

## **INFRASTRUCTURE REIMBURSEMENT AGREEMENT**

**THIS INFRASTRUCTURE REIMBURSEMENT AGREEMENT** (“Agreement”), is made and entered into effective this 23rd day of January, 2018 (“Effective Date”), by and between the COUNTY OF NEVADA, a political subdivision of the State of California (“District”), KKP-LAKE OF THE PINES, LLC, a California Limited Liability Company (“Developer”) for the purpose of funding and constructing road and sewer improvements on and in the Combie Road Corridor. This Agreement is based on the following recitals:

WHEREAS, Developer is in escrow to acquire an approximately 20.07 acre unimproved parcel commonly known as the Higgins Marketplace Center, State Highway 49 & Woodridge Court (APN 57-260-17), located in the unincorporated area of Nevada County (the “Property” or “Project Site”); and,

WHEREAS, on April 13, 2010, the Nevada County Board of Supervisors approved an Environmental Impact Report(EIR04-001) (“EIR”) and a Conditional Use Permit (U04-019) (“CUP”) for the Higgins Marketplace project, an approximately 75,710 sf commercial center (collectively the “Project”); and,

WHEREAS, the Project consists of four stand-alone commercial buildings, anchored by an approximately 50,000 sf grocery store (which includes expansion area) as shown in Exhibit A, attached hereto and incorporated herein by this reference; and,

WHEREAS, the Project conditions of approval require that Developer install the following off-site road improvements on Combie Road to serve the Project and mitigate certain traffic-related impacts (collectively the “Road Improvements”):

1. Extend the left turn lane along the westbound Combie Road approach to Higgins Road by approximately 250 feet for additional left turn storage (MM 4.4.1c and MM 4.4.3b).
2. Extend the right turn lane a minimum of 75 feet to allow adequate queuing (MM 4.4.1c).
3. Install a traffic signal at the intersection of Combie and Higgins Road (MM 4.4.1a).
4. Construct/reconfigure the two Combie Road westbound left turn lanes at SR 49/Combie Road intersection to be a minimum of approximately 250 feet each to allow for adequate storage (MM 4.4.1b); and,

WHEREAS, the Project’s Conditions of Approval also require that Developer install an off-site force main in Combie Road from Cascade Crossing to the intersection of Combie and Higgins Road (MM 4.11.5.2a) to serve the Project and mitigate certain sewer-related impacts (collectively the “Sewer Improvements”); and,

WHEREAS, the Project’s CUP expires on January 13, 2021 (“Expiration Date”) and the County believes that the Project is not entitled to any further time extensions under the County’s Land Use and Development Code except with additional discretionary County approvals; and,

WHEREAS, the County maintains an Economic Development Infrastructure Fund in which a very limited amount of money is available to fund infrastructure projects which support

commercial, industrial and other economic development projects in unincorporated areas of the County; and,

WHEREAS, the County has determined that it is in the public interest to widen portions of the Combie Road Corridor regardless of whether the Project proceeds or not and, as a part of such road widening work, it is convenient to install the Road Improvements and Sewer Improvements at the same time to avoid disruption of the road after the road widening work is completed; and

WHEREAS, the County has agreed to pay for, construct and install the Road Improvements and Sewer Improvements primarily using Local Traffic Mitigation Funds and County Economic Infrastructure Funds subject to certain potential reimbursements by Developer; and

WHEREAS, the County believes it is in the best interests of the County to encourage and incentivize Developer to either (a) expeditiously complete the Project in order to generate jobs and tax revenues for the County or (b) contribute to the cost of the Road Improvements and Sewer Improvements; and,

WHEREAS, to encourage and incentivize the expeditious completion of the Road Improvements and Sewer Improvements, Developer has agreed to make certain payments to the County as more fully set forth in this Agreement, and County has agreed to expedite construction of the Road Improvements and Sewer Improvements prior to the Expiration Date; and,

