

APPENDIX B

Development Agreement

**PARCEL A
AGREEMENT TO DEVELOP
BETWEEN
LINCOLN COUNTY, NEVADA
AND**

THIS Agreement to Develop (AGREEMENT) is made and entered into this _____ day of _____, 2001, by and between Lincoln County, State of Nevada (hereinafter referred to as the (COUNTY), and _____, (hereinafter referred to as the Master Developer (DEVELOPER). Capitalized terms used herein shall have the meanings ascribed to them in this AGREEMENT.

WHEREAS:

There is located within the boundaries of the COUNTY 4,357.77+/- acres of undeveloped public land administered by the United States Department of the Interior, Bureau of Land Management (BLM); and

The BLM intends to sell the 4,357.77+/- acres (PROPERTY) at Auction on or before the Auction Date pursuant to the Lincoln County Land Act of 2000 (LCLA), P.L.106-298 and all other applicable Federal and State legislation; and

On _____, the COUNTY, the BLM, and the City of Mesquite, Nevada entered into a Memorandum of Understanding (MOU) to facilitate the orderly disposal of the PROPERTY pursuant to the LCLA in a manner that will provide a fair return to the United States while allowing the COUNTY to plan for its future growth and development within the boundaries of the PROPERTY; and to assure the City that said development will be compatible to and consistent with existing and proposed development within the City; and

The COUNTY and BLM have agreed that the PROPERTY should be marketed and sold consistent with the desires of the COUNTY which include development of the PROPERTY under a single master plan, incorporating mixed-uses, including residential, commercial, industrial, and public uses, known as a Master Planned Community. The COUNTY and the BLM agree that the PROPERTY is not to be sold in a manner that would encourage speculation and/or sold off in smaller lots for ad hoc development.

The COUNTY and BLM have agreed that requiring the successful bidder to enter into an AGREEMENT is the best method to assure that the goals and objectives of the COUNTY and the United States, as expressed in the MOU, will be carried out. The property will be sold consistent with the Notice of Realty Action (NORA) as published in the Federal Register on _____, 2001.

The highest bidder at the Auction will enter into this AGREEMENT and an associated Conveyance Agreement with the COUNTY within thirty (30) days of the Auction Date. If the highest bidder fails to do so, the next highest bidder will be offered the PROPERTY provided the next highest bidder enters into the Agreements with the COUNTY within thirty (30) days of being declared the apparent high bidder. The successful bidder will enter into a more formal Development Agreement as authorized under NRS Chapter 278 (DEVELOPMENT AGREEMENT) with the COUNTY prior to developing the property; and

The DEVELOPMENT AGREEMENT will contain, as a significant part thereof, Covenants, Conditions and Restrictions (CC&Rs) to run with the land and zoning codes and regulations agreed to between COUNTY and DEVELOPER.

This AGREEMENT is intended to provide for the orderly disposal and development of the PROPERTY in accordance with the intent of the MOU, the NORA, and COUNTY land use policy and ordinances, by setting forth the parameters under which the parties will enter into a formal DEVELOPMENT AGREEMENT as that term is used in NRS Sections 278.0201 through 278.0207 inclusive, and

It is understood by the parties hereto that future ordinances will be enacted by the Board of Lincoln County Commissioners governing the development of lands located in Lincoln County which ordinances shall be substantially similar to the current provisions of the existing development code utilized by the City of Mesquite, Nevada requiring the provision of public services, public facilities and urban infrastructure by DEVELOPER, to promote the health, safety and general welfare of the COUNTY and its inhabitants.

DEVELOPER wishes to obtain reasonable assurances that DEVELOPER and COUNTY agree in concept with DEVELOPER' s proposed development of the PROPERTY in order to incur the costs necessary to enter into the DEVELOPMENT AGREEMENT. DEVELOPER acknowledges that there are inadequate public services, public facilities, urban infrastructure and services existing at this time, therefore, the DEVELOPER will need to provide certain public services, public facilities and urban infrastructure in order to make the PROPERTY conducive to residential, commercial and industrial development.

NOW, THEREFORE, it is agreed as follows:

SECTION 1. DEFINITIONS

For all purposes of this AGREEMENT, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Agreement" has the meaning assigned to it in the first paragraph hereof. AGREEMENT at any given time includes all addenda and exhibits incorporated by reference and all amendments, which have become effective as of such time.

"Auction" means the public sale of the PROPERTY by the BLM on the Auction Date and at the location as designated by the BLM.

"Auction Date" means the 12th day of October, 2001, or such other date as determined by BLM for holding the Auction.

"BLM" means the United States of America, by and through the Department of the Interior, Bureau of Land Management.

