

IMPROVEMENT AGREEMENT

by and between the

CITY OF HENDERSON

and

IMPROVEMENT AGREEMENT

This Improvement Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between the City of Henderson, a municipal corporation and political subdivision of the State of Nevada (hereinafter referred to as “CITY”), and the party identified below (hereinafter referred to as “DEVELOPER”), whose contact information is set forth below:

Developer: _____

Address: _____

Telephone Number: _____

Contact Person(s): _____

E-mail address of Contact Person(s): _____

Fax number(s) of Contact Person(s): _____

WHEREAS, DEVELOPER is the owner of certain real property (the “Property”) generally located in the City of Henderson identified as:

Assessor’s Parcel Number(s): _____

WHEREAS, DEVELOPER has submitted a plan to the City for a development project with respect to the Property (the “Project”), which is identified as follows:

Project Name: _____

Permit Number: _____ (the “Permit”)

WHEREAS, the CITY requires construction of certain Improvements (as defined below) as part of said Project; and

WHEREAS, in accordance with the provisions of NRS Chapter 278 and Henderson Municipal Code (“HMC”) Chapter 11 and Chapter 19, in connection with and as a condition of the development of the Property, DEVELOPER must construct certain public facilities and improvements as more particularly identified herein;

NOW, THEREFORE, CITY and DEVELOPER (the “Parties”, and individually, a “Party”), for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

1. IMPROVEMENTS.

- A. The DEVELOPER, at the DEVELOPER’s own cost, shall perform and complete all public facilities and improvements required for the Project (the “Improvements”), which Improvements are identified on the approved plans for the Project, and which are generally identified on the Improvement Bond Estimate & Inspection Inventory and Fee Form (the “Bond and Inspection Fee Form”) issued by the City for the Project, and may consist of, but are not limited to, streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, street lighting, driveways, drainage facilities, accesses, and survey monuments. DEVELOPER shall complete construction of the Improvements in accordance with applicable ordinances, regulations, standards and specifications, all CITY-approved plans and other requirements of the CITY within two (2) years of the date of approval of the civil improvement plans for the Project.
- B. DEVELOPER may request an extension of time to complete the Improvements. An extension may be granted in writing at the discretion of the Director of Public Works. An extension will only be valid if executed on the CITY approved Improvement Agreement Extension Amendment. Any extension granted shall be conditioned upon a review of the Bond and Inspection Fee Form; and if the costs of the line items therein have increased, the DEVELOPER agrees to increase DEVELOPER’s Performance Guarantee to an amount equal to that increase and pay additional inspection and/or plan check fees if warranted.
- C. The Bond and Inspection Fee Form is attached hereto as Exhibit A. Any revisions to the Bond and Inspection Fee Form shall automatically become a part of this Agreement. All references herein to the “Project” shall include any modifications to the Project as identified by the Bond and Inspection Fee Form.
- D. Any contingency fees provided for in the Bond and Inspection Fee Form may, at the discretion of the City, be applied to the costs of the following: (1) repairs, including parts, labor, equipment and materials; (2) clean-up, including parts, labor, equipment and materials; (3) emergency work, including parts, labor, equipment and materials; (4) overtime, holiday or emergency inspections by the City; and (5) any other costs pertaining to the final acceptance of the Improvements and/or Project by the City.

2. PLANS APPROVED BY THE PUBLIC WORKS DIRECTOR.

DEVELOPER shall not commence or permit the commencement of the Improvements until:

- (a) Improvement plans have been approved by the Director of Public Works or his authorized representative;
- (b) One hundred percent (100%) of all related plan-check, inspection and utility connection fees have been paid;
- (c) DEVELOPER has delivered a Performance Guarantee pursuant to Section 12, as

- (d) required by CITY ordinances and this Agreement; and
All required permits have been issued by the CITY.

3. NOTICE OF COMMENCEMENT OF CERTAIN WORK.

The DEVELOPER shall notify the Department of Public Works, Quality Control Division at 2101 Moser Drive, Henderson, Nevada, 89015, Telephone number (702) 267-3144, Facsimile number (702) 267-3101, no less than one business day in advance of the date and hour that work within the right of way or on any of the following items is expected to begin:

- Placing sewer, water, gas, power, telephone lines and fire hydrants.
- Back-filling of sewer, water, gas, power and telephone lines.
- Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations and alley gutters.
- Placing Type 1 and Type II gravel base course. Priming base course.
- Placing street lighting and burn testing.
- Placing street name signs and traffic control signs.

The DEVELOPER shall notify the Department of Public Works, Quality Control Division every day thereafter, if conditions develop to delay the start of work. The DEVELOPER agrees to notify the Quality Control Division of a delay not less than two hours before work is scheduled to begin.

4. APPROVAL OF WORK AFTER INSPECTION.

- A. DEVELOPER shall comply with any applicable sections of the HMC to obtain inspections of work from the CITY. Whenever the Quality Control Division inspects a portion of work, and finds the work performed to be in a satisfactory condition for inclusion in the completed project, the Quality Control Division shall issue a statement of inspection which shall permit the DEVELOPER to perform the next phase of the construction. Ordinarily, not less than one continuous block of any one of the items of work mentioned will be approved.
- B. Inspection and approval of any item does not waive the CITY's right to require the correction of defects in workmanship or materials at any time prior to the final acceptance of the project by the Director of Public Works.
- C. Nothing herein shall relieve the DEVELOPER of the responsibility for construction of the Improvements in accordance with established standards, and DEVELOPER shall maintain said improvements until the work has been accepted by the Director of Public Works.

5. ADJUSTMENT TO EXISTING UTILITIES AND COST THEREOF.

The DEVELOPER shall, at the DEVELOPER's sole expense, provide for adjustments necessary to all existing utilities because of the work required by this Agreement.

6. FULL COMPLIANCE WITH CITY REQUIREMENTS.

- A. The DEVELOPER shall perform and complete all Improvements in accordance with the regulations, standard specifications, and ordinances of the CITY and the construction plans approved by the Department of Public Works.
- B. The DEVELOPER shall obtain all required permits from other County, State, and Federal agencies, including, but not limited to Clark County Health, Nevada Department of Environmental Protection and Nevada Department of Transportation.
- C. At any time before release of the Performance Guarantee required pursuant to Section 12 of this Agreement, the CITY shall have the right to require DEVELOPER to make corrections/revisions to the approved plans or any items contained in this Agreement which do not conform to CITY standard specifications, laws, regulations or ordinances, even though the plans for the item in question may have been approved by the Department of Public Works.
- D. In the event the DEVELOPER fails to complete the Improvements within the time required by this Agreement, the CITY, at its option, may proceed to complete the Improvements at the expense of the DEVELOPER, and the CITY, in its sole discretion, may use the Performance Guarantee to complete the Improvements. Transfer of ownership of the Property or Project shall not relieve DEVELOPER, or the Performance Guarantee, of the obligation to complete the Improvements within the time required by the Agreement unless the DEVELOPER has been released in writing by the Director of Public Works or his authorized representative.

7. HEALTH SAFETY AND WELFARE OF THE PUBLIC.

- A. In the event of a threat or danger to the health, safety or welfare of the public that arises from or is worsened or enabled by DEVELOPER's work and/or the Improvements, as solely determined by the Director of Public Works, DEVELOPER shall, at its sole cost and expense, immediately, upon notice thereof, adjust, remove, replace, repair and/or reconstruct or perform whatever is necessary to eliminate such threat or danger to the public's health, safety or welfare, as requested by the CITY. If DEVELOPER fails to comply with the terms of this Section, the CITY, at its option, may call upon the Performance Guarantee. In the event that the CITY calls upon the Performance Guarantee for the purposes set forth in this paragraph, then DEVELOPER shall replenish and/or reimburse the Performance Guarantee (which may include the issuance of a replacement bond by a surety or replenishing the cash bond or the cash in lieu of bond) to the full original amount within thirty (30) days after receipt of notice from the CITY.
- B. In the event of a threat or danger to the health, safety or welfare of the public that arises from or is worsened or enabled by DEVELOPER's work and/or the Improvements, as solely determined by the Director of Public Works, the CITY, at its option, may proceed immediately to adjust, remove, replace, repair and/or reconstruct or perform whatever is necessary to eliminate such threat or danger to the public's health, safety or welfare, at the sole cost and expense of the DEVELOPER. DEVELOPER shall pay the amount

stated in the invoice within thirty (30) days after receipt of said invoice. If DEVELOPER fails to make said payment, CITY may act under the Performance Guarantee, including but not limited to calling the performance bond or collecting from the cash deposit or cash in lieu of bond, as applicable.

8. OTHER CONDITIONS AND REQUIREMENTS

- A. The DEVELOPER agrees that, in addition to the above requirements, any and/or all such conditions, stipulations and agreements made by the DEVELOPER and the City Council and/or City Planning Commission shall be fully performed.
- B. The DEVELOPER further agrees that all work is to be performed by a qualified contractor licensed to do business in the State of Nevada, the County of Clark and the City of Henderson.
- C. The DEVELOPER shall maintain, protect and take care of all work areas for the project, including any adjacent existing improvements, until its completion and acceptance by CITY. Maintenance of any inhabited area of the development, and the adjacent streets and/or neighborhoods, shall include, but not be limited to, sweeping of the streets and keeping the gutters free of dirt and debris and maintaining access to all existing utilities and drainage improvements.
- D. During move-in, construction and move-off, the DEVELOPER shall keep the site free and clear from dangerous accumulation of rubbish and debris and shall maintain sufficient and proper barricades, lights, etc. in accordance with the approved traffic barricade plan and the latest manual on the placement of Traffic Control Devices (MUTCD) accepted by the Department of Public Works for the protection of the public.
- E. After excavation or placement of gravel, if the sub-grade and/or gravel base material is left exposed and in the opinion of the Director of Public Works is not properly maintained, thus causing either a rough riding surface or a dust problem, the Director of Public Works may require the DEVELOPER to do whatever is necessary to provide an adequate travel-way.
- F. If a detour is needed, the Director of Public Works shall determine to what extent it shall be maintained, which shall include the placing of temporary paving, barricades, and directional signage.
- G. Final acceptance of the work will not be made by the CITY until the area subject to this Agreement and adjacent property have been cleared of all rubbish, surplus materials and equipment to the satisfaction of the Director of Public Works.

9. INDEMNIFICATION & INSURANCE.

- A. DEVELOPER shall indemnify, defend and hold harmless the CITY, its officers, agents, volunteers, and employees, against and from any and all liability, loss, damage, claims, fines, demands, causes of action, costs, expenses, and judgments of whatsoever nature, including but not limited to reasonable costs of investigation, reasonable attorneys' fees

and expenses, all reasonable expert witness fees and expenses, and all court or arbitration or other alternative dispute resolution costs which result from injury to or death of any person, and/or against and from damage to or loss or destruction of property when such injury, death, loss, destruction or damage is due to or arises in connection with or as a result of any work done by the DEVELOPER, its contractors, agents and subcontractors in connection with the construction of the Improvements, and/or arises out of or in connection with DEVELOPER's, or its contractors and subcontractors performance or failure to perform the terms and conditions of this Agreement. DEVELOPER's obligation to indemnify, defend and hold harmless includes all allegations, including but not limited to, those which may be frivolous, fraudulent, groundless, false or without merit. Nothing herein shall be deemed a waiver of any statutory liability limitations available to the CITY. This Section 9.A survives termination or completion of this Agreement.

- B. DEVELOPER, or its general contractor, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance naming the CITY, its officers, employees, volunteers, agents and officials as additional insureds for the duration of the Agreement. General liability coverage must be provided either on a Commercial General Liability form or a Broad Form Comprehensive General Liability form. No exceptions to the standard coverage provided by such forms are permitted. Policies must include, but need not be limited to, coverage for bodily injury, personal injury, Broad Form completed operations, and contractual and independent contractors. DEVELOPER, or its general contractor, shall maintain at all time limits of no less than One Million and No/100 Dollars (\$1,000,000) combined single limit per occurrence for bodily injury (including death), personal injury, and property damage. The insurance coverage supplied by the DEVELOPER must provide for 30-day calendar notice to the CITY before implementation of a proposal to suspend, void, cancel or reduce in coverage, or in limits, the required insurance coverage. This notice requirement does not waive the insurance requirements contained herein. DEVELOPER, or its general contractor, shall provide the CITY with Certificates of Insurance at the time of executing this Agreement. The certificates and endorsements for any and all insurance policies required by this Agreement are to be signed by a person authorized by the insured and licensed by the State of Nevada. The insurance obligation does not in any way limit DEVELOPER's liability obligations to the CITY.

DEVELOPER's insurance, or its general contractor's insurance, as provided by this Section, shall be primary as to the CITY, its officers, employees, volunteers, agents and officials. Said insurance policy shall include an endorsement stating that the insurer will waive any right of subrogation against the CITY, its officers, employees, agents, volunteers and officials.

10. PLAN REQUIREMENTS ON COMPLETION OF IMPROVEMENTS.

Upon completion of all the Improvements within the CITY right-of-way required hereby and prior to release of Performance Guarantee, the DEVELOPER shall furnish the Director of Public Works with an as-built plan which shall accurately indicate, by lettered dimensions, the location of all manholes, the location, size and depth of all sewer mains, underground water, storm drain, and other lines, with street plans and profiles for the same, including laterals and "Y's" for

connection of house service lines.

11. WARRANTY.

- A. The DEVELOPER is responsible to correct any defects or failures that occur within a period of one year from the date of acceptance of the work by the CITY. The DEVELOPER shall, at the DEVELOPER's own expense, make good such defects and failures and make all replacements and adjustments required, within thirty (30) days after being notified by the CITY to do so. All repairs shall be subject to the approval of the Director of Public Works.
- B. The Developer's Performance Guarantee provided pursuant to Section 12 of this Agreement, shall include a reservation of 10% of the amount of the Performance Guarantee for the warranty period, which amount may be claimed or applied by the City for any warranty work the DEVELOPER fails to perform.
- C. This Agreement does not limit or relieve DEVELOPER from any other obligation or responsibility which the DEVELOPER may otherwise have as a result of the Improvements, including any damages or latent defects which may occur beyond the warranty period specified above. Furthermore, DEVELOPER is not relieved of any obligation or responsibility it may have by law including but not limited to damages for latent deficiencies, injury to real or personal property or injury to or wrongful death of a person.

12. PERFORMANCE GUARANTEE.

- A. Pursuant to HMC Section 19.9.2, DEVELOPER or its general contractor shall furnish, without cost to the CITY, as security for the completion of the Improvements, a performance bond, cash deposit, or agreement in lieu of bond equal to the full cost of the Improvements, including any required contingency, in favor of the CITY conditioned upon the DEVELOPER completing the Improvements within the time period prescribed by this Agreement (the "Performance Guarantee"). The Performance Guarantee shall be in a form approved by the City Attorney, or his delegate. If DEVELOPER is furnishing a performance bond, the bond shall be in substantially the same form as Exhibit B. In the event the CITY exercises its option to complete any or all of Improvements, the Performance Guarantee shall be used for the payment of the costs of completion of the Improvements by the CITY in case the DEVELOPER fails to do so within the time period prescribed by this Agreement.
- B. If the construction or installation of any Improvements or facilities for which a Performance Guarantee is posted are not completed within the time frame of the building permit issued for the development or the time frame of this Agreement; or if the DEVELOPER has suspended work and has failed for a period of 60 days to provide continued construction; or if such construction is not in accordance with applicable standards and specifications as prescribed by law, then, in any such event, the CITY may, at its option, proceed to complete said Improvements at the expense of the DEVELOPER under the Performance Guarantee as provided for herein.

- C. DEVELOPER acknowledges that the Performance Guarantee provided for in this Agreement to construct the Improvements is based upon an estimate prepared by the DEVELOPER's engineer and approved by the Department of Public Works' New Development Engineer, and in the event that actual cost of the Improvements shall exceed such estimate, DEVELOPER is in no way relieved by this Agreement from paying the entire amount of such excess.
- D. Any application for release of said Performance Guarantee upon the completion of the Improvements by the DEVELOPER shall not be granted unless accompanied by a written certificate from the Director of Public Works stating that all requirements hereof have been satisfactorily completed in accordance with the terms of this Agreement.
- E. DEVELOPER shall maintain the Performance Guarantee for the full cost of the Improvements in favor of the CITY for the term of this Agreement or the time required to complete the Improvements, whichever is longer.
- F. Without limiting the generality of the foregoing, DEVELOPER understands and agrees that if it posts a Performance Guarantee in the form of an agreement in lieu of bond, in accordance with the provisions of HMC Title 19, and if the bank, credit union or financial institution that is a party to the cash in lieu of bond agreement merges, closes, is closed or taken over by the FDIC or other insurance company, DEVELOPER is obligated to immediately establish replacement Security in the manner for establishing Security as set forth in this Agreement and HMC Title 19. DEVELOPER understands and agrees that if it posts a Performance Guarantee in the form of a bond, in accordance with the provisions of HMC Title 19, and the Surety closes, files for bankruptcy, or goes into rehabilitation or liquidation, DEVELOPER is obligated to immediately establish replacement a Performance Guarantee in the manner for establishing Security as set forth in this Agreement and HMC Title 19. The Performance Guarantee remains in full force and effect until the Improvements are completed in accordance with this Agreement, the Plans, applicable permits and the HMC and accepted by the CITY.
- G. The Quality Control Division shall be notified within seven (7) days of any changes in project or property ownership, authorized contractors and subcontractors, sureties, or types of surety.
- H. The transfer by DEVELOPER of any or all interest in the Property or Project identified herein, whether voluntary or involuntary, shall not relieve the Performance Guarantee of any obligation for the completion of the Improvements, and the Performance Guarantee shall remain in full force and effect unless and until the Improvement are completed and the Performance Security is released as provided herein.

13. CERTIFICATE OF OCCUPANCY.

The granting of a certificate of occupancy does not relieve DEVELOPER of its obligation under this Agreement. The issuance of a certificate of occupancy does not imply that the Improvements have been properly completed nor authorize the release of the Performance Guarantee.

14. NOTICE OF ACCEPTANCE.

Upon final acceptance by the Director of Public Works of all the Improvements required to be constructed, DEVELOPER shall be issued a Notice of Acceptance which will release said Performance Guarantee, except to the extent required for security of warranty claims as set forth in Section 11.

15. NO THIRD-PARTY BENEFICIARY.

Any inspections or subsequent approvals undertaken by the CITY pursuant to express or implied terms of this Agreement are undertaken solely to insure compliance with the terms of this Agreement and are not undertaken for the benefit of any individual or group of individuals as members of the public. It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. Provisions in this Agreement dealing with inspections, approvals or changes requested or made do not expand the CITY's general law duties.

16. ASSIGNMENTS.

DEVELOPER cannot assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Director of Public Works or his authorized representative; and it is agreed that any attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing shall be void and shall not relieve DEVELOPER, or the Performance Guarantee, of its obligations under this Agreement.

17. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements with respect to all of any part of the subject matter hereof.

18. WAIVER.

None of the conditions of this Agreement shall be considered waived by either party unless such waiver is in writing and signed by both parties. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of the Agreement expressly stipulated in such waiver.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

CITY OF HENDERSON
CLARK COUNTY, NEVADA

ATTEST:

RICHARD A. DERRICK
CITY MANAGER/CEO

SABRINA MERCADANTE, MMC,
CITY CLERK

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

EDWARD MCGUIRE, P.E.
DIRECTOR OF PUBLIC WORKS

JIM MCINTOSH
CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM:

NICHOLAS G. VASKOV
CITY ATTORNEY

CAO
REVIEW

DEVELOPER:

By: _____

Name: _____

Title: _____

STATE OF _____ }

COUNTY OF _____ }

This instrument was acknowledged before me on the _____ day of _____, 20____

by _____ as _____ of

[DEVELOPER]_____.

(Seal, if any)

(Signature of Notarial Officer)

EXHIBIT A

BOND AND INSPECTION FEE FORM

EXHIBIT B

BOND FORM