

Revised November 24, 2014

EXCLUSIVE NEGOTIATING AGREEMENT

Art 1. Parties and Definitions.

This Agreement is by and between:

- “Agency”** The Redevelopment Agency of the City of Sparks, Nevada
an agency created under the Community Redevelopment Law
431 Prater Way
Sparks, Nevada 89431
- “City”** City of Sparks, Nevada, a municipal corporation
431 Prater Way
Sparks, Nevada 89431
- “Developer”** Silverwing Development, a Nevada Corporation
9650 Gateway Drive, Suite 201
Reno, NV 89521

As used in this Agreement, the following words have the following meanings.

Agency Parcels are the following parcels of land owned by the Agency:

- Parcel 3 (APN 032-341-24), approximately 1.875 Acres
- Parcel 4 (APN 032-341-23), approximately .228 Acres
- Parcel 6 (APN 032-341-22), approximately .228 Acres
- Parcel 13 (APN 032-341-25), approximately .765 Acres
- Parcel 21 (APN 032-135-13), approximately .241 Acres
- Parcel 22 (APN 032-135-25), approximately .38 Acres
- Parcel 24 (APN 032-135-09), approximately .12 Acres

Total square footage of Agency Parcels approximately 3.923 Acres.

City Parcel is Parcel 9 (APN 032-341-26), approximately .705 Acres.

Nugget Parcel is Parcel 23 (APN 032-134-14) owned by Wolfhound Holdings LLC.

The location of the Agency Parcels, City Parcel and Nugget Parcel are shown in Attachment B to this Agreement.

Exclusive Matters is defined in paragraph 3.01.A

Project means a mixed-used development to be located in the Project Area which may include, but is not limited to, multi-family residential, retail, restaurant, and office uses that comply with the Redevelopment Plan and the Sparks Transit Oriented Development Plan.

Project Area means a portion of Victorian Square described in Recital 2 A below, as may be amended from time to time.

Redevelopment Plan means the Sparks Town Center 2000 Amended Redevelopment Plan, adopted May 8, 2000 by the City of Sparks, Nevada under Ordinance 2071, as most recently amended by the First Amendment (Victorian Square Development Plan) adopted on June 13, 2005.

Sparks Transit Oriented Development Plan means the plan approved by the Sparks City Council on July 27, 2009, as it has been subsequently amended, and which re-zoned Victorian Square as Transit Oriented Development – Downtown/Victorian Square. The zoning permits a variety of medium to high density housing types and a wide range of retail, entertainment, service, civic and office uses by right subject to the standards contained in the Sparks Transit Oriented Development Design Manuals.

Victorian Square means the land so designated in the Redevelopment Plan generally located in downtown Sparks bounded by Fifteenth Street on the west, D Street and Victorian Plaza Circle on the north, Victorian Plaza Circle/Eleventh Street on the east and Victorian Avenue on the south.

Art 2. Recitals

A. Victorian Square is a part of the Town Center Redevelopment Area, and, pursuant to the Redevelopment Plan, the Agency had caused to be developed in that square a 14 screen stadium theater complex (the “**Theater Parcel**”), a 703 space public parking structure (“**Structure Parcel**”), and a public plaza extending south from the Theater Parcel to Victorian Avenue (the “**Public Plaza**”), and desires to continue redeveloping the remainder of Victorian Square (the “**Project Area**”) as a mixed use project and in accordance with the Redevelopment Plan and the Sparks Transit Oriented Development Plan.

B. In July of 2014, Developer approached the Redevelopment Agency to express interest in developing Victorian Square parcels owned by the Agency and City. Developer has since undertaken considerable due diligence and has prepared a mixed-use Project for the Agency Parcels, and if it can be acquired, a parcel owned by a third party. Developer is also proposing to spend 24 months working with the Economic Development Authority of Western

Nevada to attract an office tenant on the City Parcel.

C. Developer is requesting an Exclusive Negotiating Agreement (ENA) so that they can continue on to the next stage of due diligence, which will require considerably more time and expense.

D. Agency desires to grant an exclusive negotiating agreement to Developer.

NOW THEREFORE, in exchange for the mutual covenants, burdens and benefits expressed herein, the parties agree as follows.

Art 3. Exclusive negotiations; schedules; standards.

§3.01 Exclusive negotiations between Agency and Developer.

3.01.A. Negotiations of Exclusive Matters.

