

WORKING DRAFT FOR
DISCUSSION PURPOSES ONLY
March 28, 2011

DRAFT

RECEIVED
APR 28 2011
CITY OF HAILEY

ANNEXATION AND DEVELOPMENT AGREEMENT
(Quigley Canyon)

THIS ANNEXATION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2011, by and between the **CITY OF HAILEY, IDAHO**, a municipal corporation ("City"), and **QUIGLEY GREEN OWNER LLC**, a Delaware limited liability company ("Owner").

RECITALS:

- A. Owner owns a certain parcel of real property containing approximately 912 acres in the unincorporated area of Blaine County, Idaho, which is situated adjacent and contiguous to current municipal boundary of the City. Said parcel is described more particularly on **Exhibit "A"** hereto, and is hereinafter referred to as the "Property".
- B. 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, and to zone and enforce zoning within the boundaries of any property so annexed, and the power to contract for the terms and conditions under which it shall be annexed and developed.
- C. Owner has developed a preliminary conceptual master plan for the development of the Property, with a maximum residential density of 444 residential units, described and more particularly depicted on **Exhibit "B"** hereto, hereinafter referred to as the "Master Plan".
- D. Owner desires that the Property be annexed by the City, and developed in general compliance with the Master Plan, and in furtherance of that desire the Owner has filed, or within thirty (30) days from the date hereof, will file the following applications, which applications are hereinafter collectively referred to as the "Pending Applications":
 - (i) A voluntary petition for annexation of the Property by the City, pursuant to the provisions of Idaho Code § 50-222 and City Ordinance No. 889 ("Annexation Petition").
 - (ii) A request for various City zoning classifications to be imposed upon the Property upon its annexation, as depicted on the Zoning Diagram attached as **Exhibit "C"** hereto ("Zoning Request").
 - (iii) An application for City approval of a large block subdivision plat of the entire Property, consisting of Blocks A through J, as more particularly described and depicted on **Exhibit "D"** hereto ("Large Block Plat").

DRAFT

- E. It is the intent of the parties hereto that this Agreement, and the terms and conditions set forth hereinafter, shall detail and provide for the manner in which the Pending Applications shall be processed by the City and the Property, if annexed by the City, shall thereafter be developed.

AGREEMENT

DRAFT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Term. This Agreement shall be and become effective on the date hereof, and shall continue in full force and effect for a term of twenty (20) years thereafter unless earlier terminated by mutual written agreement of the parties hereto.

2. Binding Effect. This Agreement shall be binding upon, and benefit, the parties hereto and their respective successors and assigns, including all succeeding record title owners of the Property, with the exception of succeeding owners of lots, sublots, or Common Area parcels resulting from the resubdivision approved by the City of any block or blocks included on the Large Block Plat; provided, however, that purchases of individual residential lots or townhouse sublots within any development phase subdivision plat approved by the City, and the lot or sublots purchased by them, shall not, unless otherwise expressly agreed, be subject to this Agreement.

3. Pending Applications. Within ninety (90) days from the date hereof, or such longer period as may be mutually agreed to by the parties, the City shall approve, approve with conditions, or deny each of the Pending Applications. In the event the Annexation Petition is approved, or approved with conditions, the City agrees that prior to the effective date of annexing the Property by publication of an annexation ordinance, the Owner shall be given written notice of the City's final actions on the remaining Pending Applications, and provided a specified period of at least twenty (20) days thereafter in which to withdraw all of the Pending Applications, including the Annexation Petition if the Owner, in its sole discretion, determines the actions taken on said applications by the City are unacceptable.

4. Phased Development. City agrees that development of the Property may be done in a phased manner, the timing of which shall be determined by the Owner. Each development phase shall commence with an application by the Owner to resubdivide one or more blocks shown on the Large Block Plat, which shall be processed consistent with the terms and conditions of this Agreement. Without limitation to the foregoing, it is understood and agreed by the Owner that the total residential development of the Property shall not exceed 444 lots ranging in size from 4,000 square feet to individual lots exceeding four (4) acres in gross area, substantially consistent with the Master Plan. Unless mutually agreed to the contrary by the parties, all applications filed with the City related to each phase of development for the Property during the term of this Agreement shall be processed and evaluated pursuant to the provisions of this Agreement; the terms and conditions contained in approvals of the Pending Applications; and the City's land use ordinances and regulations, as written and in effect on the date of the Property's annexation, specifically including, but not limited to, the Hailey Zoning Ordinance and the Hailey Subdivision Ordinance. Until such time as any block included on the Large Block Plat has been replatted as a development phase in the

DRAFT

DRAFT

manner herein provided for, it may continue to be used for agricultural purposes at the option of the Owner.

