

# UNLV | PURCHASING & CONTRACTS

**BUSINESS CENTER SOUTH  
THE NEVADA SYSTEM OF HIGHER EDUCATION ("NSHE"), ON  
BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS ("UNLV")**

## **REQUEST FOR PROPOSAL RFP 658-BC FOR LAND LEASE OF REAL ESTATE**

**RELEASE DATE:** November 1, 2015

**PROPOSAL MEETING AND SITE WALK** November 13, 2015 2:00 p.m. Meet at the corner of Tropicana and Deckow

**LAST DAY FOR QUESTIONS:** November 18, 2015

**LAST DAY FOR ADDENDA :** November 30, 2015

**OPENING DATE, TIME and LOCATION:** December 9, 2015 2:00 p.m. Pacific

**SUBMITTAL LOCATION:** University of Nevada, Las Vegas  
4505 Maryland Parkway  
**Campus Services Building, Room 235**  
Las Vegas, NV 89154-1033

Sealed proposals, one (1) original, four (4) copies **and one (1) electronic copy** on CD or flash drive, and only one (1) Pricing Response Form (defined below) is required, subject to the terms, conditions, and scope of services herein stipulated and/or described herein, will be publicly opened as stated above ("Proposal(s)"). **All Proposals must be received on or before this date and time to be considered.** Proposals may be mailed or hand delivered to the address above. Please go to <http://maps.unlv.edu/> to view a map of UNLV campus.

If you should have any questions regarding this Request for Proposal, fax or e-mail your questions directly to the Purchasing Representative:

**Brandy Candelaria**  
**Contracts Administrator**  
**[Brandy.candelaria@unlv.edu](mailto:Brandy.candelaria@unlv.edu)**  
Fax: (702) 895-3859

**Companies wishing to do business with UNLV must first register as a supplier at the following website: <https://supplierregistration.purchasing.unlv.edu/>. If you need assistance or have questions please send your inquiries to [Supplier.Registration@unlv.edu](mailto:Supplier.Registration@unlv.edu).**

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## **SECTION A** **INTRODUCTION**

### **1. PURPOSE OF REQUEST**

UNLV invites interested parties to submit a Proposal for a short term land lease of real estate located at the Northeast Corner of Tropicana Avenue and Deckow Lane in Las Vegas, Clark County, Nevada 89169. The real estate (hereafter sometimes referred to as the "Property") is a 42.09 acre site. UNLV will be seeking approval from the Board of Regents for the purchase of the Property in December 2015. If approval is granted by the Board of Regents to acquire the property, UNLV anticipates the property may be available in the first quarter of 2016-for temporary storage or staging or other approved use permitted by the zoning. The award of a Contract is contingent upon the approval of the acquisition of this property by the Board of Regents in December 2015 and consummation of the transaction pursuant to the purchase agreement.

### **2. UNIVERSITY OF NEVADA, LAS VEGAS**

UNLV is located in the city of Las Vegas and is emerging as a premier urban university. UNLV currently has over 220 undergraduate, masters, and doctoral degree granting programs and serves approximately 28,000 students. Additionally, there are approximately 3,000 faculty and staff. UNLV's 340-acre campus is located in the southeast part of the City, near the McCarran International Airport and the Las Vegas Strip.

### **3. TERMINOLOGY**

RFP	The term "RFP" as used throughout this document will mean Request for Proposal.
PROPOSER	"Proposer(s)" as used throughout this RFP document will mean the respondent(s) to this Request for Proposal or you, as applicable.
CONTRACTOR	Successful Proposer(s)
CONTRACT DOCUMENTS	The Request for Proposal documents, Proposer's Proposal and any mutually agreed upon written modifications
CONTRACT	"Contract" is the final agreement with the Contractor.
DIRECTOR	The term "Director" as used throughout this document will mean the University of Nevada, Las Vegas Director of Purchasing and Contracts.
REQUEST	Request for Proposal, RFP

RFP RESPONSE FORM

Proposer form submitted in Section F by an authorized representative for the Company named on said form, acknowledging that he/she/it has examined this RFP including any related documents, and hereby offers to furnish all labor, materials, tools, supplies, equipment and services necessary to comply with the specifications, terms and conditions set forth herein and at the prices (or royalty rates/Royalty Fee payments, as applicable) stated.

ROYALTY OR PRICING  
RESPONSE FORM

Proposer form submitted in Section E defining the royal percentage payments for Proposer ("Proposer Payment") and the related royalty fee payments to UNLV ("UNLV Royalty Fee").

GENERAL TERMS  
AND CONDITIONS

By submitting a Proposal, you and all respondents (as applicable), acknowledge and agree with the terms and conditions upon which the Proposals will be evaluated, and the Contract awarded as set forth in Section C.

MINIMUM CONTRACT TERMS

Included in this RFP are certain standard minimum contract terms and conditions which shall be included in the final and more extensive Contract with the Contractor. All UNLV contracts are subject to existing contracts (and any replacement contracts thereof).

UNLV

University of Nevada, Las Vegas

NSHE

The Nevada System of Higher Education. NSHE is Nevada's public higher education system. It is comprised of four community colleges, one state college, two universities and one research institute.

BOARD OF REGENTS

The elective body that has been vested by the Constitution of the State of Nevada to have exclusive control and administration of NSHE. The Board of Regents is the contracting party for any NSHE contract. The Board of Regents acts on behalf of UNLV.

COMPANY(IES)

"Company" shall mean the legal entity of the applicable Proposer, whether a sole proprietorship, corporation, LLC, Partnership, or other legal entity, and any person(s) acting on behalf of such entity.

## **SECTION B**

### **SUBMISSION INSTRUCTIONS**

UNLV invites the submission of Proposals on the material and/or services specified within this RFP. Please read carefully all instructions, introduction, general terms and conditions, Purchase Order terms and conditions, scope of work and/or specifications, Pricing or Royalty Fee Response Form, RFP Response Form, sample insurance form, and Minimum Contract Terms, if applicable. Failure to comply with the instructions, terms and conditions, scope of work and/or specifications, of this RFP may result in your Proposal being declared non-responsive.

#### **1. PREPARATION AND SUBMISSION**

- a) The Proposer is expected to examine the entire RFP including any attachments. Failure to do so will be at the Proposer's risk.
- b) If it becomes necessary to revise any part of this RFP, a written addendum will be provided to all Proposers. UNLV is not bound by any oral representations, clarifications, or changes made in the written specifications by UNLV employees, unless such clarification or change is provided to proposers in written addendum form from the Purchasing Department. All addenda must be acknowledged on the **RFP Response Form**. Proposal may be considered non-responsive in the event Addenda are not acknowledged.
- c) The Proposal submitted should not exceed **40** pages. Other attachments may be included with no guarantee of review.
- d) All Proposals shall be typed in a font no smaller than 10 points on 8 ½" x 11" paper bound with tabbed dividers labeled by section to correspond with the evaluation information requested.
- e) **If applicable, prices are to be submitted on the Pricing Response Form provided or true copies thereof** and must be manually signed by pen. If any erasures or changes appear on the form, each such correction must be initialed by the person signing the Proposal. Proposers shall include with their forms the necessary documents or attachments as required in this RFP document. **All figures must be written in ink or typewritten.** If there are discrepancies between unit prices quoted and extensions, the unit price will prevail.
- f) Proposals along with all required documents as described in this RFP must be sealed and submitted in an envelope with the response form and **MUST** indicate the name of the Proposer, RFP number, title as listed on the first page of the RFP, and date and time of opening on the outside of the envelope. **Telegraph, facsimile, email or telephone Proposals will not be considered. Pricing MUST be submitted in a separate sealed envelope.**
- g) The Proposer should submit the required number of responses as indicated on the first page of this RFP. The name of the Proposer's Company shall be indicated on the spine and/or cover of each binder submitted.

- h) No responsibility will attach to UNLV or any official, regent, or employee thereof, for the pre-opening of, post-opening of, or the failure to open, a Proposal not properly addressed and identified.
- i) Alterations, modifications or variations may not be considered unless authorized by this RFP or by an addendum.
- j) When not otherwise specified, Proposer must definitely state time of proposed delivery. Days must be calculated in consecutive calendar days.
- k) All equipment or supplies shall be new, and of the manufacturer's current model unless specified herein.
- l) l) Proposers shall take no advantage of any apparent error, omission, irregularity or lack of clarity in the RFP. Any errors, omissions, irregularities or lack of clarity in the RFP should be brought to the attention of the Purchasing Department, as soon as possible so an addendum may be furnished to all Proposers.

Any clarification of instructions, terms and conditions, insurance or offer preparation shall be made only by the official Purchasing Representative. Verbal clarifications will not be binding. Written clarifications will be by addenda and posted on the UNLV Website: <http://go.unlv.edu/purchasing/solicitations> and/or faxed to all prospective Proposers who received a copy of the RFP. Proposers who have registered with the Purchasing Department may be notified via fax as well.

- m) Altering any of this RFP may render the Proposal null and void.
- n) Companies submitting a Proposal in response to this RFP are certifying that it has had no contact with an employee or member NSHE/UNLV in any manner which would give that Company submitting such a Proposal, any advantage over any other Company submitting one. Employees and members of NSHE/UNLV shall not receive any compensation, in any manner or form, nor have any vested interest, directly or indirectly, of any kind or nature inconsistent with loyal service to the public. A violation of the above shall be just cause for rejection of that particular Proposal without further consideration.
- o) All Proposers, by signing the **RFP Response Form**, certify that they agree to the terms and conditions set forth in this RFP and attached Minimum Contract Terms (**including all insurance requirements**) unless otherwise stated.
- p) All Proposers, by signing the **RFP Response Form**, certify that they are an Equal Opportunity/Affirmative Action Employer, unless otherwise stated.
- q) Proposals, attachments and **RFP Response Form** shall be enclosed in sealed envelopes and submitted as instructed on page one of this RFP document.
- r) UNLV accepts no responsibility or liability for any costs incurred by a responding Company prior to the execution of the Contract.

- s) UNLV reserves the right to contract for less than all of the services identified herein or to cancel the RFP if in the best interest of UNLV.
- t) **Proposals are not to contain confidential/proprietary information.** UNLV is subject to the Nevada Public Records Law. Proposals must contain sufficient information to be evaluated without reference to any confidential or proprietary information. Any Proposal submitted that is marked "confidential" or "proprietary," or that contains materials so marked, may be returned to the Proposer and not be considered for award.

## 2. **EVALUATION OF PROPOSALS**

- a) At the date and time stated in this RFP, all Proposals will be opened publicly and the name of the respondents/Proposers will be recorded. To maintain confidentiality of all responses, no other information will be revealed at the opening or during the evaluation process.
- b) An evaluation committee shall evaluate Proposals based on the criteria listed below. UNLV reserves the right to create a "short list" of Companies to be interviewed. The Companies invited to interview will be evaluated again using the same criteria, but the second scoring will be based on each respondent's/Proposer's presentation and discussion. At the conclusion of the evaluation, the committee will recommend the Company(ies) for award.
- c) A Contract will be awarded on the basis of which Proposal(s) UNLV deems best suited to fulfill the requirements of this RFP and meet UNLV's needs. UNLV also reserves the right not to make an award if it is deemed that no single Proposal fully meets the requirements of this RFP and/or meets the needs of UNLV and/or the needs of UNLV change.
- d) UNLV will be the sole judge as to the acceptability, for our purposes, of any and all Proposals.
- e) Any letters of recommendation that are submitted with the Proposal, but not specifically requested, will not be evaluated.
- f) Proposals will be evaluated according to the evaluation criteria stated below:

<b>Weighted Evaluation Criteria</b>	<b>Possible Points</b>
1. Experience, Reliability & Stability and References	20
2. Financial Capacity	20
3. Proposed Use	20
4. Monetary Return to UNLV	40
<b>Total Possible Points</b>	<b>100</b>

UNLV wishes to enter into a ground lease with one or more Proposers that offer the best return to UNLV.

**1. Experience, Reliability & Stability, and References**

**20 Points**

The Proposer should provide the following information about his/her Company so that UNLV can evaluate the Proposer's stability and ability to support the commitments set forth in response to the RFP. UNLV, at its option, may require the Proposer to provide additional documentation to support and/or clarify the requested information. UNLV will evaluate the facts and may, at its sole discretion, reject a proposal on the grounds of the past experience. The Proposer's outline of the Company's background should include:

- a) How long the Company has been in business.
- b) Provide a brief description of the Company (e.g., past history, present status, future plans, etc.).
  - i. Describe the corporate structure.
  - ii. Identify the number of employees in your Company.
  - iii. Please explain how your experience and background qualifies you as managerially capable of satisfactorily performing the terms and conditions of the ground lease.
  - iv. Within the past five years, have the Company or any Affiliate had a contract related to the proposed services/products to be provided terminated on the basis of a breach or default. Termination for breach or default includes a notice to stop performance for failure to adequately perform.. Provide the relevant details with respect to the termination(s) including the date of termination and the other parties' name, address, and telephone number.
  - v. The Proposer should provide a minimum of three (3) business references whose usage requirements are similar to those specified herein. Public and/or higher education institutions similar in size and scope to UNLV are preferred. The information provided should, as a minimum, include:
    - Name and location of institution
    - Name and title of contact at institution
    - Telephone number of contact
    - Email address of contact

Furnishing incorrect or incomplete reference information may lead to Proposer's elimination from consideration for award. The decision to eliminate a Proposer from consideration for poor reference checks, or for incorrect and/or incomplete reference information shall be at the sole discretion of UNLV and shall not be subject to appeal.

**2) Financial Capacity**

**20 Points**

- a) Describe and provide documentation demonstrating Proposer's financial ability to fulfill the obligations of the ground lease.
- b) Within the past five (5) years has (i) Company made a general assignment for the benefit of creditors; (ii) any action been taken or suffered by Company or an Affiliate under any insolvency or bankruptcy act; (iii) the Company been placed voluntarily or



involuntarily in any receivership; or (iv) has the Company defaulted on any loan or been otherwise unable to pay its debts.

- c) Within the past five (5) years have there been any liens, claims, judgments, lawsuits or other litigation (including any copyright, patent or infringement actions) filed against the Company or any Affiliate related to the proposed services/products to be provided and if so explain the nature and status.

3) **Proposed Use**

**20 Points**

- a) Proposer should specify the proposed use of the leased property if other than storage and staging.
- b) Proposer should indicate whether the proposed use will be revenue producing.
- c) Proposer should specify whether interest is in all or a portion of the proposed leased property. If interest is limited to a portion of the proposed leased property, indicate whether Proposer is willing to lease the entirety of the leased property.
- d) Proposer should identify any temporary structures or improvements intended to be implemented by proposer.
- e) Please explain your proposal for managing and using the property in an environmentally enhancing manner through, among other programs and actions you may propose, dust control, energy conservation, waste reduction, and recycling.

4. **Monetary return to UNLV (Price Form)**

**40 Points**

Proposers are instructed to provide their proposed compensation in Section E, RFP Pricing Response Form. Cost proposals must be made based on the financial model requested in Section E. However, UNLV will consider alternative proposals **in addition** to the requested financial model (e.g. if Proposer will offer better compensation for either a longer or shorter term, Proposer should submit the requested financial model **and** the alternate model).

The information required to be submitted in response to this RFP has been determined to be essential in the RFP evaluation and contract award process. Any qualifying statements made by the proposer to the RFP's requirements could result in a determination that the proposer's proposal is materially non-responsive. Each proposer is cautioned, that insufficient or incorrect detail may result in a determination that the RFP proposal is materially non-responsive or, in the alternative, may result in a low technical score being given to the RFP proposal.

