

## **SERVICES AGREEMENT**

THIS SERVICES AGREEMENT (this “**Agreement**”), dated as of September \_\_\_, 2019 (“**Effective Date**”), is made and entered into by and between THE CITY OF COMMERCE, a municipality organized under the laws of the State of California (“**City**”), and SILVERADO MANAGEMENT AND HOLDING COMPANY, a Nevada corporation (“**Silverado**”).

### **WITNESSETH:**

A. Without committing to any particular course of action, City desires to explore the preliminary feasibility of developing various parcels of real property owned or controlled by City.

B. Silverado has substantial experience conducting needs assessments and evaluating the feasibility of real estate development.

C. Subject to the terms of this Agreement and any applicable Work Order (as defined below), City desires to engage Silverado to furnish and perform the preliminary due diligence functions and services hereinafter prescribed, and Silverado desires to accept such engagement.

D. In order to set forth the terms and conditions of the engagement of Silverado, and of the relationship between Silverado and City, the parties now wish to enter into this Agreement, on the terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, incorporating the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Silverado hereby agree as follows.

### **Article 1** **DEFINITIONS**

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“**Affiliate**” or “**Affiliates**” means, with respect to any Person (as defined below), any other Person directly or indirectly controlling, controlled by or under common control with such Person.

“**Agreement**” means this Services Agreement, as amended, modified, extended, renewed, replaced, restated or supplemented from time to time, whether pursuant to a Work Order or otherwise.

“**Bad Conduct**” means gross negligence, willful misconduct, fraud and/or criminal activity of the subject Person.

“**Cap**” means a sum that does not exceed the amount delineated in the Work Orders approved by the City Council.

“**Development Fee**” means the sum of One Dollar (\$1).

“**Person**” means any individual, company, partnership, limited liability company, corporation, trust, or other entity.

“**Qualified Expenses**” means the actual, documented, reasonable third party expenses incurred by Silverado pursuant to a City Council approved Work Order that do not exceed the Cap or any other limitations imposed by an applicable Work Order (as defined below).

“**Termination**” means the first to occur of the following (i) the termination of this Agreement, (ii) the completion of all the work under an outstanding Work Order, or (iii) the termination of an outstanding Work Order.

“**Work Order**” means a prior written authorization by the City Council, which is (a) approved by Silverado, and (b) sets forth the terms, conditions, scope, schedule, and/or budget for due diligence, investigations, and analysis with respect to the feasibility of real estate development identified by City.

## **Article 2**

### **SILVERADO’S DUTIES**

2.1 Engagement. City hereby engages Silverado as an independent contractor for the purposes of conducting such due diligence, investigations, and analysis with respect to the feasibility of real estate development as City shall designate from time to time. Silverado acknowledges that City is retaining Silverado to perform the services described herein, in part, because of Silverado’s skills and expertise with respect thereto. Silverado accepts the engagement under this Agreement and agrees to act in good faith with diligence in performance of its duties and responsibilities hereunder as an independent contractor. Silverado shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, rules, ordinances and regulations and with the rules, regulations or orders of insurance carriers.

2.2 Powers and Duties. The services and duties to be performed by Silverado, or that Silverado shall cause to be performed, shall include all acts reasonably necessary, proper, desirable or appropriate to comply with the applicable Work Order. Silverado shall engage such qualified third party consultants, advisors, engineers, and other parties as are reasonably required to comply with the Work Order. City shall, upon request, be entitled to receive a copy of, and to use, the work product generated by or for Silverado pursuant to a Work Order.

2.3 Performance of Duties. Silverado shall consult with, and keep informed, City continuously and as soon as practical upon City’s request with respect to Silverado’s progress toward accomplishing its duties under this Agreement and/or any Work Order. Silverado shall promptly respond to City’s requests for information or materials relating to any Work Order.

