



RESOLUTION No. 19-399

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

APPROVING ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN KKP – LAKE OF THE PINES LLC (KKP), NORTH STATE GROCERY, INC. AND THE COUNTY OF NEVADA ARISING FROM THE INFRASTRUCTURE REIMBURSEMENT AGREEMENT BETWEEN THE COUNTY AND KKP– DISTRICT 2

WHEREAS, on July 9, 2019, the Board of Supervisors is requested to approve an Infrastructure Reimbursement Agreement (IRA) between the County and KKP - Lake of the Pines LLC, a California Limited Liability Corporation (“KKP”) for the development of the Higgins Marketplace, located on Highway 49 & Woodridge Court; and

WHEREAS, the IRA allows the assignment or assumption of some or all of KKP’s duties and obligations under the IRA; and

WHEREAS, North State Grocery, Inc. a California Corporation (“North State”) has agreed to lease Parcel 1 of the Higgins Marketplace project from KKP for the purpose of constructing a grocery store and will be the project’s anchor tenant; and

WHEREAS, the attached Assignment and Assumption Agreement (“Assignment”) allows KKP to assign and North State to assume certain rights and obligations under the IRA, primarily with respect to Parcel 1 identified in Parcel Map 04-020 and KKP’s obligation to reimburse the County for the cost of installing a sewer main in Combie Road to serve the project; and

WHEREAS, KKP will continue to retain all other rights, title, and interest in, to, and under the IRA for Parcels 2, 3 and 4, except as otherwise stated in the Assignment; and

WHEREAS, the County desires to consent to the proposed assignment and assumption on the terms and conditions set forth in the proposed Agreement.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors:

1. Approves the Assignment and Assumption Agreement by and between the KKP-Lake of the Pines, LLC, North State Grocery, Inc., and the County of Nevada arising from the Infrastructure Reimbursement Agreement between the County and KKP, in substantially the form attached hereto.
2. Authorizes the Chair of the Board of Supervisors to execute the Agreement.
3. Directs the Clerk of the Board to submit the fully executed Agreement for recordation with the Clerk-Recorder’s Office.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 9th day of July, 2019, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

Noes: None.

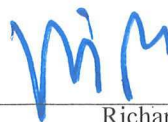
Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 



Richard Anderson, Chair

7/9/2019 cc: DPW*
Planning*
AC* (Hold)

9/24/2019 cc: DPW*
AC* (Release)

23
DD
NF

RECORDING REQUESTED BY

Office of the County Counsel
County of Nevada

WHEN RECORDED MAIL TO

NAME Office of the County Counsel
County of Nevada
STREET ADDRESS 950 Maidu Avenue, Suite 240
CITY, STATE, ZIP Nevada City, CA 95959

Nevada County Recorder
Gregory J. Diaz
Document#: 20190015169
Wednesday August 07 2019, at 12:00:27 PM

Paid: \$0.00 CP

No Fee per Gov't Code Sec. 27383

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment, Assumption and Novation Agreement ("Assumption Agreement") is made and is effective as of July 9, 2019 ("Effective Date"), by and between the County of Nevada, a political subdivision of the State of California ("County"), KKP-Lake of the Pines, LLC, a California limited liability company, ("KKP"), and North State Grocery, Inc. a California corporation, ("North State"), with respect to that certain Infrastructure Reimbursement Agreement, as amended ("Reimbursement Agreement") executed on July 9, 2019, between County and KKP. All parties are collectively referred to as "the Parties." This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, KKP is the developer of unimproved property 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 Parcel 1, an approximately 50,000 sf grocery store (which includes expansion area) as more fully described in Exhibit A, attached hereto and incorporated herein by this reference; and,

WHEREAS, The County and KKP entered into the above-referenced Reimbursement Agreement related to the Developer obligations to install certain off-site road and sewer improvements to serve the Project and other properties and to mitigate certain impacts, a copy of which is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, Paragraph 5 of said Reimbursement Agreement allows an assignment and assumption of some or all of KKP's duties and obligations under the Reimbursement Agreement; and

