

**DEVELOPMENT AGREEMENT**

**Between**

**THE CITY OF HENDERSON**

**And**

**UNION VILLAGE, LLC**

**\_\_\_\_\_, 2012**



## Table of Contents

	<u>Page</u>
<b>PRELIMINARY STATEMENTS .....</b>	<b>1</b>
<b>SECTION 1 DEFINITIONS .....</b>	<b>2</b>
<b>SECTION 2 DEVELOPMENT OF THE UNION VILLAGE PROJECT.....</b>	<b>7</b>
<b>SECTION 3 APPLICABLE RULES AND CONFLICTING LAWS .....</b>	<b>11</b>
<b>SECTION 4 PLANNING, DEVELOPMENT AND MAINTENANCE OF THE UNION VILLAGE PROJECT .....</b>	<b>14</b>
<b>SECTION 5 THE PARK AND TRAILS .....</b>	<b>26</b>
<b>SECTION 6 PROJECT INFRASTRUCTURE IMPROVEMENTS .....</b>	<b>26</b>
<b>SECTION 7 ADMINISTRATION .....</b>	<b>28</b>
<b>SECTION 8 FIRE .....</b>	<b>30</b>
<b>SECTION 9 REVIEW, DEFAULT AND REMEDIES .....</b>	<b>31</b>
<b>SECTION 10 FINANCING .....</b>	<b>36</b>
<b>SECTION 11 GENERAL PROVISIONS .....</b>	<b>38</b>
<b>EXHIBITS/SCHEDULES .....</b>	

**UNION VILLAGE DEVELOPMENT AGREEMENT  
BETWEEN  
THE CITY OF HENDERSON  
AND  
UNION VILLAGE, LLC**

This Union Village Development Agreement (the "Agreement") is made and entered into this \_\_\_\_\_, 2012 by and between the City of Henderson (the "City") and Union Village, LLC, a Nevada limited liability company ("Developer"). City and Developer are sometimes referred to collectively in this Agreement as "Parties" and individually as "Party".

**PRELIMINARY STATEMENTS**

A. The City is authorized under its Charter and the general laws of the State of Nevada to enact ordinances and enter into agreements to promote and safeguard the health, safety and welfare of its citizens.

B. The Parties desire to enter into this Agreement in accordance with NRS Chapter 278 and the Code to set forth their mutual understanding with respect to the orderly development of the Property as an integrated development designed to provide services that will enhance the lives of all those who live, learn, work and play in the City.

C. The City desires to enter into this Agreement to provide for public services, public and private uses and infrastructure, to promote the health, safety and general welfare of the City and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Union Village Project and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the City at the least economic cost to citizens, and otherwise achieve the goals and purposes for which the laws authorizing development agreements were enacted.

D. The City Council, after recommendation by the Planning Commission, having determined that all of the procedural requirements for approval of this Agreement have been satisfied and after giving notice as required by law, held a public meeting on \_\_\_\_\_, 2012 wherein the City Council found this Agreement to be: (1) in the public interest; (2) in conformance with the City's plans, policies and regulations; and (3) lawful in all respects.

E. Developer wishes to obtain assurance that Developer may develop the Union Village Project in accordance with the provisions established in this Agreement. Developer acknowledges that there are insufficient infrastructure, existing or planned at this time, and in order to develop the Property, Developer is willing to enter into this Agreement in order to provide certain Infrastructure Improvements for the area of the

Union Village Project. Because of the nature of the Union Village Project, the type and extent of the Public Infrastructure Improvements for the Union Village Project, the Developer's decision to commence development of the Union Village Project is based on expectations of proceeding and having the right to proceed with the Union Village Project in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **SECTION 1 DEFINITIONS**

1.1 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Affiliate of Developer" ("Affiliate") means any person or entity which controls, is controlled by or is under common control with Developer and includes any person or entity which is now or hereafter becomes a member or manager of Developer.

"Agency" means the City of Henderson Redevelopment Agency, together with its successors and assigns

"Agreement" has the meaning assigned to it in the first paragraph of this document, and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

"Applicable Rules" means and refers to:

- (a) The provisions of the Henderson Municipal Code (HMC), except those items that conflict or differ from anything contained within this Agreement, and all other City rules, general plans, policies, regulations, ordinances, fees, construction codes, laws, general or specific, that are effective and amended from time to time, except to the extent any such existing or future Code provisions conflict with any provisions of this Agreement in which case the provisions of this Agreement shall control;
- (b) This Agreement;

(c) Any ordinances, laws, policies, regulations or procedures applicable to Union Village Project and adopted by a governmental entity other than the City whether or not the City is a constituent member of such governmental entity;

(d) Any processing fee or monetary payment not governed by this Agreement and prescribed by City ordinance which is uniformly applied to all development within a Planned Community zone and construction subject to the City's jurisdiction;

(e) Any applicable state or federal law or regulation;

(f) The City Comprehensive Plan as amended, to support the development of Union Village or the Project.

(g) The Uniform Design and Construction Standards (UDACS) for Wastewater Collection Systems, as in effect from time to time and as amended.

(h) The Uniform Design and Construction Standards (UDACS) for Water Distribution Systems, as in effect from time to time and as amended.

"Calendar Day" shall mean each day.

"City" means the City of Henderson, together with its successors and assigns.

"City Attorney" means the City Attorney of Henderson, Nevada.

"City Business Working Day" means a day when the City of Henderson is normally open for public access.

"City Council" means the Henderson City Council.

"City Manager" means the City Manager of Henderson, Nevada, or his/her designee.

"Community Development Director" means the Community Development Director of Henderson, Nevada, or his/her designee.

"Code" means the provisions of the Henderson Municipal Code, including all rules, regulations, standards, criteria, manuals and other references adopted therein.

"Conceptual Master Drainage Study" means the comprehensive drainage, as accepted by the City on 11/29/11 the map for which is attached hereto as Exhibit

A. The Master Drainage Study shall be amended/updated as necessary through the normal City of Henderson review process.

“Conceptual Master Water Study” means the pre-design report dated 11/9/11 the plan for which is attached hereto as Exhibit A. The Master Water Study shall be amended/updated as necessary through the normal City of Henderson review process.

“Conceptual Master Sewer Study” means the pre-design report dated 1/12/12 the plan for which is attached hereto as Exhibit A. The Master Sewer Study shall be amended/updated as necessary through the normal City of Henderson review process.

“Design Review” shall mean the review by the City to ensure the Project buildings/structures, park or submission for building permit meets the standards of the Development Standards, Supplemental Development Standards and this Development Agreement.

“Developer” means Union Village, LLC, a Nevada limited liability company. Developer’s principal office is located at 815 Pilot Road, Suite B, Las Vegas, Nevada, 89119.

“Development Standards” means the approved Development Standards attached as Exhibit K as amended from time to time by approved Supplemental Development Standards. These standards shall survive termination of this agreement.

“Effective Date” shall have the meaning ascribed to it in subsection 11.1 of this Agreement.

“Master Association” means an association formed under the NRS.

“Members of Developer” means any Person with a vested interest in Union Village, LLC.

“Mixed Use Housing Type” means a structure containing commercial/office with residential units located on the upper floors.

“Multi-Family Housing Type” means a residential structure with residential units located in the structure.

“NRS” means the Nevada Revised Statutes.

“Off Premises Sign (Billboard)” – A sign or billboard that advertises products or services that are not sold on the premises upon which the sign is located.

“Owner Participation Agreement”, means the certain agreement between the Developer and the City of Henderson Redevelopment Agency (Agency).

“Parking” means parking lots and parking structures identified in this Agreement and/or contemplated as part of the Union Village Project.

“Parks and Trail Improvements” means those facilities identified as such in this Agreement.

“Park Agreement” means the form of the Parks Agreement attached as Exhibit N.

“Person” means any individual or form of business entity authorized under the law of the State of Nevada.

“Planning Commission” means the City of Henderson Planning Commission.

“Project Infrastructure Improvements” means collectively those “Park and Trail Improvements”, “Utility Improvements”, and “Transportation Improvements” identified as such in this Agreement, except as otherwise provided for in this Agreement.

“Property” means the real property as depicted on that certain Land Use Plan and legally described on Exhibits D and E.

“Public Works Director” means the Director of Public Works of the City of Henderson or his/her designee.

“Subdivision Map” means any instrument under NRS which legally subdivides property or gives the right to legally subdivide property, including, without limitation, parcel maps, division of land into large parcels, parent final Maps, tentative commercial subdivision maps, final commercial subdivision maps, reversionary maps, condominium subdivision maps, or tentative or final residential subdivision maps, for all or a portion of the Property.

“Supplemental Development Standards” has the meaning given to it in Section 2.3 of this Agreement and which once approved will be considered part of the Development Standards. These standards shall survive termination of this agreement.

“Transportation Improvements” means those street facilities identified as such in this Agreement.

“Union Village Project” means all property subject to this Agreement.

“Utility Improvements” means those water, drainage, flood control, sewer facilities identified as such in this Agreement.



“Village” means a combination of residential and non-residential uses vertically and/or horizontally integrated that include physical and functional integration of uses, connectivity, context, design, pedestrian corridors, bike trails, transit, services, amenities and urban experience.

“Village Area” means each portion of the Property identified as such on Exhibit D.

“Work Day” shall mean each day Monday through Friday excluding legal holidays observed by the City of Henderson.

## **SECTION 2 DEVELOPMENT OF THE UNION VILLAGE PROJECT**

2.1 Union Village. One of the primary objectives of the City and Developer in entering into this Agreement is that development of the Property be undertaken in an organized fashion. The Parties have agreed through this Agreement with emphasis on the exhibits, and particularly Exhibit K and subsequent Supplemental Development Standards as outlined in Section 2.3 of this Agreement, to work together to accomplish certain goals for the development of the Union Village Project. Those goals include the following:

- (a) Walkability and Connectivity as used herein is intended to mean an open community that encourages connectivity within and among the Villages and to the exterior of the Union Village Project, to the extent practicable. Walkability is best achieved by developing within the Union Village Project, entertainment, commercial uses, recreational facilities, parks, community gathering places, and civic uses to which the visitors as well as residents of the Union Village Project can walk and enjoy. Connectivity is achieved through the use of the promenade, trails, and roads that link the individual uses and elements together for pedestrians, bikes and automobile traffic.
- (b) Utilize traffic calming applications to slow traffic speeds, encourage walking, alternate modes of transportation and provide for an open and connected network of sidewalks, trails and paths.
- (c) Provide site design and landscaping to provide a coherency of connection between the streets, buildings, and other site amenities.
- (d) Provide buildings with high quality building character in terms of design standards, material and layout.

2.2 Development Standards. Attached as Exhibit K are the base standards for the overall Union Village Project. The Development Standards shall be the basis for further defining the project goals as defined in Section 2.1, and provide the basis for future Supplemental Development Standards that will further define each Village.

2.3. Supplemental Development Standards. Prior to approval of a Design Review for any portion of a Village, Developer shall submit Supplemental Development Standards for the entire Village for review and approval. For each Village, Developer shall submit to City such specific design guidelines and development standards, necessary to properly identify and authorize development of any particular Village Area ("Supplemental Development Standards"). Once Supplemental Development Standards are approved for any Village Area, all subsequently submitted Supplemental Development Standards must include physical and functional integration of uses, connectivity, context, design, pedestrian corridor, transit, services, and amenities consistent with all previously approved Supplemental Development Standards. Supplemental Development Standards must include and/or further define the:

- (a) General Purposes/Intent
- (b) Land Use Plan. (To include generalized building sizes, uses, use locations and parking)
- (c) Traffic plan and Parking Study Updates
- (d) Design mix
- (e) Permitted/Prohibited Uses
- (f) Use Regulations
- (g) Architectural Guidelines
- (h) Architectural Character and Style
- (i) Color
- (j) Landscaping
- (k) Design and General Development Standards (including dimensional standards such as height, setbacks, etc)
- (l) Signage Standards
- (m) Phasing Plan

2.4 Survivorship. The Development Standards and Supplemental Development Standards shall survive termination of this Agreement and are deemed a permanent part of the zoning established for this Property.

2.5 Zoning. Parties agree that unless otherwise noted herein, all necessary land use and zoning for development of the Union Village Project on the Property are identified in this Development Agreement. Developer agrees not to seek any further zone changes for the Property for a period of five (5) years from the date of its acquisition of the Property.

2.6 Modified Code. The Parties agree that the intention of this Agreement with the exhibits, and particularly with the Development Standards and Supplemental Development Standards, shall provide the standards for the Union Village Project and that these modifications are accepted by the City, and upon which Developer may rely in developing the Property. Developer acknowledges that when no modifications/standards have been made, Title 19 shall govern.

2.7 Time for Construction and Completion of the Planned Development. The City agrees that Union Village Project is approved for development, and Developer agrees that Union Village Project will be developed and marketed in accordance with the Applicable Rules. The City acknowledges that the Union Village Project will provide desirable, healthcare, commercial, employment, housing, public and/or recreational opportunities. If the Property is developed, this Agreement obligates Developer to develop the Developer-required Project Infrastructure Improvements. However, except to the extent specifically set forth elsewhere in this agreement or the attached Exhibits, Developer shall have discretion as to the time of commencement, construction, phasing and completion of the Union Village Project and Project Infrastructure Improvements.

2.8 Common Name. Developer has established a common name for the Project "Union Village". Developer reserves the right to change or modify this common name or portions thereof and shall disclose such proposed name(s) to the City, by written letter to the Community Development Director. Developer agrees that City will not be acting unreasonably by denying a common name(s) that suggests the Development or portions thereof are located somewhere other than in the City. The City acknowledges that Developer will devote substantial resources to promote such common name(s) and protect its value as a unique intellectual property right which may include filing state and federal registrations for such name. The Parties therefore agree that Developer shall have the exclusive right to own, control and license the name(s). The City shall have no obligation to police the use, wrongful or otherwise, of the name(s) by third parties.

2.9 Encroachments into Public Right-of-Way. Subject to an administratively issued revocable permit from the City Manager or designee, the City may allow the following features within a public right-of-way, subject to the limitations set forth as follows:

(a) Trees, shrubs, flowers, fences, retaining walls, hedges, and other landscape features.

(b) Projecting windows, balconies, stairs, attached balconies, overhangs, or similar architectural features shall maintain a minimum vertical clearance of 96 inches from finished grade. Where the vertical clearance above grade to projecting windows, balconies or architectural features is more than 8 feet, 1-inch of encroachment is permitted for each 1-inch of clearance above 8 feet, but the maximum encroachment shall be 4 feet. Encroachments 15 feet or more above grade shall not be limited when approved.

(c) Awnings, canopies, marquees and projecting signs extending from the building face over the public sidewalk or public right-of-way shall maintain a minimum 96 inches of vertical clearance from finished grade, And shall not extend into or occupy more than two-thirds the width of the sidewalk measured from the building. Stanchions or columns that support awnings, canopies, marquees and signs shall be located not less than 2 feet in from the curb line. Encroachments 15 feet or more above grade shall not be limited, when approved.

(d) The installation of a pedestrian walkway over a public right-of-way shall be subject to the approval of the applicable governing authority. The vertical clearance from the public right-of-way to the lowest part of a pedestrian walkway shall be not less than 15 feet.

(e) Enhanced paving in streets, alleys, sidewalks or other similar improvements provided, City shall not be responsible for replacement or repair. It is anticipated that enhanced paving will be used for a limited distance to provide emphasis and will not be used for extended lengths.

(f) Outdoor cafes or other similar food service areas located adjacent to the buildings or the curb so long as a pedestrian pathway, minimum of 5 feet in width is provided and minimum of 5 feet separation is provided from the back of curb. Additionally, City may impose visual screening, operating hour's restrictions, lighting, noise, and other conditions if deemed necessary to prevent such adverse impacts.

(g) Sidewalk cafes wider than one table shall be surrounded by railings that complement the architectural style of the building and provided they do not interfere with the required pedestrian pathway.

(h) Flower boxes and other decorative elements are permitted to be attached to railings or located on the sidewalk provided they do not interfere with the required pedestrian pathway (min 5 feet).

(i) Furnishings shall be compatible with the overall design of the building and should express the restaurant's theme or image.

(j) Umbrellas that shelter diners shall be secured so as not to create a hazard in windy conditions.

(k) The installation of misters, portable heaters or similar improvements shall comply with current codes, ordinances and regulations.

(l) The installation of pedestrian bridges connecting any combination of buildings, and/or spaces.

(m) Additional conditions for encroachments: The City's approval shall not be unreasonably withheld, with the understanding that the City reserves the right to deny encroachments outlined in Subsection (a) through (k) to protect health or safety of the City residents. Encroachments shall be located so as to not create a circuitous, disjointed or unduly obstructed pedestrian path. Encroachments shall not be permitted to be permanently affixed to a publicly owned sidewalk, structure or appurtenance located in the right-of-way. Encroachments shall not unduly restrict City's ability to access or maintain the public infrastructure in the vicinity of the encroachment. Encroachments shall not obstruct, screen or interfere with street lighting, traffic control devices or site visibility zones. The encroachment permit will specify that the applicant will be responsible for any and all maintenance related to the encroachment and that the owner shall bear the full cost of any removal, relocation, repairs or damage to publicly owned infrastructure.

(n) Items within public right-of-way shall comply with the "Proposed Accessibility Guidelines for Pedestrian Facilities in Public Right-of-Way".

### **SECTION 3**

#### **APPLICABLE RULES AND CONFLICTING LAWS**

3.1 Reliance on Development Standards and Applicable Rules. The City and Developer agree that Developer is approved and permitted to carry out and complete the entire Union Village Project in accordance with the standards, uses, densities and other provisions set forth in the Development Standards and Supplemental Development Standards, and in accordance with this Agreement and the Master Studies. Developer acknowledges that the Master Studies are generally conceptual in nature, in outlining the basic infrastructure required to develop the Property, and that further studies and reports may be required of Developer for review, comment, revision by Developer and ultimate acceptance by City. Should the Development Standards, Supplemental Development Standards or this Agreement fail to address a Code requirement then the Code shall prevail. Any such studies, modifications, or amendments that are required must relate specifically to the needs of the Union Village Project.

3.2 Application of Subsequently Enacted Rules. Except as provided below, no standard, policy or regulation that would otherwise constitute an amendment or addition to Title 19, or a matter generally regulated by Title 19 of the Code on the Effective Date, such as subdivision, land use, zoning, growth management, timing and phasing of construction, shall be imposed by the City upon the Union Village Project, except those in effect on the Effective Date. City may hereafter, during the term of this Agreement, apply to the Union Village Project only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after the Effective Date that:

- (a) Are not in conflict with or inconsistent with the rights of Developer with respect to the Development Agreement, Development Standards, or Supplemental Development Standards.
- (b) Are required by City to protect the health or safety of City residents.
- (c) Do not constitute impact fees.

3.3 Limitation on Imposition of New Fees or Standards. Notwithstanding the terms of Section 3.2, above:

- (a) The City may increase cost-based processing fees, entitlement processing fees, inspection fees, plan review fees, facility fees or water and/or sewer connection fees that apply uniformly to all development in the City.

(b) The development of the Union Village Project shall be subject to the construction codes in effect at the time of application for the permit for the particular development activity.

(c) The City may apply other construction standards applicable to all developers other than Developer if such changes or additional standards are required in order to protect the health, safety or welfare of City residents.

(d) Nothing in this Agreement shall preclude the application to the Union Village Project of new or changed City ordinances, regulations, plans, fees, or policies specifically mandated and required by changes in regional (i.e., Regional Flood Control District, Southern Nevada Water Authority, FAA, etc.), state or federal laws or regulations. In such event, the provisions of Section 3.4 through 3.6 of this Agreement are applicable.

(e) Notwithstanding the foregoing, should the City adopt or amend new ordinances, rules, regulations or policies that exceed the limitations of Sections 3.1 through 3.4, Developer shall have the option, if mutually agreed upon with City, of accepting such new or amended ordinances, rules, regulations, or policies by giving written notice of such acceptance. City and Developer shall then execute a supplement to this Agreement evidencing Developer's acceptance of the new or amended ordinance, rule, regulation, or policy.

3.4 Conflicting Federal, State or Regional Applicable Rules. The Parties agree to cooperate in preventing the adoption of federal, state or regional laws and regulations that would prevent or preclude compliance with the provisions of this Agreement only if said proposed laws and regulations are not needed to protect the health, safety or welfare of City residents. In the event that any conflicting federal, state or regional laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

(a) Notice of Conflict. Either Party, upon learning of any such matter, will provide the other Party with written notice thereof and provide a copy of any such law, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(b) Modification Conferences. The Parties shall, within thirty (30) days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to the minimum extent needed to bring it into compliance with any such federal, state or regional law or regulation.

3.5 City Council Hearings. In the event the City believes that an amendment to this Agreement is necessary pursuant to Section 3.4 due to the effect of any federal, state or regional law or regulation, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal, state, or regional law or regulation. Developer shall have the right to offer oral and written testimony at the hearing. Any modification ordered by the City Council pursuant to such hearing is subject to arbitration as set forth in Section 9.

3.6 City Cooperation. The City shall work with Developer in securing any City and/or other permits, licenses, interlocal agreements or other authorizations that may be required as a result of any amendment resulting from actions initiated under Section 3.4. As required by the Applicable Rules, Developer shall be responsible to pay all applicable fees in connection with securing of such permits, licenses or other authorizations.

3.7 Transfers to City. Any property to include facilities constructed by Developer and donated to and or operated by City as required by this Agreement shall be free and clear of any mortgages, deeds of trust, liens or monetary encumbrances. Further any property to include facilities constructed by Developer and donated to and or operated by City as required by this Agreement shall be free and clear of any operating agreement or subject to any covenants, conditions and restrictions (CC&R's).

#### **SECTION 4 PLANNING, DEVELOPMENT AND MAINTENANCE OF THE UNION VILLAGE PROJECT**

4.1 Permitted Density, Uses, Height and Size of Structures. Pursuant to NRS Chapter 278, this Agreement sets forth the maximum height and size of structures to be constructed in Union Village Project, the density of uses, and the permitted uses of the Property. The City agrees that Union Village Project may be developed with the density, land uses, and other criteria set out in the Development Standards, and Supplemental Development Standards and as set forth in the Applicable Rules. The following outlines the Permitted Uses for the Union Village Project, uses will also be further defined within the Development Standards.

- i. "Village" – The Union Village Project will contain five (5) Village Areas with a planned maximum of 4,328,000 SF of developed buildings. These Villages are defined on the map in Exhibit D, and will be more commonly referred to as outlined below.
  - a. Union Centre - Union Centre may include hospitals, medical office buildings, wellness, child care, fitness, specialty medical buildings, skilled nursing, support



buildings, retail, housing, restaurant, and other related uses as identified in Exhibit K.

- b. **Union Place** – Union Place may include independent living, assisted living, and memory care including, support buildings, retail, housing, restaurant, and other related uses as identified in Exhibit K.
  - c. **Union Park** – Union Park includes parks, and other related uses as identified in Exhibit K.
  - d. **Union Plaza** – Union Plaza may include a variety of general commercial uses including office buildings, retail, hotel, theatre, education, municipal, support buildings, and other related uses as identified in Exhibit K.
  - e. **Union Square** - Union Square may include the Henderson Space and Science Center, a digital library and resource center, and/or performing arts center and educational centers, and/or healthcare, retail, housing, restaurant, and other related uses as identified in Exhibit K.
- ii. Overall Village Design - Overall design character of the Villages, including density, height, and setbacks are included in the Development Standards in Exhibit K and Supplemental Development Standards.
  - iii. Building Height - Maximum building height for the Project is 200-feet. The Development Standards will further define the heights for each Village Area but in no case will the height exceed 200-feet. Compliance with FAA review and approval process is required.
  - iv. Housing - Maximum number of dwelling units within the development shall be 2,500 units (16 units per acre). All residential must comply with the conditions of approval for ZCA-10-660002-A1 regarding FAA requirements.
  - v. Parks, Trails, and Open Space - Parks, Trails and Open Space shall be calculated based on the entire development and not individually. The total open space requirement for the Union Village Project shall be a minimum of Fifteen percent (15%). The Design of Parks, Trails, and Open Space shall be as

outlined in the Development Standards, Exhibit K, and the Parks Agreement, Exhibit N.

- vi. Signage Design - Union Village Project constitutes a unique environment encouraging a mixture of available goods, services, residences and businesses that will create a unique experience. The desire for such an experience justifies signage that might be 'off premise' as to a particular parcel of land, but 'on premise' in the context of the Union Village Project. The signage design standards shall be as outlined in the Development Standards, Exhibit K.
- vii. Heliport - the Union Village Project shall be permitted up to two (2) heliports as defined by Code, the location of which shall be as per Exhibit "G". Compliance with FAA review and approval process is required.
- viii. Restaurants, Restaurants with Bar, and Wine/Lounge - There shall be no restrictions in terms of the standards identified in Chapter 19 of the Code with respect to location, adjacency, proximity or number of these two uses. Any and all distance separation requirements found in Title 4 and Chapter 19 of the Code with regard to Alcohol and Liquor Uses shall not apply.
- ix. Check Cashing, Deferred Deposit Service and/or Vehicle Title Loan use – The project shall be limited to one (1) of these uses and all distance separation requirements found in Title 19 of the Code shall not apply.
- x. Off-Sale of Alcohol and Liquor Uses – This is meant to cover any other retail use that has not been covered specifically (such as a drugstore or grocery store) that offers off-sale of alcohol and liquor. Any and all distance separation requirements found in Title 4 and Title 19 of the Code with regard to Off-Sale of alcohol and liquor Uses shall not apply.
- xi. Shared Parking – Shared parking shall be allowed through the site. A Shared Parking study is included in Exhibit C.
- xii. Existing Off Premise Signs Billboards – The existing three (3) Off Premise Signs (Billboards) are considered a legal non-conforming use.
- xiii. Taverns – The Project shall be allowed to have a maximum of Two (2) tavern licenses (a Brew Pub falls within the tavern

limitation so any combination of the two uses shall not exceed a total of two licenses) . Any and all distance separation requirements found in Title 4 and Title 19 of the Code with regard to protected uses and between Taverns shall not apply.

- xiv. Central Plant - Developer shall be allowed to develop a central utility plant any place on the Property, but in no case within 350 feet of an existing or new dwelling unit. A central plant may include the generation of power, hot water/chilled water, emergency power by any available means including without limitation photovoltaic cells.
- xv. Diesel and Bulk Oxygen Storage – The storage of these items shall be considered permitted uses subject to the following:
  - a. Subject to the permit review and approval requirements of the City; and
  - b. The storage container/structure shall be screened from view and provide adequate buffer from existing residential units.
- xvi. Transportation - Developer at its sole option shall be allowed to develop a transportation system within the Property with City Design Review approval. This does not prohibit a regional transportation system from accessing this site.
- xvii. Wireless Facilities - The Union Village Project may include freestanding wireless facilities as defined by the Code (each, a “Telecommunication Facility”). Developer, or Developer’s telecommunications provider, shall be the sole parties able to submit an application to the City for the placement of a Telecommunication Facility consistent with the requirements of the Henderson Municipal Code; provided, however, that this limitation shall not apply with regard to providers of “Telecommunications Service” (as defined in Title 47 of the United States Code) seeking access to public rights-of-way within the Union Village Project. A Telecommunication Facility shall be located such that it is architecturally integrated into the Union Village Project. The Parties acknowledge that temporary and permanent Telecommunication Facilities are a necessary component to effective communication and will be necessary on the Property. The Parties agree that determining the appropriate location(s), number, and general appearance of Telecommunication Facilities as part of this Agreement will

permit both Developer and the City to appropriately plan the Union Village Project and will help minimize any potential conflicts or disputes that might arise in regard to permits for such towers in the future. Therefore, the Parties agree that Telecommunication Facilities on the Property shall be subject to the following conditions:

- a. The Telecommunication Facilities must comply with Federal Communication Commission standards;
- b. Telecommunication Facilities may be constructed in public or private parks and open spaces, mixed use buildings, and other commercial buildings;
- c. Shall be architecturally compatible with the Development Standards and incorporate reasonable camouflaging/stealth techniques, including, by way of example, (i) architecturally screened roof-mounted antennas or (ii) designed so as to be incorporated into bell towers, buildings, light fixtures, and the like excluding mimicked landscaping (ex: mono-palms or pine trees)
- d. Shall use all reasonable efforts to ensure collocation of antennas occurs on all Telecommunication Facilities;
- e. Shall use all reasonable efforts to ensure all equipment shelters are located within the structure containing the telecommunication tower or below ground in a vault;
- f. Shall be subject to City administrative Design Review in the event the subject Telecommunication Facility meets all applicable requirements of this Section and the Supplemental Development Standards. Facilities not meeting the requirements of this Section shall require approval of a Minor Modification Level 1;
- g. Shall not obstruct public safety communications and the usual and customary transmission of other communication services enjoyed by adjacent property owners;
- h. Except when located on a building shall not be in excess of One Hundred (100) feet in height and shall not be located within One Hundred (100) feet of any residential lot (including lots adjoining the subject development);
- i. Developer shall demonstrate Telecommunication Facilities do not interfere with line-of-sight transmission of City's HEN-NET System

xviii. Utility - Installation of Water, Sewer and Utilities in Common Areas. Provided that Developer provides full width all weather drivable access as determined by City to manholes associated with storm drain or sanitary sewer for maintenance purposes, Developer shall be allowed to install water, sewer and other utility lines within the common areas of the Union Village Project. Municipal utilities shall be installed within municipal utility easements at a minimum width of Twenty (20) feet for a single utility and Thirty (30) feet for two or more utilities.

xix. Construction Hours - The evacuation, erection, construction, demolition, alteration, or repair of any building, public, or private street, site work, or similar work is prohibited between the hours of 6:00pm and 6:00am, except:

- a. Any construction within the interior of a building completely enclosed by permanent construction shall be allowed twenty-four (24) hours;
- b. Construction more than 350 feet away from existing or new dwelling units shall be allowed extended hours of 5:00am to 8:00pm;
- c. The Developer may make written requests for extended hours, beyond that outlined above. The Building Official or his/her designee may grant permission for additional extended hours after determining the public health, safety and welfare will not be impaired by the work, and that material loss or inconvenience would not be suffered by any interested party.
- d. Approval of any extended construction hours may be rescinded for cause, such as numerous complaints, etc.

4.2 Supplemental Development Standards. City concurs that development of the Union Village Project will occur over a period of time and that Supplemental Development Standards are currently evolving.

(a) Developer acknowledges that City requires Developer's involvement in the submission of any Supplemental Development Standards for any Village Area transferred by Developer to a Person other than an Affiliate of Developer. Therefore Developer agrees that in conjunction with any transfer of a Village Area, or portion thereof by Developer for which Supplemental Development Standards have not been approved, Developer shall: (a) notify each transferee in writing that

approval by City for Supplemental Development Standards for such Village Area will be required; and (b) Developer and/or member of Developer shall serve as applicant in the submission of proposed Supplemental Development Standards for such Village; and (c) notify City in writing of any transfer of a Village for which Supplemental Development Standards have not been approved and identify the transferee.

(b) Procedure for Submission. Developer agrees to submit Supplemental Development Standards for each Village through the Minor Modification process.

(c) At such time as Supplemental Development Standards have been approved, all buildings/structures shall be subject to an administratively approved Design Review as long as proposed plans comply with the Union Village Development Agreement, Development Standards, and Supplemental Development Standards as may be amended from time to time.

4.3 Phasing of Major Transportation Improvements. Developer and City acknowledge improvements will be required to the following transportation routes identified in Exhibit H in accordance with the required improvement level for the Union Village:

(a) Phase 1 which shall consist of:

- i. Gibson full half street improvements along property line.
- ii. Intersection and stop light at Gibson and new Road A, section 1 (to be named by Developer).
- iii. Galleria full half street improvements along property line.
- iv. Road A, section 1 (Gibson to Union Park) (to be named by Developer)
- v. Intersection and stop light at Galleria and new Road B (to be named by Developer)
- vi. Road B from Galleria up to and including the traffic circle.
- vii. Payment of Phase 1 Traffic Network Impact fee for the phase 1 improvements.

(b) Phase 2 which shall consist of:

- i. Road C from Stufflebeam to Road B completed as part of phase 2.
- ii. Payments of Phase 2 Traffic Network Impact fee for the phase 2 improvements.

(c) Phase 3 which shall consist of

- i. Stufflebeam (to be renamed by Developer) full half street improvements along the property.
- ii. Intersection and stop light at Stufflebeam and new Public Road A, section 2 (to be named by Developer).
- iii. Right-of-way for Stufflebeam, Stephanie, Russell, and any other adjacent property as required to complete road improvements from subject property to Russell Road.
- iv. Stufflebeam full roadway from property line just over waterway.
- v. Stufflebeam full roadway from waterway to Stephanie, and improvements on Stephanie to Russell Road, and any other improvements on or adjacent as required.
- vi. Stephanie improvements from Stufflebeam to Russell Road.
- vii. New Roadway A, section 2 from Stufflebeam to Roadway A, section 1 (Stufflebeam to Park) completed as Phase 1.
- viii. Stop Light at Stufflebeam and Public Road P (to be named by Developer).
- ix. Payments of Phase 3 Network Traffic Impact fee for the Phase 3 improvements.

(d) The City and Developer agree that it is in the best interest of the public and will promote the health, safety and general welfare of the City and its inhabitants to control the location and number of vehicle access points, and therefore limit the number of access points along Stufflebeam to four, Galleria to two, and Gibson to three access points subject to approval and compliance with an approved Traffic Study.

(e) An initial Master Traffic Study was submitted and reviewed by the City, with comments issued. Since that time, the site plan has received major revisions, and the Developer has submitted an updated Master Traffic Study for review. The review and approval of the Study may not be completed by the time final action is taken on this Development Agreement. The City reserves the right to require revisions to the above listed phasing plan and require revisions and other amendments to the site plan and development of roadways if required by the final approved Master Traffic Study, and any amendments thereto. Changes may also be necessary to Exhibit H.

(f) The Developer shall be responsible for construction of and payment for the above improvements unless, otherwise amended through the modification process as outlined in this Agreement.

#### 4.4 The Processing of Applications.

(a) The City acknowledges the Developer's desire to have timely reviews of its studies, maps, plans, applications for permits and other authorizations for development of and within the Union Village Project (collectively, the "Applications"). Developer acknowledges that timely review of Applications by City requires submittal of complete Applications by Developer in accordance with the master City Schedule as outlined below.

(b) The Developer agrees to provide the City with a master City Schedule (as defined herein) setting forth Developer's expected dates of submission for its Applications for the Union Village Project. The master City Schedule shall be complete for all anticipated Applications, and may be used by the City to plan and adjust its staffing capacity accordingly. The Developer shall provide the City with periodic, but not less than monthly or other such periods of time as agreed upon by Parties, updates of the master City Schedule providing additional Applications, changed submission dates, and reflecting Applications already submitted to City, throughout the development of the Project.

(c) The City and Developer agree that the schedule ("City Schedule") set forth below is a reasonable estimate of service targets for the City to process Applications, and shall constitute the targeted time not a guarantee for City to review Applications of the type listed. Fourth or subsequent reviews are subject to City discretion. The City Schedule is expressed in City Business Working Days, or "wd" from the date of submittal:



<b>Category</b>		<b>1<sup>st</sup> Review</b>	<b>2<sup>nd</sup> Review</b>	<b>3<sup>rd</sup> Review*</b>	<b>Mylar/Map Signatures</b>
1.	Hydrology Studies	15 wd	15 wd	5 wd	N/A
2.	Traffic Studies	15 wd	15 wd	5 wd	N/A
3.	Civil Improvement Plans	15 wd	15 wd	5 wd	5 wd
4.	Final Maps	15 wd	10 wd	10 wd	5 wd
5.	Parcel Maps	15 wd	10 wd	10 wd	5 wd
6.	Boundary Line Adjustments	15 wd	10 wd	5 wd	5 wd
7.	Reversionary Maps	15 wd	10 wd	5 wd	5 wd
8.	Apartments – Model Plans	15 wd	10 wd	5 wd	
9.	Apartments – Production Plans	10 wd	5 wd	5 wd	
10.	Condo – Standard Plans	15 wd	10 wd	5 wd	
11.	Condo – Model Plans	10 wd	5 wd	5 wd	
12.	Condo – Production Plans	10 wd	5 wd	5 wd	
13.	Commercial Buildings (Restaurants, Retail, Office, etc.)	15 wd	10 wd	5 wd	
14.	Commercial Shell Buildings	15 wd	10 wd	5 wd	
15.	Commercial Tenant Improvement	5 wd	5 wd	5 wd	
16.	Hospital Buildings, Shells and Tenant Improvement	25 wd	15 wd	10 wd	
17.	Fire sprinkler system	10 wd	5 wd	5 wd	
18.	Fire alarm systems	10 wd	5 wd	5 wd	
19.	Fire Protection Reports	15 wd	10wd	5wd	

\* if 3<sup>rd</sup> review is required

(d) The City reserves the right to reasonably extend the City Schedule for unusually large or complex Applications (i.e., mid rise and high rise buildings, pump stations, reservoirs, flood control facilities, etc.), Applications which City determines are incomplete or Applications resubmitted to City which involve a substantially new design subject written to electronic (email) notification of Developer within Eight (8) City Business Working Days of the submittal and the provision of a target date for the completion of the review. Applications not listed in the City Schedule shall be reviewed within a reasonable time frame as is agreed upon between the Parties.

(e) Developer acknowledges that submission of Applications in other than the proper sequence may delay and extend the time required for consideration of any related Applications. For other applications or for other processing as determined necessary by the Parties, the Parties will determine the proper sequence of submittals and service targets (as agreed upon, the "Alternative Schedule"). The City agrees to the review of Applications in accordance with the City Schedule or the Alternative Schedule only if the Applications are submitted in the proper sequence. Proper sequence as used in this section for submitting Applications: (i) in accordance with the City Schedule is the order of submission of similar type applications as required by City as of the Effective Date; and (ii) in accordance with the Alternative Schedule is the order as provided in the Alternative Schedule. Therefore, Developer agrees to submit Applications in the proper sequence in order to avoid coordination problems with reviews.

(f) City shall advise Developer's Application processor, whose name and standard and electronic (e-mail) address shall be provided to City with each Application, in writing or electronically within Ten (10) City Business Working Days of a submittal if City is unable to process an Application submitted in proper sequence; and City shall advise Developer's Application processor of the Business Day when City reasonably believes it will complete processing of the Application. If Developer submits an Application after the date specified in the City Schedule and/or the City projected completion date is more than Five (5) City Business Working Days later than the date required under the City Schedule or the Alternative Schedule, Developer shall have the option to either: (i) accept the alternative timeframe projected by City; or (ii) request City to utilize a Consultant to process the Application at Developer's expense (the "Consultant Option").

(g) The City may use a variety of outside consulting firms to assist in managing peak workloads ("Consultants" or "Consultant" as the context requires). The City may choose to use Consultants for any Application as it sees fit; however, the City's decision to use a Consultant does not extend the time frames set forth in the City Schedule without mutual agreement of the Parties.

(h) Developer will be permitted to commence rough grading, but not final grading, of the Property earlier than would otherwise be permitted under the Applicable Rules upon submittal and approval of a conceptual drainage study, application and approval of a rough grading improvement plans and payment of all applicable fees, and bonds.

(i) Both Developer and City acknowledge that certain permit applications for development of Project Infrastructure Improvements will be required to be reviewed and approved by outside agencies. City may conditionally approve such permit applications and allow Developer to begin work; however, City shall not be liable for delays caused by outside agencies.

4.5 Anti-Moratorium. The Parties agree that unless otherwise stated herein, no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing or sequencing of the development of Property including those that affect parcel or subdivision maps, building permits, occupancy permits or other entitlements to use land that are issued or granted by the City shall apply to the development of the Union Village Project or any portion thereof. Notwithstanding the foregoing, the City may adopt ordinances that are necessary to: (i) comply with any state or federal laws or regulations; (ii) alleviate or otherwise contain a legitimate, bona fide harmful and noxious use of the Project, in which event the ordinance shall contain the most minimal and the least intrusive alternative possible and may be imposed only after public hearing and comment and shall not, in any event, be imposed arbitrarily; or (iii) maintain the City's compliance with non-City and state sewerage, water systems and utility regulations. In the event of any such moratorium, future ordinance, resolution or rule or regulation, unless taken by the City as provided under the three exceptions contained above, Developer shall continue to be entitled to apply for and receive approvals as contemplated by this Agreement and in accordance with the Applicable Rules.

## **SECTION 5 THE PARK AND TRAILS**

5.1 Construction of the Park and Trails. Developer shall construct and dedicate to City; approximately twenty two (22) acres of public plaza, park(s), trails, landscaping and open space as preliminarily depicted on the Park and Trail map in Exhibit I and design requirements as set forth in the Development Standards and Supplemental Development Standards.

5.2 Park. Developer shall design, construct and provide for the maintenance of a total of approximately eight (8) acres of public park ("Park") as preliminarily shown in Exhibit I, and as further defined in the Park Agreement. Pursuant to Henderson Municipal Code Section 19.7.10(F), construction of the Park shall entitle Developer to a credit of toward the required residential construction tax. The Park shall be constructed in accordance with current Standardized Design Guidelines for the City of Henderson Parks and Recreation Department. The Park(s) shall be open to the public, with maintenance provided for by the Developer, with amenities as listed in the Park Agreement.

5.3 Trails and Landscaping. Developer shall design, construct, and provide for the maintenance of trails and landscaping of approximately four (4) acres as preliminarily shown on Exhibit I, and as further defined in the Park Agreement.

5.4 Park Agreement. Developer and City shall negotiate in good faith, and shall enter into a Park Agreement (as referred to in Sections 5.2 and 5.3) concerning the dedication, design, development, construction, and maintenance of the plaza, parks, trails, landscaping and open spaces. Developer shall not submit any application for permitting relating to any development phase, and construction shall not begin on any phase, until Park Agreement has been approved by the City and executed by the Parties.

5.5. Development Standards. The standards, definitions and other terms relating to the public plaza (promenade), parks(s), trails, landscaping and open spaces set forth in the Development Standards are subject to any changes set forth in the Park Agreement.

## **SECTION 6 PROJECT INFRASTRUCTURE IMPROVEMENTS**

6.1 Master Engineering Study. Developer has completed a Master Engineering Study of which plans are attached as Exhibits A, which has been reviewed and approved by City.

(a) The Developer agrees to construct the Infrastructure Improvements per approved Master Engineering Studies and as identified below and as such improvements are constructed.

(b) Off site and backbone water, sanitary sewer, storm drain, utility and related infrastructure that will provide service to the Union Village Project per attached Exhibit A.

(c) Timing for payment of infrastructure initially installed and required to be reimbursed due to oversizing and system connection fees shall be per Section 10.4.

(d) Developer shall be responsible for construction of and payment for the above improvements unless, otherwise amended through the modification process as outlined in this Agreement.

6.2 Sidewalks and Streetscape Landscaping. In conjunction with submittal of Supplemental Development Standards, Developer shall submit a plan for the building of sidewalks and streetscape landscaping. The intent of this section is to ensure that as the Union Village Project is developed sidewalks and streetscape landscaping are constructed and extended to the developed portions of the Union Village Project to create uninterrupted pedestrian and bicycle connectivity within and to the Union Village Project.

6.3 Franchise Agreements. The City has extended an exclusive franchise to Republic Services of Southern Nevada to provide a curbside solid waste and recycling collection program within the jurisdictional limits of the City. The City has extended non-exclusive franchises to public utility companies that provide utility services within the jurisdictional limits of the City, including NV Energy, Centurylink, and Southwest Gas Corporation together with non-exclusive franchises to various telecommunications carriers that provide telecommunications services within the jurisdictional limits of the City (collectively, "Franchisees"). Franchisees have non-exclusive authority to construct, maintain, and operate their respective utility and/or telecommunications services systems in public rights-of-way within the City (including any public rights of way within the Union Village Project) in accordance with the terms and conditions set forth in both the Henderson Municipal Code and applicable franchise agreements. Developer is responsible for insuring the adequate provision of utility services to the Property. Notwithstanding anything to the contrary herein, Developer has no obligation or requirement under this Agreement to obtain utility and/or telecommunications services from Franchisees. Developer shall have the right to request Franchisees or other utility and/or telecommunications services providers to provide utility and/or telecommunications services to the Property, subject to applicable State regulatory requirements and City municipal code requirements.

6.4 Limitation on Developer's Obligations. Notwithstanding anything to the contrary herein, Developer shall have no obligation to participate in, pay, contribute or otherwise provide any further impact fee, exaction, or to provide facilities, or improvements beyond those specified in this Agreement or the accepted Master Studies.

6.5 Utility Connection Requirements. The Parties agree that all current and future buildings located or to be located on the Property shall be required to connect to all water and sewer utilities per Code.

## **SECTION 7 ADMINISTRATION**

### **7.1 Approvals**

(a) The City shall review each building/structure, site plan, Telecommunication Facility, park and trail for conformance to the Development Standards, Supplemental Development Standards and this Agreement through a staff level Design Review process as defined by the City.

(b) If the City determines the building/structure, site plan, Telecommunication Facility, park or trail meets the Development Standards, Supplemental Development Standards and this Agreement, then the request will be approved and the applicant may proceed directly to Building Permit.

(c) If any item is identified by the City that requires a Modification as defined in this Development Agreement, then the Developer/applicant may proceed at-risk to submit for a Building Permit, and the Modification process shall occur concurrently with Building Permit review to the extent feasible given the scope and nature of the subject modification.

By moving forward "at-risk," the Developer/applicant acknowledges that if the requested Modification is not approved by the City, it is agreed that the Developer/applicant for the subject application shall not seek compensation from the City of Henderson for cost or damages of any kind associated in any way with the submitted application for Modification. Any Developer/applicant moving forward "at-risk" also agrees to indemnify, protect, defend and hold harmless the City, its council members, officers, employees, agents, attorneys, representatives and their successors and assigns from and against any and all claims that may arise directly or indirectly from, out of, or in connection with proceeding "at-risk."

## 7.2 Minor Modifications.

(a) A minor modification ("Minor Modification") is a modification that does not amend this Agreement but accomplishes one or more of the following in the determination of the City. In no event shall a Minor Modification increase the overall square footage, maximum height of 200-feet, density, or the number of dwelling units identified in Section 4.1 of this Agreement. (All Minor Modifications shall be approved by the City of Henderson Community Development Department) Minor Modifications have been divided into two categories: Level 1 and Level 2.

### Level 1 Minor Modifications:

- i. Review and approval of Supplemental Development Standards required by this Agreement, that may include detailed architectural, signage, landscape or other criteria as required in this Agreement.

### Level 2 Minor Modifications:

- i. An adjustment that includes, but is not limited to, setback, or similar dimensional requirements, parking, building height (not exceeding maximum height), and not in excess of fifteen (15%) percent or less of that required by or shown in the Development Standards, Supplemental Development Standards or this Agreement;
- ii. Modifications to the depiction of the helipad zone as shown in Exhibit G provided the 350-buffer shown on Exhibit G is maintained.
- iii. The addition of standards, architectural design, or detail elements to the approved Supplemental Development Standards, but only if the addition conforms to the intent of the Development Standards, previously approved Supplemental Development Standards or this Agreement; or
- iv. Modify the number of Villages or size of Village Areas.
- v. Any other change or modification planned, which the City Community Development Director in consultation with the City Attorney determines would not have a material negative impact on the Union Village Project, including but not limited to construction and payment of streets, roadways, fire apparatus, and infrastructure.

- vi. Any other action that is referenced as a Level 2 Minor Modification or requires approval as a Level 2 Minor Modification.

(b) Level 1 Minor Modifications are subject to final action by the Planning Commission with appeals to City Council. For each requested Level 1 Minor Modification, Developer shall pay a fee to City at the time of request in the amount of Two Thousand Dollars (\$2,000) together with outside consultant fees as may be reasonably required by the City to consider the requested Level 1 Minor Modification.

(c) Level 2 Minor Modifications are subject to final action by the City Community Development Director with appeals going to the Planning Commission, and if necessary, to City Council. For each requested Level 2 Minor Modification, Developer shall pay a fee to City at the time of request in the amount of One Thousand Dollars (\$1,000) together with outside consultant fees as may be reasonably required by the City to consider the requested Level 2 Minor Modification.

7.3 Major Modifications. Any application for a modification that does not qualify as a Minor Modification, Level 1 or Level 2, is subject to review and recommendation by the Planning Commission with final action by the City Council. Developer shall pay a fee as required per Title 18 (Fee Schedule) and –to include outside consultant fees as may be required by City to review and prepare a Major Modification. Major Modifications shall result in an amended and restated Development Agreement filed with the Clark County Recorder.

## **SECTION 8**

### **Fire**

8.1 Provision for Emergency Rescue Apparatus The Developer acknowledges that the new hospitals will require additional demand on the City in terms of fire department, but also shall provide additional economic benefit. The Developer and City acknowledge that a new a new Fire Rescue Unit (ambulance) will be required.

(a) Timing - A written notice from the City (Fire Notice), at any time following the issuance of the permit for either the Children's or Cancer hospital shall identify the timing of the City when ordering the apparatus. Within thirty (30) Calendar Days of the Fire Notice, an amount not to exceed \$275,000 shall be due.

(b) Developer shall be responsible for payment for the above Fire Rescue Unit unless, otherwise amended through the modification process as outlined in this Agreement.



8.2 Fire Protection Reports. The Developer shall submit for review and approval a Fire Protection Report (as defined in Section 901.2.2 of the Henderson Fire Code) for the overall Union Village Project.

Additionally, each major building or system (building over 10,000 SF) of the project requires an Individual Fire Protection Report (or an updated to the overall Fire Protection Report). The overall Fire Protection Report must be submitted prior to the submittal of any civil improvement plans and must be approved prior to issuance of the initial civil improvement permit.

Each individual Fire Protection Report, or each report update, must be submitted prior to the submission for a building permit, and must be approved prior to the issuance of a “complete building” or shell permit (this allows permitting through structural frame). The developer shall meet with Building & Fire Safety to discuss the implementation of this condition.

## **SECTION 9 REVIEW, DEFAULT AND REMEDIES**

9.1 Biennial Reports Developer shall submit to the Community Development Director or Designee a Biennial Report that includes the information required by this Agreement and that provides all information necessary to assess Developer’s good faith compliance with the terms of this Agreement. This report shall form the basis for the City Council’s periodic review of the Agreement pursuant to NRS 278.0205. This required report is generally referred to as the “Biennial Report.”

9.1.1 The initial Biennial Report shall be filed on or before two (2) years from the date of final approval of this Agreement and shall report on activities from initial approval of this Agreement through the date of the report. Subsequent reports shall be filed on or before every two years after using the initial approval date of the Agreement as the date for submittal of each year and shall report on activities in the preceding 2 fiscal years.

9.1.2 The Biennial Report shall include the specified items set forth in this Agreement and listed in this Section. The failure to include in this Section an item expressly required to be included by other sections of this Agreement shall not relieve Developer of the responsibility to include that item in the Biennial Report. The report may include such other items as deemed relevant by Developer. The City may also request inclusion of other specific information or provide for its inclusion in the following year’s Biennial Report.

9.1.3 The Biennial Report shall include the following specific information.

(a) A summary of the amount of building floor space constructed in the previous two (2) years and cumulatively pursuant to this Agreement, all related infrastructure installed in the previous two (2) years, the status of Developer's participation in the provision or financing of related public infrastructure, dedications and acquisitions of related infrastructure by Developer, and a projected schedule for development in the forthcoming two years. The report shall also identify for both the annual and cumulative totals the uses to which this space is devoted.

(b) Any updated stormwater utility cost-sharing agreements.

(c) The following information regarding parking, traffic, and other forms of transportation: (1) Current status of transit planning; (2) coordination of development with transportation management plan; (3) a report on parking provided.

(d) Provide list and summary of all Modifications (minor or major) completed within the past two years.

Provide details for compliance with any triggers and/or benchmarks as required in the Agreement and Park Agreement.

(e) A report on all construction of open space, parks and trails, and pedestrian connections including alternate modes of transportation.

(f) Any additional information specifically requested to be included by the City.

9.1.4 Nothing stated in this Agreement shall be construed to prohibit or interfere in any way with any and all rights afforded the City by NRS 278.0205.

9.2 Default and Remedies - In General. The City represents that it would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement. The City and Developer agree that they may pursue any remedy at law or equity, except that neither Party shall be liable to the other for any monetary damages solely under or with respect to this Agreement. Subject to Section 9.3 below, in the event of any non-compliance with any provision of this Agreement, the Party alleging such non-compliance shall deliver to the other Party, in writing, not less than Fourteen (14) calendar days notice of default. The notice of default ("Notice of Default") shall specify: (i) the nature of the alleged default, and (ii) whether it is curable. If a default cannot reasonably be cured within Fourteen (14) calendar days, a non-complying Party may nonetheless timely cure such non-compliance if it commences

appropriate remedial action within the Fourteen (14) calendar day period and thereafter prosecutes such action to completion with all due diligence. In addition, as to the City, if a cure of the alleged non-compliance requires action by the City Council, then the matter shall be put on the next legally available City Council agenda after receipt of the Notice of Default and the cure period shall be extended for an additional Three (3) Business Days following such meeting. If the default is timely corrected, then no default shall exist and the noticing Party shall take no further action. If the default is not corrected, the Party charging non-compliance may proceed to adjudicate the Dispute as provided in this Section 9. For purposes of this Section 9, the term "Dispute" shall include any action, dispute, claim or controversy of any kind, whether founded in contract, tort, statutory or common law, equity, or otherwise, now existing or hereafter occurring between the Parties arising out of, pertaining to, or in connection with this Agreement, transactions or events that are governed by or arise out of this Agreement, or any related agreements, or the plans for the Project.

Any failure or delay in giving a Notice of Default (under this Section 9) shall not constitute a waiver of any default. Any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

9.3 Immediate, Irreparable Harm. Should either Developer or the City reasonably believe that the other has not complied with any provision of this Agreement which non-compliance will cause immediate, irreparable harm, the Party alleging such non-compliance shall deliver to the other Party, in writing, a Notice of Default which shall provide, in addition to the information otherwise required as set forth above, a description of the alleged immediate, irreparable harm that has or may arise. The Party charging non-compliance may proceed to take such action to the extent reasonably necessary and/or possible to avoid any further harm, including bringing an action, in a court of competent jurisdiction, for immediate equitable relief, as provided in Section 9.6 below. In determining whether or not a Party has or will suffer immediate, irreparable harm, the reviewing court shall acknowledge and take into consideration the unavailability of monetary damages to the Party asserting the claim.

9.4 Arbitration. Except as otherwise provided in this Agreement, Disputes between the Parties may only be resolved by binding arbitration in accordance with the Uniform Arbitration Act, Chapter 38 of the Nevada Revised Statutes. The initiating Party (the "Claimant") shall give written notice to the other Party ("Respondent") of its intention to arbitrate (the "Demand"), which Demand shall contain a statement setting forth the nature of the Dispute, the specific matters to be arbitrated, the claims being asserted, the amount involved, if any, and the remedy sought. The Parties shall have Thirty (30) calendar days from the date of the Demand to agree upon an arbitrator or arbitrators and any rules and conditions of the arbitration. In the event the Parties are unable to

timely agree, the arbitration shall be administered by the Judicial Arbitration and Mediation Service ("JAMS") under its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (to the extent they are not inconsistent with the Uniform Arbitration Act) or as mutually agreed to by the parties. Arbitration through JAMS shall be conducted by a panel of Three (3) arbitrators and shall be initiated and conducted as set forth in the subsections below.

(a) Initiation. The Claimant shall file at the regional office of JAMS three copies of the Demand and three copies of this Section 9, together with the appropriate filing fee.

(b) Panel of Arbitrators. JAMS shall send simultaneously to each Party to the Dispute an identical list of 12-15 names of persons chosen from JAM's National Roster of Neutrals. The persons on the list shall have experience with and knowledge regarding the general subject matter surrounding the Dispute and at least one of the arbitrators ultimately selected will be an attorney. Where feasible, consideration shall be given to the geographic proximity of such persons. Each Party shall have Ten (10) calendar days from the transmittal date to strike any names objected to, number the remaining names in order of preference, and return the list to the JAMS. From among the names approved on both lists, and in accordance with the designated order of mutual preference, JAMS shall invite the acceptance of Three (3) arbitrators to serve and upon acceptance shall send out a notice of appointment to the Parties and the appointed arbitrators.

(c) Arbitrator Powers. Except as set forth in Section 9.6 below, labeled Preservation of Remedies, the arbitrators shall resolve all Disputes in accordance with the applicable substantive law, including the governing statutes of limitation. The arbitrators shall be empowered to resolve any Dispute regarding the terms of this Agreement or the arbitrability of any Dispute or any claim that all or any part of this Agreement (including this Section) is void or voidable but shall have no power to change or alter the terms of this Agreement. In any arbitration hereunder, discovery of documents shall be in accordance with the Nevada Rules of Civil Procedure, with an end to providing the arbitrators, in a prompt fashion, with relevant facts regarding the Dispute. In addition, at the request of a Party, the arbitrators shall order examination by deposition of witnesses. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. All disagreements with respect to discovery shall be promptly resolved by the arbitrators. In resolving discovery disagreements, the arbitrators shall give great weight to whether requested discovery would, under the circumstances, be available under applicable law.

(d) Resolution of Arbitration Dispute. To the maximum extent practicable, JAMS, the arbitrators and the Parties shall take any action necessary to require that an arbitration proceeding hereunder be concluded within One Hundred Eighty (180) calendar days of the filing of the Dispute with JAMS. Notwithstanding anything to the contrary stated herein, the arbitrators shall be empowered to impose sanctions for any Party's failure to timely proceed.

(e) Mediation Not Precluded. Nothing in this Section 9 labeled Arbitration shall preclude the Parties from pursuing mediation to resolve a Dispute, but no Party shall be required to mediate against its will. To the extent the Parties agree to mediation, all time lines required for arbitration shall be tolled until the mediation is concluded.

9.5 Awards. Any award, judgment or order of the arbitrator(s) pursuant to the terms of this Agreement may be entered and enforced by either Party in any state or federal court having competent jurisdiction in Clark County, Nevada. Each Party agrees to submit to the jurisdiction of any such court for purposes of enforcement of any such court order or judgment. The arbitrator(s) award shall be made promptly and, unless otherwise agreed by the Parties or specified by law, no later than Thirty (30) calendar days from the date of closing the hearing.

9.6 Preservation of Remedies. No provision of, nor the exercise of any rights under this Section 9, shall limit the right of any Party to obtain immediate equitable relief from a court having jurisdiction including, but not limited to, writs of mandamus or prohibition, injunction, set-off, and/or any other prejudgment or post-judgment provisional action or remedy. In the event either Party institutes an action for judicial relief in pursuit of any such prejudgment or post-judgment remedy, such Party may elect to have the merits of the Dispute resolved by the entertaining court in lieu of arbitration under Section 9.4.

9.7 Lack of Jurisdiction over Third Parties. In the event that joinder of a third party is necessary for a full and final adjudication of a Dispute, but such third party does not agree to submit to arbitration under Section 9.4, either Party may elect to have the entire Dispute resolved by a court having appropriate jurisdiction over all of the parties.

9.8 Attorney's Fees and Costs. In any arbitration or legal action, or both, that is instituted between or among the Parties in connection with this Agreement, the Party that prevails in such arbitration or action shall be entitled to recover from the other Party all of its reasonable attorneys' fees and legal costs and expenses.

9.9 Governing Law. This Agreement shall be governed by the laws of the State of Nevada with respect to both interpretation and performance.

## **SECTION 10 FINANCING**

10.1 City Cooperation. The City expressly acknowledges and agrees that Developer may be required to finance part of its obligations under this Agreement through private financing. The City agrees to cooperate with Developer with respect to such financing by, among other things, executing and delivering to any lender or other interested person such documents as may be reasonably requested to acknowledge (a) that the City has no lien on the Property, and (b) that the City shall recognize and allow a lender which has foreclosed or acquired a portion of the Union Village Project from Developer to succeed to the rights and benefits of this Agreement as to such portion of the Property. Developer acknowledges, however, that if a local improvement district is created; such district will constitute a lien on the Property to secure repayment of the bonds.

10.2 Estoppel Certificates. At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default. Such estoppels certificates may be relied upon only by the Parties, their respective successors and assigns, and, in the event of an estoppel certificate issued by City, a Mortgagee of Developer. City shall be entitled to payment/reimbursement for its actual and reasonable costs of investigation and preparation of an estoppel certificate prior to issuing the same.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within fifteen (15) days following receipt (assuming, in the case of an estoppel certificate to be issued by City Developer has paid City the cost thereof, as provided above)

10.3 Local Improvement Districts. The City agrees to review Developer's request to create one or more local improvement districts in accordance with the NRS. Such districts shall be financed on a minimum Twenty (20) year amortization schedule and the financing may include Two (2) year capitalized interest and may be based on an improved property loan to value ratio of Three (3) to One (1). Developer shall reimburse to the City all reasonable and customary (in Clark County, Nevada) third-party costs that the City incurs directly with respect to creation of a local improvement district.

10.4 Oversizing Reimbursement/Refunds. The Parties acknowledge that it may be necessary for Developer to construct and/or contribute certain public facilities/apparatus in a manner, or at a size or with a capacity to serve the needs of any property, development or dwelling unit located outside the boundaries of the Union Village Project. In the event that City has required Developer to provide such oversized public facilities/apparatus, City and Developer may enter into a mutually acceptable refunding/reimbursement agreement. Such agreement shall be prepared in accordance with Code and will contain provisions for refunding or reimbursing the Developer for funds it has advanced, including any costs associated with the acquisition of rights-of-way, easements or other property interests, based on Developer's proportionate use of the total capacity of the over-sized improvement and shall have a minimum term of Ten (10) years.

10.5 Redevelopment. The Property is included in the Eastside Redevelopment Area of the City. The City of Henderson Redevelopment Agency and Developer have/or intend to enter into an Owner Participation Agreement with regard to the redevelopment of the Property.

## **SECTION 11 GENERAL PROVISIONS**

11.1 Effective Date. The effective date of this Development Agreement shall be the date on which close of escrow occurs as provided for in that certain Land Sale and Purchase Agreement approved by City Council on June 14, 2011 and as First Amended on April 3, 2012.

11.2 Term. Unless otherwise specified herein. The term of this Agreement shall commence upon the Effective Date and it shall expire twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest or is otherwise terminated pursuant to the terms of this Agreement or NRS 278.0205. All of the development authorized by this Agreement must be initiated within the term of the Agreement, but expiration of the twenty (20) year term shall not terminate mutually agreed upon obligations and commitments included within this Agreement that are expressly specified to extend beyond the term of the Agreement. City agrees that Developer shall have the right to extend the Term of this Agreement for an additional Five (5) years upon the following conditions:

- (a) Developer provides written notice of such extension to City Thirty (30) calendar days prior to the expiration of the original Twenty (20) year Term of this Agreement; and
- (b) Developer is not in default of this Agreement.

Upon such extension of this Agreement, Developer and City shall enter into an amendment to this Agreement memorializing the extension of the Term.

11.3 Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in Section 11.2 of this Agreement or a specific termination made by operation of the provisions of this Agreement or NRS 278.0205.

11.4. Assignments and Transfers

- (a) City is entering into this Agreement with Developer with recognition of Developer's knowledge and expertise. Developer shall maintain its position as the master planner of the Union Village Project responsible for the overall conceptualization, design and construction of the Project. However, Developer shall have the right to sell, transfer or assign ("Transfer") fee title to portions of the Property in accordance with the provisions of this Section and any such Transfer shall include assignment and assumption of Developer's rights, duties and obligations arising under this Agreement with respect to the portion of the Property included in such Transfer. No transfer of Developer'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 relieve Developer of its obligations under this Agreement with respect to the portion so transferred but Developer shall continue to be jointly liable to City for the performance of the obligations assumed by the transferee.
- (b) In connection with any Transfer, Developer 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 City, pursuant to which the transferor 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 Supplemental Design Standards or enter into any amendment of this Agreement.
- (c) Notwithstanding the foregoing, Developer shall not sell or transfer the entire Property, or all or substantially all of the assets of or membership interests of Developer to other than an Affiliate of Developer without the prior written consent of City 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



Union Village Project in accordance with the terms of this Agreement. In the event of a proposed transaction requiring the City's consent, Developer shall provide City with written request for consent which shall include reasonable supporting documentation about the proposed transferee for consideration and City shall respond within thirty (30) calendar days of receipt of said request and supporting documentation. In the event City 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 Developer 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 therefrom the deed of trust issued by the City dated \_\_\_\_\_ and recorded as Document \_\_\_\_\_ of official records. 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.

11.5 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property ("Indemnifying Parties") shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage, which may arise from the direct or indirect planning, design, construction and/or operations of Indemnifying Parties or those of its contractors, subcontractors, agents, employees, or other persons acting on behalf Indemnifying Parties which relate to the development of the Union Village Project. Indemnifying Parties agree to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property in connection with the development of the Union Village Project. Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property agree to indemnify, hold harmless, and provide and pay all costs and attorneys' fees for a defense for City in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional act or negligence of City, its

officers, agents, employees, or representatives or by any third party not under the control of Indemnifying Parties.

Except as expressly provided in this Agreement, City shall hold Developer, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage, which may arise from the direct or indirect planning, design, construction and/or operations of City or those of its contractors, subcontractors, agents, employees, or other persons acting on City's behalf which relate to the development of the Union Village Project. City agrees to and shall defend Developer and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of City's activities in connection with the development of the Union Village Project. City agrees to indemnify, hold harmless, and provide and pay all costs and attorneys' fees for a defense for Developer in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional act or negligence of Developer, its officers, agents, employees, or representatives or by any third party not under the control of City.

Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property ("Releasing Parties") hereby mutually releases, waives, remises, acquits and forever discharges all rights, causes of action and claims which Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property has or may have in the future against the City, its officers, employees, agents, attorneys, representatives, legal successors and assigns, from any and all claims, suits, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property or any Releasing Party now has or which Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property or any other Releasing Party may have in the future on account of or in any way arising out of or in connection with Hazardous Substances or violation of Environmental Laws arising out of or in connection with any other physical or environmental condition of the Property. Developer, for itself, its successor and assigns, and for each and every subsequent owner or lessee of the Property hereby agrees to hold harmless and indemnify the City from any claims, judgments, penalties, fines, losses, damages, expenses (including reasonable attorneys fees) against or incurred by the City after the Close of Escrow arising in any way from (i) the presence of Hazardous Substances or environmental conditions at, on, beneath or from the Site or (ii) the application of Environmental Laws to the Site.

11.6 Binding Effect of Agreement. Subject to Section 11.5 hereof, the burdens of this Agreement bind, and the benefits of this Agreement inure to and run with the Property and to Developer, for itself, its successor and assigns.

11.7 Relationship of Parties. It is understood that the contractual relationship between City and Developer is such that Developer is not an agent of City for any purpose and City is not an agent of Developer for any capacity.

11.8 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To City: CITY OF HENDERSON  
P.O. Box 95050, MSC 115  
240 Water Street  
Henderson, Nevada 89009-5050  
Attention: Community Development  
Director

With a copy to: City of Henderson  
P.O. Box 95050, MSC 411  
240 Water Street  
Henderson, Nevada 89009-5050  
Attention: City Attorney

To Developer: UNION VILLAGE, LLC  
C/O JULIET COMPANIES  
8375 W. FLAMINGO ROAD  
LAS VEGAS, NV 89147  
ATTN: JOHN STEWART

With a copy to: INVXTUS PROPERTIES  
468 N. EQUESTRIAN DRIVE  
ORANGE, CA 92869  
ATTN: DAVID BAKER

With a copy to: INVXTUS PROPERTIES  
633 ROCKFORD ROAD  
CORONA DEL MAR CA 92625  
ATTN: DAVID MICHEAL

And copy to:

LAW OFFICE OF C.J. FARLEY  
140 NEWPORT CENTER DRIVE  
SUITE 250  
NEWPORT BEACH, CA 92660  
ATTN: CJ FARLEY

Either Party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

11.9 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 between the Parties with respect to all of any part of the subject matter hereof.

11.10 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of City and/or Developer, as the case may be.

11.11 Recording; Amendments. Promptly after the Effective Date, per subsection 11.1, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments, transfers and assignments hereto must be in writing signed by the appropriate officers of City and Developer in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon completion of the performance of this Agreement, or its earlier revocation or termination, a statement evidencing said completion, revocation or termination shall be signed by the appropriate officers of the City and Developer and shall be recorded in the Official Records of Clark County, Nevada.

11.12 Headings; Exhibits; Cross References. The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

11.13 Run With The Land. This Agreement is intended to run with the land and all rights and obligations hereunder shall be binding on Developer and on Developer's heirs, successor's assigns, and any subsequent owners or lessees of the Property.

11.14 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

11.15 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.16 Unavoidable Delay or Default Extension of Time for Performance. Neither Party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by insurrection, war, acts of terrorism, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities (excluding the City), failure of governmental agencies (other than the City) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, or similar matters beyond the control of the Parties. If written notice of any such delay is given to the non-delaying Party within Thirty (30) calendar days after the commencement thereof, an automatic extension of time, coextensive with the period of the unforced delay or longer as may be required by circumstances or as may be agreed to between the Parties, shall be deemed granted.

11.17 No Obligation to Develop. It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the availability of financing, appropriations, general economic factors, and programmatic needs. Nothing in this Agreement shall be construed as requiring Developer to develop the subject property and any failure to develop the subject property shall not be deemed a default by Developer of its obligations set forth in this Agreement.

11.18 Space and Science Center. In connection with the purchase of the Property from city, a portion of the Property was encumbered with [an Irrevocable Offer of Dedication or Deed Restriction (the "Dedication Commitment")] documenting Developer's obligation to dedicate five (5) acres of the Property to the Henderson Space and Science Center subject to satisfaction of certain conditions set forth more fully in the Dedication Commitment which was recorded concurrently with the transfer of the Property to Developer. The Development Standards for that parcel shall be further defined by Supplemental Development Standards prior to any application for approval of such facility.

[THE NEXT PAGE IS THE SIGNATURE PAGE]



## **EXHIBITS/SCHEDULES**

Exhibit "A"	Conceptual Master Drainage, Water and Sewer Maps
Exhibit "B"	Traffic Impact Analysis (TIA)
Exhibit "C"	Parking Study
Exhibit "D"	"Village" Area Map
Exhibit "E"	Property and Legal Description
Exhibit "F"	Comprehensive Plan Amendment and Zone Change Approval Letters
Exhibit "G"	Heliport Location Map
Exhibit "H"	Traffic Alignment Map and Street Sections
Exhibit "I"	Parks, Trails and Open Space Map
Exhibit "J"	Phasing Plan
Exhibit "K"	Development Standards
Exhibit "L"	Plan of Parking at Full Build out
Exhibit "M"	Pedestrian Connectivity Plan
Exhibit "N"	Form of Park Agreement





**Exhibit “A” Conceptual Master Drainage, Water and Sewer Maps**

### **Exhibit “B” Traffic Impact Analysis (TIA)**

A copy of the TIA is on file with the City Clerk for the City of Henderson and available for review.

### **Exhibit “C”    Parking Study**

A copy of the Parking Study is on file with the City Clerk for the City of Henderson and available for review.

## **Exhibit “D” “Village” Area Map**

## **Exhibit “E” Property and Legal Description**

**Exhibit “F” Comprehensive Plan Amendment and Zone Change Approval Letters**

## **Exhibit “G” Heliport Location Map**

## **Exhibit “H” Traffic Alignment Map and Street Sections**



**Exhibit “I” Parks, Trails and Open Space Map**

## **Exhibit “J” Phasing Plan**

### **Exhibit “K” Development Standards**

A copy of the Development Standards is on file with the City Clerk for the City of Henderson and available for review.

**Exhibit “L” Plan of Parking at Full Build out**

## **Exhibit “M” Pedestrian Connectivity Plan**

### **Exhibit “N” Form of Park Agreement**

A copy of the Form of Park Agreement will be on file with the City Clerk for the City of Henderson and available for review after it has been accepted by the City Council.

