

**City of Rigby
Development Agreement
(Hailey Creek, LLC)**

THIS DEVELOPMENT AGREEMENT, made and entered into to be effective as of the 16th day of September, 2008, by and between the City of Rigby, a Municipal Corporation, of the State of Idaho, party of the first part, hereinafter referred to as the "City", and Hailey Creek, LLC, an Idaho Limited Liability Company, party of the second part, hereinafter referred to as the "Developer", whose address is P.O. Box 506 Rigby, Idaho, 83442.

RECITALS

A. Developer is the sole owner, in law and/or equity, of a certain tract of land in the City of Rigby, County of Jefferson, State of Idaho, described as follows (the "Land"):

A Parcel of Land Situated in Jefferson County, State of Idaho, Township 4 North, Range 39 East of the Boise Meridian, Section 17. More Particularly Described as Follows: Beginning at the Southeast Corner of Section 17, Township 4 North, Range 39 East, B.M. Thence N00°02'40"E along the East line of said Section 17 for a distance of 346.67 feet to the True Point of Beginning. Thence S89°19'40"W for a distance of 301.00 feet; thence S00°02'40"W for a distance of 282.46 feet; thence S89°19'40"W for a distance of 1560.74 feet; thence S89°32'42"W for a distance of 292.03 feet; thence N00°00'11"E for a distance of 712.46 feet; thence S89°32'42"W for a distance of 478.00 feet to a point on the North/South Centerline of said Section 17; thence N00°00'11"E along said North/South Centerline for a distance of 797.50 feet; thence N89°32'13"E for a distance of 1972.78 feet; thence S00°02'40"W for a distance of 740.00 feet; thence N89°32'13"E for a distance of 660.00 feet to a point on the East line of said Section 17; thence S00°02'40"W along said East line for a distance of 480.83 feet to the True Point of Beginning.

Subject to: Easements and right-of-ways for highways, roads, ditches, canals, power pole, and transmission lines as they exist.

B. Developer, as sole owner of the Land, has made request to the City to develop the Land as a Planned Unit Development (the "Development") and has submitted to the City the following plats for the development of the Land (the "Plats"): (i) Hailey Creek Professional Park, (ii) Hailey Creek Townhomes, (iii) Hailey Creek, Division No. 1 and (iv) Hailey Creek Twinhomes, Division No. 1. The Development and the Plats have been recommended for approval by the Planning and Zoning Board and City Engineer of the City.

C. The City Council has agreed to the Development within the City of Rigby, Idaho, subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein the parties agree as follows:

1. The Development may be developed in phases. Each phase of the Development is hereinafter referred to as a "Phase". As a Planned Unit Development and in accordance with the applicable ordinances and regulations of the City, the Land may be developed in accordance with and subject to the following zones of the City: (i) Hailey Creek Professional Park, Division No. 1 - Commercial Zone, (ii) Hailey Creek Townhomes, Phases I and II - Zone R-2, (iii) Hailey Creek, Division No. 1 - Zone R-1 and (iv) Hailey Creek Twinhomes, Division No. 1 - Zone R-1.

2. In order to facilitate the Development, Developer agrees to pay (subject to the right of Developer to receive reimbursement of the developer connection fee referred to in Exhibit "C") the full cost of the design and construction of a Well and Pumping System to be owned and operated by the City as part of the municipal water system of the City (the "Well and Pumping System"). The Well and Pumping System shall be designed and constructed by the Developer and then owned and operated by the City pursuant to the terms and provisions set forth in Exhibit "A" attached hereto and incorporated herein by reference. Developer shall be reimbursed a portion of the costs for the Well and Pumping System as set forth in Exhibit "C" attached hereto and incorporated herein by reference. Developer shall not begin construction of the Well and Pumping System until such time as the improvement plans for the Well and Pumping System have been approved by the City Engineer and any necessary approvals are received from the Idaho Department of Environmental Quality.