WHEREAS, KKP desires to assign, delegate, transfer, and convey to North State all of KKP's right, title, obligations, and interest in, to and under the Reimbursement Agreement as to Parcel 1 during the term of the North State Lease as the same may be extended, and KKP's obligations to (a) design,
LOP Novation 6-25-19.doc

construct and occupy the portion of the Project to be located on Parcel 1; and (b); reimburse County for the portion of the "Sewer Costs" attributable to Building 1 ; and (c) reimburse County for the "Net Road Improvement Reimbursement" in the event of a default, all as defined and set forth in Paragraphs 1 through 4 of the Reimbursement Agreement; and (d) pay all fees associated with Building 1 including, without limitation, the Local Traffic Mitigation Fees, the Regional Traffic Mitigation Fees, and the fees associated with the connection of Building 1 to the Lake of the Pines Wastewater Treatment Plant including the per EDU sewer connection/capacity fee, and (e) comply with certain Representations and Warranties contained in Paragraph 12.a. of the Reimbursement Agreement as more particularly set forth in paragraph 1 below (the "Assignment"); and

WHEREAS, North State has leased Parcel 1 from KKP ("North State Lease") for an initial term of 25 years, subject to further extension as provided in the North State Lease; and

WHEREAS, North State desires to accept such Assignment and assume those rights, duties and obligations under the Reimbursement Agreement that are contained in said Assignment; and

WHEREAS, North State, by execution of this Assumption Agreement agrees to substitute KKP with respect to all obligations and liabilities under the Reimbursement Agreement as to Parcel 1 and with respect to all obligations set forth in Paragraph 1, below; and

WHEREAS, County has duly evaluated the creditworthiness of North State and now desires to consent to the assignment and assumption of the Reimbursement Agreement between KKP and County as provided herein and to the release of KKP from liability with respect to those obligations contained in the Assignment; and

WHEREAS, KKP shall retain all right, title and interest in, to and under the Reimbursement Agreement as to Parcels 2-4 other than those contained in the Assignment.

NOW, THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignment by KKP. KKP hereby fully and forever assigns, delegates, transfers, and conveys to North State all of KKP's right, title, obligations, and interest in, to and under the Reimbursement Agreement as to Parcel 1 during the term of the North State Lease as the same may be extended, and KKP's obligations to (a) design, construct and occupy the portion of the Project to be located on Parcel 1; and (b) reimburse County for the "Sewer Costs" attributable to Building 1; and (c) reimburse County for "Net Road Improvement Reimbursement" in the event of a default, all as defined and set forth in Paragraphs 1 through 4 of the Reimbursement Agreement; and (d) pay all fees associated with Building 1 including, without limitation, the Local Traffic Mitigation Fees, the Regional Traffic Mitigation Fees, and the fees associated with the connection of Building 1 to the Lake of the Pines Wastewater Treatment Plant including the per EDU sewer connection/capacity fee. As of the Effective Date, North State represents that it holds a leasehold interest in Parcel 1 of the Project Site, it is a California

corporation in good standing, and it makes the same representations and warranties as Developer as are contained in Paragraph 12.a.iii. of the Reimbursement Agreement. All other terms, conditions, and obligations of the Reimbursement Agreement shall remain in full force and effect as to KKP.

2. Acceptance and Assumption by North State. North State hereby agrees to and accepts the Assignment and delegation, and expressly assumes and agrees to assume, keep, perform, discharge, and fulfill those terms, covenants, conditions and obligations required to be kept, discharged, performed and fulfilled by KKP under the Reimbursement Agreement pursuant to the Assignment from and after the Effective Date of this Agreement (“Assumption”).

3. Consent and Release by County. Pursuant to Paragraph 5 of the Reimbursement Agreement, the County hereby consents to this Assignment and Assumption Agreement, and the delegation of the duties and obligations hereunder, and hereby releases KKP from these assigned and delegated obligations during the term of the North State Lease, as the same may be amended, as of the Effective Date.

4. Notices. Any and all notices permitted or required to be given to North State under the Reimbursement Agreement shall be sent to North State at the address indicated below or to any other address as North State may designate from time to time.

Name: North State Grocery Inc., Attn Chief Financial Officer

Address: 20803 Front Street (Courier only), PO Box 439, Cottonwood, CA 96002

Phone: 530-377-7137

Fax: 530-350-2626

4. Governing Law. This Agreement is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California without resort to choice of law principles. Venue for any legal action arising out of this Agreement shall be in the County of Nevada, State of California.

5. Covenants to Run with the Land. Commencing on the date KKP 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 personal obligations of KKP and North State as set forth herein. All rights and obligations under this Assumption 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. Notwithstanding the foregoing, KKP shall have no liability with respect to the obligations contained in the Assignment during the term of the North State Lease, as the same may be extended. It is the intent of the Parties that, during the term of the North State Lease, the covenants contained in the Assignment shall run with the tenant’s interest in the North State Lease.

