

# NYE COUNTY AGENDA INFORMATION FORM

Action     
  Presentation     
  Presentation & Action

Department: <b>Planning</b>		Agenda Date:	
Category: <b>Timed Agenda Item – 11:00 a.m.</b>		<b>September 19, 2017</b>	
Contact: <b>Darrell Lacy</b>	Phone: 775-751-4249	Continued from meeting of:	
Return to: <b>Darrell Lacy</b>	Location: <b>Planning</b>	Phone: 775-751-4249	
<b>Action requested:</b> (Include what, with whom, when, where, why, how much (\$) and terms) <p>Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2017-18: A Bill proposing to amend the Development Agreement between Nye County and L.I. Development, LLC and Pahrump Utility Company, Inc., for the Indian Road Subdivision; providing for the severability, constitutionality and effective date thereof; and other matters properly related thereto; and 2) Set an effective date.</p>			
<b>Complete description of requested action:</b> (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures) <p>Staff recommends adoption and setting an effective date of October 9, 2017.</p>			
Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.			
<b>Expenditure Impact by FY(s):</b> (Provide detail on Financial Form) <p style="text-align: right;"><input checked="" type="checkbox"/> No financial impact</p>			

**Routing & Approval (Sign & Date)**

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date <i>NA</i>
5.	Date	10. County Manager	Date

Place on Agenda  
*ST*  
**ITEM # 9**

**NYE COUNTY BOARD OF COUNTY COMMISSIONERS  
PLANNING DEPARTMENT STAFF REPORT**

**Meeting Date:** September 19, 2017

**AGENDA ITEMS**

11:00 – For Possible Action – Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2017-18: A Bill proposing to amend the Development Agreement between Nye County and L.I. Development, LLC and Pahrump Utility Company, Inc., for the Indian Road Subdivision; providing for the severability, constitutionality and effective date thereof; and other matters properly related thereto; and 2) Set an effective date.

**GENERAL INFORMATION SUMMARY**

This is a request to modify the existing Development Agreement between Nye County and L.I. Development, LLC, and Pahrump Utility Company, Inc., for the Indian Road Subdivision

The effective date of the Development Agreement was February 25, 2008, and has a 10-year duration. The date of expiration (if not extended) is February 25, 2018.

The (current) development agreement allows for the construction of 448 single-family residential homes on 120 acres with 8,000 square foot minimum lot sizes, and 40 acres to be developed as a wastewater reclamation facility. The modified (proposed) development agreement proposes a not-to-exceed average density of four (4) dwelling units per acre for the residential portion of the development.

Attached is the proposed Development Agreement.

If adopted, staff recommends an effective date of October 9, 2017.

**RECOMMENDATION**

**Recommended BOCC Motion:** "I move to \_\_\_\_\_ (Options: 1. Adopt, 2. Amend and adopt, 3. Reject, 4. Take no action, or 5. Continue) Nye County Bill No. 2017-18; (if adopted) with and effective date of October 9, 2017."

BILL NO. 2017-18

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

SUMMARY: A Bill proposing to amend the Development Agreement between Nye County and L.I. Development, LLC, and Pahrump Utility Company, Inc., for the Indian Road Subdivision, located within the Pahrump Regional Planning District; and other matters properly related thereto.

TITLE: A BILL PROPOSING TO AMEND THE DEVELOPMENT AGREEMENT BETWEEN NYE COUNTY AND L.I. DEVELOPMENT, LLC, AND PAHRUMP UTILITY COMPANY, INC., FOR THE INDIAN ROAD SUBDIVISION, LOCATED WITHIN THE PAHRUMP REGIONAL PLANNING DISTRICT; AND OTHER MATTERS PROPERLY RELATED 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 agreement for the Indian Road Subdivision development, attached hereto as "Exhibit 1," located within the Pahrump Regional Planning District, is hereby adopted.
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 \_\_\_\_\_, 2017.

Proposed on the 15<sup>th</sup> day of August 2017.

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

Adopted on the \_\_\_\_ day of \_\_\_\_\_, 2016.

Vote:           Ayes:           Commissioners:

                  Nays:           Commissioners:

                  Absent:          Commissioners:

Attest:

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Dan Schinhofen, Chairman  
Nye County Board of  
County Commissioners

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

**DEVELOPMENT AGREEMENT**  
**EXTENSION and AMENDMENT**

**BY AND BETWEEN**

**NYE COUNTY, STATE OF NEVADA**

**AND**

**L. I. DEVELOPMENT, LLC and PAHRUMP UTILITY  
COMPANY, INC.**

(Nye County Model Development Agreement – Revised as of ~~12/01/2006~~  
9/8/17)

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This Development Agreement Extension and Amendment (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2008~~ 2017 by and between the County of Nye, State of Nevada (hereinafter "County") and L.I. Development, LLC. and Pahrump Utility Company, Inc., (PUCI) (hereinafter "Developer"), as owner of certain real property located at 5400 E. Turner Boulevard, Pahrump, Nye County, Nevada, 120 acres of which is commonly known as "Indian Road Subdivision" and 40 acres of which is commonly known as "PUCI Utility Site" more particularly described as County Assessor's Parcel Numbers 45-361-04 and 45-361-05 (the "Property").

This Agreement extends the term and amends certain conditions of the original Development Agreement approved on February 5, 2008 by the Nye County Board of County Commissioners as Ordinance No. 349 and recorded in the Nye County Recorder's office on March 31, 2008 as Document No. 706215.

## RECITAL OF PREMISES, PURPOSE AND INTENT

A. Developer owns that certain real property consisting of a total of 160 acres at 5400 E. Turner Blvd, Pahrump, Nevada described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") This property contains approximately 120 acres zoned residential VR-8, the Residential Development, and 40 acres zoned General Commercial for utility related purposes, the Utility Development, all of which is the subject of this Agreement. It is the intent of the parties that development of the Property shall not exceed an average density of four (4) dwelling units per acre for the residential portion of the development.

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

C. 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 ~~20071214-090817~~ IR Development Agreement Extension



Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. On the \_\_\_\_ day of \_\_\_\_\_, ~~2008-2017~~ the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_\_ day of \_\_\_\_\_, ~~2008~~2017. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

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

The County finds and determines, and the Developer agrees, that the conditions established in this ~~e~~Agreement are unique to the Proposed Development (as defined in this ~~e~~Agreement) and were negotiated at arm's 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.

Additionally, the Developer agrees, as each home or building is constructed, that the Developer is required to comply with local codes, ordinances, and Nevada Revised Statutes with regard to water use and water use restrictions.

Developer agrees to comply with the 2017 Landscape Ordinance, as adopted. Developer also agrees to develop the community to a low-light, "dark sky" standard.

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 including a limited liability company, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

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

"Applicable Rules" means and refers to:

1. The Zoning Action (defined below);
2. The following provisions of the Nye County Codes as they existed on the Effective Date.  
  
Title 15, Chapters 15.12 (Flood Damage Prevention), and  
  
Title 15, Chapters 15.32.070 (Impact Fees)  
  
Title 16, (Subdivisions), and  
  
Title 17 (Zoning), Chapter 17.04, 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. Nye County Code, 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 ~~e~~Agreement by building codes that apply uniformly throughout the Pahrump Regional Planning District, and
3. 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
4. Any applicable state or federal law or regulation.

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

"BoCC" means the Board of County Commissioners.

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

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

"Developer" means L. I. Development, LLC and Pahrump Utility Company, Inc., as the Developer of the land constituting the Property and its, affiliates,

successors and assigns, if any, as permitted under the terms of Section 3.8 of this Agreement. Residential Developer means L.I. Development, LLC and its affiliates, successors and assigns. Utility Developer means Pahrump Utility Company, Inc. and its affiliates, successors and assigns.

"District" means Nye County School District, as established by NRS 386.

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

"Effective Date" means the effective date of an ordinance adopted by the BoCC that approves the execution of this Development Agreement Extension and Amendment and which Ordinance is subsequently recorded as required by NRS 278.

"Engineering and Design Standards" means those standard current engineering practices, standards required in the Master Traffic Impact Analysis and Technical Drainage Study or new standards, under the Applicable Rules when they are legally adopted by the County, for the design of roads, drainage, and other infrastructure, as may be amended from time to time. The County acknowledges that the improvement plans, approved in the original Development Agreement, submitted by Pacific Coast Civil and attached hereto as Exhibit G are approved and comply with the Engineering and Design Standards as outlined herein, so long as the engineering stamps are updated in 2017.

"HOA" means any homeowners' association(s) 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, under County Code 15.32.070, with respect to new development to finance the costs of capital improvements or facility expansion necessitated by and attributable to new development. The term does not include expenses, if these expenses are not identified in the Nye County Capital Improvement Plan for Pahrump Regional Planning District, required to complete any capital improvements identified and concurrently approved by the Director of Public Works in the

Master Traffic Impact Analysis and Technical Drainage studies that are required of the Developer by the County under the Zoning Action or under this Agreement.

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

"Land Use Application" means any application seeking any approval authorized or required by Title 16 and 17 of the Code.

"Master Plan" means the Pahrump Regional Planning District Master Plan Update ~~dated as amended December 2014 and November 19, 2003~~, as may be amended from time to time.

"Master Traffic Impact Analysis (MTIA)" means a 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 which is incorporated herein and made a part of this Agreement by this reference, is hereby approved (See Exhibit F).

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

"NRS" means the Nevada Revised Statutes.

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

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



“Proposed Development” means all property and development within the boundaries of the Indian Road residential and PUCI Utility Site, as shown on the Conceptual Residential and Utility Site Plan attached as Exhibit B. The final residential site plan shall be approved through the tentative and final map process.

“Planning Department” means the Nye County Planning Department.

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

“Property” means that certain real property as described on Exhibit “A” attached hereto and incorporated herein.

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

“Residential Development” means any proposed development identified in the Proposed Development as compatible with zoning district VR8 as established in the Pahrump Regional Planning District Zoning Ordinance, and the Zoning Action as they existed on the Effective Date.

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

“Technical Drainage Study” means a study prepared in conformance with the Zoning Action, as amended or conditioned and approved by the Director of Public Works. The Technical Drainage Study which is incorporated herein and made a part of this Agreement by this reference, is hereby approved (See Exhibit G).

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

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

~~“Unit Fee” means a voluntary contribution, of infrastructure or funds as described in this Agreement, by the Developer and its successors or assigns per designated increment of development. Developer shall receive a dollar for dollar offset from impact fees for the unit fees described in Section 6 of this Agreement. Developer is paying Unit Fees to offset every impact fee permitted, as of the Effective Date, under County Code 15.32.070. If this Agreement is silent about the application of a unit fee, the unit fee may be applied in any manner chosen by the Nye County Commission in its sole discretion.~~

“Utility Development” means any proposed development identified in the 40 acre portion of the Proposed Development as compatible with the zoning General Commercial for utility related purposes or if not utilized for utility related purposes then as residential with a lot size not smaller than one acre, as established in the Zoning Action , as it existed on the Effective Date.

“Zoning Action” means the date and action taken by the BoCC with respect to MP-06-0021, MP-06-0022, ZC-06-0075 and ZC-06-0076, 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 MP-06-0021, MP-06-0022, ZC-06-0075 and ZC-06-0076.

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

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

This Agreement is predicated upon the following facts and findings:

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

[20071214\\_090817IR Development Agreement Extension](#)

**2.2 Developer Intent.** In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. Based upon the nature of the Proposed Development, the type and extent of the public improvements and infrastructure to the Proposed Development to be provided by Developer, and the type and extent of the public and private improvements to be provided within the Proposed Development, the Developer's decision to commence development of the Proposed Development is based on expectations of proceeding and the right to proceed with the Proposed Development in accordance with this Agreement, which includes an agreement that the density shall not exceed an average density of four (4) dwelling units per acre for the residential portion of the development the Applicable Rules and the Zoning Action. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer agrees without protest to the requirements, limitations, or conditions imposed by the Agreement and the Zoning Action.

**2.3 Acknowledgement of Uncertainties.** The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Planned Community be developed in the manner and time frame contemplated by this Agreement. Among such circumstances is the unavailability of water or other limited natural resources, Federal regulation of air and water quality, prolonged economic downturn lasting more than two years and similar conditions. It is not the intent of the parties that this Section be construed as excusing the County or the Developer of any obligation hereunder or depriving the County or Developer of any right under this Agreement, which can be performed. This section does give the parties the ability to obtain/grant extensions and/or waivers of certain terms and conditions should certain uncertainties arise.

