

APNs: 139-35-211-079 and 139-35-211-080

RECORDING REQUESTED BY:

City of Las Vegas

AFTER RECORDATION MAIL TO:

City of Las Vegas

495 South Main St., 3rd Floor

Las Vegas, Nevada 89101

Attention: Department of Community  
Development

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**DECLARATION OF SPECIAL LAND USE RESTRICTIONS  
(AFFORDABLE HOUSING BONUS)**

THIS DECLARATION OF SPECIAL LAND USE RESTRICTIONS (“Declaration”) is made as of \_\_\_\_\_, 2024, (the “Effective Date”), by and between CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (together with its permitted successors and assigns, (the “City”) and NEVADA H.A.N.D., INC., a nonprofit Corporation organized and existing under the laws of the State of Nevada and an U.S. Internal Revenue Code Section 501(c)(3) organization (together with its permitted successors and assigns, collectively the “Developer”). City and Developer are sometimes collectively referred to herein as the “Parties.”

**RECITALS**

1. WHEREAS, NRS 278.235 mandates that the City of Las Vegas adopts a series of measures in order to maintain and develop Affordable Housing to carry out the housing plan required in the City’s master plan; one of such measures is the provision of density bonuses to encourage the development of Affordable Housing.

2. WHEREAS, currently pursuant to Title 19 Chapter 17 of the City’s Unified Development Code, Developer is eligible for density bonuses, height bonuses, and financial incentives (or a combination thereof as applicable) if, as part of an Incentive Application as part of or in connection with an applicable land use application under Chapter 19.16, it indicates the will to include a certain percentage of Affordable Housing residential dwelling units within the proposed Project. Upon providing this Declaration to be mutually approved and acknowledged by the City and the Developer, the proposed development Project shall be allowed density bonuses, height bonuses, and financial incentives (or a combination thereof as applicable) as established in Table 1 (Density Bonus), Table 2 (Height Bonus) and Table 3 (Fee Reduction) (each, as further defined herein) of Title 19 Chapter 17 of the City’s Unified Development Code, and this Declaration.

3. WHEREAS, Developer is the owner of Ogden Pines, a multi-family apartment rental housing project (the “Project” as defined more herein below) to be constructed located at 1200 East Ogden Avenue, Clark County Nevada Assessor’s Parcel Numbers 139-35-211-079 and 139-35-211-080,

which is more legally described in **Exhibit A** attached hereto (the “Site”).

4. WHEREAS, as part of its Incentive Application, Developer indicated the will to include a certain percentage of Affordable Housing residential dwelling units within the Project in order to be eligible for Affordable Housing Bonus, all in accordance with the Restrictions set forth herein.

5. WHEREAS, City is agreeing to provide Developer with the Affordable Housing Bonus for the Project on the basis of Developer’s continuing compliance with the Restrictions, including the construction of the Project on the Site and the operation of a portion of the Project as Affordable Housing.

6. WHEREAS, but for such representations by Developer, and Developer’s unique skills, expertise, and suitability in development of the Site and construction and operation of the Project described below, City would not have agreed to provide Developer with the Affordable Housing Bonus for the Project.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Developer, the Parties hereto agree as follows:

### **1. GENERAL PROVISIONS**

1.1 Statement of General Purposes. The purpose of this Declaration is to facilitate Affordable Housing (hereinafter defined) for the community. The City has determined that the Project will provide a needed amount of Affordable Housing units within the community. City has agreed to provide Developer with the Affordable Housing Bonus for the Project in consideration of Developer’s promise to complete the construction and operation of the Project as described below.

**Specifically for this project, the Affordable Housing Bonus requested by the Developer and approved by the City is as follows:**

**A. Fee Reduction pursuant to Chapter 19.17.090 of the City’s Unified Development Code. The Fee Reduction is listed in Exhibit B attached hereto.**

1.2 Certain Definitions. Capitalized terms used herein but not otherwise defined shall have the meanings set forth below and in Chapter 19.18 of the City’s Unified Development Code:

“Affiliate” or “Affiliates” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person. For purposes hereof, the term “control” (including the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of a Controlling Interest.

“Affordable Housing” means the for rent multi-family apartment Very Low-Income units in the Project as required pursuant to this Agreement.

“AMI” means Area Median Income.

“Affordable Housing Bonus” means that as described in Section 19.17 Incentives of the City’s Unified Development Code, as amended from time to time.

“City” means the City of Las Vegas, Nevada, a political subdivision of the State of Nevada, and City’s permitted successors and assigns.

“City Council” means the city council of the City of Las Vegas.

“City Indemnified Party or Parties” means, collectively, City and the City and their respective elected and appointed officials, directors, officers, shareholders, members, employees, permitted successors and assigns and agents and Affiliates of such Persons (and the respective heirs, legal representatives, successors and assigns of any of the foregoing).

