

BILL NO. 2001-59

ORDINANCE NO. 5339

AN ORDINANCE TO ADOPT THAT CERTAIN DEVELOPMENT AGREEMENT ENTITLED "DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS VEGAS AND TRIAD DEVELOPMENT, LLC FOR THE SUMMERLIN VILLAGE CENTER AREA," AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert S. Genzer,
Director of Planning and Development

Summary: Adopts development agreement with Triad Development, LLC for the development of property within the Summerlin Village Center Area.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
AS FOLLOWS:

SECTION 1: That certain development agreement entitled "Development Agreement Between the City of Las Vegas and Triad Development, LLC for the Summerlin Village Center Area," which was approved by the City Council on February 7, 2001, and a copy of which is attached, is hereby adopted in conformance with the provisions of NRS Chapter 278.

SECTION 2: The development agreement adopted by Section 1 shall be recorded in the office of the County Recorder in accordance with the provisions of NRS Chapter 278.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional, or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases,

...

...

...



1 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
2 1983 Edition, in conflict herewith are hereby repealed.

3 PASSED, ADOPTED and APPROVED this 18th day of July, 2001.

4 APPROVED:

5
6 By 
OSCAR B. GOODMAN, Mayor

7 ATTEST:

8 
9 BARBARA JO RONEMUS, City Clerk

10 APPROVED AS TO FORM:

11 Val Steed 6-7-2001
12 Date

1 The above and foregoing ordinance was first proposed and read by title to the City Council on
2 the 20thst day of June, 2001, and referred to the following committee composed of
3 Councilmembers Weekly and L. B. McDonald for recommendation; thereafter the said
4 committee reported favorably on said ordinance on the 18th day of July, 2001, which was a
5 regular meeting of said Council; that at said regular meeting, the proposed ordinance was read by
6 title to the City Council as first introduced and adopted by the following vote:

7 VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown,
8 L.B. McDonald and Weekly

9 VOTING "NAY": None

10 ABSENT: Councilman Mack

11 APPROVED:

12 
13 OSCAR B. GOODMAN, Mayor

14 ATTEST:

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16 BARBARA JO RONEMUS, City Clerk
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**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**TRIAD DEVELOPMENT, LLC
3960 Howard Hughes Parkway, Suite 750
Las Vegas, Nevada 89109
Attention: Mark L. Fine**

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAS VEGAS
AND
TRIAD DEVELOPMENT, LLC
FOR THE SUMMERLIN VILLAGE CENTER AREA
DECEMBER 20, 2000**

SV-0017-00

DA-0001-01

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**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LAS VEGAS
AND
TRIAD DEVELOPMENT, LLC
FOR THE SUMMERLIN VILLAGE CENTER AREA**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__ by and between the CITY OF LAS VEGAS (hereinafter referred to as the "City") and TRIAD DEVELOPMENT, LLC, a Nevada limited-liability company, the owner of the real property described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Owner").

RECITAL OF PREMISES, PURPOSE AND INTENT

1. TRIAD DEVELOPMENT, LLC ("Owner") is the owner of that certain real property described on Exhibit "A" attached hereto (the "Property"), containing approximately 11.5 acres of land, which is the subject of this Agreement. Owner represents that it has fee title ownership of the Property.
2. The City has authority, by NRS Section 278.0201 et seq. and Chapter 19.57 of the Municipal Code of the City, to enter into development agreements with persons having a legal or equitable interest in real property to establish long range plans for the development of such property.
3. All preliminary processing with regard to the Project has been duly completed in conformance with all applicable laws, rules and regulations. The City Council, having given notice as required by law, held a public hearing on Owner's application seeking approval of the form of this Agreement and the execution hereof by the City. At the described meeting, the City Council found that this Agreement is consistent with the City's plans, policies and regulations, including the City General Plan, and that the execution hereof by and on behalf of the City is in the public interest and is lawful in all respects.
4. The Development Agreement Chapter grants to the City the power to enter into and perform development agreements and on _____, the City Council adopted Ordinance No. _____ approving this Agreement and authorizing the execution hereof by duly constituted officers of the City. Said ordinance took effect on _____, 20__. The City agrees to record a certified copy of the ordinance as required by NRS 278.0207.
5. The City desires to enter into this Agreement in conformity with the requirements of NRS and as otherwise permitted by law, to promote the health, safety and general welfare of the City and its inhabitants, to minimize uncertainty in planning for and securing orderly development of the Project and surrounding areas, to insure attainment of the maximum efficient utilization of resources within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the State statute and City ordinance authorizing development agreements

were enacted. As a result of the development of the Property, the City will receive needed jobs, sales and other tax revenues, significant increases to the real property tax base and substantial improvements to public infrastructure. The City will additionally receive a greater degree of certainty with respect to the phasing, timing and orderly development of the City infrastructure by a developer with significant economic resources and experience in the development process.

