



Twin Falls City Council Agenda

Monday, February 11, 2019, 5:00 PM

City Council Chambers
203 Main Avenue East- Twin Falls, Idaho

Members: Shawn Barigar, Suzanne Hawkins, Nikki Boyd, Chris Talkington, Gregory Lanting, Christopher Reid, Ruth Pierce

- 1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM
- 2) PLEDGE OF ALLEGIANCE
- 3) PROCLAMATIONS: None
- 4) GENERAL PUBLIC INPUT
- 5) CONSENT CALENDAR
 - a) **ACTION ITEM:** Request to approve the Accounts Payable for January 31 thru February 6, 2019.
By: Amy Luna, Finance Administrative Assistant
 - b) **ACTION ITEM:** Request to approve Alcohol License for Emma's Cafe LLC located at 669 Blue Lakes Blvd, Twin Falls, ID 83301.
By: Amy Luna, Finance Administrative Assistant
 - c) **ACTION ITEM:** Approval of Findings of Fact and Conclusions of Law for:
Gem State Dairy Products
City of Twin Falls, Public Works Department
By: Jonathan Spendlove, Planning & Zoning Director
- 6) ITEMS OF CONSIDERATION
 - a) **PRESENTATION:** The Twin Falls School District is pursuing a renewal and slight increase of the Supplemental Levy, and it will discuss how the district came to the decision and its impact on students, staff, and taxpayers if the levy is approved.
By: Dr. Brady Dickenson, Superintendent of Schools
 - b) **ACTION ITEM:** **ACTION ITEM:** Request to Appeal Improvement Reimbursement Commissions approval of Broadmoor application.
By: Troy Vitek, Assistant City Engineer
- 7) GENERAL INPUT/ADVISORY BOARD REPORT/ANNOUNCEMENTS
- 8) PUBLIC HEARINGS: None
- 9) ADJOURNMENT

Any person(s) needing special accommodations to participate in the above-noticed meeting could contact Leila Sanchez (208) 735-7287 at least two working days before the meeting. Si desea esta información en español, llame Leila Sanchez (208) 735-7287.

Public Input Procedures

1. Individuals wishing to provide public input regarding matters relevant to the City of Twin Falls shall
 - wait to be recognized by the Mayor or Chairman
 - approach the microphone/podium
 - state their name, and whether they are a resident or property owner in the City of Twin Falls, and proceed with their input.
2. The Mayor or Chairman may limit input to no less than two (2) minutes. Individuals are not permitted to give their time to other speakers.

Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor or Chairman shall review the public hearing procedures.
 2. Individuals wishing to testify or speak before the City Council or Planning and Zoning shall wait to be recognized by the Mayor or Chairman, approach the microphone/podium, state their name, then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the staff. The staff shall make an audio recording of the Public Hearing.
 3. The Applicant, or the spokesperson for the Applicant, will make a presentation on the application/request (request). No changes to the request may be made by the applicant after the publication of the Notice of Public Hearing. The presentation should include the following:
 - A complete explanation and description of the request.
 - Why the request is being made.
 - Location of the Property.
 - Impacts on the surrounding properties and efforts to mitigate those impacts.
 4. Applicant is limited to 15 minutes, unless a written request for additional time is received, at least 72 hours prior to the hearing, and granted by the Mayor or Chairman.
 5. A City Staff Report shall summarize the application and history of the request.
 6. The City Council or Planning & Zoning Commission may ask questions of staff or the applicant pertaining to the request.
 7. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor or Chairman may limit public testimony to no less than two (2) minutes per person.
 - Five or more individuals, having received personal public notice of the application under consideration, may select by written petition, a spokesperson. The written petition must be received at least 72 hours prior to the hearing and must be granted by the Mayor or Chairman. The spokesperson shall be limited to 15 minutes.
 - Written comments, including e-mail, shall be either read into the record or displayed to the public on the overhead projector.
 - Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.
 8. Following the Public Testimony and Applicant's response, the hearing shall continue. The City Council or Planning & Zoning Commission, as recognized by the Mayor or Chairman, shall be allowed to question the Applicant, Staff or anyone who has testified. The Mayor or Chairman may again establish time limits.
 9. The Mayor or Chairman shall close the Public Hearing. The City Council or Planning and Zoning Commission shall deliberate on the request. Deliberations and decisions shall be based upon the information and testimony provided during the Public Hearing. Once the Public Hearing is closed, additional testimony from the staff, applicant or public is not allowed. Legal or procedural questions may be directed to the City Attorney.
- * Any person not conforming to the above rules may be prohibited from speaking. Persons refusing to comply with such prohibitions may be asked to leave the hearing and, thereafter removed from the room by order of the Mayor or Chairman.



City of Twin Falls
103 Main Avenue East
P.O. Box 1907
Twin Falls, Idaho 83303

Print Form

Alcohol License

Please attach a copy of your state license

Business Name: Emma's Cafe LLC State License # 19109
Doing Business As: Restaurant
Physical Address: 669 Blue Lakes BLVD City, State, Zip Twin Falls Idaho 83301
Legal Description of Place of Business Lot _____ Block _____ Subdivision _____
Mailing Address: 539 Clover Ave City, State, Zip: Twin Falls Idaho 83301
Contact Person: Eset Jasarevic Phone # 208-316-3400

Beer: Bottled for consumption off the premises only (\$ 50.00) ☐

Bottled for consumption on premises (\$150.00) ☒

Bottled for Draught for consumption on premises (\$200.00) ☐

Wine: Retail Sales for consumption off premises only (\$200.00) ☒

Wine by the Drink for consumption on premises only (\$200.00) ☒

Liquor: Liquor license & fees cover wine license and fees (\$562.50) ☐

License expires June 30th

Total Fee \$ 350.

Applicant is an: Individual ☒ Partnership ☐ Corporation ☐

If a partnership, name all partners:

Name: _____

Name: _____

Name: _____

If a corporation or association, name all officers:

Name: _____

Title: _____

Name: _____

Title: _____

Name: _____

Title: _____

Name: _____

Title: _____

Date of incorporation or organization: _____ Place of incorporation or organization: _____

Principal place of business in Idaho: _____

Owner of premises: _____

Name of person who will manage business of selling beer at retail: _____

(If a partnership, all partners must sign)

Signature of applicant _____

Name: BOB JARAPVIC

Birth date: _____

Signature of applicant _____

Name: _____

Birth date: _____

Signature of applicant _____

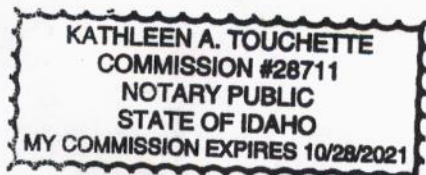
Name: _____

Birth date: _____

Signature of applicant _____

Name: _____

Birth date: _____



Subscribed and sworn to before me this 28th day of January, 2019

Kathleen A. Touchette

Notary Public for Idaho

Residing at: TWIN FALLS, IDAHO

Notary Expiration Date: 10/28/21

For Questions call 208-735-7245 [Click here for the City Code \(Title 3 then Chapter 7,8, & 9\)](#)

Return completed form to: Deputy City Clerk, City of Twin Falls, 103 Main Ave. East, Twin Falls, ID 83301

City of Twin Falls
203 Main Avenue East
P.O. Box 2469
Twin Falls, ID 83303-2469

01/28/2019

11:57 AM

Emma's Cafe LLC
000000

Alcohol & Catering Permi

t 350.00

Total 350.00

Cash 350.00

Cash Sta 350.00

Change 0.00

Cashier: mmartine Station: BRLWR02
Receipt # 02394143

CITY STAFF USE ONLY:

Approvals:

Planning and Zoning: Yes X No _____

Comments: SAP # 1272 FOR 669 BLBN STILL VALID
[Signature]

Police Department: Yes ✓ No _____

Comments: *[Signature]*

City Clerk: Yes _____ No _____

Comments:

State of Idaho

Cycle Tracking Number: 102979

Idaho State Police

Retail Alcohol Beverage License

Premise Number: 2T-19109
License Year: 2019
License Number: 19109

This is to certify, that
doing business as: Emmas Cafe LLC
Emma's Cafe

is licensed to sell alcoholic beverages as stated below at:
669 Blue Lakes Blvd N, Twin Falls, Twin Falls County

Acceptance of a license by a retailer shall constitute knowledge of and agreement to operate by and in accordance to the Alcohol Beverage Code, Title 23. Only the licensee herein specified shall use this license.
County and city licenses are also required in order to operate.

Liquor	No
Beer	Yes \$50.00
On-premise consumption	Yes \$0.00
Kegs to go	No
Restaurant	Yes \$0.00
Wine by the bottle	Yes \$100.00
Wine by the glass	No
Multipurpose arena	No
Growlers	No

TOTAL FEE: \$150.00

Signature of Licensee, Corporate Officer, LLC Member or Partner

EMMAS CAFE LLC
EMMA'S CAFE
669 BLUE LAKES BLVD N
TWIN FALLS, ID 83301
Mailing Address

License Valid: 07/01/2018 - 06/30/2019

Expires: 06/30/2019



[Signature]

Director of Idaho State Police



**CITY OF TWIN FALLS
PLANNING AND ZONING DEPARTMENT**

324 Hansen Street East
P.O. Box 1907
Twin Falls, Idaho 83303-1907

SPECIAL USE PERMIT

Permit No.1272

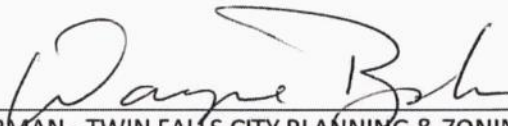
Granted by the Twin Falls City Planning and Zoning Commission on August 28, 2012 to Persian Kebab c/o Afshin Zahroony whose address is 669 Blue Lakes Boulevard North Twin Falls, ID for the purpose of serving alcohol for consumption on-site in conjunction with an existing restaurant on property located at 669 Blue Lakes Boulevard North and legally described as Twin Falls Acres Inside W 117.57' of E 447.54' & W 117.57' of TAX # 259 NE SE NE (9-10-17)

The Commission has attached the following conditions which must be fully implemented to avoid permit revocation (City Code Section 10-13-2.3):

This permit corresponds to Zoning Application No.2526

1. Subject to site plans amendments as required by Building, Engineering, Fire and Zoning Officials to ensure compliance with all applicable City Code requirements and standards
2. Subject to compliance with State, County and City alcohol licenses and regulations.





CHAIRMAN - TWIN FALLS CITY PLANNING & ZONING COMMISSION

DATE 9/11/2012

This permit is for zoning purposes only. Other permits such as sign, building, electrical or plumbing permits, etc. may be required. All facilities must comply with all Building and Fire Code Regulations.

Please contact the Building Department at 735-7238 for further information.

cc: Building Inspection



BEFORE THE CITY COUNCIL OF THE CITY OF TWIN FALLS

In Re:

Vacation Application,)

City of Twin Falls, Public Works Dept.)

c/o Josh Baird)

Applicant(s))

FINDINGS OF FACT,

CONCLUSIONS OF LAW,

AND DECISION

This matter having come before the City Council of the City of Twin Falls, Idaho on **Monday, February 4, 2019** for public hearing pursuant to public notice as required by law for Vacation of **an undeveloped portion of Washington Street South right of way located at the Southwest corner of Washington Street South and South Park Avenue West** and the City Council of the City of Twin Falls having heard testimony from interested parties and being fully advised in the matter, now makes the following

FINDINGS OF FACT

1. Applicant has applied for Vacation of **an undeveloped portion of Washington Street South right of way located at the Southwest corner of Washington Street South and South Park Avenue West.**
2. All legal requirements for notice of public hearing have been met with advertisement taking place on the following dates: Thursday, December 20, 2018 and Thursday, December 27, 2018.
3. The property in question is zoned **M-2 and C-1** pursuant to the Zoning Ordinance of the City of Twin Falls. The property is designated as **Mixed Use** in the duly adopted Comprehensive Plan of the City of Twin Falls.
4. The existing neighboring land uses in the immediate area of this property are: to the north, **South Park Ave. West**; to the south, **Diamond Ave.**; to the east, **Washington St. South ROW**; to the west, **Industrial.**

Based on the foregoing Findings of Fact, the City Council of the City of Twin Falls hereby makes the following

CONCLUSIONS OF LAW

1. The application for Vacation of **an undeveloped portion of Washington Street South right of way located at the Southwest corner of Washington Street South and South Park Avenue West** is consistent with the purpose of the **M-2** Zone, and is not detrimental to any of the outright permitted uses or existing special uses in the area.
2. The proposed use is consistent with the provisions of the Comprehensive Plan and Zoning Ordinance of the City of Twin Falls, and in particular Sections 10-1-4, 10-1-5, 10-16-1 & 2, Twin Falls City Code.
3. The proposed use is proper use in the **M-2** Zone, subject to the conditions which are attached as "Exhibit No. A", and incorporated by reference as though fully set forth herein.
4. The application for Vacation of **an undeveloped portion of Washington Street South right of way located at the Southwest corner of Washington Street South and South Park Avenue West** should be granted, subject to all applicable requirements of the Zoning Ordinance, Adopted Standard Drawings and City code of the City of Twin Falls.

Based on the foregoing Conclusions of Law, the City Council of the City of Twin Falls hereby enters the following

DECISION

1. The application Vacation of **an undeveloped portion of Washington Street South right of way located at the Southwest corner of Washington Street South and South Park Avenue West** is hereby granted.
2. The applicant shall comply with all applicable requirements of the Adopted Standard Drawings, the Zoning Ordinance, and the City Code of the City of Twin Falls.

MAYOR - TWIN FALLS CITY COUNCIL

DATE

APPLICATION #: **PZ18-0093**



BEFORE THE CITY COUNCIL OF THE CITY OF TWIN FALLS

In Re:)
)
Zoning District Change & Zoning Map Amendment,) FINDINGS OF FACT,
Application,)
) CONCLUSIONS OF LAW,
Gem State Dairy Products, LLC)
c/o Tom Mikesell) AND DECISION

Applicant(s)

This matter having come before the City Council of the City of Twin Falls, Idaho on **Monday, February 4, 2019** for public hearing pursuant to public notice as required by law for a Zoning District Change and Zoning Map Amendment from **R-4 and M-1** to **M-2** for **76** acres (+/-) for property located at **304, 312, 404 Washington Street South** and the City Council having heard testimony from interested parties, and being fully advised in the matter, now makes the following

FINDINGS OF FACT

1. Applicant has applied for a Zoning District Change and Zoning Map Amendment from **R-4 and M-1** to **M-2** for **76** acres (+/-), located at **304, 312, 404 Washington Street South**.
2. All legal requirements for notice of public hearing have been met with advertisement taking place on the following dates: **December 20, 2018 and January 17, 2019**.
3. The property in question is zoned **R-4 and M-1** pursuant to the Zoning Ordinance of the City of Twin Falls. The property is designated as **Industrial and Neighborhood Commercial** in the duly adopted Comprehensive Plan of the City of Twin Falls.
4. The existing neighboring land uses in the immediate area of this property are: to the north, **Industrial Food Processor and Undeveloped Agricultural**; to the south, **Undeveloped/Active Agriculture**; to the east, **Washington Street South**; to the west, **Undeveloped/Active Agricultural**.

Based on the foregoing Findings of Fact, the City Council hereby makes the following

CONCLUSIONS OF LAW

1. The application for a Zoning District Change and Zoning Map Amendment from **R-4 and M-1** to **M-2** for **76** acres (+/-), located at **304, 312, 404 Washington Street South** is consistent with the purpose of the **M-2** Zone, and is not detrimental to any of the outright permitted uses or existing special uses in the area.

2. The proposed use is consistent with the provisions of the Comprehensive Plan and Zoning Ordinance of the City of Twin Falls, and in particular Sections 10-4-10, 10-7-20 **and 10-14** of the Twin Falls City Code.

3. The proposed use is proper use in the **M-2** Zone, subject to the conditions, which are attached as "Exhibit No. A", and incorporated by reference as though fully set forth herein.

4. Public services may not be available at the time of development, depending upon the speed of development of this and other subdivisions and the ability of the City to obtain additional water and/or sewer capacity. A rezone of this property is not a guarantee city utilities are available. A will-serve letter will be issued upon review and approval for a final plat and/or a phase of a final plat.

5. The application for a Zoning District Change and Zoning Map Amendment from **R-4 and M-1** to **M-2** for **76** acres (+/-), located **at 304, 312, 404 Washington Street South** should be granted, subject to all applicable requirements of the Zoning Ordinance, Adopted Standard Drawings and City code of the City of Twin Falls.

Based on the foregoing Conclusions of Law, the Twin Falls City Council hereby enters the following

DECISION

1. The applicant shall comply with all applicable requirements of the Adopted Standard Drawings, the Zoning Ordinance, and the City Code of the City of Twin Falls and incorporated by reference as though fully set forth herein.

MAYOR - TWIN FALLS CITY COUNCIL

DATE

APPLICATION #: **PZ18-0095**



Date: Monday, February 11, 2019

To: Honorable Mayor and City Council

From: Lynnette Davis - Attorney for Jade Development, Dave Thaibault - Broadmoor Reimbursement Applicant, Tara Martens Miller - Attorney at Law

ACTION ITEM

Request:

ACTION ITEM: Request to Appeal Improvement Reimbursement Commissions approval of Broadmoor application.

Time Estimate:

In an effort to help the meeting run more smoothly we encourage both parties to limit their arguments to the issues presented. City staff will first introduce the issue. The Appellant will then have 15 minutes to present their case. Next, the Respondent will have 15 minutes to respond. Then, the Appellant will have 5 minutes for rebuttal. Finally, the City Council will ask questions of either party.

Background:

Broadmoor subdivision received its preliminary plat approval on July 10, 2007 as a whole subdivision. On October 27, 2015 the final plat was recorded which included both north and south portions as shown on the attached final plat document. Part of the requirement to receive approval to record the final plat is to demonstrate that the subdivision can receive water, sewer, PI, storm drainage, parks requirement, and roadway development to support subdividing. The original developer submitted a full set of construction plans that met the requirements. At time of construction the Perrine Point pressure irrigation station was not developed as originally proposed and a new location was proposed to hook into an existing station known as the Riverhawk PI station. This change was required by the City to meet City Code section 7-8-4 (E) that reads “ (E) Notwithstanding the foregoing, the use of the city's potable water supply as the primary source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or ZDA, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or ZDA. (Ord. 3082, 12-8-2014)”. On February 1, 2016 a proposed plan of the offsite PI extension was delivered to the City and eventually approved. On March 4, 2016 the construction plans were approved for the entire Subdivision and later on June 22, 2016 a revised phasing construction plan was approved for everything south of Ridgeway Drive (Jade Portion).

Subsequent to the approval of the Final Plat of the Broadmoor Subdivision, the original developer (Rusmor) sold to Gerald Martens the northerly portion of the Broadmoor Subdivision, and later sold the remaining southerly portion of the Broadmoor Subdivision to Jade Development. Gerald Martens began development of the northerly portion of the Broadmoor Subdivision and extended the pressure irrigation distribution south to the southerly portion of Broadmoor Subdivision. Gerald Martens is the "initial developer" as defined in the Improvement Reimbursement Resolution. See page 2 of the Resolution, attached.

The Improvement Reimbursement Resolution was passed to allow compensation for water distribution system, waste water collection system, transportation system, pressure irrigation pump stations, PI

distribution systems, and Twin Falls Canal Company water delivery system, made by an initial developer to be compensated by a subsequent developer who benefits from the improvement. The resolution details how those reimbursements are to be made and responsibilities. No provisions are included in this resolution with regards to parks or storm water since the design of those improvements are meant to be only for the subdivision and not benefiting adjacent properties.

Broadmoor Subdivision has constructed an offsite Pressure irrigation distribution system that serves both the north and south developments. This meets the requirements of the reimbursement resolution PI section. See pages 17-21 of the Resolution. It is the duty of the Improvement Reimbursement Commission to determine proper compensation, in a manner described in the Resolution.

City staff recommended to the Reimbursement commission approval of the application for reimbursement for the offsite pressurized irrigation improvements totaling \$35,764.31 to Jade development. The storm water retention improvements and Park Area are not in meeting with the Resolution and was recommended NOT to be included with the reimbursement request. A third party reviewer, hired by the applicant, reviewed the application stating in their opinion the application met the intent of the resolution.

The reimbursement commission heard the application on November 29, 2018 and voted in favor of reimbursement for the offsite pressurized irrigation system for \$35,764.31 per staff recommendation. Jade Development has provided a bond per the resolution, currently being held by a Title Company, so that they may continue receiving certificates of occupancy for projects already under construction while this issue is being resolved. An appeal has been delivered to the City by Hawley Troxell (attorney's for Jade Development) and Spink Butler, LLP (attorney for Gerald Martens) both are attached.

Approval Process:

The Improvement Reimbursement Commission approved the pressurized irrigation amount of \$35,764.31. The findings are being appealed to the City Council per the resolution.

The Improvement Reimbursement Committee's decision was based on City Resolution 2017-13 (resolution).

Budget Impact:

This item does not affect the City Budget but is an obligation between developers.

Regulatory Impact:

History:

N/A

Analysis:

N/A

Conclusion:

The City of Twin Falls is a facilitator of the process of reimbursements. The City's responsibility is to determine the area of benefit, place the approved information into a GIS system, and not issue permits until the financial obligations are satisfied. Staff recommended to the Improvement Reimbursement Commission to approve the pressurized irrigation portion of the reimbursement request due to both parties utilizing the utility and it meeting with the Pressurized Irrigation requirements of the resolution. The City recognizes there is a Purchase and Sale agreement on the property however the commissions

role is not to review private agreements but uphold the resolution as it reads.

There are two issues on appeal, 1) Is Gerald Martens eligible for reimbursement based on the language of the resolution and if so, 2) Was the amount calculated for reimbursement in accordance with the Resolution?

Attachments:

1. Gerald Martens reimbursement request for Broadmoor
2. Arial of Broadmoor
3. Resolution-2017-013
4. Hawley Troxell Appeal Document - 12-17-2018
5. 2019.02.01 Hawley Troxell Supplemental Appeal (002)
6. SPINK BUTLER Response to Appeal (2-1-19)(reduced) (002)
7. 2016-02-02 Broadmoor Subdivision Pressurized Irrigation Plans proposed
8. Broadmoor Subdivision 1 of 7



RECEIVED

SEP 28 2018

CITY OF TWIN FALLS
ENGINEERING DEPT.

To: Mr. Troy Vitek, P.E.

From: Gerald Martens, P.E.

Date: June 7, 2018

RE: Payback Request For Broadmoor Subdivision – Pressurized Irrigation & Storm Drainage

Please accept this transmittal as formal request to be considered as an initial developer for the Broadmoor Subdivision for the lots located north of Ridgeway Road and eligible for reimbursement for construction costs. At my expense an extension of pressurized irrigation main line has been installed to connect to the Riverhawk Pressurized Irrigation Pump Station running parallel to North College Road. Additionally, I have constructed the storm water retention basin within the park area of the City and completed seeding and other improvements for this area according to the requirements of City Code. Therefore, in accordance with Resolution No. 2017-13 I hereby request that I be identified as the initial developer and be reimbursed according to City Code provisions.

Pressurized Irrigation Improvements

Connection to Existing Station @ \$800.00 Lump Sum	\$800.00
1,700 LF of 10" PVC P.I. Main Line @ \$18.00/LF	\$30,600.00
182 LF of 6" PVC P.I. Main Line @ \$13.75/LF	\$2,502.50
220 CY of ¾" Gravel for Backfill @ \$28.00/CY	\$6,160.00
525 SY of Asphalt Patch Back & Repair @ \$36.50/SY	\$19,162.50
(2) 10" Gate Valves @ \$1,200.00 Each	\$2,400.00
(3) 10" 90° Elbows @ \$500.00 Each	\$1,500.00
(1) 10"x6"x6" Tee @ \$1,500.00 Each	\$1,500.00
Traffic Control @ \$1,000.00 Lump Sum	\$1,000.00

Storm Drainage Improvements at Park Area

Retention Basin @ \$45,000.00 Lump Sum	\$45,000.00
(40) Tree Plantings @ \$250.00/Tree	\$10,000.00
Irrigation & Hydro Seed at Park (Playground Area)	\$35,145.56
Irrigation & Hydro Seed at Park (Retention Pond Area)	\$28,532.17

Total Improvement Costs Identified Above **\$184,302.73**

This work involved installation of the pressurized irrigation main line, asphalt patch back and repair, as well as traffic control. A full compensation for the eligible reimbursement amount plus 15% to address the costs of engineering, management, interest, and inspection is requested for these improvements.

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

9/11/2018

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

Dear Mr. Vitek,

Mr. Gerald Martens retained my services to conduct a third-party review of the submitted Improvement Reimbursement Application for the northern portion of Broadmoor Subdivision. After a thorough review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,

Hailey G. Barnes, P.E.



