



**CITY OF HENDERSON
REDEVELOPMENT AGENCY ADVISORY COMMISSION
AGENDA**

**Regular Meeting
Tuesday, December 18, 2012
4:00 p.m.**

**City Hall Annex Conference Room
280 Water Street
Henderson, Nevada 89015**

Notice to persons with special needs: For those requiring special assistance or accommodation at the meeting, please contact 702-267-1515 or the Relay Nevada TTY telephone 7-1-1 at least 72 hours in advance of the meeting.

The Chairman reserves the right to hear agenda items out of order, combine two or more agenda items for consideration, remove an item from the agenda, or delay discussion relating to an item on the agenda at any time. All items are action items unless otherwise noted.

Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

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I. CALL TO ORDER

II. CONFIRMATION OF POSTING AND ROLL CALL

III. ACCEPTANCE OF AGENDA (For Possible Action)

IV. PUBLIC COMMENT

Note: Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration (NRS 241.020). Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

V. NEW BUSINESS

1.	MINUTES—CITY OF HENDERSON REDEVELOPMENT AGENCY ADVISORY COMMISSION MEETING OF November 27, 2012 (For Possible Action)
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Approve the minutes of the City of Henderson Redevelopment Agency Advisory Commission meeting of November 27, 2012.

2.	RATIFICATION OF THE USE OF REVOLVING FUNDS FOR THE DEMOLITION OF 314 NEBRASKA AVENUE TO ALLEVIATE A PUBLIC SAFETY RISK. (For Possible Action)
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Ratification of the use of the Redevelopment Agency's Revolving Funds for the demolition of 314 Nebraska to alleviate a public safety risk not to exceed \$22,500.

3.	FINANCIAL MANAGEMENT POLICIES (For Possible Action)
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Adopt the Revised Redevelopment Financial Management Policy for: Fiscal Signature Authority.

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4.	OWNER PARTICIPATION AGREEMENT BY AND BETWEEN UNION VILLAGE, LLC AND THE CITY OF HENDERSON REDEVELOPMENT AGENCY (For Possible Action)
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Approve the Owner Participation Agreement by and between Union Village, LLC and the City of Henderson Redevelopment Agency.

5.	PROJECTS UPDATE
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Discuss project updates for the following projects and accept report. Cornerstone Redevelopment Area: Griffin Park; Richmond American; Tax Increment Reimbursement to the LID; Shortfall Note; Ladera Parcels; Loretto Bay. Downtown Redevelopment Area: 19 S. Water Street; 314 Nebraska; Business Recruitment/Development; Business Retention; City Tower; Create Comprehensive Development and Business Recruitment Incentive Packages; Cultural and Events Center RFP; Downtown Master Plan; Downtown Residential Civic Alliance; Environmental Protection Agency Grant for Technical Assistance; Fencing; Former Asset Central Site: Former Parkline Site; Homeless Issue; Marketing the Water Street District; Marketing To Developers, Business Owners & Consumers; Meridian; Monumentation; Outreach; Pinnacle Building; Residential; Senior Center/Pacific Pines; Social Gathering Space Team; Site A; Site B; Townhouse Motor Lodge; Water Street District Business Association; Façade Improvement Program; Sign Grant Program; Tenant Improvement Program. Eastside Redevelopment Area: Boulder Highway Business Coalition; Business Recruitment; Eastside Amendment; Eastside Investment Strategy; Eastside Business Coalition; KMA Tax Increment Analysis; Landwell/Cadence; Museum Site-95/Galleria; Union Village; Façade Improvement Program; Sign Grant Program. Tuscany: Note; Galleria Road; OPA; Semi-Annual Payment. Lakemoor Canyon: Bill; Development; House Subcommittee on Energy and Mineral Resources, Federal Land Sale. Administration/All Areas: Audit; Assistance Programs; Bonds; Budget; Economic Development Awards; Financials; Five-year Financial Plan; Homeowner Assistance Program; NDC; New Markets Tax Credit; Outreach; Redevelopment Association of Nevada (RAN); Revenue; Tax Increment Distribution.

VI. PUBLIC COMMENT

Note: Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration (NRS 241.020). Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

VII. DIRECTOR'S/CHAIRMAN'S BUSINESS

- Financial Update

VIII. SET NEXT MEETING

- January 22, 2013 at 4:00 p.m.

IX. ADJOURNMENT

Agenda posted prior to 9:00 a.m. on December 6, 2012 at the following locations:

- City Hall, 240 Water Street, 1st Floor Lobbies (2)
- Multigenerational Center, 250 S. Green Valley Parkway
- Whitney Ranch Recreational Center, 1575 Galleria Drive
- Fire Station No. 86, 96 Via Antincendio



RAC

REDEVELOPMENT AGENCY ADVISORY COMMISSION AGENDA ITEM

REGULAR MEETING

DECEMBER 18, 2012

RAC-001

SUBJECT	Minutes—City of Henderson Redevelopment Agency Advisory Commission Meeting of November 27, 2012
PETITIONER	Economic Development/Redevelopment Division of the City Manager's Office
RECOMMENDATION	Approve

FISCAL IMPACT:

No Impact

Budget funds available

Augmentation required

BACKGROUND / DISCUSSION / ALTERNATIVES:

RECOMMENDED MOTION:

Approve the minutes of the City of Henderson Redevelopment Agency Advisory Commission meeting of November 27, 2012.

Supporting Documentation:

Minutes consisting of four (4) pages.

**CITY OF HENDERSON REDEVELOPMENT AGENCY
ADVISORY COMMISSION
MINUTES
November 27, 2012**

I. CALL TO ORDER

Vice-Chairman Mark McGinty called the Redevelopment Advisory Commission to order at 4:00 p.m. in the Annex Conference Room, City Hall Annex, 280 Water Street, Henderson, Nevada.

II. CONFIRMATION OF POSTING AND ROLL CALL

MaryAnne Cruzado, Recording Secretary, confirmed the meeting had been noticed in accordance with the Open Meeting Law by posting the Agenda three working days prior to the meeting at City Hall, Henderson Convention Center, Green Valley Police Substation, and Fire Station No. 86.

Present: Vice-Chairman Mark McGinty
David Chavez
Tom Fay
Richard Serfas
Stan Southwick

Excused: Tom Foster
Laura Jane Spina

Staff: MaryAnne Cruzado, Admin Assistant III
Christine Guerri-Nyhus, Assistant City Attorney
April Parra, Minutes Clerk
Michelle Romero, Redevelopment Manager
Lisa Sich, Special Projects Accountant

Guests: Tom Donahue, Percy, Bowler, Taylor, & Kern

III. ACCEPTANCE OF AGENDA

(Motion) Mr. Fay introduced a motion to accept the agenda. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

IV. PUBLIC COMMENT:

There were no comments presented by the public.

V. NEW BUSINESS

1.	MINUTES FOR THE CITY OF HENDERSON REDEVELOPMENT AGENCY ADVISORY COMMISSION MEETING OF OCTOBER 23, 2012.
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Recommend approval of the minutes of the City of Henderson Redevelopment Agency Advisory Commission meeting of October 23, 2012.

(Motion) Mr. Serfas introduced a motion to approve the minutes of October 23, 2012, as submitted. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

2.	REQUEST FOR A HOMEOWNERS ASSISTANCE PROGRAM LOAN MODIFICATION FOR 900 PALO VERDE DRIVE (CYNTHIA JOHNSON)
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Recommend approval of a Homeowners Assistance Program Loan Modification for 900 Palo Verde Drive (Cynthia Johnson).

Lisa Sich, Special Projects Accountant, read a summary of the proposed item and stated staff recommends approval of the extension.

A discussion ensued regarding waiving the fees at the end of the loan period once the loan was paid off in order to provide an incentive.

(Motion) Mr. Fay introduced a motion recommending approval of the loan modification for 900 Palo Verde Drive with the added condition that the fees and penalties will be waived unless payment is missed for four months, at which time they will be assessed in the amount of \$1,400.00. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

3.	FINANCIAL MANAGEMENT POLICIES
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Adopt the Redevelopment Financial Management Policy for: Loan Default Policy Amended and Fiscal Signature Authority Revised.

Ms. Sich gave a brief summary of the proposed item.

There were no questions from the Commission.

(Motion) Mr. Fay introduced a motion to adopt the Redevelopment Financial Management Policy for: Loan Default Policy Amended and Fiscal Signature Authority Revised. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

4.	SUBMISSION OF REDEVELOPMENT AGENCY ANNUAL AUDITED FINANCIAL STATEMENTS – FISCAL YEAR 2011-2012 AND REQUIRED COMMUNICATIONS LETTER
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Adopt the Redevelopment Agency's Fiscal Year 2011-2012 Audited Financial Statements.

Tom Donahue, Percy, Bowler, Taylor, and Kern, gave a brief summary of the audit and said there were no issues.

A discussion took place regarding changes that took place over the last year.

Michelle Romero, Redevelopment Manager, complimented Lisa Sich and Daphney Jeffers on their hard work on the audit.

(Motion) Mr. Serfas introduced a motion to adopt the Redevelopment Agency's Fiscal Year 2011-2012 Audited Financial Statements. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

5.	PROJECTS UPDATE
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Discuss project updates and accept the report.

Ms. Romero reviewed a memorandum regarding the status of projects.

There were no question from the Commission.

(Motion) Mr. Chavez introduced a motion to accept the report. The vote favoring approval was unanimous. Vice-Chairman McGinty declared the motion carried.

V. PUBLIC COMMENT

There were no comments presented by the public.

VI. DIRECTOR'S/CHAIRMAN'S BUSINESS

1. Financial Update

Ms. Sich distributed the financials as of October 31, 2012 and gave a brief update.

She noted that the numbers are up five percent over the projection and the Expenditure estimates are right on track.

Responding to a question by Mr. Chavez regarding how long decreases are projected, Ms. Sich said she is not sure, but does not anticipate any increase above one percent for quite a while.

VII. SET NEXT MEETING

The next meeting was scheduled for December 18, 2012, at 4:00 p.m.

VIII. ADJOURNMENT

There being no further business to be discussed, the meeting was adjourned at 4:26 p.m.

Respectfully submitted,

April Parra,
Minutes Clerk



RAC

REDEVELOPMENT AGENCY ADVISORY COMMISSION AGENDA ITEM

REGULAR MEETING

DECEMBER 18, 2012

RAC-002

SUBJECT	Ratification of the use of Revolving Funds for the Demolition of 314 Nebraska Avenue to alleviate a public safety risk.
PETITIONER	Economic Development/Redevelopment Division of the City Manager's Office
RECOMMENDATION	Ratification

FISCAL IMPACT:

No Impact
 Budget funds available
 Augmentation required

2099-9501-901010-H0036 Intrafund Transfers – Out \$22,500
 2092-9501-401300-H0036 Intrafund Transfers – In \$22,500

BACKGROUND / DISCUSSION / ALTERNATIVES:

The Agency's Revolving Fund was established in accordance with NRS 279.628; that same statute provides that monies are placed in the Revolving Fund by appropriation of the Legislative body or by the issuance of bonds. Monies in the Revolving Fund may be spent in accordance with NRS 279.628 which allows for the funds to be spent on the acquisition of property, necessary or incidental expenses of the Agency, as well as some educational expenses for the Redevelopment area. The monies currently in the Revolving Fund are the result of leases for Agency-owned properties.

On September 11, 2012, the Agency closed on 314 Nebraska Avenue, a parcel adjacent to 1.41 acres of Agency-owned land at 323 Water Street, for \$44,537.43. The purchase was made for two reasons: to remove blight and eliminate public safety issues associated with the vacant home, and to secure the property as part of a larger assemblage for future redevelopment.

In early November, staff was made aware that in order to eliminate the public safety issues, the home would need to be demolished at a cost not to exceed \$22,500. Staff immediately began working with Public Works on the demolition and is recommending to the Agency Board that the costs associated with the demolition be funded from the Revolving Fund via ratification.

RECOMMENDED MOTION:

Ratification of the use of the Redevelopment Agency's Revolving Funds for the demolition of 314 Nebraska Avenue to alleviate a public safety risk not to exceed \$22,500.