6. In exchange for these and other benefits to the City, and in accordance with the legislative intent evidenced by the state statute authorizing development agreements and the intent of the City in adopting an ordinance allowing development agreements, Owner will receive reasonable assurances that Owner may develop the Project in accordance with the Applicable Rules during the Term and subject to the conditions established in this Agreement. Because of the nature of the Project and the type and extent of the public and private improvements to be provided within the Project, the development of the Project will take the time to complete as set forth in Section 7.1. Owner's decision to commence the Project is based on expectations of proceeding with the Project to completion.

7. In the absence of this Agreement, Owner believes it would have no assurance that it could complete the Project and would therefore be exposed to significant economic risk. For any number of currently foreseeable and unforeseeable reasons, including, without limitation, regional traffic and related impacts (for example, impacts on air quality) resulting from development outside the jurisdiction of the City and issues relating to water use and availability, pressures on the City could be created to (i) halt the Project at a point short of total build out, (ii) reduce the density of the Project, (iii) defer or delay completion of the Project, or (iv) apply new rules, regulations or official policies to the Project in such a manner as to significantly increase the cost of the Project. The burden of interest carrying cost, the difficulty of obtaining construction and/or permanent financing, the risk of losing existing financing commitments and the potential loss of anticipated revenues associated with these development risks and uncertainties would, in the absence of this Agreement, deter and discourage Owner from making a long term commitment to the implementation of the Project. In addition, the cost of infrastructure improvements to be constructed by Owner will be substantial and will be incurred by Owner well in advance of the completion of the private income producing components of the Project which provide the economic return required to justify and offset the investment of infrastructure improvements. Accordingly, Owner cannot prudently commence the development of the Project and the infrastructure improvements without reasonable assurance that it will be able to complete the Project in accordance with the existing approvals and the Applicable Rules, and it is only the assurance of the ability to complete the private income producing components of the Project in accordance with the approvals and Applicable Rules that provides the inducement to Owner to agree to commit the land and financial resources represented by the various infrastructure improvements.

8. The foregoing recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

AGREEMENT

ARTICLE 1 DEFINITIONS

1.1 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:

1.1 (1) "Agreement" has the meaning assigned to it in the first paragraph hereof. "Agreement" at any given time includes all addenda and exhibits incorporated by reference and all amendments which have become effective as of such time.

1.1 (2) "Applicable Rules" means and refers to the rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated by the City which govern the development of the Project as more fully described in Section 6.2 below.

1.1 (3) "Code" means the City of Las Vegas Municipal Code, including all rules, regulations, standards, criteria, manuals and other references adopted therein.

1.1 (4) "Concurrent Approvals" means the following approvals and authorizations, together with applicable conditions, as granted by the City Council substantially concurrently with the authorization and approval of this Agreement:

The Major Modification subject to such conditions imposed by the City Council;

1.1 (5) "City" means the City of Las Vegas, together with its successors and assigns.

1.1 (6) "City General Plan" means the comprehensive plan adopted by the City Council on September 6, 2000, and on all amendments thereto the master plan of the City required by NRS 278.150.

1.1 (7) "Development Agreement Chapter" means Chapter 19.57 of the Code.

1.1 (8) "Development Plan" means the plan for development of the Project, in the form attached hereto as Exhibit "B".

1.1 (9) "Effective Date" means the date, on or after the adoption by the City of an ordinance approving execution of this Agreement and execution by both parties, and following satisfaction of the conditions set forth in Section 2.2 below, that this Agreement is recorded in the Office of the County Clerk of Clark County.

1.1 (10) "Major Modification" means the action of the City Council to change the land use designation for the Property to "VC Village Center."

