

Recording Requested by and
When Recorded Mail To:

Lisa Hunderman, City Clerk
City of Sparks
431 Prater Way
P.O. Box 857
Sparks, Nevada 89432-0857

The undersigned hereby affirms that this document submitted for recording does not contain the personal information of any person or persons per N.R.S. 239B.030.

Signature of Declarant or Agent

THIS DEVELOPMENT AGREEMENT, AMENDMENT NUMBER 1 (“Agreement”), is made and entered into this _ day of _____, 2019, by and between the CITY OF SPARKS, a municipal corporation of the State of Nevada (“City”); QK, LLC, a Nevada Limited Liability Company (“Owner”); and 5 Ridges Development Company, Inc., a Nevada Corporation (“Master Developer”). The City and Owner and Master Developer are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City is authorized, pursuant to Chapter 278 of the Nevada Revised Statutes and Title 20 of the Sparks Municipal Code, to enter into development agreements such as this Agreement with persons having a legal or equitable interest in real property in order to establish long-range plans for the development of such property.
- B. Owner has authorized Master Developer to develop the Property legally described by “Exhibit A” (metes and bounds) attached hereto (the “Property”).
- C. The Property currently consists of one (1) parcel approximately 386.87 acres in size, as shown in “Exhibit B” (graphic depiction) attached hereto.
- D. Master Developer proposes developing the Property with residential and commercial uses as allowed by the Code in effect on the date of this Agreement in the land uses identified in the master plan amendment and zone change amendment described and approved in Case No. PCN16-0050 and the Land Plan attached as “Exhibit C.”
- E. The Parties acknowledge that this Agreement will (i) promote the health, safety and general welfare of the City and its inhabitants, (ii) minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, (iii) ensure attainment of the maximum efficient utilization of resources within the City at the least economic cost

to its citizens, and (iv) otherwise achieve the goals and purposes for which the laws governing development agreements were enacted.

- F. As a result of the development of the Property, the City will receive needed housing, jobs, sales and other tax revenues and significant increases to its real estate property tax base that meet or exceed the cost of providing public services, facilities and infrastructure to the Property as described in the Fiscal Analysis attached as “Exhibit D.” The City will additionally receive a greater degree of certainty with respect to the timing and orderly development of the Property and City infrastructure by a developer with significant economic resources and experience in the development process.
- G. The Master Developer understands and acknowledges that there are insufficient public facilities and infrastructure available at the Property in order to properly construct, populate, and serve the Property. Subject to the terms and conditions of this Agreement, the Master Developer agrees to provide the necessary improvements to public facilities and infrastructure on the Property and outside the Property as specifically provided for in the Infrastructure Plan attached as “Exhibit E.”
- H. The Master Developer understands and acknowledges that the Property is currently outside a four-minute travel time for Sparks Fire Department response to fire, medical, and other emergency service calls and, due to the Property’s location and characteristics, certain design requirements and development restrictions as stated in this Agreement are appropriate and necessary unless travel times are reduced to four minutes or less with future improvements, including but not limited to the construction and operation of a new fire station.
- I. The Master Developer understands and acknowledges that the development of the Property is constrained by the steep slopes naturally occurring thereon as depicted in the Slope Analysis, attached hereto and incorporated by reference as part of the Land Plan.
- J. The Master Developer desires to enter into a development agreement with City pursuant to NRS 278.0201 to obtain reasonable assurances that it may develop the Property in accordance with the terms, conditions and intent of this Agreement. The Master Developer’s decision to enter into this Agreement and commence development of the Property is based on expectations of proceeding and the right to proceed with the Property in accordance with this Agreement and any other Applicable Rules.
- K. The Master Developer further acknowledges that this Agreement was made part of the record at the time of its approval by the City Council and that the Master Developer agrees without protest to the requirements, obligations, limitations, and conditions imposed by this Agreement.
- L. On June 25, 2018, the City entered into a development agreement concerning the Property with Jackling Aggregates, LLC, the former owner of the Property; and QK, LLC, the former master developer of the Project. The June 25, 2018 development agreement was recorded in the official records of Washoe County as Document 4827784 on June 29, 2018. In conjunction with the June 25, 2018 development agreement, the City processed and

approved the following Entitlement Requests as Case No. PCN16-0050: an Annexation Application (AX16-0003); a Master Plan Amendment (MPA 17-0005); and a Rezoning Application (RZ17-0006). This Agreement amends and supersedes the June 25, 2018 development agreement but does not affect the Entitlement Requests approved in conjunction therewith. The City hereby releases Jackling Aggregates, LLC, and QK, LLC, from their respective obligations arising under the June 25, 2018 development agreement.

