

LATE MATERIAL**ABATEMENT FUNDING AGREEMENT MEETING DATE** 9/18/08**ITEM #** 9**BANK OF THE WEST**

This ABATEMENT FUNDING AGREEMENT ("**Agreement**") is entered into effective September _____, 2008, by and among Bank of the West ("**Bank**") and Carson City, Nevada ("**City**") (Bank and City, each a "**Party**" and collectively, "**Parties**").

RECITALS

A. Bank has made a loan in the amount of \$3,055,000 ("**Loan**") to Reynen & Bardis (Carson), LLC as Borrower ("**Borrower**") to fund costs of development of the land ("**Land**") encumbered by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Nevada) ("**Deed of Trust**") recorded on September 26, 2005 as file number 343318 in the Official Records of Carson City. The obligations of Borrower to repay the Loan, and certain other obligations of Borrower to Bank, are secured by the Deed of Trust. The Loan is in default, is due in full, and has not been repaid.

B. Bank has been evaluating its remedies under the Loan, the Deed of Trust and other security documents (collectively "**Loan Documents**"), and in furtherance of that, Bank officers and Bank's counsel have conferred with officials of City regarding the existing tentative map for the Land, which unless extended, would have expired on August 21, 2008. While Bank has made no decision on whether or when to foreclose on the Land, the City made clear to the Bank as it has by notice dated July 10, 2008 to Borrower captioned "Summary Abatement Notice (APN:009-311-64) ("**Summary Abatement Notice**")", that a "dangerous structure and/or condition" exists at the abandoned raceway located on the Land which constitutes an "imminent danger" (only such structures and conditions on the Land stipulated in the Summary Abatement Notice, hereinafter the "**Nuisance**") and that the City requires that the Nuisance be abated without further delay. The City proposed that if Bank would commit to fund the cost of abatement of the Nuisance in accordance with the bid and scope of work by Canyon Creek Construction, Inc. ("**Canyon**") dated August 14, 2008 ("**Canyon Bid**") attached hereto as Exhibit A, the City would in exchange extend the existing tentative map for the Land ("**Map**") for one additional year and would waive landfill fees and bonding requirements for the debris removal from the Land under the Canyon Bid.

C. Accordingly Bank and City executed a letter of intent dated August 22, 2008 ("**LOI**"), pursuant to which Bank will, under the conditions set forth in this Agreement, and in its capacity as attorney-in-fact for Borrower, make one or more protective advances under the Loan Documents governing the Loan in an amount sufficient to pay the amount set forth in the Canyon Bid plus a one percent (1%) demolition permit fee. In reliance on the LOI, the City has extended the tentative map for the Land for one year and will refrain from performing the work and abating the Nuisance itself.

AGREEMENT

NOW, THEREFORE, upon the terms and conditions set forth herein, and for good and

valuable consideration, receipt and sufficiency of which are hereby acknowledged by both Parties, it is agreed as follows:

1. **ABATEMENT CONTRACT.** In accordance with the LOI, Bank shall, in its capacity as attorney-in-fact for Borrower pursuant to authority contained in the Deed of Trust, enter into a contract with Canyon to abate the Nuisance (hereinafter the "**Services**") as set forth and described in the Contract Documents ("**Contract Documents**"), attached hereto as Exhibit B and incorporated by reference herein, and as may be amended from time to time with the consent of City, not to be unreasonably withheld. The commencement of the Abatement Work shall be as set forth in the Contract Documents, and after any necessary permits are issued by City, and will provide for the Abatement Work to proceed with diligence thereafter. City shall allow up to six (6) months from the start date for completion of the Abatement Work, and shall promptly certify to Bank when the Abatement Work has been completed in accordance with the Contract Documents. City shall periodically inspect the progress of the work and will provide written approval for the application for payment of the contract price by Canyon which shall evidence City's satisfaction with the work to the date covered under such application. Such written approval shall be in the form of written endorsement to the demolition permit issued for the Services, which shall evidence City's satisfaction with the completion of the Services and that no further work is required to abate the Nuisance under this Agreement. City shall be responsible for any cost for dumping of materials removed from the Land pursuant to the Contract Documents, it being agreed that the Bank's total liability for the Abatement Work shall be \$76,872.00 plus the City demolition permit fee of 1% of the contract amount ("**Abatement Cost**").

