special Projects Overlay zoning classifications under § 17.04.410 and 17.04.408 of the Code, as otherwise limited or conditioned pursuant to the BoCC approval of the Zoning Action. Developer and County agree that the Proposed Development includes up to 100 single-family residential lots, an additional 100,000 square feet of warehouse/storage facilities, 50,000 square feet of retail/office space, two (2) additional control towers not to exceed 48' in height, up to twelve (12) miles of additional paved track surface, minor improvements to existing track surfaces and vehicle departure safety areas ("run-off" areas) an additional 1,850,000 square feet of "paddock area" for track related exercises, an open public lake with a maximum surface area of six (6) acres for active recreational public use and drainage control, a maximum of two (2) "zip lines" not to exceed 48' in height or 1,000' in length, two (2) additional refueling stations, water and sewer treatment facilities, up to 50 RV spaces, two (2) additional guard gate towers and gates, options for additional flags and advertising banners that will only impact or advertise inside the racetrack facility, all other advertising to be seen and for the use of the public shall require a sign permit for each one, two (2) additional underpasses or overpasses inside the facility to access portions of the track, restaurant facilities, two (2) additional clubhouse facilities, the opportunity to acquire and hold liquor licenses for the sale and consumption of alcohol, continued options for the ability to meet the safety needs of the existing track operations by adding safety walls and vehicle departure or "run-off areas."

- a. **Special Events.** Developer and County agree that up to 52 special events per year for more than 300 people but less than 1,000 shall be allowed, and up to six (6) outdoor festival events per year in excess of 1,000 people shall be allowed subject to approval of traffic control and emergency response plans by County and Nevada Department of Transportation (NDOT) as applicable. All events are subject to County and State requirements and stipulations and apply to special event licenses in accordance with County ordinance. Response or standby fire rescue and law enforcement services will be negotiated on a case-by-case basis.
- b. **Directional Signage.** On-site directional, warning, or other related miscellaneous non-advertising signage intended to provide information to members and guests shall be allowed within the Proposed Development.
- c. **Lighting.** All outdoor lighting used for illumination of the racetrack, parking areas, recreation areas, or any other purpose shall be fully shielded and downward facing lighting in accordance with Nye County Code 17.04.750.

- d. Noise Abatement. Developer agrees to install a soundwall, sound berms, landscaping berms, or other acoustical barriers located between the racetrack and the proposed single-family residential homes in order to minimize noise from the operations of the racetrack. Additionally, Developer agrees to prohibit any vehicle which is not in compliance with the established racetrack policies relating to vehicle decibel specifications from operating on the racetrack.

4.2 *Effect of Amendments.*

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 zoning district Mixed Use (MU)/Special Projects Overlay Zone, along with Developer-provided Design Guidelines and the Applicable Rules as set forth herein.

4.3 *Modifications to the Proposed Development.*

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

- (a) A nonmaterial modification is a modification made by the Developer by mutual agreement of Developer and Planning Director that:
 - (1) meets or exceeds the requirements of this Agreement by advancing or augmenting the objectives of the applicable requirement; or
 - (2) does not result in an intensification of use or off-site impacts; and
 - (3) does not materially increase or modify the amount of land area covered by this Agreement; and
 - (4) does not involve a substantial change to the proposed land use classifications (e.g., residential, commercial, industrial); and
 - (5) does not alter the setbacks, allowed building heights, or other bulk standards of the Proposed Development allowed by this Agreement.
- (b) A nonmaterial modification allows for the rearrangement of uses, internal street patterns, utility services, and/or structures, provided such changes are within the scope of any applicable federal, state, or county regulations.
- (c) In the event Developer wishes to make a nonmaterial modification to this Agreement, Developer shall notify the Planning Director and shall arrange a meeting with the Planning Director to present the justification for the proposed modifications. A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within thirty (30) days after the initial meeting between the Developer and the Planning Director. If Developer is aggrieved by the Director' decisions, Developer may appeal that decision in accordance with § 16.36.080.E of the County Code.

- (d) 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 (b) of this section, the Parties agree that any Subdivision Maps required or requested by Developer or Merchant Builder in connection with the Proposed Development shall be reviewed and considered for approval in accordance with the Applicable Rules.
- (b) County agrees to accept and timely process all subdivision maps requested by the Developer in accordance with the Applicable Rules. Developer agrees that 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) Copy of any required Environmental Report for the Property; and
 - (3) County approval of and conformance to the Technical Drainage Study; and
 - (4) Land dedications and Developer's execution of subdivision improvement, maintenance and warranty agreements with the County to assure such development; and
 - (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.
 - (6) So long as a Developer or merchant Builder complies with this Agreement and any applicable Design Guidelines, County agrees that the approval of any Subdivision Map shall not require the parties to enter into any amendment to the Agreement, nor shall such approval require a new development agreement for the property to which the Subdivision Map is applicable.
 - (7) Prior to the issuance of any certificate of occupancy for a structure subject to a subdivision Map, Developer or a Merchant Builder, as applicable, shall be required to show the following:
 - (i) The procurement of a Developer Bond, if applicable;
 - (ii) The procurement of a Merchant Builder Bond, if applicable;

- (iii) That water, sewer and power are connected to the structure; and
- (iv) That paved access to the structure(s) has been provided.

4.5 Maintenance of Roads

(a) County hereby agrees that the Proposed Development will be entirely private and contain no public infrastructure or improvements with the exception of the improvements listed in Section 6.2 and sewer and water infrastructure, which are to be privately installed by Developer within the private rights-of-way, and upon completion will be transferred for ownership and operation to an approved Utility Service Provider. All landscaping and street lighting within the private rights-of-way within the Proposed Development shall be privately maintained by the HOA in accordance with NRS Chapter 116 requirements providing certain standards and regulations relating to, but not limited to, reserve accounts and liability insurance.

(b) Developer shall maintain, in good repair and condition, all privately maintained on-site improvements, in accordance with the requirements of NRS 116 until such time as the HOA assumes responsibility for the same and Developer no longer retains control of the Board of Directors of the HOA. The HOA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of NRS 116.

