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HAILEY, BLAINE, IDAHO  
2004-03-09 12:32:00 No. of Pages: 11  
Recorded for : CITY OF HAILEY  
MARSHA RIEMANN Fee: 33.00  
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Index to: AGREEMENT/CORRECTION

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(SPACE ABOVE LINE FOR RECORDER'S USE)

**PLANNED UNIT DEVELOPMENT AGREEMENT  
FOR COPPER RANCH**

This Planned Unit Development Agreement ("**Agreement**") is entered into this 2nd day of May, 2003, by and between the City of Hailey ("**City**") and Copper Ranch, LLC., an Idaho limited liability company ("**Ranch**").

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

A. Ranch is desirous of developing a high end multiple use 135 unit condominium project and related improvements ("**Project**"), all as set forth in that certain Planned Unit Development Application, dated December 13, 2002 ("**PUD Application**") and which said PUD Application has been formally filed with City;

B. The property ("**Property**") upon which the Project is to be constructed is legally described as Lot 4, Block 67, Woodside Plat 18 according to the plat thereof on file in the Office of the Blaine County Recorder, Blaine County, Idaho and a parcel of real property described on attached Exhibit "A", to be known as Lots 13 and 14, Block 5, Woodside Plat 27. The Property is subject to City's Land Use Ordinances and Zoning Regulations;

C. Ranch intends on developing an indoor swimming pool, locker rooms, a weight room and indoor tennis courts that will be available for members of a club (the "**Club**") consisting of members of the Property's owners' association and members of the public;

D. 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;

E. City approved the PUD Application on March 31, 2003, and adopted Findings of Fact and Conclusions of Law on May 1, 2003 ("**Decision**") which are incorporated into this Agreement by this reference;

F. In order to ensure that the proposed Project is constructed consistent with City's applicable ordinances and regulations, the City and Ranch deem it in their mutual interest to enter into an agreement with regard to the manner and timing of construction, Ranch's maintenance and management thereof, construction and landscaping of the Property and other

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factors affecting the general health, safety and welfare of the citizens of City and users of the Property;

G. 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; and

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

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:

2. **Description and Location of Property.** The Property encompassed within the PUD Application is approximately ten (10) acres, zoned Limited Business (LB) and General Residential (GR), and has been approved by the City for the purposes of this Agreement as a Planned Unit Development, subject to certain conditions contained herein.

3. **Provided Amenities of Project.** Ranch agrees to construct the Project in accordance with this Agreement, City's approval of the PUD Application and the drawings and site plans submitted with the PUD Application. The Project shall include construction of the improvements depicted in the PUD Application, including the following:

(a) Recreational Facilities including 3 indoor tennis courts, a 13,600 square foot fitness facility, a four-lane 25 yard indoor swimming pool, and related spa and locker areas.

(b) Transit Facilities. A bus pullout and weather protected shelter on Woodside Boulevard, as shown on the PUD application.

4. **PUD Approval.** The PUD approval is granted, including the waivers of the setback requirements and allowance of a private street, subject to the following conditions:

(a) All parking, including dimension of stalls, on paved areas shall be provided as shown in the PUD Application ("**Improved Parking Spaces**"). The parking of recreational vehicles, trailers and boats shall be prohibited in the outdoor Improved Parking Spaces.

(b) Ranch shall improve the Property with landscaping as described and depicted in the Landscape Plan included in the PUD Application.

(c) Ranch shall develop the Project in five (5) phases as shown in the Phasing Site Plan attached as Exhibit "B" (the "Plan") in accordance with the following schedule:

<u>Phase</u>	<u>Start Date</u>	<u>Duration</u>	<u>Construction</u>
1.	June 2003	Nine Months	Remodel athletic facility, applicable site infrastructure, commercial pods, bus transit facility,

			Buildings 1 through 6, and related landscaping
2.	May 2004	Nine Months	Buildings 7 through 11, and related landscaping
3.	December 2004	Nine Months	Buildings 12 through 16, Buildings 28 and 29, and related landscaping
4.	September 2005	Nine Months	Buildings 17 through 21, and related landscaping
5.	June 2006	Nine Months	Buildings 22 through 27, and related landscaping

(d) Snow storage shall be provided by Ranch as set forth in the Snow Storage Plan submitted as part of the PUD Application.

(e) The following Friedman Memorial Airport noise impact disclosure shall be included on the plat, and all contracts for sales of condominium units:

“The Buyer has been advised that the Copper Ranch PUD is located near the Friedman Memorial Airport in a noise impacted area; that present and future noise impacts might be annoying to the Buyer and might interfere with the unrestricted use and enjoyment of the property; that these noise impacts might change over time by virtue of greater numbers of aircraft, louder aircraft, seasonal variations, and time of day variations; that changes in Airport, aircraft and air traffic control operating procedures or in Airport layout could result in increased noise impacts and that the Buyer’s own personal perceptions of the noise impact could change and that his or her sensitivity to aircraft noise could increase.”

