RA-6-93

RESOLUTION OF THE CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT AGENCY FINDING THE PROJECT PROPOSED BY THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS VEGAS, THE FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY, THE FREMONT STREET EXPERIENCE PARKING CORPORATION AND THE CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT AGENCY AS BEING IN COMPLIANCE WITH AND IN FURTHERANCE OF THE GOALS AND OBJECTIVES OF THE REDEVELOPMENT PLAN FOR THE DOWNTOWN LAS VEGAS AREA AND APPROVING THE EXECUTION THEREOF BY THE AGENCY

WHEREAS, the City Council for the City of Las Vegas adopted on March 5, 1986, by Ordinance 3218 and amended on February 3, 1988, by Ordinance 3339 that plan of redevelopment entitled, to wit: The Redevelopment Plan for the Downtown Las Vegas Redevelopment Area (the "Redevelopment Plan") for implementation by the City of Las Vegas Downtown Redevelopment Agency (the "Agency"); and

WHEREAS, the Redevelopment Plan identifies and designates an area (the "Redevelopment Area") within the corporate boundaries of the City of Las Vegas as in need of redevelopment in order to eliminate the environmental deficiencies and blight existing therein; and

WHEREAS, in the implementation of the Redevelopment Plan, the Agency is proposing to enter into that certain agreement entitled, to wit: Fremont Street Experience Project Development Agreement (the "Agreement") by and between the Agency, the City of Las Vegas, The Fremont Street Experience Limited Liability Company and the Fremont Street Experience Parking Corporation which provides for the rehabilitation and redevelopment of a portion of the Redevelopment Area (the "Site"); and

WHEREAS, pursuant to the Agreement, the Fremont Street Experience Parking Corporation has agreed to construct a public parking garage with retail shopping and storage facilities thereon (the"Improvements") for the benefit of the public in general and users of the Fremont Street Pedestrian Mall in consideration of the Agency paying all or part of the cost of acquiring the Acquisition Properties and conveying them to the Fremont Street Experience Parking Corporation; and

WHEREAS, the Governing Board of the Agency finds that the elimination of the environmental deficiencies and blight as set forth in the Redevelopment Plan and the construction of the Improvements pursuant to the Development Agreement require the acquisition of certain real property and any interests therein by the Agency either by a negotiation or, if necessary, by the exercise of the Agency's power of eminent domain; and

WHEREAS, prior to the adoption and approval of the Development Agreement, and after proper publication of notice thereof, the Agency conducted a public hearing pursuant to the requirements of NRS 279.472; and

WHEREAS, Section 279.486 of the NRS and Section 470.1.3 of the Redevelopment Plan authorizes the Agency, with the consent of the City Council, to pay all or part of the value of the land for and the cost of the construction of any building, facility, structure or other improvement which is publicly or privately owned and located within or without the Redevelopment Area; and

WHEREAS, Section 279.486 of the NRS requires that before the Agency consents to the payment of all or part of the value of the land for and the cost of the construction of any buildings facility, structure or other improvement and the installation of any improvement which is publicly or privately owned shall determine that:

(a) The buildings, facilities, structures or other improvements are of benefit to the Redevelopment Area or the immediate neighborhood in which the Redevelopment Area is located; and

(b) No other reasonable means of financing those buildings, facilities, structures or other improvements are available.

NOW, THEREFORE, THE GOVERNING BOARD OF THE AGENCY DOES HEREBY RESOLVE THE FOLLOWING:

SECTION 1: The Agency hereby determines that:

(a) The Improvements are of benefit to the Redevelopment Area and the immediate neighborhood in which the Redevelopment Area is located; and

(b) No other reasonable means of financing the Improvements are available.

SECTION 2: The Governing Board hereby consents to the Agency acquiring the Acquisition Properties and conveying them to the Fremont Street Experience Parking Corporation for the purpose of constructing the Improvements as set forth in the Development Agreement.

SECTION 3: The Development Agreement attached hereto as Exhibit "A" is hereby approved and determined to be in compliance with and in furtherance of the goals and objectives of the Redevelopment Plan, and the Chairperson of the Governing Board of the Agency is hereby authorized and directed to execute the Development Agreement for and on behalf of the Agency, and to execute any and all additional documents (including any applicable Attachments to the Development Agreement) and to perform any additional acts necessary to carry out the intent and purpose of the Development Agreement.

THE FOREGOING RESOLUTION was approved this 20th day of October, 1993, by the following vote:

VOTING "AYE": 4

VOTING "NAY": 0

ABSENT: Ward 3 vacant

ABSTAIN: 0

CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT AGENCY

By [signature]
JAN LAVERTY JONES, Chairperson
10/27/93

ATTEST:

[signature]
KATHLEEN M. TIGHE, City Clerk

OCT 20 1993

FREMONT STREET EXPERIENCE PROJECT DEVELOPMENT AGREEMENT

This Fremont Street Experience Project Development Agreement (this "Agreement") is made and executed as of this 20th day of October, 1993 among the **CITY OF LAS VEGAS, NEVADA** (the "City"), a municipal corporation of the State of Nevada (the "State"), the **CITY OF LAS VEGAS DOWNTOWN REDEVELOPMENT AGENCY** (the "Agency"), **THE FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY** (the "Company"), and **FREMONT STREET EXPERIENCE PARKING CORPORATION** (the "Corporation").

WHEREAS, each of the parties to this Agreement represents and warrants that it has the power to enter into, execute and perform this Agreement as provided herein; and

WHEREAS, it is the desire of the parties hereto that the Company construct the Celestial Vault Project, Right-of-Way Improvements Project and Skyfloat Project (all as defined below and collectively referred to herein as the "Company Projects") and that the Corporation construct the Parking Garage Project (as defined below) (collectively, the "Project") and that such Projects be funded in part by the parties to this Agreement, all as herein provided; and

WHEREAS, the construction of the Project is in furtherance of and a part of the Agency's redevelopment plan for the redevelopment of the downtown area of the City; and

WHEREAS, the City has adopted its Ordinance No. 3747 (the "Ordinance") which creates a pedestrian mall in a part of Fremont Street, and designates the Company as the Private Operating Entity of that mall pursuant to Ch. 368, 1993 Nevada Session Laws (the "Act"); and

WHEREAS, this Agreement is a culmination of negotiations of the above parties and those four parties are coming together in a way that none can separately to enhance employment opportunities, keep companies from leaving the downtown area, attract new businesses to the downtown area, and provide inducement to Company member and non-member hotels and other businesses in the downtown area thereby benefitting the public and community at large.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

GENERAL; PROJECT PROPERTY.

1.1. **Description**. The Project shall consist of the Celestial Vault Project, the "First Western" Site Project and the "Right-of Way Improvements Project," each as described in Exhibit A hereto (herein, the "Celestial Vault Project," the "Parking Garage Project," and the "Right-of-Way Improvements Project," respectively), and sky floats which will operate in the celestial vault (the "Skyfloat Project") and all related appurtenances and equipment therefor. The Project shall be substantially as described in the Fremont Street Experience Implementation Study Final Report dated October 1992 Volumes 1 through 4, and Executive Summary Volume 1, Revised January 1993, (collectively "Base Books") copies of all of which are on file in the office of the City Clerk.

1.2. **Parking Garage Property**.

A. Transfer of Title. Upon the Corporation obtaining a favorable revenue ruling as referred to in Section 1.10, the Agency shall transfer to the Corporation fee simple title to the real property on which the Parking Garage Project will be located legally described in the description attached to Exhibit B (the "Parking Garage Property") by a grant, bargain and sale deed (the "Deed") in the form hereto attached as Exhibit B, subject to no exceptions which would materially interfere with use of the Parking Garage Project as contemplated in this Agreement. Simultaneously, the Corporation shall grant to the City a first deed of trust on the Parking Garage Property in the form attached as Exhibit C (the "Deed of Trust") to secure the performance of the Company's obligations hereunder and under the Management Agreement between the City and

Company, the form of which is attached as Exhibit D.

B. Recording Instructions. This Agreement constitutes the joint recording instructions of the Agency and the Corporation, and a duplicate original of this Agreement shall be delivered to a recording agent to be mutually agreed upon by the parties, (the "Recording Agent") upon the execution hereof. The Agency and the Corporation shall provide such additional recording instructions as shall be necessary and consistent with this Agreement. The Recording Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 1.2B in writing, delivered to the Agency and to the Corporation within five (5) days after the delivery of this Agreement to the Recording Agent, shall carry out its duties as Recording Agent hereunder.

The Agency shall pay from the trust account established under Section 4.3 of this Agreement to the Recording Agent the following fees, charges and costs promptly after the Recording Agent has notified the Agency of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the recording:

1. The fee of the Recording Agent.

2. The premium for an owner's title insurance policy in form and amount satisfactory to the Corporation insuring the Corporation's title to the Parking Garage Property and any special endorsements requested by the Corporation and the premium for similar lender's title insurance, insuring the first priority interest of the City and the Agency in the Parking Garage Property under the Deed of Trust.