- M. The City Council, having determined that the development of the Property in the manner proposed in Exhibits C, D, and E is beneficial to the City, that this Agreement is in conformance with the City's Comprehensive Plan, the Sparks Municipal Code, and state and federal law, and that all other substantive and procedural requirements for approval of this Agreement have been satisfied, and after giving notice as required by relevant law, and after introducing this agreement by ordinance at a public meeting on _____ and after a subsequent public hearing to consider the substance of this Agreement on _____, found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Mayor of the City of Sparks.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION ONE DEFINITIONS

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

"Administrator" means the person holding the position of City Manager of the City of Sparks at any time or his designee.

"Agreement" means this development agreement and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

"Applicable Rules" means and refers to:

- (a) The provisions of the Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date, including without limitation City ordinances, resolutions, or regulations governing the permitted uses of land, density and standards for design; and
- (b) This Agreement.
- (c) The term "Applicable Rules" does not include:

- (i) Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than City;
- (ii) Any fee or monetary payment prescribed by City ordinance which is applied to any development or construction subject to the City's jurisdiction; or
- (iii) Any applicable state or federal law or regulation.

“Building Codes” means the Building Codes and Fire Codes in effect at the time of issuance of a permit for a particular development activity.

“City” means the City of Sparks, together with its successors and assigns.

“City Council” means the Sparks City Council.

“Code” means the Sparks Municipal Code, including all ordinances, rules, regulations, standards, criteria, manuals, appendices, and other references adopted therein.

“Development Parcels” means legally subdivided parcels of land within the Project that are intended to be developed or further subdivided.

“Effective Date” means the date, on or after the adoption by City of an ordinance approving the execution of this Agreement, and the subsequent execution of this Agreement by the Parties, on which this Agreement is recorded in the Office of the County Recorder of Washoe County. Each party agrees to cooperate as requested by the other party to cause the recordation of this Agreement without delay.

“Entitlement” means any land use approval, including without limitation, any master plan or other zoning approval, annexation, tentative map, final map, parcel map, conditional use permit, permitted land use, density of tentative or final mapped Development Parcels, building permit, grading permit, and other land use entitlements or permits, issued for the Project or any portion of the Property or in favor of Master Developer or its successor(s) in connection with the development of the Property.

“Entitlement Request” means a request by Master Developer or its authorized designee for any Entitlement for development of the Project in accordance with this Agreement.

“Infrastructure Plan” means a collection of documents that fully describe the public and private infrastructure, on and off the Property, necessary to support the adopted Land Plan and the proposed method(s) of financing construction of the public infrastructure included therein, including, but not limited to, grading plans, drainage studies, sanitary sewer studies, traffic studies, and utility improvement plans.

“Land Plan” means a collection of documents that fully describe the physical characteristics of the Property and the permitted uses of the Property, including, but not limited to, a detailed description and depiction of the permitted uses and associated densities, intensities and locations within the Project; physical characteristics of the Property such as floodplain, slope and soil, and Slope Analysis; the availability and accessibility of water that meets applicable health standards and is

sufficient in quantity for the reasonably foreseeable needs of the Project; the availability and accessibility of utilities, public services, and water and services for fire protection, prevention and containment; and the effect of the Project on existing public streets.

“Master Developer” means 5 Ridges Development Company, Inc., a Nevada Corporation, and its successors and assigns as permitted by the terms of this Agreement.

“Nonconforming Entitlement Request” means a request by Master Developer or its authorized designee for any amendment to this Agreement, Land Plan amendment, master plan amendment, or zoning amendment, or an application for a Subdivision Map which, when evaluated in conjunction with all existing Entitlements and potential future development in the Project, proposes a total number of units which will result in the Project having less than the minimum or more than the maximum number of permitted units set forth in Section 3.1 at Project build out.

“Owner” means QK, LLC, a Nevada Limited Liability Company, the entity that holds title to the real property described by Exhibit A, and its successors and assigns as permitted by the terms of this Agreement.

“Party,” when used in the singular form, means either Owner, Master Developer, or City, and in the plural form of “Parties” means Master Developer, Owner, and City.

“Project” means the Property and any and all improvements provided for or constructed thereupon.

“Property” means that certain 386.87 gross acres of real property that are the subject of this Agreement as described in Exhibit A.

“Slope Analysis” means a slope or cell map that groups small areas of similar slope together, gridded at a maximum contour interval of 2 feet. The Slope Analysis shall depict the following slope categories and may depict additional subcategories within said categories: 0-15%, 16-25%, 26-30%, and 30% or greater. The Slope Analysis shall identify slopes created as a result of prior mining operations to the approval of the Administrator.