3. In order to facilitate the Development, Developer agrees to pay (subject to the right of Developer to receive reimbursement of the developer connection fee referred to in Exhibit "C") the full cost of the design and construction of municipal water and sewer lines and lift station in accordance with the terms and provisions set forth in Exhibit "B" attached hereto and incorporated herein by reference. (the "Municipal Water and Sewer Lines"). The Municipal Water and Sewer Lines shall be designed and constructed by the Developer and then owned and operated by the City pursuant to the terms and provisions set forth in Exhibit "B". Developer shall be reimbursed a portion of the costs for the Municipal Water and Sewer Lines as set forth in Exhibit "C" attached hereto and incorporated herein by reference. Developer shall not begin construction of the Municipal Water and Sewer Lines until such time as the improvement plans for the Municipal Water and Sewer Lines have been approved by the City Engineer and any necessary approvals are received from the Idaho Department of Environmental Quality.

4. The Land has appurtenant thereto water rights evidenced by shares issued by the Burgess Canal Company. At such time as each Plat is recorded, Developer shall transfer to City the shares of Burgess Canal Company which relate to water appurtenant

to the Land encompassed by the recorded Plat. Except as hereinafter set forth, the water rights evidenced by such Shares transferred to the City shall be owned and managed by the City and all assessments associated therewith which accrue after such Shares are transferred to the City shall be paid by the City. All assessments accruing prior to transfer of the Shares to City shall be paid by Developer before the shares are transferred to City. Provided, however, notwithstanding anything herein to the contrary, Developer shall be entitled to continue to use the water associated with the shares transferred to the City for irrigation purposes on any portion of the Land which is not improved to the extent it can no longer be used for agricultural purposes as long as Developer pays any fees assessed by Burgess Canal Company in regard to such water used by Developer.

5. Developer agrees to transfer to City the green space areas designated on the Plats as green space within the following Lots (the "Green Space"):

Hailey Creek, Division 1

Lot 1 Block 1
Lot 1 Block 5
Lot 13 Block 5
Lot 1 Block 7
Lot 1 Block 8
Lot 11 Block 8
Lot 6 Block 11
Lot 5 Block 12
Lot 12 Block 12

Hailey Creek Townhomes

Lot 1 Block 1
Lot 1 Block 2

Developer shall transfer the Green Space to City after completion of the Subdivision Improvements applicable to the Phase encompassing the Green Space. City shall not be obligated to accept the transfer of the Green Space to City until the Subdivision Improvements are completed to the satisfaction of City and improvements to the Green Space are completed to the satisfaction of the designated City Public Works Director and the City Engineer. After the Green Space is transferred to City and accepted by City, the City shall thereafter own, operate and maintain the Green Space as City Property. The Green Space shall not be used for stormwater retention or stormwater retention facilities and if the Green Space serves dual purposes the dual purposes shall not be conflicting purposes.

6. Developer further agrees to transfer to City to be used, operated and maintained by City as a Public Park Lot 1, Block 9, Hailey Creek, Division No. 1 (the "Park Lot"). The Park Lot shall be transferred to City, subject to the condition that the Park Lot will revert to Developer or the party designated by Developer if the Park Lot at any time in the future is not used and maintained by City as a Public Park. City shall not

be obligated to accept the transfer of the Park Lot to City until the Subdivision Improvements are completed to the satisfaction of City and improvements to the Park Lot are completed to the satisfaction of the designated City Public Works Director and the City Engineer. After the Park Lot is transferred to City and accepted by City, the City shall thereafter own, operate and maintain the Park Lot as City Property.

7. Developer will, before development of each Phase, file or cause to be filed with the City Engineer a complete set of "Subdivision Improvement Plans" for the applicable Phase showing all streets and sidewalks, sewer, water, storm drainage, alleys, utilities and street lights. Said "Subdivision Improvement Plans" for the applicable Phase will be reviewed within seventeen (17) days from the time of submission for approval and once approved by the City Engineer and stamped "APPROVED FOR CONSTRUCTION" by DEQ are incorporated herein and made a part hereof by reference. Before Developer begins development work in any Phase, Developer shall obtain from the Idaho Department of Transportation the necessary access permit for access to State Highway 48 and the necessary utility permit for installation of utilities in the highway right of way for State Highway 48. Before Developer begins development work for the Development, Developer shall obtain from the Idaho Division of Environmental Quality all necessary approvals required by such department pertaining to the well, sewer and storm water and any other issues regulated by the Idaho Division of Environmental Quality. Developer may not begin development of any phase until such time as the applicable Subdivision Improvement Plans for such phase have been approved for construction by the City Engineer and the Idaho Division of Environmental Quality.

