



## BOARD OF COUNTY COMMISSIONERS

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COUNTY MANAGER

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**To: Board of County Commissioners**

**From: Daniel C. Holler  
County Manager**

**RE: North Valley Plaza Redevelopment OPA**

**Date: October 14, 1998**

### Project Overview

Staff has prepared a draft Owners Participation Agreement (OPA) between the Douglas County Redevelopment Agency (Agency) and J. S. Devco Ltd. Partnership and John C. Serpa. The OPA was prepared under the owner participation rules adopted by the Agency for Douglas County Redevelopment Area No.1. The project meets the purposes and goals established in the Redevelopment Plan. A copy of the purposes and goals section from the Redevelopment Plan is attached for your review.

The OPA is for the North Valley Plaza project (the Project). The project site is located on the west side of U.S. Highway 395 straddling Jacks Valley Road. The site includes 12.4± acres to the north of Jacks Valley Road and 34.6± acres to the south. The proposed project will consist of the construction of a minimum of 370,000 square feet of shopping center on 47± acres. The center will be developed in two major phases. The first phase will be the development of the site located south of Jacks Valley Road, with the second phase being development of the site on the north side of Jacks Valley Road.

The preliminary cost estimate for on and off-site, public and private improvements is \$8.9 million for Phase I & II. The Agency's participation is limited to the specific items provided for in the OPA, and the financial commitment is limited to \$3.5 million. The Agency's participation in the project is for public infrastructure. A detailed overview of the work to be undertaken by the Agency is provided in Attachment No. 3 of the OPA.

The improvements discussed in the OPA are site improvements only and do not include building specific work. It is anticipated that building investments for Phase I will be in the \$15+ million range. The estimate is based on the assessed value of similar sized stores in Carson City.

## Financial Overview

The financial analysis for the Redevelopment Plan included the construction of 240,000 square feet of commercial/retail space in the North County area. The projection was for 50% to be completed for FY 2001-02, with the remaining built out over the next two years. The initial projections assumed a shopping center with one or two major tenants with the ability to generate \$60 million in annual taxable sales. The project was estimated to generate \$175,000 in annual tax increment revenue for the Agency once the 240,000 square feet of space was completed. Increment is based on increases in assessed value of buildings and land.

The proposed project moves this time frame forward by two years and has the potential for a completed build out of the initial projection in one year, with additional square feet to be built in the near future. The following chart gives an overview of the potential annual sales tax revenue from this type of development.

<b>Taxable Sales</b>	<b>State General Fund - 2%</b>	<b>School Fund 2.25%</b>	<b>BCCRT 0.50%</b>	<b>SCCRT 1.75%</b>	<b>P.A.L.S. 0.25%</b>	<b>Total Rate 6.75%</b>
\$40 Million	800,000	900,000	200,000	700,000	100,000	2,700,000
\$60 Million	1,200,000	1,350,000	300,000	1,050,000	150,000	4,050,000
\$80 Million	1,600,000	1,800,000	400,000	1,400,000	200,000	5,400,000
\$100 Million	2,000,000	2,250,000	500,000	1,750,000	250,000	6,750,000

Generally, you may assume revenue from the BCCRT portion and the P.A.L.S. portion will come directly back to the County. Based on \$60 million in sales, the result is \$450,000 coming directly back to Douglas County for county services. If the tax increment revenue is included, the annual return is estimated at \$625,000. This represents a 17.8% return on investment, assuming the Agency's maximum commitment. The County will also receive a number of one-time permit fees (estimated at \$125,000+) and real property transfer tax (\$8,800+). This analysis has not looked at the economic impact of 200 to 300 new jobs being created resulting in expanded or new service businesses, home sales, and related economic activity.

Longer-range planning is also a part of the project. Staff has had several meetings with NDOT regarding their plans for an interchange at Highway 50 and 395. This project makes Jacks Valley the first point of access for people traveling north on 395 to Highway 50. It will also be simpler for those traveling on Highway 50 from Tahoe or from south and east Carson City, and even from the Dayton area to access this center. This has required us to look at existing and future right-of-way needs, alignments, and future street improvements. With Jacks Valley being a primary street, there is a need to make the improvements provided for in the OPA agreement sooner than later. As a central hub, we have tentatively looked at this area for a future transit stop connecting Douglas County and Carson City, as well as providing transportation service to a new job center.

