

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "*Agreement*") is entered into as of the \_\_\_ day of \_\_\_\_\_, 202\_, by and between the City of Las Vegas Nevada Redevelopment Agency, a public body organized and existing under the community development laws of the State of Nevada ("*RDA*"), and Community Development Programs Center of Nevada, Inc., a Nevada nonprofit corporation ("*Developer*"). RDA and Developer are individually referred to herein as a "*Party*" and collectively referred to herein as "*Parties*".

**WITNESSETH:**

**WHEREAS:**

A. The RDA is the owner of a 6.06 acre vacant commercial real property site with APN 138-25-518-002 (the "*RDA Property*").

B. The RDA desires to convey to Developer, and the Developer desires to accept conveyance from the RDA, a portion the RDA Property consisting of approximately 5.49 acres as described in Section 2 below (the "*Site*").

C. In response to RFP No. 160081 CB, Developer intends to construct two (2) four-story affordable and mixed-income apartment developments of approximately 144 units and a central clubhouse on the Site (the "*Project*").

D. Developer shall prepare and process the Parcel Map subdividing the RDA Property into Phase 1 (defined herein), Phase 2 (defined herein) and an approximate 0.57 acre commercial property (the "*RDA Residual Piece*").

E. Phase 1 and Phase 2 are being conveyed to Developer by RDA for the nominal consideration of One Dollar (\$1.00) each on the conditions that (i) Developer will develop Affordable Housing (hereinafter defined) on the Site and (ii) if Developer does not commence or complete construction of the Project as set forth in the Project DSLURS (hereinafter defined), RDA shall have the right to exercise the rights under the Project DSLURS.

F. RDA and Developer mutually desire to enter into this Agreement to set forth their agreements as to the conveyance of the Site to Developer and the development of the Project.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions contained herein, the Parties agree as follows:

**1. GENERAL PROVISIONS**

1.1 By executing this Agreement, RDA agrees to convey Phase 1 and Phase 2 to Developer for the sole consideration of One Dollar (\$1.00) each and Developer agrees to accept conveyance of the Site to develop the Project, subject to the terms and conditions set forth in this Agreement. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Las Vegas Redevelopment Area (the "*Redevelopment Area*") in which the Site is located by providing for the redevelopment of certain real property included within the boundaries of the Redevelopment Area. The redevelopment of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Las Vegas, Nevada, a political subdivision of the State of Nevada (the "*City*"), and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable

federal, state and local laws and requirements. The Redevelopment Area is located in the City and the exact boundaries thereof are specifically described in the Redevelopment Plan and in a document recorded March 11, 1986, as Instrument No. 00777, Book 860311, and amended in the document recorded February 11, 1988, Instrument No. 00382, Book 880211, and further amended in the document recorded November 22, 1996, as Instrument No. 00847, Book 961122, and further amended in the document recorded June 8, 2004, as Instrument No. 20040608, Book 0004235, and further amended in the document recorded on June 6, 2006, as Instrument No. 20060602, Book 0001395, in the Office of County Recorder of Clark County, and further amended in the document recorded on September 12, 2012, as Instrument No. 20120912, Book 0001933, in the Office of County Recorder of Clark County, and further amended in the document recorded on March 23, 2017, as Instrument No. 20170323, Book 0001012, in the Office of County Recorder of Clark County, which documents are incorporated herein by reference and made a part hereof as though fully set forth herein.

## 1.2 Definitions.

*"Additional Objections"* shall have the meaning set forth in Section 11(b).

*"Affiliate"* means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term "control" (including the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of a Controlling Interest.

*"Affordable Housing"* means a for rent apartment project for very low-income and low-income families from 30% to 60% of area medium income partially financed under the federal Home Investments Partnerships Program under 24 CFR 92 and/or the State of Nevada Account for Affordable Housing Trust Funds program or other similar programs.

*"Agreement"* has the meaning set forth in the preamble to this Agreement.

*"Appraisal Cost"* has the meaning set forth in Section 4.

*"City"* has the meaning set forth in Section 1.

*"City Council"* means the city council of the City of Las Vegas.

*"Close of Escrow"* and/or *"Closing"* means the consummation of the acquisition by Developer of fee title to Phase 1 and Phase 2, which shall be evidenced by the recording of a Deed in the Official Records, Clark County, Nevada.

*"Closing Date"* has the meaning set forth in Section 10.1.

*"Completion of Construction"* shall have the meaning set forth in the Project DSLURS.

*"Controlling Interest"* means the ownership, directly or indirectly, of, or other legal right to direct the voting of, 51% or more of the voting interests in a Person or the governing body of such Person.

*"County"* means Clark County, Nevada, a political subdivision of the State of Nevada.

*"Deed"* means RDA's Grant, Bargain and Sale deed in the form of Exhibit C attached hereto.

*"Developer"* has the meaning set forth in the opening paragraph of this Agreement and Developer's permitted successors and assigns.

*"Due Diligence Authorized Parties"* has the meaning set forth in Section 14.1(a)(i).

*"Effective Date"* has the meaning set forth in Section 19.

*"Employment Plan Policy"* means that RDA Employment Policy attached hereto as Exhibit H.

*"Environmental Claim"* means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, investigations, proceedings or written notices of noncompliance, liability or violation by any person or entity (including any governmental or regulatory authority) alleging potential liability (including, without limitation, potential responsibility or liability for enforcement, investigatory costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries or penalties) arising out of, based on or resulting from (a) the presence, or release or threatened release into the environment, of any Hazardous Substance; (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law; or (c) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence or release of any Hazardous Substance.

*"Environmental Law"* means, to the extent applicable to the Site, any past, present or future federal, state or local law, statute, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice, policy, or binding agreement, and all amendments thereto, issued, promulgated, or entered into by any Government Authority, relating in any way to the environment, the preservation, degradation, loss, damage, restoration or reclamation of natural resources, waste management, health, industrial hygiene, safety matters, environmental condition or Hazardous Substance.

*"Escrow"* has the meaning set forth in Section 9.1.

*"Escrow Agent"* has the meaning set forth in Section 9.1.

*"Feasibility Review Period"* has the meaning set forth in Section 14.1.

*"Governmental Authority"* or *"Governmental Authorities"* means (i) the United States of America, the State of Nevada, the City, the County, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over, under or above the Site (or any portion thereof) and (ii) any public utility or private entity which will be accepting and/or approving any development on the Site.

*"Hazardous Substance"* means all contaminants, pollutants, chemicals, substances, products, constituents, wastes, and other materials of any nature whatsoever, whether located in soil (including soil gas) or water (including groundwater, surface water, and well water): (1) which are or become listed, regulated, or addressed pursuant to any of the following federal statutes, as amended: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, *et seq.* ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. section 2601, *et seq.* ("TSCA"); the Clean Air Act, 42 U.S.C. section 7401, *et seq.* ("CAA"); the Clean Water Act, 33 U.S.C. section 1251, *et seq.*

("CWA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 *et seq.* ("FIFRA"); the Atomic Energy Act of 1954 ("AEA") and Low-Level Radioactive Waste Policy Act ("LLRWPA"), 42 U.S.C. section 2014 *et seq.*; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section 10101 *et seq.* ("NWPA"); and the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section 11001 *et seq.* ("EPCRA"); (2) which are or become listed, regulated, or addressed pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree applicable to the Site regulating, relating to or imposing liability (including, but not limited to, response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, extremely hazardous, toxic, dangerous, restricted, or designated waste, substance or material, as now or at any time hereafter may be in effect; (3) which are explosive, corrosive, reactive, ignitable, toxic, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment; (4) which are or contain oil, gasoline, diesel fuel or other petroleum hydrocarbons, and are present on the Site in quantities in violation of Environmental Laws; or (5) which are or contain lead, arsenic, other metals, volatile organic compounds, semi-volatile organic compounds, polycyclic/polynuclear aromatic hydrocarbons, polychlorinated biphenyls, asbestos, radioactive materials, or radon gas.

"*Indemnitor*" has the meaning set forth in Section 8.

"*Liabilities*" means any and all liens, demands, liabilities, actions, causes of action, judgments, costs, claims, damages, suits, losses and expenses, penalties, fines or compensation whatsoever, direct or indirect (including reasonable legal fees, expert witness fees, and court, mediation, arbitration and administrative costs and expenses).

"*NRS*" means Nevada Revised Statutes, as amended from time to time.

"*Parcel Map*" has the meaning in Section 6.2(c)(B).

"*Party*" has the meaning set forth in the preamble to this Agreement.

"*Parties*" has the meaning set forth in the preamble to this Agreement.

"*Person*" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

"*Phase*" means Phase 1 and Phase 2 as determined pursuant to Section 5(b).

"*Phase 1*" has the meaning as determined pursuant to Section 5(b). )

"*Phase 2*" has the meaning as determined pursuant to Section 5(b).

"*Project*" as described in Section 5 below.

"*Project DSLURS*" means those Declaration of Special Land Use Restrictions in the form of Exhibit "G" attached hereto.

"*Proposed Member*" means an institutional real estate investor that owns a direct interest in the Developer and may possess veto or consent rights over certain major decisions.

“*RDA*” has the meaning set forth in the opening paragraph of this Agreement, and RDA's permitted successors and assigns.

“*RDA Residual Piece*” has the meaning set forth in Recital D.

“*Recorder's Office*” means the Office of the Recorder of Clark County, Nevada.

“*Redevelopment Plan*” means the provisions of the Redevelopment Plan which was approved and adopted on March 5, 1986, by the City Council of the City of Las Vegas by Ordinance No. 3218 as it has and may be subsequently amended.

“*Releasing Parties*” has the meaning set forth in Section 14.4(c).

“*Required Approvals*” means all approvals and permits necessary under the Requirements for the development, construction and operation of the Project, including without limitation, the issuance of a building permit for the construction of the Project.

“*Requirement*” means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Developer (including, without limitation, the Americans with Disabilities Act and any of the foregoing relating to handicapped access or parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) any temporary or final certificates of completion and/or occupancy issued for the Site, as then in force; (iii) any and all provisions and requirements of any insurance policy required to be carried by Developer under this Agreement; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations, or other indentures, documents or instruments of record.

“*Schedule of Performance*” means the schedule of performance set forth in Exhibit F attached hereto, as it may be amended from time to time, subject to extension due to Unavoidable Delays.

“*Site*” has the meaning set forth in Section 2.1.

“*Site Plan*” has the meaning set forth in Section 6.2(b)

“*Scope of Development*” has the meaning set forth in Section 6.2(b)

“*Survey*” has the meaning set forth in Section 11(a).

“*Title Policy*” has the meaning set forth in Section 12.

“*Unavoidable Delays*” means delays or stoppages of work due to any of the following (provided that such delay is beyond a Party's reasonable control): war, sabotage, insurrection, civil commotion, strikes, labor disputes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, COVID -19, acts of a public enemy, acts of terrorism, epidemics, disease, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions, litigation, unusually severe or abnormal weather conditions, a moratorium or any regulatory policy which impedes or precludes private development on the Site, unavailability or failure of utilities, mechanical failure of equipment, material shortages, labor shortages resulting directly from general market shortages, criminal acts of an un-Affiliated third party, any force majeure event under the general contractor's construction contract so long as such

force majeure event was not caused by the Developer or general contractor, work stoppage or slowdown as a result of the failure of building inspectors or fire marshals to reasonably process approvals other than as a result of action or inaction of Developer, acts or failure to act of any public or governmental agency or entity or a court order which causes a delay (unless resulting from disputes between or among the Party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging Party or Affiliates or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging Party. Any delay resulting from Hazardous Substances disclosed in environmental reports prepared on the Site prior to Close of Escrow shall not constitute Unavoidable Delay. Such Party shall use reasonable good faith efforts to notify the other Party not later than eight (8) business days after such Party knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

## **2. THE SITE.**

2.1 The Site is currently a portion of the RDA Property and consists of approximately 5.49 acres, as preliminary depicted in Exhibit A and described more particularly in Exhibit B, each of which are attached to this Agreement. Developer will prepare a parcel map subdividing the RDA Property into Phase 1, Phase 2 of the Site and the RDA Residual Parcel (the "*Parcel Map*") at Developer's cost and expense satisfactory to RDA in its reasonable discretion and to the Title Company issuing the Title Policy. Upon acceptance of the Parcel Map, the legal descriptions in the Parcel Map for Phase 1 and Phase 2 shall be the legal description in the Deed and Title Policy for each of Phase 1 and Phase 2.

## **3. PARTIES TO THE AGREEMENT**

3.1 RDA. The office of RDA is located at 495 South Main Street, Las Vegas, Nevada 89101. RDA shall have the right to assign RDA's interest under this Agreement (i) to the City or an Affiliate thereof, provided, however, that such purchaser agrees in writing to assume all of RDA's obligations under this Agreement and agrees to make the same representations as those set forth in Section 7.1 as of the date of the Close of Escrow. Upon such assignment and assumption, RDA shall have no further obligations or liabilities under this Agreement arising from and after the date of such assignment and assumption.

3.2 Developer. The Developer is Community Development Programs Center of Nevada, Inc., a Nevada nonprofit corporation and is an IRS 501(c)(4) non-profit corporation. The principal office of the Developer is located at 2009 Alta Drive, Las Vegas, NV 89106. Wherever the term "Developer" is used herein, such term shall include any permitted assignee as herein provided. Pursuant to Resolution R-105-99 adopted by the City Council effective October 1, 1999, Developer warrants that it has disclosed, on the form attached hereto as Exhibit I, all principals, including partners or members, of Developer, as well as all persons and entities holding more than one percent (1%) interest in Developer or any principal, partner or member of Developer. Developer shall provide RDA with written notification of any material change in the above disclosure within ten (10) days of any such change. The Developer's obligations set forth in this section shall expire upon Completion of Construction.

3.3 Assignments and Transfers. The qualifications and identity of Developer are of particular concern to the City and RDA, and it is because of such qualifications and identity that RDA has entered into this Agreement with Developer. Developer and RDA agree that, prior to Completion of Construction:

(a) No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

(b) Developer shall not directly or indirectly transfer or assign all or any part of this Agreement without the prior written approval of RDA, which approval may be withheld at RDA's sole discretion. Developer agrees that a transfer of the direct or indirect interests in Developer shall constitute a transfer or assignment of Developer's interest in this Agreement.

(c) Notwithstanding the foregoing, Developer may admit a Proposed Member into the Developer so long as:

(i) Developer provides written notice to RDA along with a disclosure of principals of the Proposed Member as set forth in Section 3.2;

(ii) the sole purpose of the admission of the Proposed Member is in connection with the raising of capital for the financing of the development of the Project;

(iii) the Proposed Member's interest in Developer does not violate the City Council's conflict of interest requirements with respect to transactions of the type contemplated by this Agreement;

(iv) the Proposed Member does not violate RDA's customary criminal background checks; and

(v) Community Development Programs Center of Nevada, Inc. directly or indirectly maintains full management control of the Project in all respects and maintains at least a 0.0001 percent interest in Developer.

(d) Any change (voluntary or involuntary) in the membership, management or control of Developer except as expressly provided herein shall be an event of default of Developer under Section 17.1 of this Agreement.

(e) RDA shall have thirty (30) days after Developer (i) gives written notice to RDA of a proposed admission of a Proposed Member into Developer and (ii) provides RDA with such information as reasonably required by RDA to make an informed decision to review and approve such assignment or transfer. Failure of RDA to disapprove any proposed assignment or transfer in writing within such thirty (30) day time period shall constitute approval thereof by RDA unless approval of the City Council is required in which case the time for such approval will be extended in order to comply with the required and customary procedures for obtaining approval of the City Council.

#### **4. ACQUISITION OF THE SITE.**

RDA agrees to convey to Developer, and Developer agrees to accept the conveyance of, Phase 1 and Phase 2 on the terms and subject to the conditions provided herein. Phase 1 and Phase 2 will be conveyed to Developer for the nominal consideration of One Dollar (\$1.00) each but in consideration for the agreement of Developer to construct the Project. Developer acknowledges that the RDA was required to obtain an MAI appraisal of the Site under NRS in connection with this Agreement at cost of \$2,800.00 (the "*Appraisal Cost*"). Developer agrees to reimburse the Appraisal Cost to RDA at the Close of Escrow.

## **5. PROJECT.**

(a) Developer agrees that the project to be developed by Developer will consist of an Affordable Housing development (the "*Project*"). The total project will consist two (2) four-story affordable and mixed-income apartment developments totaling approximately 144 units and include a central clubhouse. The Project shall be developed in accordance with the Site Plan and the Scope of Development.