(c) Developer agrees that prior to the release of any final maps for recording, Developer will cause to be formed one or more HOA'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 map. Such HOA'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 HOA'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 private rights-of-way. Developer agrees that such HOA's shall be created pursuant to declarations of covenants and restrictions recorded against the Proposed Development and that such HOA's shall have power to assess the subject landowners to pay the costs of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Such HOA'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 HOA's.

4.6 Maintenance of Public and Common Areas.

- (a) Developer agrees to provide appropriate easements for any necessary sewer and water utility improvements for maintenance by an approved Utility Service Provider. County hereby acknowledges that upon completion of necessary sewer and water improvements by the Developer in accordance with all applicable federal, state, and local regulations, responsibility for maintenance of sewer/water improvements is intended to be transferred to and assumed by an approved Utility Service Provider.
- (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 until such time as the HOA assumes

responsibility for the same and Developer no longer retains control of the Board of Directors of the HOA. HOA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of NRS Chapter 116.

- (c) The County shall have the right to review the declaration for the sole purpose of determining its compliance with the provisions of this Section. Such review shall be performed by County within a reasonable time, which shall not exceed ninety (90) days.

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.

4.8 Phasing Schedule.

- (a) Due to the Proposed Development being entirely private and containing no public infrastructure or improvements with the exception of sewer and water infrastructure, which are to be privately installed by Developer within the private road rights-of-way, and based upon the number of residential dwelling units and non-residential floor area as set forth within this Agreement, the County and Developer hereby agree that a phasing schedule is not required for the Proposed Development.
- (b) Developer agrees to provide to the Planning Director on an annual basis a written report relating to the construction that has been completed. The report may include a summary of activity for the previous year and projections for the next year.

4.9 Design Guidelines

Developer and County agree that while there are no specific established Design Guidelines for the Proposed Development, all development within the Proposed Development will be constructed in a manner consistent and compatible with the design, appearance, building materials, and construction of existing buildings on the site. Compliance with this section shall be reviewed and determined by County through the Planning Department's site development plan review process.

4.10 Dust Mitigation

Developer agrees and acknowledges that it shall educate Merchant Builders of the Applicable Rules with respect to dust mitigation and will require compliance therewith.

SECTION 5 REVIEW AND DEFAULT

5.1 Frequency of Reviews; Biennial Review.

Pursuant to NRS 278.0205.1 and Section 16.32.110 of the Nye County Code, the BoCC shall review the development once every twenty-four (24) months during the term of this Agreement, as defined in Section 11. Developer shall submit a report describing the status of the Project and outlining the actions taken to comply with this Agreement to the Nye County Planning Department. The report and any required fee should be submitted biennially and at least two (2) months prior to the anniversary date of recording of this Agreement. 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. Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation:

- (i) data showing the total number of 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.

5.2 Opportunity to be Heard.

The report required by this Section 5 shall be considered by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. 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 in writing a notice of default ("Notice of Default"). The Notice of Default 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) **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 default has occurred by Developer and remains uncorrected, County may amend or terminate this Agreement. In the event of default by Developer, 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 and Section 5.5. 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 County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of County's obligations hereunder under the procedures set forth in this Section 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 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 County within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within thirty (30) 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 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.

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, 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 (30) day Notice of Default as set forth in Section 5.3. Following a Notice of Default and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, the BoCC must hold a public hearing where they consider the allegations and make a decision regarding the merits. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court. 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.

5.6 Notices.

All notices required by this Section 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. Except as otherwise provided in Section 3.10, 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.
- (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 of "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, construct and maintain any open space and parks as shown on the Proposed Development. All such facilities shall meet the requirements of the Applicable Rules.

- (b) Developer agrees to design, construct and maintain a Xeriscape Demonstration Garden on a portion of the Proposed Development consisting of low-water-use plants, shrubs and trees, labeled with common and botanical names and/or other applicable interpretive signs, to be available to the public for tours.
- (c) Developer agrees to construct an approximately six (6) acre lake on a portion of the Proposed Development which shall be open to use by the general public for recreational purposes.
- (d) Water Use Mitigation: Developer agrees to take the following measures to mitigate the use of water within the Proposed Development:
 - 1. Developer will remove a minimum of 10,800 square feet of existing natural grass turf from the Proposed Development;
 - 2. Developer will record CC&R's for the single-family residential subdivision requiring that all landscaping on the single-family residential lots must utilize low-water use xeriscape concepts;
 - 3. Developer has constructed, and hereby agrees to continue to maintain at its own cost, storm water retention facilities within the Proposed Development capable of groundwater recharge of approximately Twenty-Four Million (24,000,000) gallons of water per storm event.

Developer and County agree that based upon Developer's construction and maintenance of the Demonstration Garden and the public recreation lake, Developer shall not be required to pay Park Impact Fees.

6.3 Police Services.

- (a) Pursuant to Section 15.32.070 of the NCC, Developer and/or Merchant Builders 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) Developer also agrees to obtain approved response operations plans and emergency operations plans to ensure coverage for special events from the Nye County Sheriff's Office and Nevada Department of Transportation.

6.4 Fire Protection.

- (a) The Developer is subject to the Fire Impact Fees and shall pay said impact fees to the County for the benefit of the Township, at the rate adopted by County in compliance with all local, state, and federal laws, and any future adjustments thereto.

- (b) Developer also agrees to obtain approved fire and emergency response plans to ensure coverage for special events from the respective authority having jurisdiction.

6.5 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.

6.6. Water.

The parties acknowledge that the Developer has adequate certificated water rights for the Property and the County currently has no role in the allocation of water to people in Pahrump. Developer and County agree that Developer shall construct at its sole cost necessary water facilities to supply the Proposed Development with adequate water and fire services in accordance with all federal, state, and local requirements. All permits, state and local approvals shall be acquired by the Developer. Developer, at the conclusion of construction, will turn all such water facilities over to an approved Utility Service Provider, per details in Exhibit "C" to be inserted later.

6.7. Sanitary Sewer.

Developer shall provide sanitary sewer system facilities on the subject property required by the Zoning Action. County has no obligations, and is not obligated to pay any financial costs, associated with obtaining the construction 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. Developer agrees to design and construct a sewer treatment facility on the Property, at its sole cost, to serve the Proposed Development.