WHEREAS, the Sewer Improvements will serve certain existing developments and may also serve additional new developments adjacent to the new force main who will benefit from installation of the Sewer Improvements; and,

WHEREAS, the Developer has requested, and County has agreed, that Developer be credited for a portion of the County's cost of installing the Sewer Improvements from monies the County may collect, if any, from certain developments and new developments if those developments connect to the Sewer Improvements on or before the Credit Expiration Date, as defined in Paragraph 3.e. below; and,

WHEREAS, the parties now desire to document and memorialize their respective understandings and commitments, and to set forth the terms and conditions of their Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto mutually agree as follows:

**1. DESIGN AND CONSTRUCTION OF PROJECT.**

a. Developer shall design, construct and occupy the Project and will design and construct all improvements required by the Project's conditions of approval, except the Road Improvements and Sewer Improvements, in substantial conformance with the Project Timeline set forth in Exhibit A attached hereto and incorporated herein by this reference and subject to the terms and conditions of this Agreement.

b. Subject to the terms and conditions of this Agreement, Developer shall design, construct and occupy the Project and associated improvements at its sole cost, except for the Road Improvements and Sewer Improvements. Developer shall fully comply with all requirements of the Nevada County Land Use and Development Code, the Project's Conditions of Approval and the requirements of any other local, state or federal agency with jurisdiction over the Project.

## **2. CONSTRUCTION AND FUNDING OF ROAD IMPROVEMENTS.**

a. Subject to the terms and conditions of this Agreement, County shall design, construct and install the Road Improvements as part of the Combie Road widening project in substantial conformance with the Project Timeline set forth in Exhibit A attached hereto and incorporated herein by this reference. This Agreement to complete the Road Improvements shall comply with and will satisfy both Developer's and County's obligations under Mitigation Measures 4.4.1a, 4.4.1.b, 4.4.1c, and 4.4.3b of the Project EIR and the Project's Conditions of Approval.

b. The Road Improvements shall be substantially complete and operationally functional on or before October 1, 2019, provided that all County right of way acquisition (or Orders of Immediate Possession, if any) and utility relocations are completed on or before March 1, 2019. The County agrees that it shall diligently pursue the acquisition of the right of way and relocation of the utilities. The County shall update Developer in writing concerning the status of the right of way acquisition and utility relocations within Fifteen (15) days following Developer's written request; provided, however, Developer shall not request such updates more than once in any calendar month and the timeliness of County's response to such requests shall not be a basis for extending any date or deadline set forth in this Agreement.

c. County shall fund the design, construction and installation of the Road Improvements, subject to potential reimbursement from Developer as set forth in Paragraph 4, below.

d. The County's estimated cost to design, construct and install the Road Improvements is \$747,000. Within ninety (90) days after completion and acceptance of the Road Improvements, County shall provide Developer with a statement of actual costs incurred for design, construction and construction management of the Road Improvements ("Final Road Costs"). Such statement shall be accompanied by copies of invoices evidencing the costs.

e. Developer shall pay to County all Local Traffic Mitigation Fees ("LTMF") for the Project not later than the issuance of the first building permit on the Project Site. The total LTMF for the Project shall be fixed as of the Effective Date and shall be calculated based on the total square footage for the Project as shown in Exhibit A. The LTMF for the Project shall be vested at the current rate for all County building permits issued prior to the Expiration Date; provided, however, that if the original square footage of the Project is increased or a previously approved use or building is changed to another use or building which generates cumulatively greater traffic than was calculated for the original Project approval, then this vesting shall terminate as to the changed use or building. After the expiration of the current use or if there is a loss of vesting due to a changed use or building and if the LTMF has increased, Developer shall pay the difference between the LTMF paid and the then current LTMF rate upon issuance of each subsequent

building permit for the Project. After the expiration of the current use or if there is a loss of vesting due to a changed use or building and if the LTMF has decreased, County shall reimburse Developer the difference between the LTMF paid and the then current LTMF rate upon issuance of each subsequent building permit for the Project.

f. Developer shall pay the Regional Traffic Mitigation Fee at the then current rate prior to issuance of each building permit for the Project.

g. Developer shall install, at Developer's sole cost and expense, all other road improvements as required by the Project's Conditions of Approval.