Supporting Documentation:

Resolution consisting of one (1) page.

RESOLUTION NO.
(USE OF REDEVELOPMENT REVOLVING FUNDS FOR DEMOLITION)

A RESOLUTION OF THE CITY OF HENDERSON REDEVELOPMENT AGENCY APPROVING THE USE OF REDEVELOPMENT AGENCY REVOLVING FUNDS FOR THE DEMOLITION OF 314 NEBRASKA AVENUE.

- WHEREAS, the Redevelopment Agency (Agency) Revolving Fund was established in accordance with NRS 279.628; and
- WHEREAS, the statute provides that monies are placed in the Revolving Fund by appropriation of the Legislative body or by the issuance of bonds; and
- WHEREAS, monies in the Revolving Fund may be spent in accordance with NRS 279.628 which allows for the funds to be spent on the acquisition of property, necessary or incidental expenses of the Agency as well as some educational expenses for the Redevelopment area; and
- WHEREAS, the monies currently in the Revolving Fund are the result of leases for Agency-owned properties; and
- WHEREAS, the Agency purchased 314 Nebraska Avenue on September 11, 2012 for the purpose of eliminating blight, alleviating a public safety issue as a result of this property being vacant, and for assemblage into a 1.41 acre site already owned by the Agency; and
- WHEREAS, 314 Nebraska Avenue is a public safety issue requiring immediate demolition; and
- NOW, THEREFORE, BE IT RESOLVED, by the Redevelopment Agency of the City of Henderson, Nevada, that funds from the Revolving Fund, not to exceed \$22,500, be used to demolish 314 Nebraska.

END OF RESOLUTION



RAC

REDEVELOPMENT AGENCY ADVISORY COMMISSION AGENDA ITEM

REGULAR MEETING

DECEMBER 18, 2012

RAC-003

SUBJECT	Financial Management Policies
PETITIONER	Economic Development/Redevelopment Division of the City Manager's Office
RECOMMENDATION	Adopt

FISCAL IMPACT:

No Impact
 Budget funds available
 Augmentation required

BACKGROUND / DISCUSSION / ALTERNATIVES:

It is prudent of the Redevelopment Agency to adopt sound financial management policies. Historically, Agency staff has followed many of the financial policies of the City of Henderson. Recognizing that the Agency is governed by NRS 279 and engages in financial transactions unique to a Redevelopment Agency, staff is preparing financial management policy statements for review and adoption by the Redevelopment Agency Board. Staff began preparing policies for adoption in July 2011 and it is envisioned that over a period of several months, staff will complete a comprehensive compilation of policy statements. From time to time, the Governmental Accounting Standards Board (GASB), Nevada Revised Statutes, and best practices in the industry change. As these changes occur, the financial management policy statements will be reviewed and may require revision. Any proposed revisions will be brought before the Redevelopment Agency Board for review and adoption.

After its annual financial management policy review, staff is recommending adoption of the following revised financial management policy statement:

1. Fiscal Signature Authority

RECOMMENDED MOTION:

Adopt the Revised Redevelopment Financial Management Policy for: Fiscal Signature Authority.
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Supporting Documentation:

Redevelopment Financial Management Policy Statements consisting of one (1) page.

**CITY OF HENDERSON REDEVELOPMENT AGENCY
FINANCIAL MANAGEMENT POLICY**

POLICY NUMBER: 1300-01

CATEGORY: INTERNAL CONTROLS

SUBJECT: Fiscal Signature Authority

SCOPE

All contractual documents issued on behalf of the City of Henderson Redevelopment Agency.

PURPOSE

To establish and maintain authority for the approval and execution of contractual documents.

GUIDELINES

Signature authority for contractual documents shall be determined by the fiscal impact amount reflected in the documents:

\$0.01 - ~~\$25,000~~ \$50,000 Redevelopment Department Director

~~\$25,000.01 - \$50,000 Executive Director~~

Over \$50,000 Approval by the Redevelopment Agency Board and signature by the Board Chairman or authorized representative (Executive Director). The Executive Director may designate an Assistant City Manager or department director to sign contractual documents on behalf of the Executive Director.

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Contractual documents with a fiscal impact over \$10,000 must also be:

- Reviewed and signed by the Agency's General Counsel.
- Attested to by the Agency's Secretary and the original maintained in the Office of the City of Henderson's City Clerk.
- Signed by the Agency's Treasurer.

ALL contractual documents must be:

- Attested to by the Agency's Secretary and the original maintained in the Office of the City of Henderson's City Clerk.

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HISTORY

Redevelopment Agency Board Adopted: September 20, 2011

Redevelopment Agency Board Revised: August 21, 2012

[Redevelopment Agency Board Revised: \(Insert Date\)](#)



RAC

REDEVELOPMENT AGENCY ADVISORY COMMISSION AGENDA ITEM

REGULAR MEETING

DECEMBER 18, 2012

RAC-004

SUBJECT	Owner Participation Agreement by and between Union Village, LLC and the City of Henderson Redevelopment Agency
PETITIONER	Economic Development/Redevelopment Division of the City Manager's Office
RECOMMENDATION	Approve

FISCAL IMPACT:

No Impact
 Budget funds available
 Augmentation required

2097-1001-601436-H0099 Program Costs \$5,000 for FY13

BACKGROUND / DISCUSSION / ALTERNATIVES:

On April 19, 2011, the City of Henderson Redevelopment Agency (Agency) entered into a Redevelopment Planning Agreement with Union Village, LLC. That agreement set forth the terms and conditions pursuant to which the Agency would be willing to reimburse the developer a portion of the incremental increase in property taxes generated by the site as redeveloped. Further, on September 18, 2012, the City of Henderson approved a Development Agreement with the developer.

The cost of designing, developing and constructing the improvements to the site, located at Galleria and US95, is expected to exceed \$1.2 Billion, which would make implementation of the Development Agreement economically infeasible. The proposed Owner Participation Agreement (OPA) includes the following deal points:

- RDA and UV enter into an Owner Participation Agreement (OPA) which is contingent upon UV completing the purchase of property from the City.
- OPA sets out the terms and conditions for the reimbursement of some or all of the public improvement costs through Tax Increment receipts.
- The OPA is heard before the Redevelopment Advisory Commission and the Redevelopment Agency Board prior to adoption.

(CONTINUED ON NEXT PAGE)

RECOMMENDED MOTION:

Approve the Owner Participation Agreement by and between Union Village, LLC and the City of Henderson Redevelopment Agency.

- OPA provides:
 - An administrative set aside of 15% of monies received as UV tax increment up to \$500,000 annually to fund the administrative expenses of the RDA.
 - A split of the remaining UV tax increment whereby UV receives 90% of the remaining TIF in payment of the Note for years 1-10; and then 80% from year 11 until the end of the life of the area. If no audited/verified amounts have been added to the Note, and the RDA receives UV tax increment, the RDA will hold the portion allocable to UV in a segregated account until such times as there have been amounts added to the Note.
 - The Note will carry a simple interest rate of 6% calculated annually.
 - Reimbursement for constructed public improvements is capped at \$150 million; with a total cap on the Note of \$185 million (\$150 million plus \$35 million in potential accrued interest.)
 - UV will commence 5% of the public improvements within three years of execution of the OPA.
 - UV will provide an anticipated construction schedule. RDA staff will have the authority to extend the time periods in the construction schedule for up to one year. Any additional requests will need to go to the RDA board.

Supporting Documentation:

Owner Participation Agreement consisting of 50 pages.

OWNER PARTICIPATION AGREEMENT

by and between

CITY OF HENDERSON REDEVELOPMENT AGENCY

and

UNION VILLAGE, LLC

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EXHIBIT LIST

Exhibit A:	Property
Exhibit B:	Form of Promissory Note
Exhibit C:	Master List
Exhibit D:	Construction Schedule
Exhibit E:	Form of Certificate of Completion
Exhibit F:	Public Infrastructure Reimbursement Policy

OWNER PARTICIPATION AGREEMENT

This OWNER PARTICIPATION AGREEMENT (this “**Agreement**”) is entered into effective as of December ____, 2012 (“**Effective Date**”) by and between the **CITY OF HENDERSON REDEVELOPMENT AGENCY**, a public body, corporate and politic (“**Agency**”), and **UNION VILLAGE, LLC**, a Nevada limited liability company (“**Participant**”). Agency and Participant are hereinafter collectively referred to as the “**Parties**.” Capitalized terms used in this Agreement shall have the definitions set forth in Article 1 of this Agreement or as otherwise defined in this Agreement. This Agreement shall become effective upon adoption by the Agency, execution by all Parties and Participant’s acquisition of the Property.

RECITALS

A. The Agency is a Redevelopment Agency formed, existing and exercising its powers pursuant to the provisions of the Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 *et seq.* (“**CRL**”).

B. Pursuant to the authority granted under the CRL, the Agency has the responsibility to implement the redevelopment plan adopted on February 21, 2006 by the City Council (the “**City Council**”) of the City of Henderson (the “**City**”) by Ordinance No. 2432 (the “**Eastside Redevelopment Plan**”) for the Eastside Redevelopment Project Area (the “**Eastside Project Area**”).

C. Participant owns property consisting of approximately 150.72 net acres, more or less, generally located at the northeast corner of US 93/95 and Galleria Drive, known as Clark County Assessor’s Parcel Numbers 161-34-801-005, 161-34-701-001 and 161-35-401-001, and more particularly described in Exhibit A attached hereto (the “**Property**”). The Property is located within the Eastside Project Area.

D. The majority of the Property was formerly used as a mining operation and includes a gravel pit that will require extensive earth work to elevate portions of the site.

E. Participant proposes to develop the Property in five (5) village areas as more fully described in the DA. Pursuant to the DA, the project may include one or more hospitals, medical office buildings, wellness and/or fitness centers, skilled nursing, assisted living facilities, general commercial uses, housing and retail facilities (the “**Private Improvements**”).

F. The Property does not have sufficient public services, facilities and infrastructure to serve the Private Improvements.

G. On September 18, 2012, the City Council approved a Development Agreement between the City and Participant which will be recorded concurrently with Participant’s acquisition of the Property (the “**DA**”) which provides for the development of the Private Improvements and of public improvements consisting of roads, sidewalks, streetlights, traffic marking and signage, traffic signals, medians, storm drains, sewers, flood control improvements and facilities, grading specifically related to the public improvements, landscaping, parks, water lines and other public improvements described in the Master List

(“**Public Improvements**”). The Private Improvements and Public Improvements are hereinafter collectively referred to as the “**Improvements**.”

H. The costs of designing, developing and constructing the Improvements will exceed \$1.2 Billion dollars and would make implementation of the DA economically infeasible.

I. Participant has requested, and Agency has agreed, to provide financial assistance to Participant in an amount not to exceed One Hundred Fifty Million Dollars (\$150,000,000.00) (plus interest) for the costs of designing, developing and constructing all or a portion of the Public Improvements (the “**Reimbursable Public Improvements**”).

J. Agency financial assistance shall be in the form of reimbursement to Participant for Reimbursable Public Improvement Costs (defined below) pursuant to a Promissory Note (the “**Note**”) which provides that (i) reimbursement for Reimbursable Public Improvement Costs shall not exceed One Hundred Fifty Million Dollars (\$150,000,000.00) (plus interest) and shall be solely and exclusively paid from Union Village Tax Increment (as defined below); and (ii) the total amount paid by Agency to Participant including principal and interest, shall in no event exceed One Hundred Eighty Five Million Dollars (\$185,000,000.00).

K. The Agency acknowledges that Participant may, subject to Article 7, (i) construct all of the Improvements, (ii) construct the Public Improvements and sell all or portions of the Property to persons or entities who will construct the Private Improvements, (ii) sell all or a portion of the Property to persons or entities who will construct the Public Improvements and Private Improvements, or (iv) some combination of the above.

L. Participant acknowledges that if it exercises its options in Article 7, Participant will only be reimbursed for Public Improvements which it has constructed and for which it has paid.