Developer also agrees to construct at its sole cost any associated water and sewage facilities, septic systems, including any temporary septic system facilities, and electrical. Developer and County agree that at the conclusion of the construction of said sewer treatment facilities, the Developer shall turn over said facilities at zero cost to Utilities Incorporated of Central Nevada (UICN) to own and operate said facilities. All required permits, state and local approvals shall be acquired by the Developer for Proposed Sewer Facilities. The Sewer Treatment Facilities shall be owned and operated by an authorized operator of a public utility in accordance with all details in Exhibit "C" to be inserted later.

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

"c) 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.

6.8 Transportation.

(a) Traffic Studies. If a Master Traffic Impact Analysis is deemed necessary by the County's Traffic consultant it will be provided concurrent with the phase plans and or subdivision final map. Amendments and supplements to the the Master Traffic Analysis shall be submitted by Developer for review and approval by County. The County may, but is not required, to approve any such amendments if they conform to the Applicable Rules and this Agreement. Developer agrees to update the Traffic Impact Analysis to include the full build-out of the track expansion. Developer also agrees to provide the updated TIA to Nevada Department of Transportation (NDOT) for review, and Developer shall provide an approval letter from NDOT to the County.

(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 (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 and a left turn lane, necessary to provide ingress and egress for each Phase of Development, as identified in subsection (e),

below.

- (c) **Off-Site Improvements.** Developer agrees to provide off-site improvements as required by the Nevada Department of Transportation (NDOT). 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 required by NDOT.
- (d) **On-Site Improvements.** 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. 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 and set forth in this Agreement.
- (e) **Access Roads.** County agrees that Developers obligations, as they relate to Access Roads, shall be limited to the specific improvements set forth in the Final Plan. Developer acknowledges it shall be responsible for all Access Roads that may be identified in the Master Traffic Impact Analysis.
- (f) **Future Performance Bonds.** As required by law, as a condition of approval of any final map, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to roadways set forth in said final map, which are identified in the Agreement and/or Master Traffic Impact Analysis. 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 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. 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 that are a part of County's capital improvement plan as adopted. Developer remains subject, however, to impact fees for streets and highways that are adopted by County at the time any building permit is requested by Developer in connection with the Proposed Development.
- (h) **Access/Egress Plan.** 30 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. County reserves its right to require the Developer to modify or make changes to its 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 plan and any modification of the plan approved by the Director of Public Works thereafter, and ensure that the same plan is adhered to by all merchant builders, contractors and

subcontractors.

6.9 Storm Drainage

- (a) Technical Drainage Study. Developer has submitted to the County a Technical Drainage Study for the Proposed Development for the County's review and approval. Developer agrees to update the Technical Drainage Study to include full build-out of the track expansion.
- (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 the Proposed 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.
- (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 management measures identified in the approved Technical Drainage Study. 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.

6.10 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 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 estimated cost for the work as determined or approved by the Director of Public Works, and shall be adjusted no less frequently than every two 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 County.
- (b) As required by law, as a condition of approval of any final map, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to utilities set forth in said final map, 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.

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 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 County in compliance with all local, state and federal laws, and any future adjustments thereto, except as otherwise credited or offset pursuant to this agreement.
- 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, 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) any capital improvements it provides under the terms of the agreement that are a part of the funded portion of the County's capital improvement plan as adopted; and
 - (b) any "unit" fees paid pursuant to Section 6.
- 8.3 Developer remains subject to impact fees that are adopted by County at the time any building permit is requested by Developer in connection with the Proposed Development.

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 County:

Nye County
250 N. Highway 160, Suite 1
Pahrump, Nevada 89060
Attention: Planning Director

To Developer:

Spring Mountain Raceway LLC 3601
S. Highway 160

Pahrump, NV 89048

With Copy to:

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 fifteen (15) 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 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:
County of Nye
Board of County Commissioners
2100 E. Walt Williams Dr., Ste. 100
Pahrump, NV 89048

OWNER:
Spring Mountain Raceway LLC
3601 S. Highway 160
Pahrump, NV 89048

By: _____

Debra Strickland
Chair

By: _____

Name: _____

Title: _____

Approved as to Form: _____

Attest:

County Clerk

By: _____

SUBSCRIBED AND SWORN TO before me
on this ____ day of _____, 2021.

Notary Public in and for said County and State

EXHIBIT A

[Legal Description of Property Subject To Agreement and Plan of Development]

APN 027-441-16 Legal Description:

T20S R54E S34 F#956526 P.2 352 AC

APN 027-441-12 Legal Description:

T20S R54E S27 W SW SW SW 5.00 ACRES AND SE SW SW SW 2.50 ACRES; S28 E NE NE SW 5.00 ACRES; NE SE NE SW 2.50 ACRES; S SE NE SW 5.00 ACRES; NE SE SW 10.00 ACRES; E SW SE SW 5.00 ACRES; SE SE SW 10.00 ACRES; W NE NE SE 5.00 ACRES; W NE SE 20.00 ACRES; W SE NE SE 5.00 ACRES; W SE 80.00 ACRES; W NE SE SE 5.00 ACRES; W SE SE 20.00 ACRES; SE SE SE 10.00 ACRES; TOTAL 190.00 ACRES +/-

APN 027-441-13 Legal Description:

T20S R54E S27 LOTS 3, 4, 6, AND 8, (18.85 ACRES); AND NE1/4 SW1/4 SW1/4 SW1/4 (2.5 ACRES); S28 E1/2 NE1/4 NE1/4 SE1/4 (5.0 ACRES); E1/2 SE1/4 NE1/4 SE1/4 (5 ACRE); E1/2 NE1/4 SE1/4 SE1/4 (5 ACRES); AND S34 LOTS 29, 31, 33, 35, 36, 37, 38, 39, 42, 43, (45 44.68 ACRES). THE AREA DESCRIBED CONTAINS 66.03 ACRES.

