

**ORDINANCE NO. 3593**  
**(Annexation of 2.45 Acres – Welpman and Battista)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, EXTENDING THE CITY LIMITS OF THE CITY BY ANNEXING THERETO APPROXIMATELY 2.45 ACRES GENERALLY LOCATED SOUTHEAST OF VOLUNTEER BOULEVARD AND BERMUDA ROAD IN SECTION 10, TOWNSHIP 23 SOUTH, RANGE 61 EAST, M.D.M.

- WHEREAS, Nevada Revised Statutes ("NRS") Section 268.597 authorizes a city to annex territory following receipt and acceptance of a petition signed by all owners of record of individual lots or parcels of land within the area to be annexed; and
- WHEREAS, the City Council of the City of Henderson, Nevada has received one (1) petition (the "Petition") requesting annexation of that certain real property consisting of approximately 2.45 acres and more particularly described on Exhibit A, consisting of two (2) pages, which are, by reference incorporated herein and made part of this Ordinance, (the "Annexation Area"); and
- WHEREAS, the Petition was signed and submitted to the City Council by all owners of record of property situated within the Annexation Area as of the initiation of the annexation petition; and
- WHEREAS, the individual lots or parcels of the Annexation Area each meet the requirements of NRS 268.580(2) in that (a) it was contiguous to the City's boundaries at the time of institution of annexation proceedings; (b) not less than one-eighth of the aggregate external boundaries of the Annexation Area is contiguous to the boundaries of the City; (c) no part of the Annexation Area is included within the boundaries of another incorporated city as those boundaries existed on July 1, 1983; and (d) no part of the Annexation Area is included within the boundaries of any unincorporated town as those boundaries existed on July 1, 1983; and
- WHEREAS, the City of Henderson and Owner have negotiated an Annexation Agreement with respect to the annexation of the Property, in the form set forth on Exhibit B, attached hereto, containing eighteen (18) pages (the "Annexation Agreement"); and

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

- SECTION 1. That, pursuant to NRS 268.597, the Annexation Area is hereby annexed to and made a part of the City of Henderson, Nevada, effective upon completion of those requirements set forth in Section 3 following.

- SECTION 2. The City shall not be required to pay for the extension of municipal services to the territory annexed, but intends that municipal services shall be extended at the expense of the property owners and according to demand, need and benefit of the respective property owners, and in accordance with the City's Charter, Henderson Municipal Code and City policy. The City will furnish police and fire protection and maintenance of installed, approved and accepted utilities, streets, and public recreation facilities, in the Annexation Area.
- SECTION 3. That City staff are hereby instructed as follows: (1) pursuant to NRS 268.600, the City Clerk shall file a certified copy of this Ordinance with the State of Nevada Department of Taxation; (2) the City Clerk shall file a certified copy of this Ordinance with the Clark County Election Department; (3) pursuant to Section 2.100(1) of the City Charter, the City Clerk shall publish in title this Ordinance in a newspaper qualified pursuant to the provisions of Chapter 238 of NRS; and further, (4) pursuant to NRS 268.600, Public Works shall record a certified copy of this Ordinance, with a map of the Annexation Area attached thereto, in the office of the Clark County Recorder.
- SECTION 4. That from and after completion of those requirements set forth in Section 3 of this ordinance, the Annexation Area and all property therein shall be a part of the City of Henderson, Nevada, shall be subject to all debts, laws, ordinances and regulations currently or hereafter in force in the City of Henderson, Nevada, and shall be entitled to the same privileges and benefits as are afforded to all properties within the City of Henderson, Nevada.
- SECTION 5. The Annexation Agreement set forth on Exhibit B attached hereto is hereby approved.
- SECTION 6. This Ordinance shall be effective upon its publication in accordance with Section 2.100(4) of the City Charter.
- SECTION 7. 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 8. All ordinances, or parts of ordinances, sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.

SECTION 9. 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 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 following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on August 9, 2019, in the Review-Journal.

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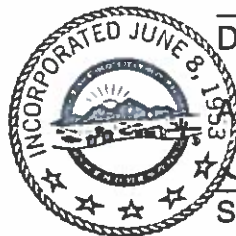
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Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is red and enclosed in **[brackets]**, and language proposed to be added is in *blue italics and underlined*.

PASSED, ADOPTED, AND APPROVED THIS 6<sup>TH</sup> DAY OF AUGUST, 2019.



