FORM OF
FIRST SUPPLEMENTAL INDENTURE OF TRUST

CITY OF LAS VEGAS, NEVADA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

# FIRST SUPPLEMENTAL INDENTURE OF TRUST

Dated as of November 1, 2010

FIRST SUPPLEMENTAL INDENTURE OF TRUST

This FIRST SUPPLEMENTAL INDENTURE OF TRUST dated as of November 1, 2010 (the "First Supplement") between the CITY OF LAS VEGAS, NEVADA, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Nevada (the "City"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (formerly known as The Bank of New York Trust Company, N.A.), a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee"), supplements and amends the Indenture of Trust dated as of May 1, 2007 (the "Original Indenture") between the City and the Trustee.

WITNESSETH:

WHEREAS, the City is authorized by the City Economic Development Revenue Bond Law, Nevada Revised Statutes Sections 268.512 to 268.568, inclusive (the "Act"), to issue bonds to finance projects located within the City or within ten miles of the corporate boundaries of the City to promote the social welfare of the residents of the City by enabling "corporations for public benefit" (as defined in the Act) to acquire, develop, expand and maintain facilities that provide services for those residents; and

WHEREAS, the Act authorizes the City (i) to issue its revenue bonds for the purpose of defraying the cost of financing any project and all incidental expenses incurred in connection with the issuance of such bonds, (ii) to enter into financing agreements with others for the purpose of providing revenues to pay the bonds authorized to be issued under the Act and upon such terms and conditions as the City Council of the City may deem advisable, and (iii) to secure the payment of the principal of, premium, if any, and interest on such bonds as provided in the Act; and

WHEREAS, the City has heretofore issued pursuant to the Act its City of Las Vegas, Nevada Variable Rate Demand Economic Development Revenue Bonds (Keep Memory Alive Project) Series 2007A in the aggregate principal amount of $68,600,000 (the "Series 2007A Bonds") and its City of Las Vegas, Nevada Taxable Variable Rate Demand Economic Development Revenue Bonds (Keep Memory Alive Project) Series 2007B in the aggregate principal amount of $5,400,000 (the "Series 2007B Bonds" and together with the Series 2007A Bonds, the "Bonds") pursuant to and secured by the Original Indenture; and

WHEREAS, the proceeds of the Bonds were loaned to Keep Memory Alive, a Nevada nonprofit corporation ("KMA") and a "corporation for public benefit", as defined in the Act, pursuant to a Loan Agreement dated as of May 1, 2007 (the "Loan Agreement") between the City and KMA to finance the cost of the construction of a building to be located on a parcel of land to be acquired by KMA and the acquisition and installation of personal property and facilities in such building and on such land; and

WHEREAS, payment of the principal of and interest on the Bonds, and the purchase price of the Bonds upon optional and mandatory tender, has been supported by an irrevocable transferable direct pay letter of credit (the "BNY Letter of Credit") from The Bank of New York (now known as The Bank of New York Mellon) (the "Bank"), the beneficiary of which is the Trustee; and

WHEREAS, pursuant to the provisions of the Original Indenture, an irrevocable letter of credit (the "PNC Letter of Credit") issued by PNC Bank, National Association will be substituted for the BNY Letter of Credit; and

WHEREAS, to facilitate such substitution of the PNC Letter of Credit for the BNY Letter of Credit, the City and the Trustee desire to amend certain provisions of the Original Indenture.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

Section 1. All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this First Supplement.

Section 2. (a) The definitions of "Alternate Letter of Credit" and "Eligible Investments" in Section 1.01 of the Original Indenture are hereby amended to read as follows:

> "Alternate Letter of Credit" means an irrevocable letter of credit authorizing drawings thereunder by the Trustee issued by a bank, trust company or other financial institution and meeting the requirements of Section 5.11 hereof, which Alternate Letter of Credit shall be the same in all material respects (except as to expiration date) as the Letter of Credit and the unsecured, uninsured and unguaranteed debt obligations of the issuer of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are then rated in one of the four highest rating categories by Moody's and S&P; provided however, an extension of the Letter of Credit Termination Date of the existing Letter of Credit shall not be deemed an Alternate Letter of Credit.
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> "Eligible Investments" means: (i) Government Obligations; (ii) bonds, debentures or notes or other evidence of indebtedness payable in cash issued by any one or a combination of any of the following federal agencies whose obligations represent the full faith and credit of the United States of America: Export Import Bank of the United States, Rural Economic Community Development Administration, Federal Housing Administration, Maritime Administration, General Services Administration, Small Business Administration, Department of Housing and Urban Development, or Government National Mortgage Association; (iii) bonds, notes or other evidences of indebtedness rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years; (iv) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks (including the Trustee and its affiliates) which have a rating on their short term certificates of deposit on the date of purchase of "P-1" by Moody's and "A-1" by S&P and maturing no more than 360 days after the date of purchase (ratings of holding companies not being considered as the rating of the bank for the purposes