“Subdivision Map” means any instrument under the Nevada Revised Statutes and the Code that legally subdivides property or gives the right to legally subdivide property.

“Term” means the temporal duration of this Agreement.

SECTION TWO APPLICABLE RULES AND CONFLICTING LAWS

2.1 Reliance on the Applicable Rules

City and Master Developer agree that Master Developer will be permitted to carry out and complete the development of the Project in accordance with the terms of this Agreement, the Land Plan, the Infrastructure Plan, and the Applicable Rules. The terms of this Agreement shall supersede any conflicting provision of the Code except as provided in Section 2.2 below.

2.2 *Application of Subsequently Enacted Rules by the City*

The City shall not amend, alter or change any Applicable Rule as applied to the development of the Project, or apply a new fee, rule, regulation, resolution, policy or ordinance to the development of the Project, except as follows:

- (a) The development of the Project shall be subject to the Building Codes and Fire Codes in effect at the time of issuance of the permit for the particular development activity.
- (b) The application of a new uniformly applied rule, regulation, resolution, policy or ordinance to the development of the Project is permitted, provided that such action is necessary to protect the health, safety and welfare of City residents, does not reduce the permitted density or land use types, does not prevent the type of units or number of permitted units in the Project as set forth in this Agreement, and is consistent with the efficient development and preservation of the entire Project.
- (c) Nothing in this Agreement shall preclude the application to the Project of new or changed rules, regulations, policies, resolutions or ordinances specifically mandated and required by changes in state or federal laws or regulations necessary to protect the health, safety and welfare of City residents. In such event, the provisions of Sections 2.4 and 2.5 of this Agreement are applicable.
- (d) Should the City adopt or amend rules, regulations, policies, resolutions or ordinances and apply such rules to the development of the Project, other than pursuant to one of the above Sections 2.2(a), 2.2(b) or 2.2(c), the Master Developer shall have the option, in its sole discretion, of accepting or rejecting such new or amended rules by giving written notice of such acceptance or rejection within 90 days of the application of such new or amended rules to the Project. If accepted, City and the Master Developer shall subsequently execute an amendment to this Agreement evidencing the Master Developer's acceptance of the new or amended ordinance, rule, regulation or policy within a reasonable time. If rejected, the new or amended rules will not apply to the Project. Master Developer's failure to accept or reject new or amended rules within 90 days constitutes acceptance of the new or amended rules for that instance.

2.3 *Application of New Fees*

Notwithstanding Section 2.2 above, City may increase existing cost-based processing fees, entitlement processing fees, Entitlement Request fees, inspection fees, plan review fees, facility fees, or sewer connection fees that uniformly apply to all or similarly situated development in City.

2.4 *Conflicting Federal or State Rules*

In the event that any federal or state laws or regulations prevent or preclude compliance by City or Master Developer with one or more provisions of this Agreement or require changes to any approval given by City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

- (a) Notice of Conflict. A Party, upon learning of any such matter, will provide the other Parties with written notice of the conflicting laws or regulations and provide a copy of any such law, rule, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and
- (b) Modification Conferences. The Parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law, rule, regulation or policy.

2.5 City Council Hearings

In the event a Party believes that an amendment to this Agreement is necessary due to the effect of any federal or state law, rule, regulation or policy, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. Master Developer shall have the right to offer oral and written testimony at the hearing and may support or oppose such change. Any amendment ordered by the City Council pursuant to a hearing contemplated by this Section is subject to judicial review, but such review shall be filed within twenty-five (25) calendar days from the date of the hearing.

SECTION THREE PLANNING AND DEVELOPMENT OF THE PROJECT

3.1 Permitted Uses and Density

Subject to all the terms and conditions of this Agreement, Master Developer agrees to build the Project described by Exhibit C subject to the design standards adopted in the Code and as follows:

- (a) Number of Dwelling Units Permitted: 1,200 minimum to 1,800 maximum
- (b) Permitted Residential Unit Types: Single Family, Duplex, and/or Townhouses
- (c) Permitted Commercial Uses: Those uses permitted in the C2 zoning district by Title 20 of the Sparks Municipal Code will be permitted in the portion of the Property with the C2 zoning designation. All conditions and regulations applicable to C2 uses set forth in Title 20 of the Code apply to such uses upon the Property. If any part of the Property is developed for multi-family residential use, the multi-family dwelling units shall be counted toward the number of dwelling units permitted in the Project.
- (d) Wireless Communication Facilities shall be permitted within the Project subject to Section 20.03.046 of the Sparks Municipal Code.