“Completion of Construction” or any variation thereof as to any portion of the Project shall mean the date that the Project receives a temporary certificate of occupancy or a notice of completion is recorded.

“Fee Reduction” means project specific financial incentives authorized by the City’s Unified Development Code, Section 19.17.090 for projects that provide housing to Very-Low Income residents with corresponding reduction in certain fees as approved by the City Council as recommended by certain City staff.

“Governmental Authority” or “Governmental Authorities” means (i) the United States of America, the State of Nevada, the City, Clark County, Nevada, any other community development district and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over, under or above the Site (or any portion thereof); and (ii) any public utility or private entity which will be accepting and/or approving any development on the Site.

“Height Bonus” means project specific development incentives authorized by the City’s Unified Development Code, Section 19.17.070 for projects that provide housing to Very-Low Income residents with corresponding increase in the allowable height of the project to be allowed in excess of the height otherwise permitted by the City’s General Plan.

“HOME Program” means HUD’s Home Investment Partnership Program under 24 CFR 92.

“HUD” means the United States Department of Housing and Urban Development.

“Lender” has the meaning set forth in Section 6.2.

“Major Default” has the meaning set forth in Section 4.3

“Mortgage” means the encumbrance, grant, pledge or conveyance of Developer’s rights, title, and interest in and to the Site, or any portion thereof, by way of a mortgage, pledge, assignment or other security agreement entering into a deed of trust or mortgage affecting the Site or any portion thereof, as the same may be amended, restated, or replaced from time to time.

“NRS” means Nevada Revised Statutes, as amended from time to time.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government, or any city or political subdivision thereof.

“Project” means that multi-family apartment rental housing development at the Site.

“Recorder’s Office” means the Office of the County Recorder of Clark County, Nevada.

“Requirement” means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Developer or the Site and Project (including, without limitation, the Americans with Disabilities Act and any of the foregoing relating to handicapped access or handicapped parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) any temporary or final certificates of completion and/or occupancy issued for the Site, as then in force; (iii) any and all provisions and requirements of any insurance policy required to be carried by Developer under this Declaration; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations, or other indentures, documents or instruments of record recorded against the Site as of the Effective Date.

“Restrictions” means the covenants, conditions, rights, restrictions and limitations more particularly set forth in Sections 2 and 3.

“Site” has the definition set forth in the third Recital.

“Very Low-Income Families” means families whose incomes do not exceed 50 percent of the median income for the area (AMI), as determined by the Secretary of Housing and Urban Development (HUD) with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs for fair market rents, or unusually high or low family incomes (See Cranston-Gonzalez National Affordable Housing Act, Section 12704). The income of a household when it initially qualifies for occupancy is determined by using HUD’s HOME Program Income Guidelines.

“Unavoidable Delays” means delays or stoppages of work due to any of the following (provided that such delay is beyond a Party’s reasonable control): war, sabotage, insurrection, civil commotion, strikes, labor disputes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, COVID -19, acts of a public enemy, acts of terrorism, epidemics, disease, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions, litigation, unusually severe or abnormal weather conditions, a moratorium or any regulatory policy which impedes or precludes private development on the Site, unavailability or failure of utilities, mechanical failure of equipment, material shortages, labor shortages resulting directly from general market shortages, criminal acts of an un-Affiliated third party, any force majeure event under the general contractor’s construction contract so long as such force majeure event was not caused by the Developer or general contractor, work stoppage or slowdown as a result of the failure of building inspectors or fire marshals to reasonably process approvals other than as a result of action or inaction of Developer, acts or failure to act of any public or governmental agency or entity or a court order which causes a delay (unless resulting from disputes between or among the Party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging Party or Affiliates or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging Party. Such Party shall use reasonable good faith efforts to notify the other Party not later than eight (8) business days after such Party knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

## **2. GENERAL AND SPECIFIC USE RESTRICTIONS**

2.1 General Use Restrictions. The violation of any of the following general use limitations after the Effective Date of this Declaration shall at City’s option constitute a default hereunder and a breach of the Restrictions, which shall entitle City to exercise any of the rights and remedies set forth in Article 0 below.

2.2 Use. **Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any party thereof that during construction and thereafter, no less than:**

**A. Thirty-nine (39) of the fifty-one (51) for rent multi-family apartment units at the Project shall be devoted only to Affordable Housing as defined in this Agreement to be in conformance with the Fee Reduction requirement.**

The Affordable Housing units may be floating units as defined in 24 CFR 92.252. The Developer and its successors and assigns shall be equally responsible to keep a record of all current Affordable Housing rental agreements, and to make such information available to City staff at a timely manner. To the extent practicable, the Affordable Housing units must not be clustered or concentrated within a multi-unit building or within the building site. The Affordable Housing units shall be of the same

building materials and finishes and have no other physical characteristics that would distinguish their appearance from the Project's non-affordable housing dwelling units. The Affordable Housing units shall also be of comparable quality to similar market rate units in terms of features, layout, number of bedrooms and bathrooms, and square footage. The City may notify Developer of the actual Project's Completion of Construction and the exact date of the expiration of the Affordable Housing covenant and this Declaration. If necessary, Developer shall execute an amendment to this Declaration identifying the exact date of expiration of the Affordable Housing covenant and this Declaration. The Developer shall also agree to all preconstruction reviews and post-construction verification and compliance by City designated staff.