2.4 Silverado's Personnel. Silverado shall at all times during the term of this Agreement provide competent and adequate personnel to execute the duties of Silverado under this Agreement. Silverado shall employ a sufficient number of capable employees to enable it at all times to effectively and efficiently perform its obligations pursuant to this Agreement and all such personnel shall in every instance be deemed employees hired by Silverado and not employees or independent contractors of City. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of such employees shall be the responsibility of Silverado, and Silverado shall pay all wages, salaries and other expenses related to such employees. Silverado shall comply with all applicable federal, state and local laws and regulations having to do with employment including, without limitation, workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety, and similar matters with respect to such employees.

2.5 Silverado's Insurance. Silverado shall at all times carry and maintain the types of insurance coverage as set forth in Section 9.1.

2.6 Silverado's Commencement of Work. Prior to the City Manager executing a Work Order or providing written consent to Silverado to commence work, Silverado shall provide the City Manager a defined proposed scope of work establishing the terms, conditions, scope, schedule, and/or budget for due diligence, investigations, and analysis with respect to the feasibility of real estate development. Silverado shall not commence work unless and until the City Manager executes a Work Order and provides written consent to Silverado to commence such work.

### **Article 3**

#### **COMPENSATION AND REIMBURSEMENT**

3.1 Development Fee. Silverado acknowledges receipt of the Development Fee.

3.2 Compensation.

(a) City shall pay Silverado only after Silverado submits proper monthly invoices in the form and manner specified by City. Each invoice shall include a monthly breakdown of all monthly services performed. Silverado shall maintain appropriate and necessary documentation supporting the monthly invoices detailing the type of service provided. It shall be available for review by the City at all reasonable times upon request. Within ten (10) working days of receipt of each invoice, City shall notify Silverado in writing of any disputed amounts included in the invoice. Within thirty (30) calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice.

(b) Total payment to Silverado pursuant to this Agreement shall not exceed the collective amount approved in all City Council-authorized Work Orders.

(c) Within ten (10) after the approval of a Work Order, City shall make an advance to Silverado for Qualified Expenses in the amount of twenty-five percent (25%) of the Cap for the applicable Work Order. The advanced amount shall be reflected in the accounting of Silverado's invoices for any and all Work Orders for which an advance was paid to Silverado by

the City. The City will not make additional payments to Silverado until Silverado has completed work that exceeds the twenty-five percent (25%) advance.

(d) Except as specifically set forth in this Agreement, City shall not reimburse Silverado for any out-of-pocket costs, expenses, disbursements and advances incurred or made by Silverado in connection with the Silverado's duties and obligations under this Agreement including, without limitation, any amount payable by Silverado as compensation to its employees and expenses of such personnel incurred in the performance of the Silverado's duties under this Agreement. In addition, City will not be obligated to reimburse Silverado for its office overhead, general administrative expenses, mailings, facsimiles, telex transmissions, telephone expenses, or any of Silverado's travel, lodging or entertainment expenses. Silverado shall be solely responsible for the payment of all federal, state and local taxes levied or assessed with respect to Silverado, its employees or its business.

(e) If a Termination occurs, then within ten (10) business days thereafter, Silverado shall deliver to City a final invoice detailing work completed by Silverado and the amount due with respect to any outstanding Work Order(s). Unless the Termination occurs as the result of Silverado's breach of the Agreement, then within thirty (30) days after the occurrence of the events in the preceding sentence, City shall pay Silverado all undisputed amounts for the work performed and completed by Silverado in connection with the Work Order(s) prior to the Termination (subject to the Cap and any other limitations set in the Work Order(s)).

(f) The provisions of this Section 3.2 shall survive the expiration or termination of this Agreement or any Work Order(s).

#### **Article 4** **INDEMNITY**

4.1 **Indemnities.** The provisions of this Section 4.1 shall survive the expiration or termination of this Agreement or any Work Order(s). Silverado and the City agree that the City and Indemnitees (as defined below) should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, liability, lawsuit, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the performance of this Agreement and/or any Work Order. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the fullest protection possible under the law to the City and the Indemnitees. Silverado acknowledges that the City would not have entered into this Agreement in the absence of the commitment of Silverado to indemnify and protect the City and the Indemnitees, as set forth in this Agreement.