3. **LATE PROPOSALS**

Formal, advertised Request for Proposals indicate a time by which the Proposals must be received in the Purchasing Department. Any Proposals received after that date and time will be rejected and not be considered or will be returned unopened upon request by, and at the expense of the Proposer. Proposer is responsible for ensuring third party deliveries arrive at the time and place as indicated in this RFP document.

4. **PUBLIC OPENING OF RFP's**

At the date and time stated in this RFP, all Proposals will be opened publicly and the name of the respondents/Proposers will be recorded. To maintain confidentiality of all responses, no other information will be revealed at the opening or during the evaluation process. Proposers, their authorized agents and other interested parties are invited to be present.

2. **WITHDRAWAL OF PROPOSAL**

Any Proposer may request withdrawal of a posted, sealed RFP prior to the scheduled opening time provided the request for withdrawal is submitted to the Purchasing Department in writing, or presents themselves in person with proper identification to the Purchasing Department and verbally requests the Proposal be withdrawn and signs for its receipt.

**SECTION C**  
**GENERAL TERMS AND CONDITIONS**

1. **ACCEPTANCE PERIOD**

The Proposer agrees to a minimum of 180 calendar day acceptance period from the date of public opening.

2. **APPROPRIATIONS**

The terms of any Contract issued are contingent upon sufficient appropriations and authorizations being made by UNLV for the performance of the Contract. If sufficient appropriations and authorizations are not made by UNLV, the Contract shall terminate, without penalty, upon written notice being given by UNLV to Proposer. UNLV's decision as to whether sufficient appropriations are available shall be accepted by Proposer and shall be final.

3. **AWARD OF CONTRACT**

- a) Any award will be made to the most responsible and responsive Proposer(s) whose proposal in combination, nets the highest lease income and financial return over the lease term.. The basis of award will be determined by evaluation of items as listed in section titled "**Evaluation of Proposals**" and any other established purchasing methods that are applicable, which may include life cycle cost, quality, availability, conformance to specifications, financial capability and service, all in the best interests of the requesting department and UNLV. An award is subject to the approval of the Board of Regents of the Nevada System of Higher Education if required .
- b) UNLV reserves the right to award on a multi-year basis and, if in the best interest of UNLV, to award to multiple vendors.
- c) The initial term of the Contract will be one (1) year ("Initial Term" or "Term"). Upon mutual agreement of both parties, the Contract may be extended for up to four (4) additional one-year renewals terms ("Renewal Term(s)" or "Term(s)").
- d) The Proposer is solely responsible for the content of its Proposal and ensuring that it best meets the evaluation criteria set forth in this RFP. Previously published data in support of experience, financial or performance capability will be evaluated if such data reflects a current position and such data is submitted as a part of the response to this RFP.
- e) UNLV reserves the right to reject any or all Proposals or any part(s) thereof and to waive informalities and minor irregularities in the Proposals received.
- f) A formal, more extensive Contract will be signed by and between the successful Proposer(s)/Contractor(s) and UNLV to perform this service.

- g) The terms and conditions contained in the attached Minimum Contract Terms or, in the sole discretion of UNLV, terms and conditions substantially similar to those contained in the Minimum Contract Terms, will be included in a more extensive and detailed Contract that results from this RFP. If Proposer takes exception to the Minimum Contract Terms (**including the insurance requirements**), or any general terms or conditions set forth herein, Proposer will submit a specific list of the exceptions as part of its response to this RFP. A general exception to the Minimum Contract Terms may result in a determination that the RFP proposal is materially non-responsive or, in the alternative, may result in a low technical score being given to the RFP proposal. Proposer's exceptions will be reviewed by UNLV and may result in disqualification of Proposer's offer as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's response, then UNLV may consider Proposer's exceptions when UNLV evaluates the Proposer's response.
- h) UNLV and its Purchasing Department reserve the right to enter into discussions with anyone, or all of the Proposers after Proposals have been initially reviewed by UNLV. Such discussions may be for clarification of Proposal content contained in a responsive Proposal and/or may result in request for a "Best and Final" offer from Proposer(s). Such responses shall be subject to all provisions, terms and conditions as set forth in the RFP, unless otherwise modified.
- i) Any governmental, state, or public entity within the State of Nevada may utilize this RFP at their option to obtain goods or services at the agreed upon price(s) throughout the term of the resulting Contract with the authorization of the successful Proposer(s). UNLV is not liable for the obligations of the governmental entity which joins or uses the resulting contract.

4. **COMPLIANCE**

Proposers are required to comply with all applicable OSHA, EPA, ADA, HIPAA, FERPA, NCAA, GLBA provisions and any and all other relevant state and federal standards, codes and regulations that may apply.

5. **CONFIDENTIAL TREATMENT OF INFORMATION**

Proposers shall preserve in strict confidence any information obtained, assembled or prepared in connection with the performance of this RFP.

6. **CONFLICT OF INTEREST**

Companies submitting a Proposal in response to this RFP are certifying that it has had no contact with an employee or member of the NSHE/UNLV in any manner which would give that Company submitting such a Proposal, any advantage over any other Company submitting one. Employees and members of the NSHE/UNLV shall not receive any compensation, in any manner or form, nor have any vested interest, directly or indirectly, of any kind or nature inconsistent with loyal service to the public. A violation of any of the above shall be just cause for rejection of that particular Proposal without further consideration.

7. **DEFAULT OF CONTRACT**

In case of default of the Contract by Contractor, UNLV may procure the articles or services from the other sources and hold the Contractor responsible for any excess cost occasioned thereby; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at the proper reduction in price or increase in Royalty Fee payment, as applicable.

8. **DISQUALIFICATION OF PROPOSERS**

Proposers may be disqualified and rejection of Proposals may be recommended by the Purchasing Department for any of (but not limited to) the following causes:

- a) Failure to use the forms furnished by UNLV.
- b) Lack of signature by an authorized representative on the RFP Response Form or to comply with any applicable reporting requirements.
- c) Failure to properly provide a full response in the RFP Response Form, Pricing Response Form or Royalty Response Form, as applicable.
- d) Evidence of collusion among Proposers.
- e) Unauthorized alteration of forms.
- f) Failure to submit requested documents.
- g) Failure to furnish proof of receipt of any addendum pertaining to a particular project.
- h) Any Proposer who has defaulted on prior contracts or is guilty of misrepresentation by any member of that particular Company.
- i) Any other reason set forth in this RFP.
- j)
- k) UNLV reserves the right to waive any minor informality or irregularity.

9. **FAILURE TO FURNISH AT SPECIFIED (PRICE/ROYALTY RATE- INSERT AS APPLICABLE)**

If a successful Proposer fails to furnish any item at the price specified in this RFP, whether such failure is due to a mistake of fact by the Proposer or any other reason, the Director, may cause the name of such Proposer to be removed from the list containing the names of prospective Proposers to whom Request for Proposals are mailed, for such period of time, not exceeding 1 year or less than 6 months, or the payment of a penalty of five percent (5%) of total price of all items on which was submitted (or an additional payment of five percent (5%) of the total Royalty Rate owed to UNLV, as applicable), as the Director may determine.

10. **INSPECTION AND ACCEPTANCE**

Inspection and acceptance will be made at destination.

11. **PAYMENT TERMS**

Payments shall be made within thirty (30) days of acceptance of the related invoice, unless otherwise stated. Should the acceptance of such invoices be in doubt, the successful Proposer shall not be due any interest or penalty on any unpaid amounts.

12. **PROMPT PAYMENT DISCOUNTS**

The offered discount of a successful Proposer will not form a part of the award evaluation. In connection with any discount offered, time will be computed from the date of delivery of the equipment or supplies at destination or from the date the correct invoice is received by UNLV, whichever is later. Payment is deemed to be made for the purpose of earning the discount the date UNLV check is mailed.

13. **PROTESTS**

Any Proposer or contractor who is allegedly aggrieved in connection with the solicitation or award of a contract may protest. The protest must be submitted in writing to the Director, within seven (7) days after such aggrieved person knows or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Director will promptly issue a decision in writing to the Protester. If the protestant wishes to appeal the decision rendered by the Director, such appeal must be made in writing to the Senior Vice President for Finance & Business within five (5) days of the receipt of the decision by the Director. The decision of the Senior Vice President for Finance & Business will be final. The Senior Vice President for Finance & Business need not consider protests unless this procedure is followed.

To be considered, all Protests must identify the following:

- a) The name, address, and telephone number of the protester,
- b) The signature of the protester,
- c) Identification of the solicitation title and number being protested,
- d) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- e) The form of relief requested.

14. **SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS**

UNLV supports equal opportunity for minority owned, women-owned, and other small disadvantaged business enterprises (*MWDBE*) to compete for contracts awarded by UNLV. UNLV also supports efforts to encourage local businesses to compete for UNLV contracts. In addition, UNLV supports finding opportunities for such (*MWDBE*) and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts. A "tier 2 supplier" or subcontractor is a supplier who is contracted for goods or services with the prime contractor, and may include, but is not limited to (*MWDBE*) and local business enterprises.

a) In compliance with NSHE policy, a Proposer responding to any RFP for the purchase of goods or services that is **anticipated to exceed \$1,000,000 at any time during the life of the contract** shall provide the following reporting information in its response:

(1) Proposer's historical and anticipated commitment to Tier 2 MWDBE and local business enterprises. At a minimum, Proposer must provide historical information for the most recently completed fiscal year (July 1 through June 30) and their anticipated commitment to the current fiscal year in which this RFP is issued.

(2) A listing of Tier 2 suppliers, including local and MWDBE suppliers, that will be given the opportunity to be considered and/or utilized as subcontractors for any work performed as a result of this RFP. The listing must include the following information:

- The name, city and state
- Type of Tier 2 status (local, women owned, minority/and or disadvantaged)
- Any certification of such status including the entity granting the certification if applicable

(3) This is a reporting requirement and will not be used for evaluating any Proposal. However, failure to provide a complete Proposal in response to this RFP could result in rejection of the submittal as incomplete.

b) Any award from this RFP that results in a contract for goods or services that is **anticipated to exceed \$1,000,000 at any time during the life of the contract** will require the Proposer to provide, at a minimum, annual reports listing expenditures with MWDBE and Local Subcontractors. These reports pertain only to expenditures that are directly attributable to the UNLV prime Contract. The report shall contain the following information:

- The name, city and state; type of Tier 2 status (local, women owned, minority/and or disadvantaged); and any certification of such status including the entity granting the certification if applicable. If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified
- A description of the goods or services purchased
- The amount of expenditures with the subcontractor attributed to the prime contract for the most recent completed fiscal year (July 1 through June 30)
- The reporting information must be available to UNLV by September 15

a) Definitions

(1) Definition of Local Business Enterprise. "Local Business Enterprise" is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

(2) Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a

minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

- (3) Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
- (4) Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.
- (5) Definition of Disabled Veteran Business Enterprise (DVBE). "Disabled Veteran Business Enterprise" is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.
- (6) Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

- b) All Proposers, by signing this RFP Response Form, certify that they are an Equal Opportunity/Affirmative Action Employer, unless otherwise stated.

15. **SUSTAINABILITY**



- a) A key focus of UNLV is to minimize the impact the procurement of goods and services has on the local environment. UNLV is committed to sustainable economic, social, and environmental practices in all operations involving UNLV. It is important that Proposers share this commitment as well. Therefore, sustainable goods and services should be offered whenever available or specifically when required in the RFP.
- b) UNLV may request the successful Proposer to provide reports related to sustainability on all goods and services provided under its Proposal. Reports may include, but are not limited to: sustainable attributes of each product or service, the dollar and percentage amount spent on sustainable or environmentally preferred products and services, and the total amount spent by UNLV.
- c) All electronic equipment UNLV purchases must be Energy Star rated (or, if there is no Energy Star rating for the desired equipment, energy efficient models or substitutes are preferred). The requirement to purchase Energy Star rated equipment will improve UNLV's energy and financial performance while distinguishing our institution as an environmental leader.

16. **TAXES, LICENSES AND PERMITS**

- a) It is the Proposers' responsibility to secure all required licenses, permits and insurance necessary for the proper execution and completion of the work/Services involved. UNLV is exempt from paying state, local and federal excise taxes.
- b) Companies conducting business for profit in Nevada are required to have a current Nevada business license pursuant to NRS 76.100 (1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. By submitting its Proposal, the Proposer certifies that it has a current Nevada business license or it is exempt and agrees to provide immediate notice to UNLV's Purchasing Department in the event the license is no longer valid.
- c) NSHE/UNLV is exempt from Nevada State sales tax as provided by Nevada Revised Statutes 372.325 and 374.330. The NSHE/UNLV State Tax Exempt Number is RCE-000-441. The Federal Tax ID number is 88-6000024.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

UNLV is an Equal Opportunity/Affirmative Action educator and employer committed to achieving excellence through diversity. All qualified applicants will receive consideration for employment without regard to, among other things, race, color, religion, sex, age, creed, national origin, ethnicity, religion, gender, marital status, pregnancy, political affiliation, veteran status, physical or mental disability, sexual orientation, genetic information, gender identity, gender expression, or any other factor protected by anti-discrimination laws. UNLV employs only United States citizens and individuals lawfully authorized to work in the United States. Women, under-represented groups, individuals with disabilities, and veterans are encouraged to apply.

## **SECTION D**

### **SCOPE OF WORK/SPECIFICATIONS**

The University of Nevada, Las Vegas (UNLV) Department of Real Estate is seeking proposals for a short term land lease of real estate located at the Northeast Corner of Tropicana Avenue and Deckow Lane in Las Vegas, Clark County, Nevada 89169. (See attachment 1 and 2. For parcel and aerial site map) The real estate (hereafter sometimes referred to as the "Property") is a 42.09 acre site. UNLV will be seeking approval from the Board of Regents for the purchase of the Property in December 2015. If approval is granted by the Board of Regents to acquire the property, UNLV anticipates the property may be available in the first quarter of 2016 for temporary storage or staging or other approved use permitted by the zoning. The award of a Contract is contingent upon the approval of the acquisition of this property by Board of Regents in December 2015 and consummation of the transaction pursuant to the purchase agreement.

UNLV desires to award the contract to a single Proposer that is interested in the vacant land that can be used for temporary storage or staging, or other approved use permitted by the zoning. However, UNLV will consider awarding portions of the Property to multiple Proposers. The 42 acre site is located in close proximity to the Las Vegas strip and is currently zoned as H-1.

#### **SITE DESCRIPTION**

ASSESSOR'S PARCEL NOS: 162-21-703-001 & 002; 162-21-802-001 thru 005; and 162-21-810-005

LOCATION: Northeast corner of Tropicana Avenue and Deckow Lane, within the central portion of the Las Vegas Metropolitan area, Las Vegas, Clark County, Nevada 89169.

SHAPE: Irregular

FRONTAGE: Approx. 1,800' along Tropicana Avenue and 1,200' along

SITE AREA: Approx. 42.09 net acres

DRAINAGE: Generally level/adequate.

STREET IMPROVEMENTS AND ACCESSIBILITY: Tropicana Avenue (with three lanes in either direction, separated by a concrete median, complete with concrete curbs, gutters, sidewalks, and street lights), Deckow Lane (with one lane in either direction, also complete with concrete curbs, gutters, sidewalks, and street lights), and Kelch Drive (a private drive). A signalized intersection has been approved by NDOT at Tropicana Avenue and Kelch Drive.

ZONING: H-1 (Limited Resort and Apartment District), Clark County. Permitted uses include hotels, resort hotels, inns, and motels. Upon the issuance of a conditional use permit, multiple dwellings, apartment houses, timeshares, public and institutional buildings, bars, restaurants, retail shops and similar uses are permitted. The following parameters are required under this zoning designation.