"Auction Rules" means all laws, rules and regulations applicable to auctions conducted by the BLM including all auction sale procedures adopted by or applicable to the BLM.

"City" means the City of Mesquite, Nevada.

"Code" means the City of Mesquite Development Code as adopted by Lincoln County and applicable to the PROPERTY.

"COUNTY" means Lincoln County, Nevada.

"County Ordinance and/or Code" means the Lincoln County Ordinance and/or Code, including all rules, regulations, standards, criteria, manuals and other references adopted herein.

"County Commission" means the Lincoln County Board of Commissioners.

"DEVELOPER" has the meaning assigned to it in the first paragraph hereof and its permitted successors and assigns.

"DEVELOPMENT AGREEMENT" means an agreement to develop in accordance with the provisions of NRS Sections 278.0201 through 278.0207 inclusive.

"Development Plan" means the plan of development of the DEVELOPER for the PROPERTY. The Development Plan shall include not less than all of the provisions of this AGREEMENT, such additional matters as required or permitted under this AGREEMENT, and the DEVELOPER's plan for the Public Use Acreage.

"Effective Date" has the meaning given to it in Section 2.01.1 of this AGREEMENT.

"MOU" means the Memorandum of Understanding entered into between the COUNTY, City and BLM dated

"NRS" means Nevada Revised Statutes.

"Patent" means the document by which, upon execution by, and delivery by, the United States to DEVELOPER, DEVELOPER will become the holder of title, and upon recording with the Lincoln County Recorder of Deeds, the record holder of title, to the PROPERTY.

"PROPERTY" means the public lands acreage administered by BLM in the COUNTY and to be sold by the BLM at the Auction. The PROPERTY shall comprise 4,363+/- acres, which includes the Public Use Acreage.

"Public Use Acreage" means those portions of the PROPERTY intended for use for roadways, drainage facilities and other public purposes and to be transferred to the COUNTY and/or Lincoln County School District after the Auction Date.

"Term" means the term of this AGREEMENT together with any extension hereof.

SECTION 2.

THE AUCTION and THE INTENT OF THIS AGREEMENT

2.01 Sale at Auction. The PROPERTY was offered for sale by the BLM at the Auction on the Auction Date, and DEVELOPER was the successful bidder. The Auction was conducted lawfully and in furtherance of the terms and provisions of the LCLA and the terms, provisions and intentions of the MOU and the NORA.

2.02 Requirement for this Agreement. Pursuant to the MOU, the NORA, and the LCLA, DEVELOPER and COUNTY must enter into this AGREEMENT, and this AGREEMENT is a condition precedent to the BLM's conveyance of the PROPERTY to DEVELOPER.

2.03 Purpose of this Agreement. The MOU and the LCLA contemplate development of the PROPERTY as a Master Planned Community. It is intended by the parties that this AGREEMENT will outline the basic intent of the DEVELOPER for development of the PROPERTY into a Master Planned Community contemplated by DEVELOPER for the PROPERTY, demonstrate the concept which DEVELOPER has for the Master Planned Community, and generally set forth the structure of the DEVELOPMENT AGREEMENT to be entered into between the parties and such other matters as may be determined necessary to provide for the proper development of the PROPERTY. Furthermore, pursuant to the Conveyance Agreement, the DEVELOPER is

required to convey to the COUNTY and the Lincoln County School District, in fee simple absolute, and without cost to COUNTY or the School District, the Public Use Acreage to be utilized for public benefit, whether through roadway, drainage, recreational use, schools or public facilities. This AGREEMENT, among other things, outlines the procedures for compliance with the Conveyance Agreement.

2.04 County Authorization. The County Commission shall consider this AGREEMENT at a public hearing. Approval and execution of this AGREEMENT by COUNTY shall not grant DEVELOPER any development rights in or for the PROPERTY, nor create any rights to which a landowner might be entitled by virtue of a DEVELOPMENT AGREEMENT under NRS Sections 278.0201 through 278.0207 inclusive. DEVELOPER shall be required to enter into the DEVELOPMENT AGREEMENT with COUNTY prior to any development of the PROPERTY.

SECTION 3. MASTER PLANNED COMMUNITY CONCEPT

3.01 Conceptual Land Use Map. Attached hereto as **Exhibit "A"** is DEVELOPER's conceptual land use map identifying in general DEVELOPER's concept for the Master Planned Community identifying areas of the PROPERTY proposed to be developed as: residential, professional, office, commercial, industrial, retail and such other compatible uses authorized by the Code. The map also identifies areas of the PROPERTY to be used for public facilities, recreational purposes and open space purposes. Without granting to DEVELOPER any development rights, by approval of this AGREEMENT, COUNTY agrees that DEVELOPER's concept as shown on the land use map, complies with the requirement of the MOU for master planning of the PROPERTY.

