

AGENDA ITEM SUMMARY

DATE: November 5, 2012 **DEPARTMENT:** PW/CD/Sustainability **DEPT. HEAD:** MP

SUBJECT: Public Hearing upon a city initiated text amendment to the Hailey Subdivision Ordinance.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Amendments to the Subdivision Ordinance - Section 1, Definitions and Section 5, Improvements Required, are associated with the proposed Title 18, a new Title of the Municipal Code. The public hearing for Title 18 includes one staff report for both this Subdivision Ord. amendment as well as the creation of Title 18. Please refer to the staff report located with Title 18's public hearing documents for more information on these Subdivision Ordinance Amendments.

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 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 checked="" type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | <input checked="" type="checkbox"/> Sustainability |
| <input checked="" type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Fire Dept. | <input checked="" type="checkbox"/> P & Z Commission | <input type="checkbox"/> _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Review and conduct the public hearing on Title 18 and these Subdivision Ordinance amendments. Approve or continue to a date certain. Motion language is provided for both public hearings at the end of the staff report found under the public hearing for Title 18, Municipal Code amendments.

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)

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S SUBDIVISION ORDINANCE, ORDINANCE NO. 821, BY AMENDING SECTION 1, DEFINITIONS, TO AMEND THE DEFINITION OF CITY STANDARDS TO REFER TO THOSE STANDARDS ADOPTED BY ORDINANCE IN TITLE 18 OF THE HAILEY MUNICIPAL CODE; BY AMENDING SECTION 5, IMPROVEMENTS REQUIRED, TO REFER TO TITLE 18 OF THE HAILEY MUNICIPAL CODE FOR MINIMUM INFRASTRUCTURE IMPROVEMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, Idaho Code §67-6518 requires standards related to "building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development" be adopted in accordance with the notice and hearing procedures provided in Idaho Code §67-6509.

WHEREAS, a new Title of the Hailey Municipal Code, Title 18 is proposed concurrent with this amendment to establish procedures in compliance with Idaho Code §67-6518 and 67-6509, to establish new street design standards, and to add infrastructure standard specifications and drawings;

WHEREAS, the proposed amendments are generally in accordance with the Comprehensive Plan;

WHEREAS, the proposed amendments will not create excessive additional requirements at public cost for public facilities and services; and

WHEREAS, the proposed amendments will be in accordance with the welfare of the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 1 of the Hailey Subdivision Ordinance No. 821, is hereby amended by the deletion of the stricken language and the addition of the underlined language:

City Standards. Those standards for street, drainage, water, sewer, wastewater and other infrastructure improvements as set forth in the "City of Hailey Improvement Standard Drawings" and "Standard Specifications" Title 18 of the Hailey Municipal Code adopted in-by ordinance in accordance with the notice and hearing procedures provided in Idaho Code §67-6509~~Section 5 of the Subdivision Ordinance.~~

Section 2. Section 5 of the Hailey Subdivision Ordinance No. 821, is hereby amended by the deletion of the stricken language and the addition of the underlined language:

5.1 It shall be a requirement of the Developer to construct the minimum infrastructure improvements set forth herein and any required infrastructure improvements for the subdivision, all to City Standards and procedures, which are attached hereto as Exhibit "A." set forth in Title 18 of the Hailey Municipal Code and adopted by ordinance in accordance with the notice and hearing procedures provided in Idaho Code §67-6509. Alternatives to the minimum improvement standards may be recommended for approval by the City Engineer and approved by the City Council at its sole discretion only upon showing that the alternative is clearly superior in design and effectiveness and will promote the public health, safety and general welfare.

Section 3. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2012.

Fritz X. Haemmerle, Mayor

Attest:

Mary Cone, City Clerk

Publish: Idaho Mountain Express _____, 2012

AGENDA ITEM SUMMARY

DATE: 11/5/2012

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Amendment of Chapter 12.04 (Public Sidewalks, Pathways and Streets and Snow Removal) and summary

Ord 1115

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing an ordinance which amends Chapter 12.04 of the Hailey Municipal Code. This ordinance is intended to address two pressing issues. First, as you know, the Woodside Boulevard Reconstruction Project includes a planting strip. We would like to limit the passage of cars over the planting strip. Eventually, the strip will be planted and irrigated. We would like to prevent damage to the irrigation system which can be caused by cars passing over the planting strip and protect the vegetative cover. Second, our special events permit ordinance allows for the closure of public streets if certain standards are met. As presently stated, Chapter 12.04 prohibits closure of streets. The attached ordinance addresses both of these issues. There is urgency to address both of these issues now. Consequently, I would recommend that the council waive the three readings. I am also attaching a summary of this ordinance.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Caselle # _____
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)
____ City Attorney ____ Clerk / Finance Director ____ Engineer ____ Building
____ Library ____ Planning ____ Fire Dept. _____
____ Safety Committee ____ P & Z Commission ____ Police _____
____ Streets ____ Public Works, Parks ____ Mayor _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve Hailey Ordinance No. 1115, to waive the three readings, to read by title only, to authorize the mayor to sign, and to approve the summary of Hailey Ordinance No. 1115.

FOLLOW-UP REMARKS:

HAILEY ORDINANCE NO. 7715

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 12.04.010 OF THE HAILEY MUNICIPAL CODE, TO ADD THE DEFINITION OF PLANTING STRIP; AMENDING SECTION 12.04.020 TO ALLOW OBSTRUCTION OF A PUBLIC STREET, ALLEY, SIDEWALK OR PATHWAY IF APPROVED BY A SPECIAL USE PERMIT; AMENDING 12.04.060 TO PROHIBIT THE OPERATION OF A MOTOR VEHICLE ON OR OVER A PLANTING STRIP; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, under Idaho law, the City of Hailey is obligated to keep streets open and free from nuisances but has the power to limit traffic and encroachments on city streets;

WHEREAS, Idaho Code § 52-101 generally defines a nuisance as an unlawful obstruction of a street;

WHEREAS, in the exercise of its police powers, the City of Hailey has the supervisory control over city streets and exclusive authority to regulate traffic on city streets, alleys, sidewalks and pathways;

WHEREAS, the City of Hailey wishes to prohibit traffic over planting strips which have been installed between curbs and sidewalks;

WHEREAS, the City of Hailey has allowed temporary street closures upon the issuance of a special events permit pursuant to Chapter 12.14 of the Hailey Municipal Code but Section 12.04.020 prohibits the obstruction of any city street, sidewalk or pathway in any manner;

WHEREAS, before a special events permit allowing for a street closure is issued, there must be evidence establishing, *inter alia*, that there will be safe and orderly movement of traffic, that emergency response will not be interrupted and that the special event will not cause injury to person or property; and

WHEREAS, the City of Hailey believes it is in the public health, safety and welfare of its residents to allow limited street closures for temporary purposes provided the street closure is permitted with the issuance of a special events permit.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 12.04.010 of the Hailey Municipal Code is amended by addition of the definition "Planting Strip," as follows

"Planting Strip" shall mean that area for vegetative growth such as grass, bushes or trees, or for non-vegetative cover such as bark, gravel and similar materials, located between any curb and public sidewalk within the City of Hailey and within a city or state right-of-way, regardless

whether the right-of-way has been dedicated, granted by deed, easement or license, or created by implied or prescriptive easement. For the purpose of this definition, Planting Strip shall not include improved driveways which cross a Planting Strip, provided the improved driveway has been installed as part of public infrastructure project or has received an encroachment permit pursuant to Chapter 12.16 of the Hailey Municipal Code.