3. Recording fees for the Deed and the Deed of Trust.

4. Notary fees.

5. Any State, County or City document or transfer taxes.

6. All other closing expenses.

Upon delivery of the Deed and the Deed of Trust to the Recording Agent by the Agency and the Corporation and receipt of the above amounts from the Agency, the

Recording Agent shall record the Deed and Deed of Trust when title can be vested in the Corporation and title insurance can be issued in accordance with the terms and provisions of this Agreement.

The Recording Agent is authorized to:

a. Pay and charge the Agency for any fees, charges and costs payable under this Section 1.2B. Before such payments are made, the Recording Agent shall notify the Agency and the Corporation of the fees, charges and costs necessary to clear title (other than consideration for the Parking Garage Property) and record the Deed and Deed of Trust; and

b. Disburse funds and deliver the Deed, Deed of Trust and other documents to the parties entitled thereto when the conditions therefor have been fulfilled by the Agency and the Corporation; and

c. Record any instrument delivered through it, if necessary or proper, to vest title in the Corporation and to vest the interest in the Parking Garage Property granted by the Deed of Trust in the City and the Agency in accordance with the terms and provisions of this Agreement.

Recording shall be accomplished as soon as reasonably possible, considering the likely need to pursue court proceedings in order to obtain title to a portion of the Parking Garage Property. The Agency agrees to use its best efforts to obtain title to the Parking Garage Property and, subject to Section 1.10, transfer it to the Corporation (on the conditions provided herein) as soon as reasonably possible. Unless recording is accomplished and the Parking Garage Property conveyed to the Corporation prior to the date specified in paragraph E of this Section, possession of the Parking Garage Property will be transferred from the Agency to the Corporation on that date. If possession is not transferred on or before that date or any extension thereof requested by the Agency and agreed to by the Corporation, any party may, in writing terminate this Agreement, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate, and the parties shall have no further liabilities to each other. Should the Corporation terminate this Agreement as a result of such failure to transfer possession, the same shall be the Corporation's and the Company's sole and exclusive remedy for such failure to so deliver possession.

Any amendment of these recording instructions shall be in writing and signed by the Agency and the Corporation. At the time of any amendment, the Recording Agent shall agree to carry out its duties as Recording Agent under such amendment.

All communications from the Recording Agent to the Agency or the Corporation shall be directed to the addresses and in the manner established in this Agreement for notices, demands and communications among the parties hereto.

The liability of the Recording Agent under this Agreement is limited to performance of the obligations imposed upon it under this Section 1.2B.

C. <u>No Real Estate Agent Fees.</u> Neither the Agency nor the Corporation shall be liable for any real estate commission or brokerage fees which may arise herefrom. The Agency and the Corporation each represent that neither has engaged any broker, agent or finder in connection with this transaction.

D. <u>Taxes and Assessments.</u> Ad valorem taxes and assessments, if any, on the Parking Garage Property, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to the transfer of possession shall be borne by the Agency. All ad valorem taxes and assessments levied or imposed for any period commencing after transfer of possession shall be paid by the Corporation.

E. <u>Transfer of Possession</u>. Possession of the Parking Garage Property sufficient to allow its use by the Corporation as contemplated by this Agreement will be transferred to the Corporation from the Agency by the earlier of January 15, 1994 or the date of recording of the Deed, provided that the Agency shall provide the Corporation access to the Parking Garage Property for the purpose of environmental and other similar studies as soon as reasonably possible. Except as otherwise provided in the Deed and except for easements, rights-of-way and other restrictions and limited rights of use of record which do not materially interfere with the Corporation's use of such property as contemplated by this Agreement, and any leases with a term of 1 month or less, possession of the Parking Garage Property shall be transferred free of any encumbrances or other restrictions or limitations. All income from the Parking Garage Property while the Corporation has the right of possession under this Section shall belong to the Corporation.

F. Zoning of the Site. The Corporation shall be responsible to obtain zoning of the Parking Garage Property that permits the development, construction and operation of the Parking Garage Project in accordance with the provisions of this Agreement.

G. Condition of the Parking Garage Property. The Parking Garage Property shall be conveyed from the Agency to the Corporation in an "as is" condition. The Agency shall not be responsible for any items of site work or any environmental or hazardous material or conditions on the Parking Garage Property. The Agency is responsible for the removal of asbestos in the buildings located at 118 Las Vegas Blvd. South and 113 South Fourth Street and will provide proof of such removal by providing a document signed by John Worlund, P.E. (Converse Associates) indicating that such asbestos removal has been done. However, the Corporation may elect to assume responsibility for removing such asbestos and shall be reimbursed by the Agency for their cost of such removal not to exceed $120,000.00. The Corporation may request, and the Agency shall provide, copies of data and information on the Parking Garage Property available to the Agency, but any such information furnished shall be without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

It shall be the sole responsibility of the Corporation, at the Corporation's sole expense, to investigate and determine the soil and other conditions of the Parking Garage Property and the suitability of such soil and other conditions for the improvements to be constructed by the Corporation, provided that the cost of any such studies may be paid from the

Agency Funds (as hereinafter defined). If the soil and other conditions are not in all respects entirely suitable for the use or uses to which the Parking Garage Property will be put, then except as provided in Section 1.9, it is the sole responsibility and obligation of the Corporation to take such action as may be necessary to place the soil and other conditions of the Parking Garage Property in a condition suitable for the Parking Garage Project.

H. Work by the Corporation before Close of Escrow. Prior to the transfer of possession, representatives of the Corporation shall have the right of access to the portion of the Parking Garage Property which the Agency then owns or controls at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. After transfer of possession, the Corporation may commence construction work on the Parking Garage Project. Any work by the Corporation under this paragraph shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

The Corporation shall hold the Agency and the City harmless for any injury or damages arising out of any activity pursuant to this paragraph and shall save and protect the Agency against any claims resulting from such work, access or use of the Parking Garage Property.

Upon request, copies of data, surveys and tests obtained or made by the Corporation on the Parking Garage Property shall be filed with the Agency.

I. Cost of Parking Garage Property. The Agency will pay the cost of acquiring the Parking Garage Property from its present owners, however, the Corporation agrees to pay to the Agency all of its costs in acquiring the Parking Garage Property in excess of $6,400,000. If the cost of acquiring the Parking Garage Property is less than $6,400,000 the Agency shall deposit the difference between that cost and $6,400,000 in the account mentioned in Section 4.3 hereof. The Agency will consult with the Corporation regarding, and keep the Corporation informed of the status of, all negotiations and other proceedings to acquire any portion of such property. The Agency will notify the Corporation prior to signing a contract, settlement or other transaction for the acquisition of any of the Parking Garage Property. If the transaction requires payment by the Agency of a price that exceeds by more than 10% the most recent appraisal of that Property prepared for the Agency, the Agency will not agree to the transaction if the Corporation objects thereto in writing within five (5) business days after the receipt of notice by the Corporation of the proposed transaction.

In calculating the cost of acquiring the Parking Garage Property, all out of pocket expenses of the Agency related thereto shall be included, including, without limitation, the cost of purchasing the Parking Garage Property, condemnation awards, all legal fees and expenses, any environmental surveys paid by the Agency and any asbestos removal on a portion of the Parking Garage Property accomplished by the Agency or the Corporation pursuant to Section 1.2G. The Corporation's obligation to pay the Agency any costs in excess of $6,400,000 shall be payable only from the following in the following order of priority: (i) amounts described in Section 4.3 hereof which are not needed for the construction of the Parking Garage Project, and (ii) and the net rental revenues from the lease of space fronting on Fremont Street on the first floor of the Parking Garage Project (the "Retail Space"), and the Corporation shall apply all net rental revenues of the Retail Space to meeting this obligation until the Agency has been fully paid. "Net rental revenues" for this purpose means the rental revenues of the Retail Space less related expenses, including, but not limited to, applicable income taxes, but exclusive of depreciation, amortization and similar types of expenses, related to the Retail Space, determined in accordance with generally accepted accounting principles. The repayment of indebtedness for borrowed money is not a cash expense for this purpose. If amounts described in clause (i) or (ii) above arise before acquisition by the Agency of title to the entire Parking Garage Property, and if the amounts claimed due by the owners of the property not yet acquired, plus amounts already paid by the Agency to other owners for such property, exceeds $6,400,000, the amounts described in said clauses shall first be applied to pay the Agency for costs already paid for acquisition of the Parking Garage Property in excess of $6,400,000. Once such excess, if any, has been paid, the amounts described in clauses (i) and (ii) above shall be deposited with an escrowee pursuant to an agreement, both satisfactory to the Agency and the Corporation, until the total amount in such escrow equals the amount of such claimed excess. As particular properties are acquired, the Agency shall be paid out of the escrow for such amounts as it is entitled to under this paragraph and the Corporation shall be paid such amount as is necessary so that the amount in escrow does not exceed the amount by which the sum of the amounts claimed due for still unacquired portions of the Parking Garage Property plus amounts previously paid to acquire the Parking Garage Property exceed the sum of $6,400,000 plus the amounts previously reimbursed to the Agency under this Section.