### **3. CONSTRUCTION AND FUNDING OF SEWER IMPROVEMENT.**

a. County shall design, construct and install the Sewer Improvements as part of the Combie Road widening project in substantial conformance with the Project Timeline set forth in Exhibit A attached hereto and incorporated herein by this reference. This Agreement to complete the Sewer Improvements shall comply with and will satisfy both Developer's and County's obligations under Mitigation Measure 4.11.5.2a as set forth in the Project EIR and the Project's Conditions of Approval.

b. The Sewer Improvements shall be completed and operationally functional on or before October 1, 2019, provided that all County right of way acquisition (or Orders of Immediate Possession) and utility relocations are completed on or before March 1, 2019. The County agrees that it shall diligently pursue the acquisition of the right of way and relocation of the utilities.

c. County shall fund the design, construction and installation of the Sewer Improvements, subject to potential reimbursement from Developer as set forth in Paragraph 4, below.

d. The County's estimated cost to design, construct and install the Sewer Improvements required pursuant to Mitigation Measure 4.11.5.2a is \$662,045. Within ninety (90) days after completion and acceptance of the Sewer Improvements, County shall provide Developer with a statement of actual costs incurred for design, construction and construction management of the Sewer Improvement ("Final Sewer Costs"). Such statement shall be accompanied by copies of invoices evidencing the costs.

e. Pursuant to subparagraph 3.f. below, Developer shall be credited for a portion of the County's cost of installing the Sewer Improvements from monies the County may collect, if any, from certain developments if those developments connect to the Sewer Improvements within ten (10) years of the Effective Date of this Agreement ("Credit Expiration Date"). Developer may request that the Community Development Agency Director extend the Credit Expiration Date for an additional period of up to five (5) years, which request shall not be unreasonably conditioned, delayed, or denied.

f. If the County issues any new development approval or approves a substantial modification to an existing approval between the Effective Date and the Credit Expiration Date, and said new development will be required to connect to the Sewer Improvements, then County

will use good faith efforts to condition said new development to require contribution of their fair share of the costs for construction of the Sewer Improvements and the County will diligently attempt to collect such amounts. For the purpose of this subparagraph, a new development approval or substantial modification of an existing approval shall apply both to vacant parcels and developed parcels where the County has the legal right to impose a requirement for payment of a fair share contribution towards the Sewer Improvements as condition of that approval. To the extent contribution payments from other existing and/or new developments are received by County on or before the Credit Expiration Date, said payments shall be applied as a credit to reduce the Final Sewer Costs or shall be paid over to Developer, as applicable. If and to the extent that Developer is required to make any payments toward Final Sewer Costs, then the obligations contained in this subparagraph 3.f. shall survive termination of this Agreement.

g. Prior to issuance of each building permit for the Project, Developer shall pay all fees associated with connecting that part of the Project to the Lake of the Pines Wastewater treatment plan, including the per EDU sewer connection/capacity fee, at then current rates.

h. Developer shall install, at Developer's sole cost and expense, all other sewer improvements as required by the Conditions of Approval and shall be solely responsible for making the physical connection between the Project's sewer line in Higgins Road and the Sewer Improvements.

#### **4. REIMBURSEMENT PAYMENTS AND WAIVERS.**

##### **a. Net Road Improvement Reimbursement**

i. Developer shall receive a credit against the Final Road Costs for the LTMF paid prior to or upon issuance of the first building permit on the Project Site. The net difference between the Final Road Costs and the LTMF paid shall be the "Net Road Improvement Reimbursement."

ii. The Net Road Improvement Reimbursement shall be allocated to each parcel on the Project Site based on the percentages set forth in paragraph b. i. immediately below.