APN 027-741-19 Legal Description:

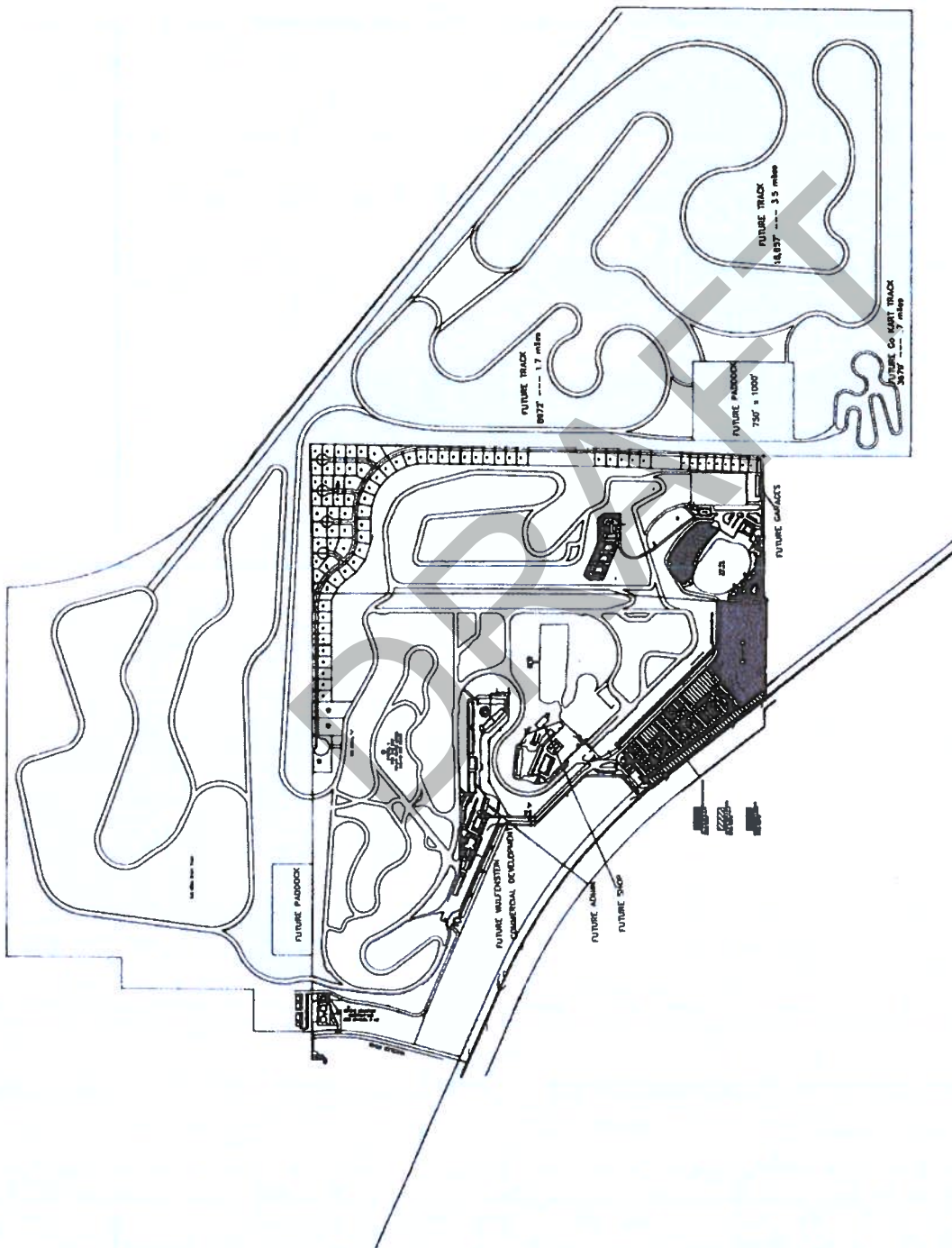
T20S R54E S33 & S34 L.78 278.738AC SPRING MOUNTAIN ESTATES

EXHIBIT B

[Master Traffic Impact Analysis – to be updated by Developer and included as part of this Amended Development Agreement]

EXHIBIT C

[Sewer/Water Utility Ownership & Operation Plan]



BILL NO. 2021-08

NYE COUNTY ORDINANCE NO. ____

SUMMARY: A Bill proposing to adopt a first amendment to the Development Agreement between Nye County and Spring Mountain Raceway, LLC.

TITLE: A BILL PROPOSING TO ADOPT A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND SPRING MOUNTAIN RACEWAY, 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, an amended development between Nye County and Spring Mountain Raceway, 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 ____ day of _____, 2021.

Proposed on the ____ day of _____, 2021.

Proposed by Commissioner _____.

Adopted on the ____ day of _____, 2021.

Vote: Ayes: Commissioners:

Nays: Commissioners:

Absent: Commissioners:

Attest:

Debra Strickland, Chair
Nye County Board of
County Commissioners

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

DRAFT

REVISED
FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT

BY AND BETWEEN

NYE COUNTY, STATE OF NEVADA

AND

SPRING MOUNTAIN RACEWAY LLC

Amendment No. 1

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DRAFT

This ~~Revised First Amendment to the~~ Development Agreement (the "Agreement") is made and entered into this ~~19th~~ day of ~~May~~, ~~2014~~2021 by and between the County of Nye, State of Nevada (hereinafter "County") and Spring Mountain Raceway LLC (hereinafter "Developer"), as owner of certain real property generally located at 3601 S. Highway 160, Pahrump, Nevada, and commonly known as "Spring Mountain Motorsports Ranch" or "Spring Mountain Raceway" and more particularly described as County Assessor's Parcel Numbers 027-741-12, 027-741-13, 027-741-14, 027-741-15, and 027-741-16, 027-741-19, 027-441-16, 027-441-12 and 027-441-13. If any terms, conditions or covenants of this Agreement conflict with the Development Agreement entered into on May 19th, 2014, this Agreement shall control.

RECITAL OF PREMISES, PURPOSE AND INTENT

A. Developer owns that certain real property described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") containing approximately ~~313.0~~ 620.03 acres of land, which is the subject of this Agreement.