  
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 16, 2019, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

"COUNCIL AS A WHOLE"

Thereafter on August 6, 2019, 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 August 6, 2019, the Ordinance was read in title and adopted by the following roll call vote:



Those voting aye:

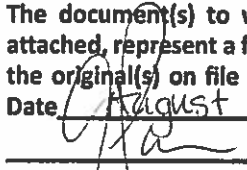
Debra March, Mayor  
Councilmembers:  
Michelle Romero  
John F. Marz  
Dan H. Stewart

Those voting nay: None  
Those abstaining: None  
Those absent: Dan K. Shaw,  
Councilmember

**CERTIFIED COPY**


The document(s) to which this certificate is/are attached, represent a full, true, and correct copy of the original(s) on file and of record in this office.  
Date August 7, 2019

SIGNATURE

  
April Parra, Admin. Duty City Clerk

PRINTED NAME AND TITLE

City of Henderson, Office of the City Clerk  
240 Water Street  
Henderson, Nevada 89015

  
Debra March, Mayor

ATTEST:  
  
Sabrina Mercadante, MMC, City Clerk

## **EXHIBIT "A"**

**APN: 191-10-401-002**

### **Annexation Description**

**The Northwest (NW 1/4) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 10, Township 23 South, Range 61 East, M.D.M., Clark County, Nevada.**

**Containing 2.45 acres, more or less**

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**Containing 2.45 acres, more or less**

**ANNEXATION MAP**  
191-10-301-022  
U.S.A.

**191-10-301-017**  
WELPMAN HOLDINGS LLC

**191-10-301-018**  
YEE 2009  
IRREVOCABLE TRUST

**191-10-301-019**  
MASSUCCI FAMILY  
TRUST

**191-10-401-001**  
BERMUDA SOUTH  
HOLDINGS

**191-10-401-002**  
HONEY ROSE LLC

**191-10-401-003**  
VRFJV PROPERTIES  
LLC

**191-10-401-007**  
VFR-HIDDEN RIDGE, LLC

**191-10-401-011**  
MARY CAMPBELL TR

**191-10-401-012**  
VFR-HIDDEN RIDGE,  
LLC

**191-10-401-015**  
LOBEL TRUST

**191-10-401-016**  
LEE SUI KWOK ETAL

**191-10-401-017**  
LARSON FAMILY  
TRUST

**191-08-801-003**  
CAMESTRELL

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ROOHANI TRUS

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CHAPA  
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**191-10-401**

**VOLUNTEER**

191-10-301-018  
YEE 2009  
IRREVOCABLE TRUST

191-10-301-019  
MASSUCCI FAMILY  
TRUST

E. WELPMAN WAY



**SCALE:**  
**1" = 250'**

191-10-401-001  
BERMUDA SOUTH  
HOLDINGS

191-10-401-002  
HONEY ROSE LLC

191-10-401-003  
VRFJV PROPERTIES  
LLC

**AMIGO STREET**

191-10-401-007  
VFR-HIDDEN RIDGE, LLC

191-10-4  
CHAPA  
LAND



7-16-19

MULLEN AVENUE

191-10-401-011  
MARY CAMPBELL TR

191-10-401-012  
VFR-HIDDEN RIDGE,  
LLC

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191-10-401-015  
LOBEL TRUST

191-10-401-016  
LEE SUI KWOK ETAL

191-10-401-017  
LARSON FAMILY  
TRUST

**191-09-801-003  
CANESTRELLI**

181-UG-801-003  
CAMESTRELL

191-09-801-003  
CAMESTRELL

**AMIGO STREET**

191-10-4  
KHUSR  
ROOHANI  
TRUS

**LARSON LANE**

**ANNEXATION MAP  
2.45 ACRES**

FILE NAME: \Survey\Legals\Annexation\WestHenderson.dwg

**SHEET 2 OF 2**

**CITY OF HENDERSON—SURVEY DIVISION**  
240 WATER STREET  
HENDERSON, NV 89015  
702-267-1300

## ANNEXATION MAP

APN 191-10-401-002

PTN OF SW 1/4, SEC. 10, T23S, R61E

Exhibit "B"

APNs: 191-10-401-002

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

ANNEXATION AGREEMENT  
(HONEY ROSE, LLC)

THIS ANNEXATION AGREEMENT (this "Agreement"), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2019, is made by and between the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada (the "City"), and HONEY ROSE, LLC, a Nevada limited liability company (together with its permitted successors and assigns, "Owner"). The City and Owner are sometimes referred to herein collectively as the "Parties" and individually as a "Party." Capitalized terms used herein but not otherwise defined have the meanings ascribed to such terms on Schedule 1.