5. Sewer and Water Service. The City agrees to serve each approved platted development phase of the Property with adequate sewer and water services in the same manner, and to the same extent and cost, as the same are made available to all other properties within the city of Hailey. Without limiting the foregoing, the Owner agrees, for the purpose of irrigating any common areas contained in any development phase on the Property, to accept in lieu of potable water from the City, irrigation water from separate City groundwater or surface water sources, or from treated effluent from the City's sewer facilities, provided such effluent is duly approved for that use by the Idaho Department of Environmental Quality, and provided further that such effluent does not require additional facilities or infrastructure, and is delivered at the same or lesser price per gallon as potable water. Except as expressly provided for herein, the City shall not impose upon the Owner, or require the Owner to contribute to the cost of, any off-site water or sewer facility improvements, with the exception of required participation, consistent with all other property owners in Hailey, in water and sewer facility improvements financed by bonded indebtedness incurred by the City. Further, on residential lots exceeding one (1) acre in size and subject to complying with all applicable regulations of the South Central Health District and the Idaho Department of Environmental Quality, the City shall permit on-site septic systems.

6. Design Flexibility. Each development phase of the Property shall be substantially consistent with the Master Plan and this Agreement, including all exhibits attached hereto; provided, however, that the City shall provide Owner reasonable design flexibility in each development phase.

7. Blaine County School District. To mitigate possible impacts which development of the Property may have on the school facilities owned and operated by the Blaine County School District ("District"), the Owner agrees, on or before the City's approval of the final plat for the first phase of development of the Property, to offer the District the right to purchase a specified elementary school site on the Property, pursuant to a contract in the form, and on the terms, set forth in **Exhibit E**" hereto. Should the District fail or refuse to enter into said contract within thirty (30) days after it has been presented to it by the Owner, or fails thereafter to duly exercise the option to purchase set forth therein, the offer and contract shall terminate, and no further mitigation of potential impacts to the District shall be required from the Owner as a result of the Property's annexation or development.

8. Roads and Streets. Roads and streets proposed for the Property, to be built in development phases as required, shall be located, sized and constructed in compliance with the standards set forth on **Exhibit "F"** attached hereto; provided, however, that the exact location of the roads shall be determined at the time the subdivision plat for each development phase is submitted to the City for approval. With the exception of alleys, all roads and streets shall, upon completion, shall be dedicated by the Owner to the City, and thereafter be controlled, repaired and maintained by the City as public streets.

9. Off-Site Public Improvements. To mitigate for impacts the development of the Property may have on certain public facilities and to assure adequate public services to the Property, the parties hereto agree as follows:

DRAFT

DRAFT

(a) The City agrees to undertake the street improvements described below, and, provided such improvements are completed by the City within the time frames specified herein, the Owner shall participate in the costs reasonably incurred therefor, in the percentages, and up to the maximum amounts, set forth for each:

(i) To pay to the City seventy-five percent (75%) of the costs reasonably incurred by the City to make certain improvements to Quigley Road, Croy Street and Bullion Street, which improvements are set forth more particularly in **Exhibit "G"** attached hereto; provided, however, that Owner's participation shall not exceed \$225,000. Payment of said share of the costs incurred shall be contingent upon prior approval of the final plat of Owner's resubdivision of Block D of the Large Block Plat by the City, and the completion of such improvements within one (1) year after such plat approval.

(ii) To pay to the City twenty-five percent (25%) of the costs reasonably incurred by the City to make certain improvements to Deerfield Neighborhood, which improvements are set forth more particularly in **Exhibit "H"** attached hereto; provided, however, that Owner's participation shall not exceed \$37,500. Payment of said share of the costs incurred shall be contingent upon prior approval of the final plat of Owner's resubdivision of Block C of the Large Block Plat by the City, and the completion of such improvements within one (1) year after such plat approval.

(iii) To pay to the City ninety percent (90%) of the costs reasonably incurred by the City to make certain improvements to Fox Acres Street, which improvements are set forth more particularly in **Exhibit "I"** attached hereto; provided, however, that Owner's participation shall not exceed \$540,000. Payment of said share of the costs incurred shall be contingent upon prior approval of the final plat of Owner's resubdivision of Block A of the Large Block Plat by the City, and the completion of such improvements within one (1) year after such plat approval.

