

**City of Carson City
Agenda Report**

Date Submitted: October 13, 2010

Agenda Date Requested: October 21, 2010

Time Requested: 30 minutes

To: Board of Supervisors

From: Joe McCarthy, Office of Business Development

Subject Title: Action to approve an amended and restated Operating Covenant and Agreement by and between Carson City Redevelopment Authority and the City of Carson City and Carson Southgate, LLC.

Staff Summary: City Management Services, doing business as Carson City Southgate, LLC in Redevelopment Project Area No. 2, is the owner in fee simple of certain real property in the Southgate Shopping Center, APN 009-125-07. In 2006, the Board of Supervisors approved the original Operating Covenant and Agreement (OCA) with Carson City Southgate, LLC. The intent of the original sales tax rebate was to cure blight in Project Area No. 2, by incenting the property owner to rehabilitate his vacant big-box building, a prominent eyesore, and to improve his property with viable, sales tax generating tenants. This amendment retains the original 15 year maximum term and reduces the incentive provided in the original agreement to a straight 20 percent rebate of new sales tax generated by the project each year.

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 an amended and restated Operating Covenant and Agreement by and between Carson City Redevelopment Authority and the City of Carson City and Carson Southgate, LLC.

Explanation for Recommended Board Action: When approving the original OCA, RDA determined that the Agreement fulfilled the requirements of Nevada Redevelopment Law and the RDA's rules governing participation by property owners. The agreement includes without limitation the provisions relating to the construction of the improvements and development of the property consistent with the provisions of the Redevelopment Plan and each of its applicable elements.

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

Fiscal Impact: The annual reimbursement of new sales tax will be based on the reimbursement percentage consistent with the approved OCA.

Explanation of Impact: The reimbursement agreement ensures new sales generation in support general fund activities

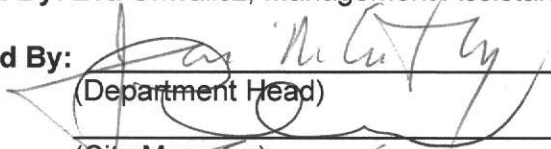
Funding Source: The new sales tax generated by this redevelopment project is from activity at City Management Service property within the Southgate Shopping Center only

Alternatives: Additional direction to staff, such as a greater or lesser reimbursement percentage, including the addition of sales tax generating improvements on the property within the Southgate Shopping Center or other alternatives the Authority may want to include.

Supporting Material: Amendment and Restatement of the original OCA

Prepared By: Eva Chwalisz, Management Assistant

Reviewed By:


(Department Head)

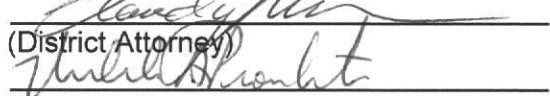
Date:

10/14/10


(City Manager)

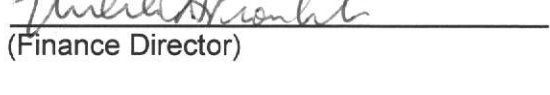
Date:

10/14/10


(District Attorney)

Date:

10/14/10


(Finance Director)

Date:

10/14/10

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

Amendment and Restatement of Original
OPERATING COVENANT AND AGREEMENT

by and between

**Carson City Redevelopment Authority
And the City of Carson City**

and

Carson Southgate, LLC

OPERATING COVENANT AND AGREEMENT

This Amendment and Restatement of the original Operating Covenant and Agreement ("**OCA**" or "**Agreement**") dated this _____ day of _____, 2010 ("**Effective Date**") is entered into by and between the Carson City Redevelopment Authority ("**RDA**") and the City of Carson City ("**City**") and Carson Southgate, LLC ("**Participant**"). RDA/City 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 Building, more specifically that blighted building is located on APN 009-125-07 and is located within Carson City Project Area No. 2 (the "**Project Area**"), and this OCA is relevant to Tenant leaseholds proposed to occupy part of this parcel, which leaseholds are more specifically described in Attachment A and is hereby incorporated into to this OCA (the "**Property**");

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 sales tax generating lessees is in the best interests of the City, the RDA and the health, safety and welfare of the residents and the taxpayers of the Project Area. It is also in accordance with the provisions of Nevada Revised Statutes (NRS) Chapter 279, the Redevelopment of Communities;

WHEREAS, RDA's participation in this Agreement requires the Participant's Tenants to generate and report net new taxable sales revenue annually to the City in order for Participant to receive twenty percent (20%) reimbursement of the annual net new sales tax generated by the leaseholds;

WHEREAS, the reimbursement of sales tax can not come from sales tax generated by Tenants that are relocated from either Douglas or Lyon County;

WHEREAS, for those Tenants relocating within Carson City, the reimbursement calculation will be limited to only the sales tax coming from the new location that is over and above the sales tax generated at the Tenant's former location (the relocating Tenant's "Tax Base Amount");

WHEREAS, completion of improvements to the Property and the leasing of 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, completion of improvements and the leasing of the property would not be financially feasible but for the RDA's assistance as further defined in this Agreement;

WHEREAS, the construction of improvements and leasing 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 continued redevelopment and occupancy of the property owned by the Participant in the Southgate Shopping Center;

WHEREAS, the Participant represents, and the RDA acknowledges, that the Participant's improvements 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 Properties in support of such public purposes;

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, is consistent with the provisions of the Redevelopment Plan and each of its applicable elements.

