

CLARK COUNTY BOARD OF COMMISSIONERS
ZONING / SUBDIVISIONS / LAND USE
AGENDA ITEM

Petitioner: Nancy A. Amundsen, Director, Department of Comprehensive Planning

Recommendation: AG-21-900626: Accept and authorize the signature of the Performance Agreement with 63 SLVB PROPCO, LLC for the Project 63 shopping center, generally located on the southwest corner of Las Vegas Boulevard South and Harmon Avenue within Paradise. JG/sr (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

The Board of County Commissioners (Board) approved the Project 63 shopping center, UC-21-0382, on August 18, 2021 consisting of a 4 story shopping center on the northeast corner of the CityCenter Resort Hotel facility. Conditions of approval of the applications required a Performance Agreement (Agreement) and bond, or other form of security or financial guarantee, for decommissioning actions to be taken by the developer in the event construction of the project is stopped or abandoned. Documents are available for review in the Department of Comprehensive Planning, Current Planning Division.

Staff recommends that the Board accept and authorize the signature of the Performance Agreement with 63 SLVB PROPCO, LLC for the proposed development.

APN/S: 162-20-711-711-008, 162-20-711-013 & 162-20-711-013
Please Return to: Sami Real
Comprehensive Planning Department
1st Floor, Clark County Government Center
500 Grand Central Parkway
Las Vegas, Nevada 89155

PERFORMANCE AGREEMENT

BETWEEN

THE COUNTY OF CLARK, NEVADA

AND

63 SLVB PROPCO, LLC

FOR

PROJECT 63

AG-21-900626

November 3, 2021

CLARK COUNTY COMPREHENSIVE PLANNING
PERFORMANCE AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into this 3rd day of November, 2021, by and between 63SLVB Propco, LLC, a Delaware limited liability company, hereinafter referred to as DEVELOPER, and the COUNTY OF CLARK, a political subdivision of the State of Nevada, hereinafter referred to as the COUNTY.

WITNESSETH:

WHEREAS, DEVELOPER is developing a project, known as Project 63 ("Project"), generally located at 3716 Las Vegas Boulevard South, Las Vegas, Nevada 89109;

WHEREAS, with the approval of UC-21-0382 by the Clark County Board of County Commissioners on August 18, 2021, the DEVELOPER agreed to submit a Decommissioning Plan ("Plan") acceptable to the COUNTY which specifies the actions to be taken by DEVELOPER in the event construction of the Project is stopped or abandoned for one hundred and eighty (180) days or longer. A copy of the approved Plan is attached hereto as Exhibit "A" and by reference made a part hereof;

WHEREAS, the DEVELOPER agreed to execute Cash in lieu of Bond in favor of the COUNTY, securing to the COUNTY the full and complete implementation of the actions identified in the Plan;

WHEREAS, the DEVELOPER desires to provide Cash in lieu of Bond in the amount of Two Hundred and Fifty Thousand Dollars, Four Hundred and Twenty-Five Dollars and Zero cents (\$250,425.00) (the "Funds") for the Project and the COUNTY desires to accept such Cash in lieu of Bond for the DEVELOPER'S obligations identified in the Plan, pursuant to the terms and conditions of the Plan and subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties do hereby agree as follows:

1. The foregoing recitals are incorporated herein and form a material part of this Agreement.
2. The DEVELOPER hereby represents and agrees that it has heretofore to provide Cash in lieu of Bond in the amount of Two Hundred and Fifty Thousand, Four Hundred and Twenty-Five Dollars and Zero cents (\$250,425.00) as security for the DEVELOPER'S full and complete fulfillment of the decommissioning actions for the Project identified in the Plan ("Decommissioning Actions"). The receipt documenting the Cash in lieu of Bond is attached hereto as Exhibit "C". Site Plan is as illustrated in Exhibit "B".
3. The Funds may be withdrawn only upon approval for release by the Director of Comprehensive Planning or the designee in accordance with the terms and conditions of this Agreement and the Plan. Should the Project be Abandoned, measures shall be immediately implemented by the DEVELOPER as required in Exhibit A attached hereto:

The term "Abandoned" or "Abandonment" means construction of the Project has stopped for a period of one hundred and eighty (180) days or longer. Situations where construction will be considered stopped include any one hundred eighty (180) day period where construction is not diligently pursued but is restarted briefly for the apparent purpose of avoiding expiration of the one hundred eighty (180) day period. The existence of an active building permit has no bearing

on determining whether the Project has been Abandoned for purposes of this Agreement and Plan. DEVELOPER shall provide COUNTY with status reports about construction activity occurring on the Project site every one hundred eighty (180) days. Each such status report shall describe the percentage of completion of the Project and such other information concerning the status of the construction of the Project as the COUNTY may reasonably require.

4. In the event said Decommissioning Actions identified in the Plan are not completed to the satisfaction of the COUNTY within the time prescribed in said Plan, or any extensions of time granted by the COUNTY thereto, the COUNTY may serve upon the DEVELOPER written notice of such default to their respective mailing address as set forth in this Agreement and thereafter the COUNTY may exercise its rights under the Security, including without limitation making drafts on said Account or requests for withdrawals of Funds there from by the COUNTY which shall be valid and binding and shall be honored upon the sole signature of the Director of Comprehensive Planning of COUNTY or the designee. The COUNTY shall use all Funds drawn from said Cash in lieu of Bond pursuant to this Agreement solely for the completion of the Decommissioning Actions identified in the Plan. Any excess Funds remaining held by the COUNTY following the completion of such Decommissioning Actions by COUNTY shall be promptly released to Developer.
5. The DEVELOPER agrees that the Cash in lieu of Bond provided for in Section 2 above is based upon the estimated cost of the Decommissioning Actions called for in the Plan. It is understood and agreed that, in the event the actual cost of said Decommissioning Actions exceed such sum, the Developer is in no way relieved by this Agreement and the Plan from the obligation of paying the amount of such excess. If the actual cost of said actions exceeds the sum of the Cash in lieu of Bond , the Developer shall pay such amounts to the County within sixty (60) days of receipt of invoice from the County in the event the Decommissioning Actions are not timely completed by the Developer. If after sixty (60) days the Developer has not paid such excess amounts to the County, the County may recover the excess costs incurred in abating the conditions on the Property by recording a lien against the Subject Property in the amount of costs incurred to abate the conditions, or by commencing a civil action in District Court to recover the costs, or both.
6. DEVELOPER hereby grants to the COUNTY a perfected security interest in the Cash in lieu of Bond to secure Developer's obligations to complete the Decommissioning Actions in accordance with the Plan. This Agreement grants to COUNTY "control" of the Funds as contemplated by Nevada Revised Statutes. The County's claim to said Funds shall be prior to that of any creditor of DEVELOPER, or any receiver or trustee in the event of insolvency of bankruptcy of DEVELOPER; and that in such event, said Funds shall not be administered by any receiver or trustee, but shall be paid and distributed according to the terms of this Agreement.
7. Upon final acceptance by the Director of Comprehensive Planning of the timely completion of all of the Decommissioning Actions called for in said Plan, upon the issuance of a Certificate of Completion or Occupancy for the Project, or upon expiration of UC-21-0382 if Decommissioning Actions are not required pursuant to this Agreement, the Agreement shall become null and void and of no further force or effect, and any Funds remaining in said Account shall be released to Developer.
8. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors, and assigns. The County consents to the assignment of the rights and obligations of the Developer to 63SLVB, Propco LLC, a Delaware limited liability company, provided that the County receives written notice of assignment.

9. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given when personally delivered or three (3) business days after deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage pre-paid and addressed as follows:

COUNTY:

Sami Real
Comprehensive Planning Department
1st Floor, Clark County Government Center
500 Grand Central Parkway
Las Vegas, Nevada 89155

DEVELOPER:

63SLVB Propco, LLC
Attn: Brett Torino
4455 Wagon Trail Avenue
Las Vegas, Nevada 89118

10. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between COUNTY and DEVELOPER except as specifically provided herein. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party to this Agreement, including without limitation, any broker, and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.
11. The laws of the State of Nevada shall be applied in interpreting and construing this Agreement. The parties hereby submit to the exclusive jurisdiction of the Eighth Judicial District Court located in Clark County, Nevada.
12. No person or entity other than those expressly named herein shall have rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals.

COUNTY:

County of Clark, a political subdivision
of the State of Nevada

Attest

By: _____
Marilyn Kirkpatrick

Lynn Marie Goya

EXHIBIT "A"

63SLVB Propco, LLC

Project 63 Shopping Center Decommissioning Plan

Below is the Decommissioning Plan ("Plan") for the 63SLVB Propco, LLC Shopping Center project ("Project") to be constructed at 3716 Las Vegas Boulevard South, Las Vegas, Nevada 89109. This Decommissioning Plan is attached to and made a part of that certain Performance Agreement (the "Agreement"), dated as of November 3, 2021, between the County of Clark and 63SLVB Propco, LLC. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement. The intent of this document is to address how the entire Project will be decommissioned, if necessary. In the event the project is Abandoned by DEVELOPER and decommissioning is required per the terms of the Agreement, this Plan shall be implemented per the requirements below.

Project Description:

The Project site is approximately 2.0 acres and located on the southwest corner of Las Vegas Boulevard South and Harmon Avenue. The Project is a shopping center consisting of a building with four (4) stories located above grade and existing basement levels, loading spaces, service areas for trash disposal, a parking garage, management offices and storage areas for the tenants. Three (3) levels of the building will be divided into leasable spaces and used for a variety of shopping and retail uses. One (1) level, being level four (4), is planned for restaurant/dining with an outdoor terrace. The Project is generally surrounded by The Cosmopolitan Las Vegas Hotel to the north, CityCenter Resort Complex (Crystals and the area Aria Resort Hotel) to the south and west, and the Harmon Market Place Shopping Center and other retail and restaurant establishments to the east across Las Vegas Boulevard South. The Project encompasses the area attached as Exhibit "B".

Decommissioning Work:

The "Decommissioning Work" consists of the following measures, which shall be implemented as required by the terms of the Agreement:

- A. Complete all remaining work necessary to make the site safe to the satisfaction of the Director of the Department of Building and Fire Prevention ("Building Official") or their designee. (Value: \$25,000.00).
- B. Erosion and sediment control measures around the property shall be left in place including Storm Water Pollution Prevention Plan ("SWPPP"). If needed or required, additional SWPPP shall be provided for. (Value: \$1,000.00)
- C. Conduct a wind study analysis or other required structural engineering studies on areas of the Project where the building is partially enclosed, make available to the County the results of the wind study analysis or other analysis, and take appropriate measures to ensure the structural stability of the building enclosure. (Value \$5,000.00)

- D. Fence along perimeter of the property shall be left in place and additional fencing with screen material shall be provided, as necessary, to enclose and screen the site. All fencing and screening materials, and the placement of such, shall be to the satisfaction of the Building Official. The screening material will be of a neutral color and kept in good condition and free of graffiti. The fence will have locked access points to allow authorized entry for both pedestrian and vehicular traffic including fire department access. (Value: \$7,500.00)
- E. Complete drainage and any in-grade foundations with reinforcing steel in place, to the satisfaction of the Building Official. (Value: \$50,000.00)
- F. Wrap the publicly exposed building elevations in a 6 mil, high strength shrink wrap or equal product. The product will be made of fire retardant poly that is both static free and anti-microbial. Shrink wrap will meet or exceed National Fire Protection Association (NFPA) 701, Test Method 2 (large scale) requirements. Shrink Wrap will be neutral in color or other subdued hue acceptable to the County. (Value: \$75,000.00)
- G. De-energize and isolate any and all unused external utilities to the site in co-operation with the appropriate utilities as required. (Value \$25,000.00)
- H. Complete all remaining work necessary to install, protect and maintain all working fire hydrants per approved plans to the satisfaction of the County. If vertical construction has commenced, not less than one Class I standpipe system shall be installed and functional throughout the building where the floor level of the highest story is located more than 40' above the lowest level of fire department vehicle access, or where the floor level of the lowest story is located more than 30 feet below the highest level of Fire Department vehicle access. On or before December 1 of the year in which the Project is Abandoned, the standpipe will be provided with required freeze protection. A standpipe is a type of rigid water piping which is built into multi-story buildings in a vertical position or bridges in a horizontal position, to which fire hoses can be connected, allowing manual application of water to the fire. Signage will be provided indicating the areas that each standpipe serves and the areas where the wet sprinkler systems shall be discharged. (Value \$20,000.00)
- I. Remove from the site or consolidate and store on-site as provided herein all materials, equipment, and trailers within 90 days after construction is considered Abandoned. Watchman's trailers are permitted at designated entry points for security purposed. Any fixed equipment on site and not yet installed in the project may be disassembled into original component parts, temporarily stored at the staging areas until secured or removed from the site by truck. Once the components are disassembled and at the ground level, the materials may be transported to various storage and/or salvage facilities. All non-salvageable components will be processed and safely transported to an approved disposal facility. Equipment and construction materials may be consolidated and stored on-site in an organized fashion upon the site so long as such storage areas are screened from view. Cranes will be dismantled and removed from the site and crane pads will be decommissioned within 90 days after construction is considered abandoned. (Value: \$30,000.00)

The total cost of the decommissioning work is estimated at \$250,425.00

Monitoring:

Follow-up monitoring will be conducted to ensure fence and screening are in place and in good order; and additional monitoring activities may also be conducted, depending upon the site conditions at the

time of decommissioning. If negative impacts are noted during monitoring activities, appropriate remediation measures will be implemented as necessary.

- A. Site and emergency lighting shall be maintained. Electrical Rooms shall be monitored on a daily basis. These rooms shall be environmentally controlled for the protection of equipment. Any de-watering systems shall be maintained in an operational condition. The principal design professional shall evaluate the structure for both architectural and structural integrity. Area safety and security of the structure shall be maintained. Safety and security staff shall continue to patrol, secure and guard the site twenty-four (24) hours a day. The building shall be secure from unauthorized access twenty-four (24) hours a day.

- B. Fire pumps shall be monitored and routinely tested in accordance with the Fire Protection Agreement and Clark County Department of Building and Fire Prevention requirements. All temporary fire pumps shall remain in place and operational in accordance with the approved Fire Protection Agreement and Clark County Department of Building and Fire Prevention requirements. All in place and functional fire/life safety and fire protection systems, permanent and temporary, shall be maintained operational and monitored. Safety and security staff shall continue to patrol, secure and guard the site twenty-four (24) hours a day; and only essential authorized personnel shall be allowed on site.

Cash in lieu of Bond

In accordance with Clark County requirements, Developer will provide Cash in lieu of Bond in an amount equal to the highest estimated cost noted in this Decommissioning Plan (\$250,425.00). In order to address any costs above the estimated amount, the above plan and Cash in lieu of Bond includes a 5% contingency (“Contingency”) for any unforeseen costs not included (\$11,925).

EXHIBIT "B"

Project Site Plan

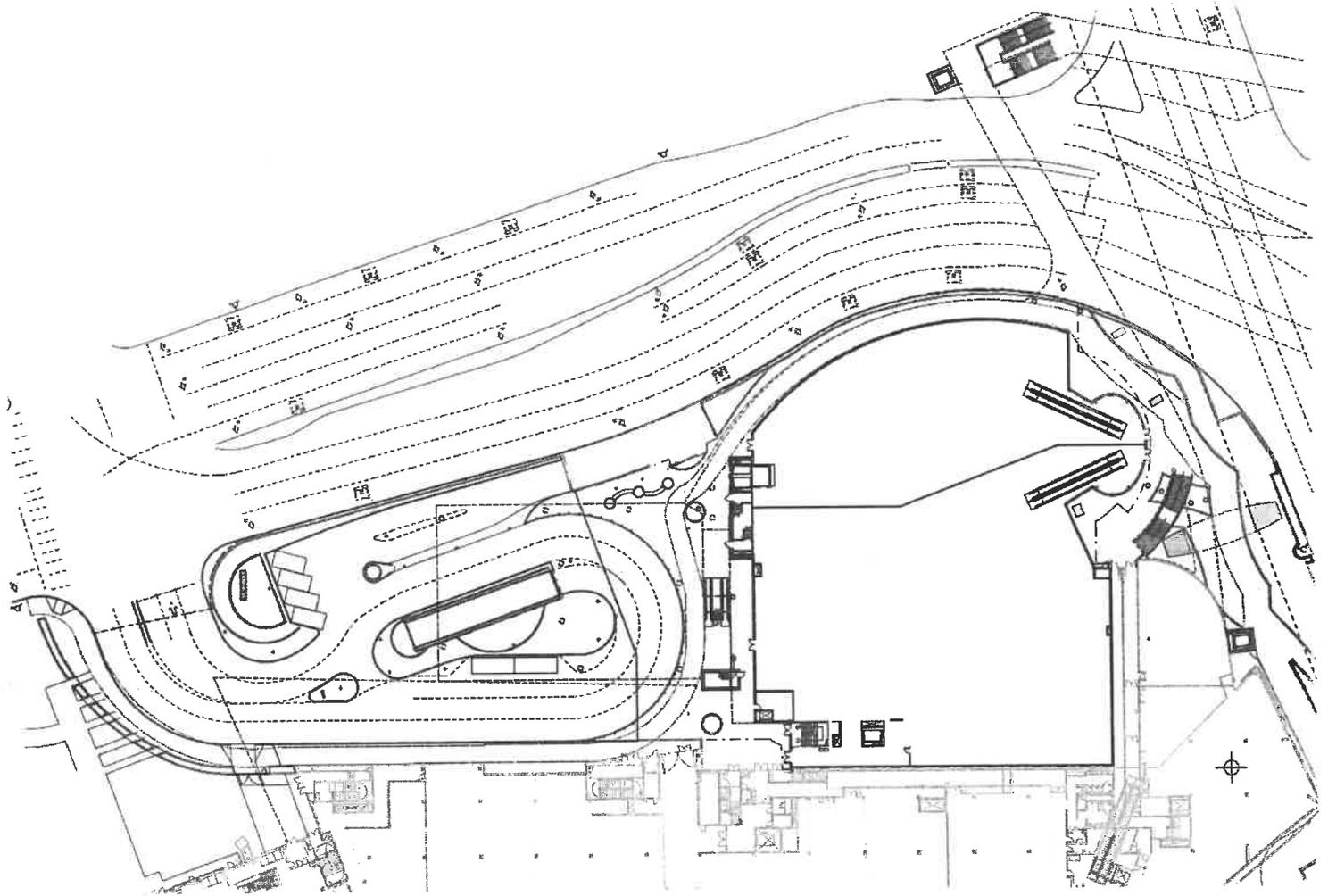


EXHIBIT “C”

Cash in lieu of Bond (copy of Receipt)



Clark County
 Department of Comprehensive Planning
 500 S Grand Central Pkwy . PO Box 551741
 Las Vegas, NV 89155-1741
 Phone (702) 455-4314 . Fax (702) 455-3271
<http://www.ClarkCountyNV.gov>

PAYMENT RECEIPT: 20925117
CASHIER: DZW
RECEIPT DATE: 10/13/2021

Receipt

Record Information: Record Type - Agenda Items

APN: 16220711014

Record Number	Project Name	Site Address
21-900626	Discussion	3716 S LAS VEGAS BLVD

Fee Information

Item Description	Notes	Date Assessed	Amount
Cash in Lieu of Bond		10/13/2021	\$250,425.00
Total Fee Amount:			\$250,425.00

Payment Information

Method	Reference No	Comments	Payor	Transaction Amount
Check	1045		63 SLVB PROPCO, LL C	\$250,425.00
Total Amount Paid:				\$250,425.00

Board of County Commission Meeting: 11/3/2021

Your request is TENTATIVELY scheduled for the above listed date(s). If your submittal is found to be incomplete or incorrect your request may be delayed. Confirmation of the meeting date will be sent to the correspondent listed on the application form.

EXHIBIT "D"

Decommissioning Costs

Decommissioning Agreement		
Section in Agreement	Decommissioning Work Description	Value
A	Secure Site – Allowance for electronic security monitoring and on-site security if needed.	\$25,000
B	SWPPP – All existing SWPPP measures in place at time of decommissioning will be left in place on site. Allowance for additional SWPPP needed or required maintenance of existing.	\$1,000
C	Special Studies – Wind analysis or any required structural engineering studies.	\$5,000
D	Perimeter Fencing – All of the project site perimeter is currently fenced and screened. Allowance for maintenance to fencing and additional screening if deemed necessary.	\$7,500
E	Complete Site Grading – Site grading is complete and cover with concrete or asphalt paving. Allowance to backfill any open foundations and close up any holes thru the existing slab on deck.	\$50,000
F	Wrap Existing Structures -Wrap the publicly exposed elevations of all incomplete building;	\$75,000
G	Decommission Utilities – De-energize and isolate utilities - NV Energy, SW Gas, Water District, communications provider.	\$25,000
H	Fire Suppression – complete all fire suppression requirements.	\$20,000
I	Removal of Materials – removal of all loose construction materials, equipment, and trailers from site; demobilize crane if necessary.	\$30,000
J	Contingency – County required 5% contingency factor	\$11,925
	Total	\$250,425