PARTICIPATION AGREEMENT
NORTHERN CLARK COUNTY 215 BRUCE WOODBURY BELTWAY
FROM DECATUR BOULEVARD TO NORTH 5TH STREET

THIS AGREEMENT is made and entered into as of this 7th day of April, 2009, between Clark County, Nevada, a political subdivision of the State of Nevada, hereinafter referred to as COUNTY and SUMMERTSET DEVELOPMENT SERVICES, L.L.C., a Nevada limited liability company, hereinafter referred to as SUMMERTSET.

The initial addresses of the parties, which one party may change by giving notice to the respective other parties, are as follows:

SUMMERTSET:
Marc A. Bolduc, Senior Vice President of Development Operations
Summerset Development Services, L.L.C.
11411 Southern Highlands Pkwy, Suite 300
Las Vegas, Nevada 89141
Phone: (702) 220-6565
Fax: (702) 220-6566

With a Copy to:
Summerset Development Services, L.L.C
Attn: R. Brett Goett, ESQ.
11411 Southern Highlands Pkwy, Suite 300
Las Vegas, Nevada 89141

COUNTY:
Denis Cederburg, Director
Clark County Public Works
500 South Grand Central Parkway
Las Vegas, Nevada 89155-4000
Phone: (702) 455-6020
Fax: (702) 455-6040

WITNESSETH

WHEREAS, the COUNTY proposes to design and construct the Northern Clark County 215 Bruce Woodbury Beltway from Decatur Boulevard to North 5th Street, hereinafter referred to as “Project”; and,

WHEREAS, the Project includes improvements for future public utilities, and drainage improvements to facilitate the drainage of the North 5th Street detention basin within the Project limits and;

WHEREAS, SUMMERTSET desires that additional improvements, including future public utility and drainage facilities, hereinafter referred to as “SUMMERTSET IMPROVEMENTS”, be included as part of the construction of the Project. The SUMMERTSET IMPROVEMENTS are generally depicted in Exhibit “A” attached hereto and made a part hereof by this reference; and,
WHEREAS, SUMMERSET desires to provide funds to the COUNTY for the County’s construction of the SUMMERSET IMPROVEMENTS; and,

WHEREAS, the COUNTY is willing to construct the SUMMERSET IMPROVEMENTS, provided that SUMMERSET provides funds for this work and that the COUNTY does not incur additional cost or expense resulting from this work, and subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I: COUNTY AGREES

1.01 To include the SUMMERSET IMPROVEMENTS in the COUNTY’s Project documents for Bid, as shown in drawings entitled 2008 Northern CC-215 Bruce Woodbury Beltway, Decatur Boulevard to North 5th Street Phase 2, Drawings No. L-1886, as part of the base bid items for the Project.

1.02 To provide SUMMERSET with the planned dates of advertisement and bid opening of the Project at least seven (7) calendar days prior to the date on which the COUNTY plans to advertise and open construction bids for the Project.

1.03 To construct the SUMMERSET IMPROVEMENTS if the Project is awarded for construction by the Clark County Board of Commissioners (“BCC”) and if SUMMERSET fulfills its obligations herein, including SUMMERSET’s payment of the SUMMERSET IMPROVEMENT COST as defined herein, and subject to the availability of COUNTY funds for the award of the construction contract for the Project and as solely determined by the COUNTY.

1.04 To reimburse SUMMERSET for any over payment, if any, made by SUMMERSET following completion of the Project solely as determined by the COUNTY.

1.05 To require the contractor selected for the Project to name Summerset Development Services, L.L.C as an additional insured on the contractor’s liability insurance contract for the Project as required by the COUNTY.

ARTICLE II: SUMMERSET AGREES

2.01 To provide, at its sole cost and expense, all temporary construction easement rights requested by the COUNTY necessary to construct the SUMMERSET IMPROVEMENTS as determined by the COUNTY, and grant said rights to the COUNTY in a manner acceptable to the COUNTY, at no cost or expense to the COUNTY.

2.02 To pay to the COUNTY the actual cost for the construction of the SUMMERSET IMPROVEMENTS and an additional twelve percent (12%) for survey, construction
management, and inspection by the COUNTY, hereinafter referred to as the “SUMMERSET IMPROVEMENT COST”. The estimated “SUMMERSET IMPROVEMENT COST “as shown in Exhibit “B” attached hereto and by this reference made a part hereof, and is the sum of Five Hundred Two Thousand Five Hundred Sixty-Four and 16/100 Dollars ($502,564.16). Payment by SUMMERSET to the COUNTY for the above estimated amount ($502,564.16) shall be made in a single payment and within five (5) calendar days following approval of this Participation Agreement by the Board of County Commissioners of the COUNTY.

If SUMMERSET fails to make the payment within the time period prescribed above then the COUNTY is under no obligation to construct the SUMMERSET IMPROVEMENTS and SUMMERSET agrees to be responsible for all the costs and expenses to the COUNTY related to the deletion of the SUMMERSET IMPROVEMENTS from the Project.

