

AGENDA ITEM SUMMARY

DATE: 04/07/2011 DEPARTMENT: Admin/legal DEPT. HEAD SIGNATURE: HD

SUBJECT: Third Amendment to Cutters Annexation Agreement

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

A draft Third Amendment to the Cutter Annexation Agreement has been submitted to the Hailey City Council by the City Attorney. We have included the Second Amendment, the First Amendment, and the initial Annexation Agreement as background, attached in the above order.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney ___ Clerk / Finance Director ___ Engineer ___ Mayor
___ P & Z Commission ___ Parks & Lands Board ___ Public Works ___ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

FOLLOW-UP/COMMENTS:

*

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Lawson Laski Clark & Pogue, PLLC
Attention: Edward A. Lawson
Post Office Box 3310
Ketchum, ID 83340

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

THIRD AMENDMENT TO ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT ("Third Amendment") is dated this ____ day of March 2011 by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI," and together with the City, the "Parties").

RECITALS

A. The City and OCI entered into that certain Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "Original Agreement") dated April 10, 2006 and recorded April 27, 2006 as Instrument No. 534733, records of Blaine County, Idaho.

B. The City and OCI entered into a First Amendment to Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "First Amendment") dated June 11, 2007 and recorded May 1, 2008 as Instrument No. 557818, records of Blaine County, Idaho. The First Amendment only amended Paragraph 7 of the Original Agreement.

C. The City and OCI entered into a Second Amendment to Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "Second Amendment", and together with the Original Agreement and the First Amendment the "Agreement") dated March 9, 2009 and recorded May 13, 2009 as Instrument No. 567326, records of Blaine County, Idaho. The Second Amendment (1) amended Paragraph 8 of the Agreement, (2) acknowledged the satisfaction of OCI's obligations under Paragraphs 4.a and 4.b of the Original Agreement, (3) amended Paragraphs 4.c, 4.d and 4.e of the Original Agreement, and (4) added a new Paragraph 4.g to the Original Agreement.

D. Paragraph 3.b of the Agreement provides that OCI must provide twenty-five (25) community housing units constructed in the Subdivision pursuant to the requirements of the City's Subdivision Ordinance. The City and OCI have agreed that, in recognition of the City's repeal of Section 4.11 of the Hailey Subdivision Ordinance, OCI need not comply with Paragraph 3.b of the Agreement.

E. The City acknowledges that OCI has paid \$100,000 in cash towards its obligation under Paragraph 4.c of the Agreement, as amended by the Second Amendment. The City and OCI further agree that OCI may satisfy its remaining obligations under Paragraphs 4.c, 4.d and 4.e by conveying title to certain lots within the Subdivision to the City.

AGREEMENT

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

1. The Recitals set forth above are an integral part of this Third Amendment and are fully incorporated herein by this reference.

2. Paragraph 3.b of the Agreement shall be deleted in its entirety. The City agrees, within thirty (30) days of executing this Third Amendment, to record a release of all deed restrictions that have already been recorded against any units constructed to date within the subdivision.

3. Paragraphs 4.c, 4.d and 4.e of the Agreement shall be amended by the deletion of Paragraphs 4.c, 4.d, 4.e., 4.f and 4.g in their entirety and by the addition of the following language as Paragraphs 4.c, 4.d, 4.e., 4.f and 4.g:

- c. On November 29, 2011, the sum of Seven Hundred Thirty Thousand Dollars (\$730,000) shall be paid to the City either in cash or by check, or at the election of OCI, by the conveyance of marketable title to unsold lots as provided in paragraph 4.f., below.
- d. On November 29, 2013, the sum of Eight Hundred Seventy-five Thousand Dollars (\$875,000) shall be paid to the City either in cash or by check, or at the election of OCI, by the conveyance of marketable title to unsold lots as provided in paragraph 4.f., below.
- e. On November 29, 2014, the sum of Eight Hundred Seventy-five Thousand Dollars (\$875,000) shall be paid to the City either in cash, by check, or at the election of OCI, by the conveyance of marketable title to unsold lots as provided in paragraph 4.f., below.
- f. OCI may elect to make the payments due under Paragraphs 4.c., 4.d, or 4.e. in in kind ("In-Kind Payment Option") through the conveyance of marketable title to unsold lots within the subdivision available for conveyance as described in Exhibit 1 attached hereto ("Available Lots"), by giving the City written notice at least thirty (30) days prior to the date on which the payment is due under paragraphs 4.c., 4.d and 4.e ("In-Kind Payment Notice"). Within fifteen (15) days after receiving the In-Kind Payment Notice, the City shall select that number of Available Lots, which have an aggregate value based solely upon the valuations set forth in Exhibit 1 attached hereto, equal to the amount due from OCI to the City. Any minor difference in the aggregate value of the lots selected shall be carried over and reflected in the amount

required in the next payment. Exhibit 1 attached hereto also sets forth the number of lots that may be chosen, and the number of lots that must be chosen, by the City from each block in the subdivision.

g. The City agrees not to attempt to market or sell any lot it acquires from OCI through the In-Kind Payment Option for five years after the acquisition date.

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

5. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

DATED this ____ day of March 2011.

CITY OF HAILEY

By: _____
Martha Burke, Council President

ATTEST:

Mary Cone, Hailey City Clerk

OLD CUTTERS, INC.

By: _____
John Campbell, President

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2011, before me the undersigned Notary Public in and for said State, personally appeared MARTHA BURKE, known or identified to me to be the Council President of Hailey and the person whose name is subscribed to the within instrument, and acknowledges that she executed the same on behalf of the city of Hailey.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