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



## SECTION 3. GENERAL PROVISIONS.

### 3.1 *Binding Agreement.*

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

### 3.2 *Reliance on 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 development standards for the Residential Development and for the Utility Development which include the uses and densities approved by the Zoning Action and in accordance with this Agreement and the Applicable Rules. The County further agrees that any required approvals necessary to permit Developer to develop the Proposed Development in the manner contemplated by this Agreement shall not be unreasonably withheld and shall be subject to the requirements of this Agreement.

### 3.3 *Modification of Applicable Rules.*

County and Developer acknowledge and agree that the Zoning Action and Applicable Rules are 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, impact fee, ~~unit fee~~, 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 as of the Effective Date. 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 and this Agreement 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 that apply uniformly to all development in the Pahrump Regional Planning District, including the Developer, which do not include impact or unit fees, subject to any credits or offsets required by the fee ordinances or Nevada law, or this Agreement; and impact fees adopted by the BoCC, except as provided in Chapter 6 of this Agreement;
  - (2) all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
  - (3) uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
  - (4) uniform estimated costs for completing required public improvements that are used to calculate costs for subdivision improvement agreements, maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and

- (5) uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the Pahrump Regional Planning District or the County to all substantially similar types of development projects and properties; and
  - (6) Engineering Standards as defined in this Agreement; and
  - (7) uniform laws and regulations that are reasonably necessary to protect the public health, safety or welfare; and
  - (8) 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; and
  - (9) a general improvement district if adopted by the BoCC. Developer shall be given credit for any improvements Developer has installed or paid for if these same improvements are assessed as an assessment against the Property.
- (b) Notwithstanding the foregoing, should the County adopt or amend the Zoning Action, 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 rejected 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 Developer.

### **3.8 *Assignment.***

- (a) Except in connection with Developer's planned sale of the Lots, Developer shall not sell, transfer, ground lease or assign the Subject Property or this Agreement in whole or in part to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee"), unless the same is an Affiliate of Developer, without the written consent of the County, which shall not be unreasonably withheld.
- (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 Transferee has the same ability to fulfill the obligations of this Agreement as the Developer, as reasonably determined by the County. The County

may not require changes to the terms of this Agreement as a condition of approving a transfer to an Assignee.

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

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.

### ***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 Developer shall provide a true, signed original eAgreement to the Clerk of the Nye County Commission for this purpose.

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

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

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

To the extent allowed under applicable laws, Developer shall accept, and shall require Merchant Builders to accept, delivery of all construction and related materials within the boundaries of the Proposed Development.

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

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

(a) Developer has agreed to develop 120 acres of the 160 acres as the

proposed Residential Development. Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the land. The remaining 40 acres ~~shall~~ is proposed to be developed as the Utility Development. 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 VR8 Zone and General Commercial for utility related purposes as defined for the Residential Development and Utility Development subject to the special conditions in the Zoning Action and conditions in this Agreement as of the Effective Date. The Zoning Action is attached hereto and incorporated herein by reference as Exhibit- ~~CE~~. The following conditions are part of this Agreement:

- (1) Residential Developer will provide a section in the covenants, conditions and restrictions to be recorded against the Residential Development that will advise prospective future owners that the surrounding area is currently Master Planned to allow large animals and livestock to be kept on the property and that some owners have large animals on the surrounding properties. The potential exists for smells, dust, flies and other conditions inherent with large animals being present.

~~2. Utility Developer agrees that the utility waste water treatment plant will be in the north east corner of this commercial /utility property that will not exceed ten (10) acres for the main processing plant. This does not include any piping, outlying pumps, lift stations or related equipment or any part of any rapid infiltration basins.~~

- ~~(2)~~3. The residential Developer will provide a section in the CC&R's limiting the home lots that have the back of the lot on Fox and Turner to one story only.

## **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 the Zoning Action as outlined in the zoning districts for VR8, the Residential Development, and General Commercial for utility related purposes, the Utility Development, and in



accordance with the Applicable Rules as set forth herein. The Property development will not exceed an average density of four (4) dwelling units per acre for the residential portion of the development.

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

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

- (a) A nonmaterial modification is a modification requested by the Developer that:
  - (1) meets or exceeds the development standards and density for the VR8 Zoning Action; and
  - (2) does not increase the number of dwelling units or the amount of land area covered under this Agreement by more than 5% or to an amount that would exceed a total of 4 dwelling units to the acre of the residential portion of the development;
  - (3) does not decrease the amount of open space provided by more than 5% which shall not be less than the minimum park requirements for the VR8 density; and
  - (4) is for ~~minor~~ lot and boundary adjustments, including clustering and higher density areas, not to exceed an average of 4 dwelling units to the acre of the residential portion of the development, and not for set-backs or waivers of other conditions; and
  - (5) does not involve a relocation of land use classifications between residential and general commercial intended to be utilized only for utility related purposes of more than 5%; and
- (b) A nonmaterial modification includes a ~~minor~~ rearrangement of the internal street pattern that increases the efficiency of traffic patterns, increases the efficiency of utility services, and improves drainage patterns, as determined by the Planning Director after consultation with the Nye County Department of Public Works.

- (c) A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within forty-five (45) days. A non-material change shall not require any changes or Amendments to the terms of this Agreement as a condition of approval. If Developer is aggrieved by the Director' decisions, Developer may appeal that decision in accordance with § 16.36.080.E of the 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 substantially complete submittals of 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 any amendment 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
- (c) So long as the Developer or Merchant Builder complies with this

Agreement and the Zoning Action, County agrees that the approval of any Subdivision Map shall not require the parties to enter into any Amendment to this Agreement, or the Master Traffic Impact Analysis and Technical Drainage Study, nor shall such approval require a new development agreement for the property to which the Subdivision Map is applicable.

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

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

- (a) County hereby agrees that, except for any sidewalks, landscaped areas, and landscape appurtenances, ~~and street lights, if any,~~ located inside the public right-of-way and easements for drainage/utility, all of the dedicated public roadways and curbs which are within or adjacent to the Proposed Development will be maintained by the County as required by law. All landscaping and street lighting, if any, within the public rights-of-way within or adjacent to the Proposed Residential Development shall be privately maintained by the HOA in accordance with NRS Chapter 116 requirements that provide for certain standards and regulations relating to, but not limited to reserve accounts and liability insurance. All landscaping and street lighting, if any, within the public rights-of-way within or adjacent to the Utility Development shall be privately maintained by the Utility Developer. Appropriate encroachment agreements shall be provided by the County for all such landscaping within public rights-of way.
- (b) Residential 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. Utility Developer shall maintain, in good repair and condition, all privately maintained on-site improvements within the Utility Development.

- (c) The Residential Developer and any Merchant Builder agree that prior to the release of any residential final maps for recording, Developer will cause to be formed one or more homeowner's associations within the Proposed Development. This section does not apply to the Utility Development which will not be forming an HOA. With respect to any final map, Residential Developer will cause the formation of a homeowners association(s) governing the property incorporated in the subdivision final map. Such association(s) will be responsible to maintain in good condition and repair all of the landscaping and other facilities which the County requires to be maintained by such associations as a condition of approval, including all developed and undeveloped landscaped areas such as parks and park facilities, trail corridors, drainage easements, sight visibility zones, and any landscaping on public rights of way. Developer agrees that such homeowner's association(s) shall be created pursuant to declarations of covenants and restrictions recorded against the Proposed Development and that such association(s) shall have the power to assess the subject landowners to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Such associations 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 land covered by such declarations, Developer may control the board of directors of such association pursuant to the requirements of NRS Chapter 116.
  
- (d) The declaration must be executed and recorded with the office of the Nye County Recorder, concurrently with the recording of any subdivision final map, in a manner acceptable to the County and must include the following provision:
  - (1) that in the event the homeowner's association fails to maintain the improvements in accordance with the provisions of the CC&R's, the County may exercise its rights under its nuisance laws, including the right of the County to levy assessments on the property owners for cost incurred by the

County in maintaining the improvements.

- (e) The County shall have the right to review the declaration for the sole purpose of determining its compliance with the provisions of the law. Such review shall be performed by County within a reasonable time, which in no event shall exceed sixty (60) days.

#### **4.6 Maintenance Plan within the Declarations.**

This entire section is deleted.

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

Developer may not include contiguous property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. Contiguous property is property that directly adjoins the Property or is only separated by a County road. 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) In accordance with this section, the Developer is proposing a tentative five phase schedule for the residential portion of the Development as shown on Exhibit B and hereby gives notice to the County of its intent to Phase the Proposed Development. There will be no phasing or time table for development of the Utility Development. The Developer, in good faith, is proposing this schedule based on its belief of the current and future marketing analysis and construction process proposed for this Development. The actual schedule may be amended if unexpected, unintended uncertainties and circumstances as described in Section 2.3 occur.
- (b) The number of dwelling units shall not exceed the maximum number permitted for any time period as established in the Zoning Action and ~~shall~~may be constructed using a five part phasing schedule, except that:



- (1) any unused increment of development during any time period established in the phasing schedule may be applied to the next or subsequent time periods of the phasing schedule; and
- (2) the BoCC may approve additional dwelling units or non-residential floor area during any time period if it finds, in its sole discretion, that there are adequate public facilities and services to accommodate the additional development.
- (3) Developer shall provide a Biennial report of the construction that has been completed for each phase to the Planning Director commencing two years after recording of the subdivision final map. The report may include a summary of activity for the previous phase and projections for the next phase.

Phasing schedule for the Indian Road subdivision:

Unit	Number of Units	Year Started
1	<u>84</u>	<u>20102025</u>
2	<u>99</u>	<u>20122028</u>
3	<u>107</u>	<u>20142033</u>
4	<u>94</u>	<u>20162035</u>
5	<u>64</u>	<u>20182037</u>

#### **4.9 Cooperation in Financing.**

County will execute and deliver, within thirty (30) days of written request to Developer or any designee of Developer, such documents as may be reasonably requested to acknowledge that: i) County has not placed a lien on the Property as a direct result of this Agreement, or that any lien is as stated by the County; ii) County shall recognize and allow a lender which has foreclosed or acquired a portion of the Development from Developer to inure to the rights and benefits of this Agreement as to such property; and iii) Developer is not in default of this Agreement or if Developer is in default of the Agreement, the specific ground of default. Nothing herein shall be deemed to relieve

Developer of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement. Nothing herein shall create any cause of action against the County, nor does this section 4.9 create any right, duty, or obligation by the County to any third party.

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

### **5.1 Frequency of Reviews; Biennial Review.**

Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may request, pursuant to written notice to Developer, to review the development at least once every twenty-four (24) months during the term of this Agreement- in accordance with Section 16.32.110.A.1 of the Code. In the event the BoCC provides such notice, Developer shall have thirty (30) days to provide a written report to BoCC containing the reporting requirements stated below.

Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation: (i) data showing the total number of 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 solely 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 not less than thirty (30) days notice of default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such period shall not be less than the thirty (30) days. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) 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 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, economic recession of more than two years 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 such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be overturned or overruled if its decision is clearly arbitrary and capricious. Judicial review of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada; provided that if the judicial action involves federal law, jurisdiction may also lie with the United States District Court, District 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. 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 (15%) 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. Developer may, in lieu of the bond, provide financial assurances for the provision or maintenance of infrastructure, for each phase, by securing the performance with real property whose value is 125% of the estimated cost of the infrastructure for each phase of the Development.

(c) In addition to infrastructure obligations included in this agreement, 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.