##### **b. Reimbursement Payment**

i. For each proposed building on the Project Site which is not fully completed and occupied on or before the "Final Completion Dates" set forth below, Developer shall pay to the County a portion of the Net Road Improvement Reimbursement and the Sewer Reimbursement as provided immediately below. The Final Completion Dates and percentage of reimbursement for each building shall be as follows:

##### **1. Building 1:**

a. Final Completion Date: Fully occupied by the latter of (a) November 1, 2019 or (b) one (1) month after the Road Improvements and Sewer Improvements are operationally functional

b. Percentage of Reimbursement: 66%

2. Building 4:
  - a. Final Completion Date: Fully occupied by the latter of (a) November 1, 2020 or (b) thirteen (13) months after the Road Improvements and Sewer Improvements are operationally functional
  - b. Percentage of Reimbursement: 11%
3. Building 2:
  - a. Final Completion Date: Occupied by the latter of (a) January 7, 2021 or (b) sixteen (16) months after the Road Improvements and Sewer Improvements are operationally functional
  - b. Percentage of Reimbursement: 15%
4. Building 3:
  - a. Final Completion Date: Occupied by the latter of (a) January 7, 2021 or (b) sixteen (16) months after the Road Improvements and Sewer Improvements are operationally functional
  - b. Percentage of Reimbursement: 8%.

For purposes of subparagraphs 4.b.i.3.a., and 4.b.i.4.a immediately above, Developer shall be obligated to pay a portion of the Net Road Improvement Reimbursement and the Sewer Reimbursement set forth above if Buildings 2 or 3 are not complete and fully occupied within the applicable time period provided for above. Such portion of the Net Road Improvement Reimbursement and the Sewer Reimbursement payable by Developer shall be based on the portion of the applicable building that is not occupied by the required date. For example, if Sixty percent (60%) of Building 2 is occupied by the latter of the dates set forth in paragraph 4.b.i.3.a above, then Developer shall be obligated to pay Forty percent (40%) the Net Road Improvement Reimbursement and the Sewer Reimbursement amounts allocable to Parcel 2.

ii. Final Completion Dates may be extended by a total period of up to 6 months (a) due to a County delay in completing a plan check in accordance with the timelines set forth in Paragraph 8.b below, if any such delay has not been excused by Force Majeure; or (b) upon the mutual written agreement of the Community Development Agency Director and Developer based on a determination that the Building is substantially complete and will be occupied within the extension period. In no event shall any time extension result in a Final Completion Date later than January 13, 2021, unless the extension is due solely to County's delay in completing the Road Improvements or Sewer Improvements as provided in this Agreement.

iii. If Developer fails to complete construction of and occupy a Project building on or before the Final Completion Dates set forth above, then the Developer shall immediately become obligated to pay as to that building ("Due Date") the percentage of reimbursement attributable to that portion of the Project as specified in paragraph b. i. immediately above. As of each Due Date, the percentage of the Net Road Improvement Reimbursement and the Sewer Reimbursement allocated to that Project building shall be immediately due and payable by Developer to County, together with any accrued interest thereon.

iv. Interest on Net Road Improvement Reimbursement and Sewer Reimbursement payments shall accrue at the rate of 10% per annum, simple interest, from each Due Date until that proportion of the Net Road and Sewer Improvements Reimbursement obligation is paid in full.

c. Security for Reimbursement Obligation

i. Unless this Agreement is terminated in accordance with the provisions of Section 11 below then, not later than three (3) business days prior to the "First Voluntary Termination Date" (defined below), Developer shall provide a cash or cash equivalent security (e.g., a letter of credit, or assignment of a certificate of deposit, savings account or similar cash account) to secure all Sewer Improvement Reimbursement obligations under this Agreement (the "Sewer Security"). Unless this Agreement is terminated in accordance with the provisions of Section 11 below then, not later than five (5) business days following the "Second Voluntary Termination Date" (defined below), Developer shall provide a cash or cash equivalent security (e.g., a letter of credit, or assignment of a certificate of deposit, savings account or similar cash account) to secure all Road Improvement Reimbursement obligations under this Agreement (the "Road Security"). The Sewer Security and the Road Security shall be collectively called the "Security" below. The Security shall be in a form acceptable to the County Counsel and the County's Chief Financial Officer.