For the term of this Agreement, Agency and City agree to negotiate exclusively with Developer, except as approved by Developer, with respect to (hereafter “**Exclusive Matters**”):

- (i) the transfer or other disposition of the Agency Parcels and City Parcel during the term of this Agreement;
- (ii) the submittal, review and approval of any plans, drawings, budgets and supporting documents for the Project;
- (iii) the terms and provisions of a Disposition and Development Agreement (DDA) for the Agency Parcels and City Parcel;
- (iv) the use, lease or occupancy of the Agency Parcels and City Parcel without the prior consent of Developer except (a) regulatory, police or legislative actions relating to public safety, public welfare or land use (including zoning and zoning enforcement); however, Developer’s consent is required to rezone the Agency Parcels and City Parcel during the term of this Agreement.
- (v) uses in connection with special events; and
- (vi) temporary uses.

§3.02 Specific Duties and limitations.

¶3.02.A No implication of condemnation or eminent domain. Developer acknowledges that neither City nor Agency has made any commitments to use the power of eminent domain or condemnation and the use of any such powers is within the sole discretion of Agency and City. Developer shall not state or imply that Agency or City intends to use any power of condemnation or eminent domain.

¶3.02.B Participation by property owners. Developer acknowledges that NRS 279.566 and the Redevelopment Plan requires the Agency to offer under certain circumstances an opportunity for existing property owners to participate in the Project, and, without obligating itself to accept any terms of participation, Developer agrees to consider in good faith offers to participate by property owners.

¶3.02.C No solicitations to relocate. Except for businesses that are presently located in Victorian Square, Developer shall not (i) initiate negotiations with or (ii) offer any incentives to any local business to relocate from any location in any Sparks Redevelopment Area to Victorian Square without the consent of Agency.

¶3.02.D Developer best efforts to find office tenant(s) for City Parcel. Developer shall undertake best efforts to identify tenant(s) for the office building the Developer proposes to construct on the City Parcel. The Developer will coordinate its efforts with the Economic Development Authority of Western Nevada and will utilize the services of a commercial real estate broker(s), as appropriate. Beginning one year after approval of this Agreement, Developer shall provide the Agency with quarterly reports regarding its effort to secure tenant(s) for the City Parcel. Should the Developer succeed in securing tenant commitment(s), the City, Agency and Developer shall negotiate a Disposition and Development Agreement to provide for the Developer to acquire and develop the City Parcel for an office use.

¶3.02.E Developer compliance with land use regulations. Developer shall review existing zoning ordinances, land use polices and other land use restrictions, including specifically the Sparks Transit Oriented Development Plan, affecting the Property. Agency shall assist Buyer in the interpretation of land use regulations as they apply to a residential or mixed use development. Developer shall submit land use entitlement applications in the form of a site plan approval and tentative and final subdivision maps required to allow for Developer's intended uses on the Agency Parcels and City Parcel. Buyer shall submit a site plan(s) that is in conformance with the regulations that apply at the time of its submittals.

¶3.02.F Review and processing of land use entitlement applications. City agrees for itself and the City staff to diligently and timely review and comment to Developer concerning submittals made to City by Developer, and otherwise to act and proceed in a prompt and

diligent manner (consistent with good management of all of its statutory obligations) throughout the entitlement and public hearing process. All decisions regarding rezoning and development standards are subject to the City's sole legislative discretion, and nothing in this Agreement expresses or implies any obligation to treat the Project with any favor.

¶3.02.G City to consider abandonments. City agrees to consider abandonment of the following areas so that Developer may incorporate them in the Project: (i) that portion of the alley located between Victorian Avenue and Avenue of the Oaks directly adjacent to Agency Parcels 13, 21, 22 and 24 and the Nugget Parcel (see Attachment B); and (ii) that portion of the public right-of-way necessary to create right angles at the northwest and southwest corners of Agency Parcel 13. Abandonments are legislative decisions of the Sparks City Council subject to the requirements of NRS 278.480, and the City shall have sole and absolute discretion to approve or disapprove an abandonment.