## **Partnerships**

The Agency's financial commitment is limited to \$3.5 million. It is anticipated that the actual amount required from the Agency will be less as we partner with other agencies. The extension of Vista Grande Blvd. north of Jacks Valley is planned to be part of NDOT's Highway 395 frontage road. NDOT will share substantially in the cost of this part of the project. To the extent the frontage road impacts the intersection at Jacks Valley, NDOT will share in intersection improvements. This is also true for the Highway 395 intersection. We anticipate power company participation in the relocation and undergrounding of utilities. We will apply for TEA-21 Federal funds to assist with components of the Jacks Valley Road widening work. Staff's goal is to secure \$500,000 in other agency funding for the project.

This type of partnership is similar to the Stateline storm water drainage project, the CTS program, Prim project, Ridgeview water system, shooting range, and other projects involving the County, other agency grants and private businesses and individuals. The scope of the project is larger than other partnerships, but also has a greater return to the County.

## **Project Time Frames**

Recent negotiations with the participants in the project suggest an aggressive time schedule for the project. The OPA requires the Participant to commence site improvements by December 1, 1998. The Agency is required to award engineering contracts for all or a portion of the Agency work by December 3, 1998. These dates push both partners to move forward in a timely fashion on the project.

The Participant is required to demonstrate to the satisfaction of the Agency that a minimum of 100,000 square feet of retail/commercial space will be constructed by December 31, 1999, prior to Agency award or payment of any construction contracts. This minimizes the Agency's exposure to expending funds with no project being constructed. A worst case scenario is having to expend funds for engineering work and then postponing any construction work until a future date.

We have prepared a preliminary construction schedule based on an October approval of the OPA and the Participant finalizing negotiations with prospective tenants. Under this schedule the majority of the engineering work is to be completed by January 1, 1999. Project bids would be awarded in February with construction to begin in March. The construction time will run 6 – 9 months. Tenants could start construction on individual buildings as early as January 1999. This would allow tenants to open for business as early as July, but at least by October 1999.

The project has a number of components that will be done at different times within the above schedule. For example, the abandonment of Vista Grande Blvd. may be processed as early as November, with site work to commence shortly thereafter. The extension of Vista Grande Blvd. North may be placed on hold for 12 – 18 months pending NDOT's schedule and the potential for a tenant on the north side of Jacks Valley Road.

As a side note, the schedule is important, as it will impact our budget planning for next fiscal year. If stores can open prior to October, we can expect an additional \$250,000 in sales tax revenues.

### **Agency Financing**

The Agency's participation is limited to the ability to pay, but requires due diligence in securing financing. The ultimate revenue source for the Agency will be tax increment revenues. The initial financing will be done with bond anticipation notes. The structure is a five-year note with capitalized interest for the first 3 years, principle and interest payments in the last two years and then a roll over of the notes into a 20-year Redevelopment Agency bond issue. The bond anticipation notes may be placed with a private investor or purchased by the County. The interest rate on the notes is projected at 5.75% to 6.0%. We are working with Bond Counsel and our Financial Advisor to have the authorization for this bond issue placed on a November Agency agenda. Any initial small contracts may be funded from funds already allocated to the Agency. The Agency will also receive \$20,000 to \$30,000 in tax increment revenue this fiscal year.

### **Recommendation**

Staff is recommending that the Agency Board approve the Draft OPA, subject to final review by Agency Counsel. Authorize the County Manager, as Executive Director for the Agency to sign the agreement and to negotiate engineering contracts for initial project work and to sign contracts under \$10,000.



Daniel C. Holler  
County Manager

**DRAFT**

**NORTH VALLEY PLAZA REDEVELOPMENT PROJECT**

**OWNER PARTICIPATION AGREEMENT**

**BY AND BETWEEN**

**THE DOUGLAS COUNTY REDEVELOPMENT AGENCY**

**AND**

**J. S. DEVCO LTD. PARTNERSHIP AND JOHN C. SERPA**

## TABLE OF CONTENTS

	<u>Page</u>
I.    [§100] SUBJECT OF AGREEMENT .....	1
A.    [§101] Purpose of This Agreement .....	1
B.    [§102] The Redevelopment Plan .....	1
C.    [§103] The Project Area .....	1
D.    [§104] The Site .....	2
E.    [§105] Parties to This Agreement .....	2
1. [§106] The Agency .....	2
2. [§107] The Participant .....	2
II.   [§200] IMPROVEMENT OF THE SITE .....	3
A.    [§201] Improvement of the Site by the Participant .....	3
1. [§202] Scope of Development .....	3
2. [§203] Cost of Construction .....	3
3. [§204] Bodily Injury and Property Damage Insurance; Indemnification .....	3
4. [§205] Douglas County and Other Governmental Agency Permits ....	4
5. [§206] Rights of Access During Construction .....	4
6. [§207] Antidiscrimination During Construction .....	4
B.    [§208] Prohibition Against Transfer and Assignment of Agreement .....	4
C.    [§209] Security Financing; Rights of Holders .....	5
1. [§210] Holder Not Obligated to Construct .....	5
2. [§211] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure .....	6
D.    [§212] Certificate of Completion .....	6
E.    [§213] Agreement to be Recorded Affecting Real Property .....	7

