

APN: _____

HTE #: _____

NFM # or MSM # (if applicable) _____

When recorded return to:

Clark County Public Works Department
Development Review Division - Bonding



CLARK COUNTY DEPARTMENT OF PUBLIC WORKS

OFF-SITE IMPROVEMENTS AGREEMENT

This **Agreement** ("Agreement"), is made and entered into this ____ day of _____, 20____, by and between County of Clark, a political subdivision of the State of Nevada, hereinafter referred to as ("COUNTY"), and, hereinafter referred to as ("DEVELOPER"). Each of the above is individually a "Party" and collectively are "Parties."

The initial addresses of each Party, which one Party may change by giving notice to respective other Party, are as follows:

DEVELOPER

COUNTY

Clark County Public Works Department
500 S. Grand Central Pkwy, 1st Floor
Box 551799
Las Vegas, NV 89155-1799

WHEREAS, DEVELOPER is required by the COUNTY to construct Off-site Improvements for the development known as _____ at the following location:

Cross Streets: _____

Assessor's Parcel Number: _____

WHEREAS, DEVELOPER has submitted plans to the COUNTY for a (type of development) (hereinafter referred to as "Project") and are identified by HTE Number _____ (plans identified by HTE Number are hereinafter referred to as "Plans"); and

WHEREAS, the DEVELOPER agrees to construct the Off-site Improvements required by the COUNTY in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties to this Agreement for and in consideration of the mutual promises herein contained and for other good and valuable considerations, do hereby agreed as follows:

1. CONSTRUCTION OF OFF-SITE IMPROVEMENTS

The DEVELOPER, at his sole cost and expense, shall perform and complete all off-site work and improvements as set forth in the Plans, which may consist of, but are not limited to, streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, street lighting, driveways, drainage facilities, accesses, and survey monuments (hereinafter referred to as Off-site Improvements). The Off-site Improvements shall be constructed in accordance with the Clark County Code and all applicable permits, regulations, standards and specifications, and Plans, as approved by the Director of Public Works or his authorized representative (Director of Public Works and/or his authorized representative are hereinafter referred to as "Director"), and other requirements of the COUNTY.

2. APPROVAL OF PLANS BY PUBLIC WORKS

No Off-site Improvements shall commence until:

- (a) The Plans have been approved by the Director;
- (b) All plan-check and inspection fees, as required by Clark County Code Title 30, have been paid;
- (c) The performance bond, cash deposit, or agreement in lieu of bond (performance bond, cash deposit, or agreement in lieu of bond are hereinafter referred to as "Security") has been executed in accordance with Title 30 of the Clark County Code; and
- (d) All required permits have been issued by the COUNTY.

3. NOTICE OF COMMENCEMENT OF CERTAIN WORK AND REQUEST FOR INSPECTION

- (a) The DEVELOPER shall notify the Director at least 24 hours before commencing work on any of the following items:
- i. Placing sewer, water, gas, power, telephone lines, and fire hydrants.
 - ii. Back-filling of sewer, water, gas, power, and telephone lines.
 - iii. Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations, and alley gutters.
 - iv. Placing Type I and Type II gravel base course.
 - v. Priming base course.
 - vi. Placing street lighting and burn testing.
 - vii. Placing street name signs and traffic control signs.

If the commencement of work is delayed, DEVELOPER agrees to notify the Director of the delay not less than two (2) hours before work was scheduled to begin.

- (b) DEVELOPER shall comply with Chapter 30.32 of the Clark County Code for obtaining inspections of work from the COUNTY.

4. APPROVAL OF WORK AFTER INSPECTION BY PUBLIC WORKS

- (a) When the Director inspects a portion of the Project, and finds the work performed to be satisfactory for inclusion in the completed Project, the Director shall issue a statement of inspection which authorizes the DEVELOPER to perform the next phase of construction for the Project. Ordinarily, not less than one (1) continuous block of any one (1) of the items of work mentioned will be approved.
- (b) Inspection and approval of any item of work, or a portion of the Project, shall not forfeit the right of the COUNTY to require the corrections to quality, workmanship or materials at any time after the inspection and prior to the final acceptance of the Project by the Director, even if previously approved by an oversight.
- (c) Nothing herein shall relieve the DEVELOPER of the responsibility for proper construction of the Off-site Improvements and the DEVELOPER shall maintain said Off-site Improvements until the work has been accepted by the Director.

