

Item # 9E #F

**City of Carson City  
Agenda Report**

**Date Submitted:** October 9, 2007

**Agenda Date Requested:** October 18, 2007  
**Time Requested:** 15 minutes

**To:** Redevelopment Authority/Board of Supervisors

**From:** Joe McCarthy, Office of Business Development

**Subject Title:** Action to approve the Owner Participation Agreement with City Management Services, owner Robert Rothe, doing business as Carson Southgate, LLC, to provide financial assistance on a reimbursement basis for the rehabilitation of the vacant, blighted former Wal-Mart building in the Southgate Shopping Center to allow for the occupancy of a 70,000 square-foot Burlington Coat Factory.

**Staff Summary:** This Owner Participation Agreement with City Management Services, doing business as Carson City Southgate, LLC will facilitate the completion of negotiations with Burlington Coat Factory for a long-term lease to occupy 70,000 square feet of retail space in the former, and now blighted, vacant Wal-Mart building. On August 16, 2007, the Redevelopment Authority determined that this project would not be feasible without a redevelopment incentive and that the incentive is consistent with the goals of its Redevelopment Plan and NRS Chapter 279, the Redevelopment of Communities. The Authority directed staff to negotiate and submit for final approval an owner participation agreement that secures the Redevelopment Authority's investment in the project with a second position on the property, a ten-year, declining lien, and a go-dark provision specific to the occupancy of Burlington Coat Factory.

**Type of Action Requested:** (check one)  
 Resolution                       Ordinance  
 Formal Action/Motion             Other (Specify) - None

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to approve the Owner Participation Agreement with City Management Services, owner Robert Rothe, doing business as Carson Southgate, LLC, to provide financial assistance on a reimbursement basis for the rehabilitation of the vacant, blighted former Wal-Mart building in the Southgate Shopping Center to allow for the occupancy of a 70,000 square-foot Burlington Coat Factory.

**Explanation for Recommended Board Action:** This incentive award is an inducement to accelerate completion of the tenant improvements associated with Burlington Coat Factory's specific requirements needed for a turnkey contract to lease.

Based on Burlington Coat Factory's national productivity model, we estimate that this new store will produce approximately \$15,000,000 in annual taxable sales revenues in a 70,000 square-foot store. This productivity will capture approximately \$300,000 in new sales tax for Carson City each year resulting in a seven-year payback period. In addition, this financial assistance is geared to stimulate additional investment in the Southgate Shopping Center and the immediate commercial area in Redevelopment Project Area No. 2.

**Applicable Statue, Code, Policy, Rule or Regulation:** NRS 279

**Fiscal Impact:** \$2,000,000 coming from economic development/redevelopment funding

**Explanation of Impact:** Sales tax capture in our commercial redevelopment district

**Funding Source:** Economic development/redevelopment funding

**Alternatives:** Additional direction to staff

**Supporting Material:** Owner Participation Agreement with Carson Southgate, LLC

**Prepared By:** Joe McCarthy

**Reviewed By:** Joe M. [Signature] Date: 10-8-07  
(Department Head)  
[Signature] Date: 10-9-07  
(City Manager)  
[Signature] Date: 10-9-07  
(District Attorney)  
[Signature] Date: 10-9-07  
(Finance Director)

**Board Action Taken:**

Motion: \_\_\_\_\_ 1) \_\_\_\_\_ Aye/Nay  
2) \_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

**Owner Participation Agreement**

**by and between**

**Carson City Redevelopment Authority and Board of Supervisors**

**and**

**Carson Southgate, LLC**

This Owner Participation Agreement ("**Agreement**") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007 ("**Effective Date**") is entered into by and between the Carson City Redevelopment Authority ("**RDA**") and the Board of Supervisors ("**BOS**") and Carson Southgate, LLC ("**Participant**"). RDA/BOS and Participant are hereinafter collectively referred to as the "**Parties.**"

### **Recitals**

WHEREAS, the Participant is the owner in fee simple of the Property, which is located within the Project Area;

WHEREAS, the RDA desires to achieve a goal established by the Redevelopment Plan for Carson City's Project Area No. 2 (the "**Project Area**") by providing a financial incentive to redevelop the real property in the Southgate Shopping Center that presently contains a vacant, blighted Wal-Mart Building, more specifically referred to as APN 009-125-07 (the "**Property**");