Attachments: Broadmoor Subdivision Payback Request Package

Cc: Gerald Martens, P.E.; David Thibault, P.E.

Broadmoor Subdivision (Northern Portion) 131 Lots

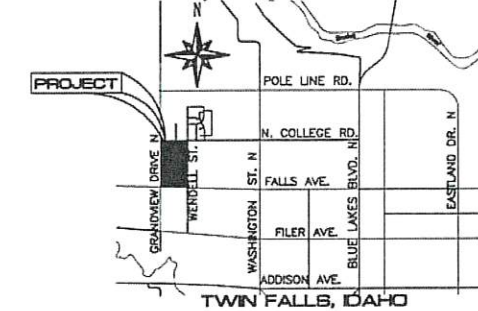
BROADMOOR SUBDIVISION

A SUBDIVISION OF
Lots 61 Thru 65, Lot 40 and A Portion of Lots 41 and 42 of
"ORCHALARA SUBDIVISION"
LOCATED IN A PORTION OF
SW 4 OF SECTION 5 &
NW 4 OF SECTION 8
TOWNSHIP 10 SOUTH,
RANGE 17 EAST, B.M.,
TWIN FALLS COUNTY, IDAHO
2015



0 100 200 400
SCALE IN FEET

Vicinity Map



Legend

SUBDIVISION BOUNDARY LINE	—
SECTION LINE	— — —
EASEMENT LINE	- - - - -
ADJACENT PROPERTY LINE	— · — · —
CENTERLINE OF STREET	— · — · — · —
LOT LINE	— · — · — · — · —
CALCULATED POINT (NOT SET)	△
FOUND BRASS CAP	⊙
FOUND 5/8" REBAR, LS 8077	○
SET 5/8" x 24" REBAR & CAP - LS 10110	●
TO BE SET 1/2" x 24" REBAR & CAP - LS 10110	•
TO BE SET 5/8" x 24" REBAR & CAP - LS 10110	●

Notes:

1. A 15 FOOT WIDE UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOT LINES AND ADJACENT TO STREET FRONTAGES.
2. ALL TRAFFIC ACCESS ON LOTS ADJACENT TO COLLECTOR OR ARTERIAL ROADS WILL BE PROVIDED FROM INTERIOR RESIDENTIAL STREETS INCLUDING RIDGEWAY DRIVE EXCEPT FOR COMBINED ACCESS ON LOTS 6, 7, 9, 11, 13 AND 16 OF BLOCK 6.

Health Certificate

"SANITARY RESTRICTIONS AS REQUIRED BY IDAHO CODE TITLE 50, CHAPTER 13, HAVE BEEN SATISFIED BASED ON THE STATE OF IDAHO, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) APPROVAL OF THE DESIGN PLANS AND SPECIFICATIONS AND THE CONDITIONS IMPOSED ON THE DEVELOPER FOR CONTINUED SATISFACTION OF SANITARY RESTRICTIONS. BUYER IS CAUTIONED AT THE TIME OF THIS APPROVAL, NO DRINKING WATER OR SEWER/SEPTIC FACILITIES WERE CONSTRUCTED. BUILDING CONSTRUCTION CAN BE ALLOWED WITH APPROPRIATE BUILDING PERMITS IF DRINKING WATER OR SEWER FACILITIES HAVE SINCE BEEN CONSTRUCTED OR IF THE DEVELOPER IS SIMULTANEOUSLY CONSTRUCTING THOSE FACILITIES. IF THE DEVELOPER FAILS TO CONSTRUCT FACILITIES OR MEET OTHER CONDITIONS OF DEQ, THEN SANITARY RESTRICTIONS MAY BE RE-IMPOSED, IN ACCORDANCE WITH SECTION 50-1326, IDAHO CODE, BY THE ISSUANCE OF A CERTIFICATE OF DISAPPROVAL, AND NO CONSTRUCTION OF ANY BUILDING OR SHELTER REQUIRING DRINKING WATER OR SEWER/SEPTIC FACILITIES SHALL BE ALLOWED."

DISTRICT HEALTH DEPARTMENT, REHS

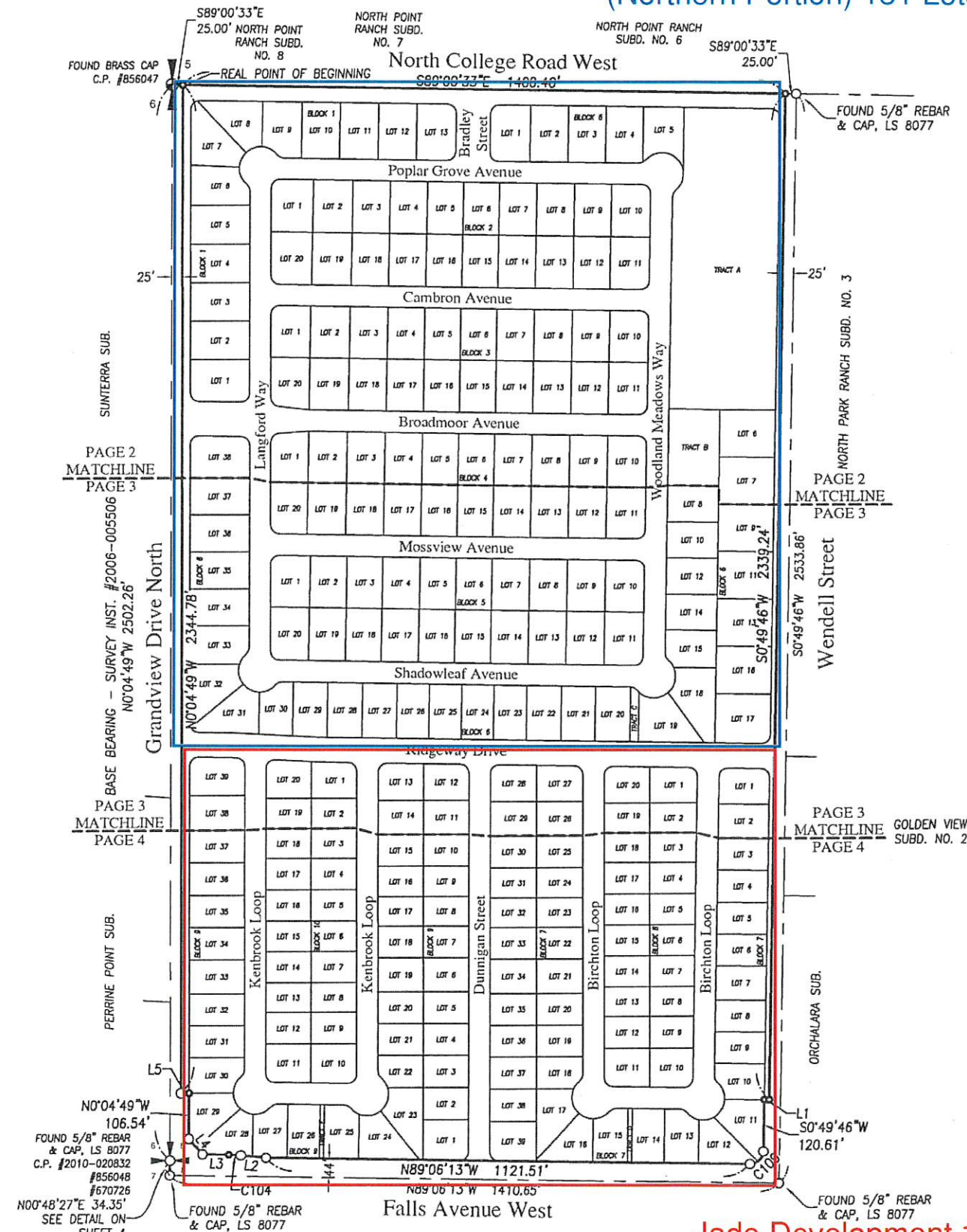
DATE: _____

Tracts Owned & Maintained By:

- TRACT A - CITY OF TWIN FALLS
- TRACT B - HOMEOWNERS ASSOCIATION
- TRACT C - CITY OF TWIN FALLS
- TRACT D - CITY OF TWIN FALLS
- TRACT E - CITY OF TWIN FALLS



V 008-07 FP
SHEET 1 OF 7



Monument Certification

THE INTERIOR MONUMENTS ON THIS PLAT SHOWN AS "TO BE SET" WILL BE SET IN ACCORDANCE WITH SECTION 50-1333, IDAHO CODE, ON OR BEFORE 1 YEAR AFTER THE RECORDATION OF THE FINAL PLAT OR AS DETERMINED BY THE CITY OF TWIN FALLS.

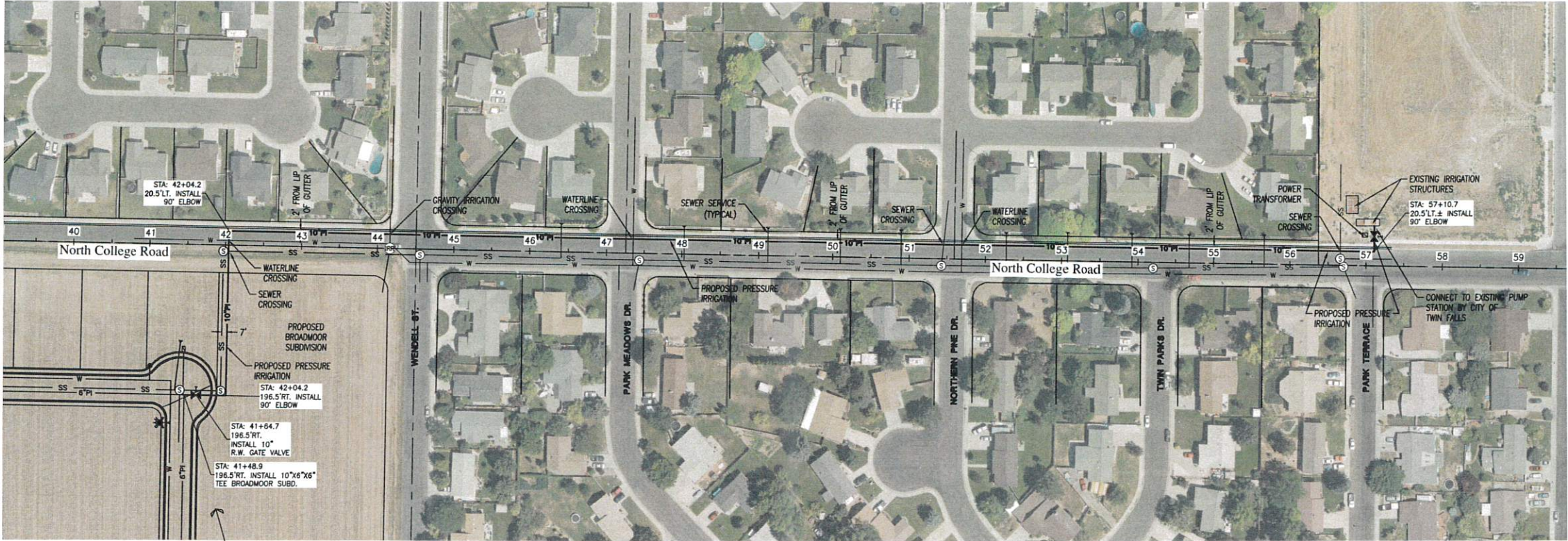
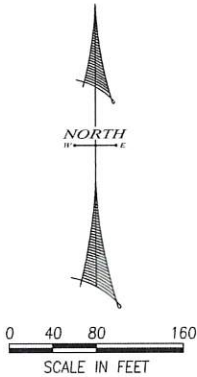
**Jade Development 118 Lots in
The Falls at Broadmoor**



EHM Engineers, Inc.

10" Pressurized Irrigation Main Extension to Existing Pumping Station along North College Rd. ~ 1,700 Lineal Feet of 10" Dia. PVC Pipe.

- (3) 90-Degree Elbows
- (2) 10" Gate Valves
- (1) 10"x6"x6" Tee
- Roadway Cut and Patchback
- 220 CY of 3/4" Gravel for Backfill
- 525 SY of Asphalt Patchback
- Traffic Control Required



SEE BROADMOOR SUBDIVISION PLANS FOR DISTRIBUTION SYSTEM WITHIN THE SUBDIVISION.

NOTES:
ALL PIPE INSTALLATION SHALL BE PERFORMED USING CITY OF TWIN FALLS STANDARD DRAWING T-1.

PROPOSED OFFSITE PRESSURE IRRIGATION PLAN
for
BROADMOOR SUBDIVISION

REVISIONS
Δ -
Δ -
Δ -
Δ -
Δ -
Δ -

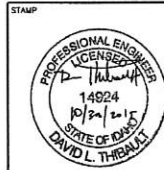
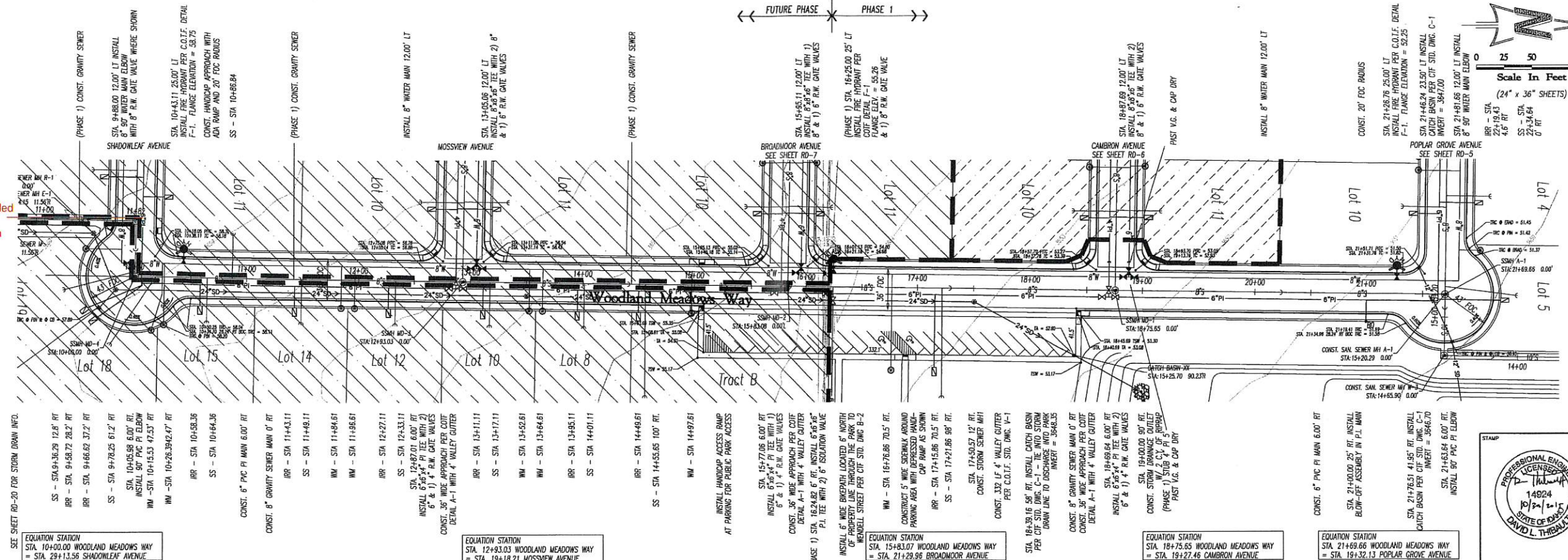
DO NOT SCALE DRAWINGS
CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS AT THE JOB SITE AND NOTIFY THE ENGINEER OF ANY DIMENSIONAL ERRORS, OMISSIONS, OR DISCREPANCIES BEFORE BEGINNING OR FABRICATING ANY WORK.

STAMP

APPROVED	DLT
DESIGN	DLT
DRAWN	DJS
DATE	2/1/2016
SCALE	AS SHOWN
C 426-15 N COLL PI	

SHEET
C 5.01 PI

6" Pressurized Irrigation Extended to Jade Development ~ 182
Lineal Feet of 6" Dia. PVC Main

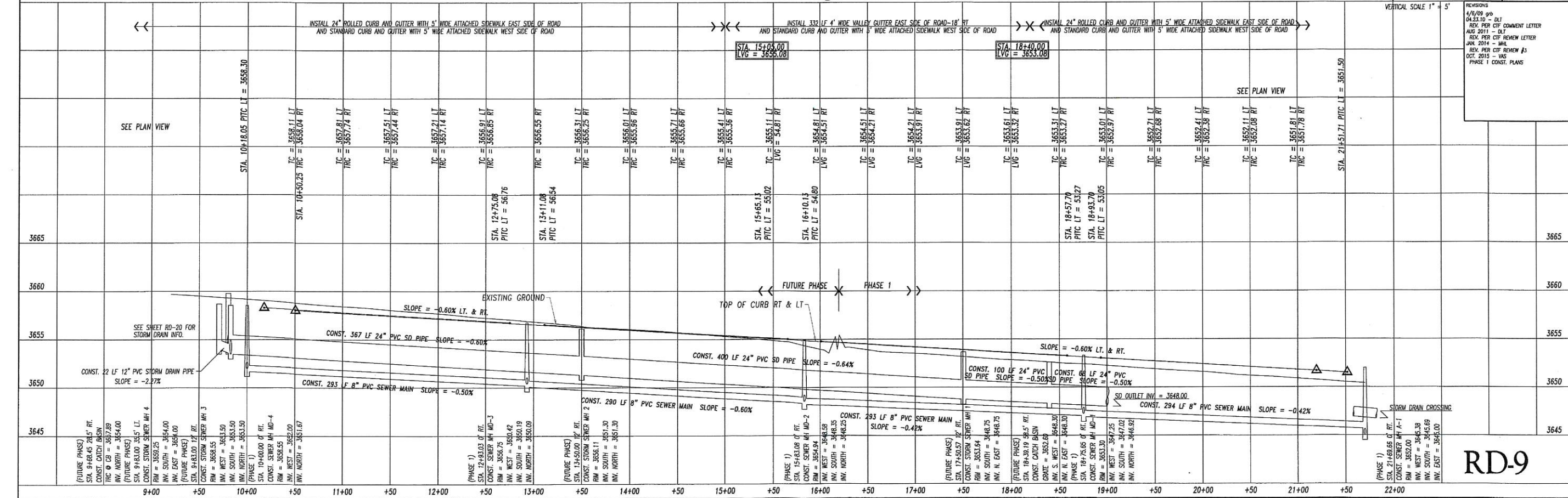


EHM Engineers Inc.
10000 WOODLAND MEADOWS WAY
SUITE 200
TWIN FALLS, IDAHO 83420
PHONE: 208.333.2800
FAX: 208.333.2801
E-MAIL: info@ehm-inc.com

**WOODLAND MEADOWS WAY
ROAD PLANS for
BROADMOOR SUBD.**

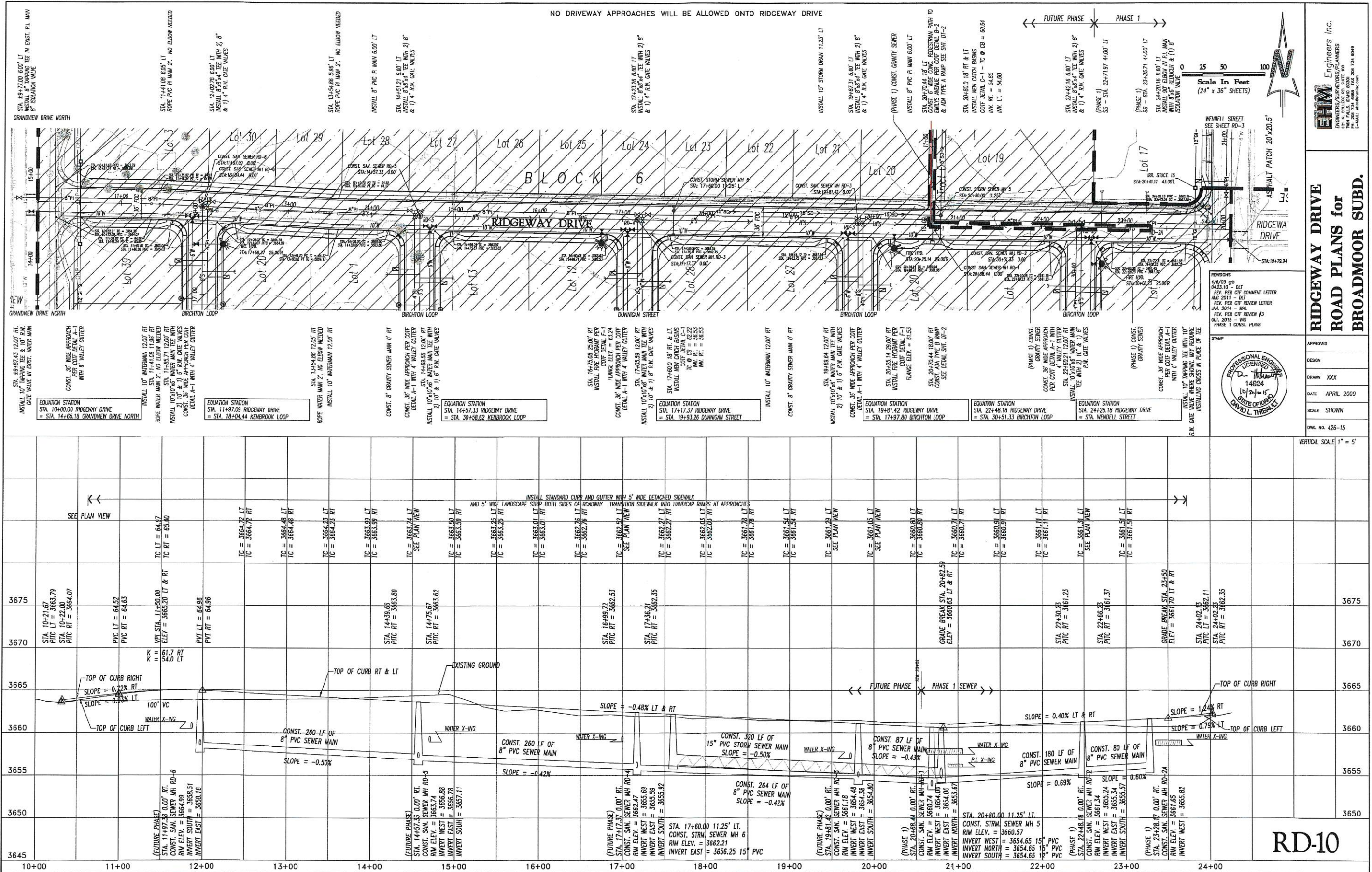
APPROVED	DESIGN
DRAWN XXX	DATE APRIL 2009
SCALE SHOWN	DATE 10/24/15
DATE 10/24/15	DATE 10/24/15
DATE 10/24/15	DATE 10/24/15

REVISIONS
4/6/09 gph
04.23.10 - DLT
REV. PER CIP COMMENT LETTER
AUG 2011 - DLT
REV. PER CIP REVIEW LETTER
JAN 2014 - WHL
REV. PER CIP REVIEW #1
OCT. 2015 - VAS
PHASE 1 CONST. PLANS

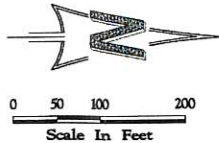
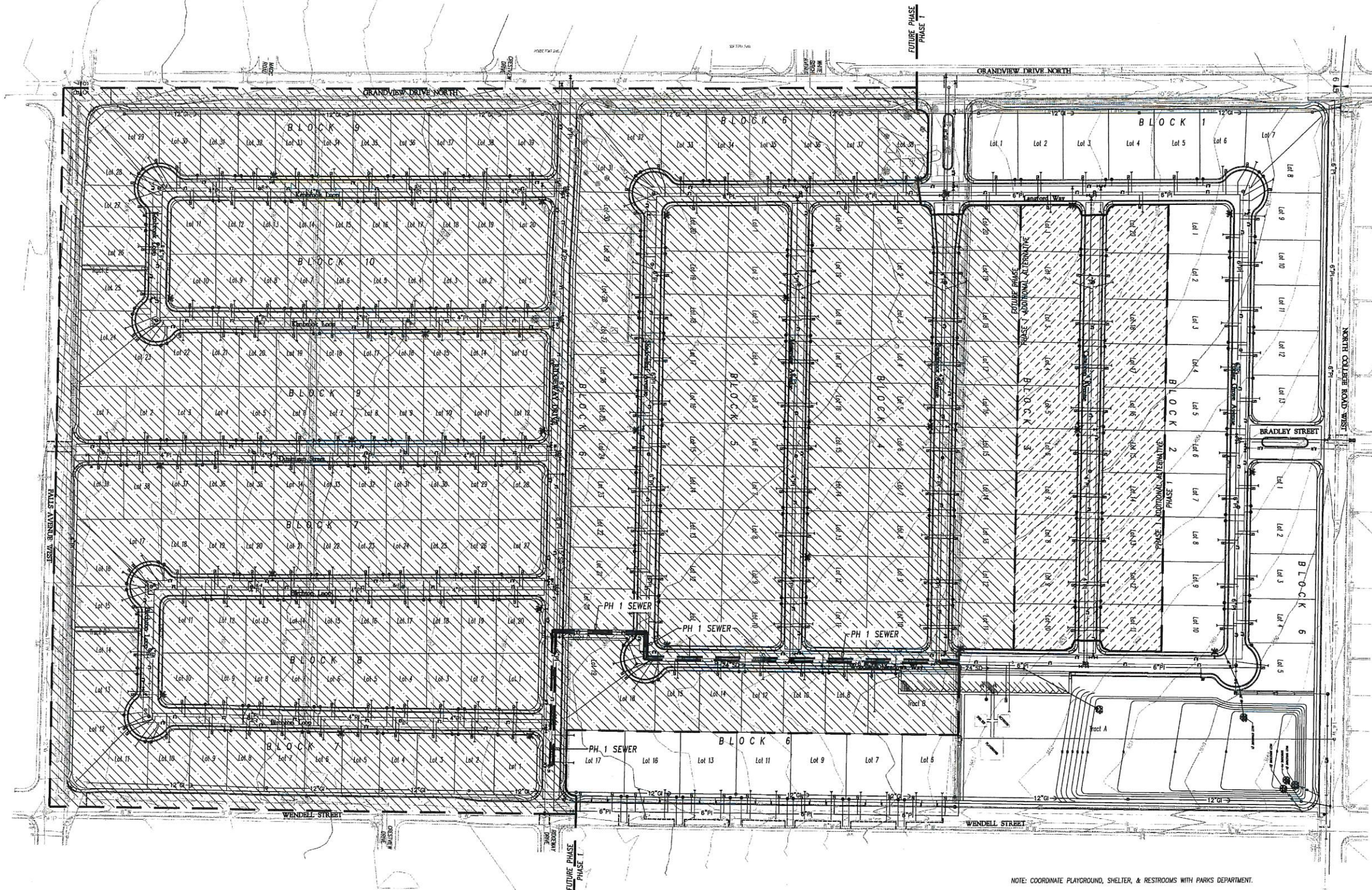


RD-9

6" Pressurized Irrigation Extension
to Jade Development - 182 Lineal
feet of 6" Dia. PVC Main



RD-10



NOTE: COORDINATE PLAYGROUND, SHELTER, & RESTROOMS WITH PARKS DEPARTMENT.

