

## EXCLUSIVE NEGOTIATING AGREEMENT

**THIS EXCLUSIVE NEGOTIATING AGREEMENT** (the “Agreement”) is entered into this \_\_\_ day of September, 2024 (“Effective Date”) between the **CITY OF RENO**, a Nevada municipal corporation (the “City”), and **ULYSSES ACQUISITION LLC**, a Delaware limited liability company (the “Developer”) (the Developer and the City are collectively referred to herein as the “Parties”), on the terms and provisions set forth below.

### RECITALS

A. **WHEREAS**, the Parties agree and acknowledge that the purpose of this Agreement is to establish a period during which the Developer shall have the exclusive right to negotiate with the City the terms of a Disposition and Development Agreement or other agreement (the “DDA”) for the development of that certain real property commonly known as 315-335 Record Street, Reno, NV with the APNs 007-313-27, 007-313-28, 007-313-30, 007-314-14, and a portion of 008-350-10, as depicted on Exhibit A and more particularly identified in the DDA (the “Site”), into an affordable housing project, as agreed to by the Parties (the “Proposed Development”). The City is interested in reviewing the Proposed Development’s feasibility, and, if mutually agreed, to facilitate and implement the Proposed Development.

B. **WHEREAS**, the Parties intend that during and for the period of negotiations set forth herein, each will perform certain actions and fulfill certain obligations and responsibilities under this Agreement.

### THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

#### I. Agreement to Negotiate

##### A. Agreement to Engage in Good Faith Negotiations

The City, by and through its staff and consultants, and the Developer, acknowledging that time is of the essence, agree for the Negotiation Period, defined below, to negotiate diligently and in good faith to prepare the DDA to be considered for execution between the City and the Developer, in the manner set forth herein, with respect to the Proposed Development of the Site. The Site is composed of certain real property currently owned by the City. The City agrees, for the Negotiation Period not to negotiate with any other person or entity regarding the sale or development of the Site or any portion thereof.

##### B. Duration of this Agreement

The duration of this Agreement shall be one hundred twenty (120) days from the Effective Date (together with any extensions thereof, the “Negotiation Period”). If upon expiration of the initial Negotiation Period, despite the parties’ good faith efforts, the Developer has not signed and submitted a final DDA to the City or engaged in substantial progress towards finalizing terms of a DDA, as jointly and reasonably determined by the Reno City Manager and Developer, then this Agreement shall automatically terminate unless this Agreement has been mutually extended by the City and the Developer. If a DDA is so signed and submitted by the Developer to the City or the parties have engaged in substantial progress towards finalizing terms of a DDA as jointly and

reasonably determined by the Reno City Manager and Developer on or before expiration of the Negotiation Period, then this Agreement and the Negotiation Period herein shall be extended without further action by the City for an additional thirty (30) days from the date of such submittal during which time the City shall take all steps legally necessary to (1) consider the terms and conditions of the proposed DDA, (2) if appropriate, take the actions necessary to authorize the City to enter into the DDA, and (3) if approved by the City, execute the DDA. Any extension of this Agreement may be granted by the Reno City Manager, or their duly authorized representative.

Provided the City Council does not need to approve the final, negotiated DDA prior to the City's execution, if the City has not executed the DDA within ten (10) days after the expiration of the Negotiation Period, then this Agreement shall automatically terminate, unless such 10-day period has been mutually extended by the City and the Developer. The City agrees to consider reasonable requests for extensions of time and shall, upon request, notify the Developer in writing of the reasons for any decision not to execute the DDA. City undertakes no commitment or obligation to Developer to grant any such requested extension.

If the City Council needs to approve the final, negotiated DDA prior the City's execution, upon agreement between the City and Developer that the DDA is ready for submission to the City Council, but in no event later than the expiration of the Negotiation Period, the City will submit the same for City Council approval. If such approval is not obtained within sixty (60) days after the expiration of the Negotiation Period ("Approval Period"), then this Agreement will automatically terminate, unless the Approval Period has been mutually extended by the City and the Developer.

### **C. Termination due to Failure to Negotiate in Good Faith, Good Faith Deposit**

Prior to or concurrently with the execution of this Agreement by the City, the Developer shall submit to the City a good faith deposit (the "First Deposit") in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) to be held in escrow. Upon entry into the DDA, Developer shall deposit an additional Seventy-Five Thousand Dollars (\$75,000.00) to the City to be held in escrow (the "Second Deposit", and together with the First Deposit, the "Deposit") All Deposits shall be in the form of wire transfer, cash or cashier's check to ensure that the Developer will proceed diligently and in good faith to perform all of the Developer's obligations under this Agreement. The City shall establish a restricted designated account or fund ("Account") on the City's books. All funds received by the City from the Developer shall be deposited into this Account. The City may not use the Account for any purpose other than holding the Deposit and any additional monies paid by Developer or to be held by the City under this Agreement and the DDA. If performance of this Agreement results in execution of a DDA, the disposition of the Deposit shall be as further set forth in the DDA. If this Agreement expires, is terminated for any reason, or is not approved by the City Council by December 31, 2024, any remaining balance of the Deposit, after payment of expenses incurred by the City pursuant to Section III of this Agreement shall be returned by the City to the Developer.