2. **NO OTHER LIABILITIES.** Without affecting other existing conditions to the Map which do not concern abatement of the Nuisance, City acknowledges that Bank shall have no other liability to City whatsoever under this Agreement or otherwise in agreeing to arrange and pay for the Abatement Work (as defined below) other than to pay the Abatement Cost.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence immediately upon execution by the Parties and shall continue until satisfactory completion of the scope of work set forth in the Contract Documents, in accordance with the Contract Documents, or upon termination of the Contract Documents in accordance with the provisions set forth in the Contract Documents.

4. **CONTRACT DOCUMENTS COMPLETE.** The City has examined the Contract Documents, is aware of the scope and conditions therein contained, and City acknowledges that the scope of work contained in the Contract Documents constitutes the full extent of the required abatement ("**Abatement Work**"), and no other additional work will be required by City as a condition subsequent to extending the Map. Bank has entered into this Agreement in reliance on City's representation that there are no other conditions that will be required to be satisfied by Borrower or Bank as a condition to extension of the Map. The obligation of Bank to provide funds for the Abatement Work hereunder shall not exceed the bid amount in the Canyon Bid, viz., \$76,872.00 plus the City demolition permit fee of 1% of the contract amount, and Bank shall disburse no other funds relating to the Land except at Bank's sole discretion.

5. **DISPOSAL FEES AND BONDING WAIVED.** The City will waive all bonding requirements for the debris and refuse removal, and will waive and/or pay all waste disposal fees for the debris and refuse materials that City has required to be removed from the Land pursuant to the Contract Documents, other than the demolition permit fee of 1% of the contract amount of \$76,872.00. In this connection, the City has represented that no testing of the debris and refuse materials will be required as a condition to its disposal at the City-owned landfill dump site, and the City has arranged for the disposal of all such materials at no cost to Bank or Borrower.

6. **CONDITIONS.** As conditions precedent to the Bank's obligation to enter the Contract Documents as set forth in this Agreement and to pay for the Abatement Work as set forth herein and therein which are conditions for Bank's sole benefit and may be waived by Bank in Bank's sole discretion, (a) Bank will require that Borrower provide to Bank a written waiver in form and content acceptable to Bank releasing all claims against Bank arising from or relating to any entry on the Land by Bank, by or through its agents, in order to perform the Abatement Work, and acknowledging that by such action Bank has not taken possession of the Land and has not agreed to accept a deed-in-lieu of the Land in exchange for the Loan, but is instead making a protective advance to protect the value of the collateral for the Loan, as authorized by the Loan Documents; and (b) Bank will require an endorsement to the Title Policy insuring the lien of the Deed of Trust, assuring Bank that there are no intervening liens or other exceptions to title to the Land that are not permitted exceptions under the Loan Documents.

7. **NO THIRD PARTIES BENEFITTED.** Bank has authorized the Abatement Work and will enter the Contract Documents as attorney-in fact pursuant to the Loan Documents solely as a means to achieve an extension of the Map and to avoid a larger assessment lien that would be almost twice the amount of the Canyon Bid, and thereby protect the Land as collateral for the Loan. Bank shall not by taking such action waive any right under any Loan Documents, all of which rights are reserved. Bank has not agreed to accept title to the Land in exchange for the Loan and other Obligations of Borrower, and Bank has not determined whether or when to exercise its rights to foreclose of any of the collateral described in the Loan Documents. Bank has demanded that Borrower perform the Abatement work, to which Borrower has not responded and Bank has expressly reserved all rights and remedies arising under the Loan Documents, at law or otherwise. Nothing herein or any action that may be taken by Bank as described above, shall be deemed a waiver by Bank of the existing defaults under the Loan Documents, or a waiver of any of Bank's rights or remedies under applicable law, the Loan Documents or otherwise, or be deemed in any way to amend, modify or impair the enforceability of any term or provision of the Loan Documents, the terms and provisions of which are and shall remain valid, binding and enforceable obligations of Borrower in accordance with their express terms, and nothing in this Agreement shall create any right whatsoever in Borrower or any other third party. Moreover, Bank has notified Borrower of the action contemplated by this Agreement and confirmed Borrower's responsibility under the Loan Documents for liabilities incurred in connection with any clean-up, remedial, removal or restoration work on the Land, or any resulting damages or injuries to the person or properties of any third parties or to any natural resources.