1.3 **Celestial Vault Property**.

A. Airspace Easements. The Company and the City will obtain for the City "Airspace Easements" from the owners of all property on which the Celestial Vault Project will be constructed or on which the Celestial Vault Project structures will encroach (the "Celestial Vault Property"), except the City and the Agency, in substantially the form attached as Exhibit E. Any changes from the form attached as Exhibit E must be approved by the City and the Company. The Company and the City agree to use their best efforts to obtain these Airspace Easements or court orders giving the Company the right to occupy the same by February 1, 1994. Any out of pocket costs incurred in obtaining the Airspace Easements will be paid from the trust account described in Section 4.2A. The Company shall be responsible for obtaining Airspace Easements from its members, its members' owners, and the owners of property leased to its members and to its members' owners. The City shall be responsible for obtaining all other Airspace Easements. The Company may request the Agency or the City to use its powers of condemnation to assist in acquiring any Airspace Easements the Company deems necessary for the Project, and the requested entity shall do so. The Company shall use its best efforts to make such requests on or before December 1, 1993. Concurrently with any such request, the Company shall furnish the City with a copy of any appraisal the Company may have obtained with respect to the subject property. The Company will record each Airspace Easement in the office of the Clark County Recorder. The Company hereby agrees to all provisions of the Airspace Easement and agrees to perform all obligations of the City thereunder.

B. [Intentionally Deleted]

C. Use of Property for Celestial Vault. Subject to the City's normal conditions for issuance of a permit to work in or along the public right-of-way, the City will issue a permit to the Company to construct the Celestial Vault Project on that portion of the Celestial Vault Property owned by the City or the Agency or subject to an Airspace Easement.

D. Condition of Property. It shall be the sole responsibility of the Company to investigate and determine the soil and other conditions of the Celestial Vault Property and the suitability of the soil and other conditions for the improvements to be constructed by the Company. If the soil and other conditions are not in all respects entirely suitable for the use or uses to which the property will be put, then except as provided in Section 1.9, it is the sole responsibility and obligation of the Company to take such action as may be necessary to place the soil and other conditions of the property in a condition suitable for the Celestial Vault Project.

1.4 **Right-of-Way Improvements Project**. Subject to the City's normal conditions for issuance of a permit to work in or along the public right-of-way, the City will issue a permit to the Company to construct the Right-of-Way Improvements Project.

1.5 **Skyfloat Project**. The Company agrees to construct and install the Skyfloat Project.

1.6 **Security Interest in Company Property**. Subject to Section 1.10, the Company hereby grants the City and the Agency a first priority security interest in all of the property owned by the Company with respect to the Project or otherwise, including, without limitation, tangible and intangible personal property, fixtures, rents, revenues and profits and its trust account as provided in Section 4.1A hereof, and the notes mentioned in Section 4.1B. This security interest secures the performance of this Agreement and the Management Agreement by the Company. The Company agrees not to consent to a lien or encumbrance on any of the property described in this Section 1.6 other than the liens or encumbrances granted in this Agreement and its exhibits and promises to pay all taxes and other lawful charges with respect to any part of the Company Projects and its other property, and to execute and deliver all documents in form and substance reasonably satisfactory to the City and the Agency as are necessary to perfect the security interest granted hereby, including, without limitation, deeds of trust, assignments, leases and rents, UCC Financing Statements and UCC Continuation Statements.

1.7 **Intellectual Property**. The Company will own all intellectual property rights, including, without limitation, any patent, trademark, service mark, trade dress, and copyright rights developed or acquired by the parties relating to the Project. The Company shall have the right to acquire such registrations or other means of protection as it sees fit for any such properties, in the Company's name and at its own expense. The City shall have the right to include information and photographs relating to the Project and any related logos in the City's customary media advertising and promotional materials provided that the same does not harm or disparage the properties referred to above in this paragraph. If the Company does not renew the Management Agreement or it is terminated because of the Company's breach, the Company shall grant the City by separate document a non-exclusive, royalty-free license to use the logos, trademarks and other intellectual property reasonably needed to continue to operate the Project.

1.8 **Profits**. The Company agrees that all of its net operating profits on the Project, computed on a consolidated basis with the Corporation, determined in accordance with generally accepted accounting principles and determined after payment of any current or previous operating deficit and after returning contributions to the Company members will be used first to fund a reserve in an amount mutually determined by the parties for demolition of the Celestial Vault Project at the end of the term of the Management Agreement and then to improve, better, extend, expand or enlarge the Project.

1.9 **Soil Conditions/Environmental Hazards**. If the Company or the Corporation encounters any unusual soil conditions or environmental hazards not caused by either of them in any of the Project property and the Company or the Corporation reasonably determines that cost of alleviating the soil conditions or eliminating the environmental hazard to such an extent as to permit construction and operation of the Project as is contemplated by this Agreement and the Management Agreement renders the Project uneconomical, the Company or the Corporation may notify the City of that fact and thereupon this Agreement will terminate without further liability of any party to any other, except that if title or the right of possession to the Parking Garage Property has already been conveyed to the Corporation, the Corporation shall reconvey such property or right of possession to the Agency.

1.10 **Tax Contingency**. Expeditiously after the execution hereof, the Corporation shall apply for a ruling from the Internal Revenue Service ("IRS") that the transfer of the Parking Garage Property to the Corporation and the funding of the development of the Parking Garage Project as provided herein will not cause the Corporation or the Company to recognize any income or similar tax. The Corporation shall keep the Agency informed of the status of such proceedings and shall, to the extent lawfully permitted, allow the Agency the right to participate therein. The Corporation, with the consent of the Agency, may withdraw the request for such ruling at any time. In the event that the IRS has not granted a favorable ruling on or before August 31, 1994, or on such earlier date as the IRS rules that such transactions will be taxable to the Corporation or the request for a ruling is withdrawn, at the option of the City exercised by written notice to the other parties within thirty (30) days after August 31, 1994, or the date the Agency receives notice of such unfavorable ruling or withdrawal of the request, whichever is earlier, either (i) this Agreement shall be amended to provide that no lien on the Corporation's assets or stock shall be granted or (ii) the Lease Option shall become effective, provided that the alternative in clause (i) may not be effected unless the IRS has ruled that such alternative will not cause the Corporation or the Company to recognize any tax as a result of the above described transactions. Except as provided in this Section, this Agreement, including, but not limited to, the Agency's obligation to obtain possession of, and title to, the Parking Garage Property, and the Management Agreement shall remain in effect after either of the above alternatives has been implemented. To the extent necessary to effect the applicable alternative, this Agreement and the Management Agreement shall be accordingly amended.

Under the Lease Option, the Agency shall own the Parking Garage Project, which shall be constructed as herein provided, except that the Agency shall be responsible for all acquisition costs, even if they exceed $6,400,000 (including reimbursement for any sums already applied in payment of such excess pursuant to Section 1.2I). All of the Parking Garage Project, except for the parking portion thereof ("Leased Property"), shall be leased to the Corporation for a reasonable rent for a term of fifty (50) years, or such lesser term as the Corporation deems appropriate, provided that the aggregate of taxes paid on the Celestial Vault Project and Parking Garage Project by the Corporation and the Company, rent for the Leased Space and the management fee referred to in Section 3.4 of the Management Agreement shall be the same as the aggregate now due under this Agreement and the Management Agreement for taxes on the Celestial Vault Project and the Parking Garage Property and such management fee. Under the lease for the Leased Property the Corporation shall be entitled to use the Leased Property in the same manner as now permitted under this Agreement and the Management Agreement. The Company shall also be entitled to all net revenue from the remainder of the Parking Garage Project ("Parking Space") for a period equal to the term of the Management Agreement provided that such net revenues after taxes must be used to defray the cost of operating, maintaining and repairing the Company Projects. Subject only to mandatory restrictions under tax laws related to the issuance of tax free bonds, the Corporation shall be provided validation rights which will be sufficient to allow the Company's members to validate parking in the Parking Space as fully as is now permitted under this Agreement and the Management Agreement. The Corporation shall be entitled to sell advertising space inside and outside of the Parking Garage Project. The

Corporation will also be provided adequate assurances that the net revenue from the Parking Space will be maximized to the same extent, and the parking space will be operated in the same manner, as it would be under the current terms of this Agreement and the Management Agreement. Subject only to mandatory restrictions under tax laws related to issuance of tax free bonds, the Corporation and the Agency will enter into an agreement by which the Corporation manages the Parking Space with all the rights with respect thereto as now provided in this Agreement and the Management Agreement. The Corporation and the Agency shall also enter into an agreement by which any successor manager must manage the Parking Space in the same manner as the Corporation. All of the Corporation's rights under the Lease Option may be transferred to the Company or any other affiliate with an equivalent net worth, provided that the Corporation shall remain liable for all of its obligations under the Lease Option.