Section 2. Section 12.04.020 of the Hailey Municipal Code is amended by addition of the underlined language and by the deletion of the stricken language, as follows:

12.04.020 Obstructions. It shall be unlawful for any person or entity to obstruct, injure or damage any public sidewalk, public pathway, ~~or public street or alley~~ in any manner, unless the obstruction is permitted by a special events permit under Chapter 12.14 of the Hailey Municipal Code.

Section 3. Section 12.04.060 of the Hailey Municipal Code is amended by addition of the underlined language and by the deletion of the stricken language, as follows

12.04.060 Motorized Vehicles. It shall be unlawful for any person or entity to drive or operate a motorized vehicle, including a motorcycle, on or over a Public Sidewalk, ~~or~~ Public Pathway, or Planting Strip, except for equipment used for snow removal.

Section 4. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 5. Repealer Clause. All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 6. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this ____ day of November, 2012.

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

Publish: Idaho Mountain Express _____, 2012

SUMMARY OF HAILEY ORDINANCE NO. 1115

The following is a summary of the principal provisions of Ordinance No. 1115 of the City of Hailey, Idaho, duly passed and adopted November 5, 2012, by the City Council and Mayor of the City of Hailey:

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 12.04.010 OF THE HAILEY MUNICIPAL CODE, TO ADD THE DEFINITION OF PLANTING STRIP; AMENDING SECTION 12.04.020 TO ALLOW OBSTRUCTION OF A PUBLIC STREET, ALLEY, SIDEWALK OR PATHWAY IF APPROVED BY A SPECIAL USE PERMIT; AMENDING 12.04.060 TO PROHIBIT THE OPERATION OF A MOTOR VEHICLE ON OR OVER A PLANTING STRIP; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

Hailey Ordinance No. 1115 amends Hailey Municipal Code, as follows:

Section 1 amends Section 12.04.010 of the Hailey Municipal Code by adding the definition of "Planting Strip."

Section 2 amends Section 12.04.020 of the Hailey Municipal Code to allow the obstruction of a public sidewalk, public pathway, public street or alley if permitted by a special use permit under Chapter 12.14 of the Hailey Municipal Code.

Section 3 amends Section 12.04.060 of the Hailey Municipal Code to make it unlawful to drive a motorized vehicle on or over a Planting Strip.

Section 4 provides for a severability clause.

Section 5 provides for a repealer clause.

Section 6 provides for an effective date of the ordinance.

The full text of Ordinance No. 1115 is available at Hailey City Hall at 115 South Main Street, Suite H, Hailey, Idaho 83333 and will be provided to any citizen upon request during regular business hours.

CERTIFICATION OF CITY ATTORNEY

I, the undersigned Attorney at Law, as attorney for the City of Hailey, Idaho, hereby certify that I have read the foregoing summary of Ordinance No. 1115 of the City of Hailey, that I have compared it to the full text of Ordinance No. 1115, and that in my opinion, the above summary is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 5th day of November, 2012.

Ned Williamson, Hailey City Attorney

Publish: Idaho Mountain Express _____, 2012

AGENDA ITEM SUMMARY

DATE: 11/5/2012

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Parking Ticket Ordinance

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed ordinance which amends Chapter 10.08 of the Hailey Municipal Code to allow for parking tickets. I reviewed the Boise and Ketchum ordinances on parking tickets. The key to this ordinance is that if the operator does not pay a penalty in advance, then the police can issue an infraction ticket. If an infraction ticket is served on an alleged offender, the offender can require the state to prove that the person was responsible for the parking violation. I believe this system will ensure due process.

In addition, the proposed ordinance restricts parking of vehicles on planting strips and allows the impoundment of such vehicles.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Caselle # _____
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)

____ City Attorney ____ Clerk / Finance Director ____ Engineer ____ Building
____ Library ____ Planning ____ Fire Dept. _____
____ Safety Committee ____ P & Z Commission ____ Police _____
____ Streets ____ Public Works, Parks ____ Mayor _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct a public hearing and discuss the ordinance. If you wish to adopt the ordinance, make a motion to adopt the ordinance, conduct the first reading and read by title only.

FOLLOW-UP REMARKS:

HAILEY ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 10.08.020 OF THE HAILEY MUNICIPAL CODE, TO ADD THE DEFINITION OF PLANTING STRIP; AMENDING SECTION 10.08.040 TO PROHIBIT PARKING ON A PLANTING STRIP; AMENDING SECTION 10.08.060(A) TO ALLOW A VEHICLE, TRAILER OR CAMPER TO BE IMPOUNDED; AMENDING SECTION 10.08.070 TO ESTABLISH A PARKING TICKET PROCEDURE AND TO ESTABLISH PENALTIES FOR VIOLATIONS OF CHAPTER 10.08 OF THE HAILEY MUNICIPAL CODE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City of Hailey has adopted parking regulations for public rights-of-way and public parking lots;

WHEREAS, the City of Hailey has limited parking within designated parking spaces, established maximum parking times and prohibited parking on sidewalks and bicycle paths;

WHEREAS, the City of Hailey wishes to prohibit parking on planting strips, to authorize impoundment of such parked vehicles and to establish effective enforcement of the parking regulations set forth in Chapter 10.08 of the Hailey Municipal Code; and

WHEREAS, the City of Hailey believes a parking ticket procedure as implemented in other municipalities will further the public health, safety and welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 10.08.020 of the Hailey Municipal Code is amended by addition of the definition "Planting Strip," as follows:

"Planting Strip" shall mean that area for vegetative growth such as grass, bushes or trees, or for non-vegetative cover such as bark, gravel and similar materials; located between any curb and public sidewalk within the City of Hailey and within a city or state right-of-way, regardless whether the right-of-way has been dedicated, granted by deed, easement or license, or created by implied or prescriptive easement. For the purpose of this definition, Planting Strip shall not include improved driveways which traverse a Planting Strip, provided the improved driveway has been installed as part of public infrastructure project or has received an encroachment permit pursuant to Chapter 12.16 of the Hailey Municipal Code.

Section 2. Section 10.08.040 of the Hailey Municipal Code is amended by addition of new subsection 10.08.040(J), as follows:

J. Planting Strip Restrictions. It shall be unlawful for any person to park a motorized vehicle or non-motorized vehicle, trailer or camper on or over any portion of a Planting Strip.

Section 3. Section 10.08.060(A) of the Hailey Municipal Code is amended by addition of the underlined language, as follows:

A. Members of the Hailey police department are authorized to remove or have removed a vehicle, trailer or camper from a Right-of-Way to a place designated by the police department or otherwise maintained by the City of Hailey, when such vehicle, trailer or camper is parked in violation of Section 10.08.040(D) and (J) of the Hailey Municipal Code.

Section 4. Section 10.08.070 of the Hailey Municipal Code is amended by the repeal of Section 10.08.070 of the Hailey Municipal Code and by the addition of new Section 10.08.070, as follows:

10.08.070 Violations-Penalties.

A. It shall be the duty of the Hailey Police Department, upon observing a vehicle stopping, standing or parking in violation of the provisions of this Chapter, to leave upon such vehicle a separate parking ticket providing notice for each posted time limit that such vehicle has been parked or stopped in violation of the provisions of this Chapter. At a minimum, each parking ticket shall state the 1) date and hour of leaving the parking ticket on the vehicle, 2) the make of the vehicle, 3) the license number of the vehicle, 4) a general description of the violation, 5) the specific municipal code section violated and 6) the fine attributable to violation. The parking ticket shall instruct the owner or operator of the vehicle to report to the Hailey Clerk's Office. One copy of the parking ticket shall be filed with the Hailey Clerk's Office.