(a) City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "**Indemnities**") shall have no liability to Silverado or any other person for, and Silverado shall indemnify, defend, protect and hold harmless Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "**Claims**"), which Indemnities may suffer or incur or to which Indemnities may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property,

economic loss or other loss occurring as a result of or allegedly caused by Silverado's performance of or failure to perform any services under this Agreement and/or any Work Order or by the negligent or willful acts or omissions of Silverado, its agents, officers, directors, subcontractor, sub consultant or employees, committed in performing any of the services under this Agreement and/or any Work Order. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the City's sole gross negligence or willful acts or omissions.

(b) Silverado agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, sub consultant or any other person or entity involved by, for, with or on behalf of Silverado in the performance of this Agreement. In the event Silverado fails to obtain such indemnity obligations from others as required in this Section, Silverado agrees to be fully responsible according to the terms of this Section. Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way serve as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights which City may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to City..

(c) Upon the occurrence of an event giving rise to indemnification, Silverado shall promptly notify the City and provide the City with copies of any documents reflecting the loss, cost, damage, liability, claim, demand or expense. The City shall cooperate with Silverado in the defense of any claim on the condition that Silverado shall reimburse the City for any out-of-pocket costs and expenses incurred in connection therewith. Silverado shall pay the reasonable charges and expenses of attorneys and other persons (on a current basis within thirty (30) days of submission of invoices or bills) incurred in connection with a settlement, compromise or discharge of the matter subject to indemnification.

## **Article 5**

### **TERM, TERMINATION, DEFAULTS AND REMEDIES**

5.1 Term. Unless earlier terminated in accordance with this Article 5, this Agreement shall be for a term commencing as of the Effective Date and ending on the earliest of (i) the completion of the last Work Order, (ii) the mutual agreement of the parties, or (iii) the termination of this Agreement. Expiration of the term shall end Silverado's obligation to provide services to City hereunder, but it shall not limit or affect payment or indemnity obligations, any representations, warranties or covenants of Silverado or City contained herein, or other provisions of this Agreement which specifically survive the expiration or termination of this Agreement.

5.2 Early Termination. In addition to the termination of this Agreement upon expiration of the term as set forth in Section 5.1, City may, in its sole and absolute discretion, unilaterally terminate this Agreement for convenience by delivering written notice of termination thereof to Silverado, whereupon, Silverado shall be entitled to compensation for all undisputed amounts (subject to the Cap or any other limitations set forth in the applicable Work Order(s)) until

the effective date of such termination (which shall not be less than five (5) business days after receipt of such notice).

5.3 Duties Flowing From Termination. Upon termination of this Agreement for any reason, Silverado shall promptly provide City with (a) the originals of all contracts and agreements entered into by Silverado or its Affiliates in connection with each Work Order and all reports, studies, or other materials provided to Silverado by its consultants in Silverado's possession, or under its control, which relate, in any way, to the duties of Silverado under this Agreement and/or any Work Order, (b) all documents outlined in Article 8 of this Agreement, and (c) a final invoice plus reasonable evidence thereof. In the event of such a termination, Silverado agrees to fulfill all reporting and accounting functions hereunder for the period from the end of that covered by the last such report and/or accounting until the date of termination. Silverado shall, from time to time, execute, acknowledge or deliver to City such instruments, agreements and other documents as City shall reasonably request in order to further evidence the termination of this Agreement and/or any Work Order(s).

5.4 Events of Default; Remedies on Default.

5.4.1 Silverado Defaults. Any of the following events shall constitute a Silverado default (each, a "**Silverado Default**"):

- (a) the commission of Bad Conduct by Silverado or its consultants, agents, or employees engaged in connection with this Agreement;
- (b) if such failure is subject to cure by performance (and not the payment of money), the failure of Silverado to fulfill, in any material respect, any of the covenants, undertakings, obligations, duties or conditions of Silverado set forth in this Agreement, and the continuance of any such default for a period of thirty (30) days after written notice of such failure is given to Silverado by City, provided that if Silverado shall (within such thirty (30) day period) commence action to cure such failure but is unable, by reason of the nature of the performance required, to cure same within such period and if Silverado continues such action thereafter diligently to achieve such cure within an additional sixty (60) days, Silverado shall not be in default hereunder;
- (c) the filing by Silverado of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy or similar creditor relief law or the consent by any such Person to an involuntary petition in bankruptcy naming it as debtor;
- (d) the entering of an order, judgment or decree with respect to Silverado by any court of competent jurisdiction, on the application of a creditor, adjudicating such party as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, conservator or liquidator of all or a substantial part of such party's assets, and such order,

judgment or decree is not controverted within twenty (20) days or remains in effect for more than sixty (50) days;