ARTICLE II

ARCHITECTURAL SERVICES.

2.1. **Architectural Services.** The Company and the Corporation shall contract with JPI - Nevada, Ltd/Wang, Cloud ("JPI") for architectural services with respect to the Project by no later than December 1, 1993 or twenty days after all deposits made in Sections 4.2 and 4.3 are made, whichever is later. The contract with JPI (the "JPI Contract") shall be presented to the City and the Agency for their review at least five (5) business days before it is effective. The JPI Contract shall among other things provide that neither JPI nor any affiliated corporation shall use any plans, drawings, design work, or other work product with respect to the Skyfloat Project generated under the JPI Contract in any other project in the United States, Canada or Mexico, or accept a job or consult on a job in the United States, Mexico or Canada for an improvement similar to the Skyfloat Project for a period of ten years without the written consent of the City, the Company and the Corporation.

2.2. **Construction Plans, Drawings and Related Documents**.

The Company and the Corporation will cause to be prepared by JPI or others and submit to the City and the Agency for review and approval, all construction plans, drawings, and similar documents ("Plans") for all parts of the Project. The Plans shall be submitted as completed. The City and the Agency review contemplated by this paragraph is in addition to all other City or Agency reviews required by law, and shall take place concurrently with other City reviews required by law. Plans shall be deemed to be approved under this Section if the City or the Agency does not raise an objection to the Plans by the time the City and, if applicable, the Agency has approved those Plans pursuant to the other reviews required by law. The review contemplated by this Section is only to assure that the Plans substantially conform to the Project as described in the Base Books, to the extent not covered by other reviews required by law. Should there be any dispute as to whether the Plans so conform, the decision of JPI made in good faith with respect to all parties shall be binding on all parties. Notwithstanding City and the Agency review and approval of Plans, it is the Company's or the Corporation's responsibility, as applicable, to see that all required governmental and other permits are obtained at the required time and that all contract requirements listed in Section 3.2 are met.

During the preparation of the Plans, the City and the Agency staff, the Company and the Corporation shall hold regular progress meetings not less frequently than monthly to coordinate the preparation of, submission to, and review of the Plans by the City and the Agency. The City, the Agency, the Company and the Corporation shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City and the Agency can receive prompt and speedy consideration, provided that nothing in this paragraph shall give the City or the Agency any approval rights not otherwise required by law or provided in this Agreement.

If any revisions or corrections of the Plans approved by the City and the Agency shall be required by any government official, agency, department or bureau having jurisdiction, the Company, the Corporation, the City and the Agency shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

Any disapproval of Plans shall state in writing the reasons for disapproval and the changes which the City and the Agency request be made. Such reasons and such changes must be substantially consistent with any items previously approved or deemed approved hereunder by the City and the Agency. The Company or the Corporation, as applicable, upon receipt of a disapproval shall revise such plans, drawings and related documents and resubmit them to the City and the Agency as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City and the Agency be entitled to require changes substantially inconsistent with any previously approved items.

If the Company or the Corporation desires to make any substantial change in the Plans after their approval by the City and the Agency, the Company or the Corporation shall submit the proposed change to the City or the Agency for their approval, as described below. For the purposes of this Section, a change is "substantial" if either it is required to be submitted to and approved by the City or the Agency pursuant to law or if it is determined to be substantial by JPI in good faith with respect to all parties. If other review and approval are required by law, the City's and Agency's review pursuant to this Section must be completed at or prior to the time approval is granted pursuant to the review required by law; otherwise, the City's and Agency's review must be completed in three (3) business days. If the change is not disapproved in writing by the deadline stated in the preceding sentence for the completion of review, the City and the Agency shall be deemed to have approved such requested change. Any disapproval must state in detail the reason therefor.

ARTICLE III

<u>CONSTRUCTION OF PROJECT</u>.

3.1. <u>In General</u>. The Company shall be responsible for the construction of the Company Projects and the Corporation shall be responsible for the construction of the Parking Garage Project.

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3.2. **Contract Requirements**.

A. Public Funds Contract Law Requirements. The Company and the Corporation shall comply with the requirements of Ch. 279, 332, 338 and 339 of NRS and with all other statutes that apply to public works, contracting and bidding and with the policies listed in Exhibit F in contracting for any work the cost of which will be paid from public funds (i.e., from the accounts mentioned in Sections 4.2 and 4.3). The Company and the Corporation shall comply with the requirements of NRS 338.010 to 338.090 in contracting for work or hiring workmen on all aspects of the Project, including those parts that are not funded with public funds. A copy of the prevailing wage rates in effect for the period October 1, 1993 - September 30, 1994 is attached hereto as Exhibit G.

B. Employment Plan, MBE/WBE Guideline and Policy Requirements. The Corporation shall adopt the objectives of the City of Las Vegas Downtown Redevelopment Agency Employment Plan Policy, in accordance with the Employment Plan attached as Exhibit H. In addition, in all cases where public funds are expended the Company and the Corporation shall adopt the guidelines established in the City's Minority and Women-Owned Business Enterprises Policy in all contracts for construction and, to the extent applicable, shall require that all contractors and subcontractors comply with that policy and those guidelines.

3.3 **Construction Schedule.** As soon as reasonably possible, but not later than June 30, 1994 the Company and the Corporation shall furnish to the City and the Agency, respectively, a proposed construction schedule, showing the expected construction schedules for each part of the Project to be constructed by such party and an expected expenditure of funds schedule, showing the amount expected to be spent, its source and the purpose of the expense for each month during the construction period. The Company and the Corporation will revise and update these schedules as frequently as necessary.

The Company and the Corporation each will promptly begin and thereafter diligently prosecute to completion the construction of that portion of the Project to be constructed by it. The Company and the Corporation will each complete its respective portion of the Project by August 15, 1996, or such reasonable extension thereof as may be granted by the City and the Agency.

During the period of construction, but not more frequently than once a month, the Company and the Corporation shall submit to the City and the Agency a written progress report of the construction when and as requested by the City and the Agency. The report shall include a reasonable number of construction photographs taken since the last report submitted to the City and the Agency.

3.4 **Construction and Acceptance Procedure**.

The Company and the Corporation shall cause all construction to be accomplished in strict conformity with the Plans, except as changed by changes as are approved under the procedure for changing approved Plans as described in Section 2.2 hereof, or which do not require such approval.

3.5 **Insurance**.

A. Liability and Workers' Compensation Insurance. Prior to the commencement of construction, the Company and/or the Corporation shall furnish or cause to be furnished to the Agency and the City, duplicate originals or appropriate certificates of comprehensive general liability insurance policies in the amount of at least $25,000,000 combined single limit naming the Company, the Corporation, the Agency and the City, and their officers and employees, as insureds. The Company and/or the Corporation shall also furnish or cause to be furnished to the City and the Agency evidence satisfactory to the City and the Agency that they and any contractor with whom they have contracted for the performance of work carries workers' compensation insurance as required by law.

B. Casualty Insurance. Prior to the commencement of construction, the Company and the Corporation each shall furnish or cause to be furnished to the City and the Agency duplicate originals or appropriate certificates of an "All Risk", Builder's Risk or Course of Construction Insurance with a limit equal to the maximum possible loss and all materials and equipment to be incorporated in its respective portion of the Project, including property in transit or elsewhere, and including the interests of the City, the Agency, the Company, the Corporation, as the case may be, and their related entities, their contractors and their subcontractors of any tier providing equipment, materials or services for the Project. Proceeds of any such insurance shall be made available to reconstruct and repair the damage to the Project for which the insurance was received. Such insurance shall include an insurer's waiver of subrogation in favor of each party insured thereunder.

C. <u>Term of Insurance.</u> The obligations of each of the Company and the Corporation set forth in this Section 3.5 shall remain in effect until the later of (i) a final Certificate of Completion has been issued by the City and the Agency covering the entire Project as hereinafter provided, or (ii) comprehensive general liability and casualty policies of insurance are provided by the Company to the City as provided in the Management Agreement. All of the policies mentioned in this Section shall provide that they will not be amended or cancelled without 30 days' notice to the City and the Agency.

3.6 **<u>Bonds</u>**. All performance, payment, guarantee and other bonds obtained for contractors or subcontractors with respect to any part of the Project shall name the Agency and the City as additional insureds, provided that all proceeds thereof shall be made available for repair, restoration or operation of the Project.

3.7 **<u>City and Other Governmental Agency Permits</u>**. At such time as is required by law, the Company and the Corporation shall, at their respective expense, secure or cause to be secured any and all required permits and pay any and all fees which may be required by the City or any other governmental agency affected by the construction of the Project. The City hereby waives payment of the fees listed in Exhibit I.

3.8 **<u>Rights of Access</u>**. For the purposes of assuring compliance with this Agreement, representatives of the Agency and the City shall have the reasonable right of access to any area where construction is taking place without charge or fee and at normal construction hours during the period of construction, including, but not limited to, the inspection of the work being performed in constructing the Project.