of this clause); (v) commercial paper which is rated at the time of purchase in the single highest classification "P-1" by Moody's and "A-1" by S&P and which matures not more than 270 days after the date of purchase; (vi) investments in a money market fund rated "Aaa" by Moody's and "AAA" by S&P including those for which the Trustee, its parent holding company or any affiliates or subsidiaries of the Trustee or such parent holding company serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (A) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (B) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee; (vii) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of Moody's and S&P or any successors thereto; or (B) (1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Government Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; (viii) repurchase and reverse repurchase agreements collateralized with Government Obligations, including those of the Trustee or any of its affiliates; (ix) demand deposits, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit of depository institutions, including the Trustee or any of its affiliates, rated in one of the two highest rating categories by Moody's and S&P; and (x) investment agreements with any financial institution that at the time of investment has long-term obligations rated in one of the two highest rating categories by Moody's and S&P.

(b) Section 1.01 of the Original Indenture is hereby amended by adding the following definition thereto:

"S&P" means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business, and its successors and its assigns.

Section 3. Section 2.07 of the Original Indenture is hereby amended to read as follows:

> Section 2.07 <u>Mandatory Tender Upon Delivery of Alternate Letter of Credit</u>. The Bonds shall be subject to mandatory tender in whole on the date of delivery of an Alternate Letter of Credit (a "Bond Purchase Date") at a price of 100% of the principal amount thereof plus accrued interest to such Bond Purchase Date.
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> At least 30 days prior to the proposed date of the delivery of an Alternate Letter of Credit, the Trustee shall notify the Holders of all Outstanding Bonds by first-class mail that an Alternate Letter of Credit is to be provided and the expected date of delivery of the Alternate Letter of Credit. Such notice shall advise the Holders of the Bond Purchase Date, that the requirements of this Indenture and the Bonds relating to Alternate Letters of Credit have been met, the name of the financial institution issuing the Alternate Letter of Credit and that all Bonds shall be subject to mandatory purchase on such Bond Purchase Date.
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> Bonds which are not tendered for purchase as required by this Section shall be deemed to have been tendered without further notice or action by the Holders thereof, subject to the right of the Holders of such Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Bond Purchase Date.
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> Notwithstanding the delivery of the Alternate Letter of Credit on the Bond Purchase Date, any drawing required to pay the purchase price of Bonds tendered for purchase on such Bond Purchase Date shall be made solely on the Letter of Credit which is being replaced by the Alternate Letter of Credit and the Trustee shall not surrender the Letter of Credit being replaced until the Bank which issued such Letter of Credit has honored any such draw made by the Trustee.

Section 4. Section 5.11 of the Original Indenture is hereby amended to read as follows:

> Section 5.11 <u>Extension of Letter of Credit; Alternate Letter of Credit.</u> The Letter of Credit expires on May 3, 2011, or as otherwise provided therein.
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> KMA may, at its option, provide for the delivery to the Trustee of an Alternate Letter of Credit to take effect on a date selected by KMA, which date shall be at least 45 days subsequent to the date on which KMA notifies the Trustee that an Alternate Letter of Credit is to be provided. The expiration date of the Alternate Letter of Credit shall be no earlier than 10 days after an Interest Payment Date and at least one year after the expiration date of the Letter of Credit being replaced. In addition, on or

prior to the Bond Purchase Date related to the furnishing of such Alternate Letter of Credit, the Trustee shall have received the following:

(a) an opinion of counsel for the issuer of the Alternate Letter of Credit that it constitutes a legal, valid and binding obligation of the issuer in accordance with its terms;

(b) an opinion of Bond Counsel that such replacement will not cause interest on the Series 2007A Bonds to become includable in gross income for Federal income tax purposes or adversely affect the validity of the Bonds under the Act;

(c) evidence satisfactory to the City and the Trustee from Moody's and S&P that the debt obligations of the provider of the Alternate Letter of Credit satisfy the requirements therefor in the definition of "Alternate Letter of Credit" in Article I hereof;

(d) written confirmation from the provider of the Letter of Credit being replaced that all fees and expenses owed to it pursuant to the Reimbursement Agreement having been paid or provided for to the satisfaction of such provider; and

(e) the Alternate Letter of Credit.