## **II. Development Concept**

### **A. Scope of Development**

The negotiation hereunder shall be based on a development concept, which shall include the development on the Site or a portion thereof, of an affordable housing project consisting of approximately 136 units, but in no event less than 100 units, along with other amenities outlined in the Request for Proposal dated July 19, 2024 and attached hereto and incorporated herein by reference as Exhibit B, to be included in the DDA, subject to modifications resulting from site constraints, and building permit review and design approvals required by the City of Reno, as applicable. Design and architecture will continue to be developed by the Parties during the negotiation of the DDA, and as approved by the City.

### **B. Developer Submissions**

Within the first ninety (90) days of the commencement of the Negotiation Period, the Developer shall submit to the City concept drawings and an economic analysis of Developer's Proposed Development. To the extent not already delivered by Developer to the City, the Developer's submission shall include: (i) a development proposal and site plan, including elevations, generally describing the Proposed Development; (ii) a proposed construction schedule of development; (iii) a statement of qualifications as a developer and operator of a corporate/institutional project (iv) an estimate of development costs, including construction and non-construction costs; (v) an estimate of project income and a financial statement and pro forma statement of project return adequate to enable the City to evaluate the economic feasibility of the Proposed Development; (vi) a description of the proposed method of construction and permanent financing and amounts and sources of equity and debt capital; (vii) a list of financial references; (viii) a detailed biographical and background description of Developer as a developer and operator of an affordable housing project of comparable size, including all general partners, members, or other principals, and background information, including (a) prior record with respect to the completion of projects, particularly those of a scale comparable to that proposed herein, (b) record of timely performance reflecting minimal litigation and/or disputes concerning development projects and payment of shareholders, partners, joint ventures, contractors, suppliers or taxing authorities, including any filings for bankruptcy or reorganization of Developer's interest, and (c) record of satisfactory development and operation of projects; and (d) marketing reports describing the undertakings proposed by Developer. It is understood that City may take appropriate steps necessary to verify information in such submissions or waive the Developer's obligation to provide any item(s) required pursuant to this Section. Developer agrees to cooperate in furnishing the information to the City.

All financial references, financial statements or other similar proprietary information of Developer (collectively, "Confidential Information") will be confidential, and the City may only use such information for the purposes set forth in this Agreement and the DDA. The City will not disclose any Confidential Information to any person or entity other than its employees, contractors, consultants, counsel or agents who have a reasonable need to know such information and who are bound by at least equivalent obligations of confidentiality and non-disclosure as those under this Agreement (such recipients being "Authorized Recipients"). The City will use no less than reasonable care to protect the Confidential Information. Each party agrees that damages may not

be adequate to protect the Developer in the event of an actual or threatened breach of the confidentiality and nondisclosure obligations of this Agreement, and that Developer may take equitable action, including seeking injunctive relief, to enforce such obligations.

### **C. Developer's Findings, Determinations, Studies and Reports**

Upon reasonable notice, as from time-to-time requested by the City, but in no event to exceed three (3) times in any calendar year, the Developer agrees to make oral and written progress reports advising the City on all non-confidential or non-proprietary matters and all studies being made by the Developer.

### **III. Acquisition of the Site, Other Costs, and Basic Terms of the DDA**

In addition to any other terms and conditions required under this Agreement, the DDA will set forth the terms and conditions of the purchase and sale of the Site, which will include, without limitation, the following terms and conditions, and standard representations and warranties of a seller of real property in the Truckee Meadows area. Upon execution, except as expressly set forth in the DDA, the DDA will supersede this Agreement and replace this Agreement in its entirety.

