

APNs: 083-023-18

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083-023-27 083-023-29
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083-741-06 083-741-07
083-741-08 083-830-45
083-830-56 083-830-59
083-830-69 083-830-73
510-071-19 510-071-20

AFTER RECORDING RETURN TO:

KM2 Development, Inc.
P.O. Box 6448
Reno, Nevada 89513

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030).

Signature:

(Print Name) _____ (Title) _____

DEVELOPMENT AGREEMENT
(A Portion of the Kiley Ranch North Project)

**DEVELOPMENT AGREEMENT
(A Portion of the Kiley Ranch North Project)**

**ARTICLE 1
PARTIES, DEFINITIONS, RECITALS**

§ 1.01 Parties and Notice Addresses

This Development Agreement (“Agreement”) is by and between:

“City” The City of Sparks, Nevada, a municipal corporation
431 Prater Way
Sparks, NV 89431-0857
Attn: City Clerk
FAX Number: (775) _____

“Master Developer”

 KM2 Development, Inc., a Nevada corporation
 P.O. Box
 Reno, NV 89513
 FAX Number: (775) 333-0305

“Owner,” collectively

 Rising Tides LLC, a Nevada limited liability company
 PO Box 6448
 Reno, NV 89513

§ 1.02 Definitions.

The following capitalized terms shall have the following meanings in this Agreement:

“Administrator” means the Deputy City Manager for Community Development for the City, the equivalent position thereof or his/her designee.

“Applicable Law” means those ordinances, codes, and agreements described in § 4.01.02.

“City Council” means the city council of the City of Sparks, Nevada.

“Code” means the Sparks Municipal Code.

“Current Law” means any ordinance, resolution or regulation, in force at the time approval is given or action is taken, and applicable pursuant to the terms of this Agreement.

“Effective Date” is the effective date of this Agreement as set out in §5.01.

“Final Approval” means the City Council’s final approval of the Handbook for each Phase of the Project pursuant to the final approval process set forth in § 1.6.5 of the Handbook and Planned Development Law, resulting in a **“Finally Approved Handbook”** which is recorded against the property comprising the Phase of the Project identified therein.

“Handbook” means the Kiley Ranch North Tentative Handbook approved on October 18, 2004, to the extent it applies to the Property presently owned legally or equitably by Owner, which establishes a development plan for the Project and design standards for improvements constructed within the Project.

“NRS” means the Nevada Revised Statutes.

“NUD” means New Urban District zoning.

“Phase” means that a portion of the Project identified in an application for Final Approval and/or in a Finally Approved Handbook.

“Planning Commission” means the Planning Commission of the City of Sparks, NV.

“Planned Development Law” means NRS 278A and SMC Chapter 20.18, jointly, governing planned unit developments, which establishes a procedure for obtaining tentative approval, and then final approval, of development/design standard handbooks for planned unit developments.

“Project” means those portions of the commercial and residential development Kiley Ranch North described in **Exhibit A** hereto, and each part thereof, that are presently under the legal or equitable control or ownership of Owner.

“Property” means the real property presently owned legally or equitably by the Owner which comprise the Project and as more particularly described in **Exhibit A** hereto and made a part hereof by reference.

“SMC” means the Sparks Municipal Code.

“Subsequent Approval” shall have the meaning set out in §4.01.

“Tentative Approval” shall mean approval of the Handbook for the entire Project approved by the City Council pursuant to the Tentative Approval process under the Planned Development Law, resulting in a **“Tentatively Approved Handbook.”**

§ 1.03 Recitals.

.01 Owner represents that pursuant to a separate agreement, Owner has authorized Master Developer to develop the Project. Also pursuant to a separate agreement, Master Developer has acquired an option to purchase the Property. Owner acquired the Property, including without limitation, all entitlements, government approvals, Handbooks and other rights, pursuant to the Trustee Deed recorded on November 9, 2011 as Document Number 4057397 in Official Records of Washoe County, State of Nevada.

.02 Master Developer envisions an overall master development and has prepared the Handbook, which includes, among other things, a master plan, development standards and design standards consistent with that theme. The Handbook shall serve as the baseline for all development of the Project and cannot be amended or modified without approval of Master Developer and landowner, as provided below.