| Block # | Lot # | | Purchase Price/ Original list price | Available lots | May pick | Must pick |
|---------|------------|------|--|----------------|----------|-----------|
| 1 | 1 | | \$351,500.00 | 16 | 4 | 2 |
| 1 | 2 | | \$370,000.00 | | | |
| 1 | 3 | | \$370,000.00 | | | |
| 1 | 4 | | \$370,000.00 | | | |
| 1 | 5 | | \$370,000.00 | | | |
| 1 | 6 | | \$370,000.00 | | | |
| 1 | 7 | | \$370,000.00 | | | |
| 1 | 8 | | \$351,500.00 | | | |
| 1 | 9 | | \$351,500.00 | | | |
| 1 | 10 | | \$370,000.00 | | | |
| 1 | 11 | | \$370,000.00 | | | |
| 1 | 12 | | \$370,000.00 | | | |
| 1 | 13 | | \$370,000.00 | | | |
| 1 | 14 | | \$370,000.00 | | | |
| 1 | 15 | | \$370,000.00 | | | |
| 1 | 16 | | \$370,000.00 | | | |
| 2 | 1 | | \$395,000.00 | 12 | 1 | 0 |
| 2 | 2 | | \$387,100.00 | | | |
| 2 | 3 | | \$387,100.00 | | | |
| 2 | 4 | | \$387,100.00 | | | |
| 2 | 5 | | \$387,100.00 | | | |
| 2 | 6 | | \$387,100.00 | | | |
| 2 | 7 | | \$387,100.00 | | | |
| 2 | 8 | | \$387,100.00 | | | |
| 2 | 9 | | \$395,000.00 | | | |
| 2 | 10 | Sold | Not available | | | |
| 2 | 11 | | \$387,100.00 | | | |
| 2 | 12 | | \$387,100.00 | | | |
| 2 | 13 | Sold | Not available | | | |
| 2 | 14 | | \$595,000.00 | | | |
| Block # | Lot # | | Purchase Price | | | |
| 3 | 1 | | \$654,050.00 | 6 | 1 | 0 |
| 3 | 2 | | \$395,000.00 | | | |
| 3 | 3 | Sold | Not available | | | |
| 3 | 4 | Sold | Not available | | | |
| 3 | 5 | | \$387,100.00 | | | |
| 3 | 6 | | \$387,100.00 | | | |
| 3 | 7 | | \$395,000.00 | | | |
| 3 | 8 | | \$395,000.00 | | | |
| 3 | 9 Cottages | | Not available | | | |
| 3 | 9 Duplex | | Not available | | | |
| 4 | 1 | | \$323,000.00 | 4 | 2 | 1 |
| 4 | 2 Cottages | | \$350,000.00 | | | |
| 4 | 2 Duplex | | \$350,000.00 | | | |
| 4 | 3 | | \$323,000.00 | | | |

EXHIBIT 1

| Block # | Lot # | | Purchase Price |
|---------|-------|--------|----------------|
| 5 | 1 | | \$261,250.00 |
| 5 | 2 | | \$275,000.00 |
| 5 | 3 | | \$232,750.00 |
| 5 | 4 | | \$209,000.00 |
| 5 | 5 | | \$232,750.00 |
| 5 | 6 | L to O | Not available |
| 5 | 7 | | \$261,250.00 |
| 5 | 8 | | \$275,000.00 |
| 5 | 9 | | \$209,000.00 |
| 5 | 10 | | \$209,000.00 |
| 5 | 11 | | \$275,000.00 |
| 5 | 12 | | \$209,000.00 |
| 5 | 13 | | \$275,000.00 |
| 5 | 14 | | \$350,000.00 |
| 5 | 15 | | \$261,250.00 |
| 6 | 1 | Sold | Not available |
| 6 | 2 | | \$261,250.00 |
| 6 | 3 | | \$275,000.00 |
| 6 | 4 | | \$325,000.00 |
| 6 | 5 | Sold | Not available |
| 6 | 6 | | \$209,000.00 |
| 6 | 7 | | \$275,000.00 |
| 6 | 8 | | \$275,000.00 |
| 6 | 9 | | \$275,000.00 |
| 6 | 10 | | \$275,000.00 |
| 6 | 11 | | \$261,250.00 |
| 6 | 12 | Sold | Not available |
| 6 | 13 | Sold | Not available |
| 6 | 14 | Sold | Not available |
| 6 | 15 | | \$350,000.00 |
| 6 | 16 | | \$261,250.00 |
| 6 | 17 | Sold | Not available |

14 4 2

11 1 0

| Block # | Lot # | | Purchase Price |
|---------|-------|--------|----------------|
| 7 | 1 | Sold | Not available |
| 7 | 2 | Sold | Not available |
| 7 | 3 | | \$261,250.00 |
| 7 | 4 | | \$261,250.00 |
| 7 | 5 | | \$232,750.00 |
| 7 | 6 | L to O | Not available |
| 7 | 7 | | \$209,000.00 |
| 7 | 8 | Sold | Not available |
| 7 | 9 | | \$350,000.00 |
| 7 | 10 | | \$275,000.00 |
| 7 | 11 | Sold | Not available |
| 7 | 12 | | \$232,750.00 |
| 7 | 13 | | \$232,750.00 |
| 7 | 14 | Sold | Not available |
| 7 | 15 | Sold | Not available |
| 7 | 16 | | \$261,250.00 |
| 7 | 17 | | \$232,750.00 |
| 7 | 18 | | \$325,000.00 |
| 7 | 19 | | \$232,750.00 |
| 7 | 20 | Sold | Not available |
| 8 | 1 | | \$370,500.00 |
| 8 | 2 | | Not available |
| 8 | 3 | | \$351,500.00 |
| 8 | 4 | | \$361,000.00 |
| 8 | 5 | | \$361,000.00 |
| 8 | 6 | L to O | Not available |
| 8 | 7 | | \$370,500.00 |
| 8 | 8 | | \$370,500.00 |

12 1 0

6 2 1

| Block # | Lot # | | Purchase Price |
|---------|------------|---------------|----------------|
| 9 | 1 Cottages | | \$350,000.00 |
| 9 | 1 Duplex | | \$350,000.00 |
| 10 | 1 | | \$332,500.00 |
| 10 | 2 | | \$332,500.00 |
| 10 | 3 | | \$332,500.00 |
| 10 | 4 Cottages | Not available | |
| 10 | 4 Duplex | | \$350,000.00 |
| 11 | 1 | | \$332,500.00 |
| 11 | 2 | | \$332,500.00 |
| 11 | 3 | | \$350,000.00 |
| 12 | 1 | | \$395,000.00 |
| 12 | 2 | | \$370,500.00 |

Total

| | | |
|----|----|---|
| 2 | 2 | 0 |
| 4 | 2 | 0 |
| 3 | 1 | 0 |
| 2 | 1 | 0 |
| 92 | 22 | 6 |



**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
Post Office Box 987
Ketchum, Idaho 83340**

(Space above line for Recorder's use)

**SECOND AMENDMENT TO ANNEXATION, SERVICES
AND DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT ("Second Amendment") is dated this ____ day of March, 2009 by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI," and together with the City, the "Parties")

RECITALS

A. The City and OCI entered into that certain Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "Agreement") dated April 10, 2006 and recorded April 27, 2006 as Instrument No. 534733, records of Blaine County, Idaho.

B. The City and OCI entered into that First Amendment to Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "First Amendment") dated June 11, 2007 and recorded May 1, 2008, as Instrument No. 557818, records of Blaine County, Idaho. The First Amendment only amended Paragraph 7 of the Agreement.

C. OCI thereafter obtained approval of Old Cutters Subdivision (the "Subdivision") for its land annexed into the City, recording the final plat for the Subdivision on November 29, 2007 as Instrument No. 563364, records of Blaine County, Idaho.

D. Paragraph 8 of the Agreement provides that OCI is to retain ownership of all water rights appurtenant to the Subdivision and may sell and move those water rights off of the Subdivision. OCI, in reliance on this provision, entered into a contract to sell to Dry Lot, LLC ("Dry Lot") that portion of these water rights used to historically irrigate 58.5 acres of the land which is now the Subdivision, and Dry Lot has filed with the Idaho Department of Water Resources (the "Department") the applications required to consummate its purchase of such water rights and change the nature of use and place of use of those water rights, including moving those rights off the Subdivision.

