



RESOLUTION No. 19-397

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPROVING SUBDIVISION IMPROVEMENT AGREEMENT WITH KKP – LAKE OF THE PINES LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION FOR PARCEL MAP 04-020 HIGGINS MARKETPLACE – DISTRICT 2

WHEREAS, in lieu of completing the required infrastructure improvements prior to approving and recording Parcel Map 04-020 Higgins Marketplace for KKP - Lake of the Pines LLC, a California Limited Liability Corporation (“Subdivider”), the Subdivider requests to enter into a Subdivision Improvement Agreement (“Agreement”), attached as Exhibit 1, in accordance with Section L-IV 3.9 of the Land Use and Development Code; and

WHEREAS, the Agreement execution date is set as July 15, 2019 in order for the date of the bonds or securities to match the date of the Agreement; and

WHEREAS, the Subdivider has provided an Engineer’s Estimate dated June 3, 2019 for \$1,691,052, attached as Exhibit 2; and

WHEREAS, the Subdivider will submit final bonds or security documents dated July 15, 2019 to match the execution date of the Agreement for County Counsel acceptance, draft attached as Exhibit 3; and

WHEREAS, Parcel Map 04-020 Higgins Marketplace is technically correct, attached as Exhibit 4; and

WHEREAS, Subdivider is required to make certain changes to the intersection of SR49/Woodbridge Road as part of the offsite improvements; and

WHEREAS, as a condition of allowing changes to the SR49/Woodbridge Road intersection, CALTrans requires the County to enter into a Cooperative Agreement which is proposed for adoption concurrently herewith; and

WHEREAS, Subdivider has agreed to assume all responsibility for, and hold County harmless for, the performance of all work required under said Cooperative Agreement, as more fully set forth in the attached Agreement; and

WHEREAS, County and Subdivider intend to enter into an Infrastructure Reimbursement Agreement (“IRA”) which is proposed for adoption concurrently herewith; and

WHEREAS, the IRA may be unilaterally terminated by Subdivider if the Subdivider elects not to proceed with its proposed building project; and

WHEREAS, County and Subdivider mutually agree that the Agreement shall not be executed by County and the Parcel Map shall not be recorded until the earlier of (a) the expiration of the termination period contained in the IRA or (b) the date on which Subdivider waives any and all right to terminate the IRA; and

WHEREAS, to effectuate the various agreements between the parties, Subdivider has waived any and all rights related to the timely processing and recordation of the final Parcel Map as set forth in the Subdivision Map Act and/or the Nevada County Land Use and Development Code, including but not limited to any right for the Parcel Map to be deemed approved if not timely recorded.

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

1. Approves the Subdivision Improvement Agreement between the County of Nevada and KKP - Lake of the Pines LLC, a California Limited Liability Corporation in substantially the form attached hereto as Exhibit 1.
2. Authorizes the Chair of the Board of Supervisors to execute and deliver the Agreement on behalf of the County of Nevada upon
 - (a) submission of bonds or securities dated July 15, 2019 and acceptable to County Counsel, and
 - (b) upon the earlier of (i) expiration of the termination period contained in the Infrastructure Reimbursement Agreement between the parties, or (ii) the date on which Subdivider waives any and all right to terminate the Infrastructure Reimbursement Agreement.
3. Directs the Clerk of the Board to submit the Agreement for recordation with the Clerk-Recorder's Office within five (5) business days after being requested to do so by the Director of Public Works.

BE IT FURTHER RESOLVED that this Resolution, and any and all approvals contained herein, shall be automatically deemed null and void and of no further force and effect as of September 15, 2019, unless the Subdivision Improvement Agreement has been fully executed and delivered and the Parcel Map has been recorded in accordance with the terms of this Resolution.