- (e) Gross Density: A minimum of 3.1 to a maximum of 4.6 dwelling units/acre
- (f) Minimum Reservation of Open Space: 100 Acres

3.2 *Required Infrastructure Improvements*

Subject to all the terms and conditions of this Agreement, Master Developer agrees to construct all infrastructure necessary to support the Project as described in Exhibit E. Master Developer further agrees to install, at Master Developer's expense, off-site infrastructure necessary to provide services to the Project, including without limitation:

- (a) Sanitary sewer conveyance upgrades that are necessary based on the increased flows resulting from the anticipated land use changes resulting in a residential unit count that would generate sewage volumes 200% to 300% greater than attributed to the site in the sewer model.
- (b) Improvements to public streets, sidewalks, curbs, and gutters that are necessary based on the increased traffic resulting from the anticipated land use changes in the Project. This includes but is not limited to off-site improvements to Highland Ranch Parkway and to the intersection of Highland Ranch Parkway and Pyramid Highway as follows:
 - (i) The widening to four travel lanes of Highland Ranch Parkway from Pyramid Highway to the entrance to the Project. Master Developer shall complete this improvement prior to issuance of any certificate of occupancy for or final inspection of any dwelling unit in excess of 650 dwelling units in the Project, or upon degradation below Level of Service (LOS) D of the segment of Highland Ranch Parkway between Pyramid Highway and the entrance to the Project, or upon degradation below LOS E of the intersection of Pyramid Highway and Highland Ranch Parkway, whichever first occurs.
 - (ii) Prior to or concurrently with submitting an application for a tentative map and/or for multi-family residential units exceeding, in aggregate, 650 dwelling units, the Master Developer shall submit an encroachment permit application to the Nevada Department of Transportation to complete all improvements to the intersection of Highland Ranch Parkway and Pyramid Highway recommended in the The Quarry Traffic Study dated September 25, 2017, with an addendum dated March 12, 2018, and prepared by Solaegui Engineers, incorporated by reference herein as part of the Infrastructure Plan attached hereto as Exhibit E. All improvements from the entrance to the Project to the intersection of Highland Ranch Parkway and Pyramid Highway shall be completed prior to issuance of any certificate of occupancy for or final inspection of any dwelling unit in excess of 650 dwelling units in the Project.
 - (iii) Implementation of dark skies standards shall be permitted subject to the approval of the City.

- (c) Flood control and drainage improvements that are necessary based on the anticipated land use changes in the Project.
 - (i) If the Property is included in Impact Fee Service Area Number 1, the City will consider for inclusion in the Impact Fee Service Area Number 1 Capital Improvements Plan any flood control and drainage improvements that have regional impacts as illustrated by a hydrology study to be completed at Master Developer's expense. The Parties agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of the Property's participation in Impact Fee Service Area Number 1 or a pre-approval or authorization for inclusion of any flood control or drainage improvements in the Impact Fee Service Area Number 1 Capital Improvements Plan.
 - (ii) Master Developer shall provide, at Master Developer's expense, a hydrology and hydraulic analysis that shall address, without limitation, offsite capacity and sediment transport improvements to the Highland Ranch Parkway and Pyramid Highway culvert crossings. Improvements identified in the analysis shall be completed to the approval of the City Engineer prior to issuance of any building permits for structures.
 - (iii) Master Developer shall design and construct all flood control and drainage improvements, whether onsite or offsite, required to comply with the Truckee Meadows Regional Drainage Manual and the approval of the Administrator. Design rainfall depths shall utilize the 24-hour point precipitation frequency estimates from the National Oceanic and Atmospheric Administration Atlas 14 (NOAA Atlas 14).
- (d) Public safety conditions and improvements that are necessary based on the anticipated land use changes in the Project, including, without limitation:
 - (i) Construction of a secondary fire apparatus access road shall be completed prior to the first final inspection or the issuance of the first certificate of occupancy for the Project. The secondary fire apparatus access road shall be privately owned and maintained, gated, and a minimum of twenty (20) feet wide. Emergency pull-out areas shall be constructed upon this secondary fire apparatus access road to the approval of the Fire Chief and the City Engineer.
 - (ii) Construction of all streets and the secondary fire apparatus access road shall comply with design requirements set forth in the City of Sparks Site Development Fire Prevention Policy Guide and shall be to the approval of the Fire Chief and the City Engineer. The street providing primary access to the Project shall be a two-lane roadway from Highland Ranch Parkway to the first entrances of Villages 3 and 4. A meandering, trail-style sidewalk at least five (5) feet in width shall be constructed of Portland cement concrete (if dedicated to the City of Sparks) on at least one side of the

primary access street. Asphalt may be used in lieu of Portland cement concrete on trail-style sidewalks that are to be owned and maintained by a homeowners association or landscape maintenance association. If the primary access street is divided by a median, emergency median crossovers (if applicable) shall be constructed to the approval of the Fire Chief at least every 750 feet. Fire hydrants shall be installed upon the primary access street at distances to be approved by the Fire Chief. Any cul-de-sac constructed within the Project shall have a diameter of at least one hundred (100) feet.

