

PLEASE RETURN TO:
Office of City Clerk
City Hall
431 Prater Way
Sparks, Nevada 89431

A-2570
A.I.6.2
6/14/99
See A-2571
Revised 06/04/99

RESIDENTIAL CONSTRUCTION TAX REIMBURSEMENT AGREEMENT
for
LOEB ENTERPRISES LLC., Re: WINGFIELD SPRINGS

This Residential Construction Tax Credit Agreement ("Agreement") is entered into this 14th day of June 1999, by and between the City of Sparks, a municipal corporation located in Washoe County, Nevada, hereinafter referred to as "City" and Loeb Enterprises, Limited Liability Company, (hereafter "Loeb"), a Nevada Limited Liability Company, original developer and owner of the real property described in the development agreement for Wingfield Springs approved November 7, 1994.

I. RECITALS

A. WHEREAS, Nevada Revised Statute 278.0201 provide, in part:

1. In the manner prescribed by ordinance, a governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land. This agreement must describe the land which is the subject of the agreement and specify the duration of the agreement, the permitted uses of the land, the density or intensity of its use, the maximum height and size of the proposed buildings and any provisions for the dedication of any portion of the land for public use. The agreement may fix the period within which construction must commence and provide for an extension of that deadline, and

B. WHEREAS, the Sparks City Council approved with conditions the Development Handbook and development agreement for Wingfield Springs on November 7, 1994, and

C. WHEREAS, in order to receive reimbursement from residential construction tax fees collected by the City, Loeb shall enter into a residential construction tax reimbursement agreement pursuant to Sparks City Charter §2.090 (5), Nevada Revised Statutes 278.4983 and 278.4985 and Sparks City Ordinance No. 1886; and

D. WHEREAS, NRS 278.4983 and 278.4985 provide, in part:

"1. The imposition of a residential construction tax on the privilege of constructing apartment houses and residential dwelling units in the amount of either 1% of the valuation of each building permit issued, or \$1,000 per residential dwelling unit, whichever is less."

"2. If a requirement to dedicate land or pay a residential construction tax is imposed on the construction of a planned unit development, the planned unit development is eligible to receive a credit against the amount of land to be dedicated or the amount of the residential

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construction tax imposed, for the amount and value of the developed open space within the planned unit development.”, and

E. WHEREAS, on December 26, 1995, the City of Sparks enacted Ordinance No. 1886, amending Chapter 15.12.0040 and 15.12.0060 of the Sparks Municipal Code providing, inter alia, that:

“The City Council, in its discretion, may allow a credit against the amount of the residential construction tax to be imposed on the development of a planned unit development for the amount and value of the developed open space within the planned unit development provided the open space is dedicated to the City for public use and the open space exceeds the requirements of this code for the development.”and

F. WHEREAS, the City Council passed resolution No. 1809 on November 13th, 1984 adopting *Administrative Guidelines for Credit Against Residential Construction Tax Planned Unit Development in the City of Sparks* (hereafter “Administrative Guidelines”), and

G. WHEREAS, The approval of the Planned Development zoning adopts a Land Use Plan (hereafter “Land Use Plan”) as set forth in the Development Standards Handbook for Wingfield Springs which provides for five parks intended to be the “neighborhood parks” elsewhere described in the Development Standards Handbook, and

H. WHEREAS, pursuant to the foregoing authority, the parties desire to execute a binding agreement to reimburse Loeb for the cost of building and dedicating two neighborhood park sites (Parks 1 & 2, identified in Exhibit B which is attached hereto and incorporated by reference herein) of the five neighborhood parks to be built within Wingfield Springs to the City of Sparks. In consideration of Loeb’s promises hereunder, the parks will be built sooner than the parks would have been built under the normal processes. This benefits the existing residents of Wingfield Springs and increases the marketability of the project, all of which inures to Loeb’s benefit. Loeb will also receive Residential Construction Tax reimbursement not to exceed \$750,000 as set forth more fully in Section II of this Agreement.

