

AGENDA ITEM SUMMARY

DATE: 09/22/2008 DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____



SUBJECT:

Proposed Amendment to Sewer Services Agreement

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am attaching a letter from Brian Ballard, attorney for the Rinker Trust. As explained in the letter, the Rinker Trust is requesting a three (3) year extension to the Sewer Services Agreement. For your benefit, I am also attaching a copy of the Sewer Services Agreement and First Amendment to Sewer Services Agreement. Please contact me if you have any questions.

Ned

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input checked="" 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:

Discuss whether the Council would be amenable to an extension, and if so, the length of the extension and under what terms. If the Council wishes to proceed with an extension, an amendment of the Sewer Services Agreement will need to be drafted and presented to the Council at a later meeting.

FOLLOW-UP REMARKS:

*

Robin Crotty

From: Rick Davis [rdavis@sunvalleytitle.com]
Sent: Wednesday, September 17, 2008 2:42 PM
To: Robin. Crotty
Subject: FW: Rinker Trust/Hailey Sewer Agreement
Attachments: DOC114.PDF

Please put in council and Mayor packet for Monday night.



Rick Davis
Client Relations
Sun Valley Title Company
208.727.7728
800.488.9341
208.726.9341

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

From: Harry Rinker [mailto:hrinker@rinkercompany.com]
Sent: Wednesday, September 17, 2008 2:27 PM
To: rick.davis@haileycityhall.org; burkefamily203@cox.net; carol.brown@haileycityhall.org; don.keirn@haileycityhall.org; fritz.haemmerle@haileycityhall.org
Subject: Rinker Trust/Hailey Sewer Agreement

Dear Mayor Davis and Hailey City Council Members:

Please see attached correspondence from my Attorney Brian Ballard to Attorney Ned Williamson regarding subject agreement. . . .

Sincerely,
Harry S. Rinker

BRIAN L. BALLARD
ADMITTED TO PRACTICE LAW IN IDAHO
EMAIL: BLB@HTEH.COM
DIRECT DIAL: (208) 388-4868

September 17, 2008

VIA FACSIMILE: 788-7901

Ned C. Williamson, Esq
115 2nd Avenue South
Hailey, ID 83333

Re: *Rinker Trust/Hailey Sewer Agreement*

Dear Ned:

The development proposal of Rinker Trust with respect to Peregrine Ranch is currently in front of the Blaine County Planning and Zoning Commission. The initial hearing thereon was held September 11, 2008, with the matter continued over to the P&Z's next regular session.

Of concern to the Blaine County Planning and Zoning Commission was the status of the Sewer Services Agreement between the City of Hailey and Rinker Trust, dated February 7, 2005, as amended by the First Amendment thereto, dated August 27, 2007.

As you will recall, and briefly stated, the Sewer Services Agreement arose out of the Castle lawsuit against Hailey alleging, among other things, inverse condemnation. Rinker Trust proposed a rescuing solution with respect to the settlement of that lawsuit, pursuant to which Rinker Trust would purchase the Castle Property, thereby providing immediate and necessary monies to Hailey for application in the settlement, with the agreement that later, in partial exchange for the Castle Property back to Hailey, Rinker Trust would have the right to connect to Hailey's municipal sewer system. Rinker Trust's right to connect was also conditioned upon an additional Final Payment, the amount of which was generally calculated upon the number of hookups to which Rinker Trust would be entitled in a maximum density development, as was contemplated under a master plan prepared by David A. Klinger, a master development planner from Colorado.

The First Amendment sets forth the further agreement of the parties pursuant to which Rinker Trust agreed to convey to Hailey (i) a parcel of land for a well site and related pump house facility, with utility and access rights, and (ii) a parcel of land for a firehouse site, with utility and access rights. Such conveyance of the well/pump house parcel and the firehouse parcel, together with a very substantial reduction in the number of allowable hookups to a

Ned Williamson
September 17, 2008
Page 2

maximum of 72 residential lots, combined to comprise the entire Final Payment, without any additional cash or other payment required.

Among other things, both the Sewer Services Agreement and the First Amendment are tied to the recordation of a final plat for Peregrine Ranch within four (4) years (that is, February 9, 2009), with the ability of Rinker Trust to terminate earlier. Upon termination, either at expiration of the four (4) year term or earlier, neither Rinker Trust nor Hailey would have further obligation under the Sewer Services Agreement or the First Amendment. Rinker Trust would be entitled to retain title to the Castle Property and to pursue development thereof. Hailey would have no obligation to provide sewer services to the Peregrine Ranch.

The Blaine County Planning and Zoning Commission, in particular through its staff, expressed concern that a final plat, even if the proposed development currently before it is approved, would be able to be recorded prior to termination of the Sewer Services Agreement and/or the First Amendment. An extension of the term was discussed as being a possible condition to continuation of the process.

Accordingly, in recognition of the concern of the Blaine County Planning and Zoning Commission, and mindful of the current real estate economy, not only in Blaine County but also nationwide, it would seem appropriate to extend the term of the Sewer Services Agreement and the First Amendment. It would not seem prudent to assume in this current failing real estate economy, even without regard to the status of the application before Blaine County, that residential buyer demand will rekindle in any short period of time, thereby allowing appropriate development of Peregrine Ranch to move forward. Accordingly, as would be in continuation of the best interests of the citizens of Hailey as stated in the Sewer Services Agreement, this is to respectfully request, on behalf of Rinker Trust, that the City of Hailey approve an extension of the term of the Sewer Services Agreement and the First Amendment for three (3) years.

Please contact me should you have any specific concerns. Also, kindly forward a copy of this letter to the Mayor and City Council members.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Brian L. Ballard

cc: Harry Rinker, Trustee (via email)

SEWER SERVICES AGREEMENT

THIS SEWER SERVICES AGREEMENT ("Agreement") is entered into this 7th day of February, 2005, by and between the CITY OF HAILEY, IDAHO, a municipal corporation ("Hailey"), and Harry S. Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated ("Trust") (collectively, Hailey and Trust are referred to as the "Parties"), in contemplation of the following:

1. Recitals.

1.1 Hailey is a municipal corporation and political subdivision of the State of Idaho, and has authority to enter into this Agreement. Martha Burke, Don Keirn and Carol Brown are duly elected City Council Members of the Hailey City Council. The Hailey City Council has duly authorized the execution of this Agreement.