.04 The Project will be developed in one or more Phases. Working with the Master Developer contemplates that it will obtain Final Approval of Handbook for each Phase. Prior to or in conjunction with each application for Final Approval, Master Developer shall request rezoning of the Phase from agricultural to NUD, if applicable.

.05. Because the Project will be developed in phases over time, City and Master Developer desire to enter into an agreement to establish enforceable planning principles, standards and procedures to (i) eliminate uncertainty in planning and guide the orderly development of the Project consistent with the Tentatively Approved Handbook, (ii) mitigate significant environmental impacts, (iii) ensure installation of necessary on-site and off-site public improvements, (iv) provide for the preservation of substantial permanent open space, (v) make provision for trail facilities, (vi) provide for traffic improvements, (vii) provide for public services, public uses and urban infrastructure, (viii) promote health, safety and general welfare of the City and its inhabitants, (xii) assure efficient utilization of resources at least economic costs to its citizens, and (x) otherwise achieve utilization of resources and accomplish the purposes of the Planned Development Law and SMC 20.101. A specific basis for the City desiring to enter into a comprehensive long-term agreement is to assure a planned community that would include the density and mixture of residential products, business park facilities, common area, open space and public facilities contemplated by the Tentatively Approved Handbook.

.06 Pursuant to NRS 278.0201 and SMC 20.101, the parties desire to enter into this development agreement to implement the foregoing principles and procedures, and to waive certain time requirements in order to permit simultaneous processing of entitlements.

NOW, THEREFORE, in exchange and consideration for the mutual benefits, covenants, conditions, and undertakings herein, the parties agree as follows.

ARTICLE II

IMPLEMENTATION OF HANDBOOK; MODIFICATION; CONSTRUCTION OF CERTAIN IMPROVEMENTS; WAIVER OF STATUTORY DEADLINES

§2.01 Implementation of Handbook

If and when the Project is developed, Master Developer shall cause each Phase of the Project to be developed in accordance with this Agreement, the Finally Approved Handbook for such Phase, and Applicable Law. The provisions of §1.6 (Handbook Approval Process), §1.7.5 (Permitted Unit Transfers), and §1.8 (Entitlement Process Chart) from the Tentatively Approved Handbook are incorporated herein by reference as if fully set forth herein. City may, in its sole discretion, approve or disapprove any application for Final Approval or application for a map, plan or other specification which deviates from the Tentatively Approved Handbook, subject to any limitations on such discretions imposed by the Planned Development Law or any other applicable law, ordinance or regulation. If, however, City desires to require a modification to any such application(s) as a condition of approval, the provisions in Section 1.6.6 of the Tentatively Approved Handbook, regarding the reasonable relationship between the required modification and the application, shall control. Without limiting the generality of the foregoing, if an application for Final Approval of a Phase deviates from the Tentatively Approved Handbook by (i) reducing any open space, common area, landscaping feature, park, trail, public facilities or public transportation facility, (ii) modifying any infrastructure plan, (iii) or by changing any phasing provisions, then, as a condition to approving such application, the City may require Master Developer to amend the Tentatively Approved Handbook as to remaining portion(s) of the Project or otherwise provide assurances satisfactory to the City in its sole discretion that (a) any such reduction is matched by an increase or replacement elsewhere in the Project, (b) all changes to infrastructure do not negatively impact and are coordinated with the infrastructure for other portion(s) of the Project, and (c) phasing changes will not result in overburdening or forcing approval of final phases inconsistent with the planning parameters contemplated in the Tentatively Approved Handbook.

§2.02 Modification or Amendment of Handbook.

With respect to the Property described in Exhibit "A" hereto, no amendment to the Tentatively Approved Handbook or Finally Approved Handbook shall be allowed without Master Developer's approval, in its sole discretion, and the approval of any landowner required by Planned Development Law. All references in this Agreement to the Tentatively Approved Handbook shall automatically include any amendments thereto, provided that in the event of a conflict between such an amendment and this Development Agreement, this Development Agreement shall control.

§ 2.03 Construction of Certain Improvements

The previous Master Developer and/or Owner of Kiley Ranch North caused all of the existing roadways, landscaping, lighting and security features, trails, parks, open space, storm water management facilities and utilities (including sewer, water, gas, electricity, phone and cable) with respect to each Phase under a Finally Approved Handbook to be constructed and completed in accordance with each respective Finally Approved Handbook. Hereafter, Master Developer shall cause all the roadways, landscaping, lighting and security features, trails, parks, open space, storm water management facilities and utilities (including sewer, water, gas, electricity, phone and cable) on each Phase to be constructed in accordance with the Finally Approved Handbook applicable to such Phase.

