

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**” Northern Nevada Community Housing

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

Key definitions in this Agreement are:

“**Project**” means the 60 unit veterans’ workforce housing project located at the corner of Hardie Lane and Westerlund Lane, 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 020-093-15, 020-093-16, 020-093-17, 020-093-18.

Article 2. Recitals.

- A. [_____] is the current owner of the Project Property (“**Owner**”). Developer is the developer of the Project, and has a legal or equitable interest in the Project Property pursuant to a right to purchase the Project Property from Owner. The construction of the Project will be financed in part through low-income housing tax credits.
- B. The Project Property is presently located in zoning district 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 SF6 (Residential Single Family 6,000 square feet) to MDR14 (Residential Medium Density Residential 14 dwelling units per acre), and reference is made to the Map Amendment relative to any submission requirements for this Agreement identified in Table A-1 (Application Checklists) of the City Municipal Code (“**Code**”).

- D. The Developer has submitted or will submit an application for a Condition Use Permit (“CUP”) to permit a multi-family building on the Project Property pursuant to Table 32.06.150-2 (Use Table) of the Code, and reference is made to the CUP relative to any submission requirements for this Agreement identified in Table A-1 (Application Checklists) of the Code.
- E. Developer desires that the Project and Project Property be permitted an increase in density of five (5) dwelling units per acre (“**Density Increase**”).
- F. The City is authorized, pursuant to NRS 278.0201 through 278.0207, inclusive, and Code §32.03.100(a), and Code §32.16.020 through Code §32.16.060, to enter into binding development agreements with any person having a legal or equitable interest in land concerning the development of that land. The City is authorized to include in a development agreement provisions specifying or relating to the density or intensity of the use of the land. NRS 278.0201(2)(b)(2) and Code §32.16.020(a)-(b).
- G. The City’s goals in the City of Fernley Comprehensive Master Plan August 2018 (“**Master Plan**”) include the following (among others):
- To provide opportunities for high-density residential development in the community where appropriate. Master Plan §HP.1.4.
 - To create flexible zoning policies to allow multi-family units for low-income families. Master Plan §HP.1.6.1.

Accordingly, the Density Increase is consistent with the City’s goals set forth in the Master Plan. Code §32.03.100(A)(6)(a) and §32.16.040(1) (City Council may approve a development agreement if it is consistent with the Master Plan).

- H. The Project will meet or exceed the minimum design standards within the Code. In addition, Nevada law encourages the governing body of a city to adopt measures to address affordable housing; two (2) of those measures permit a governing body to provide density bonuses to support the construction of affordable housing. NRS 278.235(1)(h) and (g). The Project will be financed in part through low-income housing tax credits. Accordingly, the Density Increase is consistent with Nevada and federal law. Code §32.03.100(A)(6)(b) and §32.16.040(2) (City Council may approve a development agreement if it is consistent with Nevada and federal law).
- I. Acknowledging the foregoing, the parties desire to enter into this Agreement to permit the Density Increase for 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 the Amendment, the CUP and the Code, as the same may hereafter be revised, modified or amended from time to time in accordance with applicable law.

Section 3.2 Density Increase.

The City approves the Density Increase for the Project. The maximum number of dwelling units that may be located upon the Project Property is nineteen (19) units per one (1) acre.

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 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.

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.

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.

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]

EXECUTED on the dates indicated:

City: CITY OF FERNLEY, a municipal corporation

Dated _____, 2020

By: _____

Its: _____

Attest:

City Clerk

Developer: NORTHERN NEVADA COMMUNITY HOUSING RESOURCE BOARD, a Nevada non-profit corporation

Dated _____, 2020

By: _____

Name: _____

Its: _____

STATE OF NEVADA)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2020 by _____ as _____ of NORTHERN NEVADA COMMUNITY HOUSING RESOURCE BOARD, a Nevada non-profit corporation.

Notary Public

Notary Stamp Here

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

DRAFT

LEGAL DESCRIPTION

All that certain real property situate within a portion of the Northwest One-Quarter (1/4) Section Thirteen (13), Township Twenty (20) North, Range Twenty-four (24) East, Mount Diablo Base Meridian and being Parcels B-1 thru B-4 of that Parcel Map for Milton and Alyce Steinheimer, recorded as File Number 93976, Dated July 16, 1985 in the Official Records of Lyon County, Nevada and being more particularly described as follows:

BEGINNING at the northwest corner of said Parcel B-1,

THENCE South 89°28'10" East a distance of 434.00 feet;

THENCE South 00°31'50" West a distance of 322.28 feet;

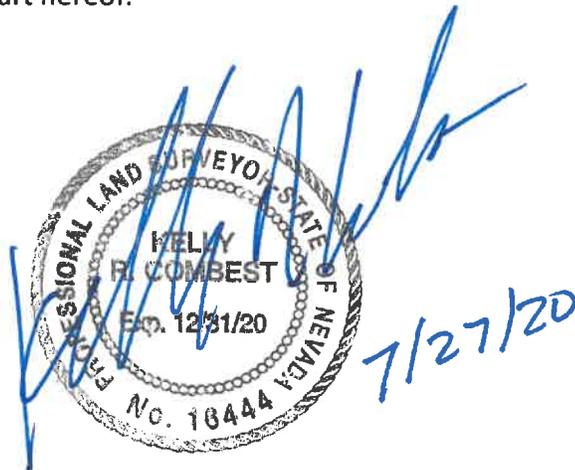
THENCE North 89°25'10" West a distance of 414.02 feet to the beginning of a curve;

THENCE a distance of 31.40 feet along the arc of a 20.00 foot radius curve to the right, through a central angle of 89°57'00";

THENCE North 00°31'50" East a distance of 302.02 feet to the **POINT OF BEGINNING**.

BASIS OF BEARINGS for this description is based on said Parcel Map, recorded as File Number 93976, of said Official Records.

See EXHIBIT A-1 attached hereto and made a part hereof.



Odyssey Engineering, Inc.

Kelly R. Combest, P.L.S. 16444
895 Roberta Lane, Suite 104
Sparks, NV 89431



HARDIE LN

N 0°42'57" E 302.02'

POB

PARCEL A
PM NO. 59198
S 89°17'03" E 434.00'

PARCEL
B-1

PARCEL
B-2

PARCEL
B-3

PARCEL
B-4

R=20.00', L=31.40'
Δ=89°57'00"

N 89°14'03" W 414.02'

WESTERLUND LN

S 0°42'57" W 322.38'

CONCORD WOODS
SUB NO. 33652

7

8

9

10

SCALE: 1" = 80'

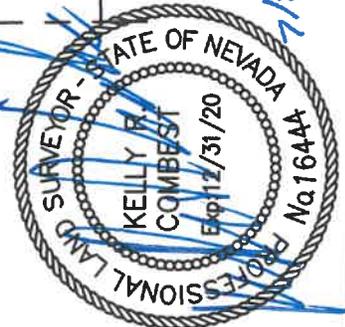


EXHIBIT A-1

WWW.ODYSSEY-CIVIL-ENGINEERING.COM

Odyssey

ENGINEERING
INCORPORATED



02/27/20