1.2 Hailey has the power to contract and to exercise all powers not specifically prohibited by or in conflict with the general laws or constitution of the State of Idaho.

1.3 Hailey owns, operates and maintains a system for the collection and treatment of sanitary sewage. Hailey treats the municipal sewage at the Woodside Treatment Plant in South Woodside, Hailey, Idaho, and is generally described as Tax Lot 5377 (the "Woodside Treatment Plant").

1.4 Trust is the owner of real property located outside of the municipal boundaries of Hailey, more particularly described in attached Exhibit "A" (the "Trust Property").

1.5 Trust desires to develop the Trust Property as a residential subdivision. Currently, the Trust Property is undeveloped and not served by any municipal sewer system. Trust has asked to connect into the Hailey municipal sewer system.

1.6 Hailey is a party in a lawsuit filed by Judy Hartley Castle and Roundup Corral, LLC (collectively referred to as "Castle"), entitled Castle v. Hailey, CV-99-6320 (the "Castle Lawsuit"). The Castle Lawsuit involves several claims, including a claim of inverse condemnation of approximately 81 acres of property, more particularly described in attached Exhibit "B" (the "Castle Property"). The Castle Property is contiguous to the Woodside Treatment Plant and is generally located to the east and south of the Woodside Treatment Plant.

1.7 Hailey believes it is in the best interests of the citizens of Hailey to settle the Castle Lawsuit and Trust is willing to facilitate such a settlement.

1.8 Subject to the terms and conditions set forth herein, Hailey is willing to allow Trust to connect into the Hailey municipal sewer system.

Instrument # 517483

HAILEY, BLAINE, IDAHO
2005-03-16 12:20:00 No. of Pages: 21
Recorded for : WILLIAMSON LAW OFFICE
MARSHA RIEMANN Fee: 63.00
Ex-Officio Recorder Deputy
Index to: AGREEMENTCORRECTION

mpp

ORIGINAL IN RED

Exh. No. 10
Date 11-9-05
Name Burke
At & At Court Reporting

HAILEY

1

30341.0095.797818.2

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

2. Right to Connection. Provided there is full compliance with this Agreement including payment of the consideration set forth in paragraph 3 of this Agreement, Trust shall have the right to connect into Hailey's municipal sewer system at such location(s) deemed acceptable by Hailey subject to the terms and conditions set forth herein.

3. Consideration. Subject to the terms and conditions hereof, Trust agrees to pay to Hailey as consideration for the right to connect into Hailey's municipal sewer system the sum of Four Million and no/100 Dollars (\$4,000,000.00), payable in cash and in accordance with the schedule described in paragraph 4 of this Agreement.

4. Payment Schedule. As part payment of the consideration described in paragraph 3 of this Agreement, upon its execution hereof, Trust, will deliver to Sun Valley Title the sum of One Million Three Hundred Fifty Thousand and no/100 Dollars (\$1,350,000.00) (the "Initial Payment"), by federal wire transfer, for the payment of the purchase price of the Castle Property. The remainder of the consideration described in paragraph 3 of this Agreement, in the amount of Two Million Six Hundred Fifty Thousand Dollars (\$2,650,000.00) (the "Final Payment") shall be paid directly to Hailey on or before the recordation of a final plat with the Blaine County Recorder's Office for a subdivision of the Trust Property, unless this Agreement is sooner terminated in accordance with the provisions set forth herein. Upon payment of the Final Payment by the Trust, the Parties shall immediately execute and record a release of any lien and satisfaction of all obligations created by Paragraphs 3 through 11, inclusive, and 13 of this Agreement.

5. Castle Property. As part of the settlement in the Castle Lawsuit, Hailey agrees to enter into a stipulated judgment and to ensure that Castle will, upon confirmation of the delivery of the Initial Payment by Trust into escrow with Sun Valley Title, immediately deposit into escrow with Sun Valley Title a duly executed and acknowledged warranty deed conveying title to the Castle Property to Trust or its designee, free and clear of all liens and encumbrances, and subject to such title exceptions only as have been approved by Trust. It is contemplated that Trust will designate South Woodside Property, LLC, an Idaho limited liability ("SWPLLC") as such designee. SWPLLC is a single member, special purpose entity, formed as a disregarded entity for tax purposes with its sole member being Trust. Closing means the date on which all documents are either recorded or accepted by Sun Valley Title and the sale proceeds are available to Castle. The Closing shall be on or before February 11, 2005. ("Closing Date"). Possession shall pass to SWPLLC on the Closing Date. The policy of title insurance, as evidenced by the Commitment and to be furnished and paid for by Hailey, shall be a standard coverage owner's policy of title insurance, to be issued by Sun Valley Title within a reasonable time after the Closing Date, on the title insurance company's usual form, dated as of the Closing Date, with liability in the amount of the purchase price of One Million Three Hundred Fifty Thousand and no/100 Dollars (\$1,350,000.00), showing title vested in SWPLLC, subject only to exceptions to title as have been approved by Trust. On or before the Closing Date, Trust shall also deposit into escrow instructions to disburse the Initial Payment to Castle upon recordation of

the deed and the irrevocable commitment of the title insurance company to issue the title insurance policy. All costs and expenses for the standard title policy, escrow fees and recording fees shall be borne exclusively by Hailey. All other costs associated with the purchase of Castle's Property (including but not limited to attorney and accountant fees) shall be borne by the requesting party. Taxes shall be prorated as of the Closing Date. Each party represents and warrants that it has not dealt with or contracted with any broker, agent or finder to act in its behalf in connection with this transaction. Until title to the Castle Property is conveyed to Hailey under the provisions of paragraphs 6 or 9 of this Agreement, or until the sooner termination of this Agreement, title to the Castle Property shall not be conveyed in whole or in part to any person or legal entity without the written consent of Hailey.

6. Rezone. Upon conveyance of title to the Castle Property to SWPLLC, Hailey agrees to initiate and process, in a prompt and diligent fashion and at its own expense, a rezone application in accordance with Hailey's Zoning Ordinance for a portion of the Castle Property as depicted on attached Exhibit "C" (the "LI Property") and for the Woodside Treatment Plant. The application for a rezone of the LI Property shall seek a rezone from Recreational Green Belt (RGB) to Light Industrial (LI). Trust shall consent to such a rezone on both properties and to the application of RGB zoning for the remainder of the Castle Property. If Hailey fails to finally adopt findings of fact and conclusions of law approving the rezone of the LI Property within one year of the date of this Agreement, this Agreement shall terminate, upon notice to Hailey from Trust, or otherwise may be extended by Trust for such period of time as deemed appropriate by Trust. If Hailey fails to finally adopt findings of fact and conclusions of law approving the rezone of the LI Property within one year of the date of this Agreement, Trust shall also be entitled to put the Castle Property to Hailey and cause SWPLLC to convey title to the Castle Property to Hailey. Hailey, in consideration for such conveyance, shall pay to Trust the sum of One Million Three Hundred Fifty Dollars (\$1,350,000.00), at a closing to occur within sixty days following the notice from Trust that it will put the LI Property to Hailey. In the event Trust elects to cause conveyance of the title to the Castle Property in accordance with this paragraph 6, the closing and conveyance of title shall be conducted consistent with the provisions of paragraph 5 of this Agreement, provided that all cost of closing and title insurance shall be the responsibility of Hailey. In the event any person or legal entity appeals an approval of or files any other cause of action relating to the rezone of the LI Property, Hailey agrees to defend such appeal or action and will consent to any request for intervention by Trust. In the event there is an appeal or other action filed relating to an approval of the rezone application and if Hailey defends such an appeal or action, this Agreement shall not terminate.

7. Creation of Sewer District or Establishment of Owner's Association. Trust shall either initiate and cause to be established a sewer district in accordance with Idaho Code §§42-3201 *et seq.*, or if a sewer district is not legally possible to establish, a Trust Property Owner's Association that will be responsible for entering into the Contract for Sewer Service, as set forth in paragraph 8 of this Agreement. The Parties recognize that Hailey will seek an amendment to Idaho Code §§42-3201 *et seq.* to allow a single property owner to petition and establish a sewer district.

8. Contract for Sewer Service between Hailey and Sewer District or Owner's Association. The Parties agree that Hailey and the Sewer District or the Trust Property Owner's Association shall enter into a Contract for Sewer Service consistent with the Memorandum of Understanding attached as Exhibit "D."

9. Final Payment and Connection. Upon payment of the Final Payment to Hailey, Trust shall cause the conveyance of the title to the Castle Property to Hailey by special warranty deed within sixty days of the recordation of the final plat of the Trust Property, with condition of title being substantially the same as when received by SWPLLC. The closing and conveyance of title shall be conducted consistent with the provisions of paragraph 5 of this Agreement, provided that all costs of closing and title insurance shall be the responsibility of Hailey. Upon receipt of the deed for the Castle Property, Hailey will credit Trust One Million Three Hundred Fifty and no/100 Dollars (\$1,350,000.00). In this event, Trust will have paid the total consideration of \$4,000,000.00 as described in paragraph 3 of this Agreement, consisting of \$2,650,000.00 in cash and land valued at \$1,350,000.00, and Hailey shall grant Trust the right to connect to the Hailey municipal sewer system in accordance with the provisions of this Agreement.

10. Termination. Notwithstanding anything to the contrary set forth in the foregoing, in the event Trust is not successful in recording a final plat of the Trust Property within four years of the date of this Agreement or Trust provides notice of an intent to terminate this Agreement before the expiration of the four year term following the date of this Agreement, this Agreement shall terminate, in which case Trust is not responsible for the payment of the Final Payment, Hailey is not obligated to provide sewer services to the Trust Property, and SWPLLC shall retain title to the Castle Property free and clear of any obligation under this Agreement, unless the Parties otherwise agree in writing.

11. Infrastructure. Trust shall construct, at Trust's sole expense, all sewer main lines and related sewer improvements, such as any necessary lift stations, needed to connect to the Hailey municipal sewer system, all in accordance with applicable federal, state and Hailey regulations and ordinances in existence at the time of the construction. The location of the sewer main lines and related sewer improvements and the points of connection to the Hailey municipal sewer system shall be approved by Hailey following consultation with Trust's engineer(s).

12. Consent to Annexation. The Parties agree that the provisions of this paragraph 12 shall constitute a consent to annexation under Idaho Code §50-222, as amended. This written consent to annex lands shall be binding, at time of recordation of this Agreement, upon subsequent purchasers, heirs or assigns of the Trust Property; provided, however, that if there is a termination of this Agreement under paragraph 10, this paragraph 12 shall be null and void, and without further force or effect, and the Parties shall immediately execute and record a notice to that effect. Upon recordation of such notice, no consent to annexation shall exist or be binding upon subsequent purchasers, heirs or assigns.

13. Trust Application. As a continuing obligation of Hailey which shall survive any termination of this Agreement, during any application(s) by Trust before Blaine County for land use approval(s) for the Trust Property, the Parties agree that Hailey shall remain neutral on any issue relating to the density of a proposed project on the Trust Property.

14. [Reserved].

15. General Provisions.

15.1 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 appropriate application.

15.2 Mediation/Arbitration. Any controversy or claim arising out of or relating to this Agreement or breach thereof, shall first be submitted to mediation in accordance with the American Arbitration Association Commercial Mediation Rules. Mediation shall be held in Blaine County. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of Idaho. Each party shall bear its own costs and the Parties shall split equally the cost and expenses of the mediator. In the event mediation proves unsuccessful, all controversies or claims arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration. Such arbitration shall be final and binding, and conducted by one (1) neutral arbitrator, and shall proceed in accordance with the American Arbitration Association Commercial Arbitration Rules unless the parties mutually agree otherwise. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of Idaho. Arbitration shall take place in Blaine County, Idaho. The Parties shall split equally the American Arbitration Association costs and the arbitrator's costs and expenses. In the event of any controversy or claim arising out of or relating to this Agreement or breach thereof, the prevailing party shall be entitled to recover its or his reasonable costs and attorney's fees incurred in the arbitration or on any proceeding in district court to compel arbitration or confirm an arbitration award or on appeal thereof.

15.3 No Waiver. In the event that Hailey or Trust, or its successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Trust, or its successors in interest, or by Hailey, 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.

15.4 Partial Invalidity. In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the Parties with respect to the invalid, void, or unenforceable provision or part hereof.

15.5 Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the Parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

15.6 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 Trust:

Harry S. Rinker, Trustee
P.O. Box 7250
Newport Beach, CA 92658

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.

15.7 Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. In addition to all other remedies at law or in equity, the Parties specifically agree that this Agreement shall be enforceable by specific performance by either party hereto.

15.8 Successors and Assigns; Covenant Running with the Land. This Agreement shall inure to the benefit of and be binding upon Trust and Hailey, and their successors and assigns. This Agreement shall be a covenant running with the Castle Property and Trust Property and with any portion thereof.

15.9 Paragraph Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

15.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho.

15.11 Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

15.12 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.13 Force Majeure. Neither Party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by the Parties, whether now existing or hereafter created.

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this 7th day of February, 2005.

[Handwritten Signature]
Harry S. Rinker, Trustee for the Harry
& Diane J Rinker Revocable Trust
dated 5/10/66, as Amended and Restated

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: *[Handwritten Signature]*
Heather Dawson, City Clerk
Shellie GALLAGHER
Deputy Clerk

By: *[Handwritten Signature]*
Martha Burke, Council Member

By: *[Handwritten Signature]*
Don Kern, Council Member

By: *[Handwritten Signature]*
Carol Brown, Council Member

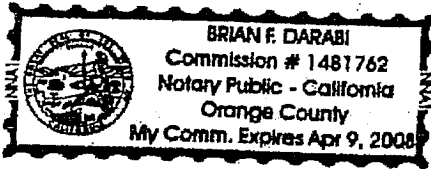


RINKER SIGNATURE
ORIGINAL

CALIFORNIA)
STATE OF IDAHO)
County of Blaine ORANGE) ss.

Subscribed and sworn before me on this 7th day of February, 2005, before me a Notary Public in and for said State, personally appeared Harry S. Rinker known to me to be the Trustee for the Harry S. and Diane J Rinker Revocable Trust dated 5/10/66, as Amended and Restated, and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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



Brian F. Darabi
Notary Public for ~~Idaho~~ California
Residing at Costa Mesa
My commission expires April 9, 2008

STATE OF IDAHO)
County of Blaine) ss.

On this 7th day of February, 2005, before me, a Notary Public in and for said state, personally appeared Martha Burke, Don Keirn and Carol Brown, City Council Members of the City of Hailey, known or identified to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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



Ned C. Williamson
Notary Public for Idaho
Residing at Hailey
My commission expires 5-15-10

RINKER NOTARY

20341.0095.797816 2

ORIGINAL

HAILEY

10

STATE OF IDAHO)
) ss.
County of Blaine)

Subscribed and sworn before me on this _____ day of February, 2005, before me a Notary Public in and for said State, personally appeared Harry S. Rinker known to me to be the Trustee for the Harry S. and Diane J Rinker Revocable Trust dated 5/10/66, as Amended and Restated, and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

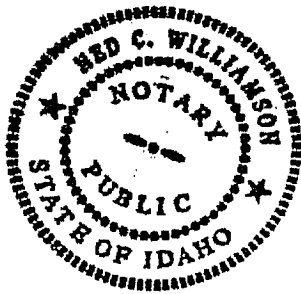
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this 7th day of February, 2005, before me, a Notary Public in and for said state, personally appeared Martha Burke, Don Keirn and Carol Brown, City Council Members of the City of Hailey, known or identified to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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



M. DeLille
Notary Public for Idaho
Residing at Hailey
My commission expires 5-15-10

15.12 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.13 Force Majeure. Neither Party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by the Parties, whether now existing or hereafter created.

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this 7th day of February, 2005.

Harry S. Rinker, Trustee for the Harry
S. and Diane J Rinker Revocable Trust
dated 5/10/66, as Amended and Restated

CITY OF HAILEY, an Idaho municipal
corporation

ATTEST:

By: Shelie Dawson
Heather Dawson, City Clerk
Shelie GALLAGHER
Deputy Clerk

By: Martha J. Burke
Martha Burke, Council Member

By: Don Keim
Don Keim, Council Member

By: Carol Brown
Carol Brown, Council Member



EXHIBIT A
TRUST PROPERTY DESCRIPTION

HAILEY

11

**LEGAL DESCRIPTION
FOR
PEREGRINE RANCH**

A parcel of land being all of Lot 1, Block 1 of Chapman's East Cloverly Ranch, recorded on April 23, 1990 as Instrument No 318754, Records of Blaine County, Idaho, lying within the East 1/2 of Section 32, and the Northwest 1/4 of the Southwest 1/4 of Section 33, Township 3 North, Range 18 East of the Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at a point marking the Northeast corner of said Section 32;

Thence South $0^{\circ}39'09''$ West, 503.96 feet along the easterly boundary of said Section 32 to a point on the southwesterly right-of-way line of Buttercup Road, said point being the **TRUE POINT OF BEGINNING**;

Thence continuing along said easterly boundary, South $0^{\circ}39'09''$ West, 2142.53 feet to the northerly boundary of the Southwest 1/4 of said Section 33;

Thence leaving said easterly boundary, South $89^{\circ}52'38''$ East, 748.62 feet along the northerly boundary of said Southwest 1/4 to a point on the southwesterly right-of-way line of Buttercup Road;

Thence leaving said northerly boundary, South $18^{\circ}39'52''$ East, 1197.94 feet along said southwesterly right-of-way line;

Thence leaving said southwesterly right-of-way line North $89^{\circ}51'44''$ West, 1143.91 feet;

Thence North $89^{\circ}32'19''$ West, 945.91 feet to a point on the easterly right-of-way line of State Highway 75;

Thence proceeding along the easterly right-of-way line of State Highway 75 the following three (3) courses and distances:

North $20^{\circ}07'26''$ West, 491.23 feet;

a distance of 1049.33 feet northwesterly along a curve to the right, with a radius of 2828.74 feet, a central angle of $21^{\circ}15'15''$, and a long chord bearing North $09^{\circ}29'48''$ West, 1043.33 feet;

North $01^{\circ}07'50''$ East, 2291.77 feet;

Thence leaving said easterly right-of-way line South $89^{\circ}35'27''$ East, 1107.52 feet along the northerly boundary of the Northeast 1/4 of Section 32 to a point on the southwesterly right-of-way line of Buttercup Road;

Thence leaving said northerly boundary, South $18^{\circ}39'52''$ East, 533.15 feet along said southwesterly right-of-way line to the **TRUE POINT OF BEGINNING**;

Said parcel contains 5,746,913 square feet or 131.93 acres, more or less.

Job No. 3455.04
Page 1 of 3

PEREGRINE RANCH (CONT.)

Together with:

A parcel of land being all of Tax Lots 2424 and 6865 as shown on a Record of Survey recorded on February 1, 2002 as Instrument No. 460963, Records of Blaine County, Idaho, lying within a portion of the Southeast 1/4 of the Southeast 1/4 of Section 29, Township 3 North, Range 18 East of the Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at a point marking the southeast corner of said Section 29;

Thence North 89°37'48" West, 176.31 feet along the southerly boundary of said Section 29 to a point on the southwesterly right-of-way line of Buttercup Road, said point being the **TRUE POINT OF BEGINNING**;

Thence continuing along said southerly boundary, North 89°35'30" West, 1107.71 feet to a point on the easterly right-of-way line of State Highway 75;

Thence leaving said southerly boundary, North 01°07'35" East, 824.19 feet along said easterly right-of-way line;

Thence leaving said easterly right-of-way line, South 89°03'33" East, 218.56 feet;

Thence North 23°16'42" West, 182.54 feet;

Thence North 13°41'08" West, 80.64 feet;

Thence North 21°30'29" West, 28.21 feet;

Thence North 09°10'46" West, 77.71 feet;

Thence North 28°36'40" West, 24.46 feet;

Thence North 56°35'54" West, 39.02 feet;

Thence North 75°51'56" West, 54.02 feet to a point on the easterly right-of-way line of State Highway 75;

Thence North 01°07'35" East, 97.46 feet along said easterly right-of-way line to a point on the northerly boundary of Southeast 1/4 of the Southeast 1/4 of said Section 29;

Thence leaving said easterly right-of-way line, South 89°39'53" East, 632.96 feet along said northerly boundary to a point on the southwesterly right-of-way line of Buttercup Road;

Thence leaving said northerly boundary, South 18°40'47" East, 1401.03 feet along said southwesterly right-of-way line to the **TRUE POINT OF BEGINNING**;

Said parcel contains 1,096,789 square feet or 25.18 acres, more or less.

Job No. 3455.04
Page 2 of 3

Excepting therefrom:

A strip of land 20 feet in width adjacent to State Highway 75 along the westerly boundary of Lot 1 of Chapman's East Cloverly Ranch Subdivision as described in a Grant Deed recorded on March 22, 2001 as Instrument No. 449192, Records of Blaine County, Idaho, lying within the East 1/2 of Section 32, Township 3 North, Range 18 East of the Boise Meridian, Blaine County, Idaho, being more particularly described as follows:

Commencing at a point marking the northeast corner of said Section 32;

Thence North $89^{\circ}35'27''$ West, 1283.88 feet along the northerly boundary of the Northeast 1/4 of said Section 32 to a point marking the northwesterly corner of said Lot 1 of Chapman's East Cloverly Ranch Subdivision; said point being on the easterly right-of-way line of State Highway 75 at Station 480+00.83, 40 feet left; said point being the **TRUE POINT OF BEGINNING**;

Thence South $01^{\circ}07'50''$ West, 2291.77 feet along said easterly right-of-way line to a point at Station 502+92.6, 40 feet left;

Thence 1049.33 feet southeasterly along said easterly right-of-way line along a curve to the left, with a radius of 2828.74 feet, a central angle of $21^{\circ}15'15''$, and a long chord bearing South $09^{\circ}29'48''$ East, 1043.33 feet; to a point at Station 513+58.8, 40 feet left;

Thence South $20^{\circ}07'26''$ East, 491.23 feet along said easterly right-of-way line to a point marking the southwest corner of said Lot 1 of Chapman's East Cloverly Ranch Subdivision, said point being at Station 518+50.03, 40 feet left;

Thence along the southerly boundary of said Lot 1 of Chapman's East Cloverly Ranch Subdivision South $89^{\circ}32'19''$ East, 21.36 to a point at Station 518+57.54, 60 feet left;

Thence North $20^{\circ}07'26''$ West, 498.74 feet to a point at Station 513+58.8, 60 feet left;

Thence 1041.92 feet northwesterly along a curve to the right, with a radius of 2808.74 feet, a central angle of $21^{\circ}15'15''$, and a long chord bearing North $09^{\circ}29'48''$ West, 1035.95 feet; to a point at Station 502+92.6, 60 feet left;

Thence North $01^{\circ}07'50''$ East, 2292.02 feet to a point on the northerly boundary of said Lot 1 of Chapman's East Cloverly Ranch Subdivision, said point being at Station 480+00.58, 60 feet left;

Thence North $89^{\circ}35'27''$ West, 20.00 feet along said northerly boundary to the **TRUE POINT OF BEGINNING**.

Said strip of land contains 76,650 square feet or 1.76 acres, more or less.

End of Description

Job No. 3455.04
Page 3 of 3

HAILEY

14

EXHIBIT B
CASTLE PROPERTY DESCRIPTION

HAILEY 15

TOWNSHIP 2 NORTH, RANGE 18 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO

SECTION 23: A tract of land lying within the SE $\frac{1}{4}$ of said Section 23 more particularly described as follows:

Beginning at the Southeast Corner of said Section 23; thence
Westerly along the South line of Section 23; thence
North 89°31'09" West 188.07 feet; thence
North 49°55'20" West 250.31 feet; thence
North 13°04'31" East 388.06 feet; thence
North 62°15'09" West 902.94 feet; thence
South 34°50'23" West 41.11 feet; thence

North 58°48'22" West 200.56 feet to the most Northerly Corner of Lot 12 of Block 42 of said final Plat No. 10; thence

North 51°32'20" West 308.91 feet to the most Northerly Corner of Lot 7 of said Block 42; thence

North 31°56'40" West 153.81 feet to the most Northerly Corner of Lot 5, of said Block 42; thence

North 21°07'57" West 280.84 feet to the Northeasterly Corner of Lot 13 of Block 46 of said Final Plat No. 11; thence

North 11°45'00" West 238.69 feet to the Northeasterly Corner of Lot 11 of said Block 46; thence

North 26°03'51" West 239.41 feet to the Northeasterly Corner of Lot 9 of said Block 46; thence

North 35°00'00" West 300.00 feet to the Northeasterly Corner of Lot 6 of said Block 46; thence

North 27°15'23" West 395.63 feet to a point on the North line of the SE $\frac{1}{4}$ of said Section 23, said point lies South 89°36'39" East 389.04 feet distant from the NW Corner of the SE $\frac{1}{4}$ of said Section 23; thence

Easterly along said North line of the SE $\frac{1}{4}$, South 89°36'39" East 2,263.00 feet to the E $\frac{1}{4}$ Corner of said Section 23; thence

Southerly along the East line of said Section, South 00°58'58" West 2,647.07 feet to the POINT OF BEGINNING.

Also known as Tax Lot 7573 on the Blaine County Assessor's Rolls.

EXHIBIT B
CASTLE PROPERTY DESCRIPTION

HAILEY 16

EXHIBIT C

"LI" PROPERTY DEPICTION

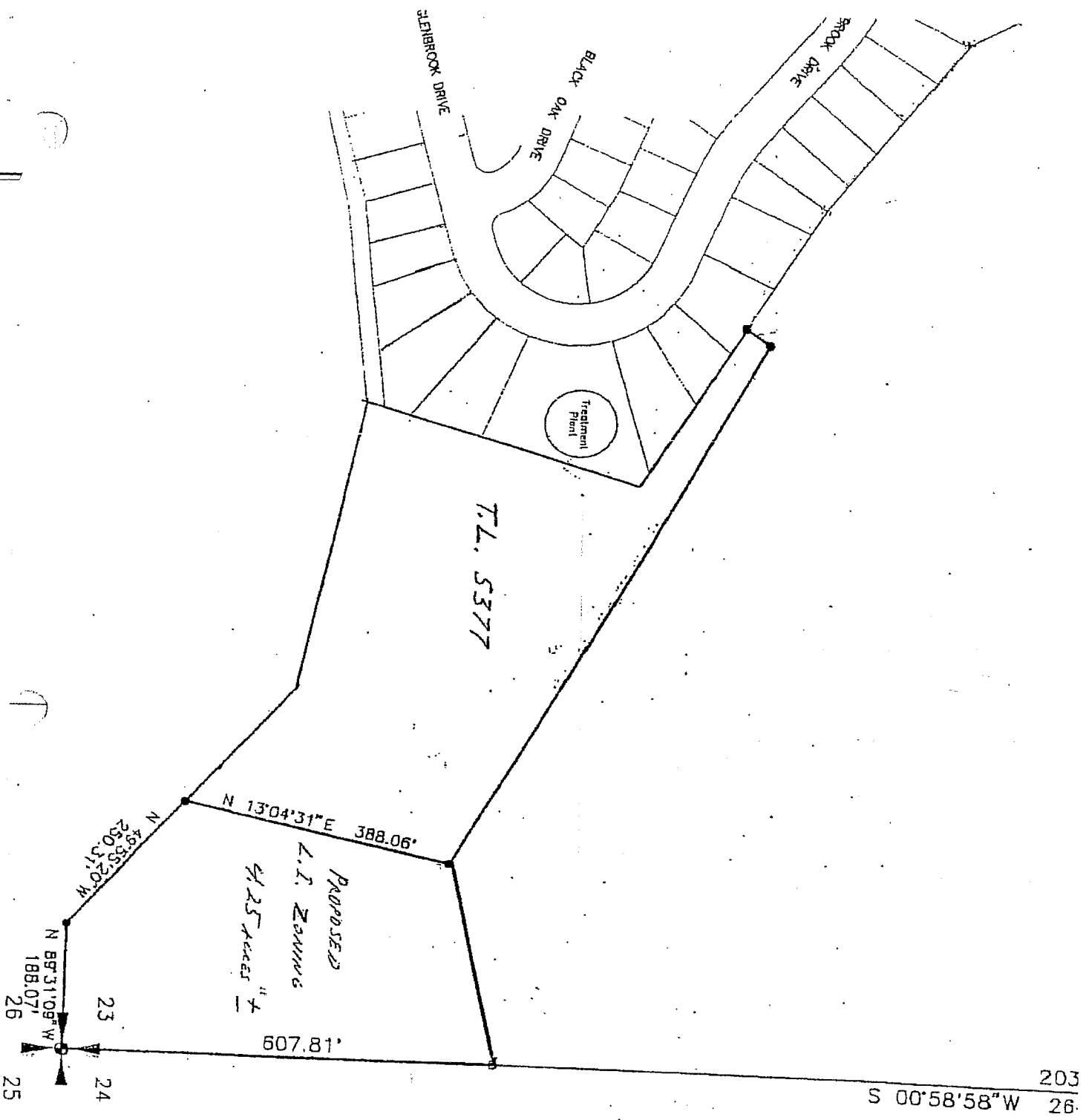


EXHIBIT C
 DEPICTION OF LI PROPERTY
 HAILEY 18

EXHIBIT D

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is set forth this _____ day of February, 2005, by and between CITY OF HAILEY, a municipal corporation and political subdivision of the State of Idaho ("City"), and Harry S. Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated ("Rinker Trust").

WHEREAS, City owns, operates and maintains a municipal system for the collection and treatment of sanitary sewage and which such municipal sewage is treated at its Woodside Treatment Plant in south Woodside, Hailey, Idaho; and

WHEREAS, City has the power to contract and exercise all powers not specifically prohibited by or in conflict with the general laws or constitution of the State of Idaho; and

WHEREAS, Rinker Trust intends to develop certain residential property located outside the City limits (hereinafter referred to as "Peregrine Ranch"); and

WHEREAS, Rinker Trust has requested that City extend sewer services to Peregrine Ranch and City is willing to extend such services; and

WHEREAS, Rinker Trust intends to form either a sewer district ("District") or a owners' association for Peregrine Ranch ("Association") upon or before final plat approval from the County of Blaine for Peregrine Ranch. Either District or Association, depending upon which is formed, shall be the contracting entity for the sewer services provided to Peregrine Ranch by City.

NOW, THEREFORE, the parties set forth their principal points of understanding and agreement as follows:

1. Either the District or the Association will pay monthly user fees (equivalent to rates charged to Hailey residents) measured at the point of entry into Hailey's sewer system, plus 10%.
2. Either the District or the Association shall be responsible for the collection and payment of hookup fees (equivalent to the rates charged to Hailey residents).
3. For Peregrine Ranch, the District or the Association shall pay its fair share of future sewer expansion costs of the Hailey Sewer Treatment System attributable to expansion or upgrades attributable to regulatory permitting and similar requirements, but shall not be responsible for any expansion costs attributable to future growth.
4. In the event the District or Association breaches any covenant in the Contract for Sewer Service, including a failure to pay the financial obligations set forth herein,

MEMORANDUM OF UNDERSTANDING - 1

HAILEY

20

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Hailey shall be entitled to terminate sewer services to the District or Association following notice and an opportunity to cure.

5. The term of any sewer extension agreement shall be 25 years with an option to renew for successive 10 year terms subject to yearly adjustment of monthly user charges and hook up fees.

6. Any expansion of the sewer service outside of Peregrine Ranch shall require the express written consent of City.

7. The costs of providing sewer service to Peregrine Ranch and the monthly user fees shall be consistent with the spirit and intent of District or Association and City addressing the most reasonable options for the providing of such sewer service.

8. The parties agree that the provisions of this Memorandum are not intended to create, nor shall they be in any way interpreted or construed to be an agreement for the provision of services, but rather is intended to be summary point of understanding regarding the scope of negotiating a final sewer service agreement between the City and District or Association. The parties contemplate that a sewer service agreement shall be negotiated and reduced to writing incorporating the concepts addressed herein.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

CITY OF HAILEY, a municipal corporation and political subdivision of the State of Idaho

By: _____
Martha Burke, Council Member

Harry Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated

By: _____
Don Keirn, Council Member

By: _____
Carol Brown, Council Member

ATTEST:

Heather Dawson, City Clerk

MEMORANDUM OF UNDERSTANDING - 2

HAILEY

2 1

30341.0095.797860.1

MEMORANDUM OF UNDERSTANDING

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THIS MEMORANDUM OF UNDERSTANDING ("Memo: this 27th day of February, 2005, by and between CITY OF HAILEY, a municipality and political subdivision of the State of Idaho ("City"), and Harry S. Rinker, Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Trust").

WHEREAS, City owns, operates and maintains a municipal collection and treatment of sanitary sewage and which such municipal sewer Woodside Treatment Plant in south Woodside, Hailey, Idaho; and

WHEREAS, City has the power to contract and exercise all powers specifically prohibited by or in conflict with the general laws or constitution of Idaho; and

WHEREAS, Rinker Trust intends to develop certain residential lots outside the City limits (hereinafter referred to as "Peregrine Ranch"); and

WHEREAS, Rinker Trust has requested that City extend sewer service to Peregrine Ranch and City is willing to extend such services; and

WHEREAS, Rinker Trust intends to form either a sewer district or owners' association for Peregrine Ranch ("Association") upon or before final plat of the County of Blaine for Peregrine Ranch. Either District or Association, depending on which is formed, shall be the contracting entity for the sewer services provided to Peregrine Ranch by City.

NOW, THEREFORE, the parties set forth their principal points of agreement as follows:

1. Either the District or the Association will pay monthly sewer rates (equivalent to rates charged to Hailey residents) measured at the point of entry into the sewer system, plus 10%.
2. Either the District or the Association shall be responsible for the cost of installation and payment of hookup fees (equivalent to the rates charged to Hailey residents).
3. For Peregrine Ranch, the District or the Association shall be responsible for the cost of future sewer expansion costs of the Hailey Sewer Treatment System attributable to regulatory permitting and similar requirements, but not responsible for any expansion costs attributable to future growth.
4. In the event the District or Association breaches any contract for Sewer Service, including a failure to pay the financial obligations

MEMORANDUM OF UNDERSTANDING - 1

HAILEY

22

Hailey shall be entitled to terminate sewer services to the District or Association following notice and an opportunity to cure.

5. The term of any sewer extension agreement shall be 25 years with an option to renew for successive 10 year terms subject to yearly adjustment of monthly user charges and hook up fees.

6. Any expansion of the sewer service outside of Peregrine Ranch shall require the express written consent of City.

7. The costs of providing sewer service to Peregrine Ranch and the monthly user fees shall be consistent with the spirit and intent of District or Association and City addressing the most reasonable options for the providing of such sewer service.

8. The parties agree that the provisions of this Memorandum are not intended to create, nor shall they be in any way interpreted or construed to be an agreement for the provision of services, but rather is intended to be summary point of understanding regarding the scope of negotiating a final sewer service agreement between the City and District or Association. The parties contemplate that a sewer service agreement shall be negotiated and reduced to writing incorporating the concepts addressed herein.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

CITY OF HAILEY, a municipal corporation and political subdivision of the State of Idaho

By: Martha Burke
Martha Burke, Council Member

Harry Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated

By: Don Keirn
Don Keirn, Council Member

By: Carol Brown
Carol Brown, Council Member

ATTEST:

Shellic Gallagher
Heather Dawson, City Clerk
Shellic Gallagher
Deputy Clerk



MEMORANDUM OF UNDERSTANDING - 2

Hailey shall be entitled to terminate sewer services to the District or Association following notice and an opportunity to cure.

5. The term of any sewer extension agreement shall be 25 years with an option to renew for successive 10 year terms subject to yearly adjustment of monthly user charges and hook up fees.

6. Any expansion of the sewer service outside of Peregrine Ranch shall require the express written consent of City.

7. The costs of providing sewer service to Peregrine Ranch and the monthly user fees shall be consistent with the spirit and intent of District or Association and City addressing the most reasonable options for the providing of such sewer service.

8. The parties agree that the provisions of this Memorandum are not intended to create, nor shall they be in any way interpreted or construed to be an agreement for the provision of services, but rather is intended to be summary point of understanding regarding the scope of negotiating a final sewer service agreement between the City and District or Association. The parties contemplate that a sewer service agreement shall be negotiated and reduced to writing incorporating the concepts addressed herein.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first above written.

CITY OF HAILEY, a municipal corporation and political subdivision of the State of Idaho

By: Martha Burke
Martha Burke, Council Member

Harry Rinker
Harry Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated

By: Don Keim
Don Keim, Council Member

By: Carol Brown
Carol Brown, Council Member

ATTEST:

Heather Dawson
Heather Dawson, City Clerk
Shellic Gallagher
Shellic Gallagher, Deputy Clerk



MEMORANDUM OF UNDERSTANDING - 2

RINKER SIGNATURE

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HAILEY

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FIRST AMENDMENT TO SEWER SERVICES AGREEMENT

THIS FIRST AMENDMENT TO SEWER SERVICES AGREEMENT ("First Amendment") is made effective the 27th day of August, 2007, by and between the CITY OF HAILEY, IDAHO, a municipal corporation ("Hailey"), and Harry S. Rinker, Trustee for the Harry S. and Diane J. Rinker Revocable Trust dated 5/10/66, as Amended and Restated ("Trust"), as follows:

RECITALS

A. This First Amendment is made to that certain Sewer Services Agreement, dated February 7, 2005, and recorded March 16, 2005, as Instrument No. 517483, Official Records of Blaine County, Idaho (the "Sewer Services Agreement").

B. The Parties desire to amend the Sewer Services Agreement as set forth below.

C. All capitalized terms not otherwise defined herein shall have the same meanings given those terms in the Sewer Services Agreement.

AMENDMENT

NOW, THEREFORE, the Sewer Services Agreement is hereby amended as follows:

1. In the event that Trust records a final plat for the Trust Property with a maximum density of 72 residential lots, the Final Payment to Hailey shall consist entirely of the following (without any additional cash or other payment required):

(a) Trust shall cause the conveyance of the title to the Castle Property to Hailey by special warranty deed within sixty (60) days of the recordation of the final plat for the Trust Property, with condition of title being substantially the same as when received by SWPLLC. The closing and conveyance of title shall be conducted consistent with the applicable provisions of paragraph 5 of the Sewer Services Agreement. All costs of closing and title insurance shall be the responsibility of Hailey.

(b) At such time as is mutually convenient to Trust and Hailey, Trust shall convey to Hailey, by grant deed, a parcel or parcels of land, not to exceed one (1) acre total, sufficient for (i) one (1) well site, with a fifty (50) foot radius surrounding the well site, and (ii) a related pump house facility site. Such land shall be conveyed together with utility and access rights as may be required for all purposes reasonably related to well and pump house activities. Such land shall be in a location or locations as are mutually acceptable to Trust and Hailey in the northwest or southeast corners of the Trust Property, or any other location within the Trust Property that is mutually acceptable to Trust and Hailey. Trust shall provide standard coverage owner's title insurance, and shall pay closing and recording costs. Hailey shall reasonably cooperate as may be required to accommodate the legal conveyance of such land to Hailey. The

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grant deed shall contain reversion language mutually acceptable to the parties providing for conveyance back to the Trust in the event Hailey would abandon use of the land for the well and pump house.

(c) At such time as is mutually convenient to Trust and Hailey, Trust shall convey to Hailey, by grant deed, a parcel of land, the size to be determined by Trust, sufficient for one (1) firehouse site. Such land shall be conveyed together with utility and access rights as may be required for all purposes reasonably related to firehouse activities. Such land shall be in a location designated by Trust in the southeast corner of the Trust Property. Trust shall provide standard coverage owner's title insurance, and shall pay closing and recording costs. Hailey shall reasonably cooperate as may be required to accommodate the legal conveyance of such land to Hailey. The grant deed shall contain reversion language mutually acceptable to the parties providing for conveyance back to the Trust in the event Hailey would abandon use of the land for the firehouse.

2. In consideration of the Final Payment, Trust shall have the right to connect into Hailey's municipal sewer system.

3. In the event Trust is not successful in recording a final plat for the Trust Property pursuant to paragraph 1 of this First Amendment or Trust provides notice of an intent to terminate this First Amendment within the four (4) year term specified in paragraph 10 of the Sewer Services Agreement, this First Amendment shall be null and void and, if the Sewer Services Agreement has not also been terminated, the Parties shall proceed under the Sewer Services Agreement without regard to this First Amendment.

4. This First Amendment shall be recorded in Blaine County, Idaho.

5. Except as amended hereby, the terms and conditions set forth in the Sewer Services Agreement shall remain in full force and effect; provided, however, that in the event of any conflict between the terms and conditions of this First Amendment and the terms and conditions of the Sewer Services Agreement, the terms and conditions of this First Amendment shall prevail.

SIGNATURES APPEAR ON FOLLOWING PAGE

Dated this 27th day of August, 2007.



Harry S. Riker, Trustee for the Harry S. and Diane J. Riker Revocable Trust dated 5/10/66, as Amended and Restated

CITY OF HAILEY, an Idaho municipal corporation

By: Martha Burke
Martha Burke, Council Member

By: Don Keim
Don Keim, Council Member

By: _____
Carol Brown, Council Member

By: Rick Davis
Rick Davis, Council Member

ATTEST:

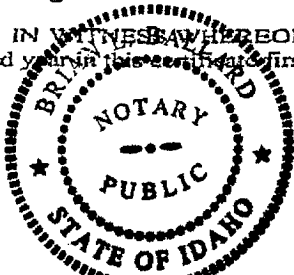
By: Heather Dawson
Heather Dawson, City Clerk



STATE OF Idaho)
County of Blaine) ss.

Subscribed and sworn before me on this 25th day of September, 2007, before me a Notary Public in and for said State, personally appeared Harry S. Rinker known to me to be the Trustee for the Harry S. and Diane J Rinker Revocable Trust dated 5/10/66, as Amended and Restated, and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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



[Signature]
Notary Public for Idaho
Residing at Blaine
My commission expires 12-12-2011

STATE OF IDAHO)
County of Blaine) ss.

On this 24th day of September, 2007, before me, a Notary Public in and for said state, personally appeared Martha Burke, Don Keirn, ~~Carol Brown~~ and Rick Davis, the City Council Members of the City of Hailey, known or identified to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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



[Signature]
Notary Public for Idaho
Residing at Hailey
My commission expires 5-15-10