WHEREAS, completion of improvements to the Property (the "**Project**") pursuant to the terms and conditions of this Agreement is in the best interests of Carson City ("**City**") and the RDA and the health, safety and welfare of the residents and the taxpayers of the Project Area and the City. It is also in accordance with the provisions of Nevada Revised Statutes (NRS) Chapter 279, the Redevelopment of Communities;

WHEREAS, completion of the Project will assist in the elimination of blight in the Project Area, create additional jobs and improve safety in the Project Area;

WHEREAS, this Project would not be feasible but for the RDA's financial participation and assistance as further defined in this Agreement;

WHEREAS, the Project will substantially improve the economic and physical conditions in the Project Area and the City and is in accordance with the purposes and goals of the RDA's Redevelopment Plan;

WHEREAS, the RDA agrees to enter into this Agreement with the Participant in order to:

- Facilitate the redevelopment of the Property that is presently a vacant, blighted Wal-Mart Building in the Southgate Shopping Center; and
- Ensure a 70,000 square foot (or larger) Burlington Coat Factory store opens for business at the **Property** by April 1, 2008, or as soon thereafter as commercially reasonable;

WHEREAS, RDA's participation and financial assistance in this Agreement requires the Participant to execute a lien in the form of a deed of trust on the Property in favor of the City that provides security for the City's financial assistance. The lien shall decline evenly over a ten-year period, commencing March 1, 2008, as the City receives

the benefits from a sales tax generating retail business at the Property, subject to Participant's Tenant remaining in occupancy of and open for business in the Participant's premises;

WHEREAS, the RDA's participation and financial assistance in this Agreement requires the Participant to agree to meet minimum annual taxable sales revenue and a "go-dark" provision as further detailed in this Agreement; and

WHEREAS, the RDA has determined that this Agreement fulfills the requirements of Nevada Redevelopment Law and the RDA's rules governing participation by property owners, and that this Agreement, including without limitation, the provisions relating to the construction of the improvements and development of the Property are consistent with the provisions of the Redevelopment Plan and each of its applicable elements.

NOW, THEREFORE, in consideration of the mutual commitments by the Parties, as contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** The following words and phrases shall be defined as follows:
  - 1.1 **"BOS"** means the Carson City Board of Supervisors.
  - 1.2 **"City"** means the consolidated city-county government of Carson City Nevada.
  - 1.3 **"Effective Date"** means the date first written above, which shall be the date upon which this Agreement is approved by the RDA and the Carson City Board of Supervisors.
  - 1.4 **"Improvements"** means collectively the public improvements and the structures to be constructed on or appurtenant to the Property.
  - 1.5 **"Participant"** means Carson Southgate, LLC, and its successors and assigns. The term "Participant" shall not include the City, the RDA or the BOS should one become the Participant's successor, assignee or transferee of the Property, the Project, or any portion thereof.
  - 1.6 **"Project"** means the development of the Property and the design, development and installation of the Improvements as described in the Conditions of Approval attached hereto and incorporated herein as Exhibit "A".
  - 1.7 **"Project Area"** means the Redevelopment Project Area established by the Redevelopment Plan.

