

the date of this Agreement, subject to delays beyond the reasonable control of Subdivider. It is agreed that all of the improvements required by the Subdivider to be constructed within and for the benefit of the development are set forth in the improvement plans. All of said improvements shall be constructed in strict accordance with said improvement plans and any subsequent changes required by changes in County, State or Federal law which changes are implemented prior to the commencement of construction.

3. Subdivider warrants and agrees that the improvement plans conform with the conditions of the subdivision approval and with all State laws and County ordinances. Subdivider further warrants that the improvement plans are adequate to accomplish the work shown thereon in a good workmanship like manner and in accordance with accepted construction practices. Should the improvement plans, at any time prior to the completion of the work specified thereon, prove to be inadequate in any respect, then Subdivider agrees to make such changes in the improvement plans as are necessary to complete the work in a good workmanship like manner and in accordance with accepted construction practices. Subdivider further agrees to make any changes in the improvement plans to bring them into full compliance with applicable County, State or Federal law in effect at the time of commencement of construction.
4. Subdivider shall employ a licensed civil engineer who shall be responsible for inspecting the Woodridge Drive and Higgins Road public right-of-way improvements during the construction thereof and who, upon completion, shall be responsible for certifying to the County that said improvements have been substantially and properly installed in all manner and things to the best of such engineer's knowledge, information, and belief. Notwithstanding the above, the County shall have an absolute right to separately inspect the construction work at any time. Further notwithstanding the above, the parties anticipate that Nevada Irrigation District shall be responsible for inspection of the off-site water improvements and that PG&E will be responsible for inspection of the joint trench improvements within the public right-of way.
5. Upon final completion of the work of installing the aforementioned improvements, and upon certification thereof by Subdivider's engineer as set forth in paragraph 4, the Subdivider shall notify the County of such event. Thereafter, the County (pursuant to Government Code Section 66499.8) shall have two (2) months in which to accept the Subdivider's certification of completion or to express the rejection of the same. Should the County reject any such notice of completion, the County shall specify in writing to Subdivider the reasons for the rejection. Thereafter Subdivider shall promptly make all required corrections. Upon acceptance by the County of the work of the improvements, Subdivider shall file a notice of completion pursuant to California Civil Code Section 8182 and shall provide a copy thereof to County.
6. Subdivider shall warrant all improvements referenced herein for a period of one year following completion and acceptance of the improvements pursuant to Government Code Section 66499.9(c).
7. Should Subdivider fail to complete any or all of the improvements referenced herein within the time established therefore in Paragraph 2 above, the County may, at its sole option, after notifying Subdivider pursuant to Section L-IV 3.9.G of the Land Use and Development Code of the County of Nevada, construct the improvements and recover the cost thereof from Subdivider and/or its successors in interest and/or from the sureties or

securities tendered herewith. In any such event, Subdivider shall, upon receipt of written notice from the County, immediately discontinue all work under this Agreement.

8. Subdivider shall, upon execution of this Agreement, deposit with County cash, irrevocable instruments of credit from a recognized financial institution or such corporate surety bonds as shall be accepted by County. Separate security shall be provided for (1) the full and faithful performance of the Subdivider's obligation under this Agreement and (2) the payment of all labor and materials claims that properly result from undertaking the construction of the subdivision improvements. Each security instrument shall be in the full face amount of **\$1,944,710** (representing 100% of the estimated cost of the improvements including contingency plus a 5% of the cost of improvements for attorneys' fees and 10% for additional reasonable expenses and fees incurred if the security is enforced per Section L-IV 3.9.D of the Land Use and Development Code of the County of Nevada). Said securities shall not lapse due to the expiration of any period of time but shall remain in effect until the improvements are fully and satisfactorily completed. Each security instrument shall also state that any additions, alterations or modification to this Agreement or to the improvement plans or any portion thereof, including any extensions of time within which the work hereunder may be completed, shall not release or exonerate the surety on the bond or the financial institution's obligation given in connection with this Agreement. Subdivider agrees to increase any security it has posted if, prior to commencement of construction, laws change which would require modifications to the improvements causing an increase in construction costs not covered by the above specified 10%.
9. All security posted by the Subdivider or its sureties to secure payment of labor and materials shall be released by the County pursuant to the provisions of Section L-IV 3.9.E.
10. All security posted by the Subdivider or its sureties to secure the faithful performance for this Agreement shall, upon acceptance of the full and satisfactory construction of the improvements by the County be reduced to 10% of the actual cost of work per Section L-IV 3.9.F. of the Land Use of Development Code of the County of Nevada and Government Code Section 66499.9, which shall remain in effect for a period of one year from the date of acceptance by the County and in order to guarantee and warrant the construction of the improvements against any defective work or labor done or defective materials furnished in the performance of this Agreement. The County shall be authorized to attach the security in order to repair any defects discovered within the one year warranty period. Following the release of the security after the expiration of said one year warranty period, the County shall, upon written request of Subdivider, sign, acknowledge and deliver to Subdivider a recordable document acknowledging the satisfaction of Subdivider's obligations under this Agreement and acknowledging the termination of this Agreement.
11. For the purpose of providing notice to the Subdivider with regard to any event or right the Subdivider may have hereunder, Subdivider agrees that notice will be deemed delivered to and received by Subdivider upon the notice being deposited in the United States mail, postage prepaid and addressed to:

Steve Kirkpatrick
Katz Kirkpatrick Properties, LLC
1731 E. Roseville Parkway, Suite 270
Roseville, CA 95661

12. Subdivider agrees to be liable for the total cost of construction of all of the subject improvements and any other costs or fees relating to the improvements. In the event that County should exercise its right to seize the security and contract for construction of any of the improvements, Subdivider shall, notwithstanding the engineer's estimate and any security posted, reimburse to County all funds expended by County in excess of the security posted, including compensation to County for all County staff time, costs, and reasonable expenses and fees for enforcement of the security, including attorney fees, spent thereon.
13. County shall not be responsible for any of the costs of said improvements or for the performance or nonperformance of the work of construction of said improvements, or for a defect therein or any injury resulting therefore, and the Subdivider shall indemnify County and hold County free and harmless from any claims or liability resulting from or arising out of the same, whether or not Subdivider or County completed said improvements.
14. County has agreed to obtain an encroachment permit from CALTrans in order for Subdivider to complete required improvements at the intersection of SR 49 and Woodridge Drive. As a condition of said encroachment permit, CALTrans required that County entered into a Cooperative Agreement of even date herewith. With respect to said Cooperative Agreement, Subdivider hereby agrees as follows:
 - a. Subdivider shall, at Subdivider's sole cost and expense, cause all work required under the Cooperative Agreement to be designed and installed to fully comply with all requirements, project plans and project specs as may be required and approved by CALTrans pursuant to the Cooperative Agreement. Subdivider shall ensure that all work required under the Cooperative Agreement complies with Public Contract Code and prevailing wage laws, and is complete and accepted by CALTrans within the time period(s) established by CALTrans or County.
 - b. Subdivider shall defend, indemnify and hold harmless the County, and all its officers, trustees, agents, employees and volunteers from and against any and all claims, losses, costs, damages or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the construction of the improvements pursuant to this Agreement. This provision shall survive termination of this Agreement.
 - c. Subdivider may delegate the obligations and requirements contained in this Paragraph 14 to a future property owner association, tenant association or similar type of common interest association or to a properly licensed third party property manager through the recordation of Covenants, Conditions and Restrictions ("CC&Rs") provisions in a form acceptable to the County Counsel or designee. The CC&Rs shall be recorded concurrently with recordation of the Parcel Map as against those property or properties to which the obligations and requirements of this Paragraph 14 are delegated.
15. Subdivider acknowledges that, pursuant to Resolution No. 19-____, the delivery and execution of this Agreement, and the recordation of the Parcel Map, may be substantially delayed in order to effectuate termination rights of Subdivider under the various agreements between the parties related to construction of the Higgins Marketplace/Lake of the Pines project. Subdivider hereby waives and forever releases any and all claims against County related to any right or obligation to the timely processing and recordation of the final Parcel Map and/or any right to have the Parcel Map deemed approved if the Parcel Map is not timely recorded as provided by any provision of state law, including but

not limited to the Subdivision Map Act and the Permit Streamlining Act, and/or the Nevada County Land Use and Development Code.

16. County and Subdivider hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status.
17. This Agreement shall be binding upon and inure to the benefit the parties and any and all successors or assigns.
18. The validity, interpretation and performance of this Agreement shall be governed by and construed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have so agreed on the date first written above.

ATTEST:

COUNTY OF NEVADA

Julie Patterson-Hunter
Clerk of the Board of Supervisors

By: _____
Richard Anderson
Chair, Board of Supervisors

SUBDIVIDER:

KKP-Lake of the Pines, LLC.
a California Limited Liability Company.

APPROVED AS TO FORM:

County Counsel

By: _____
Steve Kirkpatrick