

# STAFF REPORT

**To:** Chairman and Agency Board Members

**Agenda Item:** B1  
**Date:** 04-27-2011

**Thru:** Kevin Knutson, Interim City Manager

**Subject:**

**Staff Report: Discussion, direction to staff and possible approval of Option and Forbearance Agreement between Fitzgerald Virginia and Plaza LLC, the City of Reno, and the City of Reno Redevelopment Agency**

B.1.1 Resolution No. Resolution of the City Council of the City of Reno approving the Option and Forbearance Agreement by and between Fitzgerald Virginia and Plaza LLC, the City of Reno and the Redevelopment Agency, and authorizing the Mayor, City Manager and members, officers and agents of the City to take all other actions necessary to implement this resolution in accordance with NRS 279.432 and NRS 279.486

B.1.2 Resolution No. Resolution of the Redevelopment Agency of the City of Reno authorizing the Chairman of the Agency to execute the Option and Forbearance Agreement by and between Fitzgerald Virginia and Plaza LLC, the City of Reno, and the Redevelopment Agency, including the execution of all other deeds and agreements attached thereto or referenced therein, and authorizing the Chairman, Executive Director and members, officers and agents of the agency to take all actions necessary to implement the agreements approved herein and this resolution

**From:** John B. Hester, Assistant City Manager  
Jill Olsen, Interim Finance Director  
Peter Wallish, Economic Development Manager  
Jonathan D. Shipman, Deputy City Attorney

**Summary:** To facilitate the restructuring of the Fitzgerald Lease Revenue Bond with DEPFA Bank, staff recommends City Council and Redevelopment Agency Board approval of the transfer of various ReTRAC properties from the City of Reno to the Redevelopment Agency and approval of the Option and Forbearance Agreement for the sale of said property to Fitzgerald Virginia and Plaza, LLC. Approval of these items will also assist in the economic development efforts of the City through the removal of downtown core blight.

**Discussion:** Attached for Council and Agency Board review and consideration is a proposed Option and Forbearance Agreement (the "Agreement") for the purchase of property. Key terms of this agreement are as follows:

- For a two year period, annual rent will be \$165,000, paid in full at the beginning of each lease year with the first annual payment being made at execution of the Agreement

- Fitzgerald will deliver a letter of credit for the second year rent of \$165,000 as a security deposit
- City will forbear from taking any action on all past due rent for a two year period.
- Fitzgerald will have a two year option to purchase the Property:
  - If the Option is exercised on or before the first anniversary of the "Effective Date" of the Option Agreement (the "Option Effective Date"), the Purchase Price shall be \$2,500,000;
  - If the Option is exercised after the first anniversary of the Option Effective Date, but before the end of the Option Period (as defined in the Option Agreement), the Purchase Price shall be the greater of (x) \$2,500,000 or (y) the fair market value of the Property, including, without limitation, all improvements, easements, hereditaments, and appurtenances pertaining to the Property as determined by an independent appraiser reasonably acceptable to Buyer and Seller with at least 10 years experience in real estate appraisal for properties similar to the Property in Reno, Nevada. The appraisal shall be paid by Seller. If Optionee makes capital improvements to the Property from and after the Option Effective Date, the amount of the documented cost of those improvements shall be deducted from the Purchase Price, but only to the extent that the Purchase Price is based on the appraisal.
  - By way of examples:
    - Example No. 1:* During the first year of the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. Before the first anniversary of the Option Effective Date, Buyer exercises the Option. The Purchase Price is \$2.5 million.
    - Example No. 2:* During the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. After the first anniversary of the Option Effective Date, but no later than the end of the Option Period, Buyer exercises the Option, and the appraisal determines the fair market value of the Property is \$4 million. The Purchase Price is \$3.5 million.
    - Example No. 3:* During the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. After the first anniversary of the Option Effective Date, but no later than the end of the Option Period, Buyer exercises the Option, and the appraisal determines the fair market value of the Property is \$2 million. The Purchase Price is \$2.5 million.
- The Agreement is contingent upon and subject to Optionor's receipt of written approval from Depfa Bank.

- Following the Close of Escrow, Fitzgerald shall maintain the Garage as set forth in Exhibit C of the Purchase Agreement.
- If within five years of Close of Escrow, Fitzgerald Virginia and Plaza, LLC fails to maintain and manage the Parking Garage, the Agency may repurchase the Property for fair market value.

The sale of ReTRAC property under the Fitzgerald Garage will assist in facilitating the redevelopment of both the Parking Structure and the adjacent Fitzgerald's Hotel and Casino. Presently the parking structure has fallen into disrepair during the year since its closure.

**Financial Implications:** Net proceeds from the sale of these properties, as outlined in the Forbearance Agreement between the City and Depfa Bank dated December 8, 2010, would be applied to the City of Reno Taxable Revenue Bond, Series 2007 (Fitzgerald's Garage), as applicable, buying down the par value of the outstanding principal (principal balance as of 1/31/11 is \$5,932,000). The rent amount of \$165,000 will be sufficient to cover annual debt service payments at the current interest rate. However, should the interest rate (based on London Interbank Offered Rate) increase significantly, the total debt service payment may exceed the rent amount collected. Should this occur, the bond fund has additional cash reserved from prior years' interest savings to assist in covering current debt service and a portion of future interest rate increases for one to two additional years.

**Recommendation:** Staff recommends City Council and Redevelopment Agency Board:

1. Authorization for staff to transfer APN(s), # 011-370-52 and #011-370-53 from the City to the RDA for the Purchase and Sale between the RDA and Reno Parking Garage LLC.
2. Direction and authorization for the Executive Director and the Chairman to execute a Real Property Purchase and Sale Agreement and Escrow instructions (Exhibit B) by and between the Redevelopment Agency of the City of Reno and Reno Parking Garage LLC relating to 50 East Plaza Street, APN(s) # 011-370-52 and #011-370-53 under the terms specified in the Staff Report.
3. Council adoption of Resolution No. \_\_\_\_\_. A Resolution of the City Council of the City of Reno approving of the disposition of certain real property to the Redevelopment Agency of the City of Reno and authorizing the Mayor, City Manager and members, officers and agents of the City to take all other actions necessary to implement this resolution in accordance with NRS 279.432 and NRS 279.486
4. Redevelopment Agency Board adoption of Resolution No. \_\_\_\_\_. A Resolution of the Redevelopment Agency of the City of Reno authorizing the Chairman of the Agency to execute a Real Property Purchase and Sale Agreement and Escrow instructions by and between the Redevelopment Agency of the City of Reno and

Reno Parking Garage LLC, including the execution of all other deeds and agreements attached thereto or referenced therein, and authorizing the Chairman, Executive Director and members, officers and agents of the Agency to take all actions necessary to implement the agreements approved herein and this resolution

**Proposed Motion:** I move to approve the staff recommendations; and

For Council adoption of Resolution No. \_\_\_\_\_; and

For Redevelopment Agency Board adoption of Resolution No. \_\_\_\_\_.