1.1 (11) "NRS" means Nevada Revised Statutes.

1.1 (12) "Owner" means TRIAD DEVELOPMENT, LLC, a Nevada limited-liability company, the owner of the land constituting the Property and its successors and assigns, if any.

1.1 (13) "Project" means the Property and the proposed development of the Property as described in this Agreement.

1.1 (14) "Planned Community Zoning Chapter" means Chapter 19.19 of the Code.

1.1 (15) "Property" means that certain real property described on Exhibit "A".

1.1 (16) "Term" means the term of this Agreement together with any extension agreed upon pursuant to the terms hereof.

ARTICLE 2 EFFECTIVE DATE AND CONDITIONS PRECEDENT

2.1 Effective Date of Agreement. This Agreement will be effective upon the last to occur of the following:

2.1 (1) the approval by the City Council of the Major Modification reclassifying the entire Property to VC – Village Center and adopting the Development Plan;

2.1 (2) recordation of this Agreement in accordance with NRS 278.0203.

2.2 Conditions Precedent. It is agreed that the following actions by the City are conditions precedent to this Agreement being effective:

2.2 (1) The Major Modification shall be approved by the City Council

with such conditions as required by the City Council and approved by Owner.

- 2.3 Effectiveness of Actions.** It is the mutual intent of the parties that all of the actions specified in Section 4, inclusive, and the formal approval of this Agreement will be taken by the City Council concurrently and that none of such actions will be effective unless and until all such actions are effective.

ARTICLE 3 PLANNING AND DEVELOPMENT OF THE PROJECT

- 3.1 Permitted Uses, Height and Size of Structures.** Pursuant to NRS 278.0201, this Agreement must set forth the maximum height and size of structures to be constructed on the Property and the permitted uses of the land. The City agrees the Project may be developed with the land uses set forth in this Agreement. The maximum height and size of structures to be constructed as part of the Project shall be governed by the Applicable Rules and the Development Plan.
- 3.2 Time for Development of the Project.** Subject to the terms of this Agreement, including the duration clause in Section 7.1, and the Applicable Rules, which includes any conditions imposed by the City Council on the Major Modification, Owner shall have complete discretion as to the time of commencement, construction, phasing, and completion of any and all development of the Project in accordance with any covenants, conditions and restrictions on the property, as such may be modified from time to time.
- 3.3 Reliance on Concurrent Approvals and Permitted Land Uses.** The City agrees that Owner will be permitted to carry out and complete the entire Project in accordance with the Development Plan, the Concurrent Approvals and the Applicable Rules. Without limiting the foregoing, and subject to the conditions and requirements of the Applicable Rules and the Concurrent Approvals, the City and Owner agree that all uses, but only those uses, that are permitted under the (VC) – Village Center as defined in the Planned Community Zoning Chapter will be permitted on the Project, provided, however, the Owner further agrees (i) that those use restrictions listed in the Development Plan are applicable to the Project and (ii) those uses listed in the Development Plan as prohibited uses shall not be permitted on the Project. Owner agrees that City has no obligation whatsoever under this Agreement, and this Agreement creates no such obligation, to construct, extend or otherwise provide any streets, sidewalks, utilities, traffic control devices, or any other type of infrastructure improvements to the Project whether onsite or offsite to the Project.

ARTICLE 4
MASTER PLANNING, ZONING AND PERMITTED LAND USES

4.1 Major Modification. Owner has petitioned the City and the City agrees to reclassify the entire Property to (VC) Village Center as defined in The Planned Community Zoning Chapter of the Code, and one of the Concurrent Approvals is the adoption of an ordinance to such effect. Following such reclassification, the City will not take any action to change the zoning of the Property from Planned Community or the land use classification from (VC) Village Center without Owner's written consent.

ARTICLE 5
REVIEW AND DEFAULT

5.1 Frequency of Reviews. As required by NRS 278.0205 and the Development Agreement Chapter, at least once every twenty-four (24) months during the term of this Agreement, Owner shall provide and City shall review in good faith a report submitted by Owner documenting the extent of Owner's and City's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. City shall not charge any expense, fee or cost with respect to such review. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party shall be continued to afford reasonable time for response.