III.	[§300] USE AND MAINTENANCE OF THE SITE .....	7
	A. [§301] Use of the Site .....	7
	B. [§302] Maintenance of the Site .....	7
	C. [§303] Obligation to Refrain from Discrimination .....	7
	D. [§304] Form of Nondiscrimination and Nonsegregation Clause.....	8
	E. [§305] Rights of Access.....	9
	F. [§306] Effect and Duration of Covenants .....	9
IV.	[§400] DEFAULTS AND REMEDIES .....	9
	A. [§401] Defaults .....	9
	B. [§402] Legal Actions .....	10
	C. [§403] Applicable Law .....	10
	D. [§404] Agency’s Right to Acquire in the Event of Default by the Participant .....	10
V.	[§5001] GENERAL PROVISIONS .....	11
	A. [§5011] Conflicts of Interest .....	11
	B. [§502] Nonliability of Agency Officials and Employees .....	11
	C. [§ 503] Authority of Agency Executive Director .....	11
	[§6001] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS .....	11
	[§700] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY .....	12

## **Attachments**

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Scope of Development
Attachment 3-A	Conceptual Site Plan
Attachment No. 4	Form of Certificate of Completion
Attachment No. 5	Agreement to be Recorded Affecting Real Property

## OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the DOUGLAS COUNTY REDEVELOPMENT AGENCY (hereinafter referred to as the "Agency") and J. S. Devco Ltd. Partnership and John C. Serpa (hereinafter referred to as the "Participant"). The Agency and the Participant agree as follows:

### I. [§100] SUBJECT OF AGREEMENT

#### A. [§101] Purpose of This Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan (the "Redevelopment Plan") for the North Valley Plaza Redevelopment Project (the "Project") by providing for the improvement of certain real property (the "Site") included within the boundaries of Redevelopment Project Area No. 1 (the "Project Area"). The improvement of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of Douglas County (the "County") and the health, safety, morals and welfare of its residents and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan.

#### B. [§102] The Redevelopment Plan

This Agreement is subject to the provisions of the Redevelopment Plan which was approved and adopted by the Douglas County Board of Commissioners on July 27, 1998 and implemented by Ordinance No. 98-846, adopted on August 6, 1998. Said Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

#### C. [§103] The Project Area

The Project Area is located in Douglas County, Nevada and the exact boundaries of the Project Area are specifically described in the Redevelopment Plan.

D.    [§104] The Site

The Site is that portion of the Project Area shown on the "Map of the Site," attached to this Agreement as Attachment No. 1 and incorporated herein by reference, and as more particularly described in the "Legal Description of the Site," attached hereto as Attachment No. 2 and incorporated herein by reference. The Site is composed of real property presently owned or to be owned by the Participant.

E.    [§105] Parties to This Agreement

1.    [§106] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of Nevada (Nevada Revised Statutes 279.382 et seq.).

The principal office of the Agency is located at:  
County Manager's Office  
1594 Esmeralda Avenue, Room 307  
P.O. Box 218  
Minden, NV 89423

"Agency," as used in this Agreement, includes the Redevelopment Agency of the Douglas County and any assignee of or successor to its rights, powers and responsibilities.

2.    [§107] The Participant

The Participant is J. S. Devco Ltd. Partnership and John C. Serpa.

The principal address of the Participant is:

3579 Highway 50 East,  
Suite 300 A  
Carson City, NV 89701  
  
P.O. Box 1724  
Carson City, NV 89702

Whenever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided. The parties to this Agreement agree in advance that any of the Participants may individually assign their rights and liabilities under this Agreement to any entity John C. Serpa and family (in the aggregate) owns fifty-one percent (51%) ownership interest and maintains control over. The Agency is to be notified in writing of any such assignment.

The Participant qualifies as an "owner participant" as that term is used in the Redevelopment Plan and the Community Redevelopment Law.

The qualifications and identity of the Participant are of particular concern to the Agency, and it is because of such qualifications and concerns that the Agency has entered into this Agreement with the Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the Agency

If there is any significant change (voluntary or involuntary) in the management or control of the Participant prior to the completion of development of the Site as evidenced by the issuance of a Certificate of Completion therefor.