B. The County has authority, pursuant to Nevada Revised Statutes (NRS) Chapter 278.0201 to 278.0207 and Nye County Nye County Code (NCC), 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 19th day of May, 2014 the BoCC adopted Ordinance No. 471 approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the 9th day of June, 2014. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

E. The County desires to ~~enter into~~ Amend~~enter into~~ this Agreement to govern the development of the Property 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.

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 for the Pahrump Regional Planning District (PRPD).

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.

“Amendment” means a mutually agreed to written document entered into by the County and the Developer that modifies this Agreement. All proposed amendments shall be considered by the BoCC for adoption or rejection.

“Applicable Rules” means and refers to:

1. The Zoning Action (defined below);
2. The following provisions of the Nye County Code as they existed on the Effective Date;

Nye County Code, Title 5, Chapter 12.08 (Excavations and Encroachments), 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, (Subdivisions)

Title 17, (Zoning) and

3. 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.

"Assignee" means a person, partnership, joint venture, firm, company or other organization, other than a Merchant Builder or an Affiliate.

"BoCC" means the Nye County 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 Spring Mountain Raceway LLC, as the Developer of the land constituting the Property and its successors and assigns, if any, as permitted under the terms of Section 3.8 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, or site development plans, and tentative maps.

“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 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 Titles 16 and 17 of the Nye County Code.

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

“Master Traffic Impact Analysis” means a comprehensive traffic study prepared in conformance with the Zoning Action and approved as of the effective date of this Agreement, as amended or conditioned 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, Affiliate or Assignee that is designated by the Developer, in writing, as authorized to submit Land Use and Building Permit 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.

"Pahrump Valley Fire & Rescue Services Substation" means a building containing a minimum of 1,000 square feet of gross floor area capable of accommodating two (2) to four (4) persons operating on a 24-hour basis, and contains appropriate square footage for a minimum of two bays for accommodation of fire-rescue vehicles.

"Planning Department" means the Planning Department of Nye County and/or any successor to the Planning Department of Nye County.

"Planning Director" or "Director of Planning" means the Director of the Nye County Planning Department or their designee(s).

"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 in Exhibit "A" attached to this agreement.

"Proposed Development" means all property and development as shown on Exhibit A.

"Public Works Director" or "Director of Public Works" means the Director of the Nye County Department of Public Works or their designee(s).

"Residential Development" means any proposed development identified by the Proposed Development as compatible with the Mixed Use (MU) zoning district as established in the Zoning Ordinance, § 17.04.410 of the Code.

"Subdivision Map" means any instrument under NRS 278 and Title 16 of the NCC 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, as amended or conditioned and approved by the Director of Public Works.

"Township" shall mean the unincorporated Town 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 BoCC in their sole discretion.

“Zoning Action” means the date and action taken by the BoCC with respect to Zone Change Application No. ZC-14-0001, 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 Zone Change Application No. ZC-14-0001.

"Zoning Ordinance" means the Zoning Ordinance of the Pahrump Regional Planning District, NCC 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 utility 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, the Applicable Rules and any 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 any Zoning Action.

Nye County Bill No. 2021-08 First Amendment to the Development Agreement with Spring Mountain Raceway, LLC. _Tracked Changes

2.3 Acknowledgment of Uncertainties

The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Proposed Development be developed in the manner contemplated by this Agreement. Among such circumstances is the unavailability of water or other limited natural resources, Federal regulation or air and water quality, and similar conditions. It is not the intent of the parties nor shall this Section be construed as excusing the County or the Developer of any obligation hereunder of depriving the County or Developer of any right under this Agreement, which can be performed.

2.4 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 through the specified duration of this Agreement.

3.2 Reliance on Zoning Action 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 herein and in accordance with this Agreement and the Applicable Rules.

3.3 Modification of Applicable Rules.

County and Developer acknowledge and agree that this Agreement 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. In the event the County adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not apply to Developer or 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. 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) that are permitted by subsection 3.5, below.

3.5 Imposition of New Fees or Standards.

Notwithstanding the terms of Section 3.3 and 3.4, 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; and
 - (6) uniform impact fees adopted by the BoCC, 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, including, but not limited to, air quality standards; 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 Section 3.5 through 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, 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. 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 right to obtain any Discretionary Approval from the County, however it shall not be unreasonably withheld from Owner.

3.8 *Assignment.*

- (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.
- (b) 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.
- (c) The Assignee shall assume all duties and obligations of Developer
- (d) 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 Assignee has the same ability to fulfill the obligations of this Agreement as the 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, unless the Developer is released in a written consent agreed to and executed by the County. 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) This subsection shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.
- (g) Subject to subsection (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 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 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 affect either of those entities.

3.10 Indemnity; Hold Harmless.

Except as expressly provided in this Agreement, Developer shall hold 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 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, (including waiving any claims it has against the County), and provide and pay all costs, attorneys fees, and damages related to a defense for 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 shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of County, its officers, agent, employees, or representatives.

3.11 Binding Effect of Agreement.

Subject to the provisions of Section 3.8 of this 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 County and Developer is such that Developer is not an agent of County for any purpose and 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 County and/or Developer, as the case may be. The BoCC may adopt a resolution setting forth the types of waivers for which staff has the discretion to grant. In the absence of such resolution, all waivers must be approved by the BoCC.

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 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. 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 Proposed Development.

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 all of the permitted uses of the land. 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 Mixed Use (MU)/Special Projects Overlay zoning classifications under § 17.04.410 and 17.04.408 of the Code, as otherwise limited or conditioned pursuant to the BoCC approval of the Zoning Action. Developer and County agree that the Proposed Development includes up to 100 single-family residential lots, an additional 100,000 square feet of warehouse/storage facilities, 50,000 square feet of retail/office space, two (2) additional control towers not to exceed 48' in height, up to ~~one (1) mile~~ twelve (12) miles of additional paved track surface, minor improvements to existing track surfaces and vehicle departure safety areas ("run-off" areas) an additional ~~250,000~~ 1,850,000 square feet of "paddock area" for track related exercises, an open public lake with a maximum surface area of six (6) acres for active recreational public use and drainage control, a maximum of two (2) "zip lines" not to exceed 48' in height or 1,000' in length, two (2) additional refueling stations, water and sewer treatment facilities, up to 50 RV spaces, two (2) additional guard gate towers and gates, options for additional flags and advertising banners that will only impact or advertise inside the racetrack facility, all other advertising to be seen and for the use of the public shall require a sign permit for each one, two (2) additional underpasses or overpasses inside the facility to access portions of the track, restaurant facilities, two (2) additional clubhouse facilities, the ~~ability~~ opportunity to acquire and hold liquor licenses for the sale and consumption of alcohol, continued options for the ability to meet the safety needs of the existing track operations by adding safety walls and vehicle departure or "run-off areas."