- (iii) All dwelling units and commercial structures intended or used for human occupancy shall be equipped with fire suppression systems to the approval of the Fire Chief. This requirement may be eliminated if the Master Developer demonstrates, to the approval of the Fire Chief, that the dwelling units and/or commercial structures are located within a four-minute travel time from a City of Sparks Fire Department station.
- (iv) Emergency access points shall be provided to all common areas. These emergency access points shall be a minimum of sixteen (16) feet wide, shall be gated, and shall be posted with signs indicating that parking is prohibited to the approval of the Fire Chief. Design and location of the emergency access points shall be addressed with the appropriate tentative map submittals. Master Developer shall comply with all requirements of the International Wildland-Urban Interface Code in effect at the time of the particular development activity.
- (e) Master Developer shall grant to the City easements or other permissions acceptable to the Administrator for access, operation, and maintenance of any City-owned utility facilities located on private property. Such easements or other permissions shall be approved by the Administrator prior to or concurrently with approval of any final map.
- (f) The Parties acknowledge and agree that nothing contained in this Agreement constitutes in any way a pre-approval or acceptance of dedication of any streets, gutters, curbs, or sidewalks on the Property. All infrastructure, whether onsite or offsite, shall be constructed in substantial conformance with:
 - (i) Applicable construction standards;
 - (ii) Design standards required for dedication to the City, if applicable; and
 - (iii) Approval of the Administrator.

3.3 Slope Analysis and Development Constraints

Master Developer acknowledges that the development of the Property is constrained by the steep slopes naturally occurring on the Property. In developing the Property, Master Developer shall satisfy all requirements of the Code governing slopes, hilltops, and ridges, including but not limited

to Sparks Municipal Code Section 20.04.011. Slopes that are not naturally occurring and resulted from previous mining operations on the Property shall be identified in the Slope Analysis but shall not be included in the calculation of maximum disturbed area pursuant to Sparks Municipal Code Section 20.04.011. Specifically, Master Developer shall:

- (a) Obtain a conditional use permit prior to any clearing, grading, or other disturbance of the soils on the Property and prior to the approval of a tentative map as required by Sparks Municipal Code Section 20.04.011 and Sparks Municipal Code Appendices A7 and A8; and
- (b) Limit the total area of the Property to be cleared, graded, or otherwise disturbed to 267 acres. With the recordation of each final subdivision map, the Master Developer shall convey the lands designated as open space to the entity responsible for maintenance of the lands designated as open space.

3.4 *Fiscal Analysis Revision*

Prior to submitting any Nonconforming Entitlement Request for consideration, Master Developer agrees to update the comprehensive Fiscal Analysis of the Project attached hereto as Exhibit D to include any new or amended elements of the Project contemplated by the associated Nonconforming Entitlement Request. Upon approval of the respective Nonconforming Entitlement Request, the updated Fiscal Analysis shall be incorporated into this Agreement as an addendum to Exhibit D. So long as the Project is being developed in accordance with the Land Plan, the Infrastructure Plan, and this Agreement, no revisions or update to the Fiscal Analysis shall be required, including in connection with an Entitlement Request.

3.5 *Entitlement Requests*

- (a) City shall reasonably cooperate with Master Developer to:
 - (i) Expeditiously process all Entitlement Requests in connection with the Property that are in compliance with the Applicable Rules, Land Plan, and Infrastructure Plan; and
 - (ii) Promptly consider the approval of Entitlement Requests, subject to reasonable conditions not otherwise in conflict with the Applicable Rules, Land Plan, or the Infrastructure Plan.
- (b) Except as provided herein, Entitlement Requests shall be processed by City according to the Applicable Rules. The Parties acknowledge that the procedures for processing such Entitlement Requests are governed by the Code. In addition, any additional application requirements delineated herein shall be supplemental and in addition to such Code requirements. The Parties acknowledge and agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of any Entitlement Request.

3.6 *Modification or Amendment of the Agreement*

This Agreement may not be modified or amended, except by the mutual written agreement of the Parties.

3.7 *Deviation from Design Standards*

Any request for variance or deviation from a particular requirement of the Code for a particular Development Parcel or lot shall be processed and considered according to the requirements of the Code in effect on the Effective Date, unless otherwise agreed to by Master Developer.