§ 2.04 Scheduling and Waiver Statutory Deadlines.

Each Phase of the Project may involve rezoning to NUD, Final Approval of the Handbook, special use permits, tentative and final subdivision maps, and site plan reviews for portions of the Project. It is in the best interest of the parties to coordinate and simultaneously process the various entitlement proceedings, but state and local law imposes certain deadlines on some procedures that would inhibit the simultaneous processing. In exchange for the City agreeing to simultaneously process entitlement proceedings, Master Developer hereby waives any statutory deadline for an entitlement procedure that is processed with another procedure, including, but not limited to, the following:

See Exhibit B attached hereto.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

§3.01 Warranties and Representations of Owner and Master Developer

For the purpose of inducing the City into entering into this Agreement and to consummate the transactions contemplated hereby, Owner and Master Developer each hereby represent, warrant and agree as of the date hereof, and continuously throughout the term of this Agreement, each of the following:

.01 Good Standing. It is a Nevada corporation or limited liability company (as the case may be), duly organized, in good standing, and qualified to do business under the laws of Nevada, and has all requisite power and authority to enter into and perform its obligations under this Agreement.

.02 No Adverse Actions. To the best of its knowledge, there are no suits, other proceedings, or investigations pending or threatened against it that it reasonably believes

would prevent it from performing its duties and obligations hereunder or would have a material adverse effect on its financial condition.

.03 Valid Agreement; No Conflict. All authorizations required by its enabling documents (articles of incorporation, bylaws, etc.) have been obtained to approve this Agreement. This Agreement is duly executed by it, and is valid and legally binding upon it and enforceable in accordance with its terms. To the best of its knowledge, the execution and delivery hereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement, or other instrument to which it is a party.

.04 No Convictions or Judgments. No officer or director of Master Developer has been convicted of a crimes involving misrepresentation, fraud, obtaining money under false pretenses, or embezzlement nor has any judgment in District Court entered against any officer or director for fraud, misrepresentation, obtaining money under false pretenses or embezzlement.

§3.02 No Conflicts of Interest, Interest in Project by City Officials, or Payment to City Officials.

For the purposes of inducing the City to enter into this Agreement and to consummate the transactions contemplated hereby, Owner and Master Developer hereby represent, warrant, and agree as of the date hereof, and continuously throughout the term of this Agreement, that except as specifically disclosed to and approved by the City Council, no key person (as defined below) and no person related (within the third degree of consanguinity) to any such key person:

- (i) now is or will be permitted to become a member of Owner, Master Developer or investor in Owner or Master Developer;
- (ii) now has or will be permitted to have any contractual relationship with Owner or Master Developer (except for bona fide construction employment agreements with persons related to key persons);
- (iii) now has or will have and direct or indirect interest in this Agreement or the Project;
- (iv) has been paid or given, and will not be paid or given, any money or other consideration for obtaining this Agreement;
- (v) now has or will be permitted to have any interest, direct or indirect, in the Project or any improvements constructed by Owner or Master Developer, except for sales or rental in the ordinary course of business without discount, benefit, or advantage not offered to the general public.

“Key person” means any person who within two years previous to the above delineated Action or relationship was (i) a member of the City Council or Planning Commission of the City, (ii) an employee or officer of the City who was in a position to make any regulatory decisions or professional judgments on behalf of City regarding the Project or the administration or enforcement of this Agreement, or (iii) was a consultant of City with respect to this Project.

§3.03 Compliance with Laws.

Master Developer agrees to comply with all federal, state, county and municipal laws applicable to the proposed or existing development of the Project.

ARTICLE IV

LAWS AND PROCEDURES GOVERNING PROJECT

§4.01 Applicable Law; Subsequent Approvals.

.01 Applicable Law Controls. Unless otherwise provided herein, City agrees that Subsequent Approvals shall be governed by and that Master Developer may build the Project (or cause the Project to be built) in accordance with this Agreement and Applicable Law (to the extent that it conflicts with Current Law as provided in § 4.02 and below) during the term of this Agreement and so long as Master Developer is not in default hereunder. If a particular issue or question arises which is not covered by this Agreement or Applicable Law, then Current Law shall govern the question or issue, except as provided in § 4.02 herein. Master Developer has the right to enforce the Applicable Law provisions on behalf of itself or other landowners in the Project.