**Attachments:**

**Exhibit A:** Proposed Option and Forbearance Agreement between the City of Reno, The Redevelopment Agency of the City of Reno and the Fitzgerald Virginia and Plaza LLC.

**Exhibit B:** Proposed Real Property Purchase and Sale Agreement and Escrow instructions by and between the Redevelopment Agency of the City of Reno and Reno Parking Garage LLC.

RESOLUTION NO. \_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RENO APPROVING THE OPTION AND FORBEARANCE AGREEMENT BY AND BETWEEN FITZGERALD VIRGINIA AND PLAZA LLC, THE CITY OF RENO AND THE REDEVELOPMENT AGENCY, AND AUTHORIZING THE MAYOR, CITY MANAGER AND MEMBERS, OFFICERS AND AGENTS OF THE CITY TO TAKE ALL OTHER ACTIONS NECESSARY TO IMPLEMENT THIS RESOLUTION IN ACCORDANCE WITH NRS 279.432 AND NRS 279.486**

**WHEREAS**, on July 11, 1983, the City Council (“**City Council**”) of the City of Reno established the Downtown Project Redevelopment Area (the “**Downtown Project Area**”) and adopted the Redevelopment Plan for the Downtown Project Redevelopment Area by Ordinance No. 3316 (as amended, the “**Downtown Plan**”), and on August 24, 2005, the City established Redevelopment Project Area No. 2 (“**Project Area No. 2**” and together with the Downtown Project Area, the “**Project Areas**”), and adopted the Redevelopment Plan for Project Area No. 2 by Ordinance No. 5726 (as amended, the “**Project Area No. 2 Plan**” and together with the Downtown Plans, the “**Redevelopment Plans**”); and

**WHEREAS**, the Redevelopment Agency (the “**Agency**”) is charged with implementing the Redevelopment Plans pursuant to Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 et seq. (the “**Community Redevelopment Law**”) and is authorized to engage in redevelopment activities that alleviate blighting conditions within the Project Areas; and

**WHEREAS**, pursuant to NRS 279.432 of the Community Redevelopment Law the City may assist the Agency in redeveloping the Project Areas; and

**WHEREAS**, NRS 279.432 provides that for the purpose of aiding and cooperating in the planning, undertaking, construction or operation of redevelopment projects a public body may dedicate, sell, convey or lease any of its property to a redevelopment agency; and

**WHEREAS**, the City desires to consent to the approval and execution of an Option and Forbearance Agreement by and between Fitzgerald Virginia and Plaza LLC, the City of Reno, and the Redevelopment Agency for the disposition and redevelopment of a certain parcel particularly described in the legal description attached hereto as Exhibit A and incorporated herein (the “**Property**”); and

**WHEREAS**, pursuant to NRS Section 279.486 the Agency may, with the consent of the legislative body, 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 and the installation

of any improvement which is publicly or privately owned and located within or without the redevelopment area if the legislative body determines each of the following:

a. that the buildings, facilities, structures or improvements are of benefit to the redevelopment or the immediate neighborhood in which the redevelopment area is located;

b. that no other reasonable means of financing the buildings, facilities, structures or improvements is available; and

**WHEREAS**, the Property will provide parking and other ancillary uses for the property formerly known as Fitzgerald Casino which is owned by an affiliate of Fitzgerald Virginia and Plaza LLC where the redevelopment of the Property will help to eliminate blight and will further the goals and objectives of the Community Redevelopment Plan; and

**WHEREAS**, in view of all of the restrictions, limitations and requirements set forth in the Agreement, and the purpose for which it will be dedicated, the purchase price to be received under the Agreement is fair and reasonable; and

**WHEREAS**, pursuant to the Community Redevelopment Law, the Agency is authorized, with the approval of the City Council after a duly noticed public hearing, to sell the Property; and

**WHEREAS**, a joint public hearing of the Agency and City Council on the proposed Agreement was duly noticed in accordance with the Community Redevelopment Law; and

**WHEREAS**, on April 27, 2011, the Agency and City Council held a joint public hearing on the proposed property disposition, at which time the City Council and the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the joint public hearing; and

**WHEREAS**, all actions required by all applicable law with respect to the proposed Agreements have been taken in an appropriate and timely manner; and

**WHEREAS**, the City Council has duly considered all of the terms and conditions of the proposed agreements and believes that the redevelopment of the Project Areas pursuant to the Agreements is in the best interests of the City of Reno and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED BY THE RENO CITY COUNCIL IN THE COUNTY OF WASHOE IN THE STATE OF NEVADA:**

**Section 1.** The City Council hereby finds that the foregoing recitals are true and correct.

**Section 2.** The City Council finds that (i) the sale of the Property by the Agency will be of benefit to the Project Areas; and (ii) no other means of financing that no other reasonable means of financing the buildings, facilities, structures or improvements is available.

**Section 3.** The City Council consents to the termination of applicable City leases, transfer of said properties to the Agency pursuant to NRS 279.432, approval and execution of the Forbearance and Option Agreement, including Exhibit 2, the purchase and sale agreement, by the Agency and City, as applicable, in the forms on file with the City Clerk.

**Section 4.** The Mayor, City Manager, members, officers, and agents of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute, deliver and record documents as may be required and otherwise to carry out, give effect to, and comply with the terms and intent of this Resolution and the Option and Forbearance Agreement.

**Section 5.** The Reno City Council has determined, and does hereby declare, that this Resolution shall be in effect after its passage in accordance with law.