3.9 **Local, State and Federal Laws**. The Company and the Corporation shall each carry out the construction of its portion of the Project in conformity with all applicable laws, including, without limitation the Americans with Disabilities Act and all applicable federal and state labor standards, safety and environmental laws.

3.10 **Taxes, Assessments, Encumbrances and Liens**. Each of the Company and the Corporation will not place or allow to be placed on any property on which the Project is located or any part of the Project itself which is owned by it, any mortgage, trust deed, encumbrance or lien, including any materialmen's or mechanic's lien, other than the security interests granted to the City and the Agency by this Agreement. The Company and the Corporation shall each remove or have removed any levy or attachment made on any such property or on the Project (or any portion thereof) which is owned by it within 15 days after such levy or attachment. Nothing herein contained shall be deemed to prohibit the Company and the Corporation from contesting in good faith the validity or amounts of any tax, assessment, encumbrance or lien without being required to remove the same during the pendency of such contest, nor to limit the remedies available to the Company and the Corporation in respect thereto.

3.11 **Completion**. When the Project has been completed to the satisfaction of the Company and the Corporation, they shall request a Certificate of Completion from the City and the Agency. If the Project is complete as required by this Agreement, that certificate will be issued and the insurance requirements of Section 3.5 will no longer apply (but the applicable insurance requirements of the Management Agreement shall apply). Failure to issue such certificate or state the reasons for such failure within ten (10) days after either the Company or the Corporation requests such certificate shall be deemed issuance of such certificate. The Company or the Corporation, as the case may be, will furnish to the City copies of "as built" drawings for all components of the Project at such reasonable time as those drawings are available.

3.12 **Enforcement of Warranties, Guarantees and Bonds**. The Company or the Corporation, as applicable, will be responsible for enforcing all warranties, guarantees and bonds given with respect to workmanship and materials furnished to or for the Project or for repairing any defect which is the subject thereof.

ARTICLE IV

FUNDING.

4.1 **Company Funds**.

A. Cash. The Company agrees to deposit into a trust account at a bank to be mutually agreed upon by the parties to this Agreement the sum of $17,000,000, less up to $1,000,000 which has been expended on the Project before the date this deposit is required, to pay a portion of the cost of the Project, provided that instead of so reducing the deposit, the Company or the Corporation may request reimbursement for all or a portion of such costs, which shall be funded in the same manner as provided in this Article IV for costs incurred after the date of the deposits. This deposit will be made on the next business day after the Company has been notified that all the deposits required by Sections 4.2 and 4.3 have been made. If the deposit required by this Section is not made at that time, in addition to all other remedies the City and the Agency may have, the City and the Agency may terminate this Agreement and seek damages from the Company for all costs and expenses incurred by either or both the City or the Agency in complying with or performing the terms of this Agreement to the date of termination and all future costs related to the Project and the financing thereof, including without limitation, the costs of issuing any bonds issued by the City or the Agency all or a portion of the proceeds of which were to be used for the Project, and the incidental and the escrow cost of defeasing or otherwise repaying any or all of those bonds, to the extent those repayment, defeasance, issuance, or other costs cannot be paid with the proceeds of those bonds.

B. Notes. In addition, the Company will on the same date it makes the above deposit, furnish to the City evidence that it has received one or more promissory notes from E.G.H., Inc. and The Golden Gate in the aggregate sum of $1,000,000, as a contribution to the Company. The note or notes must be payable in not more than 120 substantially equal monthly installments of principal and interest, commencing within 6 months of the date of the deposit mentioned in Section 4.1A above.

C. Investments. Amounts in the account mentioned in this Section may be invested at the direction of the Company in investments which would be legal for the City funds under Chapter 355 of NRS. All interest earned from investing amounts in this account shall be credited to the account. (All funds in such account are herein referred to as "Company Funds.")

4.2 **City Funds**.

A. Room Tax Bonds. The City agrees to deposit into a separate trust account at a bank to mutually agreed upon by the parties to this Agreement, the amount received for the sale of its "City of Las Vegas, Nevada, Taxable General Obligation (Limited Tax) Fremont Street Experience Bonds (Additionally secured with Pledged Revenues)" (the "Room Tax Bonds") in the aggregate principal amount of $21,000,000, after deducting therefrom the costs of issuing those bonds and the sum of $400,000 to be held in a separate trust account by a bank to mutually agreed upon by the parties to this Agreement as a reserve fund for the Room Tax Bonds (the "Reserve Fund") and applied as provided in the ordinance of the City authorizing those Bonds, the proposed form of which has been submitted to the Company and which is hereby approved by the Company (the "Room Tax Bond Ordinance").

B. Other Unrestricted Funds. In addition, the City will deposit an additional $1.4 million into the account described in Section 4.2A. (All funds in such account are herein referred to as "Unrestricted Funds.")

C. Restricted Funds. In addition, the City will deposit $3.0 million ("Gas Tax Funds") and $800,000.00 ("Question 10 Funds") into two separate trust accounts held by a bank to mutually agreed upon by the parties to this Agreement. All funds in such accounts are herein referred to as "Restricted Funds." The Restricted Funds and Unrestricted Funds are collectively referred to as the "City Funds.")

D. Timing. The City shall use its best efforts to deposit all City Funds as provided above on or before November 23, 1993, and in all events shall make such deposits on or before January 18, 1994, provided that in any event at least $1,000,000 of the deposit referred to in Section 4.2B shall be made on or before November 1, 1993.

E. Investments. Funds in the accounts mentioned in this Section may be invested at the direction of the City Treasurer in investments that are legal investments for City funds under Chapter 355 of NRS. All interest earned on investments of amounts in such accounts shall be credited to the respective account.

4.3 **Agency Funds**. The Agency agrees to deposit into a separate trust account at a bank to mutually agreed upon by the parties to this Agreement an amount equal to $15,200,000. Amounts in the account mentioned in this Section may be invested at the direction of the Agency Treasurer in investments that are legal investments for City funds under Chapter 355 of NRS. All interest earned in amounts in the account mentioned in this Section shall be transferred to the Agency on receipt. (All funds in such account are herein referred to as "Agency Funds.") The Agency shall use its best efforts to deposit all Agency Funds as provided above on or before December 23, 1993, and in all events shall make such deposit on or before January 31, 1994.

4.4 **Expenditures - Initial and Subsequent Allocations**.

A. Company Funds. Up to $3,000,000 of the Company Funds may be used for pre-start up expenses, operation and maintenance expenses, and other non-capital expenses. For purposes of this Article IV, it is understood that design, engineering and other professional services with respect to the Project are capital expenses. All other Company Funds and interest earned thereon described in Section 4.1 hereof will be used for the construction of the Company Projects. If after a Certificate of Completion is issued by the City and the Agency, it is determined that Company Funds remain unspent and are not needed for any capital costs, the funds may be used as working capital or for operation, maintenance and repair expenses of the Project.

B. Unrestricted Funds. Up to $4,000,000 of the Unrestricted Funds may be used for pre-start up expenses, operation and maintenance expenses and other non-capital expenses of the Projects. The balance of such funds will be used for the design and construction of the Company Projects. In all events, at least an amount equal to the current value of the contributions of the Las Vegas Convention and Visitors Authority ("LVCVA") pursuant to the Cooperative Agreement between the City and the LVCVA (attached hereto as Exhibit J) shall be used for capital expenses. Those Funds will not be expended on the Parking Garage Project without an opinion of the City Attorney that the expenditure is legal. If there are unexpended funds after a Certificate of Completion is issued by the City and the Agency, those funds may be used to pay a portion of the costs of operating, maintaining, and repairing the Company Projects.

C. Restricted Funds. Gas Tax Funds will be used for any purpose permitted by Article 9, Section 5, of the Constitution of the State of Nevada and Question 10 Funds will be used for construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights of way used primarily for vehicular traffic, and if not needed for that purpose, may only be expended on expenses which (i) are legal expenses for those monies in the opinion of the City Attorney, and (ii) would not cause the City to violate an applicable contract to maintain the tax exempt status of interest on bonds issued to fund those amounts. If there remain unexpended funds from the amounts described in this paragraph after a Certificate of Completion is issued by the City and the Agency, they will be used, if legally permissible, to pay a portion of the costs of operating, maintaining, and repairing the Company Projects.

D. Agency Funds. The Agency Funds will be used to construct the Parking Garage Project, including, but not limited to, build out of the Retail Space and skyfloat storage space, provided that $9.215 million of the Agency Funds may not be expended for the Retail Space or skyfloat storage area. If the Agency Funds are not needed for the foregoing purposes, they shall be first be applied to pay for any costs in acquiring the Parking Garage Property in excess of $6,400,000, and if those costs are paid, will be applied to any other aspect of the Project, as needed, provided that payment for such other aspects of the Project is a legal expenditure for the bond issue which would not cause the Agency to violate its contract to maintain the tax exempt status of interest on those bonds. If there remains Agency Funds which are not needed for construction after a Certificate of Completion is issued by the City and the Agency and all costs for acquisition and development of the Parking Garage Project are paid, those Funds will be used, if legally permissible, to pay a portion of the costs of operating, maintaining, and repairing the Parking Garage Project.

