

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

DEVELOPMENT AGREEMENT

Article 1. Parties, definitions and property description.

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

“**Developer**” **Relief Springs, LLC,**
 a Nevada limited liability company, Series 3

Fax No.: 775-_____

“**City**” City of Fernley, a Nevada municipal corporation
 595 Silver Lace Boulevard
 Fernley, NV 89408
 Fax No.: 775-_____

Key definitions in this Agreement are:

“**Project**” means the residential project located off West Main Street, just to the east of Stock Lane and just to the west of Miller Lane, in Fernley, Nevada.

“**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, having APNs 021-041-07, 021-041-08, and 020-041-10.

Article 2. Recitals.

- A. Developer is the current owner of the Project Property and is the developer of the Project.
- B. The vast majority of the Project Property is presently located in zoning district SF12 (Residential Single Family 12,000 square feet), with a small portion of the Project Property presently located in zoning district C1 (neighborhood commercial). The land located to the west and to the south of the Project Property is generally zoned RR1 (Rural Residential 1-acre), with pockets of RR5 (Rural Residential 5-acre) and SF6 (Residential Single Family 6,000 square feet).
- C. The Developer has submitted an application for a Zoning Map Amendment (“**Map Amendment**”) to effect a zone change for the Project Property from SF12 (Residential Single

Family 12,000 square feet) to SF6 (Residential Single Family 6,000 square feet), and from SF12 (Residential Single Family 12,000 square feet) and C1 (neighborhood commercial) to MDR14 (Residential Medium Density Residential 14 dwelling units per acre), all as more particularly set forth in the Map Amendment application. Reference is hereby made to Developer's application for the Map Amendment relative to any submission requirements for this Agreement identified in Table A-1 (Application Checklists) of the City's Municipal Code ("**Code**").

- D. Given the land uses surrounding the Project Property, were the City to approve the Map Amendment application, development of the Project Property would require implementation of the City's lot adjacency and transition standards set forth in §32.09.030(D) of the Code (the "**Adjacency Rule**").
- E. The Adjacency Rule favors flexibility by granting the City discretion to determine appropriate transition requirements on a case-by-case basis. That being said, given the size and location of the Project Property, and the potential density of the Project, both the City and Developer desire to set expectations and agree how the Adjacency Rule will be applied in the event the City approves Developer's Map Amendment application. The City and Developer intend that this Agreement memorialize and effectuate their understanding of the proper application of the Adjacency Rule to development of the Project Property in the event of the City's approval of Developer's Map Amendment application.
- F. The City is authorized, pursuant to NRS 278.0201 through 278.0207, inclusive, and Code §32.03.100(a), to enter into binding development agreements with any person having a legal or equitable interest in land concerning the development of that land—such as an agreement to determine proper application of the Adjacency Rule to particular property—provided that such agreement is consistent with the City of Fernley Comprehensive Master Plan August 2018 ("**Master Plan**").
- G. The Master Plan includes the following goals:
- Enhance Fernley's vitality as a community by providing a variety of housing types, density and costs that accommodate the needs, desires and financial abilities of the current and future households. Master Plan §HP.1.1.
 - Encourage housing that supports sustainable development patterns by promoting the efficient use of land [...and] easy access to services and public facilities[...]. Master Plan §HP.1.2.
 - Strive for viable mixed income neighborhoods throughout Fernley that collectively reflect the diversity of housing types and tenure (rental and ownership). Master Plan §HP.1.3.

- Provide opportunities for high-density residential development near the downtown core and elsewhere in the community where appropriate. Master Plan §HP.1.4.
- Encourage new development in areas where adequate public services and facilities can be provided efficiently. Master Plan §LU.1.1
- Encourage new development to be in accordance with the Comprehensive Master Plan land use category. Master Plan §LU.12.
- Promote infill development. Master Plan §LU.1.5.

H. By entering into this Agreement establishing application of the Adjacency Rule to future development of the Project Property as zoned per the Map Amendment, the City will achieve the certainly both the City and Developer require to move forward with Developer's Map Amendment application, approval of which in turn would be consistent with the City's goals set forth in the Master Plan as identified in Recital G above. As such, approval of this Agreement is consistent with the Master Plan, as required by NRS 278.0203 and Code §32.03.100(A)(6)(a).

I. Acknowledging the foregoing, the parties desire to enter into this Agreement to confirm the proper requirements for implementing the Adjacency Rule in relation to the Project and Project Property, 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 this Agreement, the Map Amendment, the Code, and any future entitlements or approvals issued by the City for the Project or the Project Property, as the same may hereafter be revised, modified or amended from time to time in accordance with applicable law.

Section 3.2 Adjacency Rule.

The City and Developer agree that the Adjacency Rule, as applied to the Project, the Project Property, and all future permits and approvals considered by the City in connection therewith, shall require the following development standards and impose the following development constraints upon the Project Property:

(1) There shall be a Buffer Zone along the southerly boundary of the Project Property, which Buffer Zone shall include all that area within twenty feet of the southerly boundary of the Project Property, and may include, in the City's discretion, any area within fifty feet of the southerly boundary of the Project Property (such area, the "**Southern Buffer Zone**"). Similarly, there shall be a Buffer Zone along the westerly boundary of the Project Property, which Buffer Zone shall include all that area within twenty feet of the easterly boundary of the Stock Lane right-of-way as it runs parallel to the westerly boundary of the Project Property, and may include, in the City's discretion, any area within fifty feet of the easterly boundary of the Stock Lane right-of-way as it runs parallel to the westerly boundary of the Project Property (such area, the "**Western Buffer Zone**"). As used herein, "**Buffer Zone**" means an area of common open space within the Project Property, which area may not be subdivided or used for single family homes, but may be improved with paths, trails, drainage ways, landscaping berms, or other subdivision improvements.

(2) Each single-family residential lot that shares a common boundary line with the Southern Buffer Zone or the Western Buffer Zone, or for which no other single-family residential lot is located between it and the Southern Buffer Zone or the Western Buffer Zone, shall be not less than 15,000 square feet in total area, and the primary residence on each such lot (each, a "**Transition Lot**") shall be located at least twenty feet from any common boundary line between such Transition Lot and the Southern Buffer Zone or Western Buffer Zone, as applicable.

(3) The City will not issue a building permit for any residence, outbuilding, or accessory structure on a Transition Lot unless, in addition to satisfying all other conditions and requirements of the Code, the proposed residence, outbuilding, or accessory structure is single-story in height. Any right to a structure of any greater height on a Transition Lot is hereby waived.

(4) As to that portion of the Project Property zoned SF6 (Residential Single Family 6,000 square feet) following the City's approval of the Map Amendment, the total density on such portion of the Project Property shall not exceed three and sixth tenths (3.6) dwelling units per acre.

Section 3.3 No Further Requirements

Provided the requirements of Section 3.2 are met and/or satisfied, the City shall not require any further exaction, condition, mitigation, or standard of Developer, the Project, or the Project Property in satisfaction of the Adjacency Rule.

Section 3.4 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 recorded in the Official Records of Lyon County, Nevada.

Section 4.2 Term; Cancellation.

This Agreement shall continue in full force and effect in perpetuity, unless cancelled in accordance with the terms NRS 278.0205. 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. Without limiting any other notice required by applicable law, notice of the hearing on an ordinance amending or otherwise modifying this Agreement shall be provided by mail, consistent with Code Chapter 32.03.030, at least ten days in advance of such hearing to owners of property within 750 feet of the exterior limits of the Project Property.

Section 4.4 Breach.

A violation of this Agreement by a party shall be a breach of this Agreement by that party if, within 60 days after receipt of notice of such violation delivered in accordance with **Section 4.7** below by the non-violating party, the party in violation fails to cure such violation.

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 Reserved.

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.

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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]

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EXECUTED on the dates indicated:

City: **CITY OF FERNLEY,**
a Nevada municipal corporation

Dated _____, 2020

By: _____

Its: _____

Attest:

City Clerk

Developer: **RELIEF SPRINGS, LLC,**
a Nevada limited liability company-- Series 3

Dated _____, 2020

By: _____

Name: _____

Its: _____

STATE OF NEVADA)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2020 by _____ as _____ of RELIEF SPRINGS, LLC, a Nevada limited liability company – Series 3.

Notary Public

Notary Stamp Here

My Commission Expires: _____

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EXHIBIT A

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

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