M. The purpose of this Agreement is to effectuate the Redevelopment Plan for a portion of the Project Area by providing for the redevelopment of the Property in accordance with the Redevelopment Plan.

N. Completion of the Improvements will assist in the elimination of blight in the Project Area, provide additional jobs, improve safety in the Project Area, and substantially improve the economic, physical, and infrastructure conditions in the Project Area in accordance with the purposes and goals of the Redevelopment Plan.

O. Agency has determined that (i) development of the Property pursuant to the DA and this Agreement is consistent with the Redevelopment Plan and will benefit the Project Area; and (ii) Agency financial assistance is necessary to make development of the Public Improvements economically feasible.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. The following terms as used in this Agreement shall be defined as follows:

“**Advance Date**” has the meaning set forth in Section 6.4 hereof.

“**Affiliate**” means any person or entity which controls, is controlled by or is under common control with Participant and includes any person or entity which is now or hereafter becomes a member or manager of Participant.

“**Agency**” means the City of Henderson Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of Nevada, with full power and authority to execute this Agreement. The principal office of Agency is located at 240 Water Street, Henderson, Nevada, 89015.

“**Agency Engineer**” means an engineer, selected by the Agency and approved by Participant, qualified to conduct the Performance Review.

“**Agency Engineer’s Report**” has the meaning set forth in Section 6.3 hereof.

“**Bankruptcy Law**” has the meaning set forth in Section 9.1.1(e) hereof.

“**Certificate of Completion**” means a final certificate of completion substantially in the form attached hereto as Exhibit F certifying that Participant has satisfactorily completed construction of the Reimbursable Public Improvements.

“**City**” means the City of Henderson, a municipal corporation. The principal office of the City is located at 240 Water Street, Henderson, Nevada, 89015.

“**Claims**” has the meaning set forth in Section 3.6.

“**Complete,**” “**Completed,**” or “**Completion**” when used in reference to the completion of the construction of the Public Improvements (or applicable portion thereof as appropriate in the reference) means that construction of the Public Improvements has been completed to the point that City, or other public agency as designated in the DA, has indicated in writing that it has approved such Public Improvements as being complete.

“**Construction Control**” means qualified independent third parties who provide construction control services for voucher control, inspection services and analysis of the Reimbursable Public Improvements Costs that qualify as Eligible Costs as per section 6.3(i) hereof.

“**Construction Plans**” means all construction documentation which will be submitted to and approved by Agency prior to commencement of construction, and upon which Participant shall rely in building the Reimbursable Public Improvements, including but not limited to, landscaping, streets, parking, and common and public areas, and including final architectural drawings, landscaping, exterior lighting and signage plans and

specifications, a description of materials to be used, final elevations and building plans and specifications.

“**CRL**” means Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 *et seq.*

“**DA**” means the Development Agreement referenced in Recital G.

“**Eastside Project Area**” has the meaning set forth in Recital B.

“**Eastside Redevelopment Plan**” has the meaning set forth in Recital B.

“**Eastside Tax Increment**” means the gross tax revenue generated from the Eastside Project Area that is allocated to and received by the Agency pursuant to NRS 279.679 less amounts set aside for general administration pursuant to this Agreement, legislative set asides pursuant to NRS 279.685 and any other mandatory set asides required by applicable law, if and when applicable.

“**Eligible Costs**” means those Reimbursable Public Improvement Costs approved by the Agency in accordance with Article 6.

“**Effective Date**” means the date first written above.

“**Environmental Law**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials (as defined below), or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*).

“**Entitlements**” means all entitlements, permits and approvals the City or any other governmental body or agency with jurisdiction over the Improvements or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Improvements, including without limitation, the DA and all conditions of approval imposed in connection with such entitlements, permits and approvals, including without limitation, all mitigation measures imposed in connection with environmental review of the Improvements.

“**Event of Agency Default**” has the meaning set forth in Section 9.2 herein.

“**Force Majeure**” is defined in Section 9.6 of this Agreement.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Nevada, or the United States Government, including, but not limited to, any material or substance which is (i) petroleum, petroleum based products and petroleum additives and derived substances, (ii) asbestos and lead based paint, (iii) polychlorinated byphenyls, (iv) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (vi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., (vii) methyl-tertiary butyl ether, (viii) mold, fungi, viruses and bacterial matter, or (ix) any other toxic substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

“Holder” means the holder of any mortgage, deed of trust secured by all or any portion of the Property or the pledgee of any payments due or to become due under the Note or any other security instrument authorized by this Agreement.

“Improvements” means the Public Improvements and the Private Improvements collectively.

“Master List” means a cost list and referenced map of Public Improvements for the Property attached hereto as Exhibit C.

“Note” means the promissory note dated as of the Effective Date and executed by Agency substantially in the form attached hereto as Exhibit B.

“NRS” means the Nevada Revised Statutes as amended.

“Operating Agreement” has the meaning set forth in Section 7.4 hereof.

“Original Tax Increment Projection” has the meaning set forth in Section 3.1.2.

“Participant” means Union Village, LLC, a Nevada limited liability company and whose resident agent in Nevada is Incorp Services, Inc. 2360 Corporate Circle, Suite 400, Henderson, Nevada 89074-7722, subject to the provisions of Article 7 of this agreement.

“Participant’s Share” has the meaning set forth in Section 6.5.

“Performance Review” has the meaning set forth in Section 6.3 hereof.

“Private Improvements” has the meaning set forth in Recital H.

“Project Area” means the Eastside Project Area.

“Property” has the meaning set forth in Recital C. The term **“Property”** as used herein shall mean and refer to all portions of the Property, regardless of any future subdivision or parcelization.

“**Public Improvements**” has the meaning set forth in Recital F.

“**Public Infrastructure Reimbursement Policy**” means the Policies & Procedures for Performance Reviews/Audits of City of Henderson Development Projects attached hereto as Exhibit F.

“**Redevelopment Plan**” means the Eastside Redevelopment Plan referenced in Recital B.

“**Reimbursable Public Improvements**” has the meaning set forth in Recital H.

“**Reimbursable Public Improvement Costs**” means actual costs incurred and paid by Participant toward designing, developing, and constructing (including permitting) the Reimbursable Public Improvements.

“**Request for Reimbursement**” has the meaning set forth in Section 6.2 hereof.

“**Semi-Annual Payment**” has the meaning set forth in Section 6.6 hereof.

“**Tolling Period**” has the meaning set forth in Section 6.1.2 hereof.

“**Transfer**” means an attempted or completed voluntary, involuntary, direct or indirect or by operation of law sale, transfer, conveyance, assignment or lease.

“**Union Village Tax Increment**” means the gross tax revenue generated from the Property that is allocated to and received by the Agency pursuant to NRS 279.679 less a set aside for administration equal to fifteen percent (15%) of such gross tax revenue; not to exceed Five Hundred Thousand dollars annually (\$500,000.00) and less the amount of legislative set asides required by NRS, if and when applicable.

ARTICLE 2 REPRESENTATIONS

Section 2.1 Participant's Representations. Participant represents and warrants to Agency as follows, and Participant covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Participant shall immediately give written notice of such fact or condition to Agency. Participant acknowledges that Agency shall rely upon Participant’s representations made herein notwithstanding any investigation made by or on behalf of Agency.

(i) The Property. Participant is the fee owner of the Property.

(ii) Authority. Participant is a limited liability company duly organized and in good standing under the laws of the State of Nevada. Participant has the full right, power and authority to undertake all obligations of Participant as provided herein, and the execution, performance and delivery of this Agreement by Participant has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of

Participant have been duly authorized to do so. Participant's manager is a limited liability company duly organized and good standing under the laws of the State of California. This Agreement constitutes a valid and binding obligation of Participant.

(iii) No Conflict. Participant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(iv) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Participant to perform its obligations under this Agreement.

(v) No Participant Bankruptcy. Participant is not the subject of a bankruptcy or insolvency proceeding.

Section 2.2 Agency Representations. Agency represents and warrants to Participant as follows, and Agency covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, Agency shall immediately give written notice of such fact or condition to Participant. Agency acknowledges that Participant shall rely upon Agency's representations made herein notwithstanding any investigation made by or on behalf of Participant.

(i) Authority. Agency is a public entity duly organized and in good standing under the laws of the State of Nevada. Agency has the full right, power and authority to undertake all obligations of Agency as provided herein, and the execution, performance and delivery of this Agreement by Agency have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Agency have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Agency.

(ii) No Conflict. Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Agency to perform its obligations under this Agreement.

(iv) No Bankruptcy. Agency is not the subject of a bankruptcy or insolvency proceeding.

(v) No Encumbrance of Semi-Annual Payment. Except as provided herein, Agency has not and will not encumber the Union Village Semi-Annual Payment (as defined in Section 6.6).

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Scope of Development.

3.1.1 Scope of Development. Participant shall use commercially reasonable efforts to develop and construct the Improvements in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of the Entitlements.

3.1.2 Revisions to Scope of Development. The Participant retained RCG Economics LLC to prepare a tax increment projection (the “**Original Tax Increment Projection**”) which estimates the Union Village Tax Increment to be allocated to and received by the Agency from development of the Property in accordance with the DA. Participant acknowledges and agrees that the Agency has relied upon the Original Tax Increment Projection in negotiating the terms and conditions of Agency financial assistance set forth in Article 6 and in developing its goals for the Project Areas.

Section 3.2 Entitlements

Participant acknowledges and agrees that execution of this Agreement by Agency does not constitute approval of the Entitlements, does not limit in any manner the discretion of the City in such approval process, and does not relieve Participant from the obligation to obtain all necessary Entitlements. Participant shall be responsible and promptly pay when due all customary and reasonable fees and charges of the City in connection with the processing and consideration of obtaining the Entitlements, including, but not limited to, building permits.

Section 3.3. Time for Commencement of Construction.

Participant shall use commercially reasonable efforts to commence the design, development, and construction of not less than five percent (5%) of the Public Improvements within three (3) years after the Effective Date. If Participant fails to commence construction of the Tier I Public Improvements prior to the third anniversary after the Effective Date, either party shall have the right, at its option, to (i) terminate this Agreement or (ii) renegotiate the terms and conditions of this Agreement.

Section 3.3.1 Construction Schedule.

Participant shall continue the design, development, and construction of the Public Improvements substantially in accordance with the schedule attached hereto as Exhibit D, as same may be revised with approval of Agency. Participant may request an extension of time for the dates outlined in Exhibit D. Participant shall submit the proposed change in dates writing to Agency for their written approval, which approval shall not be unreasonably withheld, conditioned or delayed as long as such change is consistent with the DA. Participant’s submission should detail the proposed change, the reason for the change and specify the time period for the completion of the proposed change. Agency staff may approve change(s) in date(s) for up to a one year period from the dates submitted in Exhibit

D. All proposed changes which would delay construction in excess of one year must be submitted to and reviewed in a public meeting by the Agency Board.

If Participant fails to meet the dates outlined in Exhibit D and has not been granted an extension, Agency shall have the right to issue a notice of default in accordance with Article 9 of this Agreement.

Section 3.4 Costs of Construction.

All costs related to (i) acquisition or development of the land constituting the Property, (ii) designing, developing and constructing the Improvements, (iii) completion of the Improvements, (iv) soil, groundwater or other environmental remediation or response activities and (v) compliance with the DA and the Entitlements shall be borne solely by Participant and shall not be an obligation of Agency or the City except as to the Reimbursable Public Improvement Costs and as may be specifically and expressly otherwise provided herein.

Section 3.5 Other Approvals.

Participant hereby covenants that it shall use reasonable efforts to obtain all necessary Entitlements which may be required by any other governmental agency having jurisdiction over the design, development, or construction of the Improvements on the Property. Construction of the Improvements shall not be permitted prior to issuance of the Entitlements.

Section 3.6 Rights of Access.

In addition to those rights of access to and across the Property to which Agency and City may be entitled by law, members of the staff of Agency and City shall have the right of access to the Property, without charge or fee, anytime, to inspect the work being performed on the Property. Agency and City shall protect, indemnify, defend and hold Participant harmless from and against any and all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**"), resulting from Agency's or City's entry on to the Property, except to the extent any such Claim arises out of or relates to the sole negligence or willful misconduct of Participant.