II. Covenants, Obligations and Agreements

A. The Parties agree that the “Eligibility” and “Project Evaluation” requirement of the Administrative Guidelines have been substantially complied with and will be met.

B. The parties hereto agree that they will comply with said Administrative Guidelines except where they are in conflict with other provisions of this Agreement in which case the provisions herein shall control.

C. Loeb hereby agrees to sell and convey by deed, to the City of Sparks, park sites

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totaling approximately 3.5 +/- acres situated in proximity to those shown in the Land Use Plan, fully improved to the satisfaction of the City Parks and Recreation Director, the legal description of which shall be finalized prior to commencement of construction. The deed shall be in fee simple encumbered only by necessary and reasonable easements and covenants. Such conveyance will occur immediately after construction of the capital improvements contemplated hereunder. The total value of said improved land (land plus park improvements) shall not exceed the following

Park 1	\$350,000
Park 2	\$400,000

Loeb understands that it will not be reimbursed more than \$750,000 for Parks 1 & 2 regardless of whether the total value of said improved land (land plus park improvements) exceeds \$750,000.

D. Loeb shall construct, at its expense, the capital improvements (the "Parks") required to complete the parks in accordance with the Land Use Plan and any further agreements that may be entered into by the parties hereto. All proposed improvements must be submitted to the City Parks and Recreation Director who will seek review from the Parks and Recreation Commission and the City Council prior to rendering approval.

The total reimbursement for the cost of development of the parks shall not exceed \$750,000.

E. The park land dedication and park construction should not exceed the estimated revenue for the developing area. The developing area shall include all of the Wingfield Springs Development from the first to the 750th residential building permit.

For purposes establishing an estimated revenue the following assumptions were made regarding the amounts of potential residential construction revenue for the developing area:

All of the single family homes will pay the maximum residential construction tax of \$1000/home. Therefore 750 residential homes @ \$ 1,000/home = \$750,000

The total estimated revenue in the developing area to be served by these parks is \$750,000.

F. Park improvement costs shall include the cost of water rights. Currently water rights are in excess of \$3,000 per acre foot. It is estimated that a minimum of 7.0 acre feet (i.e. over \$21,000) will be required for the Parks. The costs for these water rights shall be reimbursed by the City as a cost of the park development.

G. Reimbursement may be requested once this agreement has been executed. Reimbursement can only be used for the Parks listed in paragraph C above. Reimbursement will be issued based on Contractor's progress pay applications approved by the City Parks and Recreation Director not to exceed the total reimbursement identified in paragraph C above.

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Reimbursement may only be requested on a \$1,000 per unit prorata basis based on the residential building permits issued to date with completion schedules as follows:

- Park 1: Completion after the issuance of the 350th building permit for a residence (cumulative for total development).
- Park 2: Completion after the issuance of the 750th building permit for a residence (cumulative for total development).

Reimbursement will not be issued for the second park until the first park has been constructed and dedicated to the City. Reimbursement shall cease once the budget threshold for each park has been reached and until Loeb has submitted for review and received approval by the City Public Works Director and the City Parks and Recreation Director of the final design and construction costs of the park improvements and the value of the land dedicated (the "Actual Costs") for the next park.

H. Both parties acknowledge that the reimbursements issued are subject to audit. Once the Contractor's pay application has been reviewed and approved by the City Parks and Recreation Director, either party may, at any reasonable time, demand a comprehensive cost accounting for the capital improvements to said park site and any cost changes shall cause an adjustment to the reimbursement previously provided. At the time of final dedication and conveyance as defined herein, there shall be a determination, subject to audit of the final actual cost of the land and construction of capital improvements. If the Reimbursements previously issued, pursuant to this Agreement, exceed the aggregate value of the land, water rights, and actual capital improvement costs, Loeb will pay within 30 days, from the date of dedication, the City the amount of such excess. If the value of the land, water rights, and the actual capital improvement costs exceed the reimbursements previously issued pursuant to this Agreement, the City shall reimburse Loeb. The City shall reimburse Loeb up to, but not exceeding the total amount of \$750,000 for Parks 1 & 2.