- 1.8 **“Property”** means the real property that includes a vacant former Wal-Mart Building in the Southgate Shopping Center, in Carson City with APN 009-125-07.
- 1.9 **“RDA”** means the Carson City Redevelopment Authority.
- 1.10 **“Redevelopment Law”** means Nevada Revised Statutes Chapter 279 entitled Redevelopment of Communities.
- 1.11 **“Redevelopment Plan”** means the Redevelopment Plan for Carson City’s Project Area No 2. adopted by the RDA and BOS by Ordinance No. 2004-17 September 28, 1994, and as amended on May 18, 2006 by Ordinance No. 2006-12-and on July 19, 2007 by Ordinance No. 2007-19 and as the same may hereafter be amended from time to time.
- 1.12 **“Tenant”** means Burlington Coat Factory or any subsequent tenant that leases approximately 70,000 square feet of retail space at the Property from Participant or its agent.
2. **PROJECT DESCRIPTION.** The Project being assisted with RDA Incentive Funds is the following: the redevelopment of the vacant former Wal-Mart Building in the Southgate Shopping Center to accommodate a 70,000 square foot, ten-year lease to Burlington Coat Factory.
3. **RDA FUNDING.** Participant agrees to improve the Property in a manner and pursuant to a schedule described in this Agreement. The RDA funding shall not exceed TWO MILLION DOLLARS (\$2,000,000).
- 3.1 **Certificate of Completion.** Upon completion of the requirements set forth in Section 5.6 below of this Agreement, Participant shall submit to the RDA a written request for reimbursement by the Participant to the RDA (“Certificate of Completion”). The Certificate of Completion shall be in such form as will enable it to be recorded among the official records of Carson City, Nevada. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the Nevada Revised Statutes.
- 3.2 **Incentive Funds.** Upon submission by Participant to the RDA of the Certificate of Completion and Participant’s execution of a Deed of Trust and Promissory Note, RDA shall release funds in the amount of TWO MILLION DOLLARS (\$2,000,000) to Participant (the “Incentive Funds”). The Incentive Funds shall constitute a lien on the Property in the form of a Second Deed of Trust and Promissory Note. Said lien and Deed of Trust shall be subordinated and in second position to any lien or deed of trust securing a loan refinancing Participant’s primary financing for the

Property and the Project, and the RDA will execute and deliver any documents requested by Participant which are necessary or appropriate to implement such subordination.

3.3 **Declining Lien.** The lien shall decline yearly at a rate of ten percent (10%) per year for ten (10) years subject to the following requirements.

3.3.1 **Annual Occupancy and Operations Requirement.** The lien shall decline yearly by \$200,000 so long as Participant's Tenant is occupying the Property and is open for business in the Property during the twelve month period in question. The Participant shall annually provide the City and RDA with audited productivity reports for its tenant during the ten (10) year period of the declining lien.

3.3.2 **Go-Dark Provision.** In the event that Burlington Coat Factory closes its store within the ten (10) year repayment period, the Participant will execute a lease with another tenant to occupy the vacated space that is expected to produce retail sales in excess of \$10,000,000 per year of taxable sales. The new lease must extend past the original repayment period of ten years for the same length of time that the Burlington Coat Factory was not open for business in the Property or repayment will be required for the remaining time-period. Failure of Participant to execute a lease with a new tenant within twelve (12) months of the date on which the Burlington Coat Factory is closed shall cause Participant to repay the Note in accordance with Section 3.4 of this Agreement.

3.4 **Repayment.**

3.4.1 **In Case of Transfer of Property.** Participant agrees to repay to the RDA the percentage of the total incentive amount shown below if, before the end of the **time-period**, shown as follows, any portion of the subject property is subdivided, parceled, sold, conveyed, assigned or transferred; or more than fifty percent of the stock or ownership of the Participant is transferred or sold. The time period provided for repayment begins on the date of the issuance of a certificate of occupancy. The amount owed is due upon the recordation of any instrument conveying Participant's interest in the subject property, or upon the delivery to the buyer of any certificate of ownership in excess of fifty percent of the outstanding ownership. Upon repayment of the amount due under this paragraph, the Participant's successor in interest is no longer obligated by the provisions of this Agreement.

Year 1	\$2,000,000
Year 2	\$1,800,000

Year 3	\$1,600,000
Year 4	\$1,400,000
Year 5	\$1,200,000
Year 6	\$1,000,000
Year 7	\$ 800,000
Year 8	\$ 600,000
Year 9	\$ 400,000
Year 10	\$ 200,000

The repayment obligation set forth in this Section 3.4 shall not apply (i) if the purchaser, assignee or transferee of the Property assumes Participant's obligations set forth in this Agreement in writing, (ii) the transfer of Participant's ownership is among existing owners of the Property such that their respective ownership percentages are readjusted, or (iii) an owner of Participant transfers his or her ownership interest to an entity formed by said owner to implement said owner's estate planning.

**3.4.2 In Case of Closure of Burlington Coat Factory Store.** In the event that Burlington Coat Factory closes its store within the ten-year repayment period, Participant will repay the RDA \$200,000 for each year within the repayment period after such closure during which the Property is not leased to another tenant that is expected to produce retail sales in excess of \$10,000,000 per year of taxable sales. Such repayment shall be made prior to the end of each applicable year.

