

## **FIRST AMENDMENT TO PROJECT MANAGEMENT AND CONSULTING AGREEMENT**

This First Amendment to Project Management and Consulting Agreement ("First Amendment") is entered into as of the Amendment Effective Date (defined below), by and among CITY PARKWAY V, INC., a Nevada non profit corporation ("Owner"), the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada ("City"), and NEWLAND COMMUNITIES, LLC, a Delaware limited liability company ("Project Manager").

### **RECITALS**

A. Owner and City (collectively, the "City Parties"), on one hand, and Project Manager, on the other hand, entered into that certain Project Management and Consulting Agreement dated as of December 21, 2005 ("Original Agreement"). All capitalized terms used in this First Amendment and not otherwise defined shall have the meaning ascribed to such terms in the Original Agreement.

B. The City Parties and Project Manager desire to amend the Original Agreement in various respects to reflect intervening events since the Effective Date of the Original Agreement and to implement certain "clean-up" revisions. The Original Agreement, as amended by this First Amendment, is referred to as the "Agreement" herein.

### **TERMS AND CONDITIONS**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City Parties and Project Manager hereby agree as follows:

1. Recital C. Recital C in the Original Agreement is hereby deleted and replaced with the following text:

"C. For many years Project Manager has been engaged in the development of master planned communities and is well experienced therein. Owner desires to engage the services of Project Manager to provide management and oversight of the implementation of the Master Plan, the design and construction of Infrastructure Improvements, the planning, design and administration of the Project and negotiation with third party developers concerning specific Building Developments, all pursuant to the terms and conditions set forth in this Agreement."

2. Recital D. Recital D in the Original Agreement is hereby deleted and replaced with the following text:

"D. In exchange for its services, Project Manager will receive reimbursement of its actual expenses and overhead costs, will be granted an option and a right of first refusal to acquire certain portions of the Project Site and will be paid an additional fee in connection with the successful disposition of certain portions of the Project Site, all pursuant to the terms and conditions set forth in this Agreement."

3. Updated Exhibits.

(a) Master Plan. Exhibit “C” attached to the Original Agreement (as referred to in the definition of “Master Plan” in Article I of the Agreement) is hereby deleted and substituted with the document attached hereto and designated as Exhibit “C” comprising the Master Site Plan in effect as of the Amendment Effective Date.

(b) Phase I Plan. Exhibit “D” attached to the Original Agreement (as referred to in the definition of “Phase I Infrastructure Improvements” in Article I of the Agreement) is hereby deleted and substituted with the document attached hereto and designated as Exhibit “D” comprising the plan for Phase I Infrastructure Improvements in effect as of the Amendment Effective Date.

(c) Reserved Blocks. Exhibit “E” attached to the Original Agreement (as referred to in the definition of “Reserved Blocks” in Article I of the Agreement) is hereby deleted and substituted with the document attached hereto and designated as Exhibit “E” showing the designation of Reserved Blocks in effect as of the Amendment Effective Date.

4. Article I Definitions.

(a) Deletion of Definitions. The definitions of “City Hall,” “Medical Center,” “Registered Client” and “Sales Management Fee” in Article I of the Original Agreement are hereby deleted in their entirety. The reference to “Medical Center” in Section 3.2(c) of the Original Agreement is hereby modified to state “Academic Medical Center” instead. Further, the reference to “City Hall” in Section 3.2(c) of the Original Agreement is hereby deleted.

(b) New Definition. A new definition is hereby added to Article I of the Original Agreement as follows:

“Additional Fee” shall have the meaning set forth in Section 5.5 below.

(c) Modification of Existing Definitions. The definitions of the terms shown below are hereby amended and superseded in Article I of the Original Agreement as follows:

“Academic Medical Center” means the potential proposed development of an academic medical center on a portion of the Project Site, whereby the size and location of the development, if any, shall be negotiated at a later date and subject to the approval of the City Parties.

“PAC” shall mean a performing arts center to be generally located in the Project as set forth on the Master Plan, provided, however, such site shall not exceed 4.76 gross acres.

“Public Uses” means the PAC, the Alzheimer Clinic and the Academic Medical Center and any other uses within any Phase which are dedicated to uses such that Real Estate Taxes are not payable for the land on which such uses are located.”

“Reserved Blocks” means Blocks C, D, F/G (a combined Block), N and O-1 and O-2, as identified in the Master Plan. The acreage, anticipated uses, and anticipated minimum density/intensity of each such lettered Block are shown in Exhibit “E” attached hereto, subject to boundary adjustments and minor changes in density/intensity as are mutually agreeable to the City Parties and Project Manager, and as may be necessary or appropriate to accomplish orderly development of the Project or to reflect any changes in the Master Plan.”

5. Section 3.3(b). Section 3.3(b) of the Original Agreement is hereby deleted and replaced with the following text:

“(b) Licenses and Permits. Except as otherwise provided in this Agreement, Project Manager shall cause the application for, and use its commercially reasonable efforts to obtain, the issuance of all approvals, permits and licenses required by any and all applicable Requirements for it to perform its duties hereunder. Project Manager hereby agrees to use commercially reasonable efforts to keep all such required approvals, permits and licenses in full force and effect at all times necessary during the Term. To the extent necessary or desirable, Owner agrees to cooperate to the fullest extent with Project Manager in applying for, obtaining or maintaining such licenses and permits.”

6. Section 3.6(b). The first sentence of Section 3.6(b) of the Original Agreement is hereby deleted and replaced with the following text:

“Owner hereby designates Scott Adams (or his successor appointed for such purpose) as the lead representative (“Owner’s Project Representative”) to represent the City Parties in all of their respective dealings with Project Manager and Project Manager’s Representative relating to this Agreement.”

7. Section 4.3(a). The tenth and eleventh sentences of Section 4.3(a) of the Original Agreement are hereby deleted and replaced with the following text:

“The Planning Commission shall endeavor to make its final decision whether to approve or disapprove the Block Plans within 90 days after receipt of the Design Review Committee’s recommendation or at the earliest opportunity thereafter.”

8. Section 5.1. Section 5.1 of the Original Agreement is hereby deleted and replaced with the following text:

“(a) Term. In consideration for Project Manager’s provision of services for Owner’s benefit in accordance with this Agreement, Owner hereby grants to Project Manager an option to purchase the Reserved Blocks at then fair market value determined in accordance with Section 5.3 (the “Reserved Block Option Right”). The term of the Reserved Block Option Right shall commence on the Effective Date of this Agreement and shall expire on December 31, 2007 if Project Manager has not consummated the acquisition of Block F/G on or before December 31, 2007; provided, however, that the term of the Reserved Block Option Right shall be extended automatically due to (i) Unavoidable Delay (except for any delay associated with either work stoppages or the presence of known Hazardous Materials), (ii) delay associated with the

determination of the purchase price in accordance with Section 5.3 below, (iii) delay associated with City's approval of a subdivision map or similar entitlement, if such map or entitlement would be necessary for Project Manager's acquisition of fee title to Block F/G, or (iv) City's failure to complete funding of construction of the Phase I Infrastructure Improvements by December 31, 2007. If Project Manager timely consummates the acquisition of Block F/G in accordance with this Section 5.1(a), then the term of the Reserved Block Option Right shall be extended to allow Project Manager's acquisition of the balance of the Reserved Blocks in accordance with Section 5.1(b) below. If Project Manager does not timely consummate the acquisition of Block F/G in accordance with this Section 5.1(a), then Project Manager agrees to execute and deliver to Owner a quitclaim deed allowing removal of the Option Memorandum (defined in Section 5.4 below) and to cause removal from the Reserved Blocks of any other lien (materialman's or otherwise), which arose as a result of Project Manager's act or omission, in order to restore clear title of Block F/G to Owner at its earliest practical convenience, but in any event, no later than forty-five (45) days after the expiration of the Reserved Block Option Right.

“(b) Exercise of Right. Project Manager may exercise the Reserved Block Option Right by delivering to Owner's Project Representative, on or before July 2, 2007, a written notice stating Project Manager's intent to exercise the Reserved Block Option Right and proposing a purchase price based upon documentation prepared by a qualified appraiser and/or real estate consultant showing the then fair market value of the Reserved Blocks (assuming no environmental contamination thereon), (i) taking into account the anticipated fiscal and economic benefit to City arising from development of Private Uses on the Reserved Blocks and (ii) deducting any areas subject to any public easement, public right-of-way or other public right precluding Private Uses thereon. Project Manager's failure to deliver a timely written notice shall be deemed Project Manager's election not to acquire the Reserved Blocks. Project Manager's exercise of the Reserved Block Option Right must apply to all of the Reserved Blocks (i.e., Project Manager must elect to acquire all or none of the Reserved Blocks); provided, however, that Project Manager may acquire the Reserved Blocks in up to five phases so long as (i) Project Manager acquires Block F/G on or before the deadline (as may be extended) prescribed by Section 5.1(a) above and (ii) the last sequential Reserved Block is acquired no later than December 31, 2012. As part of the Project Manager DDA negotiated in accordance with Section 5.2(a) below, the Parties shall agree upon a schedule for Project Manager's acquisition of the Reserved Blocks, and the Parties shall include language granting Owner the right, but not the obligation, to repurchase the Reserved Blocks at the same purchase price actually paid by Project Manager upon acquisition of the Reserved Blocks if and when Project Manager notifies Owner in writing that Project Manager has determined the development of the Reserved Blocks as originally contemplated by Project Manager is no longer feasible due to changed market conditions. Owner's right to repurchase shall be for a term which is specified in the Project Manager DDA.”

9. Section 5.3(b). The second sentence of Section 5.3(b) of the Original Agreement is hereby deleted and replaced with the following text:

“If such effort is unsuccessful, then Owner's Project Representative and Project Manager shall select a mutually acceptable appraiser who shall determine the fair market value of the

Reserved Blocks (assuming no environmental contamination thereon), (i) taking into account the anticipated fiscal and economic benefit to City arising from development of Private Uses on the Reserved Blocks and (ii) deducting any areas subject to any public easement, public right-of-way or other public right precluding Private Uses thereon.”

10. Section 5.4. Section 5.4 of the Original Agreement is hereby deleted and replaced with the following text:

“Section 5.4 Option Memorandum.

At the earliest opportunity after a legal description of the Reserved Blocks has been prepared by a licensed surveyor or civil engineer retained by Project Manager, Owner and Project Manager shall execute a memorandum of option agreement in the recordable form of Exhibit “F” (the “Option Memorandum”). Upon delivery to Project Manager of the signed Option Memorandum, Owner irrevocably authorizes Project Manager to cause the executed Option Memorandum to be filed in the County Recorder’s Office against the Reserved Blocks so as to provide record notice of the Option Rights granted to Project Manager hereunder. The Parties agree to sign and record a subsequent version of the Option Memorandum as may be necessary to reflect any minor future adjustment to the boundary of any Reserved Block. Project Manager shall sign and deliver to Owner one or more partial quitclaim deeds on or before the date of sale of any portion of the Reserved Blocks to a third party or a full quitclaim deed upon the termination of the Option Rights or the expiration or earlier termination of this Agreement; provided, however, that if Project Manager has satisfied the condition precedent to purchase Block F/G as specified in Section 5.1(a) and if this Agreement expires without being extended beyond the initial Term pursuant to Article VI below, then any pending Option Rights (e.g., Project Manager’s right to acquire the balance of the Reserved Blocks up until December 31, 2012) shall not be affected thereby.”

11. Section 5.5. Section 5.5 of the Original Agreement is hereby deleted and replaced with the following text:

“Section 5.5 Additional Fees.

In further consideration for Project Manager’s provision of services for Owner’s benefit in accordance with this Agreement, Owner hereby agrees to pay an additional fee to Project Manager relating to the sale of any portion of the Project Site to a third party for a Private Use, including, without limitation, any area originally proposed for Public Use but converted to Private Use (“Additional Fee”). The Additional Fee shall equal four percent (4%) of the gross purchase price for the sale of any applicable real property. Project Manager shall be entitled to receive payment of Additional Fees with respect to the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement, taking into account any extension of the Term of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty (20) days after the date of expiration or termination, such third party purchaser as a Person with whom Project Manager negotiated or discussed sale of a portion of Project Site). Owner shall pay the Additional Fees to Project

Manager on a quarterly basis, with respect to each fiscal quarter ending March 31, June 30, September 30 and December 31, respectively. As soon as possible after the end of each fiscal quarter, Project Manager shall present to Owner a quarterly invoice which details all Additional Fees owed by Owner as the result of sales which occurred during the preceding fiscal quarter. Owner shall pay the full invoiced amount to Project Manager within thirty (30) days after each invoice is presented to Owner. Any late payments by Owner shall accrue interest at the rate of 7.5% per annum, compounded monthly. The Parties acknowledge that Owner's agreement to pay the Additional Fees is not being done in exchange for any services normally provided by a real estate broker and that Project Manager will not be required to obtain a real estate broker's license or any other license as a condition to receiving payment of any Additional Fees."

12. Section 5.6(a). A new sentence shall be added to the end of Section 5.6(a) of the Original Agreement as follows:

"Except for those costs which are borne by Developer and which are directly related to any on-site development of the Reserved Blocks (as opposed to planning, design or coordination of the Project or the Infrastructure Improvements as a whole), Project Costs shall include, without limitation, all costs incurred by Project Manager to third party consultants, architects, engineers and other service providers in furtherance of Project Manager's performance of its duties under this Agreement and, to the extent authorized or directed by the City Parties, Project Manager's performance (or related oversight or administration) of any obligations of the City Parties under this Agreement."

13. Section 5.6(d). A new second sentence shall be added to Section 5.6(d) of the Original Agreement as follows:

"Alternatively, Project Manager may present to City a lump-sum invoice from time to time, which details all Project Costs incurred by Project Manager during a specified time period, such as the time period culminating in the completion of the first Annual Business Plan and the approval of the revised Master Plan."

14. Section 7.2(b). Clause (ii) in Section 7.2(b) of the Original Agreement is hereby deleted and replaced with the following text:

"(ii) Project Manager shall receive payment of any Additional Fees in accordance with the invoice procedure set forth in Section 5.5 above, with respect to the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty (20) days after the date of expiration or termination, such third party purchaser as a Person to whom Project Manager negotiated or discussed sale of a portion of Project Site)."

15. Section 7.5(b). Clause (ii) in Section 7.5(b) of the Original Agreement is hereby deleted and replaced with the following text:

"(ii) Project Manager shall receive payment of any Additional Fees in accordance with

the invoice procedure set forth in Section 5.5 above, with respect to the closing of any transaction consummated as the result of any Third Party DDA or other purchase agreement entered into between Owner and a third party purchaser within one (1) year after the date of expiration or termination of this Agreement (so long as Project Manager has identified in writing to Owner, within twenty (20) days after the date of expiration or termination, such third party purchaser as a Person to whom Project Manager negotiated or discussed sale of a portion of Project Site); and”

16. Section 11.17. A new Section 11.17 is hereby added to the Original Agreement as follows:

“Section 11.17. Policies and Procedures.

No later than September 29, 2006, the Parties shall agree upon a written form of policies and procedures (the “Policies and Procedures”) which (i) governs Project Manager’s performance of its duties under this Agreement with respect to the disposition of portions of the Project Site to third party developers, (ii) creates a pricing procedure to be applied on a Block-by-Block basis, and (iii) provides for periodic updates to appraisals of each unsold Block to the extent required by Nevada Assembly Bill 312. The Policies and Procedures, once mutually agreed upon by the Parties as confirmed in a subsequent letter executed by a duly authorized representative of each Party, are hereby incorporated by reference into this Agreement. The Parties shall cooperate to implement and abide by the Policies and Procedures on a consistent basis. The Parties may amend or supplement the original Policies and Procedures from time to time upon mutual written agreement, and any amended version also is hereby incorporated by reference herein.”

17. Stadium Site. With respect to Section 4.7 of the Original Agreement, the Parties acknowledge and agree that Owner has determined in its good faith judgment that it is not feasible for a major league baseball franchise to be located on the Project Site, and that Project Manager has approved such determination. For this reason, the Master Plan to be attached as a replacement Exhibit “C” to the Original Agreement does not depict the Stadium. If locating an arena on the Project Site for a professional sports franchise other than baseball becomes feasible during the one-year period ending December 21, 2006, then the parties will cooperate in good faith in an effort to agree upon a suitable location for the stadium within the Project Site so long as such location does not adversely affect Developer's future acquisition and development of the Reserved Blocks or any then existing contractual rights of third party developers with respect to any other portion of the Project Site.

18. Full Force and Effect. Except to the extent expressly amended herein, the Original Agreement shall remain in full force and effect without amendment or modification.

19. Effective Date. The effective date of this First Amendment (“Amendment Effective Date”) shall be the latter date by which (1) the City Parties and Project Manager have executed this First Amendment; and (2) the City Council considers and approves the First Amendment to Agreement to Design, Construct and Lease a Performing Arts Center, between the city of Las Vegas and the Las Vegas Performing Arts Center Foundation, thereby revising the location of the PAC to the new 4.77-acre site which is described in the Master Plan and which is distinctly separate from the Reserved Blocks (the “PAC First Amendment”). The City Parties

and Project Manager acknowledge and agree that the City Parties shall be obligated to execute this First Amendment only if and when the City Council has approved the PAC First Amendment. If the City Council has not approved the PAC First Amendment on or before October 18, 2006, or if the City Council has disapproved the PAC First Amendment, then either the City Parties or Project Manager may unilaterally rescind any previous execution of this First Amendment or any obligation to execute this First Amendment by delivering to the other party written notice of rescission, in which event this First Amendment shall not be binding upon the parties but the Original Agreement will remain in full force and effect except to the extent later amended in writing by all parties.

20. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

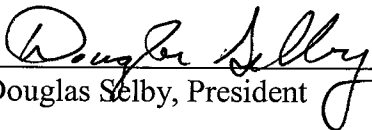
IN WITNESS WHEREOF, the City Parties and Project Manager have duly executed this First Amendment as of the Amendment Effective Date.

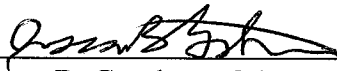
OWNER:

CITY:

CITY PARKWAY V, INC., a Nevada non profit corporation

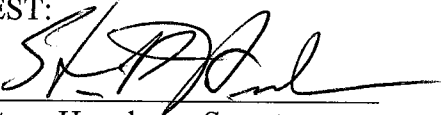
CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada

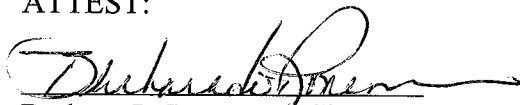
By:   
Douglas Selby, President

By:   
Name: Oscar B. Goodman, Mayor

ATTEST:

ATTEST:

By:   
Steve Houchens, Secretary

  
Barbara Jo Ronemus, City Clerk

APPROVED AS TO FORM:

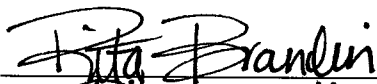
APPROVED AS TO FORM:

 8/8/06  
Date

 8/8/06  
Date

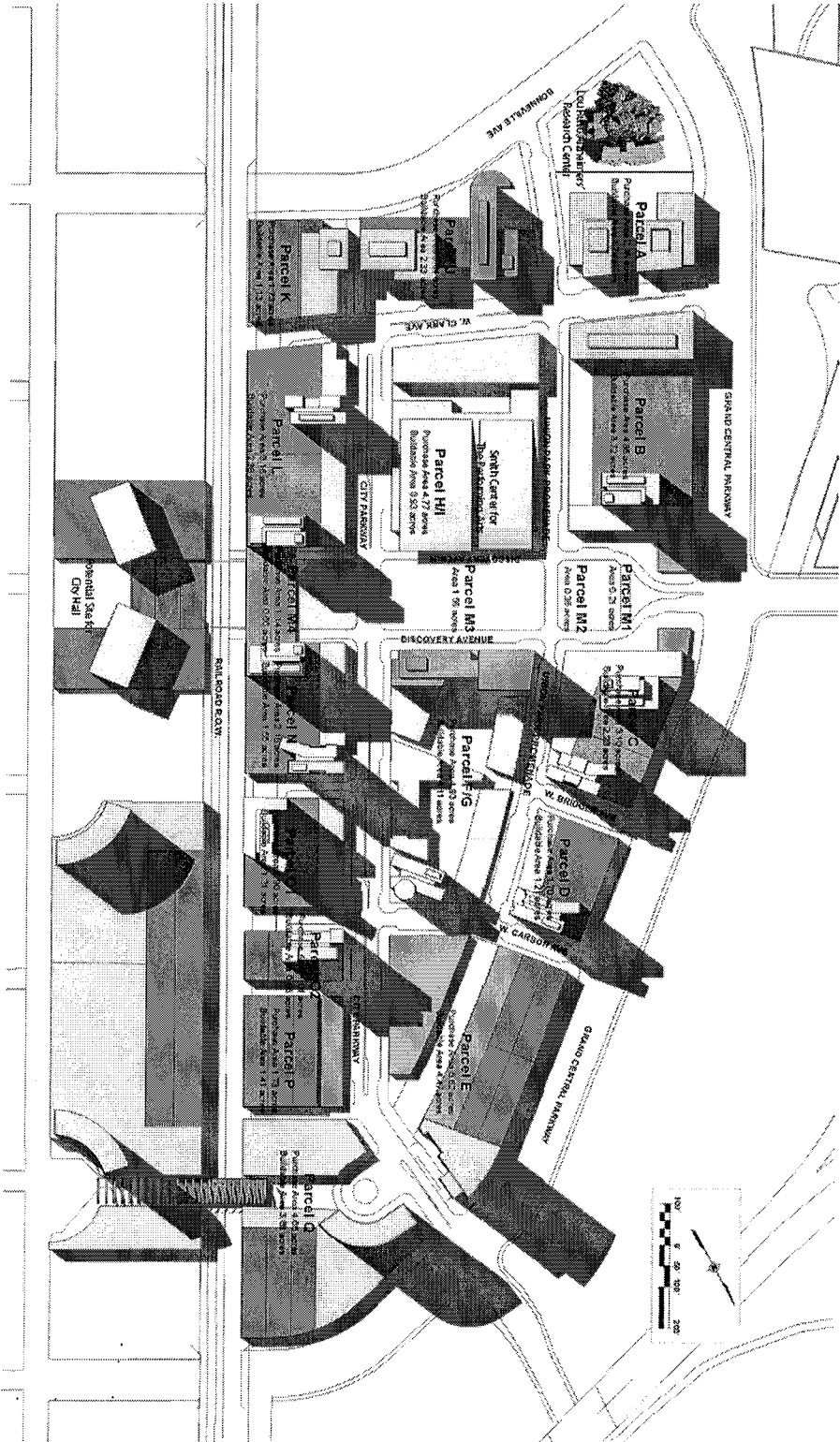
PROJECT MANAGER:

NEWLAND COMMUNITIES, LLC, a Delaware limited liability company

By:   
Name: Rita Brandin  
Title: Ast. Vice President

# EXHIBIT C

## Master Plan

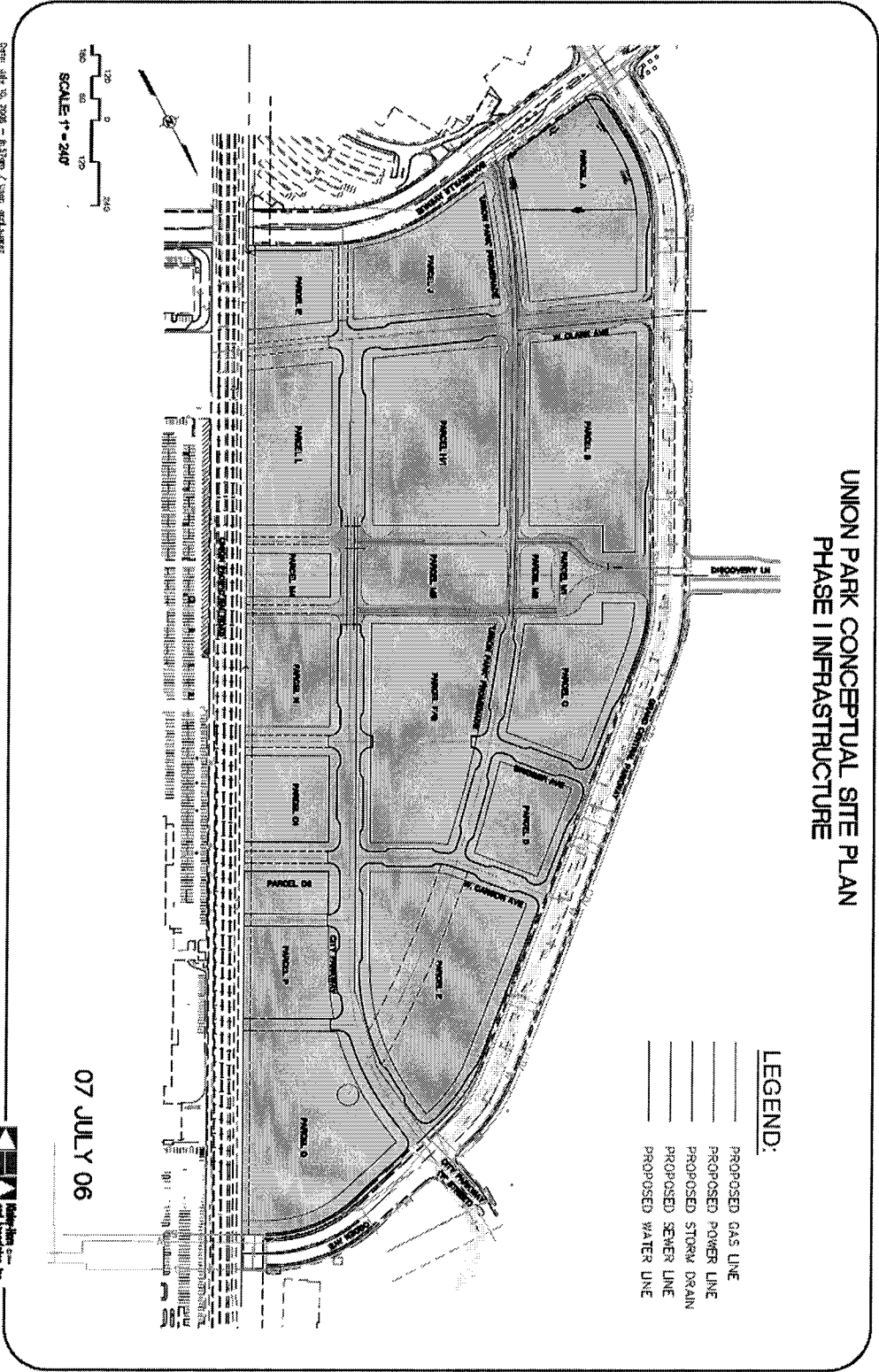


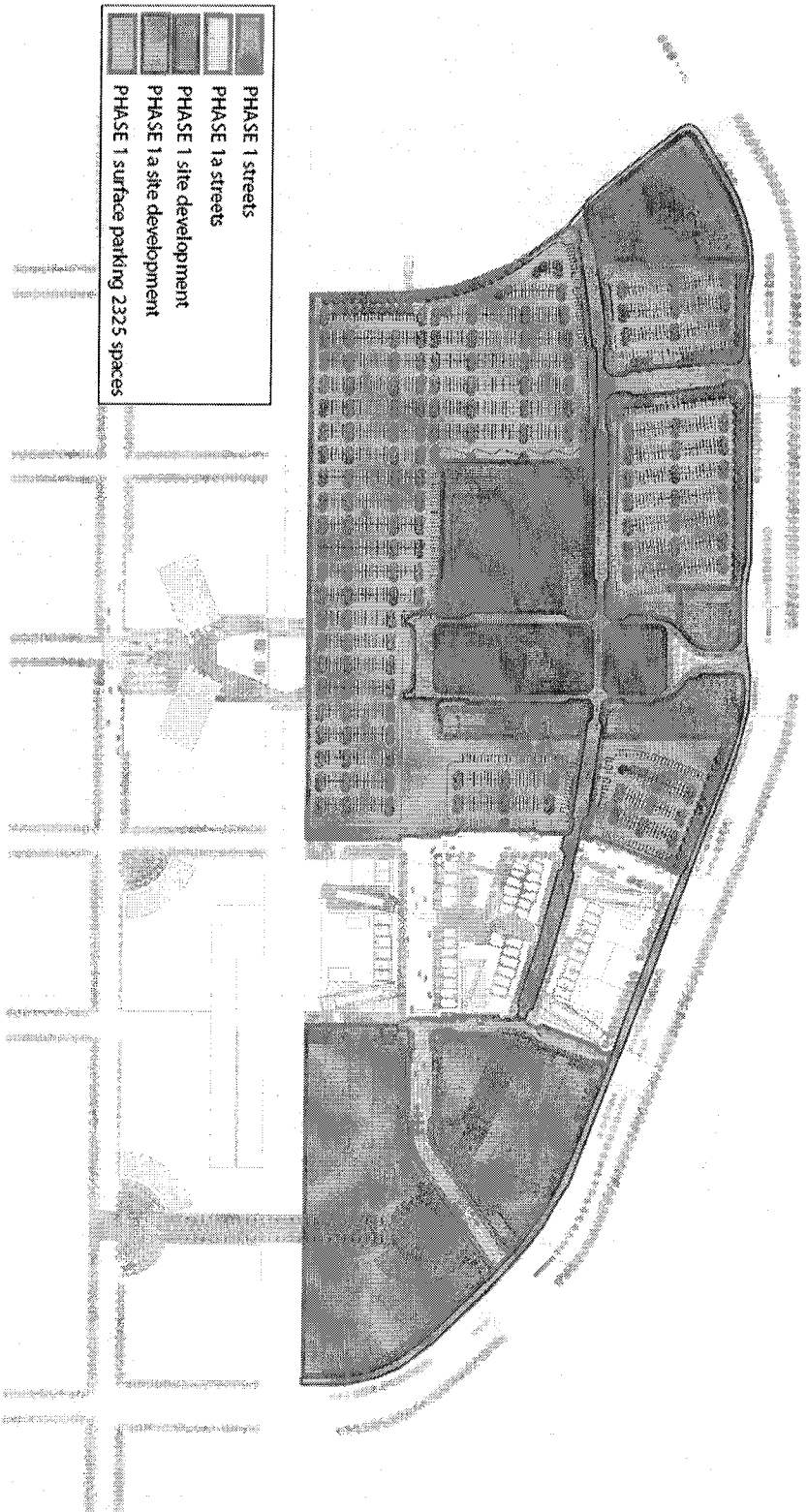
**Union Park**  
Newland Communities • City of Las Vegas  
UPDATED MASTER PLAN

DESIGNWORKSHOP  
RNL  
July 7, 2006

# EXHIBIT D

## Phase I Plan



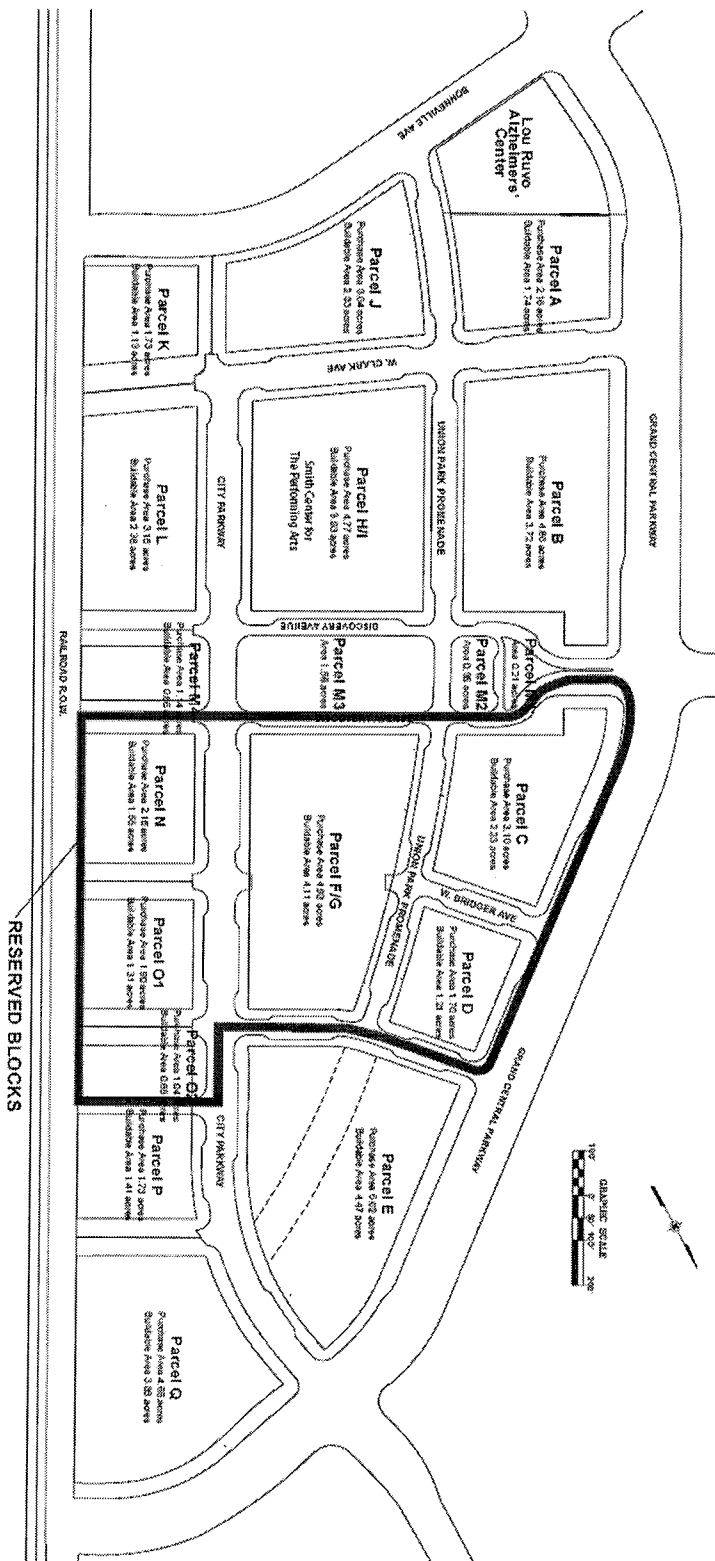


**Union Park**  
 Newland Communities • City of Las Vegas  
 Phase 1 & 1A

DESIGNWORKSHOP  
**RNL**

# EXHIBIT E

## Designation of Reserved Blocks



**Union Park**  
 Newland Communities • City of Las Vegas  
 Newland Communities Reserved Blocks

DESIGNWORKSHOP  
 RNL  
 July 7, 2006