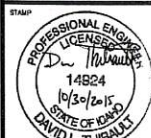
Tract A is a Retention Facility and Park Area. The retention basin services the entire Broadmoor Subdivision including both the North and South Portions. The area has been seeded and an irrigation sprinkler system meeting the City of Twin Falls requirements has been installed. Trees have been purchased to be planted around the perimeter of the park area.

EHM Engineers Inc.
ENGINEERS/SURVEYORS/PLANNERS
821 N. COLLEGE RD. SUITE 100
TWIN FALLS, IDAHO 83301
PH. 208 734 4888 FAX 208 734 6049
E-MAIL: ehm@ehminc.com

MASTER UTILITY PLAN for BROADMOOR SUBDIVISION

DO NOT SCALE DRAWINGS
CONTRACTOR SHALL VERIFY ALL
CONDITIONS AND DIMENSIONS AT
THE JOB SITE AND NOTIFY THE
ENGINEER OF ANY DIMENSIONAL
ERRORS, OMISSIONS, OR DIS-
CREPANCIES BEFORE BEGINNING
OR FABRICATING ANY WORK.

REVISIONS:
REV. - DLT - AUG 2011
CITY REVIEW LETTER
JAN. 2014 - MHL
REV. PER CITY REVIEW #3
OCT. 2015 - WAS
PHASE 1 CONST. PLANS



APPROVED	
DESIGN	
DRAWN	R. WATSON
DATE	MAY 2007
SCALE	SHOWN
CAD FILE	C-426-15CONSTPLANS
JOB NO.	426-15

MU-1



RESOLUTION NO. 2017-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING THE CITY'S IMPROVEMENT REIMBURSEMENT RESOLUTION BY PROVIDING CHANGES TO THE TERMINATION OF RIGHT TO REIMBURSEMENT SECTION RELATING TO MAJOR WATER DISTRIBUTION LINES, THE EXTENSION OF THE TERM OF ELGIBILITY AND ADDITION OF REIMBURSEMENT FOR THE COSTS OF PRIVATE AND PUBLIC IMPROVEMENTS RELATING TO TWIN FALLS CANAL COMPANY WATER DELIVERY SYSTEM.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Purpose:

Whenever any extension is made by a developer (initial developer) to the City of Twin Falls' (City) water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, in such a manner as to enable a subsequent private developer or property owner to connect to or extend the previously extended water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, the subsequent private developer or property owner (subsequent developers) shall first make proper compensation to the initial developer for the costs of the water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems (improvements). The following information is for reimbursement standards only and does not establish development standards for the City of Twin Falls.

Application By Initial Developer for Participation in Reimbursement Program:

The initial developer, who installs the improvements, must make an application for reimbursement to the Improvement Reimbursement Commission (Commission) thru the City Engineering Department within ninety (90) calendar days of acceptance of the system by the City. If the improvements were installed by the initial developer and accepted by the City prior to this Resolution, the developer shall have 90 days from the adoption of this Resolution to make an application for reimbursement. The initial developer's application shall identify all improvements proposed for compensation and shall include actual costs and all other requested data as required by the Commission to determine proper compensation. Also, Applicant will estimate the improvement boundaries per this Resolution. The Engineering Department will verify the improvements are located according to the Application and that they have been accepted by the City. The Engineering Department will not be responsible to verify the value of the improvements. The Engineering Department will review the GIS system for any previous Commission agreements. The City Engineer will review the proposed boundaries and confirm or adjust them. In the case that the City Engineer adjusts the boundaries, the initial developer will be notified by mail of the change. The initial developer can make a request to the Engineering Department to discuss this adjustment. The City Engineer has the final authority to determine the boundaries of all improvements. The Engineering Department will create a staff report including the pertaining information regarding the improvement reimbursement request and provide a copy to the initial developer prior to the Commission meeting. The Commission will review the application at their next public meeting and make a determination if the information in the application is correct by a vote of the members of the Commission. Besides

approving the application, the commission can also vote to approve the application with adjustments or vote to deny the application and request the Initial Developer correct the application and reapply for consideration. Once the Improvement Reimbursement request is approved by the Commission, the Engineering Department will enter the appropriate information into their system. The purpose of the Commission is to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for a future reimbursement. The initial developer must maintain proper identity and current address with the City Engineer in order to be eligible for proper compensation.

“Initial Developer” is hereby defined as any entity, individual, corporation, quasi-public corporation, non-profit organization, district, housing agency, partnership, firm, association, limited liability partnership or other such entities as recognized by the state of Idaho. This definition is intended to exclude the City of Twin Falls, the State of Idaho, and other governmental entities that fund or construct public improvements (as defined herein) in the ordinary course of their business.”

“Improvement” is hereby defined as one or more of the following: The completed improvement of water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, i.e. any public works improvement(s) that has been approved and accepted by the City. It is the completed improvement where the subsequent developer or property owner desires to connect, or the total or upgraded portion of any pump or unitized facility installed by the previous developer that will serve the subsequent development or property owner.

“Cost” is hereby defined as the following:

(1) Receipted actual amounts for the installation of the public works improvement;

(2) If unable to substantiate then:

The average of actual costs of public improvements installed by other private contractors within the past five (5) years, or,

The estimated costs documented by a nationally recognized estimating system.

(3) Estimate constructed from the Improvement Reimbursement Commission Agreements on file with the City of Twin Falls.

Improvements must be accepted by the City of Twin Falls to be eligible for reimbursement.

Responsibilities of the City:

The City Engineer will incorporate all “as-built” drawings into the City’s GIS program, so that the name of the initial developer that installed the existing system and the date it was “as-built” can be quickly retrieved.

The City Engineer will not issue a connection permit, sign a final plat, accept any improvement, or sign off on any certificate of occupancy without first checking the “as-built” drawings or the geographical information system (GIS) to determine if the improvement that is being connected to is less than ~~20~~ 25 years old and whether the initial developer has applied for participation in the reimbursement program. If the improvement is less than ~~20~~ 25 years old and if the initial developer has applied for participation in the reimbursement program, the City Engineer will inform the applicant (subsequent developer) that they must complete the financial obligations for reimbursement. The application will be thru the Engineering Department to the Commission for verification that the reimbursement has been made and be provided with a receipt of proper

compensation from the Commission, and receive approval by that commission. The City Engineer reserves the right to allow connections for emergency or other health and safety circumstances without receipt of proper compensation from the Commission. This does not satisfy the proper compensation requirement and the liability for payment will remain in place.

If the improvements required herein are a City requirement when a building or structure is constructed, placed, erected or enlarged or when there is a change of use of a building, structure or parcel of land, unless otherwise provided, all required improvements shall be a condition of any building permit and they shall be completed prior to final inspection and occupancy of the building. However, a reimbursement is not required for the City to approve minor modifications or additions to existing buildings or structures when the modifications and improvements do not constitute more than a twenty five percent (25%) increase over the square footage of the existing buildings or a total increase in square footage over ten thousand (10,000) square feet whichever is less, within any three (3) year period from date of completion of other expansion or modification.

Application for Verification of Payment of Proper Compensation:

The applicant for a connection permit, final plat approval, acceptance of any improvement, or any certificate of occupancy that desires to connect to existing public improvements eligible for reimbursement, shall make application to the Engineering Department to determine the Reimbursement obligation related to those improvements. The applicant can pay the required reimbursements and provide a receipt of proper compensation to the Commission or request the Commission reevaluate the required reimbursement by appealing the reimbursement amount and providing additional information to the Commission to make a new determination of proper compensation. The Commission reserves the right to request additional documentation of proper compensation. The Initial Developer will be given a reasonable time and opportunity to respond to the appeal before the hearing, and to appear and defend the determination at the hearing.

If the initial developer and subsequent developer agree on the proper compensation, the subsequent developer may file a notarized and agreed amount between the initial developer who installed the existing system and the subsequent developer or property owner who desires to connect to the existing system. The amount may be based upon any agreed portion of the cost, such as frontage, acreage or number of lots, but shall not exceed the total cost of the system. The agreement must accompany the receipt of proper compensation when presented to the Commission.

All applications shall include:

1. An application, including a complete explanation, documentation and calculations for the determination of proper compensation.
2. A fee for City administration of the Reimbursement system will be added to proper compensation. These fees will be adopted by separate resolution.
3. There will be no consideration for depreciation or inflation.

The Twin Falls City Code, Zoning Ordinances and Engineering Standards are subject to revision. In the case that a current City Code, Zoning Ordinance or Engineering Standard requires a different improvement than the completed improvement and the completed improvement no longer meets the current City Code, Zoning Ordinance or Engineering Standard, either an adjusted reimbursement or no reimbursement may be possible. Reimbursement can also be in the form of an agreement between two or more developers granting access easements in exchange for monetary compensation as long as the Original Developer releases the reimbursement liability.

The City of Twin Falls shall be exempt from all reimbursement requirements.

All individual service connections, engineering and surveying cost, and all City of Twin Falls fees including but not limited to: application fee, review fee, connection fee, water tap fee, water meters, and any capacity fees are not eligible for reimbursement.

In the case that either the applicant or the initial developer does not agree with the proper compensation determined by the Commission and chooses to appeal to the City Council, the applicant or the initial developer may appeal the decision to the City Council within fourteen (14) days of receipt of the written determination by filing an appeal with the City Council through the City Manager. If the applicant requests to proceed with their development, they shall provide a deposit in the form of a cash payment or an enforceable financial guarantee, equal to the amount of the approved determined proper compensation, to a title company to be put in escrow account authorized by the Commission. This will fulfill the subsequent developer's proper compensation receipt requirement and the Commission shall provide approval to the City Engineer. If the City Council rules in favor of the initial developer, the full deposit for proper compensation shall be provided to the initial developer. If it is determined that the proper compensation amount is to be a lesser amount, then the subsequent developer would only be responsible for the revised amount. If cash payment was made, the Commission would authorize the title company to pay the revised amount to the initial developer and the balance will be refunded to the subsequent developer. If an enforceable financial guarantee is used, the Commission would authorize the title company to pay the revised amount to the initial developer from the financial guarantee.

Termination of Right to Reimbursement:

The period of compensation to the initial developer shall be terminated at the earliest of any of the following conditions:

- (1) For all reimbursements except for water distribution systems of lines greater than 12-inch that provide additional water capacity for a service area greater than 160 acres, full compensation for the determined eligible reimbursement amount based on the actual cost plus 15% to address costs for engineering, management, fees, interest and inspection.; or,
- (2) For all reimbursements for water distribution systems of lines greater than 12-inch that provide additional water capacity for a service area greater than 160 acres, full compensation for the determined eligible reimbursement amount based on the actual cost of the entire project cost including engineering, management, fees, and inspection plus 25% to address costs for the longer reimbursement period; or,
- (3) ~~(2)~~ Failure on the part of the initial developer or their assigns to maintain proper identity and address on file with the Improvement Reimbursement Commission; or,
- (4) ~~(3)~~ A date ~~twenty~~ twenty-five (25) years after the acceptance of the improvement by the City.

Water Distribution System Reimbursement Standards:

Proper compensation for reimbursement of costs of water distribution systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Private developers are required to provide a water distribution system within its development. The water distribution system is a looped or connected system and multiple water lines benefit many other properties over long distances. The minimum requirements the developer is responsible for are construction of 12" water mains on Arterial streets, 10" water mains in Collector streets, and 6" or 8" water mains on interior streets that are located within the boundary of their development depending on the water model results. If these water mains are located within the right of way on a common property line, the improvement costs of these water mains are eligible for reimbursement and would be based on the amount of frontage feet along the water main. The cost of the water line would be split in half with each side of the Right of Way and each adjacent property owner would pay 50 % of the improvement cost. If there are multiple properties along the water line, the owners of those properties would be responsible for their frontage feet along the water main. If a parcel is located within the 1/8 mile rule of an Arterial or Collector water main but does not border along the right of way the water line is located in, that parcel may be responsible for a portion of the cost of that water main. (See 1/8 Mile Rule Standard) If the private developer constructs any of the water distribution system improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the water distribution system improvement was completed.

In cases where the water distribution system requires upsizing or other additional items, the difference in cost of material would be eligible for reimbursement from properties served by the upsizing or additional items. For developments that extend the water line from a source point not directly adjacent to their property, the entire offsite line is subject to reimbursement either from the properties it crosses, or the properties adjacent to the water line at time of tie in, or the properties that benefit within a defined area. Off site adjacent properties shall be responsible for 50% of the cost of the water line if bordered on one side, or 100% of the cost of the water line if property borders the water line on both sides-, or for developments that the water distribution system requires the installation of a major distribution line larger than a 12-inch that provides sufficient water supply for an entire defined area that is greater than 160 acres, all undeveloped properties within that defined area shall be responsible for their share of the cost of the water line.

The boundaries shall be based on the following: All water lines on Arterial streets, Collector streets and interior streets are consider part of the overall water distribution system and may not necessary benefit every development but are the responsibility of the original development. The original development is responsible for all of its boundaries where future main water lines will be required. These boundary water mains are eligible for future reimbursement. The boundary for main water lines on Arterial and Collector Street is based on the percentage of frontage that is up to +/- 1/8th of a mile deep. (See 1/8 Mile Rule Standard) All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the Water distribution system. Eligible cost for upsizing (not for extensions) would include the increase expenditure of the material only (pipe, valves, and fittings). Future reimbursement will be based on a pro rata per acre basis.

The water distribution system costs would include the installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Additional items like thrust blocking and assemblies including back flow prevention assembly and reduced pressure assembly are eligible for reimbursement. The fire hydrants must benefit the subsequent development to be eligible for reimbursement.

Line extensions or additional unusual conditions including additional depth that only benefit future development are eligible as reimbursement cost.

If the main water line runs parallel to the boundary of the property and is within dedicated city right of way for any type of street, it shall be considered bordered on one side.

If a pump station is required, the cost to complete the facility would include the pump and all required fittings and parts, the structure and related expenses; any City required landscaping and fencing, and any Special electrical power requirements. Future reimbursement will be based on a pro rata per acre basis.

Areas that would not qualify for reimbursement are interior water lines that only provide service to the original development.

Examples:

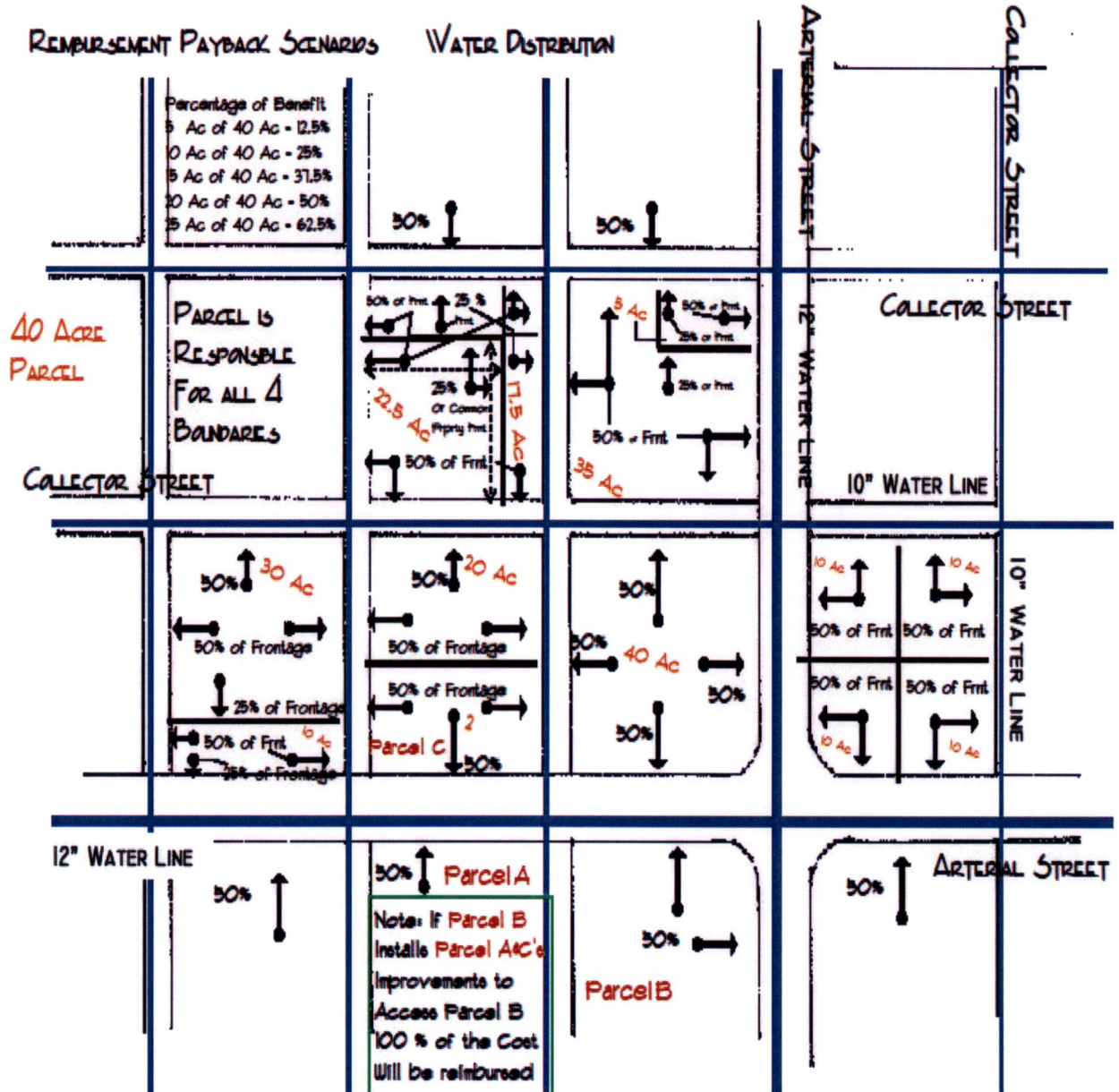
A developer is required to install a 12" main water line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that water line. If there are multiply owners along the shared Arterial Street, each owner would be responsible for their frontage along the water line. If a parcel is within the 1/8 mile rule of the 12" main water line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the water distribution system improvement cost is eligible for reimbursement. If the water main is the standard size, 100 % of the cost would be paid by the owners of parcel A and C to the developer of parcel B. The amount would depend on the percentage of benefit to each parcel so in this case each parcel would reimburse parcel B for their 50% of the cost.

On Arterial and Collector streets, if a future development does not border any designated street, reimbursement still may be required. The original development is responsible for installing the required improvements on its boundaries on the water distribution system. There are future reimbursements for the cost of these completed improvements by subsequent developments.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

REIMBURSEMENT PAYBACK SCENARIOS WATER DISTRIBUTION



Waste Water (Sewer) Collection Reimbursement Standards

Proper compensation for waste water (sewer) collection systems shall use equivalent residential units (ERU) in determining the improved capacity of the waste water collection system as determined by the Improvement Reimbursement Commission, times the actual cost of the subject existing improvements, plus 15% to address costs for (engineering, management, fees, interest and inspection).

The waste water collection system is not a looped grid type system and it is easier to determine the connection point to the existing system. Because developers are required to install minimum 8" sewer mains in all developments to provide individual sewer services and City development standards require developments to extend sewer mains to property lines with no reserve strips, the cost of reimbursements are more difficult to calculate. The other issues with sewer mains is that the design does not follow Arterial or Collector right of ways and are usually located within the boundaries of the development. For this reason all 8" sewer lines located in the interior of a development shall not be entitled to reimbursement unless the line only extends service for future connections. The cost of upsizing of a sewer main above 8" or to attain necessary depth to service adjacent subdivision from the stub extension to the property line shall be subject to reimbursement in the future from the adjacent parcel or parcels. Only the extra excavation and/or rock removal cost for additional depth would be eligible for reimbursement. The eligible cost for upsizing would include the increase expenditure for the material only (pipe, larger manholes or cleanouts, and fittings) except for improvements required for Major Sewer Trunk Lines or Line Replacements. If the original developer chooses to upsize the sewer main to provide additional depth for their subdivision, the upsizing is not subject to reimbursement. The reimbursement for upsizing shall be based on an ERU (equivalent residential unit) basis. If the new development is bounded on either side by an existing sewer lines but does not connect to or benefit from that line, the new development may be responsible for reimbursement of the cost of the existing sewer lines depending on other factors. A developer installs a 8" sewer main in a Collector right of way and the property that is located on the opposite side of the right of way plans to connect into sewer main or immediately downstream of that sewer main, that property would be responsible for 50% of the reimbursement for the lineal footage of sewer main including manholes, cleanouts, misc fittings and installation costs. Major off-site improvements such as major trunk lines or lift stations that are required by the City of Twin Falls will be entitled to reimbursement. The reimbursement will be based on a parcel's ERU requirement divided by pro rata share of ERU's available upon completion of the improvement. See examples below.

The original development is responsible for all of its boundaries where future sewer lines will be required. All minimum sewer lines on Arterial and Collector streets are consider part of the overall sewer collection system and may not necessary benefit every development but are the responsibility of the original development. However, reimbursement may be possible on sewer lines that provide future benefit to other parcels but do not benefit the original development. The boundary for sewer lines on Arterial and Collector street is based on the percentage of area that is up to +/- 1/8th of a mile deep (See 1/8 Mile Rule). All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the sewer collection system. Replacement of an existing City-wide collection system trunk line or pump station would be eligible for future reimbursement based on the equivalent residential unit (ERU) increased capacity of the new line or pump station.

The waste water collection system costs would include installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, manholes, cleanouts, and all required fittings. Line extensions or additional unusual conditions including additional depth that only benefit future development are eligible as reimbursement cost.

If a sewer pump station is required, the cost to design and complete the facility would include the pump and all required fittings and parts, the structure and related expenses; any City required landscaping and fencing, and any special electrical power requirements. Pre-development market value of the land dedicated for the pump location would be included in the overall cost of the pump station. Future reimbursement will be on an ERU basis.

