

ORDINANCE NO. 3712
(DEV-2019003697 – Development Agreement)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, APPROVING AND ADOPTING THE PARTIAL TERMINATION OF DEVELOPMENT AGREEMENT AND ZONING MORATORIUM BETWEEN THE CITY OF HENDERSON AND PEGH NEVADA LLC, ON APPROXIMATELY 45.25 ACRES (APN 191-14-115-003) GENERALLY LOCATED EAST OF VIA INSPIRADA, IN THE WEST HENDERSON PLANNING AREA.

WHEREAS, the City of Henderson, a municipal corporation and political subdivision of the State of Nevada (the “City”) is authorized under its Charter and the general laws of the State of Nevada to enact ordinances and enter into agreements to promote and safeguard the health, safety and welfare of its citizens; and

WHEREAS, pursuant to Nevada Revised Statute Chapter 278.0201, the City Council of the City of Henderson, Nevada, enacted Henderson Municipal Code Section 19.6.10.A providing for the utilization of development agreements to regulate land development within the incorporated boundaries of the City of Henderson; and

WHEREAS, the City and PEGH Nevada LLC, a Nevada limited liability company (“PEGH”), are currently parties to that certain Development Agreement recorded in the real property records of Clark County, Nevada (the “Official Records”) on November 19, 2019, as Instrument No. 20191119-0000050 (the “Development Agreement”), providing for development of the property subject thereto (the “Property”) in accordance with the above-described statute; and

WHEREAS, the grant, bargain, and sale deed conveying the Property to PEGH included a prohibition against changing the zoning from IP-MP (Industrial Park with Master Plan Overlay District) as long as the Development Agreement remained in effect (the “Zoning Moratorium”); and

WHEREAS, the City has exercised the right to purchase the Eastern Parcel as provided in the Development Agreement (the “Repurchase”) and, pursuant to the terms of the Development Agreement, at the closing of the Repurchase, the Parties shall record a termination of the Development Agreement and the Zoning Moratorium as to the Property only; and

WHEREAS, the City and PEGH therefore wish to enter into the attached Partial Termination of Development Agreement and Zoning Moratorium to release the Property from the encumbrance of the Development Agreement and from the prohibition on changing the current zoning, as a condition of the Repurchase; and

WHEREAS, the parties acknowledge and agree that the Partial Termination of Development Agreement and Zoning Moratorium does not release, discharge or exempt the Property from the requirements of the PFNA (as defined in the Development Agreement) as to any future or additional development on the Property, and that prior to any future development of the Property, the then-owner of the Property shall remain bound by the PFNA in order to fund public facilities needed to accommodate the anticipated growth within the PFNA Area (as defined in the Development Agreement), in all respects if and to the extent required by the PFNA.

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. The City Council hereby approves and adopts the Partial Termination of Development Agreement and Zoning Moratorium, attached hereto as Exhibit 1, consisting of five (5) pages.

SECTION 2. The effective date of approval of this Ordinance shall be the date the Partial Termination of Development Agreement and Zoning Moratorium is recorded in the Office of the County Recorder, Clark County, Nevada.

SECTION 3. If any section, subsection, sentence, clause, phrase, provision or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

SECTION 4. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Las Vegas Review-Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and the following approval shall be published by title (or in full if the City Council of the City of Henderson, Nevada, by majority vote so orders) together with the names of the Councilpersons voting for or against passage for at least one (1) publication before the Ordinance shall become effective. The Ordinance is scheduled for publication on July 24, 2020, in the Las Vegas Review-Journal.

PASSED, ADOPTED, AND APPROVED THIS 21ST DAY OF JULY, 2020.

Debra March, Mayor

ATTEST:

Sabrina Mercadante, MMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on July 7, 2020, which was a Special Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on July 21, 2020, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held July 21, 2020, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:

Debra March, Mayor
Councilmembers:
John F. Marz
Michelle Romero
Dan K. Shaw
Dan H. Stewart

Those voting nay: None
Those abstaining: None
Those absent: None

Debra March, Mayor

ATTEST:

Sabrina Mercadante, MMC, City Clerk

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in [brackets], and language proposed to be added is in *blue italics and underlined*.

EXHIBIT 1

APN: 191-14-115-003

**RECORDED AT THE REQUEST OF,
AND RETURN TO:**

**CITY OF HENDERSON
ATTN: CITY ATTORNEY’S OFFICE
240 WATER STREET
P.O. BOX 95050, MSC 144
HENDERSON, NV 89009-5050**

**PARTIAL TERMINATION OF DEVELOPMENT AGREEMENT
AND ZONING MORATORIUM**

THIS PARTIAL TERMINATION OF DEVELOPMENT AGREEMENT AND ZONING MORATORIUM (this “Termination”) is made and entered into this ____ day of _____, 20__ by and between the City of Henderson, a municipal corporation and political subdivision of the State of Nevada (the “City”), and PEGH Nevada LLC, a Nevada limited liability company (the “PEGH”).

RECITALS

A. PEGH owns that certain real property, consisting of approximately 45.25 acres, more or less, known as the “Eastern Parcel” in the Development Agreement (defined below) and generally located to the east of Via Inspirada in Henderson, Nevada, bearing Clark County Assessor’s Parcel Number 191-14-115-003 and more particularly described on Exhibit A (the “Property”) attached hereto.