2.3 Occupancy. If all of the Affordable Housing units are not occupied by eligible Very Low-Income Families within six (6) months following the date of Completion of Construction, the City may require the Developer to submit marketing information and, if appropriate, a marketing plan required by City in its HOME Program or similar. If the Affordable Housing units are not completely occupied by eligible Very Low-Income Families within eighteen (18) months of Completion of Construction, then in addition to any of the rights and remedies afforded to the City as set forth in Article 4 below, the Developer must pay to the City each month an amount equal to what the Developer would otherwise have collected as minimum rent for the then vacant Affordable Housing units until such time as those Affordable Housing units are initially occupied by eligible Very Low-Income Families.

2.4 Rent Restrictions. The Developer agrees that the rents to be charged on the Affordable Housing units will not exceed the rental limits established by HUD's HOME Program Income Guidelines. The HOME Program rent limits are subject to an annual update by HUD. Developer shall re-verify the income of in-place Very Low-Income Families tenants on an annual basis. In such years, all in-place tenants must be re-verified with source documentation regardless of how long a given tenant has occupied the Affordable Housing unit. If other fees are charged, the Developer shall provide a fee schedule, consistent with requirements of this Declaration, for review and approval by the City on an annual basis. Any mandatory tenant fees not otherwise approved by the City shall be considered rent and are subject to the gross rent limits outlined herein.

2.5 Indemnity.

A. The City shall not be liable to Developer for, and Developer shall indemnify, defend and hold harmless the City Indemnified Parties from and against, any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys' fees and costs), penalty or fine, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to the City or its successor in interest, on demand, the full amount of any sum which the City or its successor has paid or becomes obligated to pay on account of: (A) any injury (whether physical, economic or otherwise) to Developer or to any other Person in, about or concerning the construction and the ongoing ownership and operation of the completed Project, regardless of the presence or absence of negligence on the part of any Party; or (B) any damage to, or loss (by theft or otherwise) of, any of Developer's property or of the property of any other Person in, about or concerning the Project, regardless of the presence or absence of negligence on the part of any Party; or (C) the use or occupancy of the Project, irrespective of the cause of injury, damage or loss, regardless of the presence or absence of negligence on the part of any Party; or (D) any latent or patent defects in the Project; or (E) any act or omission of Developer or its Affiliates or of the contractors, agents, servants, employees, guests, or licensees of Developer or its Affiliates, regardless of the presence or absence of negligence on the part of any Party; or (F) any misrepresentation, omission, or the breach of any representation or warranty of the Developer under this Declaration; or (G) any failure of the Developer to fully perform or observe or cause to be performed or observed any term, provision,

covenant, or agreement to be performed or observed by the Developer, or, after an assumption, by a subsequent owner, pursuant to this Declaration. Notwithstanding the foregoing, this provision shall not apply to losses, costs, liabilities, claims, damages, expenses, penalties or fines arising from the gross negligence or willful misconduct of the City Indemnified Parties.

B. Developer shall notify City within thirty (30) days of any occurrence at the Project of which Developer has notice and which Developer believes could give rise to a claim against the City Indemnified Parties whether or not any claim has been made, complaint filed or suit commenced.

C. The obligations of Developer under this Section 2.1(d) shall not be affected in any way by the absence or presence of insurance coverage (or any limitation thereon, including any statutory limitations with respect to workers' compensation insurance), or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Project; provided, however, that if City actually receives any proceeds of Developer's insurance with respect to an obligation of Developer under this Article, the amount thereof shall be credited against, and applied to reduce, any amounts paid and/or payable hereunder by Developer with respect to such obligation.

D. If any claim, action or proceeding is made or brought against any City Indemnified Party which is or may be subject to indemnification by Developer hereunder, then, upon demand by City or such City Indemnified Party, Developer shall either resist, defend or satisfy such claim, action or proceeding in such City Indemnified Party's name, by the attorneys for, or approved by, Developer's insurance carrier (if such claim, action or proceeding is covered by insurance) or such other attorneys as City shall reasonably approve. The foregoing notwithstanding, such City Indemnified Party may, at its own expense, engage its own attorneys to defend such City Indemnified Party, or to assist such City Indemnified Party in such City Indemnified Party's defense of such claim, action or proceeding, as the case may be.