Areas that would not qualify for reimbursement are interior sewer lines that only provide service to the original development and all individual sewer service connections

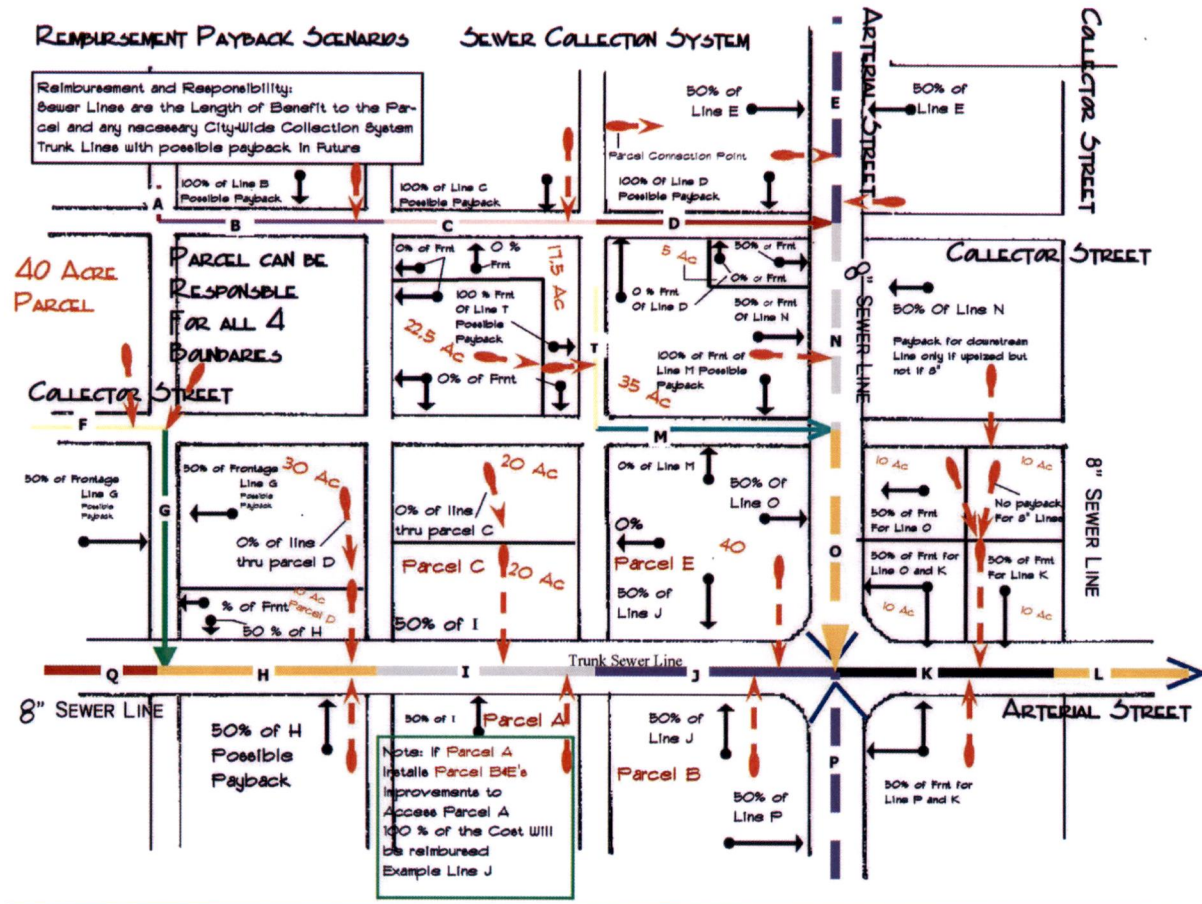
Examples:

If the current sewer main is capable of delivering 500 ERU's but there is no more capacity and a developer improves the system to carry 1000 ERU's. The additional 500 ERU's will be entitled to reimbursement from any future development upstream of the improved area. Therefore a 10 ERU development will be responsible for 2% of the cost of improvements.

A developer is required to install a minimum of a 8" sewer line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that sewer line based on their lot or parcel frontage. If there are multiple owners along the shared Arterial Street, each owner would be responsible for their frontage along the sewer line. If a parcel is within the 1/8 mile rule of the said sewer line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

If the developer of Parcel B installs an 8" sewer main across the shared boundary of Parcel A and C to access its development, 100 % of the waste water collection system improvement cost is eligible for reimbursement. The amount would depend on the percentage of benefit to each parcel. If the sewer line crossed the shared boundary, each parcel would reimburse Parcel B for 50% of the cost for a total of 100 %. The original development is responsible for installation of its required improvements on its boundaries on the waste water collection.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



Transportation Reimbursement Standards

Proper compensation for reimbursement of costs of transportation systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Developers are required to provide transportation improvements like curb, gutter, sidewalk or bike paths, landscape strips between curb and sidewalk or bike path, and asphalt roadway to centerline of the various types of approved streets per City of Twin Falls standards and specifications as part of development of the property. In certain cases a median may be also required. When the original developer constructs any of the transportation improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the transportation improvement was completed.

The boundaries shall be based on the following; the original development is responsible for all of its boundaries where future roadways will be required. If the improvements are required to be placed on the adjacent right of way owned by another party, the original development is eligible for future reimbursement. If a parcel is located within the 1/8 mile rule of an Arterial or Collector roadway but does not border along the right of way the improvements are located in, that parcel may be responsible for a portion of the cost of the transportation improvements. (See 1/8 Mile Rule Standard)

The following types of roadways are eligible for reimbursement: Arterial streets, Collector streets, local streets, and alleyways:

Reimbursement is based on a roadway that is sized to be the narrowest approved width required. The improvements eligible for reimbursement would be excavation, compaction, gravel road base and leveling course, asphalt pavement, concrete pavement, parking striping, asphalt/concrete cutting, removal and patching, curb and gutter, roll curb, standard curb, curb ramp, curb scupper, catch basins, sidewalks (the size to be the narrowest approved width required), sidewalk scupper, sidewalk catch basins, sidewalks requiring retaining walls, concrete sign post pads, standard or monolithic extruded curb- gutter and sidewalk, medians and traffic islands which included curb and/or curb and gutter, gravel, concrete sign post pads, interior improvements like: concrete/asphalt/gravel, and/or landscaping including sprinkler system with controls, parkways (the size to be the narrowest approved width required) including interior concrete, asphalt, gravel and landscaping includes a sprinkler system with controls, approaches including Arterial approaches, standard approaches, valley gutters, wheel-chair ramps, and driveway approaches, transportation ramps including public ramps with hand rails, bike paths that are either asphalt paths, concrete paths, gravel paths, metal guardrail, signage such as required public safety signs, utility sleeves that are installed for natural gas, electrical, and cablevision, telephone or any future non-City of Twin Falls utilities, and saw cutting for both expansion joints and standard joints, and saw cutting of asphalt at new street patch back. Traffic Signals are eligible for reimbursement using the 1/8 mile rule standard.

The following areas that would not qualify for reimbursement are buried non-City of Twin Falls utilities, interior transportation improvements that only provide service to the original development, and mail box pads.

Examples:

A developer of parcel B is required to improve an additional width of twelve (12) feet of roadway on the adjacent property of parcel A to meet the road width requirement for its development, that improvement is eligible for 100 % reimbursement from the owner of parcel A.

If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the improvement cost is eligible for reimbursement. The amount paid by the owners of parcel A and C would be the pro rata share of the improvements located on parcel A and C.

A parcel is responsible for the cost for all of its required improvements on its boundaries on the transportation system to the edge of its property including the roadway improvement within the future public right of way.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

Pressurized Irrigation (PI) Pump Station Reimbursement Standards

Proper compensation for reimbursement of costs of pressure irrigation (PI) pump station reimbursement standards shall be the proportion of the total acreage, including impervious areas, of the proposed development or property owner desiring to connect to the existing system, installed by the initial developer, within the boundaries served by the improvements, as determined by the City Engineer and verified by the Commission, times the actual pro rata cost of the existing improvements, plus 15% to address costs for (engineering, management, fees, interest and inspection).

Developers have many options available regarding the type of Irrigation System they utilize for their development but all new developments will be required to comply with the City's pressurized irrigation system requirements. This plan requires the use of PI pump stations to supply irrigation water to their development. When possible, the use of regional PI pump stations will be incorporated into the larger area surrounding the development. There will be both public and private systems. However, for regional PI pump stations, they will be designed and sized sufficiently for the acreage to be served. As properties connect to the station, they will be subject to a pro rata share of acres requesting service divided by the design capacity of acres available. For example: The capacity of a PI pump station is 1000 acres of service and the property requesting to be connected to the station is 40 acres, the reimbursement will be 4% of the cost of the station in addition to 40 shares of Twin Falls Canal Company water being able to be transferred from said property to the City of Twin Falls.

The design and boundary of the PI pump station will vary according to location of available water and the requirements of the region. The design and boundary of the service area will be determined by the City Engineer and the percentage of benefit will determine the amount of future reimbursement. Subdivisions that are completely developed and fully accepted by the City of Twin Falls are not subject to any reimbursement requirements unless the subdivision is connected to the regional pump station in the future.

The PI pump station costs would include the installation cost and unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Also included are additional costs for the assemblies including back flow valves, pressure reducing valve, blow off valves, diversion and overflow structures, and overflow piping, structure and related expenses, any City required landscaping and fencing, and any special electrical power requirements. The total cost shall include land costs based on pre development appraisal per acre market value of the land dedicated for the pump location.

Future reimbursement will be based on acres served and not water shares. It is the same for residential, commercial, institutional and industrial uses.

Areas that would not qualify for reimbursement are PI pump stations that only provide service to the original development and all individual PI service connections.

Examples:

If a PI pump station is designed and completed to service 640 acres, and a 20 acre development is required to connect to the pump station to provide PI to their development. The 20 Acres development would be responsible for 3.125 % of the total cost of the pump station. Ex. $20 \text{ Acres} \div 640 \text{ Acres} = 3.125\%$.

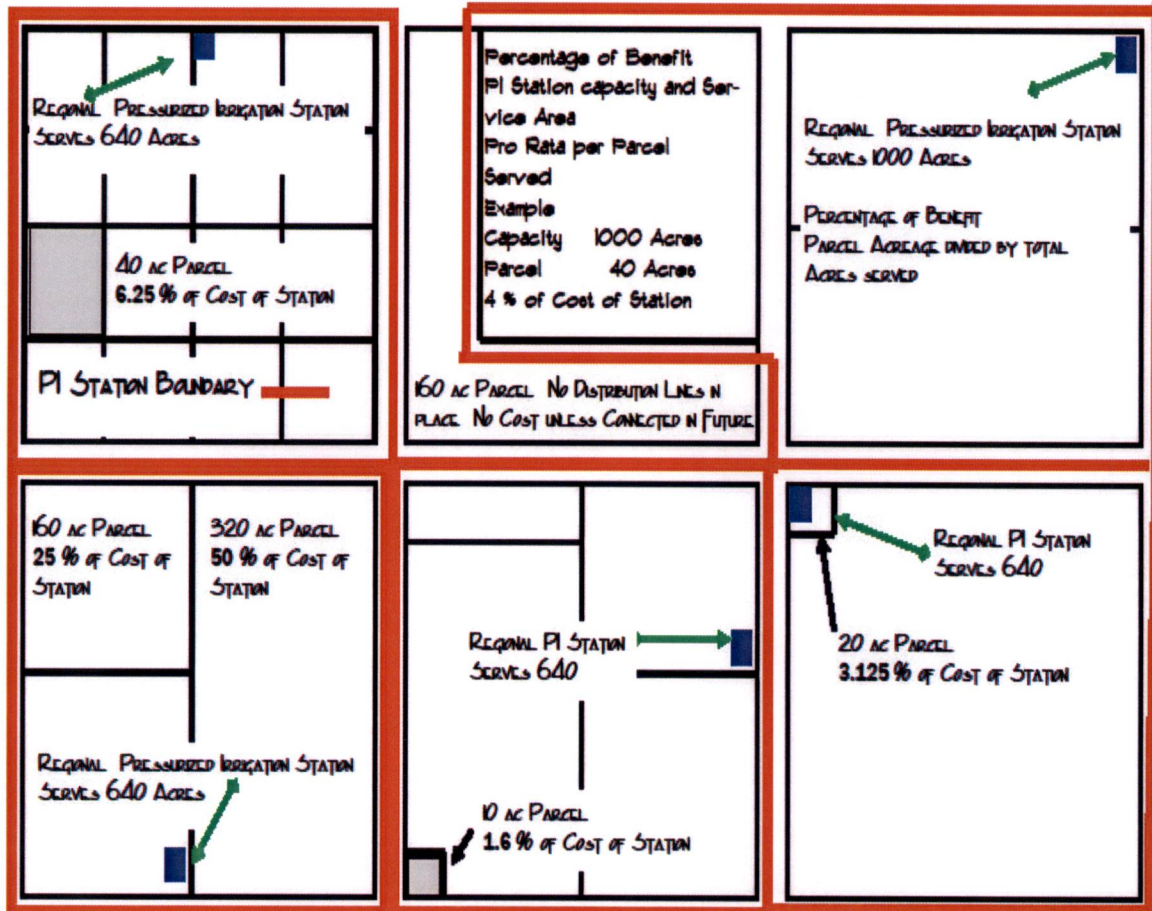
If a PI pump station is designed and completed to service 1000 acres, and a 40 Acre development is required to connect to the pump station to provide PI to their development. The 40

Acres development would be responsible for 4.00 % of the total cost of the pump station. Ex. 40 Acres divided by 1000 Acres would be 4.00%.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

REIMBURSEMENT PAYBACK SCENARIOS

PRESSURIZED IRRIGATION STATION



Pressurized Irrigation (PI) Distribution Reimbursement Standards

Proper compensation for reimbursement of costs of pressure irrigation distribution systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Private developers are required to provide a pressurized irrigation (PI) distribution system within its development. The PI distribution system is a looped or connected system and multiple PI lines benefit many other properties over long distances. The developer is responsible for construction of PI mains on Arterial streets, Collector streets, interior streets that are located within the boundary of their development. If these PI mains are located within the right of way on a shared property line, the improvement costs of these PI mains are eligible for reimbursement and would be based on the amount of frontage along the PI main. The cost of the PI line would be split in half with each side of the right of way and each property owner would pay 50 % of the improvement cost. If there are multiple properties along the PI line, the owners of those properties would be responsible for their frontage along the PI main. If a parcel is located within +/- 1/8 of a mile of an Arterial or Collector PI main but does not border along the right of way the line is located in, that parcel may be responsible for a portion of the cost of that PI main. (See 1/8 Mile Rule Standard) If the initial developer constructs any of the PI distribution system improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the PI distribution system improvement was completed.

In cases where the PI distribution system requires upsizing or other additional items, the difference in cost of material would be eligible for reimbursement from properties served by the upsizing or additional items. For developments that extend the PI line from a source point not directly adjacent to their property, the entire offsite line is subject to reimbursement from the properties it crosses or the properties adjacent to the PI line at time of tie in. Offsite adjacent properties shall be responsible for 50% of the cost of the PI line if bordered on one side or 100% of the cost of the PI line if property borders the PI line on both sides.

All PI lines on Arterial streets, Collector streets and interior streets are considered part of the overall PI distribution system and may not necessarily benefit every development but are the responsibility of the original development. The original development is responsible for all of its boundaries where future main PI lines will be required and may be eligible for future reimbursement. The boundary for main PI lines on Arterial and Collector Street is based on the percentage of frontage that is up to +/- 1/8th of a mile deep. (See 1/8 Mile Rule Standard) All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the PI distribution system to benefit adjacent properties. Eligible cost for upsizing (not for extensions) would include the increase expenditure of the material only (pipe, valves and fittings, etc.). Future reimbursement will be based on a pro rata per acre basis.

If the main PI line runs parallel to the boundary of the property and is within dedicated city right of way for any type of street, it shall be considered bordered on one side.

The PI distribution system costs include the installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Also additional items like thrust blocking and assemblies including back flow

prevention assembly, reduced pressure assembly, blow off assembly, air injection assembly and air release/vacuum assembly.

Line extensions or additional unusual conditions including additional depth that only benefit the new development are eligible as reimbursement cost.

If a pump station is required, see the pressurized irrigation pump station standards.

Areas that would not qualify for reimbursement are interior PI lines that only provide service to the original development and all individual PI service connections.

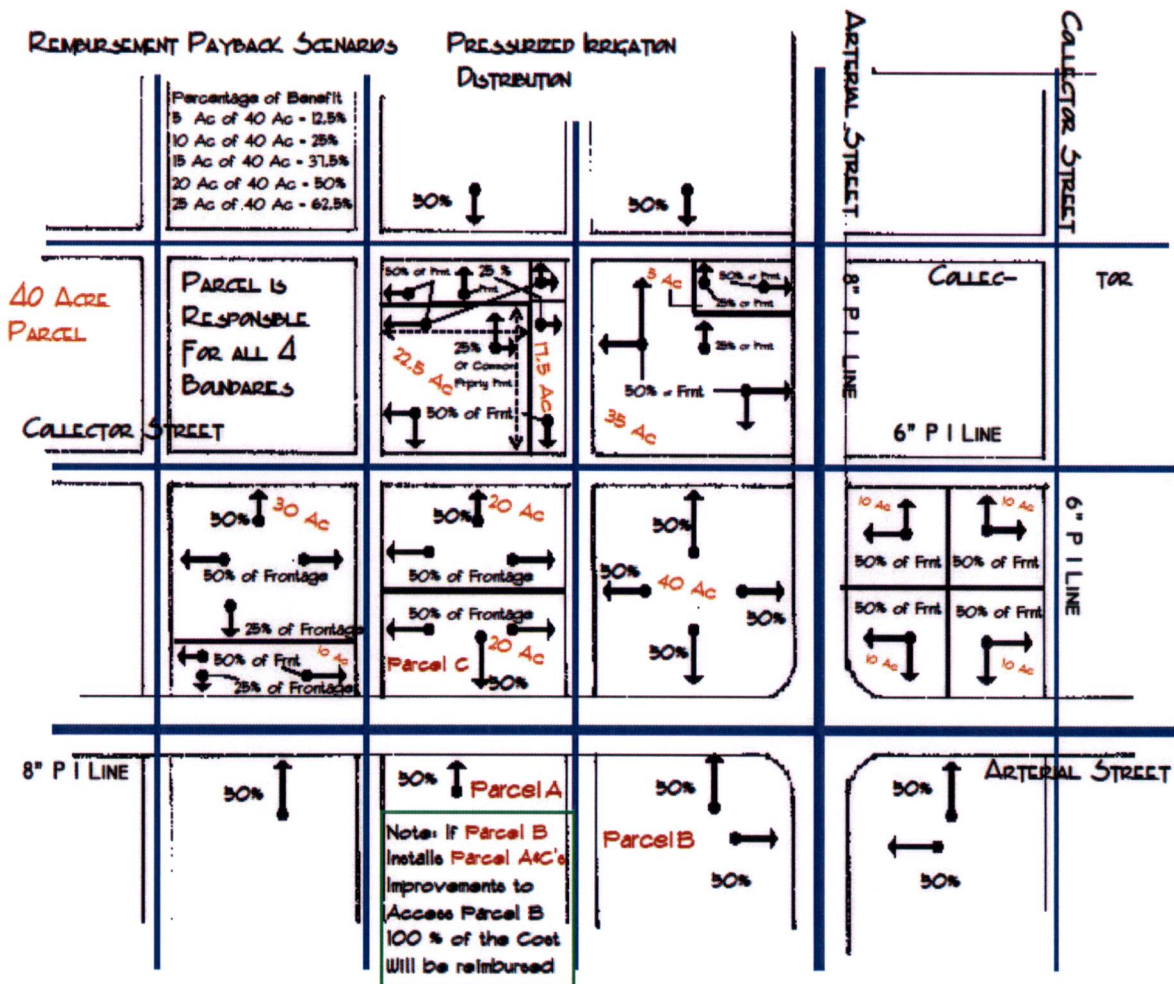
Examples:

A developer is required to install an 8" main PI line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that PI line. If there are multiply owners along the shared Arterial Street, each owner would be responsible for their frontage along the PI line. If a parcel is within the 1/8 mile rule of the 8" main PI line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the PI distribution system improvement cost is eligible for reimbursement. If the PI main is the standard size, 100 % of the cost would be paid by the owners of parcel A and C to the developer of parcel B. The amount would depend on the percentage of benefit to each parcel. The amount would depend on the percentage of benefit to each parcel so in this case each parcel would reimburse parcel B for their 50% of the cost.

On Arterial and Collector Streets, if a future development does not border any designated street, reimbursement still may be required should the PI system provides service to the parcel. The original development is responsible for the installation for all of its required improvements on its boundaries on the PI distribution system. There are future reimbursements for the cost of these completed improvements by subsequent developments.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



1/8 Mile Rule Standards:

Proper compensation for reimbursement of costs under the 1/8 mile rule standards shall be the percentage of benefit to the proposed development times the actual cost, plus 15% to address costs for (engineering, management, fees, interest and inspection) that improves any property that connects to any public works improvement(s).

The Area of Impact and the area within the City of Twin Falls City Limits are laid out in tracts of land on a Meridian, Township and Section system of survey.

A section is an area nominally one mile square containing 640 acres. Each Section is further divided into sixteen ¼ mile sections (or 1/16th sections of approximately 40 acres each) parcels that are approximately 1320' by 1320'. The City standards specify right of ways on these mile section boundaries for Arterial roadways, the ¼ mile increments between the Arterial right of ways are for Collector roadways. The City's water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution utilize this right of way to locate future improvements and create certain boundaries.

When these improvements work as a whole system, some of the improvements benefit all the developments within the 1/4 mile section and possibly other ¼ mile sections as well. Any parcel, regardless of the location within 660 +/- linear feet of the center line of the right of way of said utility would be responsible for a portion of the cost of the improvements located on the Collector or Arterial right of ways. To determine this benefit, any parcel that is located within approximately 1/8 of a mile or 660 +/- lineal feet of a Collector or Arterial right of way measuring perpendicular from the center line of the right of way, a percentage of the improvement cost would be paid by this parcel.

The method of calculating this percentage with based on the following formula: since a 40 acre parcel will be bounded on 4 sides by either a Collector or Arterial right of way, the 40 acre parcel will be reduced to four equal square areas of 10 acres. The parcel in question in that 10 acres will pay a reimbursement amount based on the amount of area no matter where it is located or arranged in those 10 acres. I.E. 3 acre parcel will pay 3/10ths of the cost of the improvements located within either the Arterial or Collector right of way or both.)

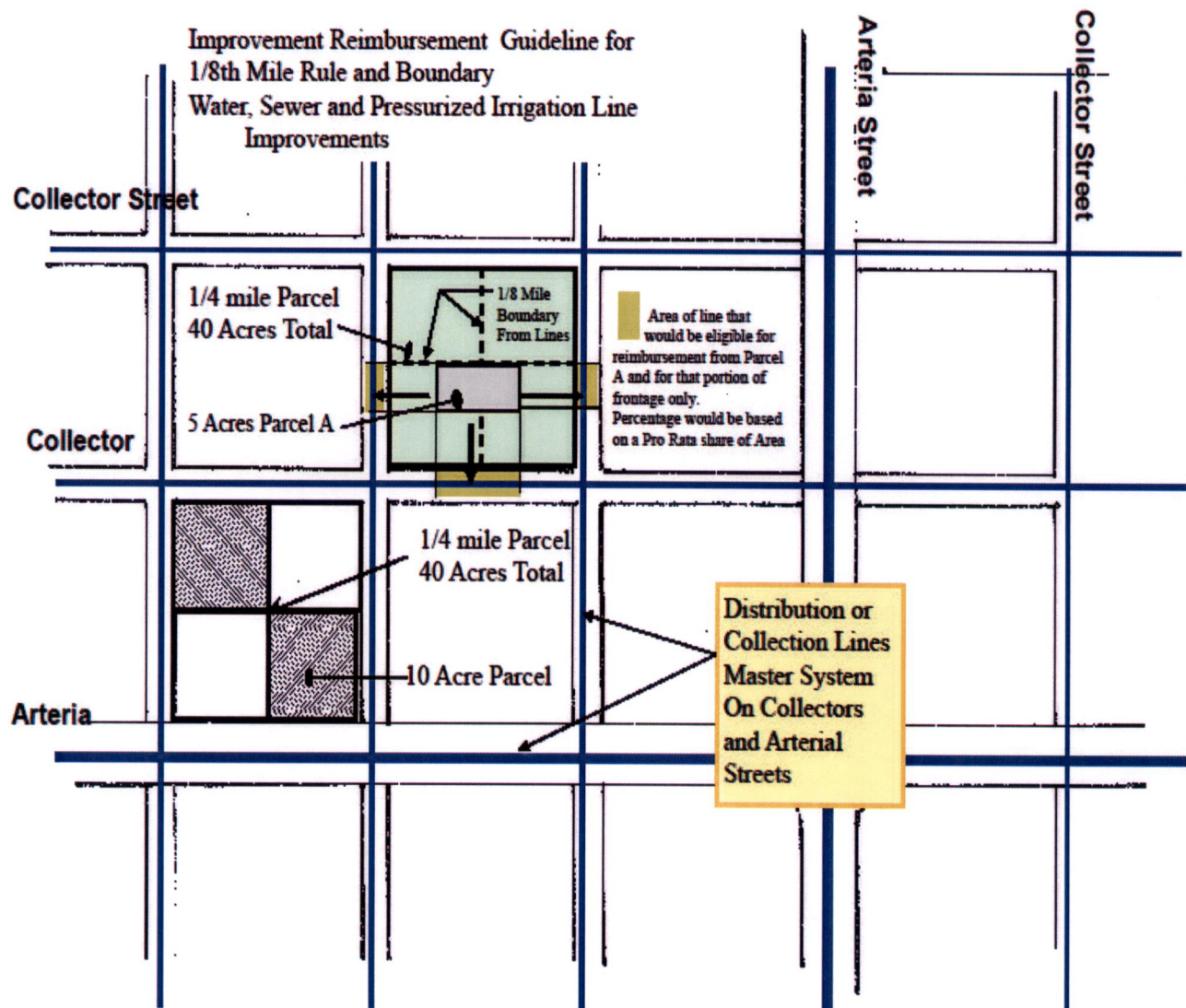
This method would apply to water distribution system, transportation, pressurized irrigation distribution system, and waste water collection system. This method would not apply to the pressured irrigation pump station systems.

