

## 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

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.