(b) The Parties agree that the Project will be built in two phases as follows to be developed in accordance with the Schedule of Performance:

(i) A phase of the Project will consist of a single four (4) story building of 104 residential one and two bedroom apartment Affordable Housing units on approximately 3.27 acres as shown on the Site Plan and a central clubhouse.

(ii) Another phase of the Project will consist of a single four (4) story building of 40 residential one and two bedroom apartment, Affordable Housing units on approximately 2.22 acres as shown on the Site Plan.

The Parties will agree during the Feasibility Review Period upon the phasing of the Project and which portion of the Project shall be the first phase to be developed which is referred to herein as "Phase 1" and which portion of the Project to be the second phase to be developed which is referred to herein as "Phase 2".

## **6. SITE DEVELOPMENT**

### **6.1 Generally; RDA Employment Plan Policy.**

(a) All of the costs for all permits and approvals for the development of the Project shall be borne exclusively by Developer. Developer acknowledges and agrees that RDA does not issue any permits or approvals related to the development and construction of the Project and that all such permits or approvals must be issued by the respective agency having approval authority over the Project. Developer acknowledges that RDA has no authority to issue or expedite any such permits or approvals.

(b) Developer agrees that the construction of the Project will be in compliance with the Employment Policy and that Developer has reviewed the Employment Policy and is familiar with its provisions. Developer shall submit to the RDA an employment plan in accordance with the Employment Plan Policy. The Developer shall deposit with the RDA an amount equal to 10% of the value of incentive as agreed upon between RDA and Developer in accordance with NRS 279.6096. As set forth in Section 10.2(b), the finalization of the Employment Plan is a condition of RDA's obligation to the Closing.

(c) Developer recognizes that this Agreement and the conveyance of the Site will result in RDA providing financial incentives to Developer in excess of \$100,000 in connection with each Phase. In accordance with NRS §279.500, Developer agrees that each Phase is subject to the Prevailing Wage Act, NRS §338.010 through §338.090, inclusive. Developer agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to construction of a Phase. Developer shall obtain a State of Nevada Public Works Project Number as required by the State Labor



Commissioner. Developer shall use the State Labor Commissioner's prevailing rate of per diem wages in the locality in which the improvements are to be constructed for each craft or type of workman needed to construct Phase improvements. Subject to the provisions of applicable law, Developer agrees not to pay less than the specified prevailing rate of wages to the contractor and its employees selected to construct Phase improvements. Developer will include the substance of the prevailing wages requirement of this Section as contractual language in all contracts and lower tier subcontracts. In addition, all solicitations and contracts shall contain the applicable prevailing wage rates. Developer shall require that the selected contractor keep accurate records showing the name, occupation and actual per diem wages paid to each employee used in connection with construction of the improvement. Such records shall be open to inspection and reproduction by RDA during normal business hours.

6.2 Schedule of Performance. Developer covenants to proceed with the entitlement, permitting and development of the Project in strict compliance with the Schedule of Performance (as may be extended due to Unavoidable Delays). Developer agrees that in the event it fails to proceed with the development of the Project as set forth in the Schedule of Performance and meet the milestones set forth in the Schedule of Performance (as may be extended due to Unavoidable Delays), Developer will be in default of this Agreement as set forth in Section 17.1. In connection therewith, Developer agrees:

(a) The Developer shall carry out the construction of the Project improvements in conformity with all applicable Requirements.

(b) The Project will be built in accordance with the preliminary Site Plan attached hereto as Exhibit "D". Developer shall submit the final Site plans as set forth in the Schedule of Performance which will be subject to RDA's approval within the time set forth in the Schedule of Performance. The Site will be developed in conformance with the "*Scope of Development*" attached hereto as Exhibit "E" within the time set forth in the "*Schedule of Performance*" attached hereto as Exhibit "F". Within the time set forth in the Schedule of Performance, the Developer shall prepare and submit to the RDA for review and written approval basic concept drawings and related documents containing the overall plan for development of the Project. The basic concept drawings shall conform to this Agreement, including the Scope of Development and this Section 6. The RDA shall approve or disapprove of the basic concept drawings within the time established in the Schedule of Performance. If the RDA shall fail to approve the basic concept drawing within such time, all subsequent time periods in the Schedule of Performance shall be extended by the number of additional days required to obtain such approval. Any disapproval shall state in writing the reasons for disapproval. The Project shall be developed as generally established in the basic concept drawings and related documents except as changes may be mutually agreed upon between the Parties. Any such changes shall be within the limitations of the Scope of Development.

(A) Phase 1 and Phase 2 will be developed within the time schedule set forth herein and in the Schedule of Performance. Developer agrees that, in all events, (i) in connection with Phase 1, within thirty (30) days after the Closing of Phase 1, the Developer will begin construction of Phase 1 and will complete such construction within eighteen (18) months after commencement of construction, as evidenced by the City's issuance to the Developer of a Certificate of Completion, the form for which is attached hereto as Exhibit "J" and (ii) in connection with Phase 2, no later than November 30, 2022, the Developer will begin construction of Phase 2 and will complete such construction within eighteen (18) months after commencement of construction, as evidenced by the City's issuance to the Developer of a Certificate of Completion, the form for which is attached hereto as Exhibit "J". Commencement of construction shall be evidenced by the pulling of a grading permit and the commencement of grading by Developer for the Project, as determined by an inspection completed by the City's Building Official, or by

his designee. Both commencement of construction and completion of construction will be extended by Unavoidable Delay.

(B) Developer, at Developer's cost and expense, will be prepare a parcel map subdividing the RDA Property into Phase 1, Phase 2 and the RDA Residual Piece (the "*Parcel Map*") satisfactory to RDA in its reasonable discretion and to the Title Company issuing the Title Policy. The Parcel Map shall be prepared and processed in compliance with applicable Requirements. Upon acceptance of the Parcel Map, the legal descriptions in the Parcel Map shall be the legal description in the Deed and Title Policy for Phase 1 and Phase 2. Developer shall proceed with the processing and approval of the Parcel Map as set forth in the Schedule of Performance. The Parties agree that the Parcel Map shall not be recorded until the Close of Escrow for Phase 1.

(d) The Developer will be responsible for the installation, at its expense, of all onsite and offsite improvements required by all applicable local, state, and federal laws in connection with the development of the Project, including, but not limited to, sidewalks and driveways, on-site utilities, sewer lines, and other on site improvements.

(e) The Developer shall complete and submit to the RDA an application for a site development plan review for a Site Plan consistent with the basic concept drawings.

### 6.3 RDA Obligations.

(a) Developer agrees that RDA, the City or any Affiliates thereof shall not have any obligation whatsoever to contribute any funds or other subsidies or construct any improvements in connection with the development of the Project.

(b) The RDA shall sign all required permit applications during its period of ownership of the Site required for the development of the Project, subject to the terms of this Agreement. The Developer agrees to assume all costs associated with preparation of the site development plan review application, and preparation of architectural plans, civil plans, structural plans, mechanical plans, electrical plans, plumbing plans, or any other plans required by the Requirements necessary to complete the Project through certificate of occupancy. The Developer also agrees to assume the cost of any application or other connection fees due to the RDA, City or any other local, state, or federal agency or organization having regulatory authority over the Project, including, but not limited to, Las Vegas Valley Water District, Southern Nevada Water Authority, NV Energy and Southwest Gas.

(c) Developer agrees that no obligation assumed by or imposed upon RDA by this Agreement or remedy granted or otherwise arising in, under or pursuant to this Agreement against RDA shall require the payment of money by RDA, or the performance of any action by RDA, the performance of which requires money from RDA, except to the extent that funds are available for such payment or performance from City appropriations therefor lawfully made by the City. This Agreement shall not be construed as obligating the City Council to make future appropriations for the payment of monies or the performance of any obligations of RDA under this Agreement.

6.4 Project DSLURS. Developer agrees to enter into the Project DSLURS at the Close of Escrow for both Phase 1 and Phase 2 which will be recorded against Phase 1 and Phase 2 at the respective Close of Escrow for each of Phase 1 and Phase 2. Developer acknowledges that the Project DSLURS are required by RDA in consideration of RDA's agreement to convey Phase 1 and Phase 2 to Developer for a One Dollar (\$1.00) consideration each and that the Project DSLURS will govern the development of Phase

1 and Phase 2 respectively and provide RDA with the rights to have Phase 1 and Phase 2 reconveyed to the RDA in the event that Developer does not commence construction of Phase 1 or Phase 2 or complete construction of Phase 1 or Phase 2, as further set forth in the Project DSLURS. The Parties will attach to the Project DSLURS the respective Exhibits for the respective Phase.

6.5 Developer Reporting. Developer agrees to provide monthly written updates setting forth the current status of the development of the Project, including the status of the milestones set forth on the Schedule of Performance. In addition, Developer agrees that, if requested by RDA, its representatives shall no less than once a year appear at meetings of the City Council to report on the status of Developer's efforts in connection with the Project.

6.6 Financing. Developer agrees that it is a condition to RDA's obligation to close the sale of a Phase to Developer that Developer has in place the necessary financing for the construction of the that portion of the Project to be constructed on the respective Phase, as the case may be, including, without limitation, the Affordable Housing financing component, and in the event that such financing is not in place, RDA will not be required to close the sale of a Phase. No later than thirty (30) business days prior to Close of Escrow for a Phase, Developer shall submit to RDA written and documentary evidence requested by RDA and satisfactory to RDA demonstrating that Developer has firm and binding commitments for the financing as described immediately above necessary to pay all the costs of the construction of a Phase, provided, however, that the terms and conditions of such financing are subject to Developer's sole and complete discretion in all respects of Developer (the "*Project Financing*"). Developer also agrees (i) to provide RDA copies of any final term sheets which Developer has negotiated with equity and financing parties for the Project Financing as such term sheets become available, provided that Developer is not under any legal obligation preventing disclosure of such terms sheets and (ii) to keep RDA reasonably informed by written report of the status of the Project Financing.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 RDA's Representations. RDA represents and warrants that as of the date hereof and as of the date of the Close of Escrow for the acquisition of a Phase:

(a) RDA has all requisite power and authority to enter into and perform its obligations under this Agreement, the Deed and the Project DSLURS.

(b) By proper action of RDA, RDA's signatories have been duly authorized to execute and deliver this Agreement, the Deed and the Project DSLURS.

(c) The execution of this Agreement, the Deed and the Project DSLURS by RDA does not violate any provision of any other agreement to which RDA is a party.

(d) Except as may be specifically set forth herein, no approvals or consents not heretofore obtained by RDA are necessary in connection with the execution of this Agreement, the Deed and the Project DSLURS by RDA or with the performance by RDA of its obligations hereunder or under any of the other attached exhibits.

(e) To RDA's actual knowledge, no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Site.

(f) To RDA's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental

authority against the Site or against RDA which would inhibit RDA's ability to perform its obligations under this Agreement, the Deed and the Project DSLURS.

(g) RDA is not a foreign person within the meaning of Section 1445(f) of the Internal Revenue Code, and RDA agrees to execute any and all documents necessary or required by the Internal Revenue Service or Purchaser in connection with such declaration(s).

(h) RDA is not acting, directly or indirectly, for or on behalf of any person named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any person designated in Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism. RDA is not engaged in the transaction contemplated by this Agreement directly or indirectly on behalf of, or facilitating such transaction directly or indirectly on behalf of, any such person.

As used in this Agreement, the term "RDA's actual knowledge" means the actual knowledge of the Executive Director of the RDA.

7.2 Developer's Representations. Developer represents and warrants to RDA that as of the date hereof and as of the date of the Close of Escrow for the acquisition of a Phase:

(a) Developer is a domestic non-profit corporation duly organized and existing under the laws of Nevada and, as of the date of the Close of Escrow, shall be qualified to do business in the State of Nevada and is an IRS 501(c)(4) non-profit corporation.

(b) Developer has all requisite power and authority to carry out business as now and whenever conducted in connection with the Project and to enter into and perform its obligations under this Agreement and the Project DSLURS.

(c) By proper action of Developer, Developer's signatories have been duly authorized to execute and deliver this Agreement and the Project DSLURS.

(d) The execution of this Agreement and the Project DSLURS by Developer does not violate any provision of any other agreement to which Developer is a party.

(e) Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary in connection with the execution of this Agreement by Developer or with the performance by Developer of its obligations hereunder.

(f) Neither Developer nor any of its principals is currently a debtor in a case under the Bankruptcy Code (Title 11 U.S.C.), is the subject of an involuntary petition under the Bankruptcy Code, has made an assignment for the benefit of creditors or is insolvent and unable to pay its debts as they become due.

(g) To Developer's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against Developer which would inhibit Developer's ability to perform its obligations under this Agreement and the Project DSLURS.

(h) Developer hereby represents and warrants to RDA that (a) Developer is not a "plan" nor a plan "fiduciary" nor an entity holding "plan assets" (as those terms are defined under the Employee Retirement Income Security Act of 1974, as amended, and its applicable regulations as issued

by the Department of Labor and the Internal Revenue Service, “ERISA”) nor an entity whose assets are deemed to be plan assets under ERISA, and (b) Developer is acquiring the Property for Developer’s own personal account and that the Property shall not constitute plan assets subject to ERISA upon conveyance of the Property by RDA and the closing of this Agreement between Developer and RDA. RDA shall not have any obligation to close the transaction contemplated by this Agreement if the transaction for any reason constitutes a prohibited transaction under ERISA or if Developer’s representation is found to be false or misleading in any respect.

(i) Developer is not acting, directly or indirectly, for or on behalf of any person named by the United States Treasury Department as a Specifically Designated National and Blocked Person, or for or on behalf of any Person designated in Executive Order 13224 as a Person who commits, threatens to commit, or supports terrorism. Developer is not engaged in the transaction contemplated by this Agreement directly or indirectly on behalf of, or facilitating such transaction directly or indirectly on behalf of, any such person.

## **8. BROKERS.**

Each Party warrants and represents to the other that no broker, finder or other intermediary hired or employed by it is entitled to a commission, finder’s fee or other compensation based upon the transaction contemplated hereby and each Party (the “*Indemnitor*”) shall indemnify and hold harmless the other Party from and against any and all liens, demands, liabilities, causes of action, judgments, costs, claims, damages, suits, losses and expenses, or any combination thereof, including attorneys’ fees, of any nature, kind or description, caused by or arising out of the claim of any broker, finder or other intermediary alleging to have been employed or hired by the Indemnitor, to a commission, finder’s fee or other compensation based upon the transactions contemplated hereby.

## **9. ESCROW AND CLOSING**

9.1 Escrow and Escrow Instructions. RDA and Developer agree to open an escrow account (“*Escrow*”) with Fidelity National Title Agency of Nevada, (“Title Company”), Attention: Pati Walter, Sr. Escrow Officer, at 6180 Brent Thurman Way, Suite 160, telephone (702) 822-8160, FAX (702) 942-8104, email [pwalter@fnf.com](mailto:pwalter@fnf.com), as escrow agent (“*Escrow Agent*”), within five (5) business days after both Parties have fully executed this Agreement. This Agreement constitutes the joint escrow instructions of RDA and Developer for the respective Close of Escrow for Phase 1 and Phase 2, and a fully executed copy of the Agreement shall be delivered to Escrow Agent upon the opening of escrow. RDA and Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 9 in writing, delivered to RDA and to Developer after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

### 9.2 Developer’s Escrow Deposits.

(a) Not later than two (2) business days prior to a Closing of a Phase, Developer shall deposit and deliver to Escrow Agent the following items:

(i) immediately available funds in (i) an amount of (One Dollar (\$1.00) equal to any prorations due from Developer pursuant to Section 13 below and (ii) the amount of \$83,750 for the Phase 1 Closing and \$83,750 for the Phase 2 Closing, which are the deposits required under the Employment Plan Policy;

(ii) two (2) original copies, duly executed and acknowledged by Developer of the Project DSLURS;

(iii) Developer's certificate signed by the President of Developer that all of Developer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date; and

(iv) any other documents, instruments, data, records, correspondence or agreements called for under this Agreement which have not been delivered.