3.8 *Anti-Moratorium*

The Parties agree that no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing or sequencing of the development of property, including those that affect parcel or subdivision maps, building permits, occupancy permits or other entitlements to use or develop land that are issued or granted by City shall apply to the development of the Project or any portion thereof. Notwithstanding the foregoing, City may adopt ordinances, resolutions, rules or regulations that are necessary to:

- (a) Comply with any state or federal laws or regulations as provided by Section 2.4, above;
- (b) Alleviate or otherwise contain a legitimate, bona fide harmful and/or noxious use of the Property, in which event the ordinance shall contain the most minimal and least intrusive alternative possible, and shall not, in any event, be imposed arbitrarily; or
- (c) Maintain City's compliance with federal and state sewerage, storm water conveyance, storm water discharge, water system, and utility regulations.

3.9 *Property Dedications to City*

Except as provided herein, any real property (and fixtures thereupon) transferred or dedicated to City or any other public entity shall be free and clear of any mortgages, deeds of trust, liens or other encumbrances.

3.10 *Inclusion of Additional Property*

The City Council will consider the inclusion of additional property ("Additional Parcels") in the Project by formal amendment of this Agreement provided that:

- (a) Each Additional Parcel is contiguous to some portion of the Property or immediately across a street;
- (b) Development of each Additional Parcel must conform to this Agreement; and

- (c) Master Developer obtains the necessary annexation, zoning, and land use approvals and approval of all necessary technical studies for each Additional Parcel. In no event shall this Agreement be amended to include Additional Parcels without contemporaneously amending Exhibits A through E to reflect the proposed expansion of the Project.

The Parties agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of the inclusion of Additional Parcels in the Project.

3.11 Impact Fee Service Area Number 1

By executing this Agreement, Master Developer and Owner hereby petition the City to include the Property in Impact Fee Service Area Number 1 and agree not to withdraw this petition except as permitted by the termination provisions of this Agreement. The Parties agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of the Property's participation in Impact Fee Service Area Number 1.

3.12 Special Improvement District

City agrees to consider and, if appropriate, process and facilitate, with due diligence, any applications made by Master Developer for the creation of a special improvement district. The Parties agree that nothing contained in this Agreement constitutes in any way a pre-approval or authorization of any such special improvement district, and any application to create a special improvement district must be processed and approved in accordance with state law and the Applicable Rules.

SECTION FOUR REVIEW OF DEVELOPMENT

4.1 Frequency of Review

At City's request, Master Developer shall appear before the City Council to review the Master Developer's compliance with the terms of this Agreement pursuant to NRS 278.0205. The Parties agree that the first review shall occur no later than twelve (12) months after the Effective Date of this Agreement, and Master Developer shall provide an updated report every twenty-four (24) months on the anniversary date of that first review thereafter, or as otherwise requested by City upon thirty (30) days' written notice to Master Developer. For any such review, Master Developer shall provide, and City shall review, a report submitted by Master Developer documenting the extent of Master Developer's and City's material compliance with the terms of this Agreement during the preceding reporting period. The report shall contain information regarding the progress of development within the Project, including, without limitation:

- (a) Data showing the total number of units built and approved on the date of the report;
- (b) Specific densities within each subdivision and within the Project as a whole; and

- (c) The status of development within the Project and the anticipated phases of development for the next reporting period.

In the event Master Developer fails to submit such a report within thirty (30) days following written notice from City that the deadline for such a report has passed, Master Developer shall be in default of this provision and City shall prepare such a report and conduct the required review in such form and manner as City may determine in its sole discretion. City shall charge Master Developer for its reasonable expenses, fees, and costs incurred in conducting such review and preparing such report. If at the time of review an issue not previously identified in writing is required to be addressed, the review may, at the request of either Party, be continued to afford reasonable time for a response.

4.2 *Opportunity to be Heard*

The report required by this Section shall be considered solely by the City Council. Master Developer shall be permitted an opportunity to be heard orally and in writing before the City Council regarding performance of the Parties under this Agreement.

4.3 *Action by the City Council*

At the conclusion of the public hearing on the review, the City Council may take any action permitted by NRS 278.0205, NRS 278.02053, and/or this Agreement.

SECTION FIVE DEFAULT

5.1 *Material Default; Opportunity to Cure*

In the event of any material default of any provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a ten (10) day notice of default and opportunity to cure. The time of notice shall be measured from the date of receipt of the certified mailing. The notice of noncompliance shall specify the nature of the alleged noncompliance and the manner in which it may be satisfactorily corrected, during which ten (10) day period the party alleged to be in noncompliance shall not be considered in default for the purposes of termination or institution of legal proceedings.

