

# Disposition, Development & Funding Agreement

Microbusiness Housing, LLC

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This Disposition, Development, and Funding Agreement (“Agreement”) is entered into as of \_\_\_\_\_ by and between Microbusiness Housing, LLC, a Nevada limited liability company (“Owner”), and Clark County, a political subdivision of the State of Nevada (“County”),

## SECTION 1: RECITALS

WHEREAS, the County desires to facilitate the creation and ongoing availability of affordable housing within the County, particularly within the Las Vegas area; and

WHEREAS, NRS 244.189 states that a Board of County Commissioners may exercise such powers not in conflict with the provisions of the NRS or other laws or regulations of this state as the Board determines are necessary and proper for the development of affordable housing; and

WHEREAS, Clark County Board of Commissioners (“BCC”) hereby determines that this Agreement is necessary and proper for the development of affordable housing; and

WHEREAS, County owns the certain parcel of land described as Assessor Parcel Number 139-22-201-005, located on the North side of West Lake Mead Boulevard near Englestad Street, North Las Vegas, Nevada, and consisting of approximately 4.9 acres, (hereinafter the “Site”) and described in **Exhibit A**; and

WHEREAS, on March 23, 2023, County issued an application (“Application”) for the “Development of Affordable Housing, Microbusiness Park Site” on the Site, to solicit applications by interested entities based on a competitive process and the criteria outlined in the Application; and

WHEREAS, on June 20, 2023, the BCC held a public hearing and selected Owner as the successful applicant to develop affordable housing upon the Site; and

WHEREAS, the Owner shall obtain financing for and develop the planned affordable housing, referred to as the “Project,” which will be further defined in this Agreement; and

WHEREAS, the County will be the primary builder of a commercial/office development on the southern portion of the Site (“Commercial Portion of the Site”); and

WHEREAS, upon recordation of a commercial final map and record of survey, County shall convey its fee interest in the newly created housing portion of the Site (“Housing Portion of the Site”) to the Owner for \$1; and

WHEREAS, the Owner shall be responsible, in coordination with the County, for preparing the Site for development and subdivision including entitlements, a commercial subdivision map, offsites, and other site improvements further defined in this Agreement; and

WHEREAS, the County will assist and support the development of Project, loan to the Owner County Human Services and Education Sales Tax Funds (“HSEST”) subject to the terms of this Agreement, and loan to the Owner State of Nevada American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (“ARPA”) awarded to the County for the development of the affordable housing on the Site, subject to the terms of this Agreement and the County’s executed Amended and Restated Grant Agreement for American

Rescue Plan Act Coronavirus State And Local Fiscal Recovery Funds with the State of Nevada (attached as **Exhibit J**) respectively.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions contained herein, the parties agree as follows:

## **SECTION 2: THE PROJECT**

### **2.1 Project Description**

As currently planned and assuming approval from the City of North Las Vegas, the Project will consist of a new 76-unit affordable rental development located in North Las Vegas, Nevada on the Housing Portion of the Site. The proposed unit count is based upon the full build-out of the Housing Portion of the Site as two-story walk-up apartment buildings. The overall unit breakdown includes 8 studio units comprised of 440 - 525 square feet each; 28 one-bedroom units comprised of 625 - 775 square feet each; 32 two-bedroom units comprised of 980 – 1,075 square feet each; and 8 3-bedroom units comprised of 1,160 – 1,225 square feet. Units will be income and rent restricted (see **Exhibit B** for detailed unit mix and targeted Area Median Income (AMI) thresholds). All units will be available as affordable or workforce housing with income and rent restrictions of 50% for 2 of the units, 60% AMI levels for 33 of the units, and 80% AMI levels for 41 of the units.

The 16-unit Building A and the 24-unit Building B, each appear twice on the site plan. One variation of Building B removes 4 units to house the Leasing and Management offices at the entrance of the neighborhood and a Community Room facing a central open space. The buildings consist of two stories of flats, with the ground-level units being accessible through patio entries. The second-story units are accessed by a common stair, each serving 4 units.

The community will include the following common amenities throughout the property to provide ample opportunities for neighbors to interact, entertain, and recreate. At the front of the community, residents will be welcomed home by a 1,567 square-foot office with lobby lounge, leasing and management offices as well as a common computer room. On the north end of the same building will be the 1,567 square foot community room with a kitchen that connects to a 3,868 square foot courtyard. Also in this area is the fitness center. The provided outdoor open spaces will have shaded seating and gathering areas and bar-b-ques. There will also be landscaped perimeter walking paths to connect the community to existing playgrounds to the west. Apartment units will feature in-unit laundry, eat-in kitchens, patios/ regular balconies/Juliet balconies (in certain units), ample storage, and flexible spaces which may be adapted by each resident for working and learning from home.

### **2.2 Funding Description**

In addition to the conveyance of the Housing Portion of the Site, which will be sold to the Owner for \$1, the County will loan to the Owner \$14,174,905, but in no case more than \$15,000,000, in HSEST funds for the Project (the “HSEST Loan”); the County will loan \$11,000,000 in ARPA funds to the Project (the “ARPA Loan”); the Project also anticipates receiving a loan of HUD HOME funds in the amount of \$500,000 from the City of North Las Vegas (“NLV HOME Loan”); and the Project also anticipates receiving a private loan in the approximate amount of \$5,260,000 (the “Permanent Loan”). Construction financing will be provided in the approximate amount of \$3,900,000 (the “Construction Loan”). Final HSEST funding and other funding, along

with name of lender(s) for Permanent Loan and Construction Loan, will be disclosed to County no later than 15 days prior to closing and will be included in the Deeds of Trust and Promissory Notes, executed at closing. The HSEST Loan and the ARPA Loan will each have a 40-year term at 0% interest, with a payment at maturity.

### **2.3 Term**

The term of this Agreement shall commence on the date of the last signature of either party executing this Agreement and shall expire upon completion of the Affordability Period, as such term is defined below unless otherwise provided herein.

The Affordability Period and the Declaration of Restrictive Covenants, as outlined in Section 6.2 below, shall continue irrespective of any repayment of either County HSEST or State ARPA. Failure of the Project to meet all applicable requirements of the County HSEST or State ARPA funds and of this Agreement, subject to applicable notice and cure periods, for the entire Affordability Period will result in a requirement that all County HSEST funds and ARPA funds, which may include penalties and interest as assessed by Clark County, be repaid within thirty (30) days of Owner receiving written notice from the County.

### **2.4 Affordability Period**

The ("Affordability Period") during which Owner must maintain compliance with all applicable requirements laid out in this Agreement and those applicable to the State ARPA funds, shall begin with initial occupancy of the Project and shall run for 99 years.

County and Owner further acknowledge that the Project will be subject to other periods of affordability or compliance periods as the result of anticipated receipt of NLV HOME funding. Both parties acknowledge that each such program specifically defines its own affordability and/or compliance period, which may begin on different dates and be of different durations than the County Affordability Period outlined above. Nothing herein is intended to limit, modify, or otherwise affect such periods imposed by other programs.

Notwithstanding, the County may subordinate, waive or cancel any remainder of the Affordability Period to accommodate a future transaction whereby the Project is sold, refinanced, or otherwise recapitalized through a state or federal program intended to preserve the Project's character as affordable housing. Further, Owner may request that the County modify or subordinate specific provisions of this Agreement to align various requirements (e.g., income determination procedures, lease provisions, or the like) with similar requirements to which the Project may be subject. Any such subordination, waiver or cancellation shall require the execution of a formal modification or termination of this Agreement. Owner, upon receiving prior written consent from County, which will not be unreasonably withheld, may refinance any senior or junior debt so long as (i) the holder of the new loan is an institutional, non-profit or governmental lender and (ii) the new loan is on then existing market terms and conditions for loans of its type.

### **2.5 Establishment of Project Completion**

The County will notify Owner of the actual date of project completion ("Project Completion") and the exact date of the expiration of the Affordability Period. If necessary, and if requested in writing, Owner shall execute an amendment to this Agreement and/or the Declaration of Restrictive Covenants with the Land identifying the exact date of expiration of the Affordability Period.



## 2.6 Budget and Plan of Finance

Owner shall pay all predevelopment costs, project infrastructure costs and affordable housing construction costs required to complete construction of the Project under this Agreement (subject to any reimbursement to the Owner by County pursuant to Section 4.3(b)). Owner shall complete a Project Budget ("Project Budget"), attached in **Exhibit D**, which shall be submitted in a manner substantially to the form provided by the County and referred to as the Financial Feasibility Spreadsheet, which shall be subject to County approval, including subsequent changes or updates, up to the execution of the close of construction financing of the project. *Owner shall include in the Budget the specific proposed uses of the State ARPA funds, which shall be dedicated only to costs associated with the units and associated amenities and infrastructure serving households at 60% AMI and below.*

Owner shall submit to County for review a Plan of Finance ("Plan of Finance"), which should include documentation that Owner has obtained a commitment from a lender sufficient to finance construction of the Project considering the cost estimates outlined in the Project Budget. Financing shall be executed prior to or concurrent with transfer of the Housing Portion of the Parcel. The Declaration of Restrictive Covenants (Exhibit G) will be executed prior to the execution and transfer of the Quit Claim Deed (Exhibit E) for the Housing Portion of the Site and recorded in first position at closing.

The submittals to the County shall include the following and shall be provided on a regular basis and whenever substantive changes occur, up to close of construction financing: (a) a commitment letter from a construction lender to the Owner accepted and signed by the Owner which specifies all material terms, pricing, fees and conditions for construction financing sufficient to pay for the development of the Project in accordance with this Agreement; and (b) other documentation as evidence of other sources of capital sufficient to demonstrate that Owner has adequate funds to cover the difference between the total costs stated in the Plan of Finance estimated for the construction and completion of the Project, less financing specified in the commitment letter required in subsection (a) above. County shall notify Owner within fifteen (15) days of receipt of the documents required to be submitted in (a) and (b) above if the submitted documentation is not complete, does not comport with the terms of this Agreement. Upon County request, the Owner shall update the documents required to be submitted in (a) and (b) above, which updated submittal shall be subject to the same timeframe for the County's review above. Owner shall report promptly to the County on material changes that may affect the Owner's ability to close or the economic viability of the Plan of Finance and shall submit updates as appropriate for the County's review.

The County must approve material changes to the Project Budget and reserves the right to reduce its HSEST commitment or require Owner to contribute additional funds needed to complete the Project if the changes to the Project Budget are material and result in either the over-subsidization or under-funding of the Project based on the County's underwriting analysis. For purposes of this section, material changes are:

- a) The receipt of any new or additional sources of funding or the increase in any permanent funding source;
- b) Any change that, on net inclusive of any concurrent or prior changes in the Project Budget, exceeds the hard cost and/or soft cost contingency, as applicable, line items of the Project Budget;
- c) Any change in a line item that exceeds the greater of 50% of approved budget for such line item or \$100,000 whichever is greater; or

- d) Any change that eliminates a given line item.

### **SECTION 3: REQUIREMENTS OF FUNDING INCLUDING DISBURSEMENTS**

Because the County is providing two separate sources of funding for this Project, County HSEST funds and State ARPA funds, please note the differences in the uses, reporting, and disbursement of these funds, as outlined below. The key difference between these two funding sources is that State ARPA funds must only be used for the construction of the 60% AMI units, or below, in the Project and any common space or infrastructure associated with those units. The disbursement requests and reporting for the State ARPA funds must reflect these uses only. County HSEST does not have any similar restriction. Owner agrees to follow the requirements outlined throughout this Agreement for each of these two funding sources and for the costs and activities upon which each of these funds are expended.

#### **3.1 Terms of County HSEST Funds**

The County will provide HSEST funding as a loan to the Project. The funds may not be subsequently loaned or granted to another entity.

The HSEST Loan will bear interest at 0.0% per annum (provided there is no default). Amounts advanced to or for the account of the Owner will be due and payable to the County by Owner in Annual Anticipated Cash Flow installments, as defined below, from Surplus Cash over a FORTY (40) year term and all principal and interest outstanding shall be due on the maturity date of the Note. Annual Anticipated Cash Flow means any payments made to the extent of available Surplus Cash each year after the annual payment towards the Deferred Developer Fee as shown in the schedule at Exhibit A of the HSEST Promissory Note, which schedule will be finalized at least 5 days prior to closing. The first Annual Anticipated Cash Flow payment is due on the first anniversary of the date of project completion in the projected amounts shown in the Annual Anticipated Cash Flow payment schedule provided in Exhibit A of the HSEST Promissory Note plus all additional available Surplus Cash, as such term is defined in Section 3.9 and as such distribution is limited in section 3.9.2. If Surplus Cash is insufficient to satisfy the projected Deferred Developer Fee payment set forth in Exhibit A of the HSEST Promissory Note in any given year, such unsatisfied payment amount will accrue and be paid with the subsequent year's payment until such time as the annual Deferred Developer Fee outstanding is paid, and any remaining Surplus Cash shall then be applied to the HSEST Loan in accordance with the payment schedule in Exhibit A of the HSEST Promissory Note. If there is any unpaid Deferred Developer Fee remaining after payment in full of the total of all annual Deferred Developer Fee amounts, Surplus Cash will be applied toward any remaining Deferred Developer Fee balance until such balance is paid in full, after which time the HSEST Loan will receive payment equal to 75% of the remaining available balance of Surplus Cash, until the HSEST Loan is repaid in full. All outstanding principal and interest shall be due no later than sixty (60) days after the end of the payment schedule. Notwithstanding anything to the contrary contained herein or in the Loan Documents, and for the avoidance of doubt, nonpayment of principal or interest on the HSEST Loan in any year due to the unavailability of sufficient cash flow shall not constitute a default hereunder or under any of the Loan Documents.

The County's willingness to provide the HSEST funds as anticipated herein is contingent upon and made with specific reliance on its evaluation of Owner.

Owner agrees that no sale or transfer of general or limited partnership interests, member interests, managing member interest, or other controlling interest in the Owner will be made without the prior written consent of the County. This will include but is not limited to the voluntary or involuntary re-assignment of the role of general partner, managing member, or other controlling entity or individual to another entity or individual.

### **3.2 Disbursement of County HSEST Funds**

Owner may request disbursement of the HSEST funds, not including amount of required retention, to pay down the balance of the then outstanding Construction Loan and/or for development costs of the Project incurred from Project closing on. One million dollars (\$1,000,000) of the HSEST Loan amount will be retained by the County and made available pursuant to the Conditions of Final Disbursement below. Requests for disbursement shall be made no more frequently than monthly.

The Owner may request HSEST-eligible costs contained within the Project Budget incurred up to 24 months prior to the execution of this Agreement including but not limited to: costs for design, engineering, planning, permits and fees, and the cost of land, to be reimbursed with HSEST funds. This request will be subject to the approval of the Clark County Community Housing Administrator. Otherwise, HSEST-eligible costs incurred prior to this Agreement and contained within the Project Budget approved by the County may be paid with other sources of financing.

Further, upon request, Owner shall provide, and the County shall retain the right to review all draws for the Project, regardless of whether the HSEST funds will be used to fund any given draw.

#### **3.2.1 Conditions of HSEST Disbursement**

Proceeds will only be released to Owner for actually incurred Project costs. The obligation of the County to make any disbursement of HSEST funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- a) Owner shall not be in default under the terms of this Agreement and any additional documents associated with this Agreement and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default.
- b) The Project shall not have been materially damaged by fire or other casualty.
- c) To the extent applicable to the specific draw, the County shall have received evidence satisfactory to the County that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- d) Owner shall have submitted at least ten (10) days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation or inspection as may be required by the County including, without limitation, the following:
  - i) Appropriate lien releases.

- ii) Appropriate certifications of compliance in all respects with applicable labor standards.
  - iii) Such other supporting evidence as may be requested by the County or its agent to substantiate all payments that are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
- e) The County shall have determined that all requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of the required prevailing wage.
  - f) If and when applicable, the governing jurisdiction's Building Department inspector shall issue a current, approved inspection report. No determination shall have been made by the County that the undisbursed amount of HSEST funds or other project sources is less than the amount needed to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

### **3.2.2 Conditions of Final Disbursement**

In addition to the requirements set forth in Section 3.2.1, the County shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities, if any, and corrections of defects in workmanship and/or materials:

- a) A permanent certificate of occupancy, if applicable, or a final approved construction report for the Project;
- b) Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations;
- c) Evidence satisfactory to the County that the Project has been completed lien free and substantially in accordance with the plans and specifications, including any work done on the Commercial Portion of the Site, as agreed upon in this document, or if any liens do exist, such liens have been fully bonded or insured over to the reasonable satisfaction of the County;
- d) Review and final settlement of the cost certification described in Section 3.16 below; and,
- e) Such other supporting evidence as may be requested by the County or its agent to substantiate all payments that are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.

The parties further covenant and agree that:

- a) In the event that the County discovers a misstatement in any affidavit, statement, or certificate furnished pursuant to this Agreement, it shall make no further disbursements until such misstatement has been corrected;

- b) The County assumes no liability to Owner for mechanic's lien claims;
- c) If, at any time during the course of construction, the total of the unpaid disclosed cost of construction, as indicated by the column totals on the general contractor's sworn statement, exceeds the amount of the undisbursed development sources, the County shall not be under obligation to make further disbursement under the terms of the Agreement until Owner has deposited with the County the sum necessary to make the available funds equal to the unpaid disclosed cost of construction; and
- d) If, after the first disbursement, a further title search reveals a subsequently arising exception over which the title insurance company is unwilling to insure, the County shall discontinue disbursement until the exception has been disposed of to the County's satisfaction.

### **3.2.3 Disbursement of Owner's Funds**

If the County shall at any time in good faith determine that the undisbursed amount of available financing is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project and shall thereupon send written notice thereof to Owner specifying the amount required to be deposited by Owner with the County or its agent to provide sufficient funds to complete the Project, Owner agrees that it will, within five (5) business days of receipt of any such notice, deposit with the County or its agent, in an interest-bearing account, the amount of funds specified in the County's notice, and may, at Owner's request invest the funds in "Temporary Investments". "Temporary Investments" means any of the following: (i) cash deposits (including certificates of deposits) at commercial banks; (ii) obligations of the United States or any State or Municipality, thereof, that have an initial or remaining term of sixty (60) days or greater; or (iii) money market mutual funds that are registered investment companies under the Investment Company Act of 1940. Owner agrees that any such funds deposited with the County, or its agent may be disbursed by the County or its agent, before any further disbursement of funds from the County, to pay any and all costs and expenses of any kind in connection with completion of the Project. Notwithstanding the foregoing, funds deposited by Owner with the senior lender or at lender's election, in a construction escrow agent pursuant to a construction escrow agreement for the purposes described herein shall satisfy the conditions of this paragraph.

### **3.2.4 Disbursement of Owner's Funds**

Notwithstanding anything herein to the contrary, the County shall have the irrevocable right at any time to apply funds that it agrees to advance hereunder to pay any and all expenses incurred in connection with the enforcement of its remedies under Section 11 hereof, all without receipt of a draw requisition for funds from Owner.

## **3.3 Terms and Disbursement of State ARPA Funds**

- a) Owner may request reimbursement of State ARPA funds from the County for the 60% AMI units and below (and associated amenities and infrastructure) no more than monthly up to total award and until awarded State ARPA funds are exhausted and must use the form contained in

Exhibit C (including corresponding financial reports) to do so. Expenditures submitted for reimbursement from State ARPA funds will be accounted for in a ledger separate from all other revenue sources.

- b) The County will require awardee to comply with requirements set forth in the United States Office of Management and Budget (OMB) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 CFR Part 200, Subparts A through F, inclusive, including, without limitation, the procurement requirements set forth in 2 CFR part 200, Subpart D, the United States Department of Treasury's (Treasury) Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds (Compliance Guidance), Department of the Treasury 31 CFR Part 35 Coronavirus State and Local Fiscal Recovery Funds Final Rule (Final Rule), and any subsequent updates, including Treasury's Frequently Asked Questions.
- c) Not more than ten percent (10%) of the State ARPA Funds provided pursuant to this Agreement may be used for administrative expenses or developer fee, or a combination thereof.
- d) Owner will not use any State ARPA funds or resources which are supplied by pursuant to this Agreement in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also agrees to notify the County and the State of Nevada, Housing Division (the "Division") of any legal action which is filed by or against it involving the Project or this Agreement.
- e) Funds must be obligated by December 31, 2024. "Obligated" means Funds which have been committed for an eligible cost. Execution of this Agreement is sufficient to obligate such funds to obligate costs. Funds must be expended by December 31, 2026. Any Funds not obligated or expended by the applicable time period must be returned to the County who will subsequently return the funds to the Division.
- f) If the Owner has not used the State ARPA funds it has been awarded to cover services or costs for the period ending December 31, 2026, Owner must notify the County by January 31, 2027, as any unappropriated State ARPA funds remaining are to be subject to recoupment and will be repaid to the Division. If the County finds that the total amount of the State ARPA funds awarded to the Owner are not expended in the time and manner prescribed in this Agreement, the County reserves the right to require the Owner to return any State ARPA funds expended or used in a manner consistent with Section 601 (d) of the Social Security Act and other criteria outlined by Treasury. The County reserves the right to otherwise complete the portion of the Project to be funded with State ARPA funds (units at or below 60% AMI) for expenditure prior to December 31, 2026, or for the purposes of returning funding to the Division or the U.S. Treasury as outlined in any guidance. County will not be obligated to reimburse costs incurred subsequent to the revocation date.
- g) Owner shall comply with the following laws and directives:
  - 1. The Hatch Act as set forth in Title 5, Chapter 15, of the United States Code.
  - 2. The National Environmental Policy Act of 1969 as set forth in Public Law 91-190 and the implementing regulations in 24 CFR, Parts 51 mid 58.
  - 3. Title VIII of the Civil Rights Act of 1968, Public Law 90-284.

4. Section 109 of the Housing and Community Development Act of 1974.
5. Title VI of the Civil Rights Act of 1964, Public Law 88-352, and the regulations of HUD with respect thereto, including 24 CFR, Parts 1 and 2.
6. The Fair Housing Act, as amended.
7. Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations of HUD with respect thereto, including 24 CFR Part 75. All published Section 3 policies, guidelines, and forms by the Division will be utilized and followed.
8. The Age Discrimination Act of 1975.
9. Section 504 of the Rehabilitation Act of 1973.
10. Executive Order 11246, as amended, and the regulations which are issued pursuant thereto.
11. The Fair Labor Standards Act.
12. Section 202(a) of the Flood Disaster Protection Act of 1973.
13. Sections 302 and 401(b) of the Lead-Based Paint Poisoning Prevention Act and implementing regulations in 24 CFR, Part 35.
14. The Davis-Bacon Act, as amended, if applicable, which requires that all laborers and mechanics who are employed to perform work on the Project, or any contractor or construction work which is financed, in whole or in part, with assistance which is received under the Housing and Community Development Act of 1974 shall be paid wages at rates which are not less than those that prevail in the locality for similar construction and shall receive overtime compensation in accordance with the Contract Work Hours and Safety Standards Act. The contractor and its subcontractors shall also comply with all applicable Federal laws and regulations which pertain to labor standards, including the minimum wage law.
15. 45 CFR, Part 76, Subpart F of the Drug-Free Workplace Act of 1988.
16. Section 319 of Public Law 101-121, of the Department of the Interior. Appropriations Act, which prohibits the Owner from using appropriated Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan, and requires that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
17. Title I of the Housing and Community Development Act of 1974, as amended, which requires that the Project shall:
  - a. not discriminate against any employee or applicant for employment on the basis of religion and not limit employment or give preference in employment to persons on the basis of religion; and
  - b. not discriminate against any person applying for such public services on the basis of religion and not limit such services or give preference to persons on the basis of religion; and
  - c. provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing and exert no other religious influence in the provision of such public services.
18. Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).

19. Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C 794.

20. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's Implementing regulations, 31 CFR part 28.

21. Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

22. The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA), 49 CFR 24. The displacement, relocation, and acquisition are consistent with the other goals and objectives of the Project under the Agreement. The Grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with Funds.

- h) Notwithstanding any provision of this Agreement, the Parties agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the Division of an Authority to Use Grant Funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 50, if applicable to the Project. The Parties further agree that the provision of any Funds to the Project is conditioned on the County and the State of Nevada's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review, if applicable to the Project.
- i) Owner shall comply with the requirements of Executive Order 11625, 12432, and 24 CFR § 93.407(a)(viii) that provides for the utilization of minority businesses and women business enterprises in all federally assisted contracts. Owner shall provide the County and the Division, on an annual basis, records and data on Minority Business Enterprise, Women's Business Enterprise, and marketing efforts. The Division, in its discretion, may request such other and further information, as from time to time required to ensure compliance with the mandates of the above listed Executive Orders. These records shall contain, but are not limited to, the following data:
  - 1. Data on the attempts to reach minority-owned and female-owned businesses when announcing business opportunities;
  - 2. Data on racial/ethnic or gender character of business to whom a contract was awarded and the contract amount; and
  - 3. Data on attempts to affirmatively further fair housing.
- j) Upon the occurrence of an event of default listed herein, if the County receives notice from the Division, the County will provide Owner notice of the default and Owner shall have 30 days from the date of the notice to cure the default as set forth in the Amended and Restated Grant Agreement for American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds with the State of Nevada, provided if no such notice has been provided by the State of Nevada, if such default hereunder is not reasonably likely to be cured in such 30-day period, Owner may request additional time to cure the default that the County may grant in its sole discretion. If the Owner does not cure the default by the expiration of the applicable cure period, the entire outstanding balance, including principal and interest, becomes immediately due and owing. The County may proceed to protect and enforce its rights by mandamus or other suit, actions, or



proceeding at law or in equity. No remedy conferred by this Agreement is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy existing at law or equity or by statute. No delay or omission of the County to exercise any right or remedy accruing on an event of default shall impair any such right or remedy or constitute a waiver of any such event of default or an acquiescence therein.

### **3.4 Reserved**

### **3.5 Change Orders**

Owner must notify the County of any change orders as required herein.

Change orders meeting the following criteria must be promptly disclosed to the County but do not require pre-approval:

- a) The change order does not increase either the total contract price or line items for contractor profit, overhead, or general conditions;
- b) If moving funds between construction cost line items, the change order represents no more than \$100,000; and
- c) The change order does not extend the outside date of construction completion.
- d) The change order is disclosed to the County within thirty (30) days, typically within the next construction period draw package.
- e) Any change order regarding taxes.

All other change orders, including those related to non-construction uses within the Project Budget, will require pre-approval by the County. Owner will provide County with not less than ten (10) business days' notice of a proposed change order requiring County approval and respond promptly to any questions or clarification requests from the County. Absent a written objection to the County issued within ten (10) days of the receipt of the change order or the receipt of any additional or clarifying information reasonably requested by the County, whichever is later, such change order will be deemed approved.

### **3.6 Reserves and Other Accounts**

Owner must establish and shall maintain an Operating Reserve and a Replacement Reserve (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section or required by any lender. The Reserve Accounts shall be held in deposit in a FDIC/NCUA insured account in a Nevada bank or credit union licensed to do business in Nevada. In all cases, Owner shall notify the County within five (5) business days of i) any withdrawal from the Operating Reserve and ii) any withdrawal in excess of \$10,000 from the Replacement Reserve.

To avoid unintended duplication, provided such account otherwise meets the requirements of this section, any similar reserve or escrow account established pursuant to requirements of the lender shall satisfy the requirements of this section.

### **3.6.1 Replacement Reserve Account**

Owner shall fund a replacement reserve as required by the County. Owner shall use the Replacement Reserve Account only for eligible capital costs as may be defined from time to time by the County. Subject to any other requirements of the lender of the Permanent Loan, the Replacement Reserve Account shall be funded at stabilization, at \$300 per unit per year. Following the start of deposits, the minimum annual deposit shall be increased each year by 3%. Disbursements from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.

The County may periodically require Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the County. Alternatively, the County may conduct a capital needs assessment using its own staff or contractors, which shall be at County's sole expense. Initially, the County expects that capital needs assessments would be required every five (5) years following Project Completion. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project through the Affordability Period. With written approval from the County, the cost of obtaining a capital needs assessment can be paid from the Replacement Reserve Account if operating funds are not otherwise available.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the five-year period between scheduled assessments, Owner shall, at the County's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If the County requires an additional deposit, Owner must replenish the Replacement Reserve Account within a reasonable time frame established by the County considering current market conditions and the financial condition of the Project.

### **3.6.2 Operating Reserve Account**

On the earlier of:

- (a) Thirty-six (36) months from the date of closing of the Project's construction financing, or
- (b) conversion of the Construction Loan to permanent loan status,

Owner shall fund and maintain an Operating Reserve Account in the amount of \$470,546 ("Minimum Balance"). After Stabilized Occupancy, as defined below, the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose.

Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees. If drawn upon, the Operating Reserve Account must be replenished to its required Minimum Balance prior to distributions of Surplus Cash as defined in Section 3.9 below.

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all the following benchmarks:

- a) Physical occupancy of no less than 93% of all units;
- b) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and
- c) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments).

### **3.6.3 Escrow for Property Taxes and Insurance**

The County will allow any senior lender approved by the County to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in the absence of such an escrow managed by a senior lender, the County reserves the right, in its sole discretion, upon issuance of notice to Owner to require Owner to establish and make monthly payments toward a reserve account held by the County for tax and insurance payments.

### **3.6.4 Term of Reserve Accounts**

All required Reserve Account(s) must be maintained for the full term of this Agreement.

## **3.7 Operating Receipts and Expense Account**

The Owner shall establish and maintain an Operating Receipts and Expense Account to be reviewed by the County periodically. All rents and other receipts of the Project shall be deposited in the name of the Owner and the Project. The Owner shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as "Operating Receipts", forthwith deposit the same in the Operating Receipts and Expense Account. Thereafter on a monthly basis, the Owner shall pay, or cause to be paid, all expenses in a timely manner out of Operating Receipts and Expense Account of the Project, in the order and priority as set forth below unless otherwise directed by the County, at its sole option, in writing:

- a) Any amount required to be paid to the County or secured financing instruments associated with other County-approved permanent sources; and
- b) All of the real estate tax and insurance premium escrow payments required of the Owner which payments shall be deemed to be part of the "Operating Expenses" of the Project for the purpose of this Agreement; and
- c) All remaining Operating Expenses of the Project including but not limited to, taxes other than those for which an escrow payment is required under any mortgage, maintenance, fuel, management, water and sewage, administration, electricity, legal, audit, and all other current expenses, unless other funds for payment are set aside or deferment of payment has been approved by the County.
- d) All amounts required to be deposited in any Replacement Reserve account or any other reserve account required by this Agreement or any lender; and

- e) The fee of the Project's managing agent as set forth in the management agreement between the Owner and said managing agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses below; and

### **3.8 Occupant Security Deposits**

The Owner is further required to segregate or cause to be segregated all occupant security deposits, which are to be held in an interest-bearing depository account (hereinafter referred to as the "Security Deposit Account").

### **3.9 Surplus Cash**

#### **3.9.1 Definition of Surplus Cash**

Surplus Cash shall equal the sum of:

- a) Project cash and cash equivalents (excluding the Security Deposit Account and the Reserve Accounts);
- b) Short-term investments;
- c) Project-based rental assistance payments earned but not yet received by Owner, if any; and
- d) Any amounts noticed for withdrawal but not yet withdrawn from the Reserves or escrow accounts;

After deducting:

- e) All sums due or required to be paid within the calendar month following the date as of which Surplus Cash is calculated by the Owner (including without limitation principal, interest, mortgage insurance premium deposits, deposits to the Reserve Accounts or other required reserves, and tax and insurance escrow deposits);
- f) Other funds required to be segregated by this Agreement, including tenant security deposits and other amounts held in trust for tenants; and
- g) All other obligations of the Project payable within the next thirty (30) days, unless the obligation is paid subject to available Surplus Cash or the County has approved deferment of payment.

#### **3.9.2 Distribution of Surplus Cash**

Owner shall not make distributions of Surplus Cash (i.e., project "cash flow") to any controlling entity, member, partner, or related parties, other than for normal operating costs in the annual

budget provided to the County, any scheduled payments on financing described above in Section 3.9, and required escrow and reserve deposits without satisfaction of the following conditions:

- a) No default in the terms of this Agreement and all associated documents exists and is continuing;
- b) The Project is in compliance with all applicable property standards including all applicable laws, requirements of this Agreement and the CHF application and there are no unresolved physical deficiencies;
- c) All required reserves and escrows are fully and properly funded;
- d) The most recent annual audit of the Project has been received by the County and shows no material weaknesses or unresolved findings; and
- e) Repayments to the County shall be made as set forth in Exhibit A of the HSEST Promissory Note to the extent of available Surplus Cash after the annual payment of the Deferred Developer Fee as shown in Exhibit A of the HSEST Promissory Note. After the annual Deferred Developer Fee payment (shown in Exhibit A of the HSEST Promissory Note) is paid in full each year, the minimum Annual Anticipated Cash Flow payment due to County towards the balance of the HSEST Loan as provided in the Annual Anticipated Cash Flow payment schedule in Exhibit A of the HSEST Promissory Note and any additional Surplus Cash up to 75% shall be paid to County towards the balance of the HSEST Loan until the HSEST Loan is paid in full and then to the ARPA Loan.