E. As a part of its protest to Department approval of the Dry Lot applications, Indian Creek Ranch Owners Association, Inc. ("ICROA") has asserted that Idaho Code Section 67-6537 (the "Statute") prohibits the transfer of such water rights off of the Subdivision. OCI and the City have agreed that the maximum irrigated area within the Subdivision (excluding Lots 13 and 14, Block 2, and Lot 1, Block 3 (the "Large Lots")) will be thirty one (31) acres at full development and build out of the Subdivision, and that the conveyance by OCI to the City of that portion of the water rights used to historically irrigate thirty one (31) acres of the land which is now the Subdivision and

SECOND AMENDMENT TO ANNEXATION AGREEMENT - 1

the retention by OCI of that portion of the water rights used to historically irrigate seven and one-half (7.5) acres of the land which is now the Subdivision will allow OCI and the City to comply with the requirements of the Statute. Dry Lot has agreed to this conveyance to the City.

F. OCI and the City have agreed that the value of the water rights to be conveyed to the City by OCI is \$930,000 and that such value shall be applied in part to satisfy in full the annexation fee payment which was due November 29, 2008 in the amount of \$883,962.13, and the remainder to reduce the balance of annexation fees due under the Agreement.

AGREEMENT

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

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

2. Paragraph 8 of the Agreement shall be amended by the deletion of Paragraph 8 in its entirety and the addition of a new Paragraph 8 as follows:

8. WATER RIGHTS. To comply with the requirements of Idaho Code Section 67-6537, OCI shall (a) contemporaneously with this Second Amendment, convey by grant deed to the City 0.19 cfs of Water Right No. 37-21130, 1.50 cfs of Water Right No. 37-21137 and 0.18 cfs of Water Right 37-21139, used for the irrigation of 31 acres within the 66 acre place of use for such water rights, pursuant to the partial decrees for such water rights issued January 21, 2009 in *In Re SRBA*, Twin Falls District Court Case No. 39576 (the "City Water Rights") and (b) retain that portion of Water Rights 37-21130, 37-21137 and 37-21139 used for the irrigation of 7.5 acres within the 66 acre place of use to be used to irrigate the maximum irrigated area at full development of Lots 13 and 14, Block 2 and Lot 1, Block 3, of the Subdivision and to provide water for the two ponds located on these 3 lots. Irrigation on these 3 lots by the City's municipal water system shall not exceed one-half (1/2) acre per lot. OCI may sell to Dry Lot the remaining portion of Water Rights 37-21130, 37-21137 and 37-21139 used for the irrigation of 27.5 acres within the 66 acre place of use. The parties agree that the conveyance of water rights to the City in an amount less than the appurtenant water rights may not be considered a precedent or binding in future annexation or subdivision applications.

3. OCI and the City agree that the annexation fee payments due pursuant to paragraph 4.a of the Agreement was timely made and the conveyance of the City Water Rights to the City satisfies in full the payment due pursuant to paragraph 4.b of the Agreement. OCI and the City further agree the conveyance of the City Water Rights to the City reduces the payment due pursuant to paragraph 4.c of the Agreement by \$46,037.87, so that the principal amount of the payment due pursuant to paragraph 4.c is \$829,087.13.

4. OCI and the City agree that OCI has conveyed title to the Park, Open Space and Easements pursuant to Paragraphs 5.a, 5.b and 5.c of the Agreement, and has constructed or will be constructing improvements to the Park pursuant to Paragraph 5.a of the Agreement or improvements described in Paragraph 7 of the Agreement and First Amendment. OCI, for itself and its successors, heirs and assigns, as a gift and donation to the City, hereby waives the right that OCI or any of its successors, heirs or assigns, has to any credit pursuant to Idaho Code Section 67-8209 and Section 15.16.050.01 of the City's Development Impact Fee Ordinance (the "DIF Ordinance") against the Development Impact Fees otherwise due for the same City Capital Improvements in connection with the Subdivision, for the conveyance to the City of the Park and its improvements. OCI further agrees for itself and its successors, heirs and assigns, that it shall not seek any other credit against any obligation for an impact or capital facilities fee, hookup fee, building permit fee, development impact fee created in accordance with Idaho Code Sections 67-8201 *et seq.*, as amended, or similar fee associated with the development of the Property, that accrues or may accrue by virtue of the conveyance of title to the Park, Open Space and Easements pursuant to Paragraphs 5.a, 5.b and 5.c of the Agreement, or the construction of improvements to the Park pursuant to Paragraph 5.a of the Agreement or improvements described in Paragraph 7 of the Agreement and First Amendment.

5. Paragraphs 4.c, 4.d and 4.e of the Agreement shall be amended by the deletion of Paragraphs 4.c, 4.d and 4.e in their entirety and by the addition of the following language in Paragraph 4.c, 4.d and 4.e, as follows:

c. The sum of Eight Hundred Twenty-nine Thousand Eighty-seven and 13/100ths Dollars (\$829,087.13) shall be due November 29, 2011;

d. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due November 29, 2013.

e. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due November 29, 2014.

6. Paragraph 4 of the Agreement is amended by the addition of the following new Paragraph 4(g):

g. As partial payment of the installments of annexation fees due under Paragraphs 4.c, 4.d and 4.e, above, OCI shall instruct the title company handling the real estate closings of every Market Rate Lot commencing with the next closing after the effective date of this Second Amendment to apply to the payment of these installments the sum of \$50,000, adjusted as described below, from each closing of the sale of every Market Rate Lot. The payments described in this Paragraph 4.g shall be adjusted by the Index according to paragraph 4.f of the Agreement and shall be paid directly to the City out of the closing escrow for the sale of each such lot.

7. OCI and the City agree to cooperate with each other and Dry Lot in connection with the defense by Dry Lot to any challenge to the transfer of the water rights to Dry Lot referenced in Paragraph 2 of this Second Amendment, based upon either Idaho Code § 67-6537 or any other action or inaction of the City which may be alleged in connection with a challenge to such a transfer.

SECOND AMENDMENT TO ANNEXATION AGREEMENT - 3

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

9. All other terms and conditions of the Agreement and First Amendment shall remain unchanged and in full force and effect.

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

DATED this _____ day of March, 2009.

CITY OF HAILEY

By: _____
Martha Burke, Council President

ATTEST:

Mary Cone, Hailey City Clerk

OLD CUTTERS, INC.

By: _____
John Campbell, President

STATE OF IDAHO)
 : ss.
County of Blaine)

On this _____ day of March, 2009, before me the undersigned Notary Public in and for said State, personally appeared MARTHA BURKE, known or identified to me to be the Council President of Hailey and the person whose name is subscribed to the within instrument, and acknowledged that she executed the same on behalf of the City of Hailey.