4.5 **Expenditures - Approvals Required**.

Funds in the trust accounts mentioned in Sections 4.1, 4.2 and 4.3 above shall be expended at the request of the Company, the Corporation, the City or the Agency, as the case may be (the "Requesting Party"), on expenses for which the Requesting Party is permitted to use those funds as set forth above, which expenses are incurred pursuant to a contract which has been previously submitted to the other non-affiliated parties ("Approving Parties"). The Requesting Party shall furnish the Approving Parties with a requisition for the expenditure which shows the amount, the payee and the contract pursuant to which the expense was incurred, specifying the account from which it is to be paid. The Requesting Party will pass requests for disbursements to the Approving Parties not less than eight (8) days before the date it desires payment to be made. The Approving Parties will, during the next succeeding eight (8) days review the disbursement request and the work (if applicable) performed to see if it complies with this Agreement, including, but not limited to, verifying, if applicable, that the invoiced work has been performed in accordance with the Plans, as modified in accordance with this Agreement, and that all mechanics' and/or materialmen's lien that might arise from such work being paid will be waived upon such payment. If the payment should be so made, the Approving Parties shall so notify in writing the Requesting Party, and also so notify the bank which is holding the funds from which the payment is to be made. If the Requesting Party also so notifies such bank that the work is acceptable and payment shall be made, the bank shall issue a check to the proposed payee.

4.6 **Ownership**. The Corporation will own the Parking Garage Project and the City will own the Right-of-Way Improvements Project. The Celestial Vault Project and the Skyfloat Project will be owned in part by the City and in part by the Company, based on the amount of funding provided by these parties for the hard costs of acquisition and construction of those Projects (but without regard to design, engineering or other soft costs), provided that upon termination of this Agreement title to the entire Celestial Vault Project will vest in the City and title to the entire Skyfloat Project will vest in the Company.

4.7 **Cost Overruns**. Except as provided in Section 1.2I, if the cost of the Project, or any portion of it, exceeds the amounts deposited in the accounts mentioned in Section 4.1, 4.2 or 4.3, and available to pay those costs as provided in Section 4.4, the Company or the Corporation, as the case may be, shall pay the amount of the excess from its own funds.

4.8 **Construction Account Audits**. All funds and accounts mentioned in this Article, and the expenditures thereof, will be audited annually prior to a Certificate of Completion being issued, and be audited for the year in which that Certificate is issued. The audit will be performed by a mutually acceptable firm of Certified Public Accountants. The City and the Agency hereby approve Arthur Andersen & Co. as an acceptable firm of Certified Public Accountants. The expenses of the audit shall be paid by the Company or the Corporation, as the case may be, as an operation and maintenance expense of their respective portion of the Project.

ARTICLE V

MISCELLANEOUS COVENANTS

5.1. **Management Agreement**. The Company and the City each covenant concurrently with the execution hereof to enter into the Management Agreement in substantially the form attached as Exhibit D with only those changes as are approved by such parties.

5.2 **Federal Tax Covenant**. The Company and the Corporation promise to make no use of any part of the Parking Garage Project and Right-of-Way Improvements Project that was financed with the proceeds of bonds issued by the City or the Agency, the interest on which was intended to be excluded from gross income for federal income tax purposes ("tax-exempt bonds"), which would cause that interest to be included in gross income or individual alternative minimum taxable income for federal income tax purposes. In addition, the Company and the Corporation each covenant it will not omit to take any action with respect to the Parking Garage Project and Right-of-Way Improvements Project which, if omitted, would cause interest on any tax-exempt bonds of the City or the Agency issued all or in part for such portions of the Project to lose its exclusion from gross income and individual alternative minimum taxable income for federal income tax purposes. It is understood that the foregoing covenant applies only to the portions of the Project financed with tax-exempt bonds. It is also understood that generally as long as (a) those monies are used only for capital costs associated with (i) providing parking spaces that are available to all members of the general public on the same basis at all times subject to incidental use including advertising and to validation procedures that are available on the same terms to all businesses and members of the public or (ii) providing a public right-of-way which is available for use by the general public at all times, except as provided in the Ordinance and/or Management Agreement, (b) the Company does not establish any fund pledged or expected to be used to pay any of those bonds, and (c) the Company does not cause the bonds to be federally guaranteed, the interest on the bonds will remain tax-exempt. The City and the Agency have advised the Company and the Corporation that development and use of the Project as provided above will not, per se, violate this Section 5.2 and the Company and the Corporation have relied on such advice in entering into this Agreement and the Management Agreement. The Company and the Corporation have been advised to seek the advice of nationally recognized bond attorneys, if they take any action with respect to the Parking Garage Project, the Right-of-Way Improvements Project or the above-referenced bonds which is not described above.

5.3 **Status**. The Company promises to maintain its status as a limited liability company throughout the term of this Agreement. The Corporation promises to maintain its corporate status as a corporation throughout the term of this Agreement.

5.4 **No Dilution**. The Company and the Corporation each also covenants that, if the same would substantially reduce the Company's or the Corporation's net worth, as the case may be, during the term of this Agreement, it will not transfer all or a substantial portion of its assets to another entity, merge into or with another entity, or take any other similar voluntary action without the prior written consent of the City and the Agency.

5.5 **Room Tax Bonds - Restrictions**. The City agrees that it will not either lower the rate of the room tax imposed by its Ordinance Number 3722 or issue any bonds other than the Room Tax Bonds to which the taxes imposed by Ordinance No. 3722 are pledged, including any refunding bonds, without the consent of the Company.

5.6 **Reserve Fund; Payment of Bonds**. The Company promises to restore the balance in the Reserve Fund to an amount equal to $400,000.00 in the event the Reserve Fund balance falls below that figure as a result of the application thereof to the Room Tax Bonds. The City shall notify the Company whenever the Reserve Fund so falls below that figure, and the Company shall have a period of six (6) months after receiving such notice within which to replenish the Reserve Fund to the full $400,000.00. In addition, if the City has exhausted available room tax revenues and the Reserve Fund and needs additional monies to pay the principal of or interest on the Room Tax Bonds, the Company shall after notice thereof and request for such payment immediately deliver an amount of money equal to the amount so needed to the City provided that at least thirty (30) days prior thereto the City has notified the Company that it anticipates such a payment may be required. The City shall invest the Reserve Fund in investments which would be legal for City funds under Chapter 355 of NRS. Prior to termination of this Agreement such interest may either be used to pay regularly scheduled payments of principal of or interest on the Room Tax Bonds or paid to the Company. Unless otherwise agreed by the Company, upon termination of this Agreement the Reserve Fund and any interest thereon not paid pursuant to the previous sentence shall be paid to the Company.

5.7 **Inspections and Reviews**. Each party covenants that it will allow the other parties to inspect its books and records pertaining to the Project at all reasonable times and upon reasonable notice. Without limiting the generality of the foregoing, the City and the Agency will have the right to inspect all construction documents, including contractor bidding documents, advertisements for bids and form of contracts.

5.8 **Audits**. Each party to this Agreement will have its books and records pertaining to the Project audited by a firm of Certified Public Accountants at least annually, and will furnish a copy of that audit, without charge, to the other parties to this Agreement.

ARTICLE VI

DEFAULTS.

6.1 **Events of Default**. Each of the following shall be deemed an "event of default" under this Agreement.

A. Any party to this Agreement fails to pay an amount under this Agreement when due.

B. Any party to this Agreement fails to perform any of its duties or obligations hereunder or to abide by any covenant or representation contained in this Agreement.

C. A party to this Agreement is dissolved or liquidated without the prior written consent of the other parties to this Agreement; however, it is not an "event of default" if the City or the Agency is dissolved, liquidated or merged pursuant to a statute of the State of Nevada which specifically requires the dissolution, liquidation or merger, so long as another governmental entity that is legally and financially able to perform assumes responsibility for the obligations of the dissolved or liquidated entity.

D. The entry of a decree or order for relief by a court having jurisdiction in respect of any party in an involuntary case under the Federal bankruptcy laws, or any other applicable Federal or state insolvency or similar laws, or appointing a receiver, liquidator, assignee, custodian, trustee, or similar official for any party to this Agreement, or ordering the winding up or liquidation of the affairs of any party to this Agreement, and the continuance of that decree or order unstayed and in effect for a period of 90 consecutive days.

E. The commencement by any party to this Agreement of a voluntary case under the Federal bankruptcy laws or other applicable Federal or state insolvency or other similar laws, or the consent by a party to this Agreement to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or similar official for or of any substantial part of the property of such party.

F. A default by any party to the Management Agreement in the performance of any of its duties and obligations under the Management Agreement, or failure by such party to abide by any covenant or representation applicable to such party which is contained in the Management Agreement.