5.2 Opportunity to be Heard. City and Owner shall each be permitted an opportunity to be heard orally and in writing before the City Council regarding performance of the parties under this Agreement in the manner set forth in Development Agreement Chapter.

5.3 General Provisions—Default. In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing not less than thirty (30) days' notice of default. The time of notice shall be measured from the date of certified mailing. The notice of default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which it may be satisfactorily corrected, during which period the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected, the party charging noncompliance may elect any one or more of the following courses:

5.3 (1) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS 278.0205. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review by the City Council.

5.3 (2) Amendment or Termination by City. Following consideration of the evidence presented before the City Council and a finding that a default has occurred by Owner and remains uncorrected, City may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Owner existing or received as of the date of the termination. Owner shall have sixty (60) days after receipt of written notice of termination to institute legal action pursuant to Section 5.6 hereof to determine whether a default existed and whether City was entitled to terminate this Agreement.

5.3 (3) Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or of any such 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.

5.4 Default by City. In the event City substantially defaults under this Agreement, Owner shall have the right to terminate this Agreement as set forth in Section 5.3 (1). Owner shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of City's obligations hereunder under the procedures set forth in Section 5.3.

5.5 Unavoidable Delay, Extension of Time. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than City) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. If written notice of any such delay is given to City within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by City within ten (10) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between City and Owner.

5.6 Legal Action. The City and the Owner agree that they would not have entered into this Agreement if either were to be liable for damages under or with respect to this Agreement. Accordingly, the City and the Owner may pursue any remedy at law or equity available for breach, except that neither party shall be liable to the other or to any other person for any monetary damages whatsoever. Prior to the institution of any legal action, the party seeking legal action must give the thirty (30) day notice of default as set forth in Section 5.3. Following such notice, a public hearing must be held by the City Council where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of this decision or any legal action taken pursuant to

this Agreement will be heard by the court under the standard of review appropriate to Court review of zoning actions and the decision of the City Council shall only be overturned or overruled if their decision is clearly arbitrary and capricious. Judicial review of the decision of the City Council shall be limited to the evidence presented to the City Council at the public hearing. Jurisdiction for judicial review or any judicial action under this Agreement shall rest exclusively with the Eighth Judicial District Court, State of Nevada or the Federal District Court in Nevada.

5.7 Institution of Legal Action. In addition to any other rights or remedies available to it, either party may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein or to enjoin any threatened or attempted violation hereof or to obtain any other relief. Any such legal actions must be commenced in a state or federal court in Clark County, Nevada.

5.8 Applicable Laws; Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

ARTICLE 6 APPLICABLE RULES AND CONFLICTING LAWS

6.1 Enforcement and Binding Effect. Subject to the limitations of NRS 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 fees for issuance of 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.

6.2 Applicable Rules. The Applicable Rules are this Agreement, the Code as of the Effective Date, the laws of the State of Nevada and the decisions of the Nevada Supreme Court, including, without limitation, the following:

- (1) The Major Modification;
- (2) The Planned Community Zoning Chapter;
- (3) The City General Plan as of the Effective Date;
- (4) The Development Plan;
- (5) The Concurrent Approvals; and
- (6) The Code, ordinances, rules, regulations and official policies of the City as of the Effective Date.

The Applicable Rules as in effect on the Effective Date shall apply to the development of the Project. City and Owner acknowledge and agree the Applicable Rules, and the Concurrent Approvals, are peculiar to the Project and may not be amended, modified or changed without the express written consent of Owner except as otherwise explicitly provided in Section 6.4 of this Agreement. In the event the City adopts new ordinances, rules or regulations, such new ordinances, rules or regulations will not impact Owner or development of the Project except in those limited circumstances provided in Section 6.4 below. Owner and City shall have the option, in their mutual and sole discretion, of accepting such new or amended matters. City agrees it will not adopt any ordinance, rule, regulation that would have the effect of violating or abrogating any provision of this Agreement or evading or frustrating the clear intent of this Agreement. The Applicable Rules for purposes of this Agreement shall be those in force and effect upon the Effective Date in the manner and form originally adopted, with the exceptions provided in Section 6.4 below, as permitted only to the extent required by NRS 278.0201.