- a. Special Events. Developer and County agree that up to 52 special events per year for more than 300 people but less than 1,000 shall be allowed, and up to six (6) outdoor festival events per year in excess of 1,000 people shall be allowed subject to approval of traffic control and emergency response plans by County and Nevada Department of Transportation (NDOT) as applicable. All events are subject to eCounty and sState requirements and stipulations and apply to special event licenses in accordance with eCounty ordinance. Response or standby fire rescue and law enforcement services will be negotiated on a case-by-case basis.
- b. Directional Signage. On-site directional, warning, or other related miscellaneous non-advertising signage intended to provide information to members and guests shall be allowed within the Proposed Development.
- c. Lighting. All outdoor lighting used for illumination of the racetrack, parking areas, recreation areas, or any other purpose shall be fully shielded and downward facing lighting in accordance with Nye County Code 17.04.750.

- d. Noise Abatement. Developer agrees to install a soundwall, sound berms, landscaping berms, or other acoustical barriers located between the racetrack and the proposed single-family residential homes in order to minimize noise from the operations of the racetrack. Additionally, Developer agrees to prohibit any vehicle which is not in compliance with the established racetrack policies relating to vehicle decibel specifications from operating on the racetrack.

4.2 *Effect of Amendments.*

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 zoning district Mixed Use (MU)/Special Projects Overlay Zone, along with Developer-provided Design Guidelines and the Applicable Rules as set forth herein.

4.3 *Modifications to the Proposed Development.*

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

- (a) A nonmaterial modification is a modification made by the Developer by mutual agreement of Developer and Planning Director that:
 - (1) meets or exceeds the requirements of this Agreement by advancing or augmenting the objectives of the applicable requirement; or
 - (2) does not result in an intensification of use or off-site impacts; and
 - (3) does not materially increase or modify the amount of land area covered by this Agreement; and
 - (4) does not involve a substantial change to the proposed land use classifications (e.g., residential, commercial, industrial); and
 - (5) does not alter the setbacks, allowed building heights, or other bulk standards of the Proposed Development allowed by this Agreement.
- (b) A nonmaterial modification allows for the rearrangement of uses, internal street patterns, utility services, and/or structures, provided such changes are within the scope of any applicable federal, state, or county regulations.
- (c) In the event Developer wishes to make a nonmaterial modification to this Agreement, Developer shall notify the Planning Director and shall arrange a meeting with the Planning Director to present the justification for the proposed modifications. A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within thirty (30) days after the initial meeting between the Developer and the Planning Director. If Developer is aggrieved by the Director' decisions, Developer may appeal that decision in accordance with § 16.36.080.E of the County Code.

- (d) 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 (b) of this section, the Parties agree that any Subdivision Maps required or requested by Developer or Merchant Builder in connection with the Proposed Development shall be reviewed and considered for approval in accordance with the Applicable Rules.
- (b) County agrees to accept and timely process all subdivision maps requested by the Developer in accordance with the Applicable Rules. Developer agrees that 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) Copy of any required Environmental Report for the Property; and
 - (3) County approval of and conformance to the Technical Drainage Study; and
 - (4) Land dedications and Developer's execution of subdivision improvement, maintenance and warranty agreements with the County to assure such development; and
 - (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.
 - (6) So long as a Developer or merchant Builder complies with this Agreement and any applicable Design Guidelines, County agrees that the approval of any Subdivision Map shall not require the parties to enter into any amendment to the Agreement, nor shall such approval require a new development agreement for the property to which the Subdivision Map is applicable.
 - (7) Prior to the issuance of any certificate of occupancy for a structure subject to a subdivision Map, Developer or a Merchant Builder, as applicable, shall be required to show the following:
 - (i) The procurement of a Developer Bond, if applicable;
 - (ii) The procurement of a Merchant Builder Bond, if applicable;

- (iii) That water, sewer and power are connected to the structure; and
- (iv) That paved access to the structure(s) has been provided.

4.5 Maintenance of Roads

(a) County hereby agrees that the Proposed Development will be entirely private and contain no public infrastructure or improvements with the exception of the improvements listed in Section 6.2 and sewer and water infrastructure, which are to be privately installed by Developer within the private rights-of-way, and upon completion will be transferred for ownership and operation to an approved Utility Service Provider. All landscaping and street lighting within the private rights-of-way within the Proposed Development shall be privately maintained by the HOA in accordance with NRS Chapter 116 requirements providing certain standards and regulations relating to, but not limited to, reserve accounts and liability insurance.

(b) Developer shall maintain, in good repair and condition, all privately maintained on-site improvements, in accordance with the requirements of NRS 116 until such time as the HOA assumes responsibility for the same and Developer no longer retains control of the Board of Directors of the HOA. The HOA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of NRS 116.

(c) Developer agrees that prior to the release of any final maps for recording, Developer will cause to be formed one or more HOA'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 map. Such HOA'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 HOA'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 private rights-of-way. Developer agrees that such HOA's shall be created pursuant to declarations of covenants and restrictions recorded against the Proposed Development and that such HOA's shall have power to assess the subject landowners to pay the costs of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Such HOA'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 HOA's.