.02 Definition of Applicable Law. “Applicable Law” means (i) the Tentatively Approved Handbook, to the extent binding on the parties pursuant to Planned Development Law, (ii) the Finally Approved Handbook, (iii) the ordinance approving this Agreement, and (iv) except as otherwise expressly provided in the Finally Approved Handbook, all provisions in the SMC Title 17 (Subdivisions) and Title 20 (Zoning and Land Use controls) which are in effect on the Effective Date hereof and as may be amended. SMC Title 17 and Title 20 as amended shall only apply to the extent they pertain to matters not already prescribed in a Tentatively Approved Handbook or Finally Approved Handbook.

.03 Definition of Subsequent Approvals. For purposes of this Agreement, “Subsequent Approvals” includes actions and decisions taken or made by the City, including the Administrator or any other officer or employee of City, the Planning Commission, the City Council, and any board or commission of the City, as a part of any of the following procedures involving the Project: (i) the Final Approval process set forth in Section 1.6 of the Tentatively Approved Handbook, (ii) the approval processes set forth in Sections 1.6 (Handbook Approval Process) and 1.7 (Individual Project Approval Process) of the Finally Approved Handbook for

each Phase, (ii) tentative and final maps, if required, (iv) variances, (iv) grading and building permits, (v) inspections and code Enforcement proceedings, and (vi) similar matters.

§4.02 Exceptions.

.01 Notwithstanding any other provision in this Agreement, City may apply Current law to the Property or Project with respect to any of the following:

(i) **Codes.** Any building code, fire code, plumbing code, mechanical code, electrical code, building construction administrative code, building security code, housing code, solar energy code, swimming pool, spa and hot tub code, energy conservation standard for new building construction, building conservation code, code for the abatement of dangerous nuisances, and any similar code imposed by state or federal law only to the extent that such laws or codes have been adopted by the City (or deemed to be adopted by the City under state law) and is in effect throughout the City.

(ii) **Processing Fees.** Any fees charged by City which solely represent the reasonable costs to City for City staff time and resources spent in reviewing and processing Subsequent Approvals.

(iii) **Impact Fees.** Any impact fees, regional road impact fees, residential construction taxes or fees, assessment district assessments, or improvement district fees or assessments.

(iv) **Rezoning Requests.** Any request to rezone the Property from NUD.

§ 4.03 Further Assurances

.01 To the maximum extent permitted by law, City shall use its best efforts to prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Master Developer and use its best efforts to keep this Agreement in full force and effect.

.02 The provisions of §1.6,6 of the Tentatively Approved Handbook are Incorporated herein by reference.

.03 Master Developer reserves the right to challenge in court any law that would, in Master Developer's opinion, conflict with Applicable Law, including this Agreement, or reduce any development rights vested by this Agreement and Subsequent Approvals.

.04 The parties recognize that City may be required by law to defend the validity of any voter-approved City initiative or referendum. The undertaking and Provision of any such defense by City shall not be construed in any manner as a violation or default of this

Agreement. Consistent with this Agreement, a conflicting initiative or referendum shall not apply to the Project.

§ 4.04 County, State, or Federal Laws.

Notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans, or policies, to the extent that such changes are required by changes in state or federal laws or regulations (“**Changes in the Law**”). In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law, and City and Developer shall take action as may be required pursuant to this Agreement, including, without limitation, §6.02(Amendments) and Section §5.04.02 (Delay by Force Majeure).

§ 4.05 Timing and Procedures for Subsequent Approvals.

.01 Prompt and Diligent Processing. Upon submission of all appropriate applications and processing fees for any Subsequent Approval, and City’s reasonable determination that such application is complete, and with due regard for any necessary waiver made under section 2.03, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application, including, without limitation, (i) the notice and holding of all required public hearings, and (ii) rendering a decision regarding the Subsequent Approval application. In processing such applications, the provisions of §4.03.02 shall be applicable.

ARTICLE V

TERM OF AGREEMENT; REVIEWS; BREACH AND REMEDIES

§ 5.01 Effective Date; Commencement.