- A. **Purchase Price.** The purchase price and/or other consideration to be paid by the Developer for the Site under the DDA will be Three Million Three Hundred Seventy-Five Thousand Dollars (\$3,375,000.00) ("Purchase Price"). The Purchase Price will be subject to approval by the City and the City Council after a public hearing as required by law. Any reasonable costs, fees and charges associated with the appraisals for the value of the land and/or actual costs associated for retaining and utilizing consultants necessary to reasonably evaluate the feasibility of the Proposed Development or work related thereto incurred by the City ("City Administrative Costs") shall be paid solely by the Developer. City Administrative Costs shall be reimbursed through the Deposit and shall not exceed \$25,000 without the express approval of Developer. The selection of the appraiser(s) and other consultant(s) and type of appraisal report(s) or other consultant report(s) necessary for the project is at the sole discretion of the City which shall reasonably consider Developer's input as to such selection. The City has already obtained appraisals of the Site and will not require any further appraisals.
  
- B. **Payment of Purchase Price; Promissory Note.** At Close of Escrow, Developer will make a payment of Six Hundred Thousand Dollars (\$600,000) towards the Purchase Price. The remainder of the Purchase Price, less any prorations and adjustments (the "Loan Amount"), including without limitation the Deposit and Extension Payment, defined below, will be financed by the City pursuant to a secured seller note ("Note") under terms more particularly set forth in an instrument attached to the DDA, some of which are set forth below, and which will be in a form mutually approved by the parties. The Note will include the following terms:
  - a. The Note will be equal to the Loan Amount;
  - b. The Loan Amount will accrue interest at a rate of 2% annually;

- c. Interest will begin accruing on the date that is thirty (30) days after completion of construction of the Proposed Development on the Site (“Commencement Date”) and will continue until December 31st of the Fifteenth (15<sup>th</sup>) year after the first taxable year of the tax credit period.
  - d. Principal and interest payments will be made annually and will commence on the first day of the calendar year following the Commencement Date.
  - e. The Note will be secured pursuant to a Deed of Trust and Assignment of Rents, which will be in a form mutually approved by the parties, and which will be subordinate to the security interests of Developer’s senior lender and the Nevada Housing Division (pursuant to the terms of the Growing Affordable Housing Program loan Developer may require to finance all or a portion of the Proposed Development).
  - f. The terms of the Note will be subject to approval by the Nevada Housing Division and Developer’s project tax equity investor and senior lender.
- C. **Close of Escrow.** Developer shall have ninety (90) days after execution of the DDA to complete its due diligence (the “Due Diligence Period”). Upon expiration of the Due Diligence Period, if Developer has not previously terminated the DDA, the Deposit shall become non-refundable, except as expressly set forth in the DDA or this Agreement. The Deposit and Extension Payment, defined below, shall be credited towards the Purchase Price at Close of Escrow. Notwithstanding anything contained this Agreement, the Deposit (less the City Administrative Costs) and Extension Payment will be fully refundable to Seller in the event (1) Developer terminates the DDA as the result of (a) an uncured City default, (b) the DDA is terminated due to the unsatisfaction of any conditions to close which are not waived by the benefitting party; or (2) provided Developer is in a position to close the transaction contemplated by this Agreement and the DDA (the “Close of Escrow”), the DDA expires. Close of Escrow will occur on or before December 31, 2025 (“Closing Date”), provided that Developer may extend the Closing Date to December 31, 2026, upon delivery of written notice to the City and deposit of \$50,000 into escrow (“Extension Payment”) on or before December 1, 2025. As part of its financing, Developer intends to request that the City allocate its 2025 (or if the Closing Date is extended, 2026) Volume Cap (as applicable, the “Volume Cap”), to the Project. Unless otherwise agreed in writing by the parties, the DDA shall expire if escrow fails to close by 11:59:59 pm, Nevada Time on the Closing Date, as may be extended, or earlier if the request for Volume Cap, as applicable, is denied before December 31, 2025, or if the Closing Date is extended, December 31, 2026. Developer acknowledges that any approval or denial of a request for volume request is at the sole and absolute discretion of City Council. The City shall take reasonable steps to ensure the 2025 or 2026 Volume Cap, as applicable, will include an allocation for the Project.
- D. **Demolition of Existing Buildings.** During the Due Diligence Period, Purchaser shall apply for a permit to demolish the existing buildings on the Site, which demolition shall be completed within six (6) months after the Close of Escrow, subject to delays caused by force majeure and issuance of any applicable permits by the City and any other

governmental agency with authority or jurisdiction over the Site, in which event such deadline will be extended on a day for day basis. If demolition occurs after the effective date of the DDA but the parties fail to reach Close of Escrow, City shall reimburse Purchaser the actual costs of its demolition expenses.

- E. **Completion of Construction.** A construction schedule shall be incorporated into the DDA, and construction is to be completed within five (5) years of the Close of Escrow, but such timeline will be subject to delays caused by force majeure and issuance of any applicable permits by the City and any other governmental agency with authority or jurisdiction over the Site, in which event such deadline will be extended on a day for day basis. Completion of Construction shall be evidenced by a Certificate(s) of Occupancy for the Project.
- F. **Separate Parcel and Abandonment of Record Street.** Developer and the City acknowledge that a portion of Record Street must be abandoned by the City (“Abandonment”) and a parcel map or maps, or boundary line adjustment (individually or collectively, the “BLA or Parcel Map(s)”) must be conducted in order for the City to convey the Site to Developer at Closing and the Abandonment and BLA or Parcel Map(s) must be approved by the appropriate governmental entities prior to and as a condition of the Close of Escrow. To the extent not already delivered, within ten (10) days after mutual execution of the DDA, the City will provide to Developer an original copy of one (or multiple, if required) executed and notarized Owner’s Affidavit and such other documents that may be reasonably required for Developer to pursue the Abandonment and BLA or Parcel Map(s) (“City Entitlement Materials”). Subject to the City’s timely delivery of the City Entitlement Materials and to the extent not already submitted, Developer will prepare and submit prior to the expiration of the Due Diligence Period applications for the Abandonment and BLA or Parcel Map(s) in a manner that the resulting property owned by Developer after Close of Escrow shall be reasonably consistent with Exhibit A. Developer will thereafter seek and secure all Final Governmental Approvals, as defined below, to permit the Abandonment and recordation of the BLA or Parcel Map(s). The City will reasonably cooperate in Developers efforts to obtain such Final Governmental Approvals. As used in this Agreement, the term “Final Governmental Approvals” shall mean the final act by any governmental agency or entity with jurisdiction over such matters, not subject to appeal, granting approval of the Abandonment and BLA or Parcel Map(s), as applicable. For the sake of clarity, Final Governmental Approvals of the Abandonment and BLA or Parcel Map(s) are a condition for the Close of Escrow.<sup>1</sup>

#### IV. The Developer

##### A. Nature of the Developer

The Developer is ULYSSES ACQUISITION LLC, a Delaware limited liability company.

---

<sup>1</sup> Note: This section is subject to revision if the existing buildings must be demolished to create such parcel. In which event, the BLA or Parcel Map(s) would likely be limited to just resizing APN 008-350-10. Developer is confirming what is required.

**B. Office of the Developer**

The principal office of the Developer is:

210 University Boulevard, Suite 460  
Denver, Colorado 80206  
Phone: 720-615-4453

**C. Full Disclosure**

The Developer will make full disclosure to the City of its principals, officers, major stockholders, major partners, joint venturers and key managerial employees. Any significant change in the principals, associates, partners, joint venturers, negotiators, development manager, consultants, professional and directly-involved managerial employees of the Developer is subject to the reasonable approval of the City. Subject to Section XVII, at no time shall the Developer interest be less than fifty one percent (51%). Notwithstanding the foregoing, the Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Site, provided that the Developer retains responsibility for day-to-day management and control of such entities and remains fully responsible to the City hereunder.

**V. City's Responsibilities**

**A. City Assistance and Cooperation**

The City shall cooperate fully in providing the Developer with appropriate information and assistance for development of the Site, which will include coordinating with the City and other agencies for the acquisition of property, processing of necessary entitlements and related approvals. Within five (5) days after the Effective Date, the City will deliver to Developer all documents, reports, studies, surveys, and other information in its reasonable possession or control relating to the Site, including, without limitation, any environmental site assessments or reports, all permits and development rights, and any other proprietary information relating to the Site.

**C. [Intentionally omitted.]**

**D. City and City Council Public Hearing**

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the City and City Council at a public hearing called for such purpose.

**E. Good Faith Cooperation To Reduce Costs**

In recognition that the Project is designed to provide affordable housing, the City will work in good faith with Developer to identify resources and strategies at the municipal level to reduce costs and expedite approvals, including, but not limited, to the waiver of sewer impact fees.

## **VI. No Predetermination of City Discretion**

The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City's discretion concerning consideration of any submittal by the Developer. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, or undertake the Proposed Development by Developer or any required approvals necessary by the laws, rules, and regulations governing the development of property.

## **VII. Hazardous Materials Assessment**

The City has not discharged, transported or stored any Hazardous Materials on the Site and, to City's knowledge, no such Hazardous Materials have been discharged, transported or stored on the Site. City has not received written notice of any violation, administrative complaint, judicial complaint, or other notice: (i) alleging that conditions on the Site are or have been in violation of any Environmental Law; (ii) informing City that the Site is subject to investigation or inquiry regarding the presence of Hazardous Materials on or about the Site; or (iii) alleging the potential violation of any Environmental Law. City has not received any written information from nearby property owners or occupants indicating they have concerns about existing environmental conditions that could affect the Site or suggesting that they might look to City or the owner of the Site for contribution to remediate any such condition. For purposes of this paragraph, "Hazardous Materials" means any substance, condition, object, living organism or any combination thereof which because it may or could pose a risk of injury or threat to health or the environment render it subject to Environmental Laws, including, without limitation: (a) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in or otherwise regulated by, any Environmental Law; and (b) any material, waste, or substance which is: (A) petroleum or refined petroleum products; (B) asbestos in any form; (C) polychlorinated biphenyls; (D) flammable explosives; (E) radioactive materials; (F) radon; or (G) lead. For purposes of this paragraph, "Environmental Laws" means any applicable federal, state or local laws, rules or regulations pertaining to health, industrial hygiene, environmental conditions or the environment, including air, soil, groundwater and surface water.

The Developer at its sole cost and expense may conduct or cause to be conducted environmental assessments, audits and/or testing of the Site. The Developer shall have the right to terminate this Agreement, at any time, and the DDA during the Diligence Period, if the Developer is not reasonably satisfied with the findings and the recommendations made in either any environmental audit conducted by or for the Developer. However, both Parties acknowledge and agree that specific representations or warranties, agreements, obligations, liabilities or responsibilities pertaining to the condition of the Site and/or the Proposed Development will be the subject of negotiations between the Parties in connection with the negotiations of any DDA entered into by the Parties.

## **VIII. Costs and Expenses**

Except as provided herein, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement.

## **IX. Non-Discrimination**

Developer shall not discriminate against nor segregate any person, or group of persons on account of sex, race, color, marital status, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

## **X. Real Estate Commission**

Each party represents that it has not engaged any broker, agent or finder in connection with this transaction and each party agrees to hold the other party harmless from any claim by any broker, agent or finder retained by or claimed through such party.

## **XI. Limitations of this Agreement**

By its execution of this Agreement, the City is not committing itself to or agreeing to undertake: (1) disposition of land to the Developer; or (2) any other acts or activities requiring the subsequent independent exercise of discretion by the City or any City or department thereof.

This Agreement does not constitute a disposition of property or exercise of control over property by the City. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof reserving final discretion and approval by the City as to any Disposition and Development Agreement and all proceedings and decisions in connections therewith.

## **XII. Governing Law**

This Agreement shall be constructed in accordance with the laws of the State of Nevada.

## **XIII. Attorney's Fees**

In the event any action is taken by either party to this Agreement to enforce this Agreement, each party shall bear its own attorneys' fees and costs regardless of the outcome.

## **XIV. Implementation of Agreement**

The City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or

concept of the Proposed Development, or add to the costs incurred or to be incurred by the City as specified herein.

**XV. Time of Essence**

Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance of obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City's obligations to review, approval and/or performance hereunder; provided, however, that the City shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City's action on the particular item in question.

**XVI. Entire Agreement**

This Agreement contains the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

**XVII. Assignment**

Notwithstanding anything contained in this Agreement, Developer may assign and transfer this Agreement to any assignee or nominee that is an affiliate of Developer or related entity controlled by or under common control with Developer, without the City's consent, provided that such assignee or nominee shall assume all of Developer's obligations under this Agreement in writing by written assignment and assumption agreement, a copy of which shall be delivered to City at such time. Such assignment shall release the original named Developer entity hereunder. In all other cases, Developer shall have no right to assign and transfer this Agreement without the prior written consent of City, which may be withheld in City's sole and absolute discretion. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors, heirs, personal representatives and assigns.

*[Signature page to follow]*

*[Signature page to Exclusive Negotiating Agreement]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date set forth above.

**“CITY”**

**THE CITY OF RENO**, a Nevada municipal corporation

By: \_\_\_\_\_  
Hillary Schieve, Mayor

**ATTEST:**

\_\_\_\_\_  
Ashley Turney, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney’s Office

**“DEVELOPER”**

**ULYSSES ACQUISITION LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Connor Larr  
Its: Vice President

**Notice/Principal Office**

ULYSSES ACQUISITION LLC  
c/o Ulysses Development Group  
210 University Blvd., Suite 460  
Denver, CO 80206  
Attn: Connor Larr  
[Connor.larr@ulyssesdevelopment.com](mailto:Connor.larr@ulyssesdevelopment.com)  
303.615.1010

with a copy to:  
McDonald Carano  
100 W. Liberty St. Floor 10  
Reno, NV 89501  
Attn: Eric Duhon  
[eduhon@mcdonaldcarano.com](mailto:eduhon@mcdonaldcarano.com)

**EXHIBIT A:**  
The Site