¶3.02.H Amendment of the Redevelopment Plan. Agency and City acknowledge that market and other conditions have changed markedly since adoption of the First Amendment (Victorian Square Development Plan) of the Redevelopment Plan in 2005. While Developer's Project is consistent with the Redevelopment Plan's focus of producing a mixed-use project in Victorian Square, some of the specific locations of proposed land uses and other particulars of the Redevelopment Plan may need to be changed. Agency and City agree to immediately initiate a review of the Redevelopment Plan and, if appropriate, diligently pursue amendment of the Redevelopment Plan, subject to the requirements of NRS 279 and the legislative discretion reserved for the Sparks City Council and Agency Board.

¶3.02.I Agency best efforts to acquire Nugget Parcel. Agency shall undertake best efforts to acquire the Nugget Parcel during the term of this Agreement by offering its owner, Wolfhound Holdings LLC, the opportunity to exchange it for other Agency owned property that is not covered by this Agreement. Agency retains its discretion, as described in ¶3.03.B of this Agreement, as to the acquisition terms. If the Agency reaches a definitive agreement to acquire the Nugget Parcel on or before April 1, 2015, the Disposition and Development Agreement shall provide the Developer the opportunity to acquire and develop the Nugget Parcel.

¶3.02.J Appraisals. Agency shall obtain, prior to or during the term of this Agreement, summary and review appraisals for the Agency Parcels, City Parcel and Nugget Parcel. Agency, City and Developer agree that the appraisals shall be used to establish the price at which the Developer will acquire these properties.

§3.03 Standards

¶3.03.A Submittals by Developer.

- (1) By January 21, 2015 Developer agrees to deliver all of the listed items in sufficient detail for Agency to make an informed decision.
- (2) If a submittal is inconsistent with the Project, as defined in this Agreement, the Developer shall explain why the Project should be changed.
- (3) Unless otherwise agreed, all proposals and plans must be generally consistent with the Redevelopment Plan.

¶3.03.B Discretion of Agency. The Agency Board is a public body and redevelopment decisions are a legislative function subject to public hearings and input, and Agency shall have sole and absolute discretion to approve or disapprove any matter submitted to it for any reason. If Agency disapproves a submittal or places conditions on it that are not acceptable to Developer, Developer's sole remedy is to terminate this Agreement, and Agency shall have no further liability to Developer other than as provided in §5.03 below.

§3.04 Information to be provided by Agency and City.

Within 30 days of the execution of this Agreement, the Agency and City shall make available to Developer at no charge or cost to Developer:

- (i) Design work and drawings previously undertaken or prepared for or on behalf of the Agency or City with respect to the Project Area.
- (ii) Engineering studies, soils tests, environmental reports, economic impact studies, historical information and studies, and traffic and parking studies, relating to the Project Area or other development projects in Victorian Square that were previously undertaken or prepared for on behalf of the Agency or City and which are in the possession of the Agency or City.
- (iii) Subject to the Developer providing timely information regarding residential unit counts and the amount and type of non-residential square footage to be constructed, and a count of the number of fixtures in non-residential structures to be connected to the sanitary sewer system, City will calculate and provide to Developer estimates of the Regional Road Impact Fees and City of Sparks sewer connection fees for the Project.
- (iii) All other information requested by Developer in the possession of the

Agency or City with respect to the Project Area or for the potential development of Victorian Square, provided that the information is readily available.

(iv) Access to such employees, advisers, and consultants of the Agency or City (consistent with other priorities) as may be helpful to Developer in its analysis of the development of the Project.

§3.05 Cooperation by Parties.

¶3.05.A Developer agrees to negotiate, communicate and confer with Agency staff and with such development consultants, traffic engineers and design professionals as may be retained by the Agency.

¶3.05.B Agency agrees (i) to negotiate with Developer on a priority basis; and (ii) to make staff available to meet with the Developer and any State or Federal entity or private lender or equity investor in order to secure required approvals or funding for the Project or its components.

§3.06 Predevelopment expenses; ownership of products purchased. Each party shall pay all of its own expenses in the performance of this Agreement.

§3.07 DDA and Other Agreements.