2.03 To pay to the COUNTY any and all additional costs resulting from or relating to or arising from or attributable to the SUMMERSET IMPROVEMENTS that may include, but are not limited to costs relating to additional bid amounts, change orders, additional change in design, survey, inspection, damages, extended overhead, traffic control, dust control, idle equipment, delay, construction, quality assurance testing, construction management and extension of time for completion of the Project. All additional costs shall be determined at the COUNTY’s sole discretion and shall be paid to the COUNTY within thirty (30) days after receipt of invoice by the COUNTY.

2.04 To design the SUMMERSET IMPROVEMENTS at its sole cost and expense. Design is to be in accordance with all COUNTY standards, specifications and codes. Final design of the SUMMERSET IMPROVEMENTS, including obtaining the approval of the COUNTY, must be completed and provided to the COUNTY no later than, March 17, 2009. SUMMERSET also agrees to make any design modification as requested by the COUNTY at SUMMERSET’s sole cost and expense.

2.05 At SUMMERSET’s sole cost and expense to provide complete timely response to all inquiries and request for information, shop drawing submittals, and other inquiries by the COUNTY and or COUNTY’s contractor during the bidding, award and construction of the SUMMERSET IMPROVEMENTS SUMMERSET shall complete as-built drawings of the SUMMERSET IMPROVEMENTS within 30 days following completion of Project’s construction.

2.06 Notwithstanding the payment of the SUMMERSET IMPROVEMENT COST by SUMMERSET, the SUMMERSET IMPROVEMENTS is not considered the property of SUMMERSET, but will be considered the property of the COUNTY and or the City of North Las Vegas as determined by the COUNTY.

2.07 Notwithstanding any other provision in this agreement SUMMERSET agrees to be solely responsible for all costs related to the SUMMERSET IMPROVEMENTS and the COUNTY shall not be responsible to pay any costs related to the SUMMERSET IMPROVEMENTS.

ARTICLE III: IT IS MUTUALLY AGREED
3.01 Calculation of Summerset Improvement Cost based on Contractor’s Bid Amount

Within five (5) calendar days following opening of construction bids for the Project and SUMMERSET IMPROVEMENTS, the COUNTY will calculate SUMMERSET IMPROVEMENT COST based upon the quantities listed on Exhibit “B” and the base bid unit prices of the successful bidder. The COUNTY will provide written notice to SUMMERSET of the recalculated amount, hereinafter referred to as the RECALCULATED AMOUNT. If the estimated amount set forth in Section 2.02 is less than the RECALCULATED AMOUNT then SUMMERSET agrees to pay any and all additional amounts within five (5) calendar days from receipt of notice from the COUNTY.

If the County elects not to construct the Project the County will have no obligation to construct the Summerset Improvements and will refund any unused or unencumbered funds advanced by Summerset.

If SUMMERSET fails to make the payment for the difference between the estimated amount as set forth in 2.02 and the RECALCULATED AMOUNT within the time period prescribed above, then the COUNTY is under no obligation to construct the SUMMERSET IMPROVEMENTS and SUMMERSET agrees to be responsible for all the cost and expense to the COUNTY related to the deletion of the SUMMERSET IMPROVEMENTS.

If the estimated amount set forth in Section 2.02 is greater than the RECALCULATED AMOUNT the COUNTY will refund to SUMMERSET within thirty (30) calendar days from the COUNTY’S determination of the RECALCULATED AMOUNT, the difference between the estimated amount set forth in Section 2.02 and the RECALCULATED AMOUNT less ten (10%) percent of the RECALCULATED AMOUNT which may be withheld by the COUNTY as a retainage for any additional costs or expenses related to the SUMMERSET IMPROVEMENT.

3.02 County Approval

The COUNTY shall have the right to review and approve or disapprove the final design of the SUMMERSET IMPROVEMENTS. All signage must be in accordance with federal, state, and local laws, ordinances, and codes, including but not limited to Nevada Revised Statutes 484.287 and the Manual on Uniform Traffic Control Devices.

3.03 No Recourse Against COUNTY

SUMMERSET shall not have the right to seek recourse against the County for the workmanship of the SUMMERSET IMPROVEMENTS or any claims whatsoever regarding the condition, location, design, construction or maintenance of the SUMMERSET IMPROVEMENTS, including but not limited to claims made by third parties injured by the condition, location, design, construction or maintenance of the SUMMERSET IMPROVEMENTS.
3.04 Indemnification

SUMMERSET, their successors in interest, shall indemnify, defend and hold harmless the COUNTY and its officers, agents, and employees, against and from any and all liability, losses, damages, claims, demands, causes of action, costs and expenses, judgments, whatever nature, including costs of investigation, reasonable attorneys fees and expenses, expert witness fees and expenses and all court or arbitration or other alternative dispute resolution costs arising out of a default by SUMMERSET under this Participation Agreement, and/or arising from or as a result of any action or inaction by SUMMERSET, its officers, employees, and agents ("SUMMERSET CLAIMS").

At its option, COUNTY may elect to hire an attorney or attorneys to defend COUNTY, its officers, employees and/or agents from any of the SUMMERSET CLAIMS. If the COUNTY exercises this option, SUMMERSET agrees that SUMMERSET remains subject to all indemnification obligations as set forth above in this section including, but not limited to, paying all costs, attorneys fees, costs of suit, costs of appeal, and expert witness fees. COUNTY may at any time compromise or settle any claim, cause of action, suit, and/or arbitration if COUNTY provides the settlement or compromise amount. Provided, however, that COUNTY and its defense counsel shall not have the right to compromise or settle any such claims, causes of action, suits or arbitration in any manner which would obligate SUMMERSET for the payment of money without SUMMERSET’s prior approval. SUMMERSET agrees, within thirty (30) days of receipt of billing(s) from COUNTY to pay all reasonable attorneys fees incurred by the COUNTY in defense of such claims or other legal actions in addition to those items listed above.

3.05 Maintenance

Maintenance of the SUMMERSET IMPROVEMENTS will be performed by the City of North Las Vegas, at its sole direction.

3.06 Termination by COUNTY

The COUNTY may terminate this Agreement at any time prior to the award of the Project for any reason, without any cost to either party. The COUNTY may terminate this Agreement in the event that SUMMERSET fails to perform pursuant to the provisions of this Agreement, without any cost to the COUNTY.

3.07 Notice of Termination

In the event that the COUNTY elects to terminate as provided in this Section, the COUNTY shall provide written notice of termination to SUMMERSET and the Agreement shall be deemed terminated upon receipt of such notice.

3.08 Term
This Agreement shall be in full force and effect from and after the date of execution of the Agreement and shall continue until the obligations of SUMMERSET and the COUNTY are fulfilled, unless terminated as provided in this Agreement.

3.09 Waiver

None of the conditions of this Agreement shall be considered waived by either party unless such waiver is in writing and signed by both parties. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of this Agreement unless expressly stipulated in such waiver.

3.10 Successors and Assigns

The terms, provisions, covenants, and conditions of this Agreement shall apply to, bind, and inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns.

3.11 Captions

The captions appearing at the commencement of the Sections and Articles hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

3.12 Governing Law

The laws of the State of Nevada shall be applied in interpreting and construing this Agreement.

3.13 Third Party/No Partnerships

It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the COUNTY and SUMMERSET except as specifically provided herein. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

3.14 Notices

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given and received when personally delivered or three business days after deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage pre-paid, to the addresses provided above.
3.15 Rights-of-Way and Easement

All easements and rights-of-way to be transferred by SUMMERSET to the COUNTY shall be granted in a manner acceptable to the COUNTY free of all liens, restrictions, covenants and/or conditions.

3.16 Recording

This AGREEMENT will be recorded in the office of the COUNTY recorder’s and shall also be binding upon the Owner of the property described in Exhibit "C".

IN WITNESS WHEREOF, the parties have executed this Participation Agreement as of the date herein above set forth.

SUMMERSET

BY: MARC A. BOLDUC
   Senior V.P. Development

CLARK COUNTY, NEVADA

BY: VIRGINIA VALENTINE
    County Manager

Approved as to form:

BY: CHRISTOPHER FIGGINS
    Chief Deputy District Attorney

Attest:

BY: SHIRLEY B. PARRAGUIRRE
    County Clerk
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EXHIBIT "C"
DESCRIPTION OF PROPERTY

Project: NORTHERN CLARK COUNTY 215 BRUCE WOODBURY BELTWAY
FROM DECATUR BOULEVARD TO NORTH 5TH STREET

APN: 124-14-410-001

LEGAL DESCRIPTION

The subject property is Lot 4.04 per Book 140, Page 60 of Plats in the Clark County Recorder’s Office, Clark County, Nevada.
CLARK COUNTY DEPARTMENT OF COMPREHENSIVE PLANNING

OWNERSHIP/APPLICANT DISCLOSURE FORM

Application 

Type of Business:

☐ Individual  ☐ Partnership  ☒ Limited Liability Company  ☐ Corporation  ☐ Trust  ☐ Other

Business Name (include d.b.a., if applicable): Summerset Development Services, L.L.C

Business Address:

11411 Southern Highlands Pkwy
# 300
Las Vegas, NV 89141

Business Telephone:

702 616-3800

Disclosure of Ownership:
Except as noted below, business entities must list the names of individuals holding more than five percent (5%) ownership or financial interest in the business entity appearing before the Board. “Business entities” include all business associations organized under or governed by Title 7 of the Nevada Revised Statutes, including but not limited to private corporations, close corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and professional corporations. Publicly traded corporations shall list all Corporate Officers and Board of Directors in lieu of disclosing the names of individuals with ownership or financial interest. The disclosure requirement, as applied to land-use transactions, extends to the applicant and the landowner.

Full Name

Carlyt Y. Cott
Brett Cott
By J. Inzalaco

Title

Manager
Manager
Manager

I certify under penalty of perjury, that all of the information provided herein is current, complete and accurate. I also understand that the Board will not take any action on land-use approvals, contract approvals, land sales, leases or exchanges without the completed disclosure form.

Signature/Capacity

Print Name

Date

rev. 07/29/02