

- B.8** Staff Report (For Possible Action): Approval of the Agreement for Economic Development and Purchase/Sale of Real Property between the City of Reno and Ulysses Development Group, LLC, regarding the sale and development of properties located at 315 and 355 Record Street, Assessor's Parcel Numbers (APNs) 007-313-27, 007-313-28, 007-313-30, 007-314-14, 008-350-10 [Portion], & Portion of Record Street to be abandoned [No Parcel Number], totaling approximately 2.4± acres, with terms allowing City-funded demolition of the facility to be reimbursed by Ulysses Development at escrow close, with future Council review of the final demolition contract.

## STAFF REPORT

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**Date:** January 22, 2025

**To:** Mayor and City Council

**Through:** Jackie Bryant, City Manager

**Subject:** Staff Report (For Possible Action): Approval of the Agreement for Economic Development and Purchase/Sale of Real Property between the City of Reno and Ulysses Development Group, LLC, regarding the sale and development of properties located at 315 and 355 Record Street, Assessor's Parcel Numbers (APNs) 007-313-27, 007-313-28, 007-313-30, 007-314-14, 008-350-10 [Portion], & Portion of Record Street to be abandoned [No Parcel Number], totaling approximately 2.4± acres, with terms allowing City-funded demolition of the facility to be reimbursed by Ulysses Development at escrow close, with future Council review of the final demolition contract.

**From:** Bryan McArdle, Revitalization Manager

**Department:** City Manager's Office

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### **Summary:**

Staff recommends that the Council approve the Agreement for Economic Development and Purchase/ Sale of Real Property with Ulysses Development Group, LLC, for the sale and development of the properties at 315 and 355 Record Street. The buyer, selected through a Request for Proposal (RFP) process, intends to develop 136 units of affordable housing on the site. The DDA includes terms allowing the City to proceed with the demolition of existing structures on the properties, with Ulysses Development agreeing to reimburse the City for all demolition costs upon the close of escrow. The costs to demolish this property will be covered by the general fund, utilizing proceeds from other property sales, and these funds will be reimbursed to the general fund at close of escrow.

### **Alignment with Strategic Plan:**

Economic and Community Development

### **Previous Council Action:**

- September 25, 2024 – Council adopted a resolution authorizing the sale of the properties to Ulysses Development Group for the purpose of affordable housing development.
- August 14, 2024 – Council reviewed development proposals from the RFP process and

directed staff to enter into an exclusive negotiation agreement with Ulysses Development Group for a 136-unit affordable housing project. The proposed offer involved a 15-year seller-financed note valued at \$3,400,000.

- April 4, 2023 – Council instructed staff to obtain appraisals and issue an RFP after reviewing a Letter of Interest from Bash Capital, LLC.

### **Background:**

In late 2003, Council identified Record Street for the co-location and expansion of homeless services. The Men's Drop-in Center, Reno-Sparks Gospel Mission, and St. Vincent's Dining Facility were relocated, and a new women's shelter, family shelter, triage center, and community resource center were built circa 2008. The city-owned buildings are generally known as the CAC, which consists of two buildings, one being 47,992 square feet in size and the other 21,937 square feet. The general area is over 2.2 acres and will require an additional portion of Record Street to be abandoned. The construction costs for both buildings exceeded \$20,000,000 with approximately \$3,000,000 in Community Development Block Grant (CDBG) funds used to cover the construction costs and bond debt. As the Nevada Cares Campus was completed in the Spring of 2021, and operations ceased at the City-owned properties located at Record Street, the City no longer has a public need for the facilities and chose to entertain proposals to develop the property. In September 2024, the City Council passed a resolution to sell the property to Ulysses Development Group for a proposed 136 affordable housing project.

### **Discussion:**

The DDA sets forth the terms of sale and development of the properties at 315 and 355 Record Street to Ulysses Development Group. Under this agreement, the City will initiate demolition of the existing structures, with costs covered by the general fund from proceeds of other property sales. Ulysses Development Group has agreed to reimburse the City for all demolition-related costs at the close of sale.

Ulysses Development Group has proposed a purchase price of \$3,400,000, financed through a 15-year seller note. This project aligns with the City's economic and community development goals and will contribute to Reno's affordable housing inventory.

### **Financial Implications:**

The 15-year seller note places the City in a subordinate position, meaning repayment is subject to the project's financial stability. This proposed development is a CDBG eligible project and does not require repayment or reallocation of CDBG funding. However, there will be costs related to the oversight of the affordable housing project by the Housing and Neighborhood Development Department. Demolition costs will initially be funded by the general fund, using proceeds from other property sales, and will be reimbursed to the general fund at the close of escrow.

**Legal Implications:**

Legal review completed for compliance with City procedures and Nevada law.

**Recommendation:**

Staff recommends that Council approve the Agreement for Economic Development and Purchase/ Sale of Real Property with Ulysses Development Group, LLC.

**Proposed Motion:**

I move to approve the Agreement for Economic Development and Purchase/ Sale of Real Property with Ulysses Development Group, LLC, as recommended.

**Attachments:**

315/355 Record Street - Agreement for Economic Development and Purchase/ Sale of Real Property with Ulysses Development Group

V5 (1/14/2024)

**AGREEMENT FOR ECONOMIC DEVELOPMENT AND PURCHASE/ SALE OF REAL  
PROPERTY**

(315-335 Record Street)

Between

City of Reno, as Seller

and

Ulysses Acquisition LLC, a Delaware limited liability company, as Buyer

Dated as of \_\_\_\_\_ (the “Effective Date”)

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**Art. 1 PARTIES; TERMS AND DEFINITIONS.**

***§1.01 Schedule of Information***

THIS AGREEMENT FOR ECONOMIC DEVELOPMENT AND PURCHASE/SALE OF REAL PROPERTY (the “Agreement”) is by and between the Buyer and Seller identified below (the “Parties”) and involves the following real property identified below (the “Property”):

<i>a.</i>	<i>Buyer</i>	Ulysses Acquisition LLC, a Delaware limited liability company 210 University Boulevard, Suite 460 Denver, CO 80206  Authorized Representative:
<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>	Royal Abstract Michael J. Roberts, Esq.

		Chief Operating Officer & General Counsel 125 Park Avenue, Suite 1610 New York, NY 10017 (212) 376-0910 (office direct) (212) 376-0900 (office main) (917) 502-9074 (mobile) <a href="mailto:mroberts@royalabstract.com">mroberts@royalabstract.com</a>
d.	<i>Real Estate Agents</i>	None.
e.	<i>Property</i>	Legally described on Exhibit A.
f.	<i>Street Address/ APN</i>	315-335 Record Street Reno, Nevada APNs 007-313-27, 007-313-28, 007-313-30, 007-314-14 and a portion of 008-350-10
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>	\$3,375,000.00, \$600,000 of which to be paid at Closing and Seller to carry a note for the remainder
i.	<i>Earnest money deposit amount</i>	\$100,000.00

## Art. 2            RECITALS

A.     The Property, which is legally described on Exhibit A, is comprised of the former Community Assistance Center.

B.     Buyer's proposed development concept includes the development on the Property or a portion thereof, of an affordable housing project (the "Project") consisting of approximately 136 units, but in no event fewer 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 (the "RFP"), subject to modifications resulting from site constraints, and building permit review and design approvals required by the City, as applicable.

C.     Under NRS 268.063, the City may sell the Property without offering it to the public for the purpose of redevelopment or "economic development," as defined in NRS 268.063(4), to retain or

expand existing commercial enterprises that will create and retain opportunities for employment for residents of the City (“Economic Development Project”). As required by NRS 268.063(2), appraisals have been obtained and the City Council of the City of Reno (“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 and the covenants set forth in this Agreement.

D. Buyer and Seller have entered into an Exclusive Negotiating Agreement dated October 23, 2024 (the “ENA”), which ENA contemplates that Buyer and Seller will negotiate and finalize this Agreement.

E. From and after the “Close of Escrow”, as defined in Section 4.11(c) below, the Property will be subject to the “NHD Covenant”, as defined in Section 3.01(c) below.

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. The Project shall include the development on the Property, or a portion thereof, of an affordable housing project consisting of approximately 136 units, but in no event fewer than 100 units, along with other amenities outlined in the RFP, subject to modifications resulting from site constraints, and building permit review and design approvals required by the City, as applicable.

b. With the permission of the City Manager of the City (“City Manager”), 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. At Close of Escrow, Buyer shall have demonstrated to the City that a Regulatory Agreement and Declaration of Restrictive Covenants or similarly titled document, recorded in favor of the Nevada Housing Division, that restricts the use of the Property for the activities described in this Section 3.01 for at least a period of fifteen (15) years from the date a certificate of occupancy is issued (the “NHD Covenant”) will be recorded against the Property.

d. At Close of Escrow, Seller shall provide the Deed to Buyer.

e. At least sixty (60) days before Close of Escrow, Buyer shall submit to Seller the proposed site plan and an updated pro forma for the Project.

f. Full Disclosure

Buyer will make full disclosure to the City of its principals, officers, the major partners, joint venturers and managerial employees of Buyer that are directly involved in the Project. Subject to Section 7.03, during the term of this Agreement, no change in control of 50% or more of the equity interests in the Buyer or the voting power in Buyer may be conducted without the reasonable approval of the City Manager, not to be unreasonably withheld, conditioned or delayed; provided that any such change of equity interests or voting power that results in such control or power vesting in an entity or person which is controlled by, controlling or under common control with Buyer will not require approval by the City Manager. Notwithstanding the foregoing, the Buyer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of owning, operating and developing the Property, provided that the Buyer or an affiliate of Buyer retains responsibility for day-to-day management and control of such entities and remains fully responsible to the City hereunder. For the sake of clarity, City will have no control or approval over the daily operations or general business activities of Buyer.

**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 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.

***§4.02 Grant of Easement.***

a. At Closing, Buyer will execute and record an easement, in a form of an easement agreement reasonably agreed upon by Seller and Buyer, granting Seller non-exclusive easements (a) for the utilities located on the Property at the Closing in their then current locations (collectively, the “Utility Easement”), and (b) for the purpose of preserving the structural integrity of, maintaining, and accessing the railroad trench wall in a location reasonably agreed upon by the Parties. The Utility Easement will be relocatable by Buyer in accordance with the terms of the easement agreement.



#### ***§4.03 Opening of Escrow; Earnest Money Deposit.***

a. Opening of Escrow. Escrow has been opened with Royal Abstract Title and Buyer has deposited Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) in such escrow (the “First Deposit”). Within five (5) business days after the Effective Date, Buyer shall deposit an additional Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) into escrow (the “Second Deposit” and collectively with the First Deposit, and the Extension Deposits (as defined in Section 4.11(b) below) and any interest earned on the First Deposit, Second Deposit, and the Extension Deposit, shall be referred to as the “Earnest Money Deposit”). The Earnest Money Deposit has been or shall be placed in an interest-bearing account acceptable to Buyer.

b. Earnest Money Deposit. The Earnest Money Deposit shall be treated as follows.

1. As set forth in Section 4.04(a) below, if Buyer elects to terminate this Agreement prior to the end of the Due Diligence Period, or if Buyer fails to provide a Notice to Proceed on or before the end of the Due Diligence Period, the Earnest Money Deposit, less the “Seller Administrative Costs”, as defined in Section 4.05(b) below, shall be returned to Buyer.

2. At Close of Escrow, the Earnest Money Deposit shall be applied to the Purchase Price. If Close of Escrow does not occur for any reason other than the reasons set forth in clause 3 below, the Earnest Money Deposit, shall be paid to Seller in exchange for Seller holding the Property open for sale for the entire period to Close of Escrow.

3. The Earnest Money Deposit, less the Seller Administrative Costs, will be fully refundable to Buyer in the event (1) Buyer terminates this Agreement as the result of (a) an uncured Seller default, (b) the Agreement is terminated due to the failure of any conditions to close which are not waived by the benefitting Party.

4. 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. Due Diligence Period and Document Delivery by Buyer. Buyer shall have ninety (90) days from the later to occur of (1) the date the City submits an application for all permits required for the demolition, as set forth below, or (2) the Effective Date (as applicable, the “Due Diligence Period”) to fully satisfy itself as to all aspects of the purchase of the Property. Subject to the terms set forth herein, from the commencement of the Due Diligence Period until Close of Escrow or

the earlier termination of this Agreement, Buyer shall, during regular business hours and upon not less than forty-eight (48) hours prior written notice, be entitled to enter upon the Property for the purpose of making an inspection of the Property, with its engineers, contractors, inspectors and other consultants (the "Consultants") and conduct such inspections, tests and other review as Buyer shall deem appropriate in order to fully satisfy itself as to all matters relating to the condition of the Property; provided however, neither Buyer nor its Consultants shall conduct any drilling, test borings, or other disturbance of the Property for review of soils, compaction, environmental, structural or other conditions without the Seller's prior written consent, to be given in Seller's sole discretion. Buyer shall promptly repair any damage to the Property arising during Buyer's and its Consultants investigations of the Property to the condition of the Property immediately prior to such damage. Seller shall reasonably cooperate with all requests by Buyer for access to the Property given as set forth above. Should the results of Buyer's investigation of the Property appear satisfactory to Buyer, in its sole and absolute discretion, then prior to the expiration of the Due Diligence Period, Buyer may deliver to Seller and Escrow Agent written notice of its acceptance of the Property and its election to proceed to the Closing ("Notice to Proceed"), at which point Buyer shall have no further legal basis to cancel this Agreement except as set forth in Sections 4.07 (b) and 4.07 (c), as a result of default by Seller, or failure of conditions precedent to Buyer's obligations hereunder. If Buyer fails to give a Notice to Proceed or delivers a termination notice prior to the expiration of the Due Diligence Period, then this Agreement shall be deemed terminated and the Earnest Money Deposit shall be returned to Buyer as set forth in Section 4.03.

b. Document Delivery by Seller. Within ten (10) days after the Effective Date, Seller shall deliver a preliminary title report, the appraisal obtained by Seller, environmental reports and studies pertaining to the Property and other documents related to the Property in Seller's possession.

