

SUMMARY: An ordinance approving Amendment of Conditions Case Number AC10-006, to amend Development Agreement Case Number DA08-006 regarding Feather River. The proposed Amendment of Conditions will extend the duration of the Development Agreement for one year from the date of signing by the Chair of the Washoe County Commission.

BILL NO. 16029

ORDINANCE NO. 1248

AN ORDINANCE PURSUANT TO NEVADA REVISED STATUTES 278.0201 THROUGH 278.0207 APPROVING AMENDMENT OF CONDITIONS CASE NUMBER AC10-006, TO AMEND DEVELOPMENT AGREEMENT CASE NUMBER DA08-006 REGARDING FEATHER RIVER. THE PROPOSED AMENDMENT OF CONDITIONS WILL EXTEND THE DURATION OF THE DEVELOPMENT AGREEMENT FOR ONE YEAR FROM THE DATE OF SIGNING BY THE CHAIR OF THE WASHOE COUNTY COMMISSION.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WASHOE DO ORDAIN:

SECTION 1.

The Amended and Restated Agreement is an acceptable document with which to extend the expiration date of Development Agreement Case No. DA08-006.

The amendment to the Development Agreement reads as follows:

AMENDED AND RESTATED AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between **Feather River Land Co., LLC, a Nevada Limited Liability Company and Feather River 320, LLC, a Nevada Limited Liability Company** (collectively the "Landowner"); and the **COUNTY OF WASHOE**, a political subdivision of the State of Nevada, ("County").

1. GENERAL.

1.1. Property. The Landowner is the owner of real property located in Washoe County, Nevada known as Assessor's Parcel Numbers 084-291-38, and a portion of 084-040-08 and 084-332-03 in Washoe County (the "Property") as more particularly described in Exhibit A, attached hereto, which is subject to County's Truckee Canyon Area Plan ("TCAP").

1.2. Tentative Map. The Property has a County land use designation of Medium Density Suburban ("MDS"), which allows a density of three single family dwellings per acre.

On November 13, 2006 the County issued its Action Order, which is incorporated herein by this reference as Exhibit B, approving a tentative map application of the Landowner for the Property known as Tentative Subdivision Map Case File No. TM06-006 [FEATHER RIVER (formerly TM04-007 STAMP MILL ESTATES)] (the "Tentative Map"). The development of the Property must be conducted pursuant to the provisions of the Tentative Map and the Washoe County Development Code (the "Code").

1.3. Previous Final Maps. Landowner or its predecessor in interest sought and was granted an extension of time to record final maps, which extension expires on June 30, 2010. As of June 2010, the Landowner has not recorded a final map for TM06-006 [FEATHER RIVER].

1.4. Next Final Map Requirement. Pursuant to NRS 278.360(1), unless the parties have entered into an agreement concerning the development of land authorized by NRS 278.0201, the Landowner originally was required to cause a final map (the "Final Map") to be recorded prior to the expiration of the two (2) year time limit, November 13, 2008. As indicated, an extension was granted by the Board of County Commission by Development Agreement Case Number DA08-006 to June 30, 2009, and another extension was granted by the Director of Community Development to June 30, 2010. Now, therefore, an extension is granted for one (1) year from the date of signing by the Chair of the Washoe County Commission, through Amendment of Conditions Case Number AC10-006. The parties believe it is in the public interest to enter into this Agreement to provide, among other matters, additional time to design and to establish phasing and financing for the infrastructure and construction of the development. Further, a community sewer system is required in accordance with state and county law, and the Agreement will ensure that phasing and financing plans for the sewer treatment and collection systems are addressed.

2. AGREEMENT CONCERNING DEVELOPMENT OF LAND.

2.1. Compliance with NRS 278.0201 and Code. This Agreement is an agreement concerning the development of land under NRS 278.0201 and Article 814 of the Code. The Landowner is the owner of fee title to the Property, and therefore has a legal interest in the Property. In compliance with NRS 278.0201(1), the following covenants, terms and conditions are set forth:

2.1.1. The land which is subject to this Agreement is APN 084-291-38 and a portion of APNs 084-040-08 and 084-332-03 which is described in Exhibit A: Legal Description.

2.1.2. The duration of this Agreement shall be for one (1) year from the date of signing by the Chair of the Washoe County Commission, provided that all the terms of the original Agreement to extend the tentative map, signed by the County Commission on October 28, 2008, shall remain binding and enforceable regarding construction or development commenced, and any related permits, on any portion of the Property subject to a tentative map, a recorded final map, or any use permit in existence at the time of expiration of this Agreement.

