

Assessor's Parcel Number: N/A

Date: DECEMBER 8, 2010

Recording Requested By:

Name: JEANE COX, COMMUNITY DEVELOPMENT

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 10 Fee: 0.00
BK-1210 PG-1939 RPTT: # 0



DEVELOPMENT AGREEMENT AMENDMENT #2010.272
(Title of Document)

SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

Between
H & S CONSTRUCTION, INC
1650 Hwy 395, Suite 203
Minden, NV 89423
Phone (775-782-2221)
("H&S")
And
DOUGLAS COUNTY,
a political subdivision of the State of Nevada
P.O. Box 218
Minden, NV 89423
("COUNTY")

FILED
2010 DEC - 7 AM 9:57
2010.2.22

This Second Amendment to the Development Agreement is made on the date the ordinance adopting this amendment becomes effective by and between H&S and COUNTY (hereafter the "Parties") pursuant to Nevada Revised Statutes, Chapter 278; Douglas County Code, Chapter 20.400; and the following terms and conditions:

RECITALS

A. H&S is the owner and developer of certain real property located in the Town of Gardnerville, Douglas County, Nevada at 1424 Toler Avenue (also known as APN 1320-34-002-001), commonly referred to as Ashland Park Planned Development (Ashland Park) which was approved by the Douglas County Board of County Commissioners on January 5, 2006, as PD 05-013.

B. Together with the owners and developers of other real property in Douglas County, H&S and the COUNTY entered into a Development Agreement dated February 3, 2005, Document No. 0639085, Book 0305, Page 6260, Ordinance 2004-1098. Additionally the parties entered into a First Amendment dated February 7, 2008, by Document No. 768537, Book 0810, Page 2769, Ordinance 2007-1234 (hereafter collectively "Development Agreement, as amended") providing, among other things, for the design, construction and timing of completion for a portion of the Muller Parkway Extension, dedication of drainage easements/improvements and a modification of the phasing plan for Ashland Park requiring the first final map in a series of successive final maps to be recorded by December 31, 2010.

C. Since the approval of Ashland Park and First Amendment, the Town of Gardnerville is pursuing a Letter of Map Revision (LOMR) to the Federal Emergency Management Agency (FEMA) for floodplains impacted by the Pinenut Creek and Cottonwood/Martin Sloughs and has hired a consultant to assist and prepare a Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs. Based on preliminary results and the best information available at this time, the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs indicates that portions of Ashland Park may now be identified within a special flood hazard area, as that term is used in Douglas County Code, Chapter 20.50. However the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs has not been finalized nor has a LOMR application, based on the analysis, been submitted to or accepted by FEMA. It is anticipated the Town of Gardnerville will submit a LOMR application to FEMA within the 2010 calendar year. It is also recognized that FEMA will review the LOMR application and that it may take a substantial amount of time before FEMA determines if it will approve the LOMR based on the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs.

D. The COUNTY pursuant to Douglas County Code, Chapter 20.50 is responsible for floodplain management. Douglas County Code recognizes that portions of Douglas County are subject to periodic inundation by flood waters which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. The COUNTY has a duty to promote the public health, safety and general welfare and to minimize public and private losses due to flooding in specific areas through the implementation of Chapter 20.50, review of land divisions, review of floodplain development permits and review of modifications to development schedules for previously conditionally approved projects such as Ashland Park PD 05-013.

E. Based on the respective parties duties and previous approvals as described above, H&S and the COUNTY recognize it is in both Parties' best interests to have the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs finalized and a FEMA determination on whether it will approve the LOMR, which includes the subject property identified for development as Ashland Park PD 05-013.

F. Based on changed conditions, the pending Hydrology and Floodplain Analysis for the Pinenut Creek and Cottonwood/Martin Sloughs, the anticipated LOMR application by the Town of Gardnerville, subsequent FEMA determination on whether it will approve LOMR which includes the subject property, and in consideration of the efficient development of the planned development the Parties desire to suspend the recording of the first final map in a series of successive final maps to be recorded for Ashland Park, modify H&S obligation with regard to the timing of the dedication of property for a portion of the Muller Parkway Extension and establish the process for approving a

modified development schedule following the suspension period.

NOW THEREFORE, based upon the foregoing recitals and in consideration of the terms and provisions described in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, H&S and COUNTY agree all provisions of the original Development Agreement, as amended, remain in full force and effect with the exception of the following additions, shown by *italics* or deletions, shown as a ~~strike~~through:

AMENDMENTS

1.2.7. PHASING PLAN AND DEVELOPMENT SCHEDULE:

(A) As consideration for the provision of the drainage easement described above and removal of the County's obligation with regard to reimbursement for construction of the easterly-half of Muller Parkway, the phasing plan for Ashland Park is modified as set forth on the attached Exhibit B that is incorporated by this reference.