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

- (a) General. Residential Developer shall, at its own expense and on private land, design and construct the open space and parks described in this Section. All such facilities shall meet the requirements of the Zoning Action and Applicable Rules and the equestrian trails shall be available for the nonexclusive use of the residents of the Proposed Development. A conceptual landscape plan for the parks and trails is attached as Exhibit C.
- (b) Parks. At no cost to the County or Township, Residential Developer shall design, construct and provide access to the approximately five and half (5.5) acres that will include on-site parks, equestrian trails and open space as shown on the , Conceptual Residential and Utility Site Plan as depicted in Exhibit B attached hereto.
- (c) Each park required by this Section shall include at least the following amenities, unless the requirement is waived by the BoCC: open fields, trees and other plantings, irrigation, picnic areas, jogging and walking paths, and other apparatuses designed to serve the residents of the Proposed Development. The equestrian trails shall be provided on a non-exclusive basis.
- (d) Developer shall be required to pay the applicable parks and open



~~space impact fee. at the rate in place at the time of the effective date of this development agreement extension and amendment. In addition to the amount of open space and park area that is provided by the Developer, the Residential Developer and County agree that Residential Developer shall contribute, to the County for the benefit of the Township, a unit fee, which as of the Effective Date is the amount of Three Hundred Fifty Nine Dollars (\$359.00), which shall be adjusted for inflation under the same rules as the Impact Fee Ordinance, Code 15.32.070, for each building permit issued for a residential unit within the Proposed Development. The County agrees that this fee is to be used by Township to operate, construct and/or maintain any public parks owned and operated by the Township.~~

- ~~(e) The County agrees and acknowledges that in consideration of the Unit Fee to be provided in Section 6.2 (d) that Developer shall not be required to pay the applicable Parks & Open Space Impact Fee under Code 15.32.070.~~

### **6.3 Police Services.**

- ~~(a) Developer shall be required to pay the applicable Police Services impact fee at the rate in place at the time of the effective date of this development agreement extension and amendment. Residential Developer shall contribute a unit fee to the County in the total amount of One Hundred Sixty Seven Dollars (\$167.00), which shall be adjusted for inflation under the same rules as the Impact Fee Ordinance, Code 15.32.070, 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. Of this fee \$30.00 per unit is a voluntary contribution from the Developer.~~
- ~~(b) The County agrees and acknowledges that in consideration of the \$137.00 portion of the Unit Fee to be provided in Section 6.3 (a) that Developer shall not be required to pay the applicable Police Services Impact Fee, Code 15.32.070.~~
- ~~(c) In addition, upon the issuance of the first building permit in the Proposed Development the Residential Developer shall donate for~~

~~the benefit of the Nye County Sheriff's office the amount of \$20,000.00 for equipment and administrative expenses.~~

#### **6.4 Fire Protection.**

- (a) ~~Developer shall be required to pay the applicable Fire Services impact fee at the rate in place at the time of the effective date of this development agreement extension and amendment. Residential Developer shall contribute a unit fee, to the County for the benefit of the Township, in the amount of One Hundred Sixty Seven Dollars (\$167.00), which shall be adjusted for inflation under the same rules as the Impact Fee Ordinance, Code 15.32.070, upon the issuance of a building permit for each residential unit in the Proposed Development, to the Township of Pahrump Capital Account for the sole and discretionary provision of fire services to the Pahrump Regional Planning District.~~
- (b) ~~The County agrees and acknowledges that in consideration of the \$167.00 Unit Fee to be provided in Section 6.4 (a) that Developer shall not be required to pay the applicable Fire Services Impact Fee, Code 15.32.070.~~
- (c) ~~In addition, upon the issuance of the first building permit in the Proposed Development the Residential Developer shall donate for the benefit of the Town of Pahrump the amount of \$20,000.00 for fire protection equipment.~~

#### **6.5 Schools.**

- (a) Residential Developer and Nye County School District acknowledge that Nye County has adopted Resolution No. 2004-32 at the request of the District imposing a residential construction tax (the "Tax") as authorized by NRS 387.331. District and Developer agree that the Tax will be imposed and paid pursuant to Resolution 2004-32, as may be amended from time to time.
- (b) The Residential developer ~~shall~~ has provided and constructed or contribute to the following, without any credit or offset against the Tax: ~~Ag~~ an easement and walking path as agreed in the letter from Nye County School district attached hereto as Exhibit D.



## 6.6. Water.

- (a) The parties acknowledge that the Developer has adequate ~~certificated~~ permitted water rights for the Plan of Development. Developer and County ~~agree-acknowledge~~ that the Property ~~shall~~ has been ~~be~~ annexed into Pahrump Utility Company's (PUCI's) service territory and Developer shall, once completed, transfer ownership of all Water Utility infrastructures to PUCI.
- (b) The Residential Developer will provide one water and sewer stub-out, for use as a future connection point, near the south sideeast ~~portion~~ of the residential property.
- (c) The Developer agrees, as each home or building is constructed, that the Developer is required to comply with local codes, ordinances, and Nevada Revised Statutes with regard to water use and water use restrictions. Developer agrees to comply with the 2017 Landscape Ordinance, as adopted.

## 6.7. Sanitary Sewer.

Developer shall provide sanitary sewer system facilities required by the Zoning Action. Developer and County ~~agree-acknowledge~~ that the Property ~~shall be~~ has been annexed into Pahrump Utility Company's (PUCI's) service territory and Developer shall, once constructed, transfer ownership of all Sewer Utility infrastructure to PUCI.

The Utility Developer proposes the construction of a wastewater treatment facility.

With respect the location, design and operation of the proposed wastewater treatment facility, the Utility 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 Utility Developer has submitted Exhibit B to Nye County Planning and Public Works Departments which is a Conceptual Residential and Utility Site Plan for the facility and adjacent park/open space for the residential neighborhood and dwellings. Utility Developer has shown that this Conceptual Residential and Utility Site Plan shows compatibility of the proposed facility with the present and planned future land use and that this Conceptual Residential and Utility Site Plan has been 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.

Approval of the facilities location as shown on the Conceptual Residential and Utility Site Plan, Exhibit B, submitted with this Agreement is deemed the local government approval required under NAC 445A.285.2.

## **6.8 Transportation.**

- (a) Traffic Studies. Developer shall provide only those improvements contained in the Master Traffic Impact Analysis ~~as concurrently approved with the Development Agreement, which was approved as part of the original Development Agreement approval in 2008.~~ Amendments and supplements to the Master Traffic Impact 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.
- (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. On-Site road improvements shall be public roads.
  - (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 approved Master Traffic Impact Analysis. County and Developer agree and acknowledge that Developer's sole responsibility with regards to Off-Site improvements, shall be limited to those Off-Site Improvements set forth in the approved Master Traffic Impact. The Developer shall be given credits for any transportation improvements that it provides under the terms of the Agreement that are a part of the County's Capital Improvement Plan as adopted.
- (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 Conceptual Residential and Utility Site Plan, Exhibit B. Developer acknowledges it shall be responsible for all internal public and private roadway costs and expenses, if the community is developed as a gated community, as identified in the approved Master Traffic Impact Analysis and set forth in this Agreement. If internal roadways are developed as public streets, then Developer shall have the right to require the County to take over maintenance of the streets.
- (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 Conceptual Residential and Utility Site Plan attached to the Master Traffic Impact Analysis as approved.



Developer acknowledges it shall be responsible for all Access Roads that may be identified in the Conceptual Residential and Utility Site Plan attached to the Master Traffic Impact Analysis. The Developer shall be given credits, against Impact Fees, for any transportation improvements it provides under the terms of the Agreement that are a part of the County's Capital Improvement Plan as adopted.

- (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. Developer may secure performance by real property, as identified in section 6.1, in lieu of the bond.
- (g) Impact Fees. Residential Developer shall ~~contribute a unit~~ pay a Streets and Highway Impact fee ~~at the rate in place on the effective date of the development agreement extension and amendment, which is for streets and highways in the amount of One Thousand Three Hundred Thirty Two and 66/100 Dollars (\$1,332.66), the current Impact Fee under Ordinance, Code 15.32.070.,~~ The impact fee shall be paid upon the issuance of a building permit for each residential unit in the Proposed Development. Developer may deduct or otherwise apply a credit towards any ~~unit fees or~~ impact fees addressed by the Master Traffic Impact Analysis. Developer shall be credited for any overpayment of ~~unit fees/~~ impact fees or shall pay the balance of any under payment of ~~unit fees/~~ impact fees. In assessing such impact fees, the Developer shall be given credits for any transportation improvements it provides under the terms of the ~~a~~ Agreement that are a part of County's capital improvement plan as adopted. The Developer shall be credited \$151,532 for the installation of the walking path to the Floyd Elementary School and the water and sewer stub outs.
- a) ~~The County agrees and acknowledges that in consideration of the \$1,332.66 Unit Fee to be provided in Section 6.8 (g) that Developer shall not be required to pay the applicable Streets and Highway Impact Fees under, Code 15.32.070.Limitation on Additional Obligations. As it applies to the Proposed~~

Development and except as expressly provided in this Agreement, Developer shall have no obligation to participate in, pay, contribute, or otherwise provide any further rights-of-way, facilities, or improvements located outside the Proposed Development. Development of the Proposed Development will not be interrupted as a result of any failure of necessary Off-Site Improvements being in place so long as Developer has complied with the terms of this Agreement in all material respects.

- (h) Access/Egress Plan. The Developer agrees to establish an access/egress plan for construction related traffic and equipment. This plan will establish temporary routes that can best serve the needs of both the residents and the Developer. This Construction Traffic Route Plan shall be submitted to the County Public Works Director at least 30 days prior to construction and shall be deemed approved if not modified or rejected within 30 days of submittal.
  
- (i) The Developer agrees to the following designated Truck Routes classified for truck traffic:
  - (1) Definitions:
    - a. "MUTCD" means the U.S. Department of Transportation, Federal Highway Administration, Manual on Uniform Traffic Control Devices.
    - b. "Permanent Truck Route" means truck route enacted by ordinance and shall remain in full force and effect until ordinance is repealed.
    - c. "Personal Trailer" means a wheeled device made to be hauled by a personal motor vehicle upon a road or highway, and includes a horse trailer, dog trailer, car trailer, motorcycle trailer, boat trailer, lawn equipment trailer, gooseneck trailer, and any other trailer designed and intended to be used to carry animals, boats, large items, or motor-driven means of transportation.
    - d. "Recreational Vehicle" means a vehicular portable

structure designed for a temporary or short-term occupancy for travel, recreational or vacation uses, including vacation travel trailers, converted buses, tent trailers or similar devices used for temporary portable housing.

- e. "Temporary Truck Route" means truck route enacted by ordinance for a period of time not to exceed five (5) years unless and until time extension or repeal is granted through amended ordinance.
- f. "Truck Terminal" means a customary storage location at the owner or operator's personal residence, or a commercial or industrial location in the Pahrump Regional Planning District.

(2) Permanent Truck Routes:

South Area

- 1. Gamebird Road entire length
- 2. Homestead Road entire length
- 3. Manse Road from SR 160 to Homestead Road
- 4. Dandelion Street from SR 160 to Malibou Avenue
- 5. Turner Boulevard from Hafen Ranch Road to Homestead Road

East Area

- 1. Basin Avenue from SR 160 to Higley Road
- 2. Mesquite Avenue from SR 160 to Higley Road
- 3. Bell Vista Avenue from SR 160 to Panorama Road
- 4. Simkins Road from SR 160 to Panorama Road

North Area

- 1. Leslie Street entire length from SR 372 to SR 160
- 2. Bell Vista Avenue entire length
- 3. Irene Street from SR 160 to Leslie Street
- 4. Charleston Park Avenue from SR 372 to Leslie Street

(3) Temporary Truck Routes:

South Area

1. Dandelion Street from Malibou Avenue to Homestead Road
2. Hafen Ranch Road from Manse road to Turner Boulevard
3. Kellogg Road from Hafen Ranch Road to Homestead Road
4. Blagg Road from SR 372 to Gamebird Road
5. Indian Reservation Road
6. Fox Avenue from Kellogg Road to Turner Boulevard

## 6.9 Storm Drainage

- (a) Technical Drainage Study. Developer shall provide only those drainage improvements contained in the Technical Drainage Study Developer has submitted to the County a Technical Drainage Study for the Proposed Development for the County's review which ~~is being concurrently submitted with this Development Agreement for approval~~ was approved as part of the original Development Agreement approval in 2008.
- (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 storm water 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.~~ The Technical Drainages Study referenced in this Agreement does not require the acquisition of any Off-Site Rights-of-Way.

- (e) Maintenance and repair of all proposed easements for drainage/utility shall be the sole responsibility of the developer/home owner's association (HOA).
- (f) Credits. Developer shall be entitled to all credits permitted under the Applicable Rules, including, but not limited to, credits for building a drainage facility that is larger than required to serve the Proposed Development. Developer shall be entitled to a credit against future Improvement District assessments for drainage improvements for all off-site improvements constructed under this Agreement. The costs that determine the amount of the credit will be established by an engineering analysis to be provided by Developer at Developer's sole cost.

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

- (a) As a condition of approval of any final map, Developer shall provide performance bonds, cash-in-lieu or secure performance with Real Property 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 cash-in-lieu shall reflect 115% or Real Property shall reflect 125% 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. In the case of Real Property, an updated appraisal shall be provided to ensure 125% of the estimated costs of construction. 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. The specific type of bonding and bond amounts will be identified in the subdivision improvement agreements.

### **6.11 Limitations of Developer's Obligations**

Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further exaction, ~~or Unit Fees~~ or Impact Fees or to construct or to provide facilities or improvements beyond those specifically identified in this Agreement.

## **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 in existence under County Code 15.32.070, ~~including CPI escalations, as of the Effective Date of this Agreement~~ 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.~~ The Impact Fees are payable at the time any building permit is requested by Developer in connection with the Proposed Development.