NOW, THEREFORE, in consideration of the above and 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 the improvements 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.

- 1.7 **"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 all the real property that includes Tenant leaseholds proposed to occupy lease space in a vacant Building in the Southgate Shopping Center, in Carson City with APN 009-125-07, which is more specifically described in Attachment A.
- 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, 2004, 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 **"Tax Base Amount"** means with respect to each individual Tenant on the Property the designated past base sales tax revenue amount to be subtracted at each yearly reimbursement calculation from the current annual reported sales tax revenue to determine the amount upon which the agreed percentage revenue split between the City and the Participant is applied, which Tax Base Amount shall be:
- 1) for a new Tenant in Carson City: zero (0); and
 - 2) for those tenants relocating within Carson City, the reimbursement calculation will be limited to only the sales tax coming from the new location that is over and above the sales tax generated at the Tenant's former location.
- 1.14 **"Tenant"** means the current lessee(s) or any subsequent tenant(s) that lease the retail space at the Property from Participant or its agent.
2. **PROJECT DESCRIPTION.** The Project is the redevelopment of the vacant blighted building and property in the Southgate Shopping Center.
3. **RDA REVENUE SHARING COVENANT.** The Participant agrees to exercise its right to enter into lease of its retail space. The Participant agrees to make all necessary improvements to the Properties so that its Tenants can fully operate their businesses in the Property by no later than October 2011. If one or more of the Tenants on the participant property decline to exercise their lease options in the future, and no replacement Tenant occupies that portion of the Property, the RDA's participation payments to the Participant will automatically decrease on a pro-rata basis. 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 in this OCA, the RDA and the City agree to participate in a revenue sharing covenant with the Participant for up to fifteen (15) consecutive years, commencing one year (365 days) from November 5, 2010. The consecutive years shall run without interruption or stay regardless of any vacancy on the Property.

3.1. **Calculation of Revenue Sharing Covenant.** During the fifteen (15) years of this OCA and upon the expiration of each year that one or more of the Tenants generate and report gross taxable sales revenue at the Leased Premises, the City and RDA shall determine the amount of revenue generated and reported by the Tenants 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 Tenants to the Nevada Department of Taxation. The reimbursement will be twenty (20) percent of net new total sales tax generated in each calendar year from each individual Tenant's respective Tax Base Amount. Payment shall be made within thirty (30) days upon the City and RDA's receipt of Tenants' annual Nevada sales tax reports at the Property.

3.4 **Assignability.** This OCA may be assigned if mutually agreed upon in writing by 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 to meet any budgeted expenditures or bonding debt or other obligation of the City and the RDA. 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 or pay those funds, this Agreement may be renegotiated, in good faith, and the Parties shall use their best efforts to achieve an alternative reasonable incentive as anticipated in the Area 2 Redevelopment Plan. Participant waives any and all claim(s) for damages that may arise against the City and/or RDA in the event of any such non-appropriation or renegotiation as anticipated under this paragraph.

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 any of the Tenants at the Property, the Participant agrees to enter into commercial leases with the Tenants at the Property for a period of not less than fifteen (15) consecutive years from the date the Participant's Tenants are open for business as set forth in Paragraph 3 of this Agreement. 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 the Tenants for the Property.

5. **DUTIES AND OBLIGATIONS OF THE PARTICIPANT.**

- 5.1. **Lease.** Within twenty (20) days upon a Lease being executed with any Tenant, Participant shall provide the City and RDA with copies of the lease for the Property;
- 5.2. **Consent to Dissemination of Sales Tax Reports.** Participant shall obtain a written consent from the Tenants that they have no objection to this OCA. Participant shall further obtain from the Tenants a written consent to allow the release of any sales tax reports and information pertaining to the sales tax generated at the Property that is submitted to the Nevada Department of Taxation during the lease term. Participant shall provide to the City and RDA the 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 original of any person. The Participant shall not discriminate against or segregate any person or 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.

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 continue beyond any applicable cure period, then RDA 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 an 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 insured's by endorsement for all liability arising out of this Agreement. The endorsement shall state that the coverage is primary insurance and that no other insurance held by the RDA or the City shall be contributory.
- 9.2 **Evidence of Insurance.** Participant shall furnish to the RDA duplicate originals or certificates evidencing such insurance coverage or coverage's 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 RDA.

- 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 insured's.
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
108 North Carson Street
Carson City, NV 89701
Attn: Joe McCarthy, Office of Business Development Director
Telephone (775) 283-7122
Facsimile (775) 887-2283

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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 to pay for the normal costs of conducting business and to pay for the services of such professionals 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 RDA 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 a 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. Participant consents and agrees 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 a party's 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 and available to 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 is now or hereafter becomes 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

By: Robert L. Crowell
Its: Mayor

CARSON SOUTHGATE, LLC
By: City Management Corporation, Manger

By: Robert Rothe
Its: President

ATTACHMENT A

Discription of the Property subject to this OCA