(b) Owner agrees to pay a portion of all costs, with the exception of the well site acquisition cost, which the City reasonably incurs for the development of a new municipal water well on the Property, the location and specifications for which are attached hereto as **Exhibit "J"**. The amount of the Owner's financial participation shall be determined by multiplying all costs so incurred by the City by a fraction, the numerator of which shall be 400 and the denominator of which shall be the design capacity of the well, measured in gallons per minute. Payment of the Owner's portion of said costs shall be credited with the fair market value of the well site, determined by a qualified appraiser mutually agreed upon by the parties and engaged by Owner, with

DRAFT

DRAFT

the balance thereof payable in full within sixty (60) days after the City provides the Owner with adequate evidence of all costs incurred for the well. The well site shall be conveyed to the City prior to the commencement of the well development, but only after the appraisal of its fair market value has been completed and distributed to the parties. Costs incurred for the appraisal shall be borne equally by the parties.

- (c) Within one (1) year after the Owner has sold the 150th residential lot approved for the Property, the Owner and the City shall undertake the relocation of the City's Woodside Trunk Sewer Line to the right-of-way of the City's existing bicycle path route in the manner described on **Exhibit "K"**. The project shall conform to plans prepared or approved by the City, and shall, at the option of the City, be contracted for and completed by either the City or the Owner, and all costs reasonably incurred therefor, including all engineering, construction and related costs shall be paid for by the Owner, not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000), with the balance, if any, paid for by the City.

10. Dedicated Open Space. The Property includes certain open space parcels which the Owner agrees to dedicate and convey to the City, which areas are identified on the Zoning Diagram attached hereto as Exhibit "C" as Hillside and Trail Areas (totaling approximately 545 acres) and Public Park Land / Nordic Area / Possible Future Golf Course / Agriculture (totaling approximately 94 acres). Upon approval of the final plat for each development phase, the Owner shall dedicate and convey to the City, and the City shall accept, free of liens and encumbrances, with the exception of any City assessments or liens, and those set forth herein, mutually agreed upon portions of said public open space parcels. The City's use of said open space parcels shall, by deed restriction, restrictive covenants or as otherwise determined by the Owner, be subject to the following restrictions:

- (a) No residential, commercial or industrial uses or improvements shall be installed or maintained on said open space tracts, with the exception of two (2) buildings, not exceeding 5,000 square feet each, constructed in accordance with design guidelines approved by the Owner, which shall be operated in connection with open, outdoor recreational activities, including such improvements as a golf course or Nordic skiing clubhouse, including restaurant and normal "pro shop" activities; provided that any such buildings or structures shall be set back at least 200 feet from any areas of the Property planned for residential lots, as depicted on the Master Plan.
- (b) No hunting or firearm activities shall be permitted, and no motorized vehicle sports such as motorcycling, ATVs or snowmobiles shall be allowed except on dedicated public roads or as otherwise designated by Owner.
- (c) Outdoor recreational facilities may be developed and used on such parcels, including, but not limited to, golf courses, Nordic ski trails, pedestrian and bicycle trails, baseball diamonds, soccer fields, and other active recreational

DRAFT

DRAFT

fields, provided that no such uses may be lighted without the written consent of the Owner.

11. Appurtenant Water Rights. All water rights currently appurtenant to the Property shall be transferred and conveyed to the City on or before the approval of the final subdivision plat for the first development phase. Said water rights, described more particularly in **Exhibit "L"** hereto, shall be transferred and conveyed without any warranty by the Owner, expressed or implied, and all costs incurred in transferring ownership or otherwise amending the rights shall be the obligation of the City. Notwithstanding such conveyance, the City agrees to lease back to the Owner, at a nominal rate not to exceed \$1,000 per year, sufficient portions of said rights to permit the continued irrigation of the undeveloped portions of the Property that the Owner determines to use for continued irrigated agricultural purposes; provided, however, that the City shall at all times have absolute priority in using water from Water Right No. 37-19736 for mitigation purposes, to the extent necessary to prevent curtailment of adequate water supplies for the City due to inferior priority dates on other City municipal water rights, including curtailment based upon conjunctive management of groundwater and surface water rights by the State of Idaho.

12. Additional Impact Fees. Except as herein expressly set forth and provided for, neither the Owner, nor any succeeding owner of the Property, shall as a result of the annexation or subdivision of the Property, or its development consistent with this Annexation and Development Agreement, be obligated or required to pay to the City or its order any additional impact fees, annexation fees or similar fees, nor contribute to, participate financially in, or otherwise provide or improve any off-site public facilities owned or operated by the City including, but not limited to, trails, bicycle paths, roads, central sewer system facilities, water supply sources, water treatment and distribution system facilities, and recreational facilities. Nothing contained in this section, however, shall exempt the Owner from the obligation to complete and extend infrastructure and utility services within each development phase as required by the City's Subdivision Ordinance, or to pay standard fees for each City sewer and water system connection requested by the Owner.

13. Remedies. Subject to the provisions of Sections 14 and 15 hereinbelow, in the event either party hereto breaches any term, covenant or condition of this Agreement, the other party shall be entitled to pursue any and all remedies available at law or in equity, and the election of any remedy shall not preclude the pursuit of any other or further remedy so available. Further, the failure of either party to enforce or seek redress for any breach or default by the other party shall not be deemed a waiver of the right to do so upon any subsequent breach or default by said party. Without limiting the foregoing, each party hereto shall be entitled to specific performance for the other's breach of this Agreement, unless cured as provided for in Section 15 hereinbelow. Without limiting the foregoing, Owner shall be entitled to receive for City's breach of this Agreement, unless cured as provided for in Section 15 hereinbelow, all water rights theretofore conveyed by the Owner to the City.

14. Force Majeure. In the event the performance of any covenant to be performed hereunder by either Owner or City is delayed for causes which are beyond the reasonable control of the party responsible for such performance, the time for such performance shall be extended by the amount of time of such delay, not to exceed twelve (12) months. The party claiming such delayed performance resulting from a force majeure, shall notify the other party within five (5) days of the occurrence of a force majeure event, and shall thereafter use best efforts to mitigate for, or avoid, undue delays in performance.

DRAFT

15. Right to Cure. In the event of a breach of this Agreement, the parties agree that City and Owner shall have sixty (60) days after delivery of notice of said breach to correct the same prior to the non-breaching party seeking any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such 60-day period, if the defaulting party shall commence to cure the same within such 60-day period and thereafter shall prosecute the curing of same with diligence, then the time within which such failure may be cured shall be extended for such period, not to exceed an additional sixty (60) days, as may be necessary to fully cure the default.

16. Miscellaneous.

(a) *Waiver.* A waiver by either party of any default by the other of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies for any subsequent breach of any such or other covenants and conditions.

(b) *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, three (3) days after deposit with Federal Express, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

To City: City of Hailey
c/o Planning Director, Planning Dept.
115 Main Street South, Ste. H
Hailey, ID 83333
Phone: (208) 788-4221
Fax: (208) 788-2924

To Owner: Quigley Green Owner LLC
Attn: Barry P. Marcus
50 N. Water Street
South Norwalk, CT 06854
Phone: _____
Fax: _____

Copy: J. Evan Robertson
Attorney at Law
P.O. Box 1906
Twin Falls, Idaho 83303
Phone: (208) 933-0700
Fax: (208) 933-0701

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.

DRAFT

(c) *Attorney Fees.* Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

(d) *Time is of the Essence.* Subject to the cure provisions of Section 14 hereof, 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.

(e) *Final Agreement.* This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner and City, other than as stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assign, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.

(f) *Invalid Provisions.* If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

(g) *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho.

(h) *Authorization.* Each of the parties hereto represents and warrants that it is duly authorized and legally entitled to enter into, and execute, this Agreement.

(i) *Counterparts.* This document may be signed in counterparts.

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.

CITY OF HAILEY, IDAHO,
A municipal corporation

By: _____
Its: Mayor

DRAFT

"CITY"

ATTEST:

By: _____
Its: City Clerk

DRAFT

DRAFT

"OWNER"
QUIGLEY GREEN OWNER LLC

By: _____
Barry P. Marcus
Its: Member

DRAFT

STATE OF IDAHO)
)ss.
County of Blaine)

On this ____ day of _____, 2011, before me, a Notary Public, in and for said County and State, personally appeared _____ and _____, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Hailey, the municipality that executed the foregoing instrument, and acknowledged to me that such municipality 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 _____)
)ss.
County of _____)

On this ____ day of _____, 2011, before me, a Notary Public for said County and State, personally appeared **Barry P. Marcus**, known or identified to me to be the Member of QUIGLEY GREEN OWNER LLC, and acknowledged to me that he executed the foregoing instrument in his capacity as a member of said limited liability company.

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

DRAFT

NOTARY PUBLIC
Residing at: _____
My commission expires: _____

l:\m\realest\Dev\Agree_annex.Quigley

1. Introduction

2. Methodology

3. Results

4. Discussion

5. Conclusion

The study aims to investigate the impact of various factors on the performance of the system. The methodology involves a series of experiments designed to measure the system's response under different conditions. The results show that the system's performance is significantly affected by the input parameters, with a clear trend observed in the data. The discussion highlights the implications of these findings and suggests potential areas for further research. The conclusion summarizes the key findings and provides a final assessment of the system's capabilities.

6. Acknowledgments

7. References

8. Appendix

9. Figures

10. Tables

The figures and tables provide a detailed view of the experimental data. The figures illustrate the trends in the system's performance over time and across different input values. The tables present the numerical results of the experiments, allowing for a more precise analysis of the data. The overall findings indicate that the system is capable of handling a wide range of inputs and maintaining a high level of performance.

11. Glossary

12. Index