

Amended Co

Item # 8E
Date: 8/26/24

RESOLUTION NO. 021 (2024/2025)

**A RESOLUTION APPROVING AMENDED COLLATERAL ASSIGNMENT OF
DEVELOPMENT AGREEMENT AMONG NEVADA DEV, LLC; CITY OF NEVADA, IA, AND
HOME STATE BANK**

WHEREAS, the City of Nevada, Iowa ("City"), and Nevada Dev, LLC ("Borrower") have entered into a Development Agreement under which the City has agreed to provide Borrower with a certain grant; and

WHEREAS, The Borrower and Home State Bank ("Bank") have entered into an agreement to lend to Borrower in accordance with the terms of their agreement; and

WHEREAS, Borrower entered into a Collateral Assignment of Development Agreement among Borrower, City and Bank to induce Bank to close on the loan per Resolution No. 021 (2024/2025); and

WHEREAS, Bank is requesting an updated Collateral Assignment due to development agreement being amended with a change in real estate description; and

WHEREAS, The City consents to the amendment per the attached Exhibit A, Collateral Assignment of Development Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nevada, Story, County, Iowa, does hereby approve the updated Collateral Assignment of Development Agreement (Exhibit A attached), among the City of Nevada, IA, Nevada Dev, LLC, and Home State Bank and consents to the assignment. The Mayor and City Clerk are hereby authorized to execute the agreement and any other paperwork necessary on behalf of the City.

PASSED AND APPROVED this 26th day of August, 2024.

Brett Barker, Mayor

ATTEST:

Kerin Wright, City Clerk

This instrument drafted by: Ryan L. Haaland, Fredrikson and Byron, P.A., 1601 Golden Aspen Drive, Suite 108, Ames, Iowa 50010; 515-242-8900
RETURN TO: Same as Above

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

This COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made to be effective as of August 7, 2024 (the "Effective Date"), by and among (i) **NEVADA DEV, LLC**, an Iowa limited liability company ("Borrower"); (ii) **THE CITY OF NEVADA, IOWA**, a municipal corporation organized and existing under the Constitution and laws of the State of Iowa (the "City"); and (iii) **HOME STATE BANK**, an Iowa chartered bank (together with its successors and/or assigns, "Bank"), and is as follows:

RECITALS:

WHEREAS, Bank and Borrower have entered into that original mortgage and loan agreement dated as of October 24, 2022 and the new mortgage dated _____, recorded _____ as Inst. No. (as the same may be hereafter amended, modified, changed, renewed, extended, substituted, replaced, or restated, in whole or in part, from time to time, the "Loan Agreement"), pursuant to which Bank has agreed to lend to Borrower up to \$2,152,500.00 (the "Loan") secured by the first priority mortgage lien and security interest in the Real Property (as defined in the Loan Agreement), which is legally described in Exhibit A attached hereto; and

WHEREAS, the City and Borrower have entered into that certain Development Agreement, dated March 11, 2024 a true, correct, and complete copy of which has been delivered to Bank (as the same has been or may be hereafter amended, modified, changed, renewed, extended, substituted, replaced, or restated, in whole or in part, from time to time, the "Development Agreement" and together with any and all other agreements, instruments, documents, certificates, statements, legal opinions, and other materials entered into between the City and Borrower or made by the City or Borrower in conjunction with or with reference to the Development Agreement, collectively, the "Assigned Documents"), under which the City has agreed to provide Borrower with a certain Grant (as defined in the Development Agreement) in accordance with the applicable terms and conditions of the Development Agreement (the "Grant"), and certain other financial and non-financial benefits and accommodations with respect to the ownership, maintenance, and operation of the Project to and in favor of Borrower and Borrower has agreed to develop improvements upon the Real Property (the "Project"); and

WHEREAS, Borrower desires to execute this Assignment, in accordance with the terms and provisions hereof, and requests that the City execute this Assignment, in order to induce Bank to close and make the Loan pursuant to the Loan Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for the additional consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged by the City and Borrower, Borrower and Bank hereby agree that the foregoing recitals are true and correct, the City hereby agrees that the second such recital is true and correct, and all such recitals are by

this reference hereby made a part hereof as if fully set forth below, and Borrower and the City further covenant and agree with Bank as follows:

1. **Definitions.** All capitalized terms and terminologies used herein that are not otherwise defined in this Assignment shall have the meanings attributed to such terms and terminologies in the Loan Agreement.

2. **Assignment; UCC Security Interest.** Subject to the terms and conditions of this Assignment, as security for all Obligations (as defined in the Loan Agreement), Borrower hereby irrevocably and collaterally assigns, pledges, and transfers to Bank and grants to Bank a security interest under the Iowa Uniform Commercial Code in all of its rights, remedies (at law or in equity), powers, privileges, and interests in and to or arising under: (a) the Assigned Documents; (b) all amounts, funds, grant, tax abatement whether on a pay-as-you-go basis or otherwise, money, cash, contract rights, general intangibles, payment rights, and other form of rights, interests, and privileges that Borrower may be entitled to under or pursuant to the Assigned Documents, including, without limitation, the right to receive, use, keep, and benefit from the Grants; (c) all proceeds, products, additions, accessions, substitutions and replacements of or to any of the Assigned Documents; and (d) all rights and remedies of Borrower under, pursuant to, or with respect to the Assigned Documents, whether now existing or arising in the future.

3. **Consent to Collateral Assignment.** FOR VALUE RECEIVED, the City hereby irrevocably consents to this Assignment and acknowledges and agrees that Bank shall possess the collateral assignment, security interest and pledge of such Borrower's interest in the Assigned Documents as described herein. Upon written notice following an Event of Default (defined below), Bank may advise the City of its intent to exercise its rights and remedies under this Assignment (the "**Assignment Notice**") and upon receipt of such Assignment Notice, the City shall honor Bank's exercise of said rights and remedies consistent with the terms of this Assignment; *provided, however*, that nothing contained in this Assignment, nor any action or inaction by or attributable to Bank shall relieve Borrower from any of its duties, obligations, liabilities, and responsibilities under the Assigned Documents. The City further agrees to provide Bank with: (a) copies of any written notice given by the City to Borrower hereafter in respect of or pursuant to the Assigned Documents and (b) a right and opportunity (but not a duty or obligation) to cure any default or event of default or any other breach of a term or provision by Borrower with the applicable cure period no shorter than any cure period provided to Borrower under the Assigned Documents. Notwithstanding any other term or condition to the contrary contained herein or otherwise, each of the City and Borrower hereby agrees and acknowledges that, unless and until the Assignment Notice is provided to the City pursuant hereto, Bank shall in no manner or respect be liable or responsible for any duties, obligations, liabilities, or responsibilities of Borrower under the Assigned Documents.

4. **Representations, Warranties, and Covenants of Borrower.** Borrower hereby warrants and represents that (a) the Assigned Documents are unmodified and in full force and effect; (b) there are no uncured defaults under any of the Assigned Documents; (c) no dispute has arisen nor has any claim been asserted by any party to any of the Assigned Documents with respect to any subject matter of such Assigned Documents; (d) the rights and remedies of Bank with respect to the pledge of security interest in and collateral assignment of the Assigned Documents made and granted hereby are, in addition to such terms and conditions set forth herein, governed by such terms and conditions more fully set forth in the respective security agreements entered into by and between any Borrower and Bank, the terms and provisions of which are incorporated by reference herein as if fully set forth herein; (e) all of the Assigned Documents may freely be assigned to Bank without any notice to or consent of any other party to any of the Assigned Documents, except for the City's consent to assignment of the Development Agreement which the City hereby consents; and (f) information disclosed to Bank concerning the Assigned Documents is accurate in all material respects.

5. **Exercise of Borrower's Rights Under Assigned Documents.** So long as no default or event of default as that term is defined in the Loan Agreement (an "**Event of Default**") has occurred and is continuing, insofar as Borrower may have any right, privilege or claim under the Assigned Documents, Borrower shall use reasonable and prudent business judgment concerning its enforcement of such rights, shall exercise and enforce the same reasonably, diligently, and in good faith, and shall give Bank a written notice of each such enforcement undertaken by Borrower. Upon the occurrence and during the continuance of an Event of Default, Bank may, at any time, upon its election that may be made in its sole discretion and choice, (a) request to or collect or receive

from the City (and otherwise communicate with the City as to) any and all facts, information, data, and records relevant to or affecting, in any respect, the Assigned Documents or the Project, and/or (b) take any action, step, or measure that is necessary, required, or desirable (as reasonably determined by Bank) to protect Bank's right, remedy, interest arising herein or provided hereunder.

6. **Bank's Rights Upon Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Bank shall have the right, power and authority (but not an obligation) to take any one or more of the following actions in its sole and absolute discretion, and all at Borrower's cost and expense: (a) to provide the City with the Assignment Notice; (b) to declare this Assignment to be unconditional and absolute, and thereby to succeed fully to any and all of Borrower's rights, remedies, title and interests in, to and under the Assigned Documents, (c) to notify any third party that is a party to any of the Assigned Documents that such Assigned Document has been assigned to Bank; (d) to take over Borrower's position as Developer under the Development Agreement; and (e) to exercise any and all rights and remedies of Borrower under or pursuant to the Assigned Documents. In furtherance of the foregoing, upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and empowers Bank, in its sole discretion, to assert, either directly or on behalf of Borrower, any right, privilege or claim which Borrower then or thereafter may have under the Assigned Documents, as Bank may deem proper. Nothing herein shall be construed to require Bank to take any action in respect of the Assigned Documents, whether for the account of Borrower or otherwise. Without limiting the generality of the foregoing, upon the occurrence and during the continuation of an Event of Default, Bank may elect, in its sole discretion (but are not obligated), to charge to Borrower any and all amounts incurred by Bank or its agents, representatives, counsels, or contractors in conjunction with its exercise of any right, power, or authority herein provided, including, without limitation, any and all amounts paid to the City or any other Person under or on account of any Assigned Document, of which payment may be made by Bank in its sole discretion but not as an obligation, and any and all reasonable attorneys' fees and other court costs incurred in enforcing any of the Assigned Documents, all of which amounts shall accrue interest at the Default Rate until paid in full, shall be due and payable immediately upon demand made by Bank, and shall automatically become part of the Obligations secured by the Collateral without any further action on the part of Borrower or Bank.

7. **Attorney-in-Fact.** Borrower hereby irrevocably makes, constitutes, empowers, and appoints Bank (and all officers, employees or agents designated by Bank) as its true and lawful attorney-in- fact for the purposes of enabling Bank to exercise its rights under Section 6 hereof, with all due powers and authorities necessary, required, or desirable for such purposes, including, without limitation, such powers and authorities to demand, receive and enforce specific performance and/or payments, endorse any check, draft or other form of payment delivered to Bank, and to give receipts, releases, satisfaction for, and to sue for all monies payable to Borrower of which power and authority may be exercised in the name of Bank with the same force and effect as Borrower could do had this Assignment not been made.

8. **Modification of Assigned Documents.** Borrower shall keep Bank informed of all circumstances which may have a material and adverse effect upon the exercise of Borrower's rights or remedies under any of the Assigned Documents. Borrower and the City shall not cause the Assigned Documents to be modified, amended, revised, replaced, or terminated, and Borrower shall not release, cancel, sell, compromise, waive, amend, alter or modify any of its rights or remedies under any of the Assigned Documents, without the prior written consent of Bank, which shall not be unreasonably withheld, conditioned or delayed. The City shall not terminate, or accept termination of, any of the Assigned Documents without giving at least thirty (30) days' prior written notice to Bank. Bank, upon receipt of such notice, shall have the right, but not the obligation, at its option, to take over Borrower's position under the Assigned Documents and/or to promptly cure the grounds asserted by the City for termination of such Assigned Documents. None of the Assigned Documents shall be terminated while Bank is promptly, diligently and actively prosecuting such a cure. Borrower shall not terminate, or accept termination of, any of the Assigned Documents without Bank's prior written consent.

9. **Borrower's Obligations.** Borrower expressly acknowledges, represents, covenants, and agrees that it shall remain liable under the Assigned Documents, that it shall observe and perform all of the conditions and obligations therein contained to be observed and performed by Borrower, and that neither this Assignment,

nor any action taken by Bank pursuant hereto, shall cause Bank to be under any obligation or liability in any respect whatsoever to any party to any of the Assigned Documents or for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

10. **Substitute Performance.** Borrower further acknowledges and agrees that if, as a result hereof, any other party to the Assigned Documents other than Borrower becomes obligated to pay or perform, and pays or performs, any Obligation owed to Bank under (or on account of) any of the Assigned Documents or otherwise, Bank will apply such payment or performance to the satisfaction of the Obligations, in whole or in part, in such manner as may be elected by Bank in their discretion.

11. **Obligations of Bank.** Notwithstanding Bank's rights hereunder or otherwise, Bank shall not be obligated to perform, and do not undertake to perform, any obligation, covenant, condition or term with respect to any of the Assigned Documents on account of this Assignment. Bank shall not have any responsibility on account of this Assignment for the control or care of any of the Assigned Documents, other than to handle the Assigned Documents in the same manner as it handles other collateral in the ordinary course of business.

12. **Indemnification.** Borrower hereby agrees to indemnify and hold Bank, and its shareholders, officers, employees, directors, participants, successors and assigns, agents, and representatives harmless from any and all claims, causes of action, responsibilities, liabilities, damages, expenses, fines, penalties, costs, and expenses incurred by Bank, including without limitation, reasonable attorneys' fees and other legal fees and costs, due to or arising out of the Assigned Documents and any legality, violation of law, action, inaction, transaction, or event taken, pursued, made, or occurring under or on account of any of the Assigned Documents, other than those caused by Bank's negligence or misconduct.

13. **General Terms.**

a. **Notice.** All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "**Notice**") required, permitted or desired to be given hereunder must be in writing and must be sent delivered by: (i) registered or certified mail, postage prepaid, return receipt requested, (ii) FedEx, UPS or another reputable overnight courier, or (iii) delivered by hand by commercial courier service, addressed to the party to be so notified at its address set forth opposite its signature, below, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 13(a). Any Notice will be deemed to have been received: (A) 3 days after the date such Notice is mailed, (B) on the date of delivery by hand (or refusal to accept such delivery) if delivered during business hours on a business day (otherwise on the next business day), and/or (C) on the next business day if sent by an overnight commercial courier. Any party may change the address to which any such Notice is to be delivered by furnishing 10 days prior written notice of such change to the other parties in accordance with the provisions of this Section 13(a). Notices will be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery.

b. **Successors and Assigns.** The provisions of this Assignment shall be binding upon the parties hereto and their respective successors and assigns, including any debtor-in-possession on behalf of Borrower, and shall, together with the rights and remedies of Bank hereunder, inure to the benefit of all future holders of any instrument evidencing any of the Obligations and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of the Loan Agreement or any agreement governing or instrument evidencing the Obligations or any portion thereof or interest therein shall in any manner affect the assignment made and security interest granted hereunder to Bank. Notwithstanding the foregoing, Borrower shall not assign, sell, hypothecate or otherwise transfer any interest in or obligation under any of the Assigned Documents and/or this Assignment without first obtaining Bank's written prior consent.

c. **Governing Law.** This Assignment shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of Iowa.

d. **Counterparts.** This Assignment may be executed by one or more of the parties to this Assignment on any number of separate counterparts (including by facsimile or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

e. **Entire Agreement.** This Assignment constitutes the entire agreement among the parties hereto regarding the subject matters hereof and supersedes all prior agreements and understandings, oral or written, regarding such subject matters.

f. **Severability.** Any provision of this Assignment held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

g. **Amendment.** No amendment or waiver of any provision of this Assignment, nor consent to any departure by Borrower or the City therefrom, shall in any event be effective unless the same shall be in writing and signed by Bank and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

h. **Remedies Cumulative.** No failure or delay on the part of Bank in exercising any right or remedy hereunder, and no course of dealing between Borrower on the one hand and Bank on the other hand shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder. The rights and remedies herein and in the Loan Agreement are cumulative and not exclusive of any rights or remedies which Bank would otherwise have. No notice to or demand on Borrower shall entitle Borrower to any other or further notice or demand in similar or other circumstances (unless required hereunder or under the Loan Agreement) or constitute a waiver of the rights of Bank to any other or further action in any circumstances.

i. **Additional Rights of Bank.** The rights granted to Bank hereunder are in addition to those arising under the Loan Agreement which shall not be constrained or otherwise limited by the terms of this Assignment.

[SIGNATURE PAGES AND ACKNOWLEDGEMENT PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers as of the Effective Date.

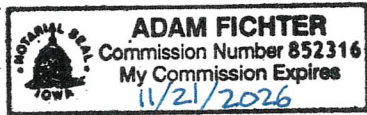
Borrower: Nevada Dev, LLC

By 
Scott Henry, Manager

Address:
20965 650th Avenue
Nevada, Iowa 50201

STATE OF IOWA)
) ss
COUNTY OF Story)

On the 12th day of August, 2024, before me, personally appeared Scott Henry, to me personally known, who, being by me duly sworn, did say that he is the Manager of Nevada Dev, LLC, the limited liability company named in the foregoing instrument, and that said instrument was signed on behalf of said limited liability company and he acknowledged said instrument to be the free act and deed of said limited liability company.




Notary Public

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers as of the Effective Date.

Bank: Home State Bank

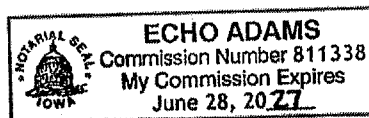
By Clayton Harreld
Name Clayton Harreld
Title Business Banker

Address:
101 E. Bridge Road
Polk City, IA 50226

STATE OF IOWA)
) ss
COUNTY OF Polk)

On the 7th day of August, 2024, before me, personally appeared Clayton Harreld to me personally known, who, being by me duly sworn, did say that he is the Business Banker of **Home State Bank**, the Iowa banking corporation named in the foregoing instrument, and that said instrument was signed in behalf of said Iowa banking corporation and he acknowledged said instrument to be the free act and deed of said Iowa banking corporation.

Echo Adams
Notary Public



IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their duly authorized officers as of the Effective Date.

City: City of Nevada, Iowa

By _____
Name _____
Title _____

Address:

STATE OF IOWA)
) ss
COUNTY OF _____)

On the _____ day of _____, 2024, before me, personally appeared _____ to me personally known, who, being by me duly sworn, did say that she is the _____ of the **City of Nevada, Iowa**, the municipal corporation named in the foregoing instrument, and that said instrument was signed in behalf of said municipal corporation and he acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

BEING A PART OF THE EAST HALF OF THE NORTHWEST QUARTER, THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, AND BURRIS ADDITION TO NEVADA, AN OFFICIAL PLAT, ALL TOGETHER LOCATED IN SECTION 6, TOWNSHIP 83 NORTH, RANGE 22 WEST OF THE 5TH P.M., CITY OF NEVADA, STORY COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE N89°42'04"E, ALONG THE SOUTH LINE OF PARCEL G OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 73.21 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE, 272.50 FEET, ALONG THE ARC OF A 400.00 FOOT RADIUS CURVE, CONCAVE NORTHWEST, HAVING A CHORD BEARING N70°11'04"E, 267.26 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE, N50°40'04"E, 33.99 FEET; THENCE S39°19'56"E, 142.50 FEET, TO A POINT ON THE NORTH LINE OF SAID BURRIS ADDITION TO NEVADA; THENCE N89°42'04"E, ALONG SAID NORTH LINE, 365.45 FEET, TO THE NORTHWEST CORNER OF BLOCK 2, BURRIS ADDITION TO NEVADA; THENCE S00°29'58"W, ALONG THE WEST LINE OF SAID BLOCK 2, 404.39 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK 2; THENCE S89°52'00"W, 70.00 FEET, TO THE SOUTHEAST CORNER OF BLOCK 3, BURRIS ADDITION TO NEVADA; THENCE S89°35'09"W, ALONG THE SOUTH LINE OF SAID BLOCK 3, 300.34 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK 3; THENCE N89°41'13"W, 70.00 FEET; TO THE SOUTHEAST CORNER OF BLOCK 4, BURRIS ADDITION TO NEVADA; THENCE S89°42'39"W, ALONG THE SOUTH LINE OF SAID BLOCK 4, 300.25 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK 4; THENCE S89°37'54"W, 60.00 FEET, TO A POINT ON THE WEST LINE OF SAID BURRIS ADDITION TO NEVADA; THENCE S00°22'06"E, ALONG SAID WEST LINE, 406.35 FEET; THENCE S00°07'55"W, ALONG SAID WEST LINE, 230.13 FEET, TO THE NORTHEAST CORNER OF A TRACT OF LAND, AS DESCRIBED IN A WARRANTY DEED FILED IN THE OFFICE OF THE RECORDER, STORY COUNTY, IOWA, AS INSTRUMENT NUMBER 2014-00007059; THENCE N89°52'05"W, ALONG THE NORTH LINE OF SAID TRACT, 300.00 FEET, TO THE NORTHWEST CORNER OF SAID TRACT; THENCE N00°03'09"W, 414.78 FEET; THENCE N90°00'00"W, 348.43 FEET; THENCE N00°00'00"E, 621.66 FEET, TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE N89°42'04"E, ALONG SAID NORTH LINE, 644.14 FEET, TO THE POINT OF BEGINNING.