

Appendix C

Development Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
ATTN: Planning Director County of Nevada 950 Maidu Avenue Nevada City, CA 95959	

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE COUNTY OF NEVADA,

A. TEICHERT & SON, INC.,

AND

PAMELA DOBBAS

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF NEVADA,
A. TEICHERT & SON, INC., AND
PAMELA DOBBAS**

THIS DEVELOPMENT AGREEMENT (“Development Agreement”) is made and entered into this [_____]th day of [_______], 2018 by and between the COUNTY OF NEVADA, a political subdivision of the State of California (“County”), A. TEICHERT & SON, INC., a California corporation (“Developer”), and PAMELA DOBBAS (“Property Owner”). For the purposes of this Development Agreement, County, Developer, and Property Owner are referred to individually as “Party” and collectively as “the Parties.”

RECITALS

A. State Law. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864, *et seq.*, of the *Government Code* (the “Development Agreement Statute”) which authorizes the County and a party or person having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in real property. All references in this Agreement to a “Code” refer to a code of the State of California, unless otherwise specified.

B. County Rules and Regulations. Pursuant to *Government Code* Section 65865, the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Section L-II 5.18 of the Nevada County Land Use and Development Code (“County Development Agreement Regulations”). This Development Agreement has been processed, considered and executed in accordance with County Development Agreement Regulations. County enters into this Agreement pursuant to the provisions of the *Government Code*, the County Development Agreement Regulations and applicable County policies.

C. Land Ownership. Property Owner owns in fee approximately 230 acres of real property in the County, which property is described in attached Exhibit A and shown on the map set forth in attached Exhibit B (the “Property”). Property Owner has granted Developer a legal interest in the Property to allow for the exclusive right to mine and process aggregate rock and to perform all other related activities on the Property.

D. Project Background. The Property has been mined for aggregate by several operators since the 1950s and was formerly known as the Hirschdale Cinder Quarry. In or around 2005, Developer took over as the operator of aggregate mining operations on the Property and renamed the operation “Boca Quarry” (“Boca Quarry”). Since taking over the operation of the Boca Quarry, Developer has invested substantially in the Boca Quarry by:

- 1) applying for and obtaining from the County a rezone of the Property to add a Mineral Extraction (ME) combining district to the Property in 2005

2) applying for and obtaining from the County a revised Conditional Use Permit (“U06-012”), attached as Exhibit C, and an amended Reclamation Plan (“RP06-001”).

3) obtaining the necessary approvals from the U.S. Forest Service and constructing a new access road that bypassed the Hirschdale community in 2008. U06-012 allows for aggregate mining operations on approximately 40 acres of the Property, known as the “East Pit” and shown in Exhibit D. U06-012 has an expiration date of July 26, 2027. Developer operated the Boca Quarry from 2005 through 2008. The Boca Quarry has been idle since the end of the 2008 operating year based on reduced aggregate demand resulting from the economic downturn.

E. Boca Quarry Expansion Project. In addition to its prior investment in the Boca Quarry described in Recital D above, Developer desires to implement its Boca Quarry Expansion Project (“Project”). The Project consists of the planned expansion of Developer’s aggregate surface mining operation on the Property. The Project will extend surface mining operations from the existing operations in the East Pit to an additional approximately 118 acres of the Property known as the West Pit (“West Pit”), as depicted in Exhibit E. (The combined East Pit and West Pit excavation/disturbance areas will total approximately 158 acres of the Property.) The Project will allow for an increase in the Boca Quarry’s maximum aggregate production from its historical maximum of approximately three hundred thousand (300,000) tons sold per year to one million (1,000,000) tons sold per year, but actual production will vary depending on local market demand. The Project will result in the removal of a total of approximately 17 million tons (approximately 13 million cubic yards) of material in three phases over a 30-year period, beginning with the mining of the existing East Pit in Phase 1 and continuing with the mining of the West Pit in Phases 2 and 3. Blasting will also be utilized as part of the proposed mining activities. The mined areas of the Property will be reclaimed to open space with onsite overburden as well as clean fill material imported primarily from Developer’s nearby Martis Valley aggregate mining and processing site. The Project includes the issuance of a new Conditional Use Permit (“U11-008”), attached as Exhibit F, and Reclamation Plan RP11-001, attached as Exhibit G, to correspond with the proposed mine expansion.