4.6 Maintenance of Public and Common Areas.

- (a) Developer agrees to provide appropriate easements for any necessary sewer and water utility improvements for maintenance by an approved Utility Service Provider. County hereby acknowledges that upon completion of necessary sewer and water improvements by the Developer in accordance with all applicable federal, state, and local regulations, responsibility for maintenance of sewer/water improvements is intended to be transferred to and assumed by an approved Utility Service Provider.
- (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 until such time as the HOA assumes

responsibility for the same and Developer no longer retains control of the Board of Directors of the HOA. HOA shall similarly maintain all privately maintained on-site improvements in accordance with the requirements of NRS Chapter 116.

- (c) The County shall have the right to review the declaration for the sole purpose of determining its compliance with the provisions of this Section. Such review shall be performed by by County within a reasonable time, which shall not exceed ninety (90) days.

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.

4.8 Phasing Schedule.

- (a) Due to the Proposed Development being entirely private and containing no public infrastructure or improvements with the exception of sewer and water infrastructure, which are to be privately installed by Developer within the private road rights-of-way, and based upon the number of residential dwelling units and non-residential floor area as set forth within this Agreement, the County and Developer hereby agree that a phasing schedule is not required for the Proposed Development.
- (b) Developer agrees to provide to the Planning Director on an annual basis a written report relating to the construction that has been completed. The report may include a summary of activity for the previous year and projections for the next year.

4.9 Design Guidelines

Developer and County agree that while there are no specific established Design Guidelines for the Proposed Development, all development within the Proposed Development will be constructed in a manner consistent and compatible with the design, appearance, building materials, and construction of existing buildings on the site. Compliance with this section shall be reviewed and determined by County through the Planning Department's site development plan review process.

4.10 Dust Mitigation

Developer agrees and acknowledges that it shall educate Merchant Builders of the Applicable Rules with respect to dust mitigation and will require compliance therewith.

SECTION 5 REVIEW AND DEFAULT

5.1 Frequency of Reviews; Biennial Review.

Pursuant to NRS 278.0205.1 and Section 16.32.110 of the Nye County Code, the BoCC shall review the development once every twenty-four (24) months during the term of this Agreement, as defined in Section 11. Developer shall submit a report describing the status of the Project and outlining the actions taken to comply with this Agreement to the Nye County Planning Department. The report and any required fee should be submitted biennially and at least two (2) months prior to the anniversary date of recording of this Agreement. 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. Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation:

- (i) data showing the total number of 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.

5.2 Opportunity to be Heard.

The report required by this Section 5 shall be considered by the BoCC in accordance with the rules and procedures of Section 16.32 of the Nye County Code. 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 in writing a notice of default ("Notice of Default"). The Notice of Default 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) **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 default has occurred by Developer and remains uncorrected, County may amend or terminate this Agreement. In the event of default by Developer, 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 and Section 5.5. 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 County substantially defaults under this Agreement, Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of County's obligations hereunder under the procedures set forth in this Section 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 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 County within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within thirty (30) 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 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.

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, 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 (30) day Notice of Default as set forth in Section 5.3. Following a Notice of Default and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, the BoCC must hold a public hearing where they consider the allegations and make a decision regarding the merits. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court. 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.

5.6 Notices.

All notices required by this Section 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. Except as otherwise provided in Section 3.10, 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.
- (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, construct and maintain any open space and parks as shown on the Proposed Development. All such facilities shall meet the requirements of the Applicable Rules.

- (b) Developer agrees to design, construct and maintain a Xeriscape Demonstration Garden on a portion of the Proposed Development consisting of low-water-use plants, shrubs and trees, labeled with common and botanical names and/or other applicable interpretive signs, to be available to the public for tours.
- (c) Developer agrees to construct an approximately six (6) acre lake on a portion of the Proposed Development which shall be open to use by the general public for recreational purposes.
- (d) Water Use Mitigation: Developer agrees to take the following measures to mitigate the use of water within the Proposed Development:
 - 1. Developer will remove a minimum of 10,800 square feet of existing natural grass turf from the Proposed Development;
 - 2. Developer will record CC&R's for the single-family residential subdivision requiring that all landscaping on the single-family residential lots must utilize low-water use xeriscape concepts;
 - 3. Developer has constructed, and hereby agrees to continue to maintain at its own cost, storm water retention facilities within the Proposed Development capable of groundwater recharge of approximately Twenty-Four Million (24,000,000) gallons of water per storm event.

Developer and County agree that based upon Developer's construction and maintenance of the Demonstration Garden and the public recreation lake, Developer shall not be required to pay Park Impact Fees.

6.3 Police Services.

- (a) Pursuant to Section 15.32.070 of the NCC, Developer and/or Merchant Builders 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) Developer also agrees to obtain approved response operations plans and emergency operations plans to ensure coverage for special events from the Nye County Sheriff's Office and Nevada Department of Transportation.

6.4 Fire Protection.

- (a) The Developer is subject to the Fire Impact Fees and shall pay said impact fees to the County for the benefit of the Township, at the rate adopted by County in compliance with all local, state, and federal laws, and any future adjustments thereto.

- (b) Developer also agrees to obtain approved fire and emergency response plans to ensure coverage for special events from the respective authority having jurisdiction.

6.5 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.

6.6. Water.

The parties acknowledge that the Developer has adequate certificated water rights for the Property and the County currently has no role in the allocation of water to people in Pahrump. Developer and County agree that Developer shall construct at its sole cost necessary water facilities to supply the Proposed Development with adequate water and fire services in accordance with all federal, state, and local requirements. All permits, state and local approvals shall be acquired by the Developer. Developer, at the conclusion of construction, will turn all such water facilities over to an approved Utility Service Provider, per details in Exhibit "C" to be inserted later.

6.7. Sanitary Sewer.

Developer shall provide sanitary sewer system facilities on the subject property required by the Zoning Action. County has no obligations, and is not obligated to pay any financial costs, associated with obtaining the construction 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. Developer agrees to design and construct a sewer treatment facility on the Property, at its sole cost, to serve the Proposed Development.

Developer also agrees to construct at its sole cost any associated water and sewage facilities, septic systems, including any temporary septic system facilities, and electrical. Developer and County agree that at the conclusion of the construction of said sewer treatment facilities, the Developer shall turn over said facilities at zero cost to Utilities Incorporated of Central Nevada (UICN) to own and operate said facilities. All required permits, state and local approvals shall be acquired by the Developer for Proposed Sewer Facilities. The Sewer Treatment Facilities shall be owned and operated by an authorized operator of a public utility in accordance with all details in Exhibit "C" to be inserted later.