6. Binding Effect. This Agreement shall apply to, bind, and inure to the benefit of the Parties, and their respective heirs, legal representatives, successors and assigns.
7. No Third Party Beneficiaries. This Agreement creates rights and duties only between the Parties hereto, and no other party, or third party, is intended to have or be deemed to have any rights under the Agreement as an intended third party beneficiary.
8. No Other Modifications. All of the rights, duties and obligations of the County, KKP and North State, and all other terms and conditions of the Reimbursement Agreement, shall be and remain in full force and effect as and to the extent provided for in the Agreement. This Assumption Agreement shall not diminish, modify, or otherwise affect any other duty or obligation of the County, KKP or North State with respect to the Reimbursement Agreement except as expressly modified by the terms of this Agreement, all rights, duties and obligations of the County and North State shall remain in full force and effect as provided for in the Reimbursement Agreement.
9. Execution of Assignment, Assumption and Novation Agreement. Each party has been represented by counsel or had the opportunity to be represented by counsel in the negotiation and execution of this Agreement. This Agreement was executed voluntarily without any duress or undue influence on the part of or on behalf of the parties. The parties acknowledge and agree that they have read and understood this Agreement and its legal effect.
10. 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. To the extent this Agreement modifies and provisions of the Reimbursement Agreement, the terms of this Agreement shall prevail. No amendment, modification, or supplement to this Agreement will be binding on any of the parties unless it is in writing and signed by the parties in interest at that time.
11. Finality of Substitution. The substitution made by this Agreement shall be final, except as otherwise provided by law.
12. Attorneys' Fees. Should any action, arbitration, or proceeding be commenced to enforce the terms of this Assumption Agreement or declare rights thereunder, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and litigation costs to be paid by the losing party as fixed by the court or arbitrator. The attorneys' fees award shall also include attorneys' fees incurred in enforcing or collecting any judgment, settlement, or award as provided by California law.

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13. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or party thereof will be stricken from this Agreement, and such provisions will not affect the legality, enforceability, or validity of the remainder of this Agreement.

IN WITNESS WHEREOF, this Assumption Agreement has been executed as of the date first above written.

COUNTY OF NEVADA

KKP, LLC


By: 
Richard Anderson, Chair
Nevada County Board of Supervisors

By: 
Title: Member

ATTEST:

North State

By: 
Julie Patterson-Hunter
Clerk of the Board

By: 
Title: President

APPROVED AS TO FORM:

By: 
Alison A. Barratt-Green, County Counsel

Exhibit A – Legal Description of Parcel 1
Exhibit B – Reimbursement Agreement

ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this Certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of PLACER } SS.

On JULY 3, 2019, before me, CARRIE KRISTEN PITKIN, Notary Public,
DATE
personally appeared STEPHEN KIRKPATRICK, who proved to me on the

basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Carrie J. Pitkin
NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER _____
- PARTNER(S) _____ TITLE(S)
- ATTORNEY-IN-FACT
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: MEMBER

DESCRIPTION OF ATTACHED DOCUMENT

ASSIGNMENT & ASSUMPTION AGRMT
TITLE OR TYPE OF DOCUMENT

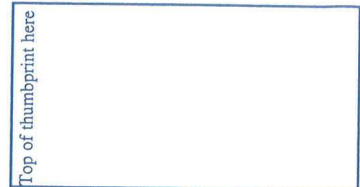
7
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

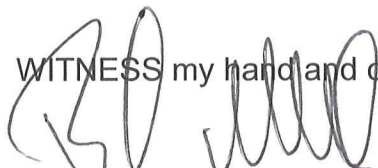
County of Shasta }

On 7-22-19 before me, Brad Askeland (Notary Public)
(Here insert name and title of the officer)

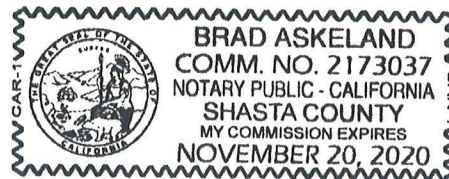
personally appeared Richard Morgan Jr.,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose
name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that
he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by
his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of
which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature



(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

EXHIBIT A

Parcel 1 of Parcel Map No. 04-020 recorded on Aug 7, 2019 in Book 21 of Parcel Maps at Page 62, Official Records of Nevada County, California.

