

DOC # 0135295

01/25/2010 10:48 AM

Official Record

Recording requested By
LINCOLN COUNTY COMMISSIONERS

Lincoln County - NV
Leslie Boucher - Recorder

Fee: Page 1 of 6
RPTT: Recorded By: LB
Book- 253 Page- 0668



0135295

APN _____

APN _____

APN _____

First Amendment to the Coyote Springs Development Agreement
Title of Document

Affirmation Statement

I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

_____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: _____
(State specific law)

 _____
Signature Title

Lisa C. Lloyd
Print

1-25-10
Date

Grantees address and mail tax statement:



Summary: An ordinance adopting an agreement between Lincoln County and Coyote Springs Investment LLC for the first amendment to the Coyote Springs Development Agreement.

BILL NO. 2009-__

ORDINANCE NO. 2009-||

AN ORDINANCE ADOPTING THE AGREEMENT BETWEEN THE COUNTY OF LINCOLN, STATE OF NEVADA, AND COYOTE SPRINGS INVESTMENT LLC, A NEVADA LIMITED LIABILITY COMPANY, FOR THE FIRST AMENDMENT TO THE COYOTE SPRINGS DEVELOPMENT AGREEMENT.

WHEREAS, the County of Lincoln, State of Nevada (the "County"), and Coyote Springs Investment LLC, a Nevada limited liability company (the "Owner") entered into that certain Development Agreement dated as of June 6, 2005, authorized by Ordinance No. 2004-03, and recorded June 30, 2005 in Book 203, Page 190, as instrument No. 124827, Official Records, Lincoln County, Nevada (the "Development Agreement");

WHEREAS, the Development Agreement may be amended by agreement of County and Owner;

WHEREAS, both the County Master Plan and Lincoln County Code Title 15 contemplate and anticipate providing development flexibility to Owner in response to changing community and market needs as the planning area develops;

WHEREAS, County recognizes the potential economic and employment benefits of development within the planning area;

WHEREAS, County and Owner have agreed to the first amendment of the Development Agreement;



THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LINCOLN DO ORDAIN:

Section 1. In accordance with the provisions of the Development Agreement, for the master planned community known as Coyote Springs, the Board hereby approves and adopts the agreement between County and Owner for the first amendment to the Development Agreement which is attached hereto as Appendix A and incorporated into this ordinance.

Section 2. If any section of this ordinance or any part thereof, as applicable, is for any reason held invalid, unenforceable or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

Section 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Lincoln County Code in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having general circulation in Lincoln County, Nevada, at least once a week for a period of two (2) weeks.



**FIRST AMENDMENT TO
THE COYOTE SPRINGS DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE COYOTE SPRINGS DEVELOPMENT AGREEMENT ("First Amendment") is dated as of ~~December 4, 2009~~²⁰¹⁰, by and between the County of Lincoln, State of Nevada (the "County"), and Coyote Springs Investment LLC, a Nevada limited liability company (the "Owner").

WHEREAS, County and Owner desire to amend that certain development agreement which, was approved by the Lincoln County Board of County Commissioners on December 20, 2004, subject to the addition of (i) a provision providing for a review period starting 180 days after December 20, 2004 (Section 9.01 of the Agreement), and (ii) a provision providing interim funding to Lincoln County (Section 12.02 of the Agreement), which provisions were added to and made a part of the original agreement. Thereafter, on June 6, 2005, the original development agreement was approved without any conditions and the County Commission adopted Ordinance No. 2004-03 approving the original agreement and authorizing the execution thereof by duly constituted officers of the County. Said Ordinance took effect on February 5, 2005. County recorded a certified copy of the ordinance as required by NRS Chapter 278.0207, recorded June 30, 2005, in Book 203, Page 190, as Instrument No. 124827, Official Records, Lincoln County, Nevada, and as modified by that certain Settlement Agreement between County and Owner dated November 9, 2006. The foregoing description of the development agreement between County and Owner, shall be collectively referred to herein as the "Original Development Agreement".

WHEREAS, Owner is the owner and lessee, respectively, of the real property to which the Original Development Agreement and this First Amendment are subject, all of which is specifically described on Exhibit "A" to the Original Development Agreement.

WHEREAS, this First Amendment was prepared pursuant to Sections 3.03 and 12.05 of the Original Development Agreement, and following the adoption of Ordinance 2009-~~08~~ amending Title 15 of the Lincoln County Code for the Coyote Springs Planning Area.

NOW THEREFORE, County and Owner agree that the Original Development Agreement is amended as set forth herein:

1. Electric Generation Station property use. Section 3.05(a)(ii) of the Original Development Agreement is hereby amended and restated in its entirety as follows:
 - (ii) Up to nine thousand (9,000) net acres (or such lesser number as Owner may elect) of the Planned Community may be developed and constructed with non-residential and/or commercial private uses, including without limitation for Electric Generation, Station (as defined in the CSPUD Code) use.

3. Except as modified hereby, the Original Development Agreement, and its terms and provisions, are hereby ratified and affirmed, and shall remain in full force and effect.



IN WITNESS WHEREOF, this First Amendment has been executed by the parties on the day and year first above written, to be effective upon the date of adoption by ordinance of the Lincoln County Board of County Commissioners.

COUNTY: BOARD OF COUNTY COMMISSIONERS,
COUNTY OF LINCOLN, STATE OF NEVADA

By: Paul Mathews
Name: Paul Mathews, its Chairperson

Attest: [Signature]
Lisa Lloyd, County Clerk

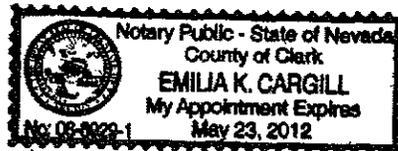
OWNER: COYOTE SPRINGS INVESTMENT LLC
a Nevada limited liability company

By: Harvey Whittemore
Name: Harvey Whittemore, its Manager

STATE OF NEVADA)
COUNTY OF Clark) ss.

This instrument was acknowledged before me on the 15th day of January, 2009, by Harvey Whittemore, a Manager of Coyote Springs Investment LLC, a Nevada Limited Liability Company.

Emilia Kargill
Notary Public
Exp 5/23/2012



127665

FILED FOR RECORDING

AT THE REQUEST OF

Lincoln County
District Attorney

2006 OCT 17 AM 11 39

LINCOLN COUNTY RECORDER

FEE \$ No Fee DEP

LESLIE BOUCHER KB

ORDINANCE TO ADOPT A DEVELOPMENT
AGREEMENT BETWEEN THE COUNTY OF LINCOLN
AND COYOTE SPRINGS INVESTMENT LLC

Summary: An ordinance to adopt a Development Agreement for Coyote/Springs located east of U.S. Highway 93 and north of the Lincoln County/Clark County boundary.

BILL NO. 2004-__

ORDINANCE NO. 2004 - 03

AN ORDINANCE TO ADOPT A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF LINCOLN AND COYOTE SPRINGS INVESTMENT LLC FOR A 27,500± ACRE, MIXED USE MASTER PLANNED COMMUNITY GENERALLY LOCATED EAST OF U.S. HIGHWAY 93 AND NORTH OF THE LINCOLN COUNTY/CLARK COUNTY BOUNDARY, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LINCOLN, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes and Chapter 13.01 of the Lincoln County Code, the Board finds the development agreement for 27,500± acre mixed use, master planned community known as Coyote Springs ("Development Agreement") is consistent with the master plan, and hereby approves and adopts the Development Agreement which is attached hereto as Appendix A and incorporated into this ordinance.

Section 2. If any section of this ordinance or any part thereof, as applicable, is for any reason held invalid, unenforceable or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

Section 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Lincoln County Code in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having general circulation in Lincoln County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on November 15, 2004.

PROPOSED by COMMISSIONER KEATON

PASSED Dec (month) 20 (day) 2004 (year)

Vote:

Ayes:

Commissioner

George T. Row

Commissioner

Jack Keaton

Commissioner

Spencer W. Hafen

Commissioner

Commissioner

Nays:

Commissioner

Ronda Hornbeck

Abstain:

Commissioner

Tim Perkins

Absent:

Commissioner

Commissioner

Attest:

Corrine Hogan, County Clerk

Spencer W. Hafen, Chairman of the Board

Appendix A

THE COYOTE SPRINGS
DEVELOPMENT AGREEMENT

Between

THE COUNTY OF LINCOLN

And

COYOTE SPRINGS INVESTMENT, LLC
A Nevada Limited Liability Company

For

Coyote Springs
Master Planned Community

was previously recorded with the Lincoln County Recorder
on June 30, 2005
as **Document # 1248257**,
and is located
in **Book 203, Pages 190-231**.

124827

FILED FOR RECORDING
AT THE REQUEST OF

Lincoln County Clerk

2005 JUN 30 PM 3 24

LINCOLN COUNTY RECORDER
FEE *No Fee* DEP *an*
LESLIE BOUCHER

**THE COYOTE SPRINGS
DEVELOPMENT AGREEMENT**

Between

THE COUNTY OF LINCOLN

And

**COYOTE SPRINGS INVESTMENT, LLC
A Nevada Limited Liability Company**

For

**Coyote Springs
Master Planned Community**

**ORIGINAL DEVELOPMENT AGREEMENT
FOR COYOTE SPRINGS**

cds/csi
041905/lcdevag.wpd/6c

BOOK **203** PAGE **190**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ^{10th} ~~20th~~ day of ^{June} ~~December~~, 2005 ~~2004~~ by and between the County of Lincoln, State of Nevada (herein referred to as the "County"), and Coyote Springs Investment LLC, a Nevada limited liability company (herein referred to as the "Owner"), the owner and lessee of the real property described on Exhibit A attached hereto and incorporated herein.

SECTION 1

DEFINITIONS

1.01 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:

(a) "Agreement" this Agreement together with all addenda and exhibits incorporated by reference herein, all as now or hereafter amended.

(b) "Applicable Rules" means and refers to the following:

(i) The Coyote Springs PUD Code;

(ii) The Concurrent Approvals, if any;

(iii) The Coyote Springs General Improvement District Regulations Manual;

(iv) The Coyote Springs Fire District Regulations Manual;

(v) The Specific Code, Ordinances, Rules, Regulations and Official Policies of the County as adopted and in force on ^{Part II, 2003} ~~December 20th, 2004~~, except as modified by the Concurrent Approvals and this Agreement and as amended from time to time and set forth on Exhibit "B" shall be locked in for the Term of this Agreement, regarding planning; zoning; subdivisions; growth management; gaming enterprise districts; timing and phasing of development; permitted uses of the Subject Property; density; design and improvement standards; and specifications applicable to the Planned Community except as provided in Coyote Springs PUD Code, and excepting therefrom any fees or monetary payments prescribed by ordinance which are uniformly applied to all development and construction subject to County's jurisdiction, except as defined in Section 3.16 of this Agreement. Owner agrees to be subject to all such fees and monetary payments prescribed by ordinance as adopted or amended throughout the duration of this Agreement, except as defined in Section 3.16 of this Agreement, and

(vi) All applicable state and federal laws and regulations.

County agrees it will not adopt any ordinance, rule, regulation, policy or guideline that would have the effect of violating or abrogating any provision of this Agreement or evading or frustrating the clear intent of this Agreement.

(c) "Best Efforts" means, in the case of any contingent obligation of County or Owner, that the party so obligated will make a good faith effort to accomplish the stated goal, task, project or promised performance; provided such term does not imply a legal obligation to take any specific action if:

(i) In the case of a County obligation, such action would, in the reasoned opinion of the County Commission be imprudent given competing public needs and projects, or;

(ii) In the case of an Owner obligation, such action would, in the reasoned opinion of the Owner, be commercially unreasonable. In either case, upon request, the responsible party shall give written notice to the other party that it has considered such contingent obligation and the reason for its decision not to perform.

(d) "Builder" means any person or entity that constructs final improvements (other than off-site improvements or infrastructure) with respect to a subdivision or parcel of the Subject Property.

(e) "Code" means the Coyote Springs Planned Unit Development Code (the "CSPUD Code"), including all rules, regulations, standards, criteria manuals and other references adopted therein.

(f) "County" means the County of Lincoln, State of Nevada, together with its successors and assigns.

(g) "County Commission" means the Board of County Commissioners of the County of Lincoln, State of Nevada.

(h) "County Master Plan" means the comprehensive plan adopted by the County Commission and all amendments thereto.

(i) "Coyote Springs Fire District" (also the "Fire District" or collectively the "Districts") means the general improvement district created pursuant to the ordinance adopted by the County for the purpose of providing fire protection and emergency medical services within the Coyote Springs Planned Community on lands lying within Lincoln County, Nevada as authorized under NRS Chapter 318.

(j) "Coyote Springs General Improvement District" (also the "District" or collectively the "Districts") means the general improvement district created pursuant to the ordinance adopted by the County for the public convenience and necessity of providing certain public services within the Coyote Springs Planned Community on lands lying within Lincoln County, Nevada as authorized under NRS Chapter 318.