RECITALS

A. The City is authorized pursuant to NRS §268.570 through §268.608, inclusive (collectively, the "Statute"), Title 19 of the Code, and Section 1.050 of the Henderson City Charter to undertake the annexation of property that is located outside its corporate boundaries, and the City is authorized, pursuant to NRS §278.0201 through §278.0207, inclusive, §278.02591 through §278.02598, inclusive, and Title 19 of the Code to enter into binding agreements with Persons having a legal or equitable interest in real property regarding the annexation of such property.

B. Owner owns that certain real property, consisting of approximately two and forty-five hundredths (2.45) acres, more or less, generally located southeast of Welpman Way and Battista Lane in Section 10, Township 23 South, Range 61 East, M.D.M., in unincorporated Clark County, Nevada, identified as Clark County Assessor's Parcel Numbers 191-10-401-002, and more particularly described on Exhibit "A" (the "Subject Property").

C. Owner has submitted an application to the City requesting the annexation of the Subject Property and desires that the City proceed with the annexation in accordance the terms and conditions of this Agreement.



D. The Subject Property meets the requirements for the alternative annexation procedures set forth in NRS §268.597(1)(a) in that all of the owners of individual lots or parcels of land within Subject Property have signed a petition requesting the City to annex the territory to the City and (a) the Subject Property was contiguous to the City's boundaries at the time of the initiation of annexation proceedings, (b) not less than one-eighth of the aggregate external boundaries of the Subject Property is contiguous to the boundaries of the City, (c) no part of the Subject Property is included within the boundaries of another incorporated city as those boundaries existed on July 1, 1983, and (d) no part of the Subject Property is included within the boundaries of any unincorporated town as those boundaries existed on July 1, 1983.

E. On January 17, 2017, in accordance with the Statute, the City adopted Ordinance No. 3382, adopting the West Henderson Public Facilities Needs Assessment (as now in effect or hereafter amended, the "PFNA"), as the City's analysis of the cost to construct infrastructure for all residential, commercial, and industrial projects within that certain real property, generally located in West Henderson, identified in Exhibit A to the PFNA (the "PFNA Area"). In accordance with Ordinance No. 3382, all parties seeking to develop property within the PFNA Area must enter into a development agreement in order to fund public facilities needed to accommodate the anticipated growth within the PFNA Area. The Subject Property is located within the PFNA Area.

F. Concurrently with the approval of this Agreement, the City has adopted Ordinance No. \_\_\_\_\_ (the "Annexation Ordinance") in accordance with §268.597. The recording of the Annexation Ordinance, together with this Agreement, which is an exhibit thereto, is a condition precedent to the Annexation Ordinance becoming effective.

G. The City requires the execution and delivery of this Agreement by Owner as a condition to the annexation of the Subject Property.

## **AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the foregoing recitals are true and correct and incorporated herein by this reference, and hereby further agree as follows:

### **ARTICLE I. TERMS OF ANNEXATION**

**Section 1.01 Term.** This Agreement shall be effective as of the date that is provided in the Annexation Ordinance as the effective date of such ordinance (the "Effective Date"). The term of this Agreement (the "Term") shall commence upon the Effective Date and shall expire on the twenty- (20-) year anniversary of the Effective Date, unless terminated earlier pursuant to the terms hereof or extended as hereinafter provided. Owner shall have the right to extend the Term for an additional five (5) years upon the satisfaction of the following conditions:

- (a) Owner provides written notice of such extension to the City prior to the expiration of the original twenty- (20-) year Term; and
- (b) Owner is not in default under this Agreement, and no event shall have occurred that would be a default hereunder subject to the giving of notice or expiration of a cure period.

Upon the satisfaction of such conditions, Owner and the City shall enter into an amendment to this Agreement memorializing the extension of the Term, which shall be recorded in the Official Records. The Annexation Ordinance shall survive the expiration of the Term or earlier termination of this Agreement.

**Section 1.02 Extension of Services after Annexation.** The City shall not be required to pay for the extension of municipal services to the Subject Property. The City shall provide, or arrange for the provision of, all municipal services, including without limitation police protection, fire protection, street maintenance and garbage collection, and shall extend the same privileges and benefits, to the Subject Property on and after the Effective Date at the same level as the respective services, privileges and benefits are provided or extended to the other parts of the City.

## **ARTICLE II. DEVELOPMENT OF SUBJECT PROPERTY**

**Section 2.01 Reliance on Applicable Rules.** When Owner seeks to develop the Subject Property, the City shall consider such development in accordance with the Applicable Rules; however, the City makes no assurances that any development on the Subject Property will occur or that plans for development of the Subject Property will be approved.