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

"c) 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:

I) 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.

6.8 Transportation.

(a) Traffic Studies. If a Master Traffic Impact Analysis is deemed necessary by the County's Traffic consultant it will be provided concurrent with the phase plans and or subdivision final map. Amendments and supplements to the the Master Traffic Analysis shall be submitted by Developer for review and approval by County. The County may, but is not required, to approve any such amendments if they conform to the Applicable Rules and this Agreement. Developer agrees to update the Traffic Impact Analysis to include the full build-out of the track expansion. Developer also agrees to provide the updated TIA to Nevada Department of Transportation (NDOT) for review, and Developer shall provide an approval letter from NDOT to the County.

(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 (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 and a left turn lane, necessary to provide ingress and egress for each Phase of Development, as identified in subsection (e),

below.

- (c) Off-Site Improvements. Developer agrees to provide off-site improvements as required by the Nevada Department of Transportation (NDOT). 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 required by NDOT.
- (d) On-Site Improvements. 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. 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 and set forth in this Agreement.
- (e) Access Roads. County agrees that Developers obligations, as they relate to Access Roads, shall be limited to the specific improvements set forth in the Final Plan. Developer acknowledges it shall be responsible for all Access Roads that may be identified in the Master Traffic Impact Analysis.
- (f) Future Performance Bonds. As required by law, as a condition of approval of any final map, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to roadways set forth in said final map, which are identified in the Agreement and/or Master Traffic Impact Analysis. 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 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. 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 that are a part of County's capital improvement plan as adopted. Developer remains subject, however, to impact fees for streets and highways that are adopted by County at the time any building permit is requested by Developer in connection with the Proposed Development.
- (h) Access/Egress Plan. 30 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. County reserves its right to require the Developer to modify or make changes to its 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 plan and any modification of the plan approved by the Director of Public Works thereafter, and ensure that the same plan is adhered to by all merchant builders, contractors and

subcontractors.

6.9 *Storm Drainage*

- (a) Technical Drainage Study. Developer has submitted to the County a Technical Drainage Study for the Proposed Development ~~and~~ for the County's review and approval. Developer agrees to update the Technical Drainage Study to include full build-out of the track expansion.
- (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 the Proposed 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.
- (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 management measures identified in the approved Technical Drainage Study. 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.

6.10 *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 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 estimated cost for the work as determined or approved by the Director of Public Works, and shall be adjusted no less frequently than every two 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 County.
- (b) As required by law, as a condition of approval of any final map, Developer shall provide performance bonds for Off-Site and On-Site Improvements which relate to utilities set forth in said final map, 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.

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 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 County in compliance with all local, state and federal laws, and any future adjustments thereto, except as otherwise credited or offset pursuant to this agreement.
- 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, 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) any capital improvements it provides under the terms of the agreement that are a part of the funded portion of the County's capital improvement plan as adopted; and
 - (b) any "unit" fees paid pursuant to Section 6.
- 8.3 Developer remains subject to impact fees that are adopted by County at the time any building permit is requested by Developer in connection with the Proposed Development.

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 County:

Nye County
250 N. Highway 160, Suite 1
Pahrump, Nevada 89060
Attention: Planning Director

To Developer:

Spring Mountain Raceway LLC 3601
S. Highway 160

Pahrump, NV 89048

With Copy to:

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 fifteen (15) years after the Effective Date of the 1st Amendment.

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 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:
County of Nye
Board of County Commissioners
2100 E. Walt Williams Dr., Ste. 100
Pahrump, NV 89048

OWNER:
Spring Mountain Raceway LLC
3601 S. Highway 160
Pahrump, NV 89048

By:

~~Daniel Schinhofen~~
Debra Strickland
~~Chairman~~Chair

By:

Name:

Title:

Approved as to Form:

Attest:

County Clerk

By:

SUBSCRIBED AND SWORN TO before me
on this ____ day of _____, ~~2014~~2021.

Notary Public in and for said County and State

EXHIBIT A

[Legal Description of Property Subject To Agreement and Plan of Development]

APN 027-441-16 Legal Description:
T20S R54E S34 F#956526 P.2 352 AC

APN 027-441-12 Legal Description:
T20S R54E S27 W SW SW SW 5.00 ACRES AND SE SW SW SW 2.50 ACRES; S28 E NE NE SW 5.00 ACRES; NE SE NE SW 2.50 ACRES; S SE NE SW 5.00 ACRES; NE SE SW 10.00 ACRES; E SW SE SW 5.00 ACRES; SE SE SW 10.00 ACRES; W NE NE SE 5.00 ACRES; W NE SE 20.00 ACRES; W SE NE SE 5.00 ACRES; W SE 80.00 ACRES; W NE SE SE 5.00 ACRES; W SE SE 20.00 ACRES; SE SE SE 10.00 ACRES; TOTAL 190.00 ACRES +/-

APN 027-441-13 Legal Description:
T20S R54E S27 LOTS 3, 4, 6, AND 8, (18.85 ACRES); AND NE1/4 SW1/4 SW1/4 SW1/4 (2.5 ACRES); S28 E1/2 NE1/4 NE1/4 SE1/4 (5.0 ACRES); E1/2 SE1/4 NE1/4 SE1/4 (5 ACRE); E1/2 NE1/4 SE1/4 SE1/4 (5 ACRES); AND S34 LOTS 29, 31, 33, 35, 36, 37, 38, 39, 42, 43, (45 44.68 ACRES). THE AREA DESCRIBED CONTAINS 66.03 ACRES.

APN 027-741-19 Legal Description:
T20S R54E S33 & S34 L.78 278.738AC SPRING MOUNTAIN ESTATES

EXHIBIT B

[Master Traffic Impact Analysis – to be updated by Developer and included as part of this Amended Development Agreement]

EXHIBIT C

[Sewer/Water Utility Ownership & Operation Plan]