2.1.3. Exhibits described herein and all other materials and information deemed reasonably necessary and required by the Department of Community Development must be submitted in substantial compliance with the Tentative Map no later than 120 days prior to the one year extension date defined by the signing date of this Agreement by the Chair of the Washoe County Commission. Final terms and specifications of all exhibits and other materials, except as

otherwise provided in this Agreement, must also be completed between the parties with the first year of this Agreement.

2.1.4. The permitted uses on the Property and the density or intensity of its use, are as provided in the Tentative Map and the Code. The permitted use of the Property is a 321 unit common open space development, having lot sizes ranging from $\pm 5,790$ square feet to $\pm 12,848$ square feet in size, with an average parcel size of $\pm 7,405$ square feet (.17 acres), and a density of 2.9 units per acre, which complies with the property's Medium Density Suburban (MDS) zoning designation.

2.1.5. The maximum height and size of the proposed buildings will comply with the Medium Density Suburban maximum height limit of 35 feet.

2.1.6. The provisions for the dedication of any portion of the Property for public use are as provided in the Tentative Map and the Code. There are two parks planned within the proposed development. The park located at the center of the development is approximately 7.2 acres and will serve as a storm water detention basin, as well as a public park. The detention basin will be maintained by the Homeowner's Association and the park will be offered for dedication to the County. The second park is located at the southern portion of the development and is approximately 1.5 acres in size and will be maintained by the Homeowner's Association. There will also be an additional 3.1 acres of open space at the northwest end of the project site, adjacent to Bureau of Land Management (BLM) land to be maintained by the Homeowner's Association. This will serve for a future county trailhead location and will connect to the City of Sparks Regional Trail System.

2.1.7. Terms and conditions relating to construction and financing of necessary public improvements and facilities, including participation in special assessment district proceedings, if necessary, will be supplied. The terms include the following exhibits:

- Exhibit C: A phasing plan for infrastructure, including construction phasing and financing plan with information on required bonding or other acceptable guarantees of performance and completion (Article 110.610 Washoe County Development Code) for each development phase or stage.
- Exhibit D: Information and methodology on the proposed funding mechanism and benefiting properties for the services and infrastructure, i.e. GID, SAD, LID, HOA, etc.
- Exhibit E: Phasing and financing plans for the sewer treatment system and for the collection system.

2.1.8. Phasing and deadline dates are required for project grading and development with information on required bonding or other acceptable guarantees of performance and completion (Article 110.610 Washoe County Development Code) for each development phase or stage. This shall constitute Exhibit F.

2.1.9. The first final map, to be a minimum of five lots, shall be recorded on or before the first anniversary of this Agreement. Each successive map, if the Landowner chooses to

record in a series, must include a minimum of five lots. Timelines for successive final maps must be in accordance with state law, including NRS 278.360 and the development code.

2.1.10. A Development Standards Handbook, to be known as Exhibit G, shall consist of the following: project description with site plan, development phasing and building setbacks; grading, drainage and erosion controls; fences and walls; lighting standards and energy conservation; revegetation and open space maintenance; public facilities including water and sewer service, fire protection and security and emergency services, as well as other materials and information deemed reasonably necessary and required by Community Development.

2.2. Code and Changes to the Law. The parties agree that changes in federal, state or county law concerning public health, safety or welfare will apply to any final map or other permit.

2.3. Public Notice. Any and all public notices required to be given in connection with this Agreement shall be given in accordance with law, including Section 110.814.25 of the Code.

2.4. Assumption of Risk. The Landowner acknowledges and agrees that the Landowner is proceeding voluntarily and at its own risk in entering into this Agreement and without advice, promises or guarantees of any kind from the County, other than as expressly set forth herein.

2.5. Default and Termination of Agreement. This Agreement shall become null and void in the event of noncompliance with any term or deadline set forth in this Agreement, and all proceedings concerning the Tentative Map shall be terminated, provided that all the terms of this Agreement shall remain binding and enforceable regarding construction or development commenced, and any related permits, on any portion of the Property subject to a tentative map, a recorded final map or any use permit in existence at the time of termination of this Agreement.