8. Developer will at Developer's own expense, construct and install all sanitary sewers, storm drains, pumping stations, water mains and appurtenances, fire hydrants, curbs and gutters, cross drains, streets, street surfacing, patch back from any existing roadways to curb and gutter, as well as any and all other improvements shown on the approved "Subdivision Improvement Plans" for each applicable Phase.

9. Developer will for each Phase construct and install all such improvements in strict accordance with the filed, reviewed and approved Subdivision Improvement Plans, which incorporate the City Standards or site specific adopted standards and Construction Specifications current and in effect at the time of this Development Agreement. Building Permits will be granted for a Phase of the Development prior to having the subdivision sewer and water infrastructure complete if the Developer supplies to the City a surety bond, escrow account or irrevocable letter of credit issued by a Bank approved by the City naming the City of Rigby as the sole payee in the amount of 100% of Developer's Professional Engineer construction cost estimate for the incomplete items which pertain to the applicable Phase. The City will then authorize building permits for the Phase for which the surety bond, escrow account or irrevocable letter of credit has been issued, thus allowing vertical construction to begin for the applicable Phase prior to completion of said improvements. Occupancy Permits for the applicable Phase shall not be issued until the required Improvements for the applicable Phase are completed. In

addition individual lot owners shall not receive Occupancy Permits for structures or residences constructed on their individual lots until the structure or residences and individual lot improvements are completed in accordance with all applicable technical requirements of City, including but not limited to construction of sidewalks on the applicable lot in accordance with applicable City standards and requirements.

10. Developer will provide the City Engineer with at least fifteen (15) days advance written notification of when and of what portion, or portions, of said Subdivision Improvements Developer intends to complete at that time; and agrees to make such modifications and/or contract for any temporary facilities necessitated by such phased construction work as shall be required and approved by the City Engineer. If said subdivision is to be phased, Developer will agree to extend utilities, streets, etc. Or, make provisions as directed by the City Engineer for temporary utility support or serviceability of the constructed portions of the subdivision.

11. Developer agrees that upon a finding by the City Council, duly entered in the official minutes of the proceedings of the City Council, that a portion or portions or the entirety of such public improvements need to be completed in the interest of public health, welfare or safety, Developer will forthwith construct such public improvements within the phase of Construction and Development then in progress. If Developer does not commence construction of such public improvements within a reasonable time after such finding is made or if Developer does not complete such construction within a reasonable time thereafter, the city may construct or complete such facilities at Developer's expense. The City Council shall not make such findings unless Developer has been given at least ten (10) days advanced written notice of the date and place of the meeting and Developer has been given an opportunity to be heard at such meeting. At or before the meeting, the City Engineer shall furnish Developer a cost estimate for completing the required portion of such public improvements.

12. Developer will have a Registered Professional Engineer supervise the construction of and perform the construction, inspection and testing work necessary to ensure that all such improvements are constructed in accordance with the approved Subdivision Improvement Plans and the City Standard Drawings and Standard Construction Specifications. The contracted Registered Professional Engineer's name and address are: Thompson Engineering, Inc., 215 Farnsworth Way, Rigby, Idaho, 83442.

13. Developer agrees to have all soils (trenches, roadways, etc.) compacted to the percentages specified in the Idaho Standards for Public Works Construction (I.S.P.W.C.) or City of Rigby construction standards, which ever is more **restrictive**. The soils shall be tested by a certified technician and the Developer's Professional Engineer will provide oversight and verify compliance of the soil testing and the test results submitted to the City Engineer. Upon completion of the work, the soil technician shall certify that all soil work performed by the Developer meets the minimum compaction and testing requirements as set out in above mentioned construction standards.

14. Developer will provide the City Engineer with certification that all materials used on the project meet the specifications as outlined in the Idaho Standards for Public Works Construction or City of Rigby's Construction Standards through Developer's Professional Engineer or a certified testing laboratory. Certifications from suppliers' testing laboratories are acceptable. If anything does not meet the I.S.P.W.C. standards then notification to the City Engineer and the City of Rigby shall be made and solutions agreed upon prior to commencing with construction.