E. Following the occurrence of an event specified in Section 2.1(d)(iv) above, each City Indemnified Party shall promptly notify Developer of the imposition of or incurrence by such City Indemnified Party of any cost or expense as to which Developer has agreed to indemnify such City Indemnified Party pursuant to the provisions of this Section 2.1(d). Developer agrees to pay such City Indemnified Party all amounts due under this Section 2.1(d) within sixty (60) days receipt of the notice such City Indemnified Party.

F. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the Federal and State Constitutions

2.6 General Obligations. Upon Completion of Construction, Developer shall at all times thereafter maintain and operate the entire Project in conformance with the terms of this Declaration and applicable law. Developer acknowledges that a material part of the consideration of City agreeing to provide Developer with the Affordable Housing Bonus for the Project is Developer's agreement to comply with the terms and conditions of this Declaration, including without limitation the construction of the Project on the Site and the operation of a portion of the Project as Affordable Housing. Developer agrees that all Project amenities shall be available to all occupants of the Affordable Housing units, and these occupants shall have the same access to these amenities as would occupants of market rate units at the Project, and Developer shall not charge Very Low-Income Families tenant fees that are not customarily charged to tenants of market rate units at the Project.

## 2.7 Reporting.

A. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest that the Project shall be subject to on-site monitoring by duly authorized

representatives (including independent auditors) of the City. The representatives will be announced, at a minimum, three (3) days in advance of any on-site visits, which shall occur during normal operating hours. During any on-site visit, the representatives shall be granted access to any and all Affordable Housing records pertaining to the Project. The representatives may interview employees or any entity associated with the Project who volunteers to be interviewed. The representatives shall be allowed to conduct such reviews, audits and on-site monitoring of the Project as the reviewing entity deems appropriate in order to determine:

- (1). Whether the Project is being operated in a manner consistent with the Affordable Housing covenant and this Declaration;
- (2). Whether the periodic reports to the City contain accurate and reliable information; and
- (3). Whether all of the Affordable Housing activities of the Project are conducted in compliance with the provisions of applicable Federal/State/Local laws and Requirements and regulations, and this Declaration.

B. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to maintain financial records and supporting documentation pertaining to all matters relative to this Declaration in accordance with standard accounting principles and procedures; including without limitation records supporting the verification of Very Low-Income Families tenant income, Project rents and Project inspections; rent rolls; occupancy rates and rent collection; and Very Low-Income Families tenant selection process. In the event the Developer and/or its successor in interest goes out of existence, they shall turn over to the City all of its records relating to this Declaration which will be retained by the City for the required period of time.

C. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest that they will provide the City with tenant usage records on an annual basis for the Project's Affordable Housing. The City reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to Requirements, or to address findings related to noncompliance by the Project. Initially these records will contain, but are not limited to, the following information:

- (1). Total Very Low-Income Families tenants served;
- (2). Racial breakdown of Very Low-Income Families tenants served including American Indian/Alaska Native, Asian, Black/African American, Native Hawaiian/ Other Pacific Islander, White, American Indian/Alaska Native and White, Asian and White, Black/African American and White, American Indian/Alaska Native and Black/African American, Other;
- (3). Number of Very Low-Income Families tenants who report a Hispanic ethnicity;
- (4). Number of Very Low-Income Families tenants with disabilities served;
- (5). Number of Very Low-Income Families that are senior citizens served;
- (6). Number of Very Low-Income Families that are female head-of-households served;
- (7). Number of Very Low-Income Families renter households served, and rent charged; and
- (8). Monthly rent paid by each Very Low-Income Families served.

### **3. COVENANT RUNNING WITH THE LAND**

3.1 This Declaration shall be deemed and shall constitute a covenant running with the land for the benefit of the City and its successors and assigns and shall pass to and be binding upon all heirs, successors and assigns in title to the Site, or if the Site 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 Site 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 Site 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 Site, or interest or interests in the Site are conveyed, all such covenants contained herein shall run to each portion of or interest in the Site.

3.2 The City is deemed the beneficiary of the terms and provisions of this Declaration and of the covenants running with the land for and in its own right and for the purposes of protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit this Declaration and the covenants running with the land have been provided. This Declaration and the covenants shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right, if this Declaration or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Declaration and the covenants may be entitled.

**3.3 THIS COVENANT SHALL BEGIN FROM THE EFFECTIVE DATE AND SHALL RUN WITH THE LAND FOR A PERIOD OF THIRTY (30) YEARS FOLLOWING COMPLETION OF CONSTRUCTION.**

### **4. ENFORCEMENT OF RESTRICTIONS**

4.1 General Purpose and Constructive Notice. The Restrictions shall be binding upon Developer (and shall pass to and be binding upon all heirs, successors and assigns in title to the Site) and be enforceable by City. Except as specifically set forth herein, the Restrictions shall remain in full force and effect for the period of time specified in Section 2 above, notwithstanding City's exercise of any right or remedy herein due to a previous or repeated violation of any one or more of the Restrictions.