- (e) the liquidation, termination or dissolution of Silverado;
- (f) the failure of Silverado to give City access to audit, examine and make copies of or extracts from the books and records relating to a Work Order at any time during normal business hours on three (3) business days' prior notice; or
- (g) if any representation or warranty of Silverado shall be untrue in any material respect, unless Silverado corrects such misrepresentation or incorrect warranty within thirty (30) days after written notice thereof is given to Silverado by City.

5.4.2 City's Remedies for Silverado Defaults. Upon the occurrence of any Silverado Default, City may, at its option, terminate this Agreement (entirely or just with respect to such Work Order(s) as City specifies) and/or exercise any other remedies that may be provided by law or in equity. In the event this Agreement is terminated due to a Silverado Default, Silverado's rights created by this Agreement shall be immediately terminated and no further compensation shall be due or paid to Silverado under this Agreement except for all undisputed amounts for work performed and completed prior to the notice of termination.

5.4.3 City Defaults. For purposes of this Section 5.4.3, a "**City Default**" shall mean the occurrence of any of the following events:

- (a) the failure of City to pay to Silverado any City-approved amount becoming due and payable hereunder within fifteen (15) business days after written notice from Silverado of such failure;
- (b) if such failure is subject to cure by performance (and not the payment of money), the failure of City to fulfill, in any material respect, any of the covenants, undertakings, obligations, duties or conditions of City set forth in this Agreement, and the continuance of any such default for a period of thirty (30) days after written notice of such failure, provided that if City shall within such thirty (30) day period commence action to cure such failure but is unable, by reason of the nature of the performance required, to cure same within such period and if City continues such action thereafter diligently to achieve such cure, City shall not be in default hereunder; or
- (c) if such failure is not subject to cure by performance or the payment of money, the failure of City to fulfill in any material respect any of the covenants, undertakings, obligations, duties or conditions of City set forth in this Agreement.

5.4.4 Silverado's Remedies for City Defaults. Upon the occurrence of any City Default and during the continuance of a City Default, Silverado may, as its sole remedy, (i) terminate this Agreement upon five (5) business days written notice to City, and (ii) receive all

undisputed amounts for work performed and completed prior to the notice of termination that which is due and owing through the date of termination.

## **Article 6**

### **REPRESENTATIONS AND WARRANTIES**

6.1 Silverado Representations. Silverado hereby represents and warrants to City the following:

(a) Silverado is a duly formed and validly existing corporation in good standing in the State of California.

(b) Silverado and its Affiliates are financially solvent and licensed (if required) to perform the activities and duties contemplated by this Agreement.

(c) Before commencing the applicable work with respect to each Work Order, Silverado will have obtained all necessary entitlements, permits, approvals or authorizations for the applicable governmental or quasi-governmental entity, as well as all utility availability letters, required therefor.

(d) All contractors, subcontractors, consultants, and design professionals to be engaged by Silverado pursuant to a Work Order will be duly qualified and licensed to do business in California.

Silverado will be deemed to have re-affirmed all of the aforementioned representations and warranties upon submittal of each request for reimbursement to City.

6.2 Survival. The foregoing representations and warranties shall survive the termination of this Agreement for a period of three (3) years.