ii. The amount required for the Security shall be reduced proportionately upon the successful and timely completion and occupancy of each Building on the Project Site or payment in full of the Building's proportionate share of the Road Improvement and Sewer Improvement Reimbursement obligations, as provided herein.

iii. If Developer fails to complete and occupy a Project building as provided in Paragraph 4.b.i above, then Developer shall be given thirty (30) days in which to pay to County the percentage of the Net Road Improvement Reimbursement and the Sewer Reimbursement allocated to that Project building, together with any accrued interest thereon. If Developer fails to make this payment in full within the time provided herein, then County may, at its sole discretion and without notice to the Developer, immediately withdraw such funds from the Security as are necessary to pay County for the outstanding reimbursement obligation and accrued interest thereon, in full.

iv. County shall release the Road Security and Sewer Security with respect to each Parcel, less any amounts withdrawn in accordance with the terms of this Agreement, upon the earliest of the following dates:

- A. Concurrently with payment in full of all monies due to the County as provided in this Agreement for the applicable Parcel. For example, upon payment of the amount due for the Net Road Improvement Reimbursement and the Sewer Reimbursement for Parcel 1, County shall concurrently return to Developer a portion

of the Road Security and Sewer Security equal to the Percentage of Reimbursement applicable to Parcel 1 as set forth in subparagraph 4.b.i.1.b.

- B. Thirty (30) days after Termination of this Agreement based on the timely and successful completion of all Developer obligations as provided in this Agreement.
- C. Ninety (90) days after the Termination of this Agreement pursuant to Paragraph 11.a.
- D. As provided in Paragraph 11.b. of this Agreement. .

## **5. SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors in interest, and assigns of the parties hereto, and all subsequent owners of the Property or any portion thereof. If Developer enters into a lease with a third party (“Assignee”) pursuant to which said Assignee leases any of the parcels encumbered by this Agreement, then, provided the Assignee assumes all of Developer’s obligations under this Agreement with respect to said leased parcel in a written form reasonably approved by County Counsel, the Assignee shall thereafter be solely responsible for the fulfilment of all of Developer’s obligations under this Agreement with respect to said leased parcel, including assumption of Developer’s personal obligations and the requirements to post and maintain the Sewer Security and Road Security, and the Developer shall be released from all of such assumed obligations.

## **6. COVENANTS TO RUN WITH THE LAND.**

Commencing on the date Developer acquires fee title to the Property, this Agreement shall be recorded and shall constitute a covenant and obligations running with the land described in Exhibit A, in addition to a personal obligation of the Developer as set forth herein. All rights and obligations under this Agreement shall be binding upon all successors in interest to the parties to this Agreement and, once recorded, shall be binding upon all successors in interest to the Property or any portion thereof.

## **7. FORCE MAJEURE.**

a. The time for completing any act or obligation required under this Agreement shall be reasonably extended by reason of strikes, fires, floods, hurricanes, typhoons, winds in excess of 90 mph, volcanoes, earthquakes, tornados, terrorism, war, which is beyond the reasonable control of and without the fault or negligence of the party claiming force majeure (“Force Majeure Event”), but only if the Force Majeure Event actually prevents or delays performance of said act or obligation and the party claiming a Force Majeure Event exercises reasonable efforts to minimize and mitigate the effects of any delay caused by the Force Majeure Event. Economic hardship (except to the extent caused by a Force Majeure Event) is explicitly excluded as a Force Majeure Event and is solely the responsibility of the affected party.

b. The party claiming a Force Majeure Event shall notify the other Party in writing as soon as practicable after becoming aware of the impact of the Force Majeure Event or of the occurrence and nature of the Force Majeure Event, including any delay or anticipated delay in performance of this Agreement due to the Force Majeure Event. Any adjustment of the Final



Completion Dates pursuant to this Paragraph shall be documented by a written Amendment to this Agreement.