B. The Property was part of a larger tract of land the City sold to PEGH pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions made by and between the parties and dated September 18, 2019, by Grant, Bargain and Sale Deed (the “Original Deed”).

C. The Original Deed included a prohibition against changing the zoning from IP-MP (Industrial Park with Master Plan Overlay District) as long as the Development Agreement (defined below) remained in effect (the “Zoning Moratorium”).

D. The Property is subject to that certain Development Agreement between the City and PEGH, dated November 14, 2019 and recorded in the real property records of Clark County, Nevada (the “Official Records”) on November 19, 2019 as Instrument No. 20191119-0000050 (the “Development Agreement”). Capitalized terms used herein and not otherwise defined have the meaning given them in the Development Agreement.

E. The City has exercised the right to purchase the Eastern Parcel as provided in the Development Agreement (the “Repurchase”) and, pursuant to the terms of the Development Agreement, at the closing of the Repurchase, the Parties shall record a termination of the Development Agreement and the Zoning Moratorium, as to the Property only.

F. The City desires, and PEGH agrees, to release and discharge the Property from the Development Agreement and to terminate the Zoning Moratorium as a requirement of the Repurchase.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Termination of Development Agreement. The Property is hereby released and forever discharged from the terms, conditions, and operations of the Development Agreement.

2. Termination of Zoning Moratorium. The Property is hereby released and forever discharged from the terms, conditions, and requirements of the Zoning Moratorium contained in the Original Deed.

3. No Other Changes. This instrument is a termination of the Development Agreement and a termination of Zoning Moratorium pertaining to the Property only. Except as expressly provided herein, all terms and provisions in the Development Agreement and the Original Deed intended to survive the release of property or partial termination of the Development Agreement shall survive.

4. Governing Law; Jurisdiction. This Termination shall be governed by the laws of the State of Nevada. Any action brought to enforce the terms of this Termination shall be brought exclusively in Clark County, Nevada.

5. Recording. The City shall record this Termination in the Official Records.

[signatures appear on following pages]

IN WITNESS WHEREOF, this Termination has been executed by the parties effective as of the day and year first above written.

Date of City Council Approval: _____

CITY:

CITY OF HENDERSON,
a municipal corporation and political subdivision of the State of Nevada

By: _____
Richard A. Derrick
City Manager/CEO

APPROVED AS TO FORM:

ATTEST:

By: _____
Nicholas G. Vaskov
City Attorney

By: _____
Sabrina Mercadante, MMC
City Clerk

APPROVED AS TO FUNDING:

APPROVED AS TO CONTENT:

By: _____
Jim McIntosh
Chief Financial Officer

By: _____
Michael Tassi
Director of Community Development
and Services

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on _____, 20__, by
Richard A. Derrick as City Manager/CEO of the City of Henderson.

(Seal, if any)

(Signature of Notarial Officer)

PEGH:

PEGH Nevada LLC,
a Nevada limited liability company

By: _____
Gene Haas
Manager

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on _____, 20__, by
Gene Haas as Manager of PEGH Nevada LLC.

(Seal, if any)

(Signature of Notarial Officer)

EXHIBIT A

THE PROPERTY

APN: 191-14-115-003

A PORTION OF LOT 2 AS SHOWN ON THE "FINAL MAP SOUTH LTA, A COMMERCIAL SUBDIVISION", IN BOOK 160, PAGE 20 OF PLATS, ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 14, TOWNSHIP 23 SOUTH, RANGE 61 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER (NW 1/4) OF SECTION 14; THENCE ALONG THE NORTH LINE THEREOF, SOUTH 89°59'09" EAST, 301.66 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTH LINE, SOUTH 89°59'09" EAST, 1,476.97 FEET; THENCE SOUTH 00°26'30" WEST, 492.17 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 915.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°24'48", AN ARC LENGTH OF 166.30 FEET; THENCE NORTH 79°08'41" WEST, 12.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 1,098.00 FEET, FROM WHICH BEGINNING THE RADIUS BEARS SOUTH 74°41'59" EAST; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 16°28'42", AN ARC LENGTH OF 315.79 FEET; THENCE SOUTH 01°10'41" EAST, 954.68 FEET; THENCE SOUTH 88°49'19" WEST, 135.00 FEET; THENCE SOUTH 01°10'41" EAST, 365.21 FEET; THENCE SOUTH 85°51'44" WEST, 335.56 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF VIA INSPIRADA; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING THREE (3) COURSES: 1) NORTH 15°11'16" WEST, 568.43 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 5,083.00 FEET; 2) NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°06'15", AN ARC LENGTH OF 1,251.25 FEET; 3) NORTH 29°17'31" WEST, 700.13 FEET TO THE POINT OF BEGINNING.

SHOWN AND DESCRIBED AS LOT 2-1 IN FILE 213, PAGE 95 OF SURVEYS, ON FILE AT THE CLARK COUNTY, NEVADA, RECORDER'S OFFICE.

NOTE: THE ABOVE METES AND BOUNDS LEGAL DESCRIPTION APPEARED PREVIOUSLY IN THE DOCUMENT RECORDED NOVEMBER 15, 2019 IN BOOK 20191115, AS INSTRUMENT NO. 0002603, OF OFFICIAL RECORDS.