Notwithstanding the provisions stated above, none of the above events shall constitute an "event of default" unless one or more of the other parties to this Agreement gives the defaulting party to this Agreement notice in writing of the default and the default remains uncured for a period of thirty (30) days; but (i) if the default is a default by the Company to make the deposits required by Section 4.1 or 5.6 hereof, a default by the City to make the deposits required by Section 4.2 hereof, a default by the Agency to make the deposit required by Section 4.3 hereof, or is such that it cannot be cured, it shall be an event of default immediately upon the delivery of notice and there is no need for the non-defaulting parties to wait 30 days to allow an opportunity for cure prior to exercising the remedies provided hereby and (ii) if the default is capable of cure, but not within thirty (30) days, it shall not be an event of default if the defaulting party commences to cure the same within the above-referenced thirty (30) day period and prosecutes such cure to completion with all due diligence.

6.2 **Remedies for Default.**

A. Remedies of City and Agency. Subject to Section 7.5, if an event of default has occurred and the Company or the Corporation is the defaulting party, the City or the Agency, or both of them, as applicable, shall be entitled to exercise all rights that they have under any security interests granted in any Company or Corporation assets, including, without limitation, the Deed of Trust on the Parking Garage Property, the conditional assignments of the Airspace Leases, and any other security interests in any property granted by the Company or the Corporation under this Agreement or the Management Agreement. The proceeds of any sale of or foreclosure on any property in which a security interest has been granted may be applied by the City and the Agency, at the option of the City and the Agency, toward curing the default, toward otherwise meeting the Company's or the Corporation's obligation under this Agreement and the Management Agreement, as the case may be, and toward repaying or defeasing any bonds issued by the City or the Agency issued in whole or in part to fund any portion of the Project, provided that in no event may the City or the Agency recover more than once for any item of damage and any surplus shall be paid to the Company or the Corporation, as applicable. In addition, the City and the Agency may terminate this Agreement, the Management Agreement or both may terminate any right of possession of the Parking Garage Property the Corporation may have if title thereto has not been transferred and shall have no liability to the Company or the Corporation for any money or property whatsoever with respect to such termination.

In addition to the above, subject to Section 7.5, upon an event of default both the City and the Agency shall have the right to bring any suit, action or proceeding at law or in equity to enforce their rights under the provisions of this Agreement and to require that each of the Company and the Corporation carry out the agreements that it has made hereunder or in the Management Agreement. The suit may be for specific performance, for damages, or for both, and the City and the Agency may also, by action in equity, enjoin any acts or things which are unlawful or in violation of the City's or Agency's rights under this Agreement. Upon an event of default the City and the Agency shall also be entitled to commence an action for the appointment of a receiver or receivers for the Project and the assets of the Company, and of the rents, revenues, income products and profits thereof.

B. Remedies of Company and the Corporation. Subject to Section 7.5, in the event of a default by the City or the Agency hereunder, the Company or the Corporation, or both of them, as applicable, shall be entitled to bring a lawsuit at law or in equity seeking damages from the City or the Agency on account of the breach, and the Company and the Corporation shall also be entitled to bring a lawsuit for specific performance to order the City and the Agency to comply with their duties under this Agreement, or bring an action for an injunction to enjoin acts of the City and the Agency which may be unlawful or in violation of the rights of the Company or the Corporation under this Agreement. All monetary obligations of the City and the Agency with respect to the Parking Garage Project hereunder, including without limitation any claim for damages, are subject to the provision that neither the City nor the Agency has any obligation to pay out money absent an appropriation and cannot legally (under, in particular, NRS 354.626) make a commitment to appropriate funds beyond this fiscal year, except for an appropriation of the proceeds of bonds theretofore issued.

6.3 **Mutual Remedies**. In addition to the above, the parties to this Agreement shall have all other rights and remedies afforded them by law or in equity for the enforcement of this Agreement if an event of default has occurred and one of the other parties is the defaulting party. Subject to Section 7.5, no right or remedy conferred by this Agreement is intended to be exclusive of any other right or remedy, and each and every said right or remedy is cumulative in addition to any other right or remedy given under this Agreement or now or hereafter existing at law or in equity, or by statute.

6.4 **No Implied Waivers**. The delay or omission of any party in exercising any right or power accruing upon any event of default hereunder shall not exhaust or impair any such right or power, and shall not be construed to be a waiver of any such default or acquiescence therein. Every power or remedy given by this Agreement or at law or in equity may be exercised from time to time and in any manner as may be deemed expedient.

6.5 **Effect of Waiver**. No waiver of any individual default hereunder by any party shall extend toward any subsequent or other event of default hereunder, or shall impair any rights or remedies for any such subsequent or other event of default hereunder.

ARTICLE VII

MISCELLANEOUS.

7.1 **Indemnification**.

A. The Company and the Corporation each agrees to protect and indemnify and hold the City, the Agency, their officers and employees and agents and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees, and court costs which the City, the Agency, their officers, employees or agents or any combination thereof may suffer or which may be sought against or recovered or obtained from the City, its officers, employees or agents or any combination thereof as a result of or by reason of or arising out of or in consequence of (i) the acquisition, construction, operation or maintenance of the Project pursuant to this Agreement or the Management Agreement by such indemnifying party (including, without limitation, any claims of any business located on or adjacent to the area in which the Project is to be constructed or the owner of any such business or of the property on which the business is located that the manner of construction, operation, or maintenance of the Project by such indemnifying party unreasonably interferes with the business or property or constitutes an inverse condemnation of all or a part of that business or property), (ii) any environmental or hazardous waste condition hereafter existing on any of the property which is a part of the Project under the control of such indemnifying party which was caused by the action of the Company or the Corporation, as applicable, or any contractor, subcontractor, agent, licensee or anyone who is directly employed by the Company or the Corporation, as applicable, or any of its contractors, subcontractors or agents, in connection with the Project, or (iii) any act or omission, negligent or otherwise, of the Company or the Corporation, as applicable, or any of its contractors, subcontractors, agents, licensees or anyone who is directly employed by the Company or the Corporation, as applicable, or any of its contractors, subcontractors, agents or licensees, in connection with the Project.

B. The Company and the Corporation, as applicable, each agrees that it shall at its sole cost and expense defend the City, the Agency, their officers, employees and agents and each of them in any suit or action for which the Company or the Corporation, as the case may be, has agreed to indemnify the City, the Agency, their officers, employees or agents. The City and/or the Agency, as applicable, shall promptly notify the Company or the Corporation, as applicable, of any claim made against them for which they may seek indemnification and shall fully cooperate with the Company and the Corporation in the defense and/or settlement thereof. If the Company or Corporation fails to defend the City or Agency as herein provided, the City or the Agency shall have the right but not the obligation to defend the same and charge all of the direct or incidental costs of such defense, including any attorneys' fees or court costs to, and recover the same from, the Company or the Corporation, as applicable.

C. No indemnification is required to be paid by the Company or the Corporation for any claim, loss or expense arising from the willful misconduct or *gross* negligence of the City, the Agency, or their officers or employees.

D. The provisions of this Section shall survive the termination of this Agreement. It is not intended by the parties hereto that this indemnification provision revive any claim of or extend any statute of limitations which has run against any third party.

7.2 **No Third-Party Beneficiaries**. None of the provisions of this Agreement is intended to constitute the general public, any member thereof, or any other person a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit for personal injuries, other damage, or any other cause of action, pursuant to this Agreement.

7.3 **Temporal Obligations**. The time in which to perform the obligations of the Company and the Corporation under provision of Sections 1.3A [Airspace Easements], 2.1 [Architectural Services], 2.2 [Construction of Plans, Drawings and Related Documents], and 3.3 [Construction Schedule] and the obligations of the Agency under 1.3A [Airspace Easements] and under 1.2E [Transfer of Possession] to convey title, but not the obligations to transfer possession, is subject to the following:

A. Force Majeure. In the event timely performance is prevented by an occurrence beyond the control of and without the fault of the party that is required to perform (financial inability excepted), such as, but not limited to, an act of God, the act of war, flood, earthquake, labor dispute, governmental regulations (other than existing applications of existing regulations of which the parties could reasonably be expected to be aware on the date hereof) or control and shortage of materials, the time in which performance is required to occur shall be continued for a reasonable period of time, not less than the number of days the party was delayed by the occurrence.

B. Reasonable Requests for Extension. If the party expected to perform reasonably requests an extension of time to perform, that request will not be unreasonably denied. This clause shall not apply to any delay exceeding one (1) year from the date for performance specified herein.

7.4 **Contract Interpretation**. All questions concerning interpretation or clarification of this Agreement will be resolved if possible by the representatives of the City, the Agency, the Company, and the Corporation, as applicable, administering this Agreement. If those parties are unable to resolve the question, any party to this Agreement involved in such dispute may request in writing a meeting of the President of the Company or the Corporation, as the case may be, and the Manager of the City to attempt to resolve the question. The parties involved in such dispute agree to use their best efforts to cause those individuals to meet within five (5) days of a request. If there is no resolution to the question within ten (10) days after such request any party involved in such dispute may request binding arbitration as provided in Section 7.5.