¶3.07.A DDA

If Developer's proposal for the Project is approved by the City and Agency, Developer and Agency staff shall use best efforts to negotiate a draft Disposition and Development Agreement (DDA) for presentation to the Agency Board and City Council. It is anticipated that the DDA will include the following terms:

(i) require Developer to diligently pursue tenants and financing for the Project, and provide that, for an initial "go – no go" period not to exceed six months, Developer may terminate the DDA without any liability if Developer cannot meet the milestones;

(ii) after the initial "go – no go" period provided for above, provide a definitive time schedule for development of the Project, and milestones for achieving Project goals, and remedies (which may include extension fees) for failure to achieve them;

(iii) provide objective standards for the selection of tenant(s) for the retail and office spaces;

- (iv) delineate with specificity the commitments of each party and the preconditions for performance of such commitments;
- (v) provide each party with a firm contractual basis concerning willingness and capability of the other party to meet its obligations;
- (vi) set out the respective obligations of the parties regarding site preparation, installation of improvements, incurrence of debt, construction and opening of the Project;
- (vii) include those matters required by law for redevelopment projects and public works projects, including the requirement, if applicable, that prevailing wages be paid to laborers on the Project.
- (viii) define the Agency's right to terminate for breach of the DDA or for other specific reasons;
- (ix) include warranties and representations;
- (x) include provisions regarding rights and obligations of parties upon termination of the DDA, including an obligation of Developer to resell Property or property conveyed to Developer at a specified price or price range in the event of a default; and
- (xi) provide for the possibility that the Project shall participate in associations or districts as may be mutually agreed upon (e.g. common interest associations, maintenance districts, parking districts, improvement districts, special assessment districts) aimed at promoting, maintaining and operating the vibrancy of Victorian Square.
- (xii) provide that due to the substantial investment in and community popularity of the fountain and existing infrastructure improvements in the Project Area, they shall not be removed, relocated, or modified without the express permission of Agency, which approval may be withheld in Agency's absolute discretion .

¶13.07.B Parking Agreement.

As required for the Project, the parties agree to negotiate a parking agreement to govern the use, operation and maintenance of parking facilities serving the Project, including the parking structure on the Structure Parcel, which provisions shall encompass operating standards, maintenance standards, allocation of any operating revenues and expenses and security measures.

Art. 4. Warranties and Representations.

§4.01 By Agency. Agency represents and warrants:

¶4.01.A That the Agency is duly created and validly existing as a corporate and body politic under the Community Redevelopment Law of Nevada (Nevada Revised Statutes Chapter 279).

¶4.01.B That Agency has the authority under the Community Redevelopment Law to enter into and carry out the provisions of this Agreement.

§4.02 By Developer. Developer warrants and represents:

¶4.02.A That Developer is duly and validly organized and existing in good standing as a corporation in the state of Nevada and has all requisite power and authority to enter into and perform its obligations under this Agreement; and that all necessary actions have been taken under Developer's Operating Agreement to authorize entering into this Agreement and bind Developer to it and all obligations to accomplish the purposes stated herein.

¶4.02.B That (i) entering into this agreement does not violate any contract, court order, administrative order or other undertaking; (ii) that Developer has complete authority to enter into this Agreement without obtaining any court order or permission or agreement of another party; (iii) to the best of Developer's knowledge, there are no suits, other proceedings or investigations pending or threatened against Developer that Developer reasonably believes would prevent Developer from performing its duties and obligations hereunder or would have a material adverse effect on the financial condition of the Developer.

¶4.02.C That the principals of Developer are experienced in the development of multi-family, retail and office projects, and that a principal will at all times be involved in day to day pursuit of the Project.

¶4.02.D That as of the date hereof, and continuously throughout the term of this Agreement, that except as specifically disclosed to and approved in writing by the City Council or Agency Board of Directors, no employee, officer, member of the Agency or City, no consultant who is providing consulting to the Agency or City with respect to the Project, and no person related (within the second degree of consanguinity) to any such person: (i) now is or will be permitted to become a member of Developer; or (ii) now has or will be permitted to have any contractual relationship with Developer (except if jointly employed by Agency and Developer); or (iii) now has or ever will have any direct or indirect interest in this Agreement; or (iv) has been paid or given, and will not be paid or given any money or other consideration for obtaining this Agreement; or (v) now has or will be permitted to own or have any interest,

direct or indirect, in the Project other than acquisition or lease of a personal residence at market rate.

¶4.02.E That except as otherwise disclosed to Agency, neither Developer nor any person who will perform duties hereunder has been convicted of or had a civil judgment entered against him or her of fraud, misrepresentation, embezzlement, theft, obtaining money under false pretenses, violations of disclosure requirements required by federal or state securities laws, or violation of any law designed to protect the environment. This is a continuing warranty and representation throughout the term of this Agreement.

§4.03 Representations by persons who sign this document.