4.2 Right of Access. City may from time to time, during business hours, enter upon and inspect the Site, or any portion thereof or improvements thereon, to ascertain compliance with the Restrictions, but without obligation to do so or liability therefor. Such representatives of City shall be those who are so identified in writing by City to Developer and advance, and who shall, except in an actual emergency, give at least three (3) business days prior notice of such Site visits.

4.3 Default and General Remedies. For a Default of the Restrictions itemized in Section 2, including without limitation (i) failure to provide the said amount of Affordable Housing units, (ii) failure to provide information regarding rent affordability to the City; (iii) failure to meet the Affordable Housing units 30-year minimum time requirement (each, a "Major Default"), and except as otherwise provided in Section 5, in the event of any breach, violation or failure to perform or satisfy any of the Restrictions or of any Requirements which has not been cured within the period set forth below (each, a "Default"), City at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which City may be entitled by law or equity, whether or not set forth herein. Unless a cure period is otherwise specifically designated, such cure period shall commence when written notice is given to Developer of a violation hereunder and shall end (y) thirty (30) calendar days thereafter in the case of a



monetary default; or (z) thirty (30) calendar days thereafter in the event of a Major Default or in the case of other non-monetary defaults; provided, however, that in the event that such nonmonetary default is of a nature that it cannot be cured within such thirty (30) calendar day period, then Developer shall commence to cure such failure within such thirty (30) calendar day period and shall diligently prosecute such cure to its completion but in all events such cure shall be completed within sixty (60) days unless additional time is otherwise agreed to by the City in writing. To the maximum extent allowable by law, the City's election to pursue any one or more of the remedies available to it herein or by law or equity shall be cumulative and shall not be construed to preclude or be a waiver of the City's right to pursue any of the other remedies with respect to the Default for which such remedy was pursued or with respect to any Default prior or subsequent to such remedy. The waiver of any Default by the City shall not be deemed a waiver of any further or different Default.

A. Damages. City may without limitation (i) bring a suit for damages for any compensable Default of any of the Restrictions [including, without limitation, an action for damages in the event of a Major Default], (ii) revoke the Site's certificate of occupancy; (iii) revoke any applicable business licenses associated with the Site; (iv) require that all gross revenue derived from an Affordable Housing unit that is not in compliance with this Declaration be turned over to the City, and/or (v) impose any other fines and/or civil liabilities as allowed under any Requirement.

B. Equity. City shall be entitled to bring an action in equity or otherwise for specific performance, without bond, to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not City exercises any other remedy set forth herein, or declaratory relief to determine the enforceability of any of the Restrictions.

C. Abatement. Any Default is hereby declared to be a nuisance, and City shall be entitled to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these Restrictions, all at the sole cost and expense of the then-current owner of the Site, or applicable portion thereof.

D. Interest. Any costs or expenses paid or incurred by City in prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the rate of three percent (3%) over the prime rate published from time to time by the "Wall Street Journal", or if the Wall Street Journal is no longer published, then its successor publication or a similar financial publication that publishes the prime rate of interest, shall be the personal obligation of the then-current owner of the Site, or applicable portion thereof, when such charges became due and who committed such Default.

E. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the exercise by the City of their governmental powers (including but not limited to, police, regulatory and tax powers) with respect to the then-current owner of the Site, or applicable portion thereof, or the Site to the same extent as if City was not a party to this Declaration or the transactions contemplated by this Declaration. Further, nothing in this Declaration is intended, nor will it be construed, to waive any claims of sovereign governmental immunity on the part of the City.

## **5. LENDER PROTECTIONS; ESTOPPEL CERTIFICATE**

### **5.1 Lender Protections.**

A. This Declaration shall be and remain senior in priority to any Mortgage hereafter executed or created with respect to the Site, or any portion thereof; provided, however, that no breach of this Declaration shall affect, impair, defeat, or render invalid the lien of any such Mortgage encumbering the Site. Any Lender or other owner whose title to the Site is derived through foreclosure, trustee's sale or deed in lieu of foreclosure with respect to such Mortgage (each a "Mortgagee") shall take title to the Site