Except as otherwise expressly permitted by this Agreement, the Participant shall not assign all or any part of this Agreement without the prior written approval of the Agency, which approval shall not be unreasonably withheld. It shall not be unreasonable for the Agency to withhold such approval if the proposed assignee fails to demonstrate to the reasonable satisfaction of the Agency that it possesses the financial resources and development experience necessary to develop the Site in accordance with this Agreement.

## **II. [§200] IMPROVEMENT OF THE SITE**

### **A. [§201] Improvement of the Site by the Participant**

#### **1. [§202] Scope of Development**

The Participant agrees to develop the Site as provided in the "Scope of Development," attached hereto as Attachment No. 3 and incorporated herein by reference.

#### **2. [§203] Cost of Construction**

The cost of developing the Site and rehabilitating and/or constructing all improvements thereon shall be borne by the Participant, except for the work specified in the Scope of Development (Attachment No. 3) to be performed or paid for by the Agency or others.

#### **3. [§204] Bodily Injury and Property Damage Insurance; Indemnification**

Prior to the commencement of construction (or any work related thereto) upon the Site, the Participant shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for any person, ONE MILLION DOLLARS (\$1,000,000) for any occurrence and THREE HUNDRED THOUSAND DOLLARS (\$300,000) property damage, naming the Agency and the Douglas County as coinsureds. The policy limits of such policies may be in lesser amounts if the Participant shall provide the Agency with duplicate originals or appropriate certificates of a binder (approved by the Agency) which indemnifies and holds the Agency and Douglas County

harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person, or to the property of any person, which shall occur on or adjacent to the Site and which shall be directly or indirectly caused by any acts done thereon, or by any errors or omissions, of the Participant and its agents, servants, employees and contractors, and which provides for the defense of the Agency and the Douglas County against all claims or causes of action arising therefrom. Such insurance policies shall be maintained and kept in force, and such obligation to indemnify shall continue, during periods of construction upon the Site and until the Agency has issued a Certificate of Completion for the Site.

4.        [§205] Douglas County and Other Governmental Agency Permits

Prior to the commencement of construction (or any work related thereto) upon the Site, the Participant shall secure, or cause to be secured, any and all permits which may be required by the Douglas County or any other governmental agency affected by such construction relating to the construction Participant is responsible for under Attachment No. 3. The Agency shall provide all proper assistance to the Participant in securing these permits.

5.        [§206] Rights of Access During Construction

Representatives of the Agency and the Douglas County shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in rehabilitating and/or constructing the improvements.

6.        [§207] Antidiscrimination During Construction

The Participant, for itself and its successors and assigns, agrees that in the construction of improvements on the Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

B.        [§208] Prohibition Against Transfer and Assignment of Agreement

Prior to the issuance of a Certificate of Completion with respect to the construction of the improvements on the Site, the Participant shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights herein, nor make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Site or the improvements thereon, without the prior written approval of the Agency (which approval shall not be unreasonably withheld). This prohibition shall not apply subsequent to the issuance of the Certificate of Completion. This prohibition shall not be deemed to prevent the granting of

easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing or rental of all or any portion of the improvements on the Site for the uses specified herein and in the Redevelopment Plan. This prohibition shall also not be deemed to prohibit the granting of any security interests in the Site for the purpose of securing loans or funds to be used for financing the construction of the improvements on the Site. This prohibition shall also not be deemed to prohibit the partial sale or lease of any part of the Site or the improvements thereon to any commercial retail company having more than twenty-five (25) stores nationally or as otherwise allowed by the Agency in writing, and any requirement to submit to the Agency shall hereby be waived. In the event of an approved sale or lease, the Agency shall release such owner or leasee of any obligation to improve the Site which is subject of any sale, transfer, conveyance, assignment or lease.

Any proposed buyer, transferee, conveyee, assignee or lessee shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the Agency, to fulfill the obligations undertaken in this Agreement by the Participant. Any such proposed buyer, transferee, conveyee, assignee or lessee, by instrument in writing satisfactory to the Agency and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Agency, shall expressly assume all of the obligations of the Participant under this Agreement and agree to be subject to all conditions and restrictions to which the Participant is subject. There shall be submitted to the Agency for review all instruments and other legal documents proposed to effect any such sale, transfer, conveyance, assignment or lease, and, if approved by the Agency, such approval shall be indicated to the Participant in writing.

In the absence of specific written agreement by the Agency, no such sale, transfer, conveyance, assignment or lease, or the approval thereof by the Agency, shall be deemed to relieve the Participant or any other party from any obligations under this Agreement.