(b) Developer shall deposit into Escrow and shall pay the following fees, charges and costs after Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not later than one business day prior to the scheduled date for a Closing:

(i) all of the ALTA Standards owner's policy of title insurance, any additional premium of ALTA extended title insurance and any endorsements requested by Developer;

(ii) all of fees of Escrow Agent and all of the recording costs of the Deed and the Project DSLURS;

(iii) any inspection fee charged in connection with the ALTA Extended Policy;

(iv) all of the real property transfer taxes applicable to the sale, if any; and

(v) in connection with the Closing of Phase 1, the amount of the Appraisal Cost reimbursement.

### 9.3 RDA's Escrow Deposits.

(a) Not later than two (2) business days prior to the Closing for a Phase, RDA will deposit with Escrow Agent the following:

(i) the Deed duly executed and acknowledged by RDA;

(ii) two (2) original copies, duly executed and acknowledged by RDA of the Project DSLURS;

(iii) a non-foreign transferor certificate in customary form duly executed by RDA;

(iv) RDA's certificate signed by the Executive Director of the RDA that all of RDA's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date; and

(v) any other documents, instruments, data, records, correspondence or agreements called for under this Agreement which have not been delivered.

(b) RDA shall be charged with the following fees, charges and costs after Escrow Agent has notified RDA of the amount of such fees, charges and costs, which shall be deducted from RDA's proceeds at the Close of Escrow:

(i) ad valorem taxes, if any, upon Phase 1 and Phase 2 for any time prior to conveyance of title;

(ii) any prorations due from RDA pursuant to Section 13 below;

9.4 Additional Escrow Deposits. The Parties shall also timely deliver into Escrow (a) any transfer declarations, returns or other similar documents satisfying federal or Nevada state law requirements, if any; (b) evidence reasonably satisfactory to the other Party and Escrow Agent respecting the authorization and execution of the documents required to be delivered hereunder; and (c) such additional documents as may be reasonably required by the other Party or Escrow Agent in order to consummate the transactions provided hereunder.

9.5 Closing Instructions. On a Closing Date for a Phase, following receipt of authorization from RDA and Developer, Escrow Agent is authorized and instructed to:

(a) Record the Deed for a Phase and the Project DSLURS for a Phase.

(b) Deliver to Developer the Title Policy for a Phase.

(c) Distribute the purchase price and Employment Plan Policy deposits to RDA.

(d) Prepare and submit to the Internal Revenue Service the information return and statement concerning the closing of the Escrow required by Section 6045(e) of the Internal Revenue Code of 1986, unless the Information Return is not required under the regulations promulgated under Section 6045(e).

9.6 Instructions Upon Recordation. The instruments that are required to be recorded and/or delivered under this Agreement shall provide that the Recorder's Office shall return them to Escrow Agent after recordation, and upon receipt thereof, Escrow Agent shall deliver the following:

(a) to RDA: (i) a copy of the Deed as recorded; (ii) the original recorded Project DSLURS; (iii) plain copies of the real property transfer tax declaration; and (iv) the original of Developer's certificate as to its representations and warranties;

(b) to Developer: (i) the original of the Deed as recorded; (ii) Project DSLURS, in counterparts; (iii) plain copies of the real property transfer tax declaration; (iv) the original of the Non-Foreign Transferor Declaration; and (v) the original of RDA's certificate as to its representations and warranties; and

(c) to RDA, the Appraisal Cost reimbursement.

9.7 Funds. All funds received in Escrow shall be deposited by Escrow Agent with other escrow funds of Escrow Agent in a general interest-bearing escrow account or accounts with any state or national bank doing business in the State of Nevada. Such funds may be transferred to any other such general interest-bearing escrow account or accounts. All disbursements shall be made by check of Escrow Agent or by wire transfer. All adjustments shall be made on the basis of a thirty (30) day month. Any



interest that is earned on funds deposited by Developer under this Agreement shall be for the benefit of Developer.

9.8 Escrow Cancellation. If Escrow is not in a condition to close before the Closing Date, the Party who shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement and demand the return of its money, papers and documents. The Party who has not fully performed shall be solely responsible for any escrow cancellation charges. No termination or demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of such demand to the other Party or Parties at the address of its or their principal place or places of business. If any objections are raised within the five (5) day period, Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both RDA and Developer or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, Escrow shall be closed as soon as possible. Nothing in this Section 9.8 shall be construed to impair or affect the rights or obligations of RDA or Developer to the respective rights and remedies granted to them pursuant to Section 17 below.

9.9 Amendments to Escrow Instructions. Any amendment of these escrow instructions shall be in writing and signed by both RDA and Developer. At the time of any amendment, Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. All communications from Escrow Agent to RDA or Developer shall be directed to the addresses and in the manner established in Section 18.5 below for notices, demands and communications between RDA and Developer.

9.10 Liability of Escrow Agent. The liability of Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it is limited to the obligations imposed upon it under this Agreement.

## **10. CONDITIONS TO CLOSE OF ESCROW**

10.1 Closing Date and Conditions to Developer's Obligation to Close. The Parties agree that (i) the Closing for Phase 1 shall occur no later than eighteen (18) months after the Effective Date and (ii) the closing Date for Phase 2 shall occur no later than November 30, 2022 (each a "*Closing Date*"). Notwithstanding any other provision of this Agreement, Developer's obligation to proceed with a Close of Escrow is subject to the fulfillment or waiver by Developer of each of the conditions precedent described below, which are solely for the benefit of Developer and which shall be fulfilled or waived by Developer at its sole discretion prior to a Close of Escrow:

(a) The Parcel Map has been approved pursuant to the Requirements and is to be recorded concurrently with the Close of Escrow for Phase 1;

(b) RDA shall not be in violation of any of its material obligations under this Agreement, including, without limitation, RDA having executed, acknowledged where required, and deposited with Escrow Agent all of the documents and deposits required to be delivered and made by RDA as required herein;

(c) Escrow Agent is prepared to issue the Title Policy as required herein; and

(d) RDA's representations and warranties set forth in this agreement are true and correct in all material respects as of the Closing.



10.2 Conditions to RDA's Obligation to Close. Notwithstanding any other provision of this Agreement, RDA's obligation to proceed with the Close of Escrow for each Phase is subject to the fulfillment or waiver by RDA of each of the conditions precedent described below, which are solely for the benefit of RDA and which shall be fulfilled or waived by RDA at its sole discretion prior to such Close of Escrow:

(a) The Parcel Map has been approved pursuant to the Requirements and is to be recorded concurrently with the Close of Escrow;

(b) The Project Financing has been obtained and is ready to fund for the respective Phase of development.

(c) The Developer and the RDA have agreed upon an employment plan in accordance with the Employment Plan Policy attached hereto as Exhibit H and Developer has deposited with the RDA an amount equal to \$83,750 for Phase 1 and \$83,750 for Phase 2;

(d) Developer shall not be in violation of any of its material obligations under this Agreement, including, without limitation, (i) Developer is in compliance with the Schedule of Performance in all respects and (ii) Developer having executed, acknowledged where required, and deposited with Escrow Agent all of the documents and deposits required to be delivered and made by Developer as required herein;

(e) Developer has been able to obtain the Project Financing for the respective Phase and RDA has reasonably determined that the Project Financing is in a position to close in order to meet the commencement of construction as set forth in the Schedule of Performance; and

(f) Developer's representations and warranties set forth in this agreement are true and correct in all material respects as of the Closing.

### 10.3 Failure of Condition.

(a) In the event any condition to Developer's obligation to a Close of Escrow set forth in Section 10.1 above is not satisfied by a respective Closing Date, Developer may terminate this Agreement by written notice to RDA and Escrow Agent, provided, however, that a failure of the condition 10.1(b) or 10.1(d) shall be a RDA event of default under Section 17.3. Upon such termination, the Parties shall each pay to Escrow Agent an amount equal to one-half of the cost of the cancellation of Escrow. Thereafter, neither Party will have any further rights or obligations under this Agreement (except for any obligation intended to survive a closing).

(b) In the event any condition to RDA's obligation to a Close of Escrow set forth in Sections 10.2 above is not satisfied by a respective Closing Date, RDA may terminate this Agreement by written notice to Developer and Escrow Agent. Upon such termination, the Parties Developer shall pay to Escrow Agent an amount equal to one-half of the cost of the cancellation of Escrow, and neither Party will have any further rights or obligations under this Agreement (except for any obligation intended to survive a closing).

## 11. **CONDITION OF TITLE.**

(a) Within five (5) calendar days after the Effective Date, Escrow Agent shall furnish to Developer a title commitment (the "*Title Commitment*") for the issuance of a ALTA Extended Owner's Policy if Developer elects (and with such ALTA extended coverage being at Developer's sole cost

and expense) covering the Site in an amount to be determined by Developer, issued by the Escrow Agent together with copies of all instruments (the "*Title Instruments*") reflected as exceptions therein, including, but not limited to, any easements, restrictions, reservations, terms, covenants, or conditions which may be applicable to or enforceable against any of the Site. The Title Commitment will show RDA to be owner of good and indefeasible fee simple title to the Site and contains the "standard printed exceptions". Within forty-five (45) days after the Effective Date, Developer at its cost and expense shall deliver (or cause to be delivered) to RDA an ALTA Survey of the Site (the "Survey"). Within ten (10) business days after delivery of the Title Commitment, Title Instruments and Survey to Developer, Developer shall have the opportunity to review the Title Commitment, Title Instruments, and Survey and to object in writing to any matter contained therein (the "*Title Review Period*"). Developer need not object to any monetary liens and encumbrances which either secure indebtedness or can be removed by payment of a liquidated sum of money, e.g., deed of trust, security agreement, financing statement, mechanic's liens, materialmen's liens ("*Unacceptable Encumbrances*") and RDA shall eliminate all such Unacceptable Encumbrances at or prior to a Closing. If Developer notifies RDA of any objections, RDA may elect to either cure the item(s) to which Developer objects or notify Developer that RDA is unwilling to cure the objectionable item(s). If RDA elects to cure the objectionable item, RDA shall, on or before the date that is three (3) days prior to the expiration of the Feasibility Review Period, eliminate or modify such objectionable item(s) to the reasonable satisfaction of Developer (the "*Cure Period*") and/or notify Developer of those objectionable items that will be cured after the Cure Period; provided, however, all Unacceptable Encumbrances and any other objections that RDA elects to cure, but will not cure until after the expiration of the Cure Period, shall be eliminated or modified to the reasonable satisfaction of Developer at or prior to the Closing (the "*Closing Cure Items*"). If RDA fails to notify Developer of RDA's election, elects not to cure, has not cured or is unable to cure objections of Developer within the Cure Period (except with respect to any Closing Cure Items that will be cured at or prior to Closing), Developer may, at its option, and as Developer's sole remedy, terminate this Agreement by written notice to RDA and Escrow Agent at any time prior to the expiration of the Feasibility Review Period. Any exceptions accepted by Developer in writing, not timely objected to during the Title Review Period (excluding any Additional Objections), or any uncured objections that Developer waives or accepts at the Closing shall be hereafter collectively referred to as "*Permitted Encumbrances*". Possession of a Phase shall be delivered at the Closing free and clear of all parties in possession, except the Permitted Encumbrances.

(b) Additional Objections. If at any time after expiration of the Title Review Period and prior to a Closing Developer receives notice from Escrow Agent that title to the Site is subject to any additional exceptions not appearing on the original Title Commitment, then Developer may notify RDA in writing within five (5) days after Developer receives notice of such additional exceptions of any objections Developer may have with the new exceptions (the "*Additional Objections*").

(c) Failure to Cure Prior to a Closing. If RDA fails to cure any Additional Objections or any Closing Cure Items at or prior to a Closing, then Developer may, at its option, terminate this Agreement by written notice to RDA. Developer shall pay all costs, fees, and expenses payable to the Escrow Agent in the event of such a termination, and neither party shall thereafter have any further duties, rights or obligations hereunder with respect to this Agreement, except those that expressly survive termination. If Developer does not terminate this Agreement and elects to proceed to Closing, then Developer shall be deemed to have accepted any uncured Additional Objections and Closing Cure Items as Permitted Exceptions.

**12. TITLE INSURANCE.** Concurrently with recordation of the Deed, and as a condition of a Closing, Escrow Agent and any required co-insurer shall provide and deliver to Developer a title insurance policy in an amount to be designated by Developer issued by Escrow Agent insuring that title to a Phase is vested

in Developer and/or its assignee in the condition required by Section 11 of this Agreement (the "Title Policy"). Developer shall pay all of the premium and costs for the Title Policy.

**13. PRORATIONS.** Except as may be otherwise expressly provided in this Agreement, all revenues, income and expenses of a Phase with respect to the period prior to the Close of Escrow shall be for the account of RDA, and all revenues, income and expenses of a Phase with respect to the period after the Close of Escrow shall be for the account of Developer. To the extent practicable, RDA and Developer shall request cut-off statements of expenses as of the Close of Escrow. If cut-off statements are not available, the expenses shall be prorated as of the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty-five (365) day year, and shall be paid or credited by RDA to Developer or by Developer to RDA, as the case may be, at the Close of Escrow. In addition, if any of the expenses cannot be accurately allocated on the Close of Escrow, the same shall be allocated as soon as practicable after the Close of Escrow, but not more than ninety (90) days thereafter, and either RDA or Developer shall promptly pay to the other the sum determined pursuant to such subsequent allocation. Real property ad valorem taxes shall be prorated as of 11:59 p.m. of the day immediately preceding the Closing Date, based upon actual days involved.

**14. FEASIBILITY REVIEW; AS-IS SALE**

**14.1 Feasibility Review.**

(a)

(i) Commencing on the Effective Date and thereafter for a period of sixty (60) days (the "*Feasibility Review Period*"), Developer, and its respective employees, agents, representatives, architects, engineers, consultants and contractors (collectively, the "*Due Diligence Authorized Parties*"), shall have the right, at all reasonable times and upon prior three (3) business day notice given to the RDA (which may be telephonic), and subject to the remaining provisions of this Section 14.1, to enter the Site and conduct such investigations as Developer in its discretion may desire or authorize in order to evaluate the desirability of its developing the Project, it being agreed that any delegation of its rights under this Section 14.1 shall not release Developer of any of its obligations and duties to the RDA under this Article 14.

(ii) RDA and its authorized and designated agent(s) shall have the right to be present upon any entry of the Site by Developer or any Due Diligence Authorized Parties, (ii) Developer and its Due Diligence Authorized Parties shall conduct their investigations in a manner so as to minimize interference with Site occupants and the operations, and otherwise in accordance with standards customarily employed in the industry and all Requirements, (iii) Developer shall pay in full for all materials, if any, supplied, used, joined, or affixed to the Site, and all persons who perform labor upon the Site, in connection with investigations, shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Site relating to investigations and shall, promptly remove any lien filed against the Site for work performed or materials delivered in connection with the investigations, (iv) Developer promptly shall restore to the extent practicable any portion(s) of the Site disturbed by its investigations, and (v) if Developer undertakes any boring or other disturbance of the soils on the Site, the soils so disturbed will be recompacted to substantially their original condition as of the date of such boring or other disturbance, or, as an alternative to filling and recompacting borings with soil, Developer shall have the right to fill such borings with neat cement or bentonite in compliance with the Nevada Department of Environmental Protection's fact sheet for filling abandoned wells. The foregoing authorization shall extend to soil borings with drilling rigs and hand augers and groundwater sampling with bailers or comparable equipment, but shall not be construed to authorize Developer to install groundwater monitoring wells or excavate soils with earth moving equipment.

(iii) The following items shall be provided or made available by the RDA to Developer no later than ten (10) business days after the Effective Date by the RDA, to the extent such items are within RDA's possession or control or are reasonably available to RDA:

(A) any and all surveys and maps of all or any portion of the Site;

(B) any and all soils condition reports, environmental assessment reports and endangered species and habitat reports on all or any portion of the Site;

(C) any and all water and sewer studies, engineering studies, zoning information, and marketing studies relating to all or any portion of the Site; and

(D) any and all leases or other contracts or agreements relating to all or any portion of the Site, the availability of utilities or access to all or any portion of the Site, and investigations of any requirements which may be imposed by governmental or quasi-governmental entities and agencies relative to all or any portion of the Site; and

(b) Developer may elect, at any time prior to the expiration of the Feasibility Review Period, to terminate this Agreement for any reason, or no reason, in Developer's sole discretion; provided, however, that if Developer fails to notify RDA and Escrow Agent of Developer's disapproval of the feasibility of the Developer's proposed development of the Site by written notice delivered to RDA no later than the date of expiration of the Feasibility Review Period, the Developer will be deemed to have approved the feasibility and this condition will be deemed satisfied and (i) Developer shall have no right to terminate this Agreement pursuant to this Section 14. If this Agreement is terminated pursuant to the foregoing provisions of this Section 14, Developer shall pay to Escrow Agent an amount equal to the cost of the cancellation of Escrow; neither party will have any further rights or obligations under this Agreement (except for any obligation intended to survive a closing.