2.6. Previously Approved Modifications to the Code. Tentative Subdivision Map Case File No. TM06-006 [Feather River] is an approved Common Open Space Development which allows for smaller lot sizes than the minimum standards set forth in the development standards for Medium Density Suburban in the Washoe County Development Code. Medium Density Suburban standards require a minimum of 12,000 square foot lot sizes. Approval of the Tentative Map allowed for lot sizes ranging from $\pm 5,790$ square feet to $\pm 12,848$ square feet. Minimum lot width was also reduced with the Common Open Space Development standards from a minimum 80 foot lot width to a minimum 55 foot lot width. These modifications are in the public's best interest because it allows for more useable open space within the project.

3. MISCELLANEOUS PROVISIONS.

3.1. Time is of the Essence. Time is of the essence of this Agreement.

3.2. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

3.3. Assignability of the Agreement. This Agreement shall be binding upon all future successors in interest of the Property as described in Exhibit A (Legal Description), and the successor shall assume the duties and obligations under this Agreement.

3.4. Professional Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, each party shall be responsible for their own attorney's fees and costs whether or not the action is prosecuted to a final judgment.

3.5. Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

3.6. Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Nevada. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada and venue for any action shall be solely in state district court for Washoe County, Nevada.

3.7. Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, pursuant to the laws of the State of Nevada, the time for such performance shall be extended to 5:00 p.m. on the next business day.

3.8. Written Amendments. Amendments to this Agreement shall be defined as changes which are not in substantial compliance with the Tentative Map and this Agreement. Amendments, if any, shall be approved as provided in NRS 278.0205. Changes hereto which are in substantial compliance with the overall Tentative Map and this Agreement may be requested by Owners and approved or denied by the Director of Community Development. The Director of Community Development shall also decide whether or not a proposed change is in substantial compliance with the overall Tentative Map. The Owners may appeal an adverse decision by the Director of Community Development to the Board of County Commissioners by written notice filed with the Director of Community Development, if filed within twenty (20) days of receipt of the notice of the adverse decision. No oral statements or representations subsequent to the execution hereof by either party are binding on the other party, and neither party shall have the right to rely on such oral statements or representations.

3.9. Future Cooperation. Each party shall, at the request of the other, at any time, execute and deliver to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Agreement.

3.10. Third Party Beneficiary Rights. This Agreement is not intended to create any third-party beneficiary rights in any person not a party hereto.

3.11. Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, the interpretation of this

Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist, or against the draftsmen.

3.12. Counterparts. This instrument may be executed in two or more counterparts, which, when taken together, shall constitute one and the same instrument. Any signature page of this instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto, but having attached to it one or more additional signature pages.

3.13. Landowner consents to the provisions of this Agreement and the original Agreement to extend the tentative map entered into on October 28, 2008.

[Signatures appear on following page]

[Signature page to Development Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above last written below.

LANDOWNER:

FEATHER RIVER LAND CO., LLC, a Nevada Limited Liability Company

By: DESERT OASIS MANAGEMENT, INC., a Nevada Corporation, Manager of Feather River Land Co., LLC.

By: _____
Randel W. Aleman, President

Date: _____

Name: _____

Title: _____

FEATHER RIVER 320, LLC, a Nevada Limited Liability Company

By: DESERT OASIS MANAGEMENT, INC., a Nevada Corporation, Manager of Feather River 320, LLC.

By: _____
Randel W. Aleman, President

Date: _____

Name: _____

Title: _____

COUNTY:

COUNTY OF WASHOE, a political subdivision of the State of Nevada, by its BOARD OF WASHOE COUNTY COMMISSIONERS

By: _____
DAVID HUMKE, Chairman

Date: _____

ATTEST:

AMY HARVEY, County Clerk

State of Nevada
County of Washoe

This instrument was acknowledged before me on _____, 2010, by Randel W. Aleman, President of Desert Oasis Management, Inc., a Nevada Corporation, Manager of Feather River Land Co., LLC, and Feather River 320, LLC.

Notary Public

My commission expires: _____

The Amended and Restated Agreement, for Amendment of Conditions Case Number AC10-006 is attached and is an acceptable document with which to extend the duration of the development agreement for one year from the date of signing by the Chair of the Washoe County Commission.

Proposed on the 13th day of July, 2010.


Proposed by Commissioner Larkin Bretternitz.

Passed on the 27th day of July, 2010.