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

Notary Public for Idaho
Residing at: _____
Comm. Expires: _____

SECOND AMENDMENT TO ANNEXATION AGREEMENT - 4

STATE OF IDAHO)
 : ss.
County of Blaine)

On this _____ day of March, 2009 before me the undersigned Notary Public in and for said State, personally appeared JOHN CAMPBELL, known or identified to me to be the president of Old Cutters, Inc., and the person who executed the foregoing instrument on behalf of said company and acknowledged to me he executed the same on behalf of said company.

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

Notary Public for Idaho
Residing at: _____
Comm. Expires: _____

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
Post Office Box 987
Ketchum, Idaho 83340

Instrument # 557818

HAILEY, BLAINE, IDAHO

5-1-2008 02:10:08 No. of Pages: 3

Recorded for : CITY OF HAILEY

JOLYNN DRAGE

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION

Fee: 0.00

RECEIVED

MAY 05 2008

(FUE) HD

(Space above line for Recorder's use)

FIRST AMENDMENT TO ANNEXATION, SERVICES
AND DEVELOPMENT AGREEMENT
OLD CUTTERS PLANNED UNIT DEVELOPMENT

THIS FIRST AMENDMENT ("First Amendment") is dated this 11th day of June, 2007 by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI," and together with the City, the "Parties")

RECITALS

A. The City and OCI entered into that certain Annexation, Services and Development Agreement Old Cutters Planned Unit Development (the "Agreement") dated April 10, 2006 and recorded April 27, 2006 as Instrument No. 534733, records of Blaine County, Idaho.

B. OCI is required by the terms of paragraph 7 of Agreement to construct, at its expense, a left turn lane on Buttercup Road at the north intersection of Buttercup Road and South Hiawatha Road, which is outside of the municipal boundaries of the City and within Blaine County.

C. OCI has entered into an agreement with Blaine County whereby, in return for opening a previously unimproved and unused public right-of-way in Blaine County for access into the northern portion of the Old Cutters Subdivision, OCI will, at its expense, make substantial improvements to portions of South Hiawatha Road in Blaine County and also pay Blaine County as road mitigation fee. As a part of this agreement, Blaine County agrees the left turn lane is not required and OCI may request deletion of that requirement from the Agreement.

AGREEMENT

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

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

FIRST AMENDMENT TO
ANNEXATION AGREEMENT - 1

2. Paragraph 7 of the Agreement shall be amended by deleting the following language from lines 5 and 6 of that paragraph:

. . . a left turn lane on Buttercup Road at the north intersection of Buttercup Road and South Hiawatha Street. . .

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

4. All other terms and conditions of the First Amendment shall remain unchanged and in full force and effect.

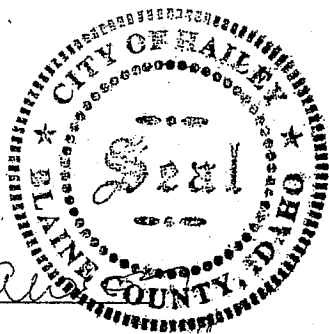
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written herein.

DATED this 17th day of June, 2007.

CITY OF HAILEY

ATTEST:

Heather Dawson
Heather Dawson
Hailey City Clerk



By: Susan McBryant
Susan McBryant, Mayor

OLD CUTTERS, INC.

By: J. S. All
John Campbell, President

FIRST AMENDMENT TO
ANNEXATION AGREEMENT - 2

COPY

Instrument # 534733

HAILEY, BLAINE, IDAHO

2006-04-27 03:16:00 No. of Pages: 15

Recorded for : CITY OF HAILEY

MARSHA RIEMANN

Fee: 45.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION

ms

**ANNEXATION, SERVICES AND DEVELOPMENT AGREEMENT
OLD CUTTERS PLANNED UNIT DEVELOPMENT**

THIS AGREEMENT ("Agreement") is dated this 10 day of April, 2006, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI", and together with the City, the "Parties").

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to annex property contiguous to its boundaries, the power to zone and enforce zoning within the boundaries of the property so annexed, and the power to contract.

B. OCI owns 142.62 acres of property in Blaine County, Idaho and contiguous to the boundaries of the City, the legal description of which is set forth in Exhibit 1 attached hereto (the "Property"). OCI has filed an application to annex the Property into the City pursuant to the provisions of the City's Annexation Procedures Ordinance No. 889.

C. Concurrent with the execution of this Agreement, the City has adopted Ordinance No. 939 (the "Annexation Ordinance") to annex the Property into the City and to classify and zone the Property.

D. OCI intends to submit applications for approval of a subdivision of and for a planned unit development for the Property pursuant to the City's Subdivision Ordinance No. 821 and Article X of the City's Zoning Ordinance upon adoption and publication of the Annexation Ordinance.

E. The Parties agree the Property shall be developed in accordance with the terms and conditions of this Agreement and any additional conditions and requirements imposed by the Hailey Planning and Zoning Commission and Hailey City Council during the approval of the subdivision of and planned unit development for the Property.

F. OCI intends to develop the Property generally as shown on the map attached hereto as Exhibit 2. For the purposes of this Agreement, the proposed lots are shown in a sequential manner from Lot 1 through Lot 116, inclusive. The Parties understand that any subdivision application and approval would ultimately result in the creation of blocks and lots with numbering that would differ from the numbering of the lots shown on Exhibit 2.

AGREEMENT

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

ORIGINAL IN RED

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

2. **ZONING.** Upon annexation the Property shall be classified and zoned in accordance with the Annexation Ordinance. The Parties acknowledge that no zoning of the Property can exist solely by virtue of this Agreement.

3. **DEVELOPMENT OF PROPERTY.** The Property shall generally be developed as shown on the map attached hereto as Exhibit 2 and in accordance with the conditions and requirements of the Hailey Subdivision and Zoning Ordinances. The following shall be included in any approved subdivision or planned unit development for the Property (the "Subdivision").

a. **Density.** There shall be no more than a total of one hundred forty-nine (149) single family residential, duplex and townhouse units in the Subdivision, consisting of one hundred two (102) single family units to be constructed on one hundred two (102) lots, twenty (20) duplex units to be constructed on ten (10) lots, and twenty-seven (27) townhouse units to be constructed on four (4) lots. The parties contemplate that townhouse sublots shall be created for the duplex and townhouse units. Following the subdivision of the lots and sublots described herein, none of the lots and sublots may be further subdivided.

b. **Community Housing.** There shall be twenty-five (25) community housing units constructed in the Subdivision pursuant to the requirements of Hailey Subdivision Ordinance. OCI shall submit a Community Housing Plan that proposes the following:

Thirteen (13) of the community housing units shall meet the sales price requirements of Section 4.11.4.2 of the Hailey Subdivision Ordinance. Six (6) of these units shall be duplex units and the remaining seven (7) shall be single townhouse units in single buildings pursuant to the ordinance amendment described in paragraph 9, below. Twelve (12) of the community housing units shall, as provided by Section 4.11.5.1.6 of the Hailey Subdivision Ordinance, be subject to a deed restriction making them available to persons who work in the Wood River Valley, reside in the unit as their primary residence and do not own other real property. All of these units shall be townhouse units in single buildings.

c. **Covenants, Conditions and Restrictions.** OCI agrees to record a declaration of covenants, conditions and restrictions against the Subdivision (the "Declaration") and agrees to form a homeowner's association for the Subdivision (the "Association"). The Declaration shall include the following provisions:

i. None of the lots may be further subdivided.

ii. The Association shall be required to maintain at its expense in a neat, attractive and safe manner, including the necessary paving, drainage and snow removal, the alleys

and parking areas within the Subdivision.

iii. The Association shall be required to maintain at its expense the snow removal and snow storage areas not located on land dedicated to the City within the Subdivision.

iv. The requirements and restrictions described in Exhibit 3 attached hereto..

d. **Streets and Alleys.** All of the streets within the Subdivision shall be constructed to City standards, and then dedicated to and accepted by the City as public streets. The alleys in the Subdivision shall be private streets, owned and maintained by the Association and shall be platted with appropriate utility easements. The Association shall, at its expense, maintain the snow storage areas not located on land dedicated to the City, the private streets and the parking areas, all of which are generally depicted on Exhibit 2.

4. ANNEXATION FEES. In consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall pay to the City a general annexation fee in the sum of Three Million Seven Hundred Eighty-Seven Thousand Five Hundred Dollars (\$3,787,500), subject to adjustment as provided below, in installments as follows:

a. The sum of Two Hundred Eighty-Seven Thousand Dollars (\$287,000) shall be due sixty (60) days after the date the final plat for the Subdivision is recorded in the records of Blaine County, Idaho (the "Plat Recording Date").

b. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due one (1) year after the Plat Recording Date, or when thirty-five percent (35%) of the Market Rate Lots are sold, whichever occurs first. The term "Market Rate Lots" for the purposes of the installment payments in this paragraph and paragraphs 4.c, 4.d and 4.e, below, shall mean only the one hundred eight (108) market rate single family and duplex lots. The four (4) townhouse lots, three (3) community housing duplex lots and Lot 73 are not included in this calculation.

c. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due two (2) years after the Plat Recording Date, or when fifty-five percent (55%) of the Market Rate Lots are sold, whichever occurs first.

d. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due three (3) years after the Plat Recording Date, or when seventy percent (70%) of the Market Rate Lots are sold, whichever occurs first.

e. The sum of Eight Hundred Seventy-five Thousand One Hundred Twenty-five Dollars (\$875,125) shall be due four (4) years after the Plat Recording Date, or when eighty-five

percent (85%) of the Market Rate Lots are sold, whichever occurs first.

f. The annexation fee installments to be paid pursuant to paragraphs 4.b, 4.c, 4.d and 4.e, above, shall be subject to adjustment prior to the due date of each such installment payment (the "Adjustment Dates") on the basis of the change in the Consumer Price Index for All Cities published by the United States Department of Labor (the "Index") which is published for the month of the Plat Recording Date (the "Beginning Index"). If the Index published nearest the Adjustment Date (the "Adjustment Index") has changed from the Beginning Index, the annexation fee installment payment then due shall be determined by multiplying the installment amount listed above by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

The obligation to pay the installments of annexation fees shall create a lien on the Market Rate Lots which shall be released in accordance with Paragraph 21 of this Agreement. The Parties acknowledge and agree that the annexation fee described in this Paragraph 4 are fair and equitable and that the annexation fees have been agreed upon as consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property. OCI agrees for itself and its successors, heirs and assigns, that OCI or any of its successors, heirs or assigns, shall not be entitled to any credit for any obligation for an impact or capital facilities fee, hookup fee, building permit fee, development impact fee created in accordance with Idaho Code Sections 67-8201 *et seq.*, as amended, or similar fee associated with the development of the Property, by virtue of the payment of annexation fees described in this Paragraph 4.

5. **CONVEYANCE OF LAND TO CITY.** In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall convey by appropriate warranty deed or deed of easement, as the case may be, title to the real property described in paragraphs 5.a, 5.b and 5.c, below (the "City Property"), free and clear of all liens, encumbrances, and restrictions, exclusive of (i) property taxes for the current year which are not due and payable on or before the date of conveyance and (ii) all easements, restrictions, notes and other matters as may be shown on the official plat of the subdivision and/or planned unit development which may be approved by the City for the Property. The appropriate deeds for the City Property, executed by OCI in recordable form, shall be delivered to the City on or before sixty (60) days after the Plat Recording Date. Within thirty (30) days after the Plat Recording Date OCI shall obtain at OCI's cost and deliver to the City a commitment for an owner's title insurance policy issued by a title insurance company selected by the City describing the City Property, showing all matters pertaining to the City Property, and listing the City as the prospective named insured (the "Title Commitment"). The Title Commitment shall not list in its Schedule B - Section 2 any exceptions to title other than the title insurance company's standard exceptions for an owner's title insurance policy and those exceptions described above in this paragraph.

a. **Park.** A park, as generally depicted on Exhibit 2 (the "Park"), approximately

5.08 acres in size constructed to the standards required by the Hailey Subdivision Ordinance, shall be conveyed to the City. At a minimum, OCI shall, at its sole cost and expense, submit a plan to improve the Park described herein with the following improvements:

Sheltered picnic tables with one or two BBQ grills, benches, trash containers, dog stations, children play structures (a structure designed for two- to five- year old children shall be well separated away from any street, closer to the picnic area and separated from a structure designed for older children), at least 20 pull-in parking spaces, a minimum 120' x 180' open area to allow for active recreation, a restroom connected to city water and sewer, a water element incorporating the canal water while it is running, passive areas, underground irrigation system with monitoring system to be connected to the Hiawatha Canal, native fescue grasses bordering park grass areas, and drip irrigation system for shrubs and bushes.

b. Open Space. All that portion of the Property situated East of the canal which runs through the Property, and as depicted on Exhibit 2, shall be conveyed to the City to be used as public open space, for non-winter, non-motorized public recreational purposes, and as a potential site for a City water storage tank.

c. Easements. A perpetual, non-exclusive easement, located as depicted on Exhibit 2 between Lots 97 and 98, shall be conveyed to the City to be used for access for the construction, operation, maintenance and repair of, and the extension of underground utilities to, the City water tank to be located on the land described in paragraph 5.b, above, and for non-winter, non-motorized access by the public to such property.

6. LOT 73. In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, and subject to and contingent upon the provisions of this paragraph 6, OCI shall convey by appropriate warranty deed title to Lot 73 of the Subdivision, as depicted preliminarily on the map attached as Exhibit 2 ("Lot 73"), free and clear of all liens, encumbrances, and restrictions, exclusive of (i) property taxes for the current year which are not due and payable on or before the date of conveyance, (ii) the Declaration, and (iii) all easements, restrictions, notes and other matters as may be shown on the official plat of the subdivision and/or planned unit development which may be approved by the City for the Property. Lot 73 shall be conveyed to the City if, and only if, OCI closes the sale of at least fifty-five percent (55%) of the Market Rate Lots within one (1) year of the Plat Recording Date. In that case, the warranty deed for Lot 73, executed by OCI in recordable form, shall be delivered to the City on or before sixty (60) days after (i) the first anniversary of the Plat Recording Date, or (ii) the date of closing of the sale of the lot which satisfies the fifty-five percent (55%) requirement, whichever occurs first. The term "Market Rate Lot" shall have the same meaning as set forth in paragraph 4.b, above. At any time before the first anniversary of the Plat Recording Date, OCI shall, if requested by the City, provide the City with copies of recorded deeds showing the Market Rate Lots conveyed and dates of conveyances of the Market Rate Lots. OCI agrees that it shall not, in any way, delay the sale of any of the Market Rate Lots to circumvent the

requirement of conveying Lot 73 within one year of the Plat Recording Date. Within thirty (30) days after (i) the first anniversary of the Plat Recording Date, or (ii) the date of closing of the sale of the lot which satisfies the fifty-five percent (55%) requirement, whichever occurs first, OCI shall obtain at OCI's cost and deliver to the City a commitment for an owner's title insurance policy issued by a title insurance company selected by the City describing Lot 73, showing all matters pertaining to Lot 73, and listing the City as the prospective named insured (the "Title Commitment"). The Title Commitment shall not list in its Schedule B – Section 2 any exceptions to title other than the title insurance company's standard exceptions for an owner's title insurance policy and those exceptions described above in this paragraph.

7. OTHER IMPROVEMENTS. In further consideration for the City providing essential governmental and utility services to the Property and to mitigate the impact on the City of annexation and development of the Property, OCI shall at its sole cost and expense construct to City standards a sidewalk on one side of and within the right of way for Myrtle Street from the Property to the East side of the bike path adjacent to Buttercup Road, a left turn lane on Buttercup Road at the north intersection of Buttercup Road and South Hiawatha Street, and three (3) pedestrian bridges at the locations shown on Exhibit 2. The improvements described herein shall be constructed on or before the Plat Recording Date, unless the City agrees to allow the posting of security for the improvements in accordance with Hailey's Subdivision Ordinance.

8. WATER RIGHTS. OCI shall retain ownership of all of the water rights which are currently appurtenant to the Property (the "Water Rights") and, except as hereinafter provided, in its sole and absolute discretion, may sell or otherwise convey and transfer the Water Rights off of the Property. OCI may use a portion of the Water Rights for irrigation of more than the one-half (1/2) acre on each of Lots 114, 115 and 116 that will be irrigated by the City's municipal water system and water rights, and for the ponds to be located on such lots. Irrigation on Lots 114, 115 and 116 by the City's municipal water system shall not exceed one-half (1/2) acre on each of Lots 114, 115 and 116. The irrigation system using the portion of the Water Rights for these lots shall, at the election of the City, be connected to an irrigation system for the Park. If it so elects, the City shall use a portion of its water rights delivered through the Hiawatha Canal to irrigate the Park and agrees these water rights may be diverted out of the Canal and through the ponds and streams on Lots 114, 115 and 116 to the park irrigation system.

9. TOWNHOUSE DEFINITION AMENDMENT. The Parties acknowledge that the proposed Subdivision requires an amendment to the City's Zoning and Subdivision Ordinances to provide that the definition of a "townhouse" includes single buildings containing single townhouse units provided the separation between the buildings and/or units complies with all applicable codes. The City agrees to consider such an amendment concurrently with the processing of the applications by OCI for subdivision and planned unit development approval.

10. REBATE FOR OWNER OCCUPANTS. OCI shall include in its agreements for the sale of each unimproved market value single family residential or duplex lot in the Subdivision the following provision: "If the Buyer, within 24 months of the closing date, obtains a certificate of

occupancy for a single family home or duplex unit constructed on the lot and thereafter resides in such home or duplex unit as an owner-occupant for a period of 24 months from the date of the certificate of occupancy, OCI shall rebate to the Buyer the sum of \$10,000."

11. **COMMUNITY HOUSING ORDINANCE.** OCI hereby waives any right it may have to assert that the City's Community Housing Ordinance is invalid in whole or in part as it applies to the Subdivision.

12. **EFFECTIVE UPON ANNEXATION.** This Agreement shall become effective only upon, and subject to, the Council's enactment of an Ordinance annexing the Property.

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

14. **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 and as evidenced by amended plats and development plans.

15. **REMEDIES.** In the event the Property is not developed in accordance with this Agreement, or if OCI or its successors and assigns, if any, materially breaches, defaults or fails to perform any material obligation under this Agreement and does not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, OCI fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, a) the City has the right to de-annex the Property, b) the proposed subdivision and planned unit development applications may be denied, and/or c) OCI may be required to pay additional annexation fees. Subject to the conditions set forth herein, OCI hereby grants to the City its irrevocable consent to the de-annexation of the Property. In the event the City does not pass the townhouse definition amendment described in paragraph 9, above, OCI shall have the right, in its sole discretion, to substitute in its proposed development townhouses which comply with current ordinance definitions or to request the Property be de-annexed from the City, in which case the City agrees to do so. In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

16. **ATTORNEY'S FEES.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement

negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

17. NOTICES. All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth in the introductory paragraph of this Agreement, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

18. RELIANCE BY PARTIES. This Agreement is intended by OCI to be considered by the City as part of OCI's request for annexation of the Property and application for subsequent subdivision and planned unit development plat approval, and is contingent upon said annexation. OCI acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said annexation request and subsequent subdivision and planned unit development application.

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

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

21. RECORDATION AND RELEASE. This Agreement shall be recorded with the Blaine County Recorder. Where the conditions of the payment of the annexation fees described in Paragraph 4 of this Agreement have been fully performed to the City's satisfaction, the City shall execute and deliver from time to time upon request partial releases in the form attached hereto as Exhibit 4 to release the lien of this Agreement from portions of the Property being conveyed to third

party purchasers. With each request for a partial release for a payment under paragraphs 4(b), (c), (d) and (e) of this Agreement, OCI shall furnish the City with a list of the Market Rate Lots sold, and if requested by the City, copies of recorded deeds showing the Market Rate Lots conveyed and dates of conveyances of the Market Rate Lots. The cost of recording each partial release shall be paid by OCI

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

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

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

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

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

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

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

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

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

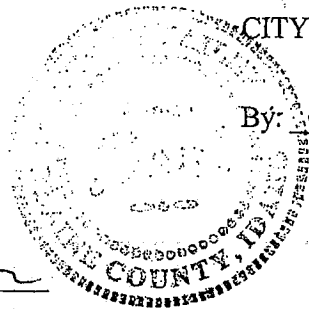
31. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

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

DATED this 25th day of April, 2006.

ATTEST:

Heather Dawson
Heather Dawson
Hailey City Clerk



CITY OF HAILEY

By: Susan McBryant
Susan McBryant, Mayor

OLD CUTTERS, INC.

By: J. Campbell
John Campbell, President

4/20/06

EXHIBIT 1

Lots 1A, 2A, 3 and 4, Block 1 of a REPLAT OF DREXLER RANCH SUBDIVISION, BLAINE COUNTY, IDAHO, as shown on the official plat thereof, recorded February 8, 1999, as Instrument No. 423951, records of Blaine County, Idaho; and

A parcel of land within the SW1/4NE1/4, Section 4, T.2N., R.18E., B.M. and also within Lot 4, Buckhorn Subdivision Second Addition, Blaine County, Idaho, more particularly described as follows:

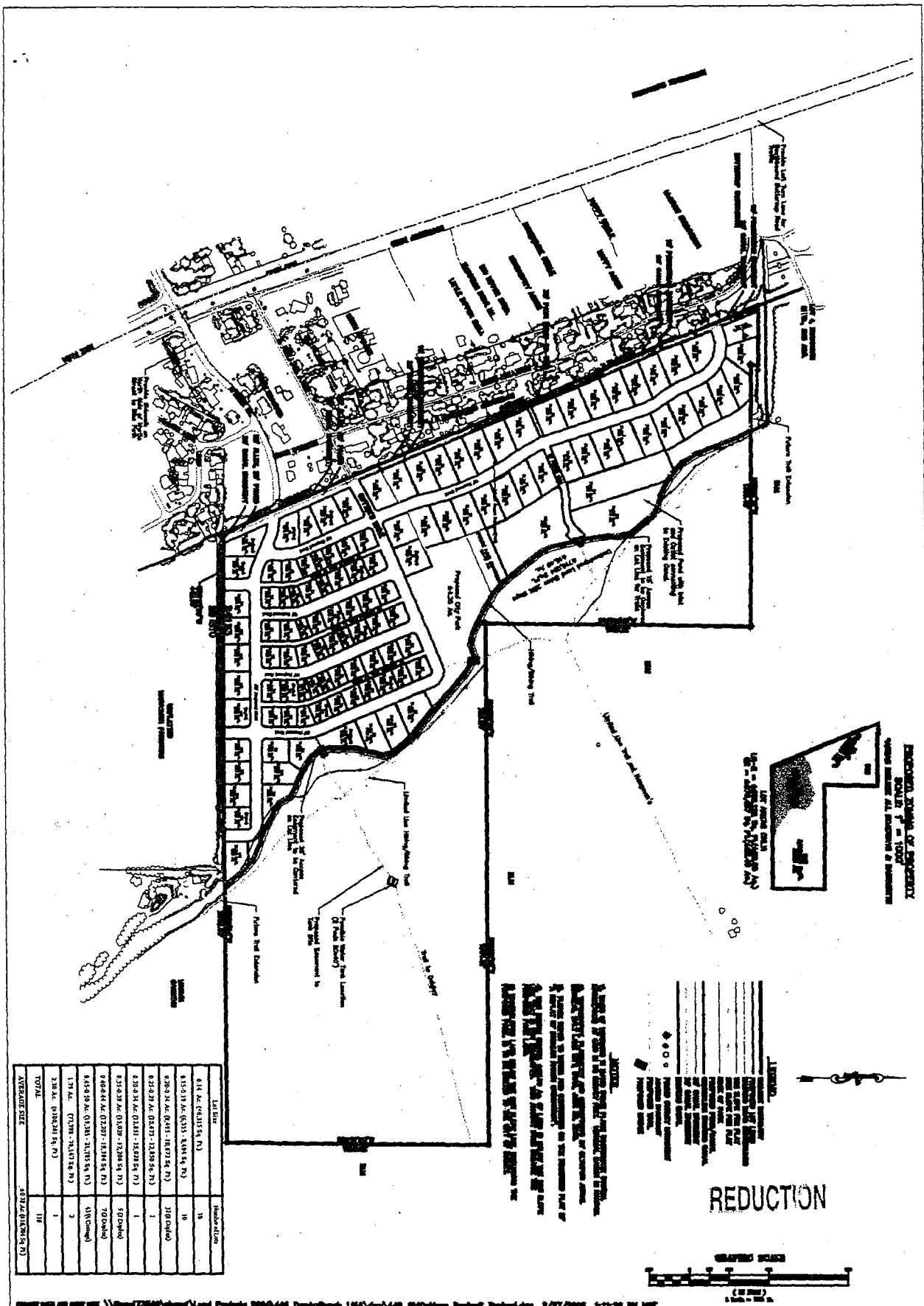
Commencing at a BLM brass cap marking the Southeast Corner of said SW1/4NE1/4, which corner is also the CE 1/16 corner of said Section 4 and which point is the REAL POINT OF BEGINNING:

thence North 89°42'50" West 291.01 feet to the Northwest corner of the Drexler Ranch;

thence North 23°17'51" West 37.31 feet along the centerline of the Hiawatha Canal and along the Southerly boundary of said Lot 4, Buckhorn Subdivision Second Addition;

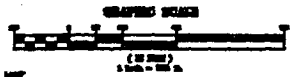
thence North 89°50'20" East 306.07 feet along a fence to the East boundary of said SW1/4NE1/4, said Section 4;

thence South 0°27'55" West 36.58 feet along said East boundary of the SW1/4NE1/4, Section 4 to the point of beginning, containing 0.24 acres, more or less, also known as Tax Lot 6804.