3.02 Master Planned Community. DEVELOPER shall develop the PROPERTY into a Master Planned Community which shall be more fully defined by the DEVELOPMENT AGREEMENT, and which shall contain or provide:

- 3.02.1 that industrial development shall be permitted on no more than ten (10%) of the Developable Acres;
- 3.02.2 that non-industrial and non-residential uses shall be governed according to mutually agreed to zoning ordinances between COUNTY and DEVELOPER;
- 3.02.3 for zoning of the Public Use Acreage for public uses only.
- 3.02.4 for the conveyance of the Public Use Acreage to the COUNTY and/or Lincoln County School District;
- 3.02.5 that the overall residential density shall not exceed 3.3 units per Developable Acres;

- 3.02.6 that a minimum of one (1) golf course(s) shall be available for play to the general public and related facilities;
- 3.02.7 for a master development plan for the PROPERTY;
- 3.02.8 for a comprehensive drainage study for the PROPERTY;
- 3.02.9 for a comprehensive transportation study prepared for the PROPERTY;
- 3.02.10 for a comprehensive facilities plan for the PROPERTY which shall include sewer, sewer treatment facilities, potable water, reservoir, dry utilities and a utility corridor study;
- 3.02.11 for such studies, surveys and plans as necessary to establish boundary lines in a Master Boundary and Right-of-way/Easement Plan which shall include any boundary adjustments, and existing and proposed utility easements and roadway rights-of-way; a Master Survey Control Plan referenced to the Nevada Coordinate System; and a Selective Site Specific Geotechnical Investigation/Analysis Report for public facilities sites;
- 3.02.12 for a plan for identifying and protecting significant cultural or paleontological resources on the PROPERTY;
- 3.02.13 for such other studies and plans as may be required by the COUNTY.

3.03 Master Planned Community Review Team. In order to facilitate the DEVELOPMENT AGREEMENT, and the ultimate development of the PROPERTY, the COUNTY agrees to establish a Master Planned Community Review Team. It is intended that the team would assist in finalizing the terms of the DEVELOPMENT AGREEMENT. Any further duties of the Review Team will be set forth in the final DEVELOPMENT AGREEMENT.

SECTION 4. AGREEMENT PRINCIPLES

4.01 Development Principles. DEVELOPER acknowledges that the DEVELOPMENT AGREEMENT will require certain agreements, concessions, contributions and improvements in order for DEVELOPER to develop the PROPERTY, some of which are:

- 4.01.1 Water Conservation. DEVELOPER shall encourage water conservation in the Master Planned Community DEVELOPER agrees to design any golf course(s), streetscape areas, park space

and any other open space using water conserving techniques, including but not limited to proper soil preparation and water conserving plant materials, irrigation systems and equipment. DEVELOPER shall establish design criteria on all development within the Master Planned Community that will encourage water conservation in all landscaping treatments by incorporating reuse and gray water.

4.01.2 Reuse Water. DEVELOPER may be required, in connection with any golf course, to irrigate such golf course with treated effluent. DEVELOPER will, to the maximum extent practical, irrigate nearby park space and landscape areas with properly treated effluent.

4.01.3 Public Safety, Governmental Services and School Sites and Facilities. DEVELOPER shall at its sole cost and expense, provide to COUNTY cash contribution or sites and facilities sufficient to serve the public needs of the proposed Master Planned Community. Such sites and facilities shall be substantially similar to and appropriate for population densities and distributions such as are currently existing within the City of Mesquite and which are anticipated to exist within the PROPERTY. Such sites and facilities will be part of the Public Use Acreage pursuant to the DEVELOPMENT AGREEMENT and shall be for the following purposes:

Fire Stations,
Sheriff Substations,
Governmental Services Annex,
School sites and facilities

Provisions of such sites and facilities may be addressed within the DEVELOPMENT AGREEMENT on a phased basis according to need as shall be established by population growth, densities and distributions.

4.01.4 Park Dedication Requirements. DEVELOPER shall dedicate to COUNTY all of the Public Use Acreage for public recreational purposes, pursuant to a master parks and recreation plan. All the Public Use Acreage shall be zoned for public use only.