(k) "CSPUD Code" means Lincoln County Code, Title 15, Coyote Springs Planned Unit Development Code, adopted by Ordinance No. 2004-04, which becomes effective on July 1, 2005, attached hereto as Exhibit C and incorporated herein.

(l) "Designated Builder" means a merchant homebuilder, apartment developer or other owner of real property within the Planned Community that is constructing any development subject to the residential construction tax if designated by Owner to County in writing.

(m) "Development Agreement Ordinance" means Ordinance No. 2004-02 effective July 1, 2004.

(n) "Drainage Study" means a comprehensive drainage study prepared for a Tentative PUD Plan in a manner reasonably acceptable to the District that addresses specific impacts to the Community from flood events, and the need to construct those flood control facilities identified in the technical drainage study, which are necessary for the flood protection of the Planned Community or for mitigation of any downstream flood impacts caused by the development of the Planned Community.

(o) "Effective Date" means the date on which this Agreement, is approved by the County Commission and signed by both parties.

(p) "Final PUD Plan" means the final development plan for a phase of the Subject Property as required by and in accordance with the CSPUD Code and as more fully described in Chapter 5 of the CSPUD Code.

(q) "Flood Control Facility" means any facility or improvement as proposed in the any Drainage Study required by Owner and as approved by the District that must be constructed by Owner, Owner's successors or another entity associated with the Owner for the purposes of controlling flood events to downstream or areas adjacent to the facility or improvement within the Subject Property.

(r) "Flood Control Facility Impact Zone" means any area within a Tentative PUD Plan that is directly impacted by the construction of Flood Control Facilities required by any Drainage Study required by Owner and approved as a part of any Tentative PUD Plan submittal, and that specifically:

(i) Is located downstream and at a lower final elevation than that of said Flood Control Facility or;

(ii) Is located upstream from a Flood Control Facility but below the final elevation of any Flood Control Facility or finalized 100 Year Flood Plain as provided in a manner consistent with FEMA, and District standards.

(s) "Master Owners' Association" (also the "Association") means an association of owner's units within a "planned community," "condominium," or "cooperative" as such terms are used in NRS Chapter 116.

(t) "NRS" means the Nevada Revised Statutes.

(u) "Owner" means Coyote Springs Investment, LLC, a Nevada limited liability company, and its successors and assigns, if any, as Owners and Lessees of the land constituting the Subject Property.

(v) "PVD Zoning" means the Planned Village District zoning for the Planned Community approved through adoption of Lincoln County Code, Title 15, Coyote Springs Planned Unit Development Code, and all conditions thereto, a copy of which is attached hereto as Exhibit C.

(w) "Planned Community" means the Subject Property and the proposed development of the Subject Property described in the Agreement.

(x) "Qualified Parks, Recreational Facilities and Open Space" means programmable park space and facilities and non-programmed amenities, such as trail systems, trailheads, wash corridors or other

natural or environmental areas of significance that are open and available for general public use on a non-discriminatory basis and can be programmed by either the Owner, the Districts, or the Association.

(y) "Residential Building Permit" means an official authorization by the County Building Official to commence construction of a residential dwelling, which may include single-family detached and attached dwellings, condominiums, townhouses, apartments, or other residential dwellings that may house families on a permanent basis. This term excludes timeshares, fractional, hotel rooms, or other permanent or temporary dwellings that expressly restrict full-time living arrangements as part of the property's restrictive covenants.

(z) "Streetscape Area" means the street medians and landscaping areas adjacent to the District roads within the Planned Community.

(aa) "Street Improvements" means public or private facilities that may include but are not limited to fire hydrants; sidewalks; curbs; gutters; pavement; gravel; aggregate base; streetlights; street name signs; traffic signals and signs; pavement markings; any other applicable traffic control devices; survey monuments; and flood control and drainage facilities which are permitted within public rights-of-way as required by District.

(bb) "Subject Property" means that certain real property located in the County and more particularly described on Exhibit "A" attached hereto.

(cc) "Tentative PUD Plan" means the tentative development plan for a phase of the Subject Property as required by and in accordance with the CSPUD Code and as more fully described in Chapter 5 of the CSPUD Code.

(dd) "Term" means the term of this Agreement together with any extension agreed upon pursuant to Section 12.03 hereof.

(ee) "Traffic Study" means a comprehensive transportation study prepared for a Tentative PUD Plan in a manner reasonably acceptable to the District that addresses specific impacts to the Major Street Segments and Major Intersections, the local street network and intersections related to that individual Village development, non-vehicular Village transportation improvements such as pedestrian and bike routes and bus stops, impacts outside of the Village and the need to construct access roads, or to increase the capacity of existing access roads to the Village, or to any of its individual developments. The study shall be consistent with the Master Traffic Study and with ITE principles and technologies.

SECTION 2

RECITAL OF PREMISES, PURPOSE AND INTENT

2.01 Recitals. This Agreement is predicated upon the following facts and findings:

(a) Statutory Authorization. County is authorized, pursuant to NRS Chapters 278.0201 through 278.0207 and 278.02591 through 278.02598, inclusive, to enter into binding Development Agreements with persons having a legal or equitable interest in real property, including, without limitation, real property that

will be developed as a planned unit development under the provisions of NRS Chapter 278A, to establish long range plans for the development of such property.

(b) Ownership Interest. Owner represents that it has fee title ownership to that portion of the Subject Property described as Fee Lands in Exhibit "A", and is the Lessee, under a long-term lease, of that portion of the Subject Property described as Lease Lands in Exhibit "A". Owner will submit for County records a legal description that describes any changes to configuration of fee title ownership within the Subject Property within ninety (90) days of the authorization by the appropriate Federal Agency.

(c) County Authorization, Hearing and Ordinance. All preliminary processing with regard to the Planned Community has been duly completed in conformance with all applicable laws, rules and regulations including, without limitation, adoption of the CSPUD Code. The County Commission, having given notice as required by law, held a public hearing on Owner's application seeking approval of the form of this Agreement and the execution hereof by County. At the described meeting, the County Commission found that this Agreement is consistent with County's plans, policies and regulations, that the Agreement meets the requirements of the Code, and that execution hereof by and on behalf of the County is in the public interest and is lawful in all respects. On December 20, 2004, the County Commission adopted Ordinance No. 2004-03 approving this Agreement and authorizing the execution hereof by duly constituted officers of the County, subject to the addition of (i) a provision providing for a review period starting 180 days after December 20, 1994, and (ii) a provision providing interim funding to Lincoln County, which provision have now been added to this Agreement. Said Ordinance took effect on January 5, 2005. County agrees to record a certified copy of the ordinance as required by NRS Chapter 278.0207.

(d) County Intent. County has determined that the long term development of the Subject Property is appropriate to address in a development agreement and County desires to enter into this Agreement in conformity with the requirements of NRS 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 County and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Planned Community and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the County at the least economic cost to its citizens and otherwise achieve goals and purposes for which the State statute and County ordinance authorizing Development Agreements were enacted.

(e) Owner Intent. In accordance with the legislative intent evidenced by the Nevada State Statute authorizing Development Agreements and the intent of County in adopting an ordinance allowing Development Agreements, Owner wishes to obtain reasonable assurances that Owner may develop the Planned Community in accordance with the Applicable Rules subject to the conditions established in this Agreement. Owner acknowledges that there are insufficient public services, which include facilities and infrastructure, existing or planned at this time and in order to develop the Subject Property, Owner is willing to enter into this Development Agreement in order to pay Owner's share of the costs to provide certain public services, facilities and infrastructure in the area of this Planned Community. Owner further acknowledges that this Agreement was made a part of the County Record at the time of its approval by the County Commission and that the Owner agrees without protest to the requirements, limitations, or conditions imposed by this Agreement and the Concurrent Approvals.

(f) Acknowledgment 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 contemplated by this Agreement. Among such circumstances are the unavailability of water or other limited natural resources, federal regulation of air and water quality, and similar conditions. It is not the intent of the parties nor shall this Section be construed as excusing County of any obligation hereunder or depriving Owner of any right under this Agreement, which can be performed.

(g) Provision of Water and Sewer Service. Owner clearly understands and agrees that, among other requirements, water commitment and sanitary sewer system development approval must be obtained from the proper governmental entities. This Agreement or County does not guarantee the provision of water and sewer services.

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

2.03 Permitted Uses, Density, Height, and Size of Structures. Pursuant to NRS Chapter 278.0201, this Agreement must set forth the maximum height and size of structures to be constructed on the Subject Property, the density of uses and the permitted uses of the land. County agrees the Planned Community may be developed pursuant to NRS 278A to the density and with the land uses set forth in the CSPUD Code and this Agreement.

SECTION 3

DEVELOPMENT OF THE PLANNED COMMUNITY

3.01 Time for Construction and Completion of the Planned Community. Subject to the terms of this Agreement and the Applicable Rules, Owner shall have complete discretion as to the time of commencement, construction, phasing, and completion of any and all development of the Planned Community. Nothing herein shall be construed to require the Owner to develop the Planned Community or any part thereof.

Notwithstanding any provision to the contrary contained in this Section 3.01, Owner will develop a receiving and storage area within the Subject Property for receiving materials for the project at the earliest practicable time after approval of the CSMSHCP (as defined in Section 3.15 below) and issuance of the Section 10(a)(1)(B) permit by USFWS (as defined in Section 3.15 below),

3.02 Planned Unit Development. The development of the Subject Property will occur in a series of Planned Unit Developments in accordance with the CSPUD Code.

3.03 Amendments to Development Agreement. County agrees that Owner may submit amendments to this Agreement during the course of development of the Planned Community and during the Term of this Agreement subject to the discretion of the Board of County Commissioners. Proposed amendments will be consistent with the terms of this Agreement and the Applicable Rules and will be processed and considered in accordance with the provisions for an amendment to a Development Agreement as prescribed in Ordinance No. 2004-02.

3.04 Reliance on the CSPUD Code. County hereby agrees the Subject Property may be used and developed during the Term hereof for the purposes and in the manner set forth in the CSPUD Code incorporated herein by reference, subject to the terms and conditions of this Agreement. The CSPUD Code sets forth broad categories of uses and generally defines densities allowed in the Planned Community.

County shall approve land use zoning and densities through the tentative and Final PUD Plan approval process established by the CSPUD Code.

3.05 Reliance on Concurrent Approvals and Applicable Rules. County hereby agrees and assures Owner that Owner will be permitted to carry out and complete the entire Planned Community in accordance with the land use zones, uses and densities set forth in the CSPUD code, subject to the terms and conditions of this Agreement and the approval of tentative and Final PUD Plan submittals. Without limiting the foregoing, and subject to the conditions and requirements of the Applicable Rules and the Concurrent Approvals, County agrees:

(a) Pursuant to the CSPUD Code and this Agreement:

(i) The maximum quantity of residential dwelling units (including single-family and multiple-family dwelling units) that may be developed and constructed within the Planned Community shall be equal to 5.0 residential dwelling units per gross acre (or such lesser number as Owner may elect) multiplied by the total gross acreage of all Owner's fee acres within the Subject Property from time to time during the term of this Agreement;

(ii) Four thousand-five hundred (4,500) net acres (or such lesser number as Owner may elect) of the Planned Community may be developed and constructed with non-residential and/or commercial private uses;

(iii) The Planned Community may, subject to the water conservation conditions set forth in Section 5.04, contain golf courses having up to one-hundred and sixty-two (162) holes of golf and related facilities and up to an additional nine (9) holes of golf and related facilities for each group of two thousand (2,000) residential dwelling units developed or constructed if either:

(1) Treated effluent is primarily (the majority of the time) used to irrigate any of the additional holes or;

(2) Owner shows that water appropriation permits in addition to those described in this Agreement have been issued to Owner by the State Engineer and can adequately meet the irrigation needs of the golf course;

(iv) The Planned Community may be developed with the other land uses and facilities described in the CSPUD Code.

(v) Pursuant to the CSPUD Code and the terms of this Agreement, and upon approval of each Tentative PUD Plan submittal, Owner shall be entitled to develop the respective PUD in accordance with the approved Final PUD Plan submittals for all or a portion of the approved Tentative PUD Plan, the CSPUD Code and this Agreement.

(vi) Owner may develop or permit development of aggregate processing operations, and concrete and asphaltic concrete plants and sell the products of such operations within and outside the Planned Community;

3.06 Modification of Applicable Rules. Subject to the provisions of Section 11.01 below, County and Owner acknowledge and agree the CSPUD Code, and the Concurrent Approvals are peculiar to the Planned Community and may not be amended, modified or changed without the express written consent of Owner, except as otherwise expressly provided in this Agreement. The sections of the CSPUD Code set forth in Exhibit "B" adopted December 20, 2004 (excepting therefrom any fees or monetary payments prescribed in Chapter 6 of the CSPUD Code as set forth in Exhibit "B" that apply uniformly to all development and construction subject to County's jurisdiction within the Subject Property), shall apply to the development of the Planned Community. Said sections of the CSPUD Code may be amended or modified by County in the future or new ordinances, rules or regulations may be added, but without impact on Owner or development of the Planned Community except in those limited circumstances as provided below:

(a) County agrees that any changes to the CSPUD Code or other applicable County Codes applicable to the Subject Property which are more restrictive than the those adopted in the CSPUD Code or other County Codes upon the Effective Date of this Agreement will not apply to the Planned Community, unless accepted through the express written consent of Owner.