This Agreement becomes binding on City only when (i) it has been reviewed by The Planning Commission and recommended to the City Council for approval, (ii) approved by the City Council by ordinance and the ordinance title published in accordance with the procedures set out in Sparks City Charter Section 2.080, and (iii) the 30-day period for filing appeals under NRS 237.100 has expired without appeal, or if an appeal is filed, then upon resolution of the appeal. If it becomes binding on City, it shall have an Effective Date as of the date when the ordinance was adopted by the City Council.

§ 5.02 Expiration and Extensions of Agreement.

.01 Expiration. This agreement shall expire on the earlier of (a) the revocation of the Tentatively Approved Handbook (provided, however, that this Agreement shall remain in effect

as to Finally Approved Handbooks), or (b) twenty (20) years after the Effective Date hereof, subject to extension, as set forth below. This Agreement shall be subject to termination by the City of Sparks upon a bulk sale of the Property to an unrelated affiliate of Owner or Master Developer unless an Assignment is executed by the purchaser and the consent of the City of Sparks, not to be unreasonably withheld, is first obtained.

.02 Automatic Extension. The Administrator agrees to extend the expiration of this Agreement to match the duration of the Tentatively Approved Handbook and any extension thereof, as set forth in §1.6.4 thereof, provided that the Tentatively Approved Handbook has not been revoked.

.03 Consequences and Duties on Expiration. Except as otherwise specifically provided in this Agreement, all vested rights, duties, and obligations contemplated under this Agreement terminate upon expiration. Current Law shall apply to all developed actions taken after expiration of this agreement.

§ 5.03 Cancellation; Public Notice of Cancellation.

.01 Public Notice. No party may cancel this Agreement until public notice is first given as required by NRS 278.0205.

.02 Cancellation by Mutual Agreement. Subject to the notice requirements set below, the parties may mutually agree to cancel this Agreement as to the Project or any portion thereof not included in a Finally Approved Handbook. Absent mutual consent, none of the parties hereto shall be entitled to cancel this Agreement except as provided herein.

.03 Consequences and Duties on Cancellation. Except as otherwise specifically provided in this Agreement, all rights, duties, and obligations contemplated under this Agreement terminate upon expiration, including, but not limited to, the provisions in the Tentatively Approved Handbook which are incorporated by reference in this Agreement, but excluding any portions of the Project which are included in Finally Approved Handbooks. Current law shall apply to all development actions taken after expiration of this Agreement.

§ 5.04 Default and Remedies.

.01 Default. A default occurs when (i) any representation of a material fact expressed herein or in any report or statement submitted under this Agreement 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) a party breaches any covenant or fails to perform any material term or provisions of this Agreement, (iv) any event expressly described as a default in this Agreement occurs, (v) Master Developer seeks any protection or relief under the Federal Bankruptcy Code (unless prohibited by applicable bankruptcy law), or under any state law designed to afford relief to debtors, or

(vi) an involuntary petition is filed against Master Developer under the Federal Bankruptcy Code, which petition is not dismissed within six months of its filing.

.02 Delay by Force Majeure. If a default occurs because a “force majeure,” as defined in this subsection, make performance of any obligation or duty under this Agreement impossible, the parties agree that the defaulting party has a right to cure the default as provided below, provided that the defaulting 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 of the default impossible, and the expected duration (if known), and (ii) agrees to diligently pursue remediation to the effects of the force majeure to the extent reasonably feasible, and (iii) agrees to notify the nondefaulting party immediately when it becomes possible to commence efforts to cure the default.

A “force majeure” is defined as:

- (i) without the fault of and beyond the reasonable control of the defaulting party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; or
- (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of Developer’s violation of the prevailing wage provisions in this Agreement, if any); or
- (iii) litigation challenging the validity of enforceability of this Agreement; or
- (iv) as provided in NRS 278.350 (3).

Market or economic conditions or inability to obtain financing are not “force majeure.”

A force majeure is deemed to cease for purposes of this Agreement when it becomes possible for the defaulting party to commence to cure defaults and perform under this Agreement.

§5.05 Notice and Right to Cure Default.

.01 The Administrator is authorized to give all notices and make all determinations regarding defaults by City in this section without resolution or action by the City Council.

.02 Except as provided next below regarding defaults caused by force majeure, notice of default shall be given in writing to the defaulting party, and the defaulting party shall have 30 calendar days from the date the notice is deemed received to cure the default.