Examples:

The initial developer improves a 5 acre parcel that is 660' by 330' that runs east to west and is parallel along an Arterial right of way located on the development's south property line and a Collector right of way on the development's west property line. The developer installs a 12" water main line in the Arterial right of way at a cost of \$30,000.00 and a 10" water main line in the Collector right of way at a cost of \$20,000.00. The developer also installs an 8" PI line in the Arterial right of way at a cost of \$10,000.00 and a 6" PI line in the Collector right of way at a cost of \$5,000.00 for a total improvement cost of \$65,000.00. This cost would be shared by the property or properties (see 1/8 mile rule) south of the Arterial right of way and west of the Collector right of way on a 50/50 basis. These parcels would reimburse the original developer for 50 % of the total cost of \$65,000.00 or \$32,500.00 plus an additional 15 % (See Resolution for explanation).

A 3 acre Parcel is located directly north of the original developer's property and part of the property is within 1/8 of a mile from the center line of the Arterial right of way with the water and PI improvements. This parcel would be responsible for the amount of acreage that is within 660 +/- linear feet or in this case the 3 acres would be 3/10th of the 10 acre grid method. The cost for the water main line and the PI line on the Arterial right of way was \$40,000.00. The parcels located south of the Arterial right of way would reimburse the original developer for half of the improvement cost or \$20,000.00 plus the 15 % which is \$23,000.00. Since the 3 Acre parcel is located perpendicular to the right of way, that parcel would reimburse the original developer for 3/10th of the remaining half of the cost of \$20,000.00 or \$6,000.00 plus the 15% which is \$6,900.00 for the Water and PI improvements located on the Arterial right of way. However, because the 3 acre parcel is not located within the 660 +/- linear feet measuring perpendicular from the Collector right of way, there would be not be any reimbursement by the 3 acre parcel for the cost of the water and PI improvements located on the Collector right of way.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



Twin Falls Canal Company Water Delivery System Reimbursement Standards

The Twin Falls Canal Company, known as "TFCC" in this section, owns and operates the irrigation water delivery system consisting of irrigation structures and head gates, canals and laterals, known as "Irrigation Improvements" in this section, located in easements and right of ways throughout the City of Twin Falls. The City of Twin Falls aids the TFCC in the design, maintenance and oversight of their water delivery system. All TFCC Irrigation Improvements become part of the overall design of any subdivision and requires approval by the City of Twin Falls Engineering Department.

Proper compensation for reimbursement of costs of the TFCC water delivery systems shall use the degree of benefit as determined by the Improvement Reimbursement Commission, times the actual cost of the subject improvements, plus 15% to address costs for engineering, management, fees, interest and inspection.

The TFCC water delivery system is not a looped grid type system and per a State Agreement, the TFCC has recorded and unrecorded rights-of-ways along the sides of its main canals (50 feet), major laterals (30 feet), and smaller laterals (15 feet or a proportionate width) by a 1903 Agreement with the State of Idaho. These measurements are from the toe of the bank.

The Irrigation Improvements follow a gravity path and are not located per property boundaries. Irrigation Improvements can be located partially on two different properties and the cost of reimbursements are more difficult to calculate. The 1/8th mile rule will not apply to Irrigation Improvements reimbursement. Degree of benefit is determined by the location of the Irrigation Improvements. All reimbursements will be determined per the historical location and right of way of any Irrigation Improvement. Benefit is determined by the location of the center of the Irrigation Improvement, the toe of the bank and the TFCC right of way. The Irrigation Improvements cannot be relocated on an adjacent property to create benefit where benefit did not previously exist.

To qualify as an Irrigation Improvement eligible reimbursement, the improvement must involve replacing a canal or lateral with approved TFCC pipe using an underground installation and/or the improvement or replacement of existing or new irrigation structures and head gates; and is required as a condition of approval by the TFCC and the City of Twin Falls.

The Irrigation Improvements costs would include installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, irrigation structures and head gates, cleanouts, and all required fittings.

If the Irrigation Improvement is required to cross an adjacent property, the adjacent property owner is responsible for 100 % of the cost of the Irrigation Improvement for that portion located on their property. If the Irrigation Improvement is located on two adjacent properties, both property owners are responsible for 50% of the cost of the Irrigation Improvement when one toe of the bank of the canal or lateral is located within their property boundary or any part of the irrigation structure is located on their property. Where a portion of the right of way is located on a property but the Irrigation Improvement is not, there is no benefit and the cost of the Irrigation Improvement is not eligible for reimbursement.

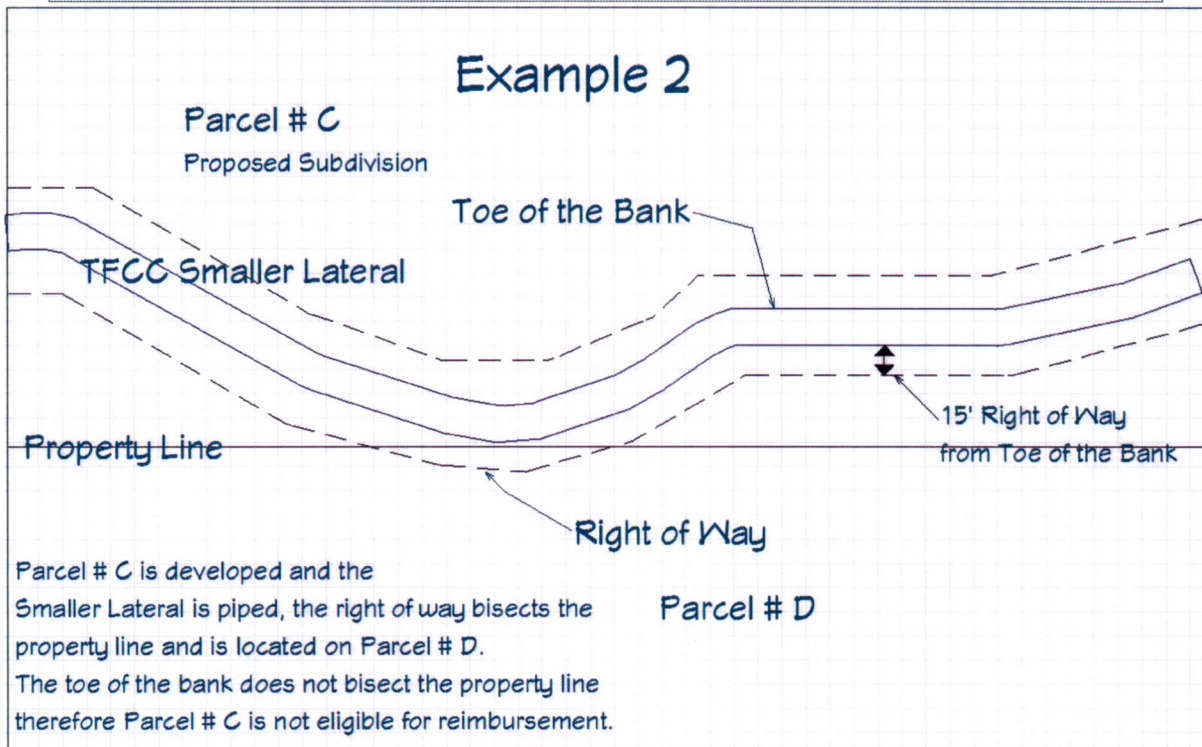
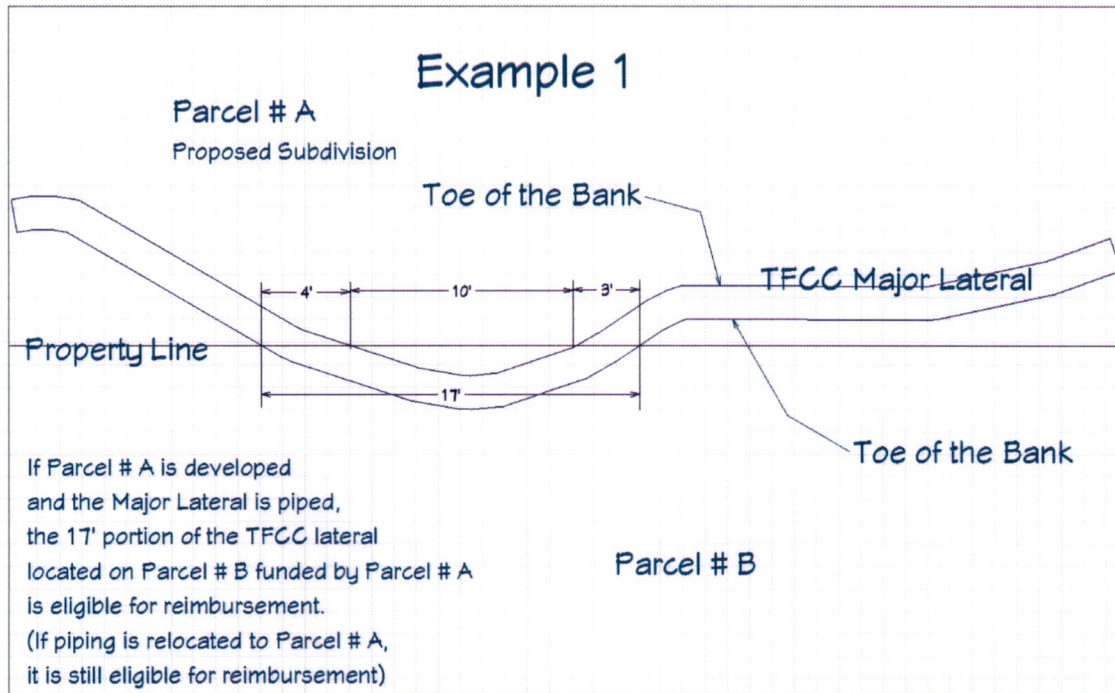
Examples:

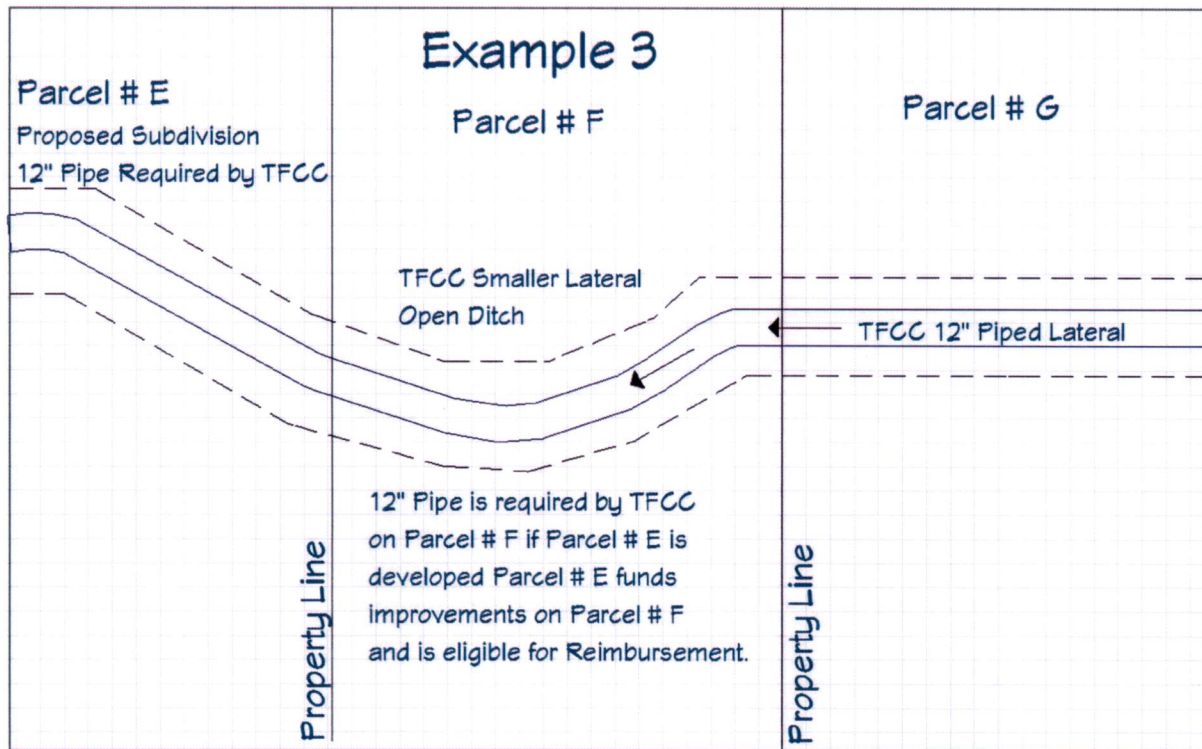
A developer of Parcel A is required to install Irrigation Improvements as part of the development of their subdivision and the Irrigation Improvements are located parallel to Parcel B and where any toe of the bank of the canal or lateral or an irrigation structure crosses Parcel B for any length those improvements are eligible for reimbursement. There is benefit to Parcel B therefore 50% of the cost of the Irrigation Improvement for the length of one toe of the bank crosses the boundary between Parcel A and B or if any portion of the irrigation structure is located on both properties are eligible for reimbursement. When both toes of the bank of the canal or lateral or all the irrigation structure is located on Parcel B, 100% of the cost of the Irrigation Improvements are eligible for reimbursement for that portion. See Example 1.

A developer of Parcel C is required to install Irrigation Improvements as part of the development of their subdivision and the Irrigation Improvements are located parallel to Parcel D. If the irrigation structure or the toe of the bank of the canal or lateral does not cross Parcel D at any point although the right of way does, there is no benefit to Parcel D therefore the Irrigation Improvement are not eligible for reimbursement. See Example 2

A developer of Parcel E is required to install Irrigation Improvements as part of the development of their subdivision and there is a canal or lateral delivering TFCC water to the subdivision on Parcel F that the TFCC requires to be improved. The developer of Parcel E will complete the required Irrigation Improvement within the TFCC right of way on Parcel F and the owner of Parcel E will be eligible for 100 % of the cost from Parcel F as an improvement reimbursement. See Example 3

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



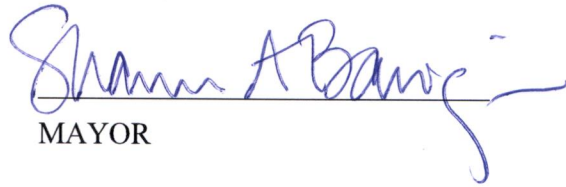


PASSED BY THE CITY COUNCIL

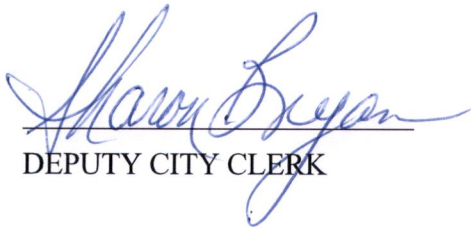
August 28, 2017.

SIGNED BY THE MAYOR

August 28, 2017.


MAYOR

ATTEST:


DEPUTY CITY CLERK

LYNNETTE M. DAVIS
ADMITTED TO PRACTICE LAW IN IDAHO
EMAIL: LDAVIS@HAWLEYTROXELL.COM
DIRECT DIAL: 208.388.4944
DIRECT FAX: 208.954.5213

December 17, 2018

***TRANSMITTED VIA E-MAIL and
CERTIFIED MAIL***

Travis Rothweiler, ICMA-CM
City Manager
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: trothweiler@tfid.org

Fritz Wonderlich
City Attorney
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: fwonderlich@tfid.org

Re: *Jade Development, LLC's Appeal of the Improvement Reimbursement
Commission's Approval of Gerald Martens' Reimbursement Application*

Dear Mr. Rothweiler, Mr. Wonderlich, and City Council Members:

At issue on this appeal is the Improvement Reimbursement Commission's ("IRC") decision, which requires Jade Development ("Jade") to reimburse Gerald Martens, who is a member of the IRC, for costs associated with the installation of a pressurized irrigation system. The written decision, dated December 3, 2018, is attached hereto as **Exhibit A**. In 2015, Mr. Martens entered into a private contract under which he agreed to install, at his sole cost, certain improvements for Jade's benefit, including but not limited to pressurized irrigation. Accordingly, Mr. Martens is not entitled to reimbursement from Jade, and Jade is not obligated to reimburse Mr. Martens. Notwithstanding the foregoing, Jade does not expect the City Council to interpret and/or enforce the private agreement—that will be done by a court of law. Instead, Jade requests that the City Council vacate the IRC's decision until the dispute between Jade and Mr. Martens is resolved, which will likely require litigation.

This appeal is divided into two sections. The first section summarizes Resolution 2017-13 and the factual background, and the second section discusses four bases upon which the IRC's decision should be vacated.

BACKGROUND

1. Resolution 2017-13

As a preliminary matter, it is important to briefly discuss Resolution 2017-13, which is attached hereto as **Exhibit B**. Resolution 2017-13 was approved by the Mayor and City Council and controls the IRC's reimbursement decision. Under Resolution 2017-13, an initial developer, who extends service to the City's water distribution, waste-water collection, transportation, or pressurized irrigation pump/distribution systems, may apply for future reimbursement from subsequent developers. If an application is approved, an initial developer will receive reimbursement from parties who later benefit from the improvement, such as subsequent developers. To be eligible for reimbursement, a developer must submit timely an application, which is reviewed by the City Engineering Department, and voted upon by the IRC. There are three steps that must occur before a reimbursement request is approved.

First, a developer must submit an application. Only the following five improvements are eligible for reimbursement: (1) water distribution improvements; (2) waste-water collection systems; (3) transportation systems; (4) pressurized irrigation pump/distribution systems; and (5) Twin Falls Canal Company water delivery systems. To be eligible for reimbursement, a developer **must** submit an application within 90 days of the City's acceptance of the improvement, or 90 days from the adoption of the Resolution. The Resolution was adopted on August 28, 2017. The application **shall** identify all improvements proposed for compensation, provide actual receipted costs, and include "all other requested data as required by the [IRC]." Historically, the City Engineering Department has required developers to submit an application on the City's standard form and include both an approval letter from an independent third-party engineer and a list of properties that may be subject to reimbursement requirements should the application be approved.

Second, the City Engineering Department reviews the application. Specifically, the City Engineering Department verifies that the improvement has been accepted by the City, and writes a staff report summarizing the application.

Third, the IRC reviews the application at its next public meeting. The IRC determines whether the "information in the application is correct" and votes to approve, deny, or request additional information. Notably, *the "purpose of the [IRC] is to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for future reimbursement."* In other words, the IRC is supposed to represent the interest of subsequent developers who may be required to reimburse the applicant.

2. Factual Background

Rusmor, LLC ("Rusmor") was the original and sole owner of the entire Broadmoor Subdivision ("Subdivision"). Rusmor retained Mr. Martens' engineering company, EHM

Engineers, Inc. ("EHM") to perform certain engineering work on the Subdivision. In 2015, Rusmor executed a Real Estate Purchase and Sale Agreement ("Agreement") by which it sold the northern portion of the Subdivision to Mr. Martens ("Martens' Property"). Rusmor retained the southern portion of the Subdivision ("Retained Property"). The Agreement is attached hereto as **Exhibit C**.

Joe Russell, the principal owner of Rusmor, negotiated the Agreement with Mr. Martens. The terms of the Agreement require Mr. Martens to install, at his sole expense, certain improvements for the benefit of the Retained Property, such as pressurized irrigation and storm-water runoff systems. Further, the Agreement requires Mr. Martens and EHM to provide all remaining engineering and related services for the Retained Property. In exchange, Mr. Martens received a significant discount to the purchase price of the property.

Sometime later, Rusmor sold the Retained Property to Jade. Jade paid a premium price for the Retained Property based upon the condition that the various improvements would be provided by Mr. Martens at no cost to Jade. Pursuant to paragraph 15 of the Agreement, Jade was bound by, and received the benefit of, the Agreement. Accordingly, Jade is Rusmor's successor-in-interest and is entitled to the benefit of Mr. Martens' promise to install the pressurized irrigation and storm-water runoff systems for the Retained Property.

In 2016, Mr. Martens complied with the Agreement by installing certain improvements. However, in May 2017, Mr. Martens sent Jade a letter requesting that Jade pay for a portion of storm-water improvement costs ("First Request"). Mr. Martens' First Request is attached hereto as **Exhibit D**. Specifically, Mr. Martens sought reimbursement for \$69,737.31 of the \$147,156.17 total.¹ Also attached to the First Request were estimates from subcontractors for other development-related work, such as pressurized irrigation, water, and sewer. Jade discussed Mr. Martens' First Request with Rusmor and confirmed that the Agreement obligated Mr. Martens to pay for the entire storm-water improvement. Accordingly, Jade advised Mr. Martens that it would not pay any portion of the cost. As will be discussed in greater detail below, the scope of Mr. Martens' First Request is noteworthy because it demonstrates that, as of May of 2017, Mr. Martens' was willing to pay for the pressurized irrigation costs, *i.e.*, initially, Mr. Martens only sought reimbursement for storm-water improvements. Mr. Martens' First Request was not submitted to the City Engineer or the IRC; thus, Jade believed that Mr. Martens respected Jade's refusal and would abide by the Agreement.

However, on December 29, 2017, Mr. Martens sent an application ("Second Request") for reimbursement to Troy Vitek (Assistant City Engineer), wherein Mr. Martens asserted that he was entitled to partial reimbursement from Jade for: (1) \$9,003.00 in sanitary sewer

¹ Mr. Martens later acknowledged that the \$147,156.17 was an overstatement of the costs related to the storm-water improvements. Indeed, he later submitted a request for nearly \$30,000 less than originally requested.

improvements; and (2) \$65,625 in pressurized irrigation improvements. Mr. Martens' Second Request is attached hereto as **Exhibit E**. Jade learned of the Second Request and informed Mr. Vitek that, pursuant to the Agreement, Mr. Martens was not entitled to reimbursement from Jade because Mr. Martens had received a discounted purchase price for the property in exchange for his promise to install certain improvements for Jade's benefit. Mr. Vitek suggested that Jade and Mr. Martens resolve the dispute between themselves before asking the City to get involved. Jade understood from its conversations with Mr. Vitek that the City Engineering Department or the IRC had rejected the Second Request because it did not comply with the requirements of Resolution 2017-13.

Despite suggesting that the parties resolve the dispute privately, but consistent with his representation to Jade that the Second Request was being rejected, on April 10, 2018, Mr. Vitek sent an email to Mr. Martens, wherein he acknowledged receipt of the Second Request, but requested that Mr. Martens: (1) resubmit the request on the City's standard application form; (2) identify the real property owners who may be subject to the reimbursement; and (3) provide acceptance letters, receipts, etc. Mr. Vitek explained that, upon receipt, the City Engineer would review a revised and resubmitted application and schedule it for the IRC's review. Mr. Vitek's email is attached hereto as **Exhibit F**.

In accordance with Mr. Vitek's suggestion, but unaware that Mr. Vitek had agreed to review Mr. Martens' revised and resubmitted application, Jade organized a meeting with Mr. Martens, John Fitzgerald (attorney for Rusmor), Scott Allen (Project Manager for Jade), and other Jade personnel. The meeting occurred on April 23, 2018. During the course of the meeting, Mr. Martens acknowledged that the Agreement required him to install, at his sole expense, the various improvements provided for in the Agreement. However, when it became apparent that Jade expected him to honor the terms of the Agreement, he made the following threat to Jade:

“Nobody bullies me. The City and I will stop you in your tracks unless you pay me.”

Following the meeting, Mr. Allen called Mr. Martens to further discuss the issue, but no Resolution was achieved. On May 9, 2018, Mr. Allen sent an email to Mr. Vitek wherein he: (1) confirmed that the Agreement required Mr. Martens to install the improvements for Jade's benefit; (2) advised the City of Jade's unsuccessful attempts to resolve the dispute with Mr. Martens; (3) confirmed Jade's understanding that Mr. Martens' Second Request had been denied by the IRC; and (4) requested immediate notice in the event that Mr. Martens subsequently sought any reimbursement from Jade. Mr. Allen's email is attached hereto as **Exhibit G**. In light of Mr. Vitek's April 10, 2018 email, Mr. Vitek should have immediately notified Mr. Allen that he had requested that Mr. Martens submit a revised application for consideration. However, neither Mr. Allen, nor Jade were provided with such notification.

