

TERMINATION AND SETTLEMENT OF THE RESIDENTIAL CONSTRUCTION TAX CREDIT AGREEMENT

THIS TERMINATION AND SETTLEMENT OF THE RESIDENTIAL CONSTRUCTION TAX CREDIT AGREEMENT ("**Agreement**") is entered into on _____, 20__ ("Effective Date"), between the CITY OF SPARKS, a Nevada municipal corporation ("**City**"), and RED HAWK LAND COMPANY, LLC, a Nevada limited liability company ("**Red Hawk**"), to terminate that certain agreement entitled Residential Construction Tax Credit Agreement No. A-2570 (the "**Credit Agreement**"), entered into on June 14, 1999, between City and Loeb Enterprises, LLC, predecessor to Red Hawk, which Credit Agreement was recorded as Document No. 2358580 of Official Records of the County Recorder of Washoe County, Nevada, and to settle and resolve any claims by both parties under the Credit Agreement.

I. RECITALS

A. WHEREAS, the parties entered into the Credit Agreement, among other terms, for Red Hawk to provide to City three (3) parks (designated as Parks 3, 4, and 5 in the Credit Agreement) in exchange for City providing to Red Hawk Residential Construction Tax Credit with an approximate value of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000) for up to one thousand four hundred fifty (1,450) single-family homes.

B. WHEREAS, Park 3, completed and commonly known as "Pelican Park" with an approximate area of 4 acres, is now owned and operated by City and is open to the general public; Park 4, commonly known as "Silverton Shores Park" with an approximate area of 2.2 acres, has not yet been completed and the land for which is still owned by Red Hawk; and Park 5, which has not yet been named and has an approximate area of 1 acre, has not yet been completed and the land for which is still owned by Red Hawk. The parties have each raised concerns about the other parties' respective performances under the Credit Agreement.

C. WHEREAS, the parties now desire to terminate the Credit Agreement and address their concerns under the provisions herein.

D. WHEREAS, Red Hawk has submitted to City requests for Master Plan Amendments for Villages 17A, 27, and 28 and Amendments to the Wingfield Springs Development Agreement Handbook for Villages 17A, 27, and 31 (collectively, the "**Pending Entitlement Requests**"); and is preparing to submit the Final Map(s) for Village 30.

II. COVENANTS, OBLIGATIONS, AND AGREEMENTS

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As of the Effective Date, the Credit Agreement shall be automatically terminated and the parties released from all obligations, known or unknown, under the Credit Agreement.

2. Red Hawk shall pay Termination Fees ("**Termination Fee**") totaling Two Hundred Thousand Dollars (\$200,000) to City pursuant to the payment terms described below:

(a) Red Hawk shall pay a Fifty Thousand Dollar (\$50,000) Termination Fee upon execution of this Agreement.

(b) Red Hawk shall pay a Fifty Thousand Dollar (\$50,000) Termination Fee upon recordation of the Village 30 Final Map(s).

(c) Red Hawk shall pay a One Thousand Dollar (\$1,000) Termination Fee on issuance of each single-family unit building permit for lots owned by Red Hawk in the Wingfield Springs Community in addition to any residential construction tax owed on the permit. The payment of this Termination Fee per building permit shall continue, so long as City continues to meet its obligations under II.6. of this Agreement, until the total sum of Two Hundred Thousand Dollars (\$200,000) has been paid.

(d) Red Hawk may at any time pay the outstanding balance of said total sum.

(e) Any outstanding balance shall be paid to City no later than December 31, 2016.

3. As of the Effective Date, City shall have no further obligation to issue Residential Construction Tax Credit to Red Hawk (i.e., Red Hawk shall pay the standard City-wide Residential Construction Tax on issuance of each single-family unit building permit, in accordance with City's normal process).

4. Concurrent with the execution of this Agreement, Red Hawk shall execute and deliver to City a grant deed to dedicate the park land for Silverton Shores to City.