4.01.5 Park Improvements. DEVELOPER and COUNTY shall enter into a master parks and recreation plan, which shall:

4.01.5.1 identify the portion of the Public Use Acreage for development as parks, which shall be not less than 5

acres per 1,000 residents, based on the density cap as identified in Section 3.02.5;

- 4.01.5.2 identify the location of the parks upon the PROPERTY;
- 4.01.5.3 identify the location of all Public Use Acreage upon the PROPERTY;
- 4.01.5.4 require DEVELOPER to, at its sole cost and expense, design, develop and construct specified park acreage into park and trail sites prior to dedication to the COUNTY;
- 4.01.5.5 provide for method of payment or credit against residential construction tax, but no credit shall be given DEVELOPER for the value of the Public Use Acreage;

- 4.01.6 Landfill Expansion Site. Developer shall dedicate to the COUNTY acreage for expansion of the existing City of Mesquite landfill for the benefit of the COUNTY and City or if the expansion area is not within the DEVELOPER'S lands shall provide to the COUNTY a cash contribution to provide for said landfill expansion.
- 4.01.7 Development Standards. Development of the PROPERTY shall be in accordance with the Uniform Standard Specifications and Drawings for Public Works Construction, Offsite Improvements, Clark County Area Nevada as adopted by the City of Mesquite and by Lincoln County. Copies of these standards are available through the Clark County Regional Transportation Commission.
- 4.01.8 All lands which are part of the LCLA shall be included in and shall be part of the Lincoln County Multi-Species Habitat Conservation Plan (MSHCP).
- 4.01.9 County will not authorize, grading or issue a building permit on LCLA lands until either: (1) the Lincoln County Multiple-Species Habitat Conservation Plan has been completed and a Section 10 Permit issued to the County by U.S. Fish and Wildlife Service; (2) Developer has prepared an individual Habitat Conservation Plan and U.S. Fish and Wildlife Service has issued a related Section 10 Permit; or (3) Developer has paid the U.S. Fish and Wildlife Service mitigation fees pursuant to Section 7 of the Endangered Species Act..

SECTION 5.
TIMING

5.01 Deadline for Formal Development Agreement. This AGREEMENT contemplates that the parties will have entered into a DEVELOPMENT AGREEMENT on or before _____, 2001. DEVELOPER acknowledges that COUNTY will have no obligation to consider, and will not consider, any application relating to any development of the PROPERTY until such time as the DEVELOPMENT AGREEMENT is finalized and the DEVELOPER receives the Patent for the PROPERTY from BLM. Both parties agree to use their best efforts to finalize the DEVELOPMENT AGREEMENT.

SECTION 6.
MISCELLANEOUS

6.01 Assignment.

- 6.01.1 To an Affiliate of Developer. The rights of DEVELOPER under this AGREEMENT may be freely transferred or assigned to any entity, partnership or corporation which DEVELOPER controls or in which DEVELOPER has a controlling interest or which controls DEVELOPER; provided, such entity is identified on Exhibit "B" attached hereto, or is an affiliate approved by COUNTY. The entity must assume in writing all obligations of DEVELOPER hereunder. In connection with a transfer of any portion of the PROPERTY pursuant to this Subsection 6.01.1, DEVELOPER shall provide COUNTY with written notice of such transfer. Such assignment or transfer shall not relieve DEVELOPER of its obligations under this AGREEMENT.
- 6.01.2 To a Third Person. COUNTY acknowledges that as a Master Developer, DEVELOPER may wish to assign, sell or transfer part of the PROPERTY to a third person developer, however, DEVELOPER shall not assign, sell or transfer any portion of the PROPERTY without the written consent of COUNTY. DEVELOPER shall, prior to any assignment, sale or transfer, certify to COUNTY that a Master Plan Development Agreement is in force between DEVELOPER and third person. Such Master Plan Development Agreement shall include, as a minimum, fully developed, approved and recorded CC&R's, phasing and sequencing agreements relating to timing of development and zoning ordinances for the portion of the PROPERTY to be assigned, sold or transferred.
- 6.01.3 Reimbursement Agreement. The COUNTY and DEVELOPER agree that reimbursement agreements between DEVELOPER,

neighboring developers, Third Person Developers and COUNTY may be necessary to facilitate the orderly development of PROPERTY and all LCLA lands. Nothing in this AGREEMENT is intended to disallow reimbursement agreements as deemed appropriate by COUNTY.

6.01.4 Transfer Not to Relieve DEVELOPER of its Obligation. Unless provided in writing by the COUNTY as part of COUNTY's consent to a transfer, an assignee or transferee of any portion of the PROPERTY shall be subject to the obligations of DEVELOPER as to the portion of the PROPERTY so assigned or transferred and such transferee shall be deemed to have assumed all such obligations. Unless provided in writing by the COUNTY as part of COUNTY's consent to a transfer, any assignment or transfer shall not relieve DEVELOPER of its obligations as to the assigned or transferred portion of the PROPERTY .