(b) Notwithstanding the foregoing, should County adopt amended or new codes, ordinances, rules, regulations or policies, Owner shall have the option, in its sole discretion, subject to the limitations included in the CSPUD Code, of accepting such new or amended matters by giving County written notice of such acceptance.

3.07 Inclusion of Additional Lands. County specifically acknowledges that Owner may become the fee title owner or hold interest in lands other than those described in Exhibit A to this Agreement. County will consider supplemental Development Agreements in accordance with the provisions of this Agreement, if necessary. Supplemental Development Agreements will only be valid if approved and executed by both parties and processed and considered in accordance with NRS. The parties hereto agree to create a Supplemental Development Agreement addressing the additional lands provided:

(a) Owner obtains the necessary County approvals;

(b) The Supplemental Development Agreement conforms as nearly as practical to the terms and provisions of this Agreement including but not limited to requiring Owner to provide additional park facilities and dedicate additional school sites, if necessary, based on the formulas established in this Agreement.

3.08 Coyote Springs Design Standards. Owner will adopt, among other standards, architectural, landscape and lighting standards that will be incorporated into the "Coyote Springs Design Standards." The Coyote Springs Design Standards will be adopted by the Master Owners' Association and administered by a Design Review Committee (DRC). Upon adoption of the Coyote Springs Design Standards by the Master Owners' Association, Owner and the DRC will submit the Coyote Springs Design Standards to the Administrator. The County agrees to adopt the Coyote Springs Design Standard as the governing standards for the Planned Community promptly after the Administrator's receipt of the Coyote Springs Design Standards. Further, Owner and County acknowledge that the Coyote Springs Design Standards will impose restrictions on the use, parking and/or storage of Recreational Vehicles, Trucks, Trailers, and Boats within the Planned Community.

3.09 County Processing of Tentative and Final PUD Plan Submittals. In order to facilitate the review and consideration process, the Administrator, as defined in the CSPUD Code, will process all tentative and Final PUD Plan submittals; technical plans and studies; off-site permits, and perform the zoning plan check process of building permits in a prompt, efficient and diligent manner. The Administrator will be funded through fees that Owner and Builders of the Planned Community are required to pay, as said fees may be reasonably amended, from time to time, by action of the County Commission, in accordance with Chapter 6 of the CSPUD Code. This review will be available for all developments within the Planned Community.

3.10 Processing of Submittals and Applications. County hereby agrees that it will accept from Owner and promptly review, process, and approve all submittals of tentative and Final PUD Plans, applications for permits and other authorizations for development of the Planned Community provided such applications are in accordance with the Applicable Codes and Rules. County will use its best efforts to assist in the coordination and timely processing of submittals, permits and applications for development of the Planned Community.

3.11 Digital Map Data. Owner will prepare and submit to County, a CAD disk, in the format prescribed by the County Assessor's Office, for all final subdivision maps of land within the Subject Property prior to the time the final map is released by County for recordation. Owner shall, by contract, require that any purchaser of the land who intends to further subdivide also provide such CAD disk for any final subdivision map prior to the time the final map is released by County for recordation.

3.12 Special Improvement Districts. One of the Applicable Rules relates to the creation of Special Improvement Districts pursuant to the Special Improvement District (SID) Guidelines. County agrees upon Owner's request to use its best efforts to assist Owner in the creation of one or more Special Improvement Districts in accordance with state law to finance those infrastructure improvements for the Planned Community as allowed by law.

3.13 General Improvement Districts. County hereby acknowledges that Owner may seek to create one or more General Improvement Districts (collectively "GIDs") under NRS Chapter 318 to provide certain improvements and long-term maintenance and operations. NRS Chapter 318 authorizes General Improvement Districts to acquire, construct, reconstruct, improve, extend and better lands, works, systems and facilities for electric light and power; streets and alleys; curbs, gutters and sidewalks; storm drainage and flood control; sewer; water; fire; emergency medical services; pest and weed abatement; endangered species protection; recreation such as swimming pools, golf courses, tennis courts, athletic fields, playgrounds, public parks, biological gardens and other recreational facilities; and other facilities and improvements which may be authorized under NRS Chapter 318. The GID's would further be authorized to establish a system of rates, fees and charges for the use or availability of use of such facilities and pledge such revenues for the payment of any indebtedness or special obligations resulting from such activities. As authorized under NRS 308.040(2) and NRS 318.050(3), County agrees, upon Owner's request, to use its best efforts to assist Owner in the formation of GID's covering Owner's entire land holdings in both Clark and Lincoln County, Nevada, or GID's that would be initially created to serve Owner's land holdings in either Clark or Lincoln County, Nevada. County acknowledges that the Lincoln County Board of Commissioners will have the jurisdiction, power and authority to create and supervise such GID's created to serve Owner's entire land holdings in both Clark and Lincoln County, Nevada or GID's created to serve only Owner's land holdings in Lincoln County.

3.14 Affordable Housing. County and Owner desire to encourage a wide range of housing opportunities within the Planned Community. Provision for a full range of housing opportunities is possible with careful

planning. Incentive programs such as density bonuses, reduced impact fees and other measures should be used to provide a variety of affordable housing opportunities, including attached and detached, single family and multi-family, for-sale and for-rent units. Affordable housing should be designed appropriately and situated within the Planned Community in such a way as to provide a complete, diverse and balanced community and to avoid a concentration of affordable housing in any one area.

3.15 Coyote Springs Multi-Species Habitat Conservation Plan (CSMSHCP). County acknowledges that Owner, in coordination with the Bureau of Land Management (BLM) and the United States Fish and Wildlife Service (USFWS) pursuant to the Memorandum of Agreement (MOA) dated April 2001, is in the process of developing a Multi-Species Habitat Conservation Plan and Environmental Impact Statement for Coyote Springs that includes all of the Owner's landholdings within Lincoln County. As agreed upon by the three parties, the purpose of the MSHCP is the subsequent issuance of a Section 10(a)(1)(B) permit for the Planned Community under the Endangered Species Act. The existence of an MSHCP under Section 10(a) of the Endangered Species Act, allows for the issuance by the USFWS of permits (known as Section 10(a) permits). This permit will allow the "incidental take" of threatened or endangered species on non-federal properties within the Subject Property. Owner acknowledges that CSMSHCP shall specifically cover all of Owner's landholdings in the County and County acknowledges that any requirements set forth by Federal Agencies as described in the CSMSHCP shall supersede coverage under any existing County MSHCP once Section 10(a) permits are issued. Upon issuance of the Section 10(a) permits, any necessary Owner compliance with requirements of the CSMSHCP will supersede County Code requirement for fee payment under and compliance with the requirements of any County MSHCP. County and Owner agree that at no time will any cost for any activity required by the CSMSHCP become an obligation of the County.

3.16 Dust Mitigation. Owner agrees to use its reasonable efforts to educate builders and contractors within the Planned Community of the applicable rules of the Nevada Division of Environmental Protection Bureau of Air Quality (BAQ) with respect to dust mitigation and to encourage compliance therewith.

3.17 Temporary Stormwater Construction Permit. Owner agrees to use its reasonable efforts to educate builders and contractors within the Planned Community on the requirements for a Temporary Stormwater Construction Permit issued by the Nevada Division of Environmental Protection (NDEP).

SECTION 4

PUBLIC FACILITIES

4.01 Fire and Emergency Medical Service. County and Owner agree that the Coyote Springs Fire District (Fire District) will provide Fire and Emergency Medical Services within the Subject Property. Owner agrees to enter into an agreement with the Fire District that will establish a plan for fire and emergency medical service provision that will meet the needs of the Subject Property. County and Owner agree that the Fire District Plan for fire and emergency medical service will not require resources greater than those that would be required for a similar area of development in Clark County, Nevada by the Clark County Fire Department. Owner acknowledges that this plan may require the owner to participate in funding necessary facilities, apparatus, and equipment. County will not approve any Tentative PUD Plan submittals, unless Owner and Fire District have executed and maintain such an agreement.

4.02 Sheriff Service.

(a) Private Security Program. Owner agrees to implement a private security program within thirty (30) days of the issuance of the first building permit by the County. This program will, at a minimum, provide one (1) security guard patrol within the Coyote Springs community area twenty four (24) hours per day, seven (7) days per week. The Coyote Springs community area includes Owner's lands in both Lincoln and Clark Counties. Owner agrees to cooperate with the Sheriff in coordinating the private security program, including but not limited to patrol methods and communications procedures.

(b) Initial Provision of Service. Owner and County agree that initial Sheriff's patrol service for the Coyote Springs community will be provided through expansion of the existing Alamo area Sheriff's patrol program. Upon occupancy of the first residential dwelling unit within the Lincoln County portion of the Coyote Springs community:

(i) County agrees to hire two (2) additional deputies for assignment to the Alamo area Sheriff's patrol program. This will bring the total number of Alamo patrol deputies to five (5) deputies. County agrees to schedule the work hours of the Alamo patrol deputies in a manner that will provide a deputy on duty twenty four (24) hours per day, seven (7) days per week, within the Alamo patrol area. County agrees to have an Alamo assigned deputy patrol the Coyote Springs development at least three (3) times during each twenty four (24) hour period, unless emergency incidents occurring in other portions of the patrol area prevent such patrol.

(ii) County and owner agree that patrol activities within the Coyote Springs development may create the need for Sheriff to employ patrol deputies on an overtime basis to provide Alamo area patrol while regularly assigned deputies attend required training classes, transport prisoners, attend court sessions, or other emergency or unanticipated assignments.

(iii) Upon the month of occupancy of the first residential dwelling unit, Owner is obligated to subsidize the Sheriff's budget in the amount of two hundred and fifty thousand dollars (\$250,000.00) prorated on an annual basis until such time as the annual tax revenue generated within the Subject Property from all County tax sources allocated to the Sheriff's budget reaches five hundred thousand (\$500,000.00) (the "Subsidy Termination Date"). Annual tax revenue generated within the Subject Property shall be measured by totaling all County tax sources allocable to the Sheriff's budget and generated within the Subject Property minus the base tax sources generated within the Subject Property at the Effective Date of this Agreement. County shall provide a budget and a breakdown of the allocations from the Subject Property on an annual basis prior to the Owner's obligation to make first payment during that fiscal year. Funds will be prorated and paid as follows:

i. Upon the month of occupancy of the first residential dwelling unit and thereafter until the following June 30th within the same fiscal year, Owner agrees to provide twenty thousand eight hundred and thirty three dollars (\$20,833.00) per month to subsidize the Sheriff's budget until the Subsidy Termination Date occurs, if it occurs within the first fiscal year.

ii. Beginning on the July 1st following occupancy of the first residential dwelling unit and every July 1st thereafter, Owner shall subsidize the Sheriff's budget in the amount of two hundred and fifty thousand dollars (\$250,000.00) annually, to be prorated and paid quarterly during the first week of each quarter.

(iv) County acknowledges and agrees that Owner's obligation to subsidize the Sheriff's budget as provided herein shall terminate on the date on which the amount of annual funds received exceed five hundred thousand dollars (\$500,000) as described in 4.02b(iii) (the "Subsidy Termination Date"). From and after the Subsidy Termination Date, Owner shall have no further obligation under this Agreement to subsidize the Sheriff's budget, and all such budget subsidies will fully terminate.

(c) Radio Communications Improvement. Owner realizes that reliable radio communications for sheriff's personnel that may serve the Coyote Springs community is necessary and important for both public and patrol deputy safety. Owner agrees to fund, upon issuance of the first residential building permit by Lincoln County, and in an amount not to exceed twenty two thousand four hundred dollars (\$22,400.00) the installation of vehicle radio "extenders" in all sheriff's department patrol vehicles.

4.03 Satellite Government Facility Site.

(a) Owner shall provide a temporary satellite government facility site of at least two and one half (2.5) acres for use by County, at no cost to the County, prior to issuance of the one thousandth (1000th) residential building permit. Owner shall provide all improved roads and utilities infrastructure necessary to serve the temporary site. The parties contemplate that County may utilize the temporary satellite government facility site for temporary facilities that may include;

- (i) A sheriff's substation and related facilities,
- (ii) Administrative offices for County and other governmental agencies and,
- (iii) A Justice Court facility.

County agrees to remove all temporary facilities placed upon the temporary satellite government facility site and return the site to Owner for use by owner prior to the issuance of the fifty thousandth (50,000th) residential building permit, unless Owner agrees to permanently transfer the site to County. Owner may transfer the temporary site to meet the portion of Owner's obligation to dedicate land for the permanent government facility site described in 4.03(b). County agrees that the site so transferred would be subject to a restriction in the instrument of conveyance prohibiting the land from being used for any private commercial or residential use, unless approved by Owner, and further providing that the land will be used solely for governmental office and administrative purposes (which may include a snack bar or vending machines to serve the needs of employees and customers) specifically excluding any storage yards, or other similarly noisy or unsightly uses.