5. ADJUSTMENT TO EXISTING UTILITIES AND COST THEREOF

The DEVELOPER shall, at its sole cost and expense, make the necessary adjustments to all existing utilities resulting from the work and the Off-site Improvements required by the Project and this Agreement.

6. FULL COMPLIANCE WITH COUNTY REQUIREMENTS

The DEVELOPER shall perform and complete all Off-site Improvements in accordance with the Clark County Code and all applicable permits, regulations, specifications, Plans, as approved by the Director, and other requirements of the County.

The DEVELOPER shall obtain all required permits from other County, State, and Federal agencies, including, but not limited to, the Clark County Health District, the Nevada Department of Environmental Protection, and the United States Army Corps of Engineers.

The COUNTY has the right to require corrections to the Plans by the DEVELOPER, at any time before release of the Security required by Title 30 of the Clark County Code and this Agreement, of any item or items contained in the Plans which do not conform to the Clark County Code, permits, standards, specification, laws, regulations or other requirements of the County, even though the Plans for the item in question may have been approved by the Director.

The DEVELOPER shall commence construction of the Off-site Improvements upon receipt of a COUNTY-approved off-site permit and the Off-site Improvements shall be completed prior to expiration of the off-site permit, and in accordance with the Clark County Code and all regulations, standards, specifications, Plans, as approved by the Director, and other requirements of the COUNTY.

In the event the DEVELOPER fails to complete said Off-site Improvements within the required period or, in the event of a threat or danger to the health, safety or welfare of the public that relates to or arises from DEVELOPER's work and/or the Off-site Improvements, as solely determined by the Director, the COUNTY, at its option, may proceed to complete said improvements at the sole cost and expense of the DEVELOPER. The COUNTY may invoice the DEVELOPER for the cost and expense of the work, or any part of the work, performed by the COUNTY. DEVELOPER shall pay the amount stated in the invoice within thirty (30) days after receipt of said invoice. Additionally, the COUNTY may seek recovery from the Security.

7. OTHER CONDITIONS AND REQUIREMENTS

The DEVELOPER further agrees that, in addition to the requirements set forth in this Agreement and the Plans, any and/or all conditions, requirements, stipulations, and agreements made by the DEVELOPER and the Board of County Commissioners and/or the County Planning Commission of Clark County shall be fully performed.

The DEVELOPER further agrees that all work is to be performed by a qualified contractor licensed to do business in the State of Nevada and Clark County.

The DEVELOPER shall maintain, protect, and care for all work areas of the Project, including, but not limited to, any and all adjacent existing improvements, until completion and acceptance by the COUNTY of the Off-site Improvements. Maintenance of any inhabited area of the development, and the adjacent streets and/or neighborhoods, shall include, but not be limited to, sweeping of the streets and maintaining the gutters free of dirt and debris.

The DEVELOPER shall obtain a dust control permit from the Clark County Department of Air Quality for the development. The DEVELOPER is responsible for compliance with Clark County Air Quality regulations and must maintain the dust control for the entire development area until all of the Off-site Improvements are accepted by the Director.

During mobilization, construction and de-mobilization, the DEVELOPER shall maintain the site free and clear from rubbish and debris and shall maintain sufficient and proper traffic control, including but not limited to barricades and lights, in accordance with the latest Manual on Uniform Traffic Control Devices accepted by Clark County.

After excavation or placement of gravel, if the sub-grade and/or gravel base material is left exposed and, in the opinion of the Director, is not properly maintained, thus causing either a rough riding surface or a dust problem, the Director may require the DEVELOPER to do whatever is necessary to provide an adequate travel-way, at DEVELOPER's sole cost and expense. If a detour is needed, the Director shall determine the extent it shall be maintained by the DEVELOPER, which shall include, but is not limited to, the placing of temporary paving, if it is to be used for an extended period of time.

Final acceptance of the work will not be made by the COUNTY until the area of work shown on the Plans and adjacent property has been cleared of all rubbish, surplus materials, and equipment resulting from the contractor's operations, to the satisfaction of the Director.

8. LIABILITY

- (a) The DEVELOPER shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, volunteers, and employees, against and from any and all liability, loss, damage, claims, fines, demands, causes of action, costs, expenses, and judgments of whatsoever nature, including, but not limited to, reasonable costs of investigation, reasonable attorney's fees and expenses, all reasonable expert witness fees and expenses, and all court or arbitration or other alternative dispute resolution costs, which result from injury to or death of any persons whomsoever, and/or against and from damage to or loss or destruction of property whatsoever when such injury death, loss, destruction or damage relates to, is due to or arises in connection with or as a result of any work done by the DEVELOPER in connection with the construction of the Off-site Improvements, and/or arises out of or in connection with DEVELOPER's performance or failure to perform the terms and conditions of this agreement.