(f) Copper Ranch Lane, Copper Ranch Way, White Cloud Lane and Ironwood Cloud shall be signed as a fire lane prohibiting parking.

(g) A sign permit shall be obtained for any signage exceeding four square feet.

(h) Membership in the Club at Copper Ranch shall be available to the public. The recreation building shall be protected by an automatic sprinkler system. As partial satisfaction of the requirements set forth in Section 10.3.8 of Hailey’s Zoning Ordinance, Ranch shall pay to the City an in-lieu fee of \$71,415, plus interest accruing at the rate of 6% per annum from the date of this Agreement, which shall be used to improve Woodside Central Park and for no other purpose. The parties acknowledge and agree that the payment of the in-lieu fee provided herein is fair and equitable, that the fee is a reasonable approximation of the public benefit contemplated by Section 10.3.8, and that the fee is not an impact or capital facilities fee. The fee shall be paid in two installments. The first installment shall be in the amount of 20% of the fee and accrued interest and shall be paid upon the issuance of the first certificate of occupancy for a residential unit in Phase 1 of the Project. The remainder of the fee, or 80% of the fee and accrued interest shall be paid upon the issuance of a building permit for any structure within Phase 2 of the Project. In the event Ranch fails to pay the City 80% of the fee and accrued interest at the time of the application of a building permit for any structure within Phase 2 of the Project, the City shall be entitled to withhold the issuance of a building permit for any structure within Phases 2 through 6, inclusive, of the Project.

(i) Engineering plans for the following infrastructure improvements shall be submitted by Ranch to the City for approval and installed in accordance with the applicable City standards and in accordance with the schedule set forth in Paragraph 4(c) of this Agreement, as follows:

Phase 1: a) water and sewer main lines for the entire Project as approved by the City in its Decision, b) water and sewer service lines and meters for the recreation facility, commercial pods and Buildings 1 through 6, inclusive, c) separate water service for irrigation for Phase 1, d) construction and paving of White Cloud Lane, including rolled curbs as shown on the Plan for Phase 1, and e) adequate drainage facilities for Phase 1. In the event Ranch fails to construct the above described infrastructure improvements for Phase 1 at the time of the application of a building permit for any structure within Phase 2 of the Project, the City shall be entitled to withhold the issuance of a building permit for any structure within Phases 2 through 6, inclusive, of the Project.

Phases 2 through 5: a) separate water and sewer service lines and meters for each residential unit to be constructed during the phase in which the unit is contained, b) separate water service for irrigation during the phase in which the units are contained, c) extension and paving of Copper Ranch Lane, Copper Ranch Way and Ironwood Court, including rolled curbs as shown on the Plan for each Phase in which the units are contained, and d) adequate drainage facilities for each Phase in which the units are contained.

Phase 4: In addition to the foregoing, the path system depicted in the Plan shall be completed during Phase 4 and before the issuance of a building permit for any structure within Phase 5.

In the event of any inconsistency between the terms and provisions of Paragraphs 4(c) and 4(i) of this Agreement, the terms and provisions of Paragraph 4(i) of this Agreement shall control.

**5. Extension of Copper Ranch Lane and Landscaping.** In the event Ranch fails to obtain a building permit for the residential units in Phases 2 through 5, inclusive, on or before the dates set forth in Paragraph 4(c) of this Agreement, then the City shall have the right, but not necessarily the obligation, to complete the extension and paving of Copper Ranch Lane and landscaping of the remainder of the Property. At the time Ranch seeks a building permit for any improvement within Phase 1, the Ranch shall post sufficient security in the form of a cash deposit, set aside agreement or letter of credit, equivalent to 150% of an engineer's estimate for the complete performance of the extension and paving of Copper Ranch Lane and construction of the path system as approved by the City in the PUD approval and landscaping of the remainder of the Property as described hereinafter. The landscaping shall consist of native fescue grasses that are drought resistant and an underground water sprinkler system of sufficient size and scope to irrigate the grass. The City shall retain such security until all buildings and infrastructure improvements have 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 extension and paving of Copper Ranch Lane and landscaping of the remainder of the Property is greater than the amount of the security, the Ranch agrees to reimburse the City within ten (10) days of demand by the City and hold harmless the City for any and all additional costs incurred by the City when completing the extension and paving of Copper Ranch Lane and landscaping of the remainder of the Property.

6. **General Requirements.**

A. **Property Maintenance.** Ranch shall be responsible, at its sole expense, for all maintenance of the Property, including maintaining all landscaping, irrigation systems, parking and drainage systems, snow removal from all streets, parking areas and pedestrian walkways, covered transit facility and recreational facilities. Ranch may cause an owners' association to be formed to assume and perform the maintenance obligations hereunder. In the event that Ranch forms any such association and it assumes Ranch's obligations, Ranch 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 or its discretion in review of subsequent applications regarding development of the Property. 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 and 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 and costs incurred, whether or not litigation is actually instituted or concluded, and on appeal, and in any bankruptcy proceeding.