F. Purpose of Development Agreement. The purpose of this Agreement is to develop the Project in conformance with the laws stated in Paragraphs A and B above, to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the County and private benefits to Developer, including those described in these Recitals. The economic uncertainty of the aggregate market makes the Project difficult for Developer to undertake if the County had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with implementation of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in County planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with the Project. This Development Agreement also describes how the old Use Permit U06-012 and the new Use Permit U11-008 will apply to the mining and reclamation of the Property.

G. Developer's Intention. As with other major private undertakings, the implementation of the Project is subject to significant economic uncertainties. These uncertainties, together with other currently unknown factors, which may arise during the Term (as defined in Section 1.4(b) herein) of this Development Agreement, prevent Developer from presently predicting the precise timing for implementation of the Project. Nevertheless, assuming that market and economic conditions perform as currently anticipated and no force majeure events occur, it is Developer's present intention to implement the Project during the Term of this Development Agreement.

H. Project Approvals. Concurrent with the approval of this Agreement, County will approve Project Approvals as defined in Section 1.6 of this Agreement. As part of the Project Approvals, County has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code §21000, *et seq.* and Section 15000, *et. seq.*, of Title 14 of the California Code of Regulations; , hereinafter collectively, "CEQA"), the required analysis of the environmental effects which would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. County has completed and certified an environmental impact report ("EIR") in connection with the Project, including the Project Approvals. County has also adopted a monitoring program to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed.

I. Consistent with General Plan. The County, after conducting all duly noticed public hearings, has found that this Agreement is consistent with the County's General Plan, Nevada County Land Use and Development Code section L-II 5.18, Government Code sections 65867, *et. seq.*, and all other applicable ordinances, plans, policies and regulations of County.

J. Planning Commission Recommendation and Board of Supervisors Approval. On [Date] the Nevada County Planning Commission (the "Planning Commission"), after giving notice as provided by law, held a public hearing to consider this Development Agreement, and recommended approval of this Development Agreement. On [Date], the Nevada County Board of Supervisors (the "Board of Supervisors"), after giving notice as provided by law, held a public hearing to consider this Development Agreement.

K. County Best Served. The terms and conditions of this Development Agreement have undergone extensive review by County staff, its Planning Commission and its County Board of Supervisors at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the County General Plan, the Development Agreement Legislation, and the County Development Agreement Regulations and, further, the County Board of Supervisors finds that the economic interests of County's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

L. County Ordinance. On [Date], the Board of Supervisors adopted Ordinance No. XXXX, approving this Agreement and authorizing the Chair of the Board of Supervisors to execute the Agreement ("Ordinance"), a copy of which is attached hereto as Exhibit H. The Ordinance becomes effective on [Date].

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, County, Developer, and Property Owner agree as follows.

ARTICLE 1.

GENERAL PROVISIONS

1.1. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full. In the event of inconsistency between the Recitals and the Articles of this Agreement, the provisions of the Articles shall prevail.

1.2. Parties.

(a) County. County is a political subdivision, with offices located at 950 Maidu Avenue, Nevada City, CA 95959. “County,” as used in this Development Agreement, shall include the County and any assignee of or successor to its rights, powers and responsibilities.

(b) Developer. Developer is Teichert, a California corporation, with offices located at 3500 American River Drive, Sacramento, CA 95864. “Developer,” as used in this Development Agreement, shall include any permitted assignee or successor in interest as herein provided.

(c) Property Owner. Property Owner is an individual. “Property Owner,” as used in this Development Agreement, shall include any permitted assignee or successor in interest as herein provided.

1.3. Property. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement.

1.4. Relationship between County, Developer, and Property Owner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the County, Developer and the Property Owner and that Developer is not an agent of County, and Property Owner is not an agent of County. County, Developer and Property Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County, Developer and/or Property Owner joint venturers or partners.

1.4. Term.

(a) Effective Date. This Development Agreement shall become effective upon the date the Enacting Ordinance becomes effective (“Effective Date”).