~~8.2 — Developer shall receive a dollar for dollar reduction of impact fees due for all unit fees payable pursuant to Section 6, for the same infrastructure category. If Unit Fees are found to be unenforceable due to a court decision then the Developer shall be obligated to pay the Impact Fees as described in 8.1 above.~~

8.23 The Developer shall be given a dollar for dollar reduction of the Streets

and Highways Impact Fee for:

- (a) any capital improvements it provides under the terms of this Agreement that are a part of the County's capital improvement plan as adopted; and
- (b) any "unit" fees paid pursuant to Section 6. improvements to Manse Road between Highway 160 and Hafen Ranch Rd. as Developer participated in the construction of the current roadway and shall be given a \$130,000.00 credit for that work.

~~8.4 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:

County of Nye,  
A political subdivision

\_\_\_\_\_  
Pahrump, Nevada \_\_\_\_\_  
Attention: Planning Director

To Developer:

Pahrump Utility Company, Inc.  
ATTN: Gregory T. Hafen, Secretary  
5250 Hafen Ranch Road  
Pahrump, NV 89061

L. I. Development, LLC.  
ATTN: Vicki Hafen Scott  
P. O. Box 90490  
Henderson, NV 89009

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

20071214\_090817IR Development Agreement Extension



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 not expire provided Developer achieves the following milestones. ~~ten (10) years after the Effective Date.~~

(a) Files its first Tentative Map with the County for approval no later than five (5) years after the Effective Date.

(b) Files its first Final Map with the County for approval no later than eight (8) years after the Effective Date.

(c) Files and records its last Final Map with the County for approval no later than 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 Developer, which conditions may be incorporated by reference in the ordinance.

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

COUNTY:

Board of County Commissioners

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

OWNER:

Pahrump Utility Company, Inc.

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

Name: M. Kent Hafen

Approved as to Form:

Title: President

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

Attest:

County Clerk

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

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, ~~2008~~2017.

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

OWNER:

L. I. Development, LLC

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

Name: Vicki Hafen Scott  
Title: Managing Member

OWNER:

SUBSCRIBED AND SWORN TO before  
me  
on this \_\_\_\_ day of \_\_\_\_\_,  
~~2008~~2017.

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

## INDEX OF EXHIBITS

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(Legal Description of Property Subject To Agreement)

### EXHIBIT B

(Conceptual Residential and Utility Site Plan)

### EXHIBIT C

(Parks and Trails Conceptual Landscape Plan)

### EXHIBIT D

(Nye County School District Floyd School Access Path Agreement Letter)

### EXHIBIT E

(Zoning Action)

### EXHIBIT F

(Master Traffic Impact Analysis)

### EXHIBIT G

(Technical Drainage Study)

**DEVELOPMENT AGREEMENT  
EXTENSION and AMENDMENT**

**BY AND BETWEEN**

**NYE COUNTY, STATE OF NEVADA**

**AND**

**L. I. DEVELOPMENT, LLC and PAHRUMP UTILITY  
COMPANY, INC.**

(Nye County Model Development Agreement – Revised as of 9/8/17)

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This Development Agreement Extension and Amendment (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the County of Nye, State of Nevada (hereinafter "County") and L.I. Development, LLC. and Pahrump Utility Company, Inc., (PUCI) (hereinafter "Developer"), as owner of certain real property located at 5400 E. Turner Boulevard, Pahrump, Nye County, Nevada, 120 acres of which is commonly known as "Indian Road Subdivision" and 40 acres of which is commonly known as "PUCI Utility Site" more particularly described as County Assessor's Parcel Numbers 45-361-04 and 45-361-05 (the "Property").

This Agreement extends the term and amends certain conditions of the original Development Agreement approved on February 5, 2008 by the Nye County Board of County Commissioners as Ordinance No. 349 and recorded in the Nye County Recorder's office on March 31, 2008 as Document No. 706215.

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

A. Developer owns that certain real property consisting of a total of 160 acres at 5400 E. Turner Blvd, Pahrump, Nevada described and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter the "Property") This property contains approximately 120 acres zoned residential VR-8, the Residential Development, and 40 acres zoned General Commercial for utility related purposes, the Utility Development, all of which is the subject of this Agreement. It is the intent of the parties that development of the Property shall not exceed an average density of four (4) dwelling units per acre for the residential portion of the development.

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

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

Agreement on behalf of the County is in the public interest and is lawful in all respects.

D. On the \_\_\_\_ day of \_\_\_\_\_, 2017 the BoCC adopted Ordinance No. \_\_\_\_\_ approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance took effect on the \_\_\_\_ day of \_\_\_\_\_, 2017. The County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.

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

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 arm's 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.

Additionally, the Developer agrees, as each home or building is constructed, that the Developer is required to comply with local codes, ordinances, and Nevada Revised Statutes with regard to water use and water use restrictions.

Developer agrees to comply with the 2017 Landscape Ordinance, as adopted. Developer also agrees to develop the community to a low-light, "dark sky" standard.

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 including a limited liability company, partnership or corporation which Developer controls, or in which Developer has a controlling interest or which controls Developer.

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

"Applicable Rules" means and refers to:

- 1. The Zoning Action (defined below);
- 2. The following provisions of the Nye County Codes as they existed on the Effective Date.  
  
Title 15, Chapters 15.12 (Flood Damage Prevention), and  
  
Title 15, Chapters 15.32.070 (Impact Fees)  
  
Title 16, (Subdivisions), and  
  
Title 17 (Zoning), Chapter 17.04, 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. Nye County Code, 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
3. 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
4. Any applicable state or federal law or regulation.

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

"BoCC" means the Board of County Commissioners.

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

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

"Developer" means L. I. Development, LLC and Pahrump Utility Company, Inc., as the Developer of the land constituting the Property and its affiliates,



successors and assigns, if any, as permitted under the terms of Section 3.8 of this Agreement. Residential Developer means L.I. Development, LLC and its affiliates, successors and assigns. Utility Developer means Pahrump Utility Company, Inc. and its affiliates, successors and assigns.

“District” means Nye County School District, as established by NRS 386.

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

“Effective Date” means the effective date of an ordinance adopted by the BoCC that approves the execution of this Development Agreement Extension and Amendment and which Ordinance is subsequently recorded as required by NRS 278.

“Engineering and Design Standards” means those standard current engineering practices, standards required in the Master Traffic Impact Analysis and Technical Drainage Study or new standards, under the Applicable Rules when they are legally adopted by the County, for the design of roads, drainage, and other infrastructure, as may be amended from time to time. The County acknowledges that the improvement plans, approved in the original Development Agreement, submitted by Pacific Coast Civil and attached hereto as Exhibit G are approved and comply with the Engineering and Design Standards as outlined herein, so long as the engineering stamps are updated in 2017.

“HOA” means any homeowners’ association(s) 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, under County Code 15.32.070, with respect to new development to finance the costs of capital improvements or facility expansion necessitated by and attributable to new development. The term does not include expenses, if these expenses are not identified in the Nye County Capital Improvement Plan for Pahrump Regional Planning District, required to complete any capital improvements identified and concurrently approved by the Director of Public Works in the

Master Traffic Impact Analysis and Technical Drainage studies that are required of the Developer by the County under the Zoning Action or under this Agreement.

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

"Land Use Application" means any application seeking any approval authorized or required by Title 16 and 17 of the Code.

"Master Plan" means the Pahrump Regional Planning District Master Plan Update as amended December 2014 and, as may be amended from time to time.

"Master Traffic Impact Analysis (MTIA)" means a 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 which is incorporated herein and made a part of this Agreement by this reference, is hereby approved (See Exhibit F).

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

"NRS" means the Nevada Revised Statutes.

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

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

"Proposed Development" means all property and development within the

boundaries of the Indian Road residential and PUCI Utility Site, as shown on the Conceptual Residential and Utility Site Plan attached as Exhibit B. The final residential site plan shall be approved through the tentative and final map process.

“Planning Department” means the Nye County Planning Department.

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

“Property” means that certain real property as described on Exhibit “A” attached hereto and incorporated herein.

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

“Residential Development” means any proposed development identified in the Proposed Development as compatible with zoning district VR8 as established in the Pahrump Regional Planning District Zoning Ordinance, and the Zoning Action as they existed on the Effective Date.

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

“Technical Drainage Study” means a study prepared in conformance with the Zoning Action, as amended or conditioned and approved by the Director of Public Works. The Technical Drainage Study which is incorporated herein and made a part of this Agreement by this reference, is hereby approved (See Exhibit G).

“Town” 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.

“Utility Development” means any proposed development identified in the 40 acre portion of the Proposed Development as compatible with the zoning General Commercial for utility related purposes or if not utilized for utility related purposes then as residential with a lot size not smaller than one acre, as established in the Zoning Action , as it existed on the Effective Date.

“Zoning Action” means the date and action taken by the BoCC with respect to MP-06-0021, MP-06-0022, ZC-06-0075 and ZC-06-0076, 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 MP-06-0021, MP-06-0022, ZC-06-0075 and ZC-06-0076.

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

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

This Agreement is predicated upon the following facts and findings:

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

**2.2 Developer Intent.** In accordance with the legislative intent evidenced by NRS Chapter 278, Developer wishes to obtain reasonable assurances that Developer may develop the Proposed Development in accordance with the conditions established in this Agreement. Developer acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time, and in order to develop the Proposed Development, Developer is willing to enter into this Agreement in order to provide certain public services, facilities and infrastructure in the area of the Proposed Development. Based upon the nature of the Proposed Development,

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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, which includes an agreement that the density shall not exceed an average density of four (4) dwelling units per acre for the residential portion of the development. Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the BoCC and that the Developer agrees without protest to the requirements, limitations, or conditions imposed by the Agreement and the Zoning Action.

**2.3 Acknowledgement of Uncertainties.** The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Planned Community be developed in the manner and time frame contemplated by this Agreement. Among such circumstances is the unavailability of water or other limited natural resources, Federal regulation of air and water quality, prolonged economic downturn lasting more than two years and similar conditions. It is not the intent of the parties that this Section be construed as excusing the County or the Developer of any obligation hereunder or depriving the County or Developer of any right under this Agreement, which can be performed. This section does give the parties the ability to obtain/grant extensions and/or waivers of certain terms and conditions should certain uncertainties arise.

**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.



### **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 development standards for the Residential Development and for the Utility Development which include the uses and densities approved by the Zoning Action and in accordance with this Agreement and the Applicable Rules. The County further agrees that any required approvals necessary to permit Developer to develop the Proposed Development in the manner contemplated by this Agreement shall not be unreasonably withheld and shall be subject to the requirements of this Agreement.

### **3.3 Modification of Applicable Rules.**

County and Developer acknowledge and agree that the Zoning Action and Applicable Rules are 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, impact fee, 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 as of the Effective Date. 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 and this Agreement 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 that apply uniformly to all development in the Pahrump Regional Planning District, including the Developer, subject to any credits or offsets required by the fee ordinances or Nevada law, or this Agreement; and impact fees adopted by the BoCC, except as provided in Chapter 6 of this Agreement;
  - (2) all regulations governing construction standards and specifications including, without limitation, the County's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the County; and
  - (3) uniform processing fees and charges of every kind and nature imposed by the County to cover the estimated actual costs to the County of processing applications for Permits or for monitoring compliance with any Permits granted or issued; and
  - (4) uniform estimated costs for completing required public improvements that are used to calculate costs for subdivision improvement agreements, maintenance or warranty guarantees, bonds, or other guarantees or assurances to complete the public improvements that are required for the Proposed Development; and
  - (5) uniform procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied throughout the Pahrump Regional Planning District or the County to all substantially similar types of development projects and properties; and
  - (6) Engineering Standards as defined in this Agreement; and

- (7) uniform laws and regulations that are reasonably necessary to protect the public health, safety or welfare; and
  - (8) 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; and
  - (9) a general improvement district if adopted by the BoCC. Developer shall be given credit for any improvements Developer has installed or paid for if these same improvements are assessed as an assessment against the Property.
- (b) Notwithstanding the foregoing, should the County adopt or amend the Zoning Action, 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 rejected 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 Developer.

### **3.8 Assignment.**

- (a) Except in connection with Developer's planned sale of the Lots, Developer shall not sell, transfer, ground lease or assign the Subject Property or this Agreement in whole or in part to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee"), unless the same is an Affiliate of Developer, without the written consent of the County, which shall not be unreasonably withheld.
- (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 Transferee has the same ability to fulfill the obligations of this Agreement as the Developer, as reasonably determined by the County. The County may not require changes to the terms of this Agreement as a condition of approving a transfer to an Assignee.
- (e) Except as expressly provided herein, no assignment or transfer of any portion of the Proposed Development shall relieve Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement. The County may, in its sole discretion, release the Developer of one or more of such obligations in a writing agreed to and executed by the County.