Developer's obligation to indemnify, defend and hold harmless includes all allegations including, but not limited to, those which may be frivolous, fraudulent, groundless, false or without merit.

At its option, the COUNTY may elect to hire an attorney and/or attorneys to defend the COUNTY, its officers, employees, agents, directors or County Commissioners for any of the items set forth above including, but not limited to, claims, causes of actions, suits, judgments, negotiations, settlements and arbitrations. If the COUNTY exercises this option, DEVELOPER agrees that DEVELOPER remains subject to all indemnification obligations as set forth in this Section, including, but not limited to, payment of all costs, attorney's fees, costs of suit, costs of appeal, and expert witness fees. COUNTY may at any time compromise or settle any claim, cause of action, suits and/or arbitration if the COUNTY pays the settlement or compromise amount; provided, however, that COUNTY and its defense counsel shall not have the right to compromise or settle any claims, causes of action, suits or arbitration in any manner which would obligate DEVELOPER for the payment of money or to take any action without DEVELOPER's prior approval. Notwithstanding the above, if it is determined that Developer fails to indemnify or defend the COUNTY and if it is determined that the DEVELOPER is legally liable to the party with whom settlement was made or in whose favor judgment rendered and the amount to be paid or was paid is reasonable, then DEVELOPER is liable to the COUNTY for that amount, plus all fees and costs as set forth in this Section 8. DEVELOPER agrees, within thirty (30) calendar days of receipt of invoice from the COUNTY to pay all attorney's fees and such other costs and/or expenses as required by the COUNTY in handling of and/or the defense of such claims and any other legal actions in addition to those items mentioned above.

This Section 8(a) survives termination or completion of this Agreement.

- (b) DEVELOPER, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance naming the COUNTY, its officers, employees, volunteers, and agents as additional insureds for the duration of this Agreement. General liability coverage must be provided either on a Commercial General Liability form or a Broad Form Comprehensive General Liability form. No exceptions to the standard coverage provided by such forms are permitted. Policies must include, but need not be limited to, coverage for bodily injury, personal injury, Broad Form property damage, premises operations, severability of interest, products and completed operations, and contractual and independent contractors. DEVELOPER shall maintain at all times limits of no less than \$2,000,000 combined single limit per occurrence for bodily injury (including death), personal injury, and property damage. The insurance coverage supplied by the DEVELOPER must provide for a 30-day calendar notice to the COUNTY before implementation of a proposal to suspend, void, cancel or reduce in coverage, or in limits, the required insurance coverage. This notice requirement does not waive the insurance requirements contained herein. DEVELOPER shall provide the COUNTY with Certificates of Insurance at the time of executing this Agreement. The certificates and endorsements for any and all insurance policies required by this Agreement are to be signed by a person authorized by the insurer and licensed by the State of Nevada. The insurance obligation does not in any way limit DEVELOPER's liability obligations to the COUNTY.

9. PLAN REQUIREMENTS ON COMPLETION OF IMPROVEMENTS

Upon completion of all the Off-site Improvements within the COUNTY right-of-way required hereby and prior to release of any performance Security, the DEVELOPER shall furnish the Director with an as-built plan which shall accurately indicate, by lettered dimensions, the location of all manholes, the location size and depth of all sewer mains, underground water, power, gas, and other lines, with street plans and profiles for the same, including laterals and "Y's" for connection of house service lines.

10. WARRANTY

The DEVELOPER is responsible should any original or developed defects or failures appear within a period of one (1) year from the date of acceptance of the work by the COUNTY. The DEVELOPER shall, at his own expense, make good such defects and failures and make all replacements and adjustments required, within thirty (30) days after being notified by the COUNTY to do so. All repairs shall be subject to the approval of the Director.

This Agreement does not limit or relieve DEVELOPER from any other obligation or responsibility which the DEVELOPER may otherwise have as a result of the Off-site

Improvements including, but not limited to, any damages or latent defects which may occur beyond the warranty period specified above. Furthermore, DEVELOPER, at all times, is not relieved of any obligation or responsibility it may have by law including, but not limited to, damages for latent deficiencies, injury to real or personal property or injury to or wrongful death of a person, including, but not limited to, the provisions of Nevada Revised Statute 11.204.