(b) Term of Agreement. The term (“Term”) of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter unless extended or earlier terminated as provided herein. Upon request by Developer, the term of Agreement may be extended for ten (10) years, with a maximum of one extension. The request for an extension shall be subject to review by the Planning Department and approval by the County Board of Supervisors. The extension will be subject to any new state and federal laws, including health and safety regulations in effect at the time of the extension request. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project.

1.5. Existing Entitlements. As discussed in Recital D, mining of the East Pit is subject to Use Permit U06-012, attached herein as Exhibit C.. U06-012 was approved by the County Planning Commission on July 26, 2007, for a term of twenty (20) years. U06-012 has an expiration date of July 26, 2027. Reclamation of the East Pit is subject to Reclamation Plan RP06-001, also approved on July 26, 2007.

1.6. Project Approvals. Concurrent with or prior to the approval of the Agreement, County will approve or has approved the following land use entitlements for the Property, which entitlements are also the subject of the Agreement:

(a) Environmental Impact Report. Certification of the Final Environmental Impact Report (EIRXX-XXX) (State Clearinghouse No. 2012022024) prepared pursuant to the California Environmental Quality Act and known as “Boca Quarry Expansion Project Final Environmental Impact Report” (“EIR”) as adequate and complete by written findings, and a Mitigation Monitoring Program.

(b) Conditional Use Permit. U11-008 to establish proposed mine expansion operations and fees.

(c) Reclamation Plan. RP11-001 to ensure the process of restoring the land to a condition that is readily adaptable for alternative land uses.

(d) Subsequent Approvals. The Parties agree that in order to develop the Property as contemplated in this Development Agreement, the Project may require additional entitlements, development permits, and use and/or construction approvals other than the Project Approvals, which may include without limitation: conditional use permit amendments, reclamation plan amendments, grading permits, building permits, lot line adjustments, and encroachment permits (collectively, “Subsequent Approvals”). At such time as any Subsequent Approval is approved by the County, such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

ARTICLE 2.

IMPLEMENTATION OF THE PROJECT

2.1. Developer’s Obligations.

2.1.1. Compliance. Developer agrees that implementation of the Project shall be in conformance with all of the terms, covenants, obligations, and requirements of the Project Approvals and this Development Agreement.

2.1.2. Project Implementation. Developer shall have the right to implement the Project on the Property in accordance with the Project Approvals and this Development Agreement.

2.1.3. Public Benefits. County is desirous of gaining the public benefits that will result from the development of this Property, including but not limited to:

(a) providing a local source of aggregate to keep infrastructure construction and maintenance costs down;

(b) implementing the County's General Plan goals and policies by reducing vehicle miles traveled (VMT) and associated traffic, air quality, and noise impacts associated with the importation of aggregate from outside of the region;

(c) mining of valuable mineral resources recognized by the State and County (as reflected by the State Department of Conservation's MRZ and County's ME designations);

(d) generating sales tax revenue for the County;

(e) Developer shall construct sight distance and bicycle mitigation measures identified in the EIR and incorporated into U11-008, prior to the commencement of sales of aggregate material mined from the West Pit.

These public benefits are in addition to those dedications, conditions and exactions required by the Project Approvals, laws or regulations, and advance the planning objectives of and provide benefits to the County.

2.1.4 East Pit Mining. The County agrees that any aggregate material mined from the East Pit and sold by Developer will not be subject to the conditions and mitigation measures contained in U11-008, but will instead be subject to the conditions and mitigation outlined in U06-012, as described in Section 1.5 above. Developer agrees to comply with all of the conditions and mitigation outlined in U06-012 in connection with the mining and sales of aggregate originating from the East Pit. Reclamation of the East Pit shall be subject to the Reclamation Plan RP 11-0001, as described in Section 1.5 above. Developer agrees that annual production of aggregate material mined from the East Pit will not exceed the historical maximum of three hundred thousand (300,000) tons sold per year. Upon the expiration of U06-012, on July 27, 2027, any remaining mining shall be subject to the conditions and mitigation provided in U11-008, as described in Section 2.1.5 below, and the payment of cents per ton funding, as provided in Section 2.1.7 below.