Upon motion by City Council Member \_\_\_\_\_, seconded by City Council Member \_\_\_\_\_, the foregoing Resolution was passed and adopted this 27<sup>th</sup> day of April, 2011 by the following vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_

APPROVED this 27<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
ROBERT A. CASHELL, SR., Mayor

ATTEST:

\_\_\_\_\_  
Lynnette R. Jones, City Clerk

RESOLUTION NO. \_\_\_\_

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF RENO AUTHORIZING THE CHAIRMAN OF THE AGENCY TO EXECUTE THE OPTION AND FORBEARANCE AGREEMENT BY AND BETWEEN FITZGERALD VIRGINIA AND PLAZA LLC, THE CITY OF RENO, AND THE REDEVELOPMENT AGENCY, INCLUDING THE EXECUTION OF ALL OTHER DEEDS AND AGREEMENTS ATTACHED THERETO OR REFERENCED THEREIN, AND AUTHORIZING THE CHAIRMAN, EXECUTIVE DIRECTOR AND MEMBERS, OFFICERS AND AGENTS OF THE AGENCY TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE AGREEMENTS APPROVED HEREIN AND THIS RESOLUTION**

WHEREAS, on July 11, 1983, the City Council (“**City Council**”) of the City of Reno established the Downtown Project Redevelopment Area (the “**Downtown Project Area**”) and adopted the Redevelopment Plan for the Downtown Project Redevelopment Area by Ordinance No. 3316 (as amended, the “**Downtown Plan**”), and on August 24, 2005, the City established Redevelopment Project Area No. 2 (“**Project Area No. 2**” and together with the Downtown Project Area, the “**Project Areas**”), and adopted the Redevelopment Plan for Project Area No. 2 by Ordinance No. 5726 (as amended, the “**Project Area No. 2 Plan**” and together with the Downtown Plans, the “**Redevelopment Plans**”); and

WHEREAS, the Redevelopment Agency (the “**Agency**”) is charged with implementing the Redevelopment Plans pursuant to Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 et seq. (the “**Community Redevelopment Law**”) and is authorized to engage in redevelopment activities that alleviate blighting conditions within the Project Areas; and

WHEREAS, pursuant to Section 279.432 of the Community Redevelopment Law, the City Council has adopted Resolution \_\_\_\_, pursuant to which the City approves that certain Option and Forbearance Agreement will convey to the Agency a certain parcel particularly described in the legal description attached hereto as Exhibit A and incorporated herein (the “**Property**”); and

WHEREAS, pursuant to Chapter 279.472 of the Community Redevelopment Law, the Agency is authorized to convey land without public bidding, but only after a public hearing is conducted; and

WHEREAS, in order to carry out and implement the Redevelopment Plans for the Agency’s redevelopment projects, the Agency proposes to enter into the Option and Forbearance Agreement for the redevelopment of the Property (the “**Agreement**”); and



**WHEREAS**, the Property will provide parking and other ancillary uses for the property formerly known as Fitzgerald Casino which is owned by an affiliate of Fitzgerald Virginia and Plaza LLC where the redevelopment of the Property will help to eliminate blight and will further the goals and objectives of the Community Redevelopment Plan; and

**WHEREAS**, in view of all of the restrictions, limitations and requirements set forth in the Project agreements, the economic benefit, and the purpose for which the money derived will be dedicated, the purchase price to be received by the Agency under the respective Agreements is fair and reasonable; and

**WHEREAS**, pursuant to the Community Redevelopment Law, the Agency is authorized, with the approval of the City Council after a duly noticed public hearing, to sell the Property; and

**WHEREAS**, a joint public hearing of the Agency and City Council on the proposed Agreement was duly noticed in accordance with the Community Redevelopment Law; and

**WHEREAS**, on April 27, 2011, the Agency and City Council held a joint public hearing on the proposed property disposition, at which time the City Council and the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the joint public hearing; and

**WHEREAS**, all actions required by all applicable law with respect to the Agreements have been taken in an appropriate and timely manner; and

**WHEREAS**, the Agency has duly considered all of the terms and conditions of the proposed agreements and believes that the redevelopment of the Project Areas pursuant to the Agreements is in the best interests of the City of Reno and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF RENO DOES RESOLVE AS FOLLOWS:**

**Section 1.** The Agency hereby finds that the foregoing recitals are true and correct.

**Section 2.** The Agency finds and determines that, based upon substantial evidence provided in the record before it, the Agency's disposition of the Property pursuant to the terms and conditions of the Agreement will benefit the Project Areas, is in the best interest of the City and the health, safety, and welfare of its residents, provides employment opportunities for the residents of the City, will eliminate blight within the Project Areas by providing for the proper reuse and redevelopment of a portion of the Project Areas, and is necessary to effectuate the purposes of the Redevelopment Plans.

**Section 3.** The Agency hereby approves the Agreement in substantially the form on file with the Agency Secretary. The Chairman of the Agency is hereby

authorized on behalf of the Agency to execute the Agreements, including the execution of all other deeds and agreements attached thereto or referenced therein, and the Executive Director is hereby authorized to make revisions to the Agreements, approved by Agency Counsel, which do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Property, to sign all documents, record any instruments, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement and related documents.

**Section 4.** The Agency Secretary is hereby authorized and directed to attest the signature of the Executive Director of the Agency as may be required in connection with the execution and delivery of the Agreements in accordance with this Resolution. The members, officers, and agents of the Agency are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver the Agreements, and otherwise to carry out, give effect to, and comply with the terms and intent of this Resolution and the documents herein approved and authorized to be executed.

**Section 5.** The Agency has determined, and does hereby declare, that this Resolution shall be in effect after its passage in accordance with law.

Upon motion by board member \_\_\_\_\_, seconded by board member \_\_\_\_\_, the foregoing Resolution was passed and adopted this 27<sup>th</sup> day of April, 2011 by the following vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_

APPROVED this 27<sup>th</sup> day of April, 2011.