## **Article 7**

### **COVENANTS**

7.1 Silverado covenants as follows:

(a) To promptly notify after discovery City of the lapse of any insurance coverage required to be held by Silverado, or by any of its consultants, contractors, subcontractors, etc.;

(b) To immediately notify City if any of the representations and warranties contained in Article 6 hereof become untrue, misleading or false and to use diligent efforts to rectify the same (to the extent Silverado has such ability);

(c) To comply with all safety laws and regulations (including, without limitation, OSHA);

(d) To cause all of its consultants, contractors, and subcontractors engaged in connection with a Work Order to minimize risk or injury to Persons or property;

(e) To cause of its consultants, contractors, and subcontractors engaged in connection with a Work Order to complete their respective tasks in a good and workmanlike manner and as promptly as practicable; and

(f) To allow City (or any designee of City) (i) the right during normal business hours to inspect and audit at any time during the term of this Agreement, and during the twenty-four (24) month period following termination, all of Silverado's costs, expenses, correspondence, contracts and records (other than confidential personnel files) as well as vouchers and books of account insofar as they pertain to the performance of its services under this Agreement and (ii) the further right to question the allocation of any item by Silverado. Silverado shall maintain copies of all records reflecting such matters for a period of two (2) years following the termination of this Agreement and make such records available to City or City's designee immediately upon City's written request therefor.

## **Article 8**

### **OWNERSHIP OF WORK PRODUCT**

8.1 (a) Silverado shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the City that relate to the performance of services under this Agreement. Silverado shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Silverado shall provide free access to the representatives of the City or its designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit the City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of Silverado. With respect to computer files, Silverado shall make available to the City, at Silverado's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## **Article 9**

### **INSURANCE REQUIREMENTS**

9.1 (a) Without limiting Silverado's indemnification of Indemnities pursuant to Section 4 of this Agreement, Silverado shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

(I) Silverado shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(II) Silverado shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses;

(III) Silverado shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Silverado agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(b) City, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

(c) All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(d) All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to City via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," City of Commerce, 2535 Commerce Way, Commerce, California, 90040. Silverado agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

(e) Silverado shall submit to City (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement".

(f) Silverado's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of Silverado's insurance and shall not contribute with it.

(g) Silverado agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. City may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Silverado's and the cost of such insurance may be deducted, at the option of City, from payments due Silverado.

## **Article 10**

### **MISCELLANEOUS**

10.1 Notices. Any notice to be given or other document to be delivered by either party to the other hereunder may be delivered in person to either party, may be delivered by commercial express delivery service, facsimile or United States mail duly certified, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To City:                      Mr. Edgar Cisneros  
                                     City Manager  
                                     City of Commerce  
                                     935 Commerce Way  
                                     City of Commerce, CA 90040  
                                     Email: ECisneros@ci.commerce.ca.us

To Silverado:                Silverado Management and Holding Company  
                                     800 Silverado Street, Suite 301  
                                     La Jolla, CA 92037  
                                     Attn.: Mr. Anthony Barkett

Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. If any notice or other document is sent by certified mail, as aforesaid, the same shall be effective upon receipt at the appropriate address. The address to which notices are sent may be changed by providing notice thereof in the manner specified in this Section 10.1. From time to time, parties may designate attorneys that are authorized to provide notices on their behalf, which shall be valid until terminated by written notice from such party or such designated attorney.

## 10.2 Reservation of Discretion.

10.2.1 The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City's discretion concerning consideration of any submittal by Silverado or any other party. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice City's discretion to consider, negotiate, approve or disapprove any development or any required approval necessary by the laws, rules, and regulations governing the development of the Premises under any circumstances.

10.2.2 By its execution of this Agreement, City is not committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by City or any Agency or department thereof. Except as expressly set forth in this Agreement, City shall not be responsible for any cost or expenses incurred by Silverado pursuant to this Agreement, nor shall City be responsible for any potential lost profits of Silverado.

10.2.3 Silverado is aware, understands, and acknowledges that City is required by law to exercise its sole unfettered discretion in approving or denying any required land use, development or building permit approvals. This Agreement does not obligate City to approve, disapprove or consider any development entitlements.

10.3 Litigation. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

10.4 Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the non-compliance or failure of performance by either party hereto under the provisions of the Agreement shall impair any such right or power to be construed to be a waiver thereof. A waiver by either party hereto of any of the covenants, conditions or agreements thereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof.