2.1.5 West Pit Mining. Developer agrees that any aggregate material mined from the West Pit and sold by Developer will be subject to the conditions and mitigation measures contained in U11-008, as described in Section 1.6 above. Reclamation of the West Pit shall be subject to the Reclamation Plan RP 11-001, as described in Section 1.6 above. Developer agrees that annual production of aggregate material mined from the West Pit will not exceed the maximum of one million (1,000,000) tons sold per year that was analyzed in the EIR.

2.1.6. Combined Annual Production Limitation. In addition to the tonnage limitations for East Pit Mining and West Pit Mining set forth in Sections 2.1.4 and 2.1.5, respectively, Developer agrees that annual production of aggregate mined from the Property will not exceed the maximum of one million (1,000,000) tons per year that was analyzed in the EIR.

2.1.7 Cents Per Ton. Developer agrees to pay cents per ton funding (“Cents Per Ton”) to the County and Town of Truckee pursuant to the payment table attached herein as Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below. These funds shall be paid for each ton of aggregate sold by Developer that is produced from the West Pit (or produced from the East Pit after expiration of U06-012) for the term of the Development Agreement.

2.1.7.1 Purpose of Cents Per Ton Funding. The purpose of the Cents Per Ton is to compensate the County and the Town of Truckee for roadway maintenance costs on Stampede Meadows Road between West Hinton Road and the Interstate 80/Hirschdale Road interchange resulting from the transport of aggregate produced from the West Pit pursuant to U11-008, as well as any remaining aggregate produced from the East Pit after the expiration of U06-012.

2.1.7.2 Method and Timing of Payment. Payments of Cents Per Ton to the County required under Section 2.1.7 shall be made to the County of Nevada and delivered to the County Executive Office, or such address as County may designate in writing. All transmittals of payments to the Town of Truckee shall be copied to Developer. Payments required by Section 2.1.7 shall be made annually after the close of each calendar year (December 31). Within 30 days of the close of the calendar year, Developer shall provide County with a statement indicating the tons of aggregate from the West Pit (and East Pit after expiration of U06-012) sold and a calculation of the cents per ton contribution to be made as a result of said production. Annual payments shall be based upon the tonnage produced and sold from the West Pit (and the East Pit after expiration of U06-012) and the rates provided for in Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below. Upon receipt of this accounting and calculation of payment due, County shall invoice Developer for payment. Within 30 days of receipt of said invoice, Developer shall make the required cents per ton payment to the County.

2.1.7.3 Payments to the Town of Truckee. The County shall forward such funds to the Town of Truckee in accordance with Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 below., per separate agreement with Truckee.

2.1.7.4 Payment Verification. For the purpose of administering this section, Developer will report and account for the sale of all aggregate removed from the West Pit (and from the East Pit after expiration of U06-012) for which contributions are due. Said procedures shall be consistent with the terms of this Agreement. The County may audit, as often as it determines is necessary, the tonnage of aggregate mined from the East Pit, and/or the West Pit and sold at the Project site and the payments to the County or to the Town of Truckee to verify that the amount of payment correctly reflects actual tonnage sold. The County hereby agrees to keep any proprietary information it may obtain from Developer confidential to the maximum extent allowed by law. Developer shall clearly mark any proprietary information provided County as confidential.

2.1.7.5 Inflation Adjustment. The payment of Cents Per Ton required under Section 2.1.7 and as provided in Exhibit I shall be adjusted annually based on the Engineering News Record (ENR) index for California Cities

2.2 Developer's Rights. Developer shall have the right to develop the Project on the Property in accordance with the Project Approvals and the Vested Elements, and other terms and conditions of development applicable to the Property are as set forth in: The General Plan of County on the Effective Date ("Applicable General Plan");

(a) The Nevada County Land Use and Development Code on the Effective Date ("Applicable Land Use and Development Code");

(b) Other rules, regulations, ordinances and policies of the County applicable to development of the Property on the Effective Date (collectively, together with the Applicable General Plan and Applicable Land Use and Development Code, the "Applicable Rules");

(c) The Project Approvals;

(d) This Development Agreement;

(e) Use Permit U06-012, as set forth in Exhibit C attached hereto; and

(f) The Cents Per Ton, as set forth in Exhibit I attached hereto;

and are hereby vested subject to the provisions of this Development Agreement ("Vested Elements").

2.3 County Obligations.

2.3.1. County hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement that Developer obtain any required Subsequent Approvals for the Project in accordance with County requirements.