Following any distribution of Surplus Cash, the Project will retain adequate liquidity to ensure uninterrupted operations. Liquidity will be measured by adding cash on hand and current receivables then subtracting current payables (i.e., liabilities), and must, following any distribution, equal or exceeding one month of gross revenue potential in the most recent annual operating budget submitted to the County.

When making a Surplus Cash distribution, Owner shall submit to the County a notice at least thirty (30) business days prior to any anticipated distribution together with a certification that all conditions for a distribution of surplus cash have been met, a current financial statement for the Project, and other documentation the County may reasonably request to assess the criteria above. Owner shall provide a prompt response to the County's requests for additional documentation, if needed.

The County recognizes that recapitalization may be needed in future years, which could impact the availability of cashflow as capital needs increase. The Owner is encouraged to contact the County in any year where projected cashflow payments may be impacted. A capital needs assessment may be required by the County at that time.

### **3.10 Reserved**

### **3.11 Title Insurance**

Prior to transfer of the Housing Portion of the Site, Owner shall provide a title insurance policy insuring the Housing Portion of the Site in standard ALTA form issued by a title company authorized to do business in the State of Nevada and acceptable to the County, and the County will reasonably cooperate and sign affidavits, certificates, resolutions and other documents reasonably required by the title company to issue such title insurance policy.

### **3.12 Covenant Running with the Land**

Prior to quitclaim of the Housing Portion of the Site, County shall execute and record the Declaration of Restrictive Covenants, as outlined in Section 6.2 below, and as drafted and attached in Exhibit G, that provides a means for enforcement of the affordability restrictions of this Agreement for both the County and the Division. The County's Declaration of Restrictive Covenants must be senior to permanent financing liens and enforceable against all successors in interest to Owner. The covenant may also be recorded at the closing of the financing, provided it is recorded in a position senior to the financing.

### **3.13 Transaction Costs**

Owner shall be responsible for all closing costs in connection with the funding contemplated herein including, but not limited to, title insurance, surveys, financing fees, recording fees, and attorney fees.

### **3.14 Property Management**

The County's willingness to provide HSEST funds as anticipated herein is also contingent upon and made with specific reliance on the evaluation of the planned property manager for the Project. Initially, and throughout the term of this Agreement, the County must, in its reasonable discretion, approve of any property management company, or another similar agent, employed by Owner. The County's approval of a specific property management company or agent may be withdrawn for cause at any time, and upon notice of same Owner will identify and contract with a property manager otherwise acceptable to the County.

Notwithstanding, nothing in this section is intended to prevent any senior lender from retaining its right to approve any property management firm or agent employed by Owner. Owner acknowledges the practical effect is that any property manager must be mutually acceptable to the County and other lenders.

Initially, the County has approved either of FPI Management or Stout Management as the property manager for the Project.

### **3.15 Final Plans and Specifications**

Owner shall provide final plans and specifications demonstrating that all applicable property standards, as well as Project amenities and features will be met (see Section 6 below) for County approval. Final plans, approvals and specifications shall be provided to County prior to first disbursement of funds.

### **3.16 Cost Certification**

Within 240 days of completion of construction, Owner must provide a cost certification prepared by an independent certified public accountant for County review and approval. Should the County determine that the cost certification indicates County HSEST and/or ARPA funds were provided in an amount greater than

was necessary or were used for ineligible costs, Owner shall promptly, upon receipt of written notice, repay such funds.

### **3.17 Completion Report**

Prior to final disbursement of funds and within 90 days of Stabilized Occupancy, Owner must provide County with demographic data on the initial occupants of all occupied units in the Project; data must include household income level, race/ethnicity (optional for residents to provide), and other information specified by the County.

### **3.18 Force Majeure**

Except for any failure to achieve Project Completion within four years of the Execution of this Agreement, neither the County nor Owner shall be deemed in default hereunder, nor shall either be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, pandemics, or acts of nature or other similar cause beyond its control. Each shall put forward its best efforts to mitigate any delay, interruption, or cessation in the performance of its obligations under this Agreement related to said force majeure event. In the event of such a delay, the party expecting delays in its performance shall provide notice to the other party as soon as practicable but in no case more than fifteen (15) days following the initiation of the force majeure event.

### **3.19 County Recognition**

Owner shall not schedule, nor advertise, a date for a groundbreaking, grand opening, or dedication ceremony until they have contacted the County in writing. Owner agrees and understands that all costs incurred for groundbreaking, grand opening or dedication ceremonies will be the sole responsibility of Owner. Owner or representatives or contractors for Owner shall ensure recognition of the role of the County in providing funding through this Agreement. In addition, Owner will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

### **3.20 Reserved**

### **3.21 Notification of Accepting Applicants for the Project**

Owner will notify the County, in writing, a minimum of sixty (60) days prior to the general availability of an interest list or application for residency at the Project, that a priority list is available for applications for residency for Clark County Social Service clients. Owner will provide a point of contact to Clark County Social Services through which clients are able to be placed on this priority list.

## **SECTION 4: ROLES & RESPONSIBILITIES**

### **4.1 Development**

Pursuant to a construction license or easement granted by the County to the Owner, the Owner shall construct a +/- 95,000 square foot finished pad on the Commercial Portion of the Site after the Site moves through the entitlement, technical studies, and plan review process. The Owner will work with County to include the Commercial Portion of the Site in their overall site plan in order to process entitlements, technical studies, civil improvement plans, utility plans, etc. to support the recordation of a commercial final map and

record of survey. The Owner will construct all offsite utilities, if any, onsite improvements, and infrastructure necessary to provide the County with a finished pad on the Commercial Portion of the Site. Such improvements shall include: driveways, curb, gutter, drainage, parking lot, asphalt, paving, stubbed utilities within 5 feet of the finished pad, sidewalks, site lighting and landscaping. County will design all architecture plans and obtain necessary building permits to support the vertical construction of the commercial office building and will ultimately own and construct that parcel and building; however, the County and Owner will be a partner throughout the development stage in order to complete the overall Project successfully. The County will reimburse the Owner for any onsite and offsite improvements constructed by the Owner on the Commercial Portion of the Site including all of Owner's work associated with the construction and development of the commercial pad. The County shall pay for or reimburse Owner for its pro rata share of the cost of the Site entitlements, civil improvements, technical studies, and onsite/offsite improvement plans that are necessary to support the recordation of the Commercial Subdivision Map and Record of Survey or parcel map, and the construction, development and/or operation of the Commercial Site. The County will pay for or reimburse Owner for the County's pro rata share of any off-site improvements, including walls along the perimeter of the Site, that benefit the Commercial Portion of the Site, with such pro rata calculation to be mutually agreeable to the Owner and the County which shall account for any costs the County paid or prepaid prior to the execution of this Agreement. The County will provide assistance to Owner in obtaining all needed utility access.

#### **4.2 County Responsibilities**

The County agrees to act promptly to review and approve such items, actions, proposals, and the like as may be contemplated under this Agreement.

#### **4.3 Owner Responsibilities**

Pursuant to the terms of this Agreement, the Owner will be responsible for planning, financing, coordinating, and otherwise completing construction of the Housing Portion of the Site after which point Owner will maintain ownership of the housing parcel and operate it as affordable rental housing. Throughout the Affordability Period, Owner shall operate and manage the Project and common areas therein and other matters related to the Project, including without limitation, exterior maintenance of the buildings and common areas and the maintenance of all on-site landscaping and on-site improvements, in a financially efficient manner and in a manner consistent with the workman-like standards demonstrated in the area where the Project is located. Without limiting the generality of the foregoing, Owner shall be responsible for:

- a) Planning and scoping the Project, including its physical design, amenities, and programming;
- b) Selecting and overseeing a development team of professionals to provide advice and assistance in planning, scoping, financing, legal structuring, tax planning, and other such matters necessary for the successful development and operation of the Project;
- c) Developing detailed budgets for the construction, operation, and long-term maintenance of the Project;
- d) Payment of all development costs, including without limitation all design, development and construction costs, the cost of all permits, impact and processing fees, and the cost of all on-site and off-site public improvements required in connection with the Project – any costs associated with the Commercial Portion of the Site shall be reimbursed to the Owner by the County and any costs associated with both



the Commercial Portion of the Site and the Housing Portion of the Site shall be allocated pro rata between the County and the Owner as agreed to by the parties;

- e) Any costs incurred by the County for expenses related to the construction and development of the Housing Portion of the Site;
- f) Evaluating, applying for, selecting specific lenders and closing on all financing necessary for the development and operation of the Project;
- g) Applying for all necessary permits, licenses, and approvals necessary to construct and operate the Project and construct the improvements as outlined in Section 4.1;
- h) Developing and managing the Project throughout the Affordability Period in compliance with this Agreement and all applicable federal, state, or local laws, ordinances, regulations, or requirements;
- i) Providing reporting to the County as required by this Agreement related to the development and operation of the Project, from Execution date of this Agreement through Construction Completion. Owner shall provide progress reports to the County as specified in Section 10 of this Agreement;
- j) Payment of the Compliance Monitoring Fee to the Division for compliance with the state ARPA funding as stipulated in the attached Amended and Restated Grant Agreement for American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds with the State of Nevada;
- k) Owner shall maintain an active registration with the System for Award Management (“SAM”) pursuant to 2 CFR Part 25; and
- l) Owner’s obligation to the County shall not end until all close-out requirements of the State ARPA funds are completed. Activities during this close-out period shall include but are not limited to, making final payments, including the return of unspent cash advances to the County; and determining custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Owner has control over funds as defined in 2 CFR Part 200.

#### **4.4 Performance Milestones**

To ensure that the Project moves forward in a timely fashion, in furtherance of the pressing needs for affordable housing in the County, Owner shall be responsible for achieving the “Performance Milestones” outlined in **Exhibit F** and in this Section.

##### **4.4.1 Limitations**

Nothing in this Agreement shall eliminate or modify the responsibility of Owner to seek, obtain and comply with conditions of any and all permits and governmental approvals required to develop and operate the Project that would otherwise be applicable to a similar project developed on property not acquired under the terms of this Agreement, including but not limited to the Site Plan (defined below), any special use permits, zone changes, variances, waivers of development standards, grading permits and building permits (collectively, “Approvals”). Owner shall be solely responsible for the cost of obtaining and extending all Approvals.

#### **4.4.2 Applications Prior to Owner's Acquisition**

County shall be reflected as "Owner" on all applications for Approvals prior to the issuance of the Quit Claim Deed transferring ownership of the Housing Portion of the Site to the Owner. Upon request, Owner shall provide County with an updated list documenting the current expiration dates of all Approvals. Should any Approval require an extension of time, Owner shall timely submit an application for extension of time at least thirty (30) days prior to the scheduled expiration of the applicable Approval, and Owner shall inform County in writing of all extensions of time requested. If Owner fails to timely submit an extension request for any Approval, County may take all actions to submit such request and pursue the approval of the extension at the expense of the Owner.

#### **4.4.3 General**

Owner shall determine and resolve any matters relating to the feasibility and/or construction of the Project. All applications and related submittal requirements shall be made by the Owner to the appropriate City of North Las Vegas Development Agency on or before the dates listed in this section. In the event of a conflict, the earlier of the dates shall prevail. Owner shall assure that all contractors and subcontractors shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect (i) employees and other persons at the site, (ii) materials and equipment stored on-site or off-site locations for use in the performance of the work, and (iii) the property and all property located on the Site and adjacent to work areas, whether or not said property or structures are part of the Project or involved with the work. Owner will obtain and shall assure that all contractors and subcontractors will obtain, workers compensation insurance as required by Nevada law and all other insurance required under this Agreement. Without limiting the generality of the foregoing, all improvements must comply with applicable building, electrical, plumbing, mechanical, energy efficiency, and similar codes in force at the time of construction, and must conform to all applicable laws, including, without limitation, those relating to persons with disabilities. Construction must be in a good and workmanlike manner, in accordance with good construction practices and using new building materials unless otherwise approved.

#### **4.4.4 Site Plan**

Owner shall work with County to develop and submit a Site Plan (the "Site Plan"), which includes all elements and information otherwise required of applicants for such approval by the County.

The Site Plan shall comply with all applicable laws, all conditions of approval imposed by appropriate City of North Las Vegas Development Agencies, this Agreement, and the Declaration of Restrictive Covenants (**Exhibit G**) further described in Section 6.2, below. In addition, County may request modifications to the Site Plan to effectuate compliance with any applicable laws, and any such modifications, or reasonable alternatives, shall be promptly incorporated by Owner into the Site Plan. Owner agrees that development of the Project shall be in compliance with any updated or final Site Plan, as approved by City of North Las Vegas and the appropriate City Development Agencies, which shall thereafter be part of the Project, provided, however, that County agrees that Owner may make modifications to the approved Site Plan which do not or would not (i) materially modify the elements, size, overall layout or exterior elements of the Project, (ii) materially alter the Site Plan, (iii) violate any applicable laws, the Declaration of Restrictive Covenants or any conditions of approval, or (iv) cause any statements or representations made by County to be materially untrue or inaccurate.

#### **4.4.5 Reserved**

#### **4.4.6 Plan of Finance and Project Budget**

Consistent with Section 2.6 above, Owner has provided plans outlining the financing for the construction of the Project, as well as a Project Budget. The Project Budget, as presented in **Exhibit D** from the Owner's latest information available prior to execution of this document, has been approved by County.

#### **4.4.7 Closing**

Closing for all financing for the Project and transfer of the Housing Portion of the Site shall occur on a date and time mutually agreed upon by the parties, but in no case later than December 31, 2024. Prior to transfer of the Housing Portion of the Site, County shall execute and record the following documents in respective order:

- a) Declaration of Restrictive Covenants; and then
- b) Reciprocal Easement Agreement (as defined in Section 4.8)

Concurrent with closing and transfer of the Housing Portion of the Site, the following documents shall be recorded in respective order:

- a) Quit Claim Deed;
- b) Construction Loan;
- c) ARPA Loan Note and Deed of Trust; and then
- d) HSEST Loan Note and Deed of Trust

#### **4.4.8 Construction**

- a) Owner shall begin construction of the Project within 30 days of transfer of Housing Portion of the Site to Owner.
- b) Within 30 months of commencing construction, Owner shall obtain a certificate of occupancy (and such other permits, certificates, approvals, and the like that may be required to allow occupancy and use of the Housing Portion of the Site for its intended purpose) and begin leasing of the residential units. Owner shall provide copies of all such certificates and as-builts to the County.

#### **4.4.9 Extensions**

Subject to Owner obtaining any necessary extensions of time or approvals required from any jurisdiction, agency or authority, and provided that (i) the Owner is not otherwise in default under this Agreement, and (ii) in the County's determination, the extension of time will not jeopardize any other activity or funding source for the Project, Owner may request an extension of a Construction and Performance Milestone deadline if additional time is necessary to complete the Project. Such an extension shall not be unreasonably withheld and shall be authorized by County in writing.

#### **4.4.10 Force Majeure Acts of God**

Both commencement and completion of construction will be extended by such additional time as corresponds to the extent of any delay that is caused by unforeseeable causes beyond the control and without the fault or negligence of Owner or County, as applicable, and materially interferes with the work or the timing of the work. Examples of such causes include fire, civil riots, unforeseen acts of government, acts of God, state of emergency, epidemics, and acts of terrorism. Notwithstanding the foregoing, in no event shall commencement of construction be extended beyond eighteen (18) months from the date of the recording of the Quit Claim Deed. Failure to commence construction within such timeframe shall constitute a breach by Owner of its obligations under this Agreement.

### **4.5 Overview of Land Transfer Process**

Upon the recordation of the Commercial Subdivision Map and Record of Survey the site will be split into two parcels. The County will then sell the Housing Portion of the Site to the Owner via Quit Claim Deed substantially as-to-form in **Exhibit E**. Upon acquisition of the Housing Portion of the Site, Owner will begin construction of the Project.

#### **4.5.1 As Is Transfer**

County's conveyance of the Housing Portion of the Site to the Owner will be by Quit Claim Deed and shall be made "as is" with no warranties or representations by County concerning the conditions of the Housing Portion of the Site, including, without limitation, the presence or absence of any "Hazardous Materials," as further described below. Owner hereby agrees and acknowledges that (i) neither County nor any one acting for or on behalf of County, has made any representation, statement, warranty, or promise to Owner concerning the development potential or condition of the Site; (ii) in entering into this Agreement, Owner has not relied on any representation, statement, or warranty of County, or anyone acting for or on behalf of County, other than as may expressly be contained in writing in this Agreement; (iii) all matters concerning the Site and the Project have been or shall be independently verified by Owner and that Owner shall purchase the Site on Owner's own prior examination thereof; and (iv) that Owner is purchasing the Housing Portion of the Site in an "as is" physical condition. Owner agrees that upon the Closing, Owner, Brinshore Development, LLC, and any related companies, their respective owners, employees, agents, assigns, and successors shall be deemed to conclusively have released and discharged County and its agents, employees, trustees, assigns, and successors from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Owner regarding the Housing Portion of the Site, including, but not limited to, environmental condition of the Housing Portion of the Site.

"Hazardous Materials" means (i) petroleum or chemical products, whether in liquid, solid or gaseous form, or any fraction or by product thereof, (ii) asbestos or asbestos containing materials, (iii) polychlorinated biphenyls ("PCBs"), (iv) radon gas, (v) underground storage tanks, (vi) any explosive or radioactive substances, (vii) lead or lead based paint, or (viii) any other substance, material, waste, or mixture which is or shall be listed, defined or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any federal, state, or local laws, regulations, or ordinances, but not including materials commonly used in construction or operation of a multifamily housing development similar to the Project, provided those materials are stored and used in a manner which complies with all applicable laws.

## **4.6 Owner Access to Site Prior to Subdivision**

**4.6.1** Upon the Effective Date and up until subdivision of the Site, County will afford Owner and its representatives full and free access to the Site for the following purposes only: 1) the right to conduct geotechnical, biological and cultural resource investigation, 2) the right to conduct an environment site assessments, 3) site surveys including, but not limited to, boundary and topography surveys; and 5) any other testing or assessment necessary to perform due diligence. Owner shall not perform any construction work or grading, including any improvements or utilities. Owner agrees not to dispose of any hazardous materials at, within, or on the Site. If Owner does discover hazardous materials in accordance with applicable law at County's cost and expense. Owner, or Brinshore Development, L.L.C., as the entity accessing the Site prior to closing, shall provide the County with a copy of a certificate of insurance with the following requirements:

- a) Worker's compensation in accordance with Nevada law or evidence from the Nevada Division of Industrial Relations that Owner is exempt from such requirement;
- b) Fire insurance with extended coverage with policy limits of Two Hundred Fifty Thousand Dollars (\$250,000). County shall not be liable for injury or damages to the Property or any property or fixtures by fire or other casualty so covered by this type of insurance, no matter how caused, it being understood that in case of damage, Owner shall look solely to the insurer for reimbursement and not to County.
- c) Commercial general liability, including abuse, molestation and corporal punishment coverage, with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence to protect the County (as an additional insured), the Owner, Owner's affiliates, contractors and agents against claims for injury or death and damage to the property of others.
- d) Any and all insurance policies required shall be "occurrence" policies and shall not be "claims made" policies.
- e) Before a contractor commences any work, Owner shall require the contractor to obtain and maintain throughout the term of the construction contract, the bonds and insurance coverage required, and shall furnish certificates of such insurance coverage to the County. The insurance and surety companies issuing certificates of insurance and bonds must be licensed by the State of Nevada Insurance Division and certificates of insurance and bonds must be issued by an appointed producer of insurance pursuant to Nevada Revised Statutes Chapter 683A.

## **4.7 Owner Access to Commercial Portion of the Site After Subdivision**

Concurrent with subdivision of the Site, County will temporarily provide Owner and its representatives full and free access to the Commercial Portion of the Site for all development and construction necessary to complete the activities required of Owner outlined in Section 4.1. Access granted pursuant to this Section 4.7 shall expire once Owner completes construction of the improvements required for the Commercial Portion of the Site. Owner agrees not to dispose of any hazardous materials at, within, or on the Site. If Owner does discover hazardous material on the

Commercial Portion of the Site prior to its completion of the work it is obligated to perform at the Commercial Portion of the Site, then Owner will dispose of discovered hazardous material in accordance with applicable law which shall be at the County's sole expense. Owner shall provide the County with a copy of a certificate of insurance with the following requirements:

- a) Worker's compensation in accordance with Nevada law or evidence from the Nevada Division of Industrial Relations that Owner is exempt from such requirement.
- b) Fire insurance with extended coverage with policy limits of Two Hundred Fifty Thousand Dollars (\$250,000). County shall not be liable for injury or damages to the Property or any property or fixtures by fire or other casualty so covered by this type of insurance, no matter how caused, it being understood that in case of damage, Owner shall look solely to the insurer for reimbursement and not to County.
- c) Commercial general liability, including abuse, molestation and corporal punishment coverage, with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence to protect the County, as additional insured, the Owner, Owner's affiliates, contractors and agents against claims for injury or death and damage to the property of others.
- d) Any and all insurance policies required shall be "occurrence" policies and shall not be "claims made" policies.
- e) Before a contractor commences any work, Owner shall require the contractor to obtain and maintain throughout the term of the construction contract, the bonds and insurance coverage required, and shall furnish certificates of such insurance coverage to the County. The insurance and surety companies issuing certificates of insurance and bonds must be licensed by the State of Nevada Insurance Division and certificates of insurance and bonds must be issued by an appointed producer of insurance pursuant to Nevada Revised Statutes Chapter 683A.

#### **4.8 Reciprocal Easement Agreement**

Prior or concurrent to the recordation of the Commercial Subdivision Map and Record of Survey, the County shall record a reciprocal easement agreement on the Site to define ingress, egress, parking and utility rights to benefit and burden the Site. Such rights are set forth in **Exhibit L ("Reciprocal Easement Agreement")**.

### **SECTION 5: ESCROW FOR LAND TRANSFER**

#### **5.1 Establishment of Escrow**

Following execution of this Agreement, County and Owner shall open an escrow with Fidelity Title Company in Las Vegas, Nevada ("Escrow Agent"). This Agreement, including Section 4.4.7 above, constitute the joint escrow instructions of County and Owner. A fully executed copy of this Agreement, and any amendments

hereto, along with the fully executed Declaration of Restrictive Covenants shall be delivered by Owner to the Escrow Agent upon the opening of escrow. Any deposit shall flow through escrow. County and Owner shall provide from time to time such additional escrow instructions as shall be necessary or required by Escrow Agent. Escrow Agent is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Agreement in writing delivered to County and Owner after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder. In the event of a dispute between County and Owner concerning escrow instructions, unless explicitly and unambiguously contrary to this Agreement in the reasonable determination of the County, Escrow Agent, understanding that the County shall bear no risk, shall implement the instructions as directed by the County.

## **5.2 Role of Escrow Agent and Liability**

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under this Agreement. The Escrow Agent is authorized and instructed to:

- a) Charge the parties obligated hereunder, and to pay to the persons entitled thereto, any fees, charges and costs payable under this Section and related solely to the acquisition and transfer to Owner of the Housing Portion of the Site. Before such payments are made, the Escrow Agent shall notify County and Owner of the fees, charges and costs necessary to clear title and close the escrow.
- b) Disburse funds and deliver the Quit Claim Deed and the other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by County and Owner.
- c) Obtain and charge each party for the premiums and costs associated with their respective title insurance policies and endorsements thereto.
- d) Record any instruments delivered through this escrow, if necessary or proper, which shall be delivered to County, to vest title in Owner in accordance with the terms and provisions of this Agreement.
- e) Receive and deposit all funds in an escrow account or accounts with any state or national bank doing business in the State of Nevada. All disbursements shall be made by check or wire of the Escrow Agent. All adjustments shall be made on the basis of a 30 (thirty) day month. Any interest that is earned on funds deposited under this paragraph shall be for the benefit of the party responsible for depositing those funds with the Escrow Agent.
- f) Charge each party  $\frac{1}{2}$  of the escrow and normal recording fees.

## **5.3 Closing**

Provided that Owner is not in default under this Agreement and the Agreement has not been previously terminated pursuant to the terms hereof, the closing shall occur as soon as practicable on a date mutually agreed by the County and Owner upon required conditions of all parties being met, but in no case later than the date set forth in Section 4.4.7 above.

#### **5.4 Owner's Closing Conditions**

Notwithstanding any other provisions of this Agreement, Owner's obligation to proceed with the Closing is subject to the fulfillment or waiver by Owner of each of the condition's precedent described below, which are solely for the benefit of Owner and which shall be fulfilled or waived prior to Closing:

- a) County shall not be in violation of any of its obligations under this Agreement.
- b) Owner shall have been able to obtain financing reasonably acceptable to it in substantial compliance with the Plan of Finance such that Owner will be able to comply with its obligation to commence construction of the Project.
- c) Owner is satisfied that it will receive marketable title.

#### **5.5 County's Closing Conditions**

Notwithstanding any other provisions of this Agreement, County's obligation to proceed with the Closing is subject to the fulfillment or waiver by County of the following conditions precedent, which are solely for the benefit of County and which shall be fulfilled or waived prior to Closing.

- a) Owner shall not be in violation of any of its obligations under this Agreement.
- b) County is satisfied with the updated Site Plan, Budget, and Plan of Finance.
- c) Owner shall have obtained all necessary permits, approvals, and entitlements necessary to commence grading of the Project.

#### **5.6 One (1) Day Prior to Closing**

(1) Owner shall deposit the following fees, costs and documents not later than one (1) business day prior to the scheduled date for Closing:

- a) Any state, county or city documentary transfer tax required in connection with the recording of the Quit Claim Deed to the Housing Portion of the Site from County to Owner;
- b) All of the premiums and costs for the title insurance policies and special endorsements for the Project;
- c) The recording costs for the Declaration of Restrictive Covenants, and any other associated documents to be recorded;
- d) Any escrow costs incurred for conveyance;
- e) The balance of any other closing costs with the Escrow Agent;
- f) The Completion and Stabilization Guarantee as described in Section 9;



- g) All costs, expenses and fees related to the escrow process and the recording of transactional documents; and
  - h) Any other documents, instructions, data, records, correspondence or agreements called for under this Agreement which have not been delivered.
- (2) County will deposit with the Escrow Agent the following not later than one (1) business day prior to the scheduled date for Closing:
- a) Any documents, instruments, data, records, correspondence or agreements called for under this Agreement which have not been delivered.

## **5.7 Miscellaneous**

The County and Owner shall also timely deliver into escrow:

- a) Any transfer declarations, returns, or other similar documents satisfying Nevada state law requirements, if any.
- b) Evidence reasonably satisfactory to the other party and Escrow Agent respecting the authorization and execution of the documents required to be delivered hereunder.
- c) Such additional documents as may be reasonably required by the other party or Escrow Agent in order to consummate the transactions provided hereunder.

## **5.8 Failure to Close and Termination**

In the event that Closing does not occur by the date set forth in Section 4.4.7, without breach by any party, then this Agreement will terminate and be of no further force or effect, provided however, that all the Owner's obligations intended to survive hereunder shall survive such termination. In such case, Owner shall have no rights or interest in the Site. If any funds were expended by the County prior to date of termination, the County shall have a right to own all design and site plans.

# **SECTION 6: PROJECT REQUIREMENTS**

## **6.1 Use as Affordable Housing**

The Project's units, as detailed in the Unit Mix provided in **Exhibit B** of this document, shall be income and rent restricted for the duration of the Project's Affordability Period unless otherwise modified by a future amendment to this Agreement. The Project must also maintain compliance with the physical standards of all income and rent restricted units for the duration of the Project's Affordability Period.

County will exercise ongoing oversight of the Project throughout the Affordability Period, including without limitation the review of reports, documents, and records as may be submitted by the Owner, conducting periodic site inspections including file reviews and/or physical inspections, reviewing and approving, as may

be required by this Agreement, proposed actions taken by the Owner such as those related to transfers, refinancing, and the like.

## **6.2 Covenant Running with the Land**

As indicated above in Section 4.4.7, County shall record the Declaration of Restrictive Covenants in form and substance acceptable to the County, a copy of which is included as **Exhibit G**. All provisions in the Declaration of Restrictive Covenants related to the ongoing operation of the Project during the Affordability Period, shall be deemed to be covenants running with the land, and shall constitute benefits to County and burdens to the Owner and its successors and assigns and to all persons hereafter acquiring or owning any interest in the Project or Housing Portion of the Site, however such interest may be acquired, throughout the term of this Agreement and for the duration of the Affordability Period. The Declaration of Restrictive Covenants shall be recorded senior to any deeds of trust, mortgages, or other liens securing anticipated sources of Project financing, will not be subordinated to any such liens, and shall not be foreclosable following any default under such liens or issuance by the Owner of a deed in lieu of foreclosure.

## **6.3 Rent, Utility Allowances, and Fees**

The County must receive a report of the rents and utility allowances applied to the Project on an annual basis. Utility allowance must be determined by a method consistent with the requirements at 24 CFR 92.252(d)

## **6.4 Income and Rent Restrictions**

During the term of this Agreement, all residential units in the Project will be rent restricted at or below at 50% AMI, 60% AMI and 80% AMI as detailed in the unit mix provided in Exhibit B (as adjusted for household size; AMI as published by HUD and updated annually).

Owner or its County approved assignee must determine at initial occupancy that each household is income eligible by determining the household's annual income as defined at 24 CFR 5.609. Annual income shall be determined by examining the source documents evidencing annual income (i.e., wage statement, interest statement, social security statements, etc.) for the household. Each year during the Affordability Period the Owner must re-examine each tenant's income.

Monthly gross rent for each affordable unit in the Project may not exceed  $1/12^{\text{th}}$  of 30% of 50%, 60% AMI or 80% AMI, as applicable to such unit, assuming a household of one (1) person per efficient (i.e. 0-bedroom) unit and 1.5 persons per bedroom for units with one (1) or more bedrooms (i.e. an imputed household of 1.5 persons for a one-bedroom unit, a household of three (3) persons for a two-bedroom unit, etc.). Actual rent charged to a tenant must be adjusted for tenant-paid utilities established using a method acceptable to the County.

County and Owner acknowledge that the Project will be subject to income and rent restrictions imposed as a result of the receipt of other planned financing, including HOME funds. Those income and rent restrictions are similar but may operate differently than those imposed by this Agreement. In the event of a conflict between the income and rent restrictions imposed by this Agreement and those imposed by HOME, or any other similar public funding program, the stricter requirements will apply.

## **6.5 Tenant Selection and Source of Income Nondiscrimination**

Without limiting the obligation of Owner to comply with all applicable laws at all times during the term of this Agreement, Owner shall comply with all provisions of federal, state, or local Fair Housing Acts, laws, ordinances, or regulations which include, but are not limited to non-discrimination based on race, religion, creed, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status or sex.

Owner may not refuse to lease to a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, State, or local program solely because of the tenant or prospective tenant's participation in such program.

The Project has been designated as family housing and occupancy will not be limited to nor preference in tenant selection given to any particular segment of the low-income population.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

Occupancy will not be limited to, nor preference in tenant selection given to, any particular segment of the low-income population. All otherwise eligible applicants may occupy the units in the Project.

## **6.6 Lease**

Owner must operate the Project in compliance with all applicable state and local landlord-tenant laws.

Owner must have a written lease with each tenant in a form acceptable to the County. If directed by the County, Owner shall include any County-required Lease Addenda, as may be updated from time to time. The lease must, at a minimum, provide all tenants with at least sixty (60) days written notice prior to (i) increasing the rent or (ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Owner cannot terminate or refuse to renew the lease of any tenant for other than good cause. In particular, good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered, now or in the future, to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, State, or local laws.

The lease may not include any provisions prohibited by 24 CFR 92.253(b).

## **6.7 Prohibition on Certain Fees to Tenants**

Owner shall not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owner may charge fees approved by the County for the following:

- a) Reasonable application fees to prospective tenants;

- b) Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the County to be customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by the County to be customary for rental housing projects in the neighborhood and not excessive; and
- d) Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary, and fees are charged only for services provided.

## **6.8 Voluntary Services**

Owner must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

## **6.9 Leasing of Accessible Units**

Notwithstanding the provisions of Section 6.5 above, for units designed to be physically accessible or accessible to tenants with sensory impairments, Owner may provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit when available. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit. Only if no existing tenants or waiting list applicants require an accessible unit may such a unit be offered to an applicant not otherwise requiring an accessible unit.

## **6.10 Reserved**

## **6.11 Conditions for Faith-Based Organizations**

Faith-based organizations are eligible to participate in the Project on the same basis as any other organization but may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Project. If Owner does engage in such religious activities, those activities must be offered separately from the housing, and participation by tenants of the Project must be voluntary. Additionally, Owner shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

## **6.12 Housing Property Standards**

The Project must be constructed and maintained in compliance with the requirements of 24 CFR 92.251.

### **6.12.1 Construction Codes**

The Project must be constructed in compliance with all applicable State and local zoning, land use, and building code requirements. The Project's plans and specifications must clearly list all building codes applicable to the Project, including without limitations electrical, mechanical, plumbing, and fire codes. Additionally, the Project must be constructed to meet or exceed all applicable State Building Codes in force at the time of construction.

#### **6.12.2 Required Amenities and Features**

Owner acknowledges that the County's decision to award funding for the Project was influenced, in part, by Owner's proposal to include various features and amenities in the construction of the project, including sustainability elements. Consequently, the Project must be constructed to include all features and amenities promised within Owner's application for funding and further delineated in **Exhibit B**.