\_\_\_\_\_  
ROBERT A. CASHELL, SR., Chair

ATTEST:

\_\_\_\_\_  
Agency Secretary

## OPTION AND FORBEARANCE AGREEMENT

**THIS OPTION AND FORBEARANCE AGREEMENT** (this "Agreement"), is entered into effective as of April \_\_\_\_\_, 2011 ("Effective Date") by and between **FITZGERALD VIRGINIA AND PLAZA LLC**, a Nevada limited liability company ("Optionee"), **THE CITY OF RENO** ("City"), a Nevada municipal corporation, and **THE REDEVELOPMENT AGENCY OF THE CITY OF RENO** ("Agency"), a public body, corporate and politic. City and Agency are collectively referred to as "Optionor."

### RECITALS

A. **WHEREAS**, the Agency is a redevelopment agency formed, existing and exercising its powers pursuant to the provisions of the Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 *et. seq.* ("Community Redevelopment Law"); and

B. **WHEREAS**, City is the owner of that certain parcel of land located at 50 East Plaza Street, Reno, Nevada and particularly described in the legal description attached hereto as Exhibit 1 and incorporated herein (the "Property"); and

C. **WHEREAS**, Optionee desires an option to purchase the Property, and Optionor desires to grant an option to Optionee to purchase the Property, in accordance with the terms of this Agreement and the terms of the Real Property Purchase and Sale Agreement and Joint Escrow Instructions attached hereto as Exhibit B (the "Purchase Agreement"); and

D. **WHEREAS**, the Agency finds that the redevelopment of the Property will help to eliminate blight and will further the goals and objectives of the Redevelopment Plan; and

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of option and consideration.

(a) In consideration of the following cash payments, made and to be made, to City by Optionee, Optionor hereby grants to Optionee the Option (as defined in Paragraph 1(b)):

(i) \$165,000 upon execution of this Agreement; and,

(ii) \$165,000 on the first anniversary of the Effective Date of this Agreement (the "Second Payment").

(b) Optionor hereby grants and gives to Optionee, for the period commencing on the Effective Date of this Agreement and ending at 5 p.m. PST on the second anniversary of the Effective Date of this Agreement (the "Option Period"), the

right and option (the "Option") to purchase the Property. Notwithstanding any provision in this Paragraph 1(b) to the contrary, Optionee's exercise of the Option prior to the first anniversary of the Effective Date of this Agreement shall automatically relieve Optionee from making the Second Payment (which failure is not cured within five days notice from Optionor).

(c) Concurrently with the execution of this Agreement, Optionee shall deliver to Optionor:

(i) A letter of credit ("LOC") as security for the Second Payment. The LOC shall be irrevocable and non-transferable in a form reasonably approved by the City Attorney's Office. The term of the LOC shall be one year from the Effective Date of this Agreement. The LOC will authorize the City's Finance Director to present drafts against the LOC and to release the City's interest in the LOC upon Optionee's failure to make the Second Payment (which failure is not cured within five days' notice from Optionor). . To the extent the Second Payment is made, the LOC shall be returned to Optionee.

(ii) A certified resolution of its Manager authorizing Optionee to enter into this Agreement and its Manager to execute this Agreement.

2. Notice of exercise. To exercise the Option, Optionee must deliver a written notice to Optionor prior to the end of the Option Period. Concurrently with the exercise of the Option, Optionee shall deliver to Optionor a certified resolution of its Manager authorizing the exercise of the Option and authorizing its Manager to execute all documents and do all things necessary to close this transaction. If the Option is exercised, Optionor shall sell and Optionee shall buy the Property pursuant to the terms and provisions of the Purchase Agreement. Upon the exercise of the Option, Optionee and Agency shall execute and deliver to each other the Purchase Agreement.

3. Depfa Approval. This Agreement is contingent upon and subject to Optionor's receipt of written approval from Depfa Bank.

4. Payment default; liquidated damages. If Optionee shall fail to pay promptly any payment required under Paragraph 1, and does not cure such failure within five days of written notice from Optionor, the Option shall automatically terminate and this Agreement shall no longer be effective. In that event, or if Optionee in any manner breaches its obligations hereunder after exercising the Option (and fails to cure such breach within five days of written notice), Optionor may keep all previous payments made for the Option as liquidated damages and as its sole remedy. Both parties agree that the total amount of such payments is a reasonable approximation of the damages that Optionor would sustain if damages were readily ascertainable.

5. Forbearance period. Optionor hereby agrees, for the Option Period or until such time as this Agreement is otherwise terminated (such period of time, the "Forbearance Period"), to forbear from the exercise of any of its remedies pursuant to the

that certain Amended Ground Lease and Signage Agreement dated January 31, 2007, and the Assignment and Assumption Agreement dated October 31, 2007 (collectively, the "Lease"), at law, in equity, or otherwise, and any other remedies or recourse which may be available to them in connection with or in relation to any and all defaults now or hereafter existing under the Lease, whether at law, in equity, or otherwise.

6. Continuation and reservation of rights.

(a) Optionee acknowledges and agrees that the forbearance by Optionor which is described in Paragraph 5 of this Agreement does not alter, impair or affect in any fashion (or evidence the intent of Optionor to alter, impair or affect in any fashion) any and all past, present, and future claims, counterclaims, demands, suits, promises, defenses, offsets, judgments, causes of action, damages, costs and other obligations, duties and liabilities or rights and remedies of any kind, direct or indirect, known or unknown, foreseen or unforeseen, matured or unmatured, direct or indirect, accrued, contingent or non-contingent, which Optionor now has or may have in the future against Optionee, which relate to, arise from or are connected with the Lease. Optionor expressly reserves its right to pursue all remedies and actions, whether at law, in equity or otherwise in such order and in such manner as Optionor may, in its sole judgment any claims, counterclaims, defenses, affirmative defenses or rights of Optionor whatsoever for any and all defaults now or hereafter existing under the Lease, or which otherwise relate to, arise from or are connected with the Lease, in each case, except to the extent Optionor has expressly agreed to forbear in enforcing such remedies pursuant to this Agreement. Notwithstanding the foregoing, to the extent Optionee closes on the purchase of the Property pursuant to the Purchase Agreement, all such rights of Optionor shall extinguish as set forth in the Purchase Agreement and the documents to be executed in connection therewith.

(b) **[Intentionally Deleted]**

(c) Upon the termination or expiration of the Option, Optionor's agreement to forbear in accordance with the terms of this Agreement shall automatically terminate and Optionor shall be entitled to unconditionally pursue all or any of its rights and remedies under the Lease and under applicable law, in equity or otherwise, without delay and Optionor shall immediately be fully restored to the position it would have held if this Agreement had never been executed.