## **8. PARTIES TO COOPERATE.**

a. The Parties shall work cooperatively and in good faith to facilitate timely approvals and completion of construction for the Project, the Road Improvements and the Sewer Improvements, and to facilitate compliance with all terms and conditions of this Agreement. The parties shall meet and confer on dates and times as may be mutually agreed upon to discuss the design, construction and progress of the Project and the Road Improvements and Sewer Improvements. The parties shall work in good faith to resolve any disagreements concerning the design and construction of the Project or the Road Improvements or Sewer Improvements, the schedule for constructing the same or any other matter involving performance of this Agreement. However, the County shall have the absolute and total management and decisional control over the design, construction and construction management of the Road Improvements and Sewer Improvements, and the Developer's role shall be advisory only; provided, however, the foregoing shall not grant County the right to extend any date for performance based solely on its right to exercise discretion under this subparagraph.

b. County shall complete plan checks for all site grading, utilities, and construction plans and any plans or documents required for issuance of an encroachment permit and/or final map no later than 30 days after receipt of each complete submittal of 100% plans and 15 days after each complete resubmittal of plans. Any incomplete submittals that are not sufficient for review will be returned within five (5) days with a checklist of the items that are incomplete. Each set of plans or permit/map documents may be submitted separately or together, at Developer's discretion.

## **9. INDEMNIFICATION.**

a. Developer agrees to defend and indemnify County, its officers and employees, from (1) any and all claims, demands, causes of action, liability or losses of any sort, arising out of acts or omissions of Developer, its agents or employees, related to this Agreement, including personal injury or death, labor laws pertaining to prevailing wage for Developer installed improvements, and for any claim for property damage from the direct or indirect operations of the Developer or Developer's contractors, subcontractors, agents, employees or other persons acting on their behalf, and (2) for any claim for damages, just compensation, restitution, judicial or equitable relief by reason of the processing of, the terms of, or effects arising from the implementation of this Agreement; provided, however, Developer shall not have any obligation to pay any compensation to the owners of property from whom the County obtains, or takes, right of way in order to implement this Agreement or to indemnify or defend County in connection with the Road Improvements or Sewer Improvements to be constructed by the County pursuant to this Agreement.

b. The approval of plans shall not constitute the assumption by County of any responsibility for such damage or taking, nor shall County, by said approval, be an insurer or surety for the construction of the Project or related improvements pursuant to said plans. The provisions of these "indemnity" issues shall become effective upon the execution of this Agreement. In accordance with the provisions of Civil Code Section 2782(b), the

indemnification provided by this paragraph to indemnitee County by Developer shall not extend to injury, damage, or other liability or loss, arising out of or occasioned by the acts or negligence of County or any officer or employee thereof.

c. Developer further agrees to indemnify, hold harmless, and pay all reasonable costs for the defense of the County, including all fees and costs for in-house or special counsel regarding any claim by a third party challenging the validity of any part of this Agreement. Upon demand by County, Developer will at its own expense, defend County, its officers, agents and employees, against all such liabilities, claims, demands, actions, losses, damages or costs. Developer shall not settle any lawsuit on grounds, which include, but are not limited to, non-monetary relief without the consent of County. County further agrees to fully cooperate with Developer in the defense of any claim described in this Paragraph 9. The obligations contained in this Paragraph 9 shall survive termination of this Agreement.

d. Developer further agrees, on behalf of itself, its officers, employees, successors, and assigns, not to contest and to release and waive any and all claims related to the calculation, amount, or right to refund of any LTMF or other mitigation fees paid upon or prior to issuance of the first building permit for the Project.

## 10. NOTICES.

Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (i) upon actual delivery, if delivery is by hand or facsimile sent and received during normal business hours; or (ii) five (5) days after delivery into the United States mail if delivery is by postage paid registered or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time.

FOR DEVELOPER:	Name:	Steve Kirkpatrick Katz Kirkpatrick Properties, LLC
	Address:	1731 E. Roseville Parkway, Suite 270 Roseville, CA 95661
	Phone:	(916) 780-6670
	Fax:	(916) 780-6746
FOR COUNTY:	Name:	Trisha Tillotson, Public Works Director
	Address:	950 Maidu Ave. Nevada City, CA 95959
	Phone:	(530) 265-1411
	Fax:	(209) 265-9849

With a cc to:

Name:	County Counsel, County of Nevada
Address:	950 Maidu Ave., Suite 240 Nevada City, CA 95959
Phone:	(530) 265-1319
Fax:	(209) 265-9840

## **11. TERMINATION.**

a. This Agreement may be terminated by either party, without cause, on or before June 1, 2018 (“First Voluntary Termination Date”). If neither party makes the election to terminate this Agreement pursuant to the immediately preceding sentence, this Agreement may thereafter be terminated by Developer, without cause, on or before October 1, 2018 (“Second Voluntary Termination Date”). Such Voluntary Termination Dates are subject to extension by mutual written agreement of the Community Development Agency Director and Developer; provided, however, that any such extension shall not extend the time by which Developer is required to post the Road Security. The terminating party shall send written notice to the other party, which notice shall be effective immediately.

b. If this Agreement is terminated by Developer after June 1, 2018 but on or before October 1, 2018, Developer shall then become obligated (“Due Date”) to pay the Final Sewer Costs to County, together with interest thereon as provided in subparagraph 4.b.iv., provided County installs the Sewer Improvements in accordance with the provisions of this Agreement. Developer shall be given thirty (30) days from the date of demand to pay such costs. If Developer fails to make this payment in full within the time provided herein, then County may, at its sole discretion and without notice to the Developer, immediately withdraw such funds from the Sewer Security as are necessary to pay County for the outstanding reimbursement obligation. Notwithstanding subparagraph 4.iv, above, County may retain the Sewer Security until ninety (90) days after determining the Final Sewer Costs to secure the foregoing obligation.

## **12. REPRESENTATIONS AND WARRANTIES.**

a. Developer’s Representations and Warranties. Developer hereby makes the following representations and warranties to County, each of which Developer acknowledges is material and being relied upon by County:

i. Ownership. Developer is in escrow to acquire title to the Project site as shown in Exhibit A and intends to acquire legal title to the Project Site on or before sixty (60) days after the Second Voluntary Termination Date. Developer has not and, except as permitted in Paragraph 5 above, will not sell, transfer, or assign such rights to any other party prior to recordation of this Agreement.

ii. Organization and Authority. Developer is a Limited Liability Company in good standing in the State of California. Developer, and the individual(s) executing this Agreement on behalf of Developer, have full power, right and actual authority to execute and deliver this Agreement and to perform all obligations, terms and conditions as required herein.

iii. No proceedings against Developer. Developer is not subject to any bankruptcy, insolvency, reorganization, moratorium, or similar proceeding. Developer is not a party to any contract or subject to any Court order, legal proceeding, action or charge by any governmental agency, any contract lease, license, options, liens or other right, or any other legal restriction that would prevent fulfillment by Developer of all of the terms and conditions of this Agreement or compliance with any of the transactions or

obligations contemplated by it, which would cause a lien or other encumbrance to the Project Site or materially interfere with the Developer's ability to perform its obligations under this Agreement.

b. County's Representations and Warranties. County hereby makes the following representations and warranties to Developer, each of which County acknowledges is material and being relied upon by Developer:

i. Ownership. County has or intends to acquire legal title to the right of way as necessary to complete the Road Improvements and Sewer Improvements on or before March 1, 2019.