subject to, and shall be bound by, all of the terms, covenants and provisions set forth in this Declaration. Notwithstanding the foregoing, (i) any Mortgagee shall be permitted to assign, sell or transfer (each, a "Mortgagee Assignment") its interest, either in full or in part, in a Mortgage without obtaining prior written approval from City of such Mortgagee Assignment provided that at least ten (10) days prior to the effective date of such Mortgagee Assignment, the then current Mortgagee provides written notice to City of the anticipated Mortgagee Assignment; and (ii) any Mortgagee shall be permitted to transfer or cause the transfer of the Site following or in connection with any foreclosure or deed-in-lieu of foreclosure (each, a "Mortgagee Transfer") without obtaining prior written approval from City of such Mortgagee Transfer, provided that (v) such Mortgagee Transfer is conducted in connection with the exercise of Mortgagee's remedies under a Mortgage due to an uncured event of default thereunder following all applicable notice and cure periods, (w) the party acquiring the Site through a Mortgagee Transfer accepts title to the Site subject to the Declaration, (x) the party acquiring the Site through a Mortgagee Transfer will use commercially reasonable efforts to commence construction or continue construction of the Project, (y) Mortgagee provides, to the extent possible and permissible under law, written notice of such Mortgagee Transfer to City ten (10) days prior to the effective date of such Mortgagee Transfer, but in any event, within five (5) business days of the date the deed is recorded in with the Recorder's Office.

B. Each Mortgagee, upon filing a written request for such notification with City, shall be entitled to written notification from City of any default by Developer in the performance of Developer's obligations under this Declaration, such notice to be given concurrently with such default notice being given to Developer. Any request for notice delivered shall remain effective without any further action by Mortgagee for so long as the requesting Mortgagee continues to be a Mortgagee. A Mortgagee shall have the absolute right, but no duty or obligation, to cure or correct a breach of this Declaration by Developer within any applicable cure period provided for the cure of such breach hereunder and Developer hereby irrevocably grants to such Mortgagee a right of access to the Site or portion thereof, as applicable, to the extent such Mortgagee may deem necessary to permit such Mortgagee to effect such cure.

C. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Declaration on the part of Developer to be performed or observed, whether as a result of (a) its having become a Mortgagee, (b) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (c) the cure or performance of any of the covenants, terms or conditions on the part of Developer to be performed or observed under this Declaration, or (d) otherwise; provided, however, any party acquiring the Site through a Mortgagee Transfer will be deemed to have assumed all of the obligations of Developer hereunder subject to the terms and limitations provided in this Section 5.1.

5.2 Estoppel Certificates. City agrees that it shall, at any time and from time to time, but no more than once per calendar year, upon not less than thirty (30) days prior notice from Developer or a Mortgagee, execute, acknowledge and deliver to the requesting party a statement in writing certifying (i) that this Declaration is unmodified and in full force and effect (or if there have been any modifications, that this Declaration is in full force and effect as modified and stating the modifications); (ii) whether to City's actual knowledge, it or Developer is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Declaration and, if in default, specifying each default; and (iii) any other matters reasonably requested by the requesting party, it being intended that any such statement delivered pursuant to this Section may be relied upon by the requesting party and any assignee thereof.

## 6. MISCELLANEOUS PROVISIONS

6.1 The introductory language and Recitals set forth above, and the Exhibits referenced herein and attached hereto are incorporated into this Agreement by reference and made a part hereof.

6.2 Assignment by City. City shall have the right to assign the rights, powers, duties and reservations of City herein contained to the City without the prior approval of Developer. City agrees to provide Developer with prior notice of any such assignment.

6.3 Assignment by Developer. City consents to Developer's right to encumber, pledge, grant or convey its rights, title, and interest in and to the Site, or any portion thereof, by way of a Mortgage to secure the payment of any loans obtained by Developer to finance or refinance any portion of the Project. The beneficiary under any Mortgage and its successors or assigns shall be referred to herein as a "Lender."

6.4 Other Restrictions. This Declaration is not the exclusive source of restrictions on the use of the Site, and nothing herein contained shall prejudice or diminish in any way City's rights under any other documents of record prior to the recording of this Declaration affecting all or any portion of the Site.

6.5 Attorneys' Fees. In the event either Party hereto is required to employ an attorney because of the other Party's default, the defaulting Party shall pay the non-defaulting Party's reasonable attorney's fees incurred in the enforcement of this Declaration.

6.6 Time of the Essence. Time is of the essence of this Declaration and every obligation hereunder.

6.7 Successors and Assigns. Except as otherwise stated herein, this Declaration shall inure to the benefit of and bind the permitted successors and assigns of the respective Parties hereto, subject to the provisions of this Declaration regarding assignment.