6.3 Application of Subsequently Enacted Rules. Except as provided in Section 6.4 below, no standard or regulation regarding subdivision, land use, zoning, growth management, timing and phasing of construction, or construction methods shall be imposed upon the development of the Project, except those in effect on the Effective Date. City may hereafter, during the term of this Agreement, apply only those rules, regulations, ordinances, laws, general or specific plans, and official policies promulgated or enacted after the Effective Date that

6.3 (1) are not in conflict with those in effect on the Effective Date,

6.3 (2) are not in conflict with this Agreement,

6.3 (3) are not in conflict with the Applicable Rules, and

6.3 (4) the application of which would not prevent or materially impede, hinder or delay development in accordance with this Agreement or increase the cost of such development.

6.4 Limitation on Imposition of New Fees or Standards. Notwithstanding the terms of Section 6.3 above:

6.4 (1) City may increase cost-based fees that apply uniformly to all development in the City.

6.4 (2) development of the Project shall be subject to the Uniform Building Code in effect at the time of issuance of the permit or authorization for such development;

6.4 (3) City may apply other construction standards applicable to all other

developers if such changed or additional standards are required to prevent a condition dangerous to the health or safety of City residents.

6.4 (4) Nothing in this Agreement shall preclude the application to the Project of new or changed City ordinances, regulations, plans or policies specifically mandated and required by changes in state or federal laws or regulations. In such event the provisions of Sections 6.3 and 6.5 of this Agreement are applicable.

6.5 Conflicting Federal or State Rules. In the event that any conflicting federal or state 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, this Agreement shall remain in full force and effect as to those provisions not affected, and:

6.5 (1) **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

6.5 (2) **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.

6.6 City Council Hearings. In the event the City believes that an amendment to this Agreement is necessary pursuant to this Section 6.5 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment or suspension necessitated by such federal or state law or regulation or action or inaction. Owner shall have the right to offer oral and written testimony at the hearing. Any suspension or modification ordered by the City Council pursuant to such hearing is subject to judicial review as set forth in Section 5.6. The parties agree that any matter submitted for judicial review shall be subject to expedited review in accordance with Rule 2.15 of the Eighth Judicial District Court of the State of Nevada.

6.7 Cooperation in Securing Permits. The City shall cooperate with Owner in securing any City permits, licenses or other authorizations which may be required as a result of any amendment or suspension resulting from actions initiated under Section 6.6. Owner will be responsible to pay all applicable fees in connection with securing of the permits.

ARTICLE 7 GENERAL PROVISIONS

7.1 Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the thirtieth (30th) anniversary of the Effective Date, unless extended by written agreement executed by City and Owner.

7.2 Assignment.

7.2 (1) To an Affiliate of Owner. The rights of Owner under this Agreement may be freely transferred or assigned to any entity, limited liability company, partnership or corporation which Owner manages or controls or in which Owner has a controlling interest or which controls Owner; provided, such entity shall assume in writing all obligations of Owner hereunder.

7.2 (2) To a Third Party. If Owner shall sell or transfer more than fifty percent (50%) of the Project then owned by Owner to a party not affiliated with Owner (as defined in Subsection 7.2 (1), Owner shall be relieved of its obligations hereunder; provided (i) such transferee shall assume all obligations of Owner then unsatisfied and (ii) the City Manager of the City consents to such assignment provided, however, that such consent shall not be unreasonably withheld.

7.2 (3) Transfer Not to Relieve Owner of its Obligation. Except as expressly provided herein, no assignee or transferee of any portion of the Project within a recorded subdivision map shall be subject to the obligations of Owner as to the portion of the Project so assigned or transferred nor be deemed to have assumed all such obligations, and such assignment or transfer shall not relieve Owner of its obligation as to the assigned or transferred portion of the Project.

7.2 (4) In Connection with Financing Transactions. Owner has full discretion and authority to transfer, assign or encumber the Project or portions thereof in connection with financing transactions, without limitation on the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefrom, and may enter into such transactions at any time and from time to time without permission of or notice to City.

7.3 Amendment or Cancellation of Agreement. Except as otherwise permitted by NRS 278.0205 and Section 6.6 of this Agreement, this Agreement may be amended from time to time or canceled but only upon the mutual written consent of the parties hereto.