- (f) 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, 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.***

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.

### ***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 Developer shall provide a true, signed original Agreement to the Clerk of the Nye County Commission for this purpose.

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

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

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

To the extent allowed under applicable laws, Developer shall accept, and shall require Merchant Builders to accept, delivery of all construction and related materials within the boundaries of the Proposed Development.

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

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

- (a) Developer has agreed to develop 120 acres of the 160 acres as the proposed Residential Development. Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the Proposed Development, the density of uses and the permitted uses of the land. The remaining 40 acres is proposed to be developed as the Utility Development. 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 VR8 Zone and General Commercial for utility related purposes as defined for the Residential Development and Utility Development subject to the special conditions in the Zoning Action and conditions in this Agreement as of the Effective Date. The Zoning Action is attached hereto and incorporated herein by reference as Exhibit E. The following conditions are part of this Agreement:

- (1) Residential Developer will provide a section in the covenants, conditions and restrictions to be recorded against the Residential Development that will advise prospective future owners that the surrounding area is currently Master Planned to allow large animals and livestock to be kept on the property and that some owners have large animals on the surrounding properties. The potential exists for smells, dust, flies and other conditions inherent with large animals being present.
- (2) The residential Developer will provide a section in the CC&R's limiting the home lots that have the back of the lot on Fox and Turner to one story only.

#### **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 the Zoning Action as outlined in the zoning districts for VR8, the Residential Development, and General Commercial for utility related purposes, the Utility Development, and in accordance with the Applicable Rules as set forth herein. The Property development will not exceed an average density of four (4) dwelling units per acre for the residential portion of the development.

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

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

- (a) A nonmaterial modification is a modification requested by the

Developer that;

- (1) meets or exceeds the development standards and density for the VR8 Zoning Action; and
  - (2) does not increase the number of dwelling units or the amount of land area covered under this Agreement by more than 5% or to an amount that would exceed a total of 4 dwelling units to the acre of the residential portion of the development;
  - (3) does not decrease the amount of open space provided by more than 5% which shall not be less than the minimum park requirements for the VR8 density; and
  - (4) is for lot and boundary adjustments, including clustering and higher density areas, not to exceed an average of 4 dwelling units to the acre of the residential portion of the development, and not for set-backs or waivers of other conditions; and
  - (5) does not involve a relocation of land use classifications between residential and general commercial intended to be utilized only for utility related purposes of more than 5%; and
- (b) A nonmaterial modification includes a rearrangement of the internal street pattern that increases the efficiency of traffic patterns, increases the efficiency of utility services, and improves drainage patterns, as determined by the Planning Director after consultation with the Nye County Department of Public Works.
- (c) A nonmaterial modification shall be reviewed and acted on administratively by the Planning Director within forty-five (45) days. A non-material change shall not require any changes or Amendments to the terms of this Agreement as a condition of approval. If Developer is aggrieved by the Director' decisions, Developer may appeal that decision in accordance with § 16.36.080.E of the 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 substantially complete submittals of 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 any amendment 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
- (c) So long as the Developer or Merchant Builder complies with this Agreement and the Zoning Action, County agrees that the approval of any Subdivision Map shall not require the parties to enter into any Amendment to this Agreement, or the Master Traffic Impact Analysis and Technical Drainage Study, nor shall such approval require a new development agreement for the property to which the Subdivision Map is applicable.
- (d) BoCC approval of a resolution or similar statement indicating the County's intent to create an Improvement District to develop storm drainage and flood control infrastructure in the Proposed Development, or in the absence thereof, land dedications and

Developer's execution of the County's standard Design and Review Guidelines to assure such development. Nothing in this Agreement requires the County to approve an Improvement District.

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

- (a) County hereby agrees that, except for any sidewalks, landscaped areas, and landscape appurtenances located inside the public right-of-way and easements for drainage/utility, all of the dedicated public roadways and curbs which are within or adjacent to the Proposed Development will be maintained by the County as required by law. All landscaping within the public rights-of-way within or adjacent to the Proposed Residential Development shall be privately maintained by the HOA in accordance with NRS Chapter 116 requirements that provide for certain standards and regulations relating to, but not limited to reserve accounts and liability insurance. All landscaping within the public rights-of-way within or adjacent to the Utility Development shall be privately maintained by the Utility Developer. Appropriate encroachment agreements shall be provided by the County for all such landscaping within public rights-of way.
- (b) Residential 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. Utility Developer shall maintain, in good repair and condition, all privately maintained on-site improvements within the Utility Development.
- (c) The Residential Developer and any Merchant Builder agree that prior to the release of any residential final maps for recording, Developer will cause to be formed one or more homeowner's associations within the Proposed Development. This section does not apply to the Utility Development which will not be forming an HOA. With respect to any final map, Residential Developer will cause the formation of a homeowners association(s) governing the property incorporated in the subdivision final map. Such

association(s) will be responsible to maintain in good condition and repair all of the landscaping and other facilities which the County requires to be maintained by such associations as a condition of approval, including all developed and undeveloped landscaped areas such as parks and park facilities, trail corridors, drainage easements, sight visibility zones, and any landscaping on public rights of way. Developer agrees that such homeowner's association(s) shall be created pursuant to declarations of covenants and restrictions recorded against the Proposed Development and that such association(s) shall have the power to assess the subject landowners to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Such associations 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 land covered by such declarations, Developer may control the board of directors of such association pursuant to the requirements of NRS Chapter 116.

- (d) The declaration must be executed and recorded with the office of the Nye County Recorder, concurrently with the recording of any subdivision final map, in a manner acceptable to the County and must include the following provision:
  - (1) that in the event the homeowner's association fails to maintain the improvements in accordance with the provisions of the CC&R's, the County may exercise its rights under its nuisance laws, including the right of the County to levy assessments on the property owners for cost incurred by the County in maintaining the improvements.
- (e) The County shall have the right to review the declaration for the sole purpose of determining its compliance with the provisions of the law. Such review shall be performed by County within a reasonable time, which in no event shall exceed sixty (60) days.

#### **4.6 Maintenance Plan within the Declarations.**

This entire section is deleted.



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

Developer may not include contiguous property outside the boundaries of the Proposed Development within the terms of this Agreement without the prior approval of the BoCC. Contiguous property is property that directly adjoins the Property or is only separated by a County road. 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) In accordance with this section, the Developer is proposing a tentative five phase schedule for the residential portion of the Development as shown on Exhibit B and hereby gives notice to the County of its intent to Phase the Proposed Development. There will be no phasing or time table for development of the Utility Development. The Developer, in good faith, is proposing this schedule based on its belief of the current and future marketing analysis and construction process proposed for this Development. The actual schedule may be amended if unexpected, unintended uncertainties and circumstances as described in Section 2.3 occur.
- (b) The number of dwelling units shall not exceed the maximum number permitted for any time period as established in the Zoning Action and may be constructed using a five part phasing schedule, except that:
  - (1) any unused increment of development during any time period established in the phasing schedule may be applied to the next or subsequent time periods of the phasing schedule; and
  - (2) the BoCC may approve additional dwelling units or non-residential floor area during any time period if it finds, in its sole discretion, that there are adequate public facilities and services to accommodate the additional development.

- (3) Developer shall provide a Biennial report of the construction that has been completed for each phase to the Planning Director commencing two years after recording of the subdivision final map. The report may include a summary of activity for the previous phase and projections for the next phase.

Phasing schedule for the Indian Road subdivision:

Unit	Number of Units	Year Started
1	<u>84</u>	<u>2025</u>
2	<u>99</u>	<u>2028</u>
3	<u>107</u>	<u>2033</u>
4	<u>94</u>	<u>2035</u>
5	<u>64</u>	<u>2037</u>

#### **4.9 Cooperation in Financing.**

County will execute and deliver, within thirty (30) days of written request to Developer or any designee of Developer, such documents as may be reasonably requested to acknowledge that: i) County has not placed a lien on the Property as a direct result of this Agreement, or that any lien is as stated by the County; ii) County shall recognize and allow a lender which has foreclosed or acquired a portion of the Development from Developer to inure to the rights and benefits of this Agreement as to such property; and iii) Developer is not in default of this Agreement or if Developer is in default of the Agreement, the specific ground of default. Nothing herein shall be deemed to relieve Developer of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement. Nothing herein shall create any cause of action against the County, nor does this section 4.9 create any right, duty, or obligation by the County to any third party.

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

### **5.1 Frequency of Reviews; Biennial Review.**

Pursuant to NRS Chapter 278.0205.1 and Section 16.32.110 of the Code, the BoCC may request, pursuant to written notice to Developer, to review the development at least once every twenty-four (24) months during the term of this Agreement in accordance with Section 16.32.110.A.1 of the Code. In the event the BoCC provides such notice, Developer shall have thirty (30) days to provide a written report to BoCC containing the reporting requirements stated below.

Reporting requirements include information regarding the progress of development within the Proposed Development, including, without limitation: (i) data showing the total number of 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 solely 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 not less than thirty (30) days notice of default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. Such period shall not be less than the thirty (30) days. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses.

- (a) 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 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, economic recession of more than two years 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 such notice, and the failure of the notified party to cure such non-compliance within the time period set forth in Section 5.3, a public hearing must be held by the BoCC where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to this Agreement will be heard by the court, and the decision of the BoCC shall be overturned or

overruled if its decision is clearly arbitrary and capricious. Judicial review of the decision of the BoCC shall be limited to the evidence presented to the BoCC at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall reside exclusively with the Fifth Judicial District Court, State of Nevada; provided that if the judicial action involves federal law, jurisdiction may also lie with the United States District Court, District 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. 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. Developer may, in lieu of the bond, provide financial assurances for the provision or maintenance of infrastructure, for each phase, by securing the performance with real property whose value is 125% of the estimated cost of the infrastructure for each phase of the Development.
- (c) In addition to infrastructure obligations included in this agreement, 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.

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

- (a) General. Residential Developer shall, at its own expense and on private land, design and construct the open space and parks described in this Section. All such facilities shall meet the requirements of the Zoning Action and Applicable Rules and the equestrian trails shall be available for the nonexclusive use of the residents of the Proposed Development. A conceptual landscape plan for the parks and trails is attached as Exhibit C.
- (b) Parks. At no cost to the County or Town, Residential Developer shall design, construct and provide access to the approximately five and half (5.5) acres that will include on-site parks, equestrian trails and open space as shown on the , Conceptual Residential and Utility Site Plan as depicted in Exhibit B attached hereto.
- (c) Each park required by this Section shall include at least the following amenities, unless the requirement is waived by the BoCC: open fields, trees and other plantings, irrigation, picnic areas, jogging and walking paths, and other apparatuses designed to serve the residents of the Proposed Development. The equestrian trails shall be provided on a non-exclusive basis.
- (d) Developer shall be required to pay the applicable parks and open space impact fee.

## **6.3 Police Services.**

- (a) Developer shall be required to pay the applicable Police Services impact fee.

## **6.4 Fire Protection.**

- (a) Developer shall be required to pay the applicable Fire Services impact fee.

## **6.5 Schools.**

- (a) Residential Developer and Nye County School District acknowledge that Nye County has adopted Resolution No. 2004-32 at the request of the District imposing a residential construction tax (the "Tax") as authorized by NRS 387.331. District and Developer agree that the Tax will be imposed and paid pursuant to Resolution 2004-32, as may be amended from time to time.
- (b) The Residential developer has provided and constructed an easement and walking path as agreed in the letter from Nye County School district attached hereto as Exhibit D.

## **6.6. Water.**

- (a) The parties acknowledge that the Developer has adequate permitted water rights for the Plan of Development. Developer and County acknowledge that the Property has been annexed into Pahrump Utility Company's (PUCI's) service territory and Developer shall, once completed, transfer ownership of all Water Utility infrastructures to PUCI.
- (b) The Residential Developer will provide one water and sewer stub-out, for use as a future connection point, near the south side of the residential property.
- (c) The Developer agrees, as each home or building is constructed, that the Developer is required to comply with local codes, ordinances, and Nevada Revised Statutes with regard to water use and water use restrictions. Developer agrees to comply with the 2017 Landscape Ordinance, as adopted.

## **6.7. Sanitary Sewer.**

Developer shall provide sanitary sewer system facilities required by the Zoning Action. Developer and County acknowledge that the Property has been annexed into Pahrump Utility Company's (PUCI's) service territory and Developer shall, once constructed, transfer ownership of all Sewer Utility infrastructure to PUCI.

The Utility Developer proposes the construction of a wastewater treatment

facility.