ii. Organization and Authority. County is a municipal entity and political subdivision of the State of California. County, and the individual(s) executing this Agreement on behalf of County, have full power, right and actual authority to execute and deliver this Agreement and to perform all obligations, terms and conditions as required herein.

iii. No proceedings against County. County is not subject to any bankruptcy, insolvency, reorganization, moratorium, or similar proceeding. County is not a party to any contract or subject to any Court order, legal proceeding, action or charge by any governmental agency, any contract lease, license, options, liens or other right, or any other legal restriction that would prevent fulfillment by County of all of the terms and conditions of this Agreement or compliance with any of the transactions or obligations contemplated by it which would materially interfere with the County's ability to perform its obligations under this Agreement.

### **13. MISCELLANEOUS PROVISIONS.**

a. Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between County and Developer or their agents, employees or contractors. Except as County may specify in writing, Developer shall have no authority to act as an agent of County or to bind County to any obligation.

b. Amendments. This Agreement, including any exhibits hereto, shall not be amended except in writing, signed by the Parties. Any amendment or addendum to this Agreement shall expressly refer to this Agreement.

c. Entire Agreement. This Agreement and all exhibits hereto constitute the entire agreement and understanding between the parties relating to the subject matter hereof. All prior or contemporaneous negotiations, agreements, and understandings, oral or written, are revoked, cancelled, and rescinded, and are all merged herein and superseded hereby.

d. Language Construction. The language of each and all paragraphs, terms and/or provisions of this Agreement shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for

or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Venue. Should any party institute suit or arbitration for enforcement or interpretation of any provision contained herein, the venue of such action shall be in Nevada County, California.

g. Headings Not Controlling. The captions to the paragraphs of this Agreement are inserted for convenience only and shall not affect the intent of this Agreement.

h. County's Discretion. County's execution of this Agreement in no way limits the discretion of County in the permit and approval process in connection with any construction or improvements related to the Project or related improvements, or with respect to determinations related to compliance with the Project's Conditions of Approval, except for compliance with the Mitigation Measures expressly addressed in this Agreement. Where the terms of this Agreement require approval or the exercise of discretion by Developer or by County, discretion shall not be exercised in an unreasonable, arbitrary, or capricious manner.

i. Waiver. Any waiver of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure of either party to take action on any breach or default or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time given to perform any obligation under this Agreement shall not operate as a waiver or release from any other obligations under this Agreement. Consent by either party to any act or omission of the other party shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for written consent to future waivers.

j. Third Party Beneficiaries. This Agreement is made solely for the benefit of Developer and County. There shall be no third party beneficiaries to this Agreement.

k. Conflicts Between Agreements. Nothing in this Agreement is intended to supersede, terminate, modify, invalidate or otherwise affect any provision of any other agreement currently existing between Developer and County, including but not limited to any agreement related to development of the Project or related improvements, except to the extent that a provision of this Agreement is directly contradictory to a provision of such agreement. Then, and in that event, the provisions of this Agreement shall prevail over the provisions of any other agreement to the contrary.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Nevada County Board of Supervisors has authorized the Director of the Department of Public Works to execute this Agreement in duplicate under authority of Resolution No.\_\_\_\_\_, adopted by the Board of Supervisors on the 23rd day of January, 2018, and Developer has caused this Agreement to be executed in duplicate, as of the Effective Date first written above.

**COUNTY OF NEVADA**

By: \_\_\_\_\_  
ED SCOFIELD, Chair  
Nevada County Board of Supervisors

ATTEST:

By: \_\_\_\_\_  
JULIE PATTERSON-HUNTER,  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
ALISON A. BARRATT-GREEN  
County Counsel

**KKP LAKE OF THE PINES, LLC**  
Fred and Cathy Katz 2009 Family Partnership,  
Member

By: \_\_\_\_\_  
Fred Katz, Trustee of the Fred and Cathy  
Katz 1986 Revocable Family Trust, Its  
General Partner