(b) Owner shall dedicate and transfer to County ownership a permanent satellite government facility site of at least seven and one half (7.5) acres, at no cost to County, prior to issuance of the forty thousandth (40,000th) residential building permit. Owner shall provide all improved roads and utilities infrastructure necessary to serve the site. The parties contemplate that County may utilize the satellite government facility site for facilities which may include;

- (i) A sheriff's substation and related facilities,
- (ii) Administrative offices for County and other governmental agencies and,

(iii) A Justice Court and potentially District Court facilities.

County agrees that the site so transferred to County ownership would be subject to a restriction in the instrument of conveyance prohibiting the site from being used for any private commercial or residential use and further providing that the site will be used solely for governmental office and administrative purposes, specifically excluding any storage yards, or other similarly noisy or unsightly uses.

4.04 Ownership and Control. Public facilities may be constructed and operated by Owner, an Association, or through special assessments or special districts and other political subdivisions of the state subsequently created under state law. Owner may, from time to time, upon request, consider funding and construction of public facilities through the following entities in accordance with NRS.

(a) Construction and/or Operations Funded by an Association. Owner may, from time to time, fund construction and operations of public facilities as required under this, Section 4 through special assessments to any Homeowner's Association formed under the provisions of NRS Chapter 116.

(b) Construction and/or Operations Funded by General Improvement Districts. County hereby acknowledges that one or more general improvement districts ("GIDs") may be formed under the provisions of NRS Chapter 318. Owner may, from time to time, fund construction and operations of public facilities as required under this, Section 4 through special assessments to any GID formed under the provisions of NRS Chapter 318.

4.05 Covote Springs Master Parks Plan. The location and timing of the development of Qualified Parks, Recreational Facilities, Open Space, and other public facilities will be addressed in tentative PUD submittals. Owner will submit to a GID having authority to provide recreational facilities a Master Parks Plan for the Subject Property as soon as practical, but not later than the time of submittal of the first Tentative PUD Plan for any portion of the Subject Property. Such plan shall include the preliminary location and timing or phasing of development of Qualified Parks, Recreational Facilities, and Open Space in addition to other requirements as may be described within this Agreement. In addition, a PUD Park Plan indicating type, nature of said public facilities, location and size will be submitted with each Tentative PUD Plan.

4.06 Construction Tax/Impact Fee. In the event that County adopts an ordinance for a construction tax or impact fee to provide for fire and/or sheriff facilities, which applies to new construction within the Planned Community, Owner shall, if allowed and provided for by ordinance, law or code, receive credit for the fire and/or sheriff facilities contributions, and the land they occupy in a manner similar to the credit received by Owner for the park residential construction tax for up to a period of ten years after the effective date of the ordinance. County shall use its best efforts to include a provision for such credit in any such ordinance.

4.07 Trash Transfer Site. County shall not construct, permit, maintain, or allow in any manner whatsoever the construction of a trash transfer site or similar facilities on the Subject Property or within a ten (10) mile radius of the Subject Property without Owner's prior written consent.

4.08 Design and Construction of Public Facilities. County acknowledges that the Master Owners' Association will create and establish uniform design guidelines for all construction and development within the Planned Community by use of recorded restrictive covenants or pursuant to contractual obligations binding on purchasers of property within the Planned Community. These design guidelines will become a

part of any approved tentative or Final PUD Plan. County agrees to utilize the Master owners' Association design guidelines, adopted within a Tentative PUD Plan, in the construction of any County facility within the PUD plan area.

4.09 Compliance. Subject to Section 1.01 and any taxes hereafter enacted by County and not discriminatorily applied (County and Owner acknowledge that taxes enacted by the County on behalf of the GID or the Fire District will not be considered a discriminatory tax hereunder), Owner's compliance with the provisions of this Section 4 shall satisfy any and all impositions and requirements now and hereafter to be imposed by County upon Owners for the provision of public facilities within or pertaining to the lands encompassed by the Planned Community.

SECTION 5

WATER CONSERVATION, REUSE AND SANITATION

5.01 Water Conservation. Owner agrees to use its best efforts to encourage water conservation in the Planned Community. Landscaping within Streetscape Areas shall use drip type or other potable water conserving irrigation systems. Owner shall impose design criteria on all development within the Planned Community (by use of recorded restrictive covenants or pursuant to contractual obligations binding on purchasers of property) that will encourage water conservation in landscaping treatments by incorporating water conservation concepts and proven water conservation equipment, techniques and plant materials.

5.02 Owner's Existing Water Rights. Owner acknowledges that, on the Effective Date of this Agreement, Owner or an entity associated with Owner holds water right permits of approximately seven thousand one hundred (7,100) acre feet annually (AFA) and may be granted additional water right permits from the State Engineer through pending applications. In accordance with the CSPUD Code, County acknowledges that water for golf course irrigation may be provided:

(a) From Owner's own wells or appurtenant or transferred water rights which can be legally used to irrigate the property on which the golf course is developed or;

(b) By treated effluent generated from within the Planned Community, without being subject to any turf area restrictions that may be set forth in the Code from time to time.

5.03 Alternative Water Sources for Irrigation. Owner agrees, to the maximum extent practical, to design any golf course, park space and Streetscape Area in such a way as to minimize the use of potable water for irrigation purposes, especially during the summer months, subject to Owner's existing or pending water rights as outlined in the CSPUD Code. County acknowledges that it is necessary to periodically flush the build up of salts in the soil of the golf course with the use of potable water and that all greens, tees and grow-ins require potable water use. To the maximum extent practical, Owner agrees to use treated effluent for such irrigation purposes, but other sources of water, including, but not limited to, ground water recharge and shallow nuisance ground water, and potable water will also be considered. Further, County and Owner have entered into or will enter into a Treated Effluent Resuse Agreement which assigns certain rights and obligations to the County and the Owner concerning the construction and operation of the treated effluent reuse system and the right to reuse treated effluent within the Planned Community.

5.04 Golf Courses-Water Conservation. To the maximum extent practical, Owner agrees to use treated effluent to irrigate the golf courses, but other sources of water including but not limited to ground water recharge, surface water runoff, shallow nuisance ground water and potable water will also be considered. County acknowledges that treated effluent may not be available (or available in sufficient quantities) to serve golf courses within the Planned Community at the time construction of such golf courses commences. If it is determined that treated effluent should be used to irrigate a proposed golf course or courses and treated effluent is not available in sufficient quantities to irrigate same, County shall not take any action to prohibit the construction of such golf course or courses and the use of potable water on an interim basis; provided Owner shall

(a) Design and construct the golf course or courses to use treated effluent, and

(b) Convert any such golf course to the use of treated effluent as soon as reasonably possible following the availability of treated effluent on the terms set forth in Section 5.06.

5.05 Future Approvals of Golf Courses Outside the Planned Community. County acknowledges that Owner will incur substantial costs in complying with the terms of Section 5.04 above and that Owner has agreed to such conditions partially in reliance on County's representation that it does not intend to permit others to construct golf courses that rely solely or primarily on the use of potable water for irrigation purposes. County agrees; therefore, that it will not permit the development of a golf course within the unincorporated areas of Lincoln County except on terms substantially the same as those set forth in Section 5.04. In the event County does permit such other development, Owner shall have the right, in addition to any other remedy Owner may have hereunder, to design and construct future golf courses in the Planned Community with irrigation methods consistent with such other development.

5.06 Use of Treated Effluent and Conversion to Such Use. Owner agrees to design and construct any golf course, park space, and Streetscape Area to use treated effluent for all irrigation uses in accordance with this Section 5.06, if determined appropriate at the time of Tentative PUD Plan approval. In the event the approved tentative PUD plan provides for future use of treated effluent and treated effluent is not available at the time of construction, Owner agrees to design and construct such golf course, park space, and Streetscape Area in a manner that it may be converted (at Owner's expense) to use treated effluent in the future as soon as reasonably possible following the availability of treated effluent. The availability of sufficient treated effluent and the timing of conversion to such use will be reviewed at least annually by the GID providing water service and Owner. Treated effluent may become available from any of the sources described in this Section 5.

5.07 Ownership and Control. All sewage treatment facilities within the Planned Community will be constructed by Owner, or through special assessments or special districts and other political subdivisions of the state subsequently created under state law subject to this Section. Owner or any entity subject to this, Section 5, agrees to construct and maintain all sewage treatment facilities at no cost to County. Owner retains the rights to treated effluent in accordance with NRS. Owner may, from time to time, upon request, consider conveying any sewage treatment facilities to the following entities in accordance with NRS:

(a) Dedication to Water Reclamation District. Owner may dedicate, at no cost to County, any sewage treatment facility described in this, Section 5 provided:

(i) Any sewage treatment facility must be completely constructed and acceptable to Water Reclamation District;

(ii) The land and improvements must be dedicated free of all liens, encumbrances, conditions, covenants and restrictions and in a manner acceptable to Water Reclamation District;

(iii) Prior to the dedication to a Water Reclamation District, Owner and Water Reclamation District will sign a Maintenance Agreement that covers the maintenance of said facilities.

(b) Transfer to or Construction by a General Improvement District. County hereby acknowledges that Owner may, from time to time, convey sewage treatment facilities to a General Improvement District ("GID") formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the GID Board acknowledges in writing that it accepts Owner's maintenance obligations for such sewage treatment facilities.

(c) Transfer to Any Entity Approved by the State of Nevada. Owner may convey sewage treatment facilities to any entity approved by the State of Nevada to provide, operate, and maintain sewage treatment facilities in accordance with NRS provided that the entity accepts Owner's maintenance obligations for such sewage treatment facility.

5.08 Package Treatment Plant. If determined to be appropriate at the time of Tentative PUD Plan approval, Owner may choose to purchase and install a package treatment plant for use in connection with any golf course in the Planned Community and convert the irrigation of such golf course to treated effluent promptly following notification from the District or any entity approved by the State of Nevada to provide, operate, and maintain sewer facilities in accordance with NRS, and that it will supply the necessary sewage effluent to Owner in an amount sufficient to assure proper irrigation of such golf course, or the maximum amount reasonably available for such purpose, whichever amount is less. Owner will, to the maximum extent practical, irrigate nearby park space and Streetscape Areas with the effluent from the package treatment plant. The package treatment plant, or plants, may be located anywhere within the Subject Property in order to provide the most efficient and economical operation.

5.09 Right of First Refusal on Use of Treated Effluent. Owner shall retain right of first refusal on the use of any treated effluent for the irrigation purposes outlined in this Section 5, for any sewage treatment facilities that are conveyed to any entity other than Owner in accordance with Section 5.07 of this Agreement.

5.10 Unavoidable Delay or Default, Extension of Time for Performance. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war; acts of terrorism; 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 for the performance of this Agreement; enactment of conflicting state or federal laws or regulations; new or supplementary environmental regulations, and litigation or similar matters beyond the control of the parties. 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 ten (10) 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 Owner.

SECTION 6

PARKS, OPEN SPACES, AND SCHOOLS

6.01 Master Plan for Parks. If the County adopts a Residential Construction Tax for park construction in accordance with NRS, Owner will, within 180 days of adoption of a residential construction tax ordinance, submit to a GHJ having authority to provide recreational facilities a Master Parks Plan for the Subject Property. Such plan shall include the proposed location of the development of Qualified Parks, Recreational Facilities, and Open Space in accordance with Section 6.04 of this Agreement. In addition, if the County adopts a Residential Construction Tax for park construction, a PUD Park Plan indicating park type, nature of recreational facilities, location and size will be submitted with each tentative PUD plan.

6.02 Park Standards. Owner agrees at its sole cost and expense to develop and construct park sites subject to Section 5.08 through Section 6.11 of this Agreement and based on the following thresholds:

(a) Owner shall develop and complete a total of ten (10.0) acres of Qualified Parks, Recreational Facilities, and Open Space prior to the issuance of the permit for the thousandth (1,000th) residential unit, subject to Section 6.03.

(b) Owner shall develop and complete a total of fifty (50.0) acres of Qualified Parks, Recreational Facilities, and Open Space prior to the issuance of the permit for the five-thousandth (5,000th) residential unit, subject to Section 6.03.

(c) Owner shall develop and complete a total of one hundred (100.0) acres of Qualified Parks, Recreational Facilities, and Open Space prior to the issuance of the permit for the ten thousandth (10,000th) residential unit, subject to Section 6.03.

(d) Thereafter, Owner shall develop and complete a total of fifty (50.0) acres of Qualified Parks, Recreational Facilities, and Open Space prior to the issuance of the every permit for the five-thousandth (5,000th) successive residential unit, subject to Section 6.03.

(e) Owner shall develop and complete a public leisure pool and recreation center subject to County design approval, prior to the issuance of the permit for every twenty thousandth (20,000th) successive residential unit, subject to Section 6.03.

6.03 Park Design. Owner shall design and construct Qualified Parks, Recreational Facilities, and Open Spaces in accordance with the standards established in the District Regulations Manual. A detailed plan for any Park proposed to be a Qualified Park, Recreational Facility, or Open Space describing the nature and location of recreational facilities shall be submitted as a part of any Tentative PUD Plan. The District will approve the final design, construction specifications and amenities of each park site. Each Qualified Park, Recreational Facility, or Open Space shall include the amenities specified in the Master Plan for Parks including: turf areas; trees; irrigation; playground apparatus; playfields; play areas; picnic areas, and other recreational facilities and equipment designed to serve the residents.

6.04 Location of Parks. County agrees police and fire stations, schools and other public facilities may be located at joint use sites adjacent to Qualified Parks, Recreational Facilities, and Open Spaces or other public facilities where feasible. Owner shall have the right to construct Qualified Parks, Recreational

Facilities, and Open Spaces within storm water detention basins, drainage channels, and floodways so long as such facilities meet District approval and subject to Tentative PUD Plan approval. The owner of each respective Qualified Park, Recreational Facility and Open Space shall be responsible for the maintenance, repair, reconstruction and replacement in the event of loss or damage.

6.05 Ownership and Control. Owner may, from time to time, convey any Qualified Park, Recreational Facility, or Open Space to the following entities in accordance with NRS, and such Qualified Park, Recreational Facility, or Open Space shall be counted towards Park requirement as described in Section 6.01 and Section 6.02 if it meets the following requirements:

(a) Transfer to or Construction by a General Improvement District. County hereby acknowledges that Owner may, from time to time, convey any Qualified Park, Recreational Facility or Open Space to a General Improvement District ("GID") formed under the provisions of NRS Chapter 318 (a "GID Park") provided the conveyance is subject to the terms and conditions of this Section 6 and the GID Board acknowledges in writing:

(i) That it is obligated to perform any unfulfilled terms and conditions of this Section 6, and;

(ii) That it accepts Owner's maintenance obligations for such Qualified Park, Recreational Facility, or Open Space.

With respect to any GID Park that may be considered as a Qualified Park, Recreational Facility, or Open Space, the GID, to which Owner conveys title, shall have the right to program and control the use thereof; provided, however, that in all circumstances that the general public shall have reasonable rights of access and use to the Qualified Park, Recreational Facility, or Open Space listed in Section 6.01 and 6.02 and in accordance with NRS Chapter 318

(b) Transfer to Homeowner's Association. Prior to any dedication to District, Owner may from time to time, convey any Qualified Park, Recreational Facility, or Open Space to any Association formed under the provisions of NRS Chapter 116, (an "HOA Park"), provided the conveyance is subject to the terms and conditions of this Section 6, and the Association acknowledges in writing:

(i) That it is obligated to perform any unfulfilled terms and conditions of this Section 6, and;

(ii) That it accepts Owner's maintenance obligations for such Qualified Park, Recreational Facility, or Open Space.

With respect to any HOA Park that may be considered as a Qualified Park, Recreational Facility, or Open Space, the Homeowner's Association, to which Owner conveys title, shall have the right to program and control the use thereof; provided, however, that in all circumstances that the general public shall have reasonable rights of access and use to the Qualified Park, Recreational Facility, or Open Space listed in Section 6.01 and 6.02.

6.06 Failure to Timely Construct or Equip. In addition to Section 9 of this Agreement, if Owner fails to timely construct or equip any of the park sites listed in Section 6.02 of this Agreement in accordance with

the provisions in Section 6.02, then at the time thereafter upon six (6) months written notice from District and unless Owner completes such construction and equipage within said six (6) months, District may cancel any pre-approved credit and construct or equip the uncompleted park using the Owner's credit security or performance bond. Any additional construction costs incurred by the District will be charged against available Residential Construction Tax revenues.

6.07 Termination of Maintenance Obligation. When Owner has dedicated any Qualified Park, Recreational Facility, or Open Space described in Section 6.01 and 6.02 to District in accordance with the provisions in 6.01 through Section 6.06 of this Agreement, Owner and any entity described herein shall be relieved of any further responsibility for maintenance of such Qualified Park, Recreational Facility, or Open Space, except where such Qualified Park, Recreational Facility, or Open Space, is covered by a Maintenance Agreement between District and Owner or any entity described in Section 6.05 of this Agreement.

6.08 Residential Construction Tax Revenues. In accordance with NRS Chapter 278.4983, the County may impose a "Residential Construction Tax" (RCT) upon the privilege of constructing apartment houses and residential dwelling units. If the County enacts an ordinance imposing a RCT upon the subject property, County agrees that, as RCT revenues become available from the created Park Revenue Management District, such funds will be applied for the development and construction of Qualified Parks, Recreational Facility, or Open Space, as described in Section 6.01 through Section 6.05 to the extent that funds are generated from within the Subject Property. County and Owner agree to produce an annual statement of funds generated by the RCT within the Subject Property for the created Park Revenue Management District and a plan for the use of such fees within the Subject Property agreeable to both parties.

6.09 Park Revenue Management District. If the County adopts a Residential Construction Tax for park construction in accordance with NRS, County shall designate the Planned Community as a Park Revenue Management District in accordance with NRS.

6.10 Joint Park Implementing Agreement. If the County enacts an ordinance imposing a RCT upon the subject property, County, District and Owner agree to develop a Joint Park Implementing Agreement that addresses:

(a) The use and allocation of RCT revenues and credits within the Planned Community in accordance with NRS Chapter 278;

(b) The maintenance of constructed Qualified Parks, Recreational Facilities, and Open Space and/or the establishment of a Maintenance Agreement between Owner and District for Qualified Parks, Recreational Facilities, and Open Space, and;

(c) The obligations of Owner and District regarding park implementation and maintenance.

6.11 Residential Construction Tax Credits. If the County enacts an ordinance imposing a RCT upon the subject property, Owner and any Designated Builder shall be entitled to a credit against such tax for any Qualified Park, Recreational Facility, or Open Space in accordance with NRS Chapter 278 as follows:

(a) Credit for Construction and Development of Park Facilities. County agrees and acknowledges that if Owner constructs and develops Qualified Park, Recreational Facility, or Open Space facilities on land to be dedicated in fee simple to Lincoln County or in manner consistent with Section 6.05

of this Agreement, Owner shall be entitled to a credit against the RCT in an amount equal to the cost actually and reasonably incurred by Owner or the Designated Builder for the design and construction of such Park and for improvements or installation of facilities that would be a permissible use of residential construction tax revenues under NRS Chapter 278.4983. County further agrees and acknowledges that if Owner constructs and develops park facilities on land that will not be conveyed to County in fee simple or conveyed as described in Section 6.05 of this Agreement, Owner shall be entitled to a credit against the RCT in an amount equal to the actual cost of the park facilities developed and constructed as outlined herein only if the park site and all facilities are made available for use by the general public on a non-discriminatory basis and such requirement is expressly stated in an irrevocable easement acceptable to County and recorded against the land on which such facilities are located. The actual cost of the credit shall be determined by the County Administrator. Notwithstanding the above, Lincoln County shall not be required to reimburse or compensate Owner in excess of the total funds available through residential construction taxes collected within the Subject Property if the residential construction tax required from Owner and/or Designated Builder exceeds available funds.

(b) Credit for Value of Land Dedicated to County. With respect to any Qualified Park, Recreational Facility, or Open Space fully funded and constructed by Owner or a Designated Builder, the amount of the credit will include the "fair value" of the land on which such Qualified Park, Recreational Facility, or Open Space is built, as defined below. For purposes of this Agreement, fair value shall mean:

(i) An amount equal to the number of acres of land within the Park conveyed to County or other entity as outlined in Section 6.05 of this Agreement times the average price per acre of land received by Owner for land sold by Owner in such Village, or;

(ii) The appraised value of the land, whichever is less. The appraised value will be based on the highest and best use of the land notwithstanding its proposed use as a park. The cost of such an appraisal shall be paid for by Owner.

The County Commission shall determine, in their reasonable and good faith opinion the amount of construction costs that qualify for residential construction tax credit pursuant to the foregoing provisions after reviewing the design, location and costs of each proposed Qualified Park, Recreational Facility or Open Space.

(c) Transfer of Credits. In addition to the credits referred to above, any credits otherwise due for a Village may be applied at Owner's sole discretion to another Village so long as the residents or future residents of the new construction have the right to use such Park on an equal basis with all other users.

(d) Right to Limit Credit Transfer. Owner shall, from time to time, notify County in writing of the identity and the location of the residential units entitled to such credits. Owner may, in its discretion, limit the maximum amount of credits for which such Designated Builder is entitled pursuant to this Section 6.11. Credits will be applied only to building permits, which have not yet been issued.

6.12 Master Plan for Schools. Owner agrees to cooperate with the Lincoln County School District (the "School District") in developing a Master Plan for Schools in the Planned Community. Such plan shall include the proposed location and suggested timing or phasing of development of potential school sites, which may include elementary, middle, and high school sites. In addition, Owner agrees to utilize the Master plan for Schools for establishing school type, location and size that will be submitted as a part of each

tentative PUD plan. Owner agrees that School District, in order to meet its educational, design and construction requirements, has the right to approve all proposed school sites.

6.13 School Site Reservation and Dedication. Owner and School District will work together to create a system for school site reservations and dedications at appropriate thresholds as outlined in Section 6.14 of this Agreement and in conjunction with a long-term student yield-monitoring program. The reservation and dedication process in conjunction with the long-term monitoring program will provide Owner and School District with the flexibility to reserve locations for school sites initially and then either relocate or dedicate those reserved sites after sufficient monitoring. The reservation of school sites will be:

(a) Acknowledged through a letter submitted by Owner to School District providing a legal description of the site and;

(b) Indicated on the respective Tentative PUD Plan.

The dedication of school sites will be acknowledged through a legally binding agreement of transfer acceptable to Owner and School District.

6.14 School Sites. Owner shall provide, at no cost to School District, school sites acceptable to the School District at the following thresholds:

(a) Owner shall reserve a school site totaling fifteen (15.0) acres prior to approval by County of the first Tentative PUD Plan that includes residential units. The site shall remain reserved until such time as the site is dedicated or the site is relocated and/or released in accordance with Section 6.15 of this Agreement.

(b) Based upon a maximum projected student enrollment of approximately three hundred and fifty (350) students per school site, Owner shall reserve an elementary school site totaling ten (10.0) acres prior to the issuance of the building permit for the twelve hundredth (1,200th) residential unit. The site shall remain reserved until such time as the site is dedicated or the site is relocated and/or released in accordance with Section 6.15 of this Agreement.

(c) Thereafter, based upon a maximum projected student enrollment of approximately three hundred and fifty (350) students per school site, Owner shall reserve an elementary school site totaling ten (10.0) acres prior to the issuance of the building permit for each successive sixteen hundredth (1,600th) residential unit. Each site shall remain reserved until such time as the site is dedicated or the site is relocated and/or released in accordance with Section 6.15 of this Agreement.

(d) Based upon a maximum projected student enrollment of approximately five hundred and twenty five (525) students per school site, Owner shall reserve a middle school site totaling fifteen (15.0) acres prior to the issuance of the permit for the two thousandth (2,000th) residential unit. The site shall remain reserved until such time as the site is dedicated or the site is relocated and/or relinquished in accordance with Section 6.15 of this Agreement.

(e) Thereafter, based upon a maximum projected student enrollment of approximately five hundred and twenty five (525) students per school site, Owner shall reserve a middle school site totaling fifteen (15.0) acres prior to the issuance of the permit for each successive fifty three hundredth (5,300th)

residential unit. Each site shall remain reserved until such time as the site is dedicated or the site is relocated and/or relinquished in accordance with Section 6.15 of this Agreement.

(f) Based upon a maximum projected student enrollment of approximately one thousand four hundred (1,400) students per school site, Owner shall reserve a high school site totaling thirty (30.0) acres prior to the issuance of the permit for the two-thousandth (2,000th) residential unit. The site shall remain reserved until such time as the site is dedicated or the site is relocated and/or released in accordance with Section 6.15 of this Agreement.

(g) Thereafter, based upon maximum projected student enrollment of approximately one thousand four hundred (1,400) students per school site, Owner shall reserve a high school site totaling thirty (30.0) acres prior to the issuance of the permit for each successive twelve thousand five hundredth (12,500th) residential unit. Each site shall remain reserved until such time as the site is dedicated or the site is relocated and/or released in accordance with Section 6.15 of this Agreement.

(h) School District and Owner realize that actual student enrollments per school site may be adjusted relative to the projected approximate enrollments shown above. In this event, School District and Owner will agree to negotiate in good faith to revise the requirements for school site dedications, including but not limited to revising thresholds for new school site reservations and revising school site acreage allocations, should projected enrollments or demographics for certain schools change.

6.15 School Site Relocation and/or Release. School sites will be reserved and dedicated as outlined in Section 6.14 of this Agreement until such time as said sites are either dedicated, relocated or released subject to a student yield monitoring program acceptable to Owner and School District and based on the following:

(a) Owner and School District will use their best efforts to develop a student yield monitoring program that:

(i) Analyzes demand for school facilities within regions of the Planned Community based on sales and household trends;

(ii) Estimates the current need for school facilities at all levels, and;

(iii) Forecasts the demand for and general location of future school facilities based on historic sales and household trends. Initially, Owner and School District may look to the historic sales and household trends of that portion of Coyote Springs Development located in Clark County and continue using such information until such time that historic sales and trends are generated for the Subject Property within Lincoln County.

In each twenty-four (24) month review of this Agreement with the County, Owner agrees to utilize the student yield monitoring program as a basis for their report to the County on the status of school facilities.

(b) Owner and School District will provide an on-going review of reserved and proposed school sites as outlined in Section 6.15 of this Agreement based on the student yield monitoring program. Upon review, Owner and School District may agree to release or relocate school sites at any time prior to dedication. The release or relocation of school sites will be:

(i) Acknowledged through a letter submitted by Owner to School District providing a legal description of the relocation and/or released site and;

(ii) Considered in future Tentative PUD Plan approvals.

(c) At anytime after the fifth (5th) anniversary of the dedication of a school site, Owner may request in writing that School District release a school site. School District will provide in writing within ninety (90) days of receipt of letter requesting the release:

(i) Approval or disapproval of the release of lands and;

(ii) If disapproved, documentation to Owner of future plans for facilities on such site and schedule for their implementation.

(d) If the release is approved, School District shall provide Owner with acknowledgement of the release through a legally binding agreement of transfer in recordable form, acceptable to Owner and School District.

6.16 Initial School Facilities. Owner and School District agree that there will be a need for public education facilities upon occupancy of the first residential unit within the Coyote Springs development. School District agrees to address the initial K-12 classroom needs by:

(a) Seeking a satisfactory inter-district agreement with the Clark County School District pursuant to NRS 387.561 for available K-12 classroom seats in any facility within the Coyote Springs development;

(b) Executing an agreement with Owner for the use of all or part of an Owner constructed school facility meeting the design approval of the School District and having a designed capacity of approximately five hundred and twenty five (525) K-12 students. Owner agrees to begin construction of this school facility within thirty (30) days of the issuance of the first residential building permit by County. School District agrees that the Owner constructed facility may be developed in phases and in a manner that allows for expansion of the facility as student yield numbers indicate increased classroom demand. The design may also allow for private non-sectarian education activities to be co-located in an appropriately designed facility; or

(c) The School District and Owner may cooperatively develop, consider, and implement options other than those contained in (a) and (b) of this Section in providing the initial school facility within the Coyote Springs development. School District and Owner agree that any options cooperatively implemented will not delay the provision of the initial school facilities.

(d) School District agrees to acquire an owner constructed initial school facility from Owner, at the Owners' actual cost of construction and debt financing adjusted to inflation utilizing the Consumer Price Index, prior to the construction of the thirty thousandth (30,000) residential unit. Upon issuance of the fifteen thousandth (15,000) residential building permit by County, School District agrees to initiate purchase of the facility.

(e) Owner agrees to provide School District with credit toward the purchase of the owner constructed initial school facility for any land dedicated to School District, pursuant to 6.14, that School

District finds is not needed for school purposes and is acceptable to owner. The credit value of the land will be the value established at the time of dedication to the School District. Credit will be given by owner upon conveyance of the acceptable land to owner by the School District.

6.17 Warehouse, Bus Storage and Maintenance Facilities. Owner shall dedicate up to a maximum of twenty (20) acres for use by School District for supply warehouse, school bus storage and maintenance facility purposes. Owner and School District agree where possible to co-locate such facilities with school sites in order to consolidate parking and service facilities. Owner and School District may agree to dedicate and co-locate up to five (5) acres as a part of the initial school facility site for use by School District for supply warehouse, school bus storage and maintenance facility purposes. Thereafter, Owner agrees to dedicate the remaining acreage as necessary to meet demand for supply warehouse, school bus storage and maintenance facilities. Owner and School District agree that such facilities may be co-located in five (5) acre increments with three other school sites, as described in Section 6.14 of this Agreement, for use by School District for supply warehouse, school bus storage and maintenance facility purposes. School District agrees to design and construct these facilities in accordance with Section 6.19 of this Agreement.

6.18 Non-Associated Facilities. Owner may consider or may be requested to consider the construction and development of school facilities that are not owned or operated by School District. Such facilities may include private or charter schools, denominational schools, or other school facilities not associated with School District. School District agrees to use its best efforts to plan reservations and dedications of School District sites and construction of School District facilities to complement such non-associated facilities. In addition, School District agrees that any students attending such non-associated facilities shall be recognized and subtracted from any facility demand analysis in conjunction with any student-yield monitoring program prepared by School District.

6.19 Design of School Facilities. School District acknowledges that the Association will create and establish uniform design guidelines for all construction and development within the Planned Community by use of recorded restrictive covenants or pursuant to contractual obligations binding on purchasers of property within the Planned Community. These design guidelines will become a part of any approved tentative or Final PUD Plan approved by County. County agrees to utilize the Association design guidelines, adopted within a Tentative PUD Plan, in the construction of any school facility within the particular PUD plan area.

6.20 Provisions for Utilities and Improvements. Owner will install to the property line, at no cost to the School District, all utility lines to allow acceptable connections meeting the capacity requirements for each school facility site. In addition, Owner will provide, at no cost to School District, all necessary roadway improvements adjacent to a proposed school site to meet access requirements for the school prior to school completion. It is anticipated that, to the extent lawful, grass fields and landscaped areas will utilize treated effluent for irrigation purposes, to the extent there is excess treated effluent remaining available for use after the golf facilities irrigation demands are satisfied.

6.21 Additional School Facilities. In the event that student-yields per household, as generated within the Subject Property and not subject to changing student yield factors as utilized for areas outside the Subject Property, mandate additional school facilities to maintain reasonable class sizes and educational opportunities, Owner shall provide, at no cost to School District, land as described in Section 6.14.

6.22 Compliance. Subject to Section 1.01 and any taxes hereafter enacted by County and not discriminatorily applied (County and Owner acknowledge that taxes enacted by the County on behalf of the

GID or the Fire District will not be considered a discriminatory tax hereunder), Owner's compliance with the provisions of this Section 6 shall satisfy any and all impositions and requirements now and hereafter to be imposed by County upon Owner for the provision of schools within or pertaining to the lands encompassed by the Planned Community.

SECTION 7

TRANSPORTATION

7.01 Traffic Studies. Owner will prepare and submit to the District and Nevada Department of Transportation (NDOT), as applicable, a Traffic Study acceptable to the District and NDOT for each Tentative PUD Plan submittal. Owner shall be responsible to provide (or agree to provide with adequate assurance of performance in accordance with District's standard practice), at no cost to District, On-Site Improvements (defined below) in conjunction with approval of each Final PUD Plan prior to issuance by County of any grading or building permits for the Final PUD Plan area. Owner shall be responsible to provide, at no cost to District, Off-Site Improvements in accordance with this Section 7. For the purposes of this, Section 7, the following terms shall have the following meanings.

(a) "Off-Site Improvements" means mitigation measures and improvements to the Major Intersections and roadways located outside of the Planned Community as described herein, except the Village Access Roads and improvements required for intersections and roadways immediately adjacent to the Planned Community.

(b) "On-Site Improvements" means mitigation measures and improvements to intersections and roadways located within the Planned Community, improvements required for intersections and roadways immediately adjacent to the Planned Community.

The need and timing of construction for On-Site Improvements and Off-Site Improvements will be established at the time of Tentative PUD Plan approval through a Village Traffic Study and implemented concurrently with development of a Village in order for community access roads to provide the minimum service level of as defined in Section 7.03(a) in accordance with the Highway Capacity Manual, Special Report Number 209, published by the Transportation Research Board, latest edition ("The Highway Capacity Manual"). The mitigation area for each Traffic Study will be established prior to initiation of the Traffic Study by agreement between District and Owner and will be limited to those major roadways as described in Sections 7.02 and 7.03. The Traffic Study shall, in a manner acceptable to District and NDOT;

(a) Identify impacts to the roadway network within the Planned Community including impacts to any Major Street Segment and any Major Intersection, and impacts to the transportation network which are outside of Planned Community, and;

(b) Display all related mitigation measures necessary to such Major Street Segments and at such Major Intersections together with the roadway access needs leading to the Planned Community.

The study shall be consistent with ITE principles and technologies. District may also require additional site-specific traffic studies as may be deemed necessary related to and prior to the construction of any commercial area, school, or other land use that may have time-sensitive traffic impacts or other significant impacts to adjacent traffic patterns. Traffic Studies and all other site-specific traffic studies

required by a Tentative PUD Plan shall be performed in accordance with District regulations. All Traffic Studies shall identify the construction phasing anticipated for any and all phases of the PUD plan area together with access mitigation acceptable to District, NDOT, and as applicable.

7.02 Mitigation of Off-Site Traffic Impacts. Owner's obligation to improve any roads or construct intersections or other transportation improvements outside of the Planned Community shall be limited to those obligations described in this Section 7.02. County and Owner acknowledge that development within the Planned Community will impact only those rights-of-way owned and maintained by NDOT, including U.S. Route 93 ("US 93") as outlined in Section 7.02(c). County acknowledges that it has no obligation or right to assess an Off-Site Traffic Mitigation Fund Fee for facilities and improvements within these rights-of-way. Owner acknowledges that it has the responsibility for any necessary cost of improvements as required by District. Owner shall cooperate with both District and NDOT in the implementation of such required improvements as set forth in this Section 7.02. Except as expressly provided in this Agreement, Owner shall have no obligation to participate in, pay, contribute, or otherwise provide any further exactions to provide for off-site rights-of-way, facilities or improvements for the road and motor vehicular traffic system within County and District or for any facilities, equipment or physical improvements that are a substitute therefore.

(a) Minimum Traffic Service Level. To satisfy its obligations to provide Off-Site Improvements, Owner will be responsible for constructing and funding all Off-Site Improvements as required by County, in order to provide a minimum service level, as defined in The Highway Capacity Manual, for those Major Intersections and roadways as set forth herein. In order to provide and maintain a minimum service level as defined herein," Owner shall be:

(i) Required to implement those Off-Site Improvements required within a Tentative PUD Plan Traffic Study concurrently with development and/or phasing of construction within the associated Tentative PUD Plan area or;

(ii) Subject to District and/or NDOT review and inspection of existing service levels as set forth in Section 7.02(e) as follows:

(1) For any improvements to roadways, intersections or interchanges on US 93 as described in Section 7.04(c), Owner will be responsible for providing a minimum service level of "C" with a maximum service flow rate of 1,900 pc/h/ln (passenger cars per hour per lane).

(2) For any On-Site Improvements to roadways and intersections as described in Section 7.03, Owner will be responsible for providing a minimum service level of "D" as defined in The Highway Capacity Manual.

(b) Financing of Off-Site Improvements. County and Owner agree that Owner may use any lawful means necessary in accordance with county, state, or federal law to obtain such funds necessary to timely construct the Off-Site Improvements set forth within this Section 7.02, including but not limited to Owner financing, builder and/or property assessments or mitigation funds, state and/or federal highway funds and financing mechanisms, or any other reasonable financing mechanisms authorized under state law or otherwise. County shall use its best efforts to cooperate with Owner in securing any state or federal funds or other authorizations, which may be necessary in order to obtain financing from institutions other than County.

(c) Owner's Limitation of Obligations. Owner's obligations to fund Off-Site Improvements are limited to the following traffic impacts associated with the Planned Community:

(i) Any traffic impacts directly associated with the Planned Community that result in improvements along US 93 from the southerly County Line to Owners northernmost property line intersecting US 93 as required by District and subject to each Tentative PUD Plan Traffic Study.

(ii) Any other roadway or interchange that may be required to achieve the minimum level of service as defined in Section 7.03(a).

(d) County agrees;

(i) That Owner will not be responsible for the cost of any Mitigation Project that has been constructed by County or others prior to the time Owner would be required to construct or improve such improvement as demonstrated by a Tentative PUD Plan Traffic Study, and;

(ii) To the extent allowed by law, County will not excuse or defer the requirement for any other development to mitigate its impacts on account of Owner's contingent responsibility for such improvement, provided Owner understands and agrees County may, in its discretion and in accordance with its standard practice, defer obligations of developers who commit contractually with District to contribute to mitigation of impacts at a later date when District determines such mitigation to be warranted or financially feasible.

(e) Review, Maintenance and Cure of Service Levels. Notwithstanding the construction and timing of Off-site Improvements as required by District and included within a Tentative PUD Plan Traffic Study, District and/or NDOT have the right at any time to review and inspect existing service levels at any Intersection or roadway set forth in Section 7.02(c). If District or NDOT find that minimum service levels as set forth in Section 7.02(a) are not being met, Owner shall be required to submit traffic mitigation plans in coordination with NDOT and District within one-hundred-twenty (120) days showing how Owner shall meet minimum service levels as required herein. Such traffic mitigation plans shall provide:

(i) Design and specifications as necessary to bring Off-site Improvements to minimum service levels and;

(ii) A schedule for when required Off-site Improvements will be implemented.

Owner is then required to complete the Off-Site Improvements in accordance with the schedule provided within the traffic mitigation plan. If Owner does not meet the schedule for implementation of Off-Site Improvements as set forth in the traffic mitigation plan, County, in cooperation with the District, may take action in accordance with Section 9 of this Agreement.

(f) Data Collection, Sharing, and Use. Owner, County and District (and each party shall cooperate with and seek the cooperation of NDOT with all such data exchanges) shall provide copies of all actual traffic data collected by any such party to each other party and related to those Off-Site Improvements set forth in Section 7.02(c). County, District and Owner acknowledge the uniqueness of the uses proposed in the CSPUD Code, and that seasonal living and age characteristics within the Planned Community may have a significant impact on traffic and Off-site Improvements. County, District and Owner agree to

minimize Off-Site Improvements while providing and maintaining the minimum service levels for Off-Site Improvements as defined in Section 7.02(a). County, District and Owner agree that any such actual traffic data collected on these Off-Site Improvements provides a valuable tool for estimating future traffic estimates and may be used by Owner and District as a model for generating any future traffic estimates, Tentative PUD Plan Traffic Studies and traffic mitigation plans.

7.03 Mitigation of On-Site Traffic Impacts. Owner acknowledges it shall be responsible for constructing all internal public and private roadway and funding all costs and expenses associated with their construction as set forth in Section 7.04, including, but not limited to: rights-of-way; drainage facilities; roadway construction; utility installations and modifications; noise attenuation devices; bridging structures; lighting; traffic control equipment and signage; aesthetic improvements; landscaping, and such other features customarily provided in such Planned Community. Except as expressly provided in this Agreement, Owner shall have no obligation to participate in, pay, contribute or otherwise provide any further exactions to provide for on-site rights-of-way, facilities or improvements for the road and motor vehicular traffic system within County and District or for any facilities, equipment or physical improvements that are a substitute therefore. Development of the Planned Community will not be interrupted as a result of any failure of necessary On-Site Improvements being in place so long as Owner has complied with the terms of this Section 7.

7.04 Ownership and Control of Internal Roadway Network. All roads within the Planned Community will be constructed and maintained by Owner, a homeowner's association, or through special assessments or special districts and other political subdivisions of the state subsequently created under state law. The hierarchy of roadways will be designed and constructed as applicable to meet AASHTO standards or ITE guidelines for roadway improvements. The final design of street configurations and intersections will be established within final PUD Plan approvals to be consistent with the CSPUD Code. Owner agrees to maintain streets, roads and rights-of-way within the Planned Community at no cost to County. Owner may, from time to time, convey any street or roadway to the following entities in accordance with NRS:

(a) Transfer to or Construction by a General Improvement District. County hereby acknowledges that Owner may, from time to time, convey any street or roadway to a General Improvement District ("District") formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the District Board acknowledges in writing that it accepts Owner's maintenance obligations for such streets and roadways. With respect to any street or roadway, the GID, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof in accordance with NRS Chapter 318.

(b) Transfer to Homeowner's Association. Owner may, from time to time, convey any street or roadway to any Association formed under the provisions of NRS Chapter 116 provided that the Association accepts Owner's maintenance obligations for such street or roadway. The Association, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof.

7.05 Acquisition of Offsite Rights-of-Way. With respect to rights-of-way outside the boundaries of the Planned Community but necessary for development of the roadways, utilities, or flood control facilities for the Planned Community, County shall use its best efforts to assist (except financially) Owner in obtaining such necessary rights-of-way through acquisition from the Bureau of Land Management or by power of condemnation where authorized by law. With respect to acquisitions requested by Owner which involve consideration or payments of fair market value or just compensation, Owner acknowledges it shall be

responsible for all such expenses and cost of condemnation, including, but not limited to, severance damages and reasonable attorneys fees; provided, in no event shall Owner be responsible for the cost of acquisition of any right-of-way beyond a one hundred (100) foot wide corridor, unless additional portions of property must be acquired in order to obtain the intended one hundred (100) foot wide corridor. Owner acknowledges County has authority to settle all condemnations entered into at the request of County.

7.06 Jobs-Housing Balance. Owner will use best efforts to develop employment creating land uses in conjunction with residential development in an effort to reduce the length of vehicle trips and enhance air quality.

7.07 Streetscapes. County acknowledges Owner will retain ownership of Streetscape Areas subject to Section 7.06 of this Agreement to allow Owner to maintain landscaping in the Streetscape Areas. Owner or any entity outlined in Section 7.04 of this Agreement shall establish an adequate reserve account to fund the maintenance, removal and replacement of the landscape and irrigation materials within Streetscape improvements.

7.08 Underground Conduit Rights-of-Way Dedicated to the County. If any facility is dedicated to District in accordance with Section 7.04 of this Agreement, District agrees to authorize Owner the right to install underground conduit that shall be under Owner's exclusive ownership and control in all public roadways and rights-of-way in the Planned Community, at Owner's sole cost and expense, for the purpose of the provision of cable TV, video, computer, communication, telephone and similar electronic or communication uses of any kind. The use of such underground conduit by any entity, including Owner, shall at all times be subject to all applicable regulatory and franchising provisions of the County, state and federal government.

SECTION 8

FLOOD CONTROL

8.01 Technical Drainage Studies. Owner shall prepare and submit a technical drainage study reasonably acceptable to the District for each Tentative PUD Plan submittal. Owner shall construct those flood control facilities identified in the technical drainage study, which are necessary for the flood protection of the Planned Community or for mitigation of any downstream flood impacts caused by the development of the Planned Community.

8.02 Flood Control Facilities. All flood control facilities within the Planned Community will be constructed by Owner, an Association, or through special assessments or Special Funding Districts subject to Section 8.06 of this Section. Owner or any entity, subject to this, Section 8, agree to construct and maintain such flood control and drainage facilities identified in the drainage study which are necessary for the flood protection of the Subject Property or for the mitigation of any downstream flood impacts caused by the development of the Subject Property. Each facility must be built in the manner consistent with the District Regulations Manual on or before the facility completion date set forth in the approved Drainage Study for each respective Tentative PUD Plan. Notwithstanding any provisions to the contrary in this Section 8, no building permit (other than construction permits for grading, roadways, utilities, and other improvements or public facilities that are permitted by FEMA and Lincoln County standards within such areas), shall be issued for any structure within a portion of Final PUD Plan within a Flood Control Facility Impact Zone ("Impact Zone") as described herein, until such facilities protecting said Impact Zone are completed as identified in the approved Drainage Study. Owner may obtain building permits at any time for

facilities and structures to be built in any phase of an area covered by a Final PUD Plan that is located outside areas qualified as Impact Zones. Owner agrees to cooperate with District in the design and treatment of local and regional flood control facilities including, but not limited to, the construction of recreational or other multiple use facilities located within said flood control facility, if approved by District. Owner and the District agree in principle to implement a series of safeguards in order to control floods while minimizing the impact of flood facilities and naturalizing the Pahranaagat Wash Corridor and summarized as follows:

(a) To the maximum extent practical, Owner shall preserve and maintain the first (1st) flow channel within the Pahranaagat Wash. Owner may, from time to time, propose facilities and improvements that do not hinder the flow of frequent storm events (10-year storms or less) within the first flow channel.

(b) To the maximum extent practical, Owner will avoid routing stormwater from the rest of the development into the existing first flow channel to minimize offsite runoff. Owner will design additional flood storage and conveyance facilities within a secondary system of naturalized low flow channels located within the 100-year flood plain. Owner and District agree that additional flow capacities may be carried within a series of appropriately-sized flood control lakes and created wetlands that may be built in conjunction with an Aquifer Recharge Program as described in NRS Chapter 534 to control excess flood flows from the north, west and east, and the backflow condition from the south of the Planned Community. The flood control lakes will be designed with a minimal, yet appropriate, level of free board to allow tertiary storage and conveyance for peak events.

8.03 Additional Flood Control and Development Requirements. Residential and non-residential development within the 100-year floodplain will only occur in Floodway Fringe locations in accordance with FEMA Standards. All onsite facilities and development will be constructed as required to reduce runoff in a manner consistent with FEMA and District regulations.

8.04 Ownership and Control. Owner may, from time to time, upon request, consider conveying any flood control facilities to the following entities in accordance with the Nevada Revised Statutes:

(a) Transfer to Homeowner's Association. Owner may, from time to time, convey flood control facilities to any Association formed under the provisions of NRS Chapter 116 provided that the Association accepts Owner's maintenance obligations for such flood control facilities. The Association, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof.

(b) Transfer to or Construction by a General Improvement District. County hereby acknowledges that Owner may, from time to time, convey flood control facilities to a General Improvement District ("GID") formed under the provisions of NRS Chapter 318 provided the conveyance is subject to the terms and conditions of NRS Chapter 318 and the General Improvement District Board acknowledges in writing that it accepts Owner's maintenance obligations for such flood control facilities. With respect to flood control facility, the GID, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof in accordance with NRS Chapter 318.

(c) Transfer to a Political Subdivision of the United States or State of Nevada. Owner may convey flood control facilities to any political subdivision of the State of Nevada or United States provided that the political subdivision accepts Owner's maintenance obligations for such flood control facilities. The political subdivision, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof.

(d) Transfer to a Water District. Owner may convey flood control facilities to any Water District formed under the provisions of NRS provided that the Water District accepts Owner's maintenance obligations for such flood control facilities. The Water District, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof.

(e) Transfer to an Irrigation District. Owner may convey flood control facilities to any Irrigation District formed under the provisions of NRS Chapter 539 provided that the Irrigation District accepts Owner's maintenance obligations for such flood control facilities. The Irrigation District, to which Owner conveys title, shall have the exclusive right to program and maintain the use thereof.

SECTION 9

REVIEW AND DEFAULT

9.01 Frequency of Reviews. As required by NRS Chapter 278.0205 and the Development Agreement Ordinance, at least once every twenty-four (24) months during the Term of this Agreement, Owner shall provide and County shall review in good faith, a report submitted by Owner documenting the extent of Owner's and County's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. County shall not charge any expense, fee or cost with respect to such review except as provided in the CSPUD Code. 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 sufficient time or response. County and Owner shall be permitted an opportunity to be heard before the County Commission regarding their performance under this Agreement in a manner set forth in the Development Agreement Ordinance.

Notwithstanding any provision to the contrary contained in this Section 9.01, Owner and County acknowledge and agree that an initial review of this Agreement shall occur during the period commencing 180 days after the effective date hereof and ending on the day occurring 240 days after the effective date hereof. The purpose of this initial review is to allow County the opportunity to identify and present to Owner any new matter that the County believes has not been addressed in this Agreement and that should be added to this Agreement by amendment. County and Owner shall, in good faith, discuss the matter and seek mutual agreement on satisfactory terms and provisions to address any such matter. In the event County and Owner are unable to mutually agree on a resolution of the matter within 90-days after the expiration of the review period, this Agreement shall terminate and shall be of no further force and effect.

9.02 Procedures in the Event of Noncompliance. In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing a courtesy notice stating the reason for noncompliance and any action necessary to correct the noncompliance. Courtesy notices must be delivered in accordance with the provisions of Section 12.08. If after thirty days (30) of the date the courtesy notice is sent the compliance is not corrected to the satisfaction of the complaining party, the party alleging noncompliance may deliver in writing a notice of default. The time of notice shall be measured in accordance with Section 12.08. The notice of default shall include the section of this agreement alleged to be violated, the nature of the alleged default, and, where appropriate, the manner and period of time in which it may be satisfactorily corrected. During the period of time the notice of default letter is pending the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. 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 after thirty days, the following procedures shall apply:

(a) County Procedures

(i) Intent to Remedy Noncompliance. After proper notice and the expiration of the above-referenced periods for correcting the alleged default, the County, or designee, may do one or both of the following options:

(1) Immediately direct County staff to recommend that all future Final PUD Plan approvals within the Planned Community be conditioned so that the building permits to be issued as a result of those approvals shall not be issued until the default is corrected; or

(2) Issue a letter providing notice of County's intent to set the matter for hearing before the County Commission. The letter shall notify Owner of the action taken. In the event County selects option two (2), County shall give Owner at least seven (7) business day's notice to correct the default before the matter is scheduled for a hearing. The letter notifying the Owner of the hearing shall contain the intended hearing date. The seven (7) business days are measured from the date of delivery of the notice in accordance with Section 12.08.

(ii) Hearing Scheduled. If default is not corrected within the time specified above, the matter shall be scheduled and noticed as required by law for consideration and review by the County Commission during their next regularly scheduled Commission meeting.