On September 28, 2018, Mr. Martens submitted a revised request for reimbursement, which was dated June 7, 2018, to Mr. Vitek ("Third Request"). The Third Request increased the total reimbursable cost to \$184,302.73, plus an additional 15% to address engineering, management, and inspection costs. Specifically, Mr. Martens' Third Request requested reimbursement for two types of improvements: (1) \$65,625 in pressurized irrigation costs; and (2) \$118,677.73 in storm-water retention costs.² The Third Request consisted of only six pages, which included a cover letter, a third-party review letter, and four pages of construction drawings and plat maps. Notably, the Third Request did not include the City's application form, a list of real property owners who may be subject to reimbursement, the City's acceptance letters, or receipts, which Mr. Vitek had previously requested. Mr. Vitek had denied the Second Request because it did not include these documents. Accordingly, it stands to reason that the Third Request should have been denied for the same reason. The Third Request is attached hereto as **Exhibit H**. The City Engineer's one-page Staff Report, dated October 25, 2018, is also included in **Exhibit H**. The Staff Report merely rubber-stamped the Third Request. Indeed, under the analysis section, it states "N/A."

Despite Mr. Allen's request for immediate notification of any reimbursement requests subsequently submitted by Mr. Martens, Jade was not notified of Mr. Martens' Third Request. Moreover, Jade was not notified that the IRC was meeting on October 25, 2018 to consider the Third Request. Fortunately, at approximately 10:00 a.m. on the morning of the October 25, 2018 meeting, Mr. Allen happened to notice that the IRC was meeting at noon to discuss Mr. Martens' Third Request. Mr. Allen emailed Mr. Vitek and other City representatives and explained that the conflicts between Mr. Martens request and the Agreement "need to be resolved prior to approval of the reimbursement request." Fritz Wonderlich (the City Attorney) responded to Mr. Allen's email, stating, "We were all surprised by this today on very short notice." The October 25, 2018 email exchange between Mr. Wonderlich and Mr. Allen is attached hereto as **Exhibit I**.

Mr. Wonderlich was unable to attend the October 25 IRC meeting but advised the IRC to table the Third Request because Jade had disputed Mr. Martens' entitlement to reimbursement. Mr. Martens, who is a member of the IRC, recused himself, and EHM's principal engineer, David Thibault, presented the Third Request to the IRC. Mr. Thibault explained that the total improvement costs, plus 15%, totaled \$211,948.14, and based upon Jade's ownership of 47.4% of the Subdivision, Jade was required to pay Mr. Martens \$100,463.42.

In response, Jade representatives explained that the Third Request conflicted with the Agreement. The Chairman of the IRC, Chad Debie, argued that the IRC should evaluate the Third Request and presumably approve it, without regard to the Agreement. Specifically,

² Notably, Mr. Martens' Third Request did not include his request for \$9,003.00 in sanitary sewer improvements, which had been included in his Second Request.

Chairman Debie stated “[T]he scope of this board has nothing to do with their purchase and sale agreement.” Chairman Debie reasoned that “it doesn’t make any difference whether or not [Jade and Mr. Martens] had a purchase and sale agreement in place,” because Mr. Martens’ entitlement to reimbursement was unrelated to the Agreement. City representatives cautioned Chairman Debie that a premature ruling on the Third Request would likely lead to a lawsuit involving the City. Ultimately, the IRC tabled the decision for 30 days to allow Mr. Wonderlich to investigate Jade’s claim that Mr. Martens was not entitled to reimbursement.

After the October 25, 2018, IRC meeting, Jade contacted Mr. Russell (who negotiated and signed the Agreement on behalf of Rusmor) to confirm, for a second time, that the Agreement obligated Mr. Martens to install, as his expense, certain improvements for the Retained Property, such as pressurized irrigation and storm-water runoff systems. Mr. Russell provided a declaration stating the same, which is attached hereto as **Exhibit J**. Mr. Russell’s attorney, who was involved in drafting the Agreement, confirmed Mr. Russell’s understanding of the Agreement. Jade also reviewed the limited information included in the Third Request and the City’s corresponding Staff Report, which was not released until the day before the IRC special meeting set to review the Third Request. Jade compared the Third Request and the Staff Report to the requirements of the Resolution and discovered several areas of noncompliance. For example, the Third Request sought reimbursement for storm-water improvements, but such improvements are not eligible for reimbursement under Resolution 2017-13. Additionally, the Third Request again failed to provide receipts, acceptance letters, or a list of affected property owners. Jade communicated its concerns in a letter to Mr. Wonderlich, Mr. Rothweiler, and the IRC and requested that the IRC refrain from ruling upon the Third Request. Jade’s letter, which included Mr. Russell’s declaration and several other attachments, is attached hereto, and incorporated herein as if set forth in full, as **Exhibit K**.³ Specifically, Jade explained that, due to Mr. Martens’ blatant disregard for the Agreement, legal action would be necessary to resolve the contractual dispute. Jade emphasized that it did not desire to involve the City in the legal action, but would be forced to do so if the IRC ruled upon the Third Request. In sum, Jade suggested that it was in the IRC’s best interest to refrain from ruling upon the Third Request until the contractual dispute between Jade and Mr. Martens is resolved, or at the very least, request additional information (*e.g.*, receipts, acceptance information, a list of affected property owners, etc.) from Mr. Martens so that the IRC could make an informed decision.

On November 29, 2018, the IRC held a special meeting to reconsider Mr. Martens’ Third Request. The IRC’s meeting packet, which was posted on the City’s website on November 28, 2018, contained: (1) a revised two-page Staff Report from the City Engineer; (2) Mr. Martens’ Third Request, which remained a total of six pages; and (3) a seventy-page packet from Jade setting forth, in detail, the numerous issues with the Third Request. The revised Staff Report is

³ Certain attachments to Jade’s letter, such as Resolution 2017-13 and Mr. Martens’ requests, are omitted from Exhibit K because they are already attached to this appeal as exhibits.

noteworthy for two reasons. First, it recommended that the IRC approve only the pressurized irrigation portion of the Third Request. In other words, the revised Staff Report recognized that storm-water improvements were not eligible for reimbursement under Resolution 2017-13. Second, it acknowledged the dispute between Jade and Mr. Martens, but stated that “whether or not proper compensation has already been made [to Mr. Martens] . . . should not be a relevant subject for the Commission’s determination.” As will be discussed in detail below, this statement conflicts with the express purpose of Resolution 2017-13: “*the purpose of the [IRC] is to determine if a reimbursement is fair and equitable to the subsequent developers.*” Resolution 2017-13, p. 2. (Exhibit B).

Representatives from Jade, Mr. Martens, and the City presented to the IRC. Based upon the IRC’s comments and questions, it was apparent that the IRC was not familiar with Resolution 2017-13. Indeed, the IRC was not aware that only four types of improvements were eligible for reimbursement under Resolution 2017-13. Further, it was apparent that the IRC had not reviewed the meeting packet. Specific concerns with the IRC’s insufficient preparation will be addressed in detail below. Ultimately, four members of the IRC voted to approve the Staff Report; thus, requiring Jade to reimburse Mr. Martens in the sum of \$35,764.31. The reimbursement requirement is especially significant because the City Engineer is required to issue a stop work order on Jade’s development until it satisfies the reimbursement cost.

In preparation for this appeal, Jade placed \$35,764.31 in an escrow account and made a public records request to the City. Although the public records request has not been fully satisfied, several noteworthy documents have been produced, which will be discussed in detail below. Jade reserves the right to supplement this appeal once the public records request has been fully satisfied.

THE IRC’S DECISION SHOULD BE VACTED FOR FOUR REASONS

1. According to the Agreement, Mr. Martens is Not Entitled to Reimbursement from Jade.

As previously mentioned, Jade does not expect the City Council to interpret and/or enforce the Agreement—that will be done by a court of law. However, because the Agreement is inextricably intertwined with Mr. Martens’ Third Request, it cannot be ignored. The plain language of the Agreement demonstrates that Mr. Martens is not entitled to reimbursement from Jade; thus, the IRC should have refrained from ruling upon the Third Request. Indeed, paragraphs 4, 10(a)(iii), and 10(d) state as follows, in pertinent part:

4. . . . EHM, Engineers, Inc. [] waive[s], and release[s] [Rusmor] from any and all liability for, said unpaid outstanding fees, costs and expenses charged by of [sic] EHM Engineers, Inc. for said engineering and related professional services to subdivide, and

cause the subdivision plat of Broadmoor Subdivision to be accepted and recorded, and otherwise attributable to Broadmoor Subdivision.

....

10. (a) . . . [Mr. Martens] **shall provide** for the development, use and benefit of the Retained Real Property active utility service connections of municipal water, sanitary sewer and pressurized irrigation . . . as follows:

[10. (a) iii.] . . . [Mr. Martens'] obligation **to install** any and all necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Retained Real Property.

....

[10. (d)] Contemporaneous with [Mr. Martens] providing active utility service connections of municipal water, sanitary sewer, and pressurized irrigation, pursuant to this Section, [Mr. Martens] shall construct and provide waste water runoff facilities on [Martens' Property], to include, without limitation, retention ponds and conduits, all as necessary and appropriate for the conveyance, transfer, delivery and storage of waste water runoff from the Retained Real Property to [Martens' Property].

Agreement §§ 4, 10(a)(iii), and 10(d). (Exhibit C).

Again, these provisions were included in the Agreement in exchange for a significant price reduction for Mr. Martens. Jade's position is buttressed by the introductory phrase in section 10(a): "[Mr. Martens] **shall provide** for the development, use and benefit of the Retained Real Property active utility service connections of municipal water, sanitary sewer and pressurized irrigation . . . as follows." Agreement, § 10(a) (emphasis added). (Exhibit C). When read in conjunction, the phrases "shall provide" and "to install" demonstrate that Mr. Martens was obligated to install the utilities at his sole expense.

Mr. Martens' obligation to install the pressurized irrigation at his sole cost is further demonstrated by the fact that the parties were capable of drafting a reimbursement clause but did not add such a clause to the pressurized irrigation provision. The only provision in the entire Agreement that contemplates a reimbursement arrangement is paragraph 10(e). Paragraph 10(e) addresses the construction of Ridgeway Drive, which is the road that divides the Retained Property and Martens' Property. Ridgeway Drive was important to Mr. Russell because it

provides access to the Retained Property, and Mr. Russell planned to further develop the Retained Property.⁴ To ensure that Ridgeway Drive was constructed in a timely manner, Mr. Russell insisted on maintaining responsibility to construct the road; however, each party remained responsible to construct the sidewalk, curb, and gutter on their respective side of the road. The parties recognized that it was impractical to construct the road separate from the sidewalk, curb and gutter. Therefore, Mr. Martens and Mr. Russell discussed that, in the event that Rusmor constructed the road and both the northern and southern sides of the sidewalk, curb, and gutter, Mr. Martens would reimburse Rusmor for his portion of the sidewalk, curb, and gutter. To that end, the Agreement includes the following reimbursement clause:

[I]n the event that [Rusmor] constructs the sidewalk, curb and gutter of and along the northern right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, [Mr. Martens] shall promptly reimburse [Rusmor], within sixty (60) days of notice for reimbursement, for all costs and expenses incurred by [Rusmor] for the northern sidewalk, curb and gutter of and along said right-of-way.

Agreement § 10(e). (Exhibit C). This provision demonstrates that the parties had discussed reimbursement and were capable of drafting a clause to that effect. Had the parties intended for Rusmor to reimburse Mr. Martens for the other improvements (engineering, pressurized irrigation, and storm-water runoff), then paragraphs 4, 10(a)(iii), and 10(d) would include a reimbursement clause. They do not. Therefore, according to the plain language of the Agreement, Mr. Martens is not entitled to reimbursement for those improvements, and the IRC's decision was erroneous.

Jade's position—that Mr. Martens is not entitled to reimbursement—is further supported by Mr. Russell and his attorney. Mr. Russell and his attorney have not only confirmed our understanding of the Agreement but Mr. Russell provided the IRC with a signed declaration (Exhibit J). Jade discussed the matter with Mr. Russell and his attorney, who drafted the Agreement. Both expressly stated that Mr. Martens' obligation to provide, at his sole cost, all engineering services and utilities was a material, negotiated, and mutually understood term of the Agreement. Again, Mr. Martens' purchase price was significantly reduced in light of his agreement to provide and pay for certain improvements. As an aside, both Mr. Russell and his attorney expressed surprise and disappointment regarding Mr. Martens' attempt to deny his obligations under the Agreement.

⁴ During the November 29, 2018 Special Meeting, it was suggested that Ridgeway Drive separates the two sections of Broadmoor Subdivision and does not benefit Martens' Property. However, contrary to the Plat comments that prohibit the lots in Martens' Property from having driveways on Ridgeway Drive, at least one lot in Martens' Property (Lot 17, Block 6) has a driveway access off of Ridgeway Drive instead of Wendell Street. Thus, Martens' Property clearly benefits from Ridgeway Drive.

Jade's position is further supported by the fact that Mr. Martens' previously acknowledged his obligations. Indeed, in his First Request, Mr. Martens sought reimbursement only for storm-water improvements. At the time, Mr. Martens had estimates for other improvements, including pressurized irrigation, water, and sewer. The fact that Mr. Martens did not request reimbursement from Jade for these other improvements in his First Request demonstrates that he understood that he was obligated for the pressurized irrigation costs. Similarly, in his Second Request, Mr. Martens did not seek reimbursement for storm-water improvements; thus, he understood that he was obligated for the storm-water improvement costs. The scope of Mr. Martens' request changed again in his Third Request, where he dropped his request for sanitary sewer reimbursement, but added a request for storm-water reimbursement. It stands to reason that if Mr. Martens truly believed that he was entitled to reimbursement, his requests would be consistent. The ever-changing nature of Mr. Martens' requests indicates that he did not believe that he had a true entitlement to reimbursement; rather, he was attempting to take whatever he could get from Jade. Moreover, in a meeting between the parties, Mr. Martens acknowledged that he was obligated to install, at his sole expense, the pressurized irrigation system.

Based on the foregoing, Mr. Martens is not entitled to a reimbursement. Therefore, the IRC should have denied the Third Request. At the very least, the IRC should have refrained from ruling upon Mr. Martens' application until the dispute between Jade and Mr. Martens had been resolved by the parties or a court of law.

2. The IRC's Decision Should be Vacated Because there are Several Significant Errors in the Third Request, the Staff Report, and the IRC's Review.

Assuming, *arguendo*, that the Agreement did not exist, the IRC's decision should nonetheless be vacated due to several significant errors in the Third Request, the Staff Report, and the IRC's review.

a. Errors in the Third Request.

There are three significant errors in the Third Request. First, as Mr. Vitek acknowledged at the November 29, 2018 meeting, the Third Request erroneously included \$118,677.73 for storm-water improvements. Storm-water improvements are not eligible for reimbursement under Resolution 2017-13; thus, the inclusion of \$118,677.73 was erroneous. Second, there are serious concerns with the independent third-party review letter, which was included in the Third Request. In the letter, Ms. Barnes states that "After a thorough review it is my opinion that . . . the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816." Apparently, despite conducting a thorough review, Ms. Barnes did not recognize that Resolution 1816 had been revised and replaced by Resolution 2017-13. Moreover, she failed to notice that neither the ordinance, nor Resolution 1816 or 2017-13, discuss reimbursement for storm-water improvements. Given that there is no evidence that she reviewed any receipts of actual costs, Ms. Barnes' "independent

review” of the Third Request should not have been relied upon by the IRC. Third, the Third Request failed to provide the requisite information. On April 20, 2018, Mr. Vitek requested that Mr. Martens: (1) resubmit the request on the standard City application; (2) provide a list of “affected RP numbers,” *i.e.*, the real property owners potentially affected by the reimbursement; and (3) produce “acceptance letters, receipts, etc.” (Exhibit F). Mr. Martens did not comply with Mr. Vitek’s request. Indeed, Mr. Martens failed to provide an acceptance letter, any receipts of actual costs incurred, a list of affected owners, or the City’s standard form. Consequently, the IRC was not provided with sufficient information to make an informed decision or to determine that the reimbursement was *fair and equitable* to Jade, as required by the Resolution.

The inadequacy of the Third Request is overwhelming when compared to the fourteen other reimbursement requests, which we obtained through a public records request. The average page length of the other reimbursement requests was 30 pages—again, Mr. Marten’s Third Request totaled six pages. An example of a properly submitted reimbursement request, the “Federation Request,” is attached hereto as **Exhibit L**. The City’s standard form application is found on pages three and four, and was included in each of the other thirteen requests. The City’s form reiterates that the following information must be included: (1) a narrative describing, *inter alia*, “the surrounding areas that will benefit from the improvements” and “any known developers/owners that will be included in this application;” (2) a letter of acceptance from the City Engineer Department; (3) “a plan identifying all improvements proposed for compensation;” and (4) “actual costs of installation . . . attach copy of original cost documents . . . if costs are unavailable, other documentation per Ordinance guidelines.” The Federation Request also includes a narrative, which identifies all of the systems that are eligible for improvement. In other words, in accordance with the Resolution and the City’s standard form, reimbursement requests must not be done in piecemeal form, *i.e.*, for each individual improvement. Rather, the developer must complete all improvements, and submit one application for reimbursement. Mr. Martens’ Third Request seeks reimbursement for only storm-water and pressurized irrigation improvements; thus, he waived reimbursement for any of the four other types of improvements, *e.g.*, water distribution, waste-water collection, and transportation systems. However, the IRC’s written decision fails to address this issue. The Federation Request contains eight pages of actual costs, and a reimbursement worksheet that identifies the property owners subject to the reimbursement request. Mr. Martens’ Third Request contains zero evidence of actual cost, and it fails to identify property owners subject to the reimbursement request, *i.e.*, Jade. Lastly, the Federation Request contains a letter of acceptance, dated June 14, 2016, and the application was submitted 45 days later; thus, it was timely because it was submitted within Resolution 2017-13’s 90-day window. Conversely, Mr. Martens request did not contain a letter of acceptance; thus, it was either: (a) premature, or (b) the improvement was constructively accepted in 2016, thus the request was untimely. The timeliness issue is discussed in greater detail below. In any event, comparing the Third Request to the Federation Request demonstrates the inadequacy of the Third Request. Therefore, the IRC should not have approved Mr. Martens’ Third Request.

b. Errors in the Staff Report.

Second, the Staff Report submitted for the November 29 IRC meeting is disturbingly superficial. For example, under the analysis section it states “N/A,” and the conclusion section relies upon Ms. Barnes’ inaccurate “independent review” letter. Additionally, the Staff Report acknowledged the dispute between Jade and Mr. Martens, but stated that “whether or not proper compensation has already been made [to Mr. Martens] . . . should not be a relevant subject for the Commission’s determination.” This statement contradicts the Resolution’s expressed purpose: the “[IRC] is to determine if a reimbursement is *fair and equitable to the subsequent developers* [i.e., Jade].” Resolution 2017-13, p. 2. (Exhibit B). (Emphasis added). How could the IRC’s decision be “fair and equitable” if it reimburses Mr. Martens for the improvement despite evidence that Mr. Martens had already received reimbursement for the improvement, i.e., a decreased purchase price for the property. At a minimum the IRC should have required Mr. Martens to demonstrate that he was entitled to the reimbursement. Additionally, the Staff Report section titled “Approval Process” incorrectly limited the IRC to three options: (1) to deny the application; (2) to accept the application as is; or (3) to accept the application with changes. However, Resolution 2017-13 makes clear that the IRC could have required Mr. Martens to supplement the Third Request and reapply, which it should have done.

Lastly, the Staff Report makes no mention of the City’s acceptance of the improvement. Several documents produced by the City in response to Jade’s public record request indicate that the City constructively accepted the pressurized irrigation system in 2016. These documents are attached hereto as **Exhibit M**, and include: (1) a letter from Mr. Martens that states “with [City’s] approval, this [pressurized irrigation] installation will be installed during the 2016 construction season; and (2) an Engineer’s Check Off and Certification document, dated October 25, 2016, wherein Mr. Thibault certified that the engineering, surveying, testing, inspections, and Contractor’s materials and workmanship for, *inter alia*, the pressurized irrigation improvement, substantially complied with the City’s requirements. Documents relating to the City’s assuming responsibility for the pressurized irrigation improvement have been requested and will be produced by Jade upon receipt. Jade reserves the right to supplement this appeal once those public records have been received.

The City’s constructive acceptance of the pressurized irrigation improvement is further demonstrated by Mr. Vitek’s statement at the November 29, 2018 meeting. Indeed, Mr. Vitek indicated that the City had maintained the system, including blowing the system out for winter, for a significant time. At the latest, the pressurized irrigation improvement was constructively accepted by the City by December 29, 2017, when Mr. Martens submitted his Second Request (which included pressurized irrigation). Thus, Mr. Martens’ Third Request, which was submitted on September 28, 2018, was outside of the 90-day window within which requests must be submitted. Therefore, it was time-barred and should have been denied by the IRC. Alternatively, Mr. Martens’ Third Request was not eligible for consideration when submitted because the City did not produce an actual written acceptance form until late afternoon on

November 28, 2018, after Jade inquired as to whether the improvement had been accepted. The letter of acceptance is attached hereto as **Exhibit N**. In sum, the IRC should not have approved the Third Request because the Staff Report was disturbingly superficial, conflicted with the express purpose of Resolution 2017-13, failed to inform the IRC of the option to require additional information, failed to confirm receipted costs, and failed to confirm it was timely filed within 90 days of acceptance of the improvement or the adoption of the Resolution.

c. Errors in the IRC's Review.

Third, the IRC committed several errors while reviewing the Third Request. Specifically, Chairman Debie blatantly disregard Resolution 2017-13. For example, Chairman Debie was told several times—by Mr. Wonderlich and Mr. Vitek—that the storm-water improvements were not eligible for reimbursement under Resolution 2017-13. Chairman Debie disagreed and indicated that he wanted to amend Resolution 2017-13 to include reimbursement for storm-water improvements. Similarly, Chairman Debie disagreed with the stated purpose of Resolution 2017-13, *i.e.*, “to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for future reimbursement.” Upon hearing this provision, Chairman Debie expressed strong disagreement, stating: “I’ve been around development long enough to know that [Resolution 2017-13] was originally intended . . . to protect the initial developer, not the subsequent developer.” November 29, 2018 Meeting, 38:03. In other words, Chairman Debie ignored Resolution 2017-13—the controlling document—because he thought he knew better. Obviously, Chairman Debie misunderstood the situation. Indeed, at one point, he asked “what contribution was done on the south end of the subdivision [*i.e.*, by Jade] that benefited the north end of the subdivision [*i.e.*, Mr. Martens]?” *Id.* 39:10. Jade’s answer—that the decreased purchase price for the property was the contribution that benefitted Mr. Martens—did not satisfy Chairman Debie. Later, Chairman Debie gave sarcastic lip-service to the Resolution, stating: “I want to make sure that we operate 100% under the Resolution . . . I practiced that [statement] in the bathroom three times.” *Id.* 2:16:10. These comments led me to question whether Chairman Debie had read Resolution 2017-13. This question was answered when he stated: “I’d feel a lot more confident if I read [the Resolution and meeting packet] three times, **but that’s not really going to happen.**” *Id.*, 2:32:13.

Perhaps most concerning was the IRC’s decision to approve the Third Request despite agreeing with Chairman Debie’s comment that: “No matter what we say today, we’re not making the final decision on anything anyway. We know that.” *Id.*, 2:15:49. In other words, the IRC recognized that the dispute between Jade and Mr. Martens was going to be resolved by a court of law. The members of the IRC were informed that if they approved the Third Request, the City would likely be sued in such litigation. Further, the members of the IRC were advised that they could avoid the City’s involvement in the lawsuit by requesting additional information from Mr. Martens or requiring the parties to resolve the dispute before applying for reimbursement. Notwithstanding Jade’s comments, the IRC refused to take the reasonable route. If the IRC’s careless decision is upheld, the City will necessarily be involved in the litigation between Jade

and Mr. Martens. Jade prefers to leave the City out of the litigation, but that is only possible if the IRC's decision is vacated. As an aside, Jade has requested that the City produce the transcript of both the October and November IRC meetings, but the City has yet to comply. Jade will supplement this brief with the transcripts upon receipt.

In sum, even if the Agreement did not exist, the IRC's decision should be vacated because there are several significant errors in the Third Request, the Staff Report, and the IRC's review.