EXHIBIT B

Infrastructure Reimbursement Agreement

INFRASTRUCTURE REIMBURSEMENT AGREEMENT

THIS INFRASTRUCTURE REIMBURSEMENT AGREEMENT (“Agreement”), is made and entered into effective this 9th day of July, 2019 (“Effective Date”), by and between the COUNTY OF NEVADA, a political subdivision of the State of California (“County”) and 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 a portion of an approximately 20.07 acre unimproved parcel which portion is 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 located on the Property (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 7, 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 contribute to the cost of the Sewer Improvements and to either (a) expeditiously complete Building 1 within the Project in order to generate jobs and tax revenues for the County or (b) contribute a portion of the cost of the Road 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 (1) Building 1 within the Project and (2) all on and off-site improvements for the Project pursuant to the Project's conditions of approval, except the Road Improvements and Sewer Improvements, in substantial conformance with the Project Timeline set forth in Exhibit B 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 aforesaid portions of 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 B 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 December 31, 2019, provided that all utility relocations are completed on or before October 1, 2019. The County agrees that it shall diligently pursue the relocation of the utilities. The County shall update Developer in writing concerning the status of construction 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. County will not prohibit the opening of businesses on the Property solely as a result of County's failure to complete the Road Improvements.

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 ("Road Costs").

e. Developer shall pay to County the Local Traffic Mitigation Fees ("LTMF") for Buildings 1 and 4 at the then current rate not later than the issuance of the building permit for Building 1. Developer shall pay to County the Local Traffic Mitigation Fees ("LTMF") for Buildings 2 and 3 at the then current rate not later than the issuance of the applicable building permit.

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 B 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 December 31, 2019, provided that all utility relocations are completed on or before October 1, 2019. The County agrees that it shall diligently pursue the 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. Said \$662,045 amount shall be deemed to constitute the "Sewer Costs". The portion of the Sewer Costs that is attributable to Building 1 is \$436,950. Developer shall not have any obligation to pay any amount in excess of said "Sewer 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 its 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 a 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 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 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 building 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

The Road Costs attributable to Building 1 ("Building 1 Road Costs") are Four Hundred Ninety-Three Thousand Twenty and no/100 Dollars (\$493,020.00). Developer shall receive a credit against the Building 1 Road Costs in the amount of the Building 1 and LTMF paid prior to or upon issuance of the building permit for Building 1. The net difference between the Building 1 Road Costs and the LTMF paid with respect to Building 1 shall be the "Net Road Improvement Reimbursement."

b. Net Road Improvement Reimbursement Payment

i. If Building 1 is not substantially completed on or before the later of (a) January 7, 2021; or (b) thirty (30) days after the Road Improvements and Sewer Improvements are fully operational and substantially complete ("Final Completion Date") Developer shall pay to the County the Net Road Improvement Reimbursement.

ii. The Final Completion Date may be extended by a total period of up to 6 months 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. In no event shall any time extension result in a Final Completion Date later than January 7, 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 substantially complete construction of Building 1 on or before the Final Completion Date, then Developer shall immediately become obligated to pay as to Building 1 ("Due Date") the Net Road Improvement Reimbursement, together with any accrued interest thereon.

iv. Interest on the unpaid Road Costs shall accrue at the rate of 10% per annum, simple interest, from thirty (30) days after the Due Date until the amount due is paid in full.

c. Sewer Cost Reimbursement.

Unless this Agreement is terminated by Developer in accordance with the provisions of paragraph 11 below, Developer shall pay to the County the Sewer Costs within five (5) business days following the Termination Date (as defined in said paragraph 11 below).

d. Security for Reimbursement Obligations

i. Not later than five (5) business days following the "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 Net Road Improvement Reimbursement obligations under this Agreement (the "Road Security"). The Road Security shall be in a form acceptable to the County Counsel and the County's Chief Financial Officer.

ii. The Road Security shall be called the "Security" below.

iii. The Security shall be returned to Developer or its designee upon the successful and timely substantial completion of Building 1 or payment in full of the Net Road Improvement Reimbursement.

iv. If Developer fails to substantially complete Building 1 as provided in subparagraph 4.b.i above, then Developer shall be given thirty (30) days in which to pay to County the Net Road Improvement Reimbursement allocated to Building 1, 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.

v. County shall release the Security, less any amounts withdrawn in accordance with the terms of this Agreement upon the earlier of the following dates: (a) concurrently with the successful and timely substantial completion of Building 1 in accordance with the terms of this Agreement; (b) payment in full of monies due to the County as provided in 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 fulfillment 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 maintain the Sewer 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 miles per hour, volcanoes, earthquakes, tornados, terrorism, or war; which event 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 7 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 applicable portions of 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 thirty (30) days after receipt of a completed plan submittal package which includes plans that are at least 80% complete and fifteen (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 building permit for Building 1.

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: (530) 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: (530) 265-9840

11. TERMINATION.

This Agreement may be terminated (“Termination”) by Developer, without cause, on or before the earlier of (a) August 9, 2019 or (b) recordation of the Parcel Map. The earlier of the dates in (a) and (b) immediately above shall constitute the “Termination Date”. The Community Development Agency Director may extend the Termination Date for up to thirty (30) days and shall not unreasonably withhold or condition its approval of any such requested extension. The terminating party shall send written notice to the other party, which notice shall be effective immediately.

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 Parcels 1 through 5 of the Project Site as shown in Exhibit A and intends to acquire legal title to such portion of the Project Site on or before sixty (60) days after the 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 legal title to the right of way as necessary to complete the Road Improvements and Sewer Improvements.

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 obligation 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.

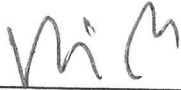
k. Conflicts Between Agreements. Nothing in this Agreement is intended to supersede, terminate, modify, invalidate or otherwise affect any provision of any other agreement currently existing between Developer and County, including but not limited to any agreement related to development of the Project 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 Chair of the Board of Supervisors to execute this Agreement in duplicate under authority of Resolution No. 19-398, adopted by the Board of Supervisors on the 9th day of July, 2019, and Developer has caused this Agreement to be executed in duplicate, as of the Effective Date first written above.

COUNTY OF NEVADA

Richard
Andersen

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

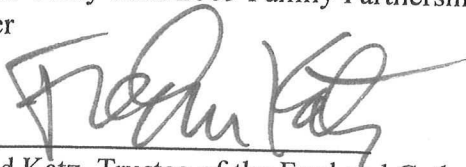
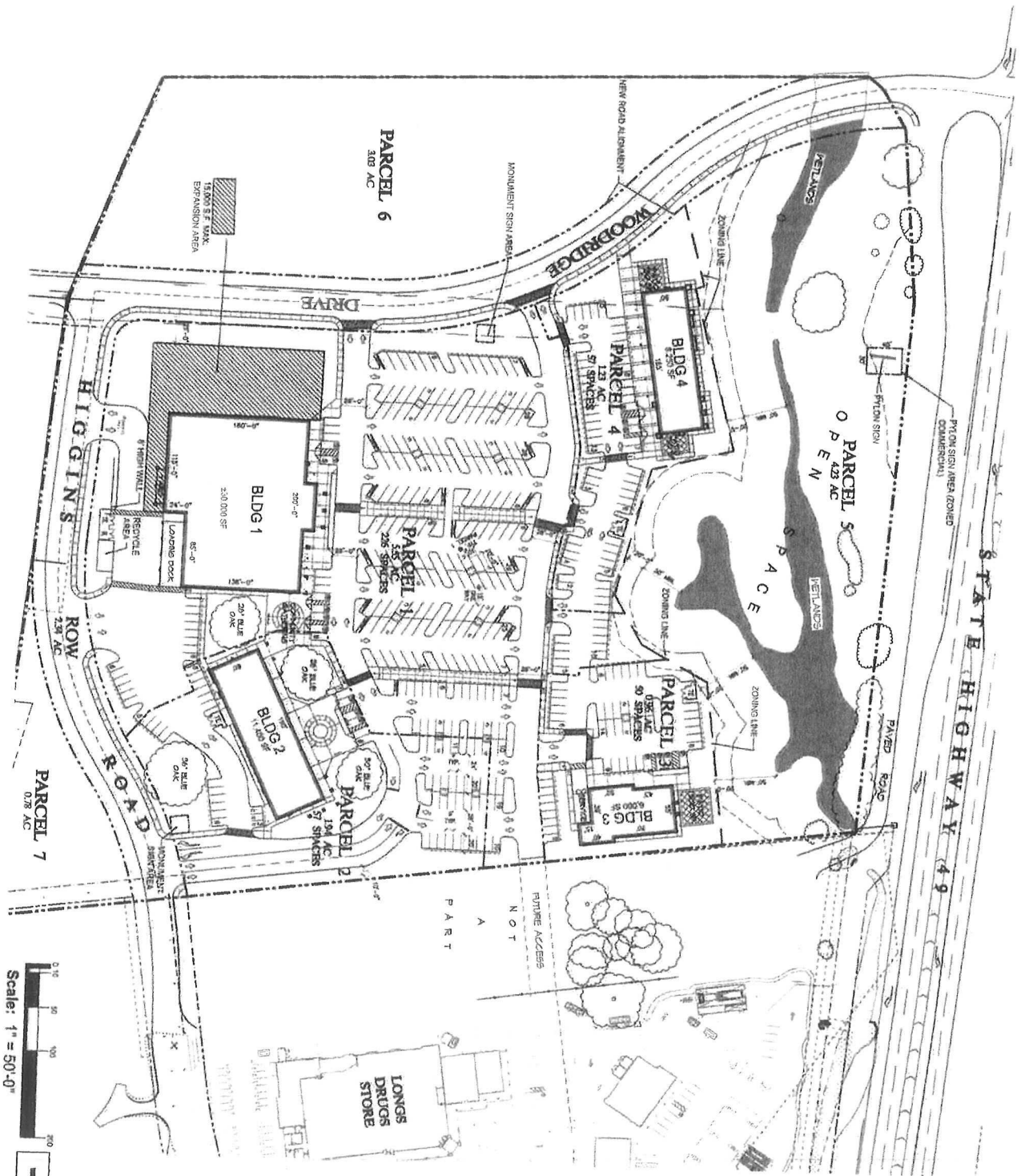
By: 
Fred Katz, Trustee of the Fred and Cathy
Katz 1986 Revocable Family Trust, Its
General Partner