Section 3.7 Local, State and Federal Laws.

Participant shall carry out the construction of the Improvements in conformity with all applicable local, state and federal laws and regulations, including, without limitation, the DA and all applicable safety, health, and labor laws.

Section 3.8 Hazardous Materials.

3.8.1 No Agency Liability; Participant's Covenants. Agency shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials existing or occurring on the Property or any portion thereof, and Participant shall be solely responsible for all actions and costs associated with any such activities required for the development of the Improvements, the Property, or any portion thereof. Upon receipt of any regulatory notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Participant (as long as Participant owns the property which is the subject of such notice) agrees to timely initiate and diligently pursue and complete all required response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials as specified by applicable Environmental Laws. Participant hereby covenants and agrees that:

(1) Participant, within the period of its ownership, shall not knowingly permit the Improvements or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials in violation of Environmental Law or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Improvements or the Property, and

(2) Participant, within the period of its ownership, shall keep and maintain the Improvements and the Property and each portion thereof in compliance with, and shall not cause or permit the Improvements or the Property or any portion of either to be in violation of, any Environmental Laws.

3.8.2 Environmental Indemnification. Participant shall indemnify, defend (with counsel approved by Agency) and hold the Agency, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against any and all Claims associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Participant, Participant's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Environmental Laws or the covenants set forth in Section 3.8.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws. The provisions of this Section 3.8.2 shall survive the issuance of a Certificate of Completion for the Reimbursable Public Improvements and the expiration or earlier termination of this Agreement.

3.8.3 No Limitation. Participant hereby acknowledges and agrees that Participant's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 3.8.2 above, are in no way limited or otherwise affected by any

information the Agency or the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the Agency or the City obtained such information from the Participant or from its own investigations. It is further agreed that Agency and City do not and shall not waive any rights against Participant that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Participant, of any of the insurance policies described in this Agreement.

ARTICLE 4 CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Construction Pursuant to Plans.

Except to the extent modified by operation of Section 4.3 of this Agreement, all construction of the Reimbursable Public Improvements shall be done in accordance with the applicable Construction Plans and the Entitlements. Prior to the commencement of construction of the Reimbursable Public Improvements or any portion thereof, Participant shall submit to Agency for written approval the Construction Plans for such Reimbursable Public Improvements so that Agency may confirm consistency with this Agreement.

Section 4.2 Construction Plans.

The Construction Plans shall be based upon the DA, and any other plans or development approvals issued by Agency or the City with respect to the Improvements or the development of the Property, and shall not materially deviate therefrom without the express written consent of the Agency.

Section 4.3 Change in Construction Plans.

If Participant desires to make any material change in the approved Construction Plans for the Reimbursable Public Improvements, Participant shall submit the proposed change in writing to Agency and the City for their written approval, which approval shall not be unreasonably withheld, conditioned or delayed as long as such change is consistent with the DA. Participant's submission should detail the proposed change, the cost of the change and specify the time period for the completion of the proposed change. If the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any plans or development approvals issued by Agency or City, including the DA, Agency and the City shall approve the change by notifying Participant in writing. All such proposed changes shall be approved or rejected by Agency or the City in writing within thirty (30) days of submittal and any notice of rejection shall state with specificity the particular aspects of the proposed changes which are unacceptable and include an explanation for such rejection. If no notice of rejection is issued by Agency within said thirty (30) day period, the proposed changes shall be deemed approved. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such changes do not substantially nor materially change the architecture, design, function, use, or other amenities of the Improvements as shown on the latest approved Construction Plans unless required by such applicable codes.

Section 4.4 Defects in Plans.

Neither Agency nor City shall be responsible to Participant or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Participant shall indemnify, defend (with counsel reasonably approved by Agency, but no right to select separate counsel unless joint representation results in a conflict of interest) and hold the Indemnitees harmless from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Participant's indemnification obligations set forth in this Section 4.4 shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that Agency and City do not, and shall not, waive any rights against Participant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or Participant's deposit with Agency of any of the insurance policies described in this Agreement. Participant's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the negligence or willful misconduct of the Indemnitees.

Section 4.5 Progress of Construction.

During construction of the Reimbursable Public Improvements, Participant shall submit to Agency quarterly written reports of the progress of the construction of the Reimbursable Public Improvements. The report shall be in such form and detail as to inform Agency fully of the status of construction of the Reimbursable Public Improvements.

Until construction of the Reimbursable Public Improvements has been Completed, Participant authorizes Agency to have full access to all building inspection reports and other information at the City to assist Agency in reviewing the actual progress of construction of the Reimbursable Public Improvements. Participant shall allow Agency to review construction documents and records maintained by Participant in the ordinary course of the construction of the Reimbursable Public Improvements as may be reasonably requested by Agency.

Section 4.6 Certificate of Completion for Reimbursable Public Improvements.

Promptly after Completion of the Reimbursable Public Improvements on the Property in accordance with the provisions of this Agreement, Agency shall provide a final (or partial, as applicable) Certificate of Completion ("**Certificate of Completion**") certifying that Participant has satisfactorily completed construction of the Reimbursable Public Improvements on the Property (or applicable portion thereof) provided that, at the time such certification is issued, (i) the Reimbursable Public Improvements on the Property (or applicable portion thereof) have been Completed, (ii) all Agency and City fees, if any, have been paid with respect to all Reimbursable Public Improvements constructed on the Property (or applicable portion thereof), (iii) the portions of the Property upon which the Reimbursable Public Improvements are located are in full compliance with the terms of this Agreement and the Redevelopment Plans, and (iv) all Entitlements for the Reimbursable Public Improvements have been obtained.

Such Certificate of Completion shall be substantially in the form attached hereto as Exhibit E and shall be recorded among the Official Records of Clark County, Nevada. Such Certificate of Completion and determination shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of a deed of trust securing money loaned to finance the Reimbursable Public Improvements or any part thereof and shall not be deemed a notice of completion under the NRS, Chapter 108.

Section 4.7 Prevailing Wage Requirements.

The Reimbursable Public Improvements to be constructed by Participant under this Agreement shall be subject to the provisions of NRS Sections 338.010 through 338.090, inclusive, and regulations adopted pursuant thereto (“**Prevailing Wage Laws**”) to the same extent as if Agency had awarded the contract for the construction of the Reimbursable Public Improvements. Participant and its respective subcontractors or agents, shall comply with the Prevailing Wage Laws and shall be responsible for carrying out the requirements of such provisions.

Participant shall, and hereby agrees to, unconditionally indemnify, reimburse, defend (with counsel reasonably approved by Agency, but no right to select separate counsel unless joint representation results in a conflict of interest), protect and hold Indemnitees harmless from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Reimbursable Public Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to NRS Sections 279.498 and 279.500 and the Prevailing Wage Laws, or any act or omission of Agency or Participant related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Participant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Participant, of any of the insurance policies described in this Agreement. The provisions of this Section 4.7 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Reimbursable Public Improvements. Participant’s indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

Pursuant to NRS Section 338.020, the hourly and daily rate of wages to be paid each of the classes of mechanics and workmen employed in connection with construction of the Reimbursable Public Improvements shall not be less than the rate of such wages then prevailing in Clark County, Nevada and shall be posted on the site of construction of the Reimbursable Public Improvements in a place generally visible to the mechanics and workmen.

Pursuant to NRS Section 338.060, Participant agrees to forfeit, as a penalty to Agency, the applicable sums set forth in Section 338.060 for each calendar day or portion thereof that each workman employed in connection with the Reimbursable Public Improvements (i) is paid less than the designated rate for any work performed under this

Agreement by Participant or any of Participant's contractors, subcontractors or agents or (ii) is not reported to Agency as required pursuant to NRS Section 338.070.

In addition to all reporting requirements under the Prevailing Wage Laws, until construction of the Reimbursable Public Improvements has been Completed, Participant authorizes Agency to have full access to all of its payroll records and payroll records of its respective subcontractors or agents, as well as all other construction, contracting, employee and worker documentation and records reasonably deemed necessary by Agency to determine compliance with this Section and NRS Sections 279.498 and 279.500 and the Prevailing Wage Laws.

Section 4.8 Construction Bonds.

Prior to commencement of construction of the Reimbursable Public Improvements, Participant shall provide labor, materials, and performance bonds naming Agency and City as co-obligees, subject to the approval of Agency and City, for all Reimbursable Public Improvements, from a surety company licensed to do business in Nevada with a general rating of A minus and a financial size category of class X or better in Best's Insurance Guide, each in a penal sum of the estimated costs of the Reimbursable Public Improvements; provided however, that any bond provided by Participant under the DA with respect to the Reimbursable Public Improvements shall be deemed to satisfy the requirements of this Section 4.8. Participant shall maintain and keep in force, at Participant's expense, the bonds required by this Section until Completion of construction of the Reimbursable Public Improvements.

Section 4.9 Implementation of DA.

The DA shall govern the development of the Property and the design, development, and construction of the Improvements. In carrying out the design, development, and construction of the Improvements, it shall be the sole responsibility of Participant to implement, at its sole cost and expense, the DA.

Section 4.10 Equal Opportunity.

During the construction of the Reimbursable Public Improvements on the Property, Participant shall not discriminate on the basis of race, religion, sex, sexual orientation or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and Participant shall direct its contractors and subcontractors to refrain from discrimination on such basis.

Section 4.11 Relocation Expenses; Hold Harmless Statement.

Participant represents and agrees that as of the Effective Date there are no occupied structures or occupied improvements on the Property. Participant agrees that it shall have the sole and exclusive responsibility for providing any relocation assistance and paying any relocation costs associated with the development of the Property which may be required to comply with applicable federal, state or local laws, rules and regulations. Participant shall, and hereby agrees to, unconditionally indemnify, reimburse, defend (with counsel reasonably approved by Agency, but no right to select separate counsel unless joint representation results in a conflict of interest), protect and hold Indemnitees harmless from and against any

and all Claims, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, relocation assistance or benefits or any act or omission of Agency or Participant with respect to the provision of relocation assistance or benefits in connection with this Agreement, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Participant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Participant, of any of the insurance policies described in this Agreement. The provisions of this Section 4.11 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Reimbursable Public Improvements. Participant's indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

ARTICLE 5 COVENANTS OF PARTICIPANT

Section 5.1 Uses.

Participant covenants and agrees that, during construction of the Improvements and thereafter, Participant shall use the Property solely for the purposes authorized in the DA for the term of the DA. Participant further covenants and agrees that the Property shall be subject to the provisions of the Redevelopment Plan for such period of time as the plan is in effect. Participant is expressly prohibited from using the Property for any uses prohibited by applicable City ordinances or regulations, by the DA, or by the Redevelopment Plan.

Section 5.2 Obligation to Refrain from Discrimination.

Participant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Participant covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, nor shall Participant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.

All deeds, leases or contracts for the sale, lease, sublease, or other transfer of the Property, or any portion thereof made or entered into by Participant, its successors or assigns, shall contain therein the following language:

- (a) In Deeds:

"The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenants shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts:

"The contractor herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall be binding upon any subcontracting Parties, successors, assigns and other transferees under the contract."

Section 5.3 Effect and Duration of Covenants.

All of the terms, covenants, agreements and conditions set forth in this Agreement shall cease and terminate as to the Property and the Improvements thereon upon recordation of the Certificate of Completion for the Reimbursable Public Improvements as described in Section 4.6 of this Agreement, excepting only the provisions of Section 5.1 of this Agreement (relating to uses), which shall remain in effect as specified therein; Section 5.2

(relating to nondiscrimination), which shall remain in effect in perpetuity; and the provisions set forth in the Section 11.12 (relating to indemnity and hold harmless provisions), which shall remain in effect as specified therein.

ARTICLE 6

REIMBURSEMENT OF COSTS BY AGENCY

Section 6.1 Reimbursement for Reimbursable Public Improvement Costs.

Section 6.1.1 Agency Financial Assistance

Participant shall undertake the design, development and construction (including permitting) of the Public Improvements described in the Master List at its initial and exclusive cost. Agency recognizes that the costs of designing, developing and constructing the Public Improvements would make implementation of the DA economically infeasible, and Agency therefore agrees to financially assist Participant with the costs of designing, developing and constructing the Reimbursable Public Improvements. The amount of Agency financial assistance shall not exceed the lesser of (i) the total amount of Eligible Costs (as defined below); or (ii) One Hundred Fifty Million Dollars (\$150,000,000.00) (plus interest on the financial assistance subject to Section 6.1.2.).

Section 6.1.2 Form of Agency Financial Assistance

The Agency financial assistance shall be by reimbursement to Participant for the Reimbursable Public Improvements Costs pursuant to a Promissory Note, dated as of the Effective Date and executed by Agency substantially in the form attached hereto as Exhibit C (the “**Note**”). The Note provides that (i) all amounts thereunder may be pre-paid in part or in full at any time without penalty and (ii) the indebtedness evidenced thereby shall be paid solely and exclusively from Union Village Tax Increment. All terms of reimbursement by Agency to Participant for Reimbursable Public Improvements Costs, representing Agency’s redevelopment financial assistance to Participant for the Reimbursable Public Improvements, shall be as provided herein and in the Note.

The outstanding principal balance of the Note shall accrue interest at rate of six percent (6%) simple interest annually commencing upon the Advance Date (defined below); provided, however, that the total amount of interest and principal paid to Participant by Agency shall not exceed One Hundred Eighty Five Million Dollars (\$185,000,000.00). If at any time during the term of the Note the amount of the Note, including principal and interest, totals One Hundred Eighty Five Million Dollars (\$185,000,000.00), interest accrual shall toll permanently (the “**Tolling Period**”) and Agency shall not be liable for interest which would have otherwise accrued during the Tolling Period.

Section 6.1.3 Pre-Approval of Reimbursable Public Improvements

Participant shall select from the Master List those Public Improvements for which Participant will seek reimbursement and shall submit such improvement to Agency for its written pre-approval using the form attached to Exhibit F. Upon Agency’s pre-approval, subject to Section 6.2 and 6.3, such Public Improvements shall constitute Reimbursable Public Improvements for which Participant will be entitled to reimbursement after issuance

of a Certificate of Completion. Participant may request written pre-approval any time prior to Request for Reimbursement noting verification of Public Improvements will be required in accordance with Section 6.3. If it is determined during a Performance Review that some portion of the Reimbursable Public Improvement Costs are not consistent with the Agency's written pre-approval but are in fact costs that are included in the Master List, Participant will be allowed to request pre approval for the Reimbursable Public Improvement Costs at that time but not to exceed 180 days after commencement of construction of the approved Reimbursable Public Improvement Costs, unless mutually agreed.

Section 6.1.4 Use of Construction Control.

Upon Pre-Approval of Reimbursable Public Improvements by Agency, Participant may elect to use construction control services. If so elected, Participant shall propose for Agency's approval, which shall not be unreasonably withheld, conditioned or delayed one or more licensed independent third parties to provide construction control services for voucher control, inspection services and analysis of the Reimbursable Public Improvements Costs that qualify as Eligible Costs. The costs of using independent third parties shall be paid by Participant directly to the independent third parties. Agency hereby approves Nevada Construction Services subject to execution of acceptable documentation.

Section 6.2 Request for Reimbursement.

Upon Completion of the Reimbursable Public Improvements, Participant shall provide to Agency for its approval a request for reimbursement ("**Request for Reimbursement**"), which includes a summary of the Reimbursable Public Improvement Costs and supporting documentation of such costs as Agency may reasonably request, including without limitation, a certification from a contractor evidencing that the payment by Participant reasonably corresponds to the construction work completed. Participant shall, and has the exclusive burden to maintain reasonably detailed documentary evidence supporting any Reimbursable Public Improvements Costs (e.g., contractor invoices, applications for payment, lien releases). The Request for Reimbursement shall be submitted on a reasonable form prepared by or approved by Agency.

Section 6.3 Verification of Public Improvements Costs.

(i) Construction Control Utilized.

Upon notification by Participant of the Completion of the Public Improvements, Agency shall cause a review of the Reimbursable Public Improvement Costs ("**Performance Review**") to be conducted by the independent third party engaged to provide construction control services. Such review will provide the basis for verifying the amount of any Agency reimbursement to Participant for the Completed Reimbursable Public Improvements. The costs of the Performance Review shall be paid by Participant directly to the independent third party.

The Performance Review shall require the independent third party, in his or her reasonable discretion, to verify the Reimbursable Public Improvements Costs for the Completed Public Improvements and to determine whether such costs are reasonable. Upon completion of the Performance Review, the

independent third parties shall submit a report to Agency and Participant detailing his or her analysis of the Reimbursable Public Improvements Costs that qualify as Eligible Costs (“Agency Independent Third Party Report”). Agency shall act on the Request for Reimbursement within thirty (30) days after receipt of the Agency Independent Third Party Report either by approving the Request for Reimbursement or by identifying with specificity any aspects of the Request for Reimbursement which require further documentation or explanation.

(ii) Construction Control Not Utilized.

Promptly following Agency’s receipt of a Request for Reimbursement, Agency shall cause a review of the Reimbursable Public Improvement Costs to be conducted by the Agency Engineer (“**Performance Review**”). Such review will provide the basis for determining the amount of any Agency reimbursement to Participant for the Completed Reimbursable Public Improvements. The costs of the Performance Review shall be paid by Participant within ten days of receiving an invoice from Agency detailing such costs; provided that Participant has received the Agency’s Engineer’s Report (as defined below).

The Performance Review shall require the Agency Engineer, in his or her reasonable discretion, to verify the Reimbursable Public Improvement Costs for the Completed Reimbursable Public Improvements and to determine whether such costs are reasonable. Upon completion of the Performance Review, the Agency Engineer shall submit a report to Agency detailing his or her analysis of the Reimbursable Public Improvement Costs (“**Agency Engineer’s Report**”). Agency shall approve only (i) those Reimbursable Public Improvement Costs in the Request for Reimbursement which the Agency Engineer has verified and determined to be reasonable as set forth in the Agency Engineer’s Report and (ii) those Reimbursable Public Improvement Costs in the Request for Reimbursement which the Agency has pre-approved pursuant to Section 6.1.3, provided that the Agency Engineer has verified and determined that such costs are consistent with the Agency’s written pre-approval (collectively, “**Eligible Costs**”).

Section 6.4 Advances Under the Note.

Eligible Costs shall be added to the principal amount of the Note as of the date the Agency approved such costs pursuant to Section 6.3 (the “**Advance Date**”).

Section 6.5 Determination of Participant’s Share.

Each year upon finalization of the property tax roll for the upcoming fiscal year (July 1st to June 30th), based upon reports received by the Clark County Assessor’s Office, Agency shall determine, as a percentage, Participant’s percentage share of the Eastside Tax Increment pursuant to the formula below (“**Participant’s Share**”). As tax increment funds are received during the fiscal year from the Clark County Assessor’s Office, the Agency shall make payments to Participant in accordance with Section 6.6.

Participant's Share (%) = (Union Village Tax Increment for upcoming fiscal year) / (Eastside Tax Increment for upcoming fiscal year)

Section 6.6 Semi-Annual Payments from Union Village Tax Increment.

Provided that Union Village Tax Increment has been allocated to and received by Agency and that there is an outstanding principal balance under the Note, on or before the first day of each April and the first day of each October during the term of this Agreement, Agency shall pay to Participant a semi-annual payment from Union Village Tax Increment pursuant to the formula below (the "**Semi-Annual Payment**") as payment first towards interest, then towards principal. If Union Village Tax Increment has been allocated to and received by Agency and there is no outstanding principal balance under the Note, the Semi-Annual Payment shall be held by Agency in a restricted cash account for future payments of the Note, and all interest accrued on funds held in such account shall accrue for the benefit of the Agency and not for the benefit of Participant.

Semi Annual Payment = [(Participant's Share (%)) x (Eastside Tax Increment received by Agency for prior 6 months)] x 90% for the first ten years after the Effective Date; x 80% beginning with the eleventh (11th) anniversary of the Effective Date and continuing until the Termination of the Reimbursement Obligation as set out in section 6.7.

Section 6.7 Termination of Reimbursement Obligations.

All financial assistance by Agency to Participant for the Reimbursable Public Improvements under this Agreement shall be made pursuant to payments under the Note and shall cease and terminate upon the earlier of (i) the full payment to Participant of all amounts owed under the Note, or (ii) the later of (a) the date of termination of the Eastside Redevelopment Plan or (b) the date on which the Agency is no longer entitled to receive Union Village Tax Increment, as either of such dates may be legislatively extended.

Section 6.8 Source of Payments.

Any Agency obligation to make any payment to Participant under this Agreement and the Note is wholly contingent and dependent upon the allocation to and receipt by Agency of Union Village Tax Increment. All amounts to be reimbursed to Participant hereunder shall be payable solely and exclusively from Union Village Tax Increment and shall not be payable from any other source. Union Village Tax Increment shall be the sole and exclusive source of payment to Participant under this Agreement and the Note, and payments hereunder may be made to Participant only if Union Village Tax Increment is allocated to and received by Agency.

Section 6.9 Agency Bond Issue.

The Agency may, in its reasonable discretion, issue tax allocation bonds secured by Participant's Share at such times when Participant's Share will support a bond issue (i) with gross proceeds of not less than \$25,000,000, (ii) with gross proceeds of not more than \$50,000,000, and (iii) with net proceeds in an amount equal to or less than the balance due under the Note. If the Agency determines, in its reasonable discretion, to issue such bonds, and makes payment under the Note with all net proceeds, Participant shall subordinate its

interest in this Agreement and the Note to such bonds and shall agree to any and all reasonable amendments to this Agreement necessary to effectuate such bond issue.

Section 6.10 Disagreement About Performance Review.

Prior to the initiation of any legal proceeding arising out of any controversy, claim or dispute between the Parties related to the conduct of the Performance Review, any analysis undertaken as part of such Performance Review, or the contents of the Agency's Engineer Report, such controversy, claim or dispute shall first be submitted to a three person panel of engineers. Each party shall select one engineer and those two engineers shall select the third engineer for the panel. The costs and expenses of the proceedings before the panel shall be split equally between the Parties, except that each party shall be responsible for its own attorneys' fees.

**ARTICLE 7
CHANGES IN PARTICIPANT**

Section 7.1 Identity of Participant.

Union Village, LLC is a Nevada limited liability company.

Section 7.2 Changes Only Pursuant To This Agreement.

Participant has represented that it possesses the necessary expertise, skill, and ability to carry out the development of the Improvements on the Property pursuant to this Agreement. The qualifications, experience, financial capability and expertise of Participant are of particular concern to Agency. It is because of these qualifications, experience, financial capability and expertise that Agency has entered into this Agreement. No voluntary or involuntary assignee or successor in interest to Participant shall acquire any rights or powers under this Agreement, except as herein provided.

Section 7.3 Prohibition on Transfer by Participant.

Prior to the Completion of the Reimbursable Public Improvements and the issuance by Agency of a Certificate of Completion for the Reimbursable Public Improvements, Participant shall not, except as expressly permitted by this Agreement and the DA, voluntarily, involuntarily, directly or indirectly or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease ("**Transfer**") of the whole or any part of the Property, the Improvements, or this Agreement, without the prior written approval of Agency. Any such attempt to Transfer this Agreement, other than in accordance with the terms of this Agreement, shall be null and void and shall confer no rights or privileges upon the purported assignee.

Section 7.4 Permitted Transfers.

(a) Participant shall have the right to Transfer fee title to portions of the Property in accordance with the provisions of this Section and any such Transfer may include assignment and assumption of Participant's duties and obligations arising under this Agreement with respect to the portion of the Property included in such Transfer. No transfer

of Participant's rights or interest under this Agreement shall be made except in connection with a Transfer of a portion of the Property. No Transfer of any portion of the Property shall include Transfer of any right to reimbursement for the cost of Public Improvements unless and then only to the extent specifically set forth in the transfer documentation.

(b) In connection with any Transfer, Participant and the transferee shall enter into a recordable written assignment and assumption agreement, the form of which shall be subject to the reasonable approval of Agency prior to the Transfer, pursuant to which the Participant assigns to the transferee and the transferee assumes from the transferor the rights and obligations under this Agreement with respect to the Property being transferred. In no event shall any such transferee have the right to request or process any amendment of this Agreement.

(c) Notwithstanding the foregoing, Participant shall not sell or transfer the entire Property, or all or substantially all of the assets of or membership interests of Participant to other than an Affiliate of Participant without the prior written consent of Agency which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee demonstrates the financial capability and development expertise to implement the development plan for the Project in accordance with the terms of this Agreement. In the event of a proposed transaction requiring the Agency's consent, Participant shall provide Agency with written request for consent which shall include reasonable supporting documentation about the proposed transferee for consideration and Agency shall respond within thirty (30) calendar days of receipt of said request and supporting documentation. In the event Agency fails to respond within such thirty (30) day period, the proposed transfer shall be deemed approved. The restrictions set forth in this subparagraph (c) shall expire upon opening of a hospital in Union Village Project.

(d) Nothing in this Agreement shall be deemed or construed to prevent Participant from encumbering all or any portion of the Property in connection with one or more financing transactions; provided, however, that this Agreement shall be and remain superior and senior to the lien of any deed of trust or mortgage excepting there from the deed of trust in favor of the City which will be recorded concurrently with Participant's acquisition of the Property. No breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property by any such lender, whether by foreclosure, transfer, quit claim, decree, deed in lieu thereof or court order, shall be subject to all of the terms and conditions of this Agreement.

Section 7.5 Requirements for Proposed Transfers.

The Agency shall consent to a proposed Transfer of the Property or portion thereof and/or this Agreement if all of the following requirements are met (provided however, the requirements of this Section 7.5 shall not apply to Transfers described in clauses (i) through (vi) of Section 7.4):

(i) The proposed transferee demonstrates to the Agency's reasonable satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency to competently complete construction of the Improvements to the extent such proposed transferee is assuming the obligations to complete

any Improvements and to otherwise fulfill any obligations of Participant under this Agreement which are being assumed in connection with the proposed Transfer.

(ii) The Participant and the proposed transferee shall submit for Agency review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the Agency may reasonably request.

(iii) The proposed transferee shall expressly assume the rights and obligations of Participant under this Agreement which are being transferred arising after the effective date of the Transfer.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency in form recordable in the Official Records at which time the assignor shall be relieved of all further obligations hereunder with respect to the portion of the Property transferred except for those obligations described in Section 11.12 which shall survive the expiration, termination or transfer of this Agreement.

Consent to any proposed Transfer may be given by the Agency's Redevelopment Manager unless the Redevelopment Manager, in his or her discretion, refers the matter of approval to the Agency's governing board. The proposed Transfer shall be approved or rejected by Agency in writing within thirty (30) days following Agency's receipt of written request by Participant.

All actual and reasonable direct third party costs incurred by Agency, including but not limited to attorneys' fees, in reviewing instruments and other legal documents proposed to effect a Transfer and assumption of the terms, provisions, covenants and obligations of Participant under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee or transferee shall be reimbursed by Participant within ten days of Agency providing Participant with a detailed invoice of such Agency costs.

Section 7.6 Effect of Transfer Without Agency Consent

7.6.1 In the absence of specific written agreement by the Agency, no Transfer by Participant (except as provided in Section 7.4) shall be deemed to relieve Participant or any other party from any obligation under this Agreement.

7.6.2 Without limiting any other remedy Agency may have under this Agreement, or under law or equity, this Agreement may be terminated by Agency if without the prior written approval of the Agency, when such consent is required by this Agreement, Participant assigns or Transfers (except as provided in Section 7.4) this Agreement, the Property, or the Improvements prior to the Agency's issuance of a Certificate of Completion for the Reimbursable Public Improvements.

ARTICLE 8

SECURED FINANCING AND RIGHTS OF HOLDERS

Section 8.1 No Encumbrances Except for Acquisition and Development Purposes.

Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Property and pledges of the payments due or to become due under the Note are permitted for any purposes deemed necessary and appropriate by Participant acting in its sole and absolute discretion to develop and operate the Property and the Public Improvements and/or Private Improvements in accordance with this Agreement. Any such mortgages, deeds of trust or any other method of security placed upon the Property or the Public Improvements and/or Private Improvements shall be at all times subordinate and junior to any easements or rights-of-way granted pursuant to this Agreement. After Completion of the Public Improvements, no mortgages, deeds of trust or other methods of security may be placed upon the Public Improvements or the portions of the Property upon which the Public Improvements are located. Participant shall promptly notify Agency in writing of any mortgage, deed of trust or other method of security that has been or will be created or attached to the Property or any pledge of the payments due or to become due under the Note and the identity and mailing address of the Holder of any such security that has been or will be created and shall notify Agency of any changes thereof. The words “mortgage” and “deed of trust” in this Section includes all customary modes of financing real estate acquisition, construction and development.

Section 8.2 Holder Not Obligated to Construct.

Except as otherwise provided in Article 7 and Section 8.3 of this Agreement, a Holder is not obligated to construct or complete any of the Improvements, to guarantee such construction or completion or to perform any of the other obligations of Participant under this Agreement or the DA. Nothing in this Agreement shall be deemed to permit or authorize any such Holder to devote the Property or the Improvements to any uses, or to construct any improvements thereon, other than those uses or the Improvements provided for or authorized by this Agreement or the DA.

Section 8.3 Notice of Default and Right to Cure.

Whenever Agency, pursuant to its rights as set forth in this Agreement, delivers any notice of default under this Agreement to Participant with respect to the construction or completion of the Improvements, Agency shall at the same time deliver to each Holder (of which Agency has been notified in accordance with Section 8.1 of this Agreement) a copy of such notice. Each such Holder shall (insofar as the rights of Agency are concerned) have the right, but not the obligation, at its option, within ninety 90 days after service of the notice, to elect to cure any default by Participant in connection with the construction or completion of the Improvements under this Agreement and to add the cost thereof to the secured debt and lien evidenced by its mortgage, deed of trust or other security instrument. A Holder who chooses to exercise its right to cure a default shall first notify Agency in writing of its intent to exercise such right prior to commencing to cure such default and thereafter shall complete such cure within a reasonable period of time. If such cure is thereafter commenced and diligently prosecuted to completion, Agency shall not have the right to terminate this

Agreement on account of such default by Participant, notwithstanding Section 9.3 of this Agreement.

Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such Improvements already constructed) without first having expressly assumed in writing all of Participant's obligations under this Agreement relating to such Improvements and the Property or portion thereof upon which such Improvements are to be constructed under this Agreement. In connection with such assumption, the Holder must agree to complete, in the manner provided in this Agreement, the Improvements on the portion of Property covered by the Holder's lien (including any portion of the Property acquired by such Holder pursuant to foreclosure of such lien, deed in lieu of foreclosure or other means) and submit evidence reasonably satisfactory to Agency that it has the developmental capability on staff or retainer and the financial responsibility necessary to perform such obligations. Any such Holder which properly completes the Improvements pursuant to this paragraph and has assumed all obligations of Participant under this Agreement with respect to the Improvements and the portion of the Property covered by the Holder's lien (including any portion of the Property acquired by such Holder pursuant to foreclosure of such lien, deed in lieu of foreclosure or other means) shall be entitled, upon written request made to Agency, to the issuance by Agency of the Certificate of Completion for the Reimbursable Public Improvements as may otherwise be applicable under Section 4.6 of this Agreement.

In the event that a Holder has assumed Participant's obligations hereunder, such Holder shall be liable for the fulfillment of such obligations until such time as such Holder transfers the portion of the Property or Improvements to another person or entity, but only if such transferee, assignee or successor assumes all of the obligations under this Agreement with respect to that portion of the Property or Improvements proposed to be transferred. After a Holder has acquired the fee interest in the portion of the Property or Improvements, any transfer by a Holder of the portion of the Property or Improvements or portions thereof shall require Agency approval, which approval shall not be unreasonably withheld if the proposed transferee, assignee or successor has the qualifications and financial resources necessary and adequate as may be reasonably determined by Agency to fulfill the obligations undertaken in this Agreement by Participant with respect to the Property or Improvements or portions thereof proposed to be transferred.

Section 8.4 Failure of Holder to Complete Improvements.

In any case where six months after default by Participant in connection with the completion of the Improvements under this Agreement (or such longer period of time as shall be reasonably necessary for such Holder to obtain possession of that Property or Improvements or portions thereof subject to its lien, not to exceed one year), a Holder, having first exercised its option to construct, has not proceeded diligently with such construction, Agency shall be afforded those rights against such Holder which it would otherwise have against Participant under this Agreement with respect to such Property and Improvements or portions thereof.

Section 8.5 Holder to be Notified.

Participant hereby warrants and agrees that each term contained herein dealing with secured financing and rights of Holders shall be either inserted into or incorporated by reference into the relevant deed of trust, mortgage or other security instrument or be acknowledged by the Holder prior to or at the same time of its coming into any security right or interest in the Property or the Improvements.

Section 8.6 Modifications to Agreement.

Agency shall not unreasonably withhold its consent to modifications of this Agreement requested by lenders of Participant, provided such modifications do not materially alter Agency's substantive rights and obligations under this Agreement.

ARTICLE 9
DEFAULTS, REMEDIES AND TERMINATION

Section 9.1 Event of Participant Default.

9.1.1 Event of Participant Default. Subject to Force Majeure as defined in Section 9.6 below, the following events shall constitute an event of default on the part of Participant ("**Event of Participant Default**"):

(a) Participant fails to commence construction of the Improvements within the time set forth in Section 3.3, or abandons or suspends construction of the Improvements prior to completion for a period of ninety (90) days or more after notice pursuant to Section 9.1.2.

(b) Participant fails to maintain liability insurance as required pursuant to Section 11.9, and Participant fails to cure such default within thirty (30) days.

(c) Any submittal to the Agency in connection with the Reimbursable Public Improvements proves to have been incorrect in any material and adverse respect when made and continues to be incorrect and materially adverse to the Agency or the City and Participant fails to cure such default within 90 days after notice pursuant to Section 9.1.2; provided, however, that if Participant fails to cure such default within 90 days, the Agency will not seek to terminate this Agreement for an additional 60 days, during which time Agency and Participant shall meet and confer to resolve the default.

(d) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Participant (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Participant or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Participant; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(e) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Participant to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Participant or seeking any arrangement for Participant under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator,

or assignee of the Participant in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Participant.

(f) Participant shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution.

(g) The Participant shall have voluntarily suspended its business or Participant shall have been dissolved or terminated.

(h) Participant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and fails to cure such default within the time set forth in Section 9.1.2 below.

Notwithstanding an Event of Default, Agency shall continue to be obligated to Participant under this Agreement and the Note for reimbursement of all Reimbursable Public Improvement Costs previously incurred except for an Event of Default under paragraph (c) of this Section where Participant has made a misrepresentation to the Agency or the City in connection with Participant's request for Agency financial assistance.

9.1.2 Notice and Cure. If Participant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement, the Agency shall provide written notice of such default to Participant. Unless a different cure period is specified for such default, Participant shall have ten (10) days in the event of a monetary default, or thirty (30) days in the event of a nonmonetary default, from Participant's receipt of such notice to cure such default; provided however, if the default is of a nature that it cannot be cured within 30 days, Participant shall have thirty (30) days (or such other period as specified) to commence to cure the default and shall thereafter prosecute the curing of such default with due diligence and in good faith to completion no later than sixty (60) days (or such other period as specified) after receipt of notice of the default.

Section 9.2 Agency Default.

An event of default on the part of Agency ("**Event of Agency Default**") shall arise hereunder if Agency fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Participant to Agency, except for a monetary default which shall be cured within ten (10) days after notice, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Agency fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

Section 9.3 Remedies.

Upon the occurrence of an Event of Agency Default or a Participant Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in

this Agreement, the non-defaulting party may terminate this Agreement with respect to future obligations arising after such default and/or bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

Section 9.4 Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 9.5 Inaction Not a Waiver of Default.

Except as expressly provided in this Agreement to the contrary, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default of any such rights or remedies, or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Any failure by Agency to enforce any of its remedies hereunder in any particular instance shall not constitute a waiver by Agency of its right to subsequently enforce its rights in the event of a subsequent default.

Section 9.6 Excuse for Nonperformance- Force Majeure.

Participant and Agency shall be excused from performing any of their obligations and undertakings provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, unusual weather, actions of the elements, war, invasion, insurrection, riot, mob violence, terrorism, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, acts or failure to act of governmental entities (except an act or failure to act by the Agency and/or City shall not excuse performance by the Agency) or any other cause, whether similar or dissimilar to the foregoing, not within the control of the party claiming the extension of time to perform. The party claiming such extension shall send written notice of the claimed extension to the other party within thirty (30) days from the commencement of the cause entitling the party to the extension.

Section 9.7 Effect of Termination.

In the event that this Agreement is terminated in accordance with the provisions of this Agreement, Agency shall not be prevented or precluded from carrying out the Redevelopment Plans, including the exercise by Agency of the power of eminent domain; however Agency shall not have the right to exercise the power of eminent domain over any portion of the Property upon which the Improvements have been completed or upon which

construction of the Improvements has commenced in accordance with this Agreement and is thereafter diligently prosecuted to completion.

ARTICLE 10 INDEMNITY

Section 10.1 Indemnity for Performance of Rights and Obligations and Financial Assistance.

Participant shall, and hereby agrees to, unconditionally indemnify, reimburse, defend (with counsel reasonably acceptable to Agency, but no right to select separate counsel unless joint representation would result in a conflict of interest), protect and hold harmless Indemnitees from and against any and all Claims whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from or relate to, or are alleged to be caused by, arise from or relate to, this Agreement, including but not limited, to Agency's or City's rights and obligations under this Agreement or the performance of same, Participant's rights and obligations under this Agreement or the performance of same, any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Improvements or this Agreement, the validity of the Redevelopment Plans (if and to the extent that the validity of the Redevelopment Plans affect the validity of this Agreement or the Note), Agency's provision of redevelopment financial assistance for the Reimbursable Public Improvements from tax revenues pursuant to this Agreement or any promissory note given by Agency as referenced herein, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Participant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Participant, of any of the insurance policies described in this Agreement. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Reimbursable Public Improvements. Participant's indemnification obligations set forth in this Section shall not apply to Claims (i) arising from the gross negligence or willful misconduct of the Indemnitees and/or (ii) arising from or relating to a breach of this Agreement by the Indemnitees or any one of them.

ARTICLE 11 GENERAL PROVISIONS

Section 11.1 Notices, Demands and Communications Between the Parties.

Any written notice, demand, communication or payment of one party to the other shall be served by personal delivery, nationally recognized overnight courier or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

Agency:

City of Henderson Redevelopment Agency
280 Water Street
Henderson, Nevada 89015
Attn: Redevelopment Manager

With Required
Copies to: City Attorney
240 Water Street
P.O. Box 95050
Henderson, NV 89009-5050

Participant: Union Village
c/o invXtus Properties
633 Rockford Road
Corona Del Mar CA 92625
Attn: David Micheal

With a copy to: Union Village
c/o invXtus Properties
468 N. Equestrian Drive
Orange, CA 29869
Attn: David Baker

And to: Law Office of C.J. Farley, Inc.
140 Newport Center Drive
Suite 250
Newport Beach, CA 92660
Attn: CJ Farley

All notices, demands, communication or payments shall be deemed received on the date which is three (3) business days after the date of deposit into the U.S. mail if sent by registered or certified mail, when delivered if delivered personally, or one (1) business day after the date of delivery to a nationally recognized overnight courier for overnight delivery if sent by overnight courier. All notices, demands, communications or payments shall be sent to the addresses above or to such other addresses as the affected party may from time to time designate.

Section 11.2 Conflicts of Interest.

No member, official or employee of Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

Section 11.3 Warranty Against Payment of Consideration for Agreement.

Participant warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

Section 11.4 Nonliability of Agency and City Officials.

No member, official or employee of Agency or the City shall personally be liable to Participant, or any assignee or successor of Participant, in the event of any default or breach

by Agency or for any amount which may become due to Participant on any obligation under the terms of this Agreement.

Section 11.5 Litigation.

In the event of any legal proceeding arising out of any controversy, claim or dispute between the parties related to this Agreement or the improvement and development of the Property, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable costs and expenses incurred in the legal proceedings, including but not limited to attorneys' fees and court costs.

Section 11.6 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.7 Counterparts; Entire Agreement; Waivers and Amendments.

This Agreement may be executed in duplicate originals, each of which is deemed to be an original. This Agreement, together with all Exhibits which are incorporated herein by reference, constitutes the entire understanding and agreement of the parties respecting the subject matter hereof. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 11.8 Applicable Law.

The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement. Any action to enforce or interpret this Agreement must be filed in Clark County, State of Nevada.

Section 11.9 Liability Insurance.

a. Participant shall maintain in force during the construction of the Public Improvements and through the Completion of the Reimbursable Public Improvements and the issuance of the Certificate of Completion for the Reimbursable Public Improvements as described in Section 4.6 of this Agreement, public liability and property damage insurance from carrier(s) and in a form acceptable to the Agency, including personal injury and pollution legal liability, contractual and owned and non-owned automobiles, with such coverage and limits as may be reasonably requested by Agency and City from time to time, but in no event for less than the sum of **\$15,000,000.00** combined single limit.

b. Public liability insurance policies shall name Agency and City as additional insureds, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance held by Agency or City will be called upon to contribute to a loss under the coverage.

c. A certificate evidencing such insurance coverage or coverages shall be filed with Agency and City prior to commencement of construction (or any work related thereto) on the Property, and said certificate shall provide that such insurance coverage will not be reduced without the insurer endeavoring to give at least 30 days' prior written notice to Agency and City and will not be cancelled without the insurer endeavoring to give at least ten days' prior written notice to Agency and City. In the event of a reduction or cancellation in coverage, Participant shall, prior to such reduction or cancellation, provide at least 30 days' prior written notice to Agency and City, regardless of any notification by an insurer. "Commencement of construction" for purposes of this paragraph means any grading, trenching, or preparation of ground for the installation of infrastructure.

d. If such coverage is cancelled or reduced, Participant shall, within 15 days after receipt of written notice from Agency or City regarding such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency and City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency or City may, without further notice and at its option, procure such insurance coverage at Participant's expense, and Participant shall promptly reimburse Agency or City, as the case may be, for such expense upon receipt of billing from Agency or City.

Section 11.10 Recordation.

Agency is authorized to record a Memorandum of this Agreement and any amendments hereto in the official records of Clark County, Nevada.

Section 11.11 Other Agreements.

This Agreement, including all agreements attached hereto and incorporated herein, has been entered into by the parties respectively thereto based upon the unique facts and circumstances pertaining to the Improvements and the Property. It shall be entirely within the respective sole discretion of the Agency and the City to rely, or not to rely, on any provision of such Agreement or agreements in the development of any subsequent owner participation or other agreement(s) which the Agency or the City hereafter may elect to develop and/or execute.

Section 11.12 Survival.

All representations made by Developer hereunder and Developer's obligations pursuant to Sections 3.8, 4.4, 4.7, 4.11, and 10.1 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion for the Reimbursable Public Improvements and shall expire upon the expiration of the statute of limitations with respect to the causes of action described in each subsection.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

Agency:

**CITY OF HENDERSON
REDEVELOPMENT AGENCY,**
a public body, corporate and politic

By: _____
Jacob Snow
Executive Director

ATTEST:

Sabrina Mercadante, MMC
Agency Secretary

APPROVED AS TO FORM:

Josh M. Reid
Agency's Counsel

Participant:

UNION VILLAGE, LLC

Union Village, LLC
a Nevada limited liability company

By: invXtus Properties, LLC,
A California limited liability company,
Manager

By: _____
Name: _____
Its: _____

EXHIBIT A
Property

EXHIBIT B

PROMISSORY NOTE (Reimbursable Public Improvements)

\$ _____,000

Henderson, Nevada
_____, 2012

FOR VALUE RECEIVED, THE CITY OF HENDERSON REDEVELOPMENT AGENCY, a Nevada public body, corporate and politic (“**Agency**”), promises to pay to the order of UNION VILLAGE, LLC, a Nevada limited liability company or its assignee as permitted under the terms hereof (“**Participant**”) in lawful money of the United States of America the principal sum of One Hundred Fifty Million Dollars (\$150,000,000.00) or so much thereof as may be outstanding from time to time pursuant to the Owner Participation Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Promissory Note (this “**Note**”) has been executed and delivered pursuant to and in accordance with that certain Owner Participation Agreement executed by and between Agency and Participant dated as of the date hereof (the “**OPA**”) and is subject to the terms and conditions of the OPA, which by this reference is incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA.

1. Payment Terms

1.1 Maturity Date. The maturity date of this Note (“**Maturity Date**”) shall be the date of termination of the Eastside Redevelopment Plan (as defined in the OPA), as such date may be legislatively extended. On the Maturity Date, provided that Agency is not in default hereunder, Participant shall forgive any and all amounts due and owing under this Note, including but not limited to the principal balance and accrued interest outstanding hereunder on the Maturity Date. Upon any forgiveness, this Note shall be deemed paid in full and Agency shall have no further obligations hereunder.

1.2 Interest Rate. Interest shall accrue on the outstanding principal balance at a rate equal to six percent (6%) simple interest annually commencing upon the Advance Date (as defined in the OPA); provided, however, that the total amount paid to Participant by Agency under this Note, including principal and interest, shall not exceed One Hundred Eighty Five Million Dollars (\$185,000,000.00). If at any time during the term of this Note, the total amount of the Note, including principal and interest, totals One Hundred Eighty Five Million Dollars (\$185,000,000.00), interest accrual shall toll for the remainder of the term of this Note (the “**Tolling Period**”) and Agency shall not be liable for interest which would have otherwise accrued during the Tolling Period.

1.3 Advances. Each payment of Reimbursable Public Improvements Costs by Participant, as described in the OPA, shall be deemed an advance hereunder as of the Advance

Date provided that such costs qualify as Eligible Costs as described in Section 6.3 of the OPA. Other than for Eligible Costs, no advances shall be made hereunder. Promptly following Agency's receipt of Participant's Request for Reimbursement described in Section 6.2 of the OPA, Agency shall cause a review of the Reimbursable Public Improvements Costs to be conducted by the Agency Engineer or a Performance Review by the third party Construction Control Service (as defined in the OPA) at Participant's sole cost and expense as described in Section 6.3 of the OPA. Agency shall approve only those Reimbursable Public Improvement Costs which the Agency Engineer has verified and has determined, in his or her reasonable discretion, qualify as Eligible Costs as set forth in the Agency Engineer's Report as described in Section 6.3 of the OPA or upon completion of the Performance Review, the independent third parties shall submit a report to Agency and Participant detailing his or her analysis of the Reimbursable Public Improvements Costs that qualify as Eligible Costs to be added to the Note provided no further information is necessary as set out in Section 6.3 of the OPA. The total advances shall not exceed the Maximum Principal Amount as defined below.

1.4. Maximum Principal Amount. The maximum principal amount of this Note ("**Maximum Principal Amount**") shall be the lesser of (i) the total amount of Eligible Costs; or (ii) the sum of One Hundred Fifty Million Dollars (\$150,000,000.00). The principal amount of this Note shall in no event exceed the Maximum Principal Amount. Agency shall not be liable for the payment of any sums hereunder which would have otherwise been due and owing but for the provisions of this paragraph.

1.5 Semi-Annual Payments from Tax Increment. Provided that Union Village Tax Increment has been allocated to and received by Agency and that there is an outstanding principal balance hereunder, on the first day of each June and each December during the term of this Note Agency shall pay to Participant from Union Village Tax Increment an amount calculated pursuant to the formulas below (the "**Semi-Annual Payment**") as payment first towards interest and then towards principal.