3. Mr. Martens' Third Request Was Supported by Improper Motives.

Jade and Mr. Russell were both surprised and disappointed by Mr. Martens' requests for reimbursement. More than anything, they were troubled by Mr. Martens' motives in pursuing this matter. After all, at the April 2018 meeting between the parties, Mr. Martens acknowledged his obligation to provide, among other things, engineering services, pressurized irrigation, and storm-water runoff systems. During the October 25 IRC meeting, Mr. Thibault helped shed light on the true motivation for Mr. Martens' actions, when he stated:

Gerald grabbed me and just said that our concern is that [Jade is] continuing to pull building permits and we have over \$180,000 that we paid for improvements. If those improvements weren't put in, then they wouldn't be able to pull building permits.

Oct. 25, 2018, 24:42.

When Mr. Thibault's comments are coupled with Mr. Martens' threat that he and the City would "stop [Jade] in its tracks" unless Jade paid him the amount demanded, one can only conclude that Mr. Martens is motivated by an intent to interfere with Jade's ability to sell its lots by blocking its ability to pull building permits and other certifications or approvals—unless it pays him the disputed amount. Mr. Martens is a savvy developer and was undoubtedly aware that he would greatly benefit from the IRC approving the Third Request. By preventing Jade from pulling building permits, Mr. Martens is preventing Jade from competing with Mr. Martens' development. Equally appealing to Mr. Martens is the fact that he would receive double-payment for his work, *i.e.*, he already received payment for his work via a lower purchase price, and allowing him to receive reimbursement would double his payment. Finally, Mr. Martens is attempting to gain leverage in the impending contractual dispute with Jade. For instance, despite the plain language of the Agreement, Mr. Martens is strong-arming Jade into contributing to pressurized irrigation costs. If the latter scenario occurs, Jade will file a lawsuit, which leads to Jade's final concern.

4. Jade Will be Forced to Sue the City if the IRC's Decision is Upheld.

Due to Mr. Martens' blatant disregard for the Agreement, legal action will be necessary to resolve the contractual dispute. To be clear, Jade does not desire to involve the City in the legal action. However, if the IRC's ruling is upheld, Jade will have a claim against the City for the its erroneous interpretation and application of Resolution 2017-13. Additionally, there are legitimate questions regarding the validity of Resolution 2017-13, *e.g.*, due process issues regarding notice, opportunity to be heard, and the appeal process; whether the City's reimbursement requirement is an unconstitutional appropriation of funds for a corporation; and whether the Resolution is void for vagueness⁵, etc. In sum, it is in the City's best interest to vacate the IRC's decision until the contractual dispute between Jade and Mr. Martens is resolved. The IRC's review of the Third Request will only be appropriate after a court of law interprets the Agreement, determines if Mr. Martens has already received reimbursement, and issues a corresponding judgment. Without such a ruling, there is no possible way that the IRC could make a determination as to whether the reimbursement requested by Mr. Martens is *fair and equitable* to Jade.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Lynnette M. Davis

LMD:ll
Attachments

cc: Twin Falls City Mayor Shawn Barigar
Twin Falls City Council Members Greg Lanting, Suzanne Hawkins,
Chris Talkington, Chris Reid, and Ruth Pierce
Jade Development, LLC
Scott Allen

⁵ There are numerous internal conflicts within the body of the Resolution that warranted review of more information and discussion by the IRC before a decision was made.

EXHIBIT A



305 3rd Avenue East

P.O. Box 1907

Twin Falls, Idaho 83303-1907

Fax: (208) 736-1501

ENGINEERING

208-735-7293

NOTICE OF WRITTEN DETERMINATION

Date: December 3, 2018

To: Gerald Martens and Jade Development, LLC

From: Troy Vitek, Assistant City Engineer

Re: Application for Improvement Reimbursement for Broadmoor Subdivision

This matter came before the City of Twin Falls Improvement Reimbursement Commission for hearing on November 29, 2018, at 12:00PM, on the Application for Reimbursement filed by Gerald Martens for reimbursement of public improvements serving the Broadmoor Subdivision. Members of the Commission present included Chad DeBie, Andrew DiPietro, Susan Petruzzelli, Colby Ricks and Gerald Martens.

Application was filed by Gerald Martens seeking reimbursement for costs of constructing pressure irrigation distribution from the Riverhawk Pressurized Irrigation Pump Station west down North College Road to the northerly boundary of the Broadmoor Subdivision, as well as for the costs of development of a public park/storm water retention facility constructed within the northeasterly portion of the Broadmoor Subdivision. Member Gerald Martens recused himself from participation on the Commission due to his conflict of interest as the applicant in the matter.

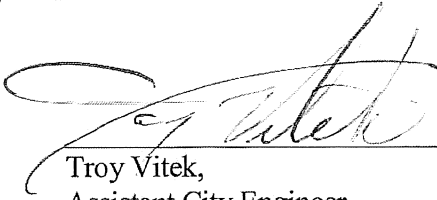
David Thibault of EHM Engineers, Inc., made the presentation to the Commission on behalf of Gerald Martens, in support of the application. Lynnette Davis of Hawley Troxell Ennis & Hawley LLP, made the presentation on behalf of Jade Development, LLC, in opposition to the application. Additional testimony was provided by Scott Allen, Tara Martens Miller and Brad Wills.

The Commission voted unanimously to accept the Staff Recommendation to approve the total cost of the pressurized irrigation improvements to connect the Broadmoor Subdivision to the Riverhawk Pressurized Irrigation Station in the amount of \$65,625.00 with a 15% markup for engineering, for an additional \$9,843.75, for a total cost of \$75,468.75. The fair and equitable compensation to be paid to Gerald Martens, as the initial developer, is represented by the total cost of \$75,468.75 divided by the total number of lots within the Broadmoor Subdivision (249 lots) multiplied by the number of lots within the southerly portion of Broadmoor Subdivision (118 Lots) now owned by Jade Development, LLC. $\$75,468.75 / 249 \times 118 = \$35,764.31$.

The Commission also accepted the Staff Recommendation and did not include reimbursement for park/storm water retention facilities for the reason that the Improvement Reimbursement Resolution contains no method for determining reimbursement for these improvements, and for the

reason that the Improvement Reimbursement Resolution requires that improvements must be accepted by the City of Twin Falls to be eligible for reimbursement.

Dated, this 3rd day of December, 2018.



Troy Vitek,
Assistant City Engineer
City of Twin Falls

EXHIBIT B

RESOLUTION NO. 2017-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING THE CITY'S IMPROVEMENT REIMBURSEMENT RESOLUTION BY PROVIDING CHANGES TO THE TERMINATION OF RIGHT TO REIMBURSEMENT SECTION RELATING TO MAJOR WATER DISTRIBUTION LINES, THE EXTENSION OF THE TERM OF ELIGIBILITY AND ADDITION OF REIMBURSEMENT FOR THE COSTS OF PRIVATE AND PUBLIC IMPROVEMENTS RELATING TO TWIN FALLS CANAL COMPANY WATER DELIVERY SYSTEM.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Purpose:

Whenever any extension is made by a developer (initial developer) to the City of Twin Falls' (City) water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, in such a manner as to enable a subsequent private developer or property owner to connect to or extend the previously extended water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, the subsequent private developer or property owner (subsequent developers) shall first make proper compensation to the initial developer for the costs of the water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems (improvements). The following information is for reimbursement standards only and does not establish development standards for the City of Twin Falls.

Application By Initial Developer for Participation in Reimbursement Program:

The initial developer, who installs the improvements, must make an application for reimbursement to the Improvement Reimbursement Commission (Commission) thru the City Engineering Department within ninety (90) calendar days of acceptance of the system by the City. If the improvements were installed by the initial developer and accepted by the City prior to this Resolution, the developer shall have 90 days from the adoption of this Resolution to make an application for reimbursement. The initial developer's application shall identify all improvements proposed for compensation and shall include actual costs and all other requested data as required by the Commission to determine proper compensation. Also, Applicant will estimate the improvement boundaries per this Resolution. The Engineering Department will verify the improvements are located according to the Application and that they have been accepted by the City. The Engineering Department will not be responsible to verify the value of the improvements. The Engineering Department will review the GIS system for any previous Commission agreements. The City Engineer will review the proposed boundaries and confirm or adjust them. In the case that the City Engineer adjusts the boundaries, the initial developer will be notified by mail of the change. The initial developer can make a request to the Engineering Department to discuss this adjustment. The City Engineer has the final authority to determine the boundaries of all improvements. The Engineering Department will create a staff report including the pertaining information regarding the improvement reimbursement request and provide a copy to the initial developer prior to the Commission meeting. The Commission will review the application at their next public meeting and make a determination if the information in the application is correct by a vote of the members of the Commission. Besides

approving the application, the commission can also vote to approve the application with adjustments or vote to deny the application and request the Initial Developer correct the application and reapply for consideration. Once the Improvement Reimbursement request is approved by the Commission, the Engineering Department will enter the appropriate information into their system. The purpose of the Commission is to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for a future reimbursement. The initial developer must maintain proper identity and current address with the City Engineer in order to be eligible for proper compensation.

“Initial Developer” is hereby defined as any entity, individual, corporation, quasi-public corporation, non-profit organization, district, housing agency, partnership, firm, association, limited liability partnership or other such entities as recognized by the state of Idaho. This definition is intended to exclude the City of Twin Falls, the State of Idaho, and other governmental entities that fund or construct public improvements (as defined herein) in the ordinary course of their business.”

“Improvement” is hereby defined as one or more of the following: The completed improvement of water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, i.e. any public works improvement(s) that has been approved and accepted by the City. It is the completed improvement where the subsequent developer or property owner desires to connect, or the total or upgraded portion of any pump or unitized facility installed by the previous developer that will serve the subsequent development or property owner.

“Cost” is hereby defined as the following:

- (1) Receipted actual amounts for the installation of the public works improvement;
- (2) If unable to substantiate then:

The average of actual costs of public improvements installed by other private contractors within the past five (5) years, or,

The estimated costs documented by a nationally recognized estimating system.

- (3) Estimate constructed from the Improvement Reimbursement Commission Agreements on file with the City of Twin Falls.

Improvements must be accepted by the City of Twin Falls to be eligible for reimbursement.

Responsibilities of the City:

The City Engineer will incorporate all “as-built” drawings into the City’s GIS program, so that the name of the initial developer that installed the existing system and the date it was “as-built” can be quickly retrieved.

The City Engineer will not issue a connection permit, sign a final plat, accept any improvement, or sign off on any certificate of occupancy without first checking the “as-built” drawings or the geographical information system (GIS) to determine if the improvement that is being connected to is less than ~~20~~ 25 years old and whether the initial developer has applied for participation in the reimbursement program. If the improvement is less than ~~20~~ 25 years old and if the initial developer has applied for participation in the reimbursement program, the City Engineer will inform the applicant (subsequent developer) that they must complete the financial obligations for reimbursement. The application will be thru the Engineering Department to the Commission for verification that the reimbursement has been made and be provided with a receipt of proper

compensation from the Commission, and receive approval by that commission. The City Engineer reserves the right to allow connections for emergency or other health and safety circumstances without receipt of proper compensation from the Commission. This does not satisfy the proper compensation requirement and the liability for payment will remain in place.

If the improvements required herein are a City requirement when a building or structure is constructed, placed, erected or enlarged or when there is a change of use of a building, structure or parcel of land, unless otherwise provided, all required improvements shall be a condition of any building permit and they shall be completed prior to final inspection and occupancy of the building. However, a reimbursement is not required for the City to approve minor modifications or additions to existing buildings or structures when the modifications and improvements do not constitute more than a twenty five percent (25%) increase over the square footage of the existing buildings or a total increase in square footage over ten thousand (10,000) square feet whichever is less, within any three (3) year period from date of completion of other expansion or modification.

Application for Verification of Payment of Proper Compensation:

The applicant for a connection permit, final plat approval, acceptance of any improvement, or any certificate of occupancy that desires to connect to existing public improvements eligible for reimbursement, shall make application to the Engineering Department to determine the Reimbursement obligation related to those improvements. The applicant can pay the required reimbursements and provide a receipt of proper compensation to the Commission or request the Commission reevaluate the required reimbursement by appealing the reimbursement amount and providing additional information to the Commission to make a new determination of proper compensation. The Commission reserves the right to request additional documentation of proper compensation. The Initial Developer will be given a reasonable time and opportunity to respond to the appeal before the hearing, and to appear and defend the determination at the hearing.

If the initial developer and subsequent developer agree on the proper compensation, the subsequent developer may file a notarized and agreed amount between the initial developer who installed the existing system and the subsequent developer or property owner who desires to connect to the existing system. The amount may be based upon any agreed portion of the cost, such as frontage, acreage or number of lots, but shall not exceed the total cost of the system. The agreement must accompany the receipt of proper compensation when presented to the Commission.

All applications shall include:

1. An application, including a complete explanation, documentation and calculations for the determination of proper compensation.
2. A fee for City administration of the Reimbursement system will be added to proper compensation. These fees will be adopted by separate resolution.
3. There will be no consideration for depreciation or inflation.

The Twin Falls City Code, Zoning Ordinances and Engineering Standards are subject to revision. In the case that a current City Code, Zoning Ordinance or Engineering Standard requires a different improvement than the completed improvement and the completed improvement no longer meets the current City Code, Zoning Ordinance or Engineering Standard, either an adjusted reimbursement or no reimbursement may be possible. Reimbursement can also be in the form of an agreement between two or more developers granting access easements in exchange for monetary compensation as long as the Original Developer releases the reimbursement liability.

The City of Twin Falls shall be exempt from all reimbursement requirements.

All individual service connections, engineering and surveying cost, and all City of Twin Falls fees including but not limited to: application fee, review fee, connection fee, water tap fee, water meters, and any capacity fees are not eligible for reimbursement.

In the case that either the applicant or the initial developer does not agree with the proper compensation determined by the Commission and chooses to appeal to the City Council, the applicant or the initial developer may appeal the decision to the City Council within fourteen (14) days of receipt of the written determination by filing an appeal with the City Council through the City Manager. If the applicant requests to proceed with their development, they shall provide a deposit in the form of a cash payment or an enforceable financial guarantee, equal to the amount of the approved determined proper compensation, to a title company to be put in escrow account authorized by the Commission. This will fulfill the subsequent developer's proper compensation receipt requirement and the Commission shall provide approval to the City Engineer. If the City Council rules in favor of the initial developer, the full deposit for proper compensation shall be provided to the initial developer. If it is determined that the proper compensation amount is to be a lesser amount, then the subsequent developer would only be responsible for the revised amount. If cash payment was made, the Commission would authorize the title company to pay the revised amount to the initial developer and the balance will be refunded to the subsequent developer. If an enforceable financial guarantee is used, the Commission would authorize the title company to pay the revised amount to the initial developer from the financial guarantee.

Termination of Right to Reimbursement:

The period of compensation to the initial developer shall be terminated at the earliest of any of the following conditions:

- (1) For all reimbursements except for water distribution systems of lines greater than 12-inch that provide additional water capacity for a service area greater than 160 acres, full compensation for the determined eligible reimbursement amount based on the actual cost plus 15% to address costs for engineering, management, fees, interest and inspection.; or,
- (2) For all reimbursements for water distribution systems of lines greater than 12-inch that provide additional water capacity for a service area greater than 160 acres, full compensation for the determined eligible reimbursement amount based on the actual cost of the entire project cost including engineering, management, fees, and inspection plus 25% to address costs for the longer reimbursement period; or,
- (3) ~~(2)~~ Failure on the part of the initial developer or their assigns to maintain proper identity and address on file with the Improvement Reimbursement Commission; or,
- (4) ~~(3)~~ A date ~~twenty~~ twenty-five (25) years after the acceptance of the improvement by the City.

Water Distribution System Reimbursement Standards:

Proper compensation for reimbursement of costs of water distribution systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Private developers are required to provide a water distribution system within its development. The water distribution system is a looped or connected system and multiple water lines benefit many other properties over long distances. The minimum requirements the developer is responsible for are construction of 12" water mains on Arterial streets, 10" water mains in Collector streets, and 6" or 8" water mains on interior streets that are located within the boundary of their development depending on the water model results. If these water mains are located within the right of way on a common property line, the improvement costs of these water mains are eligible for reimbursement and would be based on the amount of frontage feet along the water main. The cost of the water line would be split in half with each side of the Right of Way and each adjacent property owner would pay 50 % of the improvement cost. If there are multiple properties along the water line, the owners of those properties would be responsible for their frontage feet along the water main. If a parcel is located within the 1/8 mile rule of an Arterial or Collector water main but does not border along the right of way the water line is located in, that parcel may be responsible for a portion of the cost of that water main. (See 1/8 Mile Rule Standard) If the private developer constructs any of the water distribution system improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the water distribution system improvement was completed.

In cases where the water distribution system requires upsizing or other additional items, the difference in cost of material would be eligible for reimbursement from properties served by the upsizing or additional items. For developments that extend the water line from a source point not directly adjacent to their property, the entire offsite line is subject to reimbursement either from the properties it crosses, or the properties adjacent to the water line at time of tie in, or the properties that benefit within a defined area. Off site adjacent properties shall be responsible for 50% of the cost of the water line if bordered on one side, or 100% of the cost of the water line if property borders the water line on both sides, or for developments that the water distribution system requires the installation of a major distribution line larger than a 12-inch that provides sufficient water supply for an entire defined area that is greater than 160 acres, all undeveloped properties within that defined area shall be responsible for their share of the cost of the water line.

The boundaries shall be based on the following: All water lines on Arterial streets, Collector streets and interior streets are considered part of the overall water distribution system and may not necessarily benefit every development but are the responsibility of the original development. The original development is responsible for all of its boundaries where future main water lines will be required. These boundary water mains are eligible for future reimbursement. The boundary for main water lines on Arterial and Collector Street is based on the percentage of frontage that is up to +/- 1/8th of a mile deep. (See 1/8 Mile Rule Standard) All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the Water distribution system. Eligible cost for upsizing (not for extensions) would include the increase expenditure of the material only (pipe, valves, and fittings). Future reimbursement will be based on a pro rata per acre basis.

The water distribution system costs would include the installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Additional items like thrust blocking and assemblies including back flow prevention assembly and reduced pressure assembly are eligible for reimbursement. The fire hydrants must benefit the subsequent development to be eligible for reimbursement.

Line extensions or additional unusual conditions including additional depth that only benefit future development are eligible as reimbursement cost.

If the main water line runs parallel to the boundary of the property and is within dedicated city right of way for any type of street, it shall be considered bordered on one side.

If a pump station is required, the cost to complete the facility would include the pump and all required fittings and parts, the structure and related expenses; any City required landscaping and fencing, and any Special electrical power requirements. Future reimbursement will be based on a pro rata per acre basis.

Areas that would not qualify for reimbursement are interior water lines that only provide service to the original development.

Examples:

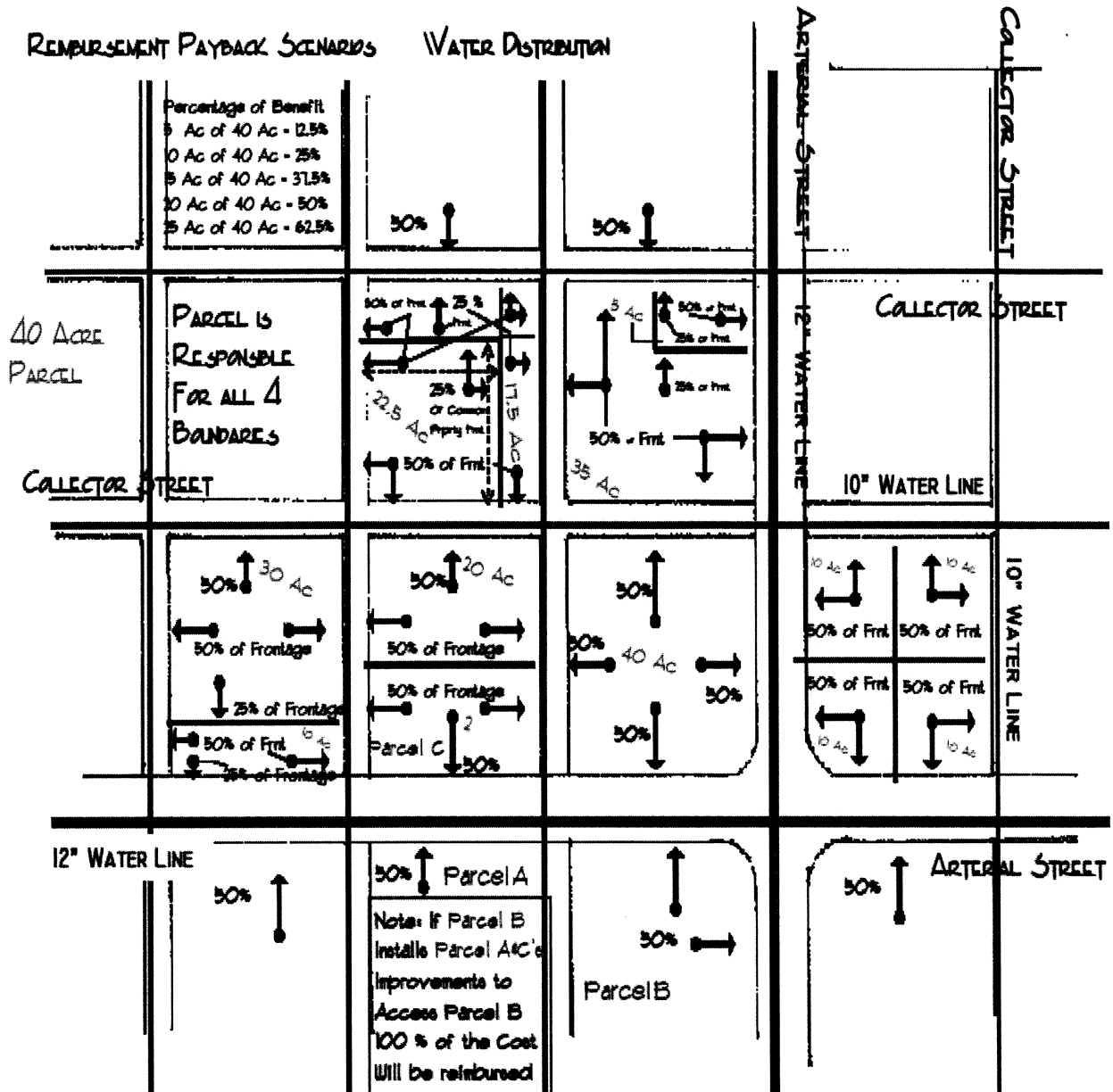
A developer is required to install a 12" main water line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that water line. If there are multiply owners along the shared Arterial Street, each owner would be responsible for their frontage along the water line. If a parcel is within the 1/8 mile rule of the 12" main water line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the water distribution system improvement cost is eligible for reimbursement. If the water main is the standard size, 100 % of the cost would be paid by the owners of parcel A and C to the developer of parcel B. The amount would depend on the percentage of benefit to each parcel so in this case each parcel would reimburse parcel B for their 50% of the cost.

On Arterial and Collector streets, if a future development does not border any designated street, reimbursement still may be required. The original development is responsible for installing the required improvements on its boundaries on the water distribution system. There are future reimbursements for the cost of these completed improvements by subsequent developments.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

REIMBURSEMENT PAYBACK SCENARIOS WATER DISTRIBUTION



Waste Water (Sewer) Collection Reimbursement Standards

Proper compensation for waste water (sewer) collection systems shall use equivalent residential units (ERU) in determining the improved capacity of the waste water collection system as determined by the Improvement Reimbursement Commission, times the actual cost of the subject existing improvements, plus 15% to address costs for (engineering, management, fees, interest and inspection).

The waste water collection system is not a looped grid type system and it is easier to determine the connection point to the existing system. Because developers are required to install minimum 8" sewer mains in all developments to provide individual sewer services and City development standards require developments to extend sewer mains to property lines with no reserve strips, the cost of reimbursements are more difficult to calculate. The other issues with sewer mains is that the design does not follow Arterial or Collector right of ways and are usually located within the boundaries of the development. For this reason all 8" sewer lines located in the interior of a development shall not be entitled to reimbursement unless the line only extends service for future connections. The cost of upsizing of a sewer main above 8" or to attain necessary depth to service adjacent subdivision from the stub extension to the property line shall be subject to reimbursement in the future from the adjacent parcel or parcels. Only the extra excavation and/or rock removal cost for additional depth would be eligible for reimbursement. The eligible cost for upsizing would include the increase expenditure for the material only (pipe, larger manholes or cleanouts, and fittings) except for improvements required for Major Sewer Trunk Lines or Line Replacements. If the original developer chooses to upsize the sewer main to provide additional depth for their subdivision, the upsizing is not subject to reimbursement. The reimbursement for upsizing shall be based on an ERU (equivalent residential unit) basis. If the new development is bounded on either side by an existing sewer lines but does not connect to or benefit from that line, the new development may be responsible for reimbursement of the cost of the existing sewer lines depending on other factors. A developer installs a 8" sewer main in a Collector right of way and the property that is located on the opposite side of the right of way plans to connect into sewer main or immediately downstream of that sewer main, that property would be responsible for 50% of the reimbursement for the lineal footage of sewer main including manholes, cleanouts, misc fittings and installation costs. Major off-site improvements such as major trunk lines or lift stations that are required by the City of Twin Falls will be entitled to reimbursement. The reimbursement will be based on a parcel's ERU requirement divided by pro rata share of ERU's available upon completion of the improvement. See examples below.