Each person who executes this agreement warrants and represents to the other that he or she has taken all steps to obtain and does in fact have actual authority to execute this Agreement and bind his or her principal to all of the provisions herein.

Art 5. Term of Agreement; duties upon termination; default and remedies.

§5.01 Expiration.

Except as it applies to the City Parcel, this Agreement expires on the earlier of: (i) the date that a DDA is approved and executed by both parties for the development of the Agency Parcels, or (ii) six months after approval of this Agreement by the Agency Board of Directors. With respect to the City Parcel, this Agreement shall continue in force until the earlier of: (i) the date that a DDA is approved and executed by both parties for development of the City Parcel, or (ii) two years after approval of this Agreement by the Sparks City Council.

§5.02 Early termination

¶5.02.A Developer may, in Developer's sole and absolute authority, terminate this Agreement at any time for any reason or no reason at all without any liability to Agency, except as provided in ¶ 5.03 below.

¶5.02.B Upon default of this Agreement, the non-defaulting party may terminate this Agreement and pursue available remedies, as provided below.

§5.03 Duties upon termination.

When this Agreement expires or is terminated, the parties agree as follows (and this provision survives the termination of this Agreement):

¶5.03.A Developer shall return to Agency all property of the Agency or City (including a copy of materials jointly owned and not previously distributed to Agency) in the possession of Developer or any of Developer’s agents or contractors, and all materials furnished to Developer.

¶5.03.B Agency shall return to Developer all materials submitted to Agency and all property of Developer (including a copy of materials jointly owned and not previously distributed to Developer) in the possession of Agency or City or any of their agents or contractors.

§5.04 Default, remedies

¶5.04.A Excuse due to force majeure.

(1) Except as provided elsewhere herein, if a “force majeure” makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the force majeure provided that the obligated party (i) within a reasonable time after the commencement of the force majeure notifies the other party of the nature of the force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

(2) A “force majeure” is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; failure of power system or public infrastructure, quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of a violation of the prevailing wage provisions in this Agreement, if any); (iii) the death or physical or mental incapacitation of the Developer’s key personnel (defined as J Carter Witt, Elizabeth Witt and Doug Hunter); (iv) a lawsuit challenging the validity or approval of this Agreement if an order is entered prohibiting performance by the obligated party, and so long as the obligated party defends such lawsuit with reasonable diligence; (v) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

(3) A force majeure is deemed to cease for purposes of this Agreement and a party is deemed to be in breach of an obligation or cure when it becomes possible for the

obligated party to commence to perform the obligation or cure.

¶15.04.B. Default.

Subject to ¶15.04.A, a default occurs when (i) any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation, becomes false as a result of a subsequent event or occurrence; (ii) any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence; (iii) any party repudiates, breaches or fails to perform any covenant, material term or provision in this Agreement; (iv) an event required to occur does not occur by the time required (unless in the case of a required submittal by Developer hereunder, Developer notifies the Agency prior to the deadline for the submittal that Developer elects not to proceed with the submittal and is terminating the Agreement); or (v) an event described in this Agreement as a default or which gives rise to a right of termination occurs.

¶15.04.C. Notice and opportunity to cure.

Upon a default, the non-defaulting party shall give notice and an opportunity to cure the default for a period of ten business days from the date that the notice is deemed received.

¶15.04.D. Remedies.

(1) In the event of a default by City or Agency which is not cured within the time provided in ¶15.04.C, Developer may, in addition to any other remedy stated in this Agreement: (i) suspend any counter-performance due hereunder; (ii) terminate this Agreement; and/or (iii) file an action in the Second Judicial District Court for the State of Nevada for damages.

(2) In the event of a default by Developer which is not cured within the time provided in ¶15.04.C, City or Agency may : (i) suspend any counter-performance due hereunder and terminate this Agreement; and/or (ii) pursue any other remedy that is available at law or equity.

(3) All remedies stated in this Agreement are cumulative with each other and with any remedy afforded in law or equity. The election of any remedy does not constitute a waiver of any other remedy.

¶15.04.E. Waivers.

Any forbearance, inaction, or failure to promptly pursue any remedy (whether

intentional or negligent) shall not be deemed a waiver of any default or remedy. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future.

Art 6. Relationship of parties; indemnifications; insurance

§ 6.01 Relationship of parties.