11. REQUIREMENTS OF PERFORMANCE BOND OR OTHER SECURITY

The DEVELOPER shall furnish at its sole cost and expense, and at no cost or expense to the COUNTY, Security, in accordance with Title 30 of the Clark County Code, for the full cost of said Off-site Improvements in favor of the COUNTY. The Security must be conditioned on the DEVELOPER complying with all terms and conditions of this Agreement, including, but not limited to, completing said Off-site Improvements within the time period prescribed by this Agreement and complying with the warranty provision of this Agreement. In the event DEVELOPER fails to construct, perform and complete the Off-site Improvements, in accordance with the terms and conditions of this Agreement and/or the Plans, the COUNTY may seek the appropriate recovery against the Security.

Additionally, if the DEVELOPER has suspended work and has failed to provide continued construction during the past sixty (60) days; or if in the event the DEVELOPER, as solely determined by the COUNTY, has created a threat or danger to the health, safety or welfare of the public, the COUNTY may, at its option, seek the appropriate recovery pursuant to the Security.

That DEVELOPER acknowledges that the Security required by Clark County Code Title 30 and this Agreement is only based upon an estimated cost of construction and performance, and in the event that actual cost of the Off-site Improvements exceeds the sum of the Security, DEVELOPER will be obligated and liable for the excess. The DEVELOPER understands and agrees that it may not be relieved from liability simply because the COUNTY seeks recovery against the Security.

Any application for release of said Security upon the completion of the Off-site Improvements by the DEVELOPER shall not be granted unless accompanied by a written certificate from the Director stating that all requirements herein have been satisfactorily completed in accordance with the terms and conditions of this Agreement and the Plans.

12. CERTIFICATE OF OCCUPANCY

No certificates of occupancy shall be granted until such time as the Off-site Improvements have been completed to the satisfaction of the Director, and in accordance with this Agreement. The granting of a certificate of occupancy does not relieve the DEVELOPER of its obligations in this Agreement.

The granting of a certificate of occupancy does not imply that the Off-site Improvements have been properly completed nor authorize the release of the Security.

13. CERTIFICATE OF RELEASE

Upon final acceptance, by the Director, of all of the Off-site Improvements required to be constructed by the DEVELOPER as herein provided, the DEVELOPER shall be issued a certificate of release of said Security, which shall be issued by the Director.

14. NO THIRD PARTY BENEFICIARY

Any inspections or subsequent approvals undertaken by the COUNTY pursuant to express or implied terms of this Agreement are undertaken solely to insure compliance with the terms of this Agreement and are not undertaken for the benefit of any individual or group of individuals as members of the public. It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. Provisions in this Agreement dealing with inspections, approvals or changes requested or made do not expand the COUNTY's general law duties.

15. ASSIGNMENTS

The DEVELOPER shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the COUNTY and it is agreed that any attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void at the option of the COUNTY. DEVELOPER understands and agrees that, if the COUNTY consents to an assignment of this Agreement, it may be required to ensure that the assignee establishes its own Security for the full completion of the off-site improvements as required by this Agreement.

16. AGREEMENT TO BE RECORDED

The DEVELOPER agrees that this Agreement will be recorded upon the land described in Exhibit "A" and this Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors, and assigns. The DEVELOPER and any heirs, executors, administrators, successors and assigns, if any, shall be jointly and severally liable for DEVELOPER's obligations herein.

17. WAIVER

None of the conditions of this agreement shall be considered waived by either Party unless such waiver is in writing and signed by both Parties. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of the agreement expressly stipulated in such waiver.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals.

DEVELOPER:

Sign

Print Name

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me this
____ day of _____, 20____,

by _____
(Developer)

NOTARY PUBLIC in and for said County and
State.

CORPORATION CERTIFICATE

I, _____, certify that I am
the Secretary of the Corporation named as
Developer in the foregoing document; that

_____ was then President of said corporation; that said
document was duly signed for and on behalf of
said corporation by authority of its governing body
and is within the scope of its corporate powers.

SECRETARY

Approved as to form

John S. Ridilla 9/2/10
John S. Ridilla Date
Deputy City Attorney

-- FOR COUNTY USE ONLY--

COUNTY OF CLARK, a political subdivision
of the State of Nevada

BY _____
ROBERT B. THOMPSON
DEPARTMENT OF PUBLIC WORKS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Signed or attested before me on this _____ day
of _____ 20____
by **ROBERT B. THOMPSON**

NOTARY PUBLIC in and for said County and
State

NOTARY STAMP: