

AGENDA ITEM SUMMARY

DATE: 11/10/2008 **DEPARTMENT:** Finance/Water **DEPT. HEAD SIGNATURE:** __HD__

SUBJECT: DEQ Loan – Water Storage Tank Loan Close – Authorization of Issuance and Delivery of \$2,400,000 promissory note to be paid over a 20-year term

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The water storage tank project was initially estimated in 2004 to cost \$2 million for construction and \$400,000 for engineering, and the DEQ State Revolving Fund Loan was established off that estimate at \$2.4 million. By the end of the construction, following several change orders, the construction project cost \$2,524,118, and the engineering contracts with Carollo were amended to \$510,133. These two components resulted in Hailey spending \$634,250 above the estimated amount to be borrowed from DEQ through the Idaho State Revolving Fund.

In addition, interim interest is due at bond closing against monies drawn for the construction loan during the course of the project, which began to be drawn for the project in the summer of 2006. That interest amounts to \$131,149.

Hailey raised its fees in 2005, after the judicial confirmation process resulted in a Loan Agreement with DEQ. The Agreement states that Hailey may borrow up to \$2.4 million for the construction project, and after DEQ closes the project, a promissory note (bond) will be executed to structure a 20 year pay-back of the funds. In the first five years of the pay-back period, a bond reserve fund equal to one-year's bond payment (\$167,886) must be established. Hailey hoped to keep the water bond rates constant by beginning to collect the required bond reserve prior to the bond closing. Since 2005, Hailey collected the following amounts from that increased fee:

Collected since 2005

12,585.27	2005
185,662.21	2006
176,722.93	2007
165,336.90	2008
	Oct
13,812.99	2008
554,120.30	Total

Hailey's Water Fund currently has an unaudited fund balance of approximately \$757,000, which includes the amount from the table above. During the bond closing, we will be issued the final 10% of our construction loan - \$240,000
minus the interim interest (\$131,149),
the net of which will come in as income of \$108,851.

Add that to the fund balance for a total of **\$ 865,850** in water fund reserves, which we suggest be used for the following purposes:

(167,886)	Bond Reserve
(120,000)	Operating Contingency of 10%
\$ 577,964.00	Council discretion.

The council may choose to

1. consider the higher construction costs to have been paid for by the bond payments in the table above, and retain the fund balance for other purposes – (purchasing water rights, studies, projects etc.)
2. retain the fund balance, and lower the water bond rate over the life of the loan.
3. Pay down the first three years of the bond payment
4. Rewrite the bond closing for 1.9 million instead of 2.4 million

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Casele # _____

Budget Line Item # _____ YTD Line Item Balance \$ _____

Estimated Hours Spent to Date: _____ Estimated Completion Date: _____

Staff Contact: _____ Phone # _____

Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

ACTION OF THE CITY COUNCIL:

Date _____

RESOLUTION NO. 2008-18

A RESOLUTION OF THE CITY OF HAILEY, IDAHO, AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND DELIVERY OF A PROMISSORY NOTE TO THE STATE OF IDAHO, DEPARTMENT OF ENVIRONMENTAL QUALITY, IN THE PRINCIPAL AMOUNT OF \$2,400,000, AS EVIDENCE OF A LOAN INDEBTEDNESS INCURRED BY THE CITY FROM THE DRINKING WATER REVOLVING LOAN PROGRAM OF THE STATE FOR THE PURPOSE OF PAYING THE COST OF DOMESTIC WATER STORAGE TANK SYSTEM IMPROVEMENTS; PROVIDING FOR THE ISSUANCE, FORM, EXECUTION, REGISTRATION, MATURITY, AND PAYMENT OF THE NOTE; ESTABLISHING FUNDS AND ACCOUNTS; PROVIDING COVENANTS RELATING TO THE NOTE AND THE TAX-EXEMPT STATUS OF THE INTEREST ON THE NOTE; PROVIDING FOR RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Hailey, Blaine County, Idaho (the "City"), is a municipal corporation duly organized and operating under and pursuant to the laws of the State of Idaho; and

WHEREAS, the City presently owns and operates, and has for many years owned and operated, a municipal domestic water supply, treatment, and distribution system for the benefit of the residents of the City; and

WHEREAS, the Mayor and Council of the City heretofore determined that the acquisition and construction of certain improvements to the existing domestic water storage facilities of the City, consisting generally of a two million gallon storage tank and associated piping, together with related improvements and costs, were necessary for the continued efficient operation of the domestic water system and in order to continue to operate its domestic water system in accordance with state and federal environmental standards for the public health, safety, and welfare, and, in order to finance the cost of such improvements, the City made application to the State of Idaho, Department of Environmental Quality (the "State") for a loan under the State's Drinking Water Revolving Loan Program in the principal amount of \$2,400,000, which loan application was approved by the State; and

WHEREAS, the Mayor and Council further determined that the indebtedness to be incurred thereby was an ordinary and necessary expense of the City within the meaning of Article 8, Section 3, Idaho Constitution, for which no approval of the electors of the City was necessary; and

WHEREAS, The City caused to be filed, in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine (the "District Court") a Petition for Judicial Confirmation pursuant to Title 7, Chapter 13, Idaho Code, seeking a judicial determination and declaration of the validity of the City's incurring of an

indebtedness and issuing its promissory note as evidence thereof for the purpose of financing the cost of the improvements; and

WHEREAS, on March 7, 2003, the District Court, in Case No. SP-03-3003, entered its Memorandum of Findings of Fact, Conclusions of Law, and Judgment (the "Judicial Confirmation Order") ordering, adjudging, and decreeing that (1) the loan agreement with the State constitutes a valid "ordinary and necessary expense" of the City within the meaning of Article 8, Section 3, of the Idaho Constitution, for which no approval of the City's electors is required; (2) the loan agreement, promissory note, or other evidence of indebtedness, when duly executed and delivered, will constitute valid and enforceable special obligations of the City, enforceable in accordance with their terms, and (3) the City may pledge its domestic water system revenues to the payment thereof; and

WHEREAS, pursuant to the Judicial Confirmation Order, the City and the State entered into the loan agreement, the City has constructed and installed the improvements, and the City now desires to issue its promissory note (the "Note") in the principal amount of \$2,400,000 to the State in accordance with the loan agreement and Judicial Confirmation Order; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, Blaine County, Idaho, as follows:

Section 1: DEFINITIONS

As used in this Resolution, the following terms shall have the following meanings.

City means the City of Hailey, Blaine County, Idaho.

City Clerk or Clerk means the Clerk of the City, or other officer of the City who is the custodian of the records, seal, and proceedings of the City.

Cost of Project means all or any part designated by the Council of the cost acquisition, construction, and installation of the domestic water system improvement Project, including costs and expenses of engineering, legal, and all other costs incidental to the improvements, the costs of issuance of the Note, publications, and interim financing.

Council means the City Council of the City.

Mayor means the Mayor of the City, including his/her successor in functions, if any.

Net Revenues means the Revenue of the System after the deduction of Operation and Maintenance Expenses.

Note means the Drinking Water Revolving Loan Program Promissory Note of the City in the principal amount of \$2,400,000, authorized by this Resolution.

Note Payment Fund means the fund created by Section 9 of this Resolution for the payment of the principal of and interest on the Note.

Note Registrar means the registrar and paying agent appointed and designated in Section 5 of this Resolution.

Operation and Maintenance Expenses or any phrase of similar import means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining, and repairing the System or of levying, collecting, and otherwise administering the Net Revenues for the payment of the Note; and the term includes (except as limited by contract or otherwise limited by law) without limiting the generality of the foregoing:

- (1) Engineering, auditing, reporting, legal, and other overhead expenses of the various City departments directly relating and reasonably allocable to the administration of the System;
- (2) Fidelity bonds and property and liability insurance premiums pertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining thereto;
- (3) Payments to pension, retirement, health, and hospitalization funds and other insurance;
- (4) Any taxes, assessments, excise taxes, or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or any privilege in connection with their operation;
- (5) The reasonable charges of the bond registrar, fiscal or paying agent, commercial bank, trust bank, or other depository bank pertaining to the Note issued by the City or pertaining to the Project, if any;
- (6) Contractual services, professional services, salaries, other administrative expenses, and the cost of materials, supplies, repairs, and labor, pertaining to the issuance of the Note and to the ordinary operation of the System; and
- (7) All other administrative, general, and commercial expenses.

Project means the domestic water system improvement project described in Section 2 of this Resolution.

Registered Owner means the purchaser of the Note and any subsequent transferee of the Note.

Reserve Fund means the Reserve Fund created by Section 10 of this Resolution.

Resolution means this Resolution No. 2008-18, adopted on November 10, 2008.

Revenue of the System shall mean all revenues received by the City from its System and may include, at the discretion of the City, moneys derived from one, all, or any combination of revenue sources pertaining to the System, including, without limitation, rates, charges, rents, fees, and any other income derived from the operation and ownership of, the use of services of, or the availability of or services pertaining to, or otherwise derived in connection with the System or all or any part of any property pertaining to the System.

Revenue Fund means the "City of Hailey Water Revenue Fund" created by Section 8, of this Resolution.

State for purposes of this Resolution, means the State of Idaho, Department of Environmental Quality.

System for purposes of this Resolution, means the domestic water supply and distribution system of the City, as the same now exists, including its assets, real and personal, tangible and intangible, and as it may later be added to, extended, and improved, and shall include buildings, structures, utilities, or other income producing water facilities from the operation of or in connection with which the revenues of the payment of the Bond to be issued hereunder will be derived, and the lands pertaining thereto.

Section 2: THE PROJECT

The domestic water improvement project consists of the acquisition, construction, and installation of improvements and betterments to the City's domestic water storage facilities, consisting generally of a two million gallon storage tank and associated piping, together with related improvements and costs (the "Project"). \$2,400,000 of the Costs of the Project shall be paid from the proceeds of the Note.

Section 3: THE NOTE

The Note shall be substantially in the form annexed hereto as Exhibit "A"; shall be issued to the State of Idaho, Department of Environmental Quality (the "State"), as Registered Owner; shall be in the principal amount of \$2,400,000; shall be dated as of its

date of delivery, shall mature no more than twenty (20) years from its date, and shall, with written permission of the Registered Owner be subject to prepayment, in whole or in part, without penalty, on any date; and shall bear interest at the rate of three and one-half percent (3.50%) per annum on the unpaid principal balance from its date of issuance. Principal of and interest on the Note shall be payable in semi-annual installments commencing one year from its date of issuance and continuing on each annual anniversary date until the Note is paid in full.

Section 4: EXECUTION OF NOTE

The Note shall be executed in the name of the City by the manual signature of the Mayor and attested by the manual signature of the City Clerk, and the seal of the City shall be impressed thereon.

Section 5: REGISTRATION OF NOTE

The Note shall be registered in the name of the State as the Registered Owner, both as to principal and as to interest, with the City Treasurer, who is hereby designated as registrar and paying agent with respect to the Note, and any transfer must likewise be registered.

Section 6: PAYMENT

The Note shall be payable in lawful money of the United States of America to the Registered Owner thereof at the address of such Registered Owner as shown in the registration books of the City.

Section 7: PLEDGE OF NET REVENUES

The Net Revenues of the System are hereby pledged for the payment of the Note and shall be used and applied in the order of priority provided in Section 8 of this Resolution.

Section 8: THE REVENUE FUND

There is hereby created a special fund, designated the "City of Hailey Water Revenue Fund" (the "Revenue Fund"), which shall be maintained by the Treasurer and into which the Revenue of the System shall be deposited immediately upon its receipt.

A. Use of Revenues. The Revenue of the System shall be used for the payment of the following obligations in the following order of priority:

- (1) First Charge and Lien: The costs of Operation and Maintenance Expenses.

(2) Second Charge and Lien: The principal of and interest on the Note by payment into the Note Payment Fund, as provided in Section 9 of this Resolution.

(3) Third Charge and Lien: To maintain the Reserve Fund created by Section 10 of this Resolution; and

(4) To administer surplus funds.

B. Interest Earnings. Interest earnings on deposits in the Revenue Fund shall remain in and be used for the purposes of the Revenue Fund.

C. Surplus Funds. Funds remaining in the Revenue Fund after having been applied for the purposes provided in this section shall constitute surplus funds and may be used for any lawful purposes of the City.

Section 9: NOTE PAYMENT FUND

There is hereby created a special fund designated the "City of Hailey Water System Note Payment Fund" (the "Note Payment Fund"), which shall be maintained by the Treasurer and into which shall be deposited, from the Net Revenues of the System, not less than two (2) days before each payment date, the amounts required by this Resolution to make the semi-annual payments of principal of and interest on the Note. If for any reason the City does not have, on any payment date, Net Revenues in the Note Payment Fund sufficient to make the scheduled payment of principal and interest, the amount of such deficiency shall be deposited into the Note Payment Fund from the Reserve Fund.

Section 10: RESERVE FUND

There is hereby established a special fund and account, to be held by the Treasurer, as additional security for the Note, to be designated the Water System Note Reserve Fund (the "Reserve Fund"). The City covenants and agrees to accumulate within five (5) years of the date of issuance of the Note in the Reserve Fund, in equal annual deposits of at least 20%, from the Revenue Fund an amount equal to one year's payment of principal and interest on the Note, and to maintain the Reserve Fund until the Note is paid in full. Any transfer from the Reserve Fund to the Note Payment Fund shall be replenished from the Revenue Fund as soon as practicable after such transfer is made, but in no event more than 30 days from the date of transfer.

Section 11: GENERAL COVENANTS

For the protection and security of the Note, it is covenanted and agreed to and with the Registered Owner of the Note from time to time, that the City will perform the following covenants:

A. Complete Project. It will complete the construction of the Project with all practical dispatch and in a sound and economical manner.

B. Operate System. It will operate the System in an efficient and economical manner and prescribe, revise, and collect such charges in connection therewith so that the services, facilities, and properties of the System may be furnished at the lowest possible cost consistent with sound economy and prudent management.

C. Good Repair. It will operate, maintain, preserve, and keep the System and every part hereof in good repair, working order, and condition.

D. Corporate Status. It will maintain its status as a municipal corporation of the State of Idaho and will take no steps to disincorporate or otherwise change its corporate status.

E. Preserve Security. It will preserve and protect the security of the Note and the rights of the Registered Owner thereof.

F. Collect Revenues. It will collect and hold in trust the revenues and other funds pledged to the payment of the Note and apply such revenue or other funds only as provided in this Resolution.

G. Service Note. It will pay and cause to be paid punctually the principal of the Note and the interest thereon on the date or dates and at the place or places and in the manner mentioned in the Note, and in accordance with this Resolution.

H. Pay Claims. It will pay and discharge any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the Revenue of the System, or any part of said Revenue of the System, or any funds in the hands of the Treasurer, prior or superior to the lien of the Note or which might impair the security of the Note, to the end that the priority and security of the Note shall be fully preserved and protected.

I. Encumbrances. It will not mortgage or otherwise encumber, sell, lease, or dispose of the System or any part thereof, nor enter into any lease or agreement which would impair or impede the operation of the System or any part thereof necessary to secure adequate revenues for the payment of the principal of and interest on the Note, nor which would otherwise impair or impede the rights of the Registered Owner of the Note with respect to such revenues of the operation of the System without provisions for the retirement of the Note then outstanding from the proceeds thereof.

J. Insurance. It will procure and keep in force insurance upon all buildings and structures of the System and the machinery and equipment therein, which are usually insured by entities operating like property, in good and responsible insurance companies.

The amount of the insurance shall be such as may be required to adequately protect it and the Registered Owner of the Note from loss due to any casualty, and in the event of any such loss, the proceeds shall be used to repair or restore the System or for the payment of the Note issued under this Resolution.

K. Fidelity Bonds. It will procure suitable fidelity bonds covering all of its officers and other employees charged with the operation of the System and the collection and disbursement of revenues therefrom.

L. Engineers. It will employ consulting engineers of acknowledged reputation, skill, and experience in the improvement and operation of the System for any unusual or extraordinary items of maintenance, repair, or betterments as shall be required from time to time, all reports, estimates, and recommendations of such consulting engineers to be filed with the Clerk and furnished to the Registered Owner of the Note issued hereunder, upon request.

M. Accounts. It will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and it will furnish complete operating and income statements upon request.

N. Delinquencies. It will not furnish water service to any customer whatsoever free of charge, and it shall not later than sixty (60) days after an account becomes delinquent, take such legal action as may be reasonable to enforce collection of any collectible delinquent account.

O. Additional Obligations. It will not issue additional bonds or other obligations payable from the Net Revenues of the System with a pledge or lien superior to the pledge and lien of the Note.

Section 12: SPECIAL COVENANTS

The City further covenants with the Registered Owner of the Note as follows:

A. In accordance with Section 149(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Note shall be issued and remain in fully registered form in order that interest thereon be excluded from gross income of the owner or owners for federal income tax purposes. The City covenants and agrees that it will take no action to permit the Note to be issued in or converted to bearer form.

B. The Note is hereby designated a "qualified tax-exempt obligation" within the meaning and for the purposes of Section 265(b)(3) of the Code, and the City does not reasonably anticipate that it will designate more than \$10,000,000, including the Note, as qualified tax-exempt obligations during the calendar year in which it is issued.

C. None of the proceeds of the Note will be used directly or indirectly (i) to make or finance loans to persons or (ii) in any trade or business carried on by any person (other than use as a member of the general public). For purposes of the preceding sentence the term "person" does not include a government unit other than the United States or any agency or instrumentality thereof, and the term "trade or business" means any activity carried on by a person other than a natural person. The City further covenants and agrees to take no action which would cause the Note to be a "private activity bond," nor will it omit to take any action necessary to prevent the Note from becoming a "private activity bond," within the meaning of Section 141 of the Code.

D. The City has general taxing powers. The Note is not a "private activity bond" within the meaning of Section 141 of the Code. 95% or more of the net proceeds of the Note are to be used for the local governmental activities of the City. The City has no subordinate entities. The City does not reasonably anticipate that it will issue tax-exempt obligations in the calendar year in which the Note is issued in a face amount which exceeds \$5,000,000. Accordingly, under Section 148(f)(4)(D) of the Code, the City is not required to pay rebates to the United States under Section 148(f) of the Code.

E. The Mayor, Clerk-Treasurer, and other appropriate officials of the City, or any one or more of such officials, as may be appropriate, are each hereby authorized and directed to execute, on behalf of the City, such certificate or certificates as shall be necessary to establish that the Note is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder, and to establish that interest on the Note is not and will not become includable in the gross income of the owners of the Note under the Code and applicable regulations. The City covenants and agrees that no use will be made of the proceeds of the Note, or any funds of the City which may, pursuant to Section 148 of the Code and applicable regulations, be deemed to be proceeds of the Note, which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code. The City further covenants to comply throughout the term of the Note with the requirements of Section 148 of the Code and the regulations promulgated thereunder in order to prevent the Note from becoming an "arbitrage bond."

F. The City will comply with the information reporting requirements of Section 149(e) of the Code.

G. None of the proceeds of the Note will be used to reimburse the City for capital expenditures made prior to the date of delivery of the Note unless the City, not later than 60 days after the payment of such expenditure, shall have adopted an official intent resolution as provided by Section 1.150-2 of the Treasury Regulations.

Section 13: FURTHER AUTHORITY

The Mayor, City Clerk-Treasurer, or any one or more such officials, as shall be appropriate, are hereby authorized to execute such further certifications and other documents as may be necessary or appropriate to carry out the intent of this Resolution.

Section 14: EFFECTIVE DATE

This Resolution shall take effect and be in force from and after its passage and approval.

DATED this 10th day of November, 2008.

CITY OF HAILEY
Blaine County, Idaho

By _____
Mayor

ATTEST:

City Clerk

(S E A L)

EXHIBIT "A"

DEQ Loan # _____

**PROMISSORY NOTE
DRINKING WATER FACILITY LOAN ACCOUNT**

This Promissory Note is executed in conformance with and pursuant to the Drinking Water Facility Loan Agreement entered into between the City of Hailey and the State of Idaho, Department of Environmental Quality, (herein called the "State") which is attached as Appendix A (the "Loan Agreement"); the Record of Disbursements prepared by the State dated _____, 2008, which is attached as Appendix B and the Judicial Confirmation Findings of Fact which is attached as Appendix C. Appendices A, B and C are hereby incorporated by reference.

For value received, the City of Hailey (herein called the "Borrower") promises to pay to the State the principal amount of two million four hundred thousand dollars (\$2,400,000), plus interest on the unpaid balance at the rate of three and one-half percent (3.5%) per annum. The principal and interest of this note shall be repaid in accordance with the Loan Repayment Schedule, which is attached as Appendix D and hereby incorporated by reference.

In addition, the Borrower pledges revenue and income of the Borrower's drinking water facility, whether collected or uncollected, in an amount sufficient to repay all principal and interest and pledges to establish and maintain a reserve account. The reserve account must equal one (1) year's principal and interest payment due under the Loan Agreement at the end of five (5) years with at least 20% of that amount being deposited annually.

Every payment made on any indebtedness evidenced by this note shall be applied first to interest computed to the effective date of the payment and then to principal. Prepayments of scheduled installments, or any portion thereof, may be made only with prior written permission of the State. Refunds and extra payments, after payment of interest, will be applied to the installments last to become due under this note and shall not affect the obligation of the Borrower to pay the remaining installments as scheduled herein.

If the State at any time assigns this note and insures the payment thereof, the Borrower shall continue to make payments to the State as collection agent for the holder. No assignment of this note shall be effective unless the Borrower is notified in writing of the name and address of the assignee. The Borrower shall thereupon duly note in its records the occurrence of such assignment, together with the name and address of the assignee.

Any amount advanced or expended by the State for the collection hereof or to preserve or protect any security hereto, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the State shall become a part of and bear interest at the same rate as the principal of the debt

evidenced hereby and be immediately due and payable by Borrower to the State without demand.

This note is given as evidence of a loan to Borrower made or insured by the State pursuant to Title 39, Chapter 79, Idaho Code. This note shall be subject to the present regulations of the State and to its future regulations not inconsistent with the express provisions hereof.

Presentment, protest and notice are hereby waived.

Payments shall be sent to:

Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706-1253

Execution of this agreement must be accompanied by a written resolution of the Borrower's governing body authorizing the signator to sign on Borrower's behalf for the purpose of this agreement.

Dated _____, 2008.

(SEAL)

CITY OF HAILEY
Blaine County, Idaho

By _____
Mayor

ATTEST:

115 Main St. South, Suite H

City Clerk-Treasurer

Hailey, Idaho 83333

LOAN NUMBER: HAILEY NAME: HAILEY DW-9915
 PMT FREQ: 2 YEAR: Y
 ORIG-LOAN-DATE: 11-20-08
 NEXT-PMT-DATE: 05-20-09
 PMT-TYPE: B
 CUR-BALANCE: 2,400,000.00
 INTR RATE: 3.5000
 NO OF PMTS: 40
 PMT AMOUNT: 83,943.00

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
001	05-20-09	181	83,943.00	41,654.79	42,288.21	2,357,711.79
002	11-20-09	184	83,943.00	41,599.08	42,343.92	2,315,367.87
		365	167,886.00	83,253.87	84,632.13	
003	05-20-10	181	83,943.00	40,185.91	43,757.09	2,271,610.78
004	11-20-10	184	83,943.00	40,079.93	43,863.07	2,227,747.71
		365	167,886.00	80,265.84	87,620.16	
005	05-20-11	181	83,943.00	38,665.16	45,277.84	2,182,469.87
006	11-20-11	184	83,943.00	38,507.14	45,435.86	2,137,034.01
		365	167,886.00	77,172.30	90,713.70	
007	05-20-12	182	83,943.00	37,295.63	46,647.37	2,090,386.64
008	11-20-12	184	83,943.00	36,882.44	47,060.56	2,043,326.08
		366	167,886.00	74,178.07	93,707.93	
009	05-20-13	181	83,943.00	35,464.30	48,478.70	1,994,847.38
010	11-20-13	184	83,943.00	35,196.76	48,746.24	1,946,101.14
		365	167,886.00	70,661.06	97,224.94	
011	05-20-14	181	83,943.00	33,776.85	50,166.15	1,895,934.99
012	11-20-14	184	83,943.00	33,451.57	50,491.43	1,845,443.56
		365	167,886.00	67,228.42	100,657.58	
013	05-20-15	181	83,943.00	32,029.82	51,913.18	1,793,530.38
014	11-20-15	184	83,943.00	31,644.76	52,298.24	1,741,232.14
		365	167,886.00	63,674.58	104,211.42	
015	05-20-16	182	83,943.00	30,388.08	53,554.92	1,687,677.22
016	11-20-16	184	83,943.00	29,777.10	54,165.90	1,633,511.32
		366	167,886.00	60,165.18	107,720.82	
017	05-20-17	181	83,943.00	28,351.49	55,591.51	1,577,919.81
018	11-20-17	184	83,943.00	27,840.56	56,102.44	1,521,817.37

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
		365	167,886.00	56,192.05	111,693.95	
019	05-20-18	181	83,943.00	26,412.91	57,530.09	1,464,287.28
020	11-20-18	184	83,943.00	25,835.64	58,107.36	1,406,179.92
		365	167,886.00	52,248.55	115,637.45	
021	05-20-19	181	83,943.00	24,405.89	59,537.11	1,346,642.81
022	11-20-19	184	83,943.00	23,759.94	60,183.06	1,286,459.75
		365	167,886.00	48,165.83	119,720.17	
023	05-20-20	182	83,943.00	22,451.37	61,491.63	1,224,968.12
024	11-20-20	184	83,943.00	21,613.14	62,329.86	1,162,638.26
		366	167,886.00	44,064.51	123,821.49	
025	05-20-21	181	83,943.00	20,178.94	63,764.06	1,098,874.20
026	11-20-21	184	83,943.00	19,388.36	64,554.64	1,034,319.56
		365	167,886.00	39,567.30	128,318.70	
027	05-20-22	181	83,943.00	17,951.82	65,991.18	968,328.38
028	11-20-22	184	83,943.00	17,085.03	66,857.97	901,470.41
		365	167,886.00	35,036.85	132,849.15	
029	05-20-23	181	83,943.00	15,646.07	68,296.93	833,173.48
030	11-20-23	184	83,943.00	14,700.38	69,242.62	763,930.86
		365	167,886.00	30,346.45	137,539.55	
031	05-20-24	182	83,943.00	13,332.16	70,610.84	693,320.02
032	11-20-24	184	83,943.00	12,232.82	71,710.18	621,609.84
		366	167,886.00	25,564.98	142,321.02	
033	05-20-25	181	83,943.00	10,788.76	73,154.24	548,455.60
034	11-20-25	184	83,943.00	9,676.86	74,266.14	474,189.46
		365	167,886.00	20,465.62	147,420.38	
035	05-20-26	181	83,943.00	8,230.11	75,712.89	398,476.57
036	11-20-26	184	83,943.00	7,030.66	76,912.34	321,564.23
		365	167,886.00	15,260.77	152,625.23	
037	05-20-27	181	83,943.00	5,581.12	78,361.88	243,202.35
038	11-20-27	184	83,943.00	4,291.02	79,651.98	163,550.37
		365	167,886.00	9,872.14	158,013.86	
039	05-20-28	182	83,943.00	2,854.29	81,088.71	82,461.66
040	11-20-28	184	83,916.60	1,454.94	82,461.66	

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
366			167,859.60	4,309.23	163,550.37	
7305			3,357,693.60	957,693.60	2,400,000.00	

LOAN SETTLEMENT INQUIRY

MMDD YYYY LoanNo:
 AS OF DATE: 11 20 2008 DW-9915

Loan No DW-9915 CITY OF HAILEY
 Loan Class DL
 Loan Type DISB

Total Principal Due	<u>\$0.00</u>	
Total Interest Due	<u>\$131,148.91</u>	
Total Fees Due	<u>\$0.00</u>	Date Payment Due
Total Payment Due	<u>\$131,148.91</u>	<u>N/A</u>

LOAN PAY-OFF AMOUNTS

Current Balance	<u>\$2,160,000.00</u>	
Accrued Int + Fees	<u>\$131,148.91</u>	
Unapplied Funds	<u>\$0.00</u>	Interest Per Day
Net Payoff Balance	<u>\$2,291,148.91</u>	<u>\$207.12329</u>



Close

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 2,400,000*+
 2,291,148.91-
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 108,851.09*+

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STAFF REPORT

TO: Hailey City Council
FROM: Beth Robrahn, Planning Director *BR*
RE: Area of City Impact (ACI) ordinance and map – supplement to October 27, 2008 staff report

HEARING: November 10, 2008

Notice

Notice for the public hearing was published in the Wood River Journal and mailed to public agencies and area media on October 8, 2008. The public hearing was continued from October 27, 2008 to November 10, 2008.

Continuation of Discussion

The following issues were brought up at the Council hearing on October 27, 2008.

- **Objection to requiring consent between two cities prior to annexation into any one city in cases when a property lying within two area of city impact:**

The draft ordinance states the following (emphasis added):

14.02.040.02 Owner Requested Annexations. The City may annex those lands within any zone of the Hailey ACI when annexation into the City of Hailey is requested by property owners, *except the City shall not annex any land lying within another city's area of city impact, even when requested by a property owner, without the consent of the other city.*

Recommendation

Bellevue has requested the deletion of this exception for the Bellevue ACI agreement. Staff recommends deletion of this exception from this section of the Hailey ACI agreement.

- **Impression that the ordinance requires a water and sewer district.**

The draft ordinance states the following (emphasis added):

14.02.040.04 Sewer and Water Districts. The provisions of Section 14.02.040 shall not in any way prohibit the creation of water and/or sewer districts, whereby property owners outside the Hailey city limits *may* enter into a contractual agreement with the City to provide water and/or wastewater services, should such districts be found to be in the best interest of the public health, safety and welfare.

Recommendation

The section allows for the extension of water and sewer services outside of the city limits should it be found in the best interest of the public health, safety and welfare, but does not require the formation of such districts. No change is necessary unless the Council does not want to allow for the extension of water and sewer services beyond city limits.

- **Objection to mandatory PUDs**

The draft ordinance states the following:

14.02.050.03 Subdivisions. All proposed subdivisions within the Hailey ACI Zones H, N or W are required to be developed as planned unit developments.

Recommendation

The Hailey ACI agreement should encourage PUDs rather than requiring them.

- **A question regarding the application of Hailey Subdivision standards to property in the designated “A Zone” and which infrastructure improvements are required.**

The draft ordinance states the following:

14.02.060 Standards. Each Development Proposal within the Hailey ACI shall comply with the applicable standards of Blaine County Land Use Ordinances and this Section 14.02.070.

14.02.060.01 . E. Subdivision Improvements. Any subdivision application for land within the H, N, W and A Zones of the Hailey ACI shall meet and conform with the applicable standards set forth in Section 5 of Hailey’s Subdivision Ordinance, as adopted and subsequently amended.

Recommendation

Section 14.02.060 should only apply to the H, N and W Zones, and the A Zone should be stricken from 14.02.060.01 . E; it was not the intent of the Commission’s recommendation to apply standards established in the ACI agreement to properties within the A Zone.

It should be noted that Section 5 of the Hailey Subdivision standards deal with roads, water and sewer infrastructure.

- **Council desire to control density at city border**

The draft ordinance states the following:

14.02.050.04 Density. The base density shall be controlled by the standards of the underlying County zoning district.

14.02.050.06 Modifications and Waivers. The Board of County Commissioners may grant modifications or waivers of certain zoning and/or subdivision requirements to carry out the intent of this ordinance and the land use policies of Blaine County pursuant to Title 9 of the Blaine County Code.

Recommendation

The County Regional Planner, Jeff Adams will be at the meeting to review the density that could be developed under current County ordinances at the City’s boarder. After discussion these two sections can be amended according to the Council’s direction.

Board of County Commissioner Hearing October 28, 2008

The County Commissioners discussed the Hailey ACI agreement and had the following general comments.

- What are the goals of the renegotiation of the ACI agreement? Do Hailey and the County have any common goals?
- What is the benefit to County residents to renegotiate the Hailey ACI agreement?
- What say should the County have in the Annexation process?

The Commissioners continued their hearing to November 25, 2008 and agreed that a joint workshop between the County and City should be planned.

Hailey and County staff recommends scheduling a special joint workshop on Tuesday, December 9, 2008.

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

October 27, 2008

Via Facsimile (208) 788-2924
Hailey City Council
115 Main Street South, Suite H
Hailey, Idaho 83333

RECEIVED
OCT 27 2008

Re: Area of City Impact (ACI)

Dear Hailey City Council Members:

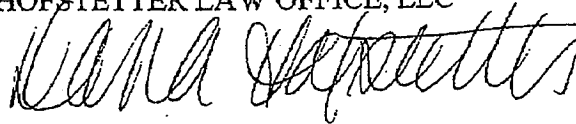
On behalf of the Indian Creek Ranch Owners Association, Inc. ("ICROA"), I respectfully submit the following comments regarding the proposed inclusion of the lands of the Indian Creek Ranch Subdivision in the Area of City Impact. Thank you for considering the following comments and including them in the record.

The statute authorizing the designation of Areas of City Impact ("ACI") does not expressly define the term. However, it is widely acknowledged that it is intended to represent an area, according to trade area and geographic factors that can reasonably be expected to be annexed in the future. See *Idaho Code § 67-6526(b)*. Indeed, designation within an ACI generally is a precursor to annexation. *Idaho Code § 67-6526(a)*. Thus, it is appropriate to consider whether lands proposed for inclusion are destined for annexation since they are "reasonably necessary to assure the orderly development of [the City] in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe." *Idaho Code § 50-222 (Supp. 2008)*. Indian Creek Ranch is an acreage subdivision with extensive common areas that was approved over 30 years ago and does not receive City services. The lots have individual wells and septic systems. The development is fully platted and land uses in the development are unlikely to change as a result of applicable restrictive covenants. It does not appear that Indian Creek Ranch is likely to need City services in the future or become affected by the City's growth. Accordingly, designation within an ACI would be inappropriate.

Further, it appears that certain statutory provisions may preclude annexation of Indian Creek Ranch and it is respectfully requested that the City Council consider these statutes in determining whether inclusion of Indian Creek Ranch in the ACI is appropriate: "[C]ity Council shall not have the power to declare such land, lots or blocks apart of said city if they with be connected to such City only by a ... string of land which comprises a railroad or highway right of way." *Idaho Code §50-222((2)*. Also, certain types of subdivisions similar to Indian Creek Ranch that do not require City services are not appropriately annexed (or included in an ACI). *Idaho Code §50-222(5)(b)(v)(B)*.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

AGENDA ITEM SUMMARY

DATE: 11/10/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: (Signature)

SUBJECT:

Request to amend the Cutters' Annexation Agreement, enter into a new security agreement and discuss dedication of property.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

See attached memo.

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

See attached memo.

FOLLOW-UP REMARKS:

MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: November 5, 2008

RE: Cutters' Request to Amend Annexation Agreement, Security Agreement and Dedication of Property

Request to Amend Annexation Agreement

I am enclosing a series of e-mails between Jim Speck and me. As you can tell by the e-mail dated September 4, 2008, Cutters would like to renegotiate the payment of annexation fees. For your benefit, I am also enclosing the Cutters' annexation agreement. The present agreement provides that there will be four installments of the annexation fees at a time when a certain percentage of lots are sold or upon annual anniversary dates of the final plat recordation, whichever is sooner. I am told that the final plat was recorded on November 29, 2007. According to the annexation agreement, Cutters is obligated to pay the principal amount of \$875,125, plus interest according to the consumer price index ("CPI"), on or before November 29, 2008, and similar payments on the next three anniversary dates.

Staff considered this proposal and communicated to Mr. Speck that staff would be recommend much of the relief sought by Cutters, provided Lot 73 would be conveyed to Hailey. In Jim Speck's e-mail to me dated October 31, 2008, Cutters made a counter-offer. I would like the Mayor and Council to become involved in this discussion. I believe you have the following options:

1. Do not amend the annexation agreement.
2. Agree to amend the annexation agreement consistent with the initial offer dated September 4, 2008.
3. Agree to amend the annexation agreement consistent with the staff recommendation set forth in the e-mail October 30, 2008.
4. Agree to amend the annexation agreement consistent with the counter-offer dated October 31, 2008.
5. Negotiate a different arrangement.

If the City and Cutters reach an agreement to amend the annexation agreement, an amendment will have to be drafted and presented to you at the November 24, 2008, City Council meeting.

Security Agreement

I have been told that a representative of Cutters has asked to extend the security needed for some subdivision improvements. For your information, Hailey and Cutters entered into a Security Agreement in November, 2007, which allowed Cutters to construct subdivision improvements within one year after Cutters posted a letter of credit. I am providing you a list of improvements which were to be completed by November 16, 2008. It is unclear to me what needs to be completed, but I have been told that much of the work has been successfully completed. The security will expire November 16, 2008. I would suggest that Hailey enter into another Security Agreement allowing another one year extension to complete the uncompleted improvements. Such a Security Agreement is attached, but it needs a list of improvements and a cost estimate. It is my hope that such a list will be agreed upon by Cutters and staff and be ready for presentation by Monday's meeting.

Dedication of Property

Paragraph 5 of the annexation agreement provides that Cutters shall, within 60 days of November 29, 2007, convey title to the Park (Parcel A), open space (Parcel B) and an access and utility easement between lots 97 and 98. As required by the annexation agreement, Cutters provided Hailey a title commitment for these properties, but Cutters failed to convey title to these parcels. Cutters has asked Hailey to rezone portions of the property to be dedicated to Hailey before the property is conveyed, which in turn would allow Cutters to potentially acquire a greater tax deduction for a charitable contribution. In my conversations with Cutters, I expressed my belief that the Council would not be willing to consider such a rezone. This matter has been unresolved for some time and I believe the Mayor and Council should allow Cutters to make their proposal to the Mayor and Council, and then make a decision whether the City would be willing to entertain the rezone. For this issue, I feel you have the following options:

1. If the Council wishes to entertain Cutters' proposal, then the Council should make a motion to amend paragraph 5 allowing Cutters to seek a rezone, and if successful, provide for the conveyance of the rezoned property following the rezone.
2. If the Council does not wish to entertain Cutters' proposal, then the Council may wish to make a motion to go into an executive session to discuss imminently likely litigation pursuant to Idaho Code § 67-2345(1)(f).

If you have any questions, please contact me. Thank you.

cc: Jim Speck (w/ encl.)

Ned Williamson

From: "Jim Speck" <jim@speckandaanestad.com>
To: "Mr. Ned Williamson" <wlo@cox-internet.com>
Cc: <jc@idahotower.com>; "Steve Brown" <steven.randall.brown@gmail.com>; "Matt Luck" <mluck@windermere.com>
Sent: Thursday, September 04, 2008 8:12 PM
Subject: Re: Old Cutters, Inc./Subdivision - Annexation Fee Payment Schedule

Ned,

We would like to propose the following changes to the current payment schedule:

1. All of the money currently held in escrow at Sun Valley Title - approximately \$169,271 - will be paid over to the City immediately upon approval of the amendment.
2. \$50,000 will be paid directly to the City from the proceeds of all future lot sales until the total annexation fee is paid.
3. The running balance of the annexation fee due the City will accrue interest at the rate of 2.5% per year. This will replace the cost of living increase.

Once the funds in escrow are paid the balance due will be \$3,331,229. Since 13 lots have been sold to date, this balance will be paid in full (without accounting for interest accruing) after the 80th lot is sold. The current schedule provides for payment in full after 85% of the lots sell, i.e. 92 lots.

Let us know what you think of this proposal before it is put on the agenda. Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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Ned Williamson

From: "Jim Speck" <jim@speckandaanestad.com>
To: "Ned Williamson" <wlo@cox-internet.com>
Cc: "John Campbell" <jc@idahotower.com>; "Steve Brown" <steven.randall.brown@gmail.com>;
 "Matt Luck" <mluck@windermere.com>
Sent: Friday, October 31, 2008 2:20 PM
Attach: cpi 1998 - 2008 data.pdf; cpi 1998 - 2008.pdf
Subject: RE: Cutters

Ned,

We are pleased the staff and you received our proposal in a favorable light. However, as you might imagine, the last point raises some concern. You may recall, as I believe you sat in on all of the meetings on the negotiations of the terms of annexation, that Lot 73 was only meant to be part of the consideration if the lot sales were going well enough that my client could pay off its bank loan within the first year the project was on the market. That is why the agreement provides that it is conveyed to the City "if and only if" Old Cutters closed on the sale of 55% or more of the market rate lots in the first year. Needless to say that has not happened and will not happen by November 29!

Due to many delays in getting all of the approvals necessary to begin selling lots, none of which were the fault of my client, the project first ran into a collapsing local real estate market and now one of the worst economic downturns nationwide since the late 1920's!! You ask for the lot to compensate the city for loss of interest. Right now the CPI is heading back down (see the two attachments). It looks like the difference between our proposal (2.5%) and the current agreement will be about 1.5% for the first year. This only amounts to around \$52,500 as of November 29, 2008. With the payment of the monies currently in escrow and the hopeful principal reductions through lot sales, this amount will only go down unless the CPI makes a sharp turnaround. In light of all this, and the irrefutable fact that the City exacted fees from my client equal to almost twice that calculated by its own consultants at the payment necessary to offset the foreseeable impacts, it seems very unfair to ask my client to convey Lot 73 to the city right now.

Nonetheless, John believes it is fair that he honor the spirit of the agreement and offer another way for the City to get Lot 73 even though under the terms of the agreement that obligation will no longer be there as of November 29, 2008. Instead of conveying Lot 73 now, if my client can sell 60% of the market rate lots by November 29, 2009, or 65% of the market rate lots by November 29, 2010, Lot 73 will then be conveyed to the City. The higher percentages are necessary because my client has and will continue to incur more interest than anticipated on the loan which will thus take longer to be paid off.

In light of the current state of the economy and its rather uncertain future we hope the City's staff and you will find this to be a fair alternative which you can recommend to the Council. Please call if there are any questions.

Jim

James P. Speck
 SPECK & AANESTAD
 A Professional Corporation
 120 East Avenue
 P.O. Box 987
 Ketchum, ID 83340
 208.726.4421
 208.726.0752 (fax)
jim@speckandaanestad.com

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-----Original Message-----

From: Ned Williamson
 Sent: Thursday, October 30, 2008 5:07 PM
 To: Jim Speck
 Cc: Dawson, Heather

Jim,

I have had an opportunity to discuss your client's proposal to amend the Cutters' Annexation Agreement with Hailey staff members. The staff would recommend an amendment to the Annexation Agreement as follows:

1. Your client would pay the amount allocated by your client and held in escrow at the time of the execution of the amendment. I understand that this amount is \$169,271.
2. After the payment of the amount collected by your client, the parties would agree that the remaining annexation fees would be paid. Based on the \$169,271 figure, the remaining annexation fees would be \$3,331,229.
3. The deadlines to pay annexation fees would be modified so that \$50,000 plus interest per lot would be paid at the time of each closing, until the remaining balance of annexation fees are paid in full.
4. Paragraph 4(f) of the Annexation Agreement would be modified so the interest rate on the remaining balance would be 2.5 % per

annum.

5. The provisions in paragraph 6 of the Annexation Agreement relating to Lot 73 would be modified so that title to Lot 73 would be conveyed to Hailey upon execution of the amendment. This amendment would be designed to address the loss in interest.

Please review this proposal and advise me of your client's position. We can put this on the Council's agenda for 10-27-08. I look forward to your response. Thank you.

Ned

Ned C. Williamson, Esq.
Williamson Law Office, PLLC
115 Second Avenue South
Hailey, Idaho 83333
Ph. (208) 788-6688
Fax (208) 788-7901

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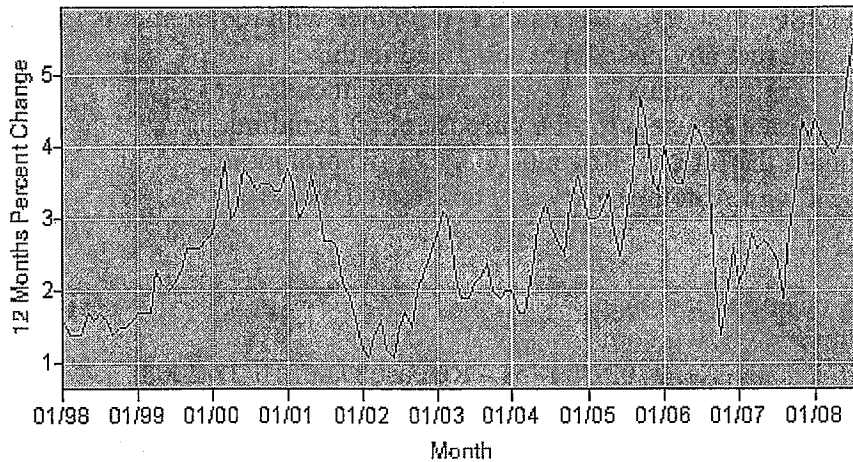
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Data extracted on: October 31, 2008 (11:31:53 AM)

Consumer Price Index - All Urban Consumers

12 Months Percent Change

Series Id: CUSR0000SA0
 Seasonally Adjusted
 Area: U.S. city average
 Item: All items
 Base Period: 1982-84=100



Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1998	1.6	1.4	1.4	1.4	1.7	1.6	1.7	1.6	1.4	1.5	1.5	1.6			
1999	1.7	1.7	1.7	2.3	2.1	2.0	2.1	2.3	2.6	2.6	2.6	2.7			

2000	2.8	3.2	3.8	3.0	3.1	3.7	3.6	3.4	3.5	3.5	3.4	3.4			
2001	3.7	3.5	3.0	3.2	3.6	3.2	2.7	2.7	2.6	2.1	1.9	1.6			
2002	1.2	1.1	1.4	1.6	1.2	1.1	1.5	1.7	1.5	2.0	2.3	2.5			
2003	2.8	3.1	3.0	2.2	1.9	1.9	2.1	2.2	2.4	2.0	1.9	2.0			
2004	2.0	1.7	1.7	2.3	2.9	3.2	2.9	2.7	2.5	3.2	3.6	3.3			
2005	3.0	3.0	3.1	3.4	2.8	2.5	3.1	3.6	4.7	4.4	3.5	3.4			
2006	4.0	3.6	3.5	3.5	4.0	4.3	4.1	3.9	2.1	1.4	1.9	2.6			
2007	2.1	2.4	2.8	2.6	2.7	2.6	2.4	1.9	2.8	3.5	4.4	4.1			
2008	4.4	4.1	4.0	3.9	4.1	4.9	5.5	5.4	4.9						

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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").

ORIGINAL IN RED

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:

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.

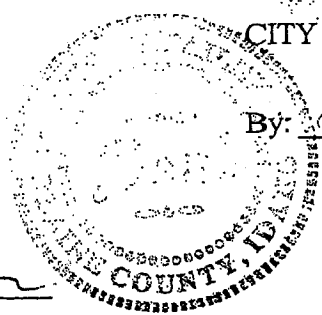
31. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

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.

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.

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

SECURITY AGREEMENT
(CUTTERS SUBDIVISION)

THIS SECURITY AGREEMENT (Cutters Subdivision) ("Agreement") is made and entered into this ___ day of November, 2008, by and between Old Cutters, Inc. an Idaho corporation, whose mailing address is P.O. Box 4944, Ketchum, Idaho, 83340 (hereinafter referred to as "Developer"), and the City of Hailey, Idaho, a municipal corporation, (hereinafter referred to as "Hailey").

RECITALS

A. Developer has made an application for and received final plat approval of the Cutters Subdivision from Hailey thereof as set forth in the Hailey City Council's Findings of Fact, Conclusions of Law and Decision dated August 13, 2007, and incorporated herein by reference; and

B. Developer has received final plat approval prior to completion of construction of the certain improvements. Developer and Hailey entered into a Security Agreement dated November 26, 2007, in which Developer agreed to post a letter of credit in the amount of \$299,491.95, as security for complete performance and construction of certain improvements.

C. Developer has not completed construction of the improvement described in the Security Agreement dated November 26, 2007, but the parties agree to enter into this Agreement to allow a letter of credit to be provided as security for the uncompleted improvements, described on attached Exhibit "A" ("Improvements") and as a condition thereof, Developer is required by the Hailey City Council to post security therefore consistent with the ordinances of the City of Hailey.

AGREEMENT

NOW, THEREFORE, Developer and Hailey hereby covenant and agree as follows:

1. Security. Developer, simultaneously with the execution of this Agreement, deposits with Hailey a Letter of Credit (Number ___) dated November __, 2008 ("Letter of Credit"), from Mountain West Bank, Ketchum, Idaho, whose mailing address is P.O. Box 2237, Ketchum, Idaho in the principal total amount of THIRTY THOUSAND TWENTY FIVE AND 95/100's DOLLARS (\$30,025.95), as security for complete performance and construction of the Improvements upon the terms and conditions set forth herein. The Letter of Credit shall be made solely in the name of the City of Hailey, Idaho and shall be held by Hailey in lieu of the Owner filing or depositing other security with Hailey.

2. Time of Performance. Developer shall complete construction of the Improvements on or before one (1) year from the date of the Letter of Credit or the amount of the Letter of Credit shall be due and payable to Hailey up to the full amount thereof and Hailey may draw upon the Letter of Credit as Hailey in its sole discretion determines necessary to complete the Improvements or any portion thereof as provided in paragraph 3, below.

3. Remedies. In the event Developer fails or refuses to complete the Improvements or any portion thereof on or before one (1) year from the date of the Letter of Credit, Hailey shall have the right, but not the obligation, to draw the funds from the Letter of Credit and apply the proceeds thereof to construction of the Improvements or any portion thereof. In case of default by Developer, if the total cost of construction of the Improvements is less than the amount of the Letter of Credit, Hailey agrees to return to Developer the unused portion of the Letter of Credit funds. However, if the cost of installing or constructing the Improvements is greater than the amount of the Letter of Credit, Developer agrees to reimburse and hold harmless Hailey for any and all additional costs and expenses incurred by Hailey associated with installing and constructing the Improvements.

4. Release. In the event Developer completes construction of the Improvements on or before one (1) year from the date of the Letter of Credit, Hailey shall release the funds from the Letter of Credit, including any and all interest accrued, to Developer upon receiving written notice by the City Engineer that the Improvements have been installed according to applicable ordinances, regulations, plans and specifications, and that the same has been inspected and approved by the City Engineer. Developer can apply for a partial release of funds from Hailey and the Hailey City Council may so authorize release by the City Clerk of an appropriate proportion of the amount held as security upon completion of a substantial portion of the Improvements, and the inspection and approval thereof by the City Engineer. In such cases, Hailey shall retain sufficient security for completion of all the Improvements in compliance with this Agreement.

5. Inspection Fees. Developer is responsible for and shall pay any and all fees incurred by the City Engineer in providing services associated with the inspections necessary to confirm completion of any or all of the Improvements required.

6. Relationship of Parties. This Agreement is not a guarantee that any of the Improvements will be constructed and does not obligate Hailey in any way to complete any of the Improvements. This Agreement is not intended nor shall it be construed as a third party beneficiary contract or creating any third party beneficiary rights.

IN WITNESS WHEREOF, the parties hereto have signed this document the day and year first written above.

DEVELOPER
Old Cutters, Inc., an Idaho corporation

By _____
John Campbell, its president

CITY OF HAILEY, IDAHO

By _____
Rick Davis, Council President

EXHIBIT "A"

<u>Description</u>	<u>Amount</u>
Restroom	\$10,000.00
Bike Racks/Benches/Picnic Tables/Trash Cans	4,717.30
Pedestrian ROW between lots 8 & 9	2,300.00
Mailboxes (2)	<u>3,000.00</u>
Total	\$20,017.30

Security Required (\$20,017.30 x 150%) \$30,025.95

AGENDA ITEM SUMMARY

DATE: 11/10/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

License – South Woodside Light Industrial area

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a proposed License that I suggested we consider for those owners of properties which abut the Hailey parcel that contains the sewer lines. Please note that I still need to include the descriptions of Hailey's property and the adjacent properties, along with the owners of the private properties. Aside from the descriptions and names, I feel this License is ready for your review. Please note that snow storage is not allowed pursuant to the License. For your information, the Public Works Administrator may suggest that Hailey charge a fee for any use of the property. I did not include any such fee because it was not discussed at our last meeting on this topic.

If you approve of this License, I would propose that I include all of the appropriate names and descriptions and then forward the License to the adjacent property owners for their signatures. Once all of the property owners have signed, then the mayor could execute the License. If you have any questions, please contact me. Thank you.

Ned

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the License, and if appropriate, make a motion authorizing the City Attorney to add the appropriate owners and legal descriptions and to forward the License to all the adjacent property owners for signature, and authorizing the Mayor to sign the License upon receipt of the License signed by all adjacent property owners.

FOLLOW-UP REMARKS:

LICENSE

THIS LICENSE is made this ___ day of _____, 2008, by and between the City of Hailey, a municipal corporation ("Licensor") and _____ (collectively referred to as "Licensees").

RECITALS

A. Licensor presently owns Parcels II and HH of WOODSIDE SUBDIVISION FINAL PLAT NO. 10, according to the official plat thereof, recorded as Instrument No. _____, records of Blaine County ("City Property"). The City Property contains a subsurface pressurized wastewater pipeline and a subsurface gravity drain wastewater pipeline, which Licensor must have year round access to maintain and repair.

B. _____ presently owns Lot ___ in Block ___ of WOODSIDE SUBDIVISION FINAL PLAT NO. 10, according to the official plat thereof, recorded as Instrument No. _____, records of Blaine County, Idaho.

_____ presently owns Lot ___ in Block ___ of WOODSIDE SUBDIVISION FINAL PLAT NO. 10, according to the official plat thereof, recorded as Instrument No. _____, records of Blaine County, Idaho

All of the parcels owned by the Licensees described herein are contiguous to the City Property.

C. Some of the Licensees have used the City Property for various purposes, including snow storage, vehicle parking, temporary storage of materials and access.

D. Licensor is willing to allow the uses described in paragraph C to continue until further notice but does not, by virtue of such uses intend to allow any or all of the Licensees to obtain any claim to an express, implied or prescriptive easement over the City Property, or any claim to any portion of the City Property by adverse possession, or any claim to City Property by any theory.

E. Collectively or individually, the Licensees do not wish to cease the use of the City Property, but do not intend to make a claim to any portion of the City Property.

NOW, THEREFORE, Licensor and the Licensees, collectively and individually, hereby agree as follows:

1. License. Subject to the permitted uses described in paragraph 2, below, and the conditions stated herein, Licensor hereby grants and conveys to each of the Licensees a non-exclusive license over and across the City Property.

2. Uses. The Licensees are only given permission and consent to use the City Property, to park motor vehicles and trailers and to store equipment on a temporary basis between the hours of 7:00 o'clock a.m. and 6:00 o'clock p.m. Monday through Saturday (except for legal holidays) only in the area depicted on attached **Exhibit "A."** Licensees shall not store any hazardous or dangerous material or property on City Property. Licensor reserves the right to relocate or further regulate the use of City Property at any time, in its sole and absolute discretion. Licensor

shall have the right to use and possess City Property for lawful purposes, including the right to remove snow and inspect. Licensor shall erect fence posts on City Property to delineate the approximate boundaries on **Exhibit "A."** The fence posts installed by Licensor shall be determinative of the boundaries where storage is allowed under this License.

3. Revocable License. The Licensees acknowledge and agree that the License granted herein is revocable by Licensor, in its sole and absolute discretion. In the event the Licensor determines in the exercise of its sole and absolute discretion that the use of City Property interferes with its use of City Property, Licensor shall have the authority to immediately and without notice remove any vehicles, trailers, equipment and/or snow located on City Property, in which case, the Licensee who stored or whose invitee, employee or agent stored the property or snow on City Property shall pay upon demand all costs associated with the removal of property or snow. In the event the Licensor determines in the exercise of its sole and absolute discretion that the License or use of City Property shall be revoked, Licensor may also terminate the License hereby granted by giving written notice thereof to Licensees or Licensees' successors at their last known address.

4. Indemnification. Each Licensee hereby indemnifies and agrees to hold Licensor and their invitees safe and harmless from any and all loss, cost, liability, damage and expense (including attorney fees and court costs), suffered or incurred by reason of this License Agreement, or the use of City Property by the Licensees, or anyone claiming, by, through or under the Licensees.

5. Miscellaneous Provisions.

a. Release. Each Licensee waives, disclaims and releases any and all claims or interest in City Property other than the License hereby granted, including but not limited to Licensee's claim to an express, implied or prescriptive easement over City Property, or any claim to any portion of City Property by adverse possession, or any claim to City Property by any theory.

b. Successors and Assigns. The terms and conditions of this License shall be binding upon the successors and assigns of the parties hereto. This License shall run with the land and shall benefit and bind the successors, heirs and assigns of the Licensor and Licensees.

c. Governing Law. This License shall be construed according to the laws of the State of Idaho.

d. Entire Agreement. This License contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matter;

e. No Presumption. No presumption shall exist in favor of or against any party to this License as a result of the drafting and preparation of the Agreement.

f. Attorneys' Fees. In the event of any dispute with regard to the interpretation or enforcement of this License, the prevailing party shall be entitled to recover his/her/its reasonable costs and attorneys' fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

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

To Hailey:

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

To Licensees:

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.

DATED this _____ day of November, 2008.

“HAILEY”

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

By: _____
Mary Cone, Clerk

“GRANTEES”

STATE OF IDAHO)
)ss.
County of Blaine)

On this ____ day of November, 2008, before me a Notary Public in and for said State, personally appeared Richard L. Davis, known to me to be the Mayor of the city of Hailey, Idaho, and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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 first written above.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
)ss.
County of Blaine)

On this _____ day of November, 2008, before me, a Notary Public in the State of Idaho, personally appeared _____, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

STATE OF IDAHO)
)ss.
County of Blaine)

On this _____ day of November, 2008, before me, a Notary Public in the State of Idaho, personally appeared _____, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