I. Upon substantial completion of the capital improvements to each park site, Loeb shall arrange by contract with its contractor, for maintenance of the park improvements until Loeb and the City Parks and Recreation Director deem the contractor has achieved final completion. Upon final completion, Loeb shall convey to the City for each Park site together with title to the capital improvements thereon and the City shall open the park and accept all future maintenance responsibility for the Park except for warranty work as defined herein. Although Loeb shall be obligated to pay the contractor for the value of the substantial completion to final completion maintenance period, the City shall reimburse Loeb for said costs as part of the park improvements.

J. Upon final completion of the capital improvements to each Park site, Loeb shall arrange, by contract with its Contractor, for a one (1) year warranty period covering all park improvements to the satisfaction of the City. Although Loeb shall be obligated to pay the Contractor for the value of the one year warranty period, the City shall reimburse Loeb for said costs as part of the park improvements and further, the City shall indemnify, defend and hold Loeb harmless against

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any and all claims arising out of or relating to any act or failure to act by the City, its agents, employees, subcontractors and/or representatives in connection with the performance of its obligations thereunder after the City has accepted dedication of each Park site, provided that this indemnification shall not exceed the statutory caps set forth in Chapter 41 of the Nevada Revised Statutes. The obligation of Loeb's contractor to provide warranty work shall terminate at the end of the one (1) year warranty period following dedication of the site and improvements to the City.

K. During construction the City shall perform periodic inspections. Upon substantial completion of the capital improvements described above in accordance with plans and specifications approved by the City Parks and Recreation Director, Loeb shall notify the City Parks and Recreation Director of such final completion whereupon the City Parks and Recreation Director shall inspect the improvements and identify any construction related deficiencies. If no deficiencies exist, or upon correction by Loeb of such deficiencies, the City shall accept the dedication of the land and capital improvements.

L. Loeb, if affected by an administrative decision regarding reimbursement or credit, may appeal such decision to the City Parks and Recreation Commission by filing with the City Parks and Recreation Director, within ten (10) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The City Parks and Recreation Director will place such appeal on the City Parks and Recreation Commission agenda for the next regularly scheduled meeting occurring at least twenty-one (21) days thereafter. The City Parks and Recreation Commission, after a public hearing, shall have the power to affirm or reverse such decision of the City Parks and Recreation Director. If the City Parks and Recreation Commission reverses the decision of the City Parks and Recreation Director, it shall direct the City Parks and Recreation Director to recalculate the fee in accordance with its findings. In no case shall the City Parks and Recreation Commission have the authority to negotiate the amount of the fee. If the Parks and Recreation Commission affirms the decision of the Parks and Recreation Director, the applicant may appeal to the City Council within eighteen (18) days of the Parks and Recreation Commission's decision by filing a notice of appeal with the City Clerk. The City Council shall consider and render a decision on the appeal. That decision shall be deemed final for purposes of judicial review.

III. General Provisions

A. The subject heading of the paragraphs and subparagraphs of this agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

B. This agreement, including the Recitals in Section 1 which are true and correct and are incorporated by reference as a part of this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this agreement shall be deemed, or shall constitute,

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a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

C. This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D. Nothing in this agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this agreement, nor shall any provision give any third persons any right of subrogation or action over against any party to this agreement.

E. This agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representative, successors, and assigns.

F. All notices, demands, and other correspondence required or provided for under this agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices given to either party shall be addressed as follows: The City of Sparks Parks and Recreation Director, 98 Richards Way, Sparks, NV 849431 or Loeb Enterprises Limited Liability Company Manager, 7755 Spanish Springs Road, Sparks, NV 89436.

Either party may change its address by giving notice in writing to the other 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.

G. Credits and Reimbursements granted hereunder, are transferable within the parks listed in paragraph C upon written approval, prior to transfer, by the City Parks and Recreation Director.

H. The provisions of this Agreement are intended to be severable. If any provision of this Agreement is held invalid, the remainder of this agreement shall not be effected thereby and shall remain in full force and effect unless amended or modified by the mutual consent of all parties.