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)

8
NR

RECORDING REQUESTED BY:

Placer Title Company

AND WHEN RECORDED MAIL TO:

Nevada County Recorder
Gregory J. Diaz
Document#: 20190015167
Wednesday August 07 2019, at 12:00:27 PM
Paid: \$0.00 CP

Nevada County Clerk of the Board
950 Maidu Avenue
Nevada City, Ca. 95959

THIS SPACE FOR RECORDER'S USE ONLY:

APN No.: 057-260-017-000

Escrow No.: CM-15016875-AV

No fee recording per Govt Code 27383

SUBDIVISION IMPROVEMENT AGREEMENT

(Please fill in document title(s) on this line)

- Exempt from fee per GC27388 due to being recorded in connection with concurrent transfer that is subject to the imposition of documentary transfer tax
- Exempt from fee per GC27388.1 due to being recorded in connection with a transfer that was subject to documentary transfer tax which paid on document recorded previously on _____ as document number _____ of Official Records
- Exempt from fee per GC27388.1 due to the maximum fees being paid on documents in this transaction
- Exempt from fee per GC27388.1 due to the maximum fees having been paid on documents in the transaction(s) recorded previously on _____ as document number(s) _____ of Official Records
- Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is a residential dwelling to an owner-occupier
- Exempt from fee per GC27388.1 due to it being recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier. The recorded document transferring the dwelling to the owner-occupier was recorded on _____ as document number(s) _____
- Exempt from the fee per GC 27388.1 (a) (1); Not related to real property
- Exempt from fee under GC27388.1 for the following reasons:

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Nevada County Clerk of the Board
950 Maidu Avenue
Nevada City, CA 95959

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of July, 2019, by and between **KKP – Lake of the Pines LLC, a California limited liability company** (hereinafter referred to as "Subdivider") as owner of that certain land to be subdivided and as shown as Parcels 1 through 5 on **Parcel Map No. 04-020 for Higgins Market Place** (hereinafter referred to as the "Subdivision") and the COUNTY OF NEVADA, a political subdivision of the State of California (hereinafter referred to as "County").

WITNESSETH

WHEREAS, Subdivider is the owner of Parcels 1 through 5 of that certain property proposed for subdivision pursuant to that application identified as County Planning Department File No. **PM04-020** (also referred to as "Application"), located in the unincorporated area of County and specifically described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Subdivider has been required by County, as a condition of approval of the Application, to construct certain improvements; and

WHEREAS, the Subdivider desires to defer construction of said improvements until after the Parcel Map for the Subdivision is recorded in the Official County records; and

WHEREAS, Section L-IV 2.16 of the Nevada County Land Use and Development Code, regulating Parcel Maps in the County, requires that the Subdivider execute and file an agreement between itself and the County relating to the improvements to be made in and for the Subdivision ("IMPROVEMENTS") prior to the approval of the Parcel Map.

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

1. County agrees that upon the execution of this Agreement and receipt by County from Subdivider of cash, or good and sufficient surety bonds, or instruments of credit from a recognized financial institution, as provided for by State law and in accordance with this Agreement and any provisions set out in the Board of Supervisors Resolution approving of this agreement, to approve the Subdivision and to record applicable offers to dedicate the roads and streets and utility easements of the Subdivision.
2. Subdivider agrees to completely construct all of the improvements referenced herein and as shown on the aforementioned improvement plans on or before two (2) years following

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. 19-397, 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

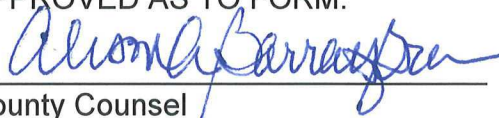
By: 

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

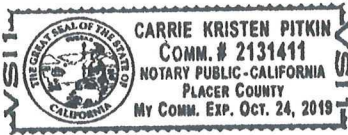
ALL-PURPOSE ACKNOWLEDGMENT

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 23, 2019, before me, CARRIE KRISTEN PITKIN, Notary Public,
DATE
 personally appeared STEVE 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 _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

 TITLE OR TYPE OF DOCUMENT

 NUMBER OF PAGES

 DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
 THUMBPRINT
 OF
 SIGNER

OTHER

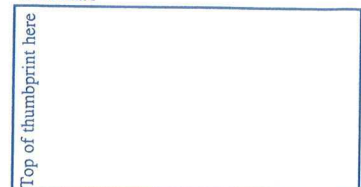


EXHIBIT "A" LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Nevada, unincorporated area, described as follows:

Parcels 1 through 5 inclusive of Parcel Map 04-020 recorded on Aug 7 2019 in Book 21 of Parcel Maps at Pages 62, Official Records of Nevada County, California.

A.P.N. 057-260-017-000