

AMENDED
PLANNED UNIT DEVELOPMENT AGREEMENT

BLAINE COUNTY DISTRICT NO. 61
(TEACHER/WORK FORCE HOUSING - WOODSIDE ELEMENTARY)

This **PLANNED UNIT DEVELOPMENT AGREEMENT** ("Agreement") is entered into this ____ day of _____, 2005~~8~~, by and between the **CITY OF HAILEY** ("City") and **BLAINE COUNTY SCHOOL DISTRICT NO. 61** ("District") in contemplation of the following:

I. RECITALS

1. District is a body corporate and politic organized under the laws of the State of Idaho in the business of providing public education. District is desirous of implementing a Planned Unit Development (PUD) on real property described below for the creation of lots on which housing units would be built for teacher and work force housing;
2. The PUD Application seeks three (3) waivers to certain requirements of the Subdivision Ordinance: namely to parking, park dedication and approval of a private street.
3. The real property (the "Property") subject to this Agreement is described in Exhibit "A" and is also described in the PUD Application and is, in part, presently zoned General Residential and is subject to City's Land Use Ordinances and Zoning Regulations. The property was annexed into the City and is subject to an Annexation Agreement ("Annexation Agreement"), recorded in the records of the County Recorder, Blaine County, Idaho as Instrument No. 519313 on April 28, 2005;
4. The City's Planning and Zoning Commission and City Council have held the required public hearings, accompanied with proper notice, with respect to the PUD Application;
5. The active recreational facilities including playing fields being constructed as part of Woodside Elementary School and District employee housing on Lots ~~3A, 3B and 4-1+0~~ satisfy the amenities requirement for PUD approval pursuant to Section 10.3.8, items (b) and (g) of the Hailey Zoning Ordinance;
6. City approved District's PUD Application on September 12, 2005, and adopted Findings of Fact and Conclusions of Law on September 26, 2005;
7. In order to ensure that the housing units are constructed consistent with City's applicable ordinances and regulations, the City and District deem it in their mutual interest to enter into an agreement with regard to the manner and timing of construction, and landscaping of the Property and other factors affecting the general health, safety and welfare of the citizens of City and users of the Property;

8. The Property shall be developed in accordance with City's Comprehensive Plan, Zoning Ordinances, City's Standards and other applicable City ordinances and the terms and conditions of this Agreement;
9. City and District desire that construction of the Improvements proceed as approved by City's City Council as set forth in the Findings of Fact and Conclusions of Law adopted by the City Council;
10. The District PUD Application is consistent with the housing and other sections of City's Comprehensive Plan;
11. Pursuant to the Annexation Agreement, the District shall convey Lots 43 and 54 to the City that are improved with water and sewer services for City's own use as workforce housing and a Lot 2 for park mitigation.

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:

II. AGREEMENT

- A. **Description and Location of Property.** The total Property encompassed within the PUD Application is approximately 20 acres, zoned General Residential ("GR") and Recreation Green Belt ("RGB") and has been approved by the City for the purposes of this Agreement as a Planned Unit Development, subject to certain conditions, in accordance with the Hailey Zoning Ordinance, Article 10. No construction is proposed within the City's RGB zone. All construction will be on land zoned GR and no structure shall be constructed or located on slopes in excess of 25%.
- B. **Construction of Improvements.** District agrees to construct the Improvements in accordance with this Agreement, City's approval of District's PUD Application and the drawings and site plans submitted with District's PUD Application. The Improvements, by phase, shall include:
 1. Phase 1. Construction of Woodside Elementary School on Lot 1 and required components on remaining lots, including construction of emergency access road and looped water line, among other items stipulated in the previously received approvals from the City for the school and property annexation, and site grading and extension of utilities and services to Lots ~~3A, 3B and 4-1+0~~. The District shall also rough grade and seed that portion of the City owned real property, Parcel 28 of Woodside Subdivision No. 14, that was disturbed during the initial construction of Phase I and provide temporary irrigation on the seeded land for a minimum of two (2) consecutive years in 2006 and 2007, to establish the growth of the grass. If the planted seed does not grow on all or part of the disturbed soil, the district shall restore and establish the native grass in the disturbed area. The District shall, on or before

May 15, 2006, plant native grass, such as Idaho and Sheep Fescue or comparable native grasses, on the property to be seeded. [COMPLETED]

2. Phase 2. Construction of townhouse units on Lots ~~65-140~~ subject to District funding for the teacher's housing units. Phase 2 may occur over the period of three (3) years consistent with City's Townhouse Ordinance 821, Section 8.6.

~~3. Phase 3. Subject to the zoning and subdivision ordinances in effect at the time of any application, approval of design for building(s) on Lots 3A and 3B.~~

C. **PUD Approval.** The PUD approval is granted subject to the following conditions:

1. As requested by the Fire Chief, fire lane signing shall be provided every 300' along the private/emergency access roadway;

2. Trailhead signage shall be installed at Echo Hill Park for the Toe of the Hill Trail by the District. Expanded signage shall be installed by the District at appropriate locations on-site noting the pathway at an appropriate location on or about Lots 76 and 87 as a connection to the Toe of the Hill Trail;

3. The District shall maintain the secondary access for emergency purposes, as set forth in Section 2.6 of the Annexation Agreement. Furthermore, the District will be responsible for all snow removal on the Property, which shall include parking areas, aisle ways and sidewalks on Lot 1, as well as the roadway/emergency access road and guest parking pullout areas for the remainder of the Property;

4. On-street parking will be allowed along the roadway only in those locations noted on the approved PUD site plan. No parking will be allowed on the west side of the roadway adjacent to Lots 43 -140;

5. No overnight parking is allowed in the on-street parking areas during winter months;

6. The City has the right to enforce the aforementioned parking restrictions on the emergency access roadway;

7. As approved by Hailey staff, additional landscaping adjacent to the backstop of the baseball/softball field and regulation safety fencing relative to the field shall be installed;

~~8. A debris flow study shall be submitted to the City Engineer for approval prior to issuance of a building permit for Lot 3A or 3B to determine whether there is adequate drainage above Lots 3A and 3B;~~

~~9. Construction of improvements on Lots 3A and/or 3B shall comply with the Urban Wildlife Fire Code. A detailed plan shall be submitted at the time of design review and approved by the Hailey Fire Chief describing steps to be taken for the~~

~~construction and maintenance of the units to be constructed on Lots 3A and 3B in order to comply with the Urban Wildland Fire Code;~~

~~10.8.~~ The active recreational facilities and playing fields at Woodside Elementary School shall be maintained by District so long as Woodside Elementary School remains an active school; and

~~11.9.~~ District shall ~~make~~has contributed \$35,000 for landscape improvements, ~~or contribute money~~ to the City for such improvements, to Echo Hill Park, as required under the Hailey Subdivision Ordinance and as mitigation for construction damage, to the extent set forth on that certain Landscape Master Plan dated August 8, 2005, submitted by Ron Adams and to the extent agreed upon between the District and the Hailey City Council on September 12, 2005.

12. On or before February 15, 2006, the District shall provide a maximum of four (4) hours of drafting and planning services by Ron Adams to revise the park plans for primarily Lot 16, Block 55, of Woodside Subdivision No. 14 ("Echo Hill Park") previously submitted by the District. On or before May 15, 2006, the District shall rough grade the property in general conformance with the contours of the revised plans approved by the City. On or before March 1, 2006, the District shall pay the City \$35,000.00, as payment in full for the improvements on Echo Hill Park. In addition, the District will, on or before May 15, 2006, or such later date as approved by City staff, install landscaping rocks/boulders along the western boundary of Echo Hill Park, in lieu of the post and rail fence previously planned to be constructed at the eastern boundary of Echo Hill Park. The payment and improvements by the District described in this paragraph 12 is the consideration for the waiver of the park requirements under Section 4.10 of the Hailey Subdivision Ordinance. The District shall post security in the form of a bond, letter of credit or cash equivalent in the amount of \$15,660.00 ("Security") as security to the City for the rough grading, seeding and installation of landscaping rocks/boulders described in this paragraph 12 (the "Work"). In the event the Work is not complete by May 15, 2006, the City shall have the right to withdraw the amount of Security needed to complete the Work. Upon the satisfactory completion of the Work, the City shall release the Security, following notification by the District to the City and following inspection and approval by the City of the condition of the Work. [COMPLETED]

13. The District will use its best efforts to provide construction scheduling information to property owners adjacent to the Property.

III. GENERAL REQUIREMENTS

A. **Property Maintenance.** District shall be responsible, at its sole expense, so long as the Property continues to be used by the District for school related purposes, for all maintenance of the affordable housing common area subject to reimbursement by a homeowner's association, including maintaining all landscaping, irrigation systems,

parking and drainage systems. District shall irrigate and maintain the active recreational play fields. Irrigation and maintenance of Lots 2, 4 and 5 shall be the responsibility of the City.

B. **Police Powers.** Except as otherwise provided, nothing contained herein is intended to limit the police powers of City. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, City's Zoning Ordinance, City's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

C. **Specific Performance.** In addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

D. **Dispute Resolution.**

1. **Mediation.** 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.

2. **Arbitration.** 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 Construction 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. The arbitrator shall have no authority to consider in its decision, or to actually award, attorney fees or costs.

E. **Relationship of Parties.** It is understood that the contractual relationship between City and District is such that neither party is the agent, partner, or joint venture of the other party.

F. **Successor and Assigns; Covenant Running With the Land.** This Agreement shall inure to the benefit of City and District 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.

- G. **No Waiver.** In the event that City or District, 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 District, or its successors in interest, or City, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.
- H. **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.
- I. **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.
- J. **No Third Party Beneficiaries.** This Agreement is not intended, nor shall it be deemed or construed, to create or confer any rights upon third parties.
- K. **Authority.** Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.
- L. **Default.** In the event either City or District, its successors and assigns, fail to faithfully comply with all the terms and conditions included in this Agreement it shall be in breach of this Agreement.
- M. **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 City:

c/o Director, Planning Department
115 Main Street South, Suite H
Hailey, Idaho 83333
208/788-4221 (telephone)
208/788-2924 (facsimile)

To District:

Blaine County District No. 61
c/o The Superintendent of Schools
118 W. Bullion
Hailey, Idaho 83333
208/578-5000- (telephone)
208/578-5110 (facsimile)

or at such other address, or facsimile number, or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

N. **Time is of the Essence.** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

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 ____ day of _____, 2005~~8~~.

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Heather Dawson, City Clerk

By: _____
~~Susan McBryant~~ Richard L. Davis, Mayor

BLAINE COUNTY DISTRICT NO. 61

By: _____
Alex Sundali, Chair

State of Idaho }
 } ss.
County of Blaine }

On this _____ day of ~~September~~ _____, 20058, before me, a Notary Public in and for said State, personally appeared ~~SUSAN McBRYAN~~ TRICHARD L. DAVIS, known or identified to me to be the Mayor of the City of Hailey, who executed the foregoing instrument, and acknowledged to me that she executed the same.

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

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

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of ~~October~~ _____, 20058, before me, a Notary Public in and for said State, personally appeared Alex Sundali, the Chair of the Board of Trustees of the Blaine County District No. 61, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she 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 _____