I. Upon execution of this Agreement, the City shall cause this Agreement to be recorded in the Office of the Washoe County Recorder.

J. It is understood that the contractual relationship between Loeb and the City is such that Loeb is not an agent, contractor or employee of the City for any purpose under this Agreement, including, without limitation, the development of capital improvements of land or construction of capital improvements to be dedicated to the City. It is the intention of the parties that this Agreement not impose or result in either party incurring or suffering additional liability for injuries

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to persons or property than would otherwise exist but for the parties' execution of this Agreement. This Agreement should not be construed as conferring any third-party beneficiary rights on anyone.

K. This Agreement shall be construed under the laws of the Great State of Nevada.

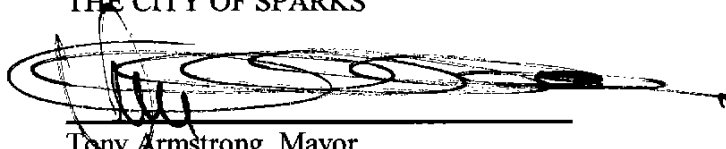
L. The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Agreement and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Agreement on behalf of the party for whom he or she is signing.

M. Pursuant to NRS 268.020, all demands and accounts against the City of Sparks, must be presented to the City Council, in writing, within six (6) months from the time the demands or accounts become due. No demand or account may be audited, considered, allowed or paid by the City unless this requirement is strictly complied with.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year appearing above.

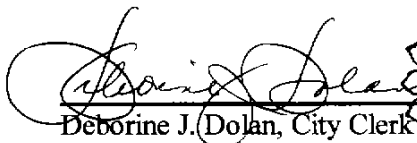
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THE CITY OF SPARKS



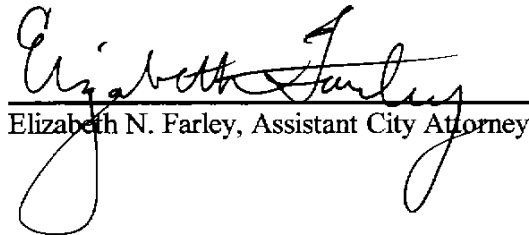
Tony Armstrong, Mayor

ATTESTED TO:


Deborine J. Dolan, City Clerk



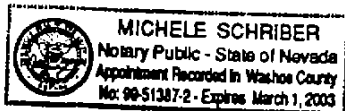
APPROVED AS TO FORM:


Elizabeth N. Farley, Assistant City Attorney

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On June 14, 1999, personally appeared before me, a Notary Public, Tony Armstrong, Mayor of the City of Sparks, and Deborine J. Dolan, City Clerk of the City of Sparks, who acknowledged to me that they executed the foregoing instrument.

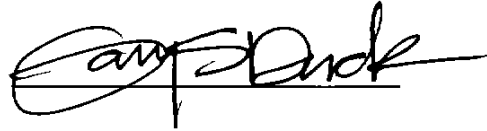
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Sparks, Nevada 89431




NOTARY PUBLIC

Revised 06/04/99

Loeb Enterprises Limited Liability Company
by its Manager, Gary S. Derck



STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On July 6th, 1999, personally appeared before me, a Notary Public, Gary S. Derck, who acknowledged to me that he executed the foregoing instrument.