F. **Relationship of Parties.** It is understood that the contractual relationship between City and Ranch 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 Ranch 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 Ranch, 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 Ranch, 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 Ranch, 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. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through direct negotiations, the parties shall first endeavor to settle the dispute in an amicable manner by mediation before resorting to arbitration or litigation.

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, three (3) 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 Ranch:

Copper Ranch, LLC  
c/o J. Edward Smith  
Post Office Box 3937  
Hailey, Idaho 83333  
208/578-9059 (telephone)  
208/578-9061 (facsimile)

With a copy to:

Edward A. Lawson  
Lawson & Laski, PLLC  
Post Office Box 3310  
Ketchum, Idaho 83340  
208/725-0055 (telephone)  
208/725-0076 (facsimile)

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.

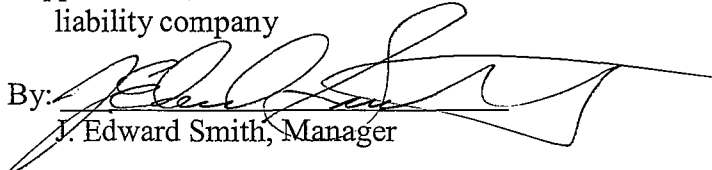
O. Force Majeure. Neither party shall be responsible for any loss, damage, detention or delay caused by fire, strike, civil or military authority, governmental restrictions, moratoriums or controls, insurrection or riot, railroad, marine or air embargoes, lockout, tempest, accident, breakdown of machinery, 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.

P. Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. Where the conditions of this Agreement for the construction of infrastructure improvements in each phase have been fully performed to the City's satisfaction, the City shall execute and deliver from time to time upon request partial releases, estoppel certificates and other appropriate documentation to release the lien of this Agreement created by the provisions relating to the construction of the infrastructure improvements from portion of the Property being conveyed to third party purchasers and to certify to said purchasers and/or lenders that this Agreement is not in default. Upon the recordation of a partial release, prospective purchasers and title insurers are entitled to rely upon this provision and the partial release. Notwithstanding the recordation of a partial release, the terms, conditions and restrictions of this Agreement that are unrelated to the released provisions for the construction of infrastructure improvements shall remain in full force and effect.

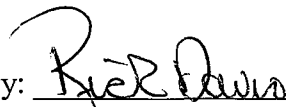
Q. Interpretation. In the event of any inconsistency between the terms and provisions of this Agreement and other drawing, plan, submittal or agreement submitted as part of the PUD Application, the terms and provisions of this Agreement shall control.

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.

Copper Ranch, LLC., an Idaho limited  
liability company

By:   
J. Edward Smith, Manager

City of Hailey, Idaho

By:   
Rick Davis, Council President





## Exhibit "A"

A parcel of land lying within the North One-half (N1/2) of Section 15, Township 2 North, Range 18 East, Boise Meridian, City of Hailey, Blaine County, Idaho, and more particularly described as follows:

BEGINNING at the most southwesterly corner of the aforementioned Lot 13 and proceeding North  $13^{\circ}54'52''$  East, 144.70 feet along the westerly line of the aforementioned Lots 13 & 14 to the northwest corner of the aforementioned Lot 14;

thence departing said westerly line and proceeding South  $79^{\circ}59'33''$  East, 191.69 feet along the northerly line of the aforementioned Lot 14 to the northeasterly corner of said Lot 14 also being a point on the westerly right-of-way line of Winterhaven Drive and a point on a curve, concave westerly;

thence departing said northerly line and proceeding southerly 79.07 feet around said right-of-way line and said curve to the right, with a radius of 220.00 feet, a central angle of  $20^{\circ}35'29''$ , a tangent of 39.96 feet and a long chord of 78.64 feet that bears South  $13^{\circ}35'14''$  East to the easterly corner common to said Lots 13 & 14;

thence continuing along said right-of-way line and a curve to the right, 6.52 feet, with a radius of 220.00 feet, a central angle of  $01^{\circ}41'49''$ , a tangent of 3.26 feet, and a long chord of 6.52 feet that bears South  $02^{\circ}26'35''$  East;

thence departing said curve and continuing along said right-of-way line, South  $01^{\circ}35'40''$  East, 57.04 feet to the southeasterly corner of said Lot 13;

thence departing said right-of-way line and proceeding the following two (2) courses along the south line of said Lot 13: South  $88^{\circ}20'30''$  West, 101.07 feet and North  $75^{\circ}57'11''$  West, 147.29 feet to the POINT OF BEGINNING, containing 33,291 square feet (0.76 acres), more or less.



**PHASING PLAN**   
SCALE: 1" = 40'-0"

# COPPER RANCH

HAILEY, IDAHO

EXHIBIT "B"