| Lot No. | Lot Size | Number of Lots |
|-----------------------|----------|----------------|
| 614 AC (24,157 SQ FT) | 18 | |
| 615 AC (24,157 SQ FT) | 18 | |
| 616 AC (24,157 SQ FT) | 18 | |
| 617 AC (24,157 SQ FT) | 18 | |
| 618 AC (24,157 SQ FT) | 18 | |
| 619 AC (24,157 SQ FT) | 18 | |
| 620 AC (24,157 SQ FT) | 18 | |
| 621 AC (24,157 SQ FT) | 18 | |
| 622 AC (24,157 SQ FT) | 18 | |
| 623 AC (24,157 SQ FT) | 18 | |
| 624 AC (24,157 SQ FT) | 18 | |
| 625 AC (24,157 SQ FT) | 18 | |
| 626 AC (24,157 SQ FT) | 18 | |
| 627 AC (24,157 SQ FT) | 18 | |
| 628 AC (24,157 SQ FT) | 18 | |
| 629 AC (24,157 SQ FT) | 18 | |
| 630 AC (24,157 SQ FT) | 18 | |
| 631 AC (24,157 SQ FT) | 18 | |
| 632 AC (24,157 SQ FT) | 18 | |
| 633 AC (24,157 SQ FT) | 18 | |
| 634 AC (24,157 SQ FT) | 18 | |
| 635 AC (24,157 SQ FT) | 18 | |
| 636 AC (24,157 SQ FT) | 18 | |
| 637 AC (24,157 SQ FT) | 18 | |
| 638 AC (24,157 SQ FT) | 18 | |
| 639 AC (24,157 SQ FT) | 18 | |
| 640 AC (24,157 SQ FT) | 18 | |
| 641 AC (24,157 SQ FT) | 18 | |
| 642 AC (24,157 SQ FT) | 18 | |
| 643 AC (24,157 SQ FT) | 18 | |
| 644 AC (24,157 SQ FT) | 18 | |
| 645 AC (24,157 SQ FT) | 18 | |
| 646 AC (24,157 SQ FT) | 18 | |
| 647 AC (24,157 SQ FT) | 18 | |
| 648 AC (24,157 SQ FT) | 18 | |
| 649 AC (24,157 SQ FT) | 18 | |
| 650 AC (24,157 SQ FT) | 18 | |
| 651 AC (24,157 SQ FT) | 18 | |
| 652 AC (24,157 SQ FT) | 18 | |
| 653 AC (24,157 SQ FT) | 18 | |
| 654 AC (24,157 SQ FT) | 18 | |
| 655 AC (24,157 SQ FT) | 18 | |
| 656 AC (24,157 SQ FT) | 18 | |
| 657 AC (24,157 SQ FT) | 18 | |
| 658 AC (24,157 SQ FT) | 18 | |
| 659 AC (24,157 SQ FT) | 18 | |
| 660 AC (24,157 SQ FT) | 18 | |
| 661 AC (24,157 SQ FT) | 18 | |
| 662 AC (24,157 SQ FT) | 18 | |
| 663 AC (24,157 SQ FT) | 18 | |
| 664 AC (24,157 SQ FT) | 18 | |
| 665 AC (24,157 SQ FT) | 18 | |
| 666 AC (24,157 SQ FT) | 18 | |
| 667 AC (24,157 SQ FT) | 18 | |
| 668 AC (24,157 SQ FT) | 18 | |
| 669 AC (24,157 SQ FT) | 18 | |
| 670 AC (24,157 SQ FT) | 18 | |
| 671 AC (24,157 SQ FT) | 18 | |
| 672 AC (24,157 SQ FT) | 18 | |
| 673 AC (24,157 SQ FT) | 18 | |
| 674 AC (24,157 SQ FT) | 18 | |
| 675 AC (24,157 SQ FT) | 18 | |
| 676 AC (24,157 SQ FT) | 18 | |
| 677 AC (24,157 SQ FT) | 18 | |
| 678 AC (24,157 SQ FT) | 18 | |
| 679 AC (24,157 SQ FT) | 18 | |
| 680 AC (24,157 SQ FT) | 18 | |
| 681 AC (24,157 SQ FT) | 18 | |
| 682 AC (24,157 SQ FT) | 18 | |
| 683 AC (24,157 SQ FT) | 18 | |
| 684 AC (24,157 SQ FT) | 18 | |
| 685 AC (24,157 SQ FT) | 18 | |
| 686 AC (24,157 SQ FT) | 18 | |
| 687 AC (24,157 SQ FT) | 18 | |
| 688 AC (24,157 SQ FT) | 18 | |
| 689 AC (24,157 SQ FT) | 18 | |
| 690 AC (24,157 SQ FT) | 18 | |
| 691 AC (24,157 SQ FT) | 18 | |
| 692 AC (24,157 SQ FT) | 18 | |
| 693 AC (24,157 SQ FT) | 18 | |
| 694 AC (24,157 SQ FT) | 18 | |
| 695 AC (24,157 SQ FT) | 18 | |
| 696 AC (24,157 SQ FT) | 18 | |
| 697 AC (24,157 SQ FT) | 18 | |
| 698 AC (24,157 SQ FT) | 18 | |
| 699 AC (24,157 SQ FT) | 18 | |
| 700 AC (24,157 SQ FT) | 18 | |

REDUCTION



| | |
|---|--|
| <p>Alpine Enterprises Inc. Planning, Mapping and Survey Services 10000 E. 1st Ave., Suite 1000 Denver, CO 80231 Phone: (303) 755-1100 Fax: (303) 755-1101 www.alpineenterprises.com</p> | <p>A PRELIMINARY DESIGN FOR THE PROPOSED OLD CUTTER'S SUBDIVISION LOTS 1A, 2A, 3 & 4, A REPLAT OF BREKIDR BUNCH SUBDIVISION WITHIN 24 & 24 1/2 T1N, 24E, SAL, BLAKE COUNTY, WY80 PREPARED FOR OLD CUTTER'S, LLC</p> |
|---|--|

EXHIBIT 3

Old Cutters CC&R Outline

CC & R's will be drafted to insure high quality design and construction mirroring the attractive sections of Old Hailey. A primary goal is to insure the creation of an attractive, well-maintained, intimate community.

- Minimum square footage for residence. 1800 sq.ft. excluding garage and basement. At least 400 sq.ft. must be on the upper floor.
- Garages off alley, setback to allow for snow storage, 20' setback if garage oriented perpendicular to alley, 5' setback if garage parallel to alley.
- Fence guidelines- max 42" high along street. Max 60" high everywhere else. Features every 16' for solid fences.
- Landscape maintenance
- Maintenance of sidewalk area in city ROW
- Boats must be stored in garages. No on-site motor home or RV storage, unless in a garage.
- Wood stoves must have catalytic converters
- Landscaping must include the planting of trees (Size and number to be determined.).
- Solar collectors are permitted. They must be flush mounted to the roof. No roof mounted tanks.
- No mineral extraction allowed on lots.

Architectural Guidelines -

Architectural guidelines apply only to the street side of the house. Residences are intended to look like the traditional, older houses found in Old Hailey.

Roof Pitch - no flatter than 6:12, no steeper than 12:12

Entry porch roofs may be flatter than 6:12

Minimum 1' roof overhang

Tall windows

Front porch - minimum 6' x 12'

Trim (fascia, window, corner) to be a different color than the body of the house

EXHIBIT 4

PARTIAL LIEN RELEASE

The City of Hailey hereby acknowledges that any and all fees for annexation, required to be paid under paragraph(s) 4___ of the Annexation, Services and Development Agreement Old Cutters Planned Unit Development ("Agreement") dated _____, 2006, recorded as Instrument No. _____, records of the County Recorder, Blaine County, Idaho, and which are due as of the date of this Partial Lien Release, have been paid in full. In accordance with the Agreement, the City of Hailey hereby releases any and all liens for annexation fees arising under or by virtue of the Agreement against the following lots: _____ of the Old Cutter's Subdivision Plat, Hailey, Blaine County, Idaho as shown on the official plat thereof, recorded _____, 2006, as Instrument No. _____, records of the County Recorder, Blaine County, Idaho.

DATED this ___ day of _____.

CITY OF HAILEY

_____, Mayor

ATTEST:

_____, City Clerk