#### **6.12.3 Additional Construction Requirements**

- a) The Project must also be constructed in compliance with the accessibility requirements of 24 CFR 8, which implements Section 504 of the Rehabilitation Act of 1973. Additionally, if the Project is a "covered multifamily dwelling" as defined in 24 CFR 100.201, the Project must also meet the design and construction requirements of 24 CFR 100.205 regarding, among other things, accessibility to the building and common areas.
- b) In particular, Owner must ensure that the construction of the units in the Project will satisfy requirements for both physically accessible units and those accessible for tenants with sensory (i.e., hearing or visual) impairments. Based on the 76] unit Project, a minimum of 4 unit(s) must be physically accessible and a minimum of 2 unit(s) must be accessible for tenants with sensory impairments.
- c) Owner must prohibit the use of lead-based paint construction of the Project and comply with all other applicable requirements of 24 CFR 35 (aka the Lead Safe Housing Rule).
- d) Owner must require the exclusive use of lead-free pipes, solder, and flux in all of the Project's potable water systems.
- e) Owner will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project. Owner will require its contractors to stop construction if ground disturbance related to this Project results in the discovery of any human remains, bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the County immediately.
- f) All buildings of five or more residential units in the Project must include the installation of "Broadband Infrastructure" as defined by 24 CFR 5.100.

#### **6.12.4 Ongoing Maintenance of the Project**

Owner must maintain the Project in compliance with all applicable State and local codes and ordinances, including but not limited to fire codes, health codes, property maintenance codes, or other habitability codes, throughout the term of this Agreement.

At minimum, during periodic on-site inspections, the County will require that any identified deficiencies be corrected, including that any deficiencies determined to be life-threatening be addressed immediately.

Additionally, to the extent known and applicable, the County's periodic inspections will incorporate State and local code requirements. However, any such inspection by the County is for its own purposes and does not warrant compliance with applicable codes or supplant the authority of any

other State or local code officials over the Project. In the event of conflicting requirements between codes, the stricter standard will apply. Outside of its periodic inspections, in the event the County becomes aware of any violation of applicable State or local codes, Owner must correct those deficiencies.

Failure to correct any deficiencies identified by the County within the timeframe specified shall constitute a default.

In addition to any other oversight by the County, Owner must annually certify to the County that each building in the Project is suitable for occupancy, taking into account (i) State and local health, safety, and other applicable codes, ordinances, and requirements, and (ii) the County's ongoing property standards.

## **SECTION 7: INSURANCE, CASUALTY, AND CONDEMNATION**

### **7.1 General**

During construction and throughout the term of this Agreement, Owner will maintain insurance, including property insurance which will be no less than replacement value for the Project listing the County as an additional insured party.

In the event of loss, Owner shall give prompt notice by mail to the insurance carrier and the County, and the County may make proof of loss, if not made promptly by Owner. Subject to existing restrictions on the property and the rights of senior lenders, the County is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Owner shall promptly furnish to the County a copy of any proof of loss given to the insurance carrier.

Subject to existing restrictions on the property and the rights of senior lenders, if the Project, or any part thereof, shall be damaged by fire or other insured hazard, the amounts paid by any insurance company shall be paid to the County, to the extent of the indebtedness then remaining unpaid, and, at the option of the County, all or any part of such amount may be applied in reduction of the Indebtedness or released for the repairing or rebuilding of the Project. Subject to existing restrictions on the property and the rights of senior lenders, if in the County's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. Subject to existing restrictions on the property and the rights of senior lenders, all policies of insurance and any and all refunds of unearned premiums are hereby assigned to the County as additional security for the payment of the Indebtedness. In event of foreclosure of this Project, all right, title and interest of Owner in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

### **7.2 Condemnation**

Subject to existing restrictions on the Site and the rights of senior lenders, Owner hereby irrevocably assigns to the County any award or payment which becomes payable by reason of any taking of the Site, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

Owner will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment and subject to existing restrictions on the Site, will cause the same to be collected and paid over to the County, and Owner irrevocably authorizes and empowers the County, in the name of Owner or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the same.

Subject to existing restrictions on the property and the rights of senior lenders, the proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by the County in the collection thereof, at the sole discretion of the County, be released to Owner, applied to restoration of the Project, or applied in reduction of the Indebtedness secured hereby. Subject to existing restrictions on the Site and the rights of senior lenders, if in the County's determination restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

### **7.3 Application of Proceeds in an Event of Default**

Subject to existing restrictions on the Site and the rights of senior lenders, in the event of a default under this Agreement or associated documents beyond applicable notice and cure periods as set forth herein, the County may apply insurance and condemnation proceeds to the reduction of the indebtedness secured hereby in any manner selected by the County but, unless otherwise agreed by the County in writing, no application of such proceeds to any obligations secured by the Project, shall delay, reduce, alter or otherwise affect any regularly scheduled payment.

## **SECTION 8: OTHER PROJECT REQUIREMENTS**

### **8.1 Other Federal Requirements**

Owner agrees to comply with the drug-free workplace requirements of 2 CFR 2429. Owner agrees to develop and operate the Project in full compliance with all other applicable federal requirements of 24 CFR 92 Subpart H and 24 CFR 5 Subpart A and the nondiscrimination requirements of section 282 of the Act. This includes, but is not limited to, compliance with the drug-free workplace requirements of 2 CFR 2429.

### **8.2 Equal Opportunity and Fair Housing Requirements**

Owner shall develop, operate, and maintain the Project in accordance with the following:

- a) The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;

- c) The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting Owner (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
- d) The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;
- e) The requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). Owner must make efforts to encourage the use of minority and women's business enterprises in connection with County-funded activities. Owner will cooperate with the County in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services; and
- f) The requirements of section 282 of the HOME Investment Partnerships Act at Title II of the Cranston-Gonzales National Affordable Housing Act, as amended. Owner agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of Owner, shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, national origin, religion, or sex.

### **8.3 Affirmative Marketing**

Owner must adopt and implement affirmative marketing procedures for the Project. Owner must also provide information to the County regarding any tenant preferences that the Project will have in place.

The County reserves the right to require Owner to update the Project's affirmative marketing procedures from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

### **8.4 Environmental and Land Use**

Owner is responsible for meeting planning and zoning requirements and gaining Project approval by the proper municipal, county, and state entities and related governing bodies. Owner is responsible for completing the construction permitting process and for meeting all applicable federal and County environmental regulations or standards including providing evidence that the Project meets the sustainability elements committed to in the application process as applicable. The requirements of this Section shall apply to the improvements required to be developed and constructed by Owner on the Commercial Portion of the Site.



## **8.5 Labor Standards**

Owner agrees that the Project shall comply with the minimum hourly wages as determined by the United States Department of Labor pursuant to the Davis-Bacon Act 40 USC §3141 et. seq. Owner is required to use the forms provided in Exhibit K for reporting and must include pay stubs with the Weekly Wage Report, federal form equivalents may be provided in lieu of the forms provided in Exhibit K. Additionally, Owner must provide their internal procedures for reviewing and validating wages.

## **8.6 Use of Contractors and Subcontractors**

Owner will ensure and maintain records demonstrating that none of the contractors or subcontractors involved in the development of the Project are suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts. Owner will further ensure that its contractors include parallel provisions in their subcontracts and maintain records showing that subcontractors are not suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts. Furthermore, Owner shall not enter into any agreement, written or oral, with any contractor without the prior determination by the Division of the contractor's eligibility.

Owner shall, at a minimum, search at [www.sam.gov](http://www.sam.gov) to verify that each contractor and subcontractor is not listed as an excluded party.

## **8.7 Conflict of Interest**

No officer, employee, agent, or consultant of Owner or immediate family members thereof (known as Covered Persons) may occupy a housing unit in the Project. However, this provision does not apply to an employee or agent of Owner who occupies a housing unit in the Project as a project manager or maintenance worker.

Notwithstanding, the County may approve a waiver to allow a Covered Person to occupy a unit in the Project based on a written request from Owner if, in the County's sole discretion, a waiver would be appropriate under the provisions of 24 CFR 92.356(f)(2).

While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to Owner's procurement of goods and services associated with the development or operation of the Project, Owner agrees to notify the County in writing and seek the County approval prior to entering into any contract with an entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by Owner, any controlling entities of Owner, any of the underlying individual Owners of the controlling entities. The County will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in the County's sole discretion.

Notwithstanding, the County initially acknowledges and approves Owner's use of either FPI Management or Stout Management as the property manager for the Project.

## **8.8 Certification Regarding Lobbying**

Owner certifies that it will not and, to the best of its knowledge, has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of

Congress in connection with obtaining any federal contract, grant or any other award. Owner further agrees that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

None of the personnel employed in the administration of the Project shall be in any way or to any extent engaged in the conduct of political activities prohibited by Chapter 15 of Title 5, U.S. Code, as applicable.

## **8.9 VAWA Compliance**

Owner agrees to comply with the provisions of the Violence Against Women Act (VAWA) as applied by 24 CFR 92.359 and, as applicable, 24 CFR 5, Subpart L. Owner further acknowledges that, despite its name, VAWA provisions apply without regard to an individual's sex, gender identity, or sexual orientation.

### **8.9.1 Core VAWA Protections**

Unless included in the limitations on VAWA protections delineated in 24 CFR 5.2005(d), the following VAWA protections will apply to all applicants for, or tenants of the Project:

- a) No individual may be denied admission or evicted on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or continued occupancy.
- b) Further, no individual may be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if: i) the criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and ii) the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
- c) In no case may an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall be construed as: i) a serious or repeated violation of a lease by the victim or threatened victim of such incident; or ii) good cause for terminating the tenancy or occupancy rights of the victim or threatened victim of such incident.

### **8.9.2 VAWA Notice**

Owner must provide a County-approved or specified VAWA notice and certification form to:

- a) Any tenant admitted to a unit in the Project at the point the tenant is admitted to the unit;
- b) Any prospective tenant for a unit in the Project whose application for occupancy is being denied based on Owner's tenant selection policies or criteria as part of the written notification of denial otherwise required by 24 CFR 92.253; and
- c) Any existing tenant of a unit in the Project whose lease is being terminated, or for whom Owner is refusing to renew the lease, at the point the tenant is being provided with notice of termination or non-renewal.

### **8.9.3 Lease Bifurcation**

Owner may seek to evict, remove, or otherwise terminate a household member from a unit in the Project on the basis of such member's criminal activity relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual, as defined in 24 CFR 5.2003, or other individual. Such action may be taken without regard to whether the individual being removed is a signatory to the lease. In any such case, however, if necessary, to avoid evicting, removing, or otherwise penalizing any victim of such activity who is also a lawful occupant of the unit, Owner must bifurcate the lease to allow continued occupancy by remaining members of the household.

### **8.9.4 Emergency Transfer Plan**

Owner must comply with the terms of the County's VAWA Emergency Transfer Plan, as may be updated from time to time, which among other items will:

- a) Allow for an internal emergency transfer to another available and safe unit in the Project by any tenant or other lawful resident of a unit in the Project who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. In such cases, the transferring tenant(s) may transfer to the new unit without having to undergo an application process and will, in all other respects, be treated as an in-place tenant.
- b) In cases where an immediately available and safe unit is not available for internal transfer, require Owner to notify the County of the tenant's request for an external emergency transfer, to cooperate and assist in providing information to the tenant about other units potentially available in the portfolio of units funded by the County, and waive any early termination or other similar fee for tenants requiring an emergency transfer that results in the breaking of the lease.

### **8.9.5 Documentation**

Owner may request that an individual seeking protection under the VAWA provisions provide documentation demonstrating that he/she is a victim of domestic violence, dating violence, sexual assault, or stalking. Owner seeking such documentation must accept any of the following:

- c) A signed tenant certification, using HUD Form 5382 or such subsequent form document HUD may publish pursuant to 24 CFR 5.2005.
- d) A document signed by the tenant and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom the tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- e) A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency.

Further, Owner may choose to accept other reasonable documentation of the individual seeking VAWA protections.

Nothing in this section shall be construed to require Owner to document an individual's status as a victim. Instead, Owner may extend the VAWA protections broadly to any individual requesting VAWA protections based on a presumption of their status without requiring documentation of their victimization.

#### **8.9.6 Confidentiality**

Any information submitted to Owner under these VAWA provisions, including but not limited to an individual's request for VAWA protections or the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking is confidential information, shall be maintained in strict confidence.

## **SECTION 9: INDEMNITIES AND DEVELOPMENT PERFORMANCE GUARANTEES**

### **9.1 General**

In addition to the County's interest in facilitating the production of affordable housing, County and Owner acknowledge County's interest in reducing its exposure to financial risks associated with the Project. Consequently, as an inducement to the County and to ensure that the public purposes of the Project will be realized, the County will require various security, guarantees, and indemnities from the Owner, and any other parties described in this Section.

### **9.2 Completion and Stabilization Guarantee**

The "Guarantors" outlined herein shall provide a completion and stabilization guarantee (**Exhibit H**) in form and substance acceptable to the County. These are in addition to any standard environmental or general indemnifications that may be required by this Agreement. All guarantees shall be joint and several.

The Completion and Stabilization Guarantee, to be executed by Guarantors, shall secure and guarantee Owner's obligations hereunder, including but not limited to completing construction of the Project, making payments for all labor and materials and removal of any improvements deemed by the County not to be in compliance with the provisions of this Agreement. In addition, the Completion and Stabilization Guarantee shall ensure that the Project is leased to eligible households, as described herein, and reaches Stabilized Occupancy, as defined below.

The Completion and Stabilization Guarantee will remain valid and enforceable until the later of (i) lien-free completion of construction and issuance of final certificate(s) of occupancy for the Project or (ii) "Stabilized Occupancy" as defined below. Upon satisfying the conditions for release, the Completion and Stabilization Guarantee will terminate and have no further force or effect.

#### **9.2.1 Stabilized Occupancy**

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- a) Initial occupancy of no less than 95% of the Project's units;

- b) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 90%; and
- c) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments), provided that in order to satisfy this condition, the guarantor of the Stabilization Guarantee may resize the permanent debt, reduce or defer its developer fee or some combination thereof with written County consent.

### **9.3 Payment and Performance Bonds**

Additionally, at or prior to closing, Owner or its general contractor shall provide payment and performance bonds, in form and substance acceptable to the County, in amounts not less than the total construction cost of the Project, guaranteeing Owner's completion of all Project improvements and the Owner's payments for labor and materials. Such bonds shall be applicable to the use and benefit of all persons who perform labor or furnish material for the Project and shall be of a form and be from a surety company satisfactory to County in its reasonable discretion. In general, the County will accept bonds issued jointly to itself and other Project lenders as co-obligees provided such bonds are otherwise satisfactory to the County.

### **9.4 Indemnification**

Regardless of whether any costs for damages and/or injuries are covered by insurance, Owner and Brinshore Development, LLC, (actively the "Indemnitors") shall indemnify, hold harmless and defend County and any of its officers, employees, representatives, agents and contractors, invitees, board members, successors, and assigns (collectively the "Indemnitees"), with counsel acceptable to County, against and from any and all liability, loss, cost, damage, or expense (including but not limited to attorneys' fees) of whatsoever nature arising from or in connection with personal injury to or death of any person (including, without limitation, exposure to hazardous or toxic substances), or loss of or destruction or damage to any property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to Indemnitors occupation or use of the Site during development or construction of the Project by, or the presence thereon of, Owner or a related party, and occurs from any cause whatsoever, excluding the grossly negligent or intentional acts of County or the presence of any Hazardous Materials on the Commercial Portion of the Site unless caused by Indemnitors. If Owner should discover any Hazardous Materials, or any other materials subject to a legal reporting requirement or corrective action, Owner will immediately notify the Nevada Department of Environmental Protection and County of the same.

Indemnitors shall also indemnify, hold harmless and defend Indemnitees against any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction or development of the Project.

The indemnity obligations of Indemnitors under this Section will survive any termination of this Agreement. In the event that any Indemnitee incurs any actual, reasonable expenses for claims or losses described in this Section, such County Indemnitee shall have a right to charge said expenses made in good faith to the Indemnitors. An itemized statement of expenses shall be prima facie evidence of the fact and extent of the indemnity obligation of the Indemnitors.

## **SECTION 10: REPORTING, RECORDKEEPING AND INSPECTIONS**

### **10.1 General Requirements**

Owner agrees to provide reports to the County and to maintain records documenting compliance with this Agreement, the Declaration of Restrictive Covenants and all other applicable federal, State, and local laws and regulations, including whether all activities associated with the Project are in compliance with the Final Rule for the Fiscal Recovery Funds, the Compliance Guidance, and any subsequent guidance issued by the U.S. Treasury regarding ARPA funding. Upon reasonable notice (generally 48 hours except in circumstances related to emergent conditions or in response to concerns regarding fraudulent activity), Owner also agrees to provide the County or their representatives access to the Project and its records, wherever located, for the purposes of assessing the accuracy of reports submitted by the Owner and monitoring Owner's compliance with applicable requirements. As requested, Owner will provide physical or electronic copies or excerpts of such records at no cost to the party requesting such records. Further such parties may, upon occasion, interview any occupants, employees, or agents of the Project who consent to such interviews.

Owner shall maintain reasonable security measures to protect records containing personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure pursuant to NRS Chapter 603A to ensure against a breach of security of personal information of clients, staff, or other individuals. Owner shall have established written policies and procedures that align with NRS Chapter 603A and shall follow such procedures. Upon request, Owner shall make available to the County staff such written policies and procedures and will be monitored for compliance.

### **10.2 Reports**

Owner shall submit monthly reports to the County on the progress and performance of the Project during construction and lease up. The County reserves the right to alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to applicable laws or regulations, or to address findings related to noncompliance by the Project.

Initially, the County may require reports as follows:

- a) At all times prior to completion of the Project and leasing of units, Owner must report to the County any circumstances that preclude timely completion of, or warrant an extension of time to complete, any of the performance milestones outlined in Section 4.4. Such a report must be provided within ten (10) days of Owner's discovery, receipt, or knowledge of such information.
- b) Prior to the commencement of construction, Owner shall report not less than quarterly on progress toward closing on all Project financing and the commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due).
- c) During the construction period, Owner shall report monthly on progress. Monthly reports should include the following:
  - i. Percent of project completion;
  - ii. Summary of completed items/progress for the last 30 days;

- iii. Summary of items anticipated to be completed in the next 30 days;
  - iv. Anticipated delays;
  - v. Updated schedule;
  - vi. Invoices being paid; and
  - vii. Evidence of appropriate lien waivers to the County regardless of whether Owner is requesting a disbursement from the County during that month.
- d) Upon completion of construction and prior to reaching Stabilized Occupancy, Owner shall report monthly on progress toward leasing units and provide monthly income and expense reports.
- e) Following the achievement of Stabilized Occupancy, Owner shall report on the occupancy, physical condition, and financial status of the Project not less than annually, including:
  - i. On or before January 31 of each year subsequent to occupancy of the Project, Owner shall submit a Certification of Compliance with Income and Rent Restrictions, certified by the general partner or managing member of the Owner, together with documents verifying that all common areas and units meet HUD's Uniform Physical Condition Standards (or any successor standard issued by HUD) and comply with the terms of this Agreement and the Declaration of Restrictive Covenants; and
  - ii. Additionally, within one hundred-eighty (180) days of the end of its fiscal year, Owner shall submit copies of its statement of cash flows and annual project audit, prepared by an independent certified public accountant. At the County's option, such information shall include copies of bank account statements and proof of current insurance and payment of property taxes due.

Owner shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of the County, or their designees may examine any records or information accumulated pursuant to this Agreement. During the Affordability Period, the County will conduct on-site inspections to verify compliance with this Agreement. All confidential information shall be treated as such by all County representatives or designees. Owner shall maintain administrative and financial records as required by this Agreement applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

- a) Property description and location;
- b) Records of all persons served including: total number of clients, racial breakdown, ethnicity, percentage of low and very-low income clients (as defined by HUD), clients with disabilities, seniors, name of each head-of household including female head-of household and number in household, and rent charged to each household;
- c) Records regarding Project requirements that apply for the duration of the Affordability Period;
- d) Information about contractors, vendors, and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence;

- e) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
- f) Documentation of efforts to affirmatively further fair housing;
- g) Records demonstrating compliance with labor requirements including contract provisions and payroll records;
- h) Records demonstrating compliance with County Planning, Building, and Environmental Requirements as well as any Sustainability Elements committed to as part of the Application;
- i) Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests; and
- j) Records related to any decision to terminate or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

### 10.3 Reporting Requirements for State ARPA Funds

Awardee will provide additional reporting to comply with State ARPA funding requirements including but not limited to the following:

- a) Quarterly outcomes and performance measurement reports to the County on the close of each quarter from execution of this Agreement through the ARPA compliance period. These reports will contain, but are not limited to, the information contained in **Exhibit I, Program Outcomes and Performance Measures Quarterly Report to Clark County** including any narrative report to delineate the benefit realized by the County for the support. The County reserves the right to request additional information to ensure that the Fiscal Recovery Funds are being used to achieve outcomes and performance measures.
- b) Pursuant to the Compliance Guidance published by Treasury, the Owner must maintain records and financial documents for five (5) years after all State ARPA funds have been expended or returned to Treasury. Owner acknowledges that the Compliance Guidance published by Treasury may change and understands that any changes must be complied with.
- c) Annually or at more frequent intervals if required by the Division to comply with State ARPA funding requirements, a report on clients served including: total number of clients, racial breakdown, ethnicity, percentage of low and very-low income clients (as defined by HUD), clients with disabilities, seniors, name of each head-of household including female head-of household and number in household, and rent charged to each household. This report shall be sent to the Division via electronic mail to: [chess@housing.nv.gov](mailto:chess@housing.nv.gov) a copy of the report must also be sent to Community Housing Office at: [chf@clarkcountynv.gov](mailto:chf@clarkcountynv.gov).
- d) Owner shall comply with the requirements of Executive Order 11625, 12432, and 24 CFR § 93.407(a)(viii) that provides for the utilization of minority businesses and women business enterprises in all federally assisted contracts. Owner shall provide the County and the Division,



on an annual basis, records and data on Minority Business Enterprise, Women's Business Enterprise, and marketing efforts. The Division, in its discretion, may request such other and further information, as from time to time required to ensure compliance with the mandates of the above listed Executive Orders. These records shall contain, but are not limited to, the following data:

- i. Data on the attempts to reach minority-owned and female-owned businesses when announcing business opportunities;
- ii. Data on racial/ethnic or gender character of business to whom a contract was awarded and the contract amount; and
- iii. Data on attempts to affirmatively further fair housing.
- iv. These reports shall be sent via email to: [chess@housing.nv.gov](mailto:chess@housing.nv.gov); with a copy to: [chf@clarkcountynv.gov](mailto:chf@clarkcountynv.gov)

#### **10.3.1 Labor and Wage Reporting**

All labor standards must be met, including reporting, as outlined in Section 8.5 and **Exhibit K** of this Agreement. All wage reports sent to the Division must also be cc'd to the County at: [chf@clarkcountynv.gov](mailto:chf@clarkcountynv.gov).

### **10.4 Record Retention**

Owner shall retain all applicable administrative and project records as follows:

- a) General project records pertaining to the development and construction of the Project must be retained for not less than ten (10) years beyond the issuance of a Certificate of Occupancy for the Project. These include, but are not limited to, construction contracts and associated documents, invoices and payment records, records documenting compliance with any applicable labor standards, and the like.
- b) Records relating to ongoing operations of the Project must be maintained for not less than the most recent ten-year period. Such records must be maintained until the end of the Affordability Period.
- c) This Agreement, the Declaration of Restrictive Covenants, and any amendments, attachments, or supplements thereto must be retained for not less than ten (10) years beyond the end of the Affordability Period.
- d) Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later, and Owner shall maintain reasonable security measures to protect records containing personal information from unauthorized access, acquisition, destruction, use, modification or disclosure per NRS Chapter 603A to ensure against a breach of the security of personal information of clients, staff or other individuals. Owner shall have established written policies and procedures that align with NRS Chapter 603A and shall follow these procedures. Upon written request, Owner shall make available to Clark County staff these written policies and procedures and will be monitored for compliance.

## **10.5 Physical Inspections**

Owner will provide the County, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds during normal business hours. The County will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, subject to applicable tenant notice requirements, the County will inspect the Project annually or on another schedule it determines to ensure that the Project is being maintained in compliance with all appropriate property standards.

## **10.6 Financial Management**

Owner agrees to comply with 2 CFR Part 200 entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," with the exception of Subpart F (Audit Requirements) and exceptions authorized by the Federal Awarding Agency under Subpart B (General Provisions).

Owner shall submit to the County a copy of Owner's most recent single audit per 2 CFR Part 200 or a letter stating that it expended less than \$750,000 of Federal funds during that reporting period. If Owner submits a letter stating it expended less than \$750,000 in Federal funds, Owner shall provide a recent financial statement certified by an appropriate officer or employee of the Owner. Owners who have not been subject to a single audit per 2 CFR Part 200 are required to obtain education and training on the requirements of 2 CFR 200. The adequacy and successful completion of this requirement is subject to County approval.

In addition to any other recordkeeping requirements herein, Owner agrees that all costs of the Project shall be recorded by budget line items and be supported by checks, payroll registers, time records, invoices, contracts, purchase orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payroll registers, time records, invoices, contracts, purchase orders or other accounting documents which pertain, in whole or in part, to the Project shall be thoroughly identified and readily accessible to the County, the Division, and their authorized agents, within 48 hours of written request from the County or the Division.

Owner agrees that excerpts or transcripts of all checks, payroll registers, time records, invoices, contracts, purchase orders and other accounting documents related to or arguably related to the Project will be provided upon reasonable request to the County, applicable federal authorities, and their authorized agents. Consistent with Section 6.6 Owner shall provide a sample tenant lease to the County for review and approval prior to lease-up. Should the approved sample tenant lease be modified at any time during the term of this Agreement Owner shall provide the modified lease for approval, not to be unreasonably withheld, conditioned or delayed, prior to any tenant entering into a lease with Owner, provided that if no response by the County is provided within 15 days of delivery, such form shall be deemed approved. Pursuant to Section 6.3, not less than annually from the date of first occupancy Owner shall provide the County with the proposed rents for review and approval.

## **SECTION 11: DEFAULT, ENFORCEMENT, AND TERMINATION**

### **11.1 Default**

The actions noted below shall constitute an event of default by Owner hereunder. The County may give written notice of default to the Owner, by registered or certified mail, addressed pursuant to the Notice provisions of this Agreement.

- a) Failure to comply with the terms and conditions hereof;
- b) Failure to comply with the Declaration of Restrictive Covenants, fair housing laws, and other federal requirements related to the Project, or any applicable State or local law, regulation, ordinance, or requirement;
- c) Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Owner in the execution or performance of this Agreement;
- d) A default by Owner under this Agreement and all associated documents, that remains uncured beyond all applicable cure periods;
- e) The Owner's dissolution or other termination of existence; merger or consolidation with any other entity; change in control of the Project or the Owner without the County's prior written consent as required herein; insolvency; forfeiture of right to do business in the State of Nevada or business failure; abandonment of the Project for more than thirty (30) days; appointment of a receiver of any part of the Owner's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Owner; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Owner which are not dismissed within sixty (60) days;
- f) Except any judgment or lien resulting from liability that is fully payable from the proceeds of an insurance policy maintained by Owner, Owner allows any judgment or lien against the property to remain for more than sixty (60) calendar days after the entry of such judgment or lien without being paid, stayed on appeal, discharged, bonded, or dismissed within sixty (60) calendar days;
- g) A sale, transfer, or further encumbrance of all or part of the Project without the County's prior written consent; and
- h) Any default that remains uncured beyond all applicable cure periods under any documents evidencing other financing for the Project, including but not limited to existing restrictions on the Housing Portion of the Site. This may include, but is not limited to, the failure to maintain any reserve account required by another lender.

## **11.2 Remedies and Enforcement**

In the event of default by Owner hereunder, which is not cured within thirty (30) days of the mailing of written notice by the County unless such cure is not practicable within 30 days and the Owner has, to the County's satisfaction, commenced and is diligently pursuing a cure within the 30 days in which case the County may extend the cure period if permitted by the Division, in which case may not exceed 45 days. The County may seek any combination of the following remedies:

- a) If the Project is not developed and operated for its intended use as affordable housing as set forth herein within five (5) years of the date of this Agreement, repossess, and re-enter the Project property pursuant to Section 11.4 below;
- b) Subject to the rights of senior lenders and superior lienholders, retain a new developer and/or general contractor to commence or finish construction of the Project and improvements on the Commercial

Portion of the Site according to the Approvals at the Owner's expense; however, this remedy shall expire within five (5) years of the execution of this Agreement;

- c) Recover from the Owner the amounts of all damages suffered by County due to Owner's breach;
- d) Seek an injunction or other equitable relief in any court of competent jurisdiction to enforce the Owner's obligations hereunder;
- e) Subject to the rights of senior lenders, collect on any payment or performance bond;
- f) Subject to the rights of senior lenders, enforce the Performance and Recovery Guaranty;
- g) Subject to the rights of senior lenders, assign any rights, privileges, guarantees, security, or the like to the County;
- h) Withhold any further payments to be made under this Agreement until such time as Owner's breach has been cured in accordance with the terms and conditions of any cure period provided by the County (but the County may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
- i) Apply to any appropriate court, State or federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
- j) Subject to the rights of senior lenders and superior lienholders, enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of Owner, as the attorney-in-fact of Owner (which authority is coupled with an interest and is irrevocable by Owner), to complete or cause to be completed the Project, at the cost and expense of Owner;
- k) Pursuant to the provisions of Section 3.14, require the use of or change in professional property management;
- l) Subject to existing restrictions on the Property and the rights of senior lenders, require the replacement of the Owner's managing member(s), as applicable, in which case not less than 60 days' notice of such intent will be provided to the Owner; senior lender shall have the right to approve such replacement of managing members;
- m) Subject to the rights of senior lenders, declare immediately due and payable the amount of funds awarded pursuant to this Agreement and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor, or any other notice of any kind, all of which are hereby expressly waived; and
- n) Terminate this Agreement by giving written notice to Owner of such termination and specifying the effective date of such termination. If the Agreement is terminated by the County as provided herein, Owner shall have no claim of payment or claim of benefit for any incomplete activities undertaken under this Agreement.

Except as otherwise provided for by law or this Agreement, the rights and remedies of County shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages.

Any delay by the County in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as the occasion therefore arises.

### **11.3 Termination for Convenience**

In addition to the termination provision in Section 11.2(n), this Agreement may be terminated by the County upon thirty (30) days written notice. In the event of termination under this section, Owner shall have no claim of payment or claim of benefit for any incomplete project activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses. Notwithstanding the foregoing, the County hereby agrees that it shall have no right to terminate this Agreement pursuant to this Section 11.3 from and after closing of the Construction Loan financing of the Project; provided, however, that County shall continue to have all of its other rights and remedies set forth in Section 11.2 above.

Upon termination for convenience by County, County shall reimburse Owner for all costs incurred for work by the Owner or Owner's affiliate on the Commercial Portion of the Site and ten percent of pre-development costs incurred by Owner on the Housing Portion of the Site, up to one hundred thousand dollars (\$100,000), subject to any payments made by the County for the Housing Portion of the Site. If Owner requests such reimbursement, they shall provide County itemized evidence of costs incurred.

### **11.4 Reversion**

In addition to and independent of any other remedy available to it, if the County terminates this Agreement as set forth in 11.2(n) as a result of the Project not being developed and operated for its intended use as affordable housing as set forth herein within five (5) years of the date of this Agreement,, the Housing Portion of the Site shall immediately and automatically revert back to the County, without liability and cost to the County. In the event of such reversion, Owner agrees, at its sole cost and expense, to reconvey the Housing Portion of the Site to the County under this Agreement. The failure of individual units from time to time to comply with the affordability restrictions set forth herein shall not trigger such reversionary right.

To the extent provided in this Agreement, shall be subject to, and shall not defeat, render invalid or limit any mortgage, deed of trust, or other security instrument or conveyance for financing permitted by this Agreement. Notwithstanding the foregoing, reversion under this Agreement shall survive any foreclosure.

## **SECTION 12: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **12.1 General**

Owner represents and warrants to Clark County that as of the date hereof:

- a) Owner is a Nevada limited liability company in good standing with the Secretary of State of Nevada, and is duly qualified, and holds all permits necessary, to operate its business under the requisite approvals required by the State of Nevada.
- b) Each is in good standing in the respective jurisdictions in which it is organized and is duly qualified, and holds all permits and authorization necessary to operate its business as required by the State of Nevada, and is qualified and authorized to act on behalf of the Owner with respect to the Project and Owner's obligations under this Agreement.
- c) Owner has all requisite power and authority to carry out its business as now and whenever conducted and to enter into and perform its obligations under this Agreement.
- d) By proper action of Owner, the signatories hereto have been duly authorized to execute and deliver this Agreement.
- e) The execution of this Agreement does not violate any provision of any other agreement to which Owner or Brinshore Development, LLC is a party.
- f) Except as may be specifically set forth in this Agreement, Owner has acquired, has timely applied for, or is committed to obtaining, all necessary approvals from the relevant City of North Las Vegas Development Agencies and any other consents or approvals that are necessary in connection with the execution of this Agreement or with the Owner's performance of its obligations hereunder.
- g) Neither Owner, nor any of their principals are currently a debtor in a case under the federal or state bankruptcy codes, are not the subject of an involuntary petition under any bankruptcy code, have not made an assignment for the benefit of creditors nor is insolvent and unable to pay its debts as they become due.
- h) There are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against Owner which would inhibit their ability to perform their obligations under this Agreement.