2.3.2. Upon submission by Developer of completed applications and processing fees for any Subsequent Approvals, County shall use its best efforts to promptly and diligently process all applications for Subsequent Approvals, including land use and construction approvals, permits, plans and maps necessary to implement the Project, in accordance with the terms of this Agreement, the Project Approvals, the County's General Plan and the Nevada County Land Use and Development Code. Developer acknowledges that County cannot promptly process Subsequent Approvals until Developer submits complete applications and responds to request for additional information on a timely basis.

2.3.3. Subject to the provisions of Section 2.4 of this Agreement, neither the County nor any County Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to the development or the construction of the Project, on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

2.3.4. Permit Exercise. The County agrees that U011-008 and Reclamation Plan RP11-001 address the mining and reclamation of the Property as a whole. As mining may occur on a portion of the Property pursuant to U06-012, the County hereby finds that U11-008 has been exercised as required under Nevada County Code, Title 3, Section L-II 5.10, through Developer's prior removal of material from the East Pit in connection with U06-012.

Section 2.1.7 above, the County shall forward cents per ton funding to the Town of Truckee in accordance with Exhibit I, as adjusted for inflation in accordance with Section 2.1.7.5 above per separate agreement with Truckee.

2.4. Changes to Applicable Laws and Regulations.

2.4.1. Notwithstanding anything to the contrary in Section 2.2 of this Agreement, in addition to the Vested Elements, only the following changes to the General Plan and the Nevada County Land Use and Development Code ("Land Use Regulations") adopted by the County after the Effective Date shall apply to and govern the Project from the Effective Date through the remainder of this Agreement:

(a) Future Land Use Regulations that are of general applicability to the entire County and that either are not in conflict with this Agreement or have been consented to in writing by Developer;

(b) County ordinances, resolutions, policies or actions reasonably adopted or pursued by the County in order to comply with preemptory State and federal laws (the “New Law”). In the event such laws prevent or preclude compliance with one or more provisions of this Agreement, then immediately following the enactment of the New Law the Parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to the Agreement can be made, in order to maintain Developer’s right to develop the Project.

(c) In the event the Parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the Parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the Parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either Party shall have the right to terminate this Agreement by giving the other Party sixty (60) days written notice of termination.

(d) Developer or County shall have the right to institute litigation relating to the New Law, and raise any issues regarding its applicability or validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that County would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, County shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subparagraph 2.4.1. (c) above shall apply.

2.4.2. Upon execution of this Agreement, Developer shall prepare two (2) sets of the vested Elements as provided in Section 2.2. of this Agreement, one (1) set for County and one (1) set for Developer, so that if it becomes necessary in the future to refer to any of the Vested Elements, there will be a common set available to both Parties.

2.4.3. The provisions of Section 10.9 of this Agreement relating to estoppel certificates shall apply to any request made by Developer to County with respect to the life of any entitlement covered by this subparagraph. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

ARTICLE 3. FEES

3.1 Fees.

(a) Developer shall be subject to all fees currently adopted by the County, including scheduled or periodic increases as provided for in the adopting ordinances or resolutions (“Current Fee”). Developer shall pay, without protest or without challenge, the Current Fees in effect at the time of the issuance of requested permit or entitlement.

In addition, Developer agrees to pay any new fees adopted by the County, or the recalculation of existing fees (“New Fees”) in effect at the time of the issuance of a requested permit or entitlement. Developer shall retain the right to challenge New Fees as permitted by law.

3.2 Dedications. No dedication of an interest in land shall be imposed by the County as a condition of Project development except as set forth in the public benefits or if required as a condition of obtaining a Discretionary Approval.

3.3 Taxes and Assessments. The County may impose new taxes and assessments without consent of Developer and/or Property Owner on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are also imposed on others land and/or projects similarly situated within the jurisdiction of the County, and only if the impact thereof does not fall disproportionately on the Property as compared with other similarly situated land and projects within the County’s jurisdiction or portion of the County’s jurisdiction subject to the tax or assessment. The amount of any taxes or assessments may be increased over time so long as the increase is applied consistently to all land or projects subject thereto. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

3.4 Life of Development Approvals and Permits.

(a) The Term of this Agreement and any of the Vested Elements shall not include any period of time during which (i) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay the construction of the Project; (ii) a condition of approval could not be satisfied because the condition of approval necessitated action by a public agency, and the public agency did not take such action; or (iii) a lawsuit involving any of the Vested Elements is pending. The Term of this Agreement shall be extended by the length of the period of time during which any situation described in (i) through (iii) exists.