c. Demolition of Existing Buildings. Within ninety (90) days after the Effective Date, Seller shall apply for a permit to demolish the existing buildings on the Property, the demolition of which shall be completed within six (6) months after receipt of a demolition permit ("Demolition Deadline"), subject to delays caused by force majeure, in which event the Demolition Deadline will be extended on a day for day basis. For the sake of clarity, "demolition" includes without limitation: (a) destruction and removal of the existing buildings on the Property, including, without limitation any concrete footers or foundation, (b) establishing a rough grade, dirt pad where the buildings were previously located, and (c) removal of all debris, trash, rubbish, and other materials generated or resulting from the demolition. Close of Escrow will be conditioned upon completion of the demolition to Buyer's reasonable satisfaction. Seller agrees to provide the cost estimates to Buyer prior to entering into a contract with the demolition contractor. At Close of Escrow, Buyer shall reimburse Seller in an amount equal to the lesser of (x) \$670,000.00 or (y) the actual demolition costs. If the Parties fail to reach Close of Escrow for any reason other than Buyer's default, Buyer need not reimburse any actual costs incurred by Buyer in connection with the demolition. Seller shall be solely responsible for managing the demolition contractor and

demolition process and Buyer shall have no responsibility or liability for the same and Seller will indemnify and hold Buyer harmless from all costs, claims, damages, or liability of any kind in connection with the demolition. At Close of Escrow, Seller shall deliver to Buyer full lien waivers from the demolition contractor and any subcontractors related to the demolition work. Any costs of temporary construction fencing, security costs, or other ongoing expenses resulting from the demolition of the Property shall be the responsibility of the Seller through the Close of Escrow date. Notwithstanding the expiration of the Due Diligence Period, upon completion of the demolition of the Property, Buyer may conduct or cause to be conducted such inspections, tests and other review as Buyer shall deem appropriate to confirm the condition of the Property after such demolition. Buyer may terminate this Agreement upon written notice to Seller, if (a) after completion of the demolition, the condition of the Property is no longer satisfactory to Buyer as a result of the demolition and Seller fails to correct such condition within thirty (30) days after Seller's receipt of written notice of such condition from Buyer, or (b) Seller fails to complete demolition by the Demolition Deadline, subject to extensions for force majeure. If Buyer terminates the Agreement pursuant to the foregoing sentence, the Earnest Money Deposit, less the Seller Administrative Costs, shall be returned to Buyer. This Section shall survive the termination or expiration of this Agreement and the Close of Escrow and will not be deemed to merge with the Deed.

d. Indemnification. 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 on the Property; provided the same shall not extend to (a) acts or omissions of the Seller, affiliates or agents or (b) to the mere discovery of pre-existing conditions. This provision shall survive the termination of this Agreement.

e. Objections to Condition; Extension of Due Diligence Deadline. Seller and Buyer shall meet and confer during the due diligence process and shall, to the extent practical in Buyer's sole discretion, attempt to work out remedies for objections to the condition of the Property, it being understood that reductions or adjustments to the Purchase 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" shall be extended until ten (10) calendar days after the final decision by the City Council.

f. Separate Parcel and Abandonment of Record Street. Buyer and Seller acknowledge that (1) a portion of Record Street must be abandoned by the City ("Abandonment"), (2) a parcel map or maps, reversion to acreage, or boundary line adjustment (individually or collectively, the "BLA or Parcel Map(s)") must be completed in order for Seller to convey the Property to Buyer at Close of Escrow, and (3) 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 the Effective Date, Seller will provide to Buyer

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 Buyer to pursue the Abandonment and BLA or Parcel Map(s) ("Entitlement Materials"). Subject to the Seller's timely delivery of the Entitlement Materials and to the extent not already submitted, Buyer 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 Buyer after Close of Escrow shall be reasonably consistent with Attachment A, whether as a single parcel or multiple parcels, as determined in Buyer's discretion. Buyer 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 Seller will reasonably cooperate in Buyer's 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 precedent for the Close of Escrow and if not obtained, this Agreement shall terminate, and the Earnest Money Deposit shall be returned to the Buyer. Notwithstanding the foregoing, nothing herein shall be construed to affect or prejudice the exercise of the City's discretion concerning any Abandonment, BLA and/or Parcel Map application.

g. Buyer's Findings, Determinations, Studies and Reports. Upon reasonable notice, as from time-to-time requested by the Seller, but in no event to exceed three (3) times in any calendar year, the Buyer agrees to make oral and written progress reports advising the Seller on all non-confidential or non-proprietary matters and all studies being made by the Buyer related to the development of the Property.

#### ***§4.05 Price and costs of closing***

a. Purchase Price. The Purchase Price of the Property shall be as set forth in Section 1.01.

b. Credits, Holdbacks and Adjustments. Any reasonable costs, fees and charges associated with the appraisals for the value of the Property and/or actual costs associated with retaining and utilizing consultants necessary to reasonably evaluate the feasibility of the Project or work related thereto incurred by the Seller ("Seller Administrative Costs") shall be paid solely by the Buyer. Seller Administrative Costs shall be reimbursed through the Earnest Money Deposit and shall not exceed \$25,000 without the express written approval of Buyer.

c. Payment of Purchase Price; Promissory Note. The Purchase Price shall be payable as follows:

1. At Close of Escrow, Buyer will make a payment of Six Hundred Thousand and no/100 Dollars (\$600,000.00) towards the Purchase Price (the "Closing Payment") by wire transfer

into escrow. The Earnest Money Deposit less any Seller Administrative Costs, shall be applied towards the Closing Payment.

2. The remainder of the Purchase Price due at Close of Escrow (the “Loan Amount”) shall be evidenced by a promissory note from Buyer to Seller (the “Note”) in substantially the form attached hereto as Exhibit F, which Note shall be secured by a Deed of Trust with Security Agreement, Assignment of Leases and Rents and Financing Statement Filed as a Fixture Filing Pursuant to NRS § 104.9502(3) (“Deed of Trust”) in substantially the form attached hereto as Exhibit G. The Deed of Trust will be subordinate to the security interests of the following (collectively, the “Senior Lenders”): (i) Buyer’s senior lender, (ii) the Nevada Housing Division (pursuant to the terms of the Growing Affordable Housing Program loan, Buyer may require to finance all or a portion of the Proposed Development) and (iii) the lender(s) to any other loan obtained by Buyer that may be required to balance the sources and uses of the Project, to the extent required by the lender(s) of such loan. Notwithstanding the foregoing, the terms of the Note and Deed of Trust will be subject to approval by the Senior Lenders and Buyer’s project tax equity investor, to be obtained by Buyer prior to Closing.

d. Allocation of Closing Costs; Apportionment of Certain Payments. Buyer and Seller agree to the following allocation of closing costs:

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 100%.
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 100%.
Property Taxes	Property is currently exempt from property taxes; Buyer pays 100% of any prorated installments needed to be paid to close.
Special Assessments (if any)	Prorated at Close of Escrow.

Sewer	Buyer pays 100% of prorated sewer costs.
Escrow Agent Fees	Buyer pays 50%; Seller pays 50%.
Recording Fees	Buyer pays 100%.

e. Sewer Connection Credits; Development Rights. Seller agrees to assign any sewer connection credits that it may acquire as a result of the demolition to Buyer upon Close of Escrow and Buyer shall have the right to apply any such credits to offset Buyer's costs for new sewer connection fees for the Project. In addition to the sewer connection credits, at Close of Escrow, Seller will assign and transfer any and all development rights, credits, and entitlements in and to the Property, including, without limitation, any regional road impact fee credits.

f. Payment of Real Estate Commissions. Except as disclosed in Section 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 Section 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.

#### ***§4.06 Title Warranties and Insurance.***

a. Title Review. Within three (3) Business Days after the Effective Date, Buyer shall request from the Title Company a preliminary title report issued by Title Company describing the state of title of the Property, together with copies of all exceptions specified therein (the "Preliminary Title Report"). Buyer shall notify Seller in writing ("Buyer's Title Objection Notice") of any objections Buyer may have to title exceptions contained in the Preliminary Title Report within twenty (20) Business Days following receipt of the Preliminary Title Report. Any and all exceptions to title that are capable of being removed as exceptions by payment of a fixed and liquidated sum of money shall be automatically deemed objected to by Buyer. Seller shall have a period of five (5) Business Days after receipt of Buyer's Title Objection Notice in which to deliver written notice to Buyer ("Seller's Title Notice") of Seller's election to either (i) agree to remove the objectionable items prior to the Close of Escrow, or (ii) decline to remove any such title exceptions. Failure to deliver Seller's Title Notice shall be deemed a refusal to cure title exceptions included or deemed to be included in Buyer's Title Objection Notice. If Seller declines to cure or remove the objectionable items, Buyer shall have the right, by written notice delivered to Seller on or before the end of the Due Diligence Period, to elect to either (i) terminate this Agreement, in which event



the entire Earnest Money Deposit, less Seller Administrative Costs, shall be immediately released to Buyer and the Parties shall have no further rights or liability hereunder except with respect to those obligations that survive termination of this Agreement; or (ii) accept the Property subject to the objectionable items and proceed to Close of Escrow (provided that Buyer has provided a Notice to Proceed) with no modification of this Agreement or reduction of the Purchase Price. Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement (provided that the period for Buyer to review such amendment or supplement shall be the later of the expiration of the Due Diligence Period or five (5) Business Days from receipt of the amendment or supplement) and Close of Escrow shall be deemed extended by the amount of time necessary to allow such review and approval in the time and manner set forth above; provided, however, that in no event shall the Close of Escrow be extended as a result of such delay for more than thirty (30) days.

b. Permitted Exceptions. Buyer agrees to accept title to the Property and agrees that conveyance by the Deed shall be subject to the following, all of which shall be deemed "Permitted Exceptions," and Buyer agrees to accept the Deed and title to the Property subject thereto:

1. All exceptions shown in the Preliminary Report other than items to which Buyer made timely objection and Seller agreed to cure in Seller's Title Notice; provided, however, that notwithstanding the foregoing, Seller shall remove, cure or obtain affirmative coverage over any voluntary or involuntary monetary liens (such as mechanic's or materialmen's liens, judgment liens, mortgages and financing statements) created by Seller and recorded against the Property prior to Close of Escrow that are reasonably susceptible of such removal, cure or affirmative coverage by the payment of money alone;

2. Real estate and property taxes to the extent not due and payable.

c. Property Taxes to be Paid at Closing. Unpaid liens for any and all taxes, charges and regular and special assessments shall not be objections to title, but shall be prorated between Seller and Buyer as of the Closing Date, subject to the provisions for apportionment of taxes contained herein.

d. Title at Closing. If on the Close of Escrow, the state of title is other than in accordance with the requirements set forth in this Agreement or if any condition to be fulfilled by Seller shall not be satisfied, Buyer shall provide Seller with notice thereof at such time and Seller shall have ten (10) days to cure such objection or unfulfilled condition and the Parties shall proceed to Close of Escrow, or such title objection or unfulfilled condition shall be deemed waived by Buyer in which case Buyer and Seller shall proceed to consummate the Close of Escrow on the Closing Date.

e. No Additional Liens. Seller covenants that it will not voluntarily create or cause any lien or encumbrance (including leases and/or property contracts with a term greater than thirty (30) days) to attach to the Property between the date of this Agreement and the Closing Date without Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed; any such

monetary lien or encumbrance so attaching by voluntary act of Seller shall be discharged by the Seller at or prior to Close of Escrow or any postponed Closing Date. Notwithstanding the foregoing, Seller may enter into an agreement for the purpose of providing parking on the Property, provided that such agreement is terminated on or before the Closing Date and Seller provides a copy of the executed agreement to Buyer within ten (10) days after execution thereof.

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

1. Except (i) as disclosed on the Preliminary Title Report (to the extent dated prior to end of the Due Diligence Period) provided to Buyer, or (ii) otherwise disclosed in writing to and approved by Buyer, or (iii) as is actually known to Buyer, 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, 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.

5. Seller is not aware of and does not know of any threatened or pending litigation naming Seller as a party or otherwise materially affecting the Property.

6. Seller has no actual knowledge of any significant adverse fact or condition that is materially inconsistent with any information contained in any documents delivered to Buyer by Seller or prepared by Seller in connection with this Agreement.

7. Seller represents that the Property is vacant, and covenants and agrees that it shall be delivered vacant at Closing.

g. Title Insurance. At Close of Escrow, Seller shall at its expense deliver a 2021 Standard Form of ALTA Owners insurance without any endorsements, subject to permitted exceptions agreed upon under paragraph a above. If Buyer wishes extended coverage or endorsements, Buyer shall pay the additional cost for such extended coverage or endorsements.



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

a.        Warranties and Representations. Seller has not discharged, transported or stored any Hazardous Materials, defined below, on the Property and, to Seller's knowledge, no such Hazardous Materials have been discharged, transported or stored on the Property. Seller has not received written notice of any violation, administrative complaint, judicial complaint, or other notice: (i) alleging that conditions on the Property are or have been in violation of any Environmental Law; (ii) informing Seller that the Property is subject to investigation or inquiry regarding the presence of Hazardous Materials on or about the Property; or (iii) alleging the potential violation of any Environmental Law. Seller has not received any written information from nearby property owners or occupants indicating they have concerns about existing environmental conditions that could affect the Property or suggesting that they might look to Seller or the owner of the Property 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. Except as provided above, Seller makes no other 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 the Property with outside carriers. If the Property is damaged or destroyed before Close of Escrow, and the Parties cannot agree on an adjustment to the Purchase Price, Buyer shall have the right to terminate this Agreement by written notice to Seller, in which event, the Earnest Money Deposit minus Seller Administrative Costs shall be returned to Buyer, this Agreement shall terminate, and the Parties shall be relieved of any further liability hereunder except for those items that survive termination of this Agreement.

c.        Risk of Loss Due to Eminent Domain. If proceedings under power of eminent domain are commenced before Close of Escrow to take any portion of the Property, Seller shall promptly inform Buyer and Buyer may terminate this Agreement by notice to Seller at any time before Close of Escrow. 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 Close of Escrow upon the original terms stated herein and Buyer shall be paid all eminent domain proceeds, except

relocation benefits. If Buyer elects to terminate this Agreement, this Agreement shall terminate as of the date of Buyer's notice, and the Earnest Money Deposit (minus Seller Administrative Costs) shall be returned to Buyer.

d. Uniform Vendor and Purchaser Act. 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:

1. The sale must be authorized by the City Council's approval of this Agreement, meet all the conditions of Nevada law, and be further authorized by the City Manager or her designee's execution of all other documents needed to close escrow, as specified in Section 7.09(b).
2. Reserved;
3. 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;
4. Buyer must have given a Notice to Proceed in accordance with Section 4.04;
5. Escrow Agent shall be irrevocably committed to issue the title insurance required by the joint escrow instructions;
6. Buyer must have deposited the Closing Payment and its share of expenses as provided herein in escrow;
7. 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
8. The legality of sale must not have been successfully 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 Section 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:

1. 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 Section 4.04;
2. Reserved;
3. Seller must have performed all of its requirements under this Agreement;
4. All of Seller's representations and warranties must remain true and complete in all material respects as of Closing;
5. Seller must have delivered into escrow all deeds and supporting documentation necessary to convey title as required by this agreement to all real and personal property being purchased hereunder;
6. All of Seller's conditions of closing have been satisfied; and
7. Buyer funding must be available, including, without limitation, the Volume Cap described in Section 4.11(b) below.

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 Section 5.04.