Vote:

Ayes:	Commissioners.....	<u>Weber - Larkin - Jung - Bretternitz</u>
Nays:	Commissioners.....	<u>none</u>
Absent:	Commissioners.....	<u>Hunke</u>

ATTEST:



Amy Harvey
County Clerk

Chairman
Washoe County Commission

Bonnie Weber
Chairman of the Board

This ordinance shall be in force and effect from and after the 6th day of the month of August of the year 2010.

211

08/27/2010 01:33:06 PM
Requested By
WASHOE COUNTY COMMUNITY
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$0.00 RPTT: \$0.00
Page 1 of 8



APN# 084-291-38, 084-040-08, 084-312-03

Recording Requested by:

Name: Washoe County Dept of Community Development
Address: 1001 E NINTH ST BLDG A
City/State/Zip: RENO NV 89512

When Recorded Mail to:

Name: Grace Santarone, Dept. of Com. Dev.
Address: 1001 E NINTH ST BLDG A
City/State/Zip: RENO NV 89512

(for Recorder's use only)

Mail Tax Statement to:

Name: _____
Address: _____
City/State/Zip: _____

Amended and Restated Agreements
(Title of Document)

Please complete Affirmation Statement below:

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons.
(Per NRS 239B.030)

-OR-

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law:

(State specific law)

Signature

Title

Printed Name

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

(Additional recording fee applies)

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10-737

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[Signatures appear on following page]

[Signature page to Development Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above last written below.

LANDOWNER:

COUNTY:

FEATHER RIVER LAND CO., LLC, a Nevada Limited Liability Company

COUNTY OF WASHOE, a political subdivision of the State of Nevada, by its BOARD OF WASHOE COUNTY COMMISSIONERS

By: DESERT OASIS MANAGEMENT, INC., a Nevada Corporation, Manager of Feather River Land Co., LLC.

By: [Signature]
Randel W. Aleman, President

By: [Signature]
DAVID HUMKE, Chairman

Date: August 17, 2010

Date: July 27, 2010

Name: Randel W. Aleman, Pres.

Title: Manager

ATTEST:

FEATHER RIVER 320, LLC, a Nevada Limited Liability Company

[Signature]
AMY HARVEY, County Clerk

By: DESERT OASIS MANAGEMENT, INC., a Nevada Corporation, Manager of Feather River 320, LLC.

By: [Signature]
Randel W. Aleman, President

Date: August 17, 2010

Name: Randel W. Aleman, Pres.

Title: Manager

10-737

State of Nevada

County of Washoe

This instrument was acknowledged before me on Aug 17, 2010, by Randel W. Aleman, President of Desert Oasis Management, Inc., a Nevada Corporation, Manager of Feather River Land Co., LLC, and Feather River 320, LLC.

Kimberly A. Nolan
Notary Public



KIMBERLY A. NOLAN
Notary Public, State of Nevada
Appointment No. 02-78107-1
My Appt. Expires Oct. 1, 2010

My commission expires: 10-1-2010

CORPOR

10-737

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STATE OF NEVADA
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **07/30/2010 - 08/06/2010**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: _____

AUG 6 2010



Stacey Gomes

Proof of Publication

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1448 BILL NO. 1629 An Ordinance pursuant to Nevada Revised Statutes 278.0201 through 278.0207 approving Amendment of Conditions Case Number AC10-006, to amend Development Agreement Case Number DA08-006, regarding Feather River. The proposed amendment of conditions will extend the duration of the development agreement for one year from the date of signing by the chairman of the Washoe County Commission. PUBLIC NOTICE IS HEREBY GIVEN that typewritten copies of the above-numbered and entitled ordinance are available for inspection by the interested parties at the office of the County Clerk of Washoe County, Nevada, at her office at the County Courthouse, 75 Court Street, Reno, Nevada; and that said ordinance was proposed by Commissioner Breternitz on July 13, 2010, and following a public hearing, was passed and adopted without amendment at a regular meeting on July 27, 2010, by the following vote of the Board of County Commissioners: Those Voting Aye: Bonnie Weber, Bob Larkin, John Breternitz, Kitty Jung Those Voting Nay: None Those Absent: David Humke This Ordinance shall be in full force and effect from and after August 6, 2010, i.e., the date of the second publication of such Ordinance by its title only. IN WITNESS WHEREOF, the Board of County Commissioners of Washoe County, Nevada, has caused this Ordinance to be published by title

only. DATED: July 28, 2010 AMY HARVEY, Washoe County Clerk and Clerk of the Board of
County Commissioners No. 715010 July 30, August 6, 2010