With respect the location, design and operation of the proposed wastewater treatment facility, the Utility 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 Utility Developer has submitted Exhibit B to Nye County Planning and Public Works Departments which is a Conceptual Residential and Utility Site Plan for the facility and adjacent park/open space for the residential neighborhood and dwellings. Utility Developer has shown that this Conceptual Residential and Utility Site Plan shows compatibility of the proposed facility with the present and planned future land use and that this Conceptual Residential and Utility Site Plan has been 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.

Approval of the facilities location as shown on the Conceptual Residential and Utility Site Plan, Exhibit B, submitted with this Agreement is deemed the local government approval required under NAC 445A.285.2.

## **6.8 Transportation.**

- (a) Traffic Studies. Developer shall provide only those improvements contained in the Master Traffic Impact Analysis, which was approved as part of the original Development Agreement approval in 2008. Amendments and supplements to the Master Traffic Impact 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.
- (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. On-Site road improvements shall be public roads.
  - (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 approved Master Traffic Impact Analysis. County and Developer agree and acknowledge that Developer's sole responsibility with regards to Off-Site improvements, shall be limited to those Off-Site Improvements set forth in the approved Master Traffic Impact. The Developer shall be given credits for any transportation improvements that it provides under the terms of the Agreement that are a part of the County's Capital Improvement Plan as adopted.
- (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

Conceptual Residential and Utility Site Plan, Exhibit B. Developer acknowledges it shall be responsible for all internal public and private roadway costs and expenses, if the community is developed as a gated community, as identified in the approved Master Traffic Impact Analysis and set forth in this Agreement. If internal roadways are developed as public streets, then Developer shall have the right to require the County to take over maintenance of the streets.

- (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 Conceptual Residential and Utility Site Plan attached to the Master Traffic Impact Analysis as approved. Developer acknowledges it shall be responsible for all Access Roads that may be identified in the Conceptual Residential and Utility Site Plan attached to the Master Traffic Impact Analysis. The Developer shall be given credits, against Impact Fees, for any transportation improvements it provides under the terms of the Agreement that are a part of the County's Capital Improvement Plan as adopted.
- (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. Developer may secure performance by real property, as identified in section 6.1, in lieu of the bond.
- (g) Impact Fees. Residential Developer shall pay a Streets and Highway Impact fee . The impact fee shall be paid upon the issuance of a building permit for each residential unit in the Proposed Development. 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. The Developer shall be credited \$151,532 for the installation of the walking path to the Floyd

Elementary School and the water and sewer stub outs.

- a) Limitation on Additional Obligations. As it applies to the Proposed Development and except as expressly provided in this Agreement, Developer shall have no obligation to participate in, pay, contribute, or otherwise provide any further rights-of-way, facilities, or improvements located outside the Proposed Development. Development of the Proposed Development will not be interrupted as a result of any failure of necessary Off-Site Improvements being in place so long as Developer has complied with the terms of this Agreement in all material respects.
- (h) Access/Egress Plan. The Developer agrees to establish an access/egress plan for construction related traffic and equipment. This plan will establish temporary routes that can best serve the needs of both the residents and the Developer. This Construction Traffic Route Plan shall be submitted to the County Public Works Director at least 30 days prior to construction and shall be deemed approved if not modified or rejected within 30 days of submittal.
- (i) The Developer agrees to the following designated Truck Routes classified for truck traffic:
  - (1) Definitions:
    - a. "MUTCD" means the U.S. Department of Transportation, Federal Highway Administration, Manual on Uniform Traffic Control Devices.
    - b. "Permanent Truck Route" means truck route enacted by ordinance and shall remain in full force and effect until ordinance is repealed.
    - c. "Personal Trailer" means a wheeled device made to be hauled by a personal motor vehicle upon a road or highway, and includes a horse trailer, dog trailer, car trailer, motorcycle trailer, boat trailer, lawn equipment trailer, gooseneck trailer, and any other trailer designed and intended to be used to carry animals, boats, large items, or motor-driven means of transportation.



- d. "Recreational Vehicle" means a vehicular portable structure designed for a temporary or short-term occupancy for travel, recreational or vacation uses, including vacation travel trailers, converted buses, tent trailers or similar devices used for temporary portable housing.
- e. "Temporary Truck Route" means truck route enacted by ordinance for a period of time not to exceed five (5) years unless and until time extension or repeal is granted through amended ordinance.
- f. "Truck Terminal" means a customary storage location at the owner or operator's personal residence, or a commercial or industrial location in the Pahrump Regional Planning District.

(2) Permanent Truck Routes:

South Area

- 1. Gamebird Road entire length
- 2. Homestead Road entire length
- 3. Manse Road from SR 160 to Homestead Road
- 4. Dandelion Street from SR 160 to Malibou Avenue
- 5. Turner Boulevard from Hafen Ranch Road to Homestead Road

East Area

- 1. Basin Avenue from SR 160 to Higley Road
- 2. Mesquite Avenue from SR 160 to Higley Road
- 3. Bell Vista Avenue from SR 160 to Panorama Road
- 4. Simkins Road from SR 160 to Panorama Road

North Area

- 1. Leslie Street entire length from SR 372 to SR 160
- 2. Bell Vista Avenue entire length
- 3. Irene Street from SR 160 to Leslie Street
- 4. Charleston Park Avenue from SR 372 to Leslie Street

(3) Temporary Truck Routes:

South Area

1. Dandelion Street from Malibou Avenue to Homestead Road
2. Hafen Ranch Road from Manse road to Turner Boulevard
3. Kellogg Road from Hafen Ranch Road to Homestead Road
4. Blagg Road from SR 372 to Gamebird Road
5. Indian Reservation Road
6. Fox Avenue from Kellogg Road to Turner Boulevard

**6.9 Storm Drainage**

- (a) Technical Drainage Study. Developer shall provide only those drainage improvements contained in the Technical Drainage Study Developer has submitted to the County a Technical Drainage Study for the Proposed Development for the County’s review which was approved as part of the original Development Agreement approval in 2008.
- (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. The Technical Drainages Study referenced in this Agreement does not require the acquisition of any Off-Site Rights-of-Way.
- (e) Maintenance and repair of all proposed easements for drainage/utility shall be the sole responsibility of the

developer/home owner's association (HOA).

- (f) Credits. Developer shall be entitled to all credits permitted under the Applicable Rules, including, but not limited to, credits for building a drainage facility that is larger than required to serve the Proposed Development. Developer shall be entitled to a credit against future Improvement District assessments for drainage improvements for all off-site improvements constructed under this Agreement. The costs that determine the amount of the credit will be established by an engineering analysis to be provided by Developer at Developer's sole cost.

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

- (a) As a condition of approval of any final map, Developer shall provide performance bonds, cash-in-lieu or secure performance with Real Property 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 cash-in-lieu shall reflect 115% or Real Property shall reflect 125% 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. In the case of Real Property, an updated appraisal shall be provided to ensure 125% of the estimated costs of construction. 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. The specific type of bonding and bond amounts will be identified in the subdivision improvement agreements.

### ***6.11 Limitations of Developer's Obligations***

Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further exaction, or Impact Fees or to construct or to provide facilities or improvements beyond those specifically identified in this Agreement.

**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 in existence under County Code 15.32.070 and shall pay said impact fees at the rate adopted by County in compliance with all local, state and federal laws, . The Impact Fees are payable at the time any building permit is requested by Developer in connection with the Proposed Development.
  
- 8.2 The Developer shall be given a dollar for dollar reduction of the Streets and Highways Impact Fee for:
  - (a) any capital improvements it provides under the terms of this Agreement that are a part of the County’s capital improvement plan as adopted; and
  
  - (b) improvements to Manse Road between Highway 160 and Hafen Ranch Rd. as Developer participated in the construction of the current roadway and shall be given a \$130,000.00 credit for that work.

## **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: County of Nye,  
A political subdivision  
  
\_\_\_\_\_  
Pahrump, Nevada \_\_\_\_\_  
Attention: Planning Director

To Developer: Pahrump Utility Company, Inc.  
ATTN: Gregory T. Hafen, Secretary  
5250 Hafen Ranch Road  
Pahrump, NV 89061

L. I. Development, LLC.  
ATTN: Vicki Hafen Scott  
P. O. Box 90490  
Henderson, NV 89009

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 not expire provided Developer achieves the following milestones.

- (a) Files its first Tentative Map with the County for approval no later than five (5) years after the Effective Date.
- (b) Files its first Final Map with the County for approval no later than eight (8) years after the Effective Date.
- (c) Files and records its last Final Map with the County for approval no later than 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 Developer, which conditions may be incorporated by reference in the ordinance.

In Witness Whereof, this Agreement has been executed by the parties on  
0908171R Development Agreement Extension

the day and year first above written.

COUNTY:

Board of County Commissioners

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

Approved as to Form:

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

Attest:

County Clerk

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

OWNER:

Pahrump Utility Company, Inc.

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

Name: M. Kent Hafen

Title: President

SUBSCRIBED AND SWORN TO before  
me  
on this \_\_\_\_ day of \_\_\_\_\_,  
2017.

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

OWNER:

L. I. Development, LLC

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

Name: Vicki Hafen Scott



Title: Managing Member

OWNER:

SUBSCRIBED AND SWORN TO before  
me  
on this \_\_\_\_ day of \_\_\_\_\_,  
2017.

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Notary Public in and for said County  
and State

## INDEX OF EXHIBITS

### EXHIBIT A

[Legal Description of Property Subject To Agreement]

### EXHIBIT B

[Conceptual Residential and Utility Site Plan]

### EXHIBIT C

[Parks and Trails Conceptual Landscape Plan]

### EXHIBIT D

[Nye County School District Floyd School Access Path Agreement Letter]

### EXHIBIT E

[Zoning Action]

### EXHIBIT F

[Master Traffic Impact Analysis]

### EXHIBIT G

[Technical Drainage Study]

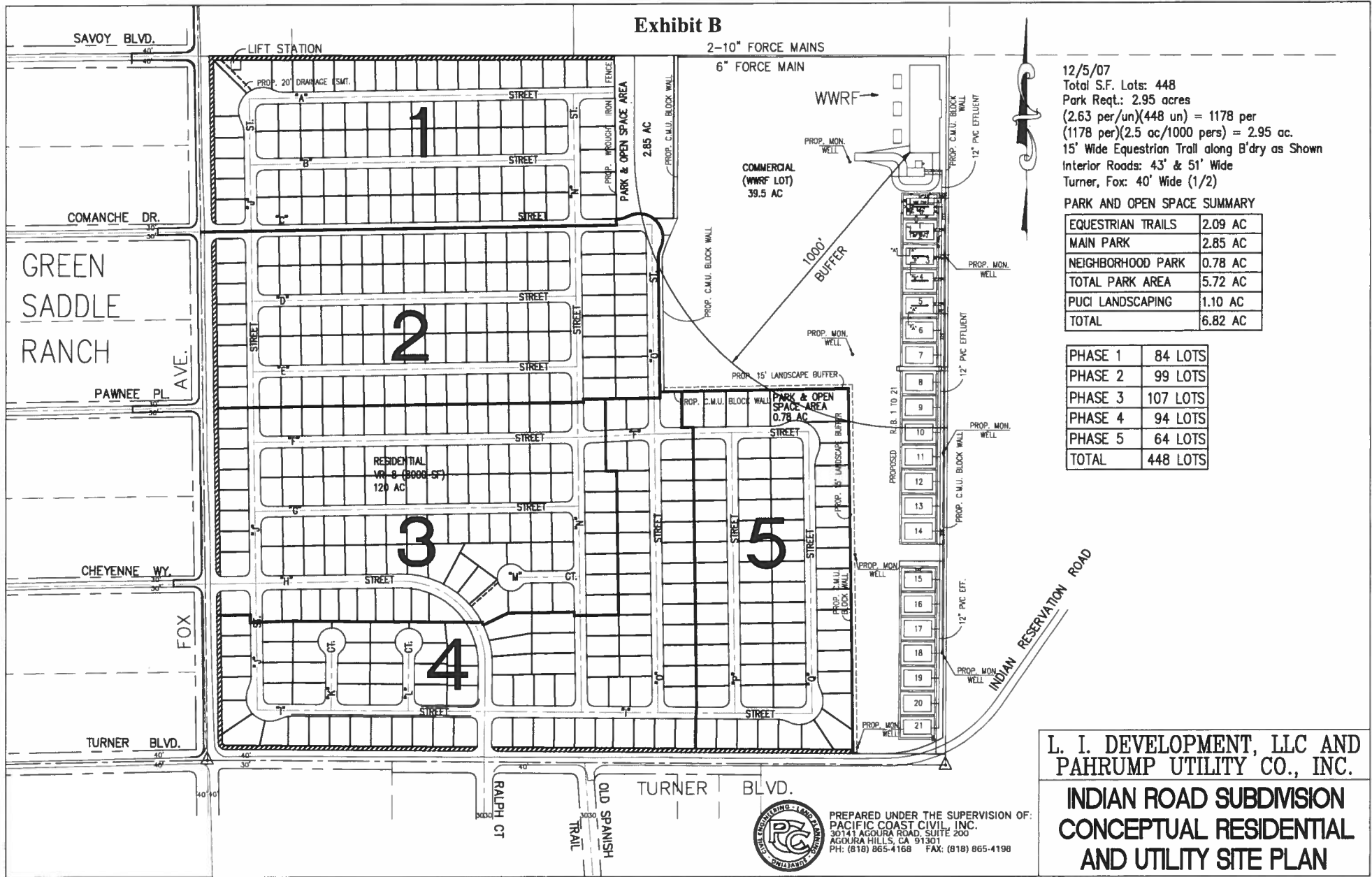
**Exhibit A**  
**Legal Description**

160 acres located in the Southwest  $\frac{1}{4}$  of Section 21 Township 21 South Range 54 East,  
M.B.M.