(d) Nothing contained in this Agreement shall, or shall be deemed independently to create any obligation, duty, agreement or undertaking by Optionor to agree to waive, modify or forbear from exercising any rights or remedies under the Lease in any other circumstances except as specifically set forth in this Agreement.

7. No assignment by Optionee. Any direct or indirect assignment of this Agreement shall automatically terminate the Option and all of Optionee's rights hereunder.

8. Binding effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, and assigns.

9. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

10. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12. Time of essence. Time is of the essence of this Agreement.

13. Entire agreement. This Agreement supersedes all prior agreements between the parties with regard to the subject matter hereof and there are no other understandings or agreements between them.

14. Notices. All notices hereunder shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**OPTIONEE:**

***FITZGERALD VIRGINIA AND PLAZA  
LLC, a Nevada limited liability company***  
By: Real Estate Ventures Management LLC  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OPTIONOR:**

***CITY OF RENO, a Nevada municipal  
corporation***

By: \_\_\_\_\_  
Robert A. Cashell, Sr.  
Chairman

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
City Attorney's Office

***REDEVELOPMENT AGENCY, public  
body, corporate and politic***

By: \_\_\_\_\_  
Robert A. Cashell, Sr.  
Chairman

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Agency Counsel

Exhibit 1: Property  
Exhibit 2: Purchase and Sale Agreement

**EXHIBIT A**  
**REAL PROPERTY PURCHASE AND SALE AGREEMENT**  
**AND**  
**JOINT ESCROW INSTRUCTIONS**  
**BY AND BETWEEN**  
**THE REDEVELOPMENT AGENCY OF THE CITY OF RENO**  
**AND**  
**RENO PARKING GARAGE LLC**

**THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT** (“Agreement”) is entered into effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”) by and between **FITZGERALD VIRGINIA AND PLAZA LLC**, a Nevada limited liability company or its assignee (“Buyer”), and **THE REDEVELOPMENT AGENCY OF THE CITY OF RENO** (“Seller”), a public body, corporate and politic. Buyer and Seller are sometimes individually referred to as a “Party” and collectively referred to as “Parties.”

**RECITALS**

E. **WHEREAS**, Buyer, Seller and the City of Reno are parties to that certain Option and Forbearance Agreement dated April \_\_, 2011 (the “Option Agreement”) pursuant to which, among other things, Buyer is granted an option (the “Option”) to purchase the Property (defined below); and

F. **WHEREAS**, Buyer has exercised the Option in accordance with the Option Agreement; and

G. **WHEREAS**, Seller is a redevelopment agency formed, existing and exercising its powers pursuant to the provisions of the Nevada Community Redevelopment Law, Nevada Revised Statutes 279.382 *et. seq.* (“Community Redevelopment Law”); and

H. **WHEREAS**, Seller is the owner of that certain parcel of land located at 50 East Plaza Street, Reno, Nevada and more particularly described in the legal description attached hereto as Exhibit A and incorporated herein, together with all easements, hereditaments, and appurtenances belonging to or inuring to the benefit of Seller and pertaining to thereto (collectively, the “Property”); and

I. **WHEREAS**, Buyer desires to purchase the Property to provide parking and other commercial uses for the property formerly known as Fitzgerald Casino which is owned by an affiliate of Buyer, and Seller desires to see that such parking and other uses is provided; and

J. **WHEREAS**, in accordance with the terms and conditions contained in this Agreement, Buyer desires to purchase and Seller desires to sell the Property; and



K. **WHEREAS**, Seller has complied with all the legal requirements necessary to convey the Property to Buyer; and

L. **WHEREAS**, Seller finds that the redevelopment of the Property will help to eliminate blight and will further the goals and objectives of the Community Redevelopment Plan.

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Agreement to Sell and Purchase**. Seller agrees to sell, convey and assign to Buyer, and Buyer agrees to purchase from Seller, the Property, subject to the terms and conditions of this Agreement.

2. **Purchase Price**. Buyer agrees to pay Seller the Purchase Price (as defined below) for the Property. For the purposes of this Agreement, the total "Purchase Price" for the Property shall be determined at the time of Closing (defined in Section 7) as follows:

A. If the Option has been exercised on or before the first anniversary of the "Effective Date" of the Option Agreement (the "Option Effective Date"), the Purchase Price shall be \$2,500,000;

B. If the Option has been exercised after the first anniversary of the Option Effective Date, but before the end of the Option Period (as defined in the Option Agreement), the Purchase Price shall be the greater of (x) \$2,500,000 or (y) the fair market value of the Property, including, without limitation, all improvements, easements, hereditaments, and appurtenances pertaining to the Property as determined by an independent appraiser reasonably acceptable to Buyer and Seller with at least 10 years experience in real estate appraisal for properties similar to the Property in Reno, Nevada. The appraisal shall be paid by Seller. If Optionee makes capital improvements to the Property from and after the Option Effective Date, the amount of the documented cost of those improvements shall be deducted from the Purchase Price, but only to the extent that the Purchase Price is based on the appraisal.

By way of examples:

*Example No. 1:* During the first year of the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. Before the first anniversary of the Option Effective Date, Buyer exercises the Option. The Purchase Price is \$2.5 million.

*Example No. 2:* During the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. After the first anniversary of the Option Effective Date, but no later than the end of the Option Period, Buyer exercises the Option, and the

appraisal determines the fair market value of the Property is \$4 million. The Purchase Price is \$3.5 million.

*Example No. 3:* During the term of the Option Agreement, Buyer makes \$500,000 in documented capital improvements on the Property. After the first anniversary of the Option Effective Date, but no later than the end of the Option Period, Buyer exercises the Option, and the appraisal determines the fair market value of the Property is \$2 million. The Purchase Price is \$2.5 million.

3. **Establishment of Escrow and Escrow Instructions.** Within three (3) business days following the Effective Date, the Parties will open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of First American Title Company located at 5310 Kietzke Lane, Suite 100, Reno, Nevada, ("Title Company" or "Escrow Agent"). The Parties will deposit with the Escrow Agent an executed copy of this Agreement, which will serve as the Parties' joint escrow instructions for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent. Any additional escrow instructions must be consistent with the terms of this Agreement.