7.4 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Owner shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees, or other persons acting on Owner's

behalf which relate to the development of the Project. Owner agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Owner's activities in connection with the development of the Project. Owner agrees to indemnify, hold harmless, and provide and pay all costs and attorneys fees for a defense for City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of City, its officers, agents, employees, or representatives.

7.5 Binding Effect of Agreement. Subject to Section 7.2 hereof, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties' respective successors in interest.

7.6 Relationship of Parties. It is understood that the contractual relationship between City and Owner is such that Owner is an independent contractor and not an agent of City for any purpose.

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

To City:	CITY OF LAS VEGAS 400 Stewart Avenue Las Vegas, Nevada 89101 Attention: City Clerk Fax Number: (702) 382-4803
To Owner:	TRIAD DEVELOPMENT, LLC 3960 Howard Hughes Parkway, Suite 750 Las Vegas, Nevada 89109 Attention: Daniel E. Otter or Douglas L. Crook Fax Number: (702) 735-6611

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 delivered on the day of personal delivery or the date delivery of mail is first attempted.

7.8 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 between the parties with respect to all or any part of the subject matter hereof.

7.9 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of City or Owner, as the case may be.

7.10 Recording; Amendments. No later than ninety (90) days after the mutual execution of this Agreement, Owner shall record an executed original of this Agreement in the Official Records of Clark County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of City and Owner in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon the completion of performance of this Agreement or its earlier revocation or termination, a statement evidencing said completion or revocation signed by appropriate officers of City and Owner shall be recorded in the Official Records of Clark County, Nevada.

7.11 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 attached to this Agreement and the recitals at the front of this Agreement are incorporated herein by the references thereto contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits of or to this Agreement, unless otherwise specified.

7.12 Heirs, Successors and Assigns. This Development Agreement shall apply to and bind each and all of the Owners, any Person hereinafter acquiring any interest in any portion of the Project and/or Property and each and all of their respective heirs, successors, assigns, grantees, mortgagees, tenants and subtenants.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written.

<u>CITY:</u> CITY COUNCIL, CITY OF LAS VEGAS By: _____ Oscar B. Goodman, Mayor ATTEST: _____ Barbara J. Ronemus, City Clerk	<u>OWNER:</u> TRIAD DEVELOPMENT, LLC, a Nevada limited-liability company By: <u>Mark L. Fine</u> Mark L. Fine, Managing Member
---	---

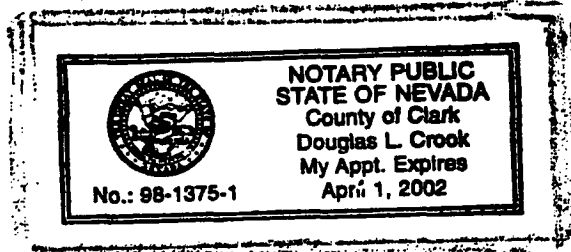
APPROVED AS TO FORM:

12/19/00
Date

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)



This instrument was acknowledged before me on December 19, 2000, by Mark L. Fine, as Managing Member of Triad Development, a Nevada limited-liability company.

D. L. Crook
Notary Public

EXHIBIT A
DESCRIPTION OF PROPERTY

EXPLANATION: THIS LEGAL DESCRIBES A PARCEL OF LAND FOR "LAND USE MAP CHANGE" PURPOSES, GENERALLY LOCATED IN SUMMERLIN AT THE NORTHEASTERLY QUADRANT OF VILLAGE CENTER CIRCLE AND TRAILS CENTER DRIVE. THIS LEGAL IS PROVIDED FOR CONVENIENCE PURPOSES AND IS NOT INTENDED TO BE USED TO TRANSFER TITLE PRIOR TO FULL COMPLIANCE WITH PROVISIONS OF N.R.S. CHAPTER 278.