3.5 Development Timing. This Agreement contains no requirement that Developer must initiate or complete development of the Project or Property or any portion thereof within any period of time set by County. It is the intention of this provision that Developer be able to develop the Project in accordance with Developer’s own schedule. However, nothing herein shall be construed to relieve Developer from any time conditions in any permit or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions.

ARTICLE 3. ANNUAL REVIEW

3.1. Annual Review. The annual review required by Government Code §65865.1 shall be conducted as provided in Section L-II 5.18 (F) of the Nevada County Land Use and Development Code, as of the date of this Agreement. Failure to conduct the annual review, standing alone, is not a breach of the Agreement.

3.2. Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 5.1 of this Development Agreement.

ARTICLE 4.

AMENDMENTS

4.1. Amendments to Agreement. This Agreement may be amended or modified from time to time or canceled in whole or in part by mutual consent of the Parties or their respective successors-in-interest or assigns in writing in accordance with Government Code Sections 65867, 65867.6 and 65858 as follows:

(a) Administrative Agreement Amendments. Any amendment to this Agreement which does not related to (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for reservation and dedication of land, including the location or size of areas committed to open space, (iv) conditions, terms, restrictions and requirements relating to subsequent Discretionary Actions, (v) any conditions or covenants relating to the Project or use of the Property, (iv) significant changes in the Project Approvals or any infrastructure construction, maintenance or securitization requirements, or (vii) monetary contributions by Developer, shall be determined to be an “Administrative Agreement Amendment” and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute any amendment hereto. Such amendment may be approved by the County Executive Officer or designee and does not require action by the Board of Supervisors. All other amendments to this Agreement shall be processed and approved in accordance with the same procedure, including without limitation, public notice and hearing requirements, as used for approval of this Agreement.

(b) Any Minor Administrative Amendment to a Project Approval or Subsequent Approval, as defined in Section 4.2 below, shall not require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

(c) No amendment, modification, waiver or change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which expressly refers to this Agreement and is signed by the duly authorized representatives of both parties, their successors or assigns.

4.2. Amendments to Project Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) The Planning Director shall have the authority to approve minor administrative changes to the Project Approvals in accordance with, and as defined by, Section L-II 5.8 of the Land Use and Development Code (“Minor Administrative Amendment”).

(b) Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Minor Administrative Amendment as set forth above, shall be subject to review, consideration and action pursuant to the applicable substantive and procedural provisions of the County’s General Plan, zoning, subdivision, and other applicable land use ordinances and regulations in effect when such an amendment or modification request is approved. Any such approved amendment or modification shall be reflected in an amendment to this Agreement and/or its pertinent exhibits. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be a Minor Administrative Amendment or otherwise permitted by this Agreement, shall be considered a new discretionary action by County (“Discretionary Action”) and may be subject to further CEQA review. County shall not be precluded from considering and/or applying any County law or other rule, regulation, standard or policy which is in effect at the time such Discretionary Action is acted upon by County.

ARTICLE 5.

DEFAULT, REMEDIES, TERMINATION

5.1. Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays, any failure by either Party to perform any material term or provision of this Development Agreement (but not including terms, provisions or conditions of any other Project Approvals) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within sixty (60) days following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing Party claims constitutes the Event of Default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, or (b) institution of legal proceedings with respect thereto. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

5.2. Remedies and Termination. If after notice and expiration of the cure periods and procedures set forth in Section 5.1, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Sections 5.3 or 5.4 of this Development Agreement and/or terminate this Development Agreement. In the event that this Development Agreement is terminated pursuant to this Section 5.2 and litigation or mediation is instituted which results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

5.3. Legal Action by Parties. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Notwithstanding the foregoing, in no event shall County be liable for loss of profits on any theory of liability.

5.4. Termination.

(a) Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.4.