7.5 **Arbitration**. All claims, disputes, or other questions that may arise between the Agency, City, Company and Corporation concerning any provision or provisions of this Agreement which cannot otherwise be settled and which have not been waived, must be submitted to and be finally settled by binding arbitration in the manner set forth in this Section. After expiration of the ten (10) day period referred to in Section 7.4, any party involved in such dispute, by written notice to the others, may demand arbitration. The notice to arbitrate shall provide a complete statement of the nature of the claim and the amount of money in dispute, if known. The notice to arbitrate shall be null and void if received beyond the time allowed by law for the presentation of the claim to the City Council, if applicable, or filing of a lawsuit, whichever occurs first, presenting the same claims as those presented in the notice to arbitrate.

Except as provided to the contrary in these provisions on arbitration, the arbitration shall be in conformity with and subject to applicable rules and procedures of the American Arbitration Association. If the American Arbitration Association is not then in existence or for any reason fails or refuses to act, the arbitration shall be in conformity with and subject to the provisions of the Nevada Uniform Arbitration Act as they stand amended at the time of the notice. The arbitrators shall be persons experienced in the subject matter of the arbitration and they shall be bound by this Agreement. All arbitrators shall be impartial and unrelated, directly or indirectly, so far as employment of services is concerned, to any party. The City and/or the Agency, on the one hand, and the Company and/or the Corporation, on the other, shall pay one-half the cost of arbitration including arbitrators' fees. Within twenty (20) days after notice requiring arbitration, the City and/or the Agency, on the one hand, and the Company and/or the Corporation, on the other, shall appoint one arbitrator and give notice of the appointment to the other parties included in the dispute. The two arbitrators shall choose a third arbitrator within ten (10) days after appointment of the second. If any party fails to appoint an arbitrator, or if the two arbitrators fail to choose a third, the appointment shall be made by the then presiding judge of the Eighth Judicial District Court of the State of Nevada, acting in his or her individual and nonofficial capacity, on the application of any party involved in the dispute and on five (5) days' notice to the other parties involved in the dispute; provided that any party involved in the dispute may, by notice given before commencement of the arbitration hearing, consent to arbitration by the arbitrator appointed by another party. In that event, no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

All arbitration proceedings shall be held in Clark County, Nevada. The arbitrator(s) shall investigate the facts and shall hold hearings at which the parties may present evidence and arguments, be represented by counsel and conduct cross-examination. The arbitrator(s) shall render a written decision upon the matter presented to them by majority vote within ninety (90) days after the date upon which the last arbitrator is appointed. The decision rendered in such arbitration shall be final and binding on the parties and judgment thereon may be entered by any court having jurisdiction thereof.

All fees, costs and/or expenses of the arbitration, excluding preparation and presentation, shall be assessed equally against the City and/or the Agency, on the one hand, and the Company and/or the Corporation, on the other, and shall be paid one-half by the City/or and the Agency, on the one hand, and one-half by the Company and/or the Corporation, on the other.

The Company and the Corporation shall carry on the work and maintain progress, and the City and the Agency shall continue to perform, during any arbitration, court proceedings or any other disputes, unless the duty of such party to so perform is the subject of the dispute or a reasonable person would consider it imprudent to proceed further because of the default in question. The City, the Agency, the Company and the Corporation shall each pay their own costs for preparation of and presentation of all claims.

For purposes of payment of an arbitrated claim under the terms of this Agreement, the definition of due and payable of a claim, shall be the date of the arbitration decision of that claim, plus forty-five (45) calendar days. Interest will be allowed from the date the arbitrators decide payment should have been made at the prime rate referred to in NRS 99.040 plus 2% annum.

7.6 **Successors; Assignments**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Except as otherwise permitted herein, no assignment of this Agreement or any right or obligation hereunder by any party hereto shall be valid unless the other parties hereto consent to such assignment in writing.

7.7 **Entire Agreement**. This Agreement, including the exhibits hereto, constitutes the entire agreement of the parties hereto. This Agreement may be modified by the parties hereto, but only by a written instrument signed by each party.

7.8 **Further Assurances**. The Company, the Corporation, the Agency and the City agree to do such further acts and things and to execute and deliver to the other such additional certificates, documents and instruments as any other may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the other its rights, powers and remedies hereunder. Without limit or foregoing, the City and the Agency will execute and acknowledge the instruments reasonably requested by the Corporation or the Company evidencing termination of this Agreement.

7.9 **Notices**. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

If to the City or the Agency:

City of Las Vegas, Nevada
c/o City Manager
400 East Stewart Avenue, 10th Floor
Las Vegas, Nevada 89101

. . .

If to the Company:

The Fremont Street Experience
Limited Liability Company
302 East Carson Avenue, Suite 808
Las Vegas, Nevada 89101
Attn: Donald D. Snyder

If to the Corporation:

Fremont Street Experience Parking Corporation
302 East Carson Avenue, Suite 808
Las Vegas, Nevada 89101
Attn: Donald D. Snyder

If any notice hereunder is given to the City or the Agency, a copy shall be forwarded by certified mail, postage prepaid, to the City's Director of Economic and Urban Development, City Treasurer and City Attorney, at:

Director of Economic and Urban Development
City Hall
400 East Stewart Avenue
Las Vegas, Nevada 89101

City Treasurer
City Hall
400 East Stewart Avenue
Las Vegas, Nevada 89101

and

City Attorney
City Hall
400 East Stewart Avenue
Las Vegas, Nevada 89101

If notice hereunder is given to the Company or the Corporation, a copy shall be forwarded by certified mail, postage prepaid, to the Company's counsel, at:

Lionel Sawyer & Collins
Attn: Jeffrey P. Zucker
1700 Bank of America Plaza
300 Fourth Street
Las Vegas, Nevada 89101

Notices delivered personally shall be deemed received on delivery and notices by mail shall be deemed received upon receipt or first attempted delivery, whichever first occurs.

Any party hereto may change the above addresses by notice delivered to the other parties as provided in this Section, provided that a notice of change of address shall not be effective against any party until actually received by such party.

7.10 [Intentionally Deleted]

7.11 **Severability**. If any provision of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof that can be given effect without the invalid or unenforceable provision and the parties agree to replace such invalid or unenforceable provision with a valid provision which has, as nearly as possible, the same effect.

7.12 **Authorized Representatives.** Each party hereto shall by written notice to the other parties designate an authorized representative, who will be responsible for all acts and approvals on behalf of that party except as otherwise specified in that notice. The authorized representative may be changed from time to time by notice to the parties designating the new authorized representative. Any such designation by the City must be signed by the Mayor and the City Clerk. Any such designation by the Agency must be signed by the Chairperson and the City Clerk. Any such designation by the Company or the Corporation must by signed by the President thereof. Until another person is designated, the Company hereby designates Donald D. Snyder, its President, as its authorized representative, the Corporation hereby designates Donald D. Snyder, its President, as its authorized representative, the City hereby designates its City Manager as its authorized representative, and the Agency hereby designates the City's City Manager as its authorized representative.

7.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

7.14 **Captions.** The captions appearing at the commencement of the Articles and

Sections hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

7.15 **Termination Date**. Except as otherwise provided in Section 7.1D hereof~~,~~ and in this Section~~;~~, this Agreement shall be in effect from the date and year first mentioned above until the date of all of the Room Tax Bonds and any bonds issued to refund those bonds have been retired. The security interest granted herein in the property of the Company shall remain in effect until the Company has performed all of its obligations under this Agreement and the Management Agreement. The security interest granted herein in the property of the Corporation shall remain in effect until the Company and the Corporation have performed all of there obligations hereunder and the term of this Agreement has expired.

7.16 **Time Calculation**. Whenever in this Agreement a reference is made to a period of days, the same shall mean calendar days unless otherwise specified, provided that should any time period so computed end on a non-business day, the time shall be extended to the next business day..

7.17 **Counterparts**. This Agreement may be executed on one or more

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counterparts, each of which shall be regarded as an original and all of which shall constitute the same Agreement.

IN WITNESS WHEREOF the City, the Agency, the Company and the Corporation have caused this Agreement to be executed as of the day and year first mentioned above.

(SEAL)

City Clerk, Chief Deputy

CITY OF LAS VEGAS, NEVADA

By: ____________________
Mayor

10/27/93

(SEAL)

City Clerk, Chief Deputy

DOWNTOWN REDEVELOPMENT AGENCY of the City of Las Vegas, Nevada

By: ____________________
Chairperson

THE FREMONT STREET EXPERIENCE LIMITED LIABILITY COMPANY

Kathilynn Smith
Secretary

By: Donald D. Snyder
President

(SEAL)

FREMONT STREET EXPERIENCE PARKING CORPORATION

Kathilynn Smith
Secretary

By: Donald D. Snyder
President