The successful Proposer will be required to accept the land in its present condition. Any renovation or improvements will be at the cost of the successful Proposer. There are no on site

utilities and the tenant will be responsible for dust control in accordance with any relevant regulations and any related cost. UNLV has no direct responsibility or obligation for any security, maintenance, repair or replacement of the lease premises improvements. The land must be compatible with UNLV operational purposes and be consistent the campus master plan located at the following link: <https://www.unlv.edu/masterplan>.

The successful Proposer must obtain UNLV's prior written approval for any improvements prior to obtaining any required licenses or permits for the operation or construction of any desired improvements. UNLV's approval shall be contingent upon its review of all plans, specifications and construction schedules for all proposed installations or alterations to the leased property and compliance with the master plan. UNLV acting through its Planning & Construction department, reserves the right to impose any condition(s) on the successful Proposer with respect to the appearance of the leased property (including without limitation the appearance of equipment, outbuildings, lighting, parking and landscaping) beyond the requirements prescribed by any statute, regulation, or other governmental authority.

Depending on the number and type of responses received, UNLV may elect to award one or multiple leases for this property. In the event multiple leases are awarded, all construction plans must be approved by UNLV as the successful Proposer's plan cannot interfere with access to the site from any of the existing access points.

The successful Proposer may in no instance use the leased property for any purpose not directly related to the installation, operating and maintaining the temporary staging or storing, or other approved use permitted by the zoning in accordance with P-F Zoning anticipated to be granted by special use permit.

The successful Proposer shall have the right, subject to the terms and conditions of the ground lease and applicable federal, state, or local laws, to use the leased property for the, operation, maintenance, alteration, and repair of a temporary storage and staging lot, and to conduct activities directly related to the foregoing permitted use. UNLV shall have the right to approve or disapprove of the activities, to the extent permitted by law, as will be more particularly described in the ground lease.

Successful Proposer shall ensure that the installation, operation and maintenance of any improvements, equipment and fixtures will in no way damage the leased property, or unreasonably interfere UNLV's use of the leased property for any purpose permitted by the ground lease, including, but not limited to, other leases or licenses and existing easements. The successful Proposer will promptly repair and restore any portion of the leased property which may be disturbed by use and/or maintenance to the condition in which it existed immediately prior to such disturbance.

The successful Proposer shall, at all times during the term of the ground lease and at its own cost and expense, secure, keep and maintain in repair and good condition all structures and improvements at any time erected on the leased property and shall use all reasonable precaution to prevent waste, damage or injury. UNLV shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations or do any other thing in or to the leased property during the term of the ground lease.

UNLV shall have a right of access to the leased property at all times in order to inspect the leased property, to take actions necessary to protect the property or persons in the community, to enforce the terms of the ground lease agreement, or for any other purpose.

**SECTION E**  
**PRICING/ROYALTY FEE RESPONSE FORM**

Proposers are instructed to provide their proposed compensation for each of the below models. UNLV will consider alternative proposals **in addition** to the requested financial model (e.g. if Proposer will offer better compensation for either a longer or shorter term, Proposer should submit the requested financial model **and** the alternate model). Note: Renewal Lease Payments and Royalties will be negotiated as part of the renewal process.

Term in Years	Rent per sq. ft.	Annual Rent	Percent Annual Increase
1			
3			
5			

Alternate Proposals

Term in Years	Rent per sq. ft.	Annual Rent	Percent Annual Increase

Alternate Proposal (s)

Proposer is requesting to lease \_\_\_\_\_ acres for the operation of temporary and staging as outlined in the RFP scope of work. If another purpose, state. \_\_\_\_\_

The Proposer is willing to lease land at the rate of \$\_\_\_\_\_ per square ft. annum.

Note: For the purpose of this RFP 1 acre = 43,560 sq. ft.

Total annual base rent \$ \_\_\_\_\_  
Percent Annual Increase \_\_\_\_\_%

SECTION F & G  
ATTACHED PDF

# EXHIBIT A



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		FAX (A/C, No):	
	PHONE (A/C, No, Ext):		E-MAIL ADDRESS:	
INSURED	INSURER(S) AFFORDING COVERAGE			NAIC #
	INSURER A:			
	INSURER B:			
	INSURER C:			
	INSURER D:			
	INSURER E:			

COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:		
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	ADD/ SUBR INSD WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>				EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> <input type="checkbox"/>				EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ 500,000
	<b>PROFESSIONAL LIABILITY</b> PROJECT SPECIFIC (IF APPLICABLE)	<input type="checkbox"/>				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						
ENDORSEMENTS/SPECIAL PROVISIONS						

<b>CERTIFICATE HOLDER</b>  BOARD OF REGENTS NEVADA SYSTEM OF HIGHER EDUCATION 4505 MARYLAND PARKWAY LAS VEGAS, NEVADA 89154-1033	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE:
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ACORD 25 (2014/01)

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## EXHIBIT B



### EXHIBIT B MINIMUM CONTRACT TERMS FOR THE RFP FOR THE UNIVERSITY OF NEVADA, LAS VEGAS

These Minimum Contract Terms set forth the minimum contract terms and conditions that will be applicable to a Contract resulting from this RFP. The final Contract will include details specific to the scope of this RFP, and any services which are excluded, due to existing agreements or replacement agreements thereof. It is important to **note any objections** to these Minimum Contract Terms (**including all insurance requirements**), since the final Contract will be longer and contain more, rather than less terms and conditions than the following:

This Ground Lease (this "**Lease**") is made and entered by and between Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas ("**Landlord**" or "**UNLV**"), and \_\_\_\_\_, ("**Tenant**"), herein identified individually as a "**Party**" and collectively as the "**Parties**." The effective date of this Lease shall be the last date any authorized representative of the Parties executes this Lease (the "**Effective Date**").

In consideration of the mutual covenants and agreements to be performed hereunder, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree that:

#### RECITALS

A. Landlord owns that certain real property located in Las Vegas, Nevada generally shown on the "**Preliminary Lease Boundary**" attached as **Exhibit "A,"** as may be updated or amended in good faith, upon mutual approval of the Parties (the "**Land**") and legally described in the attached **Exhibit "B,"** as will be attached to this Lease upon completion and mutual good faith approval of the parties. Landlord desires to lease the Land to Tenant for the purposes, terms and conditions defined in this Lease. The Land and Improvements (as defined below) are collectively referred to as the "**Premises**."

B. Tenant desires to lease the Land from UNLV to construct \_\_\_\_\_ ("**Facility**"), on these terms and conditions. The Improvements shall be generally located on the Land as depicted on the site plan in the attached **Exhibit "C,"** as may be updated or amended in good faith, upon mutual approval of the Parties (the "**Site Plan**").

C. The Improvements shall be built as set forth in the Development Guidelines set forth in the attached **Exhibit "D"** which shall be consistent with applicable UNLV policy and regulations and State of Nevada statutes and regulations. The Development Guidelines evidence the rights and obligations of Landlord and Tenant in connection with the development and construction of the Improvements and include, but are not limited to: (i) compliance with the UNLV Design, Construction and Sustainability Standards; (ii) University review and approval of plans and specifications; (iii) insurance verification; (iv) construction contracts and schedules; (v) governmental regulations and licensing; (vi) inspections; (vii) surveys; and (viii) allocation of costs related to the Improvements.

D. Tenant shall have no rights to encumber its leasehold interest herein.

E. It shall be a condition precedent to Landlord's performance under this Lease that: (1) Tenant shall provide Landlord with a Completion Guarantee Letter (as defined in Section 1.04); and (2) UNLV shall have issued Tenant a Notice to Proceed prior to initiating construction thereof on the Land.

## **ARTICLE 1**

### **Premises and Term of Lease**

Section 1.01        **Lease of Premises.** Landlord hereby leases the Land to Tenant, and Tenant hereby leases the Land from Landlord; subject, however, to the conditions and limitations expressed herein for the uses and purposes specified herein.

**NOTE: With Regards to Section 1.02 of the Ground Lease, a special use permit from Clark County to reclassify the zoning designation for the Land to Public Facilities (PF) must be sought. Any planned use must be consistent with land uses allowed under the PF zoning designation and this Lease is contingent on obtaining the special use permit.**

Section 1.02        **Land Condition.** Except as set forth in Section 1.04 of this Lease, Tenant has examined the physical condition of the Land and is generally familiar with it. Except as specifically set forth herein, Landlord makes no express or implied warranties as to the physical condition of the Land, soil conditions, flood plain status, or any improvements located thereon. Tenant agrees that the Land shall be leased in an "as-is" and "as-shown" condition, subject to all encumbrances, conditions, covenants, easements, restrictions, rights-of-way, and all other matters affecting the Land (whether or not of record) and all zoning, land use, subdivision, and all other laws, rules, regulations and judicial or administrative orders applicable to the Land or its use or occupancy, with no representation or warranty of any type or nature being made by Landlord, except as specifically set forth herein. Tenant agrees that it is leasing the Land solely upon the basis of its own investigation and not on the basis of any representation, express or implied, written or oral, made by Landlord or its agents, partners, co-venturers, or employees. Without limiting the generality of the foregoing, Landlord makes no warranty as to the sufficiency of the Land for Tenant's purposes, including the Land, improvements, taxes, bonds, covenants, conditions and restrictions, water or water rights, topography, utilities, soil, subsoil, drainage, environmental or building laws, or rules or regulation, the square footage or acreage contained within the Land, the sufficiency or completeness of any plans for the Land, the approval of the plans and specifications for the Practice Facility, plats, zoning, or other development items relating to the Land, or as to any improvements on the Land, except as expressly set forth elsewhere in this Lease. Landlord agrees to provide Tenant courtesy copies of environmental, geo-technical and other reports;



however, Tenant acknowledges that any information provided by Landlord is provided without warranty or representation of any kind. Tenant is under the affirmative obligation to confirm the reliability and accuracy of all material at its own expense. If Tenant relies on any of the information, then it does so at its own risk. Tenant waives all claims and causes of action against Landlord arising from any inaccuracy, misstatement, false statement or other error contained in that material, including but not limited to, all matters pertaining to hazardous materials. Tenant is deemed to accept the condition of the Land as free of defects and in good, clean and sanitary condition by taking possession of the Land.

Section 1.03      **Term of Lease.**      Subject to the conditions precedent to Tenant's performance as set forth in Recital "E" and Sections 1.04 and 1.05 of this Lease, the term of this Lease shall commence on \_\_\_\_\_ (the "**Commencement Date**") and shall continue until \_\_\_\_\_ (the "**Term**"). This Lease is a legally binding agreement between the parties as of the Effective Date, subject to the termination rights set forth in Section 1.04, as this Agreement may be extended for a reasonable period of time by mutual written agreement of the parties. Tenant may not enter onto the Land until Tenant provides Landlord with written proof of compliance with the liability insurance provisions hereof. Tenant shall certify the Commencement Date to Landlord in writing within thirty (30) days of its occurrence.

Section 1.04      **Right To Terminate Lease.** Tenant's rights under this Lease are expressly contingent upon the following,: (1) providing a written commitment to Landlord guaranteeing that the Improvements shall be completed in accordance with this Lease, and guaranteeing that in the event Tenant is not able to fulfill this commitment, Tenant shall provide the funds or other resources as necessary within thirty (30) days of expiration or sooner termination of this Lease, to complete the Improvements ("**Completion Guarantee Letter**"); and (2) Landlord providing a Notice to Proceed to Tenant in order to permit the development, construction and occupancy of the Improvements. If Tenant gives notice to Landlord on or before the Commencement Date that it is unable to construct the Improvements through no fault of Tenant, then this Lease shall be terminated and Landlord and Tenant shall thereupon be excused from any further or additional performance under this Lease. Tenant hereby acknowledges that it will not anticipate or rely upon any direct or indirect financial commitment by Landlord to participate in the development of the Premises.

Section 1.05      **Early Termination**

Tenant acknowledges that the Premises and Land are subject to the Master Plan of Landlord. Landlord shall have the right to terminate this Lease upon \_\_\_\_\_ prior written notice and the payment of \_\_\_\_\_ to terminate this Lease. Thereafter, Landlord and Tenant shall thereupon be excused from any further or additional performance under this Lease.

Landlord reserves the right to relocate the Premises and/or Improvements to a substantially comparable space on the Land. Landlord will give \_\_\_\_\_ written notice and Tenant shall complete the relocation within \_\_\_\_\_ of the written notice. Any relocation is subject to the following conditions: (i) Tenant shall coordinate the relocation with Landlord pursuant to a relocation plan to be approved by Landlord; and (ii) Landlord will reimburse Tenant for the reasonable actual costs of the relocation.

Section 1.07      **Quiet Enjoyment; Landlord's Warranty of Title.** Provided that Tenant has fulfilled all of its obligations under the Lease, Landlord covenants, warrants and represents that: (a) as fee simple owner, it has good and marketable title to the Land; (b) it has full right and lawful authority to execute this Lease for the Term, in the manner and upon these conditions and provisions; and, (c) Tenant shall have quiet and peaceable possession of the Premises during the Term.

## **ARTICLE 2**

### **Improvements**

Section 2.01      **Development Guidelines.** Tenant shall construct the Improvements during the Term in accordance with the terms and provisions of the Development Guidelines.

Section 2.02      **Improvements.** At Landlord's option, all Improvements constructed, installed or placed by Tenant on the Land shall be removed by Tenant from the Land upon expiration of Term or early termination of the Lease. Tenant shall have exclusive possessory rights in the Improvements (except the rights of entry and inspection set forth in this Lease). Notwithstanding the foregoing, the Parties' obligations under this Lease shall continue in full force and effect until expiration of the Term. During the Term, the Improvements shall not be conveyed, transferred or assigned, other than as part of a permitted assignment of this Lease. Any attempted conveyance, transfer or assignment of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity is void *ab initio* and of no effect whatsoever.

(a)      Notwithstanding the foregoing and to the extent applicable, Tenant may from time to time replace Improvements provided that Tenant complies with the requirements of the Lease relating to construction of Improvements and the replacements for the items are of equivalent or better value and quality, and the items are free from any liens and encumbrances except as permitted hereunder.

(b)      Upon any termination of this Lease, whether by reason of the expiration of the Term, in accordance with Section 22.22, or for any other cause, all of Tenant's rights in the Land shall cease and terminate and shall automatically and without further consideration become the sole and absolute property of Landlord free and clear of all liens and encumbrances created by or caused by Tenant.

(c)      Within ten (10) days after expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord a full release or any other applicable instrument confirming that all of Tenant's rights in the Land have expired. Notwithstanding the foregoing, Tenant may remove its personal property within thirty (30) days of termination or expiration of this Lease, as long as Tenant repairs any damage to the Improvements caused thereby.

(d)      Upon the expiration or earlier termination of this Lease, the following will, without compensation to Tenant and at Landlord's selection, vest in Landlord: (i) any prepaid rents, payments or security deposits under any subleases; (ii) Tenant's interest in any and all subleases; (iii) all intangible property related to the construction of the Improvements; and (iv) all personal property remaining on the Improvements which have not been removed by Tenant within the time period specified in Section 2.02 (c).

Section 2.03      **Easements.** At Tenant's request or as may be reasonably required in connection with development and use of the Premises, Landlord agrees to grant, in accordance with Board of Regents' policies, to third parties future easements and rights of way on or over the Premises and adjacent property owned by Landlord as required to provide utility services to the Premises and adjacent property owned by Landlord. Landlord and Tenant shall agree upon the specific locations of such easements and rights of way.

