City of Henderson
Department of Public Works
Engineering Division
Land Development

To insure development plans meet applicable public works standards and to provide floodplain management services.

Off-site Improvement Agreements

SUBMITTAL INSTRUCTIONS:

The following items are required when submitting Off-site Improvement Agreements:

1. Three original Off-site Improvement Agreement(s) signed and notarized by the same person/company listed on the Off-site Improvement Bond.

2. A Public Works Ownership Disclosure Form if the owner is not a single individual owner (includes trusts, general and limited partnerships, corporations, home owner's associations, limited liability companies and partnerships, and joint ventures). The form can be obtained at www.cityofhenderson.com >Departments>Public Works>Forms.

3. A printout of the current Corporate Officers from the Nevada Secretary of State web-site (www.sos.state.nv.us >Online Services>Business Entity Search), if the application is signed by an Officer of a Corporation or LLC. If the agreements are not being signed by a Corporate Officer listed on the printout from the Secretary of State, a letter of authorization from an Officer listed on the form must be included with the submittal. Authorization forms can also be obtained from the Public Works web-site listed above.

PLEASE NOTE:

Off-site Improvement Agreements will not be accepted unless they are accompanied by the Public Works Ownership Disclosure Form and a print out of corporate officers from the Nevada Secretary of State web site.

Department of Public Works
Land Development
702-267-3680
Fax 702-267-3604

OFF-SITE IMPROVEMENT AGREEMENTS

This Agreement, made and entered into this _____ day of _____, 20___, by and between the City of Henderson, a municipal corporation of the State of Nevada, (hereinafter referred to as "CITY") and _____,
whose mailing address is: (Name of Developer)

_____

_____

_____

Telephone Number
& Contact Person _____

_____

E-mail address of:
Contact Person(s) _____

Fax number(s) of:
Contact Person(s) _____

(hereinafter referred to as "DEVELOPER") for construction of off-site improvements at the following location:

Cross Streets: _____

Assessor's Parcel Number _____

Further Identified as KIVA Permit Number _____

WHEREAS, DEVELOPER has submitted a plan to the City for _____
_____; and
(Name of Project)

WHEREAS, the CITY requires construction of certain off-site improvements as part of said development;

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 agree as follows:

Department of Public Works
Land Development
702-267-3680
Fax 702-267-3604

1. OFF-SITE IMPROVEMENTS.

A. The DEVELOPER, at the DEVELOPER'S own cost, shall perform and complete all off-site work and improvements 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, survey monuments, _____, etc. hereinafter referred to as off-site improvements. Said off-site improvements shall be constructed in accordance with applicable ordinances, regulations, standards and specifications and other requirements of the CITY within one (1) year of the date of approval of the civil improvement plans.

B. DEVELOPER may request an extension of time to complete the off-site improvements which may be granted at the discretion of the Department of Public Works. Any extension granted shall be conditioned upon a review of the Off-Site Improvement Bond and Fee Estimate Form; and if the costs of the line items therein have increased, the DEVELOPER agrees to increase DEVELOPER'S surety to an amount equal to that increase and pay additional inspection and/or plan check fees if warranted.

C. Attached hereto and made a part of this Agreement is the Off-site Improvement Bond and Fee Estimate Form and any subsequent amended Bond and Fee Estimate Forms.

D. The above-mentioned Off-site Improvement Bond and Fee Estimate Form(s) contain provisions for contingency fees, which may, at the discretion of the City, be applied to the costs of:

- Repairs, including parts, labor, equipment and materials;
- Clean-up, including parts, labor, equipment and materials;
- Emergency work, including parts, labor, equipment and materials;
- Overtime, holiday or emergency inspections by the City; and
- Any other costs pertaining to the final acceptance of the off-site improvements/project by the City.

2. PLANS APPROVED BY THE DIRECTOR OF PUBLIC WORKS.

No off-site improvements shall commence until:

(a) Off-site improvement plans have been approved by the Director of Public Works or his authorized representative;
(b) One hundred percent (100%) of all related plan-check, inspection and utility connection fees have been paid; and
(c) Performance security executed as required by the CITY ordinances.

3. NOTICE OF COMMENCEMENT OF CERTAIN WORK.

The DEVELOPER shall notify the Department of Public Works, Quality Control Division at 2101 Moser Drive, Henderson, Nevada, 89015, Telephone number (702) 267-3100, Facsimile number (702) 267-3101, no less than one business day in advance of the date and hour that work

within the right of way or on any of the following items is expected to begin:

- Placing sewer, water, gas, power, telephone lines and fire hydrants.
- Back-filling of sewer, water, gas, power and telephone lines.
- Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations and alley gutters.
- Placing Type 1 and Type II gravel base course.
- Priming base course.
- Placing street lighting and burn testing.
- Placing street name signs and traffic control signs.