**Section 2.02 PFNA.** Owner acknowledges that all parties seeking to develop property within the PFNA Area must enter into a development agreement in order to fund public facilities needed to accommodate the anticipated growth within the PFNA Area in accordance with the Applicable Rules. The City may adopt additional rules and regulations, or amend or modify existing rules and regulations, governing infrastructure plans, allowable uses and development standards within the PFNA Area.

**Section 2.03 Acknowledgment of Uncertainties.** Owner acknowledges that circumstances beyond the control of either Party, including, but not limited to the unavailability of water or other limited natural resources and/or the regulation of air and/or water quality, could prevent the development of the Subject Property. Owner specifically acknowledges and agrees that water shortages could affect the City's ability to perform its obligations hereunder. Owner further acknowledges and agrees this Agreement does not relieve the Owner from compliance with existing, changed, modified or amended Applicable Rules of governmental bodies other than the City. Owner must comply with the Applicable Rules notwithstanding the fact that such Applicable Rules may not be specifically incorporated in this Agreement.

**Section 2.04 Standard Utilities Charges.** Owner acknowledges that the Subject Property shall be subject to the standard utility charges that would ordinarily be assessed through the plan

approval or other standard process to properties situated in the vicinity of the Subject Property, including, but not limited to, the St. Rose Sewer Special Refunding charge, the Anthem Water System Improvements Special Refunding charge, the St. Rose Sewer Special Refunding charge, the St. Rose Sewer West Special Refunding charge, any Southern Nevada Water Authority ("SNWA") Regional Connection Charge, the Water System Development Charge, the Wastewater System Development Charge, the AB 333 Water Use Reporting Fee, and the West Henderson Phase I Water Backbone Infrastructure Rates, and any other applicable fee charged in accordance with the Applicable Rules, each as described in Title 14 of the Code, posted on the website of the City's Department of Utilities or as provided in other applicable City rules. Owner acknowledges that applicable rates are subject to change in accordance with applicable law and that any refund of SNWA charges is subject to the sole discretion of the SNWA.

**Section 2.05 Parks.** In addition to the PFNA Contribution, if the Subject Property is developed as a residential development, Owner agrees that the Subject Property is subject to the Residential Construction Tax, as set forth and defined in NRS §278.4983 and Title 19 of the Code, and Owner agrees to pay the applicable Residential Construction Tax prior to the issuance of the first residential Building Permit on the Subject Property.

**Section 2.06 Traffic Study.** Owner acknowledges that the City may require, as a condition to the City granting entitlements to develop the Subject Property, Owner to provide a traffic study, subject to approval by the City (the "Traffic Study"). Owner further acknowledges that, pursuant to the Traffic Study, the Director of Public Works ("Director") may require an equitable contribution for the construction of street signals or future street signals needed as a result of increased traffic caused by the development of the Subject Property ("Street Signal Construction Contribution"). The Street Signal Construction Contribution shall apply to all residential, commercial, and industrial projects within the PFNA Area. The Street Signal Construction Contribution will be calculated using the City's standard formula and is based on the number of automobile trips created by the development, the number of street signals needed as a result of such trips, and the cost of constructing street signals. The Owner hereby agrees to pay such Street Signal Construction Contribution prior to the release of any Building Permit. Any amendments or modification to the Traffic Study must be approved in writing by the Director and shall be maintained on file with the City Clerk.

**Section 2.07 Drainage Study.** Owner acknowledges that the City may require, as a condition to the City granting entitlements to develop the Subject Property, Owner to provide a drainage study, subject to approval by the City (the "Drainage Study"). Prior to the issuance of a certificate of occupancy for the Subject Property, Owner agrees to construct, at its sole cost and expense, and dedicate to the City those flood and drainage facilities identified in the Drainage Study that are necessary for the flood protection of the Subject Property or for the mitigation of any downstream flood impacts caused by the Subject Property, as determined at the discretion of the City. Any modifications or amendments to the Drainage Study must be improved in writing by the Director and shall be maintained on file with the City Clerk.

**Section 2.08 Off-Site Improvements.** Pursuant to NRS §278.462, the City may require the Owner to provide and/or construct, at Owner's expense, off-site access, street alignment, surfacing and width, water quality, water supply, Street Improvements and sewerage provisions.

**Section 2.09 Public Improvement Construction.** Each public facility constructed on the Subject Property, as well as any on-site facilities required by the Off-Site Improvement Agreement, must be built in the manner prescribed by the Code and the NRS, and in accordance with the "Uniform Standard Drawings for Public Works Construction, Off-Site Improvements, Clark County Area, Nevada", as amended.