Neither party is the agent of the other and neither party may make representations, undertakings or agreements which are binding on the other. Nothing in this agreement or the performance thereof shall be construed as creating or implying a joint venture, partnership or other arrangement which imposes an agency or fiduciary relationship.

§6.02 Indemnifications

¶6.02.A. By Developer. To the fullest extent permitted by law, Developer shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this Agreement and caused in whole or in part by an act or omission of Developer or a related party. "Indemnified parties" includes the other parties to this agreement and their related parties. "Arising out of the administration of this agreement" means the performance of any task, responsibility or right contemplated under this agreement including negotiations with property owners, any travel and any site visits.

¶6.02.B. By City To the fullest extent provided by law, and subject to the conditions, limitations and immunities contained in NRS 41.0305 through NRS 41.039, as amended from time to time, City shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this agreement and caused in whole or in part by an act or omission of the City or a related party. "Indemnified parties" includes Developer and its related parties. "Arising out of the administration of this agreement" includes negotiations with property owners, any travel and site visits, but does not include any legislative or administrative acts of discretion by City or a related party in connection with the exercise of police powers or regulatory powers over land use planning.

¶6.02.C. By Agency To the fullest extent provided by law, and subject to the conditions, limitations and immunities contained in NRS 41.0305 through NRS 41.039, as amended from time to time, Agency shall indemnify, hold harmless and defend the indemnified parties from and against all liability arising out of the administration of this agreement and caused in whole or in part by an act or omission of the Agency or a related party. "Indemnified parties" includes Developer and its related parties. "Arising out of the administration of this agreement" includes negotiations with property owners, any travel and site visits, but does

not include any legislative or administrative acts of discretion by Agency or a related party in connection with the exercise of police powers or regulatory powers over land use planning.

¶6.02.D. Definitions. “Liability” means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorneys’ fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom) and other economic damages. “An act or omission” includes any act, negligence, or omission and any act which is in breach of this agreement. A “related party” includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

¶6.02.E. Limitations and Conditions. The current laws of Nevada limiting liability due to comparative or contributory negligence shall apply. The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker’s compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act or omission which occurred before expiration or early termination.

§6.03 Insurance.

¶6.03.A Industrial Insurance.

It is understood and agreed that there shall be no worker’s compensation or industrial insurance coverage provided by City or Agency for Developer or any related party as that term is defined in §6.02. Developer shall provide all industrial insurance required by Nevada law, and shall provide a certificate issued by an insurer in accordance with NRS 616B.627, and with a certificate of an insurer showing coverage pursuant to NRS 617.210, prior to commencing work.

¶ 6.03.B Other Insurance.

Developer shall insure itself with general liability and automobile insurance consistent with sound management practices in the industry and as may be required by law. If requested, Developer shall provide certificates of insurance.

Art 7. General Terms.

§7.01 No Assignment; binding effect.

Developer may create a separate entity for the purpose of developing the project, and may assign this Agreement to that entity, so long as the entity's managing member is either Silverwing Development or SWD Partners LLC. Otherwise, no party may assign or delegate any obligations or rights under this Agreement without the consent of the other party which may be withheld in its sole discretion. This agreement shall be binding on and inure to be benefit of the parties.

§7.02 No Third-Party Beneficiaries.

None of the provisions of this Agreement is intended to make any person who is not a party to this Agreement a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit pursuant to this Agreement for any reason, including, without limitation, any suit for personal injuries or property damage.

§7.03 Further acts and assurances.

Each party agrees to do such further acts and things and to execute and deliver to the other such additional certificates, documents and instruments as the other may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the other party its rights, powers, and remedies hereunder.

§7.04 Severability.

¶7.04.A. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be upon agreement of the parties. If any term or provision of this Agreement or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement and the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

¶7.04.B To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

§7.05 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

§7.06 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute the same Agreement.

§7.07 Notices and deliveries.

Except as otherwise provided herein, all notices, demands, instructions, deliveries and other communications required or permitted to be given upon any party hereto shall be in writing and shall be delivered to the addresses indicated in Article 1 above or to any subsequent address given in writing to the delivering party, and shall be deemed delivered upon the earlier of:

(i) regardless of the method of delivery, when actually delivered to or received by the addressee, or

(ii) if delivered or sent by registered or certified mail, postage prepaid, three business days after delivery to the U.S. Post Office, as indicated on the receipt issued by the U.S. Post Office;

(iii) if sent by recognized overnight courier or delivery service (Federal Express, UPS Overnight) when actually delivered to the location specified above, as indicated on the receipt;

(iv) If sent by facsimile (provided a copy is also sent by U.S. Mail), when actually received as confirmed in a written record printed by the sending facsimile machine, but if there is no such record from sending machine, then only when actually received.

