

AGREEMENT FOR ECONOMIC DEVELOPMENT AND PURCHASE/ SALE OF REAL PROPERTY

(1220 and 1250 West Fourth Street)

Between

City of Reno as Seller

And

Flyers Properties, LLC, a California limited liability company, as Buyer

Dated as of _____

Art. 1 PARTIES; TERMS AND DEFINITIONS.

§1.01 Schedule of Information

THIS AGREEMENT is by and between and involves the following Property:

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| <i>a.</i> | <i>Buyer</i> | Flyers Properties, LLC, a California limited liability company 2360 Lindbergh Street Auburn, CA 95602 Authorized Representative: Tom Di Mercurio, CEO |
| <i>b.</i> | <i>City/ Seller</i> | City of Reno, Nevada, a municipal corporation One East First Street P.O. Box 1900 Reno, Nevada 89509 Authorized Agent: Property Agent |
| <i>c.</i> | <i>Escrow Agent</i> | Stewart Title 5390 Kietzke Lane, Suite 101 Reno, NV 89511 Attn: Tami Haworth |
| <i>d.</i> | <i>Real Estate Agents</i> | None. |
| <i>e.</i> | <i>Appraiser</i> | Has been selected and completed. |

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| e. | <i>Property</i> | The real property set forth on Attachment A, together with (i) with all and singular the rights and appurtenances pertaining to such real property, and all right, title and interest of Seller (in its capacity as the owner of the Property and not in its capacity as a municipality) in and to parking, adjacent streets, easements, mineral rights, and rights of way, (ii) any intangible property owned by Seller (in its capacity as the owner of the Property and not in its capacity as a municipality) arising from or used exclusively in connection with the ownership, development, use, operation or maintenance of the real property, including without limitation, any warranties, refunds, rebates, licenses, permits, development rights, declarant rights, stormwater and wastewater and other utility capacity rights, applications, approvals, authorizations and other entitlements, reports, test results, environmental assessments, and other similar documents and materials (collectively, the “ <u>Intangible Personal Property</u> ”), and (iii) Seller’s interest in the Ground Lease (as defined below). For the avoidance of doubt. Seller’s conveyance of the Intangible Personal Property pursuant to this Agreement is intended only to convey to Buyer intangible personal property that would be conveyed to a buyer in a typical sale of real property and shall exclude any such intangible personal property held by the Seller in its capacity as a municipality. |
| f. | <i>Street Address/ APN</i> | 1220 and 1250 West Fourth Street Reno, Nevada APN 010-610-18 |
| g. | <i>Economic Development Project</i> | Buyer to purchase the Property and retain or expand existing commercial enterprises that will create and retain opportunities for employment for residents of the city. |
| h. | <i>Purchase Price</i> | \$738,000.00 |
| i. | <i>Earnest money deposit amount</i> | \$10,000.00 |

Art. 2 RECITALS

A. The Property is surplus left over from property acquired by Seller from the Union Pacific Railroad Company for use in the construction of the ReTRAC Project to put train tracks through

the City of Reno below ground level. Seller took the Property subject to a lease between Union Pacific Railroad and Berry Hinckley Terminal, Inc. (the "Berry Hinckley Lease").

B. City, as lessor, and Buyer's affiliate, Flyers Energy, LLC, as California limited liability company ("Flyers Energy"), as lessee, are parties to that certain Commercial Lease for the Property dated September 8, 1983, as thereafter affected by Lease of Property dated December 11, 1998, and Acceptance of and Consent to Assignment and Assumption of Lease dated September 24, 2014 (collectively, the "Ground Lease"), whereby Flyers Energy currently leases the Property from the City. In connection with the Ground Lease, the Berry Hinckley Lease was assigned from City to Flyers Energy, and Flyers Energy is the current sublessor under the Berry Hinckley Lease.

C. Buyer owns the building improvements located upon the Property. Buyer intends to invest upwards of no less than an additional \$200,000 in capital improvements to the Property. The Buyer desires to purchase the Property to secure the land to protect Buyer's investment in the Property and to further improve and expand the current commercial facility on the Property.

D. Pursuant to NRS 268.063, the City may sell the Property without offering it to the public for an "Economic Development Project" to retain or expand existing commercial enterprises that will create and retain opportunities for employment for residents of the city as defined in NRS 268.063(4). As required by NRS 268.063(2) appraisals have been obtained and the City Council has adopted a resolution setting the value of the Property as appraised and determining that it is in the best interest of the City to sell the Property at its full value to Buyer without offering the Property to the public in exchange for an agreement to build and operate the Economic Development Project for five years.

NOW THEREFORE in exchange for the mutual covenants expressed herein and the sale of the Property to Buyer without public auction, the parties agree as follows.