6.02 Amendment or Cancellation of Agreement. This AGREEMENT may be amended from time to time or canceled only upon the mutual written consent of the parties hereto.

6.03 Indemnity: Hold Harmless. Except as expressly provided in this AGREEMENT, DEVELOPER shall hold COUNTY, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for PROPERTY damage which may arise from the direct or indirect operations of DEVELOPER or those of its contractors, subcontractors, agents, employees, or other persons acting on DEVELOPER's behalf which relate to the development of the Master Planned Community DEVELOPER agrees to and shall defend COUNTY and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of DEVELOPER's activities in connection with the development of the Master Planned Community. DEVELOPER and COUNTY agree to jointly defend this AGREEMENT in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this AGREEMENT. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of COUNTY, its officers, agents, employees, or representatives.

6.04 Binding Effect of this Agreement. Subject to Section 6.01 hereof, the burdens of this AGREEMENT bind, and the benefits of this AGREEMENT inure to, the parties' respective successors in interest.

6.05 Relationship of Parties. It is understood that the contractual relationship between COUNTY and DEVELOPER is such that DEVELOPER is an independent contractor and not an agent of COUNTY for any purpose.

6.06 Notices. All notices required to be given hereunder shall be in writing and addressed as follows. Each party may designate from time to time, another address in place of the address below set forth by notifying the other parties in the same manner as provided in this paragraph.

To COUNTY:

With a copy to (Include City)

To DEVELOPER:

With a Copy to: (Include City)

Delivery shall be accomplished only in accordance with one of the following procedures. Email communications shall not constitute notice:

- A. By personal (hand) delivery to a party, and if a party is an entity, to an adult representative of such party, at the street address for the party, whereupon notice shall be deemed given upon the day of receipt or refusal to accept.
- B. By the United States mail to the street address whereupon notice shall be deemed given two (2) days after deposit with the United States Postal Service by certified or registered mail, postage prepaid, with return receipt requested.
- C. By a nationally recognized delivery service company to the street address with written proof of delivery, whereupon notice shall be deemed given upon the day of receipt or refusal to accept.
- D. By facsimile transmission to a party's facsimile number, provided sender possesses written proof of successful transmission printed contemporaneously by the transmitting device, whereupon notice shall be deemed given upon the day of transmission, if transmitted before 5:00 p.m. recipient time, otherwise the next day.

In the event any applicable statute, law, rule or regulation requires notice to be delivered in a particular manner, or to a particular address for a party, such statute, law, rule or regulation shall control, unless the requirements of such statute, law, rule or regulation can be waived in which case all parties to this AGREEMENT hereby waive such requirements.

6.07 Entire Agreement. This AGREEMENT constitutes the entire understanding and agreement of the parties. This AGREEMENT integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or

previous agreements between the parties with respect to all or any part of the subject matter hereof.

6.08 Recording. The parties hereto agree to the recordation of the ~~specific~~ DEVELOPMENT AGREEMENT and that the terms and conditions of the specific development agreement are to run with the land.

6.09 Waivers. All waivers of the provisions of this AGREEMENT must be in writing and signed by the appropriate officers of COUNTY or DEVELOPER, as the case may be.

6.10 Recording. Amendments. This AGREEMENT shall be recorded. Any amendment hereto must be in writing signed by the appropriate officers of COUNTY and DEVELOPER

6.11 Headings. Exhibits: Cross-References. The headings and captions used in this AGREEMENT are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this AGREEMENT. All exhibits attached to this AGREEMENT and the recitals at the front of this AGREEMENT are incorporated herein by the references thereto contained herein. Any term used in an exhibit hereto shall have the same meaning as in this AGREEMENT unless otherwise defined in such exhibit. All references in this AGREEMENT to sections and exhibits shall be to sections and exhibits of or to this AGREEMENT, unless otherwise specified.

6.12 Severability of Terms. If any term or other provision of this AGREEMENT is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this AGREEMENT shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such term does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this AGREEMENT so as to effect the original intention of the parties.

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SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, this AGREEMENT has been executed by the parties on the day and year first above written.

COUNTY:

LINCOLN COUNTY, NEVADA

By: _____

Attest:

DEVELOPER:

By: _____

Print Name: _____

Its: _____

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

This instrument was acknowledged before me on the _____ day of _____, 2001, by _____ as -[title]- of [DEVELOPER].

IN WITNESS WHEREOF, this AGREEMENT has been executed by the parties on the day and year first above written.

NOTARY PUBLIC