**Section 2.10 Approvals.** The approval of this Agreement and the Annexation Ordinance do not constitute an endorsement or approval of any development plans or a commitment or guarantee for water or sanitary sewer service. Provision of these services is administered by the City of Henderson pursuant to Title 13 and 19 of the Code. Owner understands the Property will be subject to requirements for development per the Code and Owner is responsible for obtaining all necessary governmental approvals prior to developing the Property. No provision of this agreement shall be deemed to constitute a waiver of any Code provision or to exempt the Property from any future changes to the Code.

**Section 2.11 Zoning.** The approval of this Agreement and the Annexation Ordinance do not constitute an endorsement or approval of any zoning or land use designation for the Property. Zoning and land use designations are administered by the City of Henderson pursuant to Title 19 of the Code.

### **ARTICLE III. REVIEW, DEFAULT AND REMEDIES**

**Section 3.01 Frequency of Reviews.** As permitted by NRS §278.0205 and Title 19, at least once every twenty-four (24) months during the Term of this Agreement, Owner shall provide, and the City shall review, in good faith, a report submitted by Owner documenting the extent of Owner's and the City's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. If at the time of review a Notice of Default (not previously identified in writing) has been received by a Party, the review, at the request of either Party, shall be continued to afford sufficient time for response as provided in Section 3.02.

**Section 3.02 Event of Default.** If a Party fails to comply with or observe any of the provisions, agreements, conditions, covenants or terms contained in this Agreement for thirty (30) days after written notice of such failure ("Notice of Default") to such Party, or, if such failure cannot be cured within such 30-day period, the defaulting Party does not commence to cure such failure within such 30-day period after receipt of such written notice and diligently complete the cure within sixty (60) days thereafter or such longer reasonable period that may be required, then such failure shall constitute an "Event of Default" hereunder. The Notice of Default shall specify (a) the nature of the alleged default, (b) whether it is curable, and (c) a description of any alleged immediate, irreparable harm that has or may arise due to such alleged default. Action by the City Council

shall not be required for the City to declare a default under this Agreement, and a Notice of Default may be delivered by the City Manager or his designee.

**Section 3.03 Remedies.** Upon the occurrence of an Event of Default, subject to the provisions of this Article III, the non-defaulting Party may enforce any of the provisions herein contained and seek all rights and remedies available under this Agreement, at law, or in equity; provided, however, that in no event shall the rights or remedies available to Owner upon an Event of Default on the part of the City include the termination of this Agreement or any monetary damages of any kind or nature whatsoever (including, without limitation, any consequential, special, speculative, exemplary or punitive damages). Without limiting the foregoing, Owner hereby waives any right or remedy it may now or hereafter have at law, in equity or otherwise, (a) to terminate this Agreement, or (b) to make a claim against the City for, or otherwise attempt to recover from the City, monetary damages of any kind or nature whatsoever (including, without limitation, any consequential, special, speculative, exemplary or punitive damages). Owner acknowledges that the City would not have entered into this Agreement if it could be held liable for monetary damages under or with respect to this Agreement or if Owner could terminate this Agreement upon an Event of Default on the part of the City.

**Section 3.04 Equitable Relief.** No provision of, nor the exercise of any rights under, this Article III shall limit the right of any Party to obtain immediate equitable relief from the court provided for in Section 3.09(b), including, but not limited to, writs of mandamus or prohibition, injunction, set-off, and/or any other prejudgment or post-judgment provisional action or remedy.

**Section 3.05 Withholding of Building Permits.** In addition to any other rights and remedies available to the City, upon the occurrence and during the continuance of an Event of Default on the part of Owner, the City may withhold the release of any final maps and/or Building Permits until the failure to comply is resolved to the reasonable satisfaction of the City, and such withholding shall not be considered a delay by the City hereunder nor shall it result in any liability to the City, whether or not the City has delivered a Notice of Default pursuant to Section 3.02.

**Section 3.06 The City's Option to Terminate.** Upon the occurrence and during the continuance of an Event of Default on the part of Owner, the City may give notice of its intent to amend or terminate this Agreement pursuant to NRS §278.0205 (the "Notice of Intent"). Following delivery by the City of any such Notice of Intent, the matter shall be scheduled and noticed as required by law for consideration and review by the City Council.

**Section 3.07 Cumulative Remedies.** Except as provided in Section 3.03, each of the rights and remedies of each Party with respect to this Agreement shall be cumulative and not exclusive, and any Party's exercise of one right or remedy shall not be deemed or construed to be an election of remedies or be deemed or construed as a waiver or in such a manner as to preclude such Party from exercising any and all other rights and remedies available to such Party at law, in equity or under this Agreement, from time to time and in any order selected by such Party in the sole and absolute discretion of each. Owner acknowledges that the annexation of the Property may not be rescinded or reversed after it is effective.

**Section 3.08 Waiver.** Any failure or delay in giving a Notice of Default shall not constitute a waiver of any default. Any failure or delay by any Party in asserting any of its rights or remedies in respect of any default or Event of Default shall not operate as a waiver of any default, Event of Default, any rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

**Section 3.09 Governing Law; Jurisdiction; Waiver of Jury Trial; Costs.** Any controversy, claim, or dispute arising out of or related to this Agreement or the interpretation, performance, or breach hereof, including alleged violations of state or federal statutory or common law rights or duties (a "Dispute"), shall be resolved in accordance with this Section 3.09.

- (a) **Governing Law.** This Agreement and all disputes between the Parties under or related to this Agreement or the facts and circumstances leading to its execution, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Nevada, applicable to contracts executed in and to be performed entirely within the State of Nevada, without regard to the conflicts of laws principles thereof.
- (b) **Jurisdiction.** Each of the Parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of Business Court of the Eighth Judicial District Court, sitting in Clark County, Nevada and any appellate court thereof, for resolution of any Dispute and for recognition or enforcement of any judgment relating to such Dispute, and each of the Parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding with respect to such Dispute except in such courts; (ii) agrees that any claim in respect of any such Dispute may be heard and determined in such courts; (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding with respect to such Dispute in any such courts; and (iv) waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding with respect to such Dispute in any such courts. Each of the Parties agrees that a final judgment in any such action or proceeding with respect to a Dispute shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.04. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.
- (c) **WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND

UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS; (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (iii) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 3.09(c).

#### ARTICLE IV. CONFLICTING LAWS

**Section 4.01 Conflicting State or Federal Rules.** In the event that any conflicting state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, to the fullest extent permitted by applicable law, this Agreement shall remain in full force and effect as to those provisions not affected, and the conflicting laws or regulations shall not be applied retroactively, and:

- (a) Notice and Copies. Either Party, upon learning of any such matter, will provide the other Party with written notice thereof and provide a copy of any such law, regulation or policy or an account of any such action or inaction together with a statement of how any such matter conflicts with the provisions of this Agreement; and
- (b) Modification Conferences. The parties shall, within thirty (30) days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law or regulation, or accommodate any such action or inaction.

#### ARTICLE V. GENERAL PROVISIONS

**Section 5.01 Enforcement.** Subject to the limitations of NRS Chapter 278, this Agreement is enforceable by either Party in accordance with its terms notwithstanding any change (which, except for this Agreement, would otherwise be applicable) in any of the Applicable Rules. Nothing in this Agreement shall prevent the City from increasing "cost-based fees" which are deemed to be administrative fees for issuance of land use approvals, Building Permits, plan checks or inspections which are based upon actual costs to the City and which are uniformly applied to all development and construction subject to the City's jurisdiction.



**Section 5.02 Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of each Party and each of their respective successors and assigns.

**Section 5.03 Relationship of Parties.** It is understood that the contractual relationship between the City and Owner is such that Owner is not an agent of the City for any purpose and the City is not an agent of Owner for any purpose. The Parties acknowledge that they will not hold themselves out as an agent, partner or co-venturer of the other and that this Agreement is not intended to, and does not, create an agency, partnership, joint venture or any other type of relationship except the contractual relationships established hereby.

**Section 5.04 Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person, mailed by certified mail postage prepaid, return receipt requested, or professional courier service. Notices shall be addressed as follows:

To City:                      City of Henderson  
                                    P.O. Box 95050, MSC 411  
                                    240 Water Street  
                                    Henderson, Nevada 89009-5050  
                                    Attention: City Manager

With a copy to:            City of Henderson  
                                    P.O. Box 95050, MSC 411  
                                    240 Water Street  
                                    Henderson, Nevada 89009-5050  
                                    Attention: City Attorney

To Owner:                   Honey Rose, LLC  
                                    1635 Village Center Circle, Suite 100  
                                    Las Vegas, NV 89134  
                                    Attention: John A. Ritter, Manager

Either Party may change its address by giving notice in writing to the other, and, thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed received upon confirmation of delivery or refusal.