Art. 3 ECONOMIC DEVELOPMENT PROJECT

§3.01 Description of Economic Development Project;

a. Pursuant to the Berry Hinckley Lease held by Flyers Energy, a portion of the Property is currently subleased by Flyers Energy to Reno Fuel. Reno Fuel provides fuel services to City residents. Buyer is proposing to make major improvements to all buildings located on the Property, including new façade, windows, landscaping and fencing. Once the improvements to the underutilized building have been completed, it will be able to support new commercial enterprises. This is of particular importance to the City in that it supports and retains opportunities for employment and enhances visual palatability for the residents of the City.

b. With the written permission of the City Manager of City, which shall not be unreasonably withheld, conditioned or delayed, Buyer may change its use of the Property, provided that the new use is a commercial enterprise that contributes to the economic development of the City and will create and retain substantially the same opportunities for employment for residents of the City.

c. If it purchases the Property, Buyer shall cause a continuation of the activities described in this §3.01 for a period of five (5) years from the date the deed is recorded. The deed shall be in a form that is reasonably acceptable to Buyer. This obligation shall be a covenant running with the land applicable to Buyer and any successors, assigns, or subsequent owners of the land. The deed from Seller to Buyer will reserve this covenant and will specify the covenant's termination date. The deed shall likewise provide that the covenant shall irrevocably terminate and be of no further force or effect upon the termination date set forth in the deed, without the necessity of any action or affirmation on the part of the City or any other third party. In addition, if requested by Buyer on or after the date of termination of the covenant, Seller shall execute and record a notice of termination in a form subject to the reasonable approval of Buyer and Seller, when the expiration date expressed in the deed has passed.

§3.02 Remedies if Property is not used for Economic Development Project.

a. Both parties independently believe that the Property, operated as set forth in this Article 3 (the "Project"), qualifies as an Economic Development project within the meaning of NRS 268.063. If there is a challenge to this sale, the parties agree to reasonably cooperate in good faith to defend the challenge, and each party may employ counsel and participate in the defense. Each party shall bear its own expenses. Each party independently assumes the risk of loss and in the event that the sale is voided by court order, each party shall hold the other harmless, agrees not to sue the other, and agrees to assume its own losses. If this sale is voided by a court order, unless another remedy is specified in the court order, title to the Property will revert to the Seller and Seller shall reimburse Buyer for the Purchase Price (together with all closing costs) actually paid by the Buyer to Seller in connection with this Agreement, such reimbursement to be made within sixty (60) days from the date of the court-ordered reverter of title. In addition, in the event the sale is voided by a court order, the City shall enter into a new ground lease for the Property with Buyer, on the same terms and conditions as the existing Ground Lease. The obligations set forth in this Section 3.02(a) shall survive the Closing and recordation of the deed to Buyer.

b. If there is a breach in the covenant running with the land set out in §3.01 beyond the applicable cure period, the rights and obligations set out in Article 5 of this Agreement shall apply, and the City of Reno shall have the following additional remedies:

(1) City shall have an option to repurchase the Property for the purchase price paid under this Agreement together with all closing costs. The option must be exercised by notice in writing within sixty (60) days after the expiration of the cure period specified in Article 5 or otherwise agreed, and shall be accomplished through an escrow with the Escrow Agent.

(2) City may bring an action for specific performance or other judicial relief, it being understood and agreed that the sale of this Property was conditioned upon and for the express purpose of furthering a significant governmental interest.

c. It is understood and agreed, however, that the covenant running with the land does not constitute a lien on the Property which is enforceable by foreclosure, nor will the covenant running with the land be extinguished by foreclosure of a deed of trust or other lien upon the land created subsequent to the recording of the deed.

Art. 4 PURCHASE AND SALE OF PROPERTY.

§4.01 General.

a. Seller hereby agrees to sell and Buyer agrees to purchase the Property according to the terms and conditions set forth in this Agreement.

b. Seller agrees not to seek any offers or enter into any negotiations with a third party for the sale of the Property while this Agreement remains in force and effect.

c. Seller agrees that during the period between the Approval Date and the Closing: (i) Seller will manage or cause the Property to be managed in accordance with its past practices and in accordance with the Leases and restrictive covenants and declarations which encumber the Property; (ii) Seller will enter into no agreements with respect to the operation or maintenance of any portion of the Property, without the prior written consent of Buyer; (iii) Seller will not further encumber (or permit such further encumbrance of) the Property in any manner; (iv) Seller will perform when due all of Seller's obligations to be performed under the Leases, the restrictive covenants and declarations and all other agreements affecting the Property; (v) Seller shall not enter into any lease, license or other occupancy agreement with any party regarding the Property; (vi) Seller shall not modify the Property or remove or authorize the removal of any personal property unless the same is replaced, prior to Closing, with similar items of at least equal suitability, quality and value; and (vii) Seller shall promptly notify Buyer promptly of any notice of default under any Lease, code violations, litigation, arbitration or administrative hearing concerning or affecting any part of the Property.

§4.02 Grant/Reservation of Easements

a. Seller shall reserve back in the deed a 10-foot wide easement along the southerly property lines for access and maintenance of the train trench wall of the Real Property. The form of such reservation shall be subject to approval by Buyer prior to the expiration of the Due Diligence Deadline.

b. Seller is aware of a Fourth Street Road Project coming forward by Regional Transportation of Washoe County (RTC) currently in planning to begin construction in the year 2025. While the City usually provides Temporary and Permanent Easements, if any, on City owned property at no costs to RTC, the City will not be in ownership of the Property when plans are finalized. Buyer shall cooperate with RTC for any Temporary Construction Easement (TCE) needs at no charge. Initial design is sixty percent (60%) complete, and currently appears to only require TCEs for new driveway aprons. This section shall survive the close of escrow.