LEGAL DESCRIPTION

PARCEL 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 90, PAGE 10 OF PARCEL MAPS, IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA, LYING WITHIN SECTION 19, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THAT PORTION THEREOF AS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF PARCEL 1 OF SAID PARCEL MAP; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 1, FROM A TANGENT BEARING SOUTH 02°11'30" WEST, CURVING TO THE RIGHT ALONG THE ARC OF A 505.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY (THE RADIUS POINT OF WHICH BEARS NORTH 87°48'30" WEST), THROUGH A CENTRAL ANGLE OF 38°00'56", AN ARC LENGTH OF 335.07 FEET, TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL 2; THENCE ALONG THE SOUTHWESTERLY AND WESTERLY LINES OF SAID PARCEL 2 THE FOLLOWING FIVE COURSES: NORTH 45°38'53" WEST, 36.08 FEET; THENCE CURVING TO THE LEFT ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, THROUGH A CENTRAL ANGLE OF 14°04'12", AN ARC LENGTH OF 73.67 FEET TO A POINT OF REVERSE CURVATURE THROUGH WHICH A RADIAL LINE BEARS NORTH 30°16'56" EAST; THENCE CURVING TO THE RIGHT ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, THROUGH A CENTRAL ANGLE OF 14°04'12", AN ARC LENGTH OF 73.67 FEET; THENCE NORTH 45°38'53" WEST, 33.83 FEET; THENCE FROM A TANGENT BEARING NORTH 40°40'31" EAST, CURVING TO THE LEFT ALONG THE ARC OF A 288.50 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY (THE RADIUS POINT OF WHICH BEARS NORTH 49°19'29" WEST), THROUGH A CENTRAL ANGLE OF 38°29'01", AN ARC LENGTH OF 193.78 FEET, TO A POINT TO WHICH A RADIAL LINE BEARS SOUTH 87°48'30" EAST; THENCE SOUTH ALONG THE SOUTHEASTERLY PROLONGATION OF SAID RADIAL LINE, SOUTH 87°48'30" EAST, 216.50 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 11.55 ACRES, MORE OR LESS.

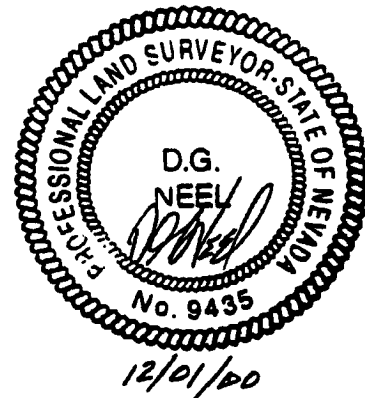


EXHIBIT B DEVELOPMENT PLAN

The Project includes approximately 11.5 acres of property located in the Village Center at Summerlin. The property is located South of Village Center Drive, East of Trails Center Drive, North of the Summerlin Library and approximately 350 feet Northwest of Golf Center Drive.

This Development Plan provides for uses allowed under the VC Village Center Land Use District designation of the Summerlin Development Standards dated March 1, 1998, subject to the following restrictions:

- (i) One day care/school facility will be allowed on the property.
- (ii) One "Restaurant" to be located at the southeast corner of Trail Center & Village Center Circle. "Restaurant" is defined to include Restaurant; Restaurant, Carry-Out; Restaurant, Service Bar; and Supper Club (pursuant to the definitions set out in City of Las Vegas Zoning Ordinance Title 19A.) Restaurants with Drive Through and Taverns shall not be permitted.
- (iii) Buildings shall be limited to two-stories in height with one-story restricted to the first 250 feet of depth of the property South of Village Center Circle between Hills Center Drive and Hills Drive
- (iv) Access to the development shall be limited to entrance and exit from Meadow Hills Drive (Hills Center Drive), Trail Center Drive, Golf Center Drive, Inner Circle Drive, and Village Center Circle (only West of Hill Center Drive). Access to and from Hills Drive will be limited to southerly 1.95-acre of the Project (excepting emergency vehicles). Hills Drive will not be a public street.
- (v) Signage shall be controlled by uniform sign design guidelines. No billboards shall be allowed.

The following uses allowed in the VC Village Center Land Use District will be restricted and not allowed on the Property or in the Project:

- 1) Residential
- 2) Gaming
- 3) Casinos
- 4) Aggregate Processing
- 5) Amusement Parks (outdoor)
- 6) Auto Mechanical Repair and Service (Minor)
- 7) Auto Mechanical Repair Shops (Major)
- 8) Auto rental agencies
- 9) Auto Service Stations