8. **COMPENSATION.** For satisfactory performance of the Services, Canyon shall be paid by Bank for the Services on the basis set forth in the Contract Documents.

9. **NOTICES.** All notices served under this Agreement shall be in writing and shall be served by certified or registered mail, confirmed telephone facsimile, courier service or personal delivery, to the Party at its address or fax number appearing below, or to such other address or fax number as specified by notice by such Party to the other Parties hereunder. Except as otherwise provided in this Agreement, service of any such notice shall be deemed effective on actual delivery. The address for each Party is as follows:

If to Bank:

Bank of the West

1450 Treat Blvd.

Walnut Creek, CA 94597

Attn: Alicia Anderson, VP

Tel: 925-975-3927 (direct)

Fax: 925-942-8441 (fax)

and to

Jeffer, Mangels, Butler & Marmaro LLP

Two Embarcadero Center, Fifth Floor

San Francisco, California 94111

Attn: Robert B Kaplan, Esq.

Tel: (415) 398-8080

Fax: (415) 398-5584

If to City:

Carson City, Nevada

Consolidated Municipality and State Capital
Development Services

Building Division

2621 Northgate Lane, Suite 6

Carson City, Nevada 89706

Attention: Walter A. Sullivan, AICP

Development Services Director

Tel: (775) 887-2000 x30077

Fax: (775) 887-2202

10. **INDEPENDENT CONTRACTOR.** In performing the Services, City agrees that Canyon shall operate as and have the status of an independent contractor and shall not act as or be deemed an agent, employee, partner, or joint venturer of Bank. As an independent contractor, City agrees that Canyon will be solely responsible for determining the means, manner, and method for performing the Services, and all payroll taxes, unemployment taxes, income taxes, disability taxes, unemployment insurance, workers' compensation insurance, and the like, for Canyon, its employees, agents, independent contractors, and subcontractors, shall be the sole and exclusive responsibility of Canyon.

11. **ASSIGNMENT.** City's and Bank's rights and obligations hereunder are deemed to be personal and may not be transferred, assigned or delegated without the prior written consent of the other Party, and any attempted assignment or delegation in violation of this provision shall be

void and of no effect. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties, their successors and assigns

12. **WAIVER.** No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon either Party unless in writing signed by an authorized representative of each Party. No waiver by either Party of any breach by the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Agreement.

13. **SEVERABILITY.** In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward giving effect to the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. **MISCELLANEOUS.** This Agreement will be governed by Nevada law. The invalidity or unenforceability of any provision of this Agreement will not affect any other provision. The captions of the sections and paragraphs of this Agreement are for convenience only and do not limit any terms or provisions. In the event that any suit or action is brought to enforce this Agreement, the prevailing party or Parties will be entitled to receive from the losing party or parties all costs of the proceedings and reasonable attorneys' fees in an amount fixed by the court. Time is of the essence of each agreement of the Parties to this Agreement.

15. **JURY WAIVER.** Each of the Parties hereby agrees not to elect a trial by jury of any issue triable of right by jury, and hereby waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each Party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Either Party is hereby authorized to file a copy of this Section 15 (Jury Waiver) in any proceeding as conclusive evidence of this waiver.

16. **WAIVER OF SPECIAL DAMAGES.** To the extent permitted by applicable law, the Parties shall not assert, and each Party hereby waives, any claim against the other Party, on any theory of liability for special indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement or any document or other agreement or instrument contemplated hereby, or the transactions contemplated hereunder.

17. **TERMINATION.** This Agreement shall terminate concurrently with the Contract Documents as governed by the termination provisions set forth in the Contract Documents.

18. **ENTIRE AGREEMENT.** This Agreement and the Exhibits hereto represent the entire agreement between the parties hereto and supersede any oral or written understandings heretofore entered into by or on account of the Parties relating to the subject matter of this Agreement

and/or the Contract Documents, including without limitation the LOI. In the event of any conflict or inconsistent term with respect to this Agreement and the LOI or the Contract Documents, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

CARSON CITY

BANK OF THE WEST, a California banking corporation

By:

By:

Name: MARV TEIXEIRA

Name: ALICIA ANDERSON

Title: Mayor, Carson City, Nevada

Title: Vice President

ATTEST

By _____

ALAN GLOVER

Title: City Clerk, Carson City, Nevada

EXHIBIT A

Canyon Bid dated August 14, 2008

EXHIBIT B

Contract Documents