

WILLIAM N. PENNINGTON FOUNDATION

CONDITIONAL PLEDGE AGREEMENT

PLEASE READ CAREFULLY

The **William N. Pennington Foundation** ("Grantor") agrees to make the following conditional pledge and the **City of Reno** ("Grantee") agrees to accept such conditional pledge, in accordance with the term and subject to the conditions set forth herein:

DATE PLEDGE AUTHORIZED: June 3, 2019

AMOUNT OF THE CONDITIONAL PLEDGE: \$9,000,000 (Nine Million Dollars)

PAYMENT SCHEDULE: Two payments of \$4,500,000 (Four Million Five Hundred Dollars). Unless otherwise agreed to by Grantor, no pledge payment shall be made to Grantee prior to year 2021. Grantor shall fund \$4,500,000 at start of construction and \$4,500,000 the subsequent year.

SPECIFIC PURPOSES OF THE CONDITIONAL PLEDGE:

The pledge amount shall be restricted for the exclusive use of Grantee per the following description and grant request submitted. Funds shall be restricted for the exclusive use of constructing the Moana Springs Community Aquatics and Fitness Center (the "Purpose").

CITY COUNCIL APPROVAL: Parties acknowledge that a formal majority vote by the Reno City Council will be required to accept and execute the commitments by the Grantee contained herein and that such a vote is tentatively set for August 14, 2019.

GENERAL CONDITIONS OF THE CONDITIONAL PLEDGE

1. **PURPOSE:** Grantee agrees to use the funds only for the Purpose described in this Conditional Pledge Agreement and grant request submitted, and to so designate the funds in Grantee's records. Grantee further agrees to use the funds only for public purposes as defined from time to time by Internal Revenue Code and equivalent provisions of applicable state law. (For all purposes of this Conditional Pledge Agreement, any reference to the Internal Revenue Code or to any other statute shall be deemed to refer also to any successor statute and to the applicable regulations under such statute or successor statute.) Any change in the Purpose and/or the organizational leadership of Grantee must be reported to Grantor within ten (10) days of said change. If this pledge is restricted to a specific public project, Grantee affirms that the public

project's current budget, as previously explained and/or submitted to Grantor, accurately reflects the Grantee's present intentions to expend at least the amount of the pledge on said public project.

2. CONDITIONS: The pledge amount (whether paid as a one-time amount or as multiple payments) is specifically conditioned upon and subject to Grantee satisfying the following conditions:

(A) On or before June 30, 2021 Grantee shall raise \$9,716,410 or more in actual funds or signed "bankable" commitments for the Purpose and submit proof to Grantor of said funds ("Grantee's Fund-Raising Obligation"). Grantee's Fund-Raising Obligation timeline shall be: Grantee shall raise \$4,800,000 of Grantee's Fund-Raising Obligation by June 30, 2020; Grantee shall raise an additional \$2,400,000 of the Grantee's Fund-Raising Obligation by December 30, 2020; Grantee shall have raised 100% of Grantee's Fund-Raising Obligation by June 30, 2021. Grantee shall also raise any additional funds needed if final construction costs are above the original estimated amount per grant request, by June 30, 2021.

(1) Up to 10% of Grantee's Fund-Raising Obligation can be in the form of "in kind" donations made by third parties which directly relate to or otherwise benefit the Purpose. Said in kind donations must be evidenced by a written statement, together with supporting documents satisfactory to Grantor, from the third party donor which provides, in detail, the services performed for the Purpose, the amount the third party donor would normally have charged for the services (the "Standard Fee") and the amount actually charged for the services (the "Actual Fee"). The difference between the Standard Fee and Actual Fee shall be the amount of credit Grantee will be entitled to receive toward Grantee's Fund-Raising Obligation.

(B) Should Grantee fail to satisfy the conditions set forth in Section 2(A), Grantor may, in its sole discretion, terminate this Conditional Pledge Agreement upon written notice to Grantee and without any further obligation hereunder. GRANTEE HEREBY ACKNOWLEDGES AND AGREES THAT GRANTOR'S OBLIGATION TO PAY THE PLEDGE AMOUNT IS SPECIFICALLY CONDITIONED UPON GRANTEE MEETING THE GRANTEE'S FUND-RAISING OBLIGATION ON OR BEFORE THE DATE INDICATED HEREIN.