## **12.2 Affirmative Covenants**

- a) Owner represents, warrants and covenants to County that the Housing Portion of the Site will only be used for affordable housing purposes during any prescribed Affordability Period.
- b) Owner shall promptly pay all taxes, judgments and claims against Owner, its contractors and subcontractors, which become involuntary liens against the Site or the Project, provided Owner shall have the right to properly contest any such taxes, judgments or claims provided they are bonded or insured over.
- c) Owner shall execute and provide to County the Ownership Disclosure Form (or such subsequent form as County may require) and shall notify County of any changes to the information on such form during the term of this Agreement.
- d) Owner shall conduct all activities in the development and management of the Project in compliance with the provisions of all applicable laws and this Agreement.

- e) Owner agrees to provide, keep current, pay all the premiums for, and comply with all terms of the insurance policies in accordance with the requirements of the County, which may be updated from time to time by the County, in its sole discretion based on affordable housing industry standards, upon notice to the Owner. In addition, at all times prior to the issuance of final certificates of occupancy for the Project, Owner shall maintain and keep in full force and effect, and shall cause all of its contractors and subcontractors to maintain and keep in full force and effect, such policies of insurance as described. Each such policy shall name County as an additional insured, shall not be subject to cancellation without 30 days' prior written notice to County, and shall be primary and non-contributory to any insurance carried by County. No later than five (5) business days prior to the Closing Date, Owner shall provide County with certificates of insurance and policy endorsements evidencing the required limits and coverages.

### **12.3 Negative Covenants**

- a) Neither County nor Owner shall knowingly permit the Site or the Project or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Site or the Project in violation of any applicable laws.
- b) Except as expressly permitted in this Agreement, Owner represents and warrants that it has not made or created, and will not make or create or suffer to be made or created, any transfer of the Site or the Project including but not limited to sale, ground lease, lease (other than in the normal course of business to eligible low income households as anticipated by this Agreement and customary utility easements and licenses), either voluntarily or by operation of law without the prior written approval of County.
- c) Except as anticipated by the Project Budget, Owner will not further encumber the Project with liens, mortgages, deeds of trust, or other similar security instruments without the prior written consent of the County.
- d) Owner will not sell or otherwise transfer the general or limited partnership interests, member interests, managing member interest, or other controlling interests in the Owner without the prior written consent of the County, which shall not be unreasonably withheld. This will include but is not limited to:
  - i) The voluntary or involuntary re-assignment of the role of general partner, managing member, or other controlling entity or individual (collectively the "Controlling Entities") to another entity or individual, except for estate planning purposes;
  - ii) Sale or transfer of the interest of any Owner of a Controlling Entity, except for estate-planning purposes;
  - iii) Sale or transfer of any other interests in Owner, including but not limited to a limited partner interest, special limited partner interest, or member interest, except for estate-planning purposes.

Notwithstanding, the County consents to the transfer of the Investor's limited partner or member interest in the Owner among affiliates of the Investor. Owner must provide notice of such transfer to the County at least five (5) days prior to the transfer. In addition, the County consents to the exercise by Owner of a purchase option and/or right of first refusal, as provided in the Owner's organizational documents, provided notice of such event is provided to the County at least thirty (30) days prior to its exercise.

## **SECTION 13: MISCELLANEOUS PROVISIONS**

### **13.1 Entire Agreement**

The Agreement including its Exhibits attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements both written and oral with respect to the subject matter hereof.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

### **13.2 Amendment**

Any deviation from, modification, or amendment to any of the provisions of this Agreement must be pursuant to a written amendment signed by both parties.

### **13.3 Assignment**

Owner shall not transfer or assign any interest in or delegate any obligation under this Agreement, without the express prior written consent of County, approval of which shall be at its sole discretion. Owner will notify the County not less than 60 days in advance of any requested transfer or assignment. In the event of the County's approval of an assignment, this Agreement will inure to the benefit of and bind the permitted successors and assigns of the Owner.

In any request for an assignment, Owner shall state in its notice, endorsed by the Owner and the potential assignee, that (i) the designated assignee is ready, willing and able to fulfill all obligations of this Agreement, and to diligently pursue the development and operation of the Project in accordance with the terms and conditions of this Agreement, and (ii) the designated assignee holds all permits, licenses and approvals required by Nevada law that are necessary to fulfill the Owner's obligations under this Agreement. County shall be under no obligation to approve any assignment and any assignment made without the approval of County is void.

The County, upon notice to the Owner (or following a County-approved assignment the Owner's successor), may assign its rights and privileges under this Agreement to any other federal, state, or local governmental body or instrumentality, including any trust or agency formed by the County

### **13.4 Notices**

Except in the case of notice of default under this Agreement, which shall be by certified mail/return receipt requested, overnight mail or parcel delivery, or personal service, notices due to Owner hereunder will be deemed delivered two (2) days after being placed in the United States mail, postage pre-paid, addressed to the Owner as follows:

c/o Brinshore Development, L.L.C.  
1603 Orrington Ave., Suite 450  
Evanston, IL 60201



Attention: David Brint  
Email: davidb@brinshore.com

All notices of default shall also be delivered to senior lenders as follows:

JP Morgan Chase Bank, N.A.  
c/o Community Development Banking  
10 S. Dearborn Street  
Chicago, Illinois 60603  
Attention: Annette Reschke, Executive Director

Notices due the County shall be in writing and must be personally delivered, delivered via overnight parcel delivery, or placed in the United States mail. Notices to the County, in response to a notice of default, must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of a County representative. Notices delivered by email will be deemed received upon the recipients email acknowledging receipt to the sender or other written acknowledgement from the intended recipient. Notices to the County should be addressed as follows:

Clark County Community Housing Office  
500 S. Grand Central Parkway  
Las Vegas, NV 89155  
Attn: Community Housing Administrator  
Email: chf@clarkcountynv.gov

### **13.5 Non-Liability of County Officials**

No officers, employees, contractors, agents, officials or board members of County, its subsidiaries or affiliates, shall be personally liable to Owner for any default or breach by County, for any amount which may become due to Owner, or for any obligation of County under the terms of this Agreement.

### **13.6 No Third-Party Beneficiaries**

Except as expressly provided herein, and subject to the limitations herein, no term or provision of this Agreement is intended to be, or will be, for the benefit of any person, firm, entity, organization or corporation not a party hereto, and no such other person, firm, organization or corporation will have any right or cause of action hereunder.

### **13.7 Reserved**

### **13.8 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be declared by a court of competent jurisdiction to be invalid, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

### **13.9 Governing Law and Jurisdiction**

The interpretation and enforcement of this Agreement shall be governed and interpreted by the laws of the State of Nevada. All actions or proceedings arising out of or related to this Agreement shall be litigated in any local, state or federal court located in Las Vegas, Nevada. The parties hereto consent to personal jurisdiction in any local, state or federal court located in Las Vegas, Nevada and hereby waive any objection to process based on personal jurisdiction.

### **13.10 Headings and Pronouns**

The headings of the paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa.

### **13.11 No Joint Venture**

It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture or other agreement between County and Owner or any other party.

### **13.12 Further Assurances**

Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.

### **13.13 Counterparts**

This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement. Each party may execute this Agreement by signatures obtained through facsimile and those signatures may be relied upon by the other party as valid as if they were signed in the presence of the other party.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

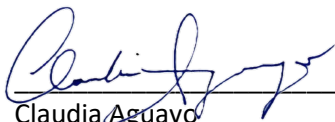
COUNTY:  
CLARK COUNTY, NEVADA

By \_\_\_\_\_  
Kevin Schiller, County Manager

ATTEST:

\_\_\_\_\_  
Lynn Marie Goya  
County Clerk

Approved as to form:

  
\_\_\_\_\_  
Claudia Aguayo  
Deputy District Attorney

STATE OF NEVADA                    )  
  ) ss.  
COUNTY OF CLARK                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Kevin Schiller, County Manager of Clark County, Nevada, on behalf of the County.

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

## **EXHIBIT A: LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$  ) OF THE NORWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 22, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M, DESCRIBED AS FOLLOWS:

BEING PARCEL ONE (1) AS SHOWN BY MAP THEREOF IN FILE 74 OF PARCEL MAPS, PAGE 56, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA

ASSESSOR'S PARCEL NUMBER: 139-22-201-005

## EXHIBIT B: PROJECT DETAILS

**Project Name:** Microbusiness Housing

**Assessor's Parcel Number:** 139-22-201-018

**Owner:** Microbusiness Housing, LLC

**Developer/Sponsor:** Brinshore Development, L.L.C.

### Unit/AMI Mix:

	Unit Size	50% AMI	60% AMI	80% AMI	Subtotal
Studio	440-525 sq. ft.		4	4	8
1-Bedroom	625-775 sq. ft.		12	16	28
2-Bedroom	980-1,075 sq. ft.		14	18	32
3-Bedroom	1,160 – 1,225sq. ft.	2	3	3	8
<b>Subtotal</b>		<b>2</b>	<b>33</b>	<b>41</b>	<b>Total: 76</b>

### Targeting:

Project is for [X] family occupancy (i.e. not age restricted)

Clark County is requiring that the units must be restricted at the AMI levels listed above. A minimum of 30 units must be restricted to 60% AMI or below to meet the requirements of the State of Nevada's Home Means Nevada ARPA funding which will be provided for this project.

### Project Amenities and Features:

The community will include common amenities throughout the property to provide ample opportunities for neighbors to interact, entertain, and recreate. At the front of the community, residents will be welcomed home by a 1,567 square-foot office with lobby lounge, leasing and management offices as well as a common computer room. On the north end of the same building will be the 1,567 square foot community room with a kitchen that connects to a 3,868 square foot courtyard. Also in this area is the fitness center. The provided outdoor open spaces will have shaded seating and gathering areas and bar-b-ques. There will also be landscaped perimeter walking paths to connect the community to existing playgrounds to the west. Apartment units will feature in-unit laundry, eat-in kitchens, patios/regular balconies/Juliet balconies (in certain units), ample storage, and flexible spaces which may be adapted by each resident for working and learning from home.

# EXHIBIT C: ARPA REQUEST FOR REIMBURSEMENT AND FINANCIAL REPORT

(Excel file available from County upon request)

## Clark County Recovery Grant Clark County Fiscal Recovery Office Monthly Request for Reimbursement (RFR)

Subgrantee:	SAM.GOV#
Vendor Number:	AGENDA#
EIN Number:	Fund#
Address:	PO#:
Project Title:	Report No.: 1
Subaward Period: AUG. 21, 2021- DEC. 31, 2024	Monthly Report Period
Total Award: \$ -	From: <span style="background-color: #f8d7da;"></span>
	To: <span style="background-color: #f8d7da;"></span>

This form contains formulas and automatically populates from previous months.

RFR must be accompanied by expenditure report and back-up documentation.

Only enter Current Expenditures	BUDGET DETAILS					
	A	B	C	D	E	F
Approved Budget Category	Award Amount	Previously Reported	Current Expenses	Reported to Date	Balance Remaining	Percent Expended to Date
Personnel	\$ -	\$ -		\$ -	\$ -	-
Professional Services	\$ -	\$ -		\$ -	\$ -	-
Rent/Insurance of facility	\$ -	\$ -		\$ -	\$ -	-
Computer related	\$ -	\$ -		\$ -	\$ -	-
Utilities	\$ -	\$ -		\$ -	\$ -	-
Supplies	\$ -	\$ -		\$ -	\$ -	-
Local Travel	\$ -	\$ -		\$ -	\$ -	-
Direct Goods and Services	\$ -	\$ -		\$ -	\$ -	-
Capital (property and equipment)	\$ -	\$ -		\$ -	\$ -	-
Liability Insurance/Fidelity Bond	\$ -	\$ -		\$ -	\$ -	-
Other	\$ -	\$ -		\$ -	\$ -	-
Indirect Cost	\$ -	\$ -		\$ -	\$ -	-
<b>TOTAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>-</b>

<sup>1</sup> Capital (property and equipment) purchases in excess of \$1,000,000 require justification. See Capital Request (CR) form.

### Household Assistance (EC 2.1-2.8):

Number of households served

### NOTES\* NO ADVANCE FOR THIS AWARD

I, an authorized signatory for the agency, certify to the best of my knowledge and belief that this report is true, complete and accurate, that the expenditures, disbursements and receipts are for the purposes and objectives set forth under the terms of the approved project and budget. I acknowledge that all costs included in this reimbursement request are allowable, allocable, necessary and reasonable and any questioned costs remain my agency's fiscal responsibility. Request for Reimbursement cannot be processed without an expenditure report/backup. I am aware that any false, fictitious or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. I verify that the backup documentation attached are correct.

Signature of Authorizing Official		Date	Authorizing Official's Name Printed	Authorizing Official's Title Printed
Preparer's Name		Preparer's Phone	Preparer's E-Mail	

## EXHIBIT D: PLAN OF FINANCE AND BUDGET

The goal of this Plan of Finance is to establish a mutual understanding of the general approach to financing the Project. The parties recognize specific figures are subject to change, for example as a result of changes in the macro-economic landscape or in the availability of specific funding sources. Significant changes to the Plan of Finance may be proposed by the Owner and Brinshore Development, L.L.C. for review by the County. The County's primary goal in any review is to determine if the financing approach is commercially reasonable and achievable within the timelines otherwise set forth in the Disposition, Development and Funding Agreement.

As of October 17, 2024, the Plan of Finance as proposed by the Owner and Brinshore Development, L.L.C. and accepted by the County is based on the following high-level assumptions.

The Project's total cost is estimated at \$31,864,905. This includes a below-market purchase of the land for \$1.00, hard costs of \$22,846,507, soft costs of \$4,284,400, and reserves/fees of \$4,626,838. The reserves/fees include the developer fee of \$4,156,292, initial replacement reserve deposit of \$11,400, hazard insurance escrow of \$95,760 and an operating reserve of \$470,546, or six (6) months of expenses, reserves and debt service. This total cost estimate equates to \$419,275/unit.

Development cost savings, compared to other comparable projects, are expected as a result of the following factors:

- \$1 purchase price of the land
- Subsidy provided through County HSEST and State ARPA funds
- Cost containment measures undertaken by Owner

The operating income is primarily based on the assumed unit mix at maximum LIHTC rents (using 2024 rent limits) with initial stabilized operating expenses, inclusive of \$300 per unit per year in initial replacement reserve deposits, of \$11,400. Projections assume a 7% vacancy rate, 2% revenue growth, and 3% expense growth.



**Bold, Green Highlight Cells Denote USER INPUT**

**Bold, Yellow Highlight Cells Denote USER INPUT OVERRIDES**

White Cells Denote CALCULATED RESULTS

#### Inputs Related to Property

Property Name	<b>Microbusiness Park Housing</b>
Total Rental Units	76
Manager's Unit / Other Non-Revenue Units	
Total Units in Development	76

#### Notes/Instructions

Enter the 'marketing name' of the proposed property  
Input unit mix on 'Rents and Unit Mix' Worksheet  
Enter number of non-revenue units; otherwise enter '0'

Proposed 1st Mortgage Lender Name	<b>To Be Determined</b>
Proposed 1st Mortgage Loan Type	<b>6,190,000</b>
First Deed of Trust Loan Payment	<b>449,250</b>
Term (Years)	<b>17</b>
Loan Amortization (Years)	<b>-35</b>
Interest Rate	<b>6.50%</b>

Estimate used in Proforma

Proposed Must-Pay 2nd Mortgage Lender Name	
Proposed Must-Pay 2nd Mortgage Loan Type	
Second Deed of Trust Loan Payment	
Term (Years)	
Loan Amortization (Years)	
Interest Rate	

Estimate used in Proforma

#### Inputs Related to Property Type

Acquisition/Rehab or New Construction?	<b>New Construction</b>
Elevator?	<b>No</b>
Elderly, Family or Mixed Tenancy?	<b>Family</b>
Utilities included in Rent Amount?	<b>Yes</b>
Project Based Vouchers (PBV)?	
PBV - If yes, provide number of vouchers awarded	

PBV's must be identified on Rents and Unit Mix tab

#### Inputs Related to Inflation and Trending

Projected Operating Expense Inflation Rate (default 3.0%)	<b>3.00%</b>
Projected Rent Inflation Rate (default 2.0%)	<b>2.00%</b>
Projected Other Income Inflation Rate (default 2.0%)	<b>2.00%</b>
First Full Operating Year for Proforma	<b>2026</b>

The first full year of operating revenue and expenses

#### Rent Loss Underwriting

Annual Vacancy Loss for Rental Units	<b>5.00%</b>
Annual Collections Loss for Rental Units	<b>2.00%</b>

Default assumption

Default assumption

#### Per Unit Per Year Replacement Reserve Deposit

2024 CHO Financial Feasibility Spreadsheet-11.7.24

Annual/Unit Required Replacement Reserve Deposit

**\$300**

*User has overridden \$250 RR underwriting*

**Property Tax Exemption**

Will project claim exemption from property taxes as a result of receiving HOME funds?

**YES**

Estimated Property Tax exemption the Development will receive

**\$50,000**

**Total amount of CHF funds requested from Clark County**

**Total amount of HOME funds requested from Clark County**

HOME assisted units will be (select one)

**FLOATING**

*Units are initially designated but can be replaced by comparable units during the period of affordability*

<b>Bold, Green Highlight Cells Denote USER INPUT</b>
<b>Bold, Yellow Highlight Cells Denote USER INPUT OVERRIDES</b>
<b>White Cells Denote CALCULATED RESULTS</b>

**Total Rental Units  
Utilities Included**

**76  
Yes**

**76 Total Units in Development**

Unit Type	# of Units	# HOME Units	Utility Allowances	Market Rent	Low HOME	High HOME
0BR	8	2	\$67		\$833	\$1,064
1BR	28		\$89		\$893	\$1,141
2BR	32		\$115		\$1,071	\$1,372
3BR	8		\$154		\$1,238	\$1,576
4BR	0		\$0		\$1,381	\$1,739

--- Unit Mix Table ---						
Number of Units	Max Rent Basis	0BR	1BR	2BR	3BR	4BR
0	Market Rents					
0	30% AMI					
0	40% AMI					
2	50% AMI	0	0	0	2	
33	60% AMI	4	12	14	3	
41	80% AMI	4	16	18	3	
0						
0						
76	Number	8	28	32	8	0
	Percentage	10.5%	36.8%	42.1%	10.5%	0%

**Zero-Bedroom Units - Rent**

# 0BR Units	Rent Basis	Net Rent (incl. Utilities)	Total Effective Monthly Rent	# HOME Units	Specify Reason for Custom
0	Market Rents		\$0		
0	30% AMI		\$0		
0	40% AMI		\$0		
0	50% AMI		\$0		
4	60% AMI	\$883.00	\$3,532		
4	80% AMI	\$1,103.00	\$4,412		
0	Custom: 0% AMI		\$0		
0	Custom: 0% AMI		\$0		
Sub-total			\$7,944		

**Two-Bedroom Units - Rent**

# 2BR Units	Rent Basis	Net Rent (incl. Utilities)	Total Effective Monthly Rent	# HOME Units	Specify Reason for Custom
0	Market Rents		\$0		
0	30% AMI		\$0		
0	40% AMI		\$0		
0	50% AMI		\$0		
14	60% AMI	1106	\$15,484		
18	80% AMI	1460	\$26,280		
0	Custom: 0% AMI		\$0		
0	Custom: 0% AMI		\$0		
Sub-total			\$41,764		

**Four-Bedroom Units - Rent**

#4BR Units	Rent Basis	Net Rent (incl. Utilities)	Total Effective Monthly Rent	# HOME Units	Specify Reason for Custom
0	Market Rents		\$0		
0	30% AMI		\$0		
0	40% AMI		\$0		
0	50% AMI		\$0		
0	60% AMI		\$0		
0	80% AMI		\$0		
0	Custom: 0% AMI		\$0		
0	Custom: 0% AMI		\$0		
Sub-total			\$0		

**One-Bedroom Units - Rent**

# 1BR Units	Rent Basis	Net Rent (incl. Utilities)	Total Effective Monthly Rent
0	Market Rents		\$0
0	30% AMI		\$0
0	40% AMI		\$0
0	50% AMI		\$0
12	60% AMI	928	\$11,136
16	80% AMI	1261	\$20,176
0	Custom: 0% AMI		\$0
0	Custom: 0% AMI		\$0
Sub-total			\$31,312

**Three-Bedroom Units - Rent**

# 3BR Units	Rent Basis	Net Rent (incl. Utilities)	Total Effective Monthly Rent
0	Market Rents		\$0
0	30% AMI		\$0
0	40% AMI		\$0
2	50% AMI	1022	\$2,044
3	60% AMI	1257	\$3,771
3	80% AMI	1728	\$5,184
0	Custom: 0% AMI		\$0
0	Custom: 0% AMI		\$0
Sub-total			\$10,999

Total Rental Income	\$92,019	Effective Gross Annual Rental	\$1,104,228
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**2024 LIHTC Rent Limits (Updated 4/8/2024)**

	0BR	1BR	2BR
Fair Market Rent	1214	1377	1643
30% AMI	500	536	643
40% AMI	667	715	857
50% AMI	833	893	1071
60% AMI	1001	1072	1286
80% AMI	1334	1429	1714

Utility	Select Source	0BR	1BR	2BR	3BR	4BR	Source of Utility Allowance	Effective Date
Heating	electric	6.00	7.00	8.00	10.00			
Cooking	electric	7.00	8.00	10.00	11.00			
Other Electric		34.00	41.00	51.00	63.00			
Refrigerator								
Range								
Air Conditioning		11.00	14.00	18.00	23.00			
Evaporative Cooler								
Water Heater	natural gas	9.00	19.00	28.00	47.00			
Water								
Sewer	Las Vegas/Henderson							
Trash Collection								
Flat Fees								
Other								
Total		67.00	89.00	115.00	154.00	0.00		

Total Rental Units 76

76

Total Units in Development

\*\* please show cost escalation from project inception, meaning from first proforma created, and likely submitted for oth

	Amounts Proposed by Developer / Sponsor			Cost Escalation % **	Comment
Estimate of Operating Expenses	Annual	Per Unit	Per Unit Per Month		
Other Income					
Interest income available for ops		\$0	\$0		
Laundry, Parking/Facilities Income		\$0	\$0		
NSF/Late Fee Income		\$0	\$0		
Tenant Damage Charges		\$0	\$0		
Grants for Service Costs		\$0	\$0		
Non-residential Rental Income (net of vacancy and collections loss)		\$0	\$0		
Other Income	\$9,120	\$120	\$10		
Total Other Income	\$9,120	\$120	\$10		
General & Administrative Expenses					
Advertising	\$1,000	\$13	\$1		
Other Administrative Expenses	\$2,000	\$26	\$2		
Postage & Office Supplies	\$2,000	\$26	\$2		
Management Fee	\$62,126	\$817	\$68		
Legal Expenses (Project)	\$2,000	\$26	\$2		
Auditing Expenses (Project)	\$9,000	\$118	\$10		
Bookkeeping Fees/Accounting Services	\$2,000	\$26	\$2		
Telephone & Answering Service	\$1,000	\$13	\$1		
Employee Training	\$400	\$5	\$0		
Miscellaneous Administrative Expenses		\$0	\$0		
Monitoring Fees	\$4,560	\$60	\$5		
Total General & Administrative Expenses	\$86,086	\$1,133	\$94		
Payroll, Payroll Tax & Employee Benefits					
Management & Office Payroll	\$60,000	\$789	\$66		
Maintenance Payroll	\$42,000	\$553	\$46		
Repairs Payroll (all O&M on payroll)		\$0	\$0		
Payroll Taxes (FICA)	\$18,000	\$237	\$20		
Health Ins. & Other Employee Benefits	\$18,000	\$237	\$20		
Other (describe)		\$0	\$0		
Other (describe)		\$0	\$0		
Total Payroll, Payroll Tax & Employee Benefits	\$138,000	\$1,816	\$151		
Utilities					
Natural Gas		\$0	\$0		
Electricity	\$9,000	\$118	\$10		
Water	\$20,000	\$263	\$22		
Gas (propane)		\$0	\$0		
Sewer	\$40,000	\$526	\$44		
Other Utilities		\$0	\$0		
Total Utility Exps	\$69,000	\$908	\$76		
Repairs and Maintenance Expenses					
Exterminating	\$5,000	\$66	\$5		
Garbage & Trash Removal	\$20,000	\$263	\$22		
Security Contract	\$5,000	\$66	\$5		
Grounds Contract	\$13,000	\$171	\$14		
Pool		\$0	\$0		
Repairs Material	\$4,000	\$53	\$4		
Repairs Contract	\$9,000	\$118	\$10		
HVAC R & M	\$5,000	\$66	\$5		
Decorating Payroll/Contract	\$18,240	\$240	\$20		

Total Rental Units 76

76

Total Units in Development

\*\* please show cost escalation from project inception, meaning from first proforma created, and likely submitted for oth

Estimate of Operating Expenses	Amounts Proposed by Developer / Sponsor			Cost Escalation % **	Comment
	Annual	Per Unit	Per Unit Per Month		
Decorating Supplies	\$2,000	\$26	\$2		
Other Expenses	\$2,000	\$26	\$2		
Misc. O & M Expenses		\$0	\$0		
<b>Total Repairs and Maintenance Expenses</b>	<b>\$83,240</b>	<b>\$1,095</b>	<b>\$91</b>		
<b>Taxes &amp; Insurance</b>					
Misc. Taxes, Licenses, & Permits	\$2,000	\$26	\$2		
Property & Liability Insurance	\$91,200	\$1,200	\$100		
Fidelity Bond Insurance		\$0	\$0		
Workmen's Compensation		\$0	\$0		
Annual Property Taxes	\$0	\$0	\$0		
Other Taxes		\$0	\$0		
Other Insurance		\$0	\$0		
<b>Total Taxes and Insurance</b>	<b>\$93,200</b>	<b>\$1,226</b>	<b>\$102</b>		
<b>Total Expenses</b>	<b>\$469,526</b>	<b>\$6,178</b>	<b>\$515</b>		

Construction Budget			Total Units 76
GENERAL CONSTRUCTION	Project Total	Per Unit	
Demolition		\$0	
Excavation		\$0	
Concrete		\$0	
Masonry		\$0	
Roofing		\$0	
Siding		\$0	
Rough carpentry		\$0	
HVAC (Repair, not Replacement)		\$0	
Plumbing		\$0	
Electrical		\$0	
Finish carpentry		\$0	
Interior Doors and Closet		\$0	
Windows (Refurbish, not Replacement)		\$0	
Drywall		\$0	
Tile		\$0	
Paint (interior)		\$0	
Flooring		\$0	
Basic Insulation (not for Energy Efficiency)		\$0	
Energy Efficiency Enhancements (see below)		\$0	
Appliances		\$0	
Cabinets & Counter Tops		\$0	
Hardware and Accessories		\$0	
Window Treatments (mini blinds)		\$0	
Exterior Doors		\$0	
Storm Doors		\$0	
Landscaping		\$0	
Permits		\$0	
Other:		\$0	
Other:		\$0	
Other:		\$0	
Other:		\$0	
Total Construction:		\$0	\$0

Hard Costs from Sources and Uses \$ 17,018,717.00

Total Rental Units 76

76 Total Units in Development

\*\* please show cost escalation from project inception, meaning from first proforma created, and likely submitted for other applications

PERMANENT Sources (do not list construction / bridge loan(s))	\$ Amount					% of TOTAL	% of CATEGORY	\$ Per Unit	Cost Escalation %**	ADDITIONAL COMMENTS
1st Mortgage Hard Debt	\$ 6,190,000					19.4%	19.4%	\$ 81,447		
2nd Mortgage Hard Debt						0.0%	0.0%	\$ -		
Tax Credit Equity						0.0%	0.0%	\$ -		
Total HOME Funds from County	\$ 500,000					1.6%	1.6%	\$ 6,579		
Total HOME Funds from Other Jurisdictions						0.0%	0.0%	\$ -		
Deferred Developer Fee						0.0%	0.0%	\$ -		Deferral equals 0.00% of Total Developer Fee
Owner/GP Cash						0.0%	0.0%	\$ -		
Welcome Home County Funds (CHF)	\$ 14,174,905					44.5%	44.5%	\$ 186,512		
Other Source 1 (HMNI)	\$ 11,000,000					34.5%	34.5%	\$ 144,737		
Other Source 2 (Specify)						0.0%	0.0%	\$ -		
Other Source 3 (Specify)						0.0%	0.0%	\$ -		
	\$ 31,864,905					100%	100%	\$ 419,275		

USES	\$ Amount	HMNI	Construction/ Perm Loan	HOME Funds	County Funds	DDF	DDF	% of CATEGORY	\$ Per Unit	ADDITIONAL COMMENTS
ACQUISITION COSTS										
Acquisition Land							0.0%	0.0%	\$ -	
Acquisition Buildings							0.0%	0.0%	\$ -	
Acquisition Other							0.0%	0.0%	\$ -	
TOTAL ACQUISITION COSTS	\$ -						0%	0%	\$ -	

CONSTRUCTION COSTS											
Hard Costs: Site Improvements	\$ 3,345,771	\$ 1,540,816			\$ 1,804,955.4	\$ -	8.4%	14.6%	\$ 44,023		
Hard Costs: Construction	\$ 17,018,717	\$ 7,837,567	\$ 2,178,152	\$ 500,000	\$ 6,502,997.7		53.7%	74.5%	\$ 223,930		
Hard Costs: Contingency	\$ 1,057,980				\$ 1,057,980.0		3.5%	4.6%	\$ 13,921		Contingency equals 0.00% of Hard Costs
GC Contingency	\$ 610,935				\$ 610,935.0		0.0%	2.7%	\$ 8,039		
NV Business Tax	\$ 18,000				\$ 18,000.0		0.0%	0.1%	\$ 237		
Other Construction/Rehab Cost (Specify)					\$ -		0.0%	0.0%	\$ -		
Builders Profit (BP)	\$ 795,104				\$ 795,104.0		3.7%	3.5%	\$ 10,462		BP Equals 0.00% of Hard Costs (incl. contingency)
General Requirements (GR)							3.7%	0.0%	\$ -		GR Equals 0.00% of Hard Costs (incl. contingency)
General Overhead (GO)							1.2%	0.0%	\$ -		GO Equals 0.00% of Hard Costs (incl. contingency)
Subtotal BP+GR+GO	\$ 795,104.00						8.7%	3.5%	\$ 10,462		Contrator Loading Equals 0.00% of Hard Costs (incl. contingency.)
TOTAL CONSTRUCTION COSTS	\$ 22,846,507.00	\$ 9,378,382.63	\$ 2,178,152.28	\$ 500,000.00	\$ 10,789,972.09	\$ -	72%	100%	\$ 300,612		
Of the total of \$22,846,507, \$21,422,468 or % is directly attributable to Hard Costs, while \$1,424,039 is attributable to other costs and contractor loading.											



\*\* please show cost escalation from project inception, meaning from first proforma created, and likely submitted for other applications

<b>SOFT COSTS</b>											
Accounting Fees: Cost Certification Audit Fee	\$	20,000		\$	20,000		\$	-	0.1%	0.5%	\$ 263
Accounting Fees: General	\$	35,000					\$	35,000	0.1%	0.8%	\$ 461
Application and Tax Credit Fees							\$	-	0.0%	0.0%	\$ -
Architect	\$	1,038,758	\$	478,375			\$	560,383	3.3%	24.2%	\$ 13,668
Bond Issuance							\$	-	0.0%	0.0%	\$ -
Bridge Loan Interest and Fees							\$	-	0.0%	0.0%	\$ -
Builders' Risk	\$	175,000					\$	175,000	0.5%	4.1%	\$ 2,303
Building Permit Fees & Local Fees	\$	580,366	\$	143,242			\$	437,124	1.8%	13.5%	\$ 7,636
Construction Loan: Construction Lender Inspections	\$	42,000					\$	42,000	0.1%	1.0%	\$ 553
Construction Loan: Financing Fee/3rd Party Reports	\$	50,000					\$	50,000	0.2%	1.2%	\$ 658
Construction Loan: Interest During Construction	\$	395,383					\$	395,383	1.2%	9.2%	\$ 5,202
Construction Loan: Lender's Attorney Fee	\$	75,000					\$	75,000	0.2%	1.8%	\$ 987
Construction Loan: Origination Fee	\$	54,000					\$	54,000	0.2%	1.3%	\$ 711
Construction Loan: Interest Post Completion*									0.0%	0.0%	\$ -
Construction Period: Insurance	\$	25,000					\$	25,000	0.1%	0.6%	\$ 329
Construction Period: Taxes							\$	-	0.0%	0.0%	\$ -
Construction Lender Misc. Fees							\$	-	0.0%	0.0%	\$ -
Consulting Fees (not payable through dev fee)							\$	-	0.0%	0.0%	\$ -
Engineer	\$	125,000					\$	125,000	0.4%	2.9%	\$ 1,645
Environmental Study	\$	10,000					\$	10,000	0.0%	0.2%	\$ 132
Furniture, Fixtures and Equipment*	\$	150,000		\$	125,000		\$	25,000	0.5%	3.5%	\$ 1,974
Legal: Owner Attorney/Borrower (EB)	\$	155,000					\$	155,000	0.5%	3.6%	\$ 2,039
Legal: Owner Attorney/Borrower Legal (Not EB)							\$	-	0.0%	0.0%	\$ -
Market Study / Appraisal	\$	11,000					\$	11,000	0.0%	0.3%	\$ 145
Marketing and Leasing*	\$	40,000		\$	40,000		\$	-	0.1%	0.9%	\$ 526
Miscellaneous / Other (Basis Eligible)							\$	-	0.0%	0.0%	\$ -
Miscellaneous / Other (NOT Basis Eligible)							\$	-	0.0%	0.0%	\$ -
Organizational Formation Fees*							\$	-	0.0%	0.0%	\$ -
Partnership Legal and Organizational*							\$	-	0.0%	0.0%	\$ -
Permanent Loan: 3rd Party Reports							\$	-	0.0%	0.0%	\$ -
Permanent Loan: Financing Fee/3rd Party Reports	\$	37,697					\$	37,697	0.1%	0.9%	\$ 496
Permanent Loan: Lender's Attorney Fee	\$	50,000.00					\$	50,000	0.2%	1.2%	\$ 658
Permanent Loan: Origination Fee	\$	92,850		\$	92,850.00		\$	-	0.3%	2.2%	\$ 1,222
Soft Cost Contingency*	\$	117,606					\$	117,606	0.4%	2.7%	\$ 1,547
Survey	\$	40,000					\$	40,000	0.1%	0.9%	\$ 526
Title and Recording	\$	90,000					\$	90,000	0.3%	2.1%	\$ 1,184
Other Transaction Cost 1 (Traffic Study)	\$	10,000					\$	10,000	0.0%	0.2%	\$ 132
Other Transaction Cost 2 (P&P Bond)	\$	142,986					\$	142,986	0.4%	3.3%	\$ 1,881
Other Transaction Cost 3 (GC Insurance)	\$	209,754					\$	209,754	0.7%	4.9%	\$ 2,760
Other Transaction Cost 4 (Construction Manage	\$	177,000	\$	-			\$	177,000	0.6%	4.1%	\$ 2,329
Other Transaction Cost 5 (Site Security)	\$	50,000					\$	50,000	0.2%	1.2%	\$ 658
Other Transaction Cost 6 (Low Voltage)	\$	25,000					\$	25,000	0.1%	0.6%	\$ 329
Other Transaction Cost 7 (Other Financing Cost	\$	45,000					\$	45,000	0.1%	1.1%	\$ 592
Other Transaction Cost 8 (Compliance Monitorir	\$	20,000					\$	20,000	0.1%	0.5%	\$ 263
Other Transaction Cost 9 (NV Energy Fee)	\$	195,000					\$	195,000	0.6%	4.6%	\$ 2,566
TOTAL TRANSACTION COSTS	\$	4,284,400.00	\$	621,617.37	\$	277,850.00	\$	-	13%	100%	\$ 56,374
<b>ESCROW ACCOUNTS</b>											
Initial Deposit to Reserve for Replacements									0.0%	0.0%	\$ -
Property Tax Escrow									0.0%	0.0%	\$ -
Hazard Insurance Escrow	\$	95,760		\$	95,760				0.3%	16.6%	\$ 1,260
Debt Service Reserve	\$	224,383		\$	224,383				0.7%	38.8%	\$ 2,952
Operating Reserve/Working Capital	\$	246,163		\$	246,163				0.8%	42.6%	\$ 3,239
Lease-Up Reserve									0.0%	0.0%	\$ -
Other Escrow 1 (Replacement Reserve)	\$	11,400		\$	11,400				0.0%	2.0%	\$ 150
Other Escrow 2 (Specify)									0.0%	0.0%	\$ -
Other Escrow 3 (Specify)									0.0%	0.0%	\$ -
TOTAL ESCROW ACCOUNTS*	\$	577,705.72		\$	577,705.72				2%	100%	\$ 7,601
<b>GROSS DEVELOPER FEE</b>											
Total Gross Developer Fee	\$	4,156,292	\$	1,000,000	\$	3,156,292	\$	-	13.0%	100.0%	\$ 54,688
TOTAL GROSS DEVELOPER FEE	\$	4,156,292.00	\$	1,000,000.00	\$	3,156,292.00	\$	-	13%	100%	\$ 54,688
Equals 0.00% of total uses excluding developer fee											
TOTAL USES	\$	31,864,905	\$	11,000,000	\$	6,190,000	\$	500,000	100%	100%	\$ 419,275

Total Rental Units		76	76 Total Units in Development						
Operating Cash Flow Projection		Assumptions / Trends	Year 1 2026	Year 2 2027	Year 3 2028	Year 4 2029	Year 5 2030	Year 6 2031	Year 7 2032
Cash Flow Projection									
Total Gross Potential Rent (Proposed Unit Mix/Rents)	2.00%	1,104,228	1,126,313	1,148,839	1,171,816	1,195,252	1,219,157	1,243,540	
Other Income	2.00%	9,120	9,302	9,488	9,678	9,872	10,069	10,271	
Estimated property Tax exemption	3.00%	0	0	0	0	0	0	0	
Allowance for Multifamily Rent Loss	5.00%	-55,211	-56,316	-57,442	-58,591	-59,763	-60,958	-62,177	
Allowance for Multifamily Bad Debt	2.00%	-22,085	-22,526	-22,977	-23,436	-23,905	-24,383	-24,871	
Effective Gross Income		1,036,052	1,056,773	1,077,908	1,099,467	1,121,456	1,143,885	1,166,763	
Operating Expenses	3.00%	-469,526	-483,612	-498,120	-513,064	-528,456	-544,309	-560,639	
Proposed Reserve Deposit	\$22,800	-23,484	-24,189	-24,914	-25,662	-26,431	-27,224	-28,041	
Net Operating Income		543,042	548,973	554,874	560,741	566,569	572,351	578,083	
First Deed of Trust Loan Payment	449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	
Second Deed of Trust Loan Payment	0	0	0	0	0	0	0	0	
Other Annual Required Payment:	0	0	0	0	0	0	0	0	
Other Annual Required Payment:	0	0	0	0	0	0	0	0	
Other Annual Required Payment:	0	0	0	0	0	0	0	0	
Other Annual Required Payment:	0	0	0	0	0	0	0	0	
Total Mortgages P&I	-13,477,502	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	
Operating Cash Flow		93,792	99,723	105,624	111,491	117,319	123,101	128,833	
Debt Service Coverage		(1.21)	(1.22)	(1.24)	(1.25)	(1.26)	(1.27)	(1.29)	
(1.44) minimum DSCR yrs 1-20									
Operating Expense Cushion		20.0%	20.6%	21.2%	21.7%	22.2%	22.6%	23.0%	
20.0% minimum Cushion yrs 1-20									
Deferred Developer Fee									
Cash to Pay DDF		93,792	99,723	105,624	111,491	117,319	123,101	128,833	
DDF Balance	0	0	0	0	0	0	0	0	
Years to Pay Off	-	-	-	-	-	-	-	-	
CHF and Other required payments from Cash Flow									
CHF % of Cash Flow		25%	25%	0%	0%	0%	0%	0%	

Total Rental Units		76	76 Total Units in Development						
CHF Loan Payment Based on Anticipated Cash Flow		0	0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0

Total Rental Units

76

Operating Cash Flow Projection		Assumptions / Trends	Year 8 2033	Year 9 2034	Year 10 2035	Year 11 2036	Year 12 2037	Year 13 2038	Year 14 2039
Cash Flow Projection									
Total Gross Potential Rent (Proposed Unit Mix/Rents)		2.00%	1,268,411	1,293,779	1,319,655	1,346,048	1,372,969	1,400,428	1,428,437
Other Income		2.00%	10,476	10,686	10,899	11,117	11,340	11,566	11,798
Estimated property Tax exemption		3.00%	0	0	0	0	0	0	0
Allowance for Multifamily Rent Loss		5.00%	-63,421	-64,689	-65,983	-67,302	-68,648	-70,021	-71,422
Allowance for Multifamily Bad Debt		2.00%	-25,368	-25,876	-26,393	-26,921	-27,459	-28,009	-28,569
Effective Gross Income			1,190,098	1,213,900	1,238,178	1,262,942	1,288,201	1,313,964	1,340,243
Operating Expenses		3.00%	-577,458	-594,781	-612,625	-631,004	-649,934	-669,432	-689,515
Proposed Reserve Deposit		\$22,800	-28,882	-29,749	-30,641	-31,561	-32,507	-33,483	-34,487
Net Operating Income			583,758	589,369	594,912	600,378	605,760	611,050	616,242
First Deed of Trust Loan Payment		449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250
Second Deed of Trust Loan Payment		0	0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0	0
Total Mortgages P&I		-13,477,502	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250
Operating Cash Flow			134,508	140,119	145,662	151,128	156,510	161,800	166,991
Debt Service Coverage			(1.30)	(1.31)	(1.32)	(1.34)	(1.35)	(1.36)	(1.37)
(1.44) minimum DSCR yrs 1-20									
Operating Expense Cushion			23.3%	23.6%	23.8%	24.0%	24.1%	24.2%	24.2%
20.0% minimum Cushion yrs 1-20									
Deferred Developer Fee									
Cash to Pay DDF			134,508	140,119	145,662	151,128	156,510	161,800	166,991
DDF Balance		0	0	0	0	0	0	0	0
Years to Pay Off		-	-	-	-	-	-	-	-
CHF and Other required payments from Cash Flow									
CHF % of Cash Flow			0%	0%	0%	0%	0%	0%	0%

Total Rental Units		76							
CHF Loan Payment Based on Anticipated Cash Flow		0	0	0	0	0	0	0	0
Other Cash Flow Payments:		0	0	0	0	0	0	0	0
Other Cash Flow Payments:		0	0	0	0	0	0	0	0
Other Cash Flow Payments:		0	0	0	0	0	0	0	0
Other Cash Flow Payments:		0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0

Total Rental Units

76

Operating Cash Flow Projection		Assumptions / Trends	Year 15 2040	Year 16 2041	Year 17 2042	Year 18 2043	Year 19 2044	Year 20 2045
Cash Flow Projection								
Total Gross Potential Rent (Proposed Unit Mix/Rents)		2.00%	1,457,005	1,486,146	1,515,868	1,546,186	1,577,109	1,608,652
Other Income		2.00%	12,034	12,274	12,520	12,770	13,026	13,286
Estimated property Tax exemption		3.00%	0	0	0	0	0	0
Allowance for Multifamily Rent Loss		5.00%	-72,850	-74,307	-75,793	-77,309	-78,855	-80,433
Allowance for Multifamily Bad Debt		2.00%	-29,140	-29,723	-30,317	-30,924	-31,542	-32,173
Effective Gross Income			1,367,049	1,394,390	1,422,278	1,450,723	1,479,738	1,509,332
Operating Expenses		3.00%	-710,200	-731,506	-753,451	-776,055	-799,337	-823,317
Proposed Reserve Deposit		\$22,800	-35,522	-36,587	-37,685	-38,815	-39,980	-41,179
Net Operating Income			621,327	626,296	631,142	635,853	640,422	644,836
First Deed of Trust Loan Payment		449,250	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250
Second Deed of Trust Loan Payment		0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0
Other Annual Required Payment:		0	0	0	0	0	0	0
Total Mortgages P&I		-13,477,502	-449,250	-449,250	-449,250	-449,250	-449,250	-449,250
Operating Cash Flow			172,077	177,046	181,892	186,603	191,172	195,586
Debt Service Coverage			(1.38)	(1.39)	(1.40)	(1.42)	(1.43)	(1.44)
(1.44) minimum DSCR yrs 1-20								
Operating Expense Cushion			24.2%	24.2%	24.1%	24.0%	23.9%	23.8%
20.0% minimum Cushion yrs 1-20								
Deferred Developer Fee								
Cash to Pay DDF			172,077	177,046	181,892	186,603	191,172	195,586
DDF Balance		0	0	0	0	0	0	0
Years to Pay Off		-	-	-	-	-	-	-
CHF and Other required payments from Cash Flow								
CHF % of Cash Flow			0%	0%	0%	0%	0%	0%

Total Rental Units		76							
CHF Loan Payment Based on Anticipated Cash Flow		0	0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
Other Cash Flow Payments:			0	0	0	0	0	0	0
			0	0	0	0	0	0	0

## EXHIBIT E: QUIT CLAIM DEED

Assessor's Parcel Number:

WHEN RECORDED PLEASE RETURN TO:

Clark County Real Property Management  
Attn: Director  
500 S. Grand Central Pkwy, 4<sup>th</sup> Fl  
Las Vegas, NV 89115-1825

With a copy to:

Clark County Department of Finance  
500 S. Grand Central Pkwy  
Las Vegas, NV 89155

And a copy to:

Clark County Community Housing  
500 S. Grand Central Pkwy  
Las Vegas, NV 89155

### QUITCLAIM DEED

**THIS INDENTURE WITNESSETH:** That the COUNTY OF CLARK, a political subdivision of the State of Nevada (Grantor), for valuable consideration, receipt of which is hereby acknowledged, does hereby quitclaim to Microbusiness Housing, LLC, a Domestic Limited-Liability Company, (Owner) all the real property situated in the County of Clark, State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and by this reference made a part hereof ("Property").

Subject to:

1. Taxes for the current fiscal year not being due and payable.
2. Covenants, Conditions, Reservations, Restrictions, Rights, Rights-of-Way, Liens, Easements and Encumbrances recorded against the Property.
3. Automatic Reversion to Clark County without consideration if Clark County terminates the Disposition, Development & Funding Agreement with Owner dated \_\_\_\_\_, 2024 or as a result of the Owner's failure to use the Property for affordable housing purposes for the Affordability Period as outlined in and pursuant to the Disposition, Development and Funding Agreement between Grantor and Owner dated \_\_\_\_\_, 2024.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my (our) hand(s) this \_\_\_\_ day of \_\_\_\_\_, 2024.



**CLARK COUNTY, NEVADA**

**BY:** \_\_\_\_\_  
**Shauna Bradley**  
**Director of Real Property Management**

STATE OF NEVADA    )  
                                  ) ss  
COUNTY OF CLARK    )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me the undersigned a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged to me that \_\_he\_\_ executed the above instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC in and for the said County and State  
My Commission expires: \_\_\_\_\_

SEAL}

## EXHIBIT F: PERFORMANCE MILESTONES

### MILESTONES TO BE ACCOMPLISHED

### DEADLINE DATES\*

Entitlement Approval: February 2024

Plan Approvals: February 2024

Record Commercial Subdivision Map/Record of Survey: October 2024

Transfer of Housing Site to Owner and Recordation of Deed and Covenants: December 2024

Close Construction Loan: December 2024

Ground Breaking: January 2024

ARPA Expenses Incurred: August 2026

Start Preleasing: May 2026

Construction Complete: August 2026

Certificate of Occupancy, Begin Leasing: August 2026

100% Occupied: December 2026

Project Completion: August 2027

## EXHIBIT G: DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants ("Declaration") is made on this \_\_\_\_\_ day of \_\_\_\_\_ 2024 by Clark County, a political subdivision of the State of Nevada ("Declarant" or "County") as owner of that certain real property located in Clark County, Nevada, known as Assessor's Parcel Number 139-22-201-018 ("Site").

### RECITALS:

WHEREAS, Microbusiness Housing, LLC, a Nevada limited liability company, having its principal office at 1603 Orrington Avenue, Suite 450, Evanston, Illinois 60201 ("Owner"), is engaged in the acquisition, development, ownership and operation of low-income housing properties; and

WHEREAS, on March 23, 2023, County issued a request for proposals titled as the "Development of Affordable Housing, Microbusiness Park Site" on the Site, to solicit proposals by interested entities based on a competitive process on the criteria outlined for the development and management of affordable housing units and partial development and construction of onsite and offsite improvements for a commercial microbusiness concept (the "Project"); and

WHEREAS, as part of the Project, the Site has been subdivided into two parcels known as the housing portion ("Property") as shown on Exhibit "A" and the commercial portion; and

WHEREAS, Declarant and Owner have entered into a Disposition, Development and Funding Agreement dated \_\_\_\_\_ ("DDFA") which outlines Project requirements, timelines, development standards and funding sources; and

WHEREAS, Owner will use funds loaned to Owner by the County, pursuant to the DDFA, the Guidelines and Application Instructions for the Development of Affordable Housing - Microbusiness Park Site, the Amended and Restated Grant Agreement for American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds CDFA #21.027 between the State of Nevada and Clark County (Exhibit J of the DDFA); and

WHEREAS, the DDFA requires compliance with the rules, regulations, and requirements of that program for a minimum period of NINETY-NINE (99) years from the Project Completion date, as defined in this Declaration.

NOW, THEREFORE, Owner hereby declares Declarant that all of the Property shall at all times be owned, held, used, operated and occupied subject to the provisions of these covenants, conditions and restrictions contained herein and the DDFA, all of which are established and declared for the purpose of imposing ongoing affordability restrictions associated with the conveyance and increasing the economic value, desirability and attractiveness of the Property and for the benefit of the inhabitants, the County, and surrounding neighborhoods.

## SECTION I - KEY ENFORCEMENT PROVISIONS

## A. Covenant Running with the Land

This Declaration shall be deemed and shall constitute a covenant running with the land for the benefit of the County and its successors and assigns and shall pass to and be binding upon all heirs, successors and assigns in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Declaration shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, successors and assigns to such interests. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or any interest therein (excepting only leases of units in the Project) shall conclusively be held to have been executed, delivered, and accepted subject to this Declaration, regardless of whether any or all of such covenants contained herein are set forth in such contract, deed or other instrument. If a portion or portions of the Property, or interest or interests in the Property are conveyed, all such covenants contained herein shall run to each portion of or interest in the Property.

Owner agrees that the Property is intended exclusively for and shall be leased, used, occupied, improved, and otherwise affected in any manner only in furtherance of the purpose of providing and maintaining affordable low-income housing, as further defined and required herein.

During the term of this Declaration, 2 units in the Project will be leased exclusively to households with incomes at or below 50% AMI, 33 units in the Project will be leased exclusively to households with incomes at or below 60% AMI (as adjusted for household size and as published by HUD and updated annually); and 41 units in the Project will be leased exclusively to households with incomes at or below 80% AMI (as adjusted for household size and as published by HUD and updated annually).

Owner or its assignee must determine at initial occupancy that each household is income eligible by determining the household's annual income as defined at 24 CFR 5.609. Annual income shall be determined by examining the source documents evidencing annual income (i.e., wage statement, interest statement, social security statements, etc.) for the household. Each year during the Affordability Period, the Owner must re-examine each tenant's income.

Monthly gross rent for each affordable unit in the project may not exceed 1/12th of 30% of 50% AMI, 60% AMI or 80% AMI, as applicable to such restricted unit, assuming a household of one (1) person per efficient (i.e. 0-bedroom) unit and 1.5 persons per bedroom for units with one (1) or more bedrooms (i.e. an imputed household of 1.5 persons for a one-bedroom unit, a household of three (3) persons for a two-bedroom unit, etc.). Actual rent charged to a tenant must be adjusted for tenant-paid utilities established using a method acceptable to the County.

Owners acknowledges that the Project will be subject to income and rent restrictions imposed as a result of the receipt of other planned financing, including but not limited to HOME Investment Partnerships Program funds. Those income and rent restrictions are similar but may operate differently than those imposed by this Declaration. In the event of a conflict between the income and rent restrictions imposed by this Declaration and those imposed by HOME, or any other similar public funding program, the stricter requirements will apply.

Without limiting the obligation of Owner to comply with all applicable laws at all times during the term of this Declaration, Owner shall comply with all provisions of federal, state, or local Fair Housing Acts, laws, ordinances, or regulations which include, but are not limited to non-discrimination based on race, religion,

creed, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status or sex.

Owner may not refuse to lease to a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, State, or local program solely because of the tenant or prospective tenant's participation in such program.

The Property has been designated as multifamily housing. Other than the low-income occupancy requirements described in Exhibit B of the DDA, occupancy will not be limited to nor preference in tenant selection given to any particular segment of the low-income population.

## B. MAINTENANCE OF PROPERTY

Owner, or any party having rights to the possession of the Property, shall maintain its Property and any improvements thereon in a neat, clean and decent and attractive condition, and in a manner commensurate with surrounding properties in the neighborhood, or as otherwise required under ordinances and regulations of Clark County, Nevada, for property with zoning applicable to the Property (the "County Requirements"). Such maintenance shall include, without limiting the generality of the foregoing:

- a) Maintaining the paved, concrete or other improved services of the Property ("The Flatwork") in a level, smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall be equal in quality, use and durability.
- b) Cleaning, sweeping and striping of such Flatwork areas, as may be located on the Property.
- c) Maintaining, replacing and repairing all landscaping and improvements as may be located on the Property, in a manner which is consistent with the landscaping plan approved, or to be approved by the County upon the initial construction of improvements on the Property.
- d) Maintaining in a decent and safe condition the life-safety, building structure and drainage systems constructed upon the Property (collectively the "Required Systems"). Elements of the life-safety systems include, without limitation, electrical, plumbing, heating, ventilation, air conditioning, emergency lighting, audio and visual signals, fire sprinklers, area separation walls, exits, etc. Elements of the building structure systems include, without limitation, foundations, walls, roof structures and parapets. Elements of the drainage systems include, without limitation site drainage and roof drainage. Walls, trash enclosures, storage facilities, carports and/or garages shall all be considered structures for purposes of this Article. Any Owner shall assure that the Required Systems are maintained for the benefit of the inhabitants of each residential unit, and the buildings and improvements existing on the Property (whether residential in nature or not).
- e) All additional improvements after the initial construction of the Property ("Additional Improvements") which are required to be permitted, or have plans approved by the County shall be submitted in accordance with all State and County Codes, regulations and laws, and Owner further warrants that all Additional Improvements shall be constructed in accordance with and in compliance with all applicable laws.

f) Owner shall maintain the exterior of the vertical improvements on the Property in a decent, neat, attractive and aesthetically pleasing manner, inclusive of paint, stucco, trim, glass, parapets, shingles (or roof covering) and any other exterior material requiring maintenance, repair and replacement.

#### C. Duration

Notwithstanding any repayment by the Owner, this Declaration shall remain in effect until the expiration of the Affordability Period as defined below.

#### D. Affordability Period

Owner shall maintain compliance with all applicable requirements laid out in this Declaration and those applicable to the funding sources, which shall begin with initial occupancy of the Project and shall run for 99 years ("Affordability Period").

County and Owner further acknowledge that the Project may be subject to other periods of affordability or compliance periods as the result of anticipated funding sources from programs. The parties acknowledge that each such program specifically defines its own affordability and/or compliance period, which may begin on different dates and be of different durations than the Affordability Period outlined above. Nothing herein is intended to limit, modify, or otherwise affect such periods imposed by other programs.

Notwithstanding, the County may subordinate, waive or cancel any remainder of the Affordability Period to accommodate a future transaction whereby the Project is sold, refinanced, or otherwise recapitalized through a state or federal program intended to preserve the Project's character as affordable housing. Further, Owner may request that the County modify or subordinate specific provisions of this Declaration to align various requirements (e.g., income determination procedures, lease provisions, or the like) with similar requirements to which the Project may be subject. Any such subordination, waiver or cancellation shall require the execution of a formal modification or termination of this Declaration.

#### E. Project Completion

The County will notify Owner of the actual date of project completion ("Project Completion") and the exact date of the expiration of the Affordability Period. If necessary, Declarant shall execute an amendment to this Declaration identifying the exact date of expiration of the Affordability Period.

#### F. Specific Performance

The primary purpose of this Declaration and the DDFA is to assure compliance with ongoing requirements for the Project. The County and the eligible beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. By reason thereof, Owner, in consideration for receiving financing for the Project, hereby agrees and consents that the County and any individual who meets the income limitations applicable to the Project (whether prospective, present, or former occupant of the Project) shall be entitled, for any

breach of the provisions hereof and in addition to all other remedies provided by law or in equity, and hereunder or under the DDFA, to enforce specific performance by the Owner of its obligations under this Declaration in a state or federal court of competent jurisdiction. The right to seek specific performance is in addition to and may be exercised independently from, or in concert with, any other remedies available under this Declaration, the DDFA and any associated documents, or any other agreements between the County and the Owner or its successors in interest.

## SECTION II - PROJECT DESCRIPTION

The Project will consist of a new 76-unit affordable rental development located in North Las Vegas, Nevada on the Housing Portion of the Site. Any subsequent owner of the Property shall be required to enter into a development agreement with the County separately on terms determined by the County if this Project is not yet constructed upon subsequent or new ownership. The proposed unit count is based upon the full build-out of the housing portion of the Site as two-story walk-up apartment buildings. The overall unit breakdown includes 8 studio units comprised of 440 - 525 square feet each; 28 one-bedroom units comprised of 625 - 775 square feet each; 32 two-bedroom units comprised of 980 – 1,075 square feet each; and 8 3-bedroom units comprised of 1,160 – 1,125 square feet. Units will be income and rent restricted (see Exhibit X for detailed unit mix and targeted Area Median Income (AMI) thresholds). All units will be available as affordable or workforce housing with income and rent restrictions of 50% for 2 of the units, 60% AMI levels for 33 of the units, and 80% AMI levels for 41 of the units.

The community shall include the following common amenities throughout the Property to provide ample opportunities for neighbors to interact, entertain, and recreate. At the front of the community, residents will be welcomed home by a 1,567 square-foot office with lobby lounge, leasing and management offices as well as a common computer room. On the north end of the same building will be the 1,567 square foot community room with a kitchen that connects to a 3,868 square foot courtyard. Also in this area is the fitness center. The provided outdoor open spaces will have shaded seating and gathering areas and bar-b-ques. There will also be landscaped perimeter walking paths to connect the community to existing playgrounds to the west. Apartment units will feature in-unit laundry, eat-in kitchens, patios/regular balconies/Juliet balconies (in certain units), ample storage, and flexible spaces which may be adapted by each resident for working and learning from home.

## SECTION III - ONGOING OPERATIONAL & PERFORMANCE REQUIREMENTS

### A. County Oversight

The Project shall be income and rent restricted for the duration of the Affordability Period unless otherwise modified by a future amendment to this Declaration. The Project must also maintain compliance with the physical standards of all income and rent restricted units for the duration of the Project's Affordability Period.

County will exercise ongoing oversight of the Project throughout the Affordability Period, including without limitation the review of reports, documents, and records as may be submitted by the Owner, conducting periodic site inspections including file reviews and/or physical inspections, reviewing and

approving, as may be required by this Declaration, proposed actions taken by the Owner such as those related to transfers, refinancing, and the like; and

1. Rent, Utility Allowances, and Fees

The County must receive a report of the rents and utility allowances applied to the Project on an annual basis. Utility allowance must be determined by a method consistent with the requirements at 24 CFR 92.252(d).

2. Income and Rent Restrictions

Owner or its County approved assignee must determine at initial occupancy that each household is income eligible by determining the household's annual income as defined at 24 CFR 5.609. Annual income shall be determined by examining the source documents evidencing annual income (i.e., wage statement, interest statement, social security statements, etc.) for the household. Each year during the Affordability Period the Owner must re-examine each tenant's income.

Monthly gross rent for each affordable unit in the Project may not exceed 1/12<sup>th</sup> of 30% of 50%, 60% AMI or 80% AMI, as applicable to such unit, assuming a household of one (1) person per efficient (i.e. 0-bedroom) unit and 1.5 persons per bedroom for units with one (1) or more bedrooms (i.e. an imputed household of 1.5 persons for a one-bedroom unit, a household of three (3) persons for a two-bedroom unit, etc.). Actual rent charged to a tenant must be adjusted for tenant-paid utilities established using a method acceptable to the County.

The Project will be subject to income and rent restrictions imposed as a result of the receipt of other planned financing, including HOME funds. Those income and rent restrictions are similar but may operate differently than those imposed by this Declaration. In the event of a conflict between the income and rent restrictions imposed by this Declaration and those imposed by HOME, or any other similar public funding program, the stricter requirements will apply.

B. Ownership

Owner agrees that no sale or transfer of general partnership interests, managing member interest, or other controlling interest in the Owner will be made without the prior written consent of the County. This will include but is not limited to:

- a) The voluntary or involuntary re-assignment of the role of general partner, managing member, or other controlling entity or individual (collectively the "Controlling Entities") to another entity or individual;
- b) Sale or transfer of the interest of any Owner of a Controlling Entity, except for estate planning purposes;
- c) Sale or transfer of any other interests in Owner, or member interest.

Notwithstanding the foregoing, the requirements set forth in this Section III.B. shall not apply to a holder of any mortgage senior to the County's or such senior mortgagee's successor(s) in interest who



acquire title to the Project through foreclosure or deed in lieu thereof; provided, however, that any transferee of such entity, and its successor(s) in interest, shall be subject to the requirements of this section for the duration of this Declaration's term.

### C. Property Management

Initially, and throughout the term of this Declaration, the County must, in its reasonable discretion, approve of any property management company, or another similar agent, employed by the Owner. The County's approval of a specific property management company or agent may be withdrawn, for cause, at any time, and upon notice of same the Owner will identify and contract with a property manager otherwise acceptable to the County.

Notwithstanding the foregoing, nothing in this section is intended to prevent any senior lender from retaining its right to approve any property management firm or agent employed by the Owner. Owner acknowledges that the practical effect is that any property manager must be mutually acceptable to the County and other lenders.

Initially, the County has approved either of FPI Management or Stout Management as the property manager for the Project.

### D. Reserves and Other Accounts

Owner must establish and shall maintain an Operating Reserve and a Replacement Reserve (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section, and any additional reserves required by any senior lender.

The Reserve Accounts shall be held in deposit in a FDIC/NCUA insured account in a Nevada bank or credit union licensed to do business in Nevada. In all cases, Owner shall notify the County within five (5) business days of i) any withdrawal from the Operating Reserve and ii) any withdrawal in excess of \$10,000 from the Replacement Reserve.

To avoid unintended duplication, provided such account otherwise meets the requirements of this section, any similar reserve or escrow account established pursuant to requirements of the senior lender shall satisfy the requirements of this section.

#### 1. Replacement Reserve Account

Owner shall fund a replacement reserve as required by the County. Owner shall use the Replacement Reserve Account only for eligible capital costs as may be defined from time to time by the County. Subject to any other requirements of a lender, the Replacement Reserve Account shall be funded at Stabilized Occupancy (as defined below), at \$300 per unit per year. Following the start of deposits, the minimum annual deposit shall be increased each year by 3%. Disbursements from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.

The County may periodically require Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the County. Alternatively, the County may conduct a capital needs assessment using its own staff or contractors, which shall be at County's sole expense. Initially, the County expects that capital needs assessments would be required every five (5) years following Project Completion. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project through the Affordability Period. With written approval from the County, the cost of obtaining a capital needs assessment can be paid from the Replacement Reserve if operating funds are not otherwise available.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the five-year period between scheduled assessments, Owner shall, at the County's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If the County requires an additional deposit, Owner must replenish the Replacement Reserve within a reasonable time frame established by the County considering current market conditions and the financial condition of the Project.

## 2. Operating Reserve Account

On the earlier of:

- a) Thirty-six (36) months from the date of closing of the Project's construction financing; or
- b) conversion of the construction loan to permanent loan status; or
- c) if no outside funding contemplated, upon Project Completion but prior to initial occupancy

Owner shall fund and maintain an Operating Reserve Account in the amount of \$470,546 ("Minimum Balance"). After Stabilized Occupancy, as defined below, the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose.

Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees. If drawn upon, the Operating Reserve Account must be replenished to its required Minimum Balance prior to distributions of Surplus Cash as defined in Section III.E. below.

## 3. Stabilized Occupancy

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all the following benchmarks:

- a) Physical occupancy of no less than 93% of all units;
- b) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and

- c) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments).

#### 4. Escrow for Property Taxes and Insurance

The County will allow any senior lender approved by the County to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in the absence of such an escrow managed by a senior lender, the County reserves the right, in its sole discretion, upon issuance of notice to Owner to require Owner to establish and make monthly payments toward a reserve account held by the County for tax and insurance payments.

#### 5. Term of Reserve Accounts

All required Reserve Account(s) must be maintained for the full term of this Declaration.

#### 6. Operating Receipts and Expense Account

Owner shall establish and maintain an Operating Receipts and Expense Account to be reviewed by the County periodically. All rents and other receipts of the Project shall be deposited in the name of the Owner and the Project. The Owner shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as "Operating Receipts", forthwith deposit the same in the Operating Receipts and Expense Account. Thereafter on a monthly basis, the Owner shall pay, or cause to be paid, all expenses in a timely manner out of Operating Receipts and Expense Account of the Project, in the order and priority as set forth below unless otherwise directed by the County, at its sole option, in writing:

- a) Any amount required to be paid to the County or secured financing instruments associated with other County-approved permanent sources; and
- b) All of the real estate tax and insurance premium escrow payments required of the Owner which payments shall be deemed to be part of the "Operating Expenses" of the Project for the purpose of this Agreement; and
- c) All remaining Operating Expenses of the Project including but not limited to, taxes other than those for which an escrow payment is required under any mortgage, maintenance, fuel, management, water and sewage, administration, electricity, legal, audit, and all other current expenses, unless other funds for payment are set aside or deferment of payment has been approved by the County; and
- d) All amounts required to be deposited in any Replacement Reserve account or any other reserve account required by this Agreement or any lender; and

- e) The fee of the Project's managing agent as set forth in the management agreement between the Owner and said managing agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses below.