Karen K. Rassa
NOTARY PUBLIC

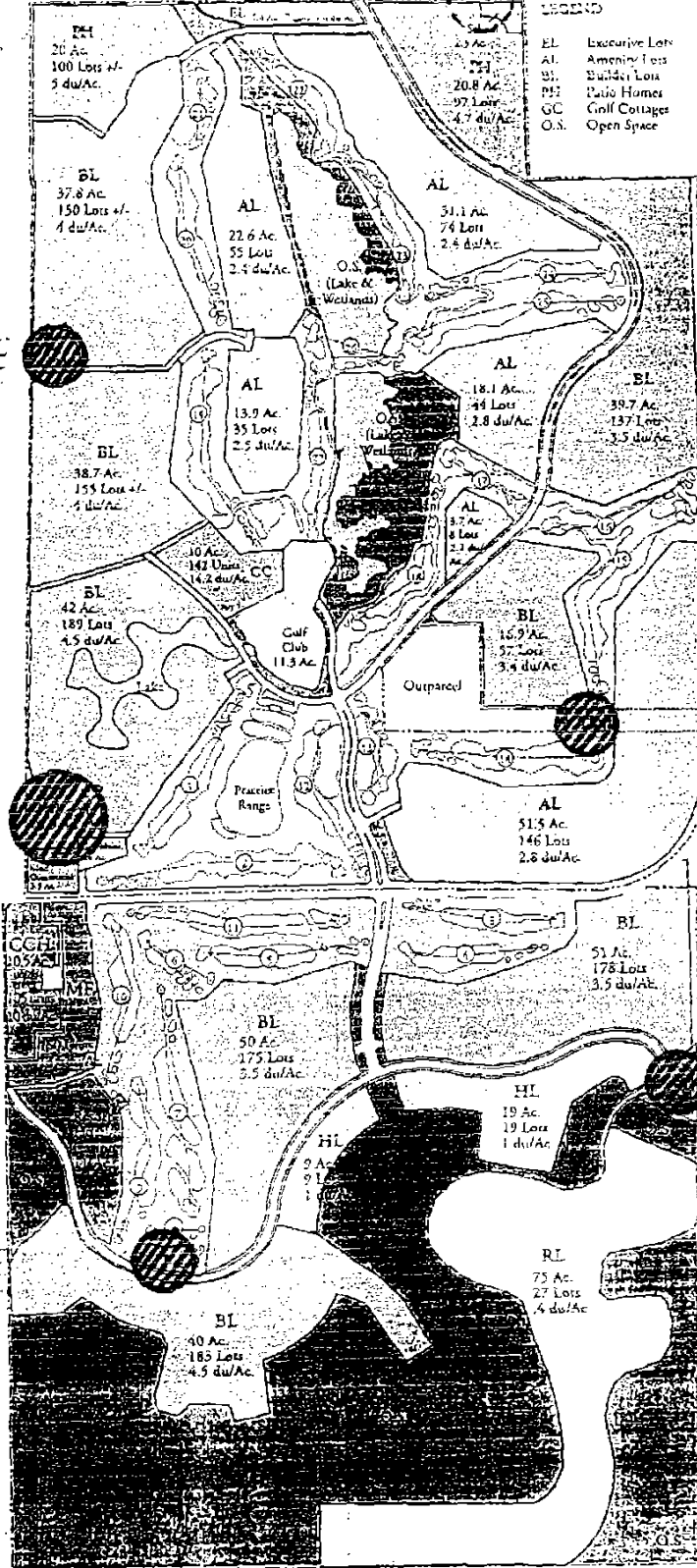


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Carlin, Nevada 89831

RECEIVED
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CITY HALL
CARLIN, NEVADA
JUL 10 1999

CHARRON PARK (OFF SITE).



- LEGEND
- EL Executive Lots
 - AL Amenities
 - BL Builder Lots
 - PH Patio Homes
 - GC Golf Cottages
 - O.S. Open Space

PARK NO. 2
(2.0 ACRES)

PARK NO. 1
(1.5 ACRES)

PARK NO. 3
(4.0 ACRES)

PARK NO. 5
(1.5 ACRES)

PARK NO. 4
(1.5 ACRES)

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FOR RETURN TO:
City of City Clerk
City Hall
311 Center Way
Washoe County, NV 89401

OFFICIAL RECORDS
WASHOE CO., NEVADA
RECORD REQUESTED BY
Joeb Ent.
39 JUL -6 PM 4:50

KATHRYN L. BURKE
COUNTY RECORDER

FEE 15- DEP *llh*

LEGEND

- RL Ridgtop Lots
- HL Hillside Lots
- BL Builder Lots
- AP Apartments
- O.S. Open Space

WINGFIELD SPRINGS MASTER PLAN



15-llh