.03 If a defaulting party has satisfied the conditions set forth in the section above regarding force majeure, then it shall have until 30 calendar days after the cessation of the force majeure to cure the default caused by the force majeure. However, if a force majeure does not cease (as defined above) within 180 calendar days after commencement, then the nondefaulting party may cancel this Agreement as provided in § 5.03 hereof.

.04 An extension of the cure period shall be allowed by the nondefaulting party if: (i) the defaulting party has made material progress toward a full cure within 30 days after notice of default or the cessation of the force majeure (provided that the force majeure has ceased within 180 days after commencement), and (ii) the defaulting party is diligently pursuing a full cure, and (iii) it is likely, in the discretion of the nondefaulting party, that a full cure is likely within 60 days from the expiration of the cure period described above. The nondefaulting party is not obligated hereunder to grant an extension beyond 60 calendar days after the expiration of the cure period specified above, and the nondefaulting party reasonably believes that the defaulting is not diligently pursuing a full cure at any time during the extension period.

.05 If the default is not cured within the manner described above, the nondefaulting party may without further notice or grace pursue the remedies provided herein.

.06 The extension of any dates set forth in this Agreement may be extended by written mutual agreement of all parties to this Agreement.

§5.06 Remedies by the City.

If a default by Master Developer has not been fully cured within the times set out above, the City may pursue any one or combination of the following remedies; (i) cancel this Agreement in accordance with NRS 278.0205, (ii) pursue any remedy in law or equity to recover damages or obtain equitable relief, including, but not limited to, specific performance, and (iii) pursue any right or remedy specifically provided for in this Agreement.

§5.07 Remedies by Master Developer

If a default by City has not been fully cured within the times set out above, the Master Developer may pursue any one or combination of the following remedies; (i) cancel this Agreement in accordance with NRS 278.0205, (ii) pursue any remedy in law or equity to recover damages or obtain equitable relief, including, but not limited to, specific performance, and (iii) pursue any right or remedy specifically provided for in this Agreement.

§5.08 Litigation; Jurisdiction and Venue; Service of Process.

.01 Jurisdiction and Venue. In addition to any other rights or remedies, any party to this Agreement may institute legal action to cure, correct, or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Second Judicial District Court for the State of Nevada.

.02 Service of Process. In the event that any legal action is commenced by Master Developer against the City, service of process on the City shall be made by personal service upon the City Clerk of the City, or in such other manner as may be provided by law. In the event that any legal action is commenced by a party against Master Developer, service of process on Master Developer shall be made by personal service upon the Nevada Resident Agent of Master Developer as provided in Nevada law.

§5.09 Remedies Cumulative, Waivers of Remedies.

.01 Inaction Not Waiver. Failure or delay in giving any notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or default by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights and remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. Failure or delay in enforcing this Agreement or in exercising any remedies in the event of continuous or repeated defaults does not constitute a waiver, or imply a course of dealing or choice of remedies giving rise to an expectation of how a party will deal with defaults in the future. Any party may at any time (subject to applicable statutes of limitations) pursue any remedy for any default.

.02 Waivers. Waivers are binding on a party only if expressed in writing signed by Authorized Officer of the waiving party, and any waiver or series of waivers is only for the default or breach described in the writing, and does not constitute a waiver, an implied waiver, or any obligation to waive any future defaults or breaches. "Authorized Officer" means the Administrator if City is the waiving party or the president or manager of Master Developer if Master Developer is the waiving party.

.03 Remedies Cumulative. Except otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by another party.

§5.10 Specific Performance.

Due to the nature of the development process, especially with regard to this Project in terms of the specific uses and structures that are a part of the Project, the functional and economic interrelationships of the various components of the Project, and the functional and economic interrelationships between the Project and the City as a whole, it may not be practical to restore the Project to its undeveloped natural state and/or to alter the Project's relationships to the City once any significant portion of the infrastructure is constructed. Master Developer and the City will then be foreclosed from other choices that they might have had available for the development of the Project. Similarly, Master Developer and the City have invested time and effort in planning prior to arriving at the kind, location, and intensity of uses, improvements, and structures all as specified in this Agreement and, therefore, it may not be possible to determine a sum of money which would adequately compensate any part for this.