4. **Deposit.** Within three (3) business days following the Effective Date, Buyer shall deposit with Escrow Agent the amount of Two Hundred Fifty Thousand Dollars (\$250,000) as Buyer's earnest money deposit ("Deposit"). The Deposit shall be applied towards the Purchase Price at the Close of Escrow (defined in Section 7). The Escrow Agent shall hold the Deposit in an interest-bearing account. The Deposit shall be non-refundable to Buyer, except in the event of a default hereunder by Seller or in the event Buyer terminates this Agreement due to Seller's failure to satisfy a condition contained in this Agreement.

5. **Title Documents.**

A. Within five (5) business days of the opening of escrow, Seller will deliver to Buyer a preliminary title report (the "Preliminary Report") on the Property issued by the Title Company containing the encumbrances, easements, assessments, restrictions and conditions of record (collectively, "Exceptions") affecting Seller's title to the Property. Any Exceptions to Seller's title to the Property shown in the Preliminary Report will be deemed to be accepted by Buyer unless objected to in writing by Buyer to Seller within the five (5) business day period following the delivery of the Preliminary Report to Buyer (the "Permitted Exceptions").

B. Buyer may, at Buyer's sole cost and expense, cause a survey of the land to be prepared (or updated) by a surveyor licensed in the State of Nevada, certified by such surveyor to Buyer, a lender designated by Buyer and the Title Company as being true, accurate and having been prepared in compliance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" adopted by the American Land Title Association and American Congress on Surveying and Mapping in 1999 (the "Survey").

6. **Closing Documents.**

A. Within fifteen (15) business days of the Effective Date, Seller shall: (i) deposit into escrow a Grant Deed in a recordable form conveying to Buyer a fee simple interest in the Property in accordance with this Agreement, duly executed and acknowledged; (ii) deposit into escrow a properly executed and acknowledged Lease Cancellation and Release Agreement substantially in the form set forth in Exhibit B ("Lease Cancellation Agreement"); and (iii) execute, deposit and deliver such additional instruments and documents as Buyer or the Title Company may reasonably require to consummate the transaction which is the subject of this Agreement.

B. No later than two (2) business days prior to the Close of Escrow, Buyer shall: (i) deposit into escrow monies in the amount necessary to pay all title insurance and title report costs, documentary transfer tax on the Grant Deed, escrow and recording fees; and (ii) execute, deposit and deliver such additional instruments and documents as the Title Company may reasonably require to consummate the transaction which is the subject of this Agreement..

7. **Close of Escrow.** Unless the Parties mutually agree in writing to an extension, the Parties shall cause the Escrow Agent to close escrow ("Close of Escrow" or "Closing"), and transfer the Property to Buyer, within twenty (20) business days from the Effective Date. Escrow Agent shall close escrow by (i) recording the Grant Deed conveying the Property from Seller to Buyer in the official records of Washoe County, Nevada; (ii) transferring the full Purchase Price to Seller; (iii) delivering to Seller and Buyer original copies of the properly executed and acknowledged Lease Cancellation and Release Agreement; and (iv) delivering to Seller and Buyer a certified copy of the Grant Deed.

8. **Title.** Upon the Close of Escrow, Seller shall by Grant Deed convey to Buyer fee simple title to the Property, free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages, excepting applicable building and zoning laws and regulations, if any, and the Permitted Exceptions.

9. **Closing Costs.** Buyer shall pay all title insurance and title report costs, escrow fees (including the costs of preparing documents and instruments) and recording fees and documentary transfer tax. Seller shall pay all costs of removing exceptions from title to the Property objected to by Buyer pursuant to Section 5A.

10. **Prorations.** At the Close of Escrow, Escrow Agent shall make the following prorations: (i) property taxes, if any, shall be prorated as of the date of Close of Escrow, including any additional property taxes which may be assessed after Close of Escrow, pertaining to the period prior to the transfer of title to Buyer, regardless of when notice is delivered or who receives the notice; and (ii) any bond or assessment that is a lien, determined as of the Close of Escrow, shall be assumed by Buyer at the Close of Escrow.

11. **Buyer's Conditions to Closing.** The Close of Escrow and Buyer's obligation to purchase the Property pursuant to this Agreement are conditioned on (i) the performance by Seller of each obligation to be performed by Seller under this Agreement by the Close of Escrow; (ii) Seller's representations and warranties contained in this Agreement being true and correct in all material respects as of the Close of Escrow; (iii) Title Company's agreement to issue a standard coverage owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price and in a form reasonably approved by Buyer upon Buyer's payment of the premium therefore. Should any of the conditions fail to occur before the Close of Escrow, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving notice to Seller and Escrow Agent, to cancel the escrow and terminate this Agreement, in which case, Escrow Agent shall immediately return the Deposit to Buyer.

12. **Seller's Conditions to Closing.** The Close of Escrow and Seller's obligation to sell the Property pursuant to this Agreement are conditioned on (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement by the Close of Escrow; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct in all material respects as of the Close of Escrow. Should any of the conditions fail to occur before the Close of Escrow, excepting any such conditions that have been waived by Seller, Seller shall have the right, exercisable by giving notice to Buyer and Escrow Agent, to cancel the escrow, terminate this Agreement, and retain the Deposit plus interest thereon as liquidated damages. The Escrow Agent shall deliver the Deposit to Seller on failure of Buyer to close the escrow as provided for in this Agreement.

13. **Liquidated Damages.** The parties agree that it would be impractical or extremely difficult to fix actual damages if Buyer fails to close the escrow, and that the amount of the Deposit is a reasonable estimate of such damages, and that Seller shall retain the Deposit as Seller's sole and exclusive remedy for Buyer's default under this Agreement. In the event that this Section should be held to be void for any reason by a court of law, Seller shall be entitled to seek the full extent of damages otherwise provided by law. The Parties indicate their agreement to these liquidated damages.

\_\_\_\_\_ Initials of Buyer \_\_\_\_\_ Initials of Seller

14. **Default.** Upon Buyer's or Seller's default under this Agreement, the other party shall have all rights available at law or in equity, including specific performance.

15. **Possession.** Seller shall deliver possession of the Property to Buyer at the Close of Escrow.