**Section 5.05 Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements with respect to all of any part of the subject matter hereof.

**Section 5.06 Waivers.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers or other authorized representatives of the City and/or Owner, as the case may be.



**Section 5.07 Recording; Amendments.** Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records. All amendments, cancellations, transfers, and assignments hereto must be in writing signed by the appropriate officers or other authorized representatives of the City and Owner in a form suitable for recordation in the Official Records. Upon completion of the performance of this Agreement, or its earlier revocation, termination or cancellation, a statement evidencing said completion, revocation, termination or cancellation shall be signed by the appropriate officers or other authorized representatives of the City and Owner and shall be recorded in the Official Records. All amendments or cancellations of this Agreement shall be in accordance with NRS §278.0205.

**Section 5.08 Headings; Exhibits; Cross References.** The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits and schedules attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit or schedule attached hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit or schedule. All references in this Agreement to sections, exhibits and schedules shall be to sections, exhibits and schedules to this Agreement, unless otherwise specified.

**Section 5.09 Severability of Terms.** If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

**Section 5.10 Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties and of their respective permitted successors and assigns, and are not for the benefit of any third party, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third party, except for provisions expressly for the respective benefit of any Person to be indemnified hereunder.

**Section 5.11 Unavoidable Delay or Default.** Each Party shall be excused from performing any obligation or undertaking provided in this Agreement, except a failure to pay money, in the event, but only so long as, the performance of any such obligation or undertaking is prevented or materially delayed or hindered by insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities (excluding the City), failure of governmental agencies (other than the City) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, or similar matters beyond the reasonable control of the Parties (financial ability or such Party's negligence excepted). If written notice of any such delay or hindrance is given to the other Party within thirty (30) days after the commencement thereof, an automatic extension of time, coextensive with the period of such delay or hindrance shall be deemed granted.

**Section 5.12 No Party Deemed Drafter.** Each of the Parties has had the opportunity to review the terms of this Agreement with its attorney, the Parties have mutually agreed to the terms herein, and the Parties have established such terms through a fair process of negotiations conducted in good faith by both Parties. Therefore, neither Party shall be deemed the drafter of this Agreement. In the event that any term is deemed to be ambiguous, or if any question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**Section 5.13 City Costs and Expenses.** Owner agrees to reimburse the City for its third-party, out-of-pocket costs, including, without limitation, attorneys' and other legal fees, paid or incurred by the City related to the preparation and negotiation of this Agreement within thirty (30) days of receipt of an invoice therefor.

**Section 5.14 Voluntary Agreement.** Owner acknowledges that it voluntarily, willingly and without protest and duress freely enters into this Agreement and accepts the terms and conditions herein.

**Section 5.15 Run with the Land.** This Agreement, including all covenants, agreements, rights and obligations created hereby, shall run with the Subject Property, does touch and concern the same, and is intended to and does burden the Subject Property and benefit the City. All covenants, agreements, rights and obligations created hereby shall inure to the benefit of and be binding upon the Parties hereto and their respective permitted successors and assigns, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all Persons claiming under them. Each Person hereafter at any time granted or conveyed an interest in or to any part or portion of the Subject Property shall be deemed to undertake performance and compliance with all the terms, covenants and conditions of this Agreement, and such Persons shall in like manner receive the benefits of the terms, covenants and conditions of this Agreement, to the same extent as if such Persons were the original Parties hereto.

*[Signatures appear on the following pages]*

IN WITNESS WHEREOF, this Agreement has been executed by the Parties to be effective as of the Effective Date.

City Council Ordinance No. \_\_\_\_\_

Date adopted: \_\_\_\_\_

**CITY OF HENDERSON**

**ATTEST:**

By: \_\_\_\_\_

RICHARD A. DERRICK  
City Manager/CEO

\_\_\_\_\_  
SABRINA MERCADANTE, MMC  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO FUNDING:**

\_\_\_\_\_  
NICHOLAS G. VASKOV  
City Attorney

\_\_\_\_\_  
JIM McINTOSH  
Chief Financial Officer

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_ as \_\_\_\_\_ of the City of Henderson.

(Seal, if any)

\_\_\_\_\_  
(Signature of Notarial Officer)

OWNER:

HONEY ROSE, LLC,  
A Nevada limited liability company

By: [Signature]

Name: JOHN A. RITTER

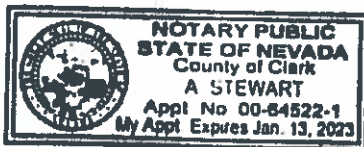
Its: MANAGER

STATE OF Nevada  
COUNTY OF Clark

This instrument was acknowledged before me on the 18th day of June, 2019  
by JOHN A. Ritter as Manager of HONEY ROSE,  
LLC.