(B) Suspension Period for the Phasing Plan/ Development Schedule:

1. H&S and the COUNTY agree, notwithstanding the phasing plan/development schedule set forth in Exhibit B, that as of the effective date of the ordinance adopting the Second Amendment to the Development Agreement, the timeframe for presenting the first final map in a series of successive final maps for Ashland Park PD05-013 is suspended for a period not to exceed four years. During the suspension period, H&S will not record a final map for any or all phases of Ashland Park, PD 05-013, except pursuant to an amended Exhibit B phasing plan/development schedule as set forth below in 1.2.7 (B)(5). The COUNTY agrees that during the suspension period, H&S approvals for the subject site, Ashland Park PD05-013, will remain valid and H&S will not be deemed to be in default of the Development Agreement as amended, for not

filing a first final map or any successive final map in a series maps. The suspension period is necessary to allow the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs to be finalized, a LOMR application to be filed with FEMA and allow for a determination by FEMA on whether it will approve the LOMR changing the flood designation of portions of the subject site, Ashland Park PD05-013, to reflect a special flood hazard area.

2. H&S hereby represents, warrants, covenants and agrees with COUNTY that, until approval or denial by FEMA of the LOMR application described above or expiration of the suspension period, H&S will not undertake or continue any construction activity on the subject site, Ashland Park. However H&S will maintain the subject site, Ashland Park, to prevent injury to the public health, safety and welfare. Furthermore, during the term of the suspension period, should H&S sell, transfer, assign or convey all or any portion of the subject site, Ashland Park, it will notify the COUNTY within 10 calendar days. The notice must be in writing, it must identify the current legal and equitable owners of the subject site, it must provide contact information for each owner and should be sent to the attention of the County Manager. The terms of this Second Amendment and the Development Agreement as amended bind the Parties and their successors and assigns.

3. Following the Hydrology and Floodplain Analysis of the Pinenut Creek and Cottonwood/Martin Sloughs being finalized and a FEMA determination on the LOMR application, if portions of the subject site, Ashland Park, are designated to be within a special flood hazard area, H&S agrees to submit a revised hydrology and hydraulics study, based on the best information available, that meets the current provisions of Douglas County Code, Chapter 20.50

Floodplain Management, for the subject site, Ashland Park. The revised hydrology and hydraulics study must demonstrate that the proposed development will not cause any adverse impact, as defined in Chapter 20.50. If the study shows change in the base flood elevation (BFE) of greater than 0.5 feet, injury to other property or expands the floodplain boundary of the effective FIRM utilizing the Corrected Effective Model or the Effective Model, as recognized by FEMA, H&S must comply with the provisions of Douglas County Code, Chapter 20.50 regarding Conditional Letter of Map Revision (CLOMR) and LOMR. If a CLOMR and LOMR are required, a final map may not be recorded or any work permitted under a site improvement permit until the CLOMR is approved by FEMA.

4. Within six months of H&S receipt of notice of final approval or denial of the LOMR application or expiration of the suspension period, whichever occurs first, H&S shall submit an application to amend Exhibit B phasing plan/development schedule, to this Development Agreement, as amended, to the COUNTY specifically stating the dates by which a final map for each phase of Ashland Park PD 05-013 will be recorded. Submission of an application to amend Exhibit B more than six months after approval or denial of the LOMR application will be treated as if H&S untimely presented its first final map in a successive series of final maps for the subject site, Ashland Park PD 05-013. The COUNTY in accordance with NRS 278 and 20.400, agrees to promptly review the application and determine whether the required findings for approval can be made taking into account the terms of this Amendment and the reasons therefore. Additionally, in reviewing the application, the COUNTY may add reasonable conditions, as necessary to ensure the proposed

development, Ashland Park PD 05-013, does not adversely impact other properties in the area, protects the public interest and ensures the public health, safety or welfare. The Douglas County Board of Commissioners is a public body and its decisions are legislative, administrative or quasi-judicial and are subject to public hearings and input, and the COUNTY, except as otherwise expressly provided herein, reserves and shall have sole and absolute discretion to approve or disapprove any matter submitted to it for any reason.

5. Development of the subject site, Ashland Park, was conditionally approved. Both the Development Agreement as amended and conditions of approval, included among other things, requirements for improvements and dedications for the Muller Parkway Extension. During the suspension period, should the COUNTY be awarded and formally accepts federal, state or other grant funding to design and construct the portion of the Muller Parkway Extension adjacent to Ashland Park the COUNTY will require and H&S agrees to dedicate in fee, with no title exceptions, to COUNTY for public use, street, highway, and drainage purposes the section of the Muller Parkway Extension, a 105 feet in width, generally depicted on the drawing, "Stodick Estates, Muller Parkway Right-of-Way Offer of Dedication, dated October 26, 2004" attached to the Development Agreement, as amended. In the event that Douglas County does not construct and complete such portion of the Muller Parkway Extension, this dedication would not relieve H&S of its obligations for improvements and dedications required for the Muller Parkway Extension per the conditions of approval for the subject site, Ashland Park, or the Development Agreement, as amended. The dedication does not obligate the COUNTY to provide any improvements in the

dedicated area, however in the event that the COUNTY does obtain grant funding and a notice of completion is issued for the Muller Parkway Extension, H&S is relieved of its obligations with regard to improvements related to the Muller Parkway Extension to the extent the notice of completion encompasses H&S obligations under the Development Agreement, as amended and the conditions of approval for the subject site, Ashland Park.

7.7 This Agreement or any amendment may be signed in counterparts.

7.9 This Agreement is not intended and shall not be construed to provide any person, association or entity not a party to this Agreement with any rights, benefits or cause of action, or to obligate the Parties to this Agreement to any entity or person not a party.

7.10 The Parties hereto were each advised by counsel in drafting and negotiating this Agreement, and both parties contributed to its contents. No presumptions against or in favor of either party are appropriate based on who drafted this Agreement or any provision herein.

{ Signature Page Follows }

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to the Development Agreement, as amended.

DOUGLAS COUNTY,
a political subdivision of the State of Nevada
Michael A. Olson
Michael A. Olson, Chair

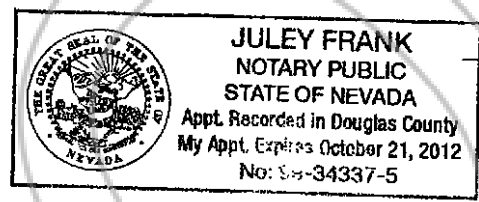
H & S CONSTRUCTION, INC.,
a Nevada Corporation
Randy Harris
Randy Harris, President

Dated: December 2, 2010

Dated: 10-28-10

STATE OF NEVADA)
)ss:
COUNTY of Douglas)

This instrument was acknowledged before me on this 28th day of October, 2010, by Randy Harris, on behalf of H & S Construction, Inc.



Juley Frank
Notary Public

ATTEST:
Ted Thran
TED THRAN, Douglas County Clerk

BY: Laurie Swann
CLERK TO THE BOARD

{Additional Signature Page Follows}

The following LANDOWNERS express no position with respect to Section 1.2.7(B)(5) and do not waive any rights or claims they may have with respect to the subject thereof. As to the remainder of the Second Amendment to the Development Agreement, as amended, the LANDOWNERS signing below have no objection.

NEVADA NORTHWEST, LLC
a Nevada Limited Liability Company
By: CORPORATE MANAGEMENT
SERVICES, INC., a Nevada Corporation
Manager

SIERRA NEVADA SW ENTERPRISES,
LTD, a Nevada Limited Liability Company
By: CORPORATE MANAGEMENT
SERVICES, INC., a Nevada Corporation
Manager

[Signature]
James S. Bradshaw, President

[Signature]
James S. Bradshaw, President

Dated: 10/27/10

Dated: 10/27/10

SCOTSMAN DEVELOPMENT
CORPORATION, a Nevada Corporation

VIRGINIA RANCH DEVELOPMENT
CORPORATION, a Nevada Corporation

[Signature]
James S. Bradshaw, President

[Signature]
James S. Bradshaw, President

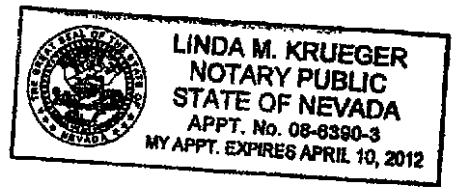
Dated: 10/27/10

Dated: 10/27/10

STATE OF NEVADA)
)ss:
COUNTY of Carson City

This instrument was acknowledged before me on this 27th day of October, 20010, by James S Bradshaw, on behalf of Nevada Northwest, LLC., Sierra Nevada SW Enterprises, Ltd., Scotsman Development, Corp., Virginia Ranch Development Corp.

Linda Krueger



CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: Dec 8 2010
[Signature] Clerk of the 2nd Judicial District Court
of the State of Nevada in and for the County of Douglas.
By [Signature] Deputy