16. **Environmental Condition of the Property.**

A. *Definitions*

1. Hazardous Substances

"Hazardous Substances" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous substances" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

## 2. Environmental Laws

"Environmental Laws" means all present and future federal, state and local laws (whether under common law, statutes, ordinances, regulations, rules, administrative rules and policies, judicial and administrative orders and decrees, or otherwise), and all other requirements of governmental authorities relating to the protection of human health or the environment.

B. *Environmental Disclosure.* Seller agrees to make available to Buyer within five (5) business days following the Effective Date, any and all information, studies, reports, investigations and other obligations concerning or relating to the Property which are in Seller's possession or which are reasonably available to Seller, including without limitation surveys, engineering studies, plans, soils reports, tentative maps, improvement plans, architects or land planners work product, water and sewer studies, development agreement(s) and investigations concerning the Property's physical, environmental or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the Property and the compliance by the Property with Environmental Laws.

C. *Right of Entry.* Buyer shall be entitled to enter upon and conduct further reviews and assessments of the physical and environmental condition of the Property. Buyer hereby agrees to provide workplans, drawings, etc of any intrusive sampling it intends to do. Prior to conducting any intrusive sampling or investigation, Buyer will enter into a right of entry agreement with Seller. Buyer shall keep the Property in a safe condition during its entry and shall indemnify, defend and protect Seller and the City of Reno against any claims, causes of action, damages, expenses or injury related directly or indirectly to its entry onto the Property. Buyer likewise agrees to return the Property to the same condition it was in prior to Buyer's entry onto the Property. Buyer will not permit any mechanics liens or other liens to be placed against the Property prior to Close of Escrow. This Section will survive the termination of this Agreement for any reason.

17. **Seller not a Responsible Party.** The Parties recognize and agree that neither Seller nor the City of Reno is a responsible party for any contamination on the Property.

18. **Representations and Warranties.**

A. Seller hereby agrees, represents and warrants that, to the best of its knowledge, without any duty of inquiry or investigation, (i) there are not presently any threatened or pending actions, suits or proceedings against or affecting the Property or the interest of Seller in the Property or their use; (ii) there are not presently any threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property; (iii) Seller has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, environmental or health code violations or violations of other governmental regulations concerning the Property that have not previously been disclosed to Buyer; and (iv) Seller is the owner and holder of good and marketable fee simple title to the Property free and clear of all interests, liens, restrictions, claims or rights of any character and has the right, title and interest to transfer the Property to Buyer; (v) Seller has obtained consents from any party necessary for the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby.

B. Each of Buyer and Seller represents, warrants and covenants to the other that this Agreement and all other documents delivered in connection herewith, prior to or at the Close of Escrow: (i) have been duly authorized, executed, and delivered by such party; (ii) are binding obligations of such Party; (iii) do not violate the provision of any agreement to which such Party is a party; and (iv) there is no pending, or to such Party's knowledge threatened, litigation that would prevent such Party's performance under this Agreement. Each Party further represents and warrants to the other that the persons who have executed this Agreement on behalf of such Party are duly authorized to do so, that such Party has the legal right to enter into this Agreement and to perform all of its terms and conditions and this Agreement is enforceable against such Party in accordance with its terms.

19. **Disclaimer of Representations and Warranties.** Buyer and Seller agree that (i) except as specified in this Agreement, neither Seller nor any agent or representative of Seller has made any representations or warranties regarding the Property, including without limitation any representations or warranties concerning the Property's improvements, physical condition, access, zoning laws, environmental matters, utilities, physical equipment or fixtures on the Property, or any other matter affecting the Property or its use; and (ii) except for the representations and warranties in this Agreement, Buyer has not relied and will not rely on any implied warranties, guaranties, statements, representations, or information about the Property, whether made by Seller or any agents or representatives of Seller. Buyer has examined or will examine the Property prior to Close of Escrow, is familiar with its physical condition, and by acquiring the Property, Buyer will be deemed to have approved the condition of the Property and accepts the Property "AS IS, WHERE IS" and in its current state and condition, without any warranties whatsoever regarding its condition except as

specifically described in this Agreement, and with all faults and defects, including Hazardous Substances and any other environmental conditions or hazards, if any, that may be located on, under, or around the Property, whether known or unknown, suspected or unsuspected, actual or potential, and Buyer assumes all responsibility for any such faults, defects, and conditions as of the Close of Escrow. Buyer acknowledges that Seller has not made and does not make any representations as to the physical condition of the Property.

20. **Release of Seller.** Upon Close of Escrow, and without the execution of any further agreement, Buyer hereby releases and forever discharges the Seller, the City of Reno, and their respective board members, employees, agents, representatives, affiliates, insurers, attorneys and their respective predecessors, successors and assigns, from any and all claims and causes of action of any kind, whether known or unknown, suspected or unsuspected, actual or potential, existing now or in the future, arising out of or relating in any way to any condition (including any environmental conditions or hazards) on, under, or around the Property, or from the air, soil, groundwater or surface water at or beneath the Property. Buyer hereby specifically acknowledges that Buyer has carefully reviewed this provision and discussed its significance with legal counsel and acknowledges that this provision is a material part of the Agreement. This release shall inure to the benefit of and be binding upon the Seller's and the Buyer' respective successors, assigns and transferees.

21. **Risk of Loss.** In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the Close of Escrow in the amount of at least \$250,000, Buyer shall have the right to terminate this Agreement by written notice to Seller. In the event of any such damages or loss less than \$250,000, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer at the Close of Escrow all of Seller's right, title and interest in and to all monies to be paid by Seller's insurer(s) in connection with the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss; and (ii) pay Buyer at the Close of Escrow the amount of Seller's deductible under the insurance policy or policies covering the damage or loss.

22. **Seller's Covenants.** From the Effective Date and through the Close of Escrow, Seller shall maintain and manage the Property substantially in accordance with Seller's established practices and maintain the Property in its same condition, ordinary wear and tear excepted.

23. **Buyer' Covenants as to Opening and Maintenance.** Following the Close of Escrow, Buyer shall diligently pursue the completion of the items set forth on Exhibit C hereto in the time periods set forth on Exhibit C hereto.