Semi Annual Payment = [(Participant's Share (%)) x (Eastside Tax Increment received by Agency for prior 6 months)] x 90% for the first ten years after the Effective Date; x 80% beginning with the eleventh (11th) anniversary of the Effective Date and continuing until the Maturity Date.

Participant's Share (%) = (Union Village Tax Increment for upcoming fiscal year) / (Eastside Tax Increment for upcoming fiscal year)

Agency shall have no obligation, under any circumstance, to make any payments over the term of this Note in an amount in excess of the Semi-Annual Payment toward the satisfaction of any obligation hereunder, irrespective of the principal balance outstanding hereunder, and Agency's obligation to make any payment hereunder is wholly contingent and dependent upon the allocation to and receipt by Agency of Union Village Tax Increment. Each Semi-Annual Payment shall be applied as of the date it is received by Participant first toward interest and then toward reduction of the outstanding principal balance hereunder. All amounts owed under this Note shall be due and payable in lawful money of the United States of America without setoff,

deduction or counterclaim.

1.6 Source of Payment. Union Village Tax Increment shall be the sole and exclusive source of repayment under this Note, and payments under this Note shall be made only if Union Village Tax Increment is allocated to and received by Agency, as herein provided. Until the outstanding principal balance under this Note is paid in full, Agency shall diligently pursue collection of all Union Village Tax Increment to which it is entitled under the Nevada Community Redevelopment Law, NRS chapter 279, and, except as otherwise permitted hereunder, Agency shall not agree to waive or defer allocation and receipt of any Union Village Tax Increment to which it is entitled under the Nevada Community Redevelopment Law, NRS chapter 279.

In the event that the total amount of tax revenues to be allocated and paid to Agency must be limited pursuant to the Nevada Community Redevelopment Law, NRS chapter 279, Agency shall be permitted to determine the allocation of tax revenues to each redevelopment area, which allocation shall be done in an equitable manner; provided, however, to the extent not prohibited by law, Agency agrees that if such allocation of tax revenues becomes necessary, in allocating such tax revenues it will give priority to the repayment of the debt evidenced by this Note over debts incurred later in time.

1.7 Prepayment. Agency may, without penalty or premium, at any time and from time to time, pay all or any part of the amounts owed hereunder. Any such prepayment shall be applied first toward interest and then toward reduction of the outstanding principal balance hereunder.

1.8 Manner of Payment. All payments of principal on this Note shall be made to Participant at Union Village, LLC c/o invXtus Properties, 633 Rockford Road, Corona Del Mar, CA 92625 Attn: David Micheal, or such other place as Participant shall designate to Agency in writing.

1.9 Termination of Payment Obligations. Agency's obligation to pay Semi-Annual Payments to Participant shall cease and terminate upon the earlier of: (i) the full payment to Participant of all amounts owed under this Note, or (ii) the Maturity Date.

2. Default. An event of default hereunder shall occur only if Agency fails to make a Semi-Annual Payment.

3. Assignment. This Note may not be assigned by Participant without the prior written approval of Agency. Any assignment without prior Agency written approval shall be void and invalid. If Participant proposes to assign this Note, it shall make a written request to Agency for approval of the assignment and shall submit to Agency for review and approval all instruments and other legal documents proposed to effect any such assignment. If a proposed assignment is approved by Agency, its approval shall be indicated to Participant in writing. Unless a proposed assignment is approved by Agency in writing within 30 days of receipt of written request by Participant, it shall be deemed rejected. Agency retains final discretionary approval of each proposed assignment. Participant shall promptly notify Agency in writing of

any assignment of this Note.

4. Return of Note. Upon the full payment of all amounts owed under this Note, Participant shall return this Note to Agency.

5. Waiver; Remedies. The failure of Participant to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. Either party shall be entitled to specific performance of the terms hereof, in addition to any other legal or equitable remedies.

6. Governing Law; Venue. This Note shall be governed by and construed in accordance with the laws of the State of Nevada without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in Clark County, Nevada.

7. Agency Waivers. Agency waives presentment, demand of payment, notice of nonpayment, protest, notice of protest, and all exemptions.

8. Severability. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect the validity and enforceability of the remaining provisions of this Note.

9. Section Headings; Construction. The headings of Sections in this Note are provided for convenience only and shall not affect the construction or interpretation of this Note.

**CITY OF HENDERSON REDEVELOPMENT
AGENCY,**

a public body, corporate and politic

By: _____

Jacob Snow
Executive Director

ATTEST:

Sabrina Mercadante, MMC
Agency Secretary

APPROVED AS TO FORM:

Josh M. Reid
Agency Counsel

EXHIBIT C
Master List

EXHIBIT D
Construction Schedule

EXHIBIT E

Recording requested by
and when recorded mail to:

Redevelopment Agency of the City of Henderson
240 Water Street
Henderson, Nevada 89015
Attn: Redevelopment Manager

Space above this line for Recorder's use.

FORM OF CERTIFICATE OF COMPLETION

This Certificate of Completion (the "**Certificate**") is made by the Redevelopment Agency of the City of Henderson, a public body, corporate and politic (the "**Agency**") effective as of _____, 20____.

RECITALS

A. Agency and Union Village, LLC, a Nevada limited liability company ("**Participant**") entered into that certain Owner Participation Agreement (the "**OPA**") dated as of _____, 2012 concerning the redevelopment of certain real property described in Exhibit A attached hereto (the "**Property**").

B. Pursuant to Section 4.6 of the OPA, the Agency is required to furnish the Participant or its successors with a Certificate of Completion upon completion of construction of the Reimbursable Public Improvements in accordance with the OPA and issuance by the City of Henderson of a Certificate of Occupancy for the Reimbursable Public Improvements.

C. The Agency has determined that the Reimbursable Public Improvements have been satisfactorily completed in accordance with the OPA.

NOW, THEREFORE, Agency hereby certifies as follows:

1. The Reimbursable Public Improvements have been satisfactorily completed in conformance with the OPA.

2. All use, maintenance and nondiscrimination covenants contained in the OPA shall remain in effect and enforceable in accordance with the OPA. This Certificate does not constitute evidence of Participant's compliance with those covenants in the OPA that survive the issuance of this Certificate.

3. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Participant to any holder of a deed of trust securing money loaned to finance

the Reimbursable Public Improvements or any part thereof and shall not be deemed a notice of completion under the NRS, Chapter 108.

4. Nothing contained in this instrument shall modify any provisions of the OPA or any other document executed in connection therewith.

IN WITNESS WHEREOF, Agency has executed and issued this Certificate of Completion as of the date first written above.

**REDEVELOPMENT AGENCY
OF THE CITY OF HENDERSON**

By: **FORM-DO NOT SIGN**

Name: _____
 Executive Director

ATTEST:

By: **FORM- DO NOT SIGN**
 Agency Secretary

APPROVED AS TO FORM:

By: **FORM-DO NOT SIGN**
 Agency Counsel

SIGNATURES MUST BE NOTARIZED.

Exhibit A to Certificate of Completion

PROPERTY

EXHIBIT F
POLICIES & PROCEDURES FOR PERFORMANCE
REVIEWS/AUDITS OF
CITY OF HENDERSON REDEVELOPMENT PROJECTS



RAC

REDEVELOPMENT AGENCY ADVISORY COMMISSION AGENDA ITEM

REGULAR MEETING

December 18, 2012

RAC-005

SUBJECT	Projects Update
PETITIONER	Economic Development/Redevelopment Division of the City Manager's Office
RECOMMENDATION	Accept

FISCAL IMPACT:

No Impact

Budget funds available

Augmentation required

BACKGROUND / DISCUSSION / ALTERNATIVES:

RECOMMENDED MOTION:

Accept report.

Supporting Documentation:

Memorandum consisting of three (3) pages.



Memorandum

TO: Redevelopment Agency Advisory Commission
FROM: Michelle Romero, Redevelopment Manager
SUBJECT: Projects Update

Following are new or ongoing redevelopment projects, as compiled by staff, in our Redevelopment Areas and their status as of November 21, 2012:

I. CORNERSTONE REDEVELOPMENT AREA

- Griffin Park
- Richmond American
- Tax Increment Reimbursement to the LID
- Shortfall Note

Projects

- Ladera Parcels
- Loretto Bay

II. DOWNTOWN REDEVELOPMENT AREA

Projects

- 19 S. Water Street
- 314 Nebraska
- Business Recruitment/Development:
 - The grand opening of the 21,000 sq ft Big Lots inside Lake Mead Crossing was held on Friday, November 9 at 8:45 a.m. Councilwoman Schroder and other staff were in attendance at the event. Big Lots presented Burkholder Middle School with a \$2,500 check at the grand opening.
 - Staff attended the Grand Opening of K & N Construction Office on Basic Road On November 3. This new business that employees 14 people received a Tenant Improvement Grant and Façade Loan to Grant, which facilitated the recruitment of this new business to the area.
- Business Retention
- City Tower (Southeast corner of Lake Mead Parkway and Water Street)
- Create Comprehensive Development and Business Recruitment Incentive Packages
 - Downtown Investment Strategy (DTIS): (Update Implementation)
- Cultural and Events Center RFP
- Downtown Master Plan
- Downtown Residential Civic Alliance
- Environmental Protection Agency Grant for Technical Assistance
- Fencing
- Former Asset Central Site
- Former Parkline Site: There were no responses to the request for proposals for residential development. Staff will continue promoting the site to potential developers.
- Homeless Issue
- Marketing the Water Street District
- Marketing to Developers, Business Owners & Consumers
- Meridian
- Monumentation
- Outreach

- Pinnacle Building:
 - Staff met with interested buyers of the Pinnacle Building on November 14. Staff has received a formal offer for the building and has begun briefing Council.
- Residential
- Senior Center/Pacific Pines
- Social Gathering Space Team
- Site A (SW corner of Victory and Water)
- Site B (small lot at the corner of Water/Victory)
- Townhouse Motor Lodge
- Water Street District Business Association: At the November 14 Board meeting, CAT staff provided information to the business owners regarding street closures during the upcoming WinterFest Event Dec 13-15.

Programs

- Façade Improvement Program
- Sign Grant Program
- Tenant Improvement

III. EASTSIDE REDEVELOPMENT AREA

Projects

- Boulder Highway Business Coalition
- Business Recruitment
- Eastside Amendment
- Eastside Investment Strategy
- Eastside Business Coalition
- KMA Tax Increment Analysis
- LandWell/Cadence (Cadence)
- Museum Site-95/Galleria
- Union Village

Programs

- Façade Improvement Program
- Sign Grant Program

IV. TUSCANY REDEVELOPMENT AREA

- Note
- Galleria Road
- OPA
- Semi-Annual Payment

V. LAKEMOOR CANYON

- Bill
- Development
- House Subcommittee on Energy and Mineral Resources
- Federal Land Sale

VI. ADMINISTRATION / ALL AREAS

- Audit
- Assistance Programs
- Bonds (Refinance of T-13 Bonds): The kickoff meeting has been set with all critical team members (underwriters, bond counsel, financial advisors, staff, etc.) for December 6 at 10am. The approval for the Finance Director to proceed with the bond issuance will be going to the January 15 City Council meeting.

The bonds should close on March 1, 2013 to coincide with when bonds may be called (on interest payment dates).

- Budget
- Economic Development Awards
- Financials: Staff completed the October financial statement. Revenues are down approximately 13% from the same period last year, but were 5% greater than projected for this fiscal year. In addition, as outlined in the RDA five-year plan, staff reappropriated \$150,000 and \$450,000 from the Tuscany and Cornerstone funds, respectively, to cover administrative fees for FY13. This reappropriation will relieve \$300,000 from each of the Downtown and Eastside funds.
- Five-Year Financial Plan: Staff will be presenting the RDA's plan to the Five-Year Plan Committee in January so that all parties are familiar with what it contains.
- Homeowner Assistance Program
- NDC
- New Markets Tax Credit
- Outreach
- Redevelopment Association of Nevada (RAN)
- Revenue
- Tax Increment Distribution