

## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Mariel Platt, Planner   
**RE:** Final Plat Townhouse Subdivision - Rimrock Cottages, Phase I  
**HEARING:** February 23, 2009

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**Applicant:** Old Cutters Inc.  
**Location:** Lot 4, Block 10, Old Cutters Subdivision (940 Myrtle Street East)  
**Zoning:** General Residential (GR)  
**Note:** Staff analysis is in lighter type.

### Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet, on December 24, 2008. On January 12, 2009, and again on February 9, 2009, the application was continued on the record until February 23, 2009.

### Application

Old Cutters, Inc., represented by Alpine Enterprises, Inc., has submitted an application for final Plat approval for the subdivision of Rimrock Cottages, Phase 1, into 7 townhouse sub-lots. The total land area of Lot 4, Block 10, is 40, 512 square feet. The cottages are shown on a portion of Lot 4, which is 21,780 square feet, to be known as Phase 1.

Section 3.4.1 of the Subdivision Ordinance allows for applications for platting townhouse units in existing or approved structures to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval, the applicant submits a final plat for Council approval.

### Procedural History

The preliminary plat application was heard by the Hailey Hearing Examiner on November 7, 2008, and November 14, 2008 and approved with conditions.

### Hailey Hearing Examiner Conditions of Preliminary Plat Approval

- a) **The applicant shall submit a phasing plan, prior to final plat application, including, but not limited to the following items:**
  - **Number of sub-lots on each phase**

- **Deadline for completion of each phase**
- **Amenities to be constructed with each phase**
- **Infrastructure planned for completion with each phase**

This condition has been met.

- b) **A phasing agreement shall be submitted prior to final plat application and shall incorporate the elements of the phasing plan. The phasing plan shall be reviewed and approved by the City Council prior to final plat approval.**

A portion of this condition has been met. The City Council should concurrently review the Phasing Agreement and approve, amend, or deny. The approval of this application is contingent on the approval of the Phasing Agreement.

- c) **The final plat shall eliminate plat notes 2 and 6, include plat notes 1, and 3-5 as stated on the approved preliminary plat, received on November 12, 2008, as follows:**

- 1) **Basis of Bearing is Idaho State Plane Coordinate System, NAD83(1992), Central Zone, at Grid, in US Survey Feet. Vertical Datum is NAV83.**
- 3) **Utility locations are based on field data and construction plane. Locations should be verified before any excavation.**
- 4) **The Current Zoning is GR.**
- 5) **All Owners shall have mutual reciprocal easements for existing water cable TV, sewage, telephone and electrical lines over, under and across their sub-lots for the repair, maintenance and replacement thereof subject to any restoration of the easement premises for any damage resulting from such repair or replacement.**

**And add three (3) additional plat notes to the final plat:**

- **The final plat shall include a note stating that the subdivision is subject to the recorded Party Wall Agreement and CC&R's, along with the instrument numbers thereof.**
- **The final plat shall include a note stating, sub-lots 3, 4, and 5 shall not install fences closer than five (5) feet from the south property line of Lot 4 and the five (5) foot fire access lane shall be maintained in a manner that ensures no pathway obstructions exist.**
- **The final plat shall include a note stating that the subdivision is subject to the Old Cutters Annexation Agreement recorded as Instrument No. 534733 and the Community Housing Agreement recorded as Instrument No. 559842, and the original Old Cutters Subdivision plat recorded as Instrument No. 553651, records of Blaine County, Idaho.**

This condition has been met.

- d) **All Fire Department and Building Department requirements shall be met. The following is a recommended condition of approval and is required for compliance with the IBC:**

- **The sub-lot line between sub-lot 1 and 2 shall be moved one (1) foot north.**
- **The south eave of cottage 1 shall be fire rated to one (1) hour construction.**
- **The western portion of the north sub-lot line of sub-lot 4 shall be moved at**

**least one (1) foot north.**

- **The sub-lot line between sub-lot 6 and 7 shall be moved one (1) foot south.**
- **The north eave of cottage 6 shall be fire rated to one (1) hour construction.**

The sub-lot lines have been moved accordingly; however, the condition regarding the requirement for the cottage eaves to be built to one (1) hour fire-rated construction, shall be carried over.

- e) **All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.**

This condition has been met.

- f) **Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.**

This condition should be carried over.

- g) **All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

- h) **The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

This condition has been met.

- i) **Any subdivision inspection fees due shall be paid prior to recording the final plat.**

This condition should be carried over.

#### **Department Head Comments**

**Life/safety:** The five (5) foot wide access lane, located south of Lot 4 shall be labeled “emergency access” instead of “fire lane.” Plat note #3 shall reflect this change in language as well.

**Water and Sewer:** No comment was provided.

**Engineering:** No comment was provided.

#### **Standards of Evaluation**

**4.3.5 Bulk Requirements. For other supplementary location and bulk regulations, see Article VII.**

- a. **Minimum Lot size - six thousand (6,000) square feet except as follows:**

**1. Townhouse sub-lots shall have an aggregate density of no more than ten lots per acre.**

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or “cottage” units and one (1) duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

The City Council shall review and approve the Phasing Agreement prior to or concurrently with approval of the final plat application.

**b. Maximum Multi-Family Residential Density - One (1) dwelling unit for each one-tenth (1/10) of an acre.**

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or “cottage” units and one (1) duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

**c. Minimum Lot Width - fifty (50) feet except as follows:**

**1. Townhouse sub-lots shall conform to the standards established in the IFC.**

Sub-lot widths are exempt from the 50 foot minimum standard; however, they shall conform to IFC standards. The Fire Department has reviewed this application and has no issue with the lot widths shown on the plat. The width of Lot 4 (Phase 1 and 2), is approximately 302 feet.

**d. Maximum Building Height - thirty five (35) feet.**

The applicant is hereby notified of this standard.

**e. Minimum Front Yard Setback - twenty (20) feet.**

The front yard setback measures twenty (20) feet from the northern (front) wall plane of sub-lots 1 and 7 to Myrtle Street. The eaves of the cottages residing on these two sub-lots extend into the twenty (20) foot front yard setback by two (2) feet. Eaves may extend into required setbacks by three (3) feet.

**f. Minimum Side and Rear Yard Setback - ten (10) feet except as follows:**

**1. Townhouse Units shall be allowed zero setbacks from the lot lines created by a Townhouse Sub-Lot; and**

The easterly side yard setback of Lot 4 cannot be determined until the building footprint for the duplex unit and the sub-lot lines are established on the remainder of Lot 4 (Phase 2). To the west, the side yard setback is ten (10) feet from west lot line to the cottages’ west wall plane and eight (8) feet from the eaves. The rear setback is ten (10) feet from

the rear lot line to the cottages' south wall and eight (8) feet from the eaves.

- 2. The separation of the buildings containing Townhouse Units in a Townhouse Development parcel shall be not less than six (6) feet as measured between any wall or any projection of a building, including but not limited to eaves, cornices, canopies or other similar roof overhang features, pergolas, chimney chases, bay windows, decks, steps, wainscot, and utility meters; or the minimum distance required by the IBC and IFC, whichever is greater.**

The minimum separation, measured between cottage eaves, found within the development of the seven (7) cottages is eight (8) feet. Some cottages show greater separation.

The Building Department has reviewed the application and has determined that the separation between the seven (7) cottage units does not comply with the IBC. Separation between each cottage's deck eave or building eave must be at least five (5) feet from the sub-lot line, unless fire-rated construction of one (1) hour or more is used. The following is a condition of approval and is required for compliance with the IBC:

- The south eave of cottage 1 shall be fire rated to one (1) hour construction.
- The north eave of cottage 6 shall be fire rated to one (1) hour construction.

- g. Detached Accessory Dwelling Units shall have a minimum gross floor area of 300 square feet and a maximum gross floor area of 950 square feet.**

No detached accessory dwelling units are proposed.

- h. Total lot coverage of all buildings on any property which includes an accessory detached dwelling unit shall not exceed 40%.**

The preliminary plat shows seven (7) cottage buildings, which comprise 3,600 square feet. The carport is excluded from lot coverage calculations. Phase one (1), as proposed, is 21,780 square feet, which equates to a lot coverage of 16.5%. The lot coverage of Phase 1 for the entire Lot 4 (40,152 square feet) is 9%. The remaining portion of Lot 4 should be developed in a manner that does not exceed the maximum standard of 40% lot coverage. The seven (7) cottages, future duplex (Phase 2), and any other future structures shall all be considered when determining the lot coverage of any future applications (i.e. Phase 2).

## **SECTION 2 - PERMITS.**

- 2.9 No permit for the construction of any building shall be issued upon any land for which all improvements required for the protection of health and the provision of safety, (including but not necessarily limited to an approved potable water system, an approved wastewater system to accept sewage, and asphalt paving of the streets) have not been installed, inspected, and accepted by the City of Hailey, with the following exception:**

**Building permits may be issued for any building in a development for which plats have been recorded and security provided, but the streets have not yet been**

**completed with asphalt due to winter conditions. In such instances, the street shall be constructed as an all-weather surface to City Standards to the satisfaction of the City Engineer, and shall be kept clear to the satisfaction of the Fire Chief. Final Inspection approval or Certificate of Occupancy shall not be granted until all improvements, including asphalt, have been installed, inspected and accepted.**

All seven (7) cottages have received Building Permits, and two have received Temporary Certificates of Occupancy. Notice of this requirement is hereby given to the applicant, and included as a recommended condition of approval.

### **SECTION 3 – PROCEDURE**

**3.3 The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement, shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.**

The Hearing Examiner's approval of the preliminary plat was on November 14, 2008.

**3.3.2 The administrator shall review the final plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.**

The final plat is consistent with the preliminary plat approved by the Hearing Examiner. Conditions of preliminary plat approval have been met or are carried over.

### **SECTION 4 – DEVELOPMENT STANDARDS**

#### **4.11 Inclusionary Community Housing.**

Pursuant to the Annexation Agreement, the Community Housing (CH) Agreement was recorded on June 23, 2008, which requires 25 CH units throughout Old Cutters Subdivision. The CH Plan, incorporated into the CH agreement as Exhibit B, states, 13 of the CH units shall be income restricted and 12 shall be alternatively deed restricted. In addition, the CH plan states, Lot 4, Block 10, shall have one (1) income restricted and four (4) resident/worker restricted cottages. The plat shows seven (7) cottages; therefore, the additional two cottages shall be market rate units. The one (1) duplex (two (2) units) proposed for the remainder of Lot 4 shall be market rate as well. No additional CH is required with this subdivision application.

All development standards pertaining to Section 4, were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval, other than those required by the preliminary plat Findings of Fact and Decision.

### **SECTION 8 - TOWNHOUSES**

**8.1 Plat Procedure. The Developer of the townhouse development shall submit with**

**the preliminary plat application and all other information required herein a copy of the proposed party wall agreement and the proposed document(s) creating an association of owners of the proposed townhouse sub-lots, which shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, commonly held facilities, garages, parking and/or Green Spaces. Prior to final plat approval, the Developer shall submit to the City a final copy of the party wall agreement and any other such documents and shall record the documents prior to or at the same time of the recordation of the plat, which plat shall reflect the recording instrument numbers thereupon.**

Draft CC&Rs have been submitted. Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat. The City has not and will not in the future determine the enforceability or validity of townhouse declarations, party wall agreements, or other private agreements.

- 8.2 Garage. All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular townhouse units. Detached garages may be platted on separate sub-lots, provided that the ownership of detached garages is appurtenant to specific townhouse units on the townhouse plat and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the townhouse development.**

There is a carport, with an attached 50 square foot storage space for each of the eight parking spaces within the carport structure.

- 8.3 Storage/Parking Areas. Residential townhouse developments shall provide parking spaces according to the requirements of Article IX of the Zoning Ordinance.**

The following standards are taken from Article IX of the Zoning Ordinance:

- 9.4.1 Residential: No parking space, or portion thereof, shall be located in any right-of-way or public thoroughfare, unless otherwise provided herein. Parking spaces within any garage, carport or similar structure shall be credited at 1 space per nine (9) feet of floor width and 21 feet of floor length.**

- a. Single family residences: 2 per residence minimum, 6 per residence maximum. The City will allow the use of 100' right-of-ways within the Hailey Original Townsite for licensed passenger vehicle parking for single family dwellings. Parking for accessory dwelling units must be provided on site.**
- b. All residences less than 1,000 square feet, including accessory dwelling units: a minimum of 1 space per unit.**
- c. Multiple family dwellings: A minimum of 1.5 spaces per unit.**

The applicant proposes seven (7) cottage units, which under standard c., the calculations would be 10.5 spaces. Pursuant to Section 9 of the Zoning Ordinance, parking calculations that exceed ten (10) are rounded down to the nearest whole number. Therefore, 10.5 is rounded down to ten (10) spaces required. There are eleven (11) spaces shown. Eight (8) spaces are provided under a carport structure. The spaces under the carport measure 10 feet wide and are striped to show 21

feet long.

**8.4 Construction standards. All townhouse development construction shall be in accordance with the IBC, IRC and IFC. Each townhouse unit must have separate water, sewer and utility services, which do not pass through another building or unit.**

**8.5 General Applicability. All other provisions of this Ordinance and all applicable ordinances, rules and regulations of the City and all other governmental entities having jurisdiction shall be complied with by townhouse developments.**

Upon meeting proposed conditions of approval, the proposed application does not appear to conflict with other provisions.

**8.6 Expiration. Townhouse developments which have received final plat approval shall have a period of three calendar years from the date of final plat approval by the Council to obtain a building permit. Developments which have not received a building permit shall be null and void and the plats associated therewith shall be vacated by the Council. If a development is to be phased, construction of the second and succeeding phases shall be contingent upon completion of the preceding phase unless the requirement is waived by the Council. Further, if construction on any townhouse development or phase of any development ceases or is not diligently pursued for a period of three years without the prior consent of the Council, that portion of the plat pertinent to the undeveloped portion of the development shall be vacated.**

The applicant is hereby notified of this requirement.

**8.7 Conversion. The conversion by subdivision of existing units into Townhouses shall not be subject to Section 4.10 of this Ordinance.**

Rimrock Cottages, Phase I subdivision is not a conversion by subdivision. The seven (7) cottage units have been newly constructed.

Section 4.10.3.1 required the applicant to provide at least 3.43 acres of park land for the subdivision of Old Cutters. In accordance with the annexation agreement, the applicant has provided a 5.08 acre park. No additional parks shall be required by this subdivision application.

**8.8 The maximum number of Cottage Townhouse Units on any parcel shall be twelve (12), and not more than two (2) Cottage Townhouse Developments shall be constructed adjacent to each other.**

The proposal would create seven (7) cottage units in Phase I and one (1) duplex in Phase II. The proposal does not exceed the maximum number of cottage townhouse units allowed on a parcel. In accordance with the Annexation Agreement and Community Housing Agreement, there are no other proposed cottage townhouse developments adjacent to Lot 4.

#### **Summary And Suggested Conditions**

The City Council shall hold a public hearing and approve, conditionally approve, or deny the final plat application. The following conditions are suggested to be placed on any approval of

this application:

- a) The final plat submitted for signature shall include plat notes 1 through 6 as stated on the submitted final plat, with the following amendments and additions:
  - Plat note #3 shall replace “fire access lane” with “emergency access lane.”
  - A plat note shall be added to the plat that states, “Sub-lots 3, 4, 5, and 6, shall be resident/worker restricted. Sub-lot 1 shall be income restricted to Category 3, as defined by Blaine County Housing Authority.”
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
- c) The five (5) foot wide access lane, located south of Lot 4 shall be labeled on the plat as “emergency access” instead of “fire lane.”
- d) Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat.
- e) All provisions of the Zoning Ordinance #532, including but not limited to use regulations and parking requirements shall continue to be met. Additional parking may also be required upon subsequent change in use, in conformance with Hailey’s Zoning Ordinance at the time of the new use.
- f) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
- g) The final plat shall be recorded within one year of the date of final plat approval. The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
- h) This approval is contingent on the applicant executing a Phasing Agreement acceptable to the City. The subdivision shall be developed in Phase I and Phase II.
- i) All Fire Department and Building Department requirements shall be met. The following is a recommended condition of approval and is required for compliance with the IBC:
  - The south eave of cottage 1 shall be fire rated to one (1) hour construction.
  - The north eave of cottage 6 shall be fire rated to one (1) hour construction.
- h) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.

- i) Any subdivision inspection fees due shall be paid prior to recording the final plat.

**AGENDA ITEM SUMMARY**

DATE: 02-23-09 DEPARTMENT: Planning DEPT. HEAD SIGNATURE: \_\_\_\_\_

**SUBJECT:** Rimrock Phasing Agreement

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

Old Cutters Inc. is concurrently being considered for final plat approval of Phase I. They propose to construct the project in two phases. Section 3.3 of the Subdivision Ordinance allows for phasing of subdivision applications. The City Attorney and Planning Director have reviewed the Phasing Agreement.

The timeline for subdivision of Phase II, needs to be discussed by the council and applicant and incorporated into the agreement.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** None

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> City Administrator       | <input type="checkbox"/> Library             | <input type="checkbox"/> Safety Committee |
| <input checked="" type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets          |
| <input type="checkbox"/> City Clerk               | <input type="checkbox"/> Planning            | <input type="checkbox"/> Treasurer        |
| <input type="checkbox"/> Building                 | <input type="checkbox"/> Police              | _____                                     |
| <input type="checkbox"/> Engineer                 | <input type="checkbox"/> Public Works, Parks | _____                                     |
| <input type="checkbox"/> Fire Dept.               | <input type="checkbox"/> P & Z Commission    | _____                                     |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Review the phasing agreement, determine a timeline for Phase II subdivision to be incorporated into the agreement and move to approve.

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agmt./Order Originals: Record  
Copies (all info.): \_\_\_\_\_  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)

**PHASING AGREEMENT  
RIMROCK COTTAGES AND TOWNHOUSES  
OLD CUTTERS SUBDIVISION**

THIS AGREEMENT ("Agreement") is dated this \_\_\_ day of February, 2009, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI", and together with the City, the "Parties").

**RECITALS**

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to approve the subdivisions of property within its municipal boundaries pursuant to the provisions of its Subdivision Ordinance No. 821 and other relevant ordinances, and the power to contract.

B. OCI owns Lot 4, Block 10, OLD CUTTERS SUBDIVISION, City of Hailey, Blaine County, Idaho, according to the official plat thereof recorded at the Office of the County Recorder for Blaine County, Idaho as Instrument No. 553634 (the "Lot"). On \_\_\_\_\_, 2009, the City Council signed and entered its Findings of Fact, Conclusions of Laws and Decision (the "Decision") approving the subdivision of the Lot into seven (7) townhouse sub-lots to be known as the Rimrock Cottages and Townhouses: Phase 1 and a future Phase 2 consisting of two (2) townhouse sub-lots (the "Townhouse Development"). A copy of the approved plat is attached hereto as **Exhibit "A"** and made a part hereof by this reference (the "Plat").

C. Condition \_\_ (h) of the Decision provides for the Townhouse Development to be developed in two (2) phases. The parties desire to enter into this Agreement to address the requirements of the Ordinance for this phased development.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties covenant and agree as follows:

**1. INCORPORATION OF RECITALS.** The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

**2. PHASE 1.** Phase 1 shall consist of Sub-lots 1 through 7 on which Cottages shall be constructed and related common areas as depicted on the Plat. All infrastructure, amenities and other improvements depicted on the Plat and required by the Decision within Phase 1 shall be completed and a final certificate of occupancy issued for the seven Cottages on or before March 31, 2009. This shall include the construction of the Cottage buildings, covered parking structures, other parking spaces, sidewalks and utilities.

3. **PHASE 2.** Phase 2 shall consist of two townhouse sub-lots on which two townhouse units in a single duplex building shall be constructed. The two townhouse sub-lots will cover all of the Phase 2 property designated on the Plat. The water and sewer service lines serving these two townhouse sub-lots have already been installed. The application for subdivision of Phase 2 property into the two townhouse sub-lots shall be filed with the City on or before \_\_\_\_\_, 2009.

4. **SECURITY.** In the event OCI fails to obtain final plat approval for the two sub-lots in Phase 2 on or before the dates set forth in Paragraph 3, above, then City shall have the right, but not the obligation, to revegetate and seed the remainder of the Property with native drought resistant grasses ("Landscaping"), after first giving OCI notice and a sixty (60) day period within which to complete the Landscaping. Landscaping shall also include sufficient irrigation for two growing seasons. At the time of the execution of this Agreement, OCI has posted sufficient security in the form of a cash deposit, a set aside agreement or a letter of credit, equivalent to 150% of an engineer's estimate for the complete performance of the Landscaping and to provide irrigation. The City shall retain such security until all Landscaping has been completed as set forth in this Agreement, at which time the City shall release such security. If the cost to complete the Landscaping is greater than the amount of the security, OCI agrees to reimburse the City within ten (10) days of demand by the City and hold harmless the City for any and all reasonable additional costs incurred by the City when completing the Landscaping. Notwithstanding the foregoing, the security posted may be reduced on a pro rata basis to reflect the partial completion of the Landscaping, such that the amount of the security shall at all times be equal to at least 150% of the cost to complete the remaining Landscaping.

5 **REMEDIES.** In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

6 **NOTICES.** All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address as follows:

To City:

The City of Hailey  
c/o Director, Planning Department  
115 Main Street South, Suite H  
Hailey, Idaho 83333  
(208) 788-4221 (telephone)  
(208) 788-2924 (facsimile)

To OCI:

Old Cutters, Inc.  
P.O. Box 4944  
Ketchum, Idaho, 83340  
(208) 578-3636 (telephone)  
(208) 578-7682 (facsimile)

With a copy to:

James P. Speck, Esq.  
SPECK & AANESTAD  
A Professional Corporation  
PO Box 987  
120 East Avenue  
Ketchum, Idaho, 83340  
(208) 726-4421 (telephone)  
(208) 726-0752 (facsimile)

or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

7 **RELIANCE BY PARTIES.** This Agreement is intended by OCI to be considered by the City as part of OCI's application for subdivision plat approval, and is contingent upon final plat approval for the Subdivision. OCI acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said subdivision application.

**8 RELATIONSHIP OF PARTIES.** It is understood that the contractual relationship between the City and OCI is such that neither party is the agent, partner, or joint venturer of the other party.

**9 SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND.** This Agreement shall inure to the benefit of the City and OCI and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

**10. RECORDATION.** This Agreement shall be recorded with the Blaine County Recorder.

**11. NO WAIVER.** In the event that the City or OCI, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by OCI, the City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

**12. PARTIAL INVALIDITY.** In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

**13. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

**14. EXHIBITS.** All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

**15. AUTHORITY.** Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

**16. NO THIRD PARTY RIGHTS.** This Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

**17. GOVERNING LAW.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

**18. TIME OF ESSENCE.** Time is of the Essence in this Agreement.

**19. NECESSARY ACTS.** Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

**20. CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

**21. ATTORNEY'S FEES.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney's fees" shall mean and include (i) attorney's fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

**22. POLICE POWERS.** Except as otherwise provided, nothing contained herein is intended to limit the police powers of City or its discretion in review of subsequent applications regarding development of the Lot. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, the City's Zoning Ordinance, and the City's Subdivision Ordinance requirements for the Property.

**23. AMENDMENT.** This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by all parties hereto.

**24. FORCE MAJEURE.** Neither party shall be responsible for any loss, damage, detention or delay caused by fire, strike, civil or military authority, governmental restrictions, moratoriums or controls, insurrection or riot, railroad, marine or air embargoes, lockout, tempest, accident, breakdown of machinery, delay in delivery of material by other parties, or any other cause which is unavoidable or beyond its reasonable control. Any time periods provided herein shall be

extended for a period equal to the length of the delay, provided that performance shall, as practicable, recommence immediately upon cessation of such unavoidable event. In any event, neither party shall be responsible or liable to the other, or to any third party, for any incidental, special or consequential damages, including without limitation, lost profits arising with respect to the Property, this Agreement or the termination thereof.

**25. INTERPRETATION.** In the event of any inconsistency between the terms and provisions of this Agreement and other drawing, plan, submittal or agreement submitted as part of the application for the Subdivision, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written herein.

CITY OF HAILEY

By: \_\_\_\_\_  
Rick Davis, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, Hailey City Clerk

OLD CUTTERS, INC.

By: \_\_\_\_\_  
John Campbell, President

STATE OF IDAHO )  
                          : ss.  
County of Blaine )

On this \_\_\_\_ day of February, 2009, before me the undersigned Notary Public in and for said State, personally appeared RICK DAVIS, known or identified to me to be the Mayor of Hailey and the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the City of Hailey.



AGENDA ITEM SUMMARY

DATE: 2/23/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

**SUBJECT:**

Request for Amendment to the Sweetwater PUD Agreement

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

An attorney for Sweetwater, Jim Laski, will be asking Hailey for relief from several provisions of the Sweetwater PUD Agreement. I have attached the original PUD Agreement, Jim's e-mail to me outlining the revisions and a memo. If there is a direct or indirect threat of litigation during the meeting, I would recommend that I lead the discussion with Sweetwater's counsel on those subjects.

Ned

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Case # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments:

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

<input checked="" type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	<input type="checkbox"/> _____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	<input type="checkbox"/> _____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	<input type="checkbox"/> _____

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Discuss the request for an amendment to the PUD Agreement and then make a motion to approve, deny or modify the request, or continue or table the discussion.

**FOLLOW-UP REMARKS:**

# MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: February 18, 2009

RE: Sweetwater Request for PUD Amendment

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I am enclosing an e-mail from Jim Laski, attorney for Sweetwater. Jim asked whether I felt he should draft an amendment to the PUD Agreement or just send me a list of the proposed revisions to the PUD Agreement. I suggested he send the list of proposed revisions.

In this memo, I will only address whether Hailey has the legal authority to make the requested amendment. I will not make any non-legal recommendation whether the amendment is reasonable or in the best interests of the City. I will, however, make suggestions for a proposed revision.

For item Nos. 2 (Phasing), 3 (Park Fees), 4 (Road/Landscape Bond) and 5 (Traffic Signal), Hailey can legally revise the agreement on these points. For item No. 6 (Flood Plain) and 7 (Uses), Hailey could only legally agree to examine the proposed flood plain text amendment and expansion of uses. Hailey cannot at this time agree to these revisions until there is full compliance with the zoning amendment procedures.

For item No. 8 (Community Housing), Hailey could legally revise the agreement to waive all or a part of the in lieu fees. On this point, I would suggest that Hailey consider some income based community housing as an alternative to the in lieu fees. As you may recall, the PUD Agreement provided that Sweetwater was to convey the River Street property and pay in lieu fees for its contribution of income based community housing. This suggestion may, also, be beneficial to the developer because the development may experience sales, which in turn may generate more interest in the project. In addition, you may want to consider a revision of the workforce community housing deeds. The Blaine County Housing Authority has requested Hailey to revisit those deeds to make them more comparable to the Cutters' deed.

For item Nos. 1 (Plats) and 9 (Permit and Related Fees), I would have to do some further research to determine whether Hailey is legally authorized to make the revisions. For now, I will await your general discussion before spending the time to research these points.

Please keep in mind that at the last meeting, Sweetwater alluded to a possible challenge of our inclusionary housing ordinance. I would recommend that we do not address this potential challenge in a public meeting. If necessary, we can discuss this matter in executive session.

**Ned Williamson**

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**From:** "Jim Laski" <jrl@lawsonlaski.com>  
**To:** "Ned Williamson" <wlo@cox-internet.com>  
**Sent:** Friday, February 13, 2009 1:11 PM  
**Subject:** Sweetwater

Ned – below is a list of revisions to the PUD which we requested at the meeting Monday evening:

**FOR SETTLEMENT PURPOSES ONLY**

1. **Plats:** City will cooperate with Sweetwater in facilitating the recordation of plats necessary to enable Sweetwater to deliver good and marketable title to purchasers of its property; and without limiting the generality of the foregoing, City will (a) approve the modification of legal descriptions on plats prior to or after recording, as requested by Sweetwater; and (b) extend for a period of six months from the full execution of an amendment to the PUD Agreement the time for recording the Large Block Plat & 2 townhouse plats which have already received preliminary approval. Though we are requesting a six month extension, we are hopeful that this may be accomplished sooner.
2. **Phasing:** City will extend time frames of all phases as long as possible – 10+ years.
3. **Park Fees:** City will defer payment of park fee until time of sale (not at plat)
4. **Road/Landscape Bond:** City will waive bonding requirement, but Sweetwater will plant unfinished areas with drought resistant grasses prior to recording the plats (or this summer if plats recorded prior to snow melting)
5. **Traffic Signal:** Sweetwater will cooperate with City's efforts to obtain ITD refund; but will have no further obligation with regard to the traffic signal.
6. **Flood Plain:** City will permit Sweetwater to fill property to the extent necessary to remove all Sweetwater property from FEMA maps and to use all reasonable efforts to assist Sweetwater in obtaining such modified FEMA maps; and without limiting the generality of the foregoing, approve text amendment to allow for fill in the Floodway and/or Flood Hazard Development Permit.
7. **Uses:** City will expand approved limited commercial uses to include additional areas to the South of Countryside Rd.
8. **Community Housing:** Sweetwater will waive all claims for return of River Street property and City of Hailey will waive future cash payments (\$2,230,000).
9. **Permit and Related Fees:** City will charge plan check fees one time on identical buildings; otherwise all permit and related fees will be charged on a per building instead of per unit basis.

Please give me a call with any questions or comments.  
 Jim

**James R. Laski**  
**Lawson & Laski, PLLC**  
**675 Sun Valley Road, Suite A**  
**PO Box 3310**  
**Ketchum, ID 83340**  
**208-725-0055**  
**208-725-0076 fax**

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## PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement ("Agreement") is entered into this 14<sup>th</sup> day of August, 2006, by and between the City of Hailey ("City"); Sweetwater Company, LLC, an Idaho limited liability ("Sweetwater Company"), and 474 Club, LLC, a Tennessee limited liability company ("474" and, collectively with Sweetwater Company, "Sweetwater").

**Recitals.** This Agreement is made in contemplation of the following facts and purposes:

A. City is a municipal corporation possessing all the powers granted to municipalities under the applicable provisions of Idaho Code, including, without limitation, all powers under the Local Land Use Planning Act, as set forth in Idaho Code §§67-6501, *et seq.*

B. 474 is the owner of the Property as defined below. Sweetwater Company is the developer of the Project, as defined below, and will acquire from 474 all or portions of the Property from time to time as the Project progresses.

C. Sweetwater is desirous of developing a multiple use 421 residential unit project and related improvements ("Project" or "Development"), all as set forth in that certain Planned Unit Development Application, certified as complete on January 23, 2006 ("PUD Application") and which said PUD Application has been formally filed with City.

D. The property ("Property") upon which the Project is to be constructed is legally described as set forth on **Exhibit "A"** attached hereto and incorporated herein by this reference, and is presently zoned "Limited Business" and is subject to City's Land Use Ordinances and Zoning Regulations, and is also subject to a Development Agreement entered into on January 10, 2005 by and between the City and Sprenger, Grubb & Associates, Inc. ("SGA") recorded in the records of Blaine County Idaho as Instrument No. 515668 (the "SGA Development Agreement").

E. The City's Planning and Zoning Commission and City Council have held the required public hearings, accompanied with proper notice, with respect to the PUD Application.

F. City approved the PUD Application on July 31, 2006, and adopted Findings of Fact and Conclusions of Law ("**Decision**") on August 14, 2006 which are incorporated into this Agreement by this reference.

G. In order to ensure that the proposed Project is constructed consistent with City's applicable ordinances and regulations, City and Sweetwater deem it in their mutual interest to enter into an agreement with regard to the manner and timing of construction, Sweetwater's maintenance and management thereof, construction and landscaping of the Property and other factors affecting the general health, safety and welfare of the citizens of City and users of the Property.

**Instrument # 542953**

HAILEY, BLAINE, IDAHO

2006-12-15 11:34:00 No. of Pages: 25

Recorded for: CITY OF HAILEY

MARSHA RIEMANN

Fee: 75.00

Ex-Officio Recorder Deputy

Index to: AGREEMENTCORRECTION

PLANNED UNIT DEVELOPMENT AGREEMENT - 1

H. The Property shall be developed in accordance with City's Comprehensive Plan, Zoning Ordinances, City's Standards and other applicable City ordinances and the terms and conditions of this Agreement.

I. City and Sweetwater desire that construction of the Project proceed as approved by City's City Council as set forth in the Decision adopted by the City Council.

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Description and Location of Property.** The Property encompassed within the PUD Application is approximately 20 acres, zoned Limited Business, and has been approved by City for the purposes of this Agreement as a Planned Unit Development, subject to certain conditions contained herein and in the Decision.

2. **Construction of Project.** Sweetwater agrees to construct the Project in substantial and material conformance with this Agreement, the Decision, the PUD Application and the drawings and site plans submitted with the PUD Application (collectively the "Plans"), as such Plans may be modified or amended from time to time with City's approval. The Project shall include construction of the improvements depicted in the Plans.

3. **Community Housing.** As a condition to the PUD and Subdivision approvals contemplated herein, Sweetwater and City agree to the following terms and conditions regarding the provision of Community Housing. With respect to community housing, the parties agree to the following calculations:

- the base community housing obligation under the subdivision ordinance is 20% (Subdivision Ordinance §4.11.2);
- the base requirement may be reduced by 1% for every 10% of the total units within the development with a gross floor area of less than 1,000 square feet (Subdivision Ordinance §4.11.4.1.b);
- 16% of the units in the Development will have a gross floor area of less than 1,000 square feet;
- the community housing requirement applied to the Development is thus 19%, or a total of 80 units;
- Sweetwater is not utilizing a density increase for community housing as allowed in the subdivision ordinance (Subdivision Ordinance §4.11.6.2);
- 50% of the required community housing units may be provided with Alternative Deed Restrictions (Subdivision Ordinance §4.11.5.1.6);
- all or part of the community housing requirement may be met through the conveyance of land and/or the payment of funds to the City (Subdivision Ordinance §4.11.5).

In fulfillment of the community housing obligation associated with the Project, Sweetwater and the City agree as follows:

- (a) On-Site Community Housing. Sweetwater shall include 40 units in the Development which shall be encumbered by deed restrictions in a format acceptable to the City which limits ownership to full time residents of Blaine County, Idaho, who do not own other real property either inside or outside of the State of Idaho. Such units shall be distributed equally among the phases of the Development and included in all buildings within the Development with the exception of duplexes and carriage houses. The locations of the Community Housing Units shall be approved by City as part of the subdivision platting process.
- (b) Alternatives. The obligation to provide the balance of the community housing shall be fulfilled as follows:
  - (i) River Street Property. Sweetwater shall convey to City a parcel of land located at the north end of River Street valued at \$1,770,000. Said conveyance shall occur no later than the date the final Large Block Plat for the Development is signed by City. The terms and conditions of the conveyance are more particularly described in paragraph 11, below.
  - (ii) In Lieu Payment. Sweetwater shall make an in lieu payment to the City in the amount of Two Million Two Hundred and Thirty Thousand Dollars (\$2,230,000) payable as follows:
    - a. \$1,115,000 due at the time of the issuance of the first building permit for a unit in Phase II of the Development;
    - b. \$557,500, adjusted as set forth in subsection iii, below, due at the time of issuance of the first building permit for a unit in Phase III of the Development;
    - c. \$557,500, adjusted as set forth in subsection iii, below, due at the time of issuance of the first building permit for a unit in Phase IV of the Development.
  - (iii) CPI Adjustment. For the purpose of determining the payments due under Paragraphs 3(b)(ii)(b) and (c), above, the amount due shall be adjusted on the basis of the change in the Consumer Price Index for All US Cities published by the United States Department of Labor ("Index") which is published for the month the Large Block Plat for the Development is recorded ("Beginning Index"). If the Index published the nearest the date of a payment ("Extension Index") has changed from the Beginning Index, the payment due shall be determined by multiplying the payment amount by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

The foregoing land conveyance and payments shall be deemed final and conclusive as to the Community Housing requirements under the Subdivision Ordinance associated with developing the Property consistent with the PUD Application.

4. **Park Land Improvements.** Sweetwater, as the successor in interest to SGA, shall provide the following in full and complete satisfaction of the requirements set forth in Paragraph 3 of the SGA Development Agreement and the requirements of the Hailey Subdivision Ordinance: Payment of \$390,000, adjusted as set forth in the SGA Development Agreement, payable in increments of \$1,000 per unit on or before City's execution of the final plat creating such units until paid in full. Said payment shall constitute the entirety of the park land improvements required of the Project and all other park and open space associated with the Project shall be considered private.

5. **Traffic Mitigation.** Paragraph 4 of the SGA Development Agreement requires the developer of the Property to pay its proportionate share of the cost of a new traffic signal (including engineering) at the intersection of Countryside Boulevard and State Highway 75 based on the increase in vehicular traffic on Countryside Boulevard west of Shenandoah Drive at full build-out of the Property. Based on traffic analysis, the increase in traffic as a result of the Development will be less than 50%. City currently has dedicated funds of at least \$67,000 to be applied to the cost of signalization of the Highway 75 – Countryside Boulevard intersection, which money must be utilized for such purposes prior to November 1, 2007.

Notwithstanding the requirements of the SGA Development Agreement, Sweetwater shall coordinate with the Idaho Department of Transportation ("IDT") and install, as soon as practicable, but in no event later than September 1, 2007 (unless otherwise agreed by City after input from IDT), a traffic signal at the intersection of Highway 75 and Countryside Boulevard. Sweetwater shall pay all costs associated with installation of said signal, except that City shall contribute its dedicated funds to the cost of said installation and Sweetwater shall be entitled to utilize funds available from other public sources, if any, toward such costs. The foregoing designated improvement shall be deemed final and conclusive as to the traffic mitigation requirements with respect to development of the Property pursuant to the PUD approval and shall be in full satisfaction of the requirements under paragraph 4 of the SGA Development Agreement.

6. **PUD Waivers.** As part of the PUD approval process, the following waivers have been requested and granted:

(a) Townhouse sub-lot size allowed up to the multi-family density of 24 sub-lots per acre from 12 sub-lots per acre for townhomes. (Zoning Ordinance §4.5.5.a.1 and Subdivision Ordinance §4.11.6.2).

(b) Maximum building height increased to 37 feet from 35 feet for some townhouse structures as set forth in the approved Plans. (Zoning Ordinance §4.5.5.d).

(c) Minimum front yard setback reduced from 20 feet to 8 feet minimum for certain residential units, and to 1 ½ feet to 10 feet for portions of certain live/work units and the mixed use building as set forth in the approved Plans. (Zoning Ordinance §4.5.5.e).

(d) Minimum side yard setback reduced to 5 feet from 10 feet and minimum rear yard setback reduced to 3 feet from 10 feet along the PUE parcel B-1 as set forth in the approved Plans. (Zoning Ordinance §4.5.5.f)

(e) Minimum length for parking spaces reduced for approximately 19% of the required spaces, with a minimum dimension of 17 feet in length from 21 feet in length, as set forth on the approved Plans. (Zoning Ordinance §9.4.1).

(f) Lots permitted to have frontage on private alley easements so long as fire and emergency vehicle access requirements are met, as set forth on the approved Plans. (Subdivision Ordinance §4.5.5).

7. **PUD Amenities.** Pursuant to Article 10 of the Zoning Ordinance, Sweetwater shall provide, in addition to the items set forth in paragraphs 3 through 5, above, and at its sole expense, the following amenities as part of the Development:

(a) Active Recreation Facilities Appropriate for the Needs of the Development (Zoning Ordinance §10.3.8.b) including:

- (i) A 1.6 acre park area including:
  - open space for which will be open to the public and maintained by the Homeowners' Association ("**Association**") in accordance with paragraph 8, below;
  - 5,200 square foot amenity building ("**Amenity Building**") with exercise rooms and fitness equipment, hobby and craft rooms, lounge and kitchen; and
  - tot lot adjacent to the Amenity Building, which shall be open to the public and maintained by the Association in accordance with paragraph 8, below.

The above park, open space and Amenity Building shall remain dedicated for this purpose so long as the Property is developed and used in accordance with the PUD, unless otherwise approved by City. The improvements identified in this paragraph 7(a)(i) shall be completed as part of Phase I of the Development.

(ii) An off-site, detached from roadway, paved bike path connection from the existing Wood River Trail System (at the existing bridge at the northwest corner of the Development) to the northeast corner of the Development at Woodside Boulevard across from City owned Parcel O, as shown on the approved Plans. This bike path improvement shall include widening of the existing bridge, or replacing if required as a result of the Floodplain Amendments, and shall meet Blaine County Recreation District standards at the connection to

the Wood River Trail System and Hailey Parks and Lands standards in all other locations. This improvement shall be completed prior to the completion of Phase IV of the Development.

(b) Public Transit Facilities (Zoning Ordinance §10.3.8.c): three (3) weather protected transit stops, two of which are noted on the approved Plans, to be installed prior to the completion of the phase in which each stop is located. The third transit stop shall be in a location agreed upon between the Blaine County School District and the Developer and approved by the City, or in the event there is no agreement by the Blaine County School District and Developer, the third transit stop shall be in a location approved by the City. Said transit stops shall be open to the public and maintained by the Homeowner's Association in accordance with paragraph 8, below.

(c) Below Grade Parking (Zoning Ordinance §10.3.8.j): 100% percent of required parking stalls are located below grade or at basement levels of buildings; over 70% of all proposed parking stalls are located within structures, and all parking entries are oriented towards internal alleys so that they do not negatively affect the quality of the pedestrian environment. All proposed parking stalls shall remain dedicated for parking so long as the Property is developed and used in accordance with the PUD unless otherwise approved by City. Sweetwater shall implement appropriate restrictions on the use of parking stalls to preclude the storage of boats and/or recreational vehicles and shall provide notice to potential owners of units to which allocated parking spaces do not meet minimum length requirements in individual condominium or townhouse declarations.

(d) Promote Goals and Objectives of the Comprehensive Plan (Zoning Ordinance §10.3.8.l): The planning and architecture of the Development fulfills the goals established in the Comprehensive Plan, Part II, Section 13, Community Design, including, Policy 1 – site plan that reinforces the pedestrian qualities of the site and de-emphasizes the car; Policy 4 – promote human scale in the design of buildings and streets; Policy 5 – promote beautification through on-site landscaping; and Policies 6 and 7 – enhance and reinforce local characteristics and community identity.

(e) Floodplain Map Amendment (Zoning Ordinance §10.3.8.l): Sweetwater agrees to complete, at its own expense, a Flood Plain Study encompassing the Quigley Drainage and the Woodside area, with the goal of amending the present FEMA map to accurately identify areas in the Floodplain. Upon completion of the study, Sweetwater shall, at its sole expense, make application for all appropriate map amendments.

(f) Sustainable Development Practices (Zoning Ordinance §10.3.8.l): Sweetwater agrees to develop the Project in accordance with LEED-ND standards, as presently drafted.

(g) Traffic Signal (Zoning Ordinance §10.3.8.l): Sweetwater agrees to pay the cost of engineering and installation of a traffic signal at the intersection of Highway 75 and Countryside Boulevard in addition to those costs which it is required to pay under the SGA Development Agreement as set forth on paragraph 5, above.

8. **Public Use and Maintenance of Certain Improvements.** Sweetwater shall construct a park and tot lot as set forth in paragraph 7(a)(i), above, and transit facilities as identified in paragraph 7(b), above. Said transit facilities, park (excluding the Amenity Building) and tot lot shall be open to the public, who shall have an absolute right to enter upon and use them subject only to reasonable restrictions adopted by Sweetwater and/or the Association. Sweetwater and/or the Association shall maintain the park, tot lot and transit facilities, including the equipment and improvements contained therein, in good, safe and operational condition.

9. **Phasing.** Sweetwater shall develop the Project in four (4) phases over a period of five (5) years as set forth below:

Phase I	2006-2008	106 units	10 CH units
Phase II	2008-2009	106 units	10 CH units
Phase III	2009-2010	99 units	10 CH units
Phase IV	2010-2011	110 units	10 CH units

and in accordance with the Phasing Plan attached hereto as **Exhibit "B."** Exhibit "B" shows "Phase Infrastructure" for each phase and generally shows where the water and sewer mains, road improvements, curb, gutter and sidewalks within the public right-of-ways shall be constructed. In the event there is a discrepancy between Exhibit "B" and the language set forth below, the language of this Agreement shall control.

All roads, alleys and infrastructure necessary to serve a given phase shall be installed prior to the completion of that phase. Notwithstanding the foregoing, the following schedule for water, sewer, road improvements, curb, gutter and sidewalks within the public rights-of-way shall apply:

a. **Countryside Boulevard.**

In the fall of 2006: water and sewer mains installed between Woodside and Shenandoah and services stubbed to the edge of the right-of-way; and the current width of the road surface improved with a two inch overlay of asphalt between Woodside and Shenandoah.

In 2007 and prior to the completion of Phase I: sidewalks (7 feet wide) installed on the north side of the road between Woodside and Shenandoah.

Prior to the completion of Phase III: water and sewer mains installed between Shenandoah and Highway 75 and services stubbed to the edge of the right-of-way; sidewalks installed on the south side of the road and sidewalks (7 feet wide) installed on the remainder of the north side of the road between the bike path and Shenandoah; curbs and gutters installed on both sides of the road between Highway 75 and Woodside; and the entire road surface between curbs and gutters improved to a total three inch asphalt paving between Woodside and Highway 75.

b. **Mapleleaf Drive.**

In the fall of 2006: 40 foot asphalt aprons (1 ½ inch thick) installed at the intersections of Mapleleaf and Woodside and Mapleleaf and Shenandoah.

Prior to the completion of Phase I: water and sewer mains installed and services stubbed to the edge of the right-of-way; curb, gutter and sidewalks (both sides) installed; and the entire road surface between the curbs and gutters improved to a total of three inch asphalt paving.

c. **Shenandoah Drive.**

Prior to completion of Phase II: water and sewer mains installed and services stubbed to the edge of the right-of-way; sidewalks installed on the east side of the road between Heartland Way and Mapleleaf and between Outback Way and Silo Lane; and current width of the road surface improved with a two inch overlay of asphalt.

Prior to completion of Phase III: curb and gutter installed from Heartland to the south boundary of the Development, including the intersection at Heartland; sidewalk installed on west side of the road between Heartland and the south boundary of the Development and on the east side of the road between Heartland and Outback; and the entire road surface between the curbs and gutters improved to a total of three inch asphalt paving between Heartland and Silo Lane.

Prior to completion of Phase IV: curb and gutter installed from Heartland to the north boundary of the Development; sidewalk installed on the west side of the road between Heartland and Mapleleaf and on both sides of the road between Mapleleaf and the north boundary of the Development; and the entire road surface between the curbs and gutters improved to a total of three inch asphalt paving between Heartland and the north boundary of the Development.

d. **Woodside Boulevard.**

In 2007 and prior to completion of Phase I: water and sewer services stubbed to the edge of the right-of way between Countryside and the north boundary of the Development; right of way regraded from Countryside to the north boundary of the Development; sidewalk (7 foot) installed along the west side of the road between Countryside and Mapleleaf; the current width of the road surface improved with a two inch overlay of asphalt between the intersection of Countryside and Mapleleaf.

Prior to completion of Phase I: curb, gutter and remainder of sidewalk (7 foot) installed on the west side of the road from Countryside to the north

boundary of the Development; and the current road surface and the unpaved right-of-way between the current road surface and the curb and gutter improved to a total of three inch asphalt pavement between Countryside and the north boundary of the Development.

Prior to completion of Phase III: water and sewer services stubbed to the edge of the right-of-way and curb, gutter and sidewalk installed along the west side of the road between Countryside and the south boundary of the Development; right-of-way regraded from Countryside to the south boundary of the Development; and the current road surface and the unpaved right-of-way between the current road surface and the curb and gutter improved to a total of three inch asphalt pavement between Countryside and the south boundary of the Development.

All improvements within the public right-of-ways shall be constructed in accordance with City Standards in effect at the time of the improvement. All sidewalks, curb and gutter improvements shall be constructed of concrete. All roads shall be paved to any installed curb and gutter.

In the event commencement of the construction on the Project is delayed until spring of 2007, the timeframes set forth in subsections (a) through (d), above, shall be extended in a timeframe consistent with the actual delay in commencement of construction.

In the event any improvements referenced herein are not completed within the phase or timeframe set forth in this Agreement, unless the pertinent timeframe has been extended with the approval of City, City shall have the discretion to withhold the issuance of building permits for subsequent phases or require the posting of sufficient security to ensure the completion of such improvements prior to the issuance of such permits.

In the event Sweetwater fails to obtain building permits for the units in Phases II through IV, inclusive, on or before the dates set forth in this Paragraph 9, then City shall have the right, but not the obligation, to complete the final paving of all public roads within the Development that have been damaged as part of the construction of the Project ("Paving") and revegetation/seedling of the remainder of the Property with native drought resistant grasses ("Landscaping"), after first giving Sweetwater notice and a sixty (60) day period within which to complete such Paving and Landscaping. Landscaping shall also include sufficient irrigation for two growing seasons. At the time Sweetwater seeks a building permit for any improvement within Phase I, Sweetwater shall post sufficient security in the form of a cash deposit, a set aside agreement or a letter of credit, equivalent to 150% of an engineer's estimate for the complete performance of the Paving and the Landscaping of the remainder of the Property. The City shall retain such security until all Paving and Landscaping has been completed as set forth in this Agreement and in the Decision, at which time the City shall release such security. If the cost to complete the Paving and the Landscaping is greater than the amount of the security, Sweetwater agrees to reimburse the City within ten (10) days of demand by the City and hold harmless the City for any and all reasonable additional costs incurred by the City when completing the Paving and the Landscaping. Notwithstanding the foregoing, the security posted may be reduced on a

pro rata basis to reflect the partial completion of said Paving and Landscaping, such that the amount of the security shall at all times be equal to at least 150% of the cost to complete the remaining Paving and Landscaping.

Within each Block, separate individual townhouse plats may be recorded for groups of buildings and condominium plats may be recorded for individual buildings. Said plats may be recorded in an orderly and reasonable fashion in groupings to be approved by the City Planning Administrator, such approval not to be unreasonably withheld, so long as all essential services are available to a completed townhouse or condominium structure prior to the recording of a final plat encompassing that building, all infrastructure is completed in accordance with the schedule described herein and a certificate of occupancy has been issued for all the units within the plat encompassing such building, or sufficient security pledged to ensure completion of the same. Prior to the commencement of each phase, Sweetwater shall submit to the City Planning Administrator for approval a schedule for said phase showing proposed groupings of buildings within individual plats. In the event Sweetwater and the planning administrator cannot agree on such groupings, Sweetwater shall be entitled request relief from the City Council with respect to recording of plats within the phase. Notwithstanding the foregoing, the parties agree that reasonable changes may be made to such groupings as a result of unanticipated changes in construction schedules.

10. **Construction Management Plan.** All construction of the Project shall be completed in accordance with a Construction Management Plan to be prepared by Sweetwater and approved by the Planning Administrator, such approval not to be unreasonably withheld. The Construction Management Plan shall address, but not be limited to, staging, fencing, noise restrictions, fencing, weed and dust abatement, dog control, number and location of trailers and blue rooms, parking for construction workers and equipment, storage of materials, mud control and contact persons, and shall include language allowing for modification of the plan to address unforeseen issues.

11. **River Street Property.**

A. In accordance with paragraph 3(b)(i), above, Sweetwater covenants and agrees to convey title to Lot 2A of the Sutton Subdivision ("River Street Property") to the City pursuant to a warranty deed free and clear of all liens, encumbrances, and restrictions, exclusive of (i) property taxes for the current year which are not due and payable on or before the date of conveyance and (ii) all easements, restrictions, notes and other matters as may be shown on the official plats. The closing under this Agreement and the delivery of all executed instruments and documents contemplated herein shall take place on or before the date the final Large Block Plat for the Development is signed by the City (the "Closing Date"), at the offices of Sun Valley Title in Hailey (the "Closing Agent").

B. On or before the Closing Date, the parties hereto shall deposit with the Closing Agent the following instruments and documents, each duly executed, and, where appropriate, acknowledged:

1. Sweetwater shall deposit a fully executed warranty deed for the River Street Property;

2. The parties shall deposit a true and executed copy of this Agreement;

3. Each party shall deposit such closing escrow instructions, consistent with this Agreement, as may be required by the Closing Agent, if any, executed by Sweetwater, the City and Closing Agent, and

4. Each party shall deposit such other instruments and documents as are required to effect the agreements of the parties herein contained.

C. Before the Closing Date, each party shall deposit with the Closing Agent the following:

The amount of all title insurance premiums, closing costs and tax proration, as the same may be adjusted by Closing Agent's closing accounting reflecting the amount shown by the Closing Agent as necessary to pay both parties' portions of all title insurance premiums and closing costs incident to the closing. Each party shall pay its own tax proration up to the Closing Date.

D. When, on or before the Closing Date, the Closing Agent has received the above described instruments and documents and obtained the irrevocable commitment of the Closing Agent's underwriter to issue a policy of title insurance for the River Street Property, it shall proceed to close this transaction. The Closing Agent shall then deliver its closing accounting, showing the proration, applications and payments herein agreed to be made by the parties through the Closing Agent (the same having been submitted and approved by the parties prior to commencement of this closing process), and deliver the documents related to this transaction in its possession as follows:

1. To Sweetwater:

a. The closing accounting;

2. To Hailey:

a. The Owner's Policy of Title Insurance for the River Street Property with a coverage amount of \$1,770,000;

b. A copy of the deed to the River Street Property; and

c. The closing accounting.

E. In the event the Closing Agent is unable, for any reason, to close on the Closing Date, it shall immediately notify both parties by both (i) telephone and (ii) United States mail, postage prepaid, or fax of the reason. The party causing the delay shall have five (5) days from the date of the receipt of such notification in which to cure the defect or other concern, and the Closing Date shall be extended accordingly. If the defect or other concern is cured within such period or the party not causing the delay shall waive the same by written notice delivered to the other party and Closing Agent within such period, the Closing Agent shall proceed to close. Otherwise, upon receipt of its fees the Closing Agent shall return all funds and documents in its possession to the party depositing the same and the duties of the Closing Agent shall terminate. This return of the funds and documents by the Closing Agent under this Section shall not affect the obligations of the parties under this Agreement, and the party not in default shall have all rights and remedies for default as may be applicable.

F. Upon closing, the Closing Agent shall promptly record the deed to the River Street Property and cause to be issued a policy of title insurance for the River Street Property.

G. Title Insurance. Sweetwater shall convey and insure title to the River Street Property consistent with the Commitment for Title Insurance for the River Street Property, issued by Commonwealth Land Title Insurance Company dated August 11, 2006.

H. Costs. Sweetwater shall be responsible for the following costs and expenses in connection with the closing:

1. The costs of the recording of all Deeds;
2. All costs and expenses related to obtaining the removal of all exceptions to the title to the River Street Property which are not permitted exceptions;
3. The portion of property taxes and assessments on the River Street Property through the Closing Date; and
4. The standard coverage premium payable for the Owner's Policy of Title Insurance for the River Street Property.
5. Both parties shall equally share the fees of the Closing Agent required to accommodate the terms and provisions of closing under this Agreement. Taxes and assessments shall be prorated as of the Closing Date.

I. Possession. The City shall be entitled to possession of the River Street Property from and after the Closing Date.

## 12. General Requirements.

A. Property Maintenance. Sweetwater shall be responsible, at its sole expense, for all maintenance of the Property not sold to individual buyers, including maintaining all landscaping, irrigation systems, parking and drainage systems, and recreational facilities. This obligation shall include maintenance of landscaping, irrigation systems and transit facilities included in the City right-of way, as well as snow removal from sidewalks located within the City right-of-way; however this maintenance obligation specifically does not include maintenance and operating costs of lighting placed within the City right-of-way. Sweetwater may cause the Sweetwater Owner's Association to be formed to assume and perform the maintenance obligations hereunder. In the event that Sweetwater forms such an association and it assumes all or part of Sweetwater's obligations, Sweetwater shall be relieved of any obligation to City after the assumption and City shall look solely to the association for compliance with the obligations hereunder.

B. Police Powers. Except as otherwise provided, nothing contained herein is intended to limit the police powers of City. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, City's Zoning Ordinance, City's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

C. Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto; provided, however, the following shall not require an application to amend this Agreement but shall otherwise be subject to all other applicable City ordinances: construction of Project and uses typically permitted in the Limited Business zone.

D. Specific Performance. In addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

E. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded, on appeal, or in bankruptcy.

F. Relationship of Parties. It is understood that the contractual relationship between City and Sweetwater is such that neither party is the agent, partner, or joint venture of the other party.

G. Successor and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Sweetwater and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the

Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

H. No Waiver. In the event that City or Sweetwater, or its successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Sweetwater, or its successors in interest, or City, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

I. Partial Invalidity. In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

J. Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

K. No Third Party Beneficiaries. This Agreement is not intended, nor shall it be deemed or construed, to create or confer any rights upon third parties.

L. Authority. Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.

M. Default. In the event City or Sweetwater, its successors and assigns, fail to faithfully comply with all the terms and conditions included in this Agreement it shall be in breach of this Agreement.

N. Notices. Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City:

The City of Hailey  
c/o Director, Planning Department  
115 Main Street South, Suite H

Hailey, Idaho 83333  
208/788-4221 (telephone)  
208/788-2924 (facsimile)

To Sweetwater:

Sweetwater Company, LLC  
c/o 474 Club, LLC  
100 Peabody Place, Suite 1200  
Memphis, TN 38103

With a copy to:  
Lawson & Laski, PLLC  
Attn: James R. Laski  
PO Box 3310  
Ketchum, ID 83340

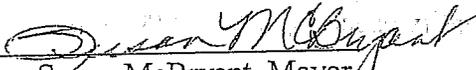
or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

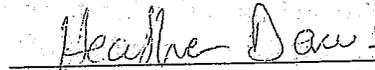
IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

CITY OF HAILEY:

Attest:

By:

  
Susan McBryant, Mayor

  
Heather Dawson, City Clerk

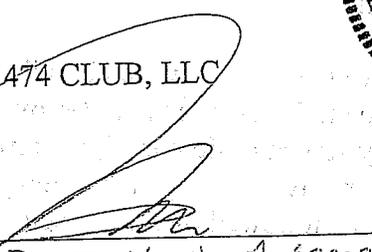


SWEETWATER COMPANY, LLC

474 CLUB, LLC

  
By: 474 Club, LLC  
Its: sole member

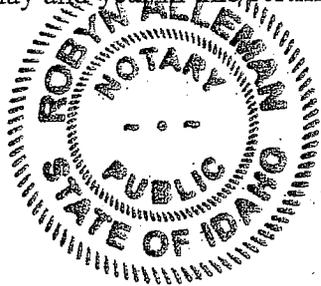
By: J. Kevin Adams  
Its: CEO

  
By: J. Kevin Adams  
Its: CEO

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this 14 day of August, 2006, before me, a Notary Public in and for said State, personally appeared Susan McBryant, known or identified to me to be the Mayor of the City of Hailey, who executed the foregoing instrument, and acknowledged to me that she 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.

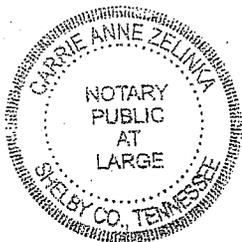


[Signature]  
Notary Public for Idaho  
Residing at Hailey, Idaho  
My commission expires 12/2/08

STATE OF Tennessee )  
 ) ss.  
County of Shelby )

On this 14<sup>th</sup> day of August, 2006, before me, a Notary Public in and for said State, personally appeared J. Kevin Adams, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the said 474 Club, LLC for itself, and as sole member of Sweetwater Company, LLC.

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



My Comm. Exp. 09-19-2007

[Signature]  
Notary Public for Tennessee  
Residing at Memphis, Tennessee  
My commission expires 9-19-07

EXHIBIT A

LEGAL DESCRIPTION

*See Attached*

## SWEETWATER DESCRIPTION

Lots 1, 2, 3, 4, 5, & 6 & in Block 17 and Lots 1 & 2 and of Block 16 and Lots 1, 2, 3 & 4 in Block 19 and Lot 1 of Block 20 of WOODSIDE SUBDIVISION FINAL PLAT NO. 5, according to the official plat thereof, recorded as Instrument No. 150393, records of Blaine County, Idaho; and Parcels B2 & F1 of the PLAT OF PARCEL B1 AND B2, BLOCK 16 AND PARCEL F1, BLOCK 17, WOODSIDE SUBDIVISION NO. 5, according to the official plat thereof, recorded as Instrument No. 538208, records of Blaine County, Idaho; and Lot 1, North 70 feet of Lot 5 and Lot 6 in Block 22 of WOODSIDE SUBDIVISION FINAL PLAT NO. 6, according to the official plat thereof, recorded as Instrument No. 150394, records of Blaine County, Idaho; and Lots 1 through 52, inclusive in Block 83 and Parcel "FF" of WOODSIDE SUBDIVISION FINAL PLAT NO. 22, according to the official plat thereof, recorded as Instrument No. 152517, records of Blaine County, Idaho; and Tract A, formerly known as the Sprenger Parcel. Tract A is a:

A parcel of land thirty feet in width located within Woodside Subdivision No. 4, Township 2 North, Range 18E, Boise Meridian, City of Hailey, Blaine County, Idaho being particularly described as follows:

Commencing at the intersection of the centerline of Briarwood Drive and the intersection of Shenandoah Drive as shown on the plat of said Woodside Subdivision No. 4:

thence South  $49^{\circ} 41' 40''$  West 54.14 feet to a point on the westerly right-of-way of said Shenandoah Drive, which is the TRUE POINT OF BEGINNING:

thence along the southerly right-of-way of Briarwood Drive 28.55 feet along a curve to the left with a central angle of  $81^{\circ} 47' 12''$ , a radius of 20.00 feet, and a chord length of 26.19 feet that bears North  $28^{\circ} 51' 23''$  West:

thence along the southerly right-of-way of Briarwood Drive North  $69^{\circ} 45' 00''$  West 254.83 feet:

thence along the southerly right-of-way of Briarwood Drive 77.92 feet along a curve to the right with a central angle of  $11^{\circ} 44' 54''$ , a radius of 380.00 feet, and a chord length of 77.78 feet that bears North  $63^{\circ} 52' 35''$  West to the northwesternly corner of Lot 1, Block 16, Woodside Subdivision No. 5:

thence across Briarwood Drive 30.73 feet along a curve to the right with a central angle of  $02^{\circ} 36' 29''$ , a radius of 675.00 feet, and a chord length of 30.72 feet that bears North  $20^{\circ} 03' 06''$  East to a point on the centerline of Briarwood Drive:

thence along the centerline of Briarwood Drive, 78.13 feet along a curve to the left with a central angle of  $12^{\circ} 47' 24''$ , a radius of 350.00 feet, and a chord length of 77.97 feet that bears South  $63^{\circ} 21' 21''$  East:

thence along the centerline of Briarwood Drive South  $69^{\circ}45'00''$  East 262.24 feet  
to a point on the westernly right-of-way of said Shenandoah Drive:

thence along the westernly right-of-way of said Shenandoah Drive 47.30 feet  
along a curve to the left with a central angle of  $08^{\circ}12'48''$ , a radius of 330.00 feet,  
and a chord length of 47.26 feet that bears South  $16^{\circ}08'39''$  West to the TRUE  
POINT OF BEGINNING containing 0.24 acres, more or less.

EXHIBIT B

PHASING PLAN

*See Attached*











WEBER SHANDWICK

1115 North Main  
Suite 200  
Seattle WA 98108  
Phone: 206.461.1111  
Fax: 206.461.1112  
http://www.webershandwick.com

PROJECT: SWEETVA FER  
Planned Unit Dev.  
Hilly, Idaho

CLIENT:

2nd Circle, LLP  
1000 S. Main, Suite 403  
Boise, ID 83725

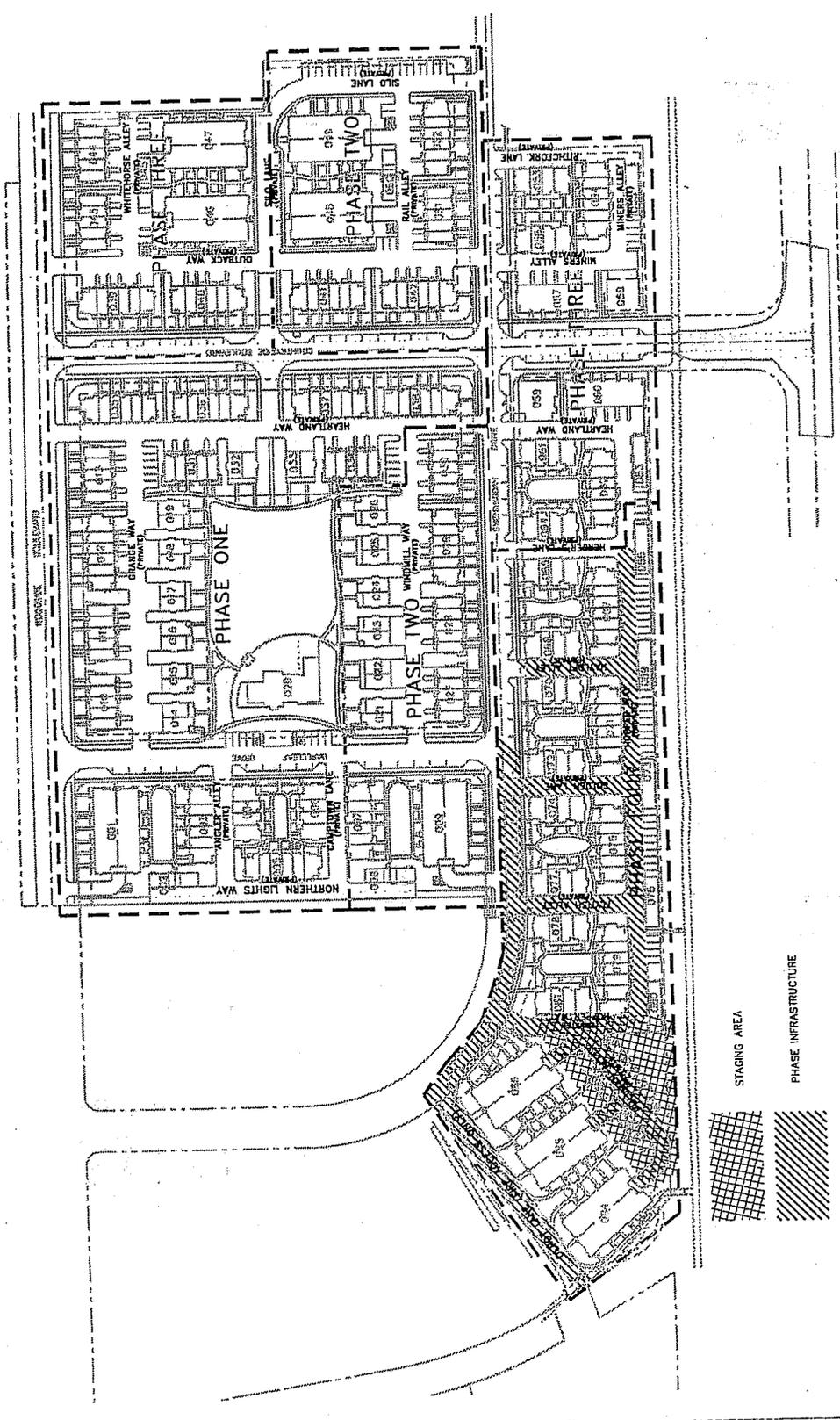
△	1st Floor	1/2" = 1'-0"
△	2nd Floor	1/2" = 1'-0"
△	3rd Floor	1/2" = 1'-0"
△	4th Floor	1/2" = 1'-0"
△	5th Floor	1/2" = 1'-0"
△	6th Floor	1/2" = 1'-0"
△	7th Floor	1/2" = 1'-0"
△	8th Floor	1/2" = 1'-0"
△	9th Floor	1/2" = 1'-0"
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△	11th Floor	1/2" = 1'-0"
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△	18th Floor	1/2" = 1'-0"
△	19th Floor	1/2" = 1'-0"
△	20th Floor	1/2" = 1'-0"

---	Phase 1
---	Phase 2
---	Phase 3
---	Phase 4
---	Phase 5
---	Phase 6
---	Phase 7
---	Phase 8
---	Phase 9
---	Phase 10
---	Phase 11
---	Phase 12
---	Phase 13
---	Phase 14
---	Phase 15
---	Phase 16
---	Phase 17
---	Phase 18
---	Phase 19
---	Phase 20

PHASING PLAN

A10.4

puu



# PHASE 4

CONSTRUCTION START: SPRING 2010 - SPRING 2011  
 PHASE FOUR: 110 UNITS