6.8 Notices. Any notice required to be given hereunder shall be deemed to have been given when written notice is (i) received by the party to whom it is directed by personal service; (ii) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address for such party; or (iii) one (1) day after deposit with a nationally recognized air courier service such as FedEx. All notices shall be effective upon receipt by the party to which notice is given or if it is delivered by email, when the recipient acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for notice purposes. Either party hereto may change its address by giving ten (10) days advance notice to the other party as provided herein. Phone and fax numbers, if listed, are listed for information only:

If to City:	Department of Neighborhood Services, City of Las Vegas City Hall, 3rd Floor 495 S. Main Street Las Vegas, NV 89101 Phone: (702) 229-2330 Attn: Director
and:	City Attorney Office City Hall, Sixth Floor 495 S. Main Street Las Vegas, NV 89101 Phone: (702) 229-6629 Attn: City Attorney

If to Developer: Nevada H.A.N.D.  
295 Warm Springs Rd, Ste. 101  
Las Vegas, NV 89119  
Attn: Senior Vice President of Real Estate

The City agrees to provide, at the same time the City sends default notices required under this Declaration to the Developer, duplicate copies of such default notices to the Developer's secured lenders at such addresses provided to City by Developer.

The Parties shall provide written notification of any change in the information stated above. For purposes of this Declaration, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Declaration.

6.9 Subsequent City Approvals. Any approvals of City required or permitted by the terms of this Declaration are authorized to be given by the City Manager of the City or such other person that City designates in writing to Developer, except for approvals resulting in a material change to this Declaration, as determined by the City Manager, which shall then require the approval of the Las Vegas City Council. If there is no time specified herein for City's approval, Developer may submit a letter requiring City's approval within thirty (30) days after submission to City or such approvals shall be deemed denied. Notwithstanding the foregoing, Developer acknowledges (i) that a request for a modification to this Declaration or a request to extend deadlines specified hereunder may either (x) require review and approval of the City Council, or (y) the City Manager of the City may determine that it is in the best interest of City to submit such request for review and approval by City Council, and (ii) such review and approval may take more than thirty (30) days in or order to comply with the required and customary procedures for obtaining approval of City Council. In such cases, the Parties shall comply with the required processes of submitting matter for review and approval by City Council. The City Manager of the City shall have the authority to grant time extensions under this Declaration, provided, however, that it shall be at the City Manager's sole and absolute discretion as to whether to grant any time extension or to submit any requests for time extensions to City Council for approval.

6.10 Entire Agreement and Waivers. This Declaration may be executed in three (3) duplicate originals, each of which is deemed to be an original. This Declaration and the respective exhibits thereto constitute the entire understanding and agreement between the Parties and is intended by the Parties to be the final expression of their agreement with respect to the subject matter hereof, and the complete and exclusive statement 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. This Declaration includes A through Exhibit B, inclusively, attached hereto and incorporated herein by reference. All waivers of the provisions of this Declaration must be in writing and signed by the appropriate authorities of City and Developer and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of City and Developer.

6.11 Termination or Amendment. The Restrictions may be validly terminated, amended, modified or extended, in whole or in part, only by recordation with the Clark County Recorder's Office of a proper instrument duly executed and acknowledged by City to that effect.

6.12 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Declaration and the remaining provisions shall remain in full force and effect. The Parties further agree to amend this Declaration to replace any stricken provision with a valid

provision that comes as close as possible to the intent of the stricken provision.

6.13 Governing Law; Jurisdiction; Waiver of Jury Trial. Any controversy, claim, or dispute arising out of or related to this Declaration or the interpretation, performance, or breach hereof (a “Dispute”), shall be resolved in accordance with this Section 6.12.

A. Governing Law. This Declaration and all Disputes between the Parties under or related to this Declaration or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Nevada, applicable to contracts executed in and to be performed entirely within the State of Nevada, without regard to the conflicts of laws principles thereof.

B. Jurisdiction. Each of the Parties hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Nevada state court, and any appellate court from any thereof, for resolution of any Dispute and for recognition or enforcement of any judgment relating to such Dispute, and each of the Parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in such courts; (b) agrees that any claim in respect of any such action or proceeding must be heard and determined in such Nevada state court; (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such Nevada state court; and (d) waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such Nevada state court. Each of the Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

C. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS DECLARATION IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DECLARATION OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS; (b) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (c) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (d) IT HAS BEEN INDUCED TO ENTER INTO THIS DECLARATION BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

6.14 Captions. The captions contained in this Declaration are for the convenience of the Parties and shall not be construed so as to alter the meaning of the provisions of the Declaration.

6.15 Counterparts. Each counterpart of this Declaration shall be deemed to be an original and all of which together shall be deemed to be one and the same Declaration. Delivery of this Declaration may be accomplished by facsimile transmission of this Declaration. In such event, the Parties hereto shall promptly thereafter deliver to each other executed counterpart originals of this Declaration.

6.16 No Third-Party Beneficiaries. Nothing in this Declaration shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Declaration. Nothing herein is intended to create any rights vested in the general public or to otherwise benefit the general public.