§4.03 Opening of Escrow; Earnest Money Deposit.

a. Opening of escrow. On or before the date specified in Attachment B, joint escrow instructions shall be prepared by City, subject to Buyer's reasonable approval, and an escrow shall be opened with a goal of closing by the Closing Date as specified in Attachment B. Following the completion of Buyer's due diligence, the joint escrow instructions may be amended with Buyer's prior written consent to reflect permitted title exceptions and conditions of closing.

b. Earnest Money Deposit. Upon opening of escrow, Buyer shall deposit into escrow the Earnest Money Deposit specified in §1.01 above. As used herein, the term Earnest Money Deposit shall include the Earnest Money Deposit, and all interest earned thereon. The Earnest Money Deposit shall be disbursed as follows.

1. The Earnest Money Deposit shall be placed in an interest bearing account with the Escrow Officer and interest actually collected by the Escrow Agent shall be paid with the Earnest Money Deposit as follows.

2. If Buyer terminates prior to the Due Diligence Deadline, for any reason, the Earnest Money Deposit shall be returned to Buyer.

3. If the sale escrow closes, Seller may retain the Earnest Money Deposit and interest as part of the Purchase Price (i.e., the Earnest Money Deposit shall be credited against the Purchase Price at Closing).

4. Unless otherwise expressly provided herein, if the sale escrow does not close for any reason other than (i) a default of Seller, or (ii) failure to satisfy Buyer's conditions to Closing as set forth herein, the Earnest Money Deposit shall be paid to Seller in exchange for Seller holding the Property open for sale for the due diligence period.

5. If the sale does not close due to default (see Article 5) of Seller or failure to satisfy Buyer's conditions to Closing as set forth herein, the Earnest Money Deposit shall be paid to Buyer.

6. If, for any reason, the Escrow Officer is given conflicting instructions, is unsure as to whom the Earnest Money Deposit should be paid, or does not want to hold the Earnest Money Deposit pending resolution of any disputes, the Escrow Officer may interplead the Earnest Money Deposit and interest into court, less earned but unpaid escrow costs and charges plus the costs of bringing the interpleader.

§4.04 *Due Diligence.*

a. Document Delivery by Seller. Within ten (10) calendar days of the Approval Date, Seller shall deliver a preliminary title report for the Property from a reputable title company, the appraisal obtained by Seller, environmental reports and studies pertaining to the Property and other documents pertaining to the Property in Seller's possession.

b. Inspections. Buyer shall promptly arrange for all desired inspections of the Property, including environmental investigations, asbestos inspections, pest control inspections, soils analysis, geotechnical inspections, and the like, to be conducted at Buyer's expense, unless otherwise agreed.

c. Indemnifications. Buyer shall indemnify Seller and hold Seller harmless from all costs, claims or liability of any kind resulting from all acts or omissions of Buyer, its contractors, agents and employees during or as a result of inspections; provided, however, the Buyer shall not be required to indemnify or hold Seller harmless in connection with any losses related to (A) Seller's negligence or misconduct, or (B) the mere discovery of a pre-existing condition at the Property; provided further, that the foregoing shall in no way limit or otherwise modify any liability of the tenant under the Ground Lease. This provision shall survive the termination of this Agreement.

d. Objections to condition; extension of Due Diligence Deadline. Buyer shall have the right to terminate this Agreement for any reason or no reason prior to the Due Diligence Deadline and receive a full refund of the Earnest Money Deposit. However, Seller and Buyer shall meet and confer during the due diligence process and shall, to the extent practical, attempt to work out remedies for objections to the condition of the Property, it being understood that since the use of

the improvements are to be continued as they exist, reductions or adjustments to the sale price are not contemplated and must be approved by the City Council. If Buyer requests a price adjustment or other remedy which requires approval by the City Council, the “Due Diligence Deadline” set forth in Attachment B is extended until ten (10) calendar days after the decision by the City Council.

e. Notice to proceed. If Buyer has completed due diligence to its satisfaction and wishes to purchase the Property, it shall give a written notice to proceed to Seller before the “Due Diligence Deadline” set forth in Attachment B.

f. Rescission of Agreement. If Buyer has not served notice to proceed to Seller by the “Due Diligence Deadline” set forth in Attachment B, this Agreement shall be automatically rescinded and the Earnest Money Deposit returned to Buyer, unless otherwise agreed by the parties.

§4.05 Price and costs of closing

a. Base Price. The base price of the Property shall be as set forth in §1.01.

b. Credits, Holdbacks and Adjustments. No credits, holdbacks or adjustments are anticipated.

c. Allocation of Closing Costs; Apportionment of certain payments. Buyer and Seller agree to the following allocation of closing costs:

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| Title Report | Seller pays 100%. |
| Title Insurance | Seller pays 100% for an ALTA Standard Owners Policy, Buyer pays for extended coverage or endorsements. |
| Survey (if needed) | Paid 100% by party who requests it. |
| Building Inspection | Paid 100% by party who requests it. |
| Appraisals and reviews | Buyer pays 50%; Seller pays 50%. |
| Pest Inspection | Paid 100% by party who requests it. |
| Soils Analysis | Paid 100% by party who requests it. |
| Environmental Assessments | Paid 100% by party who requests it. |
| Transfer Tax | Buyer pays 50%; Seller pays 50%. |