The DEVELOPER shall notify the Department of Public Works, Quality Control Division every day thereafter, if conditions develop to delay the start of work. The DEVELOPER agrees to notify the Department of Public Works, Quality Control Division of a delay not less than two hours before work is scheduled to begin.

4. APPROVAL OF WORK AFTER INSPECTION.

A. Whenever the Department of Public Works, Quality Control Division inspects a portion of work as mentioned hereinbefore, and finds the work performed to be in a satisfactory condition for inclusion in the completed project, the Quality Control Division shall issue a statement of inspection which shall permit the DEVELOPER to perform the next phase of the construction. Ordinarily, not less than one continuous block of any one of the items of work mentioned will be approved.

B. Inspection and approval of any item of work shall not forfeit the right of the CITY to require the corrections of defects in workmanship or materials at any time prior to the final acceptance of the project by the Director of Public Works, although previously approved.

C. Nothing herein shall relieve the DEVELOPER of the responsibility for construction of the off-site improvements in accordance with established standards and DEVELOPER shall maintain said improvements until the work has been accepted by the Director of Public Works.

5. ADJUSTMENT TO EXISTING UTILITIES AND COST THEREOF.

The DEVELOPER shall, at the DEVELOPER'S sole expense, provide for adjustments necessary to all existing utilities because of the work required by this agreement.

6. FULL COMPLIANCE WITH CITY REQUIREMENTS.

A. The DEVELOPER shall perform and complete all off-site improvements in accordance with the regulations, standard specifications, and ordinances of the CITY and the construction plans approved by the Department of Public Works.

B. The DEVELOPER shall obtain all required permits from other County, State, and Federal agencies, including, but not limited to Clark County Health, Nevada Department of Environmental Protection and Nevada Department of Transportation.

C. The CITY shall have the right to require corrections/revisions to the construction plans

by the DEVELOPER at any time before release of the bond (performance bond, cash deposit, or agreement in lieu of bond) required herein, of any item or items contained in this agreement which do not conform to CITY standard specifications, laws, regulations or ordinances, even though the plans for the item in question may have been approved by the Department of Public Works.

D. In the event the DEVELOPER fails to complete said improvements within said period or in the event the DEVELOPER in the CITY'S opinion has created a safety hazard, the CITY, at its option, may proceed to complete said improvements at the expense of the DEVELOPER. The CITY will claim against and use the required bond as provided for hereinafter.

7. OTHER CONDITIONS AND REQUIREMENTS.

A. The DEVELOPER further agrees that, in addition to the above requirements, any and/or all such conditions, stipulations and agreements made by the DEVELOPER and the City Council and/or City Planning Commission shall be fully performed.

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

C. The DEVELOPER shall maintain, protect and take care of all work areas for the project, including any adjacent existing improvements, until its completion and acceptance by CITY. 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 keeping the gutters free of dirt and debris and maintaining access to all existing utilities and drainage improvements.

D. During move-in, construction and move-off, the DEVELOPER shall keep the site free and clear from dangerous accumulation of rubbish and debris and shall maintain sufficient and proper barricades, lights, etc. in accordance with the approved traffic barricade plan and the latest manual on the placement of Traffic Control Devices (MUTCD) accepted by the Department of Public Works for the protection of the public.

E. Also, 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 of Public Works is not properly maintained, thus causing either a rough riding surface or a dust problem, the Director of Public Works may require the DEVELOPER to do whatever is necessary to provide an adequate travel-way.

F. If a detour is needed, the Director of Public Works shall determine to what extent it shall be maintained, which shall include the placing of temporary paving, barricades, and directional signage, if it is to be used for an extended period of time.

G. Final acceptance of the work will not be made by the CITY until the area subject to this Agreement and adjacent property have been cleared of all rubbish, surplus materials and equipment to the satisfaction of the Director of Public Works.

8. LIABILITY/INDEMNIFICATION.

The DEVELOPER shall indemnify, defend and hold harmless the CITY, 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 attorneys' 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 is due to or arises in connection with or as a result of any work done by the DEVELOPER, its contractors, agents and subcontractors in connection with the construction of the off-site improvements, and/or arises out of or in connection with DEVELOPER'S, or its contractors and subcontractors performance or failure to perform the terms and conditions of this agreement. This Section 8 shall survive termination or completion of this agreement.