***§4.10 [intentionally omitted]***

***§4.11 Closing; Delays in Closing***

a. Closing Conditions. Escrow shall not close until all conditions and provisions stated in Sections 4.08 and 4.09 shall have been met or waived by the Party benefitted by the condition or provision.

b. Close of Escrow. If the conditions set forth in Sections 4.08 and 4.09 have been met, Close of Escrow shall occur on or before December 31, 2025 ("Closing Date"), provided that Buyer may extend the Closing Date to December 31, 2026, upon delivery of written notice to Seller and deposit of an additional \$50,000 into escrow ("Extension Deposit") on or before December 1, 2025. As part of its financing, Buyer 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, this Agreement 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. Buyer acknowledges that any approval or denial of a request for volume cap is at the sole and absolute discretion of the Reno City Council. Seller acknowledges that Buyer intends to apply for an allocation of the 2025 or 2026 Volume Cap, as applicable, in

connection with the Project. Seller understands that Buyer's ability to proceed with the Project depends on the City's ability to award the Volume Cap to the Project.

c. Closing through Escrow Agent. When all conditions of closing have been met: (i) Buyer and Seller shall execute and deliver to Escrow Agent a grant, bargain, and sale deed (the "Deed"), in the form attached as Exhibit D, all documents listed in closing instructions provided to Escrow Agent or otherwise required to complete the intents and purposes of this Agreement, (ii) Buyer and Seller shall deliver into escrow in collected funds the portion of the Purchase Price and all funds necessary to close the sale, and Buyer shall deliver an executed Note and Deed of Trust; (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 the Parties. When all the foregoing events have been completed, "Close of Escrow" or "Closing" shall have occurred.

d. 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 Date shall automatically be extended for a reasonable period of time not to exceed thirty (30) days to close. If Close of Escrow does not occur within thirty (30) days from Closing Date, as it may be extended, 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 closing instructions.

e. Failure to Close. Except as expressly provided in this Agreement, if Close of Escrow does not occur by the Closing Date, as it may be extended, due to the default, actions or inactions of a Party, the provisions of Section 5.02 shall apply as applicable. If, despite the good faith efforts of the Parties, any condition to close is not met on or prior to the Closing Date and is not otherwise waived, the Party benefitting from such condition may terminate this Agreement upon written notice to the other, in which event the Earnest Money Deposit will be refunded in accordance with Section 4.03(b)(3).

#### ***§4.12           Delivery of Possession of Property.***

Upon Close of Escrow, 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. Buyer Default. Provided that Seller is not then in breach of any of its obligations under this Agreement and is ready, willing, and able to consummate the sale of the Property to Buyer in accordance with this Agreement, Buyer shall be in default under this Agreement, if Buyer (a) breaches any of its obligations under this Agreement and does not cure the same within thirty (30) days following written notice from Seller, as provided in Section 5.03 below, or (b) fails to deliver the documents required to be delivered by Buyer at Close of Escrow or to otherwise proceed with the Closing after the satisfaction or waiver of all conditions to Closing for Buyer's benefit. In such case, Seller shall be entitled to terminate this Agreement and to receive and retain the Earnest Money Deposit as liquidated damages. The Parties agree that said sum is fair and reasonable in light of all of the circumstances existing on the date of this Agreement, including the Parties' estimate of the possible range of damages to Seller in the event of a Buyer default under this

Agreement. The Parties further agree that the damages to Seller in such case would be impossible to accurately determine and that proof of the amount of such damages would be costly and inconvenient. Provided that Buyer does not dispute or give contrary instructions to the Escrow Holder following any instructions by Seller directing the Escrow Holder to release the Earnest Money Deposit to Seller following any such termination of this Agreement as a result of Buyer's default hereunder, such liquidated damages shall be Seller's sole and exclusive remedy in the case of any breach or default by Buyer under this Agreement, and Seller hereby waives, releases and relinquishes any and all other rights and remedies arising out of or on account thereof, whether at law, in equity, or otherwise.

b. Seller Default. Provided that Buyer is ready, willing and able to consummate the purchase of the Property from Seller and Buyer is not then in breach of any of its obligations under this Agreement, Seller shall be in default under this Agreement, if at any time Seller breaches any of its obligations under this Agreement and does not cure the same within thirty (30) days following written notice from Buyer, as provided in Section 5.03 below. In such case, Buyer's sole remedies are, either to (i) terminate this Agreement by giving written notice to Seller, whereupon Escrow Holder shall return the Earnest Money Deposit to Buyer which return shall operate to release Seller from any and all liability hereunder, or (ii) to enforce specific performance of Seller's obligation to sell the Property to Buyer in accordance with this Agreement. Buyer expressly waives all other rights and remedies, including, without limitation, the right to bring an action for damages in the event of Seller's failure to close the sale of the Property hereunder. Buyer shall be deemed to have elected to terminate this Agreement and receive the return of the Earnest Money Deposit if Buyer fails to file suit for specific performance against Seller, in a court having jurisdiction in Washoe County within ninety (90) days following the date upon which Closing was to have occurred.

### ***§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 as set forth in Section 5.02 above 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 by the non-defaulting Party which may be revoked without advance notice if the defaulting Party abandons the attempt to cure or if cure becomes impossible.

### ***§5.04 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.

**§5.05            *Attorney's fees and costs.***

If an action is brought to interpret or enforce this Agreement, each Party shall bear its own fees and costs, including attorney's fees, regardless of the outcome of the litigation.

**Art. 6            [INTENTIONALLY DELETED]**

**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.        Except as provided below, neither Party may delegate any duties or assign any rights under this Agreement without the approval of the other Party.



b. Notwithstanding Section 7.03(a) above, Seller agrees that Buyer, without Seller's consent, may assign this Agreement to an affiliate of Buyer or to another person or entity, provided Buyer or an affiliate of Buyer is a general partner, managing member or Class B member/partner therein or otherwise controls said entity, by written notice to Seller delivered prior to Close of Escrow, and provided that (i) Buyer is not in default under this Agreement; and (ii) the proposed assignee agrees to perform all obligations and duties of Buyer under this Agreement without change unless otherwise agreed by City. Buyer and Seller anticipate that Buyer will form an affiliate special purpose entity for the purpose of acquiring, developing and operating the Property and Project.

#### **§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, personally delivered or sent by telecopy or electronic mail 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, overnight delivery via nationally recognized courier, or personally delivered, (ii) three business days after delivered to and accepted by the U.S. Postal Service if sent by certified or registered mail; or (iii) if given by telecopy or electronic mail, when the sender receives a confirmation of receipt generated by the sending machine or confirmation email, if sent during ordinary business hours.

#### **§7.06            *Severability***

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.

**§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 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 unless expressed in writing and duly signed by the Parties. No waiver is effective unless expressed in writing and duly signed by the Party to be bound by the waiver.

b.        In addition to the Authorized Representative specified in Section 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, 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 \$25,000; (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 each 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.

***§7.11           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 Buyer. 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 Project by Buyer or any required approvals necessary by the laws, rules, and regulations governing the development of the Property.

***Exhibits***

- A.   Property Description
- B.   RFP
- C.   Reserved
- D.   Form of Deed
- F.   Form of Note
- G.   Form of Deed of Trust

***Attachments***

- A.   Site Configuration

EXECUTED on the dates indicated below:

**[SIGNATURE PAGES FOLLOW]**

Agreement for Economic Development and Purchase/ Sale of Real Property  
(315-335 Record Street)

**Counterpart Signature Page**

**Buyer**

Ulysses Acquisition LLC, a Delaware limited liability company

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

Agreement for Economic Development and Purchase/ Sale of Real Property  
(1610 and 1790 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 Attorney

## **Exhibit A**

### **Property Description**

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

[To be attached]

**Exhibit B**

**RFP**  
**[Attached]**

**Exhibit C**

**Reserved**

**Exhibit D**

**Form of Deed**

APNs:

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

Ulysses Acquisition LLC  
Attn: Legal Department  
210 University Boulevard, Suite 460  
Denver, CO 80206

**MAIL TAX STATEMENT TO:**

Ulysses Acquisition LLC  
Attn: Legal Department  
210 University Boulevard, Suite 460  
Denver, CO 80206

The undersigned hereby affirm(s) that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)
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**GRANT, BARGAIN AND SALE DEED AND RESTRICTIVE COVENANT**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the City of Reno, Nevada, a political subdivision of the State of Nevada, as grantor (“Grantor”) does hereby GRANT, BARGAIN and SELL to \_\_\_\_\_, a \_\_\_\_\_, as grantee (“Grantee”) the real property situate in the County of Washoe, State of Nevada, described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “Property”);

TOGETHER WITH all rights, entitlements, privileges, easements, tenements, hereditaments and appurtenances to the Property, and any reversions, remainders, rents, issues or profits thereof.

SUBJECT TO (i) general and special taxes for the current fiscal tax year not yet due and payable, and (ii) all matters of record.

[Signature appears on following page]



[Signature page to Grant, Bargain and Sale Deed and Restrictive Covenant]

This Deed is executed as of the date of notarization of the signature immediately set forth below. but to be effective as the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**[CITY – PLEASE INSERT APPROPRIATE SIGNATURE BLOCK]**

STATE OF \_\_\_\_\_)

)

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Reno.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Property**

*All that certain real property situate in the County of Washoe, State of Nevada, described as follows:*

**Exhibit F**

**Form of Note**

[attached]

**Exhibit G**

**Form of Deed of Trust**

[attached]

**Attachment A**  
**Site Configuration**

Agreement for Economic Development and Purchase/ Sale of Real Property  
(315-335 Record Street)

**Counterpart Signature Page**

**Buyer**

Ulysses Acquisition LLC, a Delaware limited liability company

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

## **SECURED PROMISSORY NOTE**

(315-335 Record Street)

\$[REDACTED]

[REDACTED], 202\_

FOR VALUE RECEIVED, [SPE BORROWER], a [ ] (“Borrower”), promises to pay to **City of Reno**, a municipality of the State of Nevada (“Lender”), at One East First Street, P.O. Box 1900, Reno, Nevada 89509, in lawful money of the United States of America, the principal amount of [REDACTED] and No/100 Dollars (\$[REDACTED]), together with interest on the unpaid principal balance beginning on the “Interest Accrual Commencement Date”, as defined in Section 1 below, until paid in full.

This Secured Promissory Note (this “Note”) is made pursuant to that certain Agreement for Economic Development and Purchase/Sale of Real Property by and between Borrower and Lender dated as of [REDACTED], as amended from time to time (the “ED Agreement”). All capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the ED Agreement, or if not contained therein, the Deed of Trust (hereafter defined).

This Note is secured by that certain real property located at 315-335 Record Street, Reno, Nevada (“Property”), pursuant to that certain Deed of Trust with Security Agreement, Assignment of Leases and Rents and Financing Statement Filed as a Fixture Filing Pursuant to NRS § 104.9502(3) given by Borrower, as grantor, to [REDACTED], as trustee, for the benefit of Lender, as beneficiary, dated the date hereof, to be recorded in the Official Records of Washoe County, Nevada encumbering the Property commonly known as Washoe County, Nevada Assessor’s Parcel No. [REDACTED] (the “Deed of Trust”).

1. Payment. Interest will begin to accrue upon completion of construction of the Project on the Property, as evidenced by the issuance of a certificate of occupancy for the Project (the “Interest Accrual Commencement Date”). Interest only installments in an amount equal to [REDACTED] Dollars (\$[REDACTED]) (each, an “Annual Payment”) shall be due and payable on the first (1st) day of June in each calendar year beginning on June 1, 2043 (“Annual Payment Commencement Date”), unless such day is not a Business Day, then the payment will be due on and accrue to the following Business Day. All unpaid principal, together with all accrued and unpaid interest thereon, and all other amounts payable to Lender hereunder, shall be due and payable on the date that is later to occur of (“Maturity Date”): (a) the date that is fifteen (15) years after the Interest Accrual Commencement Date, (b) six months after the maturity date of the Project’s senior permanent loan in effect as of the Close of Escrow, or (c) the Annual Payment Commencement Date . A “Business Day” is any day that is not a Saturday, Sunday or a date that is a legal holiday upon which banks are closed in the State of Nevada.

On the Maturity Date, payments shall be applied first to late charges due hereunder, second to accrued interest, third to principal and fourth to any “Deferred Payment”, as defined below. However, upon the occurrence of an Event of Default, as defined below, any monies received shall be applied, at the option and discretion of Lender, to any sums due under this Note or the Deed of Trust, including, without limitation, attorneys’ fees and other costs of collection as provided herein.

2. Interest Rate. The principal balance hereof shall bear interest at the rate of [the greater of 2% or the compounding long-term AFR at the date of Closing] per annum (the “Interest”

Rate”) beginning on the Interest Accrual Commencement Date. [NTD: INTEREST RATE NEEDS TO BE AT COMPOUNDING LONG-TERM AFR. IF NOT, THEN WE WILL NEED TO USE THE SIMPLE EQUIVALENT OF COMPOUNDING LONG-TERM AFR]

3. Conditions To Payment. Each Annual Payment will be paid from available Cash Flow, as defined below, from the immediately preceding calendar year commencing January 1, and expiring December 31 (each, a “Loan Year”). To the extent there is insufficient Cash Flow in the immediately preceding Loan Year for Borrower to pay all or any portion of the applicable Annual Payment, Borrower may elect to defer such Annual Payment (“Deferred Payment”), by providing written notice to Lender of Borrower’s election to defer no later than thirty (30) days prior to such Annual Payment’s due date. Provided Borrower timely delivered such notice, on the date the Deferred Payment would otherwise be due, upon request of Lender, Borrower will deliver unaudited consolidated balance sheets and related consolidated statements of its Cash Flow during the applicable Loan Year (collectively, the “Final Accounting”) together with reasonable supporting documentation. If Borrower fails to timely provide the Final Accounting or the Final Accounting shows there was sufficient Cash Flow for Borrower to pay all of the Deferred Payment, the Deferred Payment will not be deemed deferred and will be due and owing on its original due date. If deferred, the Deferred Payment will accrue interest at the Interest Rate until paid in full and will be payable in full at the Maturity Date, provided that Borrower may make partial or full payments thereof at any time prior to the Maturity Date without penalty or fee.

“Cash Flow” shall mean the excess of the Cash Receipts over the Operating Expenses for the applicable Loan Year. “Cash Receipts” shall mean all rental revenue, laundry income, parking revenue, amounts released from escrow accounts, and other incidental revenues on a cash basis, and rental subsidies on an accrual basis, received by Borrower from normal operations of the Project during the applicable Loan Year, but specifically excluding proceeds from insurance (other than business or rental interruption insurance), loans, proceeds of any capital transaction, or capital contributions. “Operating Expenses” shall mean and refer to all ordinary and necessary operating expenses (including those reasonable replacement and maintenance reserves or accruals required by generally accepted accounting principles) as well as necessary capital improvements and those other reasonable reserves and reasonable accruals that are required to operate, maintain, repair and keep the Project in a neat, safe, and orderly condition, as well as the payment of any deferred developer fee, tax credit investor’s administrative fees, any/all unpaid tax credit adjusters, all principal and interest payments on Project Debts, as defined below, the payment of any outstanding Project costs, and the payment of any other customary fees or expenses associated with a low income housing tax credit project incurred or otherwise made during the applicable Loan Year. As used herein, “Project Debts” shall mean any debt instrument necessary to finance the Project, outside of the Note. Right To Audit. Commencing following the Interest Accrual Commencement Date, Lender may, upon written notice given no later than sixty (60) days after Lender’s receipt of the Final Accounting for a Loan Year, audit the books and records of Borrower relating to such Final Accounting. Such audit will be conducted by an independent certified public accountant, which is mutually agreeable to Borrower and Lender and unaffiliated with either party. If such accountant concludes that the Borrower had sufficient Cash Flow to pay all of the applicable Deferred Payment, Borrower will pay the Deferred Payment within thirty (30) days after its receipt of written notice of the same, together with a certified statement from the auditing accountant and will reimburse Lender for the reasonable costs of such audit, not to exceed \$1,500. If such accountant concludes that Borrower did not have sufficient Cash Flow to pay all of the applicable



Deferred Payment, Lender will be solely responsible for the costs of such audit. The audit will be conducted during Borrower's normal business hours at Borrower's place of business or the location at which Borrower maintains its records and will not unreasonably interfere with Borrower's operations.