(Seal, if any)

[Signature]  
(Signature of Notarial Officer)



## **SCHEDULE 1 DEFINITIONS**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

**"Agreement"** has the meaning given such term in the introductory paragraph hereto.

**"Applicable Rules"** means and refers to:

(a) The applicable provisions of the Code and all other City rules, general plans, policies, regulations, ordinances, fees, construction codes, laws, general or specific, that are effective and amended from time-to-time, except to the extent any such existing or future Code provisions conflict with any provisions of this Agreement in which case the provisions of this Agreement shall control to the extent permitted by applicable law;

(b) This Agreement;

(c) Any ordinances, laws, policies, regulations or procedures applicable to the Agreement and adopted by a governmental entity other than the City whether or not the City is a constituent member of such governmental entity;

(d) Any applicable processing fee or monetary payment not governed by this Agreement and prescribed by City ordinance which is uniformly applied to all development and construction subject to the City's jurisdiction;

(e) Any applicable state or federal law or regulation; and

(f) The City Comprehensive Plan originally adopted by City Council on February 7, 2006, as amended.

**"Annexation Ordinance"** has the meaning given such term in Recital F hereto.

**"Building Permit"** shall mean an official document or certificate issued by the Building Official (as defined in the Code from time-to-time) authorizing the construction of a residence or commercial building within the Subject Property. This includes standard plan permits, model permits and production permits.

**"City"** has the meaning given such term in the introductory paragraph hereto.

**"City Attorney"** means the City Attorney of the City of Henderson, State of Nevada.

**"City Clerk"** means the City Clerk of the City of Henderson, State of Nevada.

**"City Council"** means the City Council of the City of Henderson, State of Nevada.

**"City Manager"** means the City Manager of the City of Henderson, State of Nevada.

**"Code"** means the City of Henderson Municipal Code, as may be amended from time to time, including all rules, regulations, standards, criteria, manuals and other references adopted therein.

**"Director"** has the meaning given such term in Section 2.06.

**"Dispute"** has the meaning given such term in Section 3.09.

**"Drainage Study"** has the meaning given such term in Section 2.07.

**"Dwelling Unit"** has that meaning given to it under the Code.

**"Effective Date"** has the meaning given such term in Section 1.01.

**"Event of Default"** has the meaning given such term in Section 3.02.

**"Notice of Default"** has the meaning given such term in Section 3.02.

**"Notice of Intent"** has the meaning given such term in Section 3.06.

**"NRS"** means the Nevada Revised Statutes, as the same may be amended or modified from time-to-time.

**"Official Records"** means the real property records of the County Recorder of Clark County, Nevada.

**"Off-Site Improvement Agreement"** has the meaning given such term in Section 2.08.

**"Owner"** has the meaning given such term in the introductory paragraph hereto.

**"Parties"** has the meaning given such term in the introductory paragraph hereto.

**"Performance Bond"** means a performance bond from a surety licensed in the State of Nevada and in the form attached to the Offsite Improvement Agreement, as may be revised by the City from time-to-time, or such other form approved by the City Attorney.

**"Person"** means any individual or form of business entity authorized under the laws of the State of Nevada.

**"PFNA"** has the meaning given such term in Recital E.

**"PFNA Area"** has the meaning given such term in Recital E.

**"PFNA Contribution"** has the meaning given such term in Section 2.04.

**"Street Improvements"** means public or private facilities that may include but are not limited to fire hydrants, sidewalks, curbs, gutters, pavement, gravel, aggregate base, streetlights, street signals, street name signs, traffic signals and signs, pavement markings, other applicable traffic control devices, survey monuments, flood control and drainage facilities which are permitted within public rights-of-way as required by the City.

**"Street Signal Construction Contribution"** has the meaning given such term in Section 2.06.

**"Statute"** has the meaning given such term in Recital A.

**"Subject Property"** has the meaning given such term in Recital B.

**"Term"** has the meaning given such term in Section 1.01.

**"Traffic Study"** has the meaning given such term in Section 2.06.

**EXHIBIT "A"**  
**SUBJECT PROPERTY**

**LEGAL DESCRIPTION**

All that land situated in the County of Clark, State of Nevada, more particularly described as follows:

The Northwest Quarter (N 1/4) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of Section 10, Township 23 South, Range 61 East, M.D.M, Clark County Nevada.

Containing 2.45 Acres.