10.5 Non-Assignability. Silverado, without the prior written consent of City, shall not assign, transfer, mortgage, pledge, or otherwise encumber or dispose of this Agreement or all or any part of its rights and interests hereunder, and any attempted assignment, mortgage, pledge, encumbrance, or disposition shall constitute a default hereunder and shall be void *ab initio*.; provided, however, that the foregoing shall not preclude Silverado from making an assignment of its right to any sums payable by City under this Agreement.

10.6 Agreement Binding Upon Successors and Assigns. Subject to the limitations herein set forth, each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and inure to the benefit of not only City and Silverado, but also each of their successors and assigns. Whenever in this Agreement reference is made to either City or Silverado, the reference shall be deemed to include, wherever applicable, the successors and assigns and the parties hereto the same as if in every case expressed.

10.7 Relationship of Parties. It is expressly understood and agreed that City does not in any way nor for any purpose become a partner of Silverado or a joint venturer with Silverado in the conduct of Silverado's business or otherwise and *vice versa*.

10.8 Time of the Essence. Time is expressly declared to be of the essence of this Agreement with regard to all obligations hereunder.

10.9 Headings and Titles. The section headings of this Agreement are inserted as a matter of convenience and references only and in no way define, limit or describe the scope or intent of this Agreement or in any way effect the terms and provisions hereof.

10.10 Partial Invalidity. If any term, provision, condition or covenant of this Agreement, or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.11 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to choice of law provisions. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

10.12 Entire Agreement. This Agreement contains the final expression of and the entire agreement between the parties hereto with respect to the matters covered hereby, and no other previous agreement, statement or promise made by any party hereto which is not contained herein shall be binding or valid.

10.13 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement hereon and in each such instance executed on behalf of each party hereto. Amendments on behalf of the City will only be valid if signed by the Mayor and attested by the City Clerk.

10.14 Brokers. City represents and warrants to Silverado, and Silverado represents and warrants to City, that no broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. In the event of any such claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, Silverado shall indemnify, save harmless and defend City from and against such claims if they shall be based upon any statement or representation or agreement by Silverado, and City shall indemnify, save harmless and defend Silverado if such claims shall be based upon any statement, representation or agreement made by City.

10.15 Execution of Agreement. Circulation of drafts of this Agreement does not constitute an offer and no binding rights or obligations shall exist unless and until this Agreement is executed by both parties, which either party may refuse to do in its sole discretion.

10.16 Construction. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Agreement (other than this Agreement and the exhibits attached hereto), and that this Agreement supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between City and Silverado with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Agreement, including, without limitation, any term sheet or letter of intent. The parties hereto hereby acknowledge and agree that (a) each party hereto is of equal bargaining strength, (b) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (c) each such party has been (or has had the opportunity to be) represented by, and consulted, with such party's own, independent counsel, and such other professional advisors as such party has deemed appropriate, relating to any and all matters contemplated under this Agreement, (d) each such party and such party's counsel and advisors have reviewed (or have had the opportunity to review) this Agreement, (e) each such party has agreed to enter into this Agreement following such review and the rendering of such advice (or the opportunity to receive such advice), and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto. The parties agree that any deletion of language from this Agreement prior to its mutual execution by City and Silverado shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

10.17 Authority. Silverado does hereby represent and warrant to City that Silverado has all requisite power and authority to own, lease, hold and operate properties and conduct business in the State of California.

10.18 Municipal Laws. Within thirty (30) days after the Effective Date, the parties shall make such additions, deletions, or modifications to this Agreement as shall be specified by City's attorney to make this Agreement comply with any applicable laws, rules, regulations or ordinances that apply to City, as determined by City's attorney. The parties shall enter into such amendment within such thirty (30) day period. If Silverado refuses to timely execute such an amendment in form and content acceptable to City, then this Agreement shall automatically terminate.

[Balance of page intentionally left blank. Signatures appear on next page.]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

**“CITY”**

THE CITY OF COMMERCE,  
a municipality organized under the  
laws of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_

**“SILVERADO”**

SILVERADO MANAGEMENT AND  
HOLDING COMPANY, a Nevada  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_