Section 2.04      **Grant of License.** In addition to the demised premises generally shown on **Exhibit "A,"** and legally described on **Exhibit "B,"** Landlord hereby grants to Tenant, its contractors, subcontractors, employees, agents, suppliers, purveyors, customers, licensees and invitees, a nonexclusive license over, upon and across designated access points, sidewalks, lanes, parking and driveway portions of Landlord's property as set forth on the Staging Plan and Preliminary Schedule, attached hereto as **Exhibit "E"** for: (a) vehicular and pedestrian ingress, egress and access; (b) construction parking; (c) manual traffic guidance; (d) directional and notice signs that may be temporarily installed and maintained on the property as necessary, in locations reasonably approved by the Parties; and (e) construction staging, maintenance and/or repair work as may be undertaken by Tenant in accordance with the terms of this Lease. Except as may be reasonably necessary in connection with construction, maintenance and/or repair work as may be undertaken by any Party during the Term.

### **ARTICLE 3**

#### **Rent**

Section 3.01      **Rent.** Section 3.01 shall be revised based on Proposal

### **ARTICLE 4**

#### **Payment Of Taxes, Assessments, Utilities & Other Impositions**

Section 4.01      **Taxes.**

(a)      Business Operation Taxes

Before any fine, penalty, interest or cost is incurred, Tenant shall pay or cause to be paid, any sales or use taxes, value added taxes, business and occupation taxes and all fees associated with the construction of the Improvements that may be levied, and any and all other federal, state, county and municipal governmental and quasi-governmental levies, fees, rents, assessments or taxes and charges, now or hereinafter imposed on the Premises, assessments, license and permit fees, and all other costs, charges or expenses that benefit the Land during the Term which may have been, or may be imposed upon, or become a lien on the Land.

(b)      Real Property Taxes

Landlord shall pay prior to delinquency, all taxes, if any, assessed against or levied upon, or any similar imposition due as the result of ownership of the Land ("**Real Property Taxes**"). The Parties acknowledge that the Land is exempt from Real Property Taxes under applicable laws as of the Effective Date.

(c) Personal Property Taxes

Tenant shall pay, prior to delinquency, all taxes, if any, assessed against or levied upon Tenant's fixtures, equipment, leasehold improvements and personal property located in or upon the Premises ("**Taxed Personal Property**"). Tenant shall cause all Taxed Personal Property to be assessed and billed separately from the real property of which the Premises are a part.

Section 4.02      **Impositions.** Except as otherwise specifically provided herein, Tenant shall pay directly to the applicable agency without notice, except as may be required in this Lease, and without abatement, deduction or set-off, as "**Impositions**" all costs and expenses arising from the construction of the Improvements (which specifically includes any related easement parcels relating to the use of the Premises), including, but not limited to, maintenance, repair, replacement of all improvements located thereon and costs associated with providing property management; safety and security for the Premises; insurance (as set forth in Article 6 of this Lease); premiums, fees, interest, charges, reimbursements and/or expenditures imposed by or resulting from the application of statutes or regulations, of any federal, state, county, municipal or other governmental body or agency performing a governmental or other function (including, but not limited to, the Environmental Protection Agency and the authority administering the Occupational Safety and Health Act, the Americans with Disabilities Act, or agencies performing the same or similar functions) or are incurred to reduce energy consumption or costs and expenses necessary or to protect the health and safety of guests or occupants or to improve the appearance or utility of the Improvements; and obligations of every kind and nature (excepting only certain Real Property Taxes payable by Landlord, if any, as provided in Section 4.01 or elsewhere in this Lease) which arise and become due during the Term arising from the construction of the Improvements.

Section 4.03      **Impositions for Material Changes.** Any material changes in the Improvements or Site Plan requested by Tenant which increase Landlord's cost of holding the Land, shall be paid for by Tenant.

Section 4.04      **Utilities.** Tenant shall pay or cause to be paid directly to the utility provider all utility charges, including, but not limited to, electrical power, natural gas, domestic water, sanitary sewer and storm sewer (including installation, service, relocations, connections, maintenance, license and permit fees) that benefit the Premises during the Term which may have been, or may be imposed upon, or become a lien on the Land. Tenant will ensure timely removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of the construction of the Improvements.

Section 4.05      **If Imposition Is Unpaid, After Notice, Either Party May Pay.** If Landlord or Tenant shall at any time fail to pay any sum, Imposition, cost or expense which it is obligated to pay under the terms of this Lease, then the other Party, after ten (10) days written notice to the Party which has failed to make payment (or without notice or upon a shorter notice period in case of any emergency) and without waiving or releasing either Party from any obligation under this Lease, may, but shall be under no obligation to, pay any sum, Imposition, cost or expense; provided, however, that no payment shall be made if the Party receiving the written notice has in fact paid the same before the expiration of the time period and has given notice to the party originally giving notice. Any payment made by either Party pursuant to this Section 4.05, together with all costs, expenses and interest actually paid with respect to the Imposition, if any, and if none, at the prime rate, shall be paid to the paying Party on demand.

Section 4.06      **Landlord May Perform Non-Monetary Covenant or Condition and Charge Tenant.** If Tenant fails to perform or observe any covenant or condition contained in this Lease, the performance of which involves something more than merely the payment of money, then Landlord, after ten (10) days written notice to Tenant (or without notice or upon a shorter notice period in case of an emergency), and without waiving or releasing Tenant from any obligation, may perform the same for the account of Tenant, and charge Tenant the actual cost of performance. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of the act, together with interest thereon at the prime rate, shall be paid by Tenant to Landlord on demand.

## **ARTICLE 5**

### **Surrender of Land, Premises and/or Improvements By Tenant**

Section 5.01      **When Tenant Must Surrender Possession.** On the last day of the Term (or upon any earlier termination of this Lease), Tenant shall surrender the Premises to Landlord (i) subject to the provisions of this Lease, in good order, condition and repair, free and clear of all occupancies and licenses, other than those that the continuance of which Landlord shall have expressly permitted (“**Permitted Exceptions**”); (ii) free and clear of all liens and encumbrances other than those permitted by Landlord as further set forth in Section 10.02; (iii) Tenant shall deliver all keys and access control devices/components for the Improvements (“**Keys**”); and (iii) Tenant and Landlord shall execute the Completion Certificate, attached hereto as **Exhibit “F”**. Landlord’s acceptance of surrender of the Premises by Tenant shall only arise from, and must be evidenced by, written acknowledgment of acceptance of surrender signed by Landlord. No other act or conduct of Landlord shall be deemed to be an acceptance by Landlord.

Section 5.02      **Intentionally Omitted.**

Section 5.03      **Holding Over.** Tenant acknowledges that possession of the Premises must be surrendered to Landlord at the expiration or sooner termination of the Term. Tenant agrees to indemnify Landlord against and save Landlord harmless from all costs, claims, loss or liability resulting from the failure or avoidable delay by Tenant in so surrendering the Premises. If Tenant remains in possession of the Premises after expiration or sooner termination of this Lease with Landlord’s consent, then Tenant’s possession will create a month-to-month tenancy, subject to all terms and conditions of this Lease. Such month-to-month tenancy may be terminated by either party by giving at least thirty (30) days prior written notice. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Land after the expiration or sooner termination of the Term. If Tenant remains in possession of the Premises after expiration or sooner termination of this Lease without Landlord’s consent, then Tenant shall be a tenant-in-sufferance, subject to all the terms and conditions of this Lease, and Landlord shall be entitled to terminate the tenancy immediately without notice and to recover all actual and consequential damages resulting from Tenant’s failure to surrender the Premises. This provision shall survive the expiration or sooner termination of this Lease.

Section 5.04      **Abandoned Property.** Subject to Section 2.02 (c), any personal property of Tenant or any occupant which remains on the Premises after the termination or expiration of this Lease and the removal of Tenant or other occupant from the Premises may, at the option of Landlord, be deemed to have been abandoned, and may be retained by Landlord as its property or be disposed of, without accountability.

Section 5.05      **Landlord Not Responsible For Loss or Damage.** Upon expiration or any sooner termination of this Lease, Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant, any sub-Tenant, any space Tenant or any other occupant.

Section 5.06      **Release.** Upon the expiration of this Lease or sooner termination, Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in recordable form, releasing all right, title and interest of Tenant in and to this Lease, the Premises and the Improvements.

Section 5.07      **Provisions of This Article Survive Termination.** The provisions of this Article shall survive any termination or expiration of this Lease, including a termination pursuant to the insurance provisions of this Lease.

## **ARTICLE 6**

### **Insurance**

Section 6.01      **Insurance.** Tenant shall procure, maintain, and keep in force and require each contractor, subcontractor, design builder, sub design builder, architect, sub architect, engineer, sub engineer, consultant, sub consultant, service provider, vendor and any other party performing work (collectively, "**Contractors**"), at its sole costs and expense, to procure, maintain, and keep in force for the duration of the Term the following policies:

(a)      **Comprehensive General Liability** insurance naming Tenant and Landlord as an additional insured, affording minimum protection, of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate;

(b)      **Excess/Umbrella** Landlord and Contractor shall be required to maintain a \$10,000,000 per occurrence/ aggregate excess policy. An Excess policy shall be as broad as primary liability insurance and must be specific to the Improvements;

(c)      **Worker's compensation insurance**, as required by Nevada Revised Statutes ("**NRS**"), and including employer's liability insurance. Employer's liability limits shall be at least \$100,000 per occurrence and for occupational disease. All Contractors providing services shall provide proof of Workers' Compensation insurance as required by NRS 616B, or proof that compliance with the provisions of NRS Chapter 616A-D and all other related chapters, is not required;

(d)      **Professional Liability Insurance (Errors & Omissions)**, \$5,000,000 per claim/aggregate; and retroactive date must be prior to commencement of the performance of the applicable contract and the discovery period is to be three (3) years after termination date of the applicable contract. A thirty six month (36) supplemental extended reporting period must be endorsed to the insurance policy if coverage is cancelled;

(e)      **"All Physical Loss" Builder's Risk/Property Insurance** in an amount not less than One Hundred Percent (100%) of the construction contract value of the Improvements as completed; the Contractor shall purchase and maintain Builder's Risk/Property shall be written on a "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the Improvements at the site on a replacement

cost basis without optional deductibles. Such Builder's Risk/Property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made to the Contractor. This insurance shall include interests of Tenant, UNLV, the Contractor, subcontractors and sub-subcontractors in the project.

The Builder's Risk/Property insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's and the Contractor's services and expenses required as a result of such insured loss.

If the Builder's Risk/Property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

The Builders Risk/Property insurance shall cover portions of the work stored off the site, and also portions of the work in transit.

Partial occupancy or use shall not commence until the insurance company or companies providing Builder's Risk/Property insurance have consented to such partial occupancy or use by endorsement or otherwise. Tenant and Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

(f) **Boiler and Machinery Insurance** as required by the applicable contract by law, which shall specifically cover such insured objects during installation and until final acceptance by Tenant and Landlord; this insurance shall include interests of Tenant, UNLV, the Contractor, subcontractors and sub-subcontractors in the work;

(g) **Loss of Use Insurance** shall be purchased and maintained by the Contractor as will insure Tenant and UNLV against loss of use of Tenant's and UNLV's property due to fire or other hazards, however caused; and

(h) Such insurance as may be required from city, county, state and/or federal laws, codes, regulations or authorities, or as may be reasonably required by Landlord.

(i) **Other Requirements**

- Tenant and Landlord must be named as an Additional Insured on all primary and excess General Liability policies affording the broadest possible coverage.
- Subrogation must be waived against Tenant and Landlord.
- Parties contracting directly with Tenant must have their insurance policies endorsed to reflect that their insurance coverage is primary over any other applicable insurance coverage available.
- Any insurance or self-insurance available to Tenant shall be in excess of and non-contributing with any insurance required.

- Loss Payee. Tenant shall be named as loss payee as respects its interest in any property that the Contractors have an obligation to insure on behalf of Tenant.
- Policy Cancellation Endorsement: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to Tenant the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered. A copy of this endorsement must be attached to the Certificate of Insurance.
- Each insurance policy shall be:
  1. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
  2. Currently rated by A.M. Best as A - VII or better.

Until such time as the insurance is no longer required by Tenant, Contractors shall provide Tenant with renewal or replacement evidence of insurance no less than fifteen (15) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this Lease, as soon as the Contractor has knowledge of any such failure, Contractor shall immediately notify Tenant and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

In addition to the foregoing, Tenant shall comply with other applicable insurance requirements, not listed in this Article 6, as indicated on the Risk Management and Safety website: <http://rms.unlv.edu/insurance-and-claims/insurance/contracts>.

Section 6.02      **Tenant To Provide Proof of Coverage.** Prior to the start of any work, Tenant shall obtain from each Contractor and provide to UNLV the following documents:

- Certificate of Insurance: The Accord 25 Certification of Insurance form or a form substantially similar evidencing the insurance policies and coverage required of Contractors under Section 6.01.
- Additional Insured Endorsements: Additional Insured Endorsement(s) issued by an authorized insurance company representative(s).
- Policy Cancellation Endorsement.
- Waiver of Subrogation endorsement.
- Endorsement reflecting the contractors insurance is primary over any other applicable insurance.
- Loss Payee Endorsement

## **ARTICLE 7**

### **Repairs and Maintenance Of The Premises**

Section 7.01      **Tenant to Keep Premises in Good Repair.** Throughout the Term, Tenant, at its sole cost and expense, shall maintain the Premises in good, clean, safe and



sanitary state of repair and condition consistent with: (i) such further and/or additional standards and criteria as may be reasonably established by Landlord; (ii) prudent construction, maintenance and management practices and (iii) the objective of maintaining the Premises in architectural harmony. All repairs and replacements made by Tenant shall be at least equal in quality and class to the original work and shall be completed in compliance with all applicable laws and ordinances. In order to protect and preserve the attractiveness, integrity, quality and value of the Premises, Tenant shall make all necessary repairs to the interior and exterior of the Premises, including but not limited to, driveways, parking, landscaping, walkways, exterior portions of the Improvements, balconies, terraces, patios, paint, glass, windows, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. The term "repairs" includes all necessary repairs, replacements, renewals and alterations to the Premises. All repairs and replacements made by Tenant shall be at least equal in quality and class to the original work and shall be completed in compliance with all applicable laws and ordinances. In the event that Tenant fails to undertake such repairs and maintenance, Landlord may after giving Tenant reasonable written notice, undertake any necessary repairs and maintenance to the exterior improvements at the expense of Tenant.

Section 7.02     **Standard of Care.** The necessity for and adequacy of repairs to the Premises and the fixtures, improvements and equipment therein shall be measured by the standard which is appropriate for the buildings of similar construction and class, provided that Tenant shall in any event make all repairs necessary to avoid any structural damage or injury to the Improvements.

Section 7.03     **Tenant To Maintain Certain Adjoining Areas.** Tenant shall maintain all portions of the Premises, and the sidewalks, curbs, entrances, passageways and all area adjoining the same in a clean and orderly condition, free of dirt, rubbish and unlawful obstructions.

Section 7.04     **Tenant Assumes Responsibility For Premises.** Tenant hereby assumes responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises, except those obligations of Landlord set forth in Sections 3.01 and 4.01 of the Development Guidelines.

## **ARTICLE 8**

### **Compliance With Laws, Ordinances And Regulations**

Section 8.01     **Compliance with Law.** Throughout the Term, Tenant, at its sole cost and expense, shall promptly comply with all present and future laws, statutes, ordinances, regulations, rules and orders of all federal, state, county and municipal governments, political subdivisions, boards, commissions, courts, agencies or other regulatory bodies (collectively, "**Governmental Authority**") which may be applicable to the construction of the Improvements (collectively, "**Applicable Laws**") and shall promptly remove any violation thereof installed or created by Tenant or its agents or employees. Tenant shall indemnify Landlord from and against all claims, actions, suits, proceedings, liability, damages, costs or expenses, including reasonable attorneys' fees and experts' fees and court costs, arising from Tenant's violation of any Environmental Laws (as defined below).