**Exhibit B**  
**Conceptual Residential and Utility Site Plan**

### Exhibit B

2-10" FORCE MAINS  
6" FORCE MAIN



12/5/07  
 Total S.F. Lots: 448  
 Park Req't: 2.95 acres  
 (2.63 per/un)(448 un) = 1178 per  
 (1178 per)(2.5 ac/1000 pers) = 2.95 ac.  
 15' Wide Equestrian Trail along B'dry as Shown  
 Interior Roads: 43' & 51' Wide  
 Turner, Fox: 40' Wide (1/2)

#### PARK AND OPEN SPACE SUMMARY

EQUESTRIAN TRAILS	2.09 AC
MAIN PARK	2.85 AC
NEIGHBORHOOD PARK	0.78 AC
TOTAL PARK AREA	5.72 AC
PUCI LANDSCAPING	1.10 AC
TOTAL	6.82 AC

PHASE 1	84 LOTS
PHASE 2	99 LOTS
PHASE 3	107 LOTS
PHASE 4	94 LOTS
PHASE 5	64 LOTS
TOTAL	448 LOTS

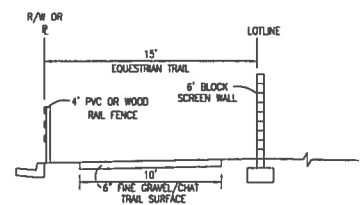
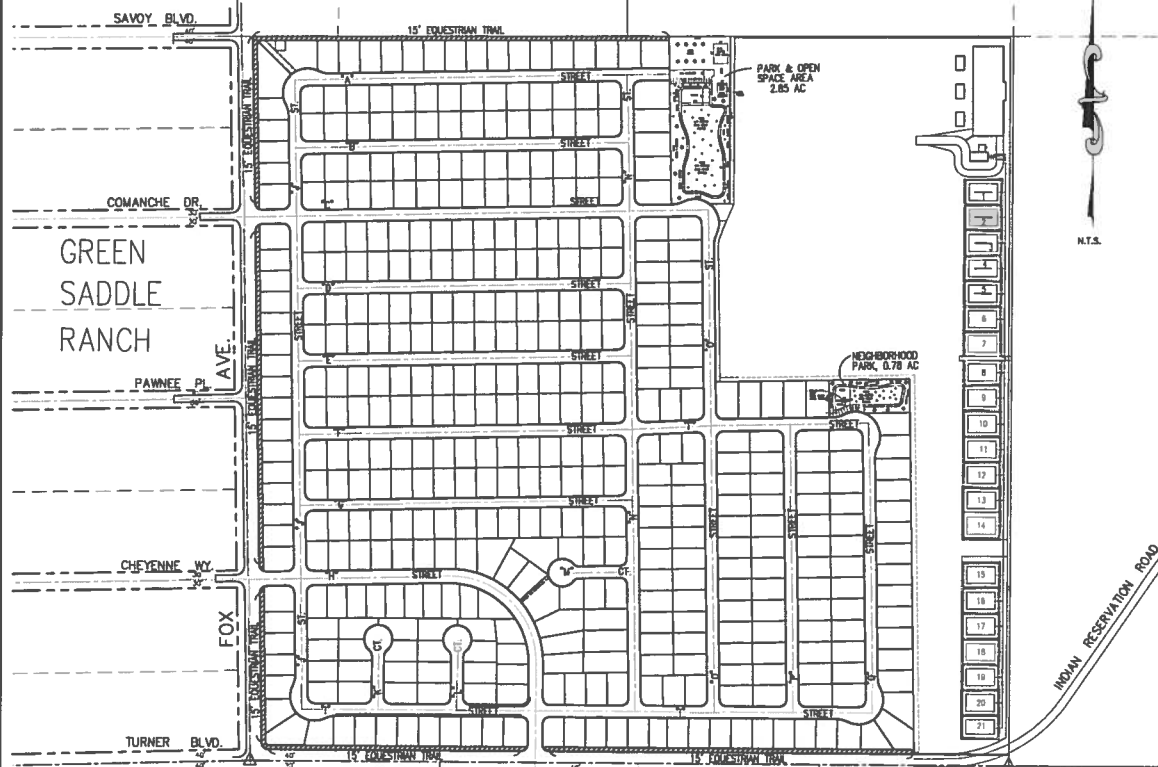
L. I. DEVELOPMENT, LLC AND  
 PAHRUMP UTILITY CO., INC.  
**INDIAN ROAD SUBDIVISION  
 CONCEPTUAL RESIDENTIAL  
 AND UTILITY SITE PLAN**



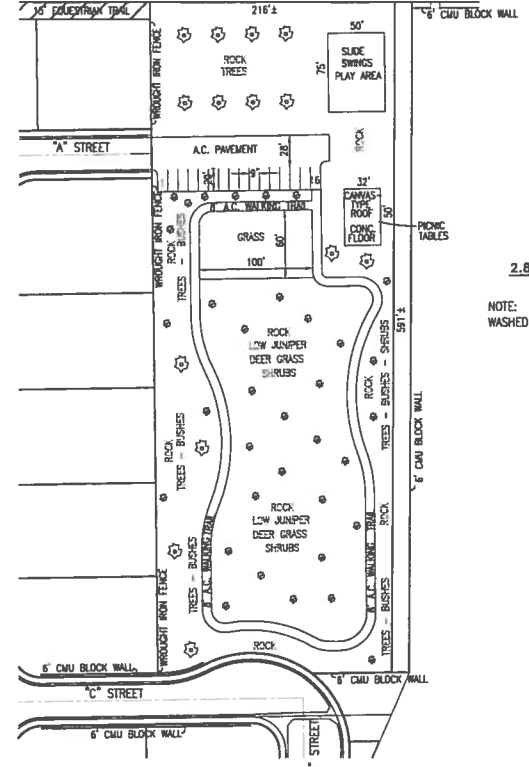
PREPARED UNDER THE SUPERVISION OF:  
 PACIFIC COAST CIVIL, INC.  
 30141 AGOURA ROAD, SUITE 200  
 AGOURA HILLS, CA 91301  
 PH: (818) 865-4168 FAX: (818) 865-4198

**Exhibit C**  
**Parks and Trails Conceptual Landscape Plan**

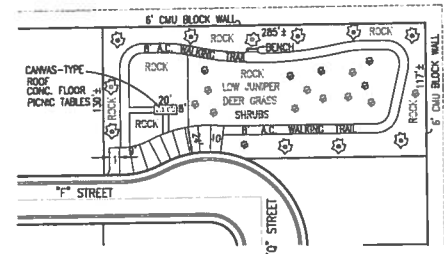
# Exhibit C




**EQUESTRIAN TRAIL**  
N.T.S.  
TYPICAL ON WEST AND SOUTH BOUNDARIES



N.T.S.  
**2.85 AC. PARK SITE**  
NOTE: ROCK SHALL BE 3/4" WASHED ROCK LANDSCAPE GRAVEL.



N.T.S.  
**0.78 AC. PARK SITE**

	Randell A. Greenwood R.C.E. 12362 DATE _____	PAHRUMP UTILITY CO.
	PREPARED UNDER THE SUPERVISION OF PACIFIC COAST CIVIL, INC. 1111 ROCKWELL ROAD, SUITE 200 OLAJARA HILLS, CA 91301 PH: (818) 866-4168 FAX: (818) 866-4198	INDIAN ROAD SUBDIVISION PARKS AND TRAILS CONCEPTUAL LANDSCAPE PLAN
DWG. DATE: 12 14 2007		w.o. # 98-122



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**Exhibit D**  
**Nye County School District Floyd School Access Path Agreement Letter**



William E. "Rob" Roberts, Ed.D  
Superintendent

## Nye County School District

Office of the County Superintendent  
P.O. Box 113  
Tonopah, Nevada 89049  
Phone 775-482-6258  
Fax 775-482-8573

Southern Administration Office  
484 S. West St.  
Pahrump, Nevada 89048  
Phone 775-727-7743  
Fax 775-727-7768

### BOARD OF TRUSTEES

Dennis Keating, President  
Harold Tokerud, Vice-President  
Tracie Ward, Clerk  
Mike Floyd  
Edna Jean Forsgren  
John "Doc" McNeely  
Kevin Pape

September 10, 2007

Mr. M. Kent Hafen  
GVT Investments, LLC  
5250 Hafen Ranch Road  
Pahrump, Nevada 89061

Dear Mr. Hafen:

The Nye County Board of Trustees considered your proposal for the Indian Road Subdivision at their meeting on September 6, 2007.

The board voted to accept your proposed contribution of the easement and construction of the pathway from Artesia to Floyd Elementary School in lieu of a land donation.

Thank you for working with the District for the benefit of Nye County students.

Sincerely,

William E. "Rob" Roberts, Ed.D.  
Superintendent

WR/kp

Copies: Board of Trustees  
Bob Whippey  
Nye County Planning Dept.

**GVT Investments, LLC**  
5250 Hafen Ranch Rd.  
Pahrump, NV 89061  
Phone (775) 727-5216 Fax (775) 727-9666

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August 16, 2007

Dr. William Roberts  
Superintendent  
Nye County School District  
484 S. West Street  
Pahrump, NV 89048

**Contribution to the NCSD for the Indian Road Subdivision APN 045-361-01, 5400 E. Turner Blvd.  
Pahrump, NV**

Dear Dr. Roberts,

We have submitted our Development Agreement for the Indian Road Subdivision. One of the requirements of submittal is, "Applicant must meet with the Sheriff, School District and Town of Pahrump to discuss benefits that may be offered to these entities, and written comments from each entity must accompany the application." We have obtained a letter from the Sheriff's office and a resolution from the Town Board approving our contributions to each entity. We would like your approval of our offer to provide the easement and build the pathway from Artesia to Floyd Elementary school as well as the stub-out of water and sewer lines to the site.

We have met with you and your staff on various occasions to discuss our contribution offer for items that are in addition to the \$1,600.00 tax imposed on each residential unit to be built in the Subdivision. Listed below are the approximate amounts that we are willing to contribute in addition to the statutory tax. We have already stubbed out sewer and water lines to the School site which is valued at approximately \$32,160. We are willing to put in a pathway from the Artesia Subdivision to the Floyd School which we estimate will cost \$121,372, the breakdown for this is attached herein as Exhibit A. This would put our total contribution to the NCSD at \$153,532.

Our estimate shows it will cost approximately \$41,372 to construct the pathway and \$80,000 for the easement. We are willing to install all of this, but if you feel you could install this pathway cheaper we would be willing to donate up to \$40,000 in cash to the School District to reimburse you for your cost to construct this pathway.

Please let us know if the NCSD will accept our contribution as stated in this letter.