Section 5. Section 8.15 of the Original Indenture is hereby amended to read as follows:

Section 8.15 <u>Qualifications of Remarketing Agent.</u> The Remarketing Agent shall have a capitalization of at least $25,000,000, or have a line of credit with a commercial bank in the amount of at least $25,000,000 and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the City, KMA, the Bank and the Trustee and otherwise in accordance with the provisions of the Remarketing Agreement. The Remarketing Agent may also resign immediately upon written notice to the Trustee, the City, KMA and the Bank if so permitted by the Remarketing Agreement. The Remarketing Agent may be removed at any time by the City, with the written consent of KMA, or at the direction of KMA, in each case with the written consent of the Bank. To effect such removal, KMA, on behalf of the City, shall give at least 30 days' notice of such removal to the Remarketing Agent, the City, the Bank and the Trustee. Such removal shall also be subject to the provisions of the Remarketing Agreement.

Upon any resignation of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any moneys and

Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee.

In the event that the Remarketing Agent shall resign, or be removed or dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or Federal court or administrative body because of bankruptcy or insolvency, or for any other reason, KMA shall appoint a successor Remarketing Agent. If KMA shall not have appointed a successor Remarketing Agent, the Trustee, notwithstanding the provisions of the first paragraph of this Section, shall ipso facto be deemed to be the Remarketing Agent until the appointment by KMA of a successor Remarketing Agent; provided, however, that the Trustee shall not remarket Bonds or fix the interest rate for the Bonds, but shall be required only to implement the purchase of Bonds pursuant to a draw on the Letter of Credit as provided for in Section 5.05 hereof.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to each rating agency then rating the Bonds and to the registered Holders of the Bonds.

In addition, the Remarketing Agent may terminate its obligations under the Remarketing Agreement pursuant to the terms of the Remarketing Agreement.

Section 6. Section 12.08 of the Original Indenture is hereby amended to read as follows:

Section 12.08 Notice to Rating Agencies. The Trustee will promptly notify in writing Moody's and S&P of the following events:

(a) the expiration, termination, substitution or extension of the Letter of Credit;

(b) the redemption, purchase, payment or defeasance of all Outstanding Bonds;

(c) amendments to this Indenture, the Agreement, the Letter of Credit or the Reimbursement Agreement of which the Trustee has notice;

(d) the occurrence of an Event of Default under this Indenture of which the Trustee has notice;

(e) a change in the method of determining the interest rate on any of the Bonds;

(f) a change in the Trustee or the Remarketing Agent; and

(g) any other information that Moody's or S&P may reasonably request to maintain the rating on the Bonds.

Section 7. Section 12.09 of the Original Indenture is hereby amended by adding the following name and address thereto:

If to S&P, at: Standard & Poor's Rating Services
55 Water Street, $38^{th}$ Floor
New York, New York 10041
Attention: Public Finance

Section 8. This First Supplement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9. This First Supplement shall be governed and construed in accordance with the law of the State of Nevada.

Section 10. All covenants, obligations and agreements of the City contained in this First Supplement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of the City or the City Council of the City in other than his or her official capacity, and neither the members of the City Council nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the City contained in this First Supplement.

Section 11. Except as amended by this First Supplement, the provisions of the Original Indenture are hereby ratified and confirmed.

Section 12. This First Supplement shall become effective upon the execution and delivery hereof by the City, the Trustee, KMA and The Bank of New York Mellon (formerly known as The Bank of New York), as issuer of the Letter of Credit.

IN WITNESS WHEREOF, the City and the Trustee have caused this First Supplement to be executed in their respective names and the City has caused its seal to be hereto affixed and attested by its duly authorized officer, all as of the date first above written.

CITY OF LAS VEGAS, NEVADA

(SEAL)

By ______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to Form:

[signature] 10/25/10

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

By ______________________________
Authorized Officer

The undersigned hereby consent to the execution and delivery of this First Supplemental Indenture of Trust:

Keep Memory Alive, a Nevada nonprofit corporation

By______________________________
Treasurer

The Bank of New York Mellon
(formerly known as The Bank of New York)

By______________________________