(iii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by Owner and the default remains uncorrected, the County Commission may authorize the suspension of building permits within the Planned Community or may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Vested Right in favor of Owner existing or received as of the date of the termination. Owner shall have twenty-five (25) days after the date noticed of the County Commission's decision is filed with the Lincoln County Clerk, to institute legal action pursuant to Section 9.04 hereof, to determine whether the County Commission abused its discretion in determining whether a default existed and remain uncorrected.

(b) Owner Procedures.

(i) After proper notice and the expiration of the above-referenced periods for correcting the alleged default, Owner may issue a letter requesting a hearing before the County Commission for review of the alleged default. Upon receipt of the letter, the County Clerk shall schedule an agenda item to consider the alleged default during the next regularly, and available, scheduled Commission meeting.

(ii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by County and remains uncorrected, the County Commission shall direct County staff to correct the default. Owner shall have twenty-five (25) days after the date notice of the County Commission's decision is filed with the Lincoln County Clerk, to institute legal action pursuant to this Section 9.04 hereof, to determine whether the County Commission abused its discretion in determining whether a default existed and remain uncorrected.

(c) Waiver. Failure or delay in giving any notice provided for herein 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 to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any of its rights or remedies.

(d) Notices. All notices provided for herein shall be sent to the address provided in Section 12 of this Agreement.

9.03 Unavoidable Delay or Default, Extension of Time for Performance. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war; acts of terrorism; 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 for the performance of this Agreement; enactment of conflicting state or federal laws or regulations; new or supplementary environmental regulations, and litigation or similar matters beyond the control of the parties. 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 ten (10) 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 Owner.

9.04 Institution of Legal Action. County and Owner agree that neither would have entered into this Agreement if either party were liable for, or could be liable for, damages under or with respect to this Agreement. Accordingly, County and Owner may pursue any remedy at law or equity available for breach, except that neither Owner nor County shall be liable to the other or to any other person or entity for any monetary damages whatsoever. Any judicial review of the County Commission's decision or any legal action taken pursuant to this Agreement will be heard by a Court under the standard review appropriate for the review of zoning actions. Judicial review of the decision of the County Commission shall be limited to the evidence presented to the County Commission at the public hearing as described in this Section 9. If a party desires to present new or additional evidence to the Court, they may petition the Court to remand the matter to the County Commission to consider the additional or new evidence. Jurisdiction for judicial review or any judicial action under this Agreement shall rest exclusively with the Seventh Judicial District Court, State of Nevada.

9.05 Applicable Laws. This Agreement shall be construed and enforced in accordance with the law of the State of Nevada.

9.06 Adjustments for Inflation. In the event there is a delay of more than one (1) year in the payment of a contribution required in this Agreement, the amount of the contribution may be adjusted for inflation. If the parties are unable to agree to the adjusted amount, the matter may be set for a hearing before the County Commission, after notice is provided to Owner. After the County Commission conducts a public hearing and considers the evidence presented, it may adjust the amount of the contribution to account for inflation.

SECTION 10

FINANCING

10.01 County Cooperation in Financing. County expressly acknowledges and agrees that Owner may be required to finance a part of its obligations through private financing in addition to the financing and reimbursement provisions contemplated by this Agreement. County agrees to cooperate with Owner with respect to any such private financing. County will execute and deliver written documentation to any lender or other interested person such documents as may be reasonably requested to acknowledge:

- (a) That County has no lien on the Subject Property as a direct result of this Agreement, and;
- (b) That County shall recognize and allow a lender, which has foreclosed or acquired a portion of the Planned Community from Owner to inure to the rights and benefits of this Agreement as to such property.

County and Owner acknowledge, however, that if a Special Improvement District or General Improvement District is created as contemplated by Section 3.12, such District will constitute or create a lien to secure repayment of the bonds. Nothing herein shall be deemed to relieve Owner of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement.

10.02 Funding Allocation. County reasonably believes that sufficient funds can be obtained to meet its obligations under this Agreement. In the event, however, that County fails to allocate funds sufficient to meet such obligations, County's obligations to fund, construct or otherwise perform the specifically non-funded obligation shall be excused. In such an event Owner will have the right to terminate this Agreement and all executory obligations of Owner hereunder by written notice to County.

SECTION 11

CONFLICTING LAWS

11.01 Conflicting State or Federal Rules. In the event that any conflicting state or federal 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 County, this Agreement shall remain in full force and effect as to those provisions not affected, the conflicting laws or regulations shall not be applied retroactively, and:

(a) Notice and Copies. Either party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, regulation or policy or an account of any such action or inaction together with a statement of how any such matter conflicts with the provisions of this Agreement; and;

(b) Modification Conferences. The parties shall, within thirty (30) days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement or create a Supplemental development agreement to bring it into compliance with any such federal or state law or regulation, or accommodate any such action or inaction.

11.02 County Commission Hearings. In the event County believes that an amendment to this Agreement is necessary pursuant to this, Section 11 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the County Commission. The County

Commission shall determine the exact nature of the amendment of suspension necessitated by such federal or state law or regulation or action or inaction. Owner shall have the right to offer oral and written testimony at the hearing. Any suspension or modification ordered by the County Commission pursuant to such hearing is subject to judicial review as set forth in Section 9.

11.03 Cooperation in Securing Permits. County shall use its best efforts to cooperate with Owner in securing any County permits, licenses or other authorizations, which may be required as a result of any, amendment or suspension resulting from actions indicated under this Section 11. Owner will be responsible to pay all applicable fees in connection with securing of the permits.

SECTION 12

GENERAL PROVISIONS

12.01 Enforcement and Binding Effect. Subject to the limitations of NRS Chapter 278 (and NRS Chapter 278A), this Agreement is enforceable by either party in accordance with its terms notwithstanding any change (which, except for this Agreement would otherwise be applicable) in any of the Applicable Rules. Nothing in this Agreement shall prevent the County from increasing "Cost Based Fees" which are deemed to be administrative fees for issuance of Land Use Approvals, building permits, plan checks, or inspections which are based upon actual costs to the County and which are specified in Chapter 6 of the CSPUD Code.

12.02 Interim Funding. Owner shall provide funding to County in an amount that is equal to the property taxes paid by Owner during each tax year (which amount is in addition to the property tax paid) commencing with the tax year in which this Agreement becomes effective and continuing each tax year thereafter until the tax year in which the first building permit is issued for a structure within the Subject Property. The initial payment shall be due on July 1, 2005, and each annual payment thereafter shall be due on each successive anniversary date until this funding obligation terminates.

12.03 Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the fortieth (40th) anniversary of the Effective Date, unless extended by written Agreement executed by County and Owner.

12.04 Assignment.

(a) Agreement Transfer. This Agreement, including the terms and conditions thereof and except as described in Section 12.04(b) of this Agreement, may be freely transferred or assigned by Owner provided that the County consents in writing to the assignment or transfer, and the County is satisfied that assignee or transferee is financially capable of fulfilling the terms and conditions of the Agreement, and such assignee or transferee assumes in writing all obligations of the Owner hereunder. Upon any such assignment hereunder, the Owner shall be relieved of all obligations and liabilities under or in connection with this Agreement.

(b) Transfer to an Affiliate of Owner. The rights of Owner under this Agreement may be freely transferred or assigned to any entity, partnership or corporation which Owner controls or in which Owner has a combined interest or which controls Owner, provided such entity shall assume in writing all obligations of Owner hereunder and is financially capable of fulfilling the terms and conditions of this Agreement. In

connection with the transfer or assignment of any portion of the Subject Property to an affiliate of the Owner, Owner shall provide County with written notice of any transfer, conveyance or assignment.

(c) Transfer of Property Not to Relieve Owner of its Obligation. The Owner may assign or transfer lands in any portion of the Planned Community within a recorded subdivision map and such transferee and assignee shall not be subject to the obligations of the Owner as to the portion of the Planned Community so assigned or transferred except as expressly provided herein. Such assignment or transfer shall not relieve Owner of its obligations as to the assigned or transferred portion of the Planned Community unless Assignee assumes such obligation in writing and County consents.

(d) Restrictions on Building Permits. Notwithstanding the above, no successor, assigns and/or transferees will be entitled to the issuance of a building permit by the County if the County determines Owner is not in complete compliance with the Agreement and/or Owner has failed to construct improvements required by the Agreement in a manner satisfactory to the County. Owner agrees to obtain from any and all successors, assigns and transferees written acknowledgment and agreement to the building permit restriction set forth in this section.

(e) In Connection with Financing Transactions. Owner has full discretion and authority to transfer, assign or encumber the Planned Community or portions thereof in connection with financing transactions, without limitation on the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefrom, and may enter into such transactions at any time and from time to time without permission of or notice to County.

12.05 Amendment or Cancellation of Agreement. Except as otherwise permitted by NRS Chapter 278.0205 and Section 9 of this Agreement, this Agreement may be amended from time to time or canceled but only upon the mutual written consent of the parties hereto, which consent shall not unreasonably withheld or delayed by either party.

12.06 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Owner shall hold County, its officers, agents, employees, and representatives harmless from liability for damages or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees, or other persons acting on Owner's behalf which relate to the development of the Planned Community. Owner agrees to and shall defend County and its officers, agents, employees and representatives from actions for damages cause or alleged to have been caused by reason of Owner's activities in connection with the development of the Planned Community. Owner agrees to indemnify, hold harmless, and provide and pay all costs and attorney's fees for a defense for County in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or action is proximately caused by the intentional or negligent act of County, its officers, agents, employees or representatives.

12.07 Binding Effect of Agreement. Subject to Section 12.03 hereof, the burdens of this Agreement bind and the benefits of this Agreement inure to the parties' respective successors in interest.

12.08 Relationship of Parties. It is understood that the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County for any purpose.

12.09 Notices. All notices, demands and correspondences 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: Lincoln County
P.O. Box 90
Pioche, NV 89043
Attn: Planning Administrator

With a Copy to: Lincoln County, Office of the District Attorney
P.O. Box 60
Pioche, NV 89043

To Owner: Coyote Springs Investment, LLC
Bank of America Plaza
300 South 4th Street, Suite 1406
Las Vegas, NV 89101
Attn: Robert R. Derck

With a Copy to: Coyote Springs Investment, LLC
6600 North Wingfield Parkway
Sparks, Nevada 89436
Attn: Carl Savely

Either party may change its address 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 date of personal delivery or the date delivery of the mail is first attempted.

12.10 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 or any part of the subject matter hereof.

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

12.12 Recording Amendments. Promptly after the Effective Date, an executed original of this Agreement shall be recorded in the Official Records of Lincoln County, Nevada. All amendments hereto shall be in writing signed by the appropriate officers of County and Owner in a form suitable for recordation in the Official Records of Lincoln County, Nevada. Upon the completion of performance of this Agreement or its cancellation, revocation or termination, a statement evidencing said completion or revocation signed by appropriate officers of County and Owner shall be recorded in the Official Records of Lincoln County, Nevada.

12.13 Release. Each residential lot or commercial parcel within the Subject Property shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any

instrument of release upon the issuance of a building permit for the construction of a residence or commercial building thereon.

12.14 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 term 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.

12.15 Voluntary Agreement. Owner acknowledges and agrees that it voluntarily, willingly and without protest and duress freely enters into this Agreement and accepts the terms and conditions herein.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written, as authorized by Ordinance No. 2004-03 of the Lincoln County Code, to be effective on the Effective Date shown below.

COUNTY:

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF LINCOLN, STATE OF NEVADA

By: George T. Rowe
George T. Rowe, Chairman

Attest: Carmen Hogan

THE EFFECTIVE DATE hereof is ~~February 1~~, ^{June 6,} 2005.

OWNER:

COYOTE SPRINGS INVESTMENT, LLC
a Nevada limited liability company

By: [Signature]
Robert R. Derck, Chief Operating Officer

STATE OF NEVADA)
) ss.
COUNTY OF LINCOLN)

This instrument was acknowledged before me on the 9 day of June, 2005 by Robert R. Derck, Chief Operating Officer of Coyote Springs Investment, LLC, a Nevada Limited Liability Company.

D.A. Blades
Notary Public

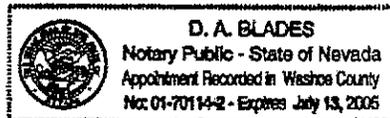


Exhibit A

Legal Description

Township 11 South, Range 63 East, (Lincoln County, Nevada):

All of Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, and 35; Section 13, the South Half (S 1/2); Section 36, the West Half (W 1/2); Sections 19, 30 and 31, all except those portions lying West of the Centerline of U.S. Highway 93.

Township 12 South, Range 63 East, (Lincoln County, Nevada):

All of Sections 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, 33, 34, 35, and 36; Sections 1, 13, and 24, the West Half (W 1/2); Section 12, the West Half (W 1/2) of the West Half (W 1/2); Sections 6, 7, 18, 19, 29, 30 and 32, all except those portions lying West of the Centerline of U.S. Highway 93.

Exhibit B

Specific Codes, Ordinances, Rules, Regulations and Official Policies:

(Add Lincoln County Code as Applicable at Effective Date)

Exhibit C
Concurrent Approvals

cds/csi
041905/lcdevag.wpd/6c

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