4. Event of Default; Late Charge; Acceleration; Prepayment. The occurrence of an Event of Default, as defined in the Deed of Trust, shall constitute an "Event of Default" hereunder. Upon the occurrence and continuance of an Event of Default under the Deed of Trust, then the entire principal balance, with all accrued interest thereon, together with all other sums evidenced or secured by the Deed of Trust, shall, if accelerated by Lender in accordance with and subject to the terms of the Deed of Trust, become immediately due and payable upon written notice to Borrower. If Borrower fails to make any required payment hereunder on or before the due date thereof, Borrower shall pay to Lender a late payment charge equal to the lesser of five percent (5%) of the delinquent amount or the lawful maximum, for the purpose of reimbursing Lender for a portion of the expense incident to handling the overdue payment which late payment shall be due if the payment is ten (10) or more days late. Borrower shall have the right, at any time prior to the Maturity Date, to prepay without penalty all or any portion of the amounts due under this Note. Upon each such prepayment, Borrower shall also pay all accrued and outstanding interest (to the date of such prepayment) on the principal amount prepaid.

5. Receipt Of Payments. All payments must be made in U.S. Dollars and must be received by Lender at:

City of Reno  
One East First Street  
P.O. Box 1900  
Reno, Nevada 89509

All payments must be received by Lender consistent with any written payment instructions provided by Lender. If a payment is made consistent with Lender's payment instructions but received after 5:00 P.M., Pacific Time, on a Business Day, Lender will credit Borrower's payment on the next Business Day.

6. Disbursements. Funds representing the proceeds of the indebtedness evidenced hereby which are disbursed by Lender by mail, wire transfer or other delivery to Borrower, to escrows or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and to have been received by Borrower as of the date of such mailing, wire transfer, or other delivery and until repaid, notwithstanding the fact that such funds may not at any time have been remitted by such escrows to Borrower or for its benefit.

7. Miscellaneous

7.1. Time is of the essence hereof.

7.2. Borrower and all others who may become liable for all or any part of these obligations hereby severally waive demand, presentment for payment, protest and demand, notice of protest, demand and dishonor, and nonpayment of this Note, and, except as set forth in the Deed

of Trust, all other notice and specifically agree that the maturity of this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of Borrower or guarantors.

7.3. Except as herein expressly provided, no modification, amendment or waiver, of the terms of this Note shall be effective unless made in a writing signed by Borrower and Lender. Acceptance by Lender of any portion or all of any sum payable hereunder, whether before, on or after the due date of such payment shall not be a waiver of Lender's right either to require prompt payment when due of all other sums payable hereunder or to exercise any of Lender's rights, powers and remedies hereunder or under the Deed of Trust. A waiver of any right in writing on one occasion shall not be construed as a waiver of Lender's rights to insist thereafter upon strict compliance with the terms hereof without previous notice of such intention being given to Borrower, and no exercise of any right by Lender shall constitute or be deemed to constitute an election of remedies by Lender precluding the subsequent exercise by Lender of any or all of the rights, powers and remedies available to it hereunder or under the Deed of Trust, or at law or in equity. Borrower expressly waives the benefit of any statute or rule of law or of equity now provided, or which may hereafter be provided, which would produce a result contrary to, or in conflict with, the foregoing.

7.4. This Note shall be governed by and construed in accordance with the laws of the State of Nevada.

7.5. All notices required or permitted to be given hereunder to Borrower or Lender shall be given in the manner and to the place as provided in the Deed of Trust.

7.6. The headings of the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

7.7. LENDER, BY ACCEPTANCE OF THIS NOTE, AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN ANY ACTION, COUNTERCLAIM OR PROCEEDING OF ANY KIND OR NATURE, IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED, ARISING OUT OF OR IN CONNECTION WITH THE LOAN, OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN BORROWER AND LENDER OF ANY KIND OR NATURE. EITHER LENDER OR BORROWER MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO WAIVER OF THE RIGHT TO A JURY TRIAL.

7.8. The obligation described in this Note is secured by the Deed of Trust, and the payment of this Note may be enforced solely out of the proceeds of the Sale of the Property in accordance with the Deed of Trust. The obligation described herein is a nonrecourse obligation of the Borrower and its members, and neither the Borrower and its members nor any of the other parties to the [limited partnership agreement with Investor Member] nor their affiliates shall have any personal liability for repayment hereunder. Any indemnification obligation hereunder shall not extend to repayment of the Loan.

7.9. The Deed of Trust and this Note are and shall be subject and subordinate in all respects to the liens, terms, covenants, and conditions of the Senior Lender(s) recorded prior in time to the Deed of Trust, and those liens which are the subject of a written subordination agreement with the Lender subordinating the Deed of Trust to a lien in favor of such lender(s)

7.10. Notwithstanding any provision in this Note or the Deed of Trust to the contrary, all notices to the Borrower relating to any default or Event of Default under this Note or the Deed of Trust shall be contemporaneously given to Senior Lender(s) and Investor Member in writing, and any cure period provided to the Borrower under this Note or Deed of Trust shall not be deemed commenced until Investor Member has also received such notice. Investor Member shall have the right, but not the obligation, to remedy or cure such default or Event of Default, and in no event shall this right of Investor Member to cure be construed as expanding the rights or remedies of the Borrower upon a default or Event of Default. Notwithstanding anything to the contrary in this Note or Deed of Trust, Lender agrees that any cure of any default made or tendered by any member or partner of Borrower shall be deemed to be a cure by the Borrower and shall be accepted or rejected by Lender on the same basis as if made or tendered by Borrower.

*[Signature page to follow]*

*[Signature page to Secured Promissory Note (315-335 Record Street)]*

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first set forth above.

BORROWER:

[SPE Borrower]

By \_\_\_\_\_  
Connor Larr, Vice President

Date \_\_\_\_\_

*[Lender Signature on Following Page]*

*[Signature page to Secured Promissory Note (315-335 Record Street)]*

IN WITNESS WHEREOF, Lender has acknowledged this Note as of the date first set forth above.

LENDER:

**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 Attorney



Assessor parcel No.:  
APN \_\_\_\_\_

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

[SPE BORROWER]  
C/o Ulysses Acquisition, LLC  
210 University Blvd., Ste. 460  
Denver, Colorado 80206

Recording requested by  
City of Reno  
One East First St. 12th Floor  
Reno, NV 89501  
Attn: Jasmine Mehta

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040
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**DEED OF TRUST WITH SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT FILED AS A  
FIXTURE FILING PURSUANT TO NRS § 104.9502(3)**

THIS DEED OF TRUST WITH SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO NRS § 104.9502(3) (this “**Deed of Trust**”) is executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by **[SPE BORROWER]**, a [ ], having its principal place of business at 210 University Boulevard, Suite 460, Denver, Colorado 80206, Attention: Sarah Rockwell, as Grantor (“**Grantor**”), in favor of \_\_\_\_\_, whose address is \_\_\_\_\_, as Trustee (“**Trustee**”), in trust for the benefit of **CITY OF RENO**, a municipal corporation, whose address is 1 East 1<sup>st</sup> Street, Reno, Nevada 89501, Attn: Revitalization Manager, as Beneficiary (“**Beneficiary**”). **[NTD: WHO DOES THE CITY WANT TO USE AS TRUSTEE?]**

**W I T N E S S E T H:**

**WHEREAS**, pursuant to that certain Agreement for Economic Development and Purchase/Sale of Real Property by and between Grantor, as Buyer, and Beneficiary, as Seller, dated \_\_\_\_\_, 2025, (the “**ED Agreement**”), Beneficiary has agreed to make the “Loan,” as defined below, to Grantor;

**WHEREAS**, the Loan is evidenced or to be evidenced by that certain Secured Promissory Note dated as of \_\_\_\_\_, 202\_\_, issue by Grantor, as “Borrower,” in favor of Beneficiary, as “Lender”, (together with any promissory notes or other securities issued in exchange or substitution for such notes or in replacement thereof, and as any of the same may be amended, restated, modified or supplemented and in effect from time to time, the “**Note**”) in the original aggregate principal amount of [ ] and No/100 Dollars (\$[ ].00) (“Loan”). The Loan bears interest at a fixed rate of interest equal

to [THE GREATER OF 2% OR THE COMPOUNDING LONG-TERM AFR AT THE DATE OF CLOSING].

NOW, THEREFORE, in consideration of the making of the Loan by Beneficiary, Grantor agrees, represents, warrants and covenants as follows:

## ARTICLE 1 DEFINITIONS

Accounts means Grantor's present and future rights to payment of money, accounts and accounts receivable related to the Mortgaged Property, including (a) rights to payment of money, accounts and accounts receivable arising from or relating to the construction, use, leasing, occupancy or operation of the Premises, the rental of, or payment for, space, goods sold or leased or services rendered, whether or not yet earned by performance, and all other "accounts" (as defined in the UCC) of Grantor related to the Mortgaged Property, (b) rights to payment, accounts, and accounts receivable arising from any consumer credit, charge, entertainment or travel card or service organization or entity, (c) all reserves, deferred payments, refunds, cost savings payments and deposits no matter how evidenced and whether now or later to be received from third parties (including all earnest money sales deposits) or deposited with, or by, Grantor by, or with, third parties (including all utility deposits), (d) all chattel paper, instruments, documents, notes, drafts and letters of credit (other than any letters of credit in favor of Beneficiary), (e) any tenant security deposit account, and any and all other accounts held by or on behalf of Beneficiary and/or Grantor pursuant to this Deed of Trust, (f) all "deposit accounts" (as defined in the UCC), (g) all "securities accounts" (as defined in the UCC), and (h) all contracts and agreements which relate to any of the foregoing.

Assignment means the assignment contained in Article 4 of this Deed of Trust, from Grantor to Beneficiary, of all Grantor's right, title and interest in and to the Leases and the Rents.

Beneficiary means the City of Reno, a municipal corporation, and its successors and assigns and the holders, from time to time, of the Note.

Beneficiary's Address means 1 East 1<sup>st</sup> Street, Reno, NV 89501, Attn: Revitalization Manager.

Deed of Trust means this Deed of Trust with Security Agreement, Assignment of Leases and Rents and Financing Statement Filed as a Fixture Filing Pursuant to NRS § 104.9502(3) by Grantor in favor of Trustee, for the benefit of Beneficiary.

Deed of Trust Obligations means, in the aggregate, all obligations, liabilities and indebtedness of every nature of Grantor from time to time owed to Beneficiary under this Deed of Trust and the Note to which Grantor is a party.

Environmental Claim means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment. Fixtures and Personalty means all fixtures, machinery, furnishings, equipment, furniture and other tangible personal property now or hereafter owned by Grantor and (i) affixed or attached to, installed in, located on, under, above or within the Land or in the Improvements or (ii) used in connection with the use, occupancy, operation and maintenance of all or any part of the Land, Improvements or any other part of the Mortgaged Property, whether or not



permanently affixed thereto, together with all accessions, replacements and substitutions thereto or therefore and the proceeds thereof, including all “equipment” (as defined in the UCC), Inventory, “farm products” (as defined in the UCC), “fixtures” (as defined in the UCC), “manufactured homes” (as defined in the UCC), oil, gas and other minerals (whether before or after extraction), and other “goods” (as defined in the UCC) and any and all of the following: machinery; signs; artwork; office furnishings and equipment; partitions and screens; generators, boilers, compressors and engines; fuel; water, gas and other pumps, lines and tanks; irrigation lines and sprinklers; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery, and equipment; heating, incinerating, ventilating, air conditioning and air cooling ducts, machinery, equipment and systems; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; floor coverings, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers and other installed appliances; attached cabinets; trees, plants and other items of landscaping; visual and electronic surveillance systems and other security systems; elevators; escalators; telecommunications equipment including telephones, switchboards, exchanges, wires and phone jacks; maintenance equipment, tables, chairs, mirrors, desks, wall coverings, clocks, lamps; kitchen, bar, lounge, public room, public area, and other operating or specialized equipment, including menus, dishes, flatware, dishware, glassware, cooking utensils, tables, refrigerating units, microwave equipment, ovens, timers; food and beverages; liquor; cleaning materials other similar items; recreational equipment and maintenance supplies; and linens. Fixtures and Personalty does not include fixtures, equipment and personalty owned by tenants, subtenants, licensees or occupants under Leases of the Premises or any part thereof.

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.

General Intangibles means all causes in action, causes of action and all other intangible personal property of Grantor of every kind and nature (other than the Accounts) relating to the Mortgaged Property, wherever located, including all “general intangibles” (as defined in the UCC), all “payment intangibles” (as defined in the UCC), all “software” (as defined in the UCC), corporate or other business records (including computer-readable memory and any computer hardware or software necessary to retrieve such memory), insurance policies (including claims under, and interests in, insurance policies), condemnation awards, good will, inventions, designs, software, patents, trademarks and applications therefor, computer programs, trade names, trade styles, trade secrets, copyrights, registrations and other intellectual property, licenses, franchises, customer lists, tax refund claims, claims for wages, salaries or other compensation of an employee, landlord’s liens, liens given by statute or other rule of law for services or materials, agricultural liens, judgments and rights represented by judgments and rights of recoupment or set-off. The General Intangibles also includes all Material Contracts.

Grantor means the entity named as such in the preamble of this Deed of Trust, and its successors and assigns and its successors in interest in and to the Mortgaged Property.

Gross Revenues means, all income, rents, revenues, issues, profits, deposits (other than security deposits except to the extent applied by Grantor in accordance with applicable Leases), proceeds of business interruption insurance, lease termination or similar payments and all other payments actually received by or for the benefit of Grantor in cash or current funds or other consideration from any source whatsoever from or with respect to the Mortgaged Property.

Hazardous Materials Activity means any past or current activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence,

location, release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

Improvements means all buildings, improvements, alterations or appurtenances now, or at any time hereafter, located upon, in, under or above the Land or any part thereof, but shall not include personal property or fixtures that have been installed by a tenant, if such tenant is permitted by its lease to remove such personal property or fixture upon the expiration or termination of the lease. The term “Improvements” also includes all buildings, improvements, alterations or appurtenances not located on, in, under or above the Land to the extent of Grantor’s right, title and interest therein.

Indemnitees shall mean Beneficiary.

Inventory means “inventory” (as defined in the UCC), including any and all goods, merchandise and other personal property, whether tangible or intangible, now owned or hereafter acquired by Grantor relating to the Mortgaged Property which is held for sale, lease or license to customers, furnished to customers under any contract or service or held as raw materials, work in process, or supplies or materials used or consumed in Grantor’s business.

Land means the real estate described in Schedule A attached hereto.

Leases means any and all leases, subleases, occupancy agreements or grants of other possessory interests, whereby Grantor acts as the lessor, sublessor, licensor, grantor or in another similar capacity, now or hereafter in force, oral or written, covering or affecting the Land or Improvements, or any part thereof, together with all rights, powers, privileges, options and other benefits of Grantor thereunder and any and all guaranties of the obligations of the lessees, sublessees, occupants, and grantees thereunder, as such leases, subleases, occupancy agreements or grants may be extended, renewed, modified or replaced from time to time (exclusive of any ground lease having Grantor as ground lessee).

Lien or Liens means any pledge, security, title retention agreement, security interest, encumbrance, right of set off or offset, rights of others, benefits, claims or other liens (including federal or state tax liens).

Managing Member means [Grantor’s managing member, a \_\_\_\_\_], as the managing member of the Grantor.

Material Contracts means all contracts and other arrangements in connection with Mortgaged Property to which Grantor is a party.

Mortgaged Property means all of Grantor’s right, title and interest in and to the Land, the Improvements, the Fixtures and Personalty, the Leases, the Rents, the Gross Revenues, the General Intangibles and all substitutions therefor, replacements and accessions thereto, and proceeds derived therefrom, together with all of Grantor’s right, title and interest in and to the following:

(a) all of the rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances inuring to the benefit of the Land and/or the Improvements, including, without limitation, all air, light, and water rights; all water stock; all development rights and credits; and all use entitlements, permits, licenses and approvals of governmental entities, belonging or in anyway appertaining thereto and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof or otherwise benefiting the same;

(b) all the estate, right, title, interest, claim or demand whatsoever of Grantor, either at law or in equity, in and to the Land (including, without limitation, water, mineral and sewer rights), the Improvements, the Fixtures and Personalty, the Leases, the Rents, the General Intangibles and the Material Contracts;

(c) all the estate, right, title, interest, claim or demand whatsoever of Grantor, either at law or in equity, in and to condemnation awards or payments with respect to casualties relating to the Mortgaged Property;

(d) all other interest of every kind and character which Grantor now has or at any time hereafter acquires in and to the above-described real and personal property.

Note means the Note defined in the recitals of this Deed of Trust.

Permitted Encumbrance or Permitted Encumbrances means (i) all Liens or matters of record (including but not limited to easements, restrictions, encumbrances, licenses) filed or recorded against or including the Mortgaged Property as of the date this Deed of Trust is recorded in the Official Records of Washoe County, including, without limitation, any and all deeds of trust, assignments of rents, fixture filings, financing statements, and other security or collateral granted by Grantor in favor of the Senior Lenders., together with liens securing and/or required in connection with the Senior Loan; (ii) those matters listed on Schedule B, Part I to the title insurance policy provided to Beneficiary and other title exceptions that have been approved by Beneficiary in writing prior to the effective date of this Deed of Trust, and thereafter, such other title exceptions and liens as may be expressly consented to in writing by the Beneficiary, (iii) taxes on the Land and Improvements not yet due and payable, (iv) trade payables incurred in the ordinary course of business, (v) subordinate lien on the Managing Member's ownership interest in the Grantor in favor of the Investor Member (hereafter defined).

Premises means the Land and the Improvements.

Rents means all of Grantor's right, title and interest in and to all of the rents, royalties, issues, profits, revenue, income, deposits, tenders, and other benefits payable and/or arising from the use or enjoyment of all or any portion of the Land and the Improvements or from any present and future Lease, use agreement, or Material Contract pertaining thereto, including, without limitation, any and all sums with respect to (a) the rental of rooms or other space, (b) the Accounts, and (c) prepaid rents and security deposits, all whether now due, past due, or to become due.

Security Agreement means the security agreement contained in Article 3 of this Deed of Trust, wherein and whereby Grantor grants a security interest in, among other things, the Accounts, the Inventory, the Fixtures and Personalty and the General Intangibles to Beneficiary.

Senior Instrument(s) means that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, together with any Riders or Exhibits attached thereto, dated as of the date hereof, by Grantor, as grantor, to Senior Lenders, as beneficiary, to secure the Senior Loan(s).

Senior Lenders means any of the following: (1) Grantor's senior lender, (2) the Nevada Housing Division, and (3) the lender(s) to any other loan obtained by Grantor that may be required to balance the sources and uses of the Project, to the extent required by the lender(s) of such loan.

Senior Loan(s) means that (those) certain loan(s) in the maximum principal amount of [\$ ] made by Senior Lender(s) to Grantor, with respect to the Mortgaged Property.

Senior Note(s) means that (those) certain Multifamily Note(s), dated the Closing Date, executed and delivered by the Grantor, payable to Senior Lender(s) in an amount not to exceed the original maximum principal amount of the Senior Loan(s), including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

Trustee means the person, persons or entity named as such in the preamble of this Deed of Trust and, as the case may be, his, their or its successors and assigns.

UCC means the Uniform Commercial Code of the State of Nevada as the same may be amended, modified or recodified from time to time provided, if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of Trustee or Beneficiary in the Mortgaged Property or any other collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than Nevada, the term "UCC" means the Uniform Commercial Code in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

## ARTICLE 2

### GRANT

2.1 Grant. To secure the payment, performance and discharge of the Deed of Trust Obligations, Grantor by these presents hereby grants, assigns, mortgages, transfers and conveys unto Trustee, IN TRUST, WITH POWER OF SALE for the use and benefit of Beneficiary, with right of entry and possession (to the extent permitted by applicable law), the Mortgaged Property, to have and to hold the Mortgaged Property unto Trustee, its successors, substitutes and assigns forever. Grantor hereby binds itself, and Grantor's successors, substitutes and assigns, to warrant and forever defend unto Beneficiary, its successors and assigns, the title to the Land and Improvements, together with all other rights of Grantor in and to the balance of the Mortgaged Property, subject to the Permitted Encumbrances in connection with the Mortgaged Property.

2.2 Condition of Grant. Provided always, that if Grantor shall irrevocably, unconditionally and indefeasibly pay or cause to be paid the entire Deed of Trust Obligations as and when the same shall become due and payable and shall observe, perform and discharge the Deed of Trust Obligations, then this Deed of Trust and the estate and rights granted by Grantor hereby shall automatically cease, terminate and become void, and shall be promptly released or reconveyed by Beneficiary, at the cost and expense of Grantor.

## ARTICLE 3

### SECURITY AGREEMENT AND FIXTURE FILING

3.1 Security Agreement. With respect to all Accounts, Fixtures and Personalty, General Intangibles, Inventory and other collateral constituting a part of the Mortgaged Property, this Deed of Trust shall constitute a "security agreement" within the meaning of, and shall create a security interest under, the UCC, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of further securing payment and performance of the Deed of Trust Obligations, Grantor hereby grants to Beneficiary a security interest and lien on all rights, titles, and interests now owned or hereafter acquired by Grantor in all Accounts, Fixtures and Personalty, General Intangibles, Inventory and other assets, including the Mortgaged Property. As to Accounts, Fixtures and Personalty, General Intangibles and Inventory, the grant, transfer, and assignment provisions of this Article 3 shall control over the grant in trust provision of Section 2.1 of this Deed of Trust. Grantor represents and warrants that, except for the Permitted Encumbrances and any financing statement filed by Beneficiary, no presently effective

financing statement covering the Accounts, the Fixtures and Personalty, the General Intangibles and Inventory or any part thereof has been filed with any filing office, and no other presently effective security interest has attached or has been perfected in the Accounts, the Fixtures and Personalty, the General Intangibles and Inventory or any part thereof. Grantor shall from time to time promptly after request by Beneficiary, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Beneficiary may reasonably request, in a form reasonably acceptable to Grantor, in order to evidence, perfect, preserve, continue, extend or maintain this security agreement and the security interest created hereby as a first Lien on the Accounts, the Fixtures and Personalty, the General Intangibles and Inventory, subject only to the Permitted Encumbrances in connection with the Mortgaged Property.

3.2 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under NRS § 104.9502(3) of the UCC and any corresponding section of any other applicable Uniform Commercial Code, each as amended and recodified from time to time, covering the Mortgaged Property. Beneficiary shall have all rights with respect to the fixtures afforded to it by the applicable Uniform Commercial Code. A carbon, photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement. Trustor hereby authorizes Beneficiary, at any time, to file a manually executed counterpart or a carbon, photographic or other reproduction of this Deed of Trust as a financing statement in either the central or local records of any jurisdiction wherein the Mortgaged Property is located, but the failure of Beneficiary to do so shall not impair (a) the effectiveness of this Deed of Trust as a fixture filing as permitted by the applicable Uniform Commercial Code, or (b) the validity and enforceability of this Deed of Trust in any respect whatsoever. The following information is included for purposes of meeting the requirements of a financing statement:

(a) The name of the debtor is the Ulysses Acquisition, LLC, a Delaware limited liability company.

(b) The name of the secured party is the City of Reno, a municipal corporation.

(c) The address of the secured party is 1 East 1<sup>st</sup> Street, Reno, Nevada 89501, Attn: Revitalization Manager (“**Beneficiary’s Address**”).

(d) The mailing address of the debtor is 210 University Boulevard, Suite 460, Denver, Colorado 80206, Attention: Sarah Rockwell (“**Grantor’s Address**”).

(e) This financing statement covers all of the debtor’s fixtures (whether now owned or hereafter acquired). The fixtures include debtor’s right, title and interest in and to (a) goods which are or are to become fixtures on the Land described in Schedule A, (b) minerals or the like (including oil and gas) located on the Land described in Schedule A, and (c) all proceeds and products of the fixtures.

#### ARTICLE 4 ASSIGNMENT OF RENTS AND LEASES AND CONTRACTS

4.1 Assignment of Rents and Leases. Subject to the Permitted Encumbrances, all of Grantor’s right, title and interest in and to the Rents and Leases are hereby absolutely and irrevocably assigned to Beneficiary to be applied against the Deed of Trust Obligations. Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact, with the right, at Beneficiary’s option at any time, to demand, receive and enforce payment of, to give receipts, releases and satisfactions for, and to sue, either in Grantor’s or Beneficiary’s name, for all Rents during the continuance of an Event of Default. Notwithstanding the foregoing Assignment of Rents, so long as no Event of Default has occurred which remains uncured, Grantor may collect, receive, take, use and enjoy such Rents, as they become due and payable and Grantor

may lease the Mortgaged Property and may exercise all other rights set forth in the Leases (subject to any express restrictions set forth herein). The foregoing assignment shall be fully operative without any further action on the part of either party; and specifically Beneficiary shall be entitled at its option, upon the occurrence of an Event of Default hereunder and for so long as such Event of Default is continuing, to collect all Rents from the Mortgaged Property whether or not Beneficiary takes possession of the Mortgaged Property. Upon the occurrence and during the continuance of an Event of Default hereunder, the permission hereby given to Grantor to collect the Rents and exercise all other rights under the Leases from the Mortgaged Property shall terminate. The permission given by Beneficiary to Grantor shall be reinstated upon the cure of such Event of Default with Beneficiary's specific consent which shall not be unreasonably withheld or delayed. This Assignment shall not be deemed or construed to constitute Beneficiary or Trustee as a mortgagee in possession nor obligate Beneficiary or Trustee to take any action or to incur expense or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 4.1 and the application of the Rents to the Deed of Trust Obligations shall not cure or waive any Event of Default but shall be cumulative of all other rights and remedies of Beneficiary.

4.2 Assignment of Contracts. Subject to the Permitted Encumbrances, all of Grantor's right, title and interest in and to the Material Contracts are hereby absolutely and irrevocably assigned to Beneficiary to be applied against the Deed of Trust Obligations. Grantor hereby appoints Beneficiary its true and lawful attorney-in-fact with the right, at Beneficiary's option at any time, to demand, receive and enforce performance and payment of, to give receipts, releases and satisfactions for, and to sue, either in Grantor's or Beneficiary's name, for all amounts due under and performance required by the Material Contracts during the continuance of an Event of Default. Notwithstanding the foregoing Assignment of Contracts, so long as no Event of Default has occurred which remains uncured, Grantor may collect, receive, take, use and enjoy all rights under the Material Contracts, as they become due and payable and Grantor may exercise all other rights set forth in the Material Contracts (subject to any express restrictions set forth herein). The foregoing assignment shall be fully operative without any further action on the part of either party. Grantor shall from time-to-time within thirty (30) days after request by Beneficiary, execute, acknowledge and deliver any additional instruments Beneficiary may reasonably request, in a form reasonably acceptable to Beneficiary, to further evidence the assignment and transfer to Beneficiary of Grantor's interest in any Material Contracts.

4.3 Effect of Assignments. This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property; subject, however, to the Permitted Encumbrances and the conditional permission given to Grantor to collect, receive, take, use and enjoy the same as provided therein and above; provided, that the existence or exercise of such right of Grantor shall not operate to subordinate this assignment to any subsequent assignment by Grantor, in whole or in part, and any such subsequent assignment by Grantor shall be subject to the rights of Trustee and Beneficiary hereunder.

4.4 No Merger of Leasehold Estates. If both the lessor's and lessee's estate under any Lease, or any portion thereof, becomes vested at any time in one owner, this Deed of Trust and the Lien created hereby shall not be adversely affected by the application of the doctrine of merger unless Beneficiary so elects in writing by recording a written declaration so stating. Unless and until Beneficiary so elects, Beneficiary and any lessor and lessee shall continue to have and enjoy all of the rights and privileges to the separate estates. If Beneficiary does so elect, the Lien created by this Deed of Trust shall attach to Grantor's resultant fee interest in the previously leased portion of the Mortgaged Property, and Grantor agrees to comply with Section 8.1 below to execute any documentation necessary and cooperate with Beneficiary in all respects to evidence such attachment. In addition, upon the foreclosure of the Lien created by this Deed of Trust on the Mortgaged Property, any Leases then existing and affecting all or any portion of the Mortgaged Property shall not be destroyed or terminated by merger or by the foreclosure unless, subject to the terms of the Leases and subordination, non-disturbance and attornment agreements to which Beneficiary

is a party, Beneficiary or any purchaser at the sale so elects. No act by or on behalf of Beneficiary or such purchaser shall constitute a termination of any Lease unless Beneficiary gives written notice thereof to the tenant or subtenant affected.

4.5 Right to Assign Leases. Grantor has the right to assign the Leases, Rents and Contracts to Beneficiary free and clear of any prior assignment, Liens, charges, encumbrances, security interests and adverse claims whatsoever, except for the Permitted Encumbrances.

4.6 Assignment to Beneficiary Controlling. The rights of Trustee in the Leases, Rents and Material Contracts created under Article 2 shall be subject to the rights of Beneficiary in the Leases, Rents and Material Contracts created under this Article 4 and the Permitted Encumbrances.

## ARTICLE 5 COVENANTS AND REPRESENTATIONS AND WARRANTIES

5.1 Covenants. Until the entire Deed of Trust Obligations shall have been paid in full, Grantor hereby covenants and agrees as follows:

(a) Payment of Deed of Trust Obligations. Grantor shall promptly pay or cause to be paid the Deed of Trust Obligations as and when same shall be due and payable under the Note and this Deed of Trust.

(b) Compliance with Laws. The present use and occupancy of the Land does not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, Environmental Laws, zoning, building, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not and if a third-party is required under any covenants, conditions and restrictions of record or any other agreement to consent to the construction, use and/or operation of the Land, Grantor has or on a timely basis will have obtained such approval from such party.

(c) Maintenance, Repair and Alterations. Grantor shall: (a) not commit waste or permit impairment or deterioration of the Premises, subject to ordinary wear and tear and damage by fire or other casualty; (b) not abandon the Premises; (c) keep the Premises in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Premises to the equivalent of its condition as of the date hereof, subject to ordinary wear and tear, or such other lesser condition as Beneficiary may approve in writing, following any damage or loss thereto; (d) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Premises; and (e) give notice in writing to Beneficiary of and, unless otherwise directed in writing by Beneficiary, appear in and defend any action or proceeding purporting to affect the Premises or the rights or powers of Beneficiary.

(d) Insurance. So long as the loan secured by this Deed of Trust is subordinate to any loan by any Senior Lender, Grantor shall maintain insurance in the amounts and on terms required by such Senior Lender and the remaining terms of this Section 5.1(d) shall not apply. If no such loan by any Senior Lender is outstanding, so long as Grantor owes money to Beneficiary, Grantor agrees to maintain insurance in amounts approved, from time to time, and with insurers approved by Beneficiary as follows:

(1) Grantor shall procure at its expense and keep in force (i) Commercially reasonable fire and other casualty policies with respect to the land and the improvements thereon, and (ii) a commercial general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single

limit, or such other policy limit as Grantor may approve in its discretion, including coverage for bodily injury, property damage, products, completed operating, and contractual liability coverage. In addition, all insurance shall be in form, content and amounts approved by Beneficiary and written by an insurance company or companies licensed to do business in the state in which the Premises are located and domiciled in the United States or a governmental agency or instrumentality approved by Beneficiary, not to be unreasonably conditioned, withheld or delayed. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Beneficiary to collect any and all proceeds payable thereunder and shall include a thirty (30) day (except for nonpayment of premium, in which case, a ten (10) day) notice of cancellation clause in favor of Beneficiary. All policies or certificates of insurance shall be delivered to and held by Beneficiary as further security for the payment of the Deed of Trust Obligations, with evidence of renewal coverage delivered to Beneficiary at least thirty (30) days before the expiration date of any policy.

(e) Performance of Agreements. Grantor shall duly and punctually perform all covenants and agreements expressed as binding upon it under any Leases and under any other Material Contracts to which it is a party with respect to the Mortgaged Property or any part thereof.

(f) Inspection. Grantor shall permit Beneficiary to inspect the Mortgaged Property upon reasonable written notice, provided that such inspection does not unreasonably interfere with the use and operation of the Mortgaged Property by Grantor or its officers, employees, agents, tenants, licensees, or guests. Grantor may elect to be present (or cause an agent of Grantor to be present) during such entries and inspection, and such entry and inspection shall be subject to the rights of tenants under applicable leases and laws and shall be carried out in a manner that minimizes disruption of such tenants.

(g) Casualty Awards. Subject to any assignments to Senior Lender(s) and/or third party lenders, the proceeds of any insurance policies collected or claims as a result of any loss or damage to any portion of the Mortgaged Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm and any awards, judgments or claims resulting from the exercise of the power of condemnation or eminent domain shall be promptly applied by Grantor to repair, replace or rebuild all or any part of the Mortgaged Property which has suffered any such loss and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Grantor shall not settle and adjust any claims under policies of insurance in excess of \$100,000 singly or in the aggregate without Beneficiary's prior written consent. All policies of insurance require to be maintained under this Section shall name Beneficiary as loss payee and additional insured.

(h) Books and Records. Grantor will keep proper books of record and account in a manner consistent with its current practices and in accordance with other applicable prudent and standard practices. Grantor will permit any representatives designated by Beneficiary, upon reasonable prior notice, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(i) Licenses.

(1) Grantor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for the construction, occupancy, and operation of the Mortgaged Property.

(2) Reserved.



(3) The storm and sanitary sewage disposal system, water system, drainage system and all mechanical systems of the Premises do (or when constructed will) comply with all applicable laws, statutes, ordinances, rules and regulations, including, without limitation, all Environmental Laws applicable to the Mortgaged Property.

(4) All utility, parking, access (including curb-cuts and highway access), construction, recreational and other permits and easements required for the construction and use of the Premises have or will have been granted and issued.

(j) Other Financing and Liens.

(1) Grantor agrees that it will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Premises and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, and will pay all special assessments which have been placed in collection and all real estate taxes and assessments of every kind (regardless of whether the same are payable in installments) upon the Premises, before the same become delinquent; *provided*, however, that Grantor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien, claim, tax or assessment. If Grantor shall fail promptly either to discharge or to contest claims, taxes or assessments asserted or give security or indemnity, or having commenced to contest the same, and having given such security or indemnity shall fail to prosecute such contest with diligence, or to maintain such indemnity or security, or upon the adverse conclusion of any such contest, to cause any judgment or decree to be satisfied and lien to be released, then and in any such event Beneficiary may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, in its sole discretion, effect any settlement or compromise of the same. Any amounts so expended by Beneficiary, including premiums paid or security furnished in connection with the issuance of any surety bonds, shall be deemed to constitute disbursement of the proceeds of the Loan. In settling, compromising, discharging or providing indemnity or security for any claim for lien, tax or assessment, Beneficiary shall not be required to inquire into the validity or amount thereof.

(2) Except for a security interest granted to Beneficiary and those interests granted under the Permitted Exceptions, Grantor agrees that all of the personal property, fixtures, attachments, furnishings and equipment owned by Grantor will be kept free and clear of all chattel mortgages, vendor's liens, and all other liens, claims, encumbrances and security interests whatsoever unless approved in writing by Beneficiary, not to be unreasonably conditioned, withheld or delayed, and that Grantor will be the absolute owner of said personal property, fixtures, attachments and equipment. Grantor, on request, will furnish Beneficiary with satisfactory evidence of such ownership, and of the terms of purchase and payment therefor.

(k) Hazardous Material.

(1) Grantor shall keep and maintain the Mortgaged Property in accordance with all applicable Environmental Laws and shall indemnify, defend and hold the Indemnitees harmless from and against any and all Environmental Claims and violations of Environmental Laws, provided that Grantor will not be in breach of this Deed of Trust for any Environmental Claims or violations of Environmental Laws which accrued or otherwise occurred on or prior to Grantor obtaining ownership of the Premises, including, without limitation, any release of Hazardous Materials on, under, or adjacent to the Premises.

(2) Grantor will not cause or permit the Premises to be used during the term of this Deed of Trust, for any activities which, directly or indirectly, involve the use, generation, treatment,

storage, transportation or disposal of any Hazardous Materials in violation of any Environmental Laws. Grantor will not cause any Hazardous Materials to exist (A) on the Premises in violation of any Environmental Laws or (B) under the Premises or (C) in any surface waters or groundwaters on or under the Premises; all of the foregoing in any amounts exceeding the amounts permitted under Environmental Laws.

(3) To the best of Grantor's knowledge, there are no facilities on the Premises which are subject to reporting under any State laws or Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11022), and federal regulations promulgated thereunder.

(l) Management. Following completion of construction of the Project, Grantor shall provide for competent and responsible management of the Mortgaged Property.

(m) Use of Mortgaged Property. Grantor shall not use the Mortgaged Property or any part thereof, or allow the same to be used or occupied for any unlawful purpose, or in violation of any certificate of occupancy or other permit or certificate, or any law, ordinance or regulation, covering or affecting the use or occupancy thereof.

(n) Reserved.

(o) Title to Mortgaged Property. Grantor agrees to defend the title to and right to possession of the Property and the Security of this Deed of Trust, and good and indefeasible title to the Improvements, the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory free and clear of any encumbrances, other than the Permitted Encumbrances.

(p) Due on Sale. Grantor acknowledges that, in making the Loan, Beneficiary has relied to a material extent upon the particular business reputation, expertise, creditworthiness, and individual net worth of Grantor and of the persons, partnerships, trusts, corporations or other entities who have a direct or indirect interest in Grantor and upon the continuing interest which such persons, partnerships, trusts, corporations or other entities, as owners of direct or indirect interests in Grantor, shall have in the Mortgaged Property.

(s) Agricultural or Farming Use. Grantor further covenants with and represents and warrants to Beneficiary that none of the Mortgaged Property is presently, or will during the term of this Deed of Trust, be used principally or at all for agricultural or farming purposes.

## ARTICLE 6 EVENTS OF DEFAULT

6.1 The term "Event(s) of Default" shall mean the occurrence or happening, from time to time, of any of the following:

(a) Grantor shall fail to pay any principal of the Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise and such failure shall continue unremedied for a period of thirty (30) days;

(b) Grantor shall fail to pay any interest on the Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Deed of Trust or the Note, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) days;

(c) any representation or warranty made or deemed made by or on behalf of Grantor in or in connection with the Note or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with the Note or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) Grantor shall fail to observe or perform any covenant, condition or agreement contained in Article 5;

(e) Grantor shall fail to observe or perform any covenant, condition or agreement contained in the Note (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from Beneficiary to Grantor;

(f) reserved;

(g) any event or condition occurs that results in any amount becoming due prior to its scheduled maturity or that enables or permits the holder or holders of any amount or any trustee or agent on its or their behalf to cause any amount to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, and any such event or condition shall continue unremedied for a period of thirty (30) days; provided that this clause (g) shall not apply to secured amounts that becomes due as a result of the voluntary sale or transfer of the property or assets securing such amounts or to amounts that are voluntarily prepaid by Grantor;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Grantor or any of its debts, or of a substantial part of any of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Grantor or for a substantial part of any of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) Grantor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Grantor or for a substantial part of any of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) Grantor shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

then, and in every such event (other than an event with respect to Grantor described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, Beneficiary may, by notice to Grantor, take either or both of the following actions, at the same or different times declare the Deed of Trust Obligations then outstanding to be due and payable in whole (or in part, in which case the Deed of Trust Obligations not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the Deed of Trust Obligations so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of Grantor accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which

are hereby waived by Grantor; and in case of any event with respect to Grantor described in clause (h) or (i) of this Article, the Deed of Trust Obligations then outstanding, together with accrued interest thereon and all fees and other obligations of Grantor accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Grantor.

## 6.2 Notice and Cure Periods.

(1) Other defaults: In the event of any default described in Section 6.1 above which does not have a prescribed notice and cure period, Beneficiary shall give notice to Grantor at the addresses set forth in Section 8.3 hereof, subject to subparagraph (2) next below, and if the default is not cured within forty-five (45) days after notice is deemed received, Beneficiary may pursue its remedies set forth below. If, however, circumstances beyond the control of Grantor exist that render it impracticable for Grantor to remedy the default within forty-five (45) days, and if Grantor has undertaken all possible measures to cure the default within forty-five (45) days, such cure period shall be extended for the period of time reasonably necessary to accommodate such cure.

(2) If, however, the giving of notice under subsections (1) above is prohibited by injunction or other court proceeding, or is stayed by the automatic stay or any other provision in federal bankruptcy laws or is not allowed by any other provision of law, then notice shall not be given, and the applicable cure period begins on the date of the default. Notwithstanding anything to the contrary in this Deed of Trust, Beneficiary agrees that any cure of any default made or tendered by any member or partner of Grantor shall be deemed to be a cure by the Grantor and shall be accepted or rejected by Beneficiary on the same basis as if made or tendered by Grantor.

(3) Notwithstanding any provision in this Deed of Trust to the contrary, all notices to the Grantor relating to any default or Event of Default under this Deed of Trust shall be contemporaneously given to [Grantor's project tax credit investor] ("Investor Member") in writing, and any cure period provided to the Grantor under this Deed of Trust shall not be deemed commenced until Investor Member has also received such notice. Investor Member shall have the right, but not the obligation, to remedy or cure such default or Event of Default, and in no event shall this right of Investor Member to cure be construed as expanding the rights or remedies of the Grantor upon a default or Event of Default. Grantor will provide to Beneficiary in writing the Investor Member's notice address upon execution of this Deed of Trust and Grantor's receipt of written notice of any change in the Investor Member's notice address for the purpose of this section. Investor Member may provide written notice of its change of address directly to Lender, in which event Grantor will have no obligation to provide written notice of the same.

## ARTICLE 7 FORECLOSURE AND REMEDIES

7.1 Remedies. If an Event of Default shall occur which continues beyond any applicable grace or cure periods set forth above, Beneficiary may, at its option, by or through Trustee or otherwise, exercise one or more or all of the following remedies, all to the fullest extent permitted by applicable law:

(a) Acceleration. Subject to the applicable provisions of the Note, declare the unpaid portion of the Deed of Trust Obligations to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) Entry Upon Mortgaged Property. To the extent allowed by applicable law, enter upon the Mortgaged Property and take possession thereof and of all books, records and accounts relating thereto.

(c) Reserved.

(d) Judicial Proceedings. (1) foreclose this Deed of Trust judicially, in the same manner as a mortgage; (2) cause the Trustee to exercise its power of sale in accordance with the provisions of this Deed of Trust; or (3) sue on the Note according to law. To the extent permitted by law, Beneficiary shall have the right to seek and obtain a deficiency judgment following the completion of a judicial foreclosure or a trustee's sale of all or part of the Mortgaged Property.

(e) Trustee's Sale of Mortgaged Property. The procedure for exercise of the Trustee's power of sale shall be as follows:

(1) Upon written request therefore by Beneficiary specifying the nature of the Event of Default(s), beyond the applicable notice and cure period, and the amount or amounts due and owing, Trustee shall execute a written notice of breach and of its election to cause the property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to Nevada law.

(2) Notice of sale having been given as then required by Nevada law and not less than the time then required by Nevada law having elapsed after recordation of such notice of breach, Trustee, without demand on Grantor, shall sell the Mortgaged Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Grantor agrees that such a sale (or sheriff's sale pursuant to judicial foreclosure) of all the Mortgaged Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all of any part of the Mortgaged Property which may be personal property, Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Mortgaged Property, and from time to time thereafter may postpone such sale, as may be required by statute or requested by Beneficiary. Trustee shall deliver to the purchaser its deed and bill of sale conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Grantor or Beneficiary, may purchase at such sale.

(3) After deducting all costs, fees and expenses of Trustee, and of this trust, including the actual cost of evidence of title search and reasonable actual out of pocket counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the applicable interest; all other sums then secured hereby; and the remainder, if any, to any party entitled thereto as their rights may appear.

(f) Receiver. Beneficiary shall be entitled, as a matter of strict right, without notice and ex parte except as otherwise required by applicable law, and without regard to the value or occupancy of the security, or the solvency of the Grantor, or the adequacy of the Mortgaged Property as security for the Note, to itself enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct, or, at its option, Beneficiary may have a receiver appointed to do the same, such receiver to have all the rights and powers permitted under the laws of the jurisdiction in which the Mortgaged Property is located. Beneficiary or the receiver may also take

possession of, and for these purposes use, any and all Fixtures and Personalty which is a part of the Mortgaged Property and used by Grantor in the rental or leasing thereof, or any part thereof. The expense (including reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Deed of Trust. Beneficiary shall (after payment of all actual out of pocket costs and expenses incurred) apply such Rents, issues and profits received by it on the Deed of Trust Obligations in the order set forth in Section 7.7 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Beneficiary shall be liable to account only for such Rents, issues and profits actually received by Beneficiary.

(g) Intentionally Deleted.

(h) Additional Rights and Remedies. With or without notice, and without releasing Grantor from the Deed of Trust Obligations, and without becoming a mortgagee in possession, Beneficiary shall have the right to cure any breach or default of Grantor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof including, but without limitation, to appear in and defend any action or proceedings purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, Lien or claim of Lien which, in the judgment of Beneficiary, is prior or superior hereto, the judgment of Beneficiary being conclusive as between the parties hereto to obtain insurance; to pay any premiums or charges with respect to insurance required to be carried hereunder, and to employ counsel, accountants, contractors and other appropriate persons to assist them.

(i) Beneficiary as Purchaser. Beneficiary shall have the right to become the purchaser at any sale held by the Trustee or by any court, receiver or public officer, and Beneficiary shall have the right to credit upon the amount of the bid made therefor, the amount of indebtedness payable to it out of the net proceeds of such sale. Beneficiary, upon any such purchase, shall acquire good title to the Mortgaged Property so purchased, free from the Lien of this Deed of Trust and free of all rights of redemption, if any, in Grantor. Recitals contained in any conveyance made to any purchaser at any sale made hereunder shall presumptively establish the truth and accuracy of the matters therein stated, including, without limiting the generality of the foregoing nonpayment of the unpaid principal sum of, and the interest accrued on, the Note after the same have become due and payable advertisement and conduct of such sale in the manner provided herein or appointment of any successor Trustee hereunder; and Grantor does hereby ratify and confirm any and all acts that said Beneficiary or its successors may lawfully do in the premises by virtue of the terms and conditions of this instrument.

(j) Receipt to Purchaser. Upon any sale, whether made under the power of sale herein granted and conferred or by virtue of judicial proceedings, the receipt of the Trustee, or of the officer making sale under judicial proceedings shall be sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, his or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee or of such officer therefor, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or nonapplication thereof.

(k) Effect of Sale. Any sale or sales of the Mortgaged Property, whether under the power of sale herein granted and conferred or by virtue of judicial proceedings conducted in accordance with applicable law, shall operate to divest all right, title, interest, claim, and demand whatsoever either at law or in equity, of Grantor of in, and to the premises and the property sold, and shall be a perpetual bar, both at law and in equity, against Grantor, Grantor's successors, and against any and all persons claiming

or who shall thereafter claim all or any of the property sold from, through or under Grantor, or Grantor's successors or assigns; nevertheless, Grantor, if requested by the Trustee so to do, shall join in the execution and delivery of all proper conveyances, assignments and transfers of the properties so sold.

(l) Remedies Under UCC. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may exercise its rights of enforcement, if they can be exercised without a breach of the peace, with respect to the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory under the applicable provisions of the UCC, and/or under other applicable Nevada law, and in conjunction with, in addition to or in substitution for those rights and remedies:

(1) Beneficiary may enter upon the Premises to take possession of, assemble and collect the Accounts, the Fixtures and Personalty, the General Intangibles, the Inventory and any and all books related to the Mortgaged Property; and

(2) Beneficiary may require Grantor to assemble the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory and make same available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory; and

(3) Written notice mailed to Grantor as provided herein at least ten (10) business days prior to the date of public sale of the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory or prior to the date after which private sale of the Accounts, the Fixtures and Personalty, the General Intangibles and the Inventory shall be made, shall constitute reasonable notice; and

(4) Any sale made pursuant to the provisions of this Subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property under power of sale as provided in Subsection 7.1(e) of this Deed of Trust; and

(5) In the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Mortgaged Property may, at the option of Beneficiary, be sold as a whole; and

(6) It shall not be necessary that Beneficiary take possession of the Accounts, the Fixtures and Personalty, the General Intangibles, the Inventory or any part thereof prior to the time that any sale pursuant to the provisions of this section is conducted and it shall not be necessary that the Accounts, the Fixtures and Personalty, the General Intangibles, the Inventory or any part thereof be present at the location of such sale; and

(7) Prior to application of proceeds of disposition of the Accounts, the Fixtures and Personalty, the General Intangibles or the Inventory to the Deed of Trust Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary; and

(8) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Deed of Trust Obligations or as to the occurrence of any Event of Default, or to Beneficiary have declared all of such Deed of Trust Obligations to be due and payable, or as to notice of time, place and terms of sale and of the Mortgaged Property to be sold having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(9) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale but in the name and on behalf of Beneficiary; and

(10) If a reinstatement shall occur with respect to this Deed of Trust or if a pre-foreclosure redemption shall occur by payment of all outstanding indebtedness and any other amounts owed to Beneficiary, then to the extent that Beneficiary shall have taken possession of any portion of the Mortgaged Property or caused such possession to be taken by a receiver or agent, Beneficiary shall cause such portion of the Mortgaged Property to be returned to Grantor. Nothing contained in this subsection (l) shall (i) require Beneficiary to return any money to Grantor which shall have been applied to any of the Deed of Trust Obligations or to the preservation or operation of the Mortgaged Property; or (ii) impair Beneficiary's rights with respect to Rents as otherwise provided in this Deed of Trust.

(m) Entry on and Operation of Property by Beneficiary. Upon the occurrence and during the continuance of an Event of Default and in addition to all other rights herein conferred on the Beneficiary, to the extent permitted by applicable law, the Beneficiary (or any person, firm or corporation designated by the Beneficiary) shall have the right and power, but shall not be obligated to enter upon and take possession of any of the Mortgaged Property, and of all books, records, and accounts relating thereto and to exclude Grantor, and Grantor's agents or servants, wholly therefrom, and to hold, lease, operate, use, administer, manage, and operate the same to the extent that Grantor shall be at the time entitled and in his place and stead for such time, and upon such terms as Beneficiary may deem to be in its best interest (making such repairs, alterations, additions, and improvements thereto, from time to time, as Beneficiary shall deem necessary or desirable) and collect and retain all earnings, Rents, profits, or other amounts payable in connection therewith and apply all such Rents and other amounts collected by Beneficiary in accordance with the provisions of Section 7.7. The Beneficiary, or any person, firm or corporation designated by the Beneficiary may operate the same without any liability to Grantor in connection with such operations, except to use ordinary care in the operation of said properties, and the Beneficiary or any person, firm or corporation designated by them, shall have the right to collect, receive and give receipts for all Rents from the Mortgaged Property, to make repairs, purchase machinery and equipment, and to exercise every power, right and privilege of Grantor with respect to the Mortgaged Property. All costs, expenses and liabilities of every character incurred by the Beneficiary in managing, operating, maintaining, protecting or preserving the Mortgaged Property (except with respect to acts or omissions of Beneficiary and its agents in exercising Beneficiary's remedies under this Deed of Trust that constitute gross negligence or willful misconduct), respectively, shall constitute a demand obligation owing by Grantor to Beneficiary and shall bear interest from date of expenditure until paid at the applicable interest rate, all of which shall constitute a portion of the Deed of Trust Obligations and shall be secured by this Deed of Trust and by any other instrument securing the Deed of Trust Obligations. If necessary to obtain the possession provided for above, the Beneficiary, as the case may be, may invoke any and all remedies to dispossess Grantor including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. When and if the expenses of such operation have been paid and the Deed of Trust Obligations paid in full, the Mortgaged Property shall, if there has been no sale or foreclosure, be returned to Grantor.

(n) Change in Laws. If any statute now applicable in any state in which any of the Mortgaged Property is now located provides, or shall hereafter be amended to provide, a different procedure for the sale of real property under a power of sale in a deed of trust or mortgage, Beneficiary may, in its sole discretion, if same be permitted by applicable law, follow the sale procedure set forth in this Article 7 or that prescribed in such statute, as amended.

(o) Sale. Beneficiary may cause the Mortgaged Property and all estate, right, title and interest, claim and demand therein, or any part thereof to be sold as follows:



(1) Beneficiary may proceed as if all of the Mortgaged Property were real property, in accordance with Section 7.1(e) above, or Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the premises without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subsection (3) below, separate and apart from the sale of real property, with the remainder of the Mortgaged Property being treated as real property at the sale.

(2) Subject to subsection (3) of this Section 7.1(o), Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or required by law) or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest. Should Beneficiary desire that more than one sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest.

(3) Subject to the provisions of Section 7.1(l)(10) hereof, should Beneficiary elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subsection (1) above, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the UCC; or in accordance with any other remedy provided by law. Grantor and Beneficiary shall be eligible to purchase any part of all of such property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the UCC. Beneficiary shall give Grantor at least ten (10) business days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Grantor it shall constitute reasonable notice to Grantor.

(p) Other. Exercise any other remedy, or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

7.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note or this Deed of Trust, or pursuant to any other judicial proceedings under this Deed of Trust, or pursuant to the power of sale granted herein, may be sold in one parcel, as an entirety or in such parcels and in such manner or order as Beneficiary, in its sole discretion, may elect.

7.3 Remedies Cumulative and Concurrent. The rights and remedies of Beneficiary as provided in the Note and this Deed of Trust shall be cumulative and concurrent and may be pursued separately, successively or together against Grantor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

7.4 No Cure or Waiver. To the extent permitted by applicable law, neither Beneficiary's, nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Deed of Trust Obligations, nor the exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Deed of Trust Obligations which are then due have been paid and performed and Grantor has cured all other defaults), or prejudice Beneficiary or Trustee

in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the Lien of this Deed of Trust.

7.5 Payment of Costs, Expenses and Attorneys' Fees. Grantor agrees to pay to Beneficiary immediately and upon demand all reasonable costs and expenses incurred by Trustee and Beneficiary in any efforts to enforce any terms of this Deed of Trust. If Beneficiary or Trustee use the services of the Reno City Attorney, reasonable attorney's fees shall be the rate being charged by the Reno City Attorney for a Deputy City Attorney III through the city budget process at the time the services are performed.

7.6 Waiver of Redemption, Notice, Marshalling, Etc. To the extent permitted by applicable law, Grantor hereby waives and releases: (a) all benefit that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any redemption or extension of time for payment; (b) unless specifically required herein, pursuant to the Note, and/or if by law, all notices of Grantor's default or of Beneficiary's election to exercise, or Beneficiary's actual exercise, of any option or remedy under the Note; (c) any right to have the Liens against the Mortgaged Property or any other collateral in which Beneficiary holds an interest as security for the Deed of Trust Obligations marshaled (excluding the Permitted Exceptions); and (d) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Note.

7.7 Application of Proceeds. Subject to the rights of Senior Lender(s) pursuant to the Senior Instruments, the proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Beneficiary in the following order:

- (a) first, to the payment of late charges, if any, owing under the Note;
- (b) second, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including without limitation payment of any impositions or other taxes);
- (c) third, to the extent allowed by law, to the payment of reasonable attorneys' fees and other legal expenses, including expenses and fees incurred on appeals, and legal expenses and fees of a receiver;
- (d) fourth, to the payment of accrued and unpaid interest on the Deed of Trust Obligations; and
- (e) fifth, to the payment of the balance of the Deed of Trust Obligations. The balance, if any, shall be paid to the Grantor, his or her heirs, executors, administrators or assigns.

7.8 Strict Performance. Any failure by Beneficiary to insist upon strict performance by Grantor of any of the terms and provisions of the Note shall not be deemed to be a waiver of any of the terms or provisions of the Note and Beneficiary shall have the right thereafter to insist upon strict performance by Grantor of any and all of them.

7.9 No Conditions Precedent to Exercise of Remedies. Neither Grantor, nor any other person now or hereafter obligated for payment of all or any part of the Deed of Trust Obligations, shall be relieved of such obligation (a) by reason of the failure of Beneficiary to comply with any request of Grantor or of any other person so obligated to take action to foreclose on this Deed of Trust, or otherwise enforce any provisions of the Note; (b) by reason of the release, regardless of consideration, of all or any part of the

security held for the indebtedness; or (c) by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Beneficiary (each, a "Subsequent Agreement") extending the time of payment or modifying the terms of the Note without first having obtained the consent of Grantor or such other person. If a subsequent owner of the Mortgaged Property and the Beneficiary enter into a Subsequent Agreement, Grantor and all such other persons shall continue to be liable to make payment according to the terms of any such Subsequent Agreement, except to the extent such Subsequent Agreement (i) increases the principal amount of Grantor's Deed of Trust Obligations or the "Interest Rate," as defined in the Note, unless expressly released and discharged in writing by Beneficiary; (ii) increases the principal amount of Grantor's Deed of Trust Obligations or the "Interest Rate," as defined in the Note; (iii) reduces the term of the Loan; or (iv) otherwise makes the terms and provisions of the Note less favorable to Grantor.

7.10 Release of Collateral. Beneficiary may release, regardless of consideration, any part of the security held for the Deed of Trust Obligations without, as to the remainder of the security, in any way impairing or affecting the Liens or their priority over any subordinate Lien. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of any Deed of Trust Obligations secured hereby or for performance of any Deed of Trust Obligations contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after maturity of said Note, and without notice or consent: (a) release any person liable for payment of all or any part of, or for performance of, any Deed of Trust Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of, or modifying or waiving any of, the Deed of Trust Obligations, or subordinating, modifying or otherwise dealing with the Lien or charge hereof; (c) exercise or refrain from exercising or waive any right Beneficiary may have; (d) accept additional security of any kind; or (e) release or otherwise deal with any property, real or personal, securing the Deed of Trust Obligations, including all or any part of the Mortgaged Property.

7.11 Other Collateral. For payment of the Deed of Trust Obligations, Beneficiary may resort to any other security therefor held by Beneficiary in such order and manner as Beneficiary may elect.

7.12 Discontinuance of Proceedings. In the event Beneficiary shall have proceeded to enforce any right under the Note and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, Grantor and Beneficiary shall be restored to their former positions and the rights, remedies and powers of Beneficiary shall continue as if no such proceedings had been taken.

7.13 Release of Liability. Without affecting the liability of any person (other than any person released pursuant to the provisions of this section) for payment of any of the Deed of Trust Obligations secured hereby, and without affecting or impairing in any way the priority or extent of the Liens upon any property not specifically released pursuant hereto, Beneficiary may at any time and from time to time (a) release any person liable for payment of any of the Deed of Trust Obligations secured hereby, (b) extend the time or agree to alter the terms of payment of any of the Deed of Trust Obligations, (c) accept additional security of any kind, (d) release any property securing the Deed of Trust Obligations, or (e) consent to the creation of any easement on or over the Mortgaged Property or any covenants restricting the use or occupancy thereof.

7.14 Retention of Copies of Books and Records. Without limiting any of Beneficiary's rights and remedies at law or in equity, including under this Deed of Trust, in the event Beneficiary elects to foreclose or otherwise realize upon its security interest in the General Intangibles, nothing herein shall be deemed to prohibit Grantor from retaining copies of its books and records (including computer-readable copies thereof), provided that the originals thereof are delivered to Beneficiary or the purchaser of such General Intangibles at a foreclosure sale, as applicable.

## ARTICLE 8 MISCELLANEOUS

8.1 Further Assurances. Grantor, upon the written request of Beneficiary, agrees to execute any financing statement or other document reasonably required by Beneficiary to document, protect or perfect (or renew or continue perfection of) this security interest, provided, however, the Grantor shall not be obligated to execute any documents that would increase or expand its liabilities or obligations or reduce or narrow its rights hereunder by more than de minimis amount. Upon any failure of Grantor to execute and deliver such instruments, certificates and other documents on or before ten (10) Business Days after receipt of written request therefor, Beneficiary may make, execute and record any and all such instruments, and certificates and Grantor irrevocably appoints Beneficiary the agent and attorney-in-fact of Grantor to do so.

8.2 Recording and Filing. Grantor, at its expense, shall cause all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and shall pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

8.3 Notice. Except in the case of notices and other communications, if any, expressly permitted to be given by telephone without further written communication being required, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by electronic mail, as follows: if to Trustee, to it at \_\_\_\_\_, Attn: \_\_\_\_\_ (Email: \_\_\_\_\_); if to Beneficiary, to it at 1 East 1st Street, Reno, Nevada 89501, Attn: Revitalization Manager (Email: \_\_\_\_\_); if to Grantor, to 210 University Boulevard, Suite 460, Denver, Colorado 80206, Attention: Sarah Rockwell E-mail: sarah.rockwell@ulyssesdevelopment.com. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

8.4 Beneficiary's Right to Perform the Deed of Trust Obligations. Subject to the rights of Senior Lender(s) pursuant to the Senior Instruments, if Grantor, or any person or entity permitted to act on their behalf as set forth herein, shall fail to make any payment or perform any act required by the Note, beyond the applicable notice and cure or grace period, then Beneficiary may make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Beneficiary, and all actual costs, and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with, interest thereon at the "Interest Rate," as defined in the Note, from the date of payment or incurring, constitute additions to the Deed of Trust Obligations, and shall be paid by Grantor to Beneficiary, on demand. Grantor shall indemnify Beneficiary for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Beneficiary pursuant to the provisions of this Section 8.4, and any funds expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the "Interest Rate," as defined in the Note, from the date of such expenditures, shall constitute additions to the Deed of Trust Obligations and shall be paid by Grantor to Beneficiary upon demand.

8.5 Covenants Running with the Land. All covenants shall run with the Mortgaged Property until the Liens and security interest created hereby are released by Beneficiary.

8.6 Severability. In case any one or more of the Deed of Trust Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Note, this Deed of Trust, and remaining Deed of Trust Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. The Note may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Non-Assumable. The Loan evidenced by the Note and secured by this Deed of Trust are personal to Grantor, and Beneficiary made such Loan to Grantor, based upon the credit of Grantor, and Beneficiary's judgment of the ability of Grantor to repay the entire Deed of Trust Obligations and therefore this Deed of Trust may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Beneficiary's prior written consent.

8.9 Tax on Deed of Trust Obligations or Deed of Trust. In the event of the passage, after the date of this Deed of Trust, of any law deducting from the value of land for the purposes of taxation, any Lien thereon, or imposing upon Beneficiary the obligation to pay the whole, or any part, of the taxes or assessments or charges or Liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust, mortgages or debts as to affect this Deed of Trust or the Deed of Trust Obligations, Grantor shall pay Beneficiary any such additional amounts necessary to compensate Beneficiary, on an after-tax basis, for such additional costs.

8.10 Maximum Rate of Interest. All agreements between Grantor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of the Loan or otherwise, shall the amount paid, or agreed to be paid to Beneficiary for the use, forbearance, or detention of the money to be loaned under the Note or otherwise or for the payment or performance of any covenant or obligation contained herein and in the Note, exceed the Maximum Rate. The term "**Maximum Rate**" as used herein shall mean the higher of the maximum interest rate allowed by applicable United States or Nevada law as amended from time to time, in effect on the date for which a determination of interest accrued hereunder is made. If from any circumstances whatsoever fulfillment of any provision hereof or of any such other documents, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by applicable usury law, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance, Beneficiary shall have ever received interest or anything which might be deemed interest under applicable law which would exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing on account of the Note or the amounts owing on other obligations of Grantor to Beneficiary hereunder (all without payment of any prepayment premium) and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of the principal of the Note and the amounts owing on other obligations of Grantor to Beneficiary hereunder as the case may be such excess shall be refunded to Grantor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the Deed of Trust Obligations of Grantor to Beneficiary shall, to the extent permitted by applicable law, (i) be amortized, prorated, allocated and spread throughout the full term of such Deed of Trust Obligations until payment in full (other than any indemnification obligations which may survive repayment of the Loan) so that the actual rate of interest on account of such Deed of Trust Obligations does not exceed the Maximum Rate throughout the term thereof, (ii) be characterized as a fee, expense or other charge other than interest, and/or (iii) exclude any voluntary prepayments and the effects thereof.

8.11 Survival of Warranties and Covenants. The warranties, representations, covenants shall survive the making of the Loan and the execution and delivery of the Note and shall continue in full force and effect until the Deed of Trust Obligations shall have been indefeasibly paid in full.

8.12 APPLICABLE LAW. GRANTOR AGREES THAT THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA EXCEPT TO THE EXTENT ANY SUCH LAWS MAY NOW OR HEREAFTER BE

PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

8.13 Loan Expenses. Grantor shall pay all costs and expenses in connection with the preparation, execution and delivery of the Note and the origination of the transactions contemplated thereby and any and all expenses associated with any future amendment and modifications to the Loan requested by Grantor.

8.14 Substitution of Trustee. Beneficiary may appoint a substitute or successor trustee or trustees in place of the Trustee or Trustees with or without any reason, and without other formality than a designation in writing of a substitute or successor. Beneficiary may exercise this irrevocable appointment power at any time without specifying any reason therefor. The power of appointment of a successor Trustee or Trustees may be exercised as often as and whenever the Beneficiary may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Whenever in this Deed of Trust reference is made to the Trustee or Trustees, it shall be construed to mean the Trustee or Trustees for the time being, whether original or successors in trust; and all title, estate, rights, powers, trusts, and duties hereunder given or appertaining to or devolving upon the Trustee or Trustees shall be in each of the Trustees so that any action hereunder or purporting to be hereunder of any one of the original or any successor Trustee shall for all purposes be considered to be and as effective as, the action of all the Trustees.

8.15 No Representations by Beneficiary. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy. Beneficiary shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Beneficiary.

8.16 Acceptance of Trust. Trustee accepts the trust created by this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. At any time or from time to time, without liability therefor and without notice, and without releasing or otherwise affecting the liability of Grantor for the Deed of Trust Obligations, Trustee, upon written request of Beneficiary may reconvey any part of the Mortgaged Property, consent to the making of any map or plat thereof or join in granting any easement thereon.

8.17 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall release the lien of this Deed of Trust. The recitals in any such release of any matters or facts shall be conclusive proof of the matters set forth therein.

8.18 Headings. The article headings and the section and subsection captions are inserted for convenience of reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.19 Extension of Prior Liens. If any or all of the proceeds of the Loan have been used to pay any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, and to the extent permitted by applicable law, Beneficiary shall be subrogated to all of the rights, claims, Liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness so paid and the former rights, claims, Liens, titles and interests, if any, are not waived but rather shall continue in full force and effect in favor of Beneficiary as cumulative security for the repayment and satisfaction of the Deed of Trust Obligations regardless of whether said Liens or debts are acquired by Beneficiary by assignment or are released by the holder thereof upon payment.

8.20 Relationship Between Parties. Nothing contained in the Note or this Deed of Trust shall be construed as creating a joint venture or partnership between Beneficiary and Grantor, and Beneficiary shall have no right of control or supervision over Grantor except as Beneficiary may exercise its rights and remedies under this Deed of Trust. Grantor further disclaims any fiduciary or quasi fiduciary relationship between it or any of its partners and Beneficiary.

8.21 Permitted leases and encumbrances. This Deed of Trust shall not prevent Grantor from entering into (i) rental agreements or leases of the Property to individual tenants or (ii) leases or easements with cable, internet or laundry service providers, in the ordinary course of Grantor's business, provided that the leases do not contain an option to purchase. Any lien or deed of trust now or hereafter granted to any lender is a permitted transfer if this Deed of Trust has been made subordinate to it.

8.22 Waivers Pertaining to Note. Grantor in its capacity as Grantor under this Deed of Trust and not as maker of the Note waives presentation, demand, protest and notice of nonpayment of the Note (except for notices required hereunder), and to the reduction or increase of the interest rates thereof based solely upon changes in the "Interest Rate," as defined therein.

8.23 Subordinate Deed of Trust. Notwithstanding any provisions of this Deed of Trust to the contrary, it is understood and agreed that the lien, terms, covenants and conditions of this Agreement are and shall be subordinate in all respects, including in right of payment and priority, to the indebtedness evidenced by the Senior Note and the Senior Instrument. Beneficiary irrevocably and unconditionally subordinates the lien priority of this Deed of Trust to the lien priority of the Senior Lenders' security instruments. Beneficiary also agrees that its lien perfection in the rents and enforcement rights under NRS Chapter 107A (Assignment of Rents -- Uniform Act) is subordinate to any assignment of rents to one or more Senior Lenders. If Beneficiary and any Senior Lender, or third party enter into any written subordination agreement(s) that is contrary to this section, each such subordination agreement shall prevail.

8.24 Limitation on Personal Liability. The Loan shall be non-recourse to Grantor and all of its assets, except for the Mortgaged Property. Notwithstanding the foregoing, none of the constituent shareholders, partners or members (direct or indirect) in the Grantor or any of its employees, agents, or other affiliates shall have any liability whatsoever for the payment or performance of any of the Deed of Trust Obligations, except to the extent such shareholder, partner or member is a party to said agreement. Grantor shall not be liable for any special, speculative, loss of profit, consequential, or punitive damages, except to the extent of any special, consequential, loss of profit or punitive damages are actually paid, or required to be paid, by the Beneficiary in connection with the financing contemplated hereby to an unaffiliated third-party. Grantor shall not be liable to and any indemnity set forth herein shall be limited to the extent of any gross negligence or willful misconduct of any indemnified party.

8.25 Third Parties. Nothing in this Agreement is intended to confer any rights or remedies on any persons other than Grantor, Trustee, Beneficiary and their respective successors and assigns.

8.26 WAIVER OF JURY TRIAL. GRANTOR AND BENEFICIARY HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS DEED OF TRUST OR THE NOTE, OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION AND BENEFICIARY/GRANTOR RELATIONSHIP THAT IS BEING ESTABLISHED. GRANTOR AND BENEFICIARY ALSO WAIVE ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF GRANTOR OR BENEFICIARY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT

MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH SHALL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GRANTOR AND BENEFICIARY FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DEED OF TRUST, THE NOTE, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8.27 Maximum Amount of Indebtedness. Notwithstanding anything contained herein to the contrary, the maximum amount of principal indebtedness secured by this Deed of Trust at the time of execution hereof or which under any contingency may become secured by this Deed of Trust at any time hereafter is 200% of the original principal amount of the Loan which is secured by this Deed of Trust, plus (a) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property; (b) premiums on insurance policies covering the Mortgaged Property; and (c) expenses incurred in upholding and enforcing the Lien of this Deed of Trust, including, but not limited to (1) the expenses of any litigation to prosecute or defend the rights and Lien created by this Deed of Trust; (2) any amount, cost or charges to which the Deed of Trust becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; and (3) any sums expended by Beneficiary pursuant to Section 8.4 hereof.

8.28 Future Advances. This Deed of Trust is governed by Nevada Revised Statutes Sections 106.300 to 106.400 and secures future advances as provided in such Sections. The maximum amount of principal (as defined in NRS Section 106.345) secured hereby (including disbursements that Beneficiary may, but shall not be obligated to, make under this Deed of Trust or any other documents with respect thereto) shall not exceed 200% of the amount of the Loan. This Deed of Trust shall be valid and have priority to the extent the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property and given priority by law.

8.29 Capitalized Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings attributed to them in the ED Agreement.

[Signature page follows]



IN WITNESS WHEREOF, Grantor has executed this Deed of Trust effective as of the date first above written.

**GRANTOR:**

[SPE BORROWER],  
a [ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2025, by \_\_\_\_\_, who is the \_\_\_\_\_ of [SPE BORROWER], a [ ].

Notary Public  
My Commission Expires:

**SCHEDULE A**

**LEGAL DESCRIPTION**



C I T Y O F  
**RENO**  
Memorandum

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**DATE:** 1/22/25

**TO:** Mayor and City Council

**THROUGH:** Jackie Bryant, City Manager  
Ashley Turney, Assistant City Manager

**FROM:** Bryan McArdle, Revitalization Manager

**DEPT:** City Manager's Office

**SUBJECT:** 315/ 355 Record Street Economic Development and Sale Agreement

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This memo outlines the AGREEMENT FOR ECONOMIC DEVELOPMENT AND PURCHASE/ SALE OF REAL PROPERTY with Ulysses Development Group for the sale of the 315 / 355 Record Street property. This Agreement reflects the original deal terms presented to the Council plus one new provision allowing the City of Reno to demolish the existing buildings on site. The new provision allowing the City of Reno to demolish the property is needed due to ongoing safety and security concerns and the significant resources expended maintaining the property between now and the closing, which could be extended up to two years.

Ulysses Development Group will seek funding from the Nevada Housing Division and the City of Reno to complete the sale and initiate its affordable housing project. These funding sources come with restrictive covenants and obligations tied to affordable housing, ensuring the project adheres to specified income and affordability requirements. The affordable housing project will deliver units that adhere to income guidelines, with the primary target being households earning at or below 60% of the Area Median Income (AMI). Taking into account Council's feedback, Ulysses is also evaluating a mix of affordability levels, potentially including units affordable to households at 30% AMI and others at up to 80% AMI. The overall income average for the project will not exceed 60% AMI, maintaining compliance with funding requirements.

Per NRS 268.063, the property must be sold for an economic development purpose. Section 3.01b of the agreement addresses this requirement by stipulating that if the use of the property were to ever change, it must still comply with NRS 268.063 and provide some form of commercial enterprise. However, it should be noted that the project will have the Nevada Housing Division Regulatory Agreement and Declaration of Restrictive Covenants running with the project for 15 years.