## 7. Occupant Security Deposits

The Owner is further required to segregate or cause to be segregated all occupant security deposits, which are to be held in an interest-bearing depository account (hereinafter referred to as the "Security Deposit Account").

## E. Surplus Cash

### 1. Definition of Surplus Cash

Surplus Cash shall equal the sum of:

- a) Project cash and cash equivalents (excluding the Security Deposit Account and the Reserve Accounts);
- b) Short-term investments;
- c) Project-based rental assistance payments earned but not yet received by Owner, if any; and
- d) Any amounts noticed for withdrawal but not yet withdrawn from the Reserves or escrow accounts.

After deducting:

- e) All sums due or required to be paid within the calendar month following the date as of which Surplus Cash is calculated by the Owner (including without limitation principal, interest, mortgage insurance premium deposits, deposits to the Reserve Accounts or other required reserves, and tax and insurance escrow deposits);
- f) Other funds required to be segregated by this Agreement, including tenant security deposits and other amounts held in trust for tenants; and
- g) All other obligations of the Project payable within the next thirty (30) days, unless the obligation is paid subject to available Surplus Cash or the County has approved deferment of payment.

### 2. Distribution of Surplus Cash

Owner shall not make distributions of Surplus Cash (i.e., project "cash flow") to any controlling entity, member, partner, or related parties, other than for normal operating costs in the annual budget provided to the County, any scheduled payments on financing described in Section III.E.1. above, and required escrow and reserve deposits without satisfaction of the following conditions:

- a) No default in the terms of this Declaration and all associated documents exists and is continuing;

- b) The Project is in compliance with all applicable property standards including all applicable laws, requirements of this Declaration and there are no unresolved physical deficiencies;
- c) All required reserves and escrows are fully and properly funded;
- d) The most recent annual audit of the Project has been received by the County and shows no material weaknesses or unresolved findings; and
- e) Repayments to the County shall be made as set forth the DDFA to the extent of available Surplus Cash after the annual payment of the Deferred Developer Fee. After the Deferred Developer Fee is paid in full each year, the minimum annual anticipated cash flow payments due to County towards the balance of the HSEST Loan as provided in the DDFA and any additional Surplus Cash up to 75% has been paid to County towards the balance of the HSEST Loan until the HSEST Loan is paid in full and then to the ARPA Loan.

Following any distribution of Surplus Cash, the Project will retain adequate liquidity to ensure uninterrupted operations. Liquidity will be measured by adding cash on hand and current receivables then subtracting current payables (i.e., liabilities), and must, following any distribution, equal or exceeding one month of gross revenue potential in the most recent annual operating budget submitted to the County.

When making a Surplus Cash distribution, Owner shall submit to the County a notice at least thirty (30) business days prior to any anticipated distribution together with a certification that all conditions for a distribution of surplus cash have been met, a current financial statement for the Project, and other documentation the County may reasonably request to assess the criteria above. Owner shall provide a prompt response to the County's requests for additional documentation, if needed.

## SECTION IV – PROPERTY STANDARDS

### A. Notification of Accepting Applicants for the Project

Owner will notify the County, in writing, a minimum of sixty (60) days prior to the general availability of an interest list or application for residency at the Project, that a priority list is available for applications for residency for Clark County Social Service clients. Owner will provide a point of contact to Clark County Social Services through which clients are able to be placed on this priority list.

### B. Tenant Selection and Source of Income Nondiscrimination

Without limiting the obligation of Owner to comply with all applicable laws at all times during the term of this Declaration, Owner shall comply with all provisions of federal, state, or local Fair Housing Acts, laws, ordinances, or regulations which include, but are not limited to non-discrimination based on race, religion, creed, color, national origin, disability, sexual orientation, gender identity or expression, ancestry, familial status or sex.

Owner may not refuse to lease to a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, State, or local program solely because of the tenant or prospective tenant's participation in such program.

The Project has been designated as family housing and occupancy will not be limited to nor preference in tenant selection given to any particular segment of the low-income population.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

Occupancy will not be limited to, nor preference in tenant selection given to, any particular segment of the low-income population. All otherwise eligible applicants may occupy the units in the Project.

### C. Lease

Owner must operate the Project in compliance with all applicable state and local landlord-tenant laws.

Owner must have a written lease with each tenant in a form acceptable to the County. If directed by the County, Owner shall include any County-required Lease Addenda, as may be updated from time to time. The lease must, at a minimum, provide all tenants with at least sixty (60) days written notice prior to (i) increasing the rent or (ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Owner cannot terminate or refuse to renew the lease of any tenant for other than good cause. In particular, good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered, now or in the future, to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, State, or local laws.

The lease may not include any provisions prohibited by 24 CFR 92.253(b).

### D. Prohibition on Certain Fees to Tenants

Owner shall not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owner may charge fees approved by the County for the following:

- a) Reasonable application fees to prospective tenants;
- b) Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the County to be customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by the County to be customary for rental housing projects in the neighborhood and not excessive; and

- d) Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary, and fees are charged only for services provided.

#### E. Voluntary Services

Owner must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

#### F. Leasing of Accessible Units

Notwithstanding the provisions of Section IV.B., for units designed to be physically accessible or accessible to tenants with sensory impairments, Owner may provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit when available. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit. Only if no existing tenants or waiting list applicants require an accessible unit may such a unit be offered to an applicant not otherwise requiring an accessible unit.

#### G. Conditions for Faith-Based Organizations

Faith-based organizations are eligible to participate in the Project on the same basis as any other organization but may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Project. If Owner does engage in such religious activities, those activities must be offered separately from the housing, and participation by tenants of the Project must be voluntary. Additionally, Owner shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

#### H. Housing Property Standards

The Project must be constructed and maintained in compliance with the requirements of 24 CFR 92.251.

##### 1. Construction Codes

The Project must be constructed in compliance with all applicable State and local zoning, land use, and building code requirements. The Project's plans and specifications must clearly list all building codes applicable to the Project, including without limitations electrical, mechanical, plumbing, and fire codes. Additionally, the Project must be constructed to meet or exceed all applicable State Building Codes in force at the time of construction.

##### 2. Additional Construction Requirements

- a) The Project must also be constructed in compliance with the accessibility requirements of 24 CFR 8, which implements Section 504 of the Rehabilitation Act of 1973. Additionally, if the

Project is a “covered multifamily dwelling” as defined in 24 CFR 100.201, the Project must also meet the design and construction requirements of 24 CFR 100.205 regarding, among other things, accessibility to the building and common areas.

- b) In particular, Owner must ensure that the construction of the units in the Project will satisfy requirements for both physically accessible units and those accessible for tenants with sensory (i.e., hearing or visual) impairments. Based on the 76 unit Project, a minimum of 4 unit(s) must be physically accessible and a minimum of 2 unit(s) must be accessible for tenants with sensory impairments.
- c) Owner must prohibit the use of lead-based paint construction of the Project and comply with all other applicable requirements of 24 CFR 35 (aka the Lead Safe Housing Rule).
- d) Owner must require the exclusive use of lead-free pipes, solder, and flux in all of the Project’s potable water systems.
- e) Owner will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project. Owner will require its contractors to stop construction if ground disturbance related to this Project results in the discovery of any human remains, bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the County immediately.
- f) All buildings of five or more residential units in the Project must include the installation of “Broadband Infrastructure” as defined by 24 CFR 5.100.

### 3. Ongoing Maintenance of the Project

Owner must maintain the Project in compliance with all applicable State and local codes and ordinances, including but not limited to fire codes, health codes, property maintenance codes, or other habitability codes, throughout the term of this Agreement.

At minimum, during periodic on-site inspections, the County will require that any identified deficiencies be corrected, including that any deficiencies determined to be life-threatening be addressed immediately.

Additionally, to the extent known and applicable, the County’s periodic inspections will incorporate State and local code requirements. However, any such inspection by the County is for its own purposes and does not warrant compliance with applicable codes or supplant the authority of any other State or local code officials over the Project. In the event of conflicting requirements between codes, the stricter standard will apply. Outside of its periodic inspections, in the event the County becomes aware of any violation of applicable State or local codes, Owner must correct those deficiencies.

Failure to correct any deficiencies identified by the County within a reasonable timeframe shall constitute a default.

In addition to any other oversight by the County, the Owner must annually certify to the County that each building in the Project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements.

## SECTION V – INSURANCE



## A. General

During construction and throughout the term of this Declaration, Owner will maintain insurance, including property insurance which will be no less than replacement value for the Project listing the County as an additional insured party.

In the event of loss, Owner shall give prompt notice by mail to the insurance carrier and the County, and the County may make proof of loss, if not made promptly by Owner. Subject to existing restrictions on the property and the rights of senior lenders, the County is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Owner shall promptly furnish to the County a copy of any proof of loss given to the insurance carrier.

Subject to existing restrictions on the property and the rights of senior lenders, if the Project, or any part thereof, shall be damaged by fire or other insured hazard, the amounts paid by any insurance company shall be paid to the County, to the extent of the indebtedness then remaining unpaid, and, at the option of the County, all or any part of such amount may be applied in reduction of the Indebtedness or released for the repairing or rebuilding of the Project. Subject to existing restrictions on the property and the rights of senior lenders, if in the County's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. Subject to existing restrictions on the property and the rights of senior lenders, all policies of insurance and any and all refunds of unearned premiums are hereby assigned to the County as additional security for the payment of the Indebtedness. In event of foreclosure of this Project, all right, title and interest of Owner in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

## B. Condemnation

Subject to existing restrictions on the Site and the rights of senior lenders, any award or payment which becomes payable by reason of any taking of the Site, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings goes to the County.

Owner will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment and subject to existing restrictions on the Site, will cause the same to be collected and paid over to the County, and the County, in the name of Owner or otherwise, may file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the same.

Subject to existing restrictions on the property and the rights of senior lenders, the proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by the County in the collection thereof, at the sole discretion of the County, be released to Owner, applied to restoration of the Project, or applied in reduction of the Indebtedness secured hereby. Subject to existing restrictions on the Site and the rights of senior lenders, if in the County's determination restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

### C. Application of Proceeds in an Event of Default

Subject to existing restrictions on the Site and the rights of senior lenders, in the event of a default under this Declaration or associated documents beyond applicable notice and cure periods as set forth herein, the County may apply insurance and condemnation proceeds to the reduction of the indebtedness secured hereby in any manner selected by the County but, unless otherwise agreed by the County in writing, no application of such proceeds to any obligations secured by the Project, shall delay, reduce, alter or otherwise affect any regularly scheduled payment.

## SECTION VI – REPORTING

### A. General Requirements

Owner must provide reports to the County and to maintain records documenting compliance with this Declaration and all other applicable federal, State, and local laws and regulations, including whether all activities associated with the Project are in compliance with the Final Rule for the Fiscal Recovery Funds, the Compliance Guidance, and any subsequent guidance issued by the U.S. Treasury regarding ARPA funding. Upon reasonable notice (generally 48 hours except in circumstances related to emergent conditions or in response to concerns regarding fraudulent activity), Owner must provide the County or their representatives access to the Project and its records, wherever located, for the purposes of assessing the accuracy of reports submitted by the Owner and monitoring Owner's compliance with applicable requirements. As requested, Owner will provide physical or electronic copies or excerpts of such records at no cost to the party requesting such records. Further such parties may, upon occasion, interview any occupants, employees, or agents of the Project who consent to such interviews.

Owner shall maintain reasonable security measures to protect records containing personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure pursuant to NRS Chapter 603A to ensure against a breach of security of personal information of clients, staff, or other individuals. Owner shall have established written policies and procedures that align with NRS Chapter 603A and shall follow such procedures. Upon request, Owner shall make available to the County staff such written policies and procedures and will be monitored for compliance.

### B. Reports

Owner shall submit monthly reports to the County on the progress and performance of the Project during construction and lease up. The County reserves the right to alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to applicable laws or regulations, or to address findings related to noncompliance by the Project.

Initially, the County may require reports as follows:

1. At all times prior to completion of the Project and leasing of units, Owner must report to the County any circumstances that preclude timely completion of, or warrant an extension of time to complete, any performance milestones. Such a report must be provided within ten (10) days of Owner's discovery, receipt, or knowledge of such information.
2. Prior to the commencement of construction, Owner shall report not less than quarterly on progress toward closing on all Project financing and the commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due).
3. During the construction period, Owner shall report monthly on progress. Monthly reports should include the following:
  - a) Percent of project completion;
  - b) Summary of completed items/progress for the last 30 days;
  - c) Summary of items anticipated to be completed in the next 30 days;
  - d) Anticipated delays;
  - e) Updated schedule;
  - f) Invoices being paid; and
  - g) Evidence of appropriate lien waivers to the County regardless of whether Owner is requesting a disbursement from the County during that month.
4. Upon completion of construction and prior to reaching Stabilized Occupancy, Owner shall report monthly on progress toward leasing units and provide monthly income and expense reports.
5. Following the achievement of Stabilized Occupancy, Owner shall report on the occupancy, physical condition, and financial status of the Project not less than annually, including:
  - a) On or before January 31 of each year subsequent to occupancy of the Project, Owner shall submit a Certification of Compliance with Income and Rent Restrictions, certified by the general partner or managing member of the Owner, together with documents verifying that all common areas and units meet HUD's Uniform Physical Condition Standards (or any successor standard issued by HUD) and comply with the terms of this Declaration and the Declaration of Restrictive Covenants; and
  - b) Additionally, within one hundred-eighty (180) days of the end of its fiscal year, Owner shall submit copies of its statement of cash flows and annual project audit, prepared by an independent certified public accountant. At the County's option, such information shall include copies of bank account statements and proof of current insurance and payment of property taxes due.

### C. Records

Owner shall maintain detailed records of all persons served pursuant to this Declaration. Representatives of the County, or their designees may examine any records or information accumulated pursuant to this Declaration. During the Affordability Period, the County will conduct on-site inspections to verify compliance with this Declaration. All confidential information shall be treated

as such by all County representatives or designees. Owner shall maintain administrative and financial records as required by this Declaration applicable to the activities to be carried out under this Declaration, including but not necessarily limited to:

1. Property description and location;
2. Records of all persons served including: total number of clients, racial breakdown, ethnicity, percentage of low and very-low income clients (as defined by HUD), clients with disabilities, seniors, name of each head-of household including female head-of household and number in household, and rent charged to each household;
3. Records regarding Project requirements that apply for the duration of the Affordability Period;
4. Information about contractors, vendors, and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence;
5. Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
6. Documentation of efforts to affirmatively further fair housing;
7. Records demonstrating compliance with labor requirements including contract provisions and payroll records;
8. Records demonstrating compliance with County Planning, Building, and Environmental Requirements as well as any Sustainability Elements committed to as part of the Application;
9. Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests; and
10. Records related to any decision to terminate or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

#### D. Physical Inspections

Owner will provide the County, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds during normal business hours. The County will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, subject to applicable tenant notice requirements, the County will inspect the Project annually or on another schedule it determines to ensure that the Project is being maintained in compliance with all appropriate property standards.

## E. Financial Management

Owner agrees to comply with 2 CFR Part 200 entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” with the exception of Subpart F (Audit Requirements) and exceptions authorized by the Federal Awarding Agency under Subpart B (General Provisions).

Owner shall submit to the County a copy of Owner’s most recent single audit per 2 CFR Part 200 or a letter stating that it expended less than \$750,000 of Federal funds during that reporting period. If Owner submits a letter stating it expended less than \$750,000 in Federal funds, Owner shall provide a recent financial statement certified by an appropriate officer or employee of the Owner. Owners who have not been subject to a single audit per 2 CFR Part 200 are required to obtain education and training on the requirements of 2 CFR 200. The adequacy and successful completion of this requirement is subject to County approval.

In addition to any other recordkeeping requirements herein, all costs of the Project shall be recorded by budget line items and be supported by checks, payroll registers, time records, invoices, contracts, purchase orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payroll registers, time records, invoices, contracts, purchase orders or other accounting documents which pertain, in whole or in part, to the Project shall be thoroughly identified and readily accessible to the County, the Division, and their authorized agents, within 48 hours of written request from the County or the Division.

Owner agrees that excerpts or transcripts of all checks, payroll registers, time records, invoices, contracts, purchase orders and other accounting documents related to or arguably related to the Project will be provided upon reasonable request to the County, applicable federal authorities, and their authorized agents. Owner shall provide a sample tenant lease to the County for review and approval prior to lease-up. Should the approved sample tenant lease be modified at any time during the term of this Declaration Owner shall provide the modified lease for approval, not to be unreasonably withheld, conditioned or delayed, prior to any tenant entering into a lease with Owner, provided that if no response by the County is provided within 15 days of delivery, such form shall be deemed approved. Not less than annually from the date of first occupancy, Owner shall provide the County with the proposed rents for review and approval.

## F. Owner Responsibilities

Owner shall be responsible for:

1. Providing reporting to the County as required by this Declaration related to the development and operation of the Project, from execution date of the DDFA through Construction Completion. Owner shall provide progress reports to the County as specified in this Declaration;
2. Payment of the Compliance Monitoring Fee to the Division for compliance with the state ARPA funding as stipulated in the attached Amended and Restated Grant Agreement for American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds with the State of Nevada;

3. Owner shall maintain an active registration with the System for Award Management ("SAM") pursuant to 2 CFR Part 25; and
4. Owner's obligation to the County shall not end until all close-out requirements of the State ARPA funds are completed. Activities during this close-out period shall include but are not limited to, making final payments, including the return of unspent cash advances to the County; and determining custodianship of records. Notwithstanding the foregoing, the requirements shall remain in effect during any period that the Owner has control over funds as defined in 2 CFR Part 200.

#### G. Record Retention

Owner shall retain all applicable administrative and project records as follows:

1. General project records pertaining to the development and construction of the Project must be retained for not less than ten (10) years beyond the issuance of a Certificate of Occupancy for the Project. These include, but are not limited to, construction contracts and associated documents, invoices and payment records, records documenting compliance with any applicable labor standards, and the like.
2. Records relating to ongoing operations of the Project must be maintained for not less than the most recent ten-year period. Such records must be maintained until the end of the Affordability Period.
3. This Declaration and any amendments, attachments, or supplements thereto must be retained for not less than ten (10) years beyond the end of the Affordability Period.
4. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later, and Owner shall maintain reasonable security measures to protect records containing personal information from unauthorized access, acquisition, destruction, use, modification or disclosure per NRS Chapter 603A to ensure against a breach of the security of personal information of clients, staff or other individuals. Owner shall have established written policies and procedures that align with NRS Chapter 603A and shall follow these procedures. Upon written request, Owner shall make available to Clark County staff these written policies and procedures and will be monitored for compliance.

#### H. Federal Requirements

Owner must comply with the drug-free workplace requirements of 2 CFR 2429. Owner must develop and operate the Project in full compliance with all other applicable federal requirements of 24 CFR 92 Subpart H and 24 CFR 5 Subpart A and the nondiscrimination requirements of section 282 of the Act. This includes, but is not limited to, compliance with the drug-free workplace requirements of 2 CFR 2429.

## I. Equal Opportunity and Fair Housing Requirements

Owner shall develop, operate, and maintain the Project in accordance with the following:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
3. The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting Owner (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
4. The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;
5. The requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). Owner must make efforts to encourage the use of minority and women's business enterprises in connection with County-funded activities. Owner will cooperate with the County in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services; and
6. The requirements of section 282 of the HOME Investment Partnerships Act at Title II of the Cranston-Gonzales National Affordable Housing Act, as amended. Owner agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of Owner, shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, national origin, religion, or sex.

## J. Affirmative Marketing

Owner must adopt and implement affirmative marketing procedures for the Project. Owner must also provide information to the County regarding any tenant preferences that the Project will have in place.

The County reserves the right to require Owner to update the Project's affirmative marketing procedures from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

## K. VAWA Compliance

Owner must comply with the provisions of the Violence Against Women Act (VAWA) as applied by 24 CFR 92.359 and, as applicable, 24 CFR 5, Subpart L. Owner further acknowledges that, despite its name, VAWA provisions apply without regard to an individual's sex, gender identity, or sexual orientation.

### 1. Core VAWA Protections

Unless included in the limitations on VAWA protections delineated in 24 CFR 5.2005(d), the following VAWA protections will apply to all applicants for, or tenants of the Project:

- a) No individual may be denied admission or evicted on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or continued occupancy.
- b) Further, no individual may be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if: i) the criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and ii) the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
- c) In no case may an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall be construed as: i) a serious or repeated violation of a lease by the victim or threatened victim of such incident; or ii) good cause for terminating the tenancy or occupancy rights of the victim or threatened victim of such incident.

### 2. VAWA Notice

Owner must provide a County-approved or specified VAWA notice and certification form to:

- a) Any tenant admitted to a unit in the Project at the point the tenant is admitted to the unit;
- b) Any prospective tenant for a unit in the Project whose application for occupancy is being denied based on Owner's tenant selection policies or criteria as part of the written notification of denial otherwise required by 24 CFR 92.253; and



- c) Any existing tenant of a unit in the Project whose lease is being terminated, or for whom Owner is refusing to renew the lease, at the point the tenant is being provided with notice of termination or non-renewal.

### 3. Lease Bifurcation

Owner may seek to evict, remove, or otherwise terminate a household member from a unit in the Project on the basis of such member's criminal activity relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual, as defined in 24 CFR 5.2003, or other individual. Such action may be taken without regard to whether the individual being removed is a signatory to the lease. In any such case, however, if necessary, to avoid evicting, removing, or otherwise penalizing any victim of such activity who is also a lawful occupant of the unit, Owner must bifurcate the lease to allow continued occupancy by remaining members of the household.

### 4. Emergency Transfer Plan

Owner must comply with the terms of the County's VAWA Emergency Transfer Plan, as may be updated from time to time, which among other items will:

- a) Allow for an internal emergency transfer to another available and safe unit in the Project by any tenant or other lawful resident of a unit in the Project who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. In such cases, the transferring tenant(s) may transfer to the new unit without having to undergo an application process and will, in all other respects, be treated as an in-place tenant.
- b) In cases where an immediately available and safe unit is not available for internal transfer, require Owner to notify the County of the tenant's request for an external emergency transfer, to cooperate and assist in providing information to the tenant about other units potentially available in the portfolio of units funded by the County, and waive any early termination or other similar fee for tenants requiring an emergency transfer that results in the breaking of the lease.

### 5. Documentation

Owner may request that an individual seeking protection under the VAWA provisions provide documentation demonstrating that he/she is a victim of domestic violence, dating violence, sexual assault, or stalking. Owner seeking such documentation must accept any of the following:

- a) A signed tenant certification, using HUD Form 5382 or such subsequent form document HUD may publish pursuant to 24 CFR 5.2005.
- b) A document signed by the tenant and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom the tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the

definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.

- c) A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency.

Further, Owner may choose to accept other reasonable documentation of the individual seeking VAWA protections.

Nothing in this section shall be construed to require Owner to document an individual’s status as a victim. Instead, Owner may extend the VAWA protections broadly to any individual requesting VAWA protections based on a presumption of their status without requiring documentation of their victimization.

#### 6. Confidentiality

Any information submitted to Owner under these VAWA provisions, including but not limited to an individual’s request for VAWA protections or the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking is confidential information, shall be maintained in strict confidence.

## SECTION VII – ENFORCEMENT

### A. Default

The actions noted below shall constitute an event of default hereunder. The County may give written notice of default to the Owner or successor-in-interest, by registered or certified mail, addressed pursuant to the Notice provisions of this Declaration.

1. Failure to comply with the terms and conditions hereof;
2. Failure to comply with fair housing laws, and other federal requirements related to the Project, or any applicable State or local law, regulation, ordinance, or requirement;
3. Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Owner in the execution or performance of this Declaration;
4. A default by Owner under this Declaration and all associated documents, that remains uncured beyond all applicable cure periods;

5. The Owner's dissolution or other termination of existence; merger or consolidation with any other entity; change in control of the Project or the Owner without the County's prior written consent as required herein; insolvency; forfeiture of right to do business in the State of Nevada or business failure; abandonment of the Project for more than thirty (30) days; appointment of a receiver of any part of the Owner's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Owner; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Owner which are not dismissed within sixty (60) days;
6. Except any judgment or lien resulting from liability that is fully payable from the proceeds of an insurance policy maintained by Owner, Owner allows any judgment or lien against the property to remain for more than sixty (60) calendar days after the entry of such judgment or lien without being paid, stayed on appeal, discharged, bonded, or dismissed within sixty (60) calendar days;
7. A sale, transfer, or further encumbrance of all or part of the Project without the County's prior written consent; and
8. Any default that remains uncured beyond all applicable cure periods under any documents evidencing other financing for the Project, including but not limited to existing restrictions on the Housing Portion of the Site. This may include, but is not limited to, the failure to maintain any reserve account required by another lender.

#### B. Remedies

In the event of default by Owner hereunder, which default is not cured within thirty (30) days of the mailing of written notice by the County (unless such cure is not practicable within thirty (30) days and the Owner, to the County's satisfaction, has commenced and is diligently pursuing a cure within the thirty (30) days in which case the County may extend the cure period if permitted by the Nevada Housing Division, in which case not to exceed 45 days.

The County may seek any combination of the following remedies:

1. If the Project is not developed and operated for its intended use as affordable housing as set forth herein within five (5) years of the date of this Agreement, repossess, and re-enter the Project property pursuant to Subsection C below;
2. Subject to the rights of senior lenders and superior lienholders, retain a new developer and/or general contractor to commence or finish construction of the Project and improvements on the Commercial Portion of the Site according to the Approvals at the Owner's expense; however, this remedy shall expire within five (5) years of the execution of this Agreement;
3. Recover from the Owner the amounts of all damages suffered by County due to Owner's breach;
4. Seek an injunction or other equitable relief in any court of competent jurisdiction to enforce the Owner's obligations hereunder;
5. Subject to the rights of senior lenders, collect on any payment or performance bond;

6. Subject to the rights of senior lenders, enforce the Performance and Recovery Guaranty;
7. Subject to the rights of senior lenders, assign any rights, privileges, guarantees, security, or the like to the County;
8. Withhold any further payments to be made under this Declaration until such time as Owner's breach has been cured in accordance with the terms and conditions of any cure period provided by the County (but the County may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
9. Apply to any appropriate court, State or federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
10. Subject to the rights of senior lenders and superior lienholders, enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of Owner, as the attorney-in-fact of Owner (which authority is coupled with an interest and is irrevocable by Owner), to complete or cause to be completed the Project, at the cost and expense of Owner;
11. Pursuant to the provisions of Section III.C., require the use of or change in professional property management;
12. Subject to existing restrictions on the Property and the rights of senior lenders, require the replacement of the Owner's managing member(s), as applicable, in which case not less than 60 days' notice of such intent will be provided to the Owner; senior lender shall have the right to approve such replacement of managing members;
13. Subject to the rights of senior lenders, declare immediately due and payable the amount of funds awarded and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor, or any other notice of any kind, all of which are hereby expressly waived; and

Except as otherwise provided for by law or this Declaration, the rights and remedies of County shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages.

#### C. Reversion

In addition to and independent of any other remedy available to it, if the Project is not developed and operated for its intended use as affordable housing as set forth herein within five (5) years of the date of this Agreement, the Property shall immediately and automatically revert back to the County, without liability and cost to the County. In the event of such reversion, Owner agrees, at its sole cost and expense, to reconvey the Property to the County under this Declaration. The failure of individual units from time to time to comply with the affordability restrictions set forth herein shall not trigger such reversionary right.

To the extent provided in this Declaration, shall be subject to, and shall not defeat, render invalid or limit any mortgage, deed of trust, or other security instrument or conveyance for financing permitted by this Declaration. Notwithstanding the foregoing, reversion under this Declaration shall survive any foreclosure.

Any delay by the County in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as the occasion therefore arises.

## SECTION VIII – PROTECTION OF ENCUMBRANCES

Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on the Property taken in good faith and for value and recorded prior to the time of recording of notice of such amendment, violation, breach or failure to comply. Any subsequent Owner of such Property shall, however, take subject to this Declaration, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise. This Declaration shall be recorded senior to any deeds of trust, mortgages or other liens securing anticipated sources of Project financing, will not be subordinated to any such liens and shall not be foreclosable following default under such liens or issuance by the Owner of a deed in lieu of foreclosure.

## SECTION IX – INDEMNIFICATION

### A. General

In addition to the County's interest in facilitating the production of affordable housing, County and Owner acknowledge County's interest in reducing its exposure to financial risks associated with the Project. Consequently, as an inducement to the County and to ensure that the public purposes of the Project will be realized, the County will require various security, guarantees, and indemnities from the Owner or successor-in-interest, and any other parties described in this Section.

### B. Completion and Stabilization Guarantee

The "Guarantors" outlined herein shall provide a completion and stabilization guarantee (Exhibit H of the DDFA) in form and substance acceptable to the County. These are in addition to any standard environmental or general indemnifications that may be required by this Declaration. All guarantees shall be joint and several.

The Completion and Stabilization Guarantee, to be executed by Guarantors, shall secure and guarantee Owner's obligations hereunder, including but not limited to completing construction of the Project, making payments for all labor and materials and removal of any improvements deemed by the County not to be in compliance with the provisions of this Declaration. In addition, the Completion

and Stabilization Guarantee shall ensure that the Project is leased to eligible households, as described herein, and reaches Stabilized Occupancy, as defined below.

The Completion and Stabilization Guarantee will remain valid and enforceable until the later of (i) lien-free completion of construction and issuance of final certificate(s) of occupancy for the Project or (ii) "Stabilized Occupancy" as defined below. Upon satisfying the conditions for release, the Completion and Stabilization Guarantee will terminate and have no further force or effect.

#### 1. Stabilized Occupancy

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- a) Initial occupancy of no less than 95% of the Project's units;
- b) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 90%; and
- c) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments), provided that in order to satisfy this condition, the guarantor of the Stabilization Guarantee may resize the permanent debt, reduce or defer its developer fee or some combination thereof with written County consent.

#### C. Indemnification

Regardless of whether any costs for damages and/or injuries are covered by insurance, Owner and Brinshore Development, LLC, actively the "Indemnitors") shall indemnify, hold harmless and defend County and any of its officers, employees, representatives, agents and contractors, invitees, board members, successors, and assigns (collectively the "Indemnitees"), with counsel acceptable to County, against and from any and all liability, loss, cost, damage, or expense (including but not limited to attorneys' fees) of whatsoever nature arising from or in connection with personal injury to or death of any person (including, without limitation, exposure to hazardous or toxic substances), or loss of or destruction or damage to any property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to Indemnitors occupation or use of the Site or Project by, or the presence thereon of, Owner or a related party, and occurs from any cause whatsoever, excluding the grossly negligent or intentional acts of County. If Owner should discover any Hazardous Materials, or any other materials subject to a legal reporting requirement or corrective action, Owner will immediately notify the Nevada Department of Environmental Protection and County of the same.

Indemnitors shall also indemnify, hold harmless and defend Indemnitees against any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction or development of the Project.

The indemnity obligations of Indemnitors under this Section will survive any termination of this Declaration. In the event that any Indemnitee incurs any actual, reasonable expenses for claims or losses described in this Section, such County Indemnitee shall have a right to charge said expenses made in good faith to the Indemnitors. An itemized statement of expenses shall be prima facie evidence of the fact and extent of the indemnity obligation of the Indemnitors.

## SECTION X- NOTICES

Except in the case of notice of default under this Declaration, notices due to Owner hereunder shall be deemed delivered two (2) days after being placed in the United States mail, postage pre-paid, addressed to the Owner as follows:

Owner:

c/o Brinshore Development, L.L.C.  
1603 Orrington Ave., Suite 450  
Evanston, IL 60201  
Attn: David Brint

All notices of default shall also be delivered to senior lenders as follows:

JP Morgan Chase Bank, N.A.  
c/o Community Development Banking  
10 S. Dearborn Street  
Chicago, Illinois 60603  
Attention: Annette Reschke, Executive Director

Insomuch as title to the Project has been transferred via foreclosure, deed in lieu of foreclosure, or other similar means, notice may be sent to the address used for the mailing of property tax bills or other similar official government records as well as care of the then Owner at any leasing office for the Project.

Notices due the County shall be in writing and must be personally delivered or placed in the United States mail. Notices to the County delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of a County representative. Notices to the County should be addressed as follows:

Clark County Community Housing  
500 S. Grand Central Pkwy., 6th Floor  
Las Vegas, NV 89155

## SECTION XI – MISCELLANEOUS PROVISIONS

### A. Interpretation

This Declaration shall not be merged with any subsequent agreement between the County and Owner, including, but not limited to, the DDFA or regulatory agreements related to the Project. Any question or dispute regarding the interpretation of the terms of this Declaration shall be decided by the County in its reasonable discretion. The County's decision, if reasonable, shall be final and binding. In the event of a conflict between this Declaration, the DDFA and any associated documents, and/or the regulatory agreements, the County reserves the right to resolve the conflict and determine which provision will take precedence. In general, the more restrictive provision will apply.