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| Property Taxes | Property currently exempt from property taxes; Buyer pays 100% of any prorated installments needed to be paid to close. |
| Special Assessments (if any) | Buyer will assume balance, if any. |
| Sewer | Buyer is already paying sewer under existing lease agreement. |
| Security Deposits | Any security deposit held by Seller under current lease shall be credited against the Purchase Price. |
| Advance utility payments | Utility payments are already being made by Buyer under current lease agreement. |
| Escrow Agent Fees | Buyer pays 50%; Seller pays 50%. |
| Recording Fees | Buyer pays 50%; Seller pays 50%. |

d. Payment of real estate commissions. Except as disclosed in §1.01 above, Seller represents to Buyer that there are no real estate or brokerage commissions payable in connection with this sale to any party claiming through Seller, or arising out of the actions of Seller. Except as disclosed in §1.01 above, Buyer represents to Seller that there are no real estate or brokerage commissions payable in connection with this sale to any party claiming through Buyer or arising out of actions of Buyer. Each party shall indemnify and hold the other harmless from all costs, claims, damages, or liability of any kind in connection with the breach of this representation. The representations and indemnities in this paragraph shall survive the closing or earlier termination of this Agreement.

e. Payment of Purchase Price. At Closing, Buyer agrees to pay the Purchase Price and its share of expenses by wire into escrow.

§4.06 Title Warranties and Insurance.

a. Title to be Delivered. Upon Closing, Seller shall deliver insurable fee title to the Property to Buyer free of all encumbrances, liens, conditions, reversionary rights or other exceptions to or defects in title except for permitted exceptions as agreed upon by the parties. If the parties cannot agree on permitted exceptions, this Agreement may be rescinded by either party at any time prior to Closing, and the Earnest Money Deposit shall be refunded to Buyer.

b. Title Warranties and Representations. Seller represents and warrants to Buyer as of the Closing, that:

1. Except for the permitted exceptions as agreed upon by the parties pursuant to Section 4.06(a) above, Seller holds and will convey good and marketable title to Buyer without encumbrances, liens, restrictions, covenants, conditions, rights of redemption, or other title exceptions.

2. There are no contracts of sale, installment sale contracts, or options for the sale of all or any part of the Property to which Seller is a party and which remain in effect, except to Buyer.

3. There are no leases (except the Ground Lease), occupancy agreements, licenses, rental contracts, billboard contracts, contracts of employment, management contracts, maintenance contracts, service contracts, or supply contracts to which Seller is a party which affect any portion of the Property that will survive the closing.

4. All improvements and materials supplied to the Property by Seller have been paid for in full.

c. Title Insurance. Seller shall at its expense deliver a 2006 Standard Form of CLTA Owners insurance without any endorsements, subject to permitted exceptions agreed upon under paragraph a above. If Buyer wishes extended coverage or obtain endorsements, Buyer shall pay the cost and Seller shall reasonably cooperate in connection with the same. At Closing, Seller shall deliver to the escrow agent and title company a customary owner's/seller's affidavit in order to allow the title company to remove the "standard exceptions" from Buyer's title policy.

§4.07 *Property Warranties; Condition and Risk of Loss.*

a. Warranties and Representations. As Buyer owns the building and has made repairs to it, Seller is not in a position to make any representations or warranties as to the condition of the Property, and Buyer shall accept the Property AS IS WITH ALL ITS FAULTS.

b. Property Damage or Destruction. Seller does not insure its property with outside carriers. If the Property is damaged or destroyed before closing, and the parties cannot agree on an adjustment to the Purchase Price, this Agreement may be rescinded by either Party at any time prior to Closing and the Earnest Money Deposit shall be returned to Buyer.

c. Risk of Loss due to Eminent Domain. If proceedings under power of eminent domain are commenced before the Closing Deadline to take any portion of the Property, Seller shall promptly inform Buyer and Buyer may rescind this Agreement in accordance with ¶6.02 at any time before Closing. Upon rescission the Earnest Money Deposit shall be returned to Buyer. If Buyer chooses to go forward with the acquisition, unless otherwise agreed, Buyer may appear in

any eminent domain proceedings and the parties shall proceed to closing upon the original terms stated herein and Buyer shall be paid all eminent domain proceeds, except relocation benefits.

d. To the extent that the above provisions are inconsistent with the Uniform Vendor and Purchaser Act (NRS 113.030 – 113.050), they are intended to replace the provisions of the Act.

§4.08 *Seller's Conditions Precedent.*

a. In addition to any other conditions stated herein, Seller's obligation to sell the Property is conditioned on the accomplishment of the following requirements to the satisfaction of Seller:

- (i) The sale must be authorized and meet all the conditions of Nevada law;
- (ii) [intentionally omitted];
- (iii) All of the documents and other items required to be delivered by Buyer to Seller under this Agreement must have been delivered in form and substance reasonably satisfactory to Seller;
- (iv) Buyer must have given a notice to proceed in accordance with §4.04 and complied with, fulfilled and performed, in all material respects, each of the covenants, terms, and conditions hereunder to the reasonable satisfaction of Seller;
- (v) Buyer must have paid the purchase price and its share of expenses as provided herein;
- (vi) All of the representations and warranties made by Buyer in this Agreement and in any closing certificate must be true in all material respects as of Closing Date; and
- (vii) The legality of sale must not have been challenged by a third party.

b. Seller may waive any of the foregoing conditions or may close the sale without waiving a condition and seek remedies for breach as provided in §5.04.

§4.09 *Buyer's Conditions Precedent.*

a. Buyer's obligation to purchase the Property is conditioned on the accomplishment of the following requirements to Buyer's satisfaction:

- (i) Buyer, in its sole discretion, must be satisfied as to the legal description, the status of title to and the condition of and the suitability of the Property for its intended use, and has issued to Seller a Notice to Proceed as provided in §4.04;

- (ii) Seller must have performed all of its requirements under this Agreement;
- (iii) Escrow Agent shall be irrevocably committed to issue the title insurance required by Buyer;
- (iv) All of Seller's representations and warranties must remain true and complete in all material respects as of Closing;
- (v) Seller must have delivered into escrow all deeds, an assignment and assumption agreement with respect to the Ground Lease in form and substance acceptable to Buyer, a general assignment conveying the Intangible Personal Property to Buyer in form and substance acceptable to Buyer, and supporting documentation necessary to (a) convey title as required by this Agreement to all real and Intangible Personal Property being purchased hereunder, and (b) assign Seller's interest in the Ground Lease to Buyer;
- (vi) All of Seller's conditions of closing have been satisfied; and
- (vii) Buyer funding must be available.

b. Buyer may waive any of the foregoing conditions or may close the sale without waiving a condition and seek remedies for breach as provided in §5.04. Notwithstanding anything to the contrary, if any of the foregoing conditions are not satisfied as of the Closing Date, Buyer may terminate this Agreement and receive a refund of the Earnest Money Deposit.

§4.10 *Preclosing.*

On the preclosing call of Escrow Agent: it shall be determined whether (i) Buyer and Seller shall have duly executed and delivered to each other or to the Escrow Agent all the documents listed in the escrow instructions or otherwise required or contemplated by this Agreement, including closing certificates, and each receiving party shall have reviewed and approved the document; (ii) all documents necessary to accomplish any financing of the sale shall have been delivered; (iii) Escrow Agent shall prepare and deliver to both parties a settlement statement indicating funds received or to be received and allocating such funds to payments to the parties, taxes, assessments, closing expenses, and both parties must approve the settlement statement; (iv) Seller shall have delivered all documents or agreements required by the Escrow Agent to insure title to the extent requested by Buyer; and (v) Escrow Agent shall be irrevocably committed to issue or cause to be issued the title insurance required by Buyer and any lender. At preclosing, the parties shall instruct the Escrow Agent whether or not to close the escrow. If preclosing is not accomplished, the foregoing actions shall be accomplished at closing.

§4.11 *Closing; Delays in closing*

- a. Closing Conditions. Escrow shall not close until all conditions and provisions stated in §§4.08 and 4.09 (or as set forth elsewhere in this Agreement) shall have been met, waived or reserved.

- b. Closing. If conditions have been met, closing shall occur on the Closing Deadline established in Exhibit B or another date agreed upon by the parties in writing. Closing shall occur at the offices of Escrow Agent. When all conditions of closing have been met: (i) Buyer and Seller shall execute and deliver to Escrow Agent all documents listed in the escrow instructions or otherwise required to complete the intents and purposes of this Agreement (in each case solely to the extent the same are reasonably acceptable to Buyer), (ii) Buyer and Seller shall deliver into escrow in collected funds the purchase price and all funds necessary to close the sale; (iii) the Escrow Agent shall record and distribute all documents as provided in the escrow instructions; and (iv) Escrow Agent shall disburse all funds as provided in the escrow instructions and settlement statements approved by both parties. When all the foregoing events have been completed, “Closing” shall have occurred.

- c. Escrow Agent Delays. Provided that Buyer and Seller shall have accomplished all that has been required of them as indicated in this Agreement, a delay in the settlement or closing caused by Escrow Agent or factors beyond the control of Escrow Agent shall not be considered as a default by Buyer or Seller, and the Closing Deadline shall automatically be extended for a reasonable period of time not to exceed thirty (30) days to close. If escrow does not close within thirty (30) days from Closing Date through no fault of either Seller or Buyer, the parties shall appoint a substitute who shall serve as the Escrow Agent for all purposes under this agreement and the escrow instructions.

- d. Failure to close. Except as provided next above, if closing does not occur by the Closing Deadline due to the default, actions or inactions of a party, the nondefaulting party may terminate this Agreement under §6.02.

§4.12 *Delivery of Possession of Property.*

Upon closing, Seller shall deliver possession of the Property together all documents necessary for Buyer to obtain and permanently enjoy full exclusive possession and title to the Property.

Art. 5 DEFAULT AND REMEDIES

§5.01 *Excuse due to Force Majeure.*

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

b. An event of force majeure is defined as (i) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; delay caused by unusually severe or extreme weather; lack of transportation attributable to any of these; or (ii) labor strikes, boycotts or picketing (unless the labor action is taken because of an alleged violation of the prevailing wage provisions in this Agreement, if any); (iii) provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems. A force majeure does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing.

c. A force majeure is deemed to cease for purposes of this Agreement and a party is deemed to be in breach of an obligation or cure on the earlier of (i) five (5) business days after it becomes possible for the obligated party to commence to perform the obligation or cure and the obligated party fails to so commence the obligation to perform or cure, or (ii) one year from the commencement of the event of force majeure.

§5.02 *Default.*

a. A party shall be in default hereunder in any of the following events or circumstances (subject to force majeure and notice and opportunity to cure if specified):

(i) The party repudiates, breaches, or fails to promptly and fully perform any covenant, condition or agreement contained in this Agreement (subject to force majeure and notice and opportunity to cure).

(ii) Any representation of a material fact expressed herein was false at the time it was made, or, if a continuing representation becomes false as a result of a subsequent event or occurrence; or any warranty made herein is breached at the time made or, if a continuing warranty, is breached as a result of a subsequent event or occurrence (subject to force majeure and notice and opportunity to cure).

(iii) An event required to occur does not occur by the time required due to the lack of diligence or fault of a party (subject to force majeure and notice and opportunity to cure).

(iv) A party makes an assignment for the benefit of creditors or files or suffers the involuntary filing of a petition for appointment of a receiver, or for relief under the U.S. Bankruptcy Code or any federal or state law that provides relief to debtors from creditors and such petition is not rescinded or resolved within sixty (60) days from the date of filing (not subject to force majeure and notice and opportunity to cure).

(v) Any interest in the Project or any improvements on the Project, or any right to receive funds under the Project become an asset in a receivership or bankruptcy estate or become the subject of any proceedings (a) relating to prejudgment attachment of assets, (b) a judgment lien, (c) a mechanics lien or any claim for payment of amounts owed for the provision of services or materials to the Property or any Improvements thereon; (d) any execution proceedings for the enforcement of judgments; (e) any foreclosure or enforcement of a security interest; (f) any forfeiture action; or (g) any other action where a party may lose possession thereof (subject to force majeure and notice and opportunity to cure).

(vi) Any other circumstance or event constituting a breach of this Agreement (subject to force majeure and notice and opportunity to cure unless otherwise specified).

§5.03 *Notice and Opportunity to cure.*

For those events or circumstances of default listed above which are expressly subject to the notice and cure, and unless otherwise specified in this Agreement, the party intending to declare a default shall first provide written notice to the defaulting party of such event or circumstance and the specific action required to cure it and the defaulting party shall have thirty (30) days from the date that the notice is deemed given to cure the default. If a party has commenced to and diligently pursues to cure the default, one or more extensions in time may be granted which may be revoked without advance notice if the defaulting party abandons the attempt to cure or if cure becomes impossible.

§5.04 Remedies/Liquidated Damages

a. The parties agree that it would be impractical or extremely difficult to fix actual damages if Buyer fails to close the escrow due to a Buyer Default, and that the amount of the Deposit plus interest earned thereon is a reasonable estimate of such damages. In the event the Close of Escrow fails to occur solely due to a Buyer Default, Seller shall be entitled to terminate the Agreement and retain the Deposit, plus any interest accrued thereon, as Seller's sole and exclusive remedy. The foregoing will not limit the Seller's right to exercise any rights to indemnification, if any, it may have under this Agreement.

b. In the event the Close of Escrow fails to occur due to a Seller Default, then Buyer shall have the right to i) terminate this Agreement and receive a refund of the Deposit and any interest earned thereon, ii) waive the default and proceed with the Close of Escrow; or iii) seek specific performance of the terms of this Agreement against Seller.

c. The Seller does not waive and intends to assert available NRS Chapter 41 liability limitations in all litigation and claims arising from this Agreement and the subject matter of this Agreement.

§5.05 General Provisions regarding remedies

a. Cumulative remedies. All remedies set forth above are cumulative with another and with any other remedy afforded by applicable law, and the pursuit of one remedy does not constitute an exclusive selection of that remedy or a waiver of or election not to pursue any other remedy.

b. Advances. Any funds reasonably expended by Buyer to make repairs, cure defaults, protect property or an interest in property shall be reimbursed by Seller together with interest as specified in this Agreement or as specified in NRS 99.040. This Section shall survive the termination of this Agreement.

§5.06 Waivers.

Any forbearance, inaction, or failure to promptly pursue any remedy (whether intentional or negligent) shall not be deemed a waiver of any default or remedy and shall not be construed as in any manner estopping any party from enforcing in full the provisions hereof. Waivers must be expressed in writing signed by the waiving party, and a waiver of a default is limited to the specific default identified in the written waiver and does not constitute a course of dealing or implication that similar defaults will be waived in the future. A party's acceptance of partial performance shall not be deemed to be an accord and satisfaction or a waiver of or change to any term, covenant or condition of this Agreement.

§5.07 *Attorney's fees and costs.*

If an action is brought to interpret or enforce this Agreement, the prevailing party may be awarded reasonable attorney's fees and costs for the action and also for reasonable attorney's fees and costs in pursuing any of the above remedies or otherwise mitigating damages.

Art. 6 **RESCISSION AND TERMINATION**

§6.01 *Rescission.*

Upon first giving notice and opportunity to cure as provided in §5.03 (except in the case of an automatic rescission), a party may rescind this Agreement if there is a failure of a condition precedent to its obligation or as otherwise stated herein. A party shall provide a written notice of rescission to the other party as provided in §7.05 and to the Escrow Agent. In the event of a rescission or automatic rescission (as provided herein), unless otherwise specified herein or agreed in writing, (i) all future or executory obligations are discharged; (ii) each party shall bear its own expenses; (iii) if there are any escrow fees due at the time of the rescission, the rescinding party shall pay them, or if the rescission is automatic, escrow fees and costs shall be paid as allocated in §4.05 above; (iv) unless otherwise provided herein, all funds deposited in escrow shall be returned to the party that paid the funds; and (v) neither party shall be further liable or obligated to the other as if this Agreement never existed, except for refunds and remuneration as may otherwise be provided in a judgment of a court if this Agreement is rescinded after closing.

§6.02 *Termination.*

a. If closing does not occur as specified in Attachment B, unless otherwise agreed by the parties, this Agreement automatically terminates and Buyer shall receive a refund of its Earnest Money Deposit.

b. Except as may otherwise be provided herein, in the event of an automatic termination, as provided herein, or a termination of this Agreement by a party as a result of a default by the other party (i) each party shall bear its own expenses (subject to possible recovery or reimbursement as provided in §5.04); (ii) if there are any escrow fees due at the time of the rescission, such fees shall be paid in accordance with the agreement in §4.05, (but subject to possible recovery or reimbursement as damages except as otherwise set forth herein); (iii) unless otherwise provided herein, all funds deposited in escrow shall be returned to the party that paid the funds, provided, however, that if there is a dispute regarding who is entitled to the funds, the parties may agree (without prejudice to any remedies or allegations) to have the Escrow Agent to hold the funds in dispute until joint instructions are executed and delivered to Escrow Agent, or Escrow Agent

may interplead the funds in dispute (less reasonable attorney's fees and costs of the interpleader); (iv) the parties shall have no further obligations or liabilities to each other except those provisions herein which are expressly agreed upon to survive the termination hereof; and (v) parties may pursue remedies due to default or pre-termination obligations to the extent permitted herein.

Art. 7 GENERAL TERMS

§7.01 *Warranties of authority and valid Obligation.*

a. Each person who signs this Agreement represents and warrants that he/she has obtained all necessary approvals and has actual authority to execute this Agreement with the effect of binding his/her principal.

b. Each party represents and warrants to the other that it is duly organized and in good standing and authorized to do business in Nevada with full power and authority to enter into, deliver and perform this agreement and that this agreement, together with closing documents placed into escrow, constitutes the legal, valid and binding obligation of the Party, enforceable against it in accordance with its terms.

§7.02 *Time Frames and Deadlines*

The parties agree to accomplish the actions within the time frames or deadlines stated above. Time is of the essence in the performance of the obligations in this Agreement. Unless otherwise specified: (i) the term "days" means calendar days; (ii) the term "business days" means days that both parties are open for business –generally excluding weekends and holidays recognized by the State of Nevada; (iii) if a deadline falls on a weekend or holiday, then performance is due on the next following business day of the recipient of the performance; and (iv) performance is due by 5 p.m. on the day of deadline.

§7.03 *Assignment, Binding Effect*

a. Neither party may delegate any duties or assign any rights under this Agreement without the approval of the other party.

b. City agrees that Buyer may assign its rights and obligations under this Agreement to any of its members or managers or any entity in which any such member or manager holds an ownership interest of at least 25% if (i) Buyer is not in default under this Agreement; (ii) the proposed assignee agrees to perform all obligations and duties of Buyer under this Agreement without change unless otherwise agreed by City; (iii) the assignee posts an Earnest Money Deposit in an amount to be agreed upon, but if no agreement can be reached, then the Earnest

Money Deposit shall be the same as was posted by Buyer; and (iv) the City Manager approves the assignment.

c. For the avoidance of any doubt, after the Closing Date, Buyer or its assignee may sell, assign or lease the Property, subject to the covenant identified in §3.01. Subject to all of the foregoing, this Agreement shall be binding on the heirs, successors, trustees, representatives and permitted assigns of the parties.

§7.04 Standards for Approvals; Further acts and assurances.

a. Unless otherwise specified (such as with the words "sole discretion") wherever this Agreement requires the approval of a party, or any of a party's officers, agents or employees, such approval shall not be unreasonably withheld delayed or conditioned.

b. The City Council of the City of Reno is a governmental body whose decisions are legislative functions that may be subject to public hearings and input, and, except as otherwise provided herein, shall have sole and absolute discretion to approve or disapprove any matter submitted to it provided, however, that decisions are not procured by fraud or bribery, or are arbitrary, capricious or an abuse of discretion.

c. Each party agrees to take all reasonable actions and enter into, execute and deliver all documents reasonably required by the other party to document and accomplish the sale as contemplated herein and carry out the terms of this Agreement. This provision survives the termination of this Agreement.

§7.05 Notices.

Notices hereunder must be in writing which shall be mailed or personally delivered to each party at the address specified above. Notice is deemed received by the other party when (i) actually received if sent by first class mail or personally delivered, or (ii) three business days after delivered to and accepted by the U.S. Postal Service if sent by certified or registered mail.

§7.06 Severability

a. In the event that any word, clause, or provision herein is declared by a court of competent jurisdiction to be invalid, unenforceable, or contrary to public policy, then such offending provision shall be deemed, from the very beginning, to have been modified to the extent to bring it within the limits of validity or enforceability, so long as it is reasonably consistent with the parties' intent. If, however, such offending provision cannot be so modified, then it shall be severed from this agreement. In either event (modification or severance), all remaining words, phrases, clauses and provisions herein remain fully enforceable.

b. If it is determined that this Agreement is invalid under NRS 268.063, the parties agree to hold each other harmless from liability.

§7.07 Applicable law; Jurisdiction.

The interpretation and enforcement of this agreement shall be governed by the laws of Nevada. Actions to enforce this Agreement shall be brought in the Second Judicial District Court in and for Washoe County, Nevada.

§7.08 *Interpretation of this Agreement.*

Titles and headlines of this agreement are intended for editorial convenience and are not to be construed as a part of this agreement. The word “include” or “including” is not intended as a limitation and shall be construed to include the words “but not limited to.” Unless otherwise specified, the word “herein” means anywhere in this Agreement or the attachments. Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural. The Parties hereto were each advised by counsel in drafting and negotiating this agreement, and each Party contributed to its contents. No presumptions against or in favor of any party are appropriate based on who drafted this Agreement or any provision herein.

§7.09 *Modifications; Authority to administer and approve changes.*

a. This Agreement may not be modified or amended and no waivers are effective unless expressed in writing and duly signed by the party to be bound by the modification, amendment or waiver.

b. In addition to the Authorized Representative specified in §1.01 above, the City Manager of the City of Reno shall have the authority to act as an Authorized Representative. Each Authorized Representative, acting alone, shall have the authority to (i) execute all deeds (except all deeds of Seller must be signed by the Mayor), escrow instructions, settlement statements, title insurance instructions, agreements, lease assignments, notices and other instruments necessary to accomplish closing and to effectuate the purposes of this Agreement; (ii) accept all performances, (iii) waive or negotiate remedies for defaults (iv) extend time for performance; (v) approve contract assignments; and (vi) negotiate and execute all amendments or modifications to this Agreement *EXCEPT* (a) as otherwise provided in this Agreement; and (b) except that any action that (w) materially or substantially changes the terms of this Agreement; (x) reduces the amount owed to or adds to the cost incurred by a party in an amount that exceeds \$99,999; (y) agrees to the payment of money that has not been appropriated by the City Council; or (z) waives or relinquishes any real property interest or right shall require the consideration of and written consent of the governing body of the party.

§7.10 *Entire Agreement; Signature in counterparts; Effective Date; Recording.*

a. This Agreement may be executed in counterparts and shall be effective on the last date it is duly executed by all of the parties.

b. The parties agree that this Agreement, together with its attachments, contains the entire agreement of the parties and supersedes any written or oral representations, promises, warranties, or other undertakings made during the negotiation of this Agreement.

c. A memorandum of agreement shall be prepared, executed by both parties and recorded indicating that there are covenants herein running with the land.

Attachments

- A. Property Description
- B. Schedule

EXECUTED on the dates indicated below:

[SIGNATURE PAGES FOLLOW]

Agreement for Economic Development and Purchase/ Sale of Real Property
(1220 and 1250 West Fourth Street)

Counterpart Signature Page

Buyer

Flyers Properties, LLC, a California limited liability company

By: _____

Tom Di Mercurio

Its: CEO

Date _____

Agreement for Economic Development and Purchase/ Sale of Real Property
(1220 and 1250 West Fourth Street)

Counterpart Signature Page

City/ Seller

City of Reno, a municipal corporation

By _____
Hillary Schieve, Mayor

Date _____

Attest:

By: _____
Mikki Huntsman, City Clerk

Date _____

Approved as to Legal Form
KARL HALL, City Attorney

By _____
Jasmine Mehta, Deputy City Attorney

EXHIBIT A:

All that certain real property situate in the Southeast One-Quarter of Section 10, Township 19 North, Range 19 East. M.D.M., City of Reno, County of Washoe, State of Nevada, described as follows:

PARCEL 5A-1

BEGINNING at the northwest corner of Parcel 5B, as shown on Parcel Map Waiver #5, Record of Survey for City of Reno, Union Pacific Railroad Corridor Boundary, Record of Survey Map No. 5392, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada on April 4, 2012, as File No. 4100101, Official Records;

Thence from said POINT OF BEGINNING South 12°59'56" East, along the westerly line of said Parcel 5B and it's southerly prolongation, 70.40 feet to a point lying on the northerly line of the Railroad ReTRAC parcel, also described as the southerly line of said Parcel 5A, as shown on said map;

THENCE along said northerly line, along the arc of a non-tangent curve to the left, radial to a bearing of South 13°30'55" East, concave southeasterly, having a radius of 8606.00 feet, through a central angle of 04°01'42", a distance of 605.09 feet to the southwest corner of Parcel 5A as shown on said map;

THENCE departing said northerly line, North 17°32'37" West, along the westerly line of said Parcel 5A, a distance of 76.83 feet to the northwest corner of said Parcel 5A;

THENCE along the northerly line of said Parcel 5A, along the arc of a non-tangent curve to the right, radial to a bearing of South 16°19'55" East, concave southeasterly, having a radius of 7908.00 feet, through a central angle of 01°45'18", a distance of 242.23 feet;

THENCE continuing along said northerly line, North 75°25'22" East, 368.60 feet to said POINT OF BEGINNING, containing 43,405 square feet, more or less.

APN: 010-610-18

Document No. 4968451 is provided pursuant to the requirements of Section 6.NRS 111.312.

Attachment B

Schedule

| Description | Reference | Date |
|--|------------------|--|
| a. Approval Date | | Last date Development and Sale Agreement is duly executed by all of the parties. |
| b. Open Escrow; Deposit Earnest Money | §4.03 | Five business days after Approval Date |
| c. Due Diligence Deadline and Notice to Proceed Deadline | §4.04 | 90 calendar days following Approval Date. |
| d. Closing Date/Closing Deadline | §4.11 | 60 calendar days after Due Diligence Deadline |