14.2 Developer Indemnity. Developer hereby agrees to indemnify, hold harmless and defend RDA, the City, and officers, employees and agents (individually and collectively, the "*City Parties*"), from and against any and all Liabilities incurred by any of the City Parties arising out of or in connection with the Developer's investigations at the Site; provided, however, the foregoing indemnity shall not apply with respect to any claims, damages, liabilities, or expenses arising out of the mere discovery by Developer, or the failure to report, any pre-existing conditions, or any acts or omissions of the City Parties or their contractors or invitees. Developer shall deliver to the City concurrently herewith a certificate of insurance substantiating commercial general liability coverage in a minimum amount of \$2,000,000.00 per occurrence single limit bodily injury and property damage coverage, including broad form contractual liability, written on a "occurrence" basis and naming the City as an additional insured. Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be disclosed and entered on the required certificate of insurance and shall be no lower than "A- VII". The Parties agree that the insurance specified in this Section 14.2 to be obtained by Developer shall not limit the liability of Developer hereunder.

14.3 Ownership of Reports and Studies. RDA agrees and acknowledges that all right, title and ownership of all proprietary and non-proprietary reports and studies pertaining to the Site, including but not limited to marketing and research studies, internal planning studies, architectural

drawings and renderings, surveys, and geotechnical and environmental reports and studies shall be the sole property of Developer.

#### 14.4 As Is Nature of Transaction.

(a) Developer acknowledges and agrees that RDA has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to the Site or any improvements thereon, (i) the value, nature, quality, or condition of any of the Site, including, without limitation, the water, soil, and geology, (ii) the income to be derived from any of the Site, (iii) the suitability of any of the Site for any and all activities and uses that Developer may conduct thereon, (iv) the compliance of or by any of the Site or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body, (v) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of any of the Site, (vi) the manner or quality of the construction or materials, if any, incorporated into any of the Site, (vii) the manner, quality, state of repair, or lack of repair of any of the Site, (viii) compliance with any Environmental Laws, including the existence in or on any of the Site of Hazardous Materials, (ix) the sufficiency of any plans, plats, drawings, specifications, reports, studies, and/or documents assigned and/or delivered by RDA, (x) the sufficiency, completeness, compliance or the standard to which any improvements on or serving the Site were constructed, maintained or repaired, and (xi) any other matter with respect to the Title Report, and/or the Site.

(b) Developer further acknowledges and agrees that Developer is relying entirely on Developer's own investigations and examinations as to any and all matters including, without limitation, the Title Report, and/or the Site. Developer acknowledges that it has, or will have prior to Close of Escrow, performed any and all inspections Developer deems necessary or appropriate for Developer to be satisfied with the acceptability of the purchase and sale and other transactions contemplated by this Agreement. Developer further acknowledges that any information provided or made available to Developer by RDA, including, without limitation, all items delivered to Developer by the RDA pursuant to Section 10(a)(iii), or by its officers, employees, agents, brokers, representatives, or others was obtained from a variety of sources and that RDA has not made any independent verification of such information and, except for the express representations, makes no representations as to the accuracy or completeness of any such information, and such information was provided or made available solely as a courtesy, and that Developer had the sole responsibility for determining the existence or nonexistence of any fact material to Developer's decision to consummate this Agreement. RDA is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to any of the Site, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person. Developer acknowledges that, except for the express representations, its purchase of any of the Site hereunder is on an "as-is" "where-is" and "with all faults" basis without any implied warranties, and upon consummating any such purchase, Developer accepts and agrees to bear all risks regarding all attributes and conditions, latent or otherwise, of the Site acquired by Developer.

(c) Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Site ("*Releasing Parties*") hereby mutually releases, waives, remises, acquits and forever discharges all rights, causes of action and claims which Developer has or may have in the future against RDA, its officers, employees, agents, attorneys, representatives, legal successors and assigns, from any and all claims, suits, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Developer or any Releasing Party now has or which Developer or any other Releasing Party may have in the future on account of or in any way arising out of or in connection with Hazardous Substances, Environmental Claims or other violation

of Environmental Laws arising out of or in connection with any other physical or environmental condition of the Site. Except with respect to the gross negligence or willful misconduct of any City Party, Developer hereby agrees to hold harmless and indemnify the City Parties from any claims, judgments, penalties, fines, losses, damages, expenses (including reasonable attorneys' fees) against or incurred by the City Parties after the Close of Escrow of the Site to Developer arising in any way from (i) the presence of Hazardous Substances or environmental conditions at, on, beneath or from the Site, (ii) Environmental Claims or (iii) the application of Environmental Laws to the Site.

14.5 Survival. Sections 8, 14.2 and 14.4 shall survive any termination of this Agreement and any Close of Escrow hereunder and shall not merge into the Deed or any other instrument of transfer.

## **15. CONVEYANCE FREE OF POSSESSION.**

The Site shall be conveyed free of any possession or right of possession by any other Person except subject to the Permitted Encumbrances.

## **16. GOVERNMENTAL PERMITS.**

Nothing in this Agreement shall affect the responsibility of Developer to seek, obtain and comply with the conditions of any and all permits and governmental authorizations necessary to develop the Site or any portion thereof. Developer shall be responsible for the payment of all permit fees and any other fees in connection with the development and construction of the Project. Developer acknowledges and agrees that RDA does not issue any permits or approvals related to the development and construction of the Project and that all such permits or approvals must be issued by the respective agency having approval authority.

## **17. DEFAULT AND REMEDIES**

17.1 Developer Event of Default. The occurrence of any of the following prior to the Close of Escrow for Phase 1 and Phase 2, shall be a Developer event of default hereunder:

(a) The failure by Developer to timely deliver the deposits as required by Sections 9.2 and 9.4 above, unless such failure is as a result of the failure to be satisfied of one or more of Developer's conditions precedent to a Close of Escrow set forth in Section 10.1 above;

(b) The filing of a petition or the institution of proceedings of, by, or against Developer pursuant to the Bankruptcy Reform Act of 1978, as amended, or any successor statute or pursuant to any state bankruptcy, insolvency, moratoria, reorganization, or similar laws which is not dismissed within ninety (90) days; or Developer's making a general assignment for the benefit of its creditors or the entering by Developer into any compromise or arrangement with its creditors generally; or Developer's becoming insolvent in the sense that Developer is unable to pay its debts as they mature or in the sense that Developer's debts exceed the fair market value of Developer's assets;

(c) Except for defaults pursuant to Section 17.1(a), (i) the failure of Developer to comply with the Schedule of Performance in all respects for both Phase 1 and Phase 2 and/or (ii) the failure of Developer to perform any material act to be performed by it, to refrain from performing any material prohibited act or to fulfill any material condition to be fulfilled by it under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit, which failure is not cured by Developer within the relevant cure period set forth below. Developer shall cure any monetary default within five (5) business days after receipt of written notice from RDA. Developer shall cure any nonmonetary default within fifteen (15) business days after receipt of written notice from RDA; *provided, however*, that

in the event that such nonmonetary default is of a nature that it cannot be cured within such fifteen (15) business day period, then Developer shall commence to cure such failure within such fifteen (15) business day period and shall diligently prosecute such cure to its completion but in all events such cure shall be completed within thirty (30) days; or

(d) Any of Developer's representations and warranties set forth in Section 7.2 above to be untrue in any material way as of a Closing Date.

## 17.2 RDA'S REMEDY.

In the event an event of default has occurred by Developer pursuant to Section 17.1 above, RDA shall have the right by written notice to Developer to terminate this Agreement. For avoidance of doubt, RDA shall have the right to terminate this Agreement in the event of a default by Developer for noncompliance under the Schedule of Performance in connection with Phase 2, notwithstanding that Developer has complied in connection with Phase 1.

17.3 RDA's Event of Default. The occurrence of any of the following prior to a Close of Escrow, shall be a RDA event of default hereunder:

(a) the failure of RDA to perform any act to be performed by it, to refrain from performing any prohibited act or to fulfill any condition to be fulfilled by it under this Agreement unless such failure is as a result of the failure to be satisfied of one or more of RDA's conditions precedent to the Close of Escrow set forth in Section 10.2 above; or

(b) any of RDA's representations and warranties set forth in Section 7.1 above shall be untrue in any material way as of the Closing Date.

17.4 Developer's Remedies. In the event of a default by RDA prior to the Close of Escrow, Developer's sole remedy shall be to pursue one, and only one, of the following remedies:

(a) to waive such default;

(b) to terminate this Agreement and on such termination RDA shall pay the cost of the cancellation of Escrow, but shall have no liability whatsoever to Developer, including, without limitation, any liability for Developer's costs and expenses incurred in connection with its undertakings under this Agreement, any damages whatsoever, including, without limitation, any lost profits, consequential damages, special damages or punitive damages, or in any other way in connection with the Project; or

(c) to demand specific performance of RDA's obligations under this Agreement and without any liability whatsoever on the part of RDA for damages resulting from RDA's event of default, including, without limitation, any liability for Developer's costs and expenses incurred in connection with its undertakings under this Agreement, any damages whatsoever, including, without limitation, any lost profits, consequential damages, special damages or punitive damages, or in any other way in connection with the Project.

## 18. MISCELLANEOUS PROVISIONS

18.1 Time of the Essence. Time is of the essence of this Agreement and every obligation hereunder.

18.2 Survival. The representations and warranties contained in this Agreement, and the covenants that extend beyond the conveyance of title shall survive the recordation of a Deed for a period of one (1) year, and shall not be deemed merged into a Deed.

18.3 Successors and Assigns. This Agreement shall inure to the benefit of and bind the successors and assigns of the respective Parties hereto, subject to the provisions of this Agreement regarding assignment.

18.4 Non-Liability of City Officials and Employees. No official or employee of RDA or the City shall be personally liable to Developer for any default or breach by RDA, for any amount which may become due to Developer or for any obligation of RDA under the terms of this Agreement.

18.5 Notices. All notices, consents, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when (i) upon delivery (or refusal of delivery) of personal delivery, (ii) forty-eight (48) hours after being sent by United States registered mail, return receipt requested, postage prepaid, (iii) upon confirmation of receipt of facsimile transmission, or (iv) sent by e-mail submission, to the other Party at the following respective addresses, facsimile number or e-mail address or such other address, facsimile number or e-mail address as either Party may from time to time designate in writing:

If to RDA: Las Vegas Redevelopment Agency  
c/o Office of Economic and Urban Development  
495 S. Main Street, 6<sup>th</sup> Floor  
Las Vegas, 89101  
Phone: (702) 229-6551  
Fax: (702) 385-3128  
Email: [barent@lasvegasnevada.gov](mailto:barent@lasvegasnevada.gov)  
Attn: William Arent, Director

And: City Attorney Office  
City Hall, Sixth Floor  
495 S. Main Street  
Las Vegas, NV 89101  
Phone: (702) 229-6629  
Fax: (702) 368-1749  
Email: [jridilla@lasvegasnevada.gov](mailto:jridilla@lasvegasnevada.gov)

If to Developer: Community Development Programs Center of Nevada, Inc.  
2009 Alta Drive  
Las Vegas, Nevada 89106  
Phone: (702) 873-8882 Ext: 110  
Email: [Frankh@cdpcn.com](mailto:Frankh@cdpcn.com)  
Attn: Frank Hawkins

18.6 Subsequent RDA Approvals. Any approvals of RDA required or permitted by the terms of this Agreement are authorized to be given by the Executive Director of the RDA or such other person that RDA designates in writing to Developer. If there is no time specified herein for RDA's approval, Developer may submit a letter requiring RDA's approval within thirty (30) days after submission to RDA or such approvals shall be deemed granted.



18.7 Entire Agreement, Amendments and Waivers. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement includes Exhibit A through Exhibit J, inclusively, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the Parties. This Agreement is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All amendments hereto must be in writing and signed by the appropriate authorities of RDA and Developer. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of RDA and Developer and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

18.8 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

18.9 Governing Law. The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

18.10 Captions. The captions contained in this Agreement are for the convenience of the Parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

18.11 Counterparts. Each counterpart of this Agreement shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement. Delivery of this Agreement may be accomplished by facsimile transmission of this Agreement. In such event, the Parties hereto shall promptly thereafter deliver to each other executed counterpart originals of this Agreement.

18.12 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

18.13 Days. All references to “*days*” in this Agreement are to consecutive calendar days unless business days are specified. All references to “*business days*” shall mean any day that is not a Friday, Saturday, Sunday or day on which commercial banks are not authorized to be open, or required to be closed, in Las Vegas, Nevada. Notwithstanding the foregoing, if the last day of any time period stated herein shall not fall on a business day, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is a business day.

18.14 Construction. The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

18.15 Extensions of Time. The Executive Director of the RDA shall have the authority to grant time extensions under this Agreement not to exceed a total of sixty (60) days, provided, however, it shall be at the Executive Director’s sole and absolute discretion as to whether to grant any time extension or to submit any requests for time extensions to the City Council for approval.

## **19. TIME FOR ACCEPTANCE OF AGREEMENT BY RDA.**

This Agreement was approved on [\_\_\_\_\_] by the RDA. The effective date of this Agreement shall be the date of RDA's approval of this Agreement as indicated on the signature page below (the "*Effective Date*").

EXECUTION BLOCKS ON NEXT PAGE

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

RDA

CITY OF LAS VEGAS  
REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Carolyn G. Goodman, Chairperson

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
LuAnn D. Holmes, Secretary

Approved as to Form

M. D. [Signature] 12-16-20  
Date

DEVELOPER

COMMUNITY DEVELOPMENT PROGRAMS  
CENTER OF NEVADA, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

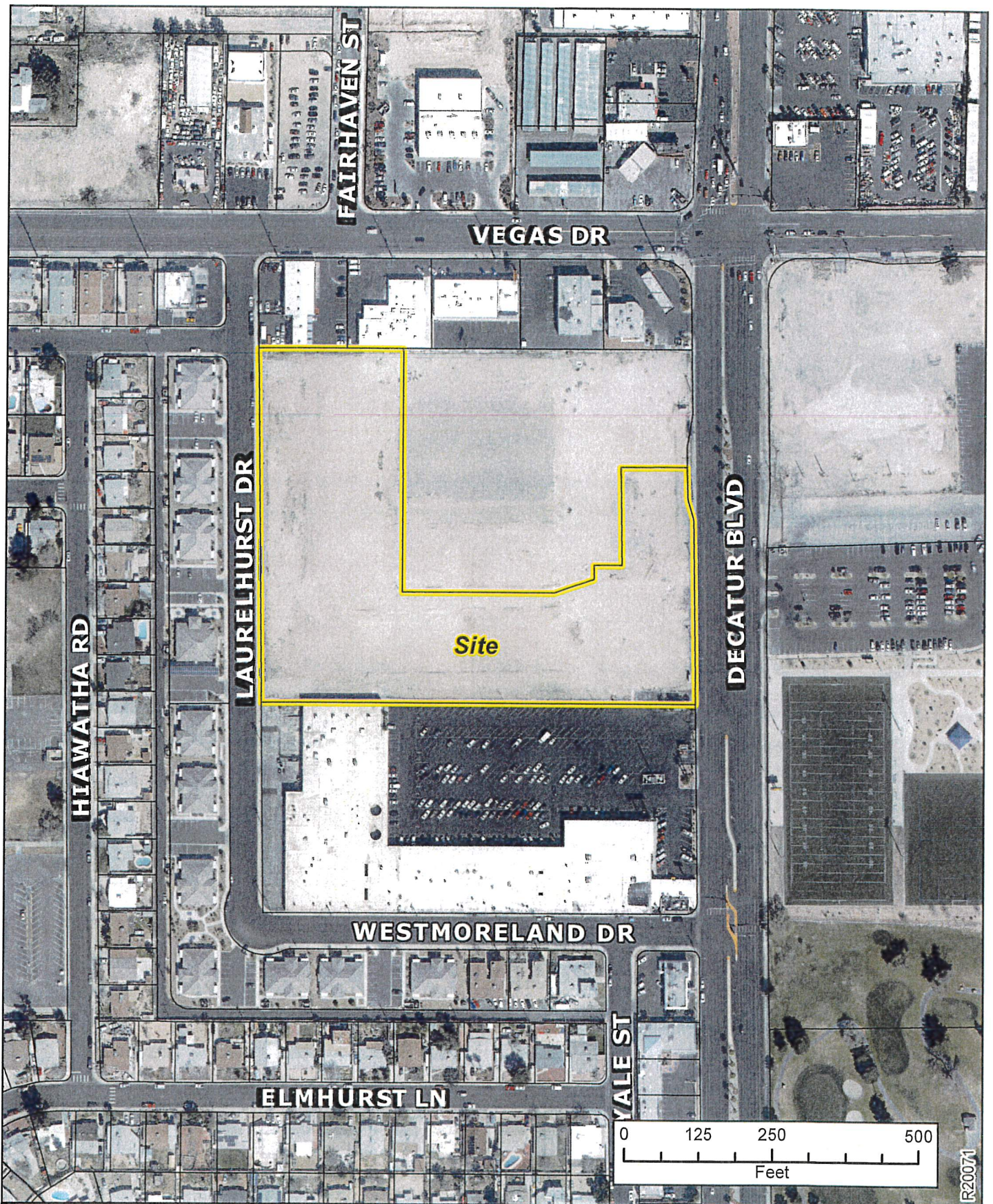
**LIST OF EXHIBITS**

EXHIBIT "A"	DEPICTION OF SITE
EXHIBIT "B"	LEGAL DESCRIPTION OF SITE
EXHIBIT "C"	DEED
EXHIBIT "D"	SITE DEVELOPMENT PLAN
EXHIBIT "E"	SCOPE OF DEVELOPMENT
EXHIBIT "F"	SCHEDULE OF PERFORMANCE
EXHIBIT "G"	PROJECT DSLURS
EXHIBIT "H"	RDA EMPLOYMENT PLAN POLICY
EXHIBIT "I"	DISCLOSURE OF PRINCIPALS
EXHIBIT "J"	CERTIFICATE OF COMPLETION

EXHIBIT "A"

SITE DEPICTION





R20071



## EXHIBIT A

Economic and Urban Development Department

This information is for display purposes only. No liability is assumed as to the accuracy of the data delineated hereon.