#### B. Applicable Law

This Declaration shall be construed and interpreted in accordance with Nevada law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of Nevada shall have jurisdiction and that the proper forum for such action shall be Clark County, Nevada.

#### C. Amendments

This Declaration may be modified or amended only with the written consent of the County. Any such executed document is to be duly recorded in the official records of Clark County.

#### D. Headings and Pronouns

The headings of the paragraphs in this Declaration are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and singular nouns used herein shall include the plural and vice versa.

#### E. Severability

If any provision of this Declaration shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Declaration is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### F. Authority

Except as otherwise provided herein, at any time during the term of this Declaration, whenever any approval or notice by the County is required under this Declaration, or whenever any action by the County is required or permitted, the Clark County Community Housing Administrator, its successor or its authorized delegate, shall have the power and right to approve, give notice or act on behalf of the County, as the case may be.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed by the duly authorized representative of the Owner on the date set opposite his signature below.

DECLARANT:

COUNTY:  
CLARK COUNTY, NEVADA

By \_\_\_\_\_

Date: \_\_\_\_\_

Kevin Schiller, County Manager

ATTEST:

\_\_\_\_\_  
Lynn Marie Goya  
County Clerk

Approved as to form:

\_\_\_\_\_  
Claudia Aguayo  
Deputy District Attorney

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK         )

The foregoing instrument was acknowledged before me this        day of \_\_\_\_\_,  
2024, by Kevin Schiller, County Manager of Clark County, Nevada, on behalf of the County.

\_\_\_\_\_

## EXHIBIT A: LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$  ) OF THE NORWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 22, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M, DESCRIBED AS FOLLOWS:

PARCEL ONE (1) AS SHOWN BY MAP THEREOF IN FILE 131 OF PARCEL MAPS, PAGE 3, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA  
ASSESSOR'S PARCEL NUMBER: 139-22-201-018

## EXHIBIT H: COMPLETION AND STABILIZATION GUARANTY

### COMPLETION AND STABILIZATION GUARANTY

This **COMPLETION AND STABILIZATION GUARANTY** (“**Guaranty**”) is given as of \_\_\_\_\_, 2024, by **Microbusiness Housing, LLC** a Nevada limited liability company (“**Owner**”), and Brinshore Development, L.L.C. (collectively, the “**Guarantors**”) to and for the benefit of **Clark County, Nevada (the “County”)**, a political subdivision of the State of Nevada, whose address is 500 S. Grand Central Parkway, Las Vegas, NV 89155.

#### R E C I T A L S:

A. The Guarantors have agreed to execute and deliver this Guaranty to the County in connection with a Disposition, Development and Funding Agreement (the “**DDFA**”) by and between the County and the Owner, which provides for development of a 76-unit apartment complex to be known as Microbusiness Housing which was designed and constructed and will be owned and managed by Owner (the “**Project**”).

B. The units in the Project will be restricted to households with income at or below eighty percent (80%) of Area Median Income (AMI), 60% AMI, and 50% AMI adjusted for family size, as determined by the United States Department of Housing and Urban Development (“HUD”). These restrictions shall remain in effect for ninety-nine (99) years from the date of completion of the Project and shall be recorded in the official land records of the Clark County Recorder’s Office.

C. Construction and permanent financing for the project is anticipated to come from JPMorgan Chase Bank, N.A.

D. The County has relied on the obligations of the Guarantors to be performed under this Guaranty and the Guarantors have determined that executing and delivering this Guaranty is in the Guarantors’ interest and to the financial benefit of the Guarantors.

E. The Guarantors acknowledge that the County is the intended beneficiary of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby irrevocably and unconditionally promise, covenant, guarantee, and agree as follows:

## 1. Term and Obligations.

- a. The Guarantors do hereby unconditionally and irrevocably guarantee the due and punctual performance of all obligations for the timely completion of the construction of the Project in accordance with the plans and specifications, and the DDFA, in a good and workmanlike manner, free of construction or similar liens, and that the Project achieves Stabilized Occupancy as such term is defined below within the time periods described therein ("**Guaranteed Obligations**"). This Guaranty is a continuing guaranty of performance throughout the term stated in Section 1(d). Each Guarantor unconditionally agrees that if for any reason it fails to perform the Guaranteed Obligations, then upon written demand by the County the Guarantors will take corrective actions to perform such obligations and further guarantees the satisfaction of any financial and other obligations necessary.
- b. If Guarantors do not assume and perform such responsibilities and obligations as described herein, the County may then elect, without further notice to Guarantors, to take any actions it reasonably believes necessary to complete the construction of the Project in accordance with the Plans and Specifications, but with the further right to suspend or terminate such actions at any time. No such actions by the County will release or limit the liability of Guarantor hereunder. In such event Guarantor shall repay the County any amounts reasonably expended by the County in undertaking any actions it reasonably believes necessary to perform the Guaranteed Obligations, together with interest on all amounts expended at the rate of five percent (5%) per annum from the date of expenditure, and all reasonable expenses actually incurred in enforcing this Guaranty, including but not limited to reasonable attorneys' fees and any expenses incurred in connection with any trial, appeal, arbitration, or bankruptcy proceedings. Such obligation of reimbursement is in addition to Guarantors' obligations under other provisions of this Guaranty ("**Repayment Obligation**").
- c. This Guaranty is intended to be an ongoing guaranty of performance, ensuring that the Project will be developed and constructed in compliance with all applicable federal, state, and local laws or ordinances or regulations. Failure to complete construction or stabilization of the Project as above said, or the failure or inability to correct instances of noncompliance will result in a requirement that the Guarantors satisfy any repayment obligation to the County. Such obligation of reimbursement is in addition to Guarantors' obligations under other provisions of this Guaranty and shall also be a Repayment Obligation.
- d. This Guaranty shall expire upon i) the County's final inspection and approval of the Project's construction, and ii) achievement of Stabilized Occupancy, as defined below. For the purposes of this Guaranty, the term "Stabilized Occupancy" shall mean the date upon which the Project has achieved all of the following benchmarks:
  1. Initial occupancy, by eligible households as described in the DDFA, of no less than 95% of the Project's units;
  2. Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 90%; and

3. Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments) provided that in order to satisfy this condition, the Guarantors may reduce the permanent debt of the Project by reducing or deferring its developer fee, subject to the terms of the DDFA.

## **2. Provisions of Guaranty**

- a. If the Guarantors fail to perform any of its obligations under this Guaranty, the Guarantors shall be responsible for any and all damages resulting to the County from such breach.
- b. This is a joint and several guarantee of performance and not of collection. The Guarantors waive any right to require that any action be brought against any other person (including a Guarantor) liable for performance or payment of any obligations or that resort first be made to any other security.
- c. Prior to filing an action against the Guarantors, the County will give the Guarantors a reasonable period of notice with an opportunity to cure any failure to perform as required, which shall be at least 30 days except in case of emergency. If the Guarantors fail to pay any amount owing under this Guaranty, the County shall have all of the rights and remedies provided by law or under any other agreement relating to the DDFA. These rights and remedies shall be cumulative and not exclusive.

## **3. Nature of Guaranty.** The Guarantors' liability for performance of the Guaranteed Obligation and payment of the Repayment Obligation guaranteed hereunder shall be a primary obligation and shall be absolute and unconditional. The Guarantors agree that none of the following acts, omissions, or occurrences shall diminish or impair the liability of the Guarantors in any respect (all of which acts, omissions, or occurrences may be done or occur without notice to any Guarantor):

- a. Any extension, modification, indulgence, compromise, settlement or variation of any of the terms of the Guaranteed Obligations or Repayment Obligation;
- b. The discharge or release of any obligations of any Guarantor or any other person now or hereafter liable on the Guaranteed Obligations or Repayment Obligation, by reason of bankruptcy or insolvency laws or otherwise;
- c. The acceptance or release by the County of any collateral, security, or other guaranty or any settlement, compromise, or extension with respect to any collateral, security, or other guaranty;
- d. The application or allocation by the County of payments, collections, or credits on the Repayment Obligation;
- e. The creation of any new indebtedness by Owner;

- f. The making of a demand, or absence of demand, for payment of the amounts owing under the Guaranty, or giving, or failing to give, any notice of dishonor, protest, presentment, or non-payment or any other notice;
- g. Any failure, omission, or delay on the part of the Guarantors or any other person now or hereafter liable on the Guaranteed Obligation or Repayment Obligation, or anyone claiming by or through any of them, to comply with any instrument or agreement relating to any of the Guaranteed Obligation or Repayment Obligation;
- h. To the extent permitted by law, any release or discharge by operation of law of the Guarantors from the performance or observance of any obligation, covenant, or agreement contained in this Guaranty;
- i. Any merger or consolidation of the Guarantors, or any other person now or hereafter liable on the Guaranteed Obligation or Repayment Obligation, into or with any other corporation or other entity or any sale, lease, or transfer of any of the assets of the Guarantors to any other person or entity; or
- j. Any other occurrence or circumstance (other than payment hereunder) which might otherwise constitute a legal or equitable defense or discharge of the liabilities of a Guarantor or surety or which might otherwise limit recourse against the Guarantors.

The obligations of the Guarantors set forth in this Guaranty constitute full recourse obligations of the Guarantors, enforceable against the Guarantors to the full extent of the Guarantors' assets and properties. The Guarantors' liability under this Guaranty is independent of the Guarantors' liability under any other guaranty previously or subsequently executed by the Guarantors as to all or any part of the Guaranteed Obligation or the Repayment Obligation and may be enforced for the full amount of this Guaranty regardless of the Guarantors' liability under any other guaranty.

4. **Sufficient Consideration.** The Guarantors acknowledge that the Guarantors have received good, valuable, and sufficient consideration for the making of this Guaranty and expressly agree that recourse may be had against the Guarantors' properties and assets for all obligations hereunder and further agree that any and all of the Guarantors' properties and assets shall be subject to execution for a judgment rendered against the Guarantors on this Guaranty by a court of competent jurisdiction.
5. **Evidence of Financial Capacity.** The Guarantors acknowledge that, they have presented to the County their financial statements in connection with the County's execution of the DDFA, and that, such statements accurately and correctly present the financial condition of the Guarantors as of the date thereof and that no material events have occurred which make the statements inaccurate or which jeopardize the ability of the Guarantors to provide the financial support anticipated hereunder. The Guarantors shall have an ongoing obligation to provide updated financial information to the County throughout the term of this Guaranty. At the request of the County, each Guarantor shall provide to the County compiled or audited financial statements within 240 days of the close of its fiscal year. All such financial statements shall be prepared in

accordance with generally accepted accounting principles.

**6. Waiver of Rights.** The Guarantors agree to waive:

- a. Notice of acceptance of this Guaranty;
- b. Any and all other notices to which the Guarantors might otherwise be entitled except as this document requires;
- c. Any and all defenses arising by reason of any disability of the Guarantors or any defense of any other person;
- d. Any and all rights to extension, composition, or election with respect to any collateral under any provision of the Federal Bankruptcy Code, as now existing or hereafter amended from time to time, or any other debtor's or guarantor's remedy thereunder or under any other federal or state law affecting creditors' rights;
- e. Diligence in any attempt to enforce the obligations guaranteed under this Guaranty, to realize upon any other security, or to collect from anyone any amount, the payment of which is guaranteed under this Guaranty, and any right to require that any action be brought against any other person or to require that resort first be had to any such security;
- f. Protection of any such security for the payment of the obligations guaranteed under this Guaranty;
- g. The observance of any and all formalities that might otherwise be required to charge any Guarantor with liability under this Guaranty;
- h. Any right of subrogation to the rights of the County against Owner; and
- i. Any notice or demand, any action that the County takes regarding Owner, anyone else, any collateral, or any Guaranteed Obligation or Repayment Obligation, which the Guarantors might be entitled to by law or under any other agreement.

The County may waive or delay enforcing any of its rights without losing those rights.

**7. Representations and Warranties.** The Guarantors represent and warrant to the County as follows:

- a. The execution and delivery of this Guaranty, and the performance of the obligations imposed under this Guaranty, do not violate any law and do not conflict with any agreement by which the Guarantors are bound, and no consent or approval of any governmental authority or any third party is required in connection with the execution or delivery of this Guaranty and the

performance of the obligations imposed under this Guaranty, and this Guaranty is a valid and binding agreement, enforceable according to its terms.

- b. There are no actions, suits or proceedings, and no proceedings before any arbitrator or by or before any governmental commission, board, bureau or other administrative agency, pending or, to the best knowledge of the Guarantors, threatened against or affecting the Guarantors, or any properties or rights of the Guarantors, which, if adversely determined, could have a materially adverse effect upon the financial condition of the Guarantors.
  - c. The Guarantors assume full responsibility for obtaining any further information concerning the status of the Guaranteed Obligation or Repayment Obligation or any other matter which the Guarantors may deem necessary or appropriate (now or later). The Guarantors waive any duty on the part of the County, and agree that the Guarantors are not relying upon nor expecting the County to disclose to the Guarantors any fact now or later known by the County, whether relating to the operations or condition of Owner as owner of the Project, the existence or the occurrence of any default with respect to the Guaranteed Obligation or Repayment Obligation, or otherwise, notwithstanding any effect such fact may have upon the undersigned's risk under this Guaranty.
  - d. The Guarantors are satisfied with the means that the Guarantors have for obtaining from Owner, on a continuing basis, financial and other information pertaining to its condition as owner of the Project.
- 8. Reinstatement.** This Guaranty shall continue to be effective, or shall be automatically reinstated, as the case may be, if at any time performance or payment of all or any part of the Guaranteed Obligation or Repayment Obligation, as the case may be, is rescinded or must otherwise be restored or returned by the County upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of Owner, or upon, or as a result of, the appointment of a custodian, receiver, trustee, or other officer with similar powers with respect to Owner or any substantial part of Owner's property, or for any other reason, all as though such payments had not been made. If an event permitting the acceleration of any of the Guaranteed Obligation or Repayment Obligation shall at any time have occurred and be continuing and such acceleration of the obligations shall at such time be prevented by reason of the pendency against Owner of a case or proceeding under a bankruptcy or insolvency law, the Guarantors agree that, for purposes of this Guaranty and the Guarantors' obligations under this Guaranty, the Guaranteed Obligation or Repayment Obligation shall be deemed to have been declared in default and accelerated with the same effect as if the obligations had been declared in default and accelerated in accordance with the terms thereof, and the Guarantors shall immediately pay the amounts specified by the County to be paid in accordance with the documents evidencing the Guaranteed Obligation or Repayment Obligation.
- 9. Notice.** Notices due to the Guarantors hereunder shall be deemed delivered two (2) days after being placed in the United States mail, postage prepaid, addressed to the Guarantors as follows:

Brinshore Development, LLC  
1603 Orrington Ave., Suite 450



Evanston, IL 60201  
Attn: David Brint

Notices due the County shall be in writing and must be personally delivered or placed in the United States mail. Notices to the County delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of a Fund representative. Notices to the County should be addressed as follows:

Clark County Community Housing Office  
500 S. Grand Central Parkway  
Las Vegas, NV 89155  
Attention: Community Housing Administrator

#### **10. Miscellaneous.**

- a. This Guaranty shall be construed in accordance with the laws of the State of Nevada.
- b. For all purposes in respect to this Guaranty, the Guarantors agree to submit to the jurisdiction of the state and federal courts located in Clark County, Nevada.
- c. This Guaranty shall be binding on the successors and assigns, legal representatives, and other transferees of the Guarantors. This Guaranty shall not be assignable or transferable by the Guarantors without the prior written consent of the County. This Guaranty shall inure to the benefit of the County's successors, assigns, and legal representatives.
- d. Any amendment of this Guaranty shall be in writing and shall require the signature of the Guarantors and the County.
- e. The invalidity or unenforceability of any provision of this Guaranty shall not affect the validity or enforceability of the remaining provisions of this Guaranty.
- f. Any reference in this Guaranty to attorneys' fees shall refer to reasonable attorneys' fees, charges, costs, and expenses of outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative, or probate proceeding, in consultation with counsel, or otherwise.
- g. The descriptive headings of this Guaranty are for convenience only and shall not be deemed to affect the meaning of any provision.
- h. As used herein, the term "person" includes a human being, a public or private corporation, an unincorporated association or organization, a partnership or any other for-profit or non-profit entity.
- i. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

**11. WAIVER OF JURY TRIAL.** THE GUARANTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. THE GUARANTOR, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS GUARANTY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Owner and Guarantor have caused this Guaranty to be duly executed as of the date opposite of their signatures below.

**OWNER:**

By: Microbusiness Housing, LLC a Nevada limited liability company, its manager

By: Microbusiness Housing Manager, LLC, a Nevada limited liability company, its managing member

By: Brinshore Development, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Brint, President

**GUARANTOR:**

By: Brinshore Development, L.L.C., an Illinois limited liability company

By: Brint Development, Inc., an Illinois corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Brint, President

## EXHIBIT I: PROGRAM OUTCOMES AND PERFORMANCE MEASURES QUARTERLY REPORT TO CLARK COUNTY

**Quarter/Calendar Year:** \_\_\_\_\_

**Agency Name:** \_\_\_\_\_

**Agency Address:** \_\_\_\_\_

**DUNS Number or Unique Entity Identifier (UEI):** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Identification Number:** \_\_\_\_\_

*(Provided by Clark County)*

**Project Expenditure Category (E.C.):** *(Provided by Clark County)*

\_\_\_\_\_  
\_\_\_\_\_

**Project Status of Completion:** \_\_\_\_\_

*(Not Started, Completed Less than 50%, Completed 50% or More, or Completed)*

**Primary Location of Project:** \_\_\_\_\_

### **Required Reporting of Performance Indicators:**

The following are required performance indicators per the United States Department of Treasury (Treasury) if they are applicable to your project. To the extent possible, provide data disaggregated by race, ethnicity, gender, income, and other relevant factors. If necessary to provide the data disaggregated, please attach an additional sheet of paper.

If necessary to allow Clark County and Treasury to interpret the results and understand any changes in performance indicators over time, you may attach a brief narrative.

Required Performance Indicators per Treasury		Quarter: _____	Calendar Year-To-Date	Program To-Date
Healthy Childhood Environments (E.C. 3.6-.3.9)	Number of Children Served by Childcare and Early Learning			
	Number of Families Served by Home Visiting			
Household Assistance (E.C. 2.2 & 2.5) and Housing Support (E.C. 3.10-3.12)	Number of Affordable Housing Units Preserved			
	Number of Affordable Housing Units Developed			
	Number of people or households receiving eviction prevention services			
Negative Economic Impacts (E.C. 2)	Number of workers enrolled in sectoral job training programs			
	Number of workers completing sectoral job training programs			
	Number of people participating in summer youth employment programs			

### **Additional Performance Indicators**

Please complete the table below to detail both the output and outcome measures that you have identified for your project. To the extent possible, provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

Performance Indicator	Quarter Ending: _____	Calendar Year-To- Date	Program To-Date

<b>Performance Indicator</b>	<b>Quarter Ending:</b> _____	<b>Calendar Year-To-Date</b>	<b>Program To-Date</b>

### **Projective Narrative**

1. In 50-250 words, provide a description of the project in sufficient detail to provide understanding of the major activities that occurred over the past quarter. Please detail the upcoming major activities.
  
2. Promoting Equitable Outcomes: Your organization is required to report and describe efforts to date and intended outcomes to promote equity.<sup>1</sup> Each update should include qualitative and quantitative data.
  - a. Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Describe any strategies used to prioritize economic and racial equity.
  
  - b. Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
  
  - c. How equal and practical is the ability for residents or businesses to become aware of the services funded by the Local Fiscal Recovery Funds?
  
  - d. Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
  
  - e. Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, or other equity dimensions where relevant for the policy objective?

---

<sup>1</sup> Equity is defined in the [Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), as issued on January 20, 2021.

- f. Describe any constraints or challenges that impacted project success in terms of increasing equity.
3. Evidence-Based Interventions: Identify whether funds are being used for evidence-based interventions and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories, as identified in the final rule.
4. What challenges has your organization encountered? How are you addressing them?
5. Provide an overview of the outreach that was done in the community to provide an awareness about the services being provided.
6. Describe any collaborations built among and between agencies and persons serving this population.
7. If your organization has received other funds to assist with the implementation of programs and services, please describe how these funds are being used. In your response, please detail how the use of all funds will assist with the overall approach for the pandemic recovery.

**HOME MEANS NEVADA INITIATIVE  
QUARTERLY PROGRESS REPORT  
NEW DEVELOPMENT, PRESERVATION, AND LAND ACQUISITION PROJECTS**

Subrecipient Name:  
Project Name:  
Project Number:

Project Type: CHOOSE ONE  
Quarter End Date: CHOOSE ONE  
Submission Date:

**Instructions:** Respond to the prompts below on progress completed this quarter. Submit report to GrantManagementHMNI@icf.com by the last business day of the month following the quarter end date. Please attach any Davis-Bacon wage reports not previously provided with draw requests.

**Quarterly Narrative:** Please describe activities undertaken this quarter on this project, including progress made and any challenges faced.

**Project Milestones – New Development, Preservation, Land Acquisition**

Accomplishment	Target Date	Completion Date
Close land purchase		
Complete design phase (conceptual, architectural, engineering)		
Secure permits and approvals		
Procure construction contractor(s)		
Begin construction		
Construction 25% complete		
Construction 50% complete		
Construction 75% complete		
Construction complete		
Certificate of Occupancy issued		
Lease up complete		



**EXHIBIT J: AMENDED AND RESTATED GRANT AGREEMENT FOR AMERICAN RESCUE  
PLAN ACT CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

**AMENDED AND RESTATED  
GRANT AGREEMENT FOR AMERICAN RESCUE PLAN ACT  
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS  
CFDA #21.027  
FAIN SLFRP2634**

This Grant Agreement ("Agreement") is entered on this 3rd day of April 2024, ("Effective Date") by and between the Nevada Housing Division, Department of Business and Industry State of Nevada ("Division") and Clark County ("Grantee"), a political subdivision of the State of Nevada, collectively the "Parties."

**RECITALS**

WHEREAS, the State of Nevada entered into an agreement with the United States Department of Treasury on May 26, 2022, wherein it received \$2,738,837,228 of Corona Virus State and Local Fiscal Recovery Funds ("Funds") pursuant to title Section 9901 of Subtitle M of the American Rescue Plan Act ("Act") to mitigate the public health emergency with respect to COVID-19;

WHEREAS, the State of Nevada received Funds;

WHEREAS, the Division desires to assist Grantee by providing a grant pursuant to the Act in the amount of \$11,000,000 to pay a portion of the costs of constructing an affordable housing development adjacent to a mixed-use microbusiness project in Westside Las Vegas (the "Project").

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt of which is hereby acknowledged subject to the rights and responsibilities of the Parties, and the following conditions and limitations:

**I. General Terms.**

A. The Division will provide Grantee with \$11,000,000 in Funds to undertake the Project as described in Exhibit A attached hereto and fully incorporated herein. The Division has determined that the Project is an eligible use of Funds pursuant to subparagraph (A) of paragraph (c) of Section 602 of the Act and the rules and regulations promulgated thereunder including, without limitation, 31 CFR Part 35 and the supplemental information provided by Treasury ("Final Rule").

B. Grantee agrees that any program costs, unless otherwise specified in this Agreement exceeding the \$11,000,000 provided by the Division pursuant to this Agreement, will be the responsibility of Grantee. Not more than ten percent (10%) of the Funds provided pursuant to this Agreement may be used for administrative expenses or developer fee, or a combination thereof. Any ongoing program costs, such as maintenance and operations, shall be the sole responsibility of Grantee, but in any event, not that of the Division.



C. Grantee agrees that the portion of the Project funded with Funds will be maintained as a low-income housing project for not less than 30 years beginning on the date which the Project is available for occupancy ("Period of Affordability") which shall be secured by a Declaration of Restrictive Covenants ("Declaration") recorded in the County Recorder's Office of Clark County. As used in this Paragraph C, "low-income housing project" means a housing complex that provides housing to tenants at or below 80% of the Area Median Income for the county in which the Project is located. Grantee agrees that the greater of 30 units or all units funded with Funds will be maintained at 60% of the Area Median Income for not less than 30 years.

D. Grantee agrees that the Project shall comply with the minimum hourly wages as determined by the United States Department of Labor pursuant to the Davis-Bacon Act 40 USC §3141 et. seq.

E. Grantee agrees that if the Project ceases to comply with any requirements set forth in this Agreement or the Declaration, Grantee shall repay any Funds provided pursuant to this Agreement to the Division.

## **II. Division General Conditions.**

A. The Division shall have no relationship whatsoever with the services provided pursuant to this Agreement, except the provision of financial support, monitoring, and the receipt of such reports as are provided for herein. To the extent, if at all, that any relationship to such services on the part of the Division may be claimed or found to exist, Grantee shall be an independent contractor only.

B. Grantee agrees to abide by all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws, including, without limitation, the Final Rule and 31 CFR Part 35 Subpart A. Except as otherwise provided in this Paragraph B, Grantee further agrees that Grantee will disburse Funds and perform all reporting requirements for the eligible activities under the Act and this Agreement. Grantee may subgrant its duties regarding the construction and maintenance of the Project under this Agreement provided that the Grantee and subgrantee execute a funding agreement, declaration of restrictive covenants, and deed of trust. Grantee shall ensure that the declaration of restrictive covenants requires the property to be used as an affordable housing project which contains not less than 30 units that serve individuals and families at or below 60% of the Area Median Gross Income for the county the Project is located in for a Period of Affordability of not less than thirty years beginning from the date that the Project is placed in service. If Grantee provides a loan to any subgrantee, any interest and principal paid by the subgrantee to Grantee is considered Program Income, as defined in 2 CFR §200.1, and must be returned to the Division each year.

C. Grantee will provide the Division with reports as required by the Division via electronic mail to the designated Division employee at intervals the Division determines are necessary, including, without limitation, any reports regarding employee wages. Reports must include, without limitation, the following information:

1. Total clients served;
2. Racial breakdown of clients served, including, without limitation, American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Pacific Islander, and White;
3. Ethnicity breakdown indicating either Hispanic or non-Hispanic, by race;
4. Number and percentage of low- and very-low income clients as defined by HUD;
5. Number of clients with disabilities served;
6. Number of senior citizens served;
7. Number of female head-of-households served;
8. Name of each head-of-household served;
9. Number of persons in each household served; and
10. Rent charged each household served.

D. Grantee will not use any portion of the Funds allocated pursuant to this Agreement for costs not expressly authorized by this Agreement.

E. If the Division determines that Funds have been expended on ineligible costs Grantee shall repay to the Division, as applicable, along with any fees, interests, or other fines, the amount of Funds expended on ineligible costs.

F. Except as otherwise provided herein, Grantee may not assign or delegate any of its rights, interests, or duties under this Agreement without the prior written consent of the Division. Any such assignment or delegation made without the Division's consent is void and may, at the option of the Division, result in the forfeiture of all financial support provided herein.

G. Grantee shall allow duly authorized representatives of the Division to conduct such occasional reviews, audits, and on-site monitoring of the Project as the Division deems appropriate in order to determine:

1. Whether the Project is being conducted in compliance with the Act and any rules and regulations adopted pursuant to the Act;
2. Whether management control systems and internal procedures have been established;
3. Whether the financial operations of the Project are being conducted properly;
4. Whether the reports to the Division contain accurate and reliable information; and
5. Whether the activities of the Project are being conducted in compliance with the provisions of Federal and State laws and regulations and this Agreement.

H. Visits by the Division shall be announced in advance of those visits and shall occur during normal operating hours. Absent exigent circumstances, the Grantee shall be given 48 hours advance written notice of said visits. The representatives of Division may request, and, if such a request is made, shall be granted, access to all of the records of Grantee which relate to



this Agreement. The representatives of the Division may, from time to time, interview recipients of the housing services of the program who volunteer to be interviewed.

I. At any time during normal business hours, Grantee's records with respect to this Agreement shall be made available for audit, upon 48 hours advance written notice of the inspection and the documents and records to be examined, by the Division, the Attorney General's Office, contracted independent auditors, the Inspector General of the Department of the Treasury, the Comptroller General of the United States, or any combination thereof. Records must be retained for a period of 10 years.

J. Neither Party waives any right or defense to indemnification that may exist in law or equity.

K. Grantee will not use any Funds or resources which are supplied by the Division pursuant to this Agreement in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also agrees to notify the Division of any legal action which is filed by or against it involving the Project or this Agreement.

L. This Agreement will commence on the Effective Date.

M. Funds must be expended by December 31, 2026. Any Funds not expended by December 31, 2026, must be returned to the Division. Funds will be disbursed on a drawdown basis. Grantee shall submit draw requests to the Division as needed, with supporting documentation. Division shall have 30 days to process such draw request. Payments will be made by the Division to the Grantee in the form of reimbursement for monies already spent on eligible Project costs. All payments are contingent upon Grantee's continued compliance with the provisions set forth in this Agreement and any/all Rules and Regulations 31 CFR Part 35, OMB Uniform Guidance 2 CFR Part 200, Treasury Requirements, and any applicable local, state, and federal laws, and any applicable Treasury and/or Division policy memo, regulations, communication or guideline, as the same may be amended time to time.

N. Grantee must maintain a written conflict of interest policy governing the performance of all persons engaged in the award and administration of contracts that comply with 2 CFR §200.112 and 2 CFR §200.318 as applicable. No person, employee, agent, consultant, officer, director or elected official or appointed official of Grantee who exercises or has exercised any function or responsibilities with respect to activities assisted with Funds or who is in a position to participate in a decision-making process or to gain inside information with regard to these activities, may obtain a financial interest or benefit from a Fund-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. Grantee must provide a copy of its written conflict of interest policy to the Division upon its request.

O. The Grantee covenants that its employees have no interest and will not acquire an interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. The



Grantee further covenants that in the performance of this Agreement, no person having such interest will be employed.

P. Grantee agrees that no officer or employee of Grantee may seek or accept any gifts, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in that position to depart from the faithful and impartial discharge of the duties of that position.

Q. Grantee agrees that no officer or employee of Grantee may use his or her position to secure or grant any unwarranted privilege, preference, exemption or advantage for himself or herself, any member of his or her household, any business entity in which he or she has a financial interest or any other person.

R. Grantee agrees that no officer or employee of Grantee may participate as an agent of Grantee in the negotiation or execution of any contract between Grantee and any private business in which he or she has a financial interest.

S. Grantee agrees that no officer or employee of Grantee may suppress any report or other document because it might tend to affect unfavorably his or her private financial interests.

T. Grantee shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required by any county ordinance or state or federal statute.

U. Grantee shall be bound by all county ordinances and state and federal statutes, conditions, regulations and assurances which are applicable to the eligible activities or are required by the Treasury, Division, or any combination thereof.

V. No officer, employee or agent of the Division shall have any interest, direct or indirect, financial or otherwise, in any contract or subcontract or the proceeds thereof, for any of the work to be performed pursuant to the project during the period of service of such officer, employee or agent, for one year thereafter.

W. Upon the revocation of this Agreement or the expiration of its terms, Grantee shall transfer to the Division the remaining balance of the Funds which have not been obligated at the time of expiration or revocation and any accounts receivable attributable to the use of Funds.

X. Grantee agrees to pay Compliance Monitoring Fee as identified within the Division's Qualified Allocation Plan. The Compliance Monitoring Fee is an annual fee charged during the compliance period for state ongoing compliance and asset monitoring.

Y. Grantee shall not enter into any agreement, written or oral, with any contractor without the prior determination by the Division of the contractor's eligibility. A contractor or subcontractor is not eligible to receive funds if the contractor is listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

### III. Federal Conditions.

- A. Grantee, and any subgrantee, shall comply with the following laws and directives:
1. The Hatch Act as set forth in Title 5, Chapter 15, of the United States Code.
  2. The National Environmental Policy Act of 1969 as set forth in Public Law 91-190 and the implementing regulations in 24 CFR, Parts 51 and 58.
  3. Title VIII of the Civil Rights Act of 1968, Public Law 90-284.
  4. Section 109 of the Housing and Community Development Act of 1974.
  5. Title VI of the Civil Rights Act of 1964, Public Law 88-352, and the regulations of HUD with respect thereto, including 24 CFR, Parts 1 and 2.
  6. The Fair Housing Act, as amended.
  7. Section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations of HUD with respect thereto, including 24 CFR Part 75. All published Section 3 policies, guidelines, and forms by NHD will be utilized and followed.
  8. The Age Discrimination Act of 1975.
  9. Section 504 of the Rehabilitation Act of 1973.
  10. Executive Order 11246, as amended, and the regulations which are issued pursuant thereto.
  11. The Fair Labor Standards Act.
  12. Section 202(a) of the Flood Disaster Protection Act of 1973.
  13. Sections 302 and 401(b) of the Lead-Based Paint Poisoning Prevention Act and implementing regulations in 24 CFR, Part 35.
  14. The Davis-Bacon Act, as amended, which requires that all laborers and mechanics who are employed to perform work on the Project, or any contractor or construction work which is financed, in whole or in part, with assistance which is received under the Housing and Community Development Act of 1974 shall be paid wages at rates which are not less than those that prevail in the locality for similar construction and shall receive overtime compensation in accordance with the Contract Work Hours and Safety Standards Act. The contractor and its subcontractors shall also comply with all applicable Federal laws and regulations which pertain to labor standards, including the minimum wage law.
  15. 45 CFR, Part 76, Subpart F of the Drug-Free Workplace Act of 1988.
  16. Section 319 of Public Law 101-121, of the Department of the Interior Appropriations Act, which prohibits the Grantee from using appropriated Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan, and requires that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.