15. Developer will notify the City Engineer's Office through Developer's Professional Engineer and/or contractor, of the schedule and progress of the construction such that the respective departments can make visual inspections of all water, sanitary sewer, and storm sewer facilities. City officials will be given 48 hour written advance notice to appear. Failure to have inspections performed prior to proceeding shall result in Developer being required to uncover improvements for inspection. Provided, however, City shall be deemed to have waived its right to any such visual inspection if City does not complete the requested inspection within 48 hours after such advance notice is given to City.

16. Prior to acceptance of the Subdivision for a Phase, Developer will file "As-Built", "As Constructed" or "Record" drawings (hereinafter referred to as the "Corrected Improvement Plans") of all said subdivision improvements prepared by the contracted Registered Professional Engineer with the City Engineer and will provide the City and DEQ with the "corrected" original drawings of the Subdivision Improvement Plans on a duplicate copy of said "corrected" original drawings of the Subdivision Improvement Plans. The original "design" drawings of the proposed subdivision improvements shall be "corrected" to show the actual "As-Built" and specific location (both horizontally and vertically) of the various water and sewer lines and their individual building service lines, the curb and gutter alignment and grades, etc. Such Corrected Improvement Plans shall also specifically show all changes between the original Improvement Plans and public improvements as actually constructed. These "As-Built" Subdivision Improvement Plans shall include a "Certification" thereon, signed by the Registered Professional Engineer in charge of the work, that the "As-Built" drawings of the various subdivision improvements are true and correct and that he (the Registered Professional Engineer) has inspected the construction of the various subdivision improvements (water lines, sanitary sewer lines, storm drain lines or facilities, curb and gutter, street paving, street lights, etc.) and that the materials for and the installation of the same were all done in conformance with the applicable City Standard Specifications governing the construction of these facilities.

17. Developer will, immediately upon the completion of any such constructed portion, portions, or the entirety of the Development, notify the City Engineer and request his inspection and written acceptance of such completed utility or street construction work or improvements. If improvements are not completed or built to the standards above, a "Punch List" of items will be provided to the Developer's Engineer for completion and re-inspection. The City Engineer will have fifteen (15) days to provide

written acceptance or conditional punch list items.

18. Developer shall remove from all public property all temporary structures, rubbish, and waste materials resulting from Developer's operations or caused by Developer's employees.

19. Developer shall guarantee all materials, workmanship and equipment furnished for a period of one (1) year from the date of written acceptance of the work. In reference to paragraph (9) nine, if the developer alternatively decides to provide to the City a surety bond or irrevocable letter of credit then the bond or letter of credit shall designate the City as the sole beneficiary. The surety bond or letter of credit shall be enforceable for a period of (1) one year and (60) sixty days and will provide for any and all warrantee items pertaining to any and all public improvements, i.e. street and street surface, sidewalk, curb and gutter, water distribution and service lines, meter boxes and lids, fire hydrants, sewer lines, service laterals, manholes, storm water facilities, street lights, street signs, etc. The City shall release the surety bond or letter of credit at such time as all work subject to the surety bond or letter of credit is completed and accepted by the City.

20. The warrantee of the subdivision shall be effective for a period of (1) one year from the date of the completion and acceptance of the corresponding phase of construction.

21. Developer shall be responsible for any damage to any existing public improvements during construction of the subdivision improvements. Developer shall repair or replace any such damage, either during or after construction of the subdivision improvements, as required by the City Engineer.

22. Developer agrees that upon Developer having received written notification from the City Engineer, that any of the requirements herein specified for the applicable Phase have not been complied with, that the City shall have the right to withhold the issuance of any Building Permit within the subdivision for the applicable Phase and/or shall have the right to withhold the providing of culinary water service to the subdivision for the applicable Phase until such time as all requirements specified herein have been complied with; provided, however, Developer shall have the right to appear before the City Council at any regular meeting after any Building Permit or any water service shall have been withheld for reasons set forth in this paragraph, and shall have the right to be heard as to why such Building Permit should be issued or water service allowed. The Council shall then decide whether said Building Permit shall be issued or water service to said property allowed, and its decision shall be final, except that the rights of the parties are preserved at law and equity.

23. No building within the applicable Phase of a Subdivision shall be used or occupied for any purpose other than for the construction of such building or structure, unless all public improvements for the applicable Phase of a Subdivision have been

completed and accepted by the City Engineer. The City may withhold Occupancy Permits until all such work has been completed. Nothing herein shall prevent the use of model homes or buildings for the purpose of Developer's sales and promotional efforts provided the home or building is not occupied for residential or commercial purposes (except for promotional efforts) until said improvements are complete and accepted by City Engineer.

24. Developer agrees to pay, or cause to be paid, to the City at the time any separate sewer service or culinary water service connection to the City's Sanitary Sewer System or Culinary Water System is requested, all availability fees, sewer capacity fees, as set forth in the Resolutions of the City of Rigby in effect at the time said request is made.

25. All required submittals as listed in the preceding paragraphs are to be submitted in a bound folder at the time final acceptance is requested. The City will not be responsible for any items (i.e. compaction tests, certification letters, etc.) submitted during design or construction.

26. Upon satisfactory completion of the public improvements and facilities required for a Phase of the Development and Developer's delivery of Corrected Improvement Plans for the applicable Phase, the City will accept the applicable Phase of the Subdivision at the next scheduled Council meeting once the fifteen (15) days for engineering review has lapsed and in accordance with City Ordinance. Such acceptance shall not be valid unless expressly acknowledged in writing by the City Engineer and recommended to the Mayor and council at the next scheduled council meeting. Upon acceptance of applicable Phase of the Subdivision the City shall assume ownership and control of all public facilities within any dedicated street or public utility right-of-way within the applicable Phase of the Subdivision. Acceptance of the applicable Phase of the Subdivision shall not be deemed as a waiver of the Developer's failure to fully and completely perform the terms and conditions hereof or as a waiver or release of the warranty as set forth herein.

27. Any modification to the public improvements shown in the Improvement Drawings or to the construction schedule or to the construction phase limits shall be approved by the City Engineer. Prior to said approval, revised Improvement Drawings shall be resubmitted to the City Engineering Department showing the proposed changes.

28. Prior to conveying property to the City, Developer shall pay all unpaid real property taxes and assessments levied or assessed against any interest in real property which Developer has agreed to convey to the City pursuant to this Agreement. Such taxes and assessments shall be paid prior to the acceptance of the Subdivision by the City. Developer shall have no obligation to pay taxes and assessments on any such property conveyed to and accepted by the City which may arise after such conveyance to and acceptance by the City.

29. Developer shall be responsible to reimburse the City for all reasonable costs associated with Developer initiated engineering, legal, inspection, platting and administrative fees associated with the annexation and construction of public improvements within the Developer's property.

30. Any notice required by this Agreement shall be mailed to the receiving party at the address set forth herein or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

31. In the event of any conflict between the terms of this Agreement or the Improvement Plans and the Standard Specifications, the terms of this Agreement or the Improvement Plans shall prevail over any contrary provision of the Standard Specifications. In the event of any conflict between the terms of this Agreement and the Improvement Plans, the terms of this Agreement shall prevail.

32. All covenants and conditions set forth herein shall be appurtenant to and run with the Land and shall be binding upon Developer's successors or assigns. The terms and provisions of this Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

33. This Agreement shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Jefferson County or in the United States District Court for the District of Idaho.

34. This writing evidences the final and complete agreement between the parties in regard to the items subject to this Development Agreement and no other prior statement, representation or understanding in regard to the items subject to this Development Agreement shall be binding upon the parties unless expressly set forth herein.

35. This Development Agreement shall become valid and binding only upon its approval by the City Council of the City and upon its execution by the Mayor.

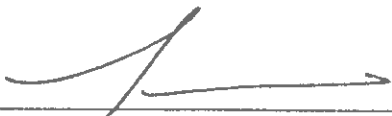
36. Developer agrees to pay all recording fees necessary to record this Development Agreement with the Jefferson County Recorder's office.

IN WITNESS WHEREOF, the City has caused these presents to be executed by its Mayor, and the Developer has caused these presents to be executed the day and year first above-written.

CITY OF RIGBY

By: 
Ryan H. Brown, Mayor

DEVELOPER:

By: 
Jaramie Magera, Manager

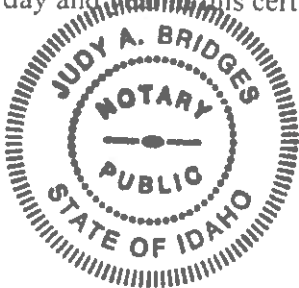
ATTEST:


Paula Sessions, Planning and Zoning
Assistant

STATE OF IDAHO)
: SS
County of Jefferson)

On this 19 day of Oct, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Ryan H. Brown, Mayor for the City of Rigby, a municipal corporation of Idaho, known to me to be the person whose name is subscribed to the within written document and who executed the foregoing instrument on behalf of said Municipal Corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

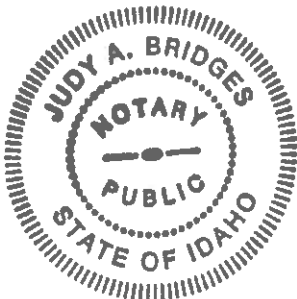


Judy A. Bridges
Notary Public for Idaho
Residing at Rigby
Commission Expires: 1-23-2012

STATE OF IDAHO)
: SS
County of Jefferson)

On this 29 day of Oct, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Jaramie Magera, known or identified to me to be the manager in the limited liability company of Hailey Creek, LLC, and the manager who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such manager executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Judy A. Bridges
Notary Public for Idaho
Residing at Rigby
Commission Expires: 1-23-2012

EXHIBIT A

WELL AND PUMPING SYSTEM

Developer and City agree that the Well and Pumping System shall be designed and constructed by the Developer and then owned and operated by the City pursuant to the following terms and provisions:

1. The Well and Pumping System shall be designed and constructed with sufficient capacity to produce 1,795 gallons per minute (4.00 cfs).
2. The Well and Pumping System shall be constructed in compliance with all rules, regulations and requirements of the Idaho Department of Environmental Quality.
3. Developer will obtain a drilling permit as required by the Idaho Department of Water Resources to drill the Well. The Well will be drilled pursuant to the domestic exemption found at Idaho Code § 42-111 or other applicable Idaho statutes or laws. The Well and Pumping System will also be connected to the City's existing water system, but will initially only be used by the School adjacent to the Development for inside usage. In order to authorize the diversion of water from the Well for municipal purposes under the City's water rights, the Developer will pay the cost for the preparation and filing of an application for transfer to add the Well as an authorized point of diversion under the City's existing water rights. The application for transfer will be signed by the Mayor, and submitted to the Idaho Department of Water Resources for review and approval. Developer shall not be responsible to pay any costs incurred in connection with such application for transfer except for the costs required for the initial preparation and filing of such application for transfer.
4. After the Well and Pumping System is completed in accordance with the terms and provisions of this Development Agreement and accepted by the City, Developer shall transfer to the City the Well and Pumping System and the Lot on which the Well and Pumping System is located. The Well and Pumping System shall thereafter be owned, operated, maintained and repaired by the City as part of the municipal water system of the City.

EXHIBIT B

MUNICIPAL WATER AND SEWER SYSTEM

In order to facilitate the Development, Developer agrees to pay the full cost of the design and construction of the Municipal Water and Sewer lines in accordance with the following terms and provisions and City agrees to accept, own and operate the Municipal Water and Sewer Lines in accordance with the following terms and provisions:

1. The Water Line shall be a 16 inch Water Line which shall extend from the Development to the intersection of State Highway 48 and the old Yellowstone Highway..
2. The Sewer Line shall be a 6 inch forced Sewer Main Line which shall extend from the Development to milepost 15.14 on State Highway 48. In connection with the construction and installation of such 6 inch forced Sewer Main Line Developer shall also construct a Lift Station to provide the necessary pressure for the forced Sewer Main Line.
3. After the Municipal Water and Sewer Lines are completed in accordance with the terms and provisions of this Development Agreement and accepted by the City, Developer shall transfer to the City the Water and Sewer Lines (including the Lift Station and Lift Station Lot) and the Water and Sewer Lines (including the Lift Station and Lift Station Lot) shall thereafter be owned, operated and maintained by the City as part of the Municipal water and sewer system of the City.
4. Following completion by Developer and assumption of the operation and maintenance of the Water and Sewer Lines (including the Lift Station) by City, Developer shall thereafter have the right to connect to the Water and Sewer Lines for the purpose of providing sewer and water service to the Development. City shall have the obligation to provide water and sewer services to the Development subject to such ordinances, regulations and policies as may be applied to similar services provided to residents and users of City water and sewer. Notwithstanding the foregoing, nothing herein shall obligate Developer or its successors or assigns to pay monthly sewer and/or water fees and charges incurred by the residents or users in the Development of City sewer and water services and any such obligation to pay such fees shall be solely between City and such customers or individual users.
5. City has previously entered an Annexation Agreement (the "Annexation Agreement") dated July 10, 2008 with Developer and Jefferson School District

No. 251 (the "School District"). The Annexation Agreement identified therein certain real property referred to as the "School District Property". The School District is constructing on the School District Property a Public School with associated playground, equipment and facilities (the "School"). Following completion by Developer and assumption of the operation and maintenance of the Water and Sewer Lines (including the Lift Station) by City, the School District shall thereafter have the right to connect to the Water and Sewer Lines for the purpose of providing sewer and water service to the School Property, including but not limited to the School. City shall have the obligation to provide water and sewer services to the School Property subject to such ordinances, regulations and policies as may be applied to similar services provided to residents and users of City water and sewer.

EXHIBIT C

1. City acknowledges that the design of the Water Lines and Well and Pumping System will include capacity in excess of the needs required to serve the Development and that it would be inequitable to require Developer to assume and pay the design and construction costs associated with constructing such excess capacity, without reimbursement from third parties that may subsequently connect to the Water Lines contemplated under the terms and conditions hereof. In recognition thereof, City agrees that it will not permit any person or entity to connect to or in anyway benefit from the usage of the Water Lines constructed by Developer (including any laterals connecting to the Water Lines and/or connection of new mainlines onto the east end of the Water Lines) unless and until such persons or entities have paid to Developer a connection fee (the "Developer Water Connection Fee") per each Equivalent Dwelling Unit or "EDU" required by such third parties to serve their properties. The Developer Water Connection Fee per EDU shall be determined at such time the Developer has completed construction and installation of the Water Lines and Well and Pumping System and established the actual costs incurred by Developer for construction and installation of the Water Lines and Well and Pumping System. The Developer's determination of such actual costs shall be subject to approval by the City Engineer for reasonableness. As soon as Developer and the City Engineer have established the amount of such actual costs (the "Water Costs"), City and Developer shall execute an agreement which sets forth the amount of the Water Costs and the computed amount of the Developer Water Connection Fee per EDU. The Developer Water Connection Fee per EDU shall be computed using the following formula:

$$\frac{\text{Water Costs}}{642} = \text{Developer Water Connection Fee Per EDU}$$

For example, if the Water Costs total \$890,010, then the Developer Water Connection Fee per EDU would be \$1,386.31 (\$890,010/642).

2. The duty of the City to collect the Developer Water Connection Fee shall be for a term of (20) twenty years after the effective date of this Development Agreement or until Developer has been paid the sum in Developer Water Connection Fees (the "Total Water Connection Fees"), which equals the sum calculated by multiplying 349 times the Developer Water Connection Fee per EDU calculated using the above stated formula (with the amount of the Developer Water Connection Fee per EDU being periodically adjusted by the amounts attributable to the CPI-U adjustment set forth in the following paragraph 6), whichever shall first occur.

For example, if Developer Water Connection Fee per EDU is \$1,386.31 (not taking into account any CPI adjustment) then the Total Water Connection Fees will be \$483,822.19 (\$1,386.31 x 349).

3. City acknowledges that the design of the Sewer Lines (including the Lift Station) will include capacity in excess of the needs required to serve the Development and that it would be inequitable to require Developer to assume and pay the design and construction costs associated with constructing such excess capacity, without reimbursement from third parties that may subsequently connect to the Sewer Lines contemplated under the terms and conditions hereof. In recognition thereof, City agrees that it will not permit any person or entity to connect to or in anyway benefit from the usage of the Sewer Lines constructed by Developer (including any laterals connecting to the Sewer Lines and/or connection of new sewer mainlines onto the east end of the Sewer Lines) unless and until such persons or entities have paid to Developer a connection fee (the "Developer Sewer Connection Fee") per each Equivalent Dwelling Unit or "EDU" required by such third parties to serve their properties. The Developer Sewer Connection Fee per EDU shall be determined at such time the Developer has completed construction and installation of the Sewer Lines and established the actual costs incurred by Developer for construction and installation of the Sewer Lines. The Developer's determination of such actual costs shall be subject to approval by the City Engineer for reasonableness. As soon as Developer and the City Engineer have established the amount of such actual costs (the "Sewer Costs"), City and Developer shall execute an agreement which sets forth the amount of the Sewer Costs and the computed amount of the Developer Sewer Connection Fee per EDU. The Developer Sewer Connection Fee per EDU shall be computed using the following formula:

$$\frac{\text{Sewer Costs}}{1046} = \text{Developer Sewer Connection Fee Per EDU}$$

For example, if the Sewer Costs total \$394,820, then the Developer Sewer Connection Fee per EDU would be \$377.45 (\$394,820/1046).

4. The duty of the City to collect the Developer Sewer Connection Fee shall be for a term of (20) twenty years after the effective date of this Development Agreement or until Developer has been paid the sum in Developer Sewer Connection Fees (the "Total Sewer Connection Fees"), which equals the sum calculated by multiplying 753 times the Developer Sewer Connection Fee per EDU calculated using the above stated formula (with the amount of the Developer Sewer Connection Fee per EDU being periodically adjusted by the amounts attributable

to the CPI-U adjustment set forth in the following paragraph 6), whichever shall first occur.

For example, if Developer Sewer Connection Fee per EDU is \$377.45 (not taking into account any CPI adjustment) then the Total Sewer Connection Fees will be \$284,219.85 ($\$377.45 \times 753$).

5. For purposes of this Agreement the term EDU refers to 245 gallons per day which represents the average sewage originating from a typical residential household in the City. Notwithstanding the foregoing, nothing herein shall prohibit or preclude City from charging and collecting from such individual customers a sewer connection fee over and above the Developer Sewer Connection Fee or a water connection fee over and above the Developer Water Connection Fee.
6. On each anniversary of the effective date of this Agreement, the Developer Water Connection Fee and the Developer Sewer Connection Fee shall be adjusted by multiplying the amount of such Fee by a fraction, the numerator of which shall be the United States Consumer Price Index, U.S. City Average (the "CPI-U") for the most recent month then available, and the denominator of which shall be the CPI-U for September, 2008.
7. The City shall remit all Developer Water Connection Fees and Developer Sewer Connection Fees, as adjusted for the CPI - U, collected from third parties on a semi-annual basis, commencing six (6) months after the effective date of this Agreement and every six months thereafter during the term of this Agreement. Such payment shall be comprised of all Developer Water Connection Fees and Developer Sewer Connection Fees, as adjusted by the CPI - U, collected by City during the preceding six months. Each payment shall be mailed to each Developer at the address set forth above or such other address which may be delivered in writing to the City Clerk.
8. City shall keep and maintain good, complete and accurate records regarding its collection of the Developer Water Connection Fees and Developer Sewer Connection Fees and shall make the same available to Developer upon request made during regular business hours on any working day, Sundays and holidays excluded. City shall maintain and keep such records for a period of time not less than the time required by Idaho Code § 50-907. In the event City adopts any ordinance or resolution providing for the destruction of public records regarding the collection of such Developer Water Connection Fee and Developer Sewer Connection Fee, City shall not destroy such records unless and until it has provided Developer with clear and legible copies thereof. Copies of such records shall be furnished to Developer, subject to payment of reasonable copying

charges.

9. Nothing herein shall be construed as creating any debt, liability or obligation in violation of the provisions of Article 8, Section 3 of the Idaho Constitution. In the event of any determination by a court of competent jurisdiction that the obligation of City to collect the Developer Water Connection Fee and Developer Sewer Connection Fee constitutes a debt or liability in violation of such section, or in the event the collection of such fee by City shall be determined to be unlawful in any respect, then Developer may collect the Developer Water Connection Fee and Developer Sewer Connection Fee directly from third-parties who connect to the Water and Sewer Lines and Developer shall be entitled to directly collect the Developer Water Connection Fee and Developer Sewer Connection Fee for a term equal to the term set forth in paragraph 5 hereof.

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