B. In order to eliminate burdening courts with violations of this Chapter and to eliminate, to the extent possible, public inconvenience, each person receiving a parking ticket under this Section 10.08.070 left upon the vehicle operated by the person shall:

1. Within seven (7) days of the time of the parking ticket, pay to the Hailey Clerk's Office in full satisfaction of such violation, the fine indicated in the following fee schedule:

10.08.040(B) Two hour and 15 minute parking restriction	\$20.00
10.08.040(C) Night-time parking restriction	\$25.00
10.08.040(D) Winter-time parking restriction	\$35.00
10.08.040(E) City parking lot restriction	\$20.00
10.08.040(F) Access parking restriction	\$30.00
10.08.040(G) Fire hydrant parking restriction	\$35.00
10.08.040(H) Main Street parking restriction	\$20.00
10.08.040(I) Parking line restriction	\$20.00
10.08.040(J) Designated parking space restriction	\$20.00
10.08.040(K) Sidewalk and bicycle path restriction	\$35.00

2. Within fifteen (15) days of the time of the parking ticket, if the parking ticket has not been paid within the seven (7) days of the time of the parking ticket, pay to the

Hailey Clerk's Office, an additional fifteen dollars (\$15.00) for each parking ticket left upon the vehicle operated by the person. The additional fifteen dollars (\$15.00) is deemed necessary to defray administrative and clerical expenses. The failure of any operator to report and/or make such payments to the Hailey Clerk's Office within the times prescribed herein shall render the owner or operator thereof subject to the penalties as provided in Section 10.08.070(D).

C. If a vehicle is found stopped, standing or parked in any manner in violation of the provisions of this Chapter and the identity of the operator cannot be determined, the owner or person or entity in whose name the vehicle is registered or the named lessee in a rental or lease agreement of the vehicle shall be prima facie evidence of the person or entity responsible for the violation of the provisions of this Chapter.

D. Any owner or operator who shall stand, stop or park a vehicle in violation of the provisions of this Chapter is guilty of an infraction. The administrative procedure for payment of parking tickets for violations is set forth in Sections 10.08.070(A) and (B). In the event of nonpayment in accordance with the administrative procedure described in Sections 10.08.070(A) and (B), an infraction citation or complaint may be filed in the magistrate division of the district court for a parking violation or for failure to pay a parking penalty. A person or entity who pleads guilty or is found guilty of such an infraction shall be fined the fixed penalty and court costs set forth in the Idaho Infraction Rules for parking infractions and failure to pay parking infractions.

Section 5. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 6. Repealer Clause. All Ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 7. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this _____ day of _____, 2012.

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

Publish: Idaho Mountain Express _____, 2012

AGENDA ITEM SUMMARY

DATE: 11/06/2012 **DEPARTMENT:** CDD **DEPT. HEAD SIGNATURE:**MA

SUBJECT: Loan agreement and MOU between the City of Hailey and the Hailey Urban Renewal Agency

AUTHORITY: ID Code Title 50.29 and 50-2015 IAR _____ City Ordinance/Code

(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Loan Agreement:

- The loan agreement sets out the terms of repayment of the \$50,000 loan to the City of Hailey from the Hailey Urban Renewal Agency. The agreement states that the interest rate shall be 3% and the HURA shall make semi-annual payments equaling 75% of the total Tax Revenue Allocation proceeds to the City until the loan is paid off. According to the agreement, payments will begin as soon as the Agency receives its first tax increment proceeds. The City Attorney has made minor changes to the original promissory note and those changes are reflected in the current draft.

MOU:

- The MOU further defines the obligations of the City and the HURA to each other in respect to the \$50,000. Specifically, it defines the term of the MOU as being 20 years or until the City is reimbursed in full for the loan. Also, the MOU states that the "City shall establish a separate dedicated account for the benefit of the Agency [. . .] Agency and City shall establish an acceptable process for disbursement of Agency expenses from that account." The City Attorney as reviewed the MOU and has made no changes.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

\$50,000 will be transferred from the General Fund to an account established for the HURA. The City Treasurer will be addressing these financial transfers and accounts.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---|--|---|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Benefits Committee |
| <input 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"/> _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | <input type="checkbox"/> _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Approve the Loan Agreement and MOU and direct the City Treasurer to work with the Community Development Director on disbursement of the funds to the Hailey Urban Renewal Agency.

ACTION OF THE CITY COUNCIL:

Date : _____

City Clerk _____

FOLLOW-UP:

LIMITED RECOURSE PROMISSORY NOTE

This Limited Recourse Promissory Note (the "Note") is entered into as of the ____ day of _____ 2012, between the HAILEY URBAN RENEWAL AGENCY, a public body, corporate and politic, organized and existing under the Idaho Urban Renewal Law of 1965, as amended, Chapter 20, Title 50, Idaho Code, and the Local Economic Development Act of 1988 as amended, Chapter 29, Title 50, Idaho Code ("Agency"), and CITY OF HAILEY, a duly organized and existing municipality of the State of Idaho ("City").

WITNESSETH:

For One Hundred and no/100 Dollars (\$100.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and City hereby agree as follows:

1. **Definitions.** As used in this Note, the following capitalized terms shall have the indicated meanings:

- (a) "Act" means collectively the Idaho Urban Renewal Law of 1965, as amended, Title 50, Ch. 20, Idaho Code and the Idaho Economic Development Act of 1988, as amended, Title 50, Ch. 29, Idaho Code.
- (b) "Assessment Roll" means the assessment roll used in connection with the taxation of the Revenue Allocation Area by the Taxing Agencies, as such roll is equalized as provided by the laws of the State of Idaho.
- (c) "Effective Date" means the effective date of the Urban Renewal Project for revenue allocation financing provisions as authorized by Title 50, Chapter 29, Idaho Code, which will be the date the proposed Urban Renewal Plan is adopted by the Hailey City Council and effective upon the publication of the ordinance approving the proposed Urban Renewal Plan.
- (d) "Interest Rate" shall be 3% per year.
- (e) "Memorandum of Understanding" means that Memorandum of Understanding between Agency and City concerning the loan of City funds to Agency for the purpose of providing the Agency funding of administrative expenses related to the adoption of the proposed Urban Renewal Plan.
- (f) "Pre-Effective Date Rate" means the rate at which Taxes were levied by or for the Taxing Agencies upon the total sum of the assessed value of the taxable property in the Revenue Allocation Area, as shown on the base Assessment Roll prior to the Effective Date.

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Limited Recourse Promissory Note - 1

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~~(g)~~ “Resolution” means Resolution No. _____, adopted by the Agency on _____, and as supplemented or restated, pursuant to which this Note was authorized.

~~(gh)~~ “Revenue Allocation Area” means all taxable real and personal property within the Urban Renewal Project Area as described in the Urban Renewal Plan as adopted by the Hailey Urban Renewal Agency and approved by the Mayor and the City Council of the city of Hailey, Idaho.

~~(hi)~~ “Revenue Allocation Proceeds” means that portion of ~~†~~Taxes in excess of the ~~†~~Taxes which would be produced by the Pre-Effective Date Rate.

~~(ij)~~ “Taxes” means all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible, included within the Revenue Allocation Area.

~~(jk)~~ “Taxing Agencies” means the city of Hailey School District, Blaine County, and any other district or public corporation levying ~~†~~Taxes within the Revenue Allocation Area.

~~(kl)~~ “Urban Renewal Plan” shall mean that certain document entitled “Hailey Downtown Urban Renewal Plan” adopted by the City pursuant to the Act and City Ordinance and as amended from time to time.

~~(lm)~~ “Urban Renewal Project” means the improvements and other costs identified in the Urban Renewal Plan, including design, engineering, consulting, insurance, audit, planning, and administration costs of the Agency.

2. **Promise to Pay.** Agency promises to pay in lawful money of the United States of America, to the order of City, at such place as City may from time to time designate, the principal sum not to exceed Fifty Thousand Dollars (\$50,000), with interest thereupon at the Interest Rate from the effective date of this Note and continuing until the Note is fully paid off or the termination date of the Urban Renewal Plan, whichever occurs first.

