

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**” **Fernley Tuscany, LLC,**
 a Nevada limited liability company
940 Emmett Avenue, Suite 200
Belmont, CA 94002
Fax No.: 415-546-0569

“**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 single family residential subdivision known as Cook Ranch Estates, being developed pursuant to a tentative subdivision map (TSM 2017-001) approved pursuant to Chapter 278 of the Nevada Revised Statutes (“**NRS**”) by the City Council for the City of Fernley (“**City Council**”), which subdivision is located just south of Cottonwood Lane, in the City of Fernley, Nevada (the “**City**”).

“**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 APN 021-171-52, inclusive.

“**Record**”, “**Recording**”, “**Recordation**”, or “**Recorded**”: To file, the filing, or filed of record with the Office of the County Recorder of Lyon County, Nevada. The date of Recording shall refer to that time at which a document or map is Recorded.

Article 2. Recitals.

A. Developer is the current owner of the Project Property and is a developer of single-family subdivision lots in the Project.

- B. On November 20, 2017, the City issued its notice of the City Council’s September 20, 2017, approval of tentative subdivision map (TSM 2017-001) for the Project (the "**Tentative Map**") subject to Conditions of Approval as set forth in said letter of November 20, 2017 (the "**Conditions**").
- C. The development of the Project, including the Project Property, must be conducted pursuant to the provisions of the NRS, the Tentative Map, the Conditions, and the City’s Municipal Code ("**Code**").
- D. Pursuant to NRS 278.360 and the Conditions, in order to prevent expiration of the Tentative Map, a final subdivision map related to the Tentative Map (a "Final Map") must be presented for Recordation on or before September 20, 2021 (the "Initial Final Map Deadline").
- E. As of the date of the Agreement’s Recordation, a Final Map has not been presented for Recordation, and Developer and the City do not anticipate presentation of a Final Map for Recordation prior to the Initial Final Map Deadline.
- F. The City is authorized, pursuant to NRS 278.360, 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—including an agreement to extend the time period for presenting the initial final map in relation to an approved tentative map—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 and extending the Initial Final Map Deadline, the City will preserve the Tentative Map, including the City's and Developer's prior investment of resources related thereto, and will provide Developer sufficient time to present a Final Map, 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 extend the Initial Final Map Deadline, 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 Tentative Map, the Conditions, 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 Extension of Final Map Deadlines. The Initial Final Map Deadline, and relatedly the time for presenting the first final map for the Tentative Map under NRS 278.360 and Code §32.03.060(f)(1)h, is extended through the date that is two (2) years after the date this Agreement is Recorded.

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 Recorded.

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 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. This notice and cure period do not extend the final map deadline 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 the City, 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 Nevada municipal corporation

Dated _____, 2021

By: _____

Its: _____

Attest:

City Clerk

Developer:

FERNLEY TUSCANY, LLC,
a Nevada limited liability company

By: VPD-EX, LLC,
a Delaware limited liability company,
its manager

Dated _____, 2021

By: _____

Name: _____

Its: _____

DRAFT

[notary acknowledgement on following page]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA §
 §
COUNTY OF PLACER §

On _____ before me, _____, Notary Public, personally appeared Debra L. Perry, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

[SEE FOLLOWING PAGES]

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DRAFT

EXHIBIT "A"

COOK RANCH ESTATES DEVELOPMENT AGREEMENT PARCEL

A.P.N. 021-171-52

A parcel of land situate within the Northeast One-Quarter (NE1/4) of Section Twenty-Four (Sec. 24), Township Twenty North (T.20N.), Range Twenty-Four East (R.24E.), Mount Diablo Meridian (MDM), City of Fernley, Lyon County, State of Nevada, being Parcel A-1 of the Final Map for "Cook Ranch Estates Phase 2", File number 354267, filed June 21, 2005, in the Official Records of Lyon County, Nevada and being more particularly described as follows:

COMMENCING at the North One-Quarter corner of said Section 24, as shown on said Final Map;

THENCE, along the north/south centerline of said Section 24, South 00°04'23" East, 30.01 feet, to the Northwest corner of said Parcel A-1, being on the south right-of-way line of Cottonwood Lane as shown on said Final Map, also being the **POINT OF BEGINNING**;

THENCE, leaving said **POINT OF BEGINNING**, along the North line of said Parcel A-1, also being the south right-of-way line of said Cottonwood Lane, South 88°54'07" East, 289.05 feet;

THENCE, leaving the south right-of-way line of said Cottonwood Lane and along the easterly line of said Parcel A-1, the following ten (10) courses:

- 1) South 01°05'48" West, 180.00 feet;
- 2) South 88°54'12" East, 24.21 feet;
- 3) South 00°04'23" West, 440.06 feet;
- 4) South 88°54'12" East, 812.53 feet;
- 5) South 01°05'48" West, 180.00 feet;
- 6) South 88°54'20" East, 62.33 feet;
- 7) South 01°06'03" West, 310.81 feet;
- 8) South 88°53'14" East, 86.27 feet, to the beginning of a tangent curve to the right;
- 9) easterly, 11.91 feet along the arc of a curve having a radius of 160.00 feet and through a central angle of 04°15'48";
- 10) and, South 01°06'03" West, 179.61 feet, to the Southeast corner of said Parcel A-1;

THENCE, along the South line of said Parcel A-1, North 88°53'57" West, 1,271.05 feet, to the Southwest corner of said Parcel A-1;

THENCE, along the West line of said Parcel A-1, North 00°04'23" East, 1,290.95 feet, to the **POINT OF BEGINNING**.

Containing 22.62 acres, more or less.

BASIS OF BEARINGS:

Modified Nevada State Plane Coordinate System, West Zone, North American Datum of 1983/1994, High Accuracy Reference Network (NAD 83/94 HARN) Determined using Real Time Kinematic (RTK) GPS observations of Nevada Department of Transportation (NDOT) Control Monuments #80512 and #766231. Combined Grid to Ground Factor = 1.00026944758.

SURVEYOR'S CERTIFICATE:

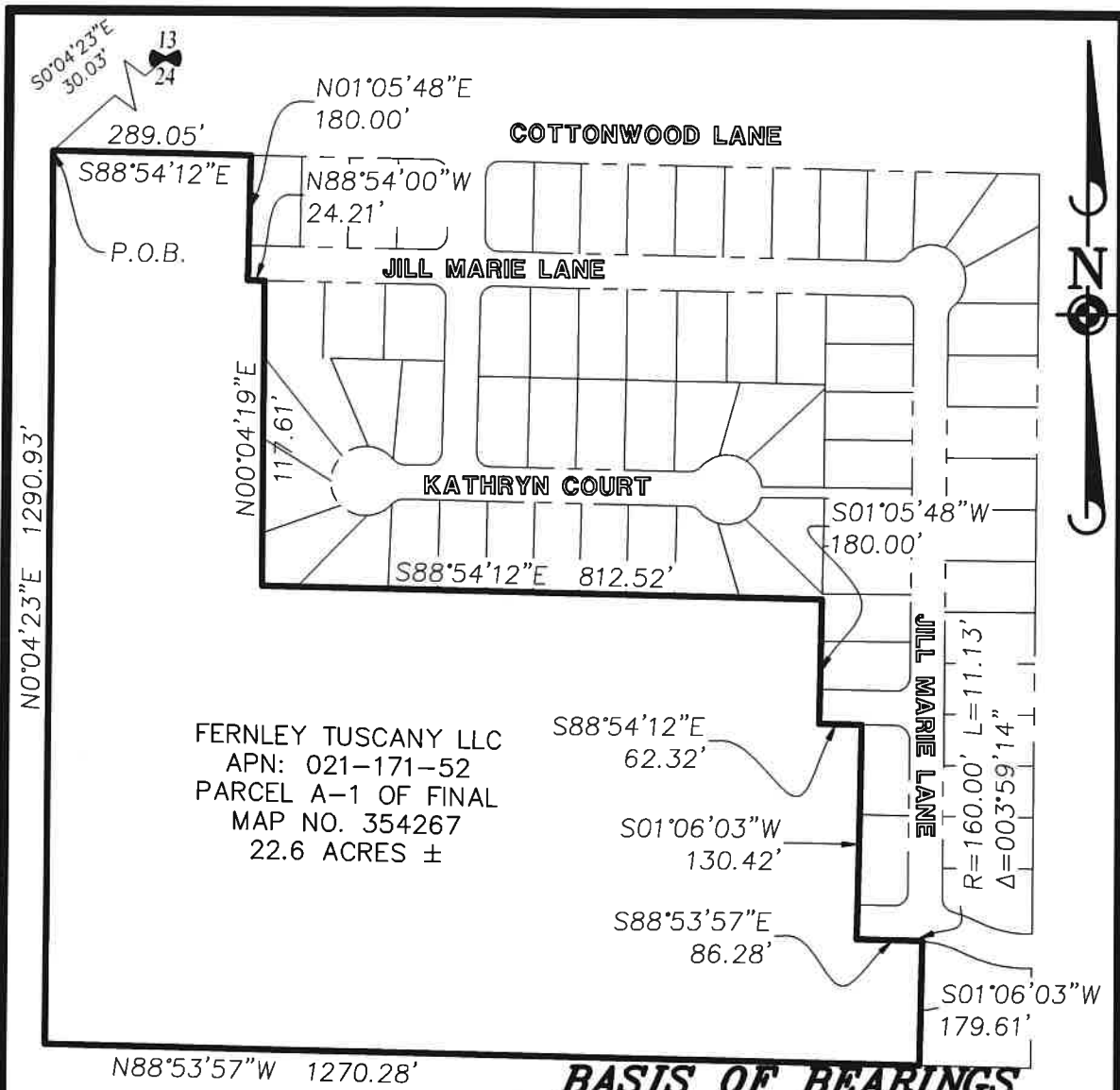
I hereby certify that the description above was prepared by me or under my direct supervision and is accurate to the best of my knowledge and belief.

Lee H. Smithson
Nevada PLS 5097
For and on behalf of



241 RIDGE STREET, SUITE 400
RENO, NEVADA 89501
(775) 887-5222





FERNLEY TUSCANY LLC
 APN: 021-171-52
 PARCEL A-1 OF FINAL
 MAP NO. 354267
 22.6 ACRES ±

BASIS OF BEARINGS

MODIFIED NEVADA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983/1984, HIGH ACCURACY REFERENCE NETWORK (NAD 83/94 HARN) DETERMINED USING REAL TIME KINEMATIC (RTK) GPS OBSERVATIONS OF NEVADA DEPARTMENT OF TRANSPORTATION (NDOT) CONTROL MONUMENTS #80512 AND #766231. COMBINED GRID TO GROUND FACTOR = 1.00026944758.

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 Civil Engineers | Surveyors | Water Resource Engineers | Water & Waste Water Engineers
 Construction Managers | Environmental Scientists | Landscape Architects | Planners

COOK RANCH	
FERNLEY, NV	
EXHIBIT	
PM: LHS	SHEET
DRAWN: HHF	1 OF 1
DATE: MAY 2021	
SCALE: 1"=250'	FTLFENV

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