(b) Survival of Obligations. Upon the termination of this Development Agreement pursuant to Section 5.2 or this Section 5.4, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation which is specifically set forth as surviving this Development Agreement. The termination of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) or Subsequent Approvals.

ARTICLE 6.

COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments. The Parties to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

6.2. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of County may possess authority to regulate aspects of the development of the Property separately from or jointly with County, and this Development Agreement does not limit the authority of such other public agencies. Developer or County (whichever is appropriate) shall apply in a timely manner for the permits and approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. County shall cooperate with Developer in its endeavors to obtain such permits and approvals.

6.3. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the issuance of Project Approvals and/or Subsequent Approvals for the Project, the Parties hereby agree to affirmatively cooperate in defending said action. Developer agrees to bear the litigation expenses of defense, including reasonable attorneys' fees. Developer shall be entitled to any award of reasonable attorneys' fees arising out of any such legal action. Developer shall have sole authority to select legal counsel for its defense.

6.4. Revision to Project. In the event of a court order issued as a result of a successful legal challenge, County and Developer shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Agreement and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

6.5. Indemnification Agreement. County and Developer shall enter into a mutually acceptable indemnification agreement in a form substantially similar to Exhibit J attached hereto.

ARTICLE 7.

TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign. Developer shall be permitted to sell, transfer or assign its rights and interests under this Agreement with respect to all or a portion of the Property concurrent with the sale, transfer or assignment of the underlying portion of the Property with the prior approval of the County, not to be unreasonably withheld.

7.2. Release upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Development Agreement pursuant to Section 7.1, Developer shall be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property sold, transferred or assigned and any subsequent default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (a) Developer has provided to County notice of such

transfer, and (b) the transferee executes and delivers to County a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property sold, transferred or assigned. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

7.3. Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors in interest, and all persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of such Property and is a burden upon such Property, (b) runs with such Property, (c) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1. Project Is a Private Undertaking. It is specifically understood and agreed by the Parties that (a) the development contemplated by this Development Agreement is a private development, (b) that neither Party is acting as the agent of the other in any respect hereunder, and (c) that Developer shall have full power over the exclusive control of the Property herein described subject only to the limitations and obligations of Developer under this Development Agreement.

8.2. Force Majeure. The Term of this Development Agreement and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, enemy action, civil disturbances, fire, unavoidable casualties, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of the Developer.

8.3. Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between County, Developer and Property Owner shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a “hard” copy to the offices of County, Developer and Property Owner as indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

County: Planning Director
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

Developer: Teichert, Inc.
P.O. Box 15002
Sacramento, CA 95851
Attn: President, Teichert Materials

with copy to: Taylor & Wiley
500 Capitol Mall, Suite 1150
Sacramento, CA 95814
Attn: James B. Wiley

Property Owner: Pamela Dobbas
8260 Hubbard Rd.
Auburn, CA 95602

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent, or (ii) within 5 days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received 24 hours after the date of deposit.

8.4. No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making County, Developer, and/or Property Owner joint venturers or partners.

8.5. Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement

to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either County or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then County and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to County and Developer.

8.6. Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

8.7. Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and County, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

8.8. Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of [written number] ([numeric symbols]) pages including the Recitals, and [written number] [numeric symbol] exhibits, attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Use Permit U06-012
Exhibit D	Map of the East Pit
Exhibit E	Map of the West Pit
Exhibit F	Use Permit U11-008
Exhibit G	Reclamation Plan RP11-001
Exhibit H	Ordinance Approving This Agreement
Exhibit I	Cents Per Ton Payment Table
Exhibit J	Form of Indemnification Agreement

8.9. Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Development Agreement is in full force and effect and a binding obligation of the parties, (b)

this Development Agreement has not been amended or modified either orally or in writing, or if amended, the Party shall describe the amendments, and (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, the Party shall describe the nature and amount of any such defaults. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that no default exists. Either the County Executive Officer or the Planning Director of County shall have the right to execute any certificate requested by Developer hereunder. County acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

8.10. Execution and Recordation. Pursuant to California Government Code Section 65868.5, within ten (10) days after the approval of the Enacting Ordinance, the County shall execute this Development Agreement and the Clerk of the Board shall record this Development Agreement with the Nevada County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended pursuant to Article 4, Article 5 or Article 6 of this Development Agreement, the County Clerk shall record notice of such action with the Nevada County Recorder.