If the material default cannot reasonably be cured within the ten (10) day cure period, the defaulting Party may timely cure the material default for purposes of this Section if it commences the appropriate remedial action within the ten (10) day cure period and thereafter diligently prosecutes such action to completion within a period of time acceptable to the non-breaching Party. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than ninety (90) days from the date on which the ten (10) day notice of material default and opportunity to cure was received by the defaulting Party.

If the material default is corrected, then no default shall exist and the noticing Party shall take no further action. If the material default is not corrected within the relevant cure period, the defaulting

Party is in default, and the Party alleging material default may elect any one or more of the following courses.

- (a) Amendment or Termination by City. After proper notice and the expiration of the above-referenced period for Master Developer to correct the alleged material default, the City may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the City Council. Following consideration of the evidence presented before the City Council and a finding that a material default has occurred by Master Developer and remains uncured, City may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Entitlement held in the Project and/or in favor of Master Developer, as determined under the Applicable Rules, existing or received as of the date of the termination. Master Developer shall have twenty-five (25) days after receipt of written notice of termination to institute legal action pursuant to this Section to determine whether a material default existed and whether City was entitled to terminate this Agreement.
- (b) Termination by Master Developer. In the event City materially defaults under this Agreement, Master Developer shall have the right to terminate this Agreement after providing notice and an opportunity to cure as set forth in this Section. Master Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of City's obligations by pursuing an action for specific performance or other appropriate judicial remedy.

5.2 Force Majeure; Unavoidable Delay; Extension of Time

Neither Party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, national disasters, terrorist attacks, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, third-party lawsuits, or acts of God. If written notice of any such delay is given to one Party or the other within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by the Party in receipt of the notice within thirty (30) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between City and Master Developer.

5.3 Limitation on Monetary Damages

The Parties agree that they would not have entered into this Agreement if either were to be liable for monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement. Accordingly, the Parties (or their permitted assigns) may pursue any cause of action available at law or in equity for breach of contract, except that neither Party shall be liable to the other or to any other person or entity for any monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement.

5.4 *Venue*

Jurisdiction for judicial review under this Agreement shall rest exclusively with the Second Judicial District Court, County of Washoe, State of Nevada or the United States District Court, District of Nevada. The Parties agree to mediate any and all disputes prior to filing of an action in court unless seeking injunctive relief.

5.5 *Waiver*

Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

5.6 *Applicable Laws; Attorney Fees*

This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. The Parties to this Agreement have had the opportunity to consult with counsel concerning the terms of this Agreement, and this Agreement shall not be construed in favor of or against any Party solely by reason of one Party having drafted all or part of this Agreement. Each Party shall bear its own attorney fees and court costs in connection with any legal proceeding hereunder, and in no event shall any prevailing Party in such a legal proceeding be entitled to an award of attorney fees.

SECTION SIX GENERAL PROVISIONS

6.1 *Duration of Agreement*

The Term of this Agreement shall commence upon the Effective Date and shall expire on the fifteenth (15) anniversary of the Effective Date, unless terminated earlier pursuant to the terms hereof. Master Developer shall have the right to request one extension of the Term of this Agreement for an additional five (5) years upon the following conditions:

- (a) Master Developer provides written notice of such extension to City at least one hundred-eighty (180) days prior to the expiration of the original Term of this Agreement;
- (b) Master Developer is not in default of this Agreement;
- (c) The City Council finds that an extension is in the best interests of the City; and
- (d) Master Developer and City enter into an amendment to this Agreement memorializing the extension of the Term.

6.2 *Expiration of the Agreement*

Expiration of the Agreement Term pursuant to Section 6.1 shall not in any manner rescind, modify, or terminate any Entitlement in the Project and/or in favor of Master Developer, as determined under the Applicable Rules, existing or received as of the date of the expiration, and future development of any other portion of the Project not holding such Entitlements shall be subject to all applicable Codes in effect at the time of development. The Parties agree that, in the event this Agreement expires prior to recordation of any final map for the Project, Master Developer and Owner shall consent to the City reverting the land use and/or zoning designations on the Property back to the respective land use and/or zoning designations that were applicable to the Property on January 1, 2018.