§7.08 Attorney's fees.

Each party shall bear its own attorney's fees regardless of the outcome of any

proceeding brought to enforce or interpret this Agreement. Costs of the proceeding, however, may be awarded as deemed appropriate under the circumstances by the presiding judge.

§7.09 Construction; time for performance; holidays weekends.

¶7.09.A Titles and headlines of this agreement are intended for editorial convenience and are not to be construed as a part of this agreement.

¶7.09.B The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.”

¶7.09.C Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural.

¶7.09.D The parties hereto were each advised by counsel in drafting and negotiating this agreement, and all parties contributed to its contents. No presumptions against or in favor of either party are appropriate based on who drafted this Agreement or any provision herein. This agreement shall be interpreted and enforced only to the extent permitted by law. If any provision of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the parties agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

¶7.09.E. Time is of the essence with respect to all of the provisions herein. If a period of time for performance is specified in terms of days, it means calendar days. If, however, a time period for performance expires on a weekend or a holiday recognized in NRS 236.015 then the time for performance is extended to 5 p.m. on the next business day for the City.

§7.10 Authority to administer agreement.

¶7.10.A Except as otherwise specifically provided herein, the Chief Administrative Officer of the Agency and the City Manager of the City has the authority to negotiate and execute any approvals, waivers, modifications, amendments, and acceptances of performance under this Agreement, EXCEPT the following, which must be approved by the Agency board and City Council:

(i) All proposals or submittals by Developer as listed in Attachment A. The Chief Administrative Officer of the Agency may review submittals for compliance with the requirements set forth in this Agreement, and return them if they do not comply.

(ii) Any agreement regarding any Exclusive Matter.

(iii) Any extension of the overall expiration date indicated in ¶5.01.A.

(iv) Any decision to terminate this Agreement or seek any remedies for defaults. The Chief Administrative Officer of the Agency and City Manager may give notice of default, and may approve any extension of the cure period.

¶7.10.B The President of Developer shall have the authority to execute all approvals, waivers, modifications, amendments, and acceptances of performance under this Agreement.

§7.11 Entire Agreement; modifications.

¶7.11.A This Agreement, including the recitals and exhibits hereto, constitutes the entire agreement of the parties hereto. All statements, representations, promises, undertakings made by any party or any contractor, employee or agent of either party not expressly contained herein is hereby superceded by this agreement.

¶7.11.B This Agreement may be modified by the parties hereto but only by a written instrument signed by the party to be bound.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the dates indicated below.

Developer

Silverwing Development, a Nevada Corporation

By _____ Date _____
J Carter Witt III, President

Agency

Redevelopment Agency of the City of Sparks, Nevada

By _____ Date _____
Julia Ratti, Chair

Attest:

By _____ Date _____
Teresa M. Gardner, Agency Clerk

City

City of Sparks, Nevada

By _____ Date _____
Geno R. Martini, Mayor

Attest:

By _____ Date _____
Teresa Gardner, City Clerk

Approved as to Form and Legality

By _____
Agency Attorney

By _____
City Attorney

Attachment A

1. **Market Assessment.** A description of the target market for the Project, including an assessment of the likelihood of long-term success relative to competition (existing, planned and proposed).
2. **Plan.** A schematic plan showing the location, size and use of all improvements to be constructed on the Property, including:
 - a. The proposed building height, dimensions and square footage of all structures.
 - b. The type of tenant proposed in the Project.
 - c. Preliminary renderings showing the architectural style of the Project.
3. **Budget.** A proposed budget for the Project (reflecting any phasing), including the following elements:
 - a. Projected costs for the construction and development of the concept for the Project, including all anticipated hard and soft costs.
 - b. Projected operating revenues and expenses for the Project for three years following issuance of the first certificate of occupancy for the Project, together with information on operating revenues and expenses for various components (e.g. retail, housing, etc.) of the Project.
4. **Financing.** A summary of likely financing sources for the Project.
5. **Project Schedule.** A schedule showing the expected timeline for the possible financing, development and leasing of the Project.