

When recorded, mail to
City Clerk
City of Fernley
595 Silver Lace Boulevard
Fernley, NV 89408

DEVELOPMENT AGREEMENT

Regarding Development Of

Friendly 5 Ranch

Fernley, Nevada

Article 1. Parties, definitions and property description.

This Development Agreement (“**Agreement**”) is by and between:

“**Developer**” Jenuane Communities Onda Verde LLC, a Nevada
limited liability company
5400 Equity Ave
Reno, NV 89502

“**City**” City of Fernley, a municipal corporation
595 Silver Lace Boulevard
Fernley, NV 89408

Key definitions in this Agreement are:

“**Project**” means the 514-lot single family residential subdivision known as Friendly 5 Ranch on a tentative subdivision map (TSM 2016-003) approved pursuant to Chapter 278 of the Nevada Revised Statutes (“**NRS**”) by the City Council for the City of Fernley (“**City Council**”), APNs 021-303-09, 47, 49, 52, and 54.

“**Project Property**” means that real property located in the City of Fernley, County of Lyon, State of Nevada, more particularly described as **Exhibit A** attached hereto.

Article 2. Recitals.

A. Jenuane Communities Onda Verde LLC is the Owner of the Project Property.

- B. In 2006, the City Council approved the Friendly 5 Ranch Planned Development Handbook (“**PDH**”). All the Project Property is within the planned unit development created by the PDH, and the PDH is in full force and effect in accordance with the terms thereof. The original tentative subdivision map associated with the PDH expired.
- C. On March 16, 2016, the City Council approved a tentative subdivision map (TSM 2016-003) for the Project subject to Conditions of Approval (“**Conditions**”). Pursuant to NRS 278.360(1)(a), a tentative subdivision map expires four (4) years from the date of City Council approval. As a result, unless extended, the tentative subdivision map for the Project expires March 16, 2020.
- D. Pursuant to NRS 278.360, the City Council may extend such time frame, and a development agreement entered into pursuant to NRS 278.0201 may specify a time frame longer than four (4) years for the expiration of a tentative subdivision map. In addition, the City Council has the power and authority to adopt an ordinance approving a development agreement pursuant to Section 32.16.010, et seq. of the City Municipal Code (“**Code**”), and among other things, Code Section 32.16.20(b)(7) requires that if a development agreement involves the subdivision of land, then the agreement shall provide for extensions of time in accordance with NRS 278.360.
- E. Acknowledging the foregoing, the parties desire to enter into this Agreement to extend the deadlines for filing final maps for the Project, and to provide for such other matters as set forth herein.

NOW, THEREFORE, in exchange for mutual considerations, the sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 3. Development Matters.

Section 3.1 Development Standards.

The permitted uses of the Project Property, the density or intensity of its use, the maximum height and size of the proposed buildings, and any dedication of any portion of the Project Property to the City for public use shall be as provided in the Conditions and PDH, as the same may hereafter be revised, modified or amended from time to time in accordance with applicable law.

Section 3.2 Extension of Final Map Deadlines.

- A. The time for presenting the first final map under NRS 278.360 and Code Section 32.03.060(F)(h) for a portion of the Project Property is extended through the date that is **four (4) years** after the date this Agreement is recorded in the Official Records of Lyon County.
- B. The time frame for presenting each and every further, successive final map under NRS 278.360 and Code Section 32.03.060(F)(h) for the remainder of the Project Property

is extended through the date that is **fifteen (15) years** after the date this Agreement is recorded in the Official Records of Lyon County (“**Termination Date**”).

- C. If the date for presentation of a final map under this Section 3.2 falls on a Saturday, Sunday, or legal holiday in the State of Nevada, then the date for such presentation will be extended to the next business day. The term “business day” means a day that is not a Saturday, Sunday or legal holiday in the State of Nevada.

Section 3.3 Limitation.

The provisions of NRS 278.0201 apply to this Agreement.

Article 4. General Terms.

Section 4.1 Effective Date; approved by ordinance.

This Agreement is not effective until it has been approved by ordinance by the City Council, and has been recorded in the Official Records of Lyon County.

Section 4.2 Expiration and Cancellation.

Unless amended or cancelled, in whole or in part, pursuant to NRS 278.0205, this Agreement shall expire upon the Termination Date set forth in Section 3.2 above. A cancellation of this Agreement is not effective or binding until approved by ordinance of the City Council and recorded in accordance with NRS 278.0205.

Section 4.3 Modifications and Amendments.

Modifications and amendments to this Agreement are not effective or binding until approved by ordinance of the City Council and recorded in accordance with NRS 278.0205.

Section 4.4 Breach.

A violation of this Agreement shall be a breach of this Agreement, and the breaching party shall have 60 days after receipt of notice delivered in accordance with Section 4.7 below by the nonbreaching party to cure such breach. This notice and cure period do not extend the final map deadlines set forth in Section 3.2 above.

Section 4.5 Entire Agreement.

With respect to the matters addressed herein (including the recitals), this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties.

Section 4.6 Assignments; Transfer of rights.

Developer shall have the right to assign all or any portion of its rights and delegate any obligations under this Agreement to third parties who acquire fee simple absolute ownership to any portion of the Project Property.

Section 4.7 Notices; when deemed sufficiently given.

- A. Formal notices, demands and communications between the City and Developer must be in writing and must be sent to the addresses or facsimile numbers stated in Article 1 above and to each successor or assign of Developer to the address given by such party in writing and if no written notice is given, then to the address stated in the transfer agreement, and/or to any address or number subsequently communicated to the sending party in writing.
- B. If notice is sent by registered or certified mail to the correct address, postage prepaid, it will be deemed sufficiently given the earlier of when actually received by the addressee or three business days after it is received by the U.S. Post Office as indicated on the receipt.
- C. If notice is sent by courier, or overnight delivery service (Federal Express, UPS Overnight, U.S. Postal Priority Mail), and is properly addressed, it will be deemed sufficiently given when delivered as indicated in the records of the courier or service.
- D. If notice is sent by facsimile, properly addressed to the addressee specified in Article 1 above and is actually sent to the correct facsimile number, it will be deemed sufficiently given when receipt is confirmed by either the receiving or sending facsimile machine, provided that that confirmation is in writing and sufficiently identifies the document, and indicates the time and date that the document was received by the receiving facsimile machine.

Section 4.8 Further documents.

Each party agrees to honor any reasonable requests by the other party to complete, execute, and deliver any document necessary to accomplish the purposes hereof.

Section 4.9 Attorney's fees and costs.

If any party hereto institutes any action or proceeding (including arbitration, if authorized or mutually agreed upon) against the other or others arising out of or relating to this Agreement, the prevailing party shall be awarded attorney's fees and costs by the other party.

Section 4.10 Time of Essence.

Time is of the essence in the performance of this Agreement.

Section 4.11 Governing law.

The laws of the State of Nevada, without regard to conflicts of law principles, shall govern the interpretation and enforcement of this Agreement.

Section 4.12 Severability of invalid or unenforceable provisions.

If any provision contained in Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

Section 4.13 Binding effect; successors and assigns; assignment/delegation.

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and permitted successors and assigns of the parties hereto. To the extent that any assignment of any right under this Agreement changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Agreement, attempts to operate as novation, or includes a waiver or abrogation of any defense to payment by Fernley, such offending portion of the assignment shall be void, and shall be a breach of this Agreement.

Section 4.14 No third-party beneficiaries intended.

Unless otherwise specifically identified in this Agreement, there are no third-party beneficiaries intended by this Agreement and no third parties have any standing to enforce any of the provisions of this Agreement.

Section 4.15 Representation and warranties by persons who sign this Agreement.

Each person who signs this Agreement represents and warrants to each other person who signs this Agreement that he or she is an authorized agent of and has actual authority to execute this Agreement on behalf of the party for whom he or she is signing, and that all required approvals and actions have been taken to authorize the execution of this Agreement with the intent and effect of binding the party to this Agreement.

[Signature Page Follows]

DRAFT

EXECUTED on the dates indicated:

City: CITY OF FERNLEY, a municipal corporation

Dated _____, 2020

By: _____

Its: _____

Attest:

City Clerk

Developer: JENUANE COMMUNITIES ONDA VERDE LLC, a Nevada limited liability company

Dated _____, 2020

By: _____

Print Name: Kenneth Hendrix

Its: Manager

STATE OF NEVADA)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20__ by Kenneth Hendrix as Manager of Jenuane Communities Onda Verde LLC, a Nevada limited liability company.

Notary Public

Notary Stamp Here

My Commission Expires: _____

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

DRAFT