(C) Grantee shall manage and operate the newly constructed facility for a minimum of 25 (Twenty-Five) years. Grantee shall also fund all costs associated with maintenance and operations for a minimum of 25 (Twenty-Five) years, and the annual Capital Improvement Fund, per grant request.

(D) Prior to the payment of any pledge amount to Grantee, the parties shall enter into a grant agreement substantially similar to the sample set forth in Exhibit A of this Conditional Pledge Agreement.

3. **RESTRICTIONS:** No funds awarded through this Conditional Pledge Agreement are to be shared with or used to pay fees or wages for the services of fundraising or consulting firms. Further, Grantee will not intervene in any election of support or oppose any political party or engage in any attempts to influence legislation (lobbying) not permitted by the Internal Revenue Code or more specifically (if applicable), Internal Revenue Code 501(h) and 4911. Grantee shall not use any of the funds received from Grantor to (i) carry on propaganda, or otherwise attempt to influence legislation within the meaning of Internal Revenue Code 4945(d)(1); (ii) influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Internal Revenue Code 4945(d)(2); or undertake any activity for any public purpose.

4. **GRANTEE STATUS:** Grantee shall immediately give written notice to Grantor if, prior to receipt of all or any portion of the pledge, or before all or any portion of the funds are expended, Grantee ceases to be an organization as set forth in Internal Revenue Service Code Section 170(c)(1).

5. **ADDITIONAL SUPPORT:** By making this conditional pledge, Grantor assumes no obligation to provide other or additional support for Grantee. This conditional pledge is not to be construed as establishing a precedent for further support of Grantee.

6. **REVERSION OF PLEDGE AMOUNT:** All or any portion of the funds paid pursuant to this Conditional Pledge Agreement shall be returned to Grantor in the event such portion of the pledge is not expended or committed for the Purpose. By written instrument only, Grantor may, upon written request from Grantee, authorize a modification in the disbursement of the funds.

7. **PRESS RELEASES:** Under no circumstances shall Grantee be permitted to issue a press release or similar public announcement regarding the conditional pledge without the prior written approval of the Grantor's directors.

8. **NOTICES:** All notices required herein shall be made by certified mail, addressed to:

Grantor:

WILLIAM N. PENNINGTON FOUNDATION
P.O. Box 7290
Reno, Nevada 89510

Grantee:

CITY OF RENO
1 E. First Street
Reno, Nevada 89501

9. **GOVERNING LAW AND VENUE:** This Conditional Pledge Agreement shall be governed by and construed under the laws of the State of Nevada. Venue for any legal

proceedings brought pursuant to this Conditional Pledge Agreement shall be with the Second Judicial District Court in Washoe County, Nevada.

Executed by or on behalf of Grantor and Grantee as follows:

GRANTOR:

WILLIAM N. PENNINGTON FOUNDATION

By: 
Richard P. Banis, Director

By: 
Fred V. Scarpello, Director

GRANTEE:

CITY OF RENO

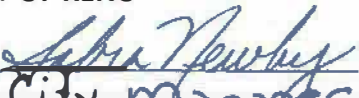
By: 
Its: City Manager

EXHIBIT A

CONSTRUCTION GRANT AGREEMENT

By and between

THE WILLIAM N. PENNINGTON FOUNDATION

and

CONSTRUCTION GRANT AGREEMENT

THIS CONSTRUCTION GRANT AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20__ by and between _____ ("Grantee") and the **WILLIAM N. PENNINGTON FOUNDATION** ("Foundation").

RECITALS

WHEREAS, Grantee has submitted a grant application package the terms and conditions of which are incorporated herein by reference ("Grant Request") to Foundation for a grant to be used to build the _____ ("Project") located at _____ which site location is shown on the preliminary site plan attached hereto and incorporated by reference as Exhibit "A";

WHEREAS, Foundation has approved a grant to Grantee in the Grant Amount to assist in the construction of the Project, as described in the Grant Request; and

WHEREAS, Foundation, in reliance upon the representations and warranties made by Grantee in this Agreement, is willing to fund the Grant Request in accordance with all terms and conditions in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and the representations and warranties of Grantee contained in this Agreement, Foundation and Grantee do hereby agree as follows:

SECTION 1

GRANT: TERMS AND CONDITIONS

1.1 Grant. Foundation hereby agrees to fund a grant in an amount not to exceed \$_____ (the "Grant Amount") for the sole purpose of constructing the Project described in the Grant Request and in reliance on and subject to, as the case may be, (a) the terms and conditions set forth in this Agreement and (b) Grantee's representations and warranties set forth in this Agreement.