Sincerely,

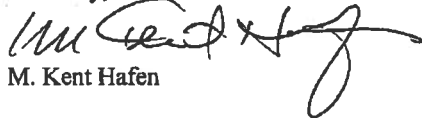
  
M. Kent Hafen

Exhibit A  
Pathway from Artesia to Floyd Elementary

<u>Description</u>	<u>Distance</u>	<u>Cost</u>
40' Wide Easement	260'	\$ 80,000.00
8' High Block Wall	222'	\$ 11,100.00
8' High Block Wall	40'	\$ 2,000.00
Demo/Haul-off of 54' Existing 5' Wall	54'	\$ 500.00
8' Wide Walking Trail (Pavement)	260'	\$ 6,032.00
16 Ballards to Prevent Motorized Vehicles		\$ 4,000.00
36" Culvert	120'	\$ 4,500.00
4 - 36" Connectors		\$ 160.00
Bar screen on 2 Ends of the Culverts		\$ 3,500.00
Head Frame and End Frame Concrete		\$ 6,000.00
102 Cubic Yards of 3/8" Gravel		\$ 1,080.00
Misc. Grading		\$ 2,500.00
<b>Total</b>		<b><u><u>\$ 121,372.00</u></u></b>


**Note: No Lighting Included**

**Exhibit E**  
**Zoning Action**



**REVISED FINAL ACTION MEMORANDUM**

TO: Louie Sharp – Property Owner  
Kragar Equipment Company, Inc. – Applicant  
Richard N. Scott – Agent

FROM:   
Cheryl Beeman, Acting Planning Director

SUBJECT: Nye County Board of County Commissioners' Action on Master Plan Amendment  
Application No. MP-06-0021 and Zone Change Application No. ZC-06-0075

DATE: October 12, 2006

The purpose of this memorandum is to advise you that the Nye County Board of County Commissioners, at its October 3, 2006 meeting in Pahrump, conducted a public hearing concerning a Master Plan Amendment application for approximately 120-acres of property designated as Low Density Residential to Medium Density Residential, located at 5400 E. Turner Blvd. on property situated approximately ½-mile south of Kellogg Road, between Fox Avenue, Sandy Lane and north of Turner Blvd., situated in Section 21, Township 21 South, Range 54 East. AP# 45-361-01.

In addition, the Board conducted a public hearing concerning a Zone Change application for approximately 120-acres of property from the Open Use (OU) District to Village Residential-8 (VR-8) for property, located at 5400 E. Turner Blvd. on property situated approximately ½-mile south of Kellogg Road, between Fox Avenue, Sandy Lane and north of Turner Blvd., situated in Section 21, Township 21 South, Range 54 East. AP# 45-361-01.

After closing the hearing, the Board elected to approve the Master Plan Amendment for Medium Density Residential and the Zone Change application to Village Residential, 8,000 square foot minimum lot size subject to the following Conditions of approval:

**Zone Change Standard Conditions of Approval**

1. Unless otherwise specified, all conditions must be met or financial assurances must be provided to satisfy the conditions prior to submittal for a building permit. The Nye County Planning Department and/or Public Works Department is responsible for determining compliance with a specific condition, and shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurances. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the Public Works- and the Planning- Departments.

2. Compliance with the conditions of this approval is the responsibility of the applicant, its successor(s) in interest, and all owners, assignees, and occupants of the property and their successors in interest. Failure to comply with any conditions imposed in the approval of this application may result in the implementation of revocation procedures.
3. Nye County reserves the right to review and revise the conditions of this approval should it determine that a subsequent license or permit issued by Nye County violates the intent of this approval.
4. For the purposes of conditions imposed by Nye County, "may" is permissive and "shall" or "must" is mandatory.
5. Approval of this application does not constitute approval of a liquor, gaming, sexually oriented business, brothel or fireworks license or any other County issued permit, license, or approval.
6. Developer(s) shall, at their own cost, perform and complete all work and improvements required by state and county statutes, codes, regulations, etc.
7. If required, any drainage study, construction plans and/or traffic studies must be submitted and approved prior to construction and all improvements must comply with the approved plans.
8. Unless expressly authorized through a waiver or another approved method, development of the property shall comply with all applicable codes and ordinances.
9. At the time of development, staff approval is required of the Site Development Plan, which may include, but not be limited to (dependent on the use of the property), review of parking layout, landscaping, lighting, screening walls and fences, as well as signage requirements.
10. Developer(s) shall participate and perform and complete all work (at their own expense related to on-site and off-tract improvements) required by federal, state and county statutes, codes, and regulations that are in effect at the time of development.
11. Should any off-premise signs--other than a billboard super structure--exist on the subject property, any such sign shall be removed within thirty-five (35) days after the date of final action. No other off-premise signs shall be erected on the subject property unless permitted through the Nye County Planning Department.
12. Should any billboard super structure(s) exist on the subject property, any such sign shall be removed at the time of development or within ten-years from the date of this approval, whichever occurs first.
13. Approval of a Site Development Plan shall be required prior to application for building or other construction permits.

#### **Zone Change Special Conditions of Approval**

14. Applicant agrees to install a fifteen-foot wide equestrian trail around the perimeter of the residential portion of the property.
15. Applicant will provide a section in the covenants, conditions and restrictions, to be recorded against the residential property that establishes this fifteen-foot wide equestrian trail and provides for its maintenance and use.
16. Applicant will provide a section in the covenants, conditions and restrictions, to be recorded against the residential property that will limit the homes along the perimeter of Fox Avenue and Turner Boulevard to single story units.
17. Applicant will build a block wall along the back of the residential lots on Turner Boulevard and Fox Avenue.
18. That the property owner/applicant shall successfully negotiate a Development Agreement prior to the recordation of any map.
19. The property subject to this Master Plan and Zone change shall revert to Low Density Residential (LDR) and Open Use (OU) if a Development Agreement is not successfully negotiated within one (1) year from the date of this final action.



**Public Works Conditions of Approval**

20. We recommend that approval of all parcel maps, waivers, conditional use, zone changes and other related applications be conditional upon the owner and subsequent owners agreeing to pay for public road improvement, including curb and gutter as required.
21. If road improvement can be deferred as deemed by this Department, the proponent must agree not to object to any current and future local or district public improvements that are supported by the County Commission including but not necessary projects that are funded under NRS 271. Where appropriate under current or future county's ordinances, rules and regulation, such agreement should be recorded on the title of the lands.
22. The department also reserves its right to require the proponent to be responsible and/or pay for its share of reconstruction, rehabilitation or resurfacing of roads fronting and flanking onto the proponent's property. This requirement shall be based on existing road conditions, and/or pavement condition indexes, which shall be determined by the Department upon confirmation that the conditional approval of the subject development application(s) has been given by the Planning Department.


Should you have any questions or need any additional information please contact this office.

CB/



**REVISED FINAL ACTION MEMORANDUM**

TO: Louie Sharp – Property Owner  
Kragar Equipment Company, Inc. – Applicant  
Richard N. Scott – Agent

FROM:   
Cheryl Beeman, Acting Planning Director

SUBJECT: Nye County Board of County Commissioners' Action on Master Plan Amendment  
Application No. MP-06-0022 and Zone Change Application No. ZC-06-0076

DATE: October 16, 2006

The purpose of this memorandum is to advise you that the Nye County Board of County Commissioners, at its October 3, 2006 meeting in Pahrump, conducted a public hearing concerning a Master Plan Amendment application for approximately 40-acres of property designated as Low Density Residential to General Commercial, located at 5400 E. Turner Blvd. on a portion of property situated approximately ½-mile south of Kellogg Road, between Fox Avenue, Sandy Lane and north of Turner Blvd., situated in Section 21, Township 21 South, Range 54 East. AP# 45-361-01.

In addition, the Board conducted a public hearing concerning a Zone Change application for approximately 40-acres of property from the Open Use (OU) District to General Commercial (GC) for property, located at 5400 E. Turner Blvd., on a portion of property situated approximately ½-mile south of Kellogg Road, between Fox Avenue, Sandy Lane and north of Turner Blvd., situated in Section 21, Township 21 South, Range 54 East. AP# 45-361-01.

After closing the hearing, the Board elected to approve the Master Plan Amendment and the Zone Change application to General Commercial subject to the following Conditions of approval:

**Zone Change Standard Conditions of Approval**

1. Unless otherwise specified, all conditions must be met or financial assurances must be provided to satisfy the conditions prior to submittal for a building permit. The Nye County Planning Department and/or Public Works Department is responsible for determining compliance with a specific condition, and shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurances. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the Public Works- and the Planning- Departments.
2. Compliance with the conditions of this approval is the responsibility of the applicant, its successor(s) in interest, and all owners, assignees, and occupants of the property and their successors in interest.

- Failure to comply with any conditions imposed in the approval of this application may result in the implementation of revocation procedures.
3. Nye County reserves the right to review and revise the conditions of this approval should it determine that a subsequent license or permit issued by Nye County violates the intent of this approval.
  4. For the purposes of conditions imposed by Nye County, "may" is permissive and "shall" or "must" is mandatory.
  5. Approval of this application does not constitute approval of a liquor, gaming, sexually oriented business, brothel or fireworks license or any other County issued permit, license, or approval.
  6. Developer(s) shall, at their own cost, perform and complete all work and improvements required by state and county statutes, codes, regulations, etc.
  7. If required, any drainage study, construction plans and/or traffic studies must be submitted and approved prior to construction and all improvements must comply with the approved plans.
  8. Unless expressly authorized through a waiver or another approved method, development of the property shall comply with all applicable codes and ordinances.
  9. At the time of development, staff approval is required of the Site Development Plan, which may include, but not be limited to (dependent on the use of the property), review of parking layout, landscaping, lighting, screening walls and fences, as well as signage requirements.
  10. Developer(s) shall participate and perform and complete all work (at their own expense related to on-site and off-tract improvements) required by federal, state and county statutes, codes, and regulations that are in effect at the time of development.
  11. Should any off-premise signs--other than a billboard super structure--exist on the subject property, any such sign shall be removed within thirty-five (35) days after the date of final action. No other off-premise signs shall be erected on the subject property unless permitted through the Nye County Planning Department.
  12. Should any billboard super structure(s) exist on the subject property, any such sign shall be removed at the time of development or within ten-years from the date of this approval, whichever occurs first.
  13. Approval of a Site Development Plan shall be required prior to application for building or other construction permits.

#### **Zone Change Special Conditions of Approval**

14. Applicant agrees that the property being Master Planned and zoned as General commercial (GC) is intended to be utilized only for utility related purposes.
15. If all, or a portion of, this commercial property is not used for utility related purposes then the Master Plan and zoning designations shall revert to Residential, lot size not smaller than one acre, for the portion of the property designated as General Commercial (GC) pursuant to this application.
16. That the property owner/applicant successfully negotiate a Development Agreement prior to the recordation of any map.
17. Items # 3, 4 & 5 of the Agreement between Applicant and Interested Adjoining Property Owners shall be incorporated into the Development Agreement.

#### **Public Works Conditions of Approval**

18. We recommend that approval of all parcel maps, waivers, conditional use, zone changes and other related applications be conditional upon the owner and subsequent owners agreeing to pay for public road improvement, including curb and gutter as required.
19. If road improvement can be deferred as deemed by this Department, the proponent must agree not to object to any current and future local or district public improvements that are supported by the County Commission including but not necessary projects that are funded under NRS 271. Where appropriate under

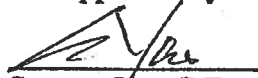
- current or future county's ordinances, rules and regulation, such agreement should be recorded on the title of the lands.
20. The department also reserves its right to require the proponent to be responsible and/or pay for its share of reconstruction, rehabilitation or resurfacing of roads fronting and flanking onto the proponent's property. This requirement shall be based on existing road conditions, and/or pavement condition indexes, which shall be determined by the Department upon confirmation that the conditional approval of the subject development application(s) has been given by the Planning Department.
  21. With respect to the location, design and operation of any proposed wastewater treatment facility, the proponent 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.
  22. The proponent shall submit to Nye County planning and Public Works Departments a separate site development plan for the utility facility and adjacent park/opens space to ensure zero odor emission and adequate setback and buffer from residential neighborhood and dwellings. Proponent shall further agree 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 either be rejected or fully disclosed by the proponent to the potential home buyers and affected residents, as deemed necessary by the Departments.

Should you have any questions or need any additional information please contact this office.

CB/


**Exhibit F**  
**Master Traffic Impact Analysis**

I, Samson Yao, P.E. Director Public Works, do hereby certify that the Master Traffic Impact Analysis dated July, 2007 and its Addendums dated October 5, 2007 and December 10, 2007 for the Indian Road Subdivision (APN: 45-36-101) prepared by Roger L. Freeman, P.E. with Superior Engineering Services, Inc. has been reviewed and approved by Public Works on this 15<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Samson Yao, P.E.  
Director of Public Works

**Exhibit G**  
**Technical Drainage Study**

**I, Samson Yao, P.E. Director Public Works, do hereby certify that the Technical Drainage Study dated January 7, 2008 as amended on January 31, 2008 for the Indian Road Subdivision (APN: 45-36-101) prepared by Randall A. Greenwood, RCE 12362 with Pacific Coast Civil, Inc. has been reviewed and is hereby approved this 2<sup>nd</sup> day of February, 2008.**

  
\_\_\_\_\_  
**Samson Yao, P.E.**  
**Director of Public Works**