EXHIBIT A



PROJECT STATISTICS

BUILDING	USE	AREA	REQUIRED PING.	PROPOSED PING.
BLDG. 1	RETAIL	30,000 SF	190	153
BLDG. 1 (EXP)	RETAIL	15,000 SF	75	75
BLDG. 2	RETAIL	11,400 SF	57	57
BLDG. 3	RESTAURANT	6,000 SF	40	40
BLDG. 4	PATIO	1,500 SF	16	16
	RESTAURANT	4,750 SF	24	24
	RESTAURANT	3,500 SF	23	23
	REST. PATIO	1,500 SF	18	18
TOTAL		73,550 SF	389	392

RETAIL PARKING	RESTAURANT PARKING	RESTAURANT PATIO PARKING
1 STALL / 200 SF	1 STALL / 150 SF	1 STALL / 150 SF

Project: Higgins Marketplace at Lake of the Pines
 Site: Hwy 49 & Woodbridge Drive
 Newton County, Colorado

Developer: Regis Korpelak & Partners
 Regis, L.P., 20000 Sycamore, Suite 270
 Fort Collins, Colorado
 970.720.6270
 970.780.6742 S

Designer: STAFFORD KING WIESE ARCHITECTS
 1500 W. 10th Ave., Suite 100
 Fort Collins, CO 80521
 970.221.1100
 www.staffordkingwiese.com

Job Number: 150000
Date: 06/27/17
Drawn By: MZ/A
Reviewed: SK/STW
Sheet: A.01

SITE PLAN
 Preliminary

Scale: 1" = 50'-0"

EXHIBIT B

PROJECT TIMELINE

Phase 1: Building 1 and Road Improvements and Sewer Improvements

1. June 26, 2019: County awards contract for construction and issues notice to proceed for Road Improvements.
2. **July 9, 2019**: BOS Meeting for approval of Reimbursement Agreement, Assignment and Assumption Agreement, Parcel Map Improvement Agreement and Cooperative Agreement with CALTrans.
3. August 8, 2019: Termination Date - Last Day for Developer to withdraw from Agreement without cause (unless extended by CDA Director per Paragraph 11).
4. **October 1, 2019**: Last day for County to complete utility relocations for Road Improvements.
5. January 1, 2020: Developer commences construction of Building 1 and on and off-site improvements.
6. **December 31, 2019**: County constructed Road Improvements and Sewer Improvements to be substantially complete and operationally functional, provided all utility relocations are completed on or before October 1, 2019.
7. **Later of January 7, 2021 or 1 month after Road Improvements and Sewer Improvements are operationally functional**: Final substantial completion for Building 1 and all on and off-site improvements required to allow Building 1 to open, and Developer to request final Certificate of Occupancy for Building 1; County to issue Certificate of Occupancy within 15 days of completion of all construction and checklist items.
8. **January 13, 2021**: Expiration Date for Project's Conditional Use Permit.

***Dates in bold are critical deadlines per the Agreement and may only be extended as provided in the Agreement. All other dates are provided as guidelines and may be adjusted by the parties as necessary.**