C. [§209] Security Financing; Rights of Holders

1. [§210] Holder Not Obligated to Construct

The holder of any mortgage, deed of trust or other security interest pertaining to the Site shall in no way be obligated by the provisions of this Agreement to rehabilitate and/or construct, or complete such construction of, the improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses, or to rehabilitate and/or construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

2. [§211] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the

Participant with respect to any breach or default by the Participant in the completion of the construction of the improvements, the Agency shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement (who has previously made a request therefor) a copy of such notice or demand. Each such holder shall (insofar as the rights of the Agency are concerned) have the right, at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the improvements, or the completion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Participant's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations.

D. [\$212] Certificate of Completion

Promptly after the completion of all work set forth in this Agreement on the Site, and upon the written request by the Participant, the Agency shall furnish the Participant with a Certificate of Completion, in the form attached hereto as Attachment No. 4 and incorporated herein by reference, which evidences and determines the satisfactory completion of such work Participant is responsible for under Attachment No. 3.. The Certificate of Completion shall not be withheld or delayed by the Agency unless the Participant shall have failed to satisfactorily complete the construction required by this Agreement relating to the construction Participant is responsible for under Attachment No. 3 in substantial compliance with the terms and provisions hereof. Upon issuance of such Certificate of Completion, the respective rights and obligations of the parties with reference to the Site shall be limited to those set forth in the Agreement to be Recorded Affecting Real Property as described in Section 213 of this Agreement.

Such Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the construction of the improvements on the Site, or any portion thereof. Such Certificate of Completion is not a notice of completion as may be required by any construction, building or other permit issued by any permitting agency.

E. [\$213] Agreement to be Recorded Affecting Real Property

Concurrently with this Agreement, the Participant and the Agency have executed an "Agreement to be Recorded Affecting Real Property," attached hereto as Attachment No. 5 and incorporated herein by reference, which provides for certain covenants and agreements on the part of the Participant consistent with the terms and purpose of this Agreement and by which

the Agency agrees to waive its legal right to acquire the Site by eminent domain. The Agency is authorized to, and shall, record the Agreement to be Recorded Affecting Real Property after issuance of the Certificate of Completion pertaining to the Site.

### III. [§300] USE AND MAINTENANCE OF THE SITE

#### A. [§301] Use of the Site

The Participant covenants and agrees for itself, its successors, its assigns and every successor in interest to devote the Site to the uses specified in the Redevelopment Plan and to comply with all other provisions and conditions of the Redevelopment Plan for the period of time the Plan is in force and effect. The foregoing covenants shall run with the land.

#### B. [§302] Maintenance of the Site

The Participant agrees to maintain the improvements and landscaping on the Site in a clean and orderly condition and in good condition and repair and keep the Site free from any accumulation of debris and waste materials for the period of time the Redevelopment Plan is in force and effect. This agreement to maintain shall not apply to those areas of the Site that will be maintained by third parties within public right of ways as part of their separate obligations.

#### C. [§303] Obligation to Refrain from Discrimination

The Participant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

#### D. [§304] Form of Nondiscrimination and Nonsegregation Clause

The Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of

persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land. "

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

E. §305 Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of Douglas County or Douglas County Redevelopment Agency shall have the reasonable right of access to the Site without charges or fees for the purpose of inspection of the Site as to maintenance of the improvements thereon. Such representatives of the Agency or the Douglas County shall be those who are so identified in writing by the Executive Director of the Agency.

F. §306 Effect and Duration of Covenants

The covenants contained in Sections 301 and 302 of this Agreement shall remain in effect until the termination date of the Redevelopment Plan. The covenants against discrimination contained in Sections 303 and 304 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and

assigns to the Site or any part thereof, and the tenants, lessees, sublessees and occupants of the Site, for the benefit of and in favor of the Agency, its successors and assigns, the Douglas County and any successor in interest thereto.

#### IV. [§400] DEFAULTS AND REMEDIES

##### A. [§401] Defaults

Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

##### B. [§402] Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Ninth District Court of the State of Nevada, or in any other appropriate court in Douglas County.

The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement.

##### C. [§403] Applicable Law

The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement.

##### D. [§404] Agency's Right to Acquire in the Event of Default by the Participant

The Agency hereby waives its legal right to acquire the Site by purchase or eminent domain to enable the Participant to construct the improvements on the Site and to otherwise develop, use and maintain the Site in accordance with the Redevelopment Plan as more particularly described in this Agreement, provided that the Participant completes such improvements and develops, uses and maintains the Site as required by this Agreement. In the event that the Participant fails to complete such construction within the time or in the manner provided herein, or in the event that the Site is not developed, used and maintained as required