8.11. No Waiver. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

8.12. Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

8.13. Applicable Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. The Parties agree that venue for any legal action brought under this Agreement shall be Nevada County.

8.14. No Third Party Beneficiaries. County, Developer, and Property Owner hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

8.15. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

8.16. Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', County Board of Supervisors', or other approvals have been obtained.

[signatures on next page.]

IN WITNESS WHEREOF, County and Developer and Property Owner have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

A. Teichert & Sons, Inc.
a California Corporation

By: _____
Name

Title

By: _____
Name

Title

APPROVED AS TO FORM:

By: _____
[Teichert Attorney signature]
Attorney for Developer

PROPERTY OWNER:

By: _____
Pamela Dobbas

APPROVED AS TO FORM:

By: _____
[Ms. Dobbas Attorney signature]
Attorney for Property Owner

COUNTY:

County of Nevada, a political subdivision of the
State of California

By: _____

ATTESTATION:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: _____
Alison Barratt-Green, County Counsel

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

MAP OF THE PROPERTY

EXHIBIT C

USE PERMIT U06-012

EXHIBIT D

MAP OF THE EAST PIT

EXHIBIT E

MAP OF THE WEST PIT

EXHIBIT F

USE PERMIT U11-008

EXHIBIT G

RECLAMATION PLAN RP11-001

EXHIBIT H

ORDINANCE APPROVING THIS AGREEMENT

EXHIBIT I

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EXHIBIT J
FORM OF INDEMNIFICATION AGREEMENT

This Indemnity Agreement ("Agreement") is made and entered on the date hereinafter set forth, effective on the date of project approval, by the [Applicant/Company, type of company] with regard to the following facts:

RECITALS

WHEREAS, Applicant is the record owner of that property located in the incorporated area of Nevada County near [city or town], on APNs [____], on which the applicant applied for approval of a [Project type], [Project number], to [project description, e.g., "subdivide XX acres into XX single-family residential lots"], and a [Project type], [Project number], to [project description, e.g., "implement a Comprehensive Master Plan"].

WHEREAS, on Applicant's request the County of Nevada ("County") approved the application for a [project type/s], subject to conditions, which actions are included within the subject "project approval."

WHEREAS, on Applicant's request the County of Nevada ("County") adopted a [environmental document] for the project ([env doc number, e.g., EIS03-101]) and approved the application for a [project type/s], subject to conditions, which actions are included within the subject "project approval."

AND WHEREAS, the conditions of project approval include a requirement that the Applicant sign and file an indemnity agreement in substantially the following form approved by County Counsel.

NOW THEREFORE, in consideration of the above-referenced project approval and in satisfaction of an express condition of that approval, the Applicant hereby agrees as follows:

1. The Applicant agrees to defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul the above-referenced project approval or any prior or subsequent project related approvals or conditions imposed by the County or any of its agencies, departments, commissions, agents, officers, or employees concerning said project, or to impose personal liability against such agents, officers, or employees based upon the project approval, which claim, action, or proceeding is brought within the time provided by law, including, without limitation, any claim for private attorney general fees claimed by or awarded to any party from the County.

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2. The County shall not be required to, but may, within its unlimited discretion, participate in the defense of any such claim, action, or proceeding in good faith, at its own expense; but such participation shall not relieve Applicant of his obligations under this Agreement.

3. The Applicant shall not be required to pay or perform any settlement of such claim, action, or proceeding covered by this Agreement unless the settlement is approved by the Applicant.

4. This Agreement shall be binding upon Applicant and his heirs, executors, administrators, assigns and successors in interest.

5. Upon execution of this Agreement, it may be recorded with the County Recorder's Office.

6. It is agreed and understood that this Agreement shall be interpreted fairly in accordance with its terms to effectuate the intent of the parties and not strictly for or against any party by reason of authorship that none of them is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

7. Applicant agrees to cooperate in good faith with County in performance of obligations as set forth in this Agreement.

IN WITNESS WHEREOF, Applicant has so agreed on the date hereinafter set forth.

APPLICANT

Dated: _____

Approved as to Form:

Counsel for County of Nevada

Approved as to Form:

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Counsel for [Applicant]