For the above reasons, the parties agree that, depending on the nature of a breach, damages may not be an adequate remedy for the parties if one or more of them fails to carry out its obligations under this Agreement, because the Project is a series of parcels with a unique potential for development as compared to other property in the City, and because it may not be possible to evaluate the amount of damages which could properly compensate any party in the case of any other party's failure to carry out its obligations. Accordingly, the parties agree that specific performance may be a preferred remedy, rather than damages, in the event of any party's failure to carry out its obligations hereunder.

ARTICLE VI

GENERAL PROVISIONS

§6.01 Binding Effect; Successors and Assigns.

All of the benefits and obligations of this Agreement shall bind Master Developer and any successor or assign to whom Master Developer specifically assigns all its rights and obligations hereunder and names as the successor "Master Developer." Master developer agrees to inform City in writing as to the name and address of successor or assign.

§6.02 Amendments and Modifications to this Agreement.

.01 General. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties or their successors in interest, in accordance with this Agreement and NRS 278.0205.

.02 Notice. Prior to any amendment to this Agreement, the following parties shall be notified as follows:

(i) Notice shall be mailed to those persons, if any, required by Applicable Law.

(ii) Notice shall be published in a newspaper as provided in NRS 287.0205.

.03 Approval by Ordinance. All amendments to this Agreement must be approved by the City Council by ordinance.

§ 6.03 Authority to Implement this Agreement; Appeals.

.01 Powers of Administrator. Except as otherwise provided in this Agreement or the Tentatively Approved Handbook or Finally Approved Handbook, as applicable, the Administrator has the Authority to conduct all reviews, make all approvals, and take all actions on behalf of the City.

.02 Appeals. Appeals of Administrator's actions, approvals or omissions shall be made in the manner prescribed by Title 20 to SMC.

§ 6.04 Notices; When Deemed Sufficiently Given.

.01 Formal notices, demands, and communications between the City and Master Developer must be in writing and must be sent to the addresses or facsimile numbers stated in §1.01 above, or such other addresses or number as either party direct in writing from time to time, and if no written notice is given, then to address or number subsequently communicated to the sending party in writing.

.02 If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given the earlier of when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt.

.03 If notice is sent by courier, or overnight delivery service (Federal Express, UPS overnight, U.S. Postal Priority Mail), and is properly addressed, it will be deemed sufficiently given when delivered as indicated in the records of the courier or service.

§ 6.05 Intentionally Omitted

§6.06 Claims Against City.

NRS 268.020 requires that claims against City must be presented to the City Clerk within 180 days after the claim arises, and must be submitted in a certain manner. Master Developer agrees to comply with NRS 268.020 and understands that failure to submit as required will void the claim as a matter of law.

§6.07 Further Documents.

Each party agrees to honor any reasonable requests by the other party to complete, execute, and deliver any document necessary to accomplish the purposes hereof.

§6.08 Approvals Not to be Unreasonably Withheld.

Unless otherwise specified (such as with the words “sole discretion”), wherever this Agreement requires the approval of the City or Master Developer, or any officers, agents, or employees of either the City or Master Developer, such approval shall not be unreasonably withheld, conditioned or delayed.

§6.09 Attorney’s Fees and Costs.

If any party hereto institutes any action or proceeding (including arbitration, if authorized, or litigation) against the others arising out of or relation to this Agreement, each party shall bear its own attorney’s fees, regardless of who prevails. Costs may be awarded by the Court or arbitrator in accordance with the rules applicable to the proceedings, but otherwise shall be born by the party incurring the cost.

§6.10 Time of Essence; Timing Provisions.

Time is of the essence in the performance of this Agreement. Any reference to “days” means calendar days unless otherwise provided. If a performance deadline falls on a weekend or holiday recognized by the State of Nevada, then the deadline shall be deemed to be due on the first business day following the weekend or holiday. Performance on a day shall be due no later than 5 p.m.

§6.11 Inspection of Books and Records.

Each party shall have the right to all reasonable times to inspect the books and records of the other party pertinent to the purpose of this Agreement,

§6.12 Governing law.

The laws of the State of Nevada, without regard to the conflicts of law principles, shall govern the interpretation and enforcement of this Agreement.

§6.13 Modification or Severability of Invalid or Unenforceable Provisions.

.01 Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Agreement or the application thereof is held to be invalid or unenforceable by a court of competent jurisdiction, it shall be deemed to be modified to bring it within the limits of validity or enforceability , but if it cannot

be so modified, then it shall be severed from this Agreement; but in either event, 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.