11/10/20



EXHIBIT "B"

SITE LEGAL DESCRIPTION

## EXHIBIT B

### LEGAL DESCRIPTION – A PORTION OF:

THAT PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 25, TOWNSHIP 20 SOUTH, RANGE 60 EAST, MDM IN THE CITY OF LAS VEGAS, COUNTY OF CLARK, STATE OF NEVADA.

#### DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 25: THENCE SOUTH 00°42'34" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER (NE ¼) THEREOF, A DISTANCE OF 190.00 FEET; THENCE NORTH 89°57'34" WEST A DISTANCE OF 70 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89°57'34" WEST A DISTANCE OF 735.96 FEET; THENCE SOUTH 00°42'34" EAST (00°41'40" M) A DISTANCE OF 591.00 FEET; THENCE SOUTH 89°57'34" EAST A DISTANCE OF 735.96 FEET THENCE NORTH 00°42'34" WEST (00°41'40" M) A DISTANCE OF 591 FEET TO THE POINT OF BEGINNING.



EXHIBIT "C"

DEED

APN: a portion of 138-25-518-002

RECORDING REQUESTED BY:  
City of Las Vegas Redevelopment Agency

AFTER RECORDATION MAIL TO,  
AND SEND TAX BILLS TO:  
CDPCN, LLC  
2009 Alta Drive  
Las Vegas, NV 89106

GRANT, BARGAIN AND SALE DEED

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body organized and existing under the community development laws of the State of Nevada ("Grantor"), hereby grants, bargains and sells to COMMUNITY DEVELOPMENT PROGRAMS CENTER OF NEVADA, INC., a Nevada nonprofit corporation, whose address is 2009 Alta Drive, Las Vegas, NV 89106 ("Grantee"), all right, title, and interest in the real property ("Property") legally described in the Attachment attached hereto and incorporated herein by this reference.

IN WITNESS THEREOF, Grantor has caused this instrument to be executed as of

\_\_\_\_\_.

GRANTOR:

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
CAROLYN G. GOODMAN, Chairperson

Attest: \_\_\_\_\_  
LuAnn D. Homes, Secretary

Approved as to form:

\_\_\_\_\_

Date

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
Carolyn G. Goodman as Chairperson of the City of Las Vegas Redevelopment Agency.

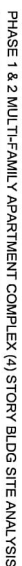
NOTARY PUBLIC

ATTACHMENT  
TO  
GRANT, BARGAIN, AND SALE DEED  
LEGAL DESCRIPTION

EXHIBIT "D"

SITE DEVELOPMENT PLAN

## VEGAS DRIVE



NOTE: ALL PARCEL DIMENSIONS  
ARE APPROXIMATE AND MUST BE  
VERIFIED BY SURVEYOR

VEGAS DECATUR MULTI-FAMILY APARTMENTS  
1501 N. DECATUR BLVD LAS VEGAS NV, 89108  
APN # 13825518002

 WINSTON H. HENDERSON  
ARCHITECTS

8689 WEST SAHARA AVENUE, STE. #100, LAS VEGAS, NV 89111  
OFFICE (702) 893-9700 FAX (702) 893-9798

Date:	09/15/2020
Job No.:	VEGAS TR17
Designed:	WHH
Drawn:	TEP
Update:	
Checked:	TEP

AS1.0

EXHIBIT "E"

SCOPE OF DEVELOPMENT

## SCOPE OF DEVELOPMENT

Community Development Programs Center of Nevada, Inc. a non profit development organization has been selected to develop 144 apartments in 2 phases. The first phase is a 4 story, 40 unit new construction development located at the SE intersection of the site at Decatur Blvd and Vegas Drive in the City of Las Vegas. Phase 2 will consist of 104 apartments in a single four-story building, 28 (1) bedroom units and 12 (2) bedroom units, fully sprinkled, tankless hot water heaters, low E windows, SIPS panels, 100% ceramic tile units, washer/dryer hookups, ceiling fans in all rooms.

### **Project Amenities:**

The clubhouse includes an exercise room, computer lab with high-speed connection, management offices, gathering room and laundry facilities. Fully landscaped exterior including, exterior lighting, covered barbeque areas. This development will target residents with incomes 44.99% to 60.00% with market rate units.

### **Market Study Conclusions: page B-3 of market study included in attachments**

The proposed project contains units targeted to both low income and general market prospects. In addition, it is the newest project in an area that has exhibited strong demand for rental apartments, particularly in the affordable ranges.

The subject site is well-located relative to population-supporting amenities and employment centers, and is immediately adjacent to shopping, transportation and recreation amenities. Potential residents will be able to choose from one- and two-bedroom plans that are similar in size to comparable units in the market area.

The proposed 40-unit project will offer 33 of its units on an income restricted basis, targeted to income ranges significantly lower than the areas competitive affordable senior projects. Rents and unit sizes are strongly competitive, priced at or below both affordable and market rate projects. As a result of this pricing strategy and the fact that these will be the only new affordable units in the market, the subject project should receive excellent market acceptance.

The Reicher Company projects that the new units will be absorbed at a rate of between 8 and 10 units per month, resulting in full absorption of the 40 units within 4 to 5 months from the start of the leasing program.

EXHIBIT "F"

SCHEDULE OF PERFORMANCE

**EXHIBIT F**  
**SCHEDULE OF PERFORMANCE**

The Parties shall execute and deliver two exact copies of this Agreement:	Not later than ten (10) calendar days from execution of this Agreement.
Open escrow at a title company mutually agreeable to the Parties and which is properly licensed in the State of Nevada within Five (5) Business Days of both parties executing the Agreement.	Developer shall open escrow with Fidelity National Title Agency of Nevada 6180 Brent Thurman Wy. Ste 160 Las Vegas, NV 89148 Attn: Pati Walter, Sr. Escrow Officer Title Officer: Cara Chamberlain
Delivery to and approval of Preliminary Title Report by Developer:	Escrow to deliver a Preliminary Title Report (PRT) to developer within 5 calendar days of opening escrow.  Developer shall approve the PRT or issue a title objection letter within ten (10) calendar days of receipt of the PRT and ALTA Survey.  Developer to deliver an ALTA Survey within Forty-Five (45) days of Effective Date.
Expiration of Feasibility Review Period:	Sixty (60) calendar days from Effective Date.
The Developer shall submit to the City for approval a set of basic concept drawings:	Not later than Ninety (90) calendar days from the Effective Date.
Submission to City by Developer of site development plan application through City Planning Department.	Not later than Ninety (90) calendar days after site development plan application approval.
Submission of Developer's evidence of financing for each phase of the project pursuant to Section 6.6:	No later than Thirty (30) business days prior to Close of Escrow.



Submittal of final architectural plans, civil plans, mechanical, electrical, and plumbing plans, landscape plans, and structural plan to City.	Not later than one hundred eighty (180) calendar days after site development plan application approval.
Issuance of City and other governmental permits necessary to commence construction.	Prior to start of construction.
Submission – Certificates of Insurance.	To be held on file, prior to site entry.
Developer to prepare a parcel map for each phase - <b>subject to review and approval by City Surveyor.</b>	To be recorded at Closing
Deposit for RDA Employment Plan  Purchase Price and all closing costs (by Developer.)  Real Property Transfer Tax  Costs of ALTA Standard and Extended Coverage title insurance policies.  Reimbursement of Appraisal Costs to RDA	No later than Two (2) Business Days prior to closing per 9.2 Developer's Escrow Deposits.
Developer to submit a preliminary report regarding hiring for the project per the RDA Employment Plan Policy.	Prevailing Wage and monthly status reports shall be due monthly, subsequent to RDA and City Council approval of the Development Agreement.
Execution of and delivery to escrow of: <ul style="list-style-type: none"> <li>• Project DSLURS</li> <li>• ALTA Survey</li> </ul>	No later than Two (2) Business Days prior to closing per 9.2 Developer's Escrow Deposits.

Escrow closing and conveyance Phase 1:	<p><u>Phase I:</u> Close of escrow: Not to exceed 18 months from Effective Date of Agreement.</p> <p><u>Phase 2:</u> Apply for tax credits in May, 2022 Close of escrow – November, 2022 Start of construction (104 units) November, 2022 Completion of Construction: est. 18 months May, 2024</p>
The Developer shall commence construction, which shall mean pulling grading permit and grading the site determined by an inspection completed by the City's building official, or by his designee for each Phase:	Within thirty (30) days after the earlier of (i) escrow closing or (ii) issuance of City and other governmental permits necessary to commence construction.
Completion of construction, as evidenced by a Certificate of Occupancy issued by the City.	Not later than eighteen (18) calendar months following commencement of construction for Phase any phase.
Upon written request by Developer and after completion of improvements as required by the Agreement, City shall furnish Developer with a Notice of Completion.	Not later than thirty (30) calendar days following the completion of construction.

EXHIBIT "G"

PROJECT DSLURS

EXHIBIT "G"

APN NO:

WHEN RECORDED, MAIL TO:

LAS VEGAS REDEVELOPMENT AGENCY  
495 South Main St. 6<sup>th</sup> Floor  
Las Vegas, Nevada 89101  
Attention: Office of Economic and Urban Development

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(Space Above Line For Recorder's Use)

**DECLARATION OF SPECIAL LAND USE RESTRICTIONS AND OPTION TO PURCHASE**

THIS DECLARATION OF SPECIAL LAND USE RESTRICTIONS AND OPTION TO PURCHASE ("*Declaration*") is made as of \_\_\_\_\_, 20\_\_ (the "*Effective Date*"), by and between CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a political subdivision the State of Nevada (together with its permitted successors and assigns, "*RDA*"), and \_\_\_\_\_, a \_\_\_\_\_ (together with its permitted successors and assigns, "*Developer*"). RDA and Developer are individually or collectively referred to herein as "*Party*" or "*Parties*."

**WITNESSETH:**

A. WHEREAS, RDA has conveyed to Developer that site, which is more particularly described in Exhibit "A" attached hereto (the "*Site*") for a nominal consideration of One Dollar (\$1.00);

B. WHEREAS, in consideration of such conveyance, Developer has agreed that it is acquiring the Site to develop the Project (hereinafter defined) on the Site (hereinafter defined) in accordance with the Restrictions set forth herein;

C. WHEREAS, RDA is conveying the Site to Developer for such nominal consideration on the basis of Developer's continuing compliance with the Restrictions, including the construction of the Project on the Site and the operation of the Project as Affordable Housing; and

D. WHEREAS, but for such representations by Developer, and Developer's unique skills, expertise and suitability in development of the Site and construction and operation of the Specific Facilities described below, RDA would not have conveyed the Site to Developer.

## AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing (including the conveyance of the Site by RDA to Developer), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Developer, the Parties hereto agree as follows:

### 1. GENERAL PROVISIONS

1.1 Statement of General Purposes. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Las Vegas Redevelopment Area (the "*Redevelopment Area*") in which the Site is located by providing for the redevelopment of certain real property included within the boundaries of the Redevelopment Area. RDA has conveyed the Site to Developer for the nominal consideration of One Dollar and No Cents (\$1.00) in consideration of Developer's promise to complete the construction and operation of the Specific Facilities described below. The RDA has determined that the Project will provide a needed amount of Affordable Housing units within the Redevelopment Area. If not for Developer's unique skills, expertise and suitability in development of the Site and construction and operation of the Specific Facilities described below, RDA would neither have conveyed the Site to Developer pursuant to the DDA nor conveyed it for the nominal consideration.

1.2 Certain Definitions. Capitalized terms used herein but not otherwise defined shall have the meanings set forth below:

"*Abandoned Construction*" or a variation thereof means that Developer has ceased the active and continuous construction of the Project for a period of ninety (90) days, except as a result of Unavoidable Delays.

"*Affiliate*" or "*Affiliates*" means, with respect to any Person, "*Affiliate*" means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term "control" (including the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of a Controlling Interest.

“

"*Affordable Housing*" means a for rent apartment project for very low-income and low-income families from 30% to 60% area medium income partially financed under the federal Home Investments Partnerships Program under 24 CFR 92 and/or the State of Nevada Account for Affordable Housing Trust Funds program or other similar programs.

"*City*" means the City of Las Vegas, Nevada, a political subdivision of the State of Nevada.

"*City Council*" means the city council of the City of Las Vegas.

"*Commence Horizontal Construction*" or "*Commencement of Horizontal Construction*" means commencement of any one of the grading, off-site improvements, foundation work or similar horizontal construction on the Site.

*"Commence Vertical Construction"* or *"Commencement of Vertical Construction"* means commencement of the vertical erection of the primary buildings of the Project following commencement of horizontal construction.

*"Completion of Construction"* or any variation thereof as to any portion of the Project shall mean the date that such portion receives a temporary certificate of occupancy or a notice of completion is recorded.

*"Convey or Conveyance"* means (i) any manner by which any estate or interest in all or substantially all of the Site is created, alienated, assigned or surrendered, and includes, without limitation, any sale, ground lease, conveyance, transfer, exchange, encumbrance or other disposition of the Site, whether by agreement for sale or in any other manner and (ii) a transfer of the direct or indirect equity interests in Developer.

*"DDA"* means that certain Disposition and Development Agreement between RDA and Developer (as such term is defined in the DDA), as such may be amended, whereby RDA has sold the Site to Developer.

*"Environmental Law"* means any applicable past, present or future federal, state or local law, statute, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice, policy, or binding agreement, and all amendments thereto, issued, promulgated, or entered into by any Government Authority, relating in any way to the environment, the preservation, degradation, loss, damage, restoration or reclamation of natural resources, waste management, health, industrial hygiene, safety matters, environmental condition or Hazardous Substance.

*"Final Plans and Drawings"* means the administratively approved civil improvement plans, together with any subsequent revisions thereto, prepared for the construction of the Project which have obtained all approvals pursuant to the Requirements for the construction of the Project.

*"Governmental Authority"* or *"Governmental Authorities"* means (i) the United States of America, the State of Nevada, the City, Clark County, Nevada, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over, under or above the Site (or any portion thereof), and (ii) any public utility or private entity which will be accepting and/or approving any development on the Site.