17. Title I of the Housing and Community Development Act of 1974, as amended, which requires that the Project shall:
  - a. not discriminate against any employee or applicant for employment on the basis of religion and not limit employment or give preference in employment to persons on the basis of religion; and
  - b. not discriminate against any person applying for such public services on the basis of religion and not limit such services or give preference to persons on the basis of religion; and
  - c. provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing and exert no other religious influence in the provision of such public services.
18. Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225.
19. Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C 794.
20. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's Implementing regulations, 31 CFR part 28.
21. Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.
22. The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA), 49 CFR 24. The displacement, relocation, and acquisition are consistent with the other goals and objectives of the Project under the Agreement. The Grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of a project assisted with Funds.

B. None of the personnel employed in the administration of the Project shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 Title 5, of the U.S. Code.

C. None of the Funds shall be used for any partisan political activity, or to support or defeat legislation pending before Congress.

D. Notwithstanding any provision of this Agreement, the Parties agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the Division of an Authority to Use Grant Funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 50, if applicable to the Project. The Parties further agree that the provision of any Funds to the Project is conditioned on the Division's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review, if applicable to the Project.

E. Grantee shall comply with the requirements of Executive Order 11625, 12432, and 12138 and 24 CFR § 93.407(a)(viii) that provides for the utilization of minority businesses and



women business enterprises in all federally assisted contracts. Grantee shall provide the Division, on an annual basis, records and data on Minority Business Enterprise, Women's Business Enterprise, and marketing efforts. The Division, in its discretion, may request such other and further information, as from time to time required to ensure compliance with the mandates of the above listed Executive Orders. These records shall contain, but are not limited to, the following data:

1. Data on the attempts to reach minority-owned and female-owned businesses when announcing business opportunities;
2. Data on racial/ethnic or gender character of business to whom a contract was awarded and the contract amount; and
3. Data on attempts to affirmatively further fair housing.

F. Any material breach of the terms of this section may, in the discretion of the Division, result in forfeiture of Funds received by Grantee pursuant to this Agreement, or any part thereof.

G. Upon the expiration or revocation of this Agreement, Grantee shall transfer to the Division any Funds on hand at the time of expiration or revocation and any accounts receivable attributable to the use of Funds, unless waived in writing by the Division.

H. Grantee, and any subgrantee, shall maintain an active registration with the System for Award Management ("SAM") pursuant to 2 CFR Part 25.

I. Grantee's obligation to the Division shall not end until all close-out requirements are completed. Activities during this close-out period shall include but are not limited to, making final payments; disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Division; and determining custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Grantee has control over funds, including program income, as defined in 2 CFR Part 200.

#### **IV. Financial Management.**

A. The Division has reviewed the procurement process of Grantee and finds it sufficient to meet any applicable procurement requirements and exemptions under 2 CFR Part 200, Subpart D. Grantee agrees to require any subgrantee to agree, to comply with the requirements of the United States Office of Management and Budget ("OMB") "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" codified at 2 CFR part 200, Subparts A through F, inclusive, including, without limitation, the procurement requirements set forth in 2 CFR part 200, Subpart D.

B. Grantee agrees that all costs of any recipient receiving Funds pursuant to this Agreement, shall be recorded by budget line items and be supported by checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payrolls,



time records, invoices, contracts, vouchers, orders or other accounting documents which pertain, in whole or in part, to eligible activities shall be thoroughly identified and readily accessible to the Division upon 48 hours notice to Grantee.

C. Grantee agrees that excerpts or transcripts of all checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents related to this Agreement will be provided upon request to the Division upon 48 hours written notice.

D. Grantee agrees that it may not request disbursement of Funds under this Agreement until the Funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

E. Grantee shall comply with the Single Audit Act and 2 CFR Part 200, Subpart F, or such other audit as required by the Division if the Grantee is a for-profit entity, and shall provide the Division with a copy of the complete audit report. When complying with the Single Audit Act, or other audit, as required by the Division, and 2 CFR Part 200, Subpart F, the audit must include Funds that were disbursed and require all subrecipients who must comply with the Single Audit Act to include Funds.

F. Grantee agrees that upon completion of the project a cost certification will be performed by a certified public accountant and submitted to the Division.

G. Grantee agrees that if, at any point during the Affordability Period, the Project ceases to comply with this Agreement or the Declaration of Restrictive Covenants, the Grantee shall repay the total amount granted pursuant to this Agreement.

H. Grantee agrees to submit quarterly financial reports as set forth by the Division, which includes, without limitation, detailing the amount of Funds that have been expended in the prior quarter. Financial reports are due to the Division on or before the 15<sup>th</sup> of each month following the end of the prior quarter.

## **V. Default and Remedies.**

A. Any one or more of the following shall constitute an event of default under this Agreement:

1. Any breach of this Agreement, or Declaration after the expiration of any notice and cure periods set forth in Paragraph B of this Article V.

B. Upon the occurrence of an event of default listed above, the Division will provide Grantee notice of the default and Grantee shall have 60 days from the date of the notice to cure the default unless the Division grants an extension of time to Grantee to cure the default. If the Grantee does not cure the default, the entire outstanding balance, including principal and interest, becomes immediately due and owing. The Division may proceed to protect and enforce its rights by mandamus or other suit, actions, or proceeding at law or in equity. No remedy conferred by this Agreement is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy existing at law or

equity or by statute. No delay or omission of the Division to exercise any right or remedy accruing on an event of default shall impair any such right or remedy or constitute a waiver of any such event of default or an acquiescence therein.

## **VI. Miscellaneous.**

A. All notices, demands, requests, or other communications required or permitted under this Agreement shall be in writing and sent by first class, regular, registered, or certified mail, commercial delivery service, overnight courier, or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

To the Division: 1830 E. College Parkway  
Suite 200  
Carson City, Nevada 89706  
Attn: Administrator  
Telephone: (775) 687-2249  
Facsimile: (775) 687-4040  
E-mail: [nhdinfo@housing.nv.gov](mailto:nhdinfo@housing.nv.gov)

To the Grantee: Community Housing Office  
500 S. Grand Central Parkway, 6<sup>th</sup> Floor  
Las Vegas, NV 89155  
Attn: Administrator  
E-mail: [CHF@clarkcountynv.gov](mailto:CHF@clarkcountynv.gov)

Any such notice, demand, request, or communication shall be deemed to have been given and received for all purposes under this Agreement:

1. Three business days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or if applicable, certified mail, return receipt requested, postage prepaid;
2. On the date of transmission when delivered by facsimile transmission, provided any transmission received after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following business day;
3. On the next business day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and
4. On the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a business day, such notice, demand, request or communication shall be deemed to have been given and received on the next business day.

B. Each Party has cooperated in the drafting and preparation of this Agreement and, therefore, the Agreement shall not be construed against either Party as its drafter.

C. This Agreement constitutes the legal, valid, and binding obligations of the Parties



enforceable against the Parties in accordance with its respective terms.

D. This Agreement shall be governed by and enforceable in accordance with the laws of the State of Nevada.

E. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

F. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

G. All references to the singular shall include the plural and all references to gender shall include the masculine, feminine, as well as the neuter, and vice versa, as the context requires.

H. In connection with any litigation, including appellate proceedings arising under this Agreement or any related agreement contemplated herein, the prevailing party or parties in such litigation shall be entitled to recover reasonable attorney fees and other legal costs and expenses from the non-prevailing party or parties.

I. This Agreement may be signed by the Parties hereto in counterparts with the same effect as if the signatories to each counterpart signed as a single instrument. All counterparts (when taken together) shall constitute an original of this Agreement.

J. Each Party represents and warrants to the other Party that:

1. It has the full right, power and authority to enter into this Agreement, to grant any rights and licenses hereunder and to perform its obligation hereunder;
2. The execution of this Agreement by its representative whose signatures are set forth at the end hereof has been duly authorized by all methods or corporate action of the Parties; and
3. Execution and delivery by such Party of this Agreement shall constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

K. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury and respect any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

L. The transactions described in this Agreement may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**VII. Modification or Revocation of Agreement.**

A. The Division and Grantee may amend or otherwise revise this Agreement should such modification necessary.

B. In the event that any of the Funds for any reason are terminated or withheld from the Division or otherwise are not forthcoming to the Division, the Division may revoke this Agreement.

C. The Division may suspend or terminate this Agreement if Grantee fails to comply with any of its terms.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed and intend to be legally bound.

Nevada Housing Division

  
\_\_\_\_\_  
Steve Aichroth, Administrator

Date: 4/10/24

Grantee:  
Clark County

  
\_\_\_\_\_  
Kevin Schiller, County Manager

Date: 4-9-2024



## EXHIBIT A

The housing portion of the Mixed-Use Microbusiness Park project will meet a critical need for affordable housing in Southern Nevada, specifically in the Historic Westside of Las Vegas. The housing will be adjacent to Clark County's planned Microbusiness Park, which will include both commercial and office space. The goal of the Microbusiness Park is to build a campus where new and growing small businesses can be centralized, have a brick-and-mortar operation, and have quick access to small business support services.

The affordable housing component of this project will provide a minimum of 60 units, of which 30 units will be rent restricted for households at 60% of AMI and the remaining units will be rent restricted for households at 80% of AMI. The State ARPA funds will only fund the portion of the Project that consists of the units that are rent restricted for households of 60% of AMI. The apartments will have common recreation space, community space, and high-quality amenities commensurate with the needs of the population served. There are no existing buildings on the site. The objective of the housing portion of the Mixed-Use Microbusiness project is to use a combination of Clark County and state ARPA funds to build much needed affordable housing as a part of the Mixed-Use Microbusiness Park project. Groundbreaking for the project is projected for 2025. All funds would be committed prior to December 2024 and expended prior to December 2026. And lease up of the housing portion of the project is projected to be July 2025.

The funds provided by this request and Clark County allow the first mortgage must-pay debt to be reduced to a level that can be supported by the affordable rents. With this gap financing in place, affordable rents will be sufficient to cover operating expenses and must-pay debt service throughout the 20-year projection period and well beyond.

This Project will be completed by using County funds together with ARPA funds.

The additional government funds being provided will be County funds, in an amount up to \$15 million. In addition to this significant investment by Clark County, this is also an opportunity to leverage the use of County-owned land, as well as the amenities that will be provided through the Microbusiness project. The site will support low-income residents and businesses and will leverage County land and funds together with State provided ARPA, so that, with additional limited long-term debt, affordability can be maintained.

## **EXHIBIT K: LABOR AND WAGE REPORTING FORMS**

(Adobe Versions available upon request). Submit the following reports to: [chess@housing.nv.gov](mailto:chess@housing.nv.gov); and to: [chf@clarkcountynv.gov](mailto:chf@clarkcountynv.gov);





JOE LOMBARRO  
Governor

STATE OF NEVADA  
DEPARTMENT OF BUSINESS & INDUSTRY  
HOUSING DIVISION  
1830 E College Pkwy, Suite 200  
Carson City, NV 89706

TERRY J. REYNOLDS  
Director  
STEVE AICHROTH  
Administrator

#### STATEMENT OF COMPLIANCE

I, as an officer, or director of Owner of the Project, hereby certify that this report is a true and accurate statement of the worker(s) per diem, wages, and benefits employed on this Project by the undersigned contractor/subcontractor for the following payroll period:

\_\_\_\_\_ to \_\_\_\_\_  
month day year month day year

*I further certify:*

- 1 That no deductions have been made from the wages earned by any person so listed other than those permissible or required by law.
- 2 Each employee listed has been paid the required applicable wages per hour with no bona fide fringe benefit contributions paid by the contractor.
- 3 The Owner shall keep or cause to be kept an accurate record showing the name and the actual per diem, wages and benefits paid to each workman employed by him in connection with the Project.
- 4 The record must be open at all reasonable hours to the inspection by the Division, and its officers and agents. The contractor or subcontractor shall ensure that a copy of the record for each calendar month is received by the Owner.

SIGNATURE:

\_\_\_\_\_ month day year

PRINTED NAME:

\_\_\_\_\_



**TERRY J. REYNOLDS**  
Director

**STEVE AICHROTH**  
Administrator

[illegible]



JOE LOMBARBO  
Governor

STATE OF NEVADA  
DEPARTMENT OF BUSINESS & INDUSTRY  
HOUSING DIVISION  
1830 E College Pkwy, Suite 200  
Carson City, NV 89706

TERRY J. REYNOLDS  
Director  
STEVE AICHROTH  
Administrator

WEEKLY WAGE AND HOUR REPORT OF HOME MEANS NEVADA INITIATIVE FOR THE PAYROLL PERIOD ENDING:

\_\_\_\_ month \_\_\_\_ day \_\_\_\_ year

The contractor and each subcontractor shall keep or cause to be kept an accurate record showing the name and the actual per diem, wages and benefits paid to each workman employed by him in connection with the Home Means Nevada Initiative Project.

PROJECT TITLE:	_____	LICENSE NUMBER:	_____
OWNER:	_____	LICENSE NUMBER:	_____
CONTRACTOR:	_____	LICENSE NUMBER:	_____
SUBCONTRACTOR:	_____	LICENSE NUMBER:	_____

JOE LOMBARDO  
Governor

STATE OF NEVADA



DR. KRISTOPHER SANCHEZ  
Director

STEVE AICHROTH  
Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY  
HOUSING DIVISION

MEMORANDUM

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**DATE:** 12/27/2023  
**TO:** ICF Incorporated, LLC  
**FROM:** Christine Hess, Nevada Housing Division  
**SUBJECT:** Home Means Nevada Initiative Davis Bacon Monitoring Policy

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The Nevada Housing Division administers a portion of the State of Nevada's Federal Coronavirus State and Local Fiscal Recovery Funds (SLFRF) through the Home Means Nevada Initiative (HMNI). To meet the SLFRF strong labor standards reporting requirement, the HMNI program requires that construction and rehabilitation projects comply with the minimum hourly wages determined by the United States Department of Labor pursuant to the Davis-Bacon Act (40 USC 3141 et. seq) for the duration of the construction project.

To achieve compliance, prior to submission of payroll information to ICF, each subrecipient must:

- Review certified payrolls and supporting documentation to ensure the wage decision lists all applicable job classifications, and if not, confirm the contractor/subrecipient obtained approval from ICF for any necessary additional wage classifications,
- Verify the contractor paid prevailing wages, and
- Follow up to ensure the contractor completes necessary corrections and restitution if compliance issues arise.

Upon review and confirmation of compliance, the subrecipient will submit the certified payroll forms and any supporting documentation (referred to as the Davis Bacon package) to ICF with the draw request for all associated construction costs. Submittal of the certified payroll is required through the completion of construction, even after the subrecipient has expended and drawn its full HMNI award. If not submitted with draw requests, Davis Bacon packages must be submitted with quarterly reports.

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**Carson City:** 1830 College Parkway, Suite 100 Carson City, Nevada 89706 - Telephone (775) 684-2999 - Fax (775) 684-2998  
**Las Vegas:** 3300 W. Sahara Avenue, Suite 425 Las Vegas, Nevada 89102 - Telephone (702) 486-2750 - Fax (702) 486-2758  
[www.business.nv.gov](http://www.business.nv.gov)

### **Davis Bacon Compliance Review Schedule**

NHD adopts the following Davis Bacon monitoring guidelines for the HMNI program as a HUD best practice. The frequency and intensity of ICF's Davis Bacon package monitoring will depend on the subrecipient's previous demonstration of compliance.

The ICF monitoring process for Davis Bacon compliance is the following:

- Concurrently with the draw request review, ICF will evaluate the associated Davis Bacon package to confirm correct wage determination, work classifications, hourly wages and fringe benefits.
- Upon identification of any errors or omissions, ICF will return the Davis Bacon package to the subrecipient to complete a more thorough compliance review, obtain corrections from contractors, and resubmit revised package. Subrecipients must resolve all Davis Bacon compliance issues prior to submitting a subsequent draw request.
- For subrecipients and contractors who establish a pattern of compliance, ICF will transition to spot check of each subsequent Davis Bacon package.
- If the subrecipient demonstrates ongoing challenges with Davis Bacon compliance and accurate reporting, ICF will provide technical assistance as needed.
- ICF's project status table submitted weekly to NHD will track whether each submitted draw was reviewed for Davis Bacon compliance, spot checked, or not applicable for review.

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**Las Vegas:** 3300 W. Sahara Avenue, Suite 425 Las Vegas, Nevada 89102 - Telephone (702) 486-2750 - Fax (702) 486-2758  
[www.business.nv.gov](http://www.business.nv.gov)

## **EXHIBIT L: RECIPROCAL EASEMENT AGREEMENT**

Assessor's Parcel Number: 139-22-201-005

RECORDING REQUESTED BY  
AND RETURN TO:

Clark County Real Property Management  
Attn: Right-of-Way Agent  
500 South Grand Central Pkwy 4<sup>th</sup> Floor  
Las Vegas, Nevada 89155-1825

**RECIPROCAL EASEMENT AGREEMENT**

This Reciprocal Easement Agreement ("**REA**") entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by Clark County, a political subdivision of the State of Nevada ("**Declarant**"), as owner of that certain real property located in Clark County, Nevada, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein ("**Site**")

RECITALS:

WHEREAS on March 23, 2023, County issued a request for proposal titled as the "Development of Affordable Housing, Microbusiness Park Site" on the Site, to solicit proposals by interested entities based on a competitive process on the criteria outlined for the development and management of affordable housing units and partial development and construction of onsite and offsite improvements for a commercial microbusiness concept (the "Project");

WHEREAS as part of the Project, the Site has been subdivided into two parcels known as the housing portion ("Housing Site") as shown on Exhibit "B" and the commercial portion ("Commercial Site") as shown on Exhibit "C";

WHEREAS Microbusiness Housing, LLC, a Nevada limited liability company, having its principal office at 1603 Orrington Avenue, Suite 450, Evanston, Illinois 60201 ("Developer"), was the successful applicant chosen to complete the Project;

WHEREAS the Housing Site will be conveyed to the Developer for construction of the Project and the County desires to establish covenants and rights on the Site for the use, occupancy, development and enjoyment thereof;

NOW, THEREFORE, County hereby declares that the Site shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following easements and covenants, all of which are hereby declared to be in furtherance of a general plan for the development, use, occupancy, and enjoyment of the Site and which are for the purpose of protecting the value and desirability of the Site, which shall run with the Site and be binding on all parties having any right, title or interest in the Site or any part thereof, their heirs, successors and assigns, and which

shall inure to the benefit of each owner thereof, all in accordance with and subject to the terms of this REA. This REA shall be effective upon the date and time this REA is recorded in the Official Records of Clark County (the “Effective Date”) pursuant to its terms:

## **ARTICLE I – DEFINITIONS**

**Accessibility Laws.** “Accessibility Laws” shall mean any federal, state or local law, statute, code, ordinance, rule, regulation or requirement relating to accessibility to facilities or properties for disabled, handicapped and/or physically challenged persons, including, without limitation, the Americans with Disabilities Act of 1991, as amended (42 U.S.C Section 12101, et seq)

**Declarant.** “Declarant” shall mean Clark County, a political Subdivision of the State of Nevada.

**Hazardous Substance.** “Hazardous Substance” shall mean any substance, material element, compound, mixture, solution, waste, pollutant or matter that may give rise to liability under any environmental law or under any common law theory involving materials or substances which are (or alleged to be) hazardous to human health or the environment, based on nuisance, trespass, negligence, strict liability or other tortious conduct.

**Owner.** “Owner” shall mean any person having a fee simple estate in any parcel or portion of the Site, the Housing Site or the Commercial Site, excluding any person who hold such interest as security for the payment of an obligation.

**Parcel.** “Parcel” shall mean any legally created and assessed lot within the Site. No Parcel may be created without the prior written approval of Declarant so long as Declarant owns any portion of the Site.

**Site.** “Site” shall mean the +/- 4.92 acre parcel as legally described in Exhibit “A”

**Utilities.** “Utilities” shall mean all pipes, conduits, cables, lines and other equipment for water, gas, sewage, telephone, internet, cable, drainage, steam, electricity, or any other energy or service.

## **ARTICLE II – USE OF THE PROPERTY**

1. **Hazardous Substances.** The Site or any portion thereof shall not be utilized for the storage of Hazardous Substances, nor shall any Owner cause or permit any Hazardous Substances to be brought upon, kept, or used in or about the Site, except to the extent the bringing upon, storage or use of such Hazardous Substance (i) is necessary or useful to the conduct of any business lawfully permitted to be operated (under applicable laws and this REA) within the Site, (ii) will be in compliance with all Laws, including without limitation, all Environmental Laws, (iii) is not harmful to any other occupant, employee, contractor, or invitee of the Site. If an Owner breaches the obligations stated in the preceding sentence, or, notwithstanding that such presence is permitted under the preceding sentence, the presence of Hazardous Substances within the Site cause by or permitted by an Owner results in contamination of the Site or any



part thereof, or if contamination of the Site, or any part hereof by Hazardous Substances otherwise occurs for which an Owner is legally liable to any other occupant of the Site for damage resulting therefrom, then such Owner shall protect, indemnify, defend and hold the other Owners and their tenants harmless from any and all claims, subject to the limits of Nevada Revised Statutes ("NRS") chapter 241, which arise as a result of such contamination. Without limiting the foregoing, if the presence of any Hazardous Substance within the Site or any part thereof caused or permitted by an Owner results in any contamination of the Site or any part thereof, such Owner shall restore the Site and every part thereof to the condition existing prior to the introduction of any such Hazardous Substance to the Site; provided that the approval of such actions shall first be obtained from the affected Owners, which approval may be given or withheld by such Owners in their sole discretion.

2. Nuisances and Noxious or Offensive Activities. No Owner, lessee, licensee or other occupant of any portion of the Site shall create a nuisance to all or any part of the Site or the surrounding neighborhood. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Parcel or portion thereof and no items or materials which are unsanitary, unsightly, offensive or otherwise detrimental to any property in the vicinity thereof or to the occupants therein. No use or operation shall be conducted on any portion of the Site which is noxious, offensive, objectionable, unsightly or detrimental to persons or property in surrounding areas in any manner and due to any cause, such as, but not limited to, vibration, sound, electro-mechanical disturbances, electro-magnetic disturbances, radiation, air or water pollution, dust and the emission of odorous or toxic materials.
3. Maintenance of Parcels. The Owner of every Parcel shall maintain their Parcel and all structures thereon in a safe, clean, neat and sanitary condition and in all respects in compliance with all laws, including governmental, zoning, health, fire and policy requirements. Without limiting the generality of the foregoing, such maintenance shall include the following:
  - a) Maintaining the paved concrete or other improved surfaces on the Parcel in a level, smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal in quality, use, durability, and aesthetics;
  - b) Removing all trash, rubbish, papers, debris and dirt, and thoroughly sweeping the area to the extent necessary to keep the Parcel in a clean and orderly condition;
  - c) Placing, maintaining, keeping in repair and replacing as necessary any business signs, directional signs, markers, lines and striping;
  - d) Maintaining any satellite dishes, television antennas, and/or radio antennas on the Parcel, if any are approved, in such a manner so that they are not visible and otherwise do not cause the Parcel to be maintained in anything but a clean and orderly condition;
  - e) Operating, keeping in repair and replacing as necessary such artificial lighting facilities as shall be reasonably required for the safe and attractive condition of the Parcel;
  - f) Maintaining all exterior walls, roofs, covered walkways and overhangs in a good condition and state of repair;
  - g) Maintaining any perimeter walls in a good condition and state of repair; and

- h) Maintaining each Parcel and all improvements thereon in compliance with applicable Accessibility Laws.
- 4. Construction Cleanup. During construction of any Parcel, the Owner thereof shall keep the construction site free of accumulations of rubbish and scrap materials. Construction materials, trailers, shacks and similar items employed in connection with such construction shall be kept in a neat and orderly manner, and shall be removed promptly upon completion of construction.
- 5. Housing Site. The Housing Site shall be used for the purposes of affordable housing rental units and for no other purposes for a period of ninety-nine (99) years following the Effective Date of this REA. Any change in building orientation, size, or quantity on the Housing Site after completion of initial construction shall require prior written approval of the Declarant.

### **ARTICLE III – UTILITIES**

1. Utilities As part of the Project, Developer is required to install Utilities on the Site that both benefit and burden the Housing Site and the Commercial Site. Declarant hereby grants authorization for such Utilities pursuant to the plans and specifications previously provided to the Declarant. Declarant and Owner shall execute any documents necessary to grant non-exclusive easements to each utility company as may be required. For any Utilities not previously approved by Declarant, any Owner needing such an easement for Utilities across any other Owner's Parcel shall have the authorization for such Utilities so long as no such Utilities shall be made within any building footprint, or encroach upon any permanent improvements, and all such easements shall be situated so as to minimize damage, diminution in value or other negative impacts upon the burdened Parcel. The utility easements granted hereby are for the purposes of installation, testing, maintenance, replacement and/or repair of utility lines, conduits or other facilities; provided however that in using the easements granted hereby, any Owner who goes, or causes his agent or any utility company to go, upon any other Owner's Parcel shall (a) cause such use of its utility easement to be conducted in a manner which, under the circumstances, is the least disruptive to the other Owner, its tenants and their respective invitees, customers and licensees, (b) cause such use to be completed with due regard for the safety of all persons coming onto such Parcel, and (c) cause, at its expense, any damage to the other Owner's Improvements (including without limitation placement) to be promptly repaired and restored as nearly as is practicable to the condition in which it existed prior to such improvement. Each such Owner shall be liable to such other Owner for any breach of the foregoing obligations. Utilities shall be subterranean unless such service is required to be above-ground such as meters boxes and transformer units. Notwithstanding, the Owner of any burdened Parcel shall have the right to review any plans for the Utilities and approve of the placement of such Utilities, so long as such approval is not unreasonably withheld, conditioned or delayed.
2. Pump Room. Declarant shall allow Owner to house two (2) fire pumps and associated electrical ("Residential Fire Pumps") within its pump room located on the Commercial Site. Declarant shall

provide access to Owner for the pump room for maintenance, inspection and repair activities of the Residential Fire Pumps. Owner shall be responsible for all maintenance, testing, certification and repairs of the Residential Fire Pumps. Declarant waives any liability regarding the Residential Fire Pumps or any failure of operation thereof.

#### **ARTICLE IV – PARKING**

1. Each Owner shall have exclusive access to the parking stalls located on their Parcel, provided however that twenty five (25) parking stalls located on the Housing Site may be used by and for the benefit of the Commercial Site during business hours and four (4) parking stalls on the Commercial Site may be used by and for the benefit of the Housing Site outside of business hours as shown and depicted on Exhibit “D” attached hereto and incorporated by reference.

#### **ARTICLE V – INGRESS & EGRESS**

1. Cross Access Easement. Declarant hereby grants and conveys to Owners, as easements appurtenant to the Site, a permanent and irrevocable non-exclusive easement over, upon and across those portions of the Site for public ingress and egress including pedestrian and vehicular access as depicted on Exhibit “D” attached hereto and incorporated herein by reference (“Cross Access Easement Area”). Owners agree the Cross Access Easement Area will remain functional, clean, clear of debris, and safe for pedestrian and vehicular travel and that no other buildings, improvements or structures may be placed within the Cross Access Easement Area.

#### **ARTICLE VI – MISCELLANEOUS**

1. Indemnification. Each Owner agrees to indemnify, defend and hold harmless the other Owner and all its officers, agents and employees and each of them from and against any and all claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or at equity every kind whatsoever including but not limited to personal or bodily injury or death of any person or persons or damage to property of any kind caused in whole or in part by any act or omission by the indemnifying Owner or its employees, agents, subcontractors or assigns arising out of or in connection with this REA, but excluding any act or omission that constitutes gross negligence or willful misconduct of the non-indemnifying Owner or their employees, agents, subcontractors or assigns. Declarant’s agreement to indemnify is subject to the limitations on liability pursuant to Nevada Revised Statute Chapter 41 and without waiving any such limitations.
2. Insurance. Owners shall, at all times during the REA, obtain the following insurance policies, or the self-insured equivalent covering their Parcel and naming Declarant as an additional insured:
  - a) Commercial general liability, including abuse, molestation and corporal punishment coverage, with a combined single limit for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence;
  - b) Fire insurance with extended coverage with policy limits of Two Hundred Fifty Thousand Dollars (\$250,000). Unless Declarant is an Owner, Declarant shall not be liable for injury or

damages to the Parcels or any property or fixtures by fire or other casualty so covered by this type of insurance, no matter how caused, it being understood that in case of damage, Owners shall look solely to the insurer for reimbursement and not to Declarant; and

c) Workers compensation in accordance with Nevada law or evidence from the Nevada Division of Industrial Relations that Developer is exempt from such requirement.

d) Any and all insurance policies required shall be "occurrence" policies and shall not be "claims made" policies.

3. Term; Successors and Assigns. This REA shall bind and inure to the benefit of the parties and their respective successors, assigns, lessees and sublessees, and the benefits, covenants, and obligations of the parties contained in this REA shall be covenants running with the land, benefiting and burdening the Site. No Parcel may be created without the prior written approval of Declarant so long as Declarant owns any portion of the Site.
4. Taxes. Each Owner shall pay or cause to be paid, prior to delinquency, directly to the taxing authorities, all real property taxes and assessments which may be levied against such Owner's Parcel and all municipal, city, county or state or federal taxes assessed against any leasehold interest or any personal property of any kind owned, installed or used by each Owner or its tenants.
5. Amendment. This REA may be amended from time to time by the Declarant until any portion of the Site is transferred, and then by the Owners, only by a written document recorded in the Official Records of the Clark County Recorder, executed by Declarant or such applicable parties.
6. Notices. Any notices, consents, offers, acceptances, elections, demands and other communications required or provided by this Agreement shall be in writing and shall be deemed to have been made or given only as follows: (a) when hand delivered, (b) one (1) business day after delivery to a nationally-recognized overnight courier service for next business day delivery, or (c) three (3) business days after certified mailing via United States Mail with return receipt requested, in all cases addressed to the Parties at their respective addresses as follows:

Clark County: Clark County Department of Real Property Management  
Attn: Director  
500 S. Grand Central Parkway, 4<sup>th</sup> Floor  
Box 551825  
Las Vegas, NV 89155-1825

Developer: Microbusiness Housing, LLC  
c/o Brinshore Development, L.L.C.  
1603 Orrington Ave., Suite 450  
Evanston, IL 60201  
Attn: David Brint

The address of each of the Parties shall for all purposes be as set forth above, unless otherwise changed by the applicable Party by notice to the other as provided herein pursuant to this Subsection.

7. Entire Agreement. This REA, together with the exhibits attached hereto, constitutes the entire agreement with respect to the subject matter hereof, and supersedes all prior agreements and negotiations, which shall not, in part or whole, be deemed to have merged into this REA.
8. Governing Law. This REA shall be enforced, governed by, and construed in accordance with the laws of the State of Nevada.
9. Severability. If any provision of this REA shall be invalid or unenforceable for any reason and to any extent, the remainder of this REA shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
10. No Waiver. No failure or delay of a party in the exercise of any right given to such party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof, or of any breach of any other provisions hereof.
11. Exhibits. Each exhibit referred to herein and attached hereto is an integral part of this REA and is incorporated herein by this reference.

**[SIGNATURE APPEARS ON THE FOLLOWING PAGES]**

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

**CLARK COUNTY**

a political subdivision of the State of Nevada

Shauna Bradley  
Director of Real Property Management

APPROVED AS TO FORM:

Nichole Kazimirovicz  
Deputy District Attorney

STATE OF Nevada )  
 ) ss.  
COUNTY OF Clark )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public in and for said County, personally appeared Shauna Bradley, the Acting Director of Real Property Management for the County of Clark, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same voluntarily and for the intents and purposes described therein.

Notary Public

**EXHIBIT "A"**  
**SITE LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$  ) OF THE NORWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 22, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M, DESCRIBED AS FOLLOWS:

PARCEL ONE (1) AS SHOWN BY MAP THEREOF IN FILE 74 OF PARCEL MAPS, PAGE 56, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA

ASSESSOR'S PARCEL NUMBER: 139-22-201-005

**EXHIBIT "B"**  
**HOUSING SITE LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$ ) OF THE NORWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 22, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M, DESCRIBED AS FOLLOWS:

PARCEL ONE (1) AS SHOWN BY MAP THEREOF IN FILE 131 OF PARCEL MAPS, PAGE 3, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA

ASSESSOR'S PARCEL NUMBER: 139-22-201-018



**EXHIBIT "C"**  
**COMMERCIAL SITE LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$  ) OF THE NORWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 22, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.B.&M, DESCRIBED AS FOLLOWS:

PARCEL ONE (2) AS SHOWN BY MAP THEREOF IN FILE 131 OF PARCEL MAPS, PAGE 3, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA

ASSESSOR'S PARCEL NUMBER: 139-22-201-019

**EXHIBIT "D"**  
**SHARED PARKING & CROSS ACCESS EASEMENT AREA**