The original development is responsible for all of its boundaries where future sewer lines will be required. All minimum sewer lines on Arterial and Collector streets are consider part of the overall sewer collection system and may not necessary benefit every development but are the responsibility of the original development. However, reimbursement may be possible on sewer lines that provide future benefit to other parcels but do not benefit the original development. The boundary for sewer lines on Arterial and Collector street is based on the percentage of area that is up to +/- 1/8th of a mile deep (See 1/8 Mile Rule). All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the sewer collection system. Replacement of an existing City-wide collection system trunk line or pump station would be eligible for future reimbursement based on the equivalent residential unit (ERU) increased capacity of the new line or pump station.

The waste water collection system costs would include installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, manholes, cleanouts, and all required fittings. Line extensions or additional unusual conditions including additional depth that only benefit future development are eligible as reimbursement cost.

If a sewer pump station is required, the cost to design and complete the facility would include the pump and all required fittings and parts, the structure and related expenses; any City required landscaping and fencing, and any special electrical power requirements. Pre-development market value of the land dedicated for the pump location would be included in the overall cost of the pump station. Future reimbursement will be on an ERU basis.

Areas that would not qualify for reimbursement are interior sewer lines that only provide service to the original development and all individual sewer service connections

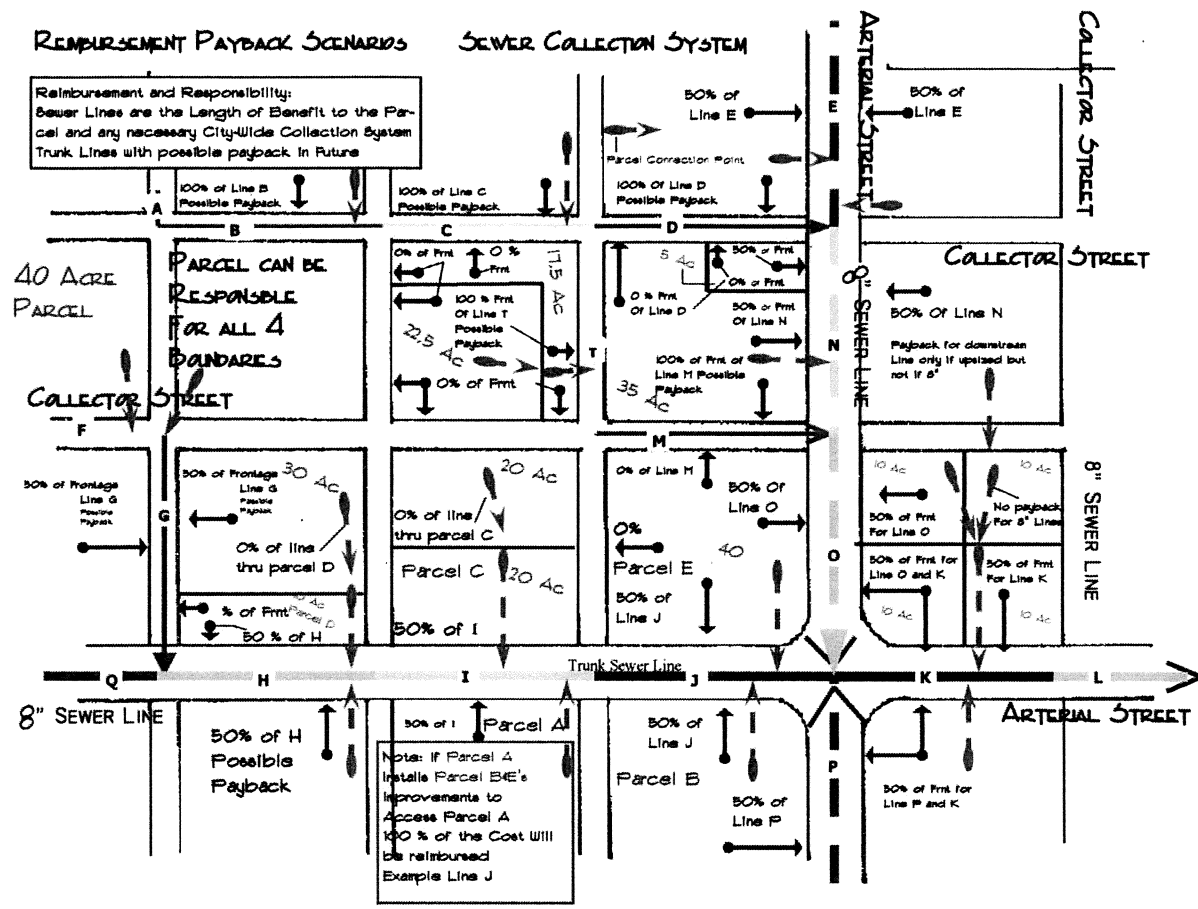
Examples:

If the current sewer main is capable of delivering 500 ERU's but there is no more capacity and a developer improves the system to carry 1000 ERU's. The additional 500 ERU's will be entitled to reimbursement from any future development upstream of the improved area. Therefore a 10 ERU development will be responsible for 2% of the cost of improvements.

A developer is required to install a minimum of a 8" sewer line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that sewer line based on their lot or parcel frontage. If there are multiple owners along the shared Arterial Street, each owner would be responsible for their frontage along the sewer line. If a parcel is within the 1/8 mile rule of the said sewer line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

If the developer of Parcel B installs an 8" sewer main across the shared boundary of Parcel A and C to access its development, 100 % of the waste water collection system improvement cost is eligible for reimbursement. The amount would depend on the percentage of benefit to each parcel. If the sewer line crossed the shared boundary, each parcel would reimburse Parcel B for 50% of the cost for a total of 100 %. The original development is responsible for installation of its required improvements on its boundaries on the waste water collection.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



Transportation Reimbursement Standards

Proper compensation for reimbursement of costs of transportation systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Developers are required to provide transportation improvements like curb, gutter, sidewalk or bike paths, landscape strips between curb and sidewalk or bike path, and asphalt roadway to centerline of the various types of approved streets per City of Twin Falls standards and specifications as part of development of the property. In certain cases a median may be also required. When the original developer constructs any of the transportation improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the transportation improvement was completed.

The boundaries shall be based on the following; the original development is responsible for all of its boundaries where future roadways will be required. If the improvements are required to be placed on the adjacent right of way owned by another party, the original development is eligible for future reimbursement. If a parcel is located within the 1/8 mile rule of an Arterial or Collector roadway but does not border along the right of way the improvements are located in, that parcel may be responsible for a portion of the cost of the transportation improvements. (See 1/8 Mile Rule Standard)

The following types of roadways are eligible for reimbursement: Arterial streets, Collector streets, local streets, and alleyways:

Reimbursement is based on a roadway that is sized to be the narrowest approved width required. The improvements eligible for reimbursement would be excavation, compaction, gravel road base and leveling course, asphalt pavement, concrete pavement, parking striping, asphalt/concrete cutting, removal and patching, curb and gutter, roll curb, standard curb, curb ramp, curb scupper, catch basins, sidewalks (the size to be the narrowest approved width required), sidewalk scupper, sidewalk catch basins, sidewalks requiring retaining walls, concrete sign post pads, standard or monolithic extruded curb- gutter and sidewalk, medians and traffic islands which included curb and/or curb and gutter, gravel, concrete sign post pads, interior improvements like: concrete/asphalt/gravel, and/or landscaping including sprinkler system with controls, parkways (the size to be the narrowest approved width required) including interior concrete, asphalt, gravel and landscaping includes a sprinkler system with controls, approaches including Arterial approaches, standard approaches, valley gutters, wheel-chair ramps, and driveway approaches, transportation ramps including public ramps with hand rails, bike paths that are either asphalt paths, concrete paths, gravel paths, metal guardrail, signage such as required public safety signs, utility sleeves that are installed for natural gas, electrical, and cablevision, telephone or any future non-City of Twin Falls utilities, and saw cutting for both expansion joints and standard joints, and saw cutting of asphalt at new street patch back. Traffic Signals are eligible for reimbursement using the 1/8 mile rule standard.

The following areas that would not qualify for reimbursement are buried non-City of Twin Falls utilities, interior transportation improvements that only provide service to the original development, and mail box pads.

Examples:

A developer of parcel B is required to improve an additional width of twelve (12) feet of roadway on the adjacent property of parcel A to meet the road width requirement for its development, that improvement is eligible for 100 % reimbursement from the owner of parcel A.

If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the improvement cost is eligible for reimbursement. The amount paid by the owners of parcel A and C would be the pro rata share of the improvements located on parcel A and C.

A parcel is responsible for the cost for all of its required improvements on its boundaries on the transportation system to the edge of its property including the roadway improvement within the future public right of way.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

Pressurized Irrigation (PI) Pump Station Reimbursement Standards

Proper compensation for reimbursement of costs of pressure irrigation (PI) pump station reimbursement standards shall be the proportion of the total acreage, including impervious areas, of the proposed development or property owner desiring to connect to the existing system, installed by the initial developer, within the boundaries served by the improvements, as determined by the City Engineer and verified by the Commission, times the actual pro rata cost of the existing improvements, plus 15% to address costs for (engineering, management, fees, interest and inspection).

Developers have many options available regarding the type of Irrigation System they utilize for their development but all new developments will be required to comply with the City's pressurized irrigation system requirements. This plan requires the use of PI pump stations to supply irrigation water to their development. When possible, the use of regional PI pump stations will be incorporated into the larger area surrounding the development. There will be both public and private systems. However, for regional PI pump stations, they will be designed and sized sufficiently for the acreage to be served. As properties connect to the station, they will be subject to a pro rata share of acres requesting service divided by the design capacity of acres available. For example: The capacity of a PI pump station is 1000 acres of service and the property requesting to be connected to the station is 40 acres, the reimbursement will be 4% of the cost of the station in addition to 40 shares of Twin Falls Canal Company water being able to be transferred from said property to the City of Twin Falls.

The design and boundary of the PI pump station will vary according to location of available water and the requirements of the region. The design and boundary of the service area will be determined by the City Engineer and the percentage of benefit will determine the amount of future reimbursement. Subdivisions that are completely developed and fully accepted by the City of Twin Falls are not subject to any reimbursement requirements unless the subdivision is connected to the regional pump station in the future.

The PI pump station costs would include the installation cost and unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Also included are additional costs for the assemblies including back flow valves, pressure reducing valve, blow off valves, diversion and overflow structures, and overflow piping, structure and related expenses, any City required landscaping and fencing, and any special electrical power requirements. The total cost shall include land costs based on pre development appraisal per acre market value of the land dedicated for the pump location.

Future reimbursement will be based on acres served and not water shares. It is the same for residential, commercial, institutional and industrial uses.

Areas that would not qualify for reimbursement are PI pump stations that only provide service to the original development and all individual PI service connections.

Examples:

If a PI pump station is designed and completed to service 640 acres, and a 20 acre development is required to connect to the pump station to provide PI to their development. The 20 Acres development would be responsible for 3.125 % of the total cost of the pump station. Ex. 20 Acres divided by 640 Acres would be 3.125%.

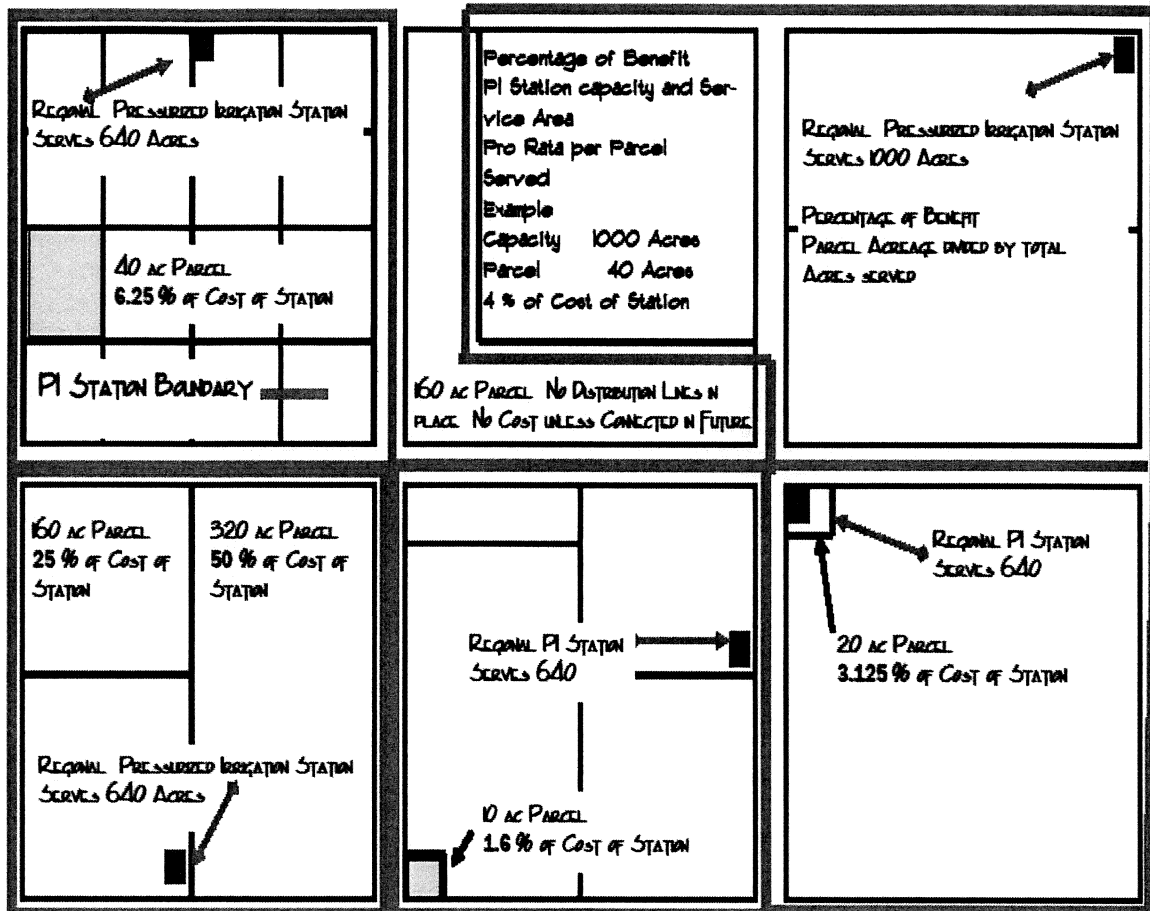
If a PI pump station is designed and completed to service 1000 acres, and a 40 Acre development is required to connect to the pump station to provide PI to their development. The 40

Acres development would be responsible for 4.00 % of the total cost of the pump station. Ex. 40 Acres divided by 1000 Acres would be 4.00%.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

REIMBURSEMENT PAYBACK SCENARIOS

PRESSURIZED IRRIGATION STATION



Pressurized Irrigation (PI) Distribution Reimbursement Standards

Proper compensation for reimbursement of costs of pressure irrigation distribution systems shall be the proportion of frontage footage of the proposed development, up to one half (1/2) of the actual cost, plus 15% to address costs for engineering, management, fees, interest and inspection, for any public works improvement(s) for properties that shares a common property boundary.

Private developers are required to provide a pressurized irrigation (PI) distribution system within its development. The PI distribution system is a looped or connected system and multiple PI lines benefit many other properties over long distances. The developer is responsible for construction of PI mains on Arterial streets, Collector streets, interior streets that are located within the boundary of their development. If these PI mains are located within the right of way on a shared property line, the improvement costs of these PI mains are eligible for reimbursement and would be based on the amount of frontage along the PI main. The cost of the PI line would be split in half with each side of the right of way and each property owner would pay 50 % of the improvement cost. If there are multiple properties along the PI line, the owners of those properties would be responsible for their frontage along the PI main. If a parcel is located within +/- 1/8 of a mile of an Arterial or Collector PI main but does not border along the right of way the line is located in, that parcel may be responsible for a portion of the cost of that PI main. (See 1/8 Mile Rule Standard) If the initial developer constructs any of the PI distribution system improvements outside the boundaries of their development, those items may be eligible for reimbursement. The reimbursement amount shall be the percentage of benefit to the other property in which the PI distribution system improvement was completed.

In cases where the PI distribution system requires upsizing or other additional items, the difference in cost of material would be eligible for reimbursement from properties served by the upsizing or additional items. For developments that extend the PI line from a source point not directly adjacent to their property, the entire offsite line is subject to reimbursement from the properties it crosses or the properties adjacent to the PI line at time of tie in. Offsite adjacent properties shall be responsible for 50% of the cost of the PI line if bordered on one side or 100% of the cost of the PI line if property borders the PI line on both sides.

All PI lines on Arterial streets, Collector streets and interior streets are considered part of the overall PI distribution system and may not necessarily benefit every development but are the responsibility of the original development. The original development is responsible for all of its boundaries where future main PI lines will be required and may be eligible for future reimbursement. The boundary for main PI lines on Arterial and Collector Street is based on the percentage of frontage that is up to +/- 1/8th of a mile deep. (See 1/8 Mile Rule Standard) All required interior lines are not eligible for reimbursement unless they required upsizing or extension of the PI distribution system to benefit adjacent properties. Eligible cost for upsizing (not for extensions) would include the increase expenditure of the material only (pipe, valves and fittings, etc.). Future reimbursement will be based on a pro rata per acre basis.

If the main PI line runs parallel to the boundary of the property and is within dedicated city right of way for any type of street, it shall be considered bordered on one side.

The PI distribution system costs include the installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, valves, and all required fittings. Also additional items like thrust blocking and assemblies including back flow

prevention assembly, reduced pressure assembly, blow off assembly, air injection assembly and air release/vacuum assembly.

Line extensions or additional unusual conditions including additional depth that only benefit the new development are eligible as reimbursement cost.

If a pump station is required, see the pressurized irrigation pump station standards.

Areas that would not qualify for reimbursement are interior PI lines that only provide service to the original development and all individual PI service connections.

Examples:

A developer is required to install an 8" main PI line on a shared Arterial street; the adjacent property owner would pay one half or 50 % of the cost of that PI line. If there are multiply owners along the shared Arterial Street, each owner would be responsible for their frontage along the PI line. If a parcel is within the 1/8 mile rule of the 8" main PI line, they would be responsible to reimburse the original developer per the 1/8 mile rule guideline before they would be permitted to connect to that line.

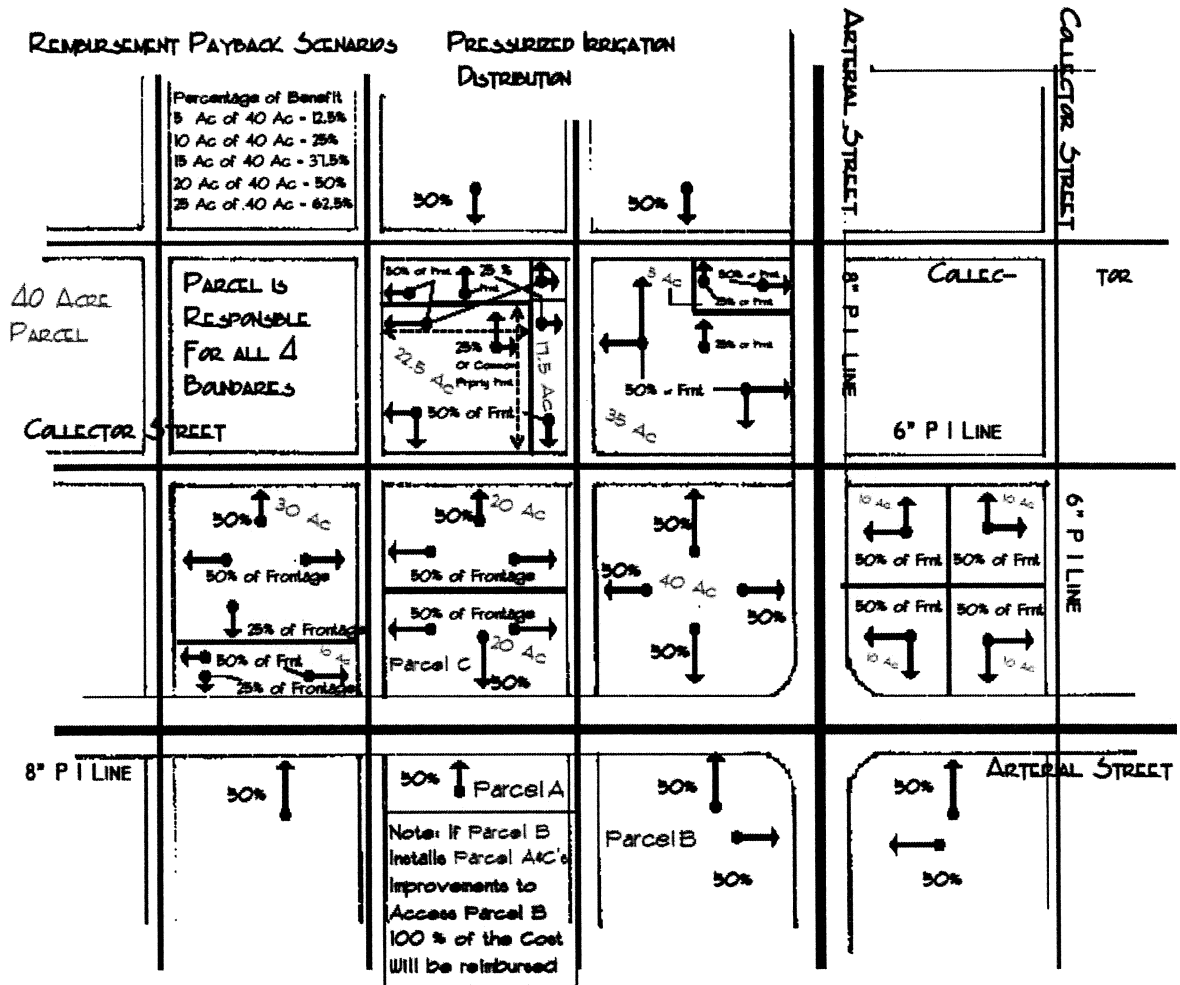
If the developer of parcel B crosses the shared boundary of parcel A and C to access its development, 100 % of the PI distribution system improvement cost is eligible for reimbursement. If the PI main is the standard size, 100 % of the cost would be paid by the owners of parcel A and C to the developer of parcel B. The amount would depend on the percentage of benefit to each parcel. The amount would depend on the percentage of benefit to each parcel so in this case each parcel would reimburse parcel B for their 50% of the cost.

On Arterial and Collector Streets, if a future development does not border any designated street, reimbursement still may be required should the PI system provides service to the parcel. The original development is responsible for the installation for all of its required improvements on its boundaries on the PI distribution system. There are future reimbursements for the cost of these completed improvements by subsequent developments.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.

REIMBURSEMENT PAYBACK SCENARIOS

PRESSURIZED IRRIGATION DISTRIBUTION



1/8 Mile Rule Standards:

Proper compensation for reimbursement of costs under the 1/8 mile rule standards shall be the percentage of benefit to the proposed development times the actual cost, plus 15% to address costs for (engineering, management, fees, interest and inspection) that improves any property that connects to any public works improvement(s).

The Area of Impact and the area within the City of Twin Falls City Limits are laid out in tracts of land on a Meridian, Township and Section system of survey.

A section is an area nominally one mile square containing 640 acres. Each Section is further divided into sixteen ¼ mile sections (or 1/16th sections of approximately 40 acres each) parcels that are approximately 1320' by 1320'. The City standards specify right of ways on these mile section boundaries for Arterial roadways, the ¼ mile increments between the Arterial right of ways are for Collector roadways. The City's water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution utilize this right of way to locate future improvements and create certain boundaries.

When these improvements work as a whole system, some of the improvements benefit all the developments within the 1/4 mile section and possibly other ¼ mile sections as well. Any parcel, regardless of the location within 660 +/- linear feet of the center line of the right of way of said utility would be responsible for a portion of the cost of the improvements located on the Collector or Arterial right of ways. To determine this benefit, any parcel that is located within approximately 1/8 of a mile or 660 +/- lineal feet of a Collector or Arterial right of way measuring perpendicular from the center line of the right of way, a percentage of the improvement cost would be paid by this parcel.

The method of calculating this percentage with based on the following formula: since a 40 acre parcel will be bounded on 4 sides by either a Collector or Arterial right of way, the 40 acre parcel will be reduced to four equal square areas of 10 acres. The parcel in question in that 10 acres will pay a reimbursement amount based on the amount of area no matter where it is located or arranged in those 10 acres. I.E. 3 acre parcel will pay 3/10ths of the cost of the improvements located within either the Arterial or Collector right of way or both.)