*"Hazardous Substance"* means any product, byproduct, compound, substance, chemical, material or waste, including, without limitation, asbestos, solvents, degreasers, heavy metals, refrigerants, nitrates, urea formaldehyde, polychlorinated biphenyls, dioxins, petroleum and petroleum products, fuel additives, and any other material, whose presence, characteristics, nature, quantity, intensity, existence, use, manufacture, possession, handling, disposal, transportation, spill, release, threatened release, treatment, storage, production, discharge, emission, remediation, cleanup, abatement, removal, migration, or effect, either by itself or in combination with other materials is or is allegedly: (a) injurious, dangerous, toxic, hazardous to human or animal health, aquatic or biota life, safety or welfare or any other portion of the environment; (b) regulated, defined, listed, prohibited, controlled, studied or monitored in any manner by any Government Authority or Environmental Laws; or (c) a basis for liability to any Government Authority or third party under any regulatory, statutory or common law theory.

*"Lender"* has the meaning set forth in Section 6.2.

*"Major Default"* has the meaning set forth in Section 4.3

*"Mortgage"* means the encumbrance, grant, pledge or conveyance of Developer's rights, title, and interest in and to the Site, or any portion thereof, by way of a mortgage, pledge, assignment or other security agreement entering into a deed of trust or mortgage affecting the Site or any portion thereof, as the same may be amended, restated, or replaced from time to time.

*"Non-complying Structures"* means structures upon the Site that violate applicable Requirements or any conditions, covenants, or restrictions recorded upon the Site.

*"Person"* means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

*"Project"* means that Affordable Housing development as set forth in the Project Scope.

*"Project Scope"* means the description of the Project attached to this Declaration as Exhibit "B".

*"Proposed Member"* means an institutional real estate investor that owns a direct interest in the Developer and may possess veto or consent rights over certain major decisions.

*"RDA Indemnified Party or Parties"* means, collectively, RDA and the City and their respective elected and appointed officials directors, officers, shareholders, members, employees, permitted successors and assigns and agents and Affiliates of such Persons (and the respective heirs, legal representatives, successors and assigns of any of the foregoing).

*"Recorder's Office"* means the Office of the County Recorder of Clark County, Nevada.

*"Required Approvals"* means all approvals and permits necessary under the Requirements for the development, construction and operation of the Project.

*"Requirement"* means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Developer or the Site and Project (including, without limitation, the Americans with Disabilities Act and any of the foregoing relating to handicapped access or handicapped parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) any temporary or final certificates of completion and/or occupancy issued for the Site, as then in force; (iii) any and all provisions and requirements of any insurance policy required to be carried by Developer under this Declaration; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations, or other indentures, documents or instruments of record recorded against the Site as of the Effective Date.

“*Restrictions*” means the covenants, conditions, rights, restrictions and limitations more particularly set forth in Sections 2 and 3.

“*Schedule of Performance*” attached to this Declaration as Exhibit “C”, subject to Unavoidable Delays.

“*Site*” has the definition set forth in the Recital A.

“*Specific Facilities*” means those buildings, infrastructure improvements, site improvements and other facilities generally specified in the Final Plans and Drawings together with all modifications thereto agreed by RDA.

“*Unavoidable Delays*” means delays or stoppages of work due to any of the following (provided that such delay is beyond a Party’s reasonable control): war, insurrection, civil commotion, strikes, labor disputes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, COVID-19, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions, litigation, unusually severe or abnormal weather conditions, a moratorium or any regulatory policy which impedes or precludes private development on the Site, unavailability or failure of utilities, acts of another party, acts or failure to act of any public or governmental agency or entity or a court order which causes a delay (unless resulting from disputes between or among the Party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging Party or Affiliates or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging Party. Any delay resulting from Hazardous Substances disclosed in environmental reports prepared on the Site prior to the Effective Date shall not constitute Unavoidable Delay. Such Party shall use reasonable good faith efforts to notify the other Party not later than sixty (60) days after such Party knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

## **2. GENERAL AND SPECIFIC USE RESTRICTIONS**

2.1 General Use Restrictions. The violation of any of the following general use limitations within fifty (50) years after the recordation of this Declaration shall at RDA’s option constitute a default hereunder and a breach of the Restrictions, which shall entitle RDA to exercise any of the rights and remedies set forth in Article 0 below.

(a) Subdivision. Except as may be otherwise indicated in the Final Plans and Drawings or as required herein, Developer shall not affect any change or amendment to any parcel or final map covering the Site or record any further parcel or final map of the Site or any portion thereof or facilities thereon, pursuant to the Nevada Revised Statutes (as amended), or any similar statute hereafter enacted, and any local ordinances adopted pursuant thereto, nor shall Developer file any applications with any governmental agency with respect to any of the foregoing matters.

(b) Use. Developer shall not construct or attempt to construct any building or structure other than the Specific Facilities on the Site.



(c) Zoning. Developer shall not use or develop or attempt to use or develop the Site or any portion thereof for any purpose other than the Project, or those other purposes expressly allowed (without the benefit of a special use permit, exception or other special administrative procedure) under the zoning ordinance or ordinances of the governmental entity having zoning jurisdiction over the Site effect as of the date of recordation of this Declaration. Additionally, Developer shall not change or attempt any change in zoning, or obtain or apply for an exception or other similar approval with respect to the use or development of the Site or any portion thereof not expressly allowed under such existing zoning without first obtaining the written consent of RDA.

(d) Unapproved Project. Developer shall not permit the construction of any structure or improvements on the Site not in material compliance with all Requirements or the Restrictions and in all other recorded covenants, conditions, rights, restrictions and limitations existing from time to time covering the Site.

(e) Conveyance. Developer and RDA agree that:

(i) Until such time as Completion of Construction of the Project is achieved, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Declaration except as expressly set forth herein.

(ii) Developer shall not convey all or any part of its interest in the Site without the prior written approval of RDA, until such time as Completion of Construction of the Project is achieved. Developer agrees that a transfer of the direct or indirect equity interests in Developer shall constitute a Conveyance under this Agreement.

(a) Notwithstanding the foregoing, Developer may admit a Proposed Member into Developer so long as:

(i) Developer provides written notice to RDA along with a disclosure of principals of the Proposed Member;

(ii) The sole purpose of the admission of the Proposed Member is in connection with the raising of capital for the financing of the development of the Project;

(iii) the Proposed Member's interest in Developer does not violate the City Council's conflict of interest requirements with respect to transactions of the type contemplated by this Agreement;

(iv) the Proposed Member does not violate RDA's customary criminal background checks; and

(v) Frank Hawkins maintains full management control of Developer and retains at least a one percent (1%) interest in Developer.

(f) Indemnity.

(i) The RDA Indemnified Parties shall not be liable to Developer for, and Developer shall indemnify, defend and hold the RDA Indemnified Parties from and against, any third-party

loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and costs), penalty or fine caused in whole or in part by: (A) any injury (whether physical, economic or otherwise) to Developer or to any other Person in, about or concerning the construction and the ongoing ownership and operation of the completed Project, regardless of the presence or absence of negligence on the part of any Party; or (B) any damage to, or loss (by theft or otherwise) of, any of Developer's property or of the property of any other Person in, about or concerning the Project, regardless of the presence or absence of negligence on the part of any Party; or (C) the use or occupancy of the Project, irrespective of the cause of injury, damage or loss, regardless of the presence or absence of negligence on the part of any Party; or (D) any latent or patent defects in the Project; or (E) any act or omission of Developer or its Affiliates or of the contractors, agents, servants, employees, guests, or licensees of Developer or its Affiliates, regardless of the presence or absence of negligence on the part of any Party.

(ii) Developer shall notify RDA within thirty (30) days of any occurrence at the Project of which Developer has notice and which Developer believes could give rise to a claim against the RDA Indemnified Parties whether or not any claim has been made, complaint filed or suit commenced.

(iii) The obligations of Developer under this Section 2.1(f) shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to workers' compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project; provided, however, that if RDA actually receives any proceeds of Developer's insurance with respect to an obligation of Developer under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Developer with respect to such obligation.

(iv) If any claim, action or proceeding is made or brought against any RDA Indemnified Party which is or may be subject to indemnification by Developer hereunder, then, upon demand by RDA or such RDA Indemnified Party, Developer shall either resist, defend or satisfy such claim, action or proceeding in such RDA Indemnified Party's name, by the attorneys for, or approved by, Developer's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as RDA shall reasonably approve. The foregoing notwithstanding, such RDA Indemnified Party may, at its own expense, engage its own attorneys to defend such RDA Indemnified Party, or to assist such RDA Indemnified Party in such RDA Indemnified Party's defense of such claim, action or proceeding, as the case may be.

(v) Following the occurrence of an event specified in Section 2.1(f)(iv) above, each RDA Indemnified Party shall promptly notify Developer of the imposition of or incurrence by such RDA Indemnified Party of any cost or expense as to which Developer has agreed to indemnify such RDA Indemnified Party pursuant to the provisions of this Section 2.1(f). Developer agrees to pay such RDA Indemnified Party all amounts due under this Section 2.1(f) within sixty (60) days receipt of the notice such RDA Indemnified Party.

(g) Insurance.

(i) Prior to Commencement of Horizontal Construction on the Site, Developer shall obtain and, at all times prior to completion of the Project, maintain in effect the following policies of insurance: (i) workers' compensation insurance covering liability arising from claims of

workers in respect of and during the period of the performance of the work on the Site; and (iii) a standard "all risk" Builder's Risk Policy.

(ii) Prior to Commencement of Horizontal Construction on the Site and at all times thereafter, Developer shall maintain in effect comprehensive general public liability insurance and/or excess umbrella policy with a single per occurrence limit of not less than Two Million Dollars (\$2,000,000) with respect to the Site and the operations of Developer in, on or about the Site;

(iii) All policies of insurance shall be issued by insurance companies authorized to do business in Nevada and with a financial rating of at least "A-VII" status as rated in the most recent edition of Best's Insurance Reports, or such other insurers to which RDA may consent in writing. All such policies shall provide coverage against claims which may arise out of or result from Developer's performance of the work on the Site or which may arise in connection with the activities of Developer, any contractor or subcontractor of Developer, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Developer shall furnish RDA with certificates of all insurance policies required under this Section 2.1(g) before commencing any work on the Site. Each policy shall provide that it may not be canceled in coverage until twenty (20) days after written notice shall have been given to RDA of such cancellation. In the event of any reduction in the coverage amount, Developer shall promptly notify RDA. All insurance required hereunder (except worker's compensation) shall name RDA and the RDA Indemnified Parties as additional insureds. Notwithstanding the above, Developer shall have the right to provide and maintain the coverage provided for in this Section 2.1(h) above through a program of self-insurance or from an affiliated carrier, which provides insurance to or for Developer, or a combination of both.

2.2 Project Development. Developer agrees to develop the Site with those Specific Facilities specified in the Final Plans and Drawings. The violation of any of the following requirements shall also constitute a default hereunder and a breach of the Restrictions, which shall entitle RDA to exercise any of the rights and remedies set forth below.

(a) Development. Developer agrees (i) that the design, permitting, Commencement of Horizontal Construction and Commencement of Vertical Construction of the Project shall be undertaken and Completion of Construction achieved in compliance with the Schedule of Performance, and (ii) that Developer shall not Abandon Construction unless due to an Unavoidable Delay or as permitted by RDA or the City, at their respective sole discretion. As to Developer deadlines on the Schedule of Performance or otherwise specified herein, the parties shall agree to reasonably extend such deadlines where delays or defaults are the result of the City or RDA taking longer than commercially reasonable to respond to any application or item requiring City or RDA approval. Developer agrees that a Default under this Section 2.2(a) and/or the Performance Schedule shall entitle RDA to exercise the remedies set forth in Section 4.3 and/or Section 4.4.

(b) Uses. Developer shall cause the Site to be developed and operated only with the Specific Facilities and only as Affordable Housing, and no portion of the Site or improvements thereon or any portion thereof shall be developed, used, operated or maintained with any other facilities or for any other use or purpose whatsoever, unless expressly approved by RDA, which approval shall be granted or withheld by RDA in its sole discretion.

2.3 General Obligations. Upon Completion of Construction, Developer shall at all times thereafter maintain and operate the Project in conformance with the terms of this Declaration, including,

without limitation, only as Affordable Housing. Developer acknowledges that a material part of the consideration of RDA conveying the Site to Developer is Developer's agreement to comply with the terms and conditions of this Declaration.

2.4 Maintenance of Project. Subject to Unavoidable Delays, Developer agrees at its sole cost and expense to maintain the Project in first class condition and repair at all times.

2.5 RDA Right to Cure. RDA shall have the right (at RDA'S sole discretion) to perform any obligations hereunder required to be performed by Developer for which Developer is in default past all notice and cure periods set forth in Section 4.3, including, without limitation, the performance of maintenance and repair that Developer is obligated to perform hereunder. RDA shall have the right upon thirty (30) days prior notice to Developer (except that no notice shall be required in the case of an emergency), to enter the Project and perform such maintenance or repair on behalf of Developer. Developer agrees to reimburse RDA within ten (10) business days after a written demand by RDA for any reasonable costs and expenses incurred by RDA in connection with the performance by RDA of Developer's obligations under this Declaration including five percent (5%) of such costs for RDA's supervision of any maintenance and repair.

### **3. COVENANT RUNNING WITH THE LAND**

This Declaration shall be deemed and shall constitute a covenant running with the land for the benefit of the RDA and its successors and assigns and shall pass to and be binding upon all heirs, successors and assigns in title to the Site, and shall pass to and be binding upon all heirs, successors and assigns to such interests. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof or any interest therein (excepting only leases of units in the Project) shall conclusively be held to have been executed, delivered, and accepted subject to this Declaration, regardless of whether any or all of such covenants contained herein are set forth in such contract, deed or other instrument. If a portion or portions of the Site, or interest or interests in the Site are conveyed, all such covenants contained herein shall run to each portion of or interest in the Site.

### **4. ENFORCEMENT OF RESTRICTIONS**

4.1 General Purpose and Constructive Notice. The Restrictions shall be binding upon Developer and be enforceable solely by RDA. Except as specifically set forth herein, the Restrictions shall remain in full force and effect for the period of time specified in Section 2.1 above, notwithstanding RDA's exercise of any right or remedy herein due to a previous or repeated violation of any one or more of the Restrictions.

4.2 Right of Access. Until Completion of Construction, RDA may from time to time, during business hours, enter upon and inspect the Site, or any portion thereof or improvements thereon, to ascertain compliance with the Restrictions, but without obligation to do so or liability therefor. Such representatives of RDA shall be those who are so identified in writing by RDA to Developer and advance, and who shall, except in an actual emergency, give at least one (1) business day prior notice of such Site visits. RDA shall indemnify Developer and hold it harmless from any damage caused or liability arising out of this right to access.

4.3 Default and General Remedies. Except as otherwise provided in Section 4.4, for a Default of the Restrictions itemized in Sections 2.1(e), 2.1(f), 2.2(a) or 2.2(b) (each, a "Major Default"), and

except as otherwise provided in Section 5, in the event of any breach, violation or failure to perform or satisfy any of the Restrictions or of any Requirements which has not been cured within the period set forth below (each, a "*Default*"), RDA at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which RDA may be entitled by law or equity, whether or not set forth herein. Unless a cure period is otherwise specifically designated, such cure period shall commence when written notice is given to Developer of a violation hereunder and shall end (i) ten (10) days thereafter in the case of a monetary default; (ii) sixty (60) days thereafter in the event of a Major Default; or (iii) thirty (30) days thereafter in the case of other non-monetary defaults; provided, however, that Developer shall be granted such additional period necessary to cure such default if the cure of such default is not capable of being cured within the enumerated period. To the maximum extent allowable by law, all remedies provided herein or by law or equity shall be cumulative and not exclusive, except as stated herein with respect to the Option to Purchase in Section 4.4.

(a) Damages. RDA may bring a suit for damages for any compensable Default of any of the Restrictions (including, without limitation, an action for damages in the event of (i) a Major Default and (ii) RDA elects not to exercise RDA's rights under Section 4.4 as a result of a Major Default.

(b) Equity. RDA shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not RDA exercises any other remedy set forth herein, or declaratory relief to determine the enforceability of any of the Restrictions.

(c) Abatement. Any Default is hereby declared to be a nuisance, and RDA shall be entitled to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these Restrictions, all at the sole cost and expense of the then-current owner of the Site, or applicable portion thereof. Any costs or expenses paid or incurred by RDA in prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the rate of three percent (3%) over the prime rate published from time to time by the "Wall Street Journal", or if the Wall Street Journal is no longer published, then its successor publication or a similar financial publication that publishes the prime rate of interest, shall be the personal obligation of the then-current owner of the Site, or applicable portion thereof, when such charges became due and who committed such Default.

4.4 Option to Purchase. In recognition of RDA's interest in the expeditious development of the Project, Developer hereby grants to RDA the irrevocable, exclusive right and option to purchase the Site as set forth in this Section 4.4 upon the occurrence of a Major Default under Sections 2.2(a) and/or 2.2(b) (the "*Purchase Option*"). Developer agrees that the Purchase Option is of a special and unique kind and character and that, if there is a Major Default by Developer triggering Developer's right to pursue the Purchase Option hereunder, RDA may not have any adequate remedy at law. It is expressly agreed, therefore, that in addition to all other rights and remedies available to RDA to enforce the Purchase Option, the Purchase Option may be enforced by RDA by an action for specific performance and other equitable relief; provided, however, that if RDA elects to pursue the Purchase Option, such exercise shall be in lieu of any other remedies permitted herein or at law or in equity for the occurrence of the applicable Major Default by Developer under Sections 2.2(a) and/or 2.2(b).

(a) Exercise of Purchase Option. No failure of RDA to exercise the Purchase Option after the occurrence of any Major Default under Sections 2.2(a) and/or 2.2(b) shall constitute a waiver of

its right to exercise the Purchase Option upon the occurrence of any other Major Default under Sections 2.2(a) and 2.2(b). The Purchase Option shall be subject to the following:

(b) RDA may exercise the Repurchase Option by giving written notice to Developer in the event of Developer's Major Default under Sections 2.2(a) and/or 2.2(b) within ninety (90) days of RDA obtaining knowledge of a Major Default under Sections 2.2(a) and 2.2(b) ("*Purchase Option Notice*"). If RDA does not exercise the Repurchase Option within such ninety (90) day period, RDA shall no longer be entitled to exercise the Repurchase Option solely with respect to that particular Major Default. Upon Completion of Construction, whether prior to or after the date set forth in the Schedule of Performance, RDA shall no longer be entitled to exercise the Repurchase Option (including in connection with a Major Default under Sections 2.2(a) and/or 2.2(b) occurring prior to Completion of Construction). No failure of RDA to exercise the Repurchase Option after the occurrence of any of the foregoing events shall constitute a waiver of its right upon the occurrence of any other event permitting exercise of the Repurchase Option.

(c) Purchase Price. The purchase price shall be equal to the purchase price paid by Developer to RDA as evidenced by the final escrow closing statement (which Developer agrees is the sum of One Dollar (\$1.00) *plus* the Improvement Costs (as defined below) of the improvements made to the Site as of the date of the Purchase Option Notice (collectively, the "*Improvements*"). Absent manifest error, Developer's books and records provided in accordance with Section 4.4(e)(i) shall be deemed conclusive in determining such Improvement Costs. The Improvements shall be conveyed to RDA by bill of sale in consideration of payment of the Improvement Costs as part of the purchase price for the Site.

(d) Title Condition. Upon consummation of the transaction contemplated by the Purchase Option Notice, the Site shall be subject only to:

(i) Current taxes not yet delinquent;

(ii) Matters affecting title which exist as of the date of recordation of this Declaration, or which are created, made, assumed, consented to or requested by RDA, its successors or assigns; and

(iii) Easements for utilities and other matters used in connection with the Improvements constructed on the Site.

(e) Improvement Costs.

(i) Within thirty (30) days after RDA's exercise of the Purchase Option, Developer shall submit to RDA (A) a list of Improvements constructed on the Site; and (B) a breakdown of the actual hard and soft costs to Developer to construct or otherwise further the development of the Improvements (the "*Improvement Costs*"). RDA and Developer shall consult in good faith with one another for the purpose of arriving at an agreement concerning such Improvement Costs, with the goal to agree on the Improvement Costs within thirty (30) days after RDA's notice of the exercise of the Purchase Option. Upon the closing of the Purchase Option, Developer shall (I) provide RDA with copies of all documents relating to the Project prepared by or at the direction of Developer, including, but not limited to, geotechnical reports, soils tests, environmental reports, engineering studies, architectural plans for the Specific Facilities and any other reports, studies or plans relating to the Site or Specific Facilities to be

constructed upon the Site (collectively, the "*Project Documents*"); and (II) assign and transfer all rights that Developer has to the Project Documents.

(ii) Prior to the closing of the Purchase Option, Developer at its sole cost and expense shall remove all Non-Complying Structures. Alternately, at RDA's option, RDA may determine the cost to remove the Non-Complying Structures and deduct the amount from the Purchase Price.

(f) Purchase Escrow Terms. Within five (5) days after RDA's exercise of a Purchase Option as provided above or as soon thereafter as possible, an escrow shall be created at a national escrow company selected by RDA and reasonably acceptable to Developer to consummate the Purchase Option, which escrow shall provide for a closing no later than ninety (90) days after the opening of the escrow. Said escrow shall be subject only to approval by RDA of a then current preliminary title report. Any exceptions other than those set forth in Section 4.4(d) above shall be removed or reasonably insured over by Developer at its sole expense at or prior to closing of escrow or discharged by payment of the proceeds of the Purchase Price at the closing of the Purchase Option. Developer agrees that any monetary or mechanics liens on the Site shall be paid by Developer at the close of escrow, regardless if the proceeds of the purchase price are sufficient to discharge the monetary or mechanics liens on the Site. Developer and RDA shall each pay one-half of the escrow fees; Developer shall pay for documentary tax stamps, for recording the deed, and for a standard form owner's coverage policy of title insurance in the amount of the purchase price showing title to the Site vested in RDA or its assigns free and clear of all liens, encumbrances or other title exceptions other than those set forth in this Declaration or Section 4.4(d) above; RDA shall pay for any requested endorsements, other than as provided in this Section. Any other costs or expenses shall be allocated between the Parties in the manner customary in Clark County, Nevada.

(g) Binding Effect; Priority. The Purchase Option shall be binding upon and shall inure to the benefit of the respective successors in interest to the Parties hereto. The Purchase Option shall be superior and prior to any Mortgage and any Mortgage shall be inferior to and subject to the Purchase Option.

(h) Termination. Following Completion of Construction, (1) the Purchase Option shall automatically terminate and be of no further force and effect, and (2) at the written request of Developer, RDA shall execute an acknowledgement of the termination of the Purchase Option which Developer may record with the Recorder's Office, at Developer's sole cost and expense.

## **5. LENDER PROTECTIONS; ESTOPPEL CERTIFICATE**

### **5.1 Lender Protections.**

(a) This Declaration shall be and remain senior in priority to any Mortgage hereafter executed or created with respect to the Site, or any portion thereof; provided, however, that no breach of this Declaration shall affect, impair, defeat or render invalid the lien, charge or priority of any such Mortgage encumbering the Site. Any Lender or other owner whose title to the Site is derived through foreclosure, trustee's sale or deed in lieu of foreclosure with respect to such Mortgage (each a "*Mortgagee*") shall take title to the Site subject to, and shall be bound by, all of the terms, covenants and provisions set forth in this Declaration. Notwithstanding the foregoing, (i) any Mortgagee shall be permitted to assign, sell or transfer (each, a "*Mortgagee Assignment*") its interest, either in full or in part, in a Mortgage without obtaining prior written approval from RDA of such Mortgagee Assignment

provided that at least ten (10) days prior to the effective date of such Mortgagee Assignment, the then current Mortgagee provides written notice to RDA of the anticipated Mortgagee Assignment, and shall provide to RDA a fully executed Disclosure of Ownership/Principals form pursuant to Resolution R-105-99 adopted by the City Council effective October 1, 1999; and (ii) any Mortgagee shall be permitted to transfer or cause the transfer of the Site following or in connection with any foreclosure or deed-in-lieu of foreclosure (each, a "*Mortgagee Transfer*") without obtaining prior written approval from RDA of such Mortgagee Transfer, provided that (v) such Mortgagee Transfer is conducted in connection with the exercise of Mortgagee's remedies under a Mortgage due to an uncured event of default thereunder following all applicable notice and cure periods, (w) the party acquiring the Site through a Mortgagee Transfer accepts title to the Site subject to the Declaration, (x) the party acquiring the Site through a Mortgagee Transfer will use commercially reasonable efforts to Commence Construction or continue construction of the Project, (y) Mortgagee provides, to the extent possible and permissible under law, written notice of such Mortgagee Transfer to RDA ten (10) days prior to the effective date of such Mortgagee Transfer, but in any event, within five (5) business days of the date the deed is recorded in with the Recorder's Office, and (z) within fifteen (15) days after the completion of the Mortgagee Transfer, the new Mortgagee shall provide to RDA a fully executed Disclosure Form. Mortgagee or other owner acknowledges that such subsequent owner who takes title to the Site prior to Completion of Construction, except as provided for in this Section or in Section 4.4 above, shall require, prior to such transfer of title to the Site, written consent of RDA as provided for in Section 2.1(f) above. Following Completion of Construction, no such consent to take title to the Site or encumber the Site with a Mortgage shall be required hereunder. In the event of a Mortgagee Transfer, the applicable dates in the Schedule of Performance shall be extended as reasonably necessary to account for the Mortgagee Transfer.

(b) Each Mortgagee, upon filing a written request for such notification with RDA, shall be entitled to written notification from RDA of any default by Developer in the performance of Developer's obligations under this Declaration, such notice to be given concurrently with such default notice being given to Developer. Any request for notice delivered shall remain effective without any further action by Mortgagee for so long as the requesting Mortgagee continues to be a Mortgagee. A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Declaration by Developer within any applicable cure period provided for the cure of such breach hereunder plus ninety (90) days and Developer hereby irrevocably grants to such Mortgagee a right of access to the Site or portion thereof, as applicable, to the extent such Mortgagee may deem necessary to permit such Mortgagee to effect such cure.

(c) In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Declaration on the part of Developer to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Declaration, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (a) its having become a Mortgagee, (b) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (c) the cure or performance of any of the covenants, terms or conditions on the part of Developer to be performed or observed under this Declaration, or (d) otherwise; provided, however, any party acquiring the Site through a Mortgagee Transfer will be deemed to have assumed all of the obligations of Developer hereunder subject to the terms and limitations provided in this Section 5.1.

5.2 Estoppel Certificates. RDA agrees that it shall, at any time and from time to time, but no more than once per calendar quarter, upon not less than thirty (30) days prior notice from Developer or a Mortgagee, execute, acknowledge and deliver to the requesting party a statement in writing certifying (a)



that this Declaration is unmodified and in full force and effect (or if there have been any modifications, that this Declaration is in full force and effect as modified and stating the modifications), (b) whether to RDA's actual knowledge, it or Developer is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Declaration and, if in default, specifying each default, and (c) any other matters reasonably requested by the requesting party, it being intended that any such statement delivered pursuant to this Section may be relied upon by the requesting party and any assignee thereof.

## **6. MISCELLANEOUS PROVISIONS**

6.1 Assignment by RDA. Any and/or all of the rights, powers, duties and reservations of RDA herein contained may not be assigned without the written consent of Developer. Notwithstanding the foregoing, RDA shall have the right to assign the rights, powers, duties and reservations of RDA herein contained to the City without the prior approval of Developer. RDA agrees to provide Developer with prior notice of any such assignment.

6.2 Assignment by Developer. RDA consents to Developer's right to encumber, pledge, grant or convey its rights, title, and interest in and to the Site, or any portion thereof, by way of a Mortgage to secure the payment of any loans obtained by Developer to finance or refinance any portion of the Project. The beneficiary under any Mortgage and its successors or assigns shall be referred to herein as a "Lender."

6.3 Other Restrictions. This Declaration is not the exclusive source of restrictions on the use of the Site, and nothing herein contained shall prejudice or diminish in any way RDA's rights under any other documents of record prior to the recording of this Declaration affecting all or any portion of the Site.

6.4 Attorneys' Fees. In the event either Party hereto is required to employ an attorney because of the other Party's default, the defaulting Party shall pay the non-defaulting Party's reasonable attorney's fees incurred in the enforcement of this Declaration.

6.5 Time of the Essence. Time is of the essence of this Declaration and every obligation hereunder.

6.6 Successors and Assigns. Except as otherwise stated herein, this Declaration shall inure to the benefit of and bind the successors and assigns of the respective Parties hereto, subject to the provisions of this Declaration regarding assignment.

6.7 Notices. All notices, consents, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when personally served or forty-eight (48) hours after being sent by United States registered mail, return receipt requested, postage prepaid; upon receipt or refusal if sent by personal delivery; or upon confirmation of receipt if sent by or facsimile transmission or e-mail electronic submission, in each case to the other Party at the following respective addresses, facsimile number or e-mail address or such other address, facsimile number or e-mail address as either Party may from time to time designate in writing:

If to RDA:	Las Vegas Redevelopment Agency
	c/o Office of Economic and Urban Development
	495 S. Main Street, 6 <sup>th</sup> Floor
	Las Vegas, 89101
	Phone: (702) 229-6551

Fax: (702) 385-3128  
Email: barent@lasvegasnevada.gov  
Attn: Bill Arent, Director

And: City Attorney Office  
Attn: John Ridilla  
495 S. Main Street, 6<sup>th</sup> Floor  
Las Vegas, NV 89101  
Phone: (702) 229-6629  
Fax: (702) 368-1749  
Email: jridilla@lasvegasnevada.gov

If to Developer: Community Development Programs Center of Nevada, Inc.  
2009 Alta Drive  
Las Vegas, Nevada 89106  
Phone: (702) 873-8882 Ext: 111  
Email: Frankh@cdpcn.com  
Attn: Frank Hawkins

6.8 Subsequent RDA Approvals. Any approvals of RDA required or permitted by the terms of this Declaration are authorized to be given by the President of RDA or such other person that RDA designates in writing to Developer. If there is no time specified herein for RDA's approval, Developer may submit a letter requiring RDA's approval within thirty (30) days after submission to RDA or such approvals shall be deemed granted. Notwithstanding the foregoing, Developer acknowledges (i) that a request for a modification to this Declaration or a request to extend deadlines specified hereunder may either (x) require review and approval of the City Council, or (y) the President of RDA may determine that it is in the best interest of RDA to submit such request for review and approval by City Council, and (ii) such review and approval may take more than thirty (30) days in or order to comply with the required and customary procedures for obtaining approval of City Council. In such cases, the Parties shall comply with the required processes of submitting matter for review and approval by City Council. The President of RDA shall have the authority to grant time extensions under this Declaration, provided, however, that it shall be at the President's sole and absolute discretion as to whether to grant any time extension or to submit any requests for time extensions to City Council for approval.

6.9 Entire Agreement and Waivers. This Declaration is executed in three (3) duplicate originals, each of which is deemed to be an original. This Declaration, the DDA and the respective exhibits thereto constitute the entire understanding and agreement between the Parties and is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and the complete and exclusive statement of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. In the event of a conflict between the terms of this Declaration and the DDA, the terms of the DDA shall control. This Declaration includes "A" through Exhibit "C", inclusively, attached hereto and incorporated herein by reference. All waivers of the provisions of this Declaration must be in writing and signed by the appropriate authorities of RDA and Developer and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of RDA and Developer.

6.10 Termination or Amendment. The Restrictions may be validly terminated, amended, modified or extended, in whole or in part, only by recordation with the Clark County Recorder's Office of a proper instrument duly executed and acknowledged by RDA and Developer to that effect.

6.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Declaration and the remaining provisions shall remain in full force and effect.

6.12 Governing Law; Jurisdiction; Waiver of Jury Trial. Any controversy, claim, or dispute arising out of or related to this Declaration or the interpretation, performance, or breach hereof (a "*Dispute*"), shall be resolved in accordance with this Section 6.12.

(a) Governing Law. This Declaration and all Disputes between the Parties under or related to this Declaration or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Nevada, applicable to contracts executed in and to be performed entirely within the State of Nevada, without regard to the conflicts of laws principles thereof.

(b) Jurisdiction. Each of the Parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Nevada state court, or federal court of the United States of America, sitting in Clark County, Nevada, and any appellate court from any thereof, for resolution of any Dispute and for recognition or enforcement of any judgment relating to such Dispute, and each of the Parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in such courts; (b) agrees that any claim in respect of any such action or proceeding may be heard and determined in such Nevada state court or, to the extent permitted by applicable law, in such federal court; (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such Nevada state or federal court; and (d) waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such Nevada state or federal court. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Each Party irrevocably consents to service of process in the manner provided for notices in Section. Nothing in this Declaration will affect the right of any Party to serve process in any other manner permitted by law.

(c) WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS DECLARATION IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DECLARATION OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS; (b) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (c) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (d)

IT HAS BEEN INDUCED TO ENTER INTO THIS DECLARATION BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.13 Captions. The captions contained in this Declaration are for the convenience of the Parties and shall not be construed so as to alter the meaning of the provisions of the Declaration.

6.14 Counterparts. Each counterpart of this Declaration shall be deemed to be an original and all of which together shall be deemed to be one and the same Declaration. Delivery of this Declaration may be accomplished by facsimile transmission of this Declaration. In such event, the Parties hereto shall promptly thereafter deliver to each other executed counterpart originals of this Declaration.

6.15 No Third-Party Beneficiaries. Nothing in this Declaration shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Declaration. Nothing herein is intended to create any rights vested in the general public or to otherwise benefit the general public.

6.16 Days. All references to “*days*” in this Declaration are to consecutive calendar days unless business days are specified. The term “*business days*” refers means a day when the City is normally open for public access, occurring on Mondays through Thursdays, unless the City is not open for the celebration or observance of holidays or is otherwise declared not open to the public by the City Manager of the City. If a time for performance hereunder falls on a day other than a business day, the time for performance shall be extended to the following business day.

6.17 Construction. The Parties acknowledge that each Party and its counsel have reviewed and approved this Declaration and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Declaration or any amendments or exhibits hereto.

6.18 Further Assurances. Each Party will, whenever as reasonably requested to do so by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further documents and do any and all other acts as may be reasonably necessary to carry out the intent and purpose of this Declaration.

*[Signatures appear on the following pages]*

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

RDA

CITY OF LAS VEGAS REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
Carolyn G. Goodman, Chairperson

Attest:

\_\_\_\_\_  
LuAnn D. Holmes, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Date

DEVELOPER

Community Development Programs Center of  
Nevada, Inc. , a Nevada nonprofit corporation

By: \_\_\_\_\_

Execution Date:

\_\_\_\_\_

**LIST OF EXHIBITS**

EXHIBIT "A"	LEGAL DESCRIPTION OF THE SITE
EXHIBIT "B"	PROJECT SCOPE
EXHIBIT "C"	SCHEDULE OF PERFORMANCE

EXHIBIT "H"

RDA EMPLOYMENT PLAN POLICY



# **Las Vegas Redevelopment Agency**

## **Employment Plan Policy**

**Revised**

**June 18, 2014**



## **TERMS**

***"Community Development Block Grant (CDBG) Eligible Areas"*** means an area which is eligible for a community development block grant pursuant to 24 C.F.R. Part 570.

***"Developer"*** means a person or entity that proposes to construct a redevelopment project, which will receive financial assistance from the Agency.

***"Disabled"*** means a physical impairment, with respect to an individual, that substantially limits one or more of the major activities of such individual: A record of such impairment; or Being regarded as having such impairment.

***"Disposition and Development Agreement (DDA)"*** means an agreement that sets forth requirements for the sale, lease, exchange acquisition, or disposal of real property owned by the Agency, where a specific type of project is developed.

***"Economically Disadvantaged"*** means any individual who meets the present poverty guidelines established by the Federal government as a poverty measure. The guidelines are issued each year in the Federal Register by the Department of Health and Human Services (HHS).

***"Las Vegas Redevelopment Agency Resident"*** means an individual whose primary place of residence is within the Las Vegas Redevelopment Area boundaries.

***"Las Vegas Redevelopment Area"*** means the 1986 Redevelopment Plan, as amended, and the 2012 Redevelopment Plan identifies two areas within the corporate boundaries of the City of Las Vegas as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein.

***"Members of Racial Minorities"*** means or describes an individual that is: Black or African-American, Hispanic-American, Native-American, Asian-Pacific American, Subcontinent Asian-American, Native-Hawaiian or other Pacific Islander.

***"Owner Participation Agreement (OPA)"*** means any agreements where the Agency is participating with a landowner for the development of a site by providing some form of financial concession.

***"Purchase and Sale Agreement (PSA)"*** means any agreements where the Agency is involved in the acquisition or sale of real property.

***"Private Developer"*** means any person or entity that is proposing to construct a project and will receive financial assistance from the Agency and includes developers of either speculative or build-to-suit projects.

***"Southern Nevada Enterprise Community (SNEC)"*** means the area designated as the Southern Nevada Enterprise Community in section 5 of chapter 407, Statutes of Nevada 2007.

***"Veteran"*** means any honorably discharged soldier, sailor, marine, nurse, or army field clerk, as well as reserve components of these services, who have served in military service of the United States.

This Employment Plan Policy is prepared in accordance with the Las Vegas Redevelopment Agency Employment Plan Resolution No. RA-4-2011 dated April 6, 2011, and as amended by Resolution No. RA-8-2014 and RA2-2-2014 dated June 18, 2014 and prepared in accordance with Nevada Revised Statutes Chapter 279, specifically but not limited to NRS 279.482 (2) and NRS 279.6092 to 279.6099, inclusive. This Employment Plan Policy (hereinafter referred to as the "Policy"), supersedes the amended Las Vegas Redevelopment Agency Employment Plan Policy dated April 6, 2011. In accordance with the Policy, private developers and build-to-suit owners which receive redevelopment project funds are required to hire residents who live within the designated Las Vegas Redevelopment Areas, areas in the city for which the city council has adopted a plan for revitalization or which is eligible for a community development block grant (CDBG), or the Southern Nevada Enterprise Community (SNEC), and are encouraged to hire economically disadvantaged residents, members of racial minorities, women, disabled or veterans (hereinafter collectively referred to as "M/W/D/VBE").

### **OBJECTIVE**

The immediate purpose of this Policy is to provide developers and build-to-suit owners/lessees with the guidance necessary to prepare and implement an employment plan when participating in a private redevelopment project funded by the Las Vegas Redevelopment Agency (hereinafter referred to as the "Agency"). The ultimate result of this Policy is to ensure that the persons identified in the statute have the opportunity to benefit from redevelopment projects as fully as the community at large.

The requirements of the Policy shall be included in the Owner Participation Agreement ("OPA"), the Disposition and Development Agreement ("DDA") and/or Purchase and Sale Agreement ("PSA"), (hereinafter collectively referred to as "Agreements"), between the developer and the Agency.

### **APPLICABILITY**

- 1) Except as otherwise provided in NRS 279.6094, as appropriate for the particular project, each proposal for a redevelopment project must include an employment plan.
- 2) The provisions of NRS 279.6092 to 279.6099, inclusive, apply only to a redevelopment project undertaken in a redevelopment area of a city whose population is 500,000 or more.

- 3) A public agency that uses redevelopment funds for the design or construction of a redevelopment project being built as a public work pursuant to chapter 338 of NRS shall submit an employment plan pursuant to NRS 279.482.

### **EMPLOYMENT PLAN REQUIREMENTS**

- 1) The employment plan must include:
  - a. A description of the existing opportunities for employment within the area;
  - b. A projection of the effect that the redevelopment plan will have on opportunities for employment in the area;
  - c. A description of the manner in which an employer relocating a business in the area plans to employ persons within the area of operation who:
    - (1) are Economically Disadvantaged;
    - (2) have a Physical Disability ("Disabled");
    - (3) are members of Racial Minorities;
    - (4) are Veterans; or
    - (5) are Women.
  - d. For a redevelopment project undertaken in the Las Vegas Redevelopment Area of the city of Las Vegas (whose population is 500,000 or more), a description of the manner in which:
    - i. The developer will, in hiring for construction jobs for the redevelopment project, use its best efforts to hire M/W/D/VBE living within the Las Vegas Redevelopment Area, areas in the city of Las Vegas for which the City Council has adopted a plan for revitalization or which is an eligible CDBG area, or the SNEC area.
    - ii. Each employer relocating a business in the Las Vegas Redevelopment Area will use its best efforts to hire M/W/D/VBE living within the areas described in subparagraph (1) above. In addition, there shall be included an agreement by the developer and employer to offer and conduct training for the residents described in subparagraph (1) above or make a good faith effort to provide such training through a program of training that is offered by a governmental agency and reasonably available to the developer or employer.

## **PARTIAL WITHHOLDING OF INCENTIVE**

- 1) If the Agency proposes to provide an incentive to a developer for a redevelopment project, an amount equal to 10% of the amount of the proposed incentive must be withheld by the Agency and must not be paid to the developer until:
  - a. At least 15% of all employees of contractors, subcontractors, vendors and suppliers of the developer are bona fide residents of the Redevelopment Area, an area in the city for which the legislative body has adopted a specific plan for neighborhood revitalization, a CDBG area or the SNEC area.
  - b. At least 15% of all jobs created by employers who relocate to the Redevelopment Area are filled by bona-fide residents of the Redevelopment Area, an area in the city for which the legislative body has adopted a specific plan for neighborhood revitalization, a CDBG area or the SNEC area.
  - c. The developer satisfies all reporting requirements as described in the Reporting Requirements section below.
- 2) If the Agency provides incentives in a form other than cash to a developer for a redevelopment project, the developer shall deposit an amount of money with the agency equal to 10% of the value of such incentive as agreed upon between the Agency and the developer. If the developer satisfies the requirements in subsection 1, the Agency shall return the deposit required by this subsection to the developer in accordance with NRS 279.6096.
- 3) Prior to the start of construction, failure to adhere to all of the required program elements, as further described below, will constitute grounds for withdrawal of the entire incentive.

## **MINORITY PARTICIPATION**

- 1) The minority participation goal is designed for all segments of the local business community to have a reasonable and significant opportunity to participate in Agency contracts with respect to redevelopment projects.
  - a. 15% participation of "M/W/D/VBEs" – aspirational goal. This goal represents the total value of sub-contracts and materials agreements awarded to M/W/D/VBEs. Participation shall be inclusive of subcontractors, sub-tier subcontractors, vendors and suppliers. Reporting and demonstration of efforts is required.

- 2) M/W/D/VBE's may participate as a prime contractor, sub-contractor, as a joint venture partner with a prime or sub-contractor, or as a vendor of materials and/or supplies. Only those sub-contractor(s) and suppliers contracting directly with or to be paid by the prime contractor may be credited towards the participation goals.
- 3) If the minority participation goals are not met, information documenting specific actions taken to achieve the goals must be submitted prior to the contract award to receive credit towards compliance.

## **REPORTING REQUIREMENTS**

- 1) A developer that receives incentives from the Agency for a redevelopment project shall, upon completion of the project and upon request of the Agency, report, in a form prescribed by the Agency, information relating to:
  - a. Outreach efforts that the developer has utilized, including, without limitation, information relating to job fairs, advertisements in publications that reach residents of the areas described in NRS 279.6096 and utilization of employment referral agencies; and
  - b. Training conducted for persons hired by the developer and contractors, subcontractors, vendors and suppliers of the developer and the employers within the redevelopment project; and
  - c. The execution of the redevelopment project, including, without limitation, plans and scope of services.
- 2) If a developer receives incentives from the Agency for a redevelopment project with a value of \$100,000 or less, the developer shall use its best efforts to satisfy the reporting requirements described in subsection 1.
- 3) If the developer fails to comply with the requirements of this section:
  - a. The Agency may refuse to pay all or any portion of an incentive; and
  - b. The Agency may require the developer to repay any incentive already paid to the developer in accordance with NRS 279.6098.
- 4) A report to the Agency is due within thirty (30) calendar days after the end of each calendar quarter. In an effort to provide accountability, accuracy and consistency, a standard Agency reporting template has been developed. The templates may be modified by the Agency at any time, to ensure uniform and accurate reporting. All exhibit checklists shall be complete with copies of correspondence and advertisements attached to the report.

## **APPEALS**

- 1) A developer may appeal the refusal of the Agency to pay the amount provided for in NRS 279.6096 to the City of Las Vegas as the legislative body of the community.
- 2) In an appeal, the developer has the burden of demonstrating that:
  - a. Specific actions were taken to substantially fulfill the requirements of NRS 279.6096;
  - b. An insufficient number of significant opportunities for appropriate contractors, subcontractors, vendors or suppliers to perform a commercially useful function in the project existed; and
  - c. Use of appropriate contractors, subcontractors, vendors or suppliers as required by NRS 279.6096 would have significantly and adversely affected the overall cost of the project.
- 3) If the Las Vegas City Council on behalf of the City of Las Vegas finds that the developer's appeal has satisfied the requirements of subsection 2, the Agency shall pay the developer the amount provided for in NRS 279.6096.

### Procedure for submission and hearing of appeals:

- 1) Contact the Agency for an appointment to present analysis and to discuss obstacles for meeting the participation requirements or minority participation goals. A staff recommendation will be made and forwarded to the director of the Agency.
- 2) The director will review the analysis and staff recommendation and make a decision on whether a project-specific employment plan modification is warranted. If the decision is in favor of no modification, the developer may appeal to the Las Vegas City Council on behalf of the City of Las Vegas as the legislative body of the of the Agency.
- 3) Final decisions regarding ability to meet the Policy requirements in the applicable agreement shall rest with the Las Vegas City Council.

EXHIBIT "T"

DISCLOSURE OF PRINCIPALS

# EXHIBIT I

## CERTIFICATE DISCLOSURE OF OWNERSHIP/PRINCIPALS

### 1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

### 2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

### 3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

### 4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

<b>Block 1</b>	<b>Contracting Entity</b>
Name <b>CDPCN</b>	
Address <b>2009 Alta Drive</b>	
<b>Las Vegas, NV 89106</b>	
Telephone <b>702-873-8882</b>	
EIN or DUNS <b>014847813</b>	

<b>Block 2</b>	<b>Description</b>
Disposition & Development Agreement	

<b>Block 3</b>	<b>Type of Business</b>
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Other:	



CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS  
(CONTINUED)

**Block 4 Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Arlatha McCovy Stevens	2009 Alta Drive	702-873-8882
2.	David L. Washington	2009 Alta Drive	702-873-8882
3.	Charles Bradshaw	2009 Alta Drive	702-873-8882
4.			
5.			
6.			
7.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: \_\_\_\_\_.

**Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: \_\_\_\_\_

Date of Attached Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Name: Frank Hawkins Jr.

Date: 11/5/2020

Subscribed and sworn to before me this 5<sup>th</sup> day of

November, 2020

Sharon Bullock  
Notary Public



SHARON BULLOCK  
NOTARY PUBLIC  
STATE OF NEVADA  
My Commission Expires: 02-28-23  
Certificate No: 93-2360-1

EXHIBIT "J"

CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

APN: a portion of 138-25-518-002

RECORDING REQUESTED BY:

City of Las Vegas Redevelopment Agency

AFTER RECORDING, MAIL TO:

City of Las Vegas Redevelopment Agency  
Economic and Urban Development Department  
495 S. Main Street  
Las Vegas, NV 89101

NOTICE OF COMPLETION  
OF  
CONSTRUCTION AND DEVELOPMENT

THIS NOTICE OF COMPLETION OF CONSTRUCTION AND DEVELOPMENT ("Notice") is made pursuant to the requirements of that certain Disposition and Development Agreement ("DDA") with an effective date of \_\_\_\_\_, 2020, whereby the City of Las Vegas Redevelopment Agency, a public body organized and existing under the community development laws of the State of Nevada ("Grantor"), provided assistance to CDPCN, LLC a Nevada limited liability company ("Developer"), for construction and development of a certain project situated in the City of Las Vegas, Nevada, and described on the Attachment attached hereto and made a part hereof ("Site").

The DDA provides that (a) the RDA shall furnish the Developer with this Notice upon completion of all construction and development upon the Site that is required to be completed by the DDA, (b) this Notice shall be in such form as to permit it to be recorded in Recorder's Office of Clark County, and (c) this Notice shall be conclusively determined that the construction and development on the Site has been satisfactorily completed.

NOW, THEREFORE, the RDA agrees and does hereby certify that the construction and development on the Site has been fully and satisfactorily performed and completed in full compliance with the requirements of the DDA.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the RDA has executed this Notice as of \_\_\_\_\_, 2020

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
CAROLYN G. GOODMAN, Chairperson

Attest: \_\_\_\_\_  
LuAnn D. Homes, Secretary

CDPCN, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
Carolyn G. Goodman as Chairperson of the City of Las Vegas Redevelopment Agency.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
Frank Hawkins as Executive Director of CDPCN, LLC.

\_\_\_\_\_  
NOTARY PUBLIC

ATTACHMENT  
TO  
NOTICE OF COMPLETION OF CONSTRUCTION AND DEVELOPMENT  
LEGAL DESCRIPTION