Section 8.02     **Tenant to Comply with Public Liability Insurance.** Tenant shall comply with all the requirements of all policies of public liability, fire and other insurance (as set forth in Article 6 of this Lease) at any time in force with respect to the Premises.

## **ARTICLE 9**

### **Construction of Improvements**

Section 9.01      **Tenant's Right to Construct Improvements.**      All construction, alterations, additions and Improvements shall be made in accordance with Applicable Laws at Tenant's sole expense and in strict accordance with the Development Guidelines. All construction, alterations, additions or improvements shall be performed and completed diligently and in a good and workmanlike manner, free from defects of any kind and nature. The Premises shall at all times be free of liens for labor and materials supplied.

Section 9.02      **Compliance with NRS Section 108.2403.** Pursuant to NRS § 108.234, Landlord hereby informs Tenant that Tenant must comply with the requirements of NRS § 108.2403 and NRS § 108.2407. Tenant shall take all actions necessary under Nevada law to ensure that no liens encumbering Landlord's interest in the Premises arise as a result of Tenant's work, which actions shall include, without limitation, the recording of a notice of posted security in the Official Records of Clark County, Nevada, in accordance with NRS § 108.2403, and either (i) establishing a construction disbursement account pursuant to NRS § 108.2403(1)(b)(1), or (ii) furnishing and recording, in accordance with NRS § 108.2403(1)(b)(2), a surety bond for the prime contract for Tenant's work at the Premises that meets the requirements of NRS § 108.2415. The prime contractor is \_\_\_\_\_ . Tenant shall notify Landlord immediately upon the signing of any contract with the prime contractor for the construction, alteration or repair of any portion of the Premises. Tenant may not enter the Premises to begin initial construction on Tenant's improvements or begin any alteration or other work in the Premises until Tenant has delivered evidence satisfactory to Landlord that Tenant has complied with the terms of this Section 9.02. Failure by Tenant to comply with the terms of this Section 9.02 shall permit Landlord to declare Tenant in default and to terminate this Lease. Tenant's failure to comply with the bond and security requirements of NRS § 108.2403 and NRS § 108.2407 within fifteen (15) days of the applicable statutory periods shall permit Landlord to discharge the lien and entitle Landlord to immediate reimbursement by Tenant.

## **ARTICLE 10**

### **Discharge of Liens**

Section 10.01      **Tenant Shall Not Create or Permit Lien.** Tenant shall not create or permit to be created or to remain, and shall discharge any lien, encumbrance or charge which might be or become a lien, encumbrance or charge upon the Premises or the income arising from the Premises. Tenant shall neither take, nor permit, any action which impairs Landlord's interest in the Premises, including but not limited to, the income from the Premises.

Section 10.02      **Mechanic's Liens.** Tenant shall pay or cause to be paid all costs for work done by Tenant or caused to be done by Tenant on the Premises, and Tenant shall keep the Premises free and clear of all mechanics' liens and material men's liens and other liens arising from work done or materials supplied to Tenant or persons claiming under Tenant (collectively, "**Mechanics' Liens**"). Tenant shall have the right to contest any lien or other encumbrance in good faith by appropriate judicial proceedings so long as: (i) the proceeding operates to stay an execution or foreclosure on the lien; and (ii) Tenant diligently pursues the contest to its conclusion. In any event, Tenant shall indemnify, defend, and hold Landlord harmless for, from, and against any and all liability, loss, damage, costs, attorneys' fees, and all other expenses arising from all Mechanics' Liens. In addition, Tenant shall keep Tenant's

leasehold interest and the Improvements free and clear of all liens of attachment or judgment liens (collectively, "**Judgment Liens**"). Tenant shall cause any Mechanics' Liens or Judgment Liens to be discharged (by bonding or otherwise) within fifteen (15) days after demand by Landlord or such other period required by law, whichever is longer. If Tenant fails to do so, then Landlord may pay or otherwise discharge the lien and immediately recover all amounts expended (together with interest thereon at 10% per annum from the date of payment) from Tenant. If, at the end of the Term, a Mechanics' Lien or Judgment Lien is attached to the Premises, Tenant shall cause such Mechanics' Lien or Judgment Lien to be paid, discharged, bonded, or cleared from title.

## **ARTICLE 11**

### **Waste and Environmental Matters**

Section 11.01      **Tenant Must Not Harm Premises.** During the Term, Tenant shall not commit or permit any waste, damage or injury to the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any adjoining property, other than the normal incidences of construction. Tenant agrees not to use or permit the use of the Premises or any part thereof for any purpose prohibited by, and Tenant shall comply with all, Applicable Laws relating to the condition, use and occupancy of the Premises.

Section 11.02      **Environmental Laws.** Tenant shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality, handling, transportation, treatment, storage, and disposal of any regulated substance on, under, or from the Premises. For the purposes of this Lease, the term "**Environmental Laws**" shall include, but not be limited to, any relevant federal, state, or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, obligations, losses, dangers, penalties, claims, and clean up costs, including legal fees and expenses, imposed on, incurred by, or reserved against Landlord in any way relating to or arising out of any non-compliance by Tenant, Tenant's successors, assignees, sub-Tenants, Contractors, agents or invitees with any Environmental Laws, from and after the Effective Date. This indemnity shall survive the expiration or termination of this Lease and/or transfer of all or any portion of the Land as shall be governed by the laws of the State of Nevada.

Section 11.03      **Obligation to Notify.** If either Party shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Laws or liability for Environmental Laws in connection with the Premises, that party shall deliver to the other Party, within fourteen (14) days of the receipt of notice or other communication, a written description of the violation, liability or actual or threatened event or condition, together with copies of any documents evidencing the same.

## **ARTICLE 12**

### **Use and Occupancy of Premises**

**Permitted Use.** Subject to all the provisions and limitations contained herein, Tenant shall use the Premises solely and exclusively to \_\_\_\_\_ in accordance with the requirements of the Development Guidelines. Use of the Premises for any other purpose shall be subject to prior written consent of Landlord, in its sole and absolute discretion. Tenant shall not use or

allow the Premises or any part thereof to be used or occupied for any improper, immoral, unlawful or objectionable purpose, including any sexually oriented business purpose or in violation of any laws, and shall not suffer any act to be done or any condition to exist on the Premises or any part thereof which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force.

Section 12.02      **Continuous Use; Interruption of Work.** Tenant shall have the right from time to time to interrupt construction Improvements for such reasonable periods of time as may be required to comply with Section 12.04 of this Lease. If construction is interrupted, Tenant shall diligently perform its obligations with all Applicable Laws in order to promptly resume construction of the Improvements following such interruption.

Section 12.03      **Application for Licenses and Permits.** As further set forth in the Development Guidelines, Landlord agrees, upon request of Tenant, to sign promptly and without charge any applications for such licenses and permits as may be required to comply with Section 12.04 of this Lease, where the signature of Landlord or owner is required by Applicable Laws in force at the time. The cost of obtaining any such licenses and permits shall be borne by Tenant. Tenant shall indemnify, defend, save and hold harmless Landlord its officers, employees and agents from and against all liability, claims, losses, costs and expenses, including attorneys' fees, which Landlord may incur by reason of having signed any such applications.

Section 12.04      **Compliance with Laws.** Tenant shall obey, perform and comply with any and all Applicable Laws existing at any time during the Term in any way affecting the Land, or the use or condition of the Land, including the construction, alteration or demolition of the Improvements, or in any other way affecting this Lease. Tenant shall have sole responsibility for compliance with any requirements of the Americans with Disabilities Act of 1990, including the ADA Amendments Act of 2008 (collectively, the "ADA") and its implementing regulations and agrees to protect, defend, indemnify and hold Landlord harmless with regard to any claims, liabilities, or actions arising under the ADA and Tenant's obligations hereunder. Tenant shall have the right to contest in good faith the validity and/or applicability of any such Applicable Laws

Section 12.05      **Tenant Shall Not Cause Insurance Rates to Increase.** Tenant shall not use nor permit the Premises to be used in any way which will independently increase the rate or rates of insurance upon the Premises or upon any adjacent buildings or property owned or used by Landlord or which will independently cause a cancellation of one or more of Landlord's insurance policies.

## **ARTICLE 13**

### **Entry on Premises By Landlord**

Section 13.01      **Landlord Has Right to Enter Premises.** In addition to Landlord's right of entry under any other provision of this Lease, Tenant shall permit Landlord and its authorized representatives to enter the Premises at all reasonable times on reasonable prior notice for the purpose of (a) inspecting, surveying, measuring or preserving the same, and (b) making any necessary repairs and performing any work that may be necessary by reason of Tenant's failure to make the repairs or perform the work, and any other lawful purpose. Landlord may enter without notice in case of an emergency threatening injury to persons or property. Nothing herein contained shall create or imply any duty upon the part of Landlord to make repairs or do

the work. Landlord hereby reserves for itself, its contractors, employees, agents, suppliers, purveyors, customers, licensees and invitees of each of them, a nonexclusive license over, upon and across all access, sidewalks and driveway portions of the Land, for vehicular and pedestrian ingress, egress and access.

Section 13.02      **Entry is Not Termination.** Any entry or re-entry by Landlord on the Premises shall not cause a termination of this Lease, unless termination is specifically intended by Landlord as clearly and convincingly evidenced by a written Notice of Termination.

## **ARTICLE 14**

### **Indemnification**

Section 14.01      **Tenant to Indemnify Landlord.** Notwithstanding any provision to the contrary contained in this Lease and except to the extent occurring or existing prior to the Effective Date, Tenant expressly agrees to indemnify, defend and hold harmless Landlord, its officers, employees and agents from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects and attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any action or inaction of Tenant, its agents, employees or invitees, in connection with this Lease ("**Claim**"). In case any action is brought against Landlord by reason of a Claim, Tenant, upon written notice from Landlord, shall at Tenant's sole cost and expenses, including attorneys' fees, defend the action by counsel approved by Landlord in writing, within ten (10) days of receiving notice from Landlord, with the approval not to be unreasonably withheld. If Tenant fails to provide this defense, Tenant shall reimburse Landlord on demand for any legal fees or costs incurred by Landlord in connection with the Claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Premises during the Term, except for those caused by gross negligence or willful misconduct of Landlord or its agents or employees. Notwithstanding any provision of this Lease to the contrary, this indemnity shall survive expiration or earlier termination of this Lease.

## **ARTICLE 15**

### **Damage or Destruction**

Section 15.01      **Tenant To Repair Damage or Destruction.** In case of damage to or destruction of the Premises by fire or other casualty during the Term, where such damage or destruction is covered by a policy of insurance as required under Article VI of this Lease, Tenant, at Tenant's sole cost and expense, whether or not the insurance proceeds, if any, are sufficient for the purpose, and irrespective of the amount of any loss, shall restore, repair, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to the damage or destruction or with those changes or alterations as may be made at Tenant's election in conformity with and subject to the applicable provisions of this Lease. Restoration, repairs, replacements, rebuilding or alterations shall be commenced and prosecuted with due diligence and in good faith, unavoidable delays excepted. If the damage to, or the destruction of, the Premises results in a loss exceeding in the aggregate \$\_\_\_\_\_ then Tenant shall promptly give written notice thereof to Landlord and Tenant's election under Section 15.04.

Section 15.02      **All Insurance Money to Be Used for Restoring the Premises.** All insurance money paid pursuant to the terms of this Lease on account of damage or destruction, less the actual cost, contractor fees, and miscellaneous fees and expenses, if any, incurred in

connection with the adjustment of the loss, shall be held in an escrow account, at the option of Landlord, and applied to the payment of the cost of demolition, restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs or the protection of property pending the completion or permanent restoration, repairs, replacements, rebuilding or alterations.

Section 15.03      **Tenant to Pay Any Deficiency.** If the insurance money at the time of distribution, less the actual costs, fees and expenses, if any, incurred in connection with the adjustment of the loss, are insufficient to pay the entire cost of the restoration, then Tenant shall deposit the deficiency into the escrow account set forth in Section 15.02 above within fifteen (15) days of the determination that such funds are insufficient

Section 15.04      **When Tenant Has Option to Restore.** If the Premises are damaged or destroyed by fire or other casualty during the Term, and the cost of restoration exceeds the sum of \$\_\_\_\_\_ as estimated by a licensed general contractor selected by Tenant and approved in writing by Landlord, and confirmed by the insurance adjuster, then Tenant may have the option of either:

(a)      restoring, repairing, replacing, rebuilding or altering the Improvements as provided in this Lease, or

(b)      terminating this Lease by written notice to Landlord given within sixty (60) days after the date of destruction or damage, provided Tenant is not in default hereunder and returning the Premises to Landlord in the same condition as on the Effective Date.

Section 15.05      **Except for the Provisions of this Article, Tenant to Remain Liable.** Except as provided in this Article 15, no destruction of, or damage to, the Premises or any part thereof by fire or any other casualty shall permit Tenant to surrender this Lease or shall relieve Tenant from any of its other obligations under this Lease.

## ARTICLE 16

Section 16.01      **Effect of Total or Partial Eminent Domain.** If the possession of, title to, or ownership of the Premises are permanently or temporarily taken either prior to or during the Term by any competent authority under a statutory power of expropriation or compulsory acquisition or in lieu thereof, this Lease shall terminate upon the transfer of possession or title to the authority, as the case may be, and the Rent and any other sums payable by Tenant to Landlord shall be prorated to the date of taking.

(a)      In the event of a temporary or partial taking of the Premises by condemnation which is not sufficient in time or space to materially affect construction of the Improvements, this Lease shall be unaffected.

(b)      Any proceeds or benefits paid by any Governmental Authority for any kind of condemnation, whether whole, partial or temporary shall belong to Landlord.

Section 16.02      **Partial Condemnation.** If only a part of the Premises is taken or condemned so that the remaining portion of the Premises can continue to be used to the mutual satisfaction of Landlord and Tenant, then this Lease shall remain in full force and effect. In this event, whether or not its portion of the awards or payments, if any, on account of the

taking are sufficient for the purpose, Tenant, at its own expense shall promptly commence and complete the restoration of the Premises as nearly as possible to their value, condition and character immediately prior to the taking or condemnation.

Section 16.03      **Partial Taking Improvements Restructure.** In the event of a partial taking which does not result in termination of this Lease, Landlord shall receive the entire award and shall cause that portion of the net award attributable to the value of the Improvements as determined by the parties on the Premises to be applied to pay the cost of restoration of the Improvements. The balance of that portion of the award, if any, remaining after completion of the restoration, shall be equitably apportioned between Landlord and Tenant but that portion of the net award attributable solely to the value of the land shall be paid to Landlord.

## **ARTICLE 17**

### **Mortgages, Assignments, Subleases And Transfers of Tenant's Interest**

#### **Section 17.01      No Assignment, Mortgaging, Subletting without Prior Consent.**

Without the prior written consent of Landlord, in its sole and absolute discretion, Tenant shall not: (i) make or allow any assignment or transfer, by operation of law or otherwise, of any part of Tenant's interest in this Lease or in the Improvements, (ii) grant or allow any lien or encumbrance, by operation of law or otherwise, upon any part of Tenant's interest in this Lease, (iii) sublet any part of the Premises, (iv) permit anyone other than Tenant, its employees and bona fide guests to occupy any part of the Premises; nor, (v) sell, assign, option, encumber or transfer beneficial control of Tenant.

#### **Section 17.02      Landlord's Consent.**

In the event Landlord consents to an assignment or transfer under Section 17.01:

(a) Tenant shall remain primarily liable for all of its obligations under this Lease, notwithstanding any assignment, sublease or transfer. No consent granted by Landlord shall be deemed to be consent to any subsequent assignment or transfer, lien or encumbrance, sublease or occupancy.

(b) (b) Tenant shall pay all of Landlord's reasonable expenses incurred, up to a maximum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in connection with any consent requested by Tenant or in reviewing any proposed assignment or subletting. Any assignment or transfer, grant of lien or encumbrance, or sublease or occupancy without Landlord's prior written consent shall be void.

## **ARTICLE 18**

### **Default Provisions**

Section 18.01      **Tenant's Event of Default.** Each of the following events is an "**Event of Default**" if it is not cured within a period of thirty (30) days after written notice thereof from Landlord to Tenant or the event is of a nature that it cannot be completely cured within thirty (30) calendar days of such notice with the exercise of due diligence, and Tenant fails to timely commence the cure or fails to complete it with reasonable diligence and good faith:

(a) whether by operation of law or otherwise, by selling, assigning or transferring or in any way disposing of this Lease or of the interest of Tenant hereunder except as provided in this Lease;

(b) Tenant fails to perform its obligations to diligently prosecute construction of the Improvements;

(c) Tenant vacates or abandons the Premises;

(d) appointment of a receiver to take possession of all or substantially all of the assets of Tenant;

(e) general assignment by Tenant for the benefit of creditors;

(f) any action taken or suffered by Tenant under any insolvency or bankruptcy act;

(g) Tenant's failure to maintain in force all insurance coverage required by this Lease or Tenant's failure to deposit evidence of insurance with Landlord as required by this Lease;

(h) Tenant's failure to comply (i) with any material provision of this Lease, except for payment obligations, or (ii) with any applicable local, county, state or federal law, rules or regulations affecting the Premises;

(i) Tenant remaining in possession of the Premises after expiration or sooner termination of this Lease without Landlord's consent; or

(j) Tenant is in material default under the terms and conditions of the Development Guidelines.

For events other than as described in the immediately preceding list, Tenant shall be deemed in Default of this Lease if: (i) Tenant fails to perform or observe any covenant or condition of this Lease and if this failure continues for sixty (60) calendar days after written notice from Landlord to Tenant; (ii) this failure is of a nature that it cannot be completely cured within sixty (60) calendar days with the exercise of due diligence, and Tenant fails to timely commence the cure or fails to complete it with reasonable diligence and good faith; or (iii) Tenant fails to make any payment when due.

Section 18.02      **Peaceful Surrender.**      Upon occurrence of an Event of Default, Landlord may declare this Lease terminated or may declare Tenant's right to possession terminated. Upon any expiration or termination of this Lease, or of Tenant's right to possession, Tenant shall peacefully surrender the Premises to Landlord. At any time after expiration or termination, Landlord may without further notice re-enter the Premises. In addition to its other rights or remedies at law and in equity, Landlord shall have the immediate right of re-entry and may remove all persons and property from the Premises with, or without, judicial process.



Section 18.03      **Intentionally Omitted.**

Section 18.04      **Effect of re-entry.**      No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless Landlord expressly elects in writing to terminate all Tenant's rights in and to the Premises. No expiration or termination of this Lease shall relieve Tenant of its liabilities and obligations under this Lease, and these liabilities and obligations shall survive any termination.

Section 18.05      **Additional Damages.**      In the event of the occurrence of any Event of Default, Landlord may, whether Landlord terminates this Lease or whether Landlord terminates Tenant's right to possession of the Premises, recover from Tenant the reasonable amount necessary to compensate Landlord for completing construction of the Improvements or, at Landlord's option, returning the Premises to the same state and physical condition as they were on the Effective Date.

Section 18.06      **Tenant's Property.**      Tenant hereby waives all claims for damages which may be caused by the re-entry of Landlord and taking possession of the Premises or removing or storing Tenant's personal property. Tenant will defend, indemnify and hold harmless Landlord (and its regents, officers, members, contractors, agents and employees) from and against all injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses (including, without limitation, court costs and attorneys' fees and expenses) occasioned by Landlord in re-taking possession of the Premises. Re-entry shall not be considered a forcible entry.

Section 18.07      **Other Remedies.**      In addition to all other remedies, in the event of any Default by Tenant, upon prior written notice to Tenant, Landlord may cure the Default for the account and at the expense of Tenant. If Landlord incurs any expense, the sum or sums advanced by Landlord, together with interest of 1% per month, from date of payment by Landlord, together with all costs and damages, shall be deemed to be Rent and shall be due and payable as Rent.

Section 18.08      **Partial Performance Does Not Constitute Cure of Default.**      No failure by Landlord or by Tenant to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy hereunder shall constitute a waiver of a breach thereof.

Section 18.09      **Landlord's Injunction Rights.**      If Tenant commits an Event of Default, then Landlord may enjoin the breach without bond and may invoke any right or remedy allowed at law or in equity whether or not the remedy in question is specifically included in this Lease.

Section 18.10      **Remedies are Cumulative.**      Each right or remedy of Landlord provided for in this Lease are cumulative and are in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity. The exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity.

Section 18.11      **Intentionally Omitted.**

Section 18.12      **Default by Landlord.**

Landlord shall be considered in default or breach of this Lease for the non-performance of any obligation imposed herein if it is not cured within a period of thirty (30) calendar days after written notice thereof from Tenant to Landlord and:

(a) If the same relates solely to the non-payment of money, Landlord fails to perform within thirty (30) calendar days after receipt of said written notice, or

(b) If the same does not relate solely to the non-payment of money, Landlord fails to commence performance within said thirty calendar (30) day period and to diligently continue such performance until the obligation is fulfilled.

In the event of a default by Landlord as defined in this Section 18.12, Tenant, at its option, without further notice or demand, and as its remedy shall have the right to any one or more of the following remedies without bonds: (a) to pursue the remedy of specific performance; (b) to pursue injunctive relief; and/or (c) perform Landlord's obligation and add the value thereof to the Gift. In the event of a default by Landlord defined in this Section 18.12, Tenant shall also have the right to terminate this Lease.

## **ARTICLE 19**

### **Representations and Warranties**

Section 19.01      **Representations and Warranties of Tenant.** Tenant represents and warrants to UNLV as of the date of this Lease and continuing until expiration or earlier termination of this Lease:

(a) Tenant is a valid entity organized under the laws of the State of Nevada and is qualified to do business in the State of Nevada.

(b) Tenant has the right, power and authority to enter into this Lease and to consummate the transactions contemplated herein in accordance with the terms and conditions hereof.

(c) The parties executing this Lease on behalf of Tenant have all requisite authority to execute this Lease, and this Lease, as executed, is a valid, legal and binding obligation of Tenant.

(d) Neither the execution and delivery of this Lease, nor compliance with the terms and conditions of this Lease by Tenant, nor the consummation of the transactions contemplated herein, constitutes or, to Tenant's actual knowledge, will constitute a violation or breach any agreement or other instrument to which it is a party or to which Tenant is subject or by which it is bound.

(e) The execution and delivery of this Lease by Tenant has been duly authorized by all necessary corporate action on the part of Tenant, and no consent is necessary in connection therewith from any court or corporate or Governmental Authority having jurisdiction over Tenant or the subject matter of this Lease.

(f) There is no administrative agency action, litigation, condemnation or other governmental proceeding of any kind pending against Tenant or, to Tenant's knowledge, any other member of the Development Team, which would prohibit or materially affect the

ability of Tenant, or any member of the Development Team to comply with the terms and conditions of this Lease or to consummate the transactions contemplated herein.

Section 19.02      **Representations and Warranties of UNLV.**      UNLV represents and warrants to Tenant as of the date of this Lease and continuing until expiration or earlier termination of this Lease:

(a)      UNLV is an instrumentality of the State of Nevada, duly organized and established under State law.

(b)      UNLV owns the Land in which the Project is to be developed and constructed and has the right, power and authority to enter into this Lease and to consummate the transactions contemplated herein in accordance with the terms and conditions hereof.

(c)      The parties executing this Lease on behalf of UNLV have all requisite authority to execute this Lease, and this Lease, as executed, is a valid, legal and binding obligation of UNLV.

(d)      Neither the execution and delivery of this Lease, nor compliance with the terms and conditions of this Lease by UNLV, nor the consummation of the transactions contemplated herein, constitutes or, to UNLV's actual knowledge, will constitute a violation or breach of any agreement or other instrument to which UNLV is a party or by which it is bound.

(e)      The execution and delivery of this Lease by UNLV has been duly authorized on the part of UNLV and no consent is necessary in connection therewith from any court or Governmental Authority having jurisdiction over UNLV or the subject matter of this Lease.

## **ARTICLE 20**

### **Notices**

Section 20.01      **Notices.**      All notices, requests, demands, waivers, and other communications given as provided in this Lease shall be in lieu of, and not in addition to, statutorily required notice. All such notices, requests, demands, waivers, and other communications, unless otherwise specifically provided in this Lease, will be in writing, will also be delivered via e-mail to the addresses set forth below, and will be deemed to have been given:

(a)      If delivered in person, upon delivery, or

(b)      If mailed by certified or registered mail, postage prepaid, and addressed to Landlord or Tenant at the addresses provided below on the second business day after deposit in the United States mail if addressed to an address located within the same state in which the notice is being mailed or on the third business day after deposit in the United States mail if addressed to an address located within a state other than the state in which the notice is being mailed, or

(c)      If sent by overnight express delivery service, enclosed in a prepaid envelope and addressed to Landlord or Tenant at the addresses provided below, on the first business day after deposit with the service, or

(d) If sent by fax machine to the phone number listed below, then Notice shall be deemed delivered on the next business day following receipt, as evidenced by a successful transmission report.

Either Landlord or Tenant may change its respective address as provided in this paragraph by giving written notice of the change as provided in this paragraph.

The addresses for notice are:

**Notice to Landlord:**

Senior Vice President for Finance and Business  
4505 Maryland Parkway  
Box 451004  
Las Vegas, NV 89154-1004  
Telephone No.: 702-895-3571  
Facsimile No.: 702-895-1090  
E-mail: Gerry.Bomotti@unlv.edu

**With copy:**

General Counsel  
4505 Maryland Parkway  
Box 451085  
Las Vegas, NV 89154-1085  
Telephone No.: 702-895-5185  
Facsimile No.: 702-895-5299  
E-mail: Elda.Sidhu@unlv.edu

**Notice to Tenant**

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**ARTICLE 21**  
**Signs**

Section 21.01      **Tenant's Right to Reasonable Signage.** Tenant may place directional signs at such places on the Landlord's campus as is mutually agreeable by the Parties. Tenant shall not place nor permit to be placed any sign, advertisement, notice, marquee, awning, or other display on any part of the exterior of the Premises including windows or doors without the

prior written consent of Landlord, which consent shall not be unreasonably withheld, nor make any change thereafter, except as otherwise provided for in the Development Guidelines. Except where consent has been previously obtained, Tenant, upon request of Landlord, shall immediately remove any sign, advertisement, notice, marquee, awning, or other display which Tenant has placed or permitted to be placed on or about the Premises or on the Improvements of which they are a part, which in the reasonable opinion of Landlord is objectionable, offensive, or not in good taste, and, if Tenant shall fail to do so, Landlord may re-enter in or upon the Premises and remove the same at the expense of Tenant.

## **ARTICLE 22**

### **Miscellaneous Provisions**

#### **Section 22.01      Table of Contents; Descriptive Headings; Background**

The table of contents and descriptive headings of the paragraphs, sections, and other portions of this Lease are inserted for convenience and reference only and in no way define, limit or describe the scope, meaning construction or intent of this Lease nor in any way affect this Lease. The Recitals and Exhibits are incorporated by reference as a material part of this Lease.

#### **Section 22.02      Nevada Law Governs.**

This Lease will be interpreted and construed under and in accordance with the laws of the State of Nevada. The forum selected for any proceeding or suit related to this Lease shall be both the federal or state courts located in Clark County, Nevada. The Parties expressly consent to personal jurisdiction in these courts. Notwithstanding any other provision herein, the Parties expressly agree that: (1) this Section 22.02 is a valid and binding agreement despite any claim as to the invalidity of all or any portion of this Lease and is supported by mutual consideration of the Parties' actions in negotiating the transactions contemplated hereby; and (2) no claim as to the invalidity of this Lease shall serve as a bar to the enforcement of the provisions of this Section 22.02.

#### **Section 22.03      Severability of Any Invalid Provision**

Invalidation of any one of the covenants, restrictions or provisions of this Lease by judgment or court order shall in no way affect any provisions, restrictions or covenants which shall remain in full force and effect.

#### **Section 22.04      No Brokers**

Tenant represents and warrants to Landlord and Landlord represents to Tenant that neither party has had no dealings or discussions with any broker or agent in connection with this Lease and Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all losses, liabilities, damages, costs and expenses arising out of or in connection with any claim by any broker or agent for commissions relating to this Lease by reason of Tenant's activities.

**Section 22.05      Amendment Must Be In Writing**      No amendment or modification to this Lease shall be valid except by written agreement made in writing by the Parties.

**Section 22.06      Unless Otherwise Stated, Consent Shall Not Be Unreasonably Withheld**

Any consent required of Landlord or Tenant hereunder shall not be unreasonably withheld, unless the specific provision provides that the consent is at the Party's sole discretion.

**Section 22.07      Time Is of the Essence**

Time is of the essence in this Lease and in each and every term and condition contained herein.

**Section 22.08      Force Majeure**

In the event that Landlord or Tenant shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder (other than payment of any sum due hereunder by Tenant or Landlord) by reason of any acts of God, governmental restriction, strikes, labor disturbances, shortages of materials or supplies, third party suits which delay or prevent, acts of war or terrorism, or acts or failures to act by the other Party hereto in breach of such Party's obligations (but not because of insolvency, lack of funds, or other financial cause) or comparable condition by which any Party is hindered or prevented from performance of any act under this Lease (collectively referred to in this Lease as "Force Majeure"), then such Party shall not be liable or responsible for any such delays, and the doing or performing of such act or thing shall be excused for the period during which such performance is rendered impossible due to the Force Majeure, and the time for performance shall be extended accordingly; provided, however, that (i) the Party seeking the benefit of this provision shall, within five (5) days after such Party becomes aware of any such delay, have first notified the other Party in writing of the cause(s) thereof and requested an extension, and (ii) the requesting Party must diligently seek removal or avoidance of the hindrance, and (iii) even though the time for performance may be extended as provided in this Section 22.08, the Parties shall remain bound by the other terms, covenants, and agreements of this Lease. In no event shall any Party's performance be excused for more than \_\_\_\_ for matters of Force Majeure (or \_\_\_\_ for matters relating to an employee strike or labor disturbance).

**Section 22.09      No Waiver Unless in Writing**

No consent or waiver, express or implied, by either Party hereto with respect to any breach or default by the other Party in the performance of any of its covenants or obligations under this Lease shall be deemed or construed to be a consent to or waiver of any other breach or default. No waiver by either Party hereto of any default or breach by the other Party in the performance of any of its covenants or obligations under this Lease shall be deemed to have been made by the Party unless contained in a writing executed by the Party.

**Section 22.10      Intentionally Omitted.**

**Section 22.11      Entire Agreement.**

This Lease, together with the RFP, any exhibits and other matters attached hereto or incorporated herein by reference, constitutes one entire contract between the parties. All terms, conditions, representations, warranties, understandings, and interpretations contained in any other oral or written communications between the parties are hereby superseded. In

executing this Lease, the parties acknowledge that they are relying solely on the matters set forth in this Lease, and not on any other inducements, written or oral, by the other party or by any agent, employee, or representative thereof. Tenant acknowledges that no prior information provided or statements made by the Landlord or by any agent, employee, or representative thereof (collectively, "**Prior Information**") has induced Tenant to enter into this Lease. Tenant acknowledges that prior to entering into this Lease it has satisfied itself of all its concerns by conducting an independent investigation of the validity of all Prior Information.

Section 22.12      **Joint and Several Obligations.**

If Tenant is comprised of more than one person or entity, then the obligations imposed upon Tenant shall be joint and several.

Section 22.13      **Successors and Assigns; Lease Covenants.**

These terms, covenants, agreements, provisions, conditions and limitations shall be construed as covenants running with the land and shall bind and inure to the benefit of Landlord, its successors or assigns, and Tenant, its successors and permitted assigns and permitted sub-Tenants, except as otherwise provided herein.

Section 22.14      **No Partnership.**      It is expressly understood that neither Landlord nor Tenant is or becomes in any way or for any purpose, a partner of the other in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with the other, or agent of the other by reason of this Lease or otherwise.

Section 22.15      **Counterparts.**      This Lease may be executed in any number of counterparts, all of which shall be deemed one instrument, and each of which shall be deemed an original of this Lease for all purposes, notwithstanding that less than all signatures may appear on any single counterpart.

Section 22.16      **No Merger.**      There shall be no merger of this Lease nor of the leasehold estate created with the estate in the Premises by reason of the fact that this Lease, or the leasehold estate created hereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Premises or any portion therein and no merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease or the leasehold estate, including any lender, join in a written instrument effecting a merger.

Section 22.17      **Mineral Rights.**      Landlord reserves to itself all of the oil, gas and mineral rights of the Land.

Section 22.18      **Airport Noise Disclaimer.**      Tenant acknowledges the Premises are located within nearby airplane flight paths, and are subject to significant levels of airport traffic and noise. Tenant shall release and hold harmless Landlord from any and all claims or actions arising from and relating to airplane flights and/or airplane noise.

Section 22.19      **Intellectual Property.**      The Parties agree not to use any foreign, federal, state or common law trademark, trade name, service mark, trade dress, universal resource locator, domain name, design, symbol, logo, patent, copyright, name or insignia belonging to the other without prior written approval.

Section 22.20      **Time Periods.**      Whenever this Agreement refers to a number of days, such number shall refer to business days unless calendar days are specified. Business days shall be Monday through Friday, excluding those days recognized by state banking institutions as holidays in Clark County, Nevada.

Section 22.21      **No Third-Party Beneficiaries.** This Lease is not intended to, and shall not, confer upon any person other than the Parties hereto any rights or remedies hereunder, and no person shall have any right to enforce any rights, duties or obligations of the Parties hereunder other than the Parties hereto.

Section 22.22      **Right to Demolish the Premises.** In the event the Improvements are in conflict with UNLV's future implementation of the UNLV Masterplan, as may be amended from time to time, Tenant acknowledges that the Improvements must be demolished or removed by Tenant as deemed necessary to comply with such Masterplan. This provision shall survive the expiration or sooner termination of this Lease.

## **ARTICLE 23**

### **Certificates by Landlord and Tenant**

Section 23.01      **Estoppel Certificate.** Either Party agrees at any time and from time to time upon not less than thirty (30) days prior notice by the other Party to execute, acknowledge and deliver to the other Party a statement in writing certifying that this Lease is unmodified and in full force and effect, (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), and stating whether or not the other Party is in default, specifying each default, it being intended that any statement delivered pursuant to this Section may be relied upon by the other Party or any prospective purchaser of the fee or any mortgagee thereof.

## **ARTICLE 24**

### **Right To Perform Other Party's Covenants**

#### **Section 24.01      Mutual Cure Rights of Obligations Under Lease**

If Landlord or Tenant shall at any time fail to pay any sum, cost or expense which it is obligated to pay under the terms of this Lease, then the other Party, after fifteen (15) days written notice to the Party which has failed to make payment (or without notice or upon a shorter notice period in case of any emergency) and without waiving or releasing either Party from any obligation under this Lease, may, but shall be under no obligation to, pay any such sum, cost or expense; provided, however, that no such payment shall be made if the Party receiving such written notice has in fact paid the same before the expiration of the time period and has given notice to the party originally giving notice. Any payment made by either Party pursuant to this Section, together with all costs, expenses and interest at the rate of ten percent (10%) per annum shall be paid to the paying Party on demand.

Section 24.02      **Cure Rights of Obligations Under Lease.** If either Party ("**Failing Party**") fails to perform or observe any covenant or condition contained in this Lease, the performance of which involves something more than merely the payment of money, then the other Party, after fifteen (15) days written notice to the Failing Party (or without notice or upon a shorter notice period in case of an emergency), and without waiving or releasing Failing Party



from any obligation, may perform the same for the account of Failing Party, and charge Failing Party the actual cost of any such performance. All sums so paid by and all costs and expenses incurred Landlord in connection with the performance of any such act, together with interest thereon at the rate of ten percent (10%) per annum shall be paid by Failing Party to the other Party on demand.

Section 24.03      **Intentionally Omitted.**

Section 24.04      **Successor Owner to Assume All Liabilities.** In the event Landlord, or any successor owner of the Land, conveys its interest in the Land, then, upon the transfer of any monies or any other securities belonging to Tenant held by Landlord pursuant to the provisions of this Lease to any such purchaser of the Land, all liabilities and obligations on the part of Landlord or successor owner as Landlord under this Lease, accruing after such conveyance or disposal, shall cease. Each successor purchaser of the Land shall, without further agreement, be bound by Landlord's covenants and obligations. Nothing herein contained shall be construed to release Landlord or any successor owner as Landlord from any liability or obligation which otherwise matured prior to the effective date of such conveyance or disposal.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Landlord and Tenant have caused this Lease to be executed as of the Effective Date.

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS**

**Recommended:**

\_\_\_\_\_

\_\_\_\_\_  
Date

**Approved:**

\_\_\_\_\_

\_\_\_\_\_  
Date

**Approved as to Legal Form:**

\_\_\_\_\_

\_\_\_\_\_  
Date

**TENANT**

**Approved:**

\_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Date

## EXHIBIT "C"

### DEVELOPMENT GUIDELINES

These Development Guidelines shall be attached and become a part of that certain Ground Lease, dated as of \_\_\_\_\_, 2015 (the "**Lease**"), by and between the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas ("**Landlord**" or "**UNLV**"), and \_\_\_\_\_ ("**Tenant**"). Landlord/UNLV and Tenant shall be herein identified individually as a "**Party**" and collectively as the "**Parties**." Terms used, but not defined herein, shall have the meaning given them in the Lease. For purposes of this Exhibit "D," the planning, design, permitting and construction of the Improvements shall be referred to as the "**Project**."

### ARTICLE 1 TENANT's Obligations

#### Section 1.01 General Rights and Obligations. Tenant shall:

(A) Have overall responsibility for the planning, design, permitting and construction of the Project in accordance with the UNLV Design, Construction and Sustainability Standards (the "**UNLV Guidelines**"), which are incorporated herein by this reference, provided, however, UNLV and Tenant will cooperate to develop design criteria for the Project which will ensure compatibility and consistency with the UNLV campus.

(B) Contract for, direct and manage all activities required to deliver the Project, including the coordination and management of all consultants, contractors, sub-contractors and other third-parties necessary to complete the Project.

(C) Construct the Project on the Land at its expense and at no cost to UNLV.

(D) Perform its services in a timely manner and in accordance with the requirements of the Lease and any specific schedule agreed upon in writing by the Parties, subject to delays caused by Acts of God, terrorism, strike or any other unavoidable delays, as further set forth in the Lease.

(E) Designate a representative ("**Tenant's Representative**"), who shall be responsible for managing Tenant's responsibilities under the Lease and communicating Tenant's approval and other Tenant decisions to UNLV. UNLV may reasonably rely upon representations from Tenant's Representative in carrying out its obligations under the Lease. Tenant shall give immediate written notice to UNLV if Tenant, from time to time, designates any other individual to act as Tenant's Representative.

**Section 1.02 Governmental Regulations/Licenses.** Tenant, its employees, agents and representatives will comply with all applicable laws, statutes, ordinances, regulations, requirements, rules and orders of all federal, state, county and municipal governments, agencies and government authorities that may be applicable to the development, construction and use of the Project, including but not limited to, all requirements of the Nevada State Public Works Board ("**SPWB**") and other codes and regulations as referenced by them. Tenant will

maintain all appropriate business and operating licenses per the Clark County Business and Licensing office.

## **ARTICLE 2**

### **Development Team**

**Section 2.01 Development Team.** Tenant will retain qualified and licensed companies to act as members of the team who will design and construct the Project, which includes an architect and a general contractor (collectively, the “**Development Team**”). UNLV shall review and provide any reasonable and timely concerns or objections to the Tenant’s selection of the Development Team, which will be provided to UNLV in writing within seven (7) days of the selection of each team member by the Tenant. Specifically, Tenant shall provide the name, resume/experience on the General Contractor’s superintendent, project manager, safety director, and project executive. Upon receipt of complete information for this item, Landlord shall notify Tenant of any concerns or objections related to the General Contractor. As of the Effective Date, the following companies have been selected by Tenant and approved by UNLV as members of the Development Team:

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

Tenant may terminate, but may not replace any member of the Development Team without UNLV’s prior written consent, which shall not be unreasonably withheld or delayed.

Tenant shall provide copies of the Schedule of Values and Guaranteed Maximum Price (“**GMP**”), but not the project budget, to UNLV for its review and approval prior to execution, which shall not be unreasonably withheld or delayed. Tenant shall also provide copies of agreements between Tenant and Architect and Tenant and General Contractor, as applicable, for UNLV’s review. UNLV’s review and approval rights shall be limited to all terms of such contractual agreements other than the scope of the services to be provided and the amount of the economic consideration to be paid therefor.

**Licensed Contractors/Design Professionals.** Tenant shall comply with the State of Nevada regulations as contained in the Nevada Revised Statutes (“**NRS**”) and Nevada Administrative Code (“**NAC**”) in the use of design professionals and contractors for the Project. Provided further, Tenant shall use only licensed, bonded, and responsible design professionals and contractors to perform any work, repairs, installations, or improvements on the Project. All design professionals and contractors employed by Tenant to perform any work, repair, installation, or improvement on the Project shall carry the insurance required by and in amounts at least equal to the limits set forth in Article 6 of the Lease, including, but not limited to, Workers’ Compensation Insurance in accordance with statutory requirements and Commercial General Liability Insurance covering their activities on the Project.

**Section 2.02 Non-Discrimination.** Tenant will not discriminate against any worker, employee or applicant, or any member of the public because of race, creed, color, handicap, national origin, age or sex, nor otherwise commit an unfair labor practice. Tenant will agree that, where required by state or federal law applicable to the Project, such clause will be

incorporated into all subcontracts entered into with other business organizations or individuals who may perform any labor or services or provide materials in connection with the Project.

### **ARTICLE 3 UNLV's Obligations**

#### **Section 3.01 General Rights and Obligations.** UNLV shall:

(A) Assist Tenant throughout the entitlement process. During the construction process, UNLV will reasonably approve temporary easements dedications and rights-of-way as may be necessary to complete construction of the Project.

(B) Assist Tenant throughout the plan check, permit and inspection process by the SPWB, Clark County, and/or any other government entity having jurisdiction for the Project as applicable and in obtaining all permits and approvals, at Tenant's cost, required to construct and occupy the Project.

(C) Pursuant to the Staging Plan attached to the Lease as Exhibit "E," coordinate with Tenant to designate staging, materials storage, parking areas, pedestrian paths and other staging requirements for the Project in accordance with the UNLV Guidelines.

(D) Designate a representative, who shall be responsible for managing UNLV's responsibilities under the Lease and communicating UNLV's approval and other UNLV decisions to Tenant ("**UNLV's Representative**"). Tenant may reasonably rely upon representations from UNLV's Representative in carrying out its obligations under the Lease. UNLV shall give immediate written notice to Tenant if UNLV, from time to time, designates any other individual to act as UNLV's Representative.

(F) Provide survey, geotech report and special inspection services, at Tenant's expense.

### **ARTICLE 4 Site Development Costs**

**Section 4.01 Existing Structures and Improvements.** Tenant, at its sole cost and expense, shall be responsible for all actions, demolition, removal, relocation, and clean-up of any existing structures and improvements remaining on the Land on the Commencement Date. Landlord shall be solely responsible for all remediation and disposal required in connection with any and all environmental conditions existing or arising on the Premises which are not the direct result of the negligent or intentional actions or inaction of Tenant. Tenant shall be entitled to any and all salvage value of the structures and improvements if it demolishes and/or removes them pursuant to the provisions herein.

**Section 4.02 Cost Allocation.** Landlord shall pay for all construction and completion electricity, water and gas used until occupied. Pursuant to the Staging Plan attached to the Lease as Exhibit "E," Landlord shall allocate necessary parking spaces for staging and construction purposes at no cost to Tenant or Development Team. Tenant agrees, however, to pay for fencing and temporary redirection signage for the Project. UNLV shall provide Tenant use of existing utility infrastructure capacity, consistent with the UNLV Guidelines.

## **ARTICLE 5**

### **Design of the Project**

**Section 5.01 Plans and Specifications.** Tenant has, at its expense, prepared plans, specifications and construction documents in accordance with the provisions herein for the Project (collectively, the “**Plans and Specifications**”). The Plans and Specifications have been prepared by architects, engineers and licensed design professionals on the Development Team. The Plans and Specifications have been prepared subject to any statute, ordinance, rule or regulation of any other applicable governmental agency, department or authority having jurisdiction for the Project, whether federal, state or local. As of the Effective Date of the Ground Lease, Tenant has submitted the Plans and Specifications to UNLV and Landlord shall review and provide comments on the Plans and Specifications. With UNLV’s approval, Tenant shall prepare and submit to UNLV the materials required for UNLV to submit the Plans and Specifications to the SPWB and the State Fire Marshall as required for their review and approval. Tenant shall provide such materials to UNLV no later than thirty (30) days prior to the Term Commencement Date.

(A) **Conceptual Plans.** As of the Effective Date of the Ground Lease, Tenant has submitted to UNLV the conceptual plans related to the Project (“**Conceptual Plans**”). UNLV acknowledges receipt of the Conceptual Plans and has agreed to the overall design intent.

No material revisions shall be made hereafter to the Conceptual Plans without UNLV’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(B) **Construction Documents.** As of the Effective Date of the Ground Lease, Tenant has delivered to UNLV the construction drawings, detailed specifications, and related documents required for the construction of the Project and consistent with the Conceptual Plans (the “**Construction Documents**”). The Construction Documents conform to and are consistent in all material respects with the Conceptual Plans. Tenant shall provide UNLV with any information requested in connection with the Construction Documents, and shall meet with UNLV as requested to facilitate its understanding of the Construction Documents. The Construction Documents are subject to UNLV review and comment.

UNLV shall provide comments to the Construction Documents in writing to Tenant within twenty one (21) days after receipt thereof. The parties shall discuss any disagreements relating thereto, with Tenant revising the Construction Documents thereafter and re-submitting them to UNLV for review and approval no later than thirty (30) days prior to the Term Commencement Date. No material revisions shall be made hereafter to the Construction Documents without UNLV’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

**Section 5.02 Standard of Review.** UNLV SHALL NOT WITHHOLD ITS APPROVAL OF ANY PLANS AND SPECIFICATIONS, OR MODIFICATIONS THERETO, THAT COMPLY WITH OR ARE CONSISTENT WITH THE UNLV GUIDELINES, PLANS AND SPECIFICATIONS PREVIOUSLY APPROVED BY UNLV, OR AS THE CASE MAY BE, ANY SPECIFIC REQUIREMENTS SET FORTH IN THE LEASE.

**Section 5.03 Financial Feasibility.** IT IS ACKNOWLEDGED THAT THE PROJECT’S DESIGN AND CONSTRUCTION WILL BE COMPLETED PURSUANT TO A DESIGN BUILD AGREEMENT WITH A GUARANTEED MAXIMUM PRICE (“**GMP**”) AND THAT

TENANT DESIRES THE PROJECT BE COMPLETED WITHIN THE GMP AND WITHOUT CHANGE ORDERS. THEREFORE, PROVIDED THE UNLV GUIDELINES AND ANY SPECIFIC REQUIREMENTS SET FORTH IN THE LEASE, AS THE CASE MAY BE, ARE SATISFIED, TENANT SHALL NOT BE REQUIRED TO MAKE ANY CHANGES BASED ON COMMENTS OF UNLV ("**DISCRETIONARY CHANGE**"), WHETHER MADE DURING THE DESIGN PHASE OR THE CONSTRUCTION PHASE, IF SUCH DISCRETIONARY CHANGES ARE LIKELY TO INCREASE THE GMP. IF TENANT DETERMINES CHANGES REQUESTED BY UNLV MAY INCREASE THE GMP, TENANT SHALL PROVIDE A WRITTEN OBJECTION TO UNLV AND, UPON REASONABLE WRITTEN REQUEST FROM UNLV, WILL PROVIDE AN EXPLANATION OF THE FINANCIAL IMPACT OF THE REQUESTED CHANGES. IF LANDLORD DESIRES TO PROCEED WITH THE DISCRETIONARY CHANGE OR REQUIRES ADDITIONS OR CHANGES OUTSIDE THE APPROVED CONSTRUCTION DOCUMENTS, LANDLORD SHALL BE RESPONSIBLE FOR ALL RELATED COSTS (INCLUDING, BUT NOT LIMITED TO, ANY DELAY OR SCHEDULING COSTS AND RE-DESIGN COSTS), UNLESS SUCH REQUIRED ADDITIONS OR CHANGES ARE A RESULT OF TENANT'S OR GENERAL CONTRACTOR'S ERROR OR OMISSION. IN THE EVENT OF SUCH A REQUEST, TENANT AGREES TO WORK WITH LANDLORD, IF POSSIBLE, TO CHANGE OR REDUCE OTHER PORTIONS OF THE PROJECT'S SCOPE BY MUTUAL AGREEMENT IN ORDER TO SUPPORT SUCH ADDITIONS OR CHANGES, AND TENANT FURTHER AGREES IT WILL NOT UNREASONABLY WITHHOLD CONSENT. LANDLORD ACKNOWLEDGES SUCH MUTUAL CHANGES OR MODIFICATIONS CANNOT BE MADE IF GENERAL CONTRACTOR HAS COMMENCED WORK ON THE ITEMS THAT LANDLORD REQUESTS TO BE CHANGED OR IF GENERAL CONTRACTOR HAS PURCHASED THE MATERIALS IN CONFORMANCE WITH THE ORIGINAL DESIGN.

**Section 5.04 Efforts to Resolve Objections.** In the event of any objections by UNLV to submissions by Tenant, which objections shall be made in writing within thirty (30) days of such submission to UNLV, the Parties shall endeavor to resolve such objections. All objections shall set forth in reasonable detail the basis for the objection. UNLV shall appoint no more than three (3) UNLV representatives who shall make themselves reasonably available during normal business hours to work with Tenant to resolve the objections as promptly as practicable. In the event of any objections by Tenant to changes requested by UNLV as set forth in Section 5.03 of this Exhibit, Tenant shall appoint no more than three (3) representatives (which may include Tenant's Representative), plus appropriate representatives of members of the Development Team, who shall make themselves reasonably available during normal business hours to work with UNLV to resolve the objections as promptly as practicable. In the event either party raises objections as set forth in this Section, the parties shall agree in good faith to establish a time period in which to resolve such objections.

## **ARTICLE 6**

### **Construction of the Project**

**Section 6.01 Requirements for Commencement of Construction.** Prior to the commencement of construction, Tenant shall furnish to UNLV:

- (A) A Completion Guarantee Letter;
- (B) evidence in a form acceptable to UNLV that the insurance required by the Lease has been obtained;

(C) the Plans and Specifications approved in writing by UNLV and, as necessary, by any Governmental Authority as provided in Section 5.01 above;

(D) a copy of the Schedule of Values and GMP;

(E) a binding "Construction Contract" for the construction of the Project between Tenant and the General Contractor;

(F) a copy of any and all building permits issued in connection with the development and construction of the Project, and consistent with the Construction Documents;

(G) a construction schedule approved by UNLV, which shall account for UNLV special events and activities near the Project site as further set forth in Section 6.08.

(H) those other items reasonably requested by UNLV in connection with the design, permitting, development, construction, maintenance or operation of the Project.

Tenant shall not have the right to proceed with development and construction of the Land until Tenant shall have obtained a Notice to Proceed from Landlord, as set forth in Article 1 of the Lease. Notwithstanding the items enumerated above, Landlord may issue a Notice to Proceed prior to Landlord's and SPWB's final approval of the Construction Documents, but no earlier than the completion of the 2015 Mountain West (Baseball) Tournament, in order to allow the Development Team to occupy the Premises to setup jobsite offices and to fence the Project. Tenant shall not proceed with construction of the Project until UNLV, SPWB, Clark County, Nevada and any other Governmental Authority, as applicable, has approved the final Construction Documents in writing. Tenant shall not authorize any variances from the approved Construction Documents that materially alters the nature or character of the Improvements, without prior written approval of UNLV, which shall not be unreasonably withheld. Any variance from the approved Construction Documents shall be subject to UNLV's acceptance.

**Section 6.02 Code Compliance.** Tenant and its agents, contractors, sub-contractors and employees shall comply with all requirements for construction of the Project which include, but are not necessarily limited to, all requirements of the Nevada SPWB ([www.spwb.nv.us](http://www.spwb.nv.us)) and other codes and regulations as referenced by them which were in effect as of the plan check application or as otherwise required by SPWB, and also the following: International Building Code, the International Fire Code, the National Fire Code, the Uniform Mechanical Code, Uniform Plumbing Code, the National Electrical Code, the International Energy Conservation Code, and the County Street, Utility Standards, and Fire Department access requirements; applicable sections of the NRS and the NAC ([www.leg.state.nv.us](http://www.leg.state.nv.us)) including those related to the Energy Policy, State Fire Marshall; the Divisions/Departments of Industrial Relations, Health and Human Services and Environmental Protection; and the American with Disabilities Act Accessibility Guidelines. Tenant acknowledges UNLV is a party to that certain Interlocal Agreement, dated as of October 15, 1996, between UNLV and the Clark County Department of Aviation, in which UNLV acknowledges that the Land lies within McCarran International Airport's Airport Environs Overlay District (AEOD) and agrees to comply with Federal Aviation Regulation (FAR) Part 150.

**Section 6.03 Commencement and Completion of Construction.** Upon satisfaction of all the requirements set forth in Section 6.01 of this Exhibit, UNLV will issue Tenant a Notice to Proceed and Tenant shall occupy the Land and commence construction of



the Project on the Commencement Date. Tenant shall complete construction of the Project by February 28, 2015. Tenant shall obtain a Certificate of Occupancy prior to acceptance of the Gift by UNLV. If Tenant experiences a delay in the construction of the Project, through no fault of Tenant, such as an act of God, a labor strike, or a material shortage, then provided that Tenant exercises due diligence in its attempt to complete construction, Tenant shall have a reasonable extension of time (as set forth in Section 1.05 of the Lease), which shall not be unreasonably withheld or delayed, each in which to complete construction of the Project.

**Section 6.04** To the extent applicable, Tenant shall be responsible for compliance with the prevailing wage provisions of Nev. Rev. Stat. Chapter 338.020 to 338.090, including recent changes implemented by the Nevada legislature and state government in the 2015 legislative session, such as SB 119, and other changes as applicable, in the design, construction, development and maintenance of the Improvements. Tenant shall indemnify, defend, save and hold harmless UNLV, and its regents, officers and employees from any claims, liabilities, losses, costs or expenses arising out of any violation or alleged violation of any provision of Nev. Rev. Stat. Chapter 338.

**Section 6.05 Governmental Regulations/Licenses.** At its cost and expense, Tenant is solely responsible for obtaining all required governmental, regulatory or administrative approvals necessary to permit the completion of the Project (collectively, the “**Governmental Approvals**”). In cases where public entities accept payment only from other public entities, Tenant shall pay SPWB plan check fees to UNLV, which will pay SPWB or any other government agency, as applicable. Tenant shall design and construct the Project in accordance with all applicable laws and regulations of governmental agencies having jurisdiction over the Project. Tenant, its employees, agents and representatives shall comply with all present and future laws, statutes, ordinances, regulations, requirements, rules and orders of all federal, state, county and municipal governments, agencies and government authorities that may be applicable to the completion of the Project.

**Section 6.06 Development Activities.** In connection with completion of the Project, it may be necessary to dedicate and/or grant certain portions of the Premises for streets, alleys and rights-of-way, including, without limitation, utility rights-of-way and easements, and/or to obtain various governmental approvals, permits and/or consents (collectively, “**Development Activities**”). Tenant shall not pursue any Development Activities without the prior written consent of UNLV, which consent shall be in accordance with the policies of the Board of Regents, and will not be unreasonably withheld, conditioned or delayed. If UNLV consents to Development Activities, then UNLV shall, within ten (10) days after written request from Tenant (at no expense to Tenant but without entitlement to any payment by UNLV to Tenant for the services rendered), join in applications, creation of easements, dedications of streets or rights-of-way, subdivisions and declarations of covenants, conditions and restrictions, execute instruments and documents and attend a reasonable number of meetings with Tenant and/or jurisdictional governmental agencies.

**Section 6.07 UNLV Participation.** UNLV shall have the right to: (1) notice and ability to attend all Project meetings; (2) construction observation; (3) construction punch list-activities; (4) option to review all submittals, shop drawings and Requests for Information (RFI's).

**Section 6.08 Coordination of Construction Activities.** Prior to commencement of construction and throughout the construction period for the Project, Tenant will meet with UNLV to coordinate on-site and off-site construction activities, as required, for activities that may impact UNLV and/or its existing operational activities and events. Such activities may involve UNLV academic, event and/or administrative/auxiliary departments in or adjacent to the construction area, utility companies and/or other County, State or governmental agencies, as deemed appropriate. UNLV shall provide a current list for a twelve month period and shall regularly update the Development Team of any changes thereto. Such coordination shall include not less than 72-hour notice to UNLV for temporary shut-off or disruption of any utility. UNLV shall require a minimum seven (7) day notice period where such shut-off or disruption will impact UNLV events, and such activities shall be coordinated with Project construction schedules. UNLV shall approve Tenant's reasonable mitigation measures and shall not unreasonably withhold or delay such approval.

**Section 6.09 UNLV's and SPWB's Right To Inspect Project.** Upon a minimum of 24 hours advance written and electronic notice to Tenant during the construction period, UNLV, the SPWB, or its designees may inspect the Project during normal working hours to verify compliance with SPWB-approved Plans and Specifications, to confirm any condition under the Lease, or for any other reasonable purpose. Tenant is responsible for making arrangements for inspections by SPWB as Tenant determines appropriate during the construction period. Tenant shall notify Landlord of scheduled inspections by the SPWB and other regulatory agencies.

**Section 6.10 As-Builts, Survey, Operations and Maintenance Manuals, Warranties and Title Insurance Endorsement.** Within ninety (90) days of the end of the Term, Tenant, at Tenant's expense, shall furnish to UNLV a complete set of record documents in electronic format ("CAD" and "PDF") based upon "as built" civil, landscape, architectural, structural, electrical, mechanical, plumbing and similar plans, warranties and operations and maintenance manuals with respect to the improvements on the Premises and an "as built" survey showing the location of the Improvements upon the Land, describing the Land boundaries and showing all easements and other items affecting the Land. Tenant shall also furnish to UNLV upon request, at Tenant's expense, copies of any and all other reports which Tenant may have in connection with the Premises, including, but not limited to, environmental surveys and assessments.

**Section 6.11 Protection of Work, Employees, Property and Public.** Tenant will continuously maintain adequate protection of all its work from damage and will protect UNLV's property from injury or loss arising in connection with the construction of the Project. Tenant will adequately protect adjacent property as provided by law and the Lease. Tenant will take all necessary precautions for the safety of employees on the Project and comply with all applicable provisions of the state's workers' compensation laws and all federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Project.

Tenant will designate a responsible member of its Development Team as Safety Officer (and report the name and position of the person so designated to UNLV), whose duty shall be to enforce safety regulations. Tenant will be responsible for the protection and subsequent repair of adjacent property during the course of construction from any potential damage caused by the construction of the Project.

## **ARTICLE 7**

### **Signs**

**Section 7.01 Temporary Project Signage.** Tenant shall be responsible for controlling all signage that may be placed on the Project site during the term of the Lease. Tenant shall be allowed to place a project information sign on the Project site of a size not to exceed four feet by eight feet (4' x 8') or 32 square feet total that shall contain, at Tenant's option, the names of the members of the Project Team and such other project information as the Parties shall agree, with the prior approval of UNLV as to the appearance and location of said sign. Approval for Tenant's project sign identifying the Project and its team members shall not be unreasonably withheld.

The Development Team shall be responsible to provide temporary or construction signage and signage redirecting pedestrian or vehicular traffic around project site at any time.

**EXHIBIT "D"**

**COMPLETION CERTIFICATE**

This Completion Date Certificate ("**Certificate**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "**Certificate Date**") by and between \_\_\_\_\_, ("**Tenant**"), and the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas ("**Landlord**" or "**UNLV**").

**WITNESSETH:**

**WHEREAS**, by that certain Ground Lease (the "**Lease**"), dated as of \_\_\_\_\_, 20\_\_\_\_, Landlord granted to Tenant lease of that certain parcel of land described on "Attachment 1" which is attached hereto (the "**Land**"); and

**WHEREAS**, in accordance with the Letter of Substantial Completion submitted to UNLV by Tenant, as shown in "Attachment 2," attached hereto and incorporated herein ("**Notice**"), construction of the Improvements were substantially completed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WHEREAS**, Landlord and Tenant agree to execute, acknowledge, and deliver this Certificate to each other establishing the term of the Lease;

**NOW, THEREFORE**, Landlord and Tenant agree as follows:

1. Section 1.03(a) of the Lease shall be revised to include that the term of the Lease, per the Notice, shall end on \_\_\_\_\_, 20\_\_\_\_. ("**Term**").
2. All other Lease terms remain unchanged and are in full force and effect.
3. Any terms not defined in this Certificate shall have the meanings given to them in the Lease.

[SIGNATURE PAGE FOLLOWS]

UNLV RFP 658-BC

**IN WITNESS WHEREOF**, Tenant and Landlord have duly executed this Certificate on the Certificate Date.

**LANDLORD:**

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION,  
ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS**

**RECOMMENDED:**

By: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_

**TENANT:**

**APPROVED:**

By: \_\_\_\_\_

Name:

Title:



