

**LANDSCAPED MEDIAN IMPROVEMENTS  
MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 3<sup>rd</sup> day of September, 2008, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (the "City"), and LV/VPC NEV-CENTENNIAL HILLS, LLC, a Delaware Limited Liability Company, with corporate offices located at 125 East Sir Francis Drake Blvd., Larkspur, CA 94939 (the "Developer").

**WITNESSETH**

WHEREAS, the Developer is one of the owners of record of that certain real property that is located within the corporate boundaries of the City as shown in EXHIBIT "A" (the "Property"); and

WHEREAS, the Developer has an obligation to construct and maintain certain landscaping improvements, including plants, irrigation, and groundcover, on roadway medians, as shown in Exhibit "A" (the "Median Improvements"), adjacent to the Property required by Town Center Standards; and

WHEREAS, City, as the developer of the property to the south (the "City Property" herein), as shown in Exhibit "A", of the Developer Property also has an obligation to construct and maintain Median Improvements on roadway medians adjacent to City Property required by Town Center Standards as shown in Exhibit "A"; and

WHEREAS, City and Developer wish to enter into an agreement to apportion the respective obligations between the City and the Developer, to facilitate the timely construction and perpetual maintenance of the Median Improvements; and

WHEREAS, the City of Las Vegas City Council, at a meeting that was held on December 7, 2005, approved the zoning application SDR-8066 for the Property; the approval of which is conditioned upon the construction and maintenance of the Median Improvements by the Developer; and

WHEREAS, by its execution of this Agreement, the Developer intends to bind and obligate itself and its heirs, successors and assigns to inspect, maintain, and repair the Median Improvements in the manner and at the times that are hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, of the mutual promises and agreements that are hereinafter contained and of other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, said parties do hereby agree as follows:

1. COVENANT OF CONSTRUCTION OF MEDIAN IMPROVEMENTS: City hereby covenants and agrees that:

(A) City shall, at its sole cost and expense, construct the full width of the Median Improvements, meeting Town Center requirements, within the median along Durango Drive between the intersection of Grand Montecito Parkway on the south and Riley Avenue on the north, and shall install irrigation improvements necessary for the installation of plants, and the future maintenance thereof, using existing water meters and facilities to be provided by Developer. Any facilities and equipment not on Developer's approved plans, specifications, or conditioned under the approved SDR-8066 shall be the financial responsibility of the City.

(B) Future median repairs or improvements. It is the intent of this Agreement for the City to be financially responsible for construction of current Median Improvements. The City shall also be responsible for any repairs or improvements required in the future by any public agency or jurisdiction to the Median Improvements that are NOT associated with standard maintenance of landscape related items such as trees, shrubs, plants, and routine maintenance facilities.

(C) City shall, at its sole cost and expense, shall, along the full width of Median Improvements meeting Town Center requirements, within the median along Durango Drive between the intersection of Grand Montecito Parkway on the south and Riley Avenue on the north, install all landscaping (trees, shrubs, plants, rock, soils, irrigation, and other landscape features) as the City shall require under the Town Center Standards. The Developer shall have the right to review and comment on the plans as developed by the City to insure that the installation is pursuant to commercially acceptable plans and specification standards for long-term maintenance obligations as to quality of design, materials, and workmanship.

(D) At such time as City has completed construction of the Median Improvements, City shall provide Developer with written notice of completion, and shall demonstrate to Developer that all Median Improvements been installed and are operating properly.

2. COVENANT OF MAINTENANCE OF MEDIAN IMPROVEMENTS: The Developer, for itself, its heirs, successors and assigns, hereby covenants and agrees that:

(A) Developer shall submit an Encroachment Agreement to the City of Las Vegas, in accordance with Town Center Standards, for maintenance of all plant and irrigation facilities located within the Median Improvements.

(B) Upon receipt of written notice of completion from City, Developer shall, at its sole cost and expense, commence perpetual maintenance of the Median Improvements pursuant to City's Town Center Standards.

3. STANDARDS OF MAINTENANCE: All Median Improvements shall be in accordance with the City of Las Vegas Town Center Development Standards Manual. All Median Improvement maintenance shall be in accordance with the requirements of that Manual, and the applicable sections of that Manual shall be incorporated into this Agreement by reference.

4. INSPECTION, MAINTENANCE, AND REPAIR OF MEDIAN IMPROVEMENTS: Developer or its representatives shall periodically, a minimum of once every fourteen days, inspect the Median Improvements as to the health and vitality of the plants, adequate operation of the irrigation facilities, and sufficiency of the groundcover, and shall promptly replace any dead plants and/or malfunctioning irrigation components and refresh the groundcover to maintain the aesthetic appeal of the Median Improvements. All plants shall be kept trimmed within Site Visibility Restriction guidelines per City policy, and all trash, debris, and litter shall be removed.

5. DEFAULT: In the event the Developer fails to perform any obligation described in Paragraph 4 (the "Maintenance Work") and such failure is not cured within the reasonable time specified for such cure, the City may, at its option, proceed to perform any such work or obligation at the expense of the Developer.

6. PERFORMANCE OF ADDITIONAL AGREEMENTS: The Developer further agrees that, in addition to its performance of all of the terms, conditions and covenants on its part to be performed under this Agreement, it will faithfully comply with all the conditions that may have been imposed by the

Planning Commission, the City Council, the City's Department of Public Works, or any of them, in order to obtain any other development permit or approval.

7. INDEMNIFICATION:

(A) The Developer hereby agrees to protect, indemnify and hold the City, its officers, agents and employees, harmless from and against any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees and court costs which the City, its officers, employees or agents, may suffer, or which may be sought against, or are recovered or obtainable from, the City, its officers, employees or agents, as a result of, or by reason of, or arising out of or in consequence of any act or omission, negligent or otherwise, of the Developer or its contractor, subcontractors, agents or anyone who is or was directly or indirectly employed by, or acting in concert with, the Developer, its contractor, subcontractors or agents in the Maintenance Work associated therewith, subject to the limitations of Paragraph 1(B).

(B) In this connection, the Developer expressly agrees, at its sole cost and expense, to defend the City, its officers, employees and agents, in any suit or action that may be brought against it or them, or any of them, by reason of any act or omission, negligent or otherwise, against which the Developer has agreed to indemnify the City, its officers, employees and agents. If the Developer fails so to do, the City shall have the right, but not the obligation to defend same and to charge all of the reasonable direct and incidental costs of such defense, including attorneys' fees and court costs, to the Developer.

8. INSURANCE:

(A) The Developer further agrees to secure and maintain, at a minimum and at its sole cost and expense, the following liability insurance coverages with respect to the use, maintenance, and repair of the Median Improvements, which coverages shall be maintained throughout the existence of this Agreement:

- (1) Personal injury liability for injury or death to one person: \$1,000,000.00;
- (2) Personal injury liability for injury or death to any number of persons with respect to one occurrence: \$3,000,000.00;
- (3) Property damage liability per occurrence: \$1,000,000.00.

The City shall be named as an additional party insured under all of the liability coverages that are obtained with respect to the Median Improvements. The coverages that are required herein must be written by a company which is acceptable to the City and which is licensed to do business in the State of Nevada, and each policy with respect thereto shall provide that such coverages may not be canceled or materially altered without providing the City with thirty (30) calendar days prior written notice of such cancellation or alteration.

(B) The Developer shall submit to the City a certificate of insurance, which evidences the required coverages. Such insurance coverages shall be so endorsed as to create the same liability on the part of the insurer that would exist if separate policies had been written for each the Developer and the City.

(C) In the event that any of the insurance coverages that are required herein is canceled, terminated, reduced or restricted, and the Developer fails to obtain equivalent replacement coverage before such cancellation, termination, reduction or restriction becomes effective, the City may avail itself of any remedy for breach provided herein or at law or in equity.

9. ASSIGNABILITY: Subject to approval by the City, Developer shall have the right to assign the rights, duties, covenants, obligations, representations and warranties stated herein or arising herefrom to an owners' association for the Property provided such association has the financial capability, as determined by the City, to assume such duties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF LAS VEGAS

  
\_\_\_\_\_  
OSCAR B. GOODMAN, Mayor

The "City"

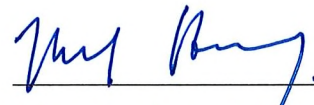
ATTEST:

  
\_\_\_\_\_  
Beverly K. Bridges, CMC, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Date 7/22/08

LV/VPC NEV-CENTENNIAL HILLS, LLC

By   
\_\_\_\_\_  
MARK HEAVEY The "Developer"

Street Address: 125 E. SIR FRANCIS DRAKE  
THIRD FLOOR

City, State, Postal Code: LAKESIDE CA 94559

EXHIBIT A