9. PLAN REQUIREMENTS ON COMPLETION OF IMPROVEMENTS.

Upon completion of all the off-site improvements within the CITY right-of-way required hereby and prior to release of any bond or security, the DEVELOPER shall furnish the Director of Public Works 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.

A. The DEVELOPER is responsible to correct any defects or failures that occur within a period of one year from the date of acceptance of the work by the CITY. The DEVELOPER shall, at the DEVELOPER'S own expense, make good such defects and failures and make all replacements and adjustments required, within thirty (30) days after being notified by the CITY to do so. All repairs shall be subject to the approval of the Director of Public Works.

B. 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 street or off-site improvements, including 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 (N.R.S. 11.204).

11. REQUIREMENTS OF PERFORMANCE BOND OR OTHER SECURITY.

A. DEVELOPER shall furnish, without cost to the CITY, as security for the completion of the off-site improvements, a performance bond, cash deposit, agreement in lieu of bond, or letter of credit equal to the full cost of said off-site improvements in favor of the CITY

conditioned upon the DEVELOPER completing said off-site improvements within the time period prescribed by this agreement. Also, in the event the CITY exercises its option to complete said off-site improvements, that said bond, cash deposit, agreement in lieu of bond, or letter of credit shall be used for the payment of the costs of completion of said off-site improvements by the CITY in case the DEVELOPER fails to do so within said time period.

B. If the construction or installation of any off-site improvements or facilities for which a bond, cash deposit, agreement in lieu of bond, or letter of credit is posted are not completed within the time frame of the building permit issued for the development or the time frame of this Agreement; or if the DEVELOPER has suspended work and has failed to provide continued construction during the past 60 days ; or if in the event the DEVELOPER, in the CITY'S opinion, has created a safety hazard; or if such construction is not in accordance with applicable standards and specifications as prescribed by law, then, in any such event, the CITY may, at its option, proceed to complete said off-site improvements at the expense of the DEVELOPER under this bond as provided for hereinafter.

C. That DEVELOPER acknowledges that the bond provided for in this Agreement to construct the off-site improvements is only based upon an estimate prepared by the DEVELOPER'S engineer and approved by the Department of Public Works' New Development Engineer, and in the event that actual cost of said off-site improvements shall exceed such estimate, DEVELOPER is in no way relieved by this agreement from paying the entire amount of such excess.

D. Any application for release of said bond or cash deposit upon the completion of the off-site improvements by the DEVELOPER shall not be granted unless accompanied by a written certificate from the Director of Public Works stating that all requirements hereof have been satisfactorily completed in accordance with the terms of this Agreement.

E. The DEVELOPER shall obtain, renew or otherwise maintain a performance bond, or other security, for the full cost of said off-site improvements in favor of the CITY for the term of this agreement or the time required to complete the off-site improvements, whichever is longer.

F. The DEVELOPER shall notify the Quality Control Division in writing of the intent to cancel or not renew a performance or surety bond at least thirty (30) days in advance of cancellation or non-renewal. The Quality Control Division shall be notified within seven (7) days of any changes in project or property ownership, authorized contractors and subcontractors, sureties, or types of surety.

12. CERTIFICATE OF OCCUPANCY.

The granting of a certificate of occupancy does not relieve DEVELOPER of its obligation in this agreement. The issuance of a certificate of occupancy does not imply that the off-site improvements have been properly completed nor authorized the release of the performance bond or other security.

13. NOTICE OF ACCEPTANCE.

Upon final acceptance by the Director of Public Works, of all the off-site improvements required to be constructed by DEVELOPER as herein provided, DEVELOPER shall be issued a Notice of Acceptance which will release said performance bond, cash deposit, agreement in lieu of bond, or letter of credit.

14. NO THIRD PARTY BENEFICIARY.

Any inspections or subsequent approvals undertaken by the CITY 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 CITY's general law duties.

15. ASSIGNMENTS.

DEVELOPER cannot assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Public Works Director or his authorized representative; 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 CITY.

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16. 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.

CITY OF HENDERSON, NEVADA:

BY: _____
ROBERT MURNANE, P.E.
CITY MANAGER

APPROVED AS TO FORM:

BY: _____
JOSH M. REID,
CITY ATTORNEY

APPROVED AS TO CONTENT:

BY: _____
ROBERT C. HERR, P.E.
DIRECTOR, PUBLIC WORKS,
PARKS AND RECREATION

OWNER/DEVELOPER

By:_____
(Signature)

_____
(Print Name)

_____
(Title)

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

This instrument was acknowledged before me this _____ day of _____, 20____, by _____ (name of party) as _____ (type of authority) of _____ (Company)

_____
Notary Public, in and for said County and State