24. **Right of Purchase**





With a copy to:           Roberts McGivney Zagotta LLC  
                                  55 W. Monroe Street  
                                  Suite 1700  
                                  Chicago, IL 60603  
                                  Attention: Michael S. Roberts

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28.    **Survival of Warranties, Covenants and Obligations.** None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed, and neither the Grant Deed nor any other document shall affect or impair the provisions, terms representations, warranties and covenants contained herein. Without limiting the generality of the foregoing, Sections 16, 17, 18, 19, 20, 22, 23, 24, 26, 28, 30, 35, 36 and 40 expressly survive the Close of Escrow.

29.    **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

30.    **Cooperation: Further Documents.** Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the acquisition of the Property. Both Buyer and Seller agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

31.    **Waiver.** No waiver by any Party of any provision of this Agreement shall be considered a waiver of any other provision or of any subsequent breach of the same or any other provision, including the time for performance of any such provision. Except as otherwise provided in this Agreement, the exercise by a Party of any remedy provided in this Agreement or at law or in equity following the default or breach of any provision in this Agreement shall not prevent the exercise by that Party of any other remedy provided in this Agreement or at law or in equity.

32.    **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

33.    **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. A copy of an executed counterpart of this Agreement transmitted by any electronic transmission service shall be considered an original executed counterpart.

34. **Construction.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that they have both participated in the negotiation and drafting of this Agreement. Therefore this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

35. **Disputes.** Any actions or proceedings arising under, growing out of, or in any way related to this Agreement shall be instituted and prosecuted only in courts located in the Washoe County, State of Nevada, or the nearest federal court.

36. **Litigation Costs.** If any legal action or any other proceeding, including arbitration, or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which such Party may be entitled.

37. **Time.** All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

38. **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions hereof unenforceable, invalid or illegal, unless the rights and obligations of the Parties have been materially altered or abridged thereby so as to thwart the original intent of the Parties.

39. **Entire Agreement of Parties.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

40. **Nevada Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of Nevada.

41. **Time of Essence.** Time is of the essence of each provision of this Agreement in which time is an element.

42. **Parties Not Co-Venturers.** Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

43. **Third Party Beneficiary.** The City of Reno shall be a third party beneficiary of this Agreement to the extent there are any rights or benefits accruing to the City.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**BUYER:**

FITZGERALD VIRGINIA AND PLAZA  
LLC

By: Real Estate Ventures Management LLC  
Its: Manager

By: \_\_\_\_\_  
Name: Donald R. Wilson Jr.  
Title: Manager

**SELLER:**

REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Robert A. Cashell, Sr.  
Chairman

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Agency Counsel

Exhibits

- Exhibit A—Legal Description of Property
- Exhibit B—Form: Lease Cancellation and Release
- Exhibit C – Items to Complete

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**THIS LEASE CANCELLATION AGREEMENT AND RELEASE** ("Agreement") is entered into effective as of \_\_\_\_\_ ("Effective Date") by and between the **CITY OF RENO**, a Nevada municipal corporation ("Landlord"), and **FITZGERALD VIRGINIA AND PLAZA LLC**, a Nevada limited liability company ("Tenant"). Landlord and Tenant are collectively referred to as "Parties."

**WITNESSETH:**

A. **WHEREAS**, the Parties are party to that certain Ground Lease dated on or about March 1, 1978, as amended, supplemented or assigned from time to time (the "**Lease**"); and,

B. **WHEREAS**, the Parties have mutually agreed to terminate the Lease.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the aforesaid, the Parties agree as follows:

1. The Lease is hereby terminated effective immediately and is of no further force or effect and neither Party shall have any further obligation under the Lease, including any obligations of Tenant for past due rent.

2. Each of the Parties hereby releases the other Party from all obligations under the Lease and hereby waives any and all claims thereunder against the other Party, including any obligations of Tenant for past due rent.

3. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. A copy of an executed counterpart of this Agreement transmitted by any electronic transmission service shall be considered an original executed counterpart.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the parties have executed this Lease Cancellation Agreement and Release as of the day and year first above written.

**LANDLORD:**

CITY OF RENO

By: \_\_\_\_\_  
Robert A. Cashell, Sr.  
Mayor

CITY CLERK

By: \_\_\_\_\_  
Lynnette R. Jones  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney's Office

**TENANT:**

FITZGERALD VIRGINIA AND PLAZA LLC, a  
Nevada limited liability company

By: Real Estate Ventures Management LLC  
Its: Manager

By \_\_\_\_\_  
Name: Donald R. Wilson, Jr.  
Title: Manager

## EXHIBIT C

### Operating Standards

A. Except as otherwise expressly set forth herein, Buyer shall at all times manage, operate, maintain and repair the parking garage in working order, condition and repair. Such management, operation, maintenance and repair shall be at the sole cost and expense of the Buyer.

B. Without limiting the generality of the foregoing, Buyer shall maintain, repair and operate the parking garage in accordance with the practices generally prevailing in the operation of a structured urban parking garage located in the downtown Reno, and shall at all times observe and perform the following standards and services as frequently as reasonably required for the parking garage to satisfy such standard of operation and remain in working order, condition and repair: (i) clean and maintain all garage surfaces and keep such surfaces in good condition, reasonable wear and tear excepted; (ii) remove all papers, debris, filth and refuse from the parking garage and periodically wash or thoroughly sweep paved areas; (iii) regularly remove trash from trash receptacles and clean trash receptacles; (iv) clean, maintain, repair and replace entrance, exit and directional signs, traffic control signage, markers and lights into and within the parking garage; (v) clean lighting fixtures and replace broken light bulbs; (vi) maintain, repair and replace striping and curbing; (vii) maintain and replace as necessary the existing landscaping; (viii) maintain and repair the structure of the parking garage in accordance with the determination of Buyer's architect and structural engineer based upon "grandfathered" specifications for a 30 year old structure; (ix) keep interior and exterior surfaces free of graffiti; (x) clean, maintain and repair all stairs, stairwells and stairwell doors within the parking garage; (xi) clean, maintain, repair and operate all elevators within the parking garage; and, (xii) maintain, repair and replace, if needed, all mechanical, electrical and utility facilities and systems that are a part of or serve the parking garage or any portion of them, including, without limitation, fire control systems, parking revenue control equipment, lighting and emergency lighting systems, traffic barriers, excluding, however, the elevators serving overlying improvements.