1.2 Payment Terms. The Grant Amount shall be paid to Grantee under the following schedule with Grantee Representative (see section 2.1 of this Agreement) certifying attainment of the requirements referenced:

(A) 50%, or \$_____ upon the start of construction of the Project.

(B) 25%, or \$_____ upon the Project reaching 50% complete as certified by the Project Architect and approved by the Foundation Representative.

(C) 25%, or \$_____ upon the receipt of a Certificate of Occupancy for the Project.

1.3 Conditions. The Grant and any payments remaining are subject to the following conditions:

- (A) Receipt of approval from the _____ to be a recognized _____ subject to all of the requirements of such.
- (B) Proof of actual funds on deposit or signed "bankable" commitments in an amount sufficient to cover the estimated costs of constructing, furnishing and equipping the Project as determined by the Architectural Firm to be hired by the Grantee. In addition, Grantee must provide proof of actual funds on deposit or signed "bankable" commitments in an amount to cover the cost of any possible modifications or change orders that may arise during the Construction Phase of the Project.

Failure by Grantee to satisfy these Conditions to the satisfaction of Foundation by _____ will terminate this agreement and make it null and void.

SECTION 2

REPRESENTATIVES

- 2.1 Grantee Representative. Grantee shall appoint a "Grantee Representative" who shall be vested with the authority to act on and in behalf of Grantee. Grantee shall submit in writing to Foundation a certificate stating the identity and certifying the signature of Grantee Representative. Grantee Representative shall be no more than one reporting level from the Chief Executive Officer of Grantee's organization. All acts and agreements approved by, entered into, or executed by Grantee Representative shall be binding on Grantee.
- 2.2 Foundation Representative. Foundation appoints Richard Stoltz as "Foundation Representative". Foundation Representative shall be responsible solely to Foundation and shall owe no duty to Grantee in the performance of his or her duties as Foundation Representative. Foundation will send Grantee a written notification certifying Foundation Representative's signature. Foundation Representative responsibilities shall include, without limitation, the following:
 - (A) Project plan review to insure that Project's plans and specifications accurately reflect the Project as it was described in the Grant Request.
 - (B) Visits to the Project during any phase of construction on behalf of Foundation in order to satisfy Foundation that Project construction is proceeding in accordance with the plans and specifications thereof.

2.3 Access to Project Information. Grantee shall provide Foundation Representative with full and complete access to the following:

- (A) The Project construction site and the Project during construction and at all times thereafter.
- (B) All books and records related to the Project in any manner, including, but not limited to, invoices, bills of material, lien waivers, payment records, architectural reports, surveys, or any other information which may reasonably relate to the progress of the Project or any problems which may materialize.
- (C) Any of Grantee's staff or employees, any employees or agents of the architect or any employees or agents of any construction contractor or sub-contractor for purposes of discussing any aspect of the Project, construction or maintenance thereof.

SECTION 3

DESIGN AND CONSTRUCTION

3.1 General. Grantee, its selected architectural firm and its selected general contractor ("Project Team") shall create and submit to Foundation a "Gantt chart" ("Project Schedule") setting forth all dates related to the Project, including each phase of the Project's construction as fully set forth in Sections 3.2 and 3.3.

3.2 Project Phases. Grantee shall adhere to the following project phases.

- (A) Planning Phase. Prior to engaging in or continuing with any further design, Grantee shall begin and/or complete the process of selecting an architectural firm and general contractor. The architectural firm shall prepare the plans and specifications. The general contractor shall begin to seek and acquire all permits, licenses and regulatory approvals necessary to commence the construction of the improvements. The general contractor shall work with the architect throughout all design phases to provide information pertaining to means and methods of construction, general construction, and scheduling that will be reflected in the plans and specifications to acquire accurate marketing pricing (collectively called the "Planning Phase").
- (B) Design Phase. Upon completion of the Planning Phase, the Project Team shall prepare a project design using its best efforts to complete any necessary or required construction documents in a timely manner (collectively called the "Design Phase").

- (C) Construction Phase. Upon completion of the Design Phase, Grantee shall establish the general contractor's contract amount ("Construction Costs"). Grantee shall use its best efforts to substantially complete all aspects of work to complete the Project in a timely manner (collectively called the "Construction Phase").
- 3.3 Beginning Planning. Grantee shall commence and diligently pursue construction of the Project, beginning with the Planning Phase, by _____ provided, however, if Grantee has not commenced the Planning Phase by _____ Foundation may, at its sole option, elect to terminate this Agreement by giving written notice to Grantee.
- 3.4 Architectural Firm. Grantee shall furnish Foundation Representative with the credentials of the proposed architectural firm. Grantee shall have made reasonable effort, prior to furnishing credentials to Foundation Representative, to ensure that the architect is qualified for the project and is in good standing in its professional arena. It is Foundation's desire that such firm shall be competent to design and supervise the Project within the Project's budget parameters and the stated scope of work in the Grant Request. If Foundation Representative has no reasonable objection to the engagement of the architectural firm, Grantee may proceed to retain such firm. A copy of the contract between Grantee and the architectural firm shall be furnished to Foundation as well as any subsequent amendments or modifications of such contract. Grantee shall notify Foundation of the name of the architect that has been designated as the supervising architect. Such supervising architect shall certify the percentage completion of the project as required in the Payment Terms section of this agreement.
- (A) The architectural firm shall promptly prepare a "timeline" of events which shall include the following: when the plans and specifications will be prepared; when the construction bids will be let; when the construction will commence; and an estimated completion date. Said Timeline shall be incorporated into the Project Schedule.
- (B) The architect shall require a topographic survey with boundaries and legal description of the site, any soils studies which may be necessary or appropriate and shall assist Grantee in obtaining an appropriate Phase I environmental audit from a firm regularly engaged in performing such studies and in taking such corrective measures as may be required.
- (C) When the Schematic Design has been completed it will be submitted along with a preliminary cost estimate, to Foundation Representative who shall review them for compliance with the Grant Request and the Grant Amount.
- (D) The final plans and specifications shall be prepared after the Schematic Design Presentation Package has been approved. A final budget will also be prepared showing an architectural breakdown of Construction Costs. The final budget shall

identify and explain any costs not included in the Grant Request. All plans, specifications, and other documents described in this Section 3.4 shall be submitted to Foundation Representative for his review prior to submitting the Project for bids.

3.5 Cost Projection. Grantee and the architect shall prepare and furnish to Foundation Representative, simultaneously with the final plans and specifications, a detailed cost projection for:

- (A) All labor, materials and services necessary for construction of the building in accordance with the plans and specifications as stated in the Grant Request.
- (B) All Furnishings and Equipment, including the installation charges for such items as included in the Grant Request. The list of Furnishings and Equipment and related installation charges shall be set forth in Exhibit "B" and incorporated herein by reference.

3.6 Bid Process. When the plans and specifications have been reviewed and approved by Grantee, Grantee shall invite bids from the general contractor to construct, furnish and equip the Project, as the case may be. Grantee shall select the "best bid" for both the construction and for the various items of Furnishings and Equipment. The criteria for selection of the "best bid" shall include such factors as cost, quality of workmanship, reputation and ability to complete the Project on or before project completion. Grantee shall not be required to obtain competitive bids on furnishings or equipment where such bid would be in the aggregate less than Ten Thousand Dollars (\$10,000). Grantee shall not enter into a pay for services contract with an active board member of the organization benefiting from this grant.

3.7 Construction Contract. When a general contractor has been selected, Grantee shall furnish a fully executed copy of the construction agreement between such general contractor and Grantee to Foundation and any modifications or amendments thereof shall also be furnished to Foundation immediately.

3.8 Payment and Performance Bond. The general contractor shall be required to post a payment and performance bond in an amount at least equal to the Construction Costs as security to Grantee for the full and faithful performance of all obligations of the general contractor. This bond premium may be included in the Construction Costs. Grantee shall furnish a copy of the payment and performance bond to Foundation.

3.9 Insurance Coverage. Prior to commencement of actual construction, Grantee shall obtain, at a minimum, the following types of insurance coverage:

- (A) Workmen's compensation.
- (B) Fire and extended coverage (in builder's risk completed value form).

- (C) Builder's risk insurance for the full insurance of not less than the Grant Amount, naming both Grantee and Foundation as additional insureds.
- (D) Comprehensive general liability insurance of not less than the Grant Amount, naming both Grantee and Foundation as additional insureds.
- (E) Any other insurance coverage(s) as may be deemed reasonable and necessary.

These coverages are to be considered as Construction Costs under the Grant Request and evidence of such coverage shall be furnished to Foundation within ten (10) days of commencement of construction on the Project.

3.10 Project Completion. All phases of the Project, including procurement and installation of all furnishings and equipment shall be completed by _____ ("Project Completion").

3.11 Completion Report. Within thirty (30) days after completion of the Project and prior to final payment hereunder, Grantee shall deliver to Foundation a "Completion Report" consisting of the following:

- (A) A certificate of occupancy (if required by local governing agencies).
- (B) A document signed by Grantee Representative, the project architect and the contractor certifying that all work called for by the contract for construction has been completed in accordance with the plans and specifications and accepted.
- (C) A letter from Grantee co-signed by the project architect and general contractor certifying that Grantee received a complete set of "as built" drawings and its supporting documents for the Project.

SECTION 4

PUBLICITY

4.1 Donor Recognition. The Foundation reserves the right to name the building and such reservation is to be determined at the 75% completion level referred to in Section 1.2(B).

4.2 Naming Opportunities. Foundation may entertain other naming opportunities in the Project as outlined below:

- (A) Grantee may provide a single prominent display in the Project on which to honor as many donors as it wishes in recognition of their contributions.
- (B) Grantee may request up to _____ interior or exterior locations in the Project for other naming opportunities. These naming opportunities should be

limited to donors who make significant contributions to the organization. The locations and the nature and text of each recognition fixture shall avoid detracting from the location and fixture that recognizes Foundation's contribution.

- (C) Grantee shall notify Foundation as soon as a naming opportunity has been extended and accepted by a contributor.

4.3 Press Releases. Under no circumstances shall Grantee be permitted to issue a press release or similar public announcement regarding the Grant without the prior written approval of the Grantor's Trustees.

SECTION 5

REPRESENTATIONS AND WARRANTIES

The following representations and warranties are true and correct as of the signing of the Agreement and each request for payment by Grantee shall constitute an affirmation that the following representations and warranties remain true and correct as of the date of such request and, unless Foundation is notified to the contrary prior the disbursement of the requested payment, will be true and correct on the date of such payment. Grantee hereby represents and warrants that:

- 5.1 Exempt Status. Grantee is organized and has operated exclusively for one (1) or more of the purposes set forth in Section 170(c)(2)(B) of the Internal Revenue Code of 1986 as amended from time to time ("Code"), and that Grantee is an organization described in Section 509(a)(1) of the Code. If at any time Grantee's status changes, Grantee shall immediately notify Foundation of any change or changes thereof. Grantor hereby warrants and represents that the receipt of the Grant Amount will not cause a change in Grantee's public charity status, colloquially known as "tipping," and will not result in the Grant Amount becoming a taxable expenditure under Internal Revenue Code Section 4945.
- 5.2 Title or Long-Term Lease. Grantee has good and marketable title in fee simple or a long-term lease of at least forth (40) years to the real property upon which the project is to be constructed, subject only to reasonable rights-of-way, easements, conditions, covenants and restrictions which will not interfere with the construction and operation of the Project, and written proof thereof shall be furnished to Foundation in a form satisfactory to Foundation.
- 5.3 Authority. Grantee has taken all action necessary to authorize (a) the execution and delivery by Grantee of this Agreement and any related documents required in connection therewith to which Grantee is a party, (and (b) the consummation of the

transactions contemplated in this Agreement and any related documents required in connection therewith. A copy of Grantee's corporate resolution authorizing this Agreement and any related documents required in connection therewith is attached hereto and incorporated by reference as Exhibit "C".

- 5.4 Ability to Perform. The Project can be constructed, furnished and equipped on the site in full compliance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which hereafter may be in force ("Requirements"), which shall impose any duty upon Grantee with respect to the improvement, use, occupation or alteration of the Project by Grantee, including, but not limited to, the Americans with Disabilities Act ("ADA"). The Project shall have the following features:
- (A) The Project shall be free standing and shall not share a common wall with any building(s);
 - (B) The Project shall be approximately _____ gross square feet in size computed in accordance with common or accepted methods.
- 5.5 Construction. All construction related to the Project shall be performed within the perimeter of the site as shown on Exhibit "A" and shall be in accordance with the plans and specifications approved by Grantee and its architect and as furnished to Foundation.
- 5.6 Compliance. The anticipated use of the Project complies with all applicable zoning ordinances, building codes, regulations and ADA requirements affecting the premises, and all requirements for such use have been or will be satisfied before construction of the Project commences.
- 5.7 Payment of Obligations. Grantee shall pay all obligations incurred by Grantee for the cost of designing, constructing, and furnishing as required by Section 6.7 of this Agreement.
- 5.8 No Litigation. Grantee has no knowledge, actual or constructive, of any claim, fact, circumstance or any other event which may or could give rise to any action, suit, claim, damages or other liability or proceeding against Grantee or any of its real property.
- 5.9 Licenses/Permits. Grantee possesses or will obtain prior to commencement of construction all franchises, certificates, licenses, permits and other authorizations from governmental or regulatory authorities that are necessary for the construction, ownership, maintenance, or operation of the Project and Grantee is not in violation of these licenses, permits or agreements or any requirements in any respect.
- 5.10 No Untrue Statements. The representations, warranties and statements made by Grantee to Foundation do not contain any untrue statement, and, when taken together,

do not omit to state any material fact necessary to make such representations, warranties and statements, in light of the circumstances in which they are made, and are not misleading.

- 5.11 No Modification. No specific warranty or representation contained herein shall be deemed to modify or limit any general warranty or representation.
- 5.12 Reliance on Warranties. Grantee acknowledges that all of the representations, warranties and covenants made by Grantee in this Agreement were material inducement to Foundation to approve the Grant Request and enter into this Agreement and Grantee further acknowledges that all of the representations, warranties and covenants contained herein are made with the knowledge and expectation that Foundation is placing complete reliance thereon.

SECTION 6

PROGRESS PAYMENTS, PROCEDURE

The Grant Amount shall be distributed to Grantee in accordance to the payment terms specified in Section 1.2 of this agreement and subject to the following provisions:

- 6.1 Bank Account. Unless disapproved by Foundation in writing, Grantee will open and maintain at Grantee's expense, an account ("Account") at a qualified financial institution and/or federally insured banking institution selected by Grantee. The Account shall be used exclusively for the payment of the costs of designing, constructing, furnishing and equipping the Project.
- 6.2 Account Requirements. The Account shall be set-up in such a manner that Grantee shall receive monthly statements and a return of all checks charged to the Account. Funds in the Account shall be subject to withdrawal only by checks signed by at least two (2) persons who shall be either two (2) authorized officers of Grantee, or one (1) or more authorized officers of Grantee and Grantee Representative. Grantee shall notify Foundation of any change of any person authorized to sign checks drawn on the Account. The Account may be an interest bearing account and such interest shall be accounted for and considered as a part of the Grant Amount.
- 6.3 Retainage. All contracts for the construction or furnishing of the Project, including any installation thereof, shall provide that at least five percent (5%) of all bids rendered for services rendered or materials furnished shall not be payable until all work or materials called for by any such contracts has been completed or furnished to the Project and accepted by the architect and Grantee.

- 6.4 Lien Waivers. Grantee shall obtain partial lien waivers from all persons performing labor or furnishing materials to the Project at the time of all payments therefor, and a general lien waiver prior to any final payment.
- 6.5 Change Orders. Any changes in the plans which Grantee may wish to make in the course of the Project's construction, in excess of 1% of the original estimated Project cost, shall be approved in writing in advance by the Project Architect and Grantee Representative and such approved change order shall be submitted to Foundation no later than ten (10) days from such approval along with proof of actual and committed "bankable funds" sufficient to cover the additional cost associated with the change.
- 6.6 Unused Funds. All or any portion of the Grant Amount shall be returned to Foundation in the event such portion of the Grant Amount is not expended or committed for the Project. By written instrument only, Foundation may, upon written request from Grantee, authorize a modification in the disbursement of the Grant Amount.

SECTION 7

DEFAULT IN PERFORMANCE

- 7.1 Events of Default. Each of the following shall be considered an "Event of Default" and shall entitle Foundation to the remedies provided for in Section 7.2, as well as any and all other remedies, whether at law or in equity, provided for or otherwise available to Foundation or as otherwise provided for in this Agreement:
- (A) Breach of Agreement. If Grantee fails or refuses to comply with any of the covenants, conditions, agreements or obligations contained in this Agreement or any other instrument or document given in connection with this grant.
 - (B) Breach of Warranty. If Grantee breaches any representation or warranty contained in this Agreement or any other writing given in connection with the Grant Request.
 - (C) Breach of Construction Contract. If Grantee shall fail or refuse to comply with any term or condition of the construction contract.
 - (D) Not in Accordance with Plans. If the description, area, character or condition of the Project is different from the information provided to Foundation or the construction of the Project is not in compliance with the plans and specifications of the Project.

7.2 Rights and Remedies Upon Default.

- (A) If any Event of Default occurs, Foundation may, at its option and in addition to any and all other rights or remedies provided Foundation in this Agreement or at law or equity, terminate this Agreement if such Event of Default is not cured within fifteen (15) days following notice by Foundation to Grantee of such default. During such fifteen (15) day period, Foundation will suspend any payment(s) to Grantee, pending Grantee's cure, provided that, if Grantee fails to cure, Foundation's obligation under this Agreement shall cease pursuant to Section 7.3. If the Event of Default is not curable within fifteen (15) days, or at all, no notice of default is required and Foundation may terminate this Agreement by notice as provided in Section 10.4.
- (B) Foundation shall immediately terminate this Agreement and any current or future funding obligations to Grantee upon Grantee's being organized or operated for a purpose other than those described in Section 170(c)(2)(B) of the Code or upon Grantee not being an organization described in Section 509(a)(1) of the Code.

7.3 Effect of Termination. In the event of termination of this Agreement, Foundation shall have the right to require the balance in the Account to be paid over to Foundation and to refrain from making any further advance or payments hereunder. Further, in the event of any such termination, any and all of Foundation's obligations hereunder shall cease and neither Grantee nor any other person shall have any rights whatsoever against Foundation.

7.4 Effective Date of Termination. Termination pursuant to this Section 7 shall be effective upon the expiration of the fifteen (15) day cure period if Grantee has not cured the Event of Default. If the Event of Default is not cured or curable within fifteen (15) days, termination shall be effective when notice is given.

7.5 Foundation's Right of Termination. Notwithstanding any other provision of this Agreement, including Section 10.3, Foundation shall have the absolute right, if there is any Event of Default not timely cured or a Use Restriction breach as provided in Section 8.1, to recover from Grantee, its successor or assigns, all sums paid by Foundation hereunder, together with interest and reasonable attorneys' fees.

7.6 Use of Foundation and William N. Pennington Names. Notwithstanding any other provision of this Agreement, Foundation may, in its sole absolute discretion, declare that its name and the name of William N. Pennington may no longer be used in any way by, or in connection with, the Project or Grantee. In such event, all evidence at the Project, or elsewhere, which refers to Foundation or William N. Pennington shall be returned forthwith to Foundation and any future reference to Foundation and William

N. Pennington by, or in connection with, the Project or Grantee shall be unauthorized and illegal.

SECTION 8

USE RESTRICTION

- 8.1 Use Restriction. It is expressly agreed by Grantee, its successors or assigns, that the Project shall be used solely for the philanthropic or charitable purposes generally set forth in the Grant Request ("Use Restriction"). Any use of the Project which is inconsistent with the Use Restriction shall be considered a willful and material breach of this Agreement.
- 8.2 No Further Encumbrance. Grantee shall not record or impose, and shall not permit the recordation or imposition of, any monetary lien or other monetary encumbrance not of record as of the date of this Agreement against the Project or all or any portion of the real property upon which the Project is to be constructed, including, without limitation, any mortgage or deed of trust, without the prior written consent of Foundation.
- 8.3 Binding. Grantee hereby agrees that the Use Restriction set forth in Section 8.1 and the restriction set forth in Section 8.2 shall run with the land and be binding upon Grantee, its successors and assigns and shall bind all persons with any right, title or interests in the Project or any part thereof, their heirs, successors and assigns, for a term of _____ years from Project Completion. No act or omissions upon the part by Foundation shall be a waiver of the operation or enforcement of this restriction or its rights in the event of Grantee's default.

SECTION 9

FURTHER COMMITMENTS BY GRANTEE

- 9.1 Further Commitments. Grantee does further agree as follows:
- (A) To maintain records of receipts and expenditures and to make Grantee's books and records available to Foundation at reasonable times.
 - (B) Grantee shall not use the Grant Amount or any portion thereof to undertake any activity for any purpose other than those set forth in Section 1.1 of this Agreement and the Grant Request.

9.2 Project Reporting and Evaluation.

- (A) Between the time of award notification and building dedication, Grantee shall provide Foundation annually with:
 - (1) Full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of this grant.
 - (2) Current copies of Grantee's annual certified financial audit. Grantee's annual certified audit shall include a written statement, on Grantee's auditor's letterhead, that is specific to the review of the account established for the Restricted Fund and the Account for the payment of the cost of designing, constructing and furnishing the project as required in Section 6.1.
 - (3) A three (3) to five (5) page written report describing the plans and achievements of Grantee toward meeting the needs relating to the program areas to be accommodated in the Project.
- (B) After completion of the Project, Foundation may, at its option, send representatives to make physical site visits to the Project from time to time. Grantee shall submit a written report up to five (5) pages annually within ninety (90) days of Grantee's fiscal year end that shall:
 - (1) Describe the utilization of the building over the past fiscal year,
 - (2) show the contribution the Project has made to the achievement of Grantee's purpose as described in the Grant Request,
 - (3) enclose a current copy of Grantee's annual certified audited Financial Statements.

SECTION 10

GENERAL TERMS AND CONDITIONS

- 10.1 No Agency. Grantee understands and agrees that neither Foundation nor Foundation Representative is the agent or representative of Grantee for any purpose whatsoever.
- 10.2 No Liability. This Agreement shall not be construed to make Foundation liable to materialmen, contractors, subcontractors, craftsmen, laborers, engineers, architects, or others for goods or services delivered or provided by such persons to the construction site or the Project.

- 10.3 No Third-Party Beneficiaries. Notwithstanding any other provision of this Agreement to the contrary, the terms, covenants and conditions contained in this Agreement are for the sole benefit of the parties hereto, and no reliance or benefit as intended to be granted to any person or company not a party to this Agreement.
- 10.4 Notices. All notices shall be in writing and shall be sent to the respective addresses of the parties as follows:

Grantee:

Foundation: William N. Pennington Foundation
P.O. Box 7290
Reno, Nevada 89510-7290

A notice may be hand delivered or mailed, postage prepaid, first class, registered or certified mail, return receipt requested. Any notice sent by mail shall be deemed to have been received on the third business day following the date of mailing.

- 10.5 Applicable Law. This Agreement has been delivered and accepted in, and shall be a contract made under and shall be entered into and governed by the laws of the State of Nevada. Any action or proceeding against Grantee or Foundation arising out of or relating to this Agreement shall be instituted only in a federal or state court in Washoe County, Nevada having jurisdiction, and each party waives any objection which it may now or hereafter have to the paying of venue of any such suit, action or proceeding, and each party hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.
- 10.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 10.7 Section Headings. The section headings and title headings contained herein are for convenience only and do not define, limit, construe or amplify the contents of such sections.
- 10.8 Drafting. This Agreement shall not be construed either for or against Grantee or Foundation, but shall be interpreted in accordance with the general tenor of its language.

As of the date above first written, this Agreement has been executed in multiple original counterparts, each of which constitutes the original agreement, and an executed counterpart delivered to each signatory as of the day and year first above written.

WILLIAM N. PENNINGTON FOUNDATION:

GRANTEE:

By: _____, Co-Director
_____, Co-Director

By: _____
Its: _____

LIST OF EXHIBITS:

EXHIBIT "A" – Preliminary Site Plan

EXHIBIT "B" – List of Furnishings and Equipment

EXHIBIT "C" – Resolution of Grantee