- 10) Bed & Breakfast Inn
- 11) Bowling Centers/Lanes
- 12) Building Materials/Lumber Yards
- 13) Car Washes (Full Service & Self Service)
- 14) Concrete/Asphalt Concrete Batch Plants
- 15) Convenience Stores (No Fuel Pumps)
- 16) Convenience Stores (W/ Fuel Pumps)
- 17) Drug Stores
- 18) Entertainment Facilities (Indoor)
- 19) Garden Supply Stores
- 20) Grocery Stores
- 21) Golf Cart Sales
- 22) Hotel, Motel, Inns & Resorts (Non-Gaming)
- 23) Laundromats (Coin Operated)
- 24) Liquefied Petroleum Gas Installation (288 gals. or less)
- 25) Liquefied Petroleum Gas Installation (over 288 gals.)
- 26) Liquor Stores
- 27) Mini-Storage Facilities
- 28) Mortuaries/Funeral Homes/Crematories
- 29) Night Clubs/Discotheques
- 30) Pawn Shops
- 31) Pet Boarding Kennels (Indoor)
- 32) Pet Shops
- 33) Plant Nurseries (Retail Sales)
- 34) Pubs, Bars, & Lounges
- 35) Skating Rinks (Ice/Roller)
- 36) Small Animal Hospital/Clinic
- 37) Taxidermists
- 38) Theaters, Movie
- 39) Thrift Shops
- 40) Tire Stores
- 41) Truck Rentals (U-Haul, etc.)
- 42) Veterinary Hospitals/Clinics
- 43) Any business open to the public twenty-four (24) hours a day

RECEIVED
CITY CLERK

2001 JUL 13 A 11:07

AFFP DISTRICT COURT
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:

That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK
1791303

2296311LV

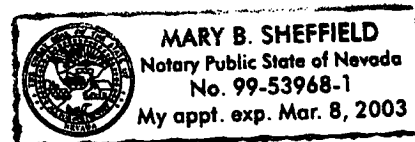
was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 07/06/01 to 07/06/2001, on the following days: JULY 6, 2001

Signed: Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE 6

day of July 2001

Mary B. Sheffield
Notary Public



BILL NO. 2001-59

AN ORDINANCE TO ADOPT THAT CERTAIN DEVELOPMENT AGREEMENT ENTITLED "DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS VEGAS AND TRIAD DEVELOPMENT, LLC FOR THE SUMMERLIN VILLAGE CENTER AREA," AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert S. Genzer, Director of Planning and Development
Summary: Adopts development agreement with Triad Development, LLC for the development of property within the Summerlin Village Center Area.

At a City Council meeting June 20, 2001 BILL NO. 2001-59 WAS READ BY TITLE AND REFERRED TO RECOMMENDING COMMITTEE: Councilmembers Weekly and Mack

COPIES OF THE COMPLETE BILL ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, CITY HALL, 400 STEWART AVENUE, LAS VEGAS, NEVADA. PUB: July 6, 2001

LV Review-Journal

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CITY CLERK

2001 JUL 30 A 11: 22

AFFP DISTRICT COURT
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:

That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK
1813014

2296311LV

BILL NO. 2001-59
ORDINANCE NO. 5339

AN ORDINANCE TO ADOPT THAT CERTAIN DEVELOPMENT AGREEMENT ENTITLED "DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS VEGAS AND TRIAD DEVELOPMENT, LLC FOR THE SUMMERLIN VILLAGE CENTER AREA" AND TO PROVIDE FOR OTHER RELATED MATTERS.

Proposed by: Robert S. Genzer, Director of Planning and Development
Summary: Adopts development agreement with Triad Development, LLC for the development of property within the Summerlin Village Center Area.

The above and foregoing ordinance was first proposed and read by title to the City Council on the 20TH day of June, 2001, and referred to the following committee composed of Councilmembers Weekly and L. B. McDonald for recommendation; thereafter the said committee reported favorably on said ordinance on the 18th day of July, 2001, which was a regular meeting of said City Council; and that at said regular meeting the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown, L.B. McDonald and Weekly
VOTING "NAY": NONE
EXCUSED: Councilman Mack

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, 400 STEWART AVENUE, LAS VEGAS, NEVADA.
PUB: July 21, 2001
LV Review-Journal

was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 07/21/01 to 07/21/2001, on the following days: JULY 21, 2001

Signed: _____

Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE _____

24

day of _____ 2001

July

Mary B. Sheffield

Notary Public