Agency may redeem, at any time, in whole or in part, without penalty, the then principal amount outstanding. All payments by the Agency shall be applied first to interest and then to principal.

In conjunction with its receipt of Revenue Allocation Proceeds, the Agency agrees to make semi-annual payments of seventy-five percent (75%) of the Revenue Allocation Proceeds from the Revenue Allocation Area, commencing from the first date the Agency receives tax increment monies from the Revenue Allocation Area until the principal amount of Fifty Thousand Dollars (\$50,000), has been paid or the termination date of the Urban Renewal Plan, whichever occurs first. In the event the Urban Renewal Plan is not approved by the City Council or deemed invalid by a court of competent jurisdiction, the Note shall be deemed void.

Limited Recourse Promissory Note - 2

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3. **Partial Payments.** The acceptance by City of any payment which is less than the entire amount then due hereunder shall be on account only and shall not constitute a waiver of the obligation of Agency to pay such entire amount. The failure of Agency to pay the entire amount then due hereunder shall be and continue to be an event of default hereunder, notwithstanding the acceptance by City of such amount on account, and City shall thereafter, until such entire amount is paid (and notwithstanding acceptance by City thereafter of further sums on account or otherwise), be entitled to exercise all rights and remedies provided for herein upon the occurrence of an event of default hereunder. The acceptance by City of any amount due hereunder after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder, or to declare that an event of default has occurred hereunder.

4. **Default.** Provided that Agency has received Revenue Allocation Proceeds sufficient to make such payments, if any payment required under this Note is not made when due and within forty-five (45) days after notice is given by City to Agency that the same is due, the entire unpaid principal balance hereof, together with all accrued but unpaid interest due hereunder shall, at the option of the City, become due and payable without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Agency and all endorsers, guarantors, sureties, accommodation parties, and other persons at any time liable for all or any portion of the indebtedness evidenced hereby.

5. **Limited Recourse, Collection of Revenue Allocation.** Notwithstanding anything contained in this Note to the contrary, the recourse of City for payment of any amounts due hereunder shall be limited solely to the percentages set forth in Section 2, above, of the Revenue Allocation Proceeds from the Revenue Allocation Area, as the same are generated from time to time for the period necessary to obtain full payment of all principal and interest payable under this Note. Agency shall exercise its best efforts to cause the collection of all taxes, including the Revenue Allocation Proceeds. As of the termination date of the Urban Renewal Plan (or earlier period if redeemed), and upon Agency's performance of its obligations to receive and disburse revenue allocation generated during such periods to City, Agency's obligations under this Note shall cease, and said Note shall be deemed canceled and fully satisfied. In any event, City shall not be entitled to receive more than the outstanding principal and interest balance of this Note, and in the event Revenue Allocation Proceeds generated are in excess of the sums required to satisfy such Note balance during said payment term, then Agency shall be entitled to any and all such surplus or excess revenue allocation. The Agency's obligations hereunder are specifically limited to the obligations contained in Attachment No. 1 attached hereto and incorporated herein by reference.

6. **Assignment of Revenue Allocation Proceeds.** Agency hereby absolutely, unconditionally, and irrevocably transfers, assigns, and sets over to City for the term of this Note such amount of such Revenue Allocation Proceeds as is required to timely pay amounts becoming due hereunder until such time as all such amounts due hereon are paid in full or until the termination date of the Urban Renewal Plan.

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Limited Recourse Promissory Note - 3

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7. **Non-general Obligation.** As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the state of Idaho, or any of its political subdivisions or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Note.

8. **Miscellaneous.** Time is of the essence with respect to all obligations of the parties hereunder. The unenforceability or invalidity of any provisions hereof shall not affect the enforceability or validity of any other provisions hereof. The terms hereof shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Note is delivered in Hailey, Idaho, and shall be governed by Idaho law.

9. **General Provisions.** City may delay or forego enforcing any of its rights or remedies under this Note without losing them. Agency, to the extent allowed by law, waives presentment, demand for payment, protest, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, Agency shall not be released from liability.

IN WITNESS WHEREOF, this Note has been entered into as of the date and year first above written.

[signatures on following page]

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Limited Recourse Promissory Note - 4

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AGENCY:
HAILEY URBAN RENEWAL AGENCY

By: _____
Jason Miller, Chairman

ATTEST:

By: _____,
Vice-Chair

CITY:
CITY OF HAILEY

By: _____
Fritz X. Haemmerle,

ATTEST:

By _____
Mary Cone, Clerk

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Limited Recourse Promissory Note - 5

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Attachment 1

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Description of Financing of Agency-Funded Improvements

A. Obligation of the Agency to Pay to City a Portion of the Revenue Allocation (Tax Increment) Proceeds

Because the Agency administrative expenses are being financed through the City Loan, the Agency covenants and agrees to pay to the City a portion of the revenue allocation (tax increment) monies which the Agency shall actually receive within the proposed Revenue Allocation Area according to the terms and conditions described herein. The Incremental Tax Revenues are to be used to reimburse City for the loan of funds to assist Agency in the payment of administrative expenses related to the adoption of the Urban Renewal Plan.

1. Tax Increment Monies Are Sole Source of Agency Funding

Agency and City agree that the only source of monies available to Agency to pay City are the Incremental Tax Revenues to be received by Agency from the Revenue Allocation Area. Only the Incremental Tax Revenues from the Revenue Allocation Area shall be used to make the payments due to City pursuant to the Memorandum of Understanding. No payments shall be made by Agency to City which Agency may receive from time to time from other redevelopment project areas which have been or may hereinafter be established, designated, or adopted by Agency and City at some future time.

2. Contingencies of Payment

City understands that Agency is entitled to receive Incremental Tax Revenues, which are to be paid by Blaine County. City understands that the Incremental Tax Revenues shall become available to Agency only if and when the new development is constructed within the Revenue Allocation Area or other development from other revenues which Agency may receive is completed and has a current year assessed value which is greater than the assessed value of the Revenue Allocation Area "base year" established at the time the Urban Renewal Plan is adopted. City further understands that Agency is not a taxing agency under Idaho law, has no power to levy a property tax on real or personal property located within the Revenue Allocation Area, or to set a mill levy or rate of tax levy on real or personal property within the Revenue Allocation Area. Agency is entitled to receive tax increment funds from the Revenue Allocation Area for the period established by the Act and the Urban Renewal Plan. City has investigated the provisions of Idaho laws governing the receipt of Incremental Tax Revenues by Agency and assumes all risk that the anticipated Incremental Tax Revenues derived from the Revenue Allocation Area and in conformance with the Urban Renewal Plan will be paid to Agency and, if paid, that the amount of Incremental Tax Revenues will be sufficient to repay the obligation of Agency to City according to the terms and conditions contained in this Note. City further assumes the risk that the Agency may not receive any Revenue Allocation Proceeds if the

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proposed Urban Renewal Plan is not approved or declared invalid. City further assumes the risk that no changes or amendments will be made in the provisions of the Act or other tax statutes which would affect or impair either Agency's right or ability to receive the aforesaid Incremental Tax Revenues and to pay the indebtedness created by execution of the Note, the length of time said monies can be received, or the percentage or the amount of the Incremental Tax Revenues paid to or anticipated to be received by Agency based upon the current statutes.

3. Limitation on Making Payments

It is the intention of the parties that City shall only be paid from the Incremental Tax Revenues, if any, which are paid or are payable to Agency from the Revenue Allocation Area. If, for any reason, the Incremental Tax Revenues anticipated to be received by Agency from the Revenue Allocation Area are reduced, curtailed, or limited in any way by enactments, initiative referendum, or judicial decree, Agency shall have no obligation to pay the tax increment obligation to City as described in this Note from other sources or monies which Agency has or might hereinafter receive.

4. Percentage of Tax Increment Payment

Agency agrees to pay to City seventy-five percent (75%) of the overall Incremental Tax Revenues that Agency receives as set forth in the Act, Agency adopted policy, or Urban Renewal Plan, commencing upon receipt of Incremental Tax Revenues received by Agency from the Revenue Allocation Area and thereafter for a period through the termination date of the Urban Renewal Plan or until the principal amount is retired, whichever occurs first. Because of the limitation on available funds, no amortization schedule shall be prepared or used by the parties. Rather, Agency's obligation is to pay the applicable percentage of the overall Incremental Tax Revenues as required by the Act, Agency adopted policy, or the Urban Renewal Plan, received as described above, for the time period specified or until the principal amount, plus interest, is paid, whichever occurs first. Agency's obligation to City shall only be to pay above-described percentages of the amounts of Incremental Tax Revenues received by Agency, notwithstanding said amount may be reduced, curtailed, or limited in any way, and there shall be no interest or amounts added to the principal in the event the Incremental Tax Revenues are reduced, curtailed or limited in any way.

5. Time and Terms of Tax Increment Payments

a. For any funds to which City is entitled, the payments received each year by Agency from the ~~ad-valorem~~ taxes paid by taxpayers to the County Treasurer on the Revenue Allocation Area shall be paid to City within thirty (30) days following receipt of said funds by Agency. Agency anticipates receipt of these funds in late January and late July of each year from the ~~ad-valorem~~ taxes from the Revenue Allocation Area paid by property owners each year.

b. The Act, as amended, provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Blaine County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the Taxing Attachment I Limited Recourse Promissory Note - 2

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Agencies. Agency is not a guarantor of the assessment determination made by Blaine County Assessor or guarantor of collection of taxes by the Blaine County Treasurer.

c. The Increment Tax Revenues resulting from the incremental increase in assessed value of the Revenue Allocation Area (as determined from the assessment records of the Blaine County Assessor and the payment records of the Blaine County Treasurer) shall be paid to City if and only as they are paid to Agency by Blaine County, the entity which has the legal responsibility to collect property taxes.

d. Agency agrees to make semi-annual payments of the Incremental Tax Revenues, commencing from the first date Agency receives tax increment monies from the Revenue Allocation Area for the period as described in Section 5 of this Attachment, or until the principal amount or the amount adjusted, plus interest, has been paid; whichever occurs first. Agency shall have no obligation to make tax increment payments to City for taxes collected and paid to Agency beyond the term described in Section 5 of this Attachment.

e. The payments to City are secured solely by a pledge of Agency of the Incremental Tax Revenues that are produced by the Revenue Allocation Area, and City shall have no other recourse to Agency and no recourse whatever to any other party for payment.

6. Interest & Fees

Agency shall pay interest at the Interest Rate set forth above but shall not be subject to any additional fees or charges resulting from any default of this Note.

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Attachment 1 Limited Recourse Promissory Note - 3

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**CITY OF HAILEY
RESOLUTION NO. 2012-82**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF A LIMITED RECOURSE PROMISSORY
NOTE WITH THE HAILEY URBAN RENEWAL AGENCY**

WHEREAS, the City of Hailey desires to enter into an agreement with the Hailey Urban Renewal Agency under which Hailey Urban Renewal Agency will borrow \$50,000 from the City's general fund (current balance \$803,441) and in time will pay back this loan to the City of Hailey.

WHEREAS, the City of Hailey and Hailey Urban Renewal Agency have agreed to the terms and conditions of the Contract for Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Contract for Services between the City of Hailey and Hailey Urban Renewal Agency and that the Mayor is authorized to execute the attached Agreement,

Passed this 5th day of November, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

LIMITED RECOURSE PROMISSORY NOTE

This Limited Recourse Promissory Note (the "Note") is entered into as of the ____ day of _____ 2012, between the HAILEY URBAN RENEWAL AGENCY, a public body, corporate and politic, organized and existing under the Idaho Urban Renewal Law of 1965, as amended, Chapter 20, Title 50, Idaho Code, and the Local Economic Development Act of 1988 as amended, Chapter 29, Title 50, Idaho Code ("Agency"), and CITY OF HAILEY, a duly organized and existing municipality of the State of Idaho ("City").

WITNESSETH:

For One Hundred and no/100 Dollars (\$100.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and City hereby agree as follows:

1. Definitions. As used in this Note, the following capitalized terms shall have the indicated meanings:

- (a) "Act" means collectively the Idaho Urban Renewal Law of 1965, as amended, Title 50, Ch. 20, Idaho Code and the Idaho Economic Development Act of 1988, as amended, Title 50, Ch. 29, Idaho Code.
- (b) "Assessment Roll" means the assessment roll used in connection with the taxation of the Revenue Allocation Area by the Taxing Agencies, as such roll is equalized as provided by the laws of the State of Idaho.
- (c) "Effective Date" means the effective date of the Urban Renewal Project for revenue allocation financing provisions as authorized by Title 50, Chapter 29, Idaho Code, which will be the date the proposed Urban Renewal Plan is adopted by the Hailey City Council and effective upon the publication of the ordinance approving the proposed Urban Renewal Plan.
- (d) "Interest Rate" shall be 3% per year.
- (e) "Memorandum of Understanding" means that Memorandum of Understanding between Agency and City concerning the loan of City funds to Agency for the purpose of providing the Agency funding of administrative expenses related to the adoption of the proposed Urban Renewal Plan.
- (f) "Pre-Effective Date Rate" means the rate at which Taxes were levied by or for the Taxing Agencies upon the total sum of the assessed value of the taxable property in the Revenue Allocation Area, as shown on the base Assessment Roll prior to the Effective Date.

(g) “Revenue Allocation Area” means all taxable real and personal property within the Urban Renewal Project Area as described in the Urban Renewal Plan as adopted by the Hailey Urban Renewal Agency and approved by the Mayor and the City Council of the city of Hailey, Idaho.

(h) “Revenue Allocation Proceeds” means that portion of Taxes in excess of the Taxes which would be produced by the Pre-Effective Date Rate.

(i) “Taxes” means all levies on an ad valorem basis upon land, real property, personal property, or any other property, tangible or intangible, included within the Revenue Allocation Area.

(j) “Taxing Agencies” means the city of Hailey School District, Blaine County, and any other district or public corporation levying Taxes within the Revenue Allocation Area.

(k) “Urban Renewal Plan” shall mean that certain document entitled “Hailey Downtown Urban Renewal Plan” adopted by the City pursuant to the Act and City Ordinance and as amended from time to time.

(l) “Urban Renewal Project” means the improvements and other costs identified in the Urban Renewal Plan, including design, engineering, consulting, insurance, audit, planning, and administration costs of the Agency.

2. **Promise to Pay.** Agency promises to pay in lawful money of the United States of America, to the order of City, at such place as City may from time to time designate, the principal sum not to exceed Fifty Thousand Dollars (\$50,000), with interest thereupon at the Interest Rate from the effective date of this Note and continuing until the Note is fully paid off or the termination date of the Urban Renewal Plan, whichever occurs first.

Agency may redeem, at any time, in whole or in part, without penalty, the then principal amount outstanding. All payments by the Agency shall be applied first to interest and then to principal.

In conjunction with its receipt of Revenue Allocation Proceeds, the Agency agrees to make semi-annual payments of seventy-five percent (75%) of the Revenue Allocation Proceeds from the Revenue Allocation Area, commencing from the first date the Agency receives tax increment monies from the Revenue Allocation Area until the principal amount of Fifty Thousand Dollars (\$50,000), has been paid or the termination date of the Urban Renewal Plan, whichever occurs first. In the event the Urban Renewal Plan is not approved by the City Council or deemed invalid by a court of competent jurisdiction, the Note shall be deemed void.

3. **Partial Payments.** The acceptance by City of any payment which is less than the entire amount then due hereunder shall be on account only and shall not constitute a waiver of the obligation of Agency to pay such entire amount. The failure of Agency to pay the

entire amount then due hereunder shall be and continue to be an event of default hereunder, notwithstanding the acceptance by City of such amount on account, and City shall thereafter, until such entire amount is paid (and notwithstanding acceptance by City thereafter of further sums on account or otherwise), be entitled to exercise all rights and remedies provided for herein upon the occurrence of an event of default hereunder. The acceptance by City of any amount due hereunder after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder, or to declare that an event of default has occurred hereunder.

4. **Default.** Provided that Agency has received Revenue Allocation Proceeds sufficient to make such payments, if any payment required under this Note is not made when due and within forty-five (45) days after notice is given by City to Agency that the same is due, the entire unpaid principal balance hereof, together with all accrued but unpaid interest due hereunder shall, at the option of the City, become due and payable without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Agency and all endorsers, guarantors, sureties, accommodation parties, and other persons at any time liable for all or any portion of the indebtedness evidenced hereby.
5. **Limited Recourse, Collection of Revenue Allocation.** Notwithstanding anything contained in this Note to the contrary, the recourse of City for payment of any amounts due hereunder shall be limited solely to the percentages set forth in Section 2, above, of the Revenue Allocation Proceeds from the Revenue Allocation Area, as the same are generated from time to time for the period necessary to obtain full payment of all principal and interest payable under this Note. Agency shall exercise its best efforts to cause the collection of all Taxes, including the Revenue Allocation Proceeds. As of the termination date of the Urban Renewal Plan (or earlier period if redeemed), and upon Agency's performance of its obligations to receive and disburse revenue allocation generated during such periods to City, Agency's obligations under this Note shall cease, and said Note shall be deemed canceled and fully satisfied. In any event, City shall not be entitled to receive more than the outstanding principal and interest balance of this Note, and in the event Revenue Allocation Proceeds generated are in excess of the sums required to satisfy such Note balance during said payment term, then Agency shall be entitled to any and all such surplus or excess revenue allocation. The Agency's obligations hereunder are specifically limited to the obligations contained in Attachment No. 1 attached hereto and incorporated herein by reference.
6. **Assignment of Revenue Allocation Proceeds.** Agency hereby absolutely, unconditionally, and irrevocably transfers, assigns, and sets over to City for the term of this Note such amount of such Revenue Allocation Proceeds as is required to timely pay amounts becoming due hereunder until such time as all such amounts due hereon are paid in full or until the termination date of the Urban Renewal Plan.
7. **Non-general Obligation.** As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the state of Idaho, or any of its political subdivisions or give rise to a charge against their

general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Note.

8. **Miscellaneous.** Time is of the essence with respect to all obligations of the parties hereunder. The unenforceability or invalidity of any provisions hereof shall not affect the enforceability or validity of any other provisions hereof. The terms hereof shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Note is delivered in Hailey, Idaho, and shall be governed by Idaho law.
9. **General Provisions.** City may delay or forego enforcing any of its rights or remedies under this Note without losing them. Agency, to the extent allowed by law, waives presentment, demand for payment, protest, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, Agency shall not be released from liability.

IN WITNESS WHEREOF, this Note has been entered into as of the date and year first above written.

[signatures on following page]

AGENCY:
HAILEY URBAN RENEWAL AGENCY

By: _____
Jason Miller, Chairman

ATTEST:

By: _____
_____, Vice-Chair

CITY:
CITY OF HAILEY

By: _____
Fritz X. Haemmerle,

ATTEST:

By _____
Mary Cone, Clerk

Attachment 1

Description of Financing of Agency-Funded Improvements

A. Obligation of the Agency to Pay to City a Portion of the Revenue Allocation (Tax Increment) Proceeds

Because the Agency administrative expenses are being financed through the City Loan, the Agency covenants and agrees to pay to the City a portion of the revenue allocation (tax increment) monies which the Agency shall actually receive within the proposed Revenue Allocation Area according to the terms and conditions described herein. The Incremental Tax Revenues are to be used to reimburse City for the loan of funds to assist Agency in the payment of administrative expenses related to the adoption of the Urban Renewal Plan.

1. Tax Increment Monies Are Sole Source of Agency Funding

Agency and City agree that the only source of monies available to Agency to pay City are the Incremental Tax Revenues to be received by Agency from the Revenue Allocation Area. Only the Incremental Tax Revenues from the Revenue Allocation Area shall be used to make the payments due to City pursuant to the Memorandum of Understanding. No payments shall be made by Agency to City which Agency may receive from time to time from other redevelopment project areas which have been or may hereinafter be established, designated, or adopted by Agency and City at some future time.

2. Contingencies of Payment

City understands that Agency is entitled to receive Incremental Tax Revenues, which are to be paid by Blaine County. City understands that the Incremental Tax Revenues shall become available to Agency only if and when the new development is constructed within the Revenue Allocation Area or other development from other revenues which Agency may receive is completed and has a current year assessed value which is greater than the assessed value of the Revenue Allocation Area "base year" established at the time the Urban Renewal Plan is adopted. City further understands that Agency is not a taxing agency under Idaho law, has no power to levy a property tax on real or personal property located within the Revenue Allocation Area, or to set a mill levy or rate of tax levy on real or personal property within the Revenue Allocation Area. Agency is entitled to receive tax increment funds from the Revenue Allocation Area for the period established by the Act and the Urban Renewal Plan. City has investigated the provisions of Idaho laws governing the receipt of Incremental Tax Revenues by Agency and assumes all risk that the anticipated Incremental Tax Revenues derived from the Revenue Allocation Area and in conformance with the Urban Renewal Plan will be paid to Agency and, if paid, that the amount of Incremental Tax Revenues will be sufficient to repay the obligation of Agency to City according to the terms and conditions contained in this Note. City further assumes the risk that the Agency may not receive any Revenue Allocation Proceeds if the proposed Urban Renewal Plan is not approved or declared invalid. City further assumes the risk

Attachment 1 - 1

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that no changes or amendments will be made in the provisions of the Act or other tax statutes which would affect or impair either Agency's right or ability to receive the aforesaid Incremental Tax Revenues and to pay the indebtedness created by execution of the Note, the length of time said monies can be received, or the percentage or the amount of the Incremental Tax Revenues paid to or anticipated to be received by Agency based upon the current statutes.

3. Limitation on Making Payments

It is the intention of the parties that City shall only be paid from the Incremental Tax Revenues, if any, which are paid or are payable to Agency from the Revenue Allocation Area. If, for any reason, the Incremental Tax Revenues anticipated to be received by Agency from the Revenue Allocation Area are reduced, curtailed, or limited in any way by enactments, initiative referendum, or judicial decree, Agency shall have no obligation to pay the tax increment obligation to City as described in this Note from other sources or monies which Agency has or might hereinafter receive.

4. Percentage of Tax Increment Payment

Agency agrees to pay to City seventy-five percent (75%) of the overall Incremental Tax Revenues that Agency receives as set forth in the Act, Agency adopted policy, or Urban Renewal Plan, commencing upon receipt of Incremental Tax Revenues received by Agency from the Revenue Allocation Area and thereafter for a period through the termination date of the Urban Renewal Plan or until the principal amount is retired, whichever occurs first. Because of the limitation on available funds, no amortization schedule shall be prepared or used by the parties. Rather, Agency's obligation is to pay the applicable percentage of the overall Incremental Tax Revenues as required by the Act, Agency adopted policy, or the Urban Renewal Plan, received as described above, for the time period specified or until the principal amount, plus interest, is paid, whichever occurs first. Agency's obligation to City shall only be to pay above-described percentages of the amounts of Incremental Tax Revenues received by Agency, notwithstanding said amount may be reduced, curtailed, or limited in any way, and there shall be no interest or amounts added to the principal in the event the Incremental Tax Revenues are reduced, curtailed or limited in any way.

5. Time and Terms of Tax Increment Payments

a. For any funds to which City is entitled, the payments received each year by Agency from the Taxes paid by taxpayers to the County Treasurer on the Revenue Allocation Area shall be paid to City within thirty (30) days following receipt of said funds by Agency. Agency anticipates receipt of these funds in late January and late July of each year from the Taxes from the Revenue Allocation Area paid by property owners each year.

b. The Act, as amended, provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Blaine County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the Taxing Agencies. Agency is not a guarantor of the assessment determination made by Blaine County Assessor or guarantor of collection of Taxes by the Blaine County Treasurer.

c. The Increment Tax Revenues resulting from the incremental increase in assessed value of the Revenue Allocation Area (as determined from the assessment records of the Blaine County Assessor and the payment records of the Blaine County Treasurer) shall be paid to City if and only as they are paid to Agency by Blaine County, the entity which has the legal responsibility to collect Taxes.

d. Agency agrees to make semi-annual payments of the Incremental Tax Revenues, commencing from the first date Agency receives tax increment monies from the Revenue Allocation Area for the period as described in Section 5 of this Attachment, or until the principal amount or the amount adjusted, plus interest, has been paid; whichever occurs first. Agency shall have no obligation to make tax increment payments to City for Taxes collected and paid to Agency beyond the term described in Section 5 of this Attachment.

e. The payments to City are secured solely by a pledge of Agency of the Incremental Tax Revenues that are produced by the Revenue Allocation Area, and City shall have no other recourse to Agency and no recourse whatever to any other party for payment.

6. Interest & Fees

Agency shall pay interest at the Interest Rate set forth above but shall not be subject to any additional fees or charges resulting from any default of this Note.

**CITY OF HAILEY
RESOLUTION NO. 2012-83**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING
BETWEEN THE HAILEY URBAN RENEWAL AGENCY AND THE CITY OF HAILEY**

WHEREAS, the City of Hailey desires to enter into an agreement with the Hailey Urban Renewal Agency under which Hailey Urban Renewal Agency will pay back the \$50,000 loan according to the details contained in the Memorandum of Understanding to the City of Hailey.

WHEREAS, the City of Hailey and Hailey Urban Renewal Agency have agreed to the terms and conditions of the Memorandum of Understanding, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Memorandum of Understanding between the City of Hailey and Hailey Urban Renewal Agency and that the Mayor is authorized to execute the attached Agreement,

Passed this 5th day of November, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF HAILEY AND THE HAILEY URBAN RENEWAL AGENCY**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is effective on the date last executed below by and between the city of Hailey ("City") and the Hailey Urban Renewal Agency ("Agency").

RECITALS

A. City is a duly organized and existing municipal corporation of the state of Idaho, located in Blaine County, Idaho.

B. Agency is an independent public body corporate and politic, organized and existing pursuant to Idaho Code § 50-2001 *et seq.*

C. Pursuant to Idaho Code §§ 50-2007(f) and 50-2015, City and Agency are authorized and empowered to enter into such contracts as may be necessary to carry out the purposes of the Idaho Urban Renewal Law, including contracts for the furnishing of financial assistance by City to Agency.

D. Pursuant to Idaho Code § 50-2015, City has authorized financial assistance to Agency (the "City Loan") for costs in the amount of \$50,000 (the "Loan Amount") for which Agency agrees to reimburse City as outlined herein.

E. The Agency intends to use the funds from the City Loan to pay for those certain administrative, legal, consultant, and other related expenses for the preparation of the necessary eligibility report, urban renewal plan, and other related documents for the activities of the Agency leading to the consideration and approval of an urban renewal plan, which plan will include a revenue allocation provision by the Hailey City Council.

F. City and Agency acknowledge that the sole source of Agency funds for reimbursement of the City Loan will be revenue allocation funds generated from new development within the proposed and contemplated urban renewal project area (the "Proposed Project Area") after the approval of the urban renewal plan.

G. Nothing herein shall be deemed to impede, hinder, or prevent either the Agency or the City to render its discretion in the approval process for consideration of the proposed urban renewal plan.

H. The City and the Agency have, during duly noticed public meetings, authorized execution of this MOU.

AGREEMENT

NOW, THEREFORE, it is understood between City and Agency as follows:

1. Agency agrees to reimburse City for the Loan Amount in an amount equal to seventy-five percent (75%) of Agency's yearly revenue allocation proceeds (tax increment) from the Proposed Project Area until this City Loan is fully paid.

2. Interest shall accrue on the Loan Amount at the rate of three percent (3%) per year.
3. Agency's reimbursement payments under this MOU may be made in equal semi-annual installments on or before the 15th day of February and August of each year.
4. The term of this MOU shall be twenty (20) years, or until City is reimbursed in full, whichever occurs first.
5. This MOU shall be deemed terminated and of no further force and effect in the event the Hailey City Council does not approve an urban renewal plan for the Proposed Project Area or the Proposed Project Area is ultimately set aside by an action before a court of competent jurisdiction.
6. City shall establish a separate dedicated account for the benefit of the Agency in the amount of \$50,000. Agency and City shall establish an acceptable process for the disbursement of Agency expenses from that account.
7. This MOU constitutes the entire agreement between the parties and supersedes all other agreements and understandings, written and oral, between the parties with respect to the subject matter hereof. The parties hereto may, at any time hereafter, modify or amend this MOU by a subsequent written agreement executed by both parties. This MOU may not, however, be modified or amended orally, nor shall this MOU be deemed modified or amended in any way by any act of either of the parties hereto.
8. All parties hereto are or have been afforded the opportunity to be represented by counsel in the course of the negotiations for and the preparation of this MOU; accordingly, in all cases, the language of this MOU will be construed simply, according to its fair meaning, and not strictly for or against any party.
9. No covenant, term, or condition, or breach thereof, shall be deemed waived, except by written consent of the party against whom waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any other covenant, term, or condition herein or of any future breach of the provision in question. Acceptance by a party of any performance by another party after the time the same shall have become due shall not constitute a waiver by the first party of the breach or default of any such covenant, term, or condition unless otherwise expressly agreed to in writing by the first party.
10. This MOU may be executed in counterparts, and once so executed by both parties hereto, each such counterpart shall be deemed to be an original, but all such counterparts together shall constitute but one agreement.
11. If any provision of this MOU or its application to any person or circumstance is held invalid, the remainder of this MOU or the application to other persons or circumstances shall not be affected.
12. The Parties represent and warrant that they are authorized to execute this Agreement on behalf of the entities indicated below.

[signatures on following page]

CITY

AGENCY

_____, Mayor

_____, Chairman

Date signed: _____

Date signed: _____

Attested:

_____, City Clerk

AGENDA ITEM SUMMARY

DATE: 11/5/2012

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Third Amendment to Sweetwater PUD Agreement and Resolution No. 2012-84

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed Third Amendment to Planned Unit Development Agreement (Sweetwater). The present Sweetwater PUD agreement provides that Sweetwater is responsible for constructing new curb, gutter and sidewalk adjacent to Woodside along the owner's property to the south of Countryside. We presented the cost of doing the work under the present contract to the Sweetwater owner and proposed that Sweetwater pay that amount now and be relieved of doing the work in the future. Sweetwater has agreed to this suggestion. The enclosed Third Amendment provides that Hailey receives \$17,000 now and that Sweetwater is relieved of the obligation to construct curb, gutter and sidewalk in the future.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Caselle # _____
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)
____ City Attorney ____ Clerk / Finance Director ____ Engineer ____ Building
____ Library ____ Planning ____ Fire Dept. _____
____ Safety Committee ____ P & Z Commission ____ Police _____
____ Streets ____ Public Works, Parks ____ Mayor _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve the Third Amendment to Planned Unit Development Agreement (Sweetwater) and the associated Resolution No. _____, and authorize the mayor to sign.

2012-84

FOLLOW-UP REMARKS:

**CITY OF HAILEY
RESOLUTION NO. 2012-84**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE THIRD AMENDMENT TO PLANNED UNIT DEVELOPMENT
(PUD) AGREEMENT (SWEETWATER), FOR \$17,000 PAYMENT IN LIEU OF
FUTURE CONSTRUCTION OF CURB, GUTTER, SIDEWALK OBLIGATION, THESE
IMPROVEMENTS WERE TO BE CONSTRUCTED BY SWEETWATER, NOW THESE
IMPROVEMENTS WILL BE CONSTRUCTED BY THE CITY WITH THIS PAYMENT
OF \$17,000.**

WHEREAS, the City of Hailey desires to enter into the Third Amendment to Sweetwater PUD with Hailey Sweetwater, LLC. under which Hailey Sweetwater, LLC. will allow the City to construct the Improvements with their payment of \$17,000 and that as a condition of the PUD releases the future construction obligation to Hailey Sweetwater, LLC.

WHEREAS, the City of Hailey and Hailey Sweetwater, LLC. have agreed to the terms and conditions of the Third Amendment to Sweetwater PUD, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Third Amendment To Sweetwater PUD between the City of Hailey and with Hailey Sweetwater, LLC and that the Mayor is authorized to execute the attached Agreement,

Passed this 5th day of NOVEMBER, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

**THIRD AMENDMENT TO PLANNED UNIT DEVELOPMENT AGREEMENT
(SWEETWATER)**

This Third Amendment to Planned Unit Development Agreement ("**Third Amendment**") is entered into this ____ day of November, 2012, by and between the City of Hailey ("**City**"); and Hailey Sweetwater Partners, LLC, an Idaho limited liability company ("**Hailey Sweetwater**")

RECITALS

A. Hailey Sweetwater is the successor-in-interest to Sweetwater Company, LLC, an Idaho limited liability company ("**Sweetwater**"), with respect to that certain Planned Unit Development Agreement with the City dated August 14, 2006 ("**PUD Agreement**"), and recorded on December 15, 2006, as Instrument No. 542953, records of the County Recorder, Blaine County, Idaho. The PUD Agreement sets forth contractual obligations for a multi-use project consisting of 421 residential units and related improvements in Hailey, Idaho, ("**Development**" or "**Project**").

B. The PUD Agreement was amended by the First Amendment to the Planned Unit Development Agreement ("**First Amendment**") dated December 18, 2009 and recorded on December 29, 2009 as Instrument No. 573775, records of the County Recorder, Blaine County, Idaho and by the Second Amendment to Planned Unit Development Agreement ("**Second Amendment**") dated December 27, 2010 and recorded December 29, 2010 as Instrument No. 583748, records of the County Recorder, Blaine County, Idaho.

C. As part of the City's Woodside Boulevard Reconstruction Project ("**Woodside Project**") currently underway, the City has made certain improvements to curb, gutter and sidewalks adjacent to the Development which are also included in the improvements required to be completed by Sweetwater as part of Phase III of the Development under the PUD Agreement, as amended.

D. The City has requested Hailey Sweetwater to contribute now toward the cost of the adjacent improvements Woodside Project, and Hailey Sweetwater is in agreement on the condition that its future obligations to construct improvements under the PUD Agreement be adjusted accordingly.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and the payment by Hailey Sweetwater to City of Seventeen Thousand Dollars (\$17,000.00), the receipt of which is hereby acknowledged by City, the City and Hailey Sweetwater agree to amend and supplement the PUD Agreement, as follows:

1. Paragraph 9 of the PUD Agreement is deleted in its entirety and replaced with the following:

9. Phasing. Exhibit "B" to the PUD Agreement identifies Phases of the Project and generally shows where the water and sewer mains, road improvements, curb, gutter and sidewalks within the public right-of-ways shall be constructed. Notwithstanding the foregoing, Sweetwater may develop the Project without regard to Phasing or time restrictions associated with any prior Phasing Plan. 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 building within the Project, shall be installed prior to the completion of that building. Notwithstanding the foregoing, the following schedule for water, sewer, road improvements, curb, gutter and sidewalks within the public rights-of-way shall apply. **Stricken language in subparagraphs a, b, c and d, below, indicates infrastructure accepted as completed or waived by the City and no longer required as of the time of this Third Amendment.**

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.~~

~~Prior to the completion of the buildings identified on Phase I of Exhibit B: sidewalks (7 feet wide) installed on the north side of the road between Woodside and Shenandoah.~~

Prior to the completion of buildings identified in Phase III of Exhibit B: 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 the buildings identified in Phase I on Exhibit B: 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 the buildings identified in Phase II on Exhibit B: 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 the buildings identified in Phase III of Exhibit B: 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 the building identified in Phase IV of Exhibit B: 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 the buildings identified in Phase I on Exhibit B: 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 the buildings identified in Phase III on Exhibit B: 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~~

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 any improvements referenced herein are not completed within the 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 buildings or require the posting of sufficient security to ensure the completion of such improvements prior to the issuance of such permits.

~~Pursuant to the First Amendment, Sweetwater deposited Ninety Six Thousand Five Hundred Ninety Two and 50/100 Dollars (\$96,592.50) as security for the re-vegetation/seeding of the property located within the areas identified as Phases II, III and IV on Exhibit B with native drought resistant grasses ("Landscaping"), as a result of the delay in developing these areas. Landscaping shall also include sufficient irrigation for two growing seasons. Sweetwater shall complete the Landscaping before September 1, 2011 unless extended for good cause by the city engineer, and the City shall retain such security until and the Landscaping has been completed, at which time the City shall release such security. If Sweetwater fails to complete the Landscaping as required, the City has the right, but not the obligation, after first giving Sweetwater notice and a sixty (60) day period within which to complete the Landscaping, to utilize the security to complete the Landscaping. In such event, if the cost to complete 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 Landscaping. Notwithstanding the foregoing, the security posted shall be reduced on a pro rata basis to reflect the partial completion of said 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.~~

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 identified at the discretion of Sweetwater, without regard to phases identified on Exhibit B, 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 any building, Sweetwater shall submit to the City Planning Administrator for approval a schedule for the plat encompassing said building 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 groupings of buildings included on plats. Notwithstanding the foregoing, the parties agree that reasonable changes may be made to such groupings as a result of unanticipated changes in construction schedules.

2. Construction. This Third Amendment and the PUD Agreement, as amended by the First Amendment and the Second Amendment, constitute one agreement between the City and Sweetwater. In the event of any inconsistency between this Third Amendment and the PUD Agreement as amended by the First Amendment and the Second Amendment, the terms of this Third Amendment shall govern. All capitalized terms in this Third Amendment shall have the respective meanings in the PUD Agreement when used in this Third Amendment, unless otherwise defined herein.

3. Ratification. The PUD Agreement, as amended by the First Amendment, the Second Amendment and this Third Amendment, is hereby ratified and affirmed. This Third Amendment remains valid and effective even if the City fails to fully complete the improvements specified in the Woodside Project.