6.17 Days. All references to “days” in this Declaration are to consecutive calendar days unless

business days are specified. The term “business days” refers means a day when the City is normally open for public access, occurring on Mondays through Thursdays, unless the City is not open for the celebration or observance of holidays or is otherwise declared not open to the public by the City Manager of the City. If a time for performance hereunder falls on a day other than a business day, the time for performance shall be extended to the following business day. Except as may otherwise be set forth herein, any performance provided for herein shall be timely made and completed if made and completed no later than 5:00 p.m. (Las Vegas time) on the day for performance.

6.18 Construction. The Parties acknowledge that each Party and its counsel have reviewed and approved this Declaration and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Declaration or any amendments or exhibits hereto.

6.19 Further Assurances. Each Party will, whenever as reasonably requested to do so by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further documents and do any and all other acts as may be reasonably necessary to carry out the intent and purpose of this Declaration.

6.20 Non-Liability of City Officials and Employees. It is agreed by and between the Parties of this Declaration, that in no event shall any official, officer, employee, or agent of the City in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Declaration.

6.21 Conflict of Interest (City Officials). An official of the City, who is authorized on behalf of the City to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Declaration, payments under this Declaration, or work under this Declaration, shall not be directly or indirectly interested personally in this Declaration or in any part hereof. Each party represents that it is unaware of any financial or economic interest of any public officer or employee of the City relating to this Declaration.

6.22 Public Records. The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City’s Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Declaration and all supporting documents are deemed to be public records.

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DECLARATION OF SPECIAL LAND USE RESTRICTIONS

Signature Page (continued)

HAND Property Holding Company

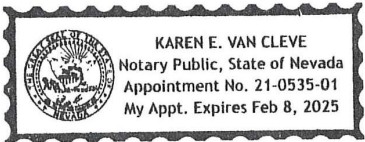
By:   
Audra Hamernik  
President and CEO

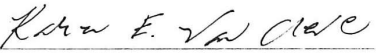
Date: September 12, 2024

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

This instrument was acknowledged before me, a notary public, on September 12, 2024, by Audra Hamernik as President and CEO of HAND Property Holding Company.

S  
E  
A  
L



By:   
Notary Public, in and for said County and State



## **LIST OF EXHIBITS**

EXHIBIT A: LEGAL DESCRIPTION OF THE SITE

EXHIBIT B: FEE REDUCTION

**EXHIBIT A**

LEGAL DESCRIPTION OF THE SITE

LOTS FIVE (5), SIX (6), SEVEN (7) AND EIGHT (8) IN BLOCK FIVE (5) OF FAIRVIEW TRACT, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 7, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$ ) OF THE NORTHWEST QUARTER (NW  $\frac{1}{4}$ ) OF SECTION 35, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M. IN THE CITY OF LAS VEGAS, CLARK COUNTY, STATE OF NEVADA, LYING WITHIN LOT 8 IN BLOCK 5 OF FAIRVIEW TRACT AS SHOWN BY PLAT THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 7 IN THE CLARK COUNTY RECORDER'S OFFICE CLARK COUNTY, NEVADA DESCRIBED AS FOLLOWS:

A TRIANGULAR PARCEL OF LAND BOUNDED AS FOLLOWS: BOUNDED ON THE NORTHWEST BY THE NORTHWESTERLY LINE OF SAID LOT 8; BOUNDED ON THE SOUTHWEST BY THE SOUTHWESTERLY LINE OF SAID LOT 8; AND BOUNDED ON THE NORTHEAST BY THE ARC OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 25.00 FEET AND BEING TANGENT TO THE NORTHWESTERLY LINE OF SAID LOT 8 AND TANGENT TO THE SOUTHWESTERLY LINE OF SAID LOT 8.

LEGAL DESCRIPTION FROM THE GRANT, BARGAIN, AND SALE DEED RECORDED ON DECEMBER 15, 2009 AT 01:50:22 pm AS INSTRUMENT NO. 200912150003334 BY STEWART TITLE OF NEVADA—LAS VEGAS DIVISION.

## **EXHIBIT B**

### **FEE REDUCTION**

The following fees shall be waived for the Project:

1. City of Las Vegas Administrative Fee except for the FIFTY FIVE DOLLAR (\$55.00) submittal fee.
2. City of Las Vegas Department of Building & Safety Plan Review Fees
3. City of Las Vegas additional plan review fees for extra reviews (three (3) or more reviews and additional time).
4. City of Las Vegas zoning plan review fees
5. City of Las Vegas Fire and Rescue Department plan review fees on building permits.
6. City of Las Vegas building permit and inspection fees
7. City of Las Vegas miscellaneous permit fees

The following fees shall NOT be waived for the Project:

1. City of Las Vegas sewer connection fees
2. City of Las Vegas traffic signal impact fee
3. Residential Construction Tax
4. Clark County Transportation Fees
5. State of Nevada Water Fee
6. Any other fees charged by third parties such as, by way of example and not limitation, the Las Vegas Valley Water District, Nevada Energy, and Southwest Gas.