

Mem # 9A #B

**City of Carson City
Agenda Report**

Date Submitted: November 6, 2007

Agenda Date Requested: Nov. 15, 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 only, for the rehabilitation of the vacant, blighted former Wal-Mart building in the Southgate Shopping Center to allow for the occupancy of a 55,000 square-foot, nationally-recognized sporting goods store.

Staff Summary: This Owner Participation Agreement with City Management Services, doing business as Carson City Southgate, LLC will facilitate the completion of negotiations with a nationally recognized sporting goods store to execute a long-term lease to develop 55,000 square feet of retail space on the site of the former, and now blighted, vacant Wal-Mart building. On October 18, 2007, the Redevelopment Authority (RDA) directed staff and Mr. Rothe to return with a redevelopment incentive package consistent with the goals of its Redevelopment Plan and NRS Chapter 279, the Redevelopment of Communities. This package includes an annual \$200,000 sales tax reimbursement to make it economically possible for the property owner to attract an Class A tenant that will generate more than \$450,000 in new sales tax annual for Carson City, an approximate net of \$250,000 in new sales taxes annually. The RDA's approval of an owner participation agreement is intended to secure 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. The new tenant will provide new construction to replace the severely adequate existing structure and enter into a ten-year lease to do business in Carson City.

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 only for the rehabilitation of the vacant, blighted former Wal-Mart building in the Southgate Shopping Center to allow for the occupancy of a 55,000 square-foot, nationally-recognized sporting-goods store.

Explanation for Recommended Board Action: This incentive award is an inducement to accelerate the signing of a contract with the nationally recognized sporting goods store as soon as

possible for an intended opening no later than the fall of 2008. Based on this store's national reputation, this financial assistance is intended to stimulate additional investment in the Southgate Shopping Center and the immediate commercial area in Redevelopment Project Area No. 2. It will be a positive addition to the commercial corridor, bolstering sales and commercial rents throughout the Redevelopment District. In addition, this partnership with the City will mitigate the potential that the district would become a landing spot for discount retailers that reduce values and encourage future blight and economic hardship.

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

Fiscal Impact: \$200,000 coming from the approximately \$450,000 in new sales tax generated by this one store

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

Funding Source: Redevelopment agreement stipulates the reimbursement

Alternatives: Additional direction to staff

Supporting Material: Owner Participation Agreement with Carson Southgate, LLC

Prepared By: Joe McCarthy

Reviewed By: <u>Joe McCarthy</u>	Date: <u>11-6-07</u>
(Department Head)	
<u>[Signature]</u>	Date: <u>11-6-07</u>
(City Manager)	
<u>Melanie Boukett</u>	Date: <u>11-6-07</u>
(District Attorney)	
<u>[Signature]</u>	Date: <u>11-6-07</u>
(Finance Director)	

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

OPERATING COVENANT AND AGREEMENT

by and between

Carson City Redevelopment Authority and Board of Supervisors

and

Carson Southgate, LLC

OPERATING COVENANT AND AGREEMENT

This Operating Covenant and Agreement (“OCA” or “**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 certain 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**”) and is located within Carson City Project Area No. 2 (the “**Project Area**”);

WHEREAS, the RDA desires to achieve a goal established by the Redevelopment Plan for the Project Area by providing a financial incentive to redevelop and lease the Property;

WHEREAS, completion of improvements to the Property and leasing the Property to a sales tax generating retailer 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 improvements to the Property and lease of the retail space on the Property will assist in the elimination of blight in the Project Area, create additional jobs and improve safety in the Project Area;

WHEREAS, the lease of the property to a national sporting goods retailer would not be feasible but for the RDA’s financial participation and assistance as further defined in this Agreement;

WHEREAS, the construction of improvements and lease of the Property 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

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- Ensure the lease of approximate fifty five thousand (55,000) square feet of retail space to a national sporting goods retailer that is anticipated to be open for business at the Property by Fall of 2008, or as soon thereafter as commercially reasonable;

WHEREAS, in order to accomplish RDA goals and purposes, this OCA provides that the Participant will lease the Property in the manner and for the uses described in this OCA. The Participant represents, and the Agency acknowledges, that the Participant's improvement and use of the Property as called for under this OCA will afford the RDA the opportunity to achieve important public policy objectives. Participant acknowledges that it is willing to lease and improve the Property as set forth herein in support of such public purposes and in consideration for the promises of the RDA as set forth below;

WHEREAS, RDA's participation and financial assistance in this Agreement requires the Participant's Tenant to meet minimum taxable gross sales tax revenue of FIFTEEN MILLION DOLLARS (\$15,000,000) annually in order for Participant to receive the maximum annual revenue sharing proceeds of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) from the City; 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:

AGREEMENT

NOW THEREFORE, in consideration of the mutual commitments by the City, RDA and Participant, 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 “**Leased Premises**” means approximately FIFTY-FIVE THOUSAND (55,000) square feet of retail space at the Property to be leased by Tenant, a national sporting goods retailer.
- 1.6 “**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.
- 1.7 “**Project**” means the development of the Property and the design, development and installation of the Improvements in accordance with City Ordinances and Codes.
- 1.8 “**Project Area**” means the Redevelopment Project Area established by the Redevelopment Plan.
- 1.9 “**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.
- 1.10 “**RDA**” means the Carson City Redevelopment Authority.
- 1.11 “**Redevelopment Law**” means Nevada Revised Statutes Chapter 279 entitled Redevelopment of Communities.
- 1.12 “**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.
- 1.13 “**Tenant**” means a national sporting goods retailer or any subsequent tenant that leases approximately 55,000 square feet of retail space at the Property from Participant or its agent.

2. **PROJECT DESCRIPTION.** The Project is the redevelopment of the vacant former Wal-Mart Building in the Southgate Shopping Center. The Project includes retail space of approximately 70,000 square feet to be leased to Burlington Coat Factory and 55,000 square feet to be leased to a national sporting goods retailer. This OCA is limited to the improvements and lease of 55,000 square feet of retail space located on the Property to a national sporting good

retailer at the Property.

3. **RDA REVENUE SHARING COVENANT.** The Participant agrees to exercise its right to enter into a fifteen (15) year lease to lease approximately FIFTY-FIVE THOUSAND (55,000) square feet of retail space at the Leased Premises. The Participant agrees to make all necessary improvements to the Property so that its Tenant can operate a national sporting retail business in the Leased Premises by the Fall of 2008. The Participant agrees to devote the Property to commercial retail uses for at least fifteen (15) years. The Participant shall execute and record this OCA for the benefit of the RDA and the City binding the Participant, its successors, heirs and assigns. In consideration of the Participant entering into this OCA, the RDA and the City agree to participate in a revenue sharing covenant with the Participant for fifteen (15) consecutive years, commencing upon the date Tenant generates taxable sales revenue at the Leased Premises.

- 3.1 **Projected Gross Sales Revenue.** Based upon the current market conditions, Participant is informed that its Tenant anticipates achieving projected gross taxable sales revenue of a minimum of FIFTEEN MILLION DOLLARS (\$15,000,000) annually for the Leased Premises. (The RDA understands that this Tenant may generate annual taxable sales of approximately TWENTY-FIVE MILLION DOLLARS (\$25,000,000) in its first full year of operation in Carson City, an estimate related to the Tenant's regional and national productivity success in comparable communities.)

- 3.2. **Calculation of Revenue Sharing Covenant.** During the fifteen (15) years of this OCA and upon the expiration of each year that Tenant generates and reports gross taxable sales revenue at the Leased Premises, the City and RDA shall determine the amount of revenue generated and reported by Tenant based upon the Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue. The determination shall be based upon a review and a right to audit the monthly sales tax reports submitted by the Tenant to the Nevada Department of Taxation. If the Tenant's reported gross taxable sales revenue meets or exceeds FIFTEEN MILLION (\$15,000,000) annually, the City shall pay Participant ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) from the proceeds collected from the Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue. Payment shall be made within thirty (30) days upon the City and RDA's receipt of Tenant's annual Nevada sales tax reports at the Leased Premises. However, the maximum amount the Participant may receive from the proceeds of the Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue is ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) each year over the fifteen (15) year

term of this OCA, subject to Section 3.3 below.

- 3.3 **Catch-up Provision.** In the event Tenant fails to report gross taxable sales revenue that meet or exceed FIFTEEN MILLION DOLLARS (\$15,000,000) annually, Participant's ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000) annual payment from the City shall be reduced dollar-for-dollar by the reduction in Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue that the Tenant fails to generate for the City a "Payment Reduction". However, if one or more Payment Reductions occur, the City shall make additional payments to Participant, dollar-for-dollar until Participant has received an amount equal to the full amount of the Payment Reductions, for each dollar generated from the proceeds of the Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue as a result of Tenant's gross taxable sales revenue exceeding FIFTEEN MILLION DOLLARS (\$15,000,000) annually. Such additional payments shall be made as soon as possible after the Payment Reductions in question.
- 3.4 **Assignability.** This OCA may be assignable if mutually agreed upon in writing by all the parties.
- 3.5. **Renegotiation of the OCA for Non-Appropriation.** The City and RDA's obligations under this Agreement to share revenue, as provided herein, is conditioned upon sufficient funds being collected, distributed and otherwise being made available by state law. As a condition of participation in the program, Participant agrees that if for any reason the state law governing Carson City's ability to receive sales tax is amended to withdraw, limit, or impair Carson City's ability to collect those funds, this Agreement may be renegotiated, in good faith, the Parties shall use their best efforts to achieve similar resulting payments, and Participant waives any and all claim(s) for damages that may arise against the City and/or RDA.
4. **OPERATING COVENANT FOR A FIXED TERM.** In consideration of RDA and the City's offer to share revenue generated by the sales tax of the Tenant at the Leased Premises, the Participant agrees to enter into a commercial lease with the Tenant at the Property for a period of not less than fifteen (15) consecutive years from the date the Participant's Tenant is open for business to the public. To implement the obligations of the parties under this Agreement, Participant shall submit for RDA's and the City's review, an executed lease between Participant and Tenant for the Leased Premises.
5. **DUTIES AND OBLIGATIONS OF THE PARTICIPANT.** Within twenty (20) days upon a Lease being executed with Tenant, Participant will provide the

City and RDA:

- 5.1. **Lease.** Copies of the lease for the Leased Premises;
- 5.2. **Consent to Dissemination of Sales Tax Reports.** Participant shall obtain a written consent from the Tenant that it has no objection to this OCA. Participant shall further obtain from the Tenant a written consent to allow the release of any sales tax reports and information pertaining to the sales tax generated at the Leased Premises that is submitted to the Nevada Department of Taxation during the lease term. Participant shall provide to the City and RDA monthly gross annual sales tax reports submitted to the Nevada Department of Taxation.
- 5.3. **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.
- 5.4. **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.

- 5.5 **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.
- 5.6 **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.
- 5.7 **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 that is not dismissed or stayed within ninety (90) days after such filing.
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 **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.

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 of any Improvements to the Property, 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 who 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; or

(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

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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 **Warranties 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.
- 13.15. **Time is of the Essence.** In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date will be deemed to be the succeeding day on which the public agencies and major banks are open for Participant.
- 13.16 **Execution of Additional Documents.** In addition to documents and other matters specifically referenced in this Agreement, the Participant, City and RDA agree to execute and/or deliver, or cause to be executed and/or delivered such other documents and/or materials, including additional escrow instructions carrying out the terms and conditions of this Agreement, as may be reasonably necessary to effect the transaction contemplated by this Agreement.
- 13.17 **Governing Law.** The validity, construction and enforceability of this Agreement will be governed in all respects by the law of Nevada applicable to agreements negotiated, executed and performed in Nevada by Nevada residents, whether one or more of the parties will now be or hereafter become a resident of another state.
- 13.18 **Ambiguities in Agreement.** Both Parties have participated in the drafting of this Agreement and any ambiguities in the language of the Agreement will not be construed against either party.
- 13.19 **Attorney's Fees.** In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party will be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.

13.20 **Effect of Termination.** No termination of this Agreement will be construed as relieving a party from liability to any other party for breach of this Agreement.

13.21 **Discrimination.** Participant agrees not to discriminate on the basis of race, color, creed, national origin, sex, age, disability, or any other legally protected class in the sale, lease, rental, use or occupancy of the subject Property or any improvements made to the subject Property.

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

CARSON CITY BOARD OF SUPERVISORS

By: Marv Teixeira
Its: Mayor

CARSON SOUTHGATE, LLC
By: City Management Corporation, Manger

By: Robert Rothe
Its: President