.02 To prevent windfall or unintended consideration, if any material 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 counterperformance, condition, or corresponding consideration, and if such negotiations fail, either party may cancel this Agreement.

§6.14 Binding Effect; Successors and Assigns; Changes in Plans, Zoning or Law.

.01 This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and successors and assigns of the parties hereto.

.02 Unless this Agreement is amended, terminated, or canceled pursuant to the provisions herein, or by applicable law or regulation, this Agreement shall be enforceable notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, building regulation, or development moratorium, or similar City action, adopted by the City which changes, alters, or amends the rules, regulations, and policies applicable to the development of the Project at the time of approval of this Agreement, as provided by Nevada law.

§6.15 No Third Party Beneficiaries Intended.

Unless otherwise specifically identified in this Agreement, there are no third party beneficiaries intended by this Agreement and no third parties have any standing to enforce any of the provisions of this Agreement.

§6.16 No Agency, Partnership, or Joint Venture.

It is specifically understood and agreed to by and between the parties that (i) the Project is a private development, (ii) the City has no interest in or responsibilities for, or due to, third parties concerning any improvements, except as otherwise set forth in NRS Chapter 278A, until such time, and only until such time, that City accepts the dedication of such improvements in accordance with Nevada law, (iii) Master Developer shall have full power over and exclusive control over the Property which is a part of the Project, and (iv) City and Master Developer hereby renounce the existence of any form of agency relationship, joint venture, partnership, or other co-relationship and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Master Developer.

§6.17 Entire Agreement.

This Agreement (including recitals) integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between parties with respect to all or any part of the subject matter hereof.

§6.18 Construction of Agreement.

.01 Titles and headlines of this Agreement are intended for editorial convenience and are not to be construed as part of this Agreement.

.02 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.

.03 The parties hereto were each advised by counsel in drafting and negotiating this Agreement, and both parties contributed to its contents. No presumptions against or in favor of either party are appropriate based on who drafted this Agreement or any provisions hereto.

§6.19 Duplicate Originals; Counterpart Signatures.

This Agreement is executed in one duplicate original for each party hereto, and may be executed in counterpart signature pages, and is binding on a party only when all parties have signed a counterpart signature page and delivered it to the party responsible for assembling and distributing the final originals of this Agreement.

§6.20 Recording.

This Agreement and all exhibits (except those otherwise marked) shall be recorded in the Official Records of Washoe County as required by NRS 278A.520, the Tentatively Approved Handbook shall not be recorded.

§ 6.21 Representation by City as to Validity of Agreement.

City represents and warrants that (i) all authorizations required by state and local law (including the City Charter) have been obtained to approve this Agreement, (ii) this Agreement has been duly executed, and (iii) this Agreement is valid and binding upon City and enforceable in accordance with its terms.

§6.22 Representations and Warranties by Person Who Sign this Agreement.

Each person who signs this Agreement represents and warrants to each other person who signs this Agreement that he or she is an authorized agent of and has actual authority to execute this Agreement on behalf of the party for whom he or she is signing and that all

required approvals and actions have been taken to authorize the execution of this Agreement with the intent and effect of binding the party to this Agreement.

[Remainder of page intentionally left blank]

EXECUTED on the dates indicated below.

CITY:

City of Sparks, Nevada, a municipal corporation

Dated: _____, 2012
9-02

By: _____

Its: _____

Attest:

Approved as to form and legality

By: _____
City Clerk

City Attorney

MASTER DEVELOPER:

KM2 Development, Inc.
a Nevada corporation

By: _____

Robert A. Mathewson

Its: President

OWNER:

Rising Tides LLC,
a Nevada limited liability company

By: _____

Its: Manager

By: _____

Its: Manager

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

Acknowledgement in Representative Capacity
(NRS 240.1665)

This instrument was acknowledged before me on _____, 2012 by
_____.

Notary Public
Residing at _____
My commission expires: _____

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

Acknowledgement in Representative Capacity
(NRS 240.1665)

This instrument was acknowledged before me on _____, 2012 by
_____.

Notary Public
Residing at _____
My commission expires: _____

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2012 by
_____.

Notary Public

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2012 by
_____.

Notary Public

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2012 by
_____.

Notary Public

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2012
_____.

Notary Public

EXHIBIT "A"