6.3 *Assignment*

The Parties acknowledge that the intent of this Agreement is that there is a master developer responsible for all of the obligations in this Agreement throughout the Term of this Agreement. At any time during the Term, Master Developer may sell, assign or transfer all or any portion of its rights, title and interests in the Property, Project (including rights to develop such property in accordance with this Agreement), and this Agreement to any person or entity for development, so long as Master Developer remains, or a successor master developer has assumed through a written assignment and assumption agreement provided to the City, and is obligated and responsible as master developer of the Project for:

- (a) Performance under this Agreement;
- (b) Completion of backbone infrastructure for the Project; and
- (c) Completion of common areas through dedication and acceptance by a common interest community or limited purpose association under NRS Chapter 116.

6.4 *Indemnity; Hold Harmless*

Except as expressly provided in this Agreement, the Master Developer shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of Master Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on Master Developer's behalf that relate to the development of the Project. Master Developer agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Master Developer's activities in connection with the development of the Project other than any challenges to the validity of this Agreement or City's approval of related entitlements. Master Developer and City agree to equally pay all costs and attorney fees for a defense in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of City, its officers, agents, employees, or representatives. This Section shall survive any termination of this Agreement.

6.5 *Binding Effect of Agreement*

Subject to this Agreement, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties' respective assigns and successors-in-interest and the Property that is the subject of this Agreement.

6.6 *Relationship of Parties*

It is understood that the contractual relationship between City and Master Developer is such that Master Developer is not an agent of City for any purpose and City is not an agent of Master Developer for any purpose.

6.7 *Counterparts*

This Agreement may be executed at different times and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect to any signatures thereon, and may be attached to another counterpart, identical in form thereto, but having attached to it one or more additional signature pages.

Delivery of a counterpart by facsimile or portable document format (pdf) through electronic mail transmission shall be as binding an execution and delivery of this Agreement by such Party as if the Party had delivered an actual physical original of this Agreement with an ink signature from such Party. Any Party delivering by facsimile or electronic mail transmission shall promptly thereafter deliver an executed counterpart original hereof to the other Party.

6.8 *Notices*

All notices, demands and correspondence required or provided for under this Agreement shall be in writing. Delivery may be accomplished in person, by certified mail (postage prepaid, return receipt requested), or via electronic mail transmission. Mail notices shall be addressed as follows:

To City:	City of Sparks Attention: City Manager 431 Prater Way Sparks, Nevada 89431
To Owner:	QK, LLC Attention: Rob Winkel 4785 Caughlin Pkwy. Reno, Nevada 89519
To Master Developer:	5 Ridges Development Co., Inc. Attention: Blake Smith 1 East Liberty, Suite 444 Reno, Nevada 89501

Any Party may change its address by giving notice in writing to the others and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address.

Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

6.9 *Entire Agreement*

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

6.10 *Waiver*

All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate officers of Master Developer or approved by the City Council, as the case may be.

6.11 *Recording; Amendments*

Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Washoe County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of City and Master Developer in a form suitable for recordation in the Official Records of Washoe County, Nevada. Upon completion of the performance of this Agreement, a statement evidencing said completion shall be signed by the appropriate officers of the City and Master Developer and shall be recorded in the Official Records of Washoe County, Nevada. A revocation or termination shall be signed by the appropriate officers of the City or Master Developer and shall be recorded in the Official Records of Washoe County, Nevada.

6.12 *Headings; Exhibits; Cross References*

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

6.13 *Severability of Terms*

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

6.14 *Exercise of Discretion*

Wherever a Party to this Agreement has discretion to make a decision, it shall be required that such discretion be exercised reasonably unless otherwise explicitly provided in the particular instance that such decision may be made in the Party's "sole" or "absolute" discretion or where otherwise allowed by applicable law.

6.15 *No Third-Party Beneficiary*

This Agreement is intended to be for the exclusive benefit of the Parties hereto and their permitted assignees, if any. No third-party beneficiary to this Agreement is contemplated and none shall be construed or inferred from the terms hereof. In particular, no person purchasing or acquiring title to land within the Project, residing in the Project, or residing outside the Project shall, as a result of such purchase, acquisition or residence, have any right to enforce any obligation of Master Developer or City nor any right or cause of action for any alleged breach of any obligation hereunder by any Party hereto.

6.16 *Gender Neutral*

In this Agreement (unless the context requires otherwise), the masculine, feminine and neutral genders and the singular and the plural include one another.

[Signatures on following pages]

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

CITY OF SPARKS, a municipal corporation of the State of Nevada

QK, LLC, a Nevada Limited Liability Company

By: _____
Ronald E. Smith, Mayor

By: _____

ATTEST:

By: _____
Lisa Hunderman, City Clerk

5 Ridges Development Co., Inc., a Nevada Corporation

APPROVED AS TO FORM

By: _____
Chester H. Adams, City Attorney

By: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019,
by _____.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019,
by _____.

Notary Public