**3.5 Release of Deed of Trust.** When the obligations under the Promissory Note are satisfied by Participant, the RDA will execute an acknowledgement that the Promissory Note has been satisfied and will release the Deed of Trust that has been recorded against the Property.

**4. PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** Participant acknowledges and agrees that the execution of this Agreement by the RDA does not constitute approval for the purpose of the issuance of building permits for the construction of the Project. It also does not limit in any manner the discretion of City in such approval process, and does not relieve Participant from the obligation to obtain all necessary approvals and permits for the construction of the Project. This includes without limitation, the approval of architectural plans, the issuance of any certificates required in connection with the Project, and the issuance of building permits.

**4.1 Approval Process.** The Participant shall be solely responsible for, and shall promptly pay when due, all customary and reasonable fees and charges in connection with obtaining building permits and other approvals for the Project. This includes, without limitation, those related to the



processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, architectural review, historic review, and any subsequent approvals for the Project or the development of the Property.

- 4.1.1 The Participant agrees that it shall obtain all necessary permits and approvals which may be required by the City, or any other governmental agency having jurisdiction over the construction of the Project or the development of the Property;
- 4.1.2 The Participant agrees that it shall comply with all conditions imposed by the RDA or the City in connection with the Project;
- 4.1.3 The Participant agrees that it shall not commence any construction of the Project prior to issuance of building permits; and
- 4.1.4 The Participant agrees that except for the RDA's financial reimbursement of \$2,000,000, all costs of demolition, design, rehabilitation and tenant improvements related to the Project that are requirements imposed in connection with any subsequent approvals for the development of the Project shall be borne solely by Participant and shall not be an obligation of the RDA or the City. (This does not preclude additional redevelopment financial contributions that may be justified as they relate to future tenant opportunities.)

## 5. **DEVELOPMENT PROVISIONS.**

- 5.1 **Time for Construction.** Upon receiving all necessary approvals, Participant shall promptly begin construction of the Improvements for the Project and shall diligently prosecute to completion. Participant shall timely complete all Improvements necessary for a Burlington Coat Factory opening on or before April 1, 2008. This date may be extended by the Participant on a monthly basis, provided that on the first day of each month following April 1, 2008, the Participant shall notify RDA in a manner specified for notices in Section 10.1 of this Agreement. Such monthly extensions shall not be permitted to extend the Construction period beyond six months after the April 1, 200~~8~~ date, at which time Participant will be in material default of this Agreement.
- 5.2 **Rights of Access.** In addition to those rights of access to and across the Property to which the RDA and City may be entitled by law, employees or agents of the RDA or City shall have the right of access to the Property without charge or fee, at any time, to inspect the work being performed at the Property. The RDA or City shall give the Participant notice of its intent to so enter a reasonable period of time in advance of such entry (except in the case of an emergency, in which case notice shall not be

required). In exercising its right of entry, the RDA shall use its best efforts to minimize interference with the operations or other activities of the Participant.

- 5.3 **Compliance with Laws.** The Participant shall carry out the construction of the Project in conformity with all applicable local, state and federal laws and regulations, including all applicable local, state and federal occupational, safety, health and labor standards.
- 5.4 **Progress of Construction.** Participant shall submit to the RDA from time to time, within ten (10) days following the RDA's request, but not more frequently than monthly, a written report of the progress of the construction when and as requested by the RDA. The report shall be in such form and detail as to inform the RDA fully of the status of construction.
- 5.5. **Access.** Until construction of the Project has been completed, Participant authorizes the RDA to have full access to all building inspection reports and other information at the City to assist the RDA in reviewing the actual progress of construction. Participant shall allow the RDA to review construction documents and records maintained by Participant in the ordinary course of the construction as may be reasonably requested by the RDA.
- 5.6 **Completion for Project.** The Participant will have satisfied its obligations regarding the development of the Property after:
  - 5.6.1 Completing the Project and the Improvements in accordance with the provisions of this Agreement;
  - 5.6.2 Upon issuance of a Certificate of Occupancy by the City; and
  - 5.6.3 The public opening of Burlington Coat Factory.
- 5.7 **Uses.** Participant agrees to comply with all provisions of the Redevelopment Plan and shall use the Property solely for purposes authorized in this Agreement, the Redevelopment Plan, and the City's Land Use Master Plan.
- 5.8 **Use of the Redevelopment Incentive to Eliminate Blight.** Participant agrees that the incentive is solely to repay the costs incurred by Participant to procure Burlington Coat Factory as a tenant in the Property, including but not limited to costs of labor and materials necessary for physical improvements, modifications or changes to existing buildings or new construction. Expenses necessary to render a building safe, habitable and serviceable may be included in these costs.

- 5.9 **Prevailing Wage Requirements.** Participant and its subcontractors and agents, shall comply with Nevada Revised Statutes Section 338.010 *et seq.* and its regulations along with NRS Chapter 279.500 and shall be responsible for carrying out the requirements of such provisions. The Participant and its subcontractors must obtain a Public Works Project Number. The most current prevailing wage rates for all classified positions are published by the Nevada Labor Commissioner's Office.
- 5.10 **Prevailing Wage Indemnification.** The Participant agrees to unconditionally indemnify, reimburse, defend, protect and hold harmless the RDA, the City and their respective elective and appointive boards, commissions, officers, agents, attorneys, consultants and employees, and their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs, with counsel reasonably acceptable to the RDA and the City), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of the RDA, the City or the Participant related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the RDA and the City do not, and shall not, waive any rights against the Participant, which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the RDA or the City.
- 5.11 **Equal Opportunity.** During the construction of the Project, Participant shall not discriminate on the basis of race, color, religion, creed, sex, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and shall direct its contractors and subcontractors to refrain from discrimination on such basis.
- 5.12 **Obligation to Refrain from Discrimination.** The Participant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or

enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, marital status, ancestry, or national origin of any person. The Participant shall not discriminate against or segregate any person or of group of persons on account of race, color, religion, creed, sex, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property. Nor shall the Participant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

- 5.13 **Hazardous Waste Indemnification.** The Participant shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless the RDA and the City and their elected and appointed boards, commissions, officers, agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief (whether known or unknown and whether based on personal injury, property damage, or contamination of, or adverse effects upon, the environment or natural resources), and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs, with counsel reasonably acceptable to the RDA and the City) and any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials, and administrative, enforcement or judicial proceedings and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the presence, release or discharge, or alleged presence, release or discharge, of any Hazardous Materials in, on or under the Property, pursuant to this Agreement, or the failure to comply with any Environmental Laws, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the RDA and the City do not, and shall not, waive any rights against the Participant, which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the RDA.

6. **PARTICIPANT'S DEFAULT.** The following events shall constitute an event of default ("**Event of Default**") on the part of Participant.

- 6.1 If the Participant shall fail to keep, observe or perform any of its covenants, duties or obligations under this Agreement and such default shall continue for a period of thirty (30) days after written notice thereof from the RDA to the Participant, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Participant fails to promptly begin and diligently proceed to cure such default promptly after such notice;
  - 6.2 The making by Participant of an assignment for the benefit of creditors, or filing by Participant of a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law;
  - 6.3 The appointment of a receiver or trustee of the property of Participant which appointment is not vacated or stayed within ninety (90) days after such appointment; or
  - 6.4 The filing of a petition in bankruptcy against Participant or for its reorganization under any bankruptcy or insolvency law which is not dismissed or stayed within ninety (90) days after such filing.
  - 6.5 The failure to repay the Note as required under Section 3.4 of this Agreement.
7. **RDA'S REMEDIES IN THE EVENT OF DEFAULT.** If an Event of Default on the part of Participant shall occur and be continuing beyond any applicable cure period, then shall have the following rights and remedies in addition to other rights available to it under law or this Agreement.
- 7.1 **Termination.** RDA shall have the right to terminate this Agreement. If the RDA makes such election, the RDA shall give written notice to Participant and to any mortgagee entitled to such notice, specifying the Event of Default and stating that this Agreement shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, and upon the date specified in such notice, this Agreement and all rights of Participant under this Agreement shall expire and terminate.
  - 7.2 **Injunction.** The RDA shall have the right to seek to restrain, by injunction, the commission of or attempted or threatened commission of an Event of Default and to obtain a judgment or order specifically compelling performance of any such term or provision of this Agreement without, in either case, being required to prove or establish that the RDA does not have an adequate remedy at law. Participant hereby waives the requirement of any such proof and acknowledges that Agency would not have an adequate remedy at law for Participant's commission of an Event of Default hereunder if such Event of Default was voluntary on the part of

Participant and could be prevented or remedied by injunctive relief or specific performance.

7.3 **Damages.** The RDA shall be entitled to proceed against Participant for all direct damages, costs and expenses arising from Participant's commission of an Event of Default hereunder and to recover all such direct damages, costs and expenses, including reasonable attorneys' fees.

7.4 **Foreclosure.** The RDA shall have the right to foreclose on the Deed of Trust in the event of a default of this Agreement on the part of Participant.

8. **INDEMNIFICATION/HOLD HARMLESS.** Participant hereby shall indemnify, hold harmless and defend, not excluding the right of the RDA and City to participate, the RDA and the City, their respective elected and appointed boards, commissions, officers, agents and employees (collectively, "**Indemnified Parties**") from and against any or all losses, expenses, claims, suits, demands, costs (including attorneys' fees and expenses of litigation), damages and liabilities of every kind (collectively, "**Claims**"), including without limitation, claims arising in connection with any personal injury, death or property damage, which may arise directly or indirectly as a result of any action or inaction, error, negligent or wrongful act or omission, breach of warranty, willful misconduct or fraudulent misrepresentation of Participant's or Participant's contractors, subcontractors, agents or employees in connection with the construction, improvement, operation or maintenance of the Project, the public Improvements, or any part thereof. Participant shall defend the RDA, the City, and their elected and appointed boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of Participant's performance of its rights and obligations under this Agreement.

9. **LIABILITY AND WORKERS COMPENSATION INSURANCE.** Participant shall maintain in force during the construction of the Project and through the issuance of the Certificate of Completion, comprehensive general liability and property damage insurance, including personal injury, contractual, and owned and non-owned automobile insurance with such coverage and limits as may be reasonably requested by the RDA and the City from time to time, but in no event for less than the sum of THREE MILLION DOLLARS (\$3,000,000) per occurrence combined single limit (which coverage amount may be obtained in part through umbrella coverage). During the term of this Agreement, Participant shall maintain Worker's Compensation insurance for all persons employed by Participant for work at the Project site. Participant shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Participant agrees to indemnify the City and the RDA for any damage resulting from Participant's failure to maintain or require any such insurance.

- 9.1 **Additional Insureds.** Liability insurance policies shall name the RDA, the City, its officers, employees and immune contractors as additional insureds for all liability arising out of this agreement. The endorsement shall be provided which states the coverage is primary insurance and that no other insurance held by the RDA or the City will be called upon to contribute to a loss under this coverage.
- 9.2 **Evidence of Insurance.** Participant shall furnish to the RDA duplicate originals or certificates evidencing such insurance coverage or coverages prior to commencement of construction (or any work related thereto) on the Property, but in no event later than thirty (30) days after the Effective Date, and such certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days' prior written notice to Agency.
- 9.3 **Cancelled or Reduced Coverage.** If such coverage is canceled or reduced, Participant shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with the RDA and the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, RDA or the City may, without further notice and at its option, procure such insurance coverage at Participant's expense, and Participant shall promptly reimburse the RDA or City for such expense upon receipt of billing from the RDA or the City.
- 9.4 **Approved Insurer.** The insurance policies specified in this Section shall be provided by a reputable company or companies currently rated A.M. Best as A-VII or better, licensed to do business in Nevada and having agents in Nevada upon whom service of process may be made.
- 9.5 **Waiver of Subrogation.** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
10. **LIMITED LIABILITY.** The City and RDA will not waive and intends to assert available NRS Chapter 41 Liability limitations in all cases.
11. **BUSINESS LICENSE.** Participant and any Tenant of Participant shall obtain a Carson City business license and provide a copy of same to Carson City Purchasing & Contracts, 201 North Carson Street, Suite 11, Carson City, Nevada 89701, prior to commencing work.
12. **COMPLIANCE WITH LAW.** Participant and any Tenant of Participant shall comply with all Federal, State and local laws and regulations adopted thereunder.