5. Concurrent with the recordation of the Village 30 Final Map(s), Red Hawk shall execute and deliver to City a grant deed to dedicate the park land for Park 5 to City.

6. City shall consider, on the same date as the Effective Date, all Pending Entitlement Requests. City shall consider the Village 30 Final Map(s) within sixty (60) calendar days of Red Hawk submitting such Final Map(s).

7. Within seven (7) days of the Effective Date, the parties shall execute and record a Notice of Termination of the Credit Agreement.

8. City does hereby release, acquit, and forever discharge Red Hawk and each, every, and all of its agents, servants, employees, representatives, successors, assigns, and insurance carriers, from any and all actions, causes of action, claims, demands, costs, expenses, and, without limitation to the foregoing, any and all claims or causes of action whatsoever existing in the undersigned, either directly or indirectly, on account of, or in any way growing out of, or connected with any and all known or unknown causes of action, claims, demands, damages, losses, or liabilities of whatsoever character, and without limitation to the foregoing, resulting from the Credit Agreement other than the obligations set forth in this Agreement.

9. Red Hawk does hereby release, acquit, and forever discharge City and each, every, and all of its agents, servants, employees, representatives, successors, assigns, and insurance carriers from any and all actions, causes of action, claims, demands, costs, expenses, and, without limitation to the foregoing, any and all claims or causes of action whatsoever existing in the undersigned, either directly or indirectly, on account of, or in any way growing out of, or connected with any and all known or unknown causes of action, claims, demands, damages, losses, or liabilities of whatsoever character, and without limitation to the foregoing, resulting from the Credit Agreement other than the obligations set forth in this Agreement.

10. The parties specifically warrant and represent that they have been fully advised and represented by legal counsel of their own selection, and are fully familiar with all of the circumstances, and in executing this release, they do so relying wholly upon their own judgment and advice of counsel of their own independent selection, and that they have been in no way influenced whatsoever in making this release by any representation or statement whatsoever regarding the matters set forth herein, or any other matter made by a person, individual, or corporation, or any agent, employee, or servant thereof, who is hereby released, or by any persons representing any of them, or by any attorney representing any of them.

11. It is understood that this settlement is a compromise of a disputed matter and the fulfillment of all settlement terms is not to be construed as an admission or acknowledgment of liability or responsibility whatsoever on the part of Red Hawk or City.

12. This release contains the entire agreement between the parties hereto and the terms of this release are contractual and not a mere recital. The undersigned further declare that: (a) this entire release has been carefully read; (b) the contents thereof are fully known and understood; (c) the same is signed as the free and voluntary act of the undersigned; and (d) it is the express intention of the undersigned to waive, release, and discharge any and all claims or causes of action whatsoever against Red Hawk or City and each, every, and all of their respective agents, servants, employees, representatives, successors, assigns, and insurance carriers, and to be fully and legally bound thereby.

13. Should any provision of this Agreement be determined by any court or arbitrator to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions shall not be affected and said illegal, unenforceable, or invalid provisions shall be deemed not to be a part of this Agreement.

14. The parties agree that this Agreement contains their complete and final agreement and there are no representations, statements, or agreements which have not been included within this Agreement.

15. This Agreement shall be binding upon the parties to this Agreement and upon their heirs, administrators, representatives, executors, and assigns. The parties expressly warrant that they have not transferred to any person or entity any rights, causes of action, or claims released in this Agreement.

16. The parties agree that any dispute regarding the application and interpretation or alleged breach of this Agreement shall be subject to final and binding arbitration before a neutral

arbitrator referred by the Judicial Arbitration and Mediation Services (“JAMS”). Such arbitrator shall be selected by the parties from the list of proposed arbitrators referred by JAMS. The prevailing party in any such action shall be entitled to recover its reasonable attorneys’ fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.


CITY:

CITY OF SPARKS,
a Nevada municipal corporation

By: _____
Name: _____
Its: _____

REDHAWK:

RED HAWK LAND COMPANY, LLC,
a Nevada limited liability company

By: 
Name: Jackie Seeno
Its: Manager