13. **GENERAL PROVISIONS**

13.1 **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) Personal delivery, in which case notice is effective upon delivery;

(ii) Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

**TO RDA:**

Carson City Redevelopment Authority  
201 South Carson Street  
Carson City, NV 89701  
Attn: Joe McCarthy, Economic Development/Redevelopment Mgr  
Telephone (775) 887-2101  
Facsimile (775) 887-2286

**TO PARTICIPANT:**

Carson Southgate, LLC  
c/o City Management Services, Inc.  
Attn: Robert Rothe  
3000 Northup Way, Suite 101  
Bellevue, WA 98004  
Telephone: 425-827-2001  
Facsimile: 425-827-2855



- 13.2 **Conflicts of Interest.** No member, official or employee of the RDA shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.
- 13.3 **Warranty Against Payment of Consideration for Agreement.** Participant warrants that it has not paid or given, and will not pay or give, to any third party, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.
- 13.4 **Non-liability of City Officials.** No member, official or employee of the RDA or the City shall personally be liable to Participant, or any assignee or successor of Participant, in the event of any default or breach by the Agency or for any amount which may become due to Participant or its successors or on any obligation under the terms of this Agreement.
- 13.5 **Parties Not Co-Venturers; No Third-Party Beneficiaries.** No provision of the Agreement nor any act of the City or the RDA shall be deemed or construed to establish the Parties as partners, co-venturers, or principal and agent with one another or to create any relationship of third-party beneficiary.
- 13.6 **Litigation.** In the event of any dispute between the Parties hereto arising out of this Agreement the non-prevailing party agrees to pay to the prevailing party all sums paid or incurred by the prevailing party as reasonable costs and expenses and incurred in the legal proceedings, including but not limited to reasonable attorneys' fees.
- 13.7 **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. If as a result of any final judgment this Agreement or any other required approvals under this Agreement are determined to be invalid, the Parties agree to cooperate to amend this Agreement and other necessary documents in order to accomplish the basic purposes and intent of this Agreement.
- 13.8 **Counterparts; Entire Agreement; Captions.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall be deemed to be one agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations or agreements between the Parties with respect thereto. The captions of the sections and articles of this

Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

- 13.9 **Amendments; Waivers.** This Agreement may be amended only by a written instrument executed by the Parties. No waiver of any provision of this Agreement shall constitute or be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless it is executed in writing by the Party making the waiver.
- 13.10 **Governing Law; Venue.** The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement without giving affect to any principle of conflict of law that would require application of the law of any other jurisdiction. Principle consents and agrees to that any action to enforce or interpret this Agreement shall be filed in the First Judicial District Court for Carson City, Nevada.
- 13.11 **Waiver of Breach.** Failure of a party to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms shall not operate as a waiver of any of its rights or remedies as to any other breach.
- 13.12 **Lobbying.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
- 13.12.1 Any federal, state, county or local agency, legislature, commission, counsel or board;
  - 13.12.2 Any federal, state, county or local legislator, commission member, counsel member, board member or other elected official; or
  - 13.12.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
- 13.13 **Recordation; Further Assurances.** The RDA is authorized to record in the official records of Carson City Nevada this Agreement and any amendments. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as may be reasonably necessary to carry out the intent of this Agreement.
- 13.14 **Proper Authority.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Participant acknowledges that

this Agreement is effective only after approval by the Carson City Board of Supervisors.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written and intend to be legally bound thereby.

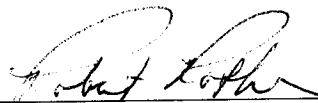
**CARSON CITY REDEVELOPMENT AUTHORITY**

\_\_\_\_\_  
By: Robin Williamson  
Its: Chairman

ATTEST:

\_\_\_\_\_  
By:  
Its:

**CARSON SOUTHGATE, LLC**  
By: City Management Corporation, Manger

  
\_\_\_\_\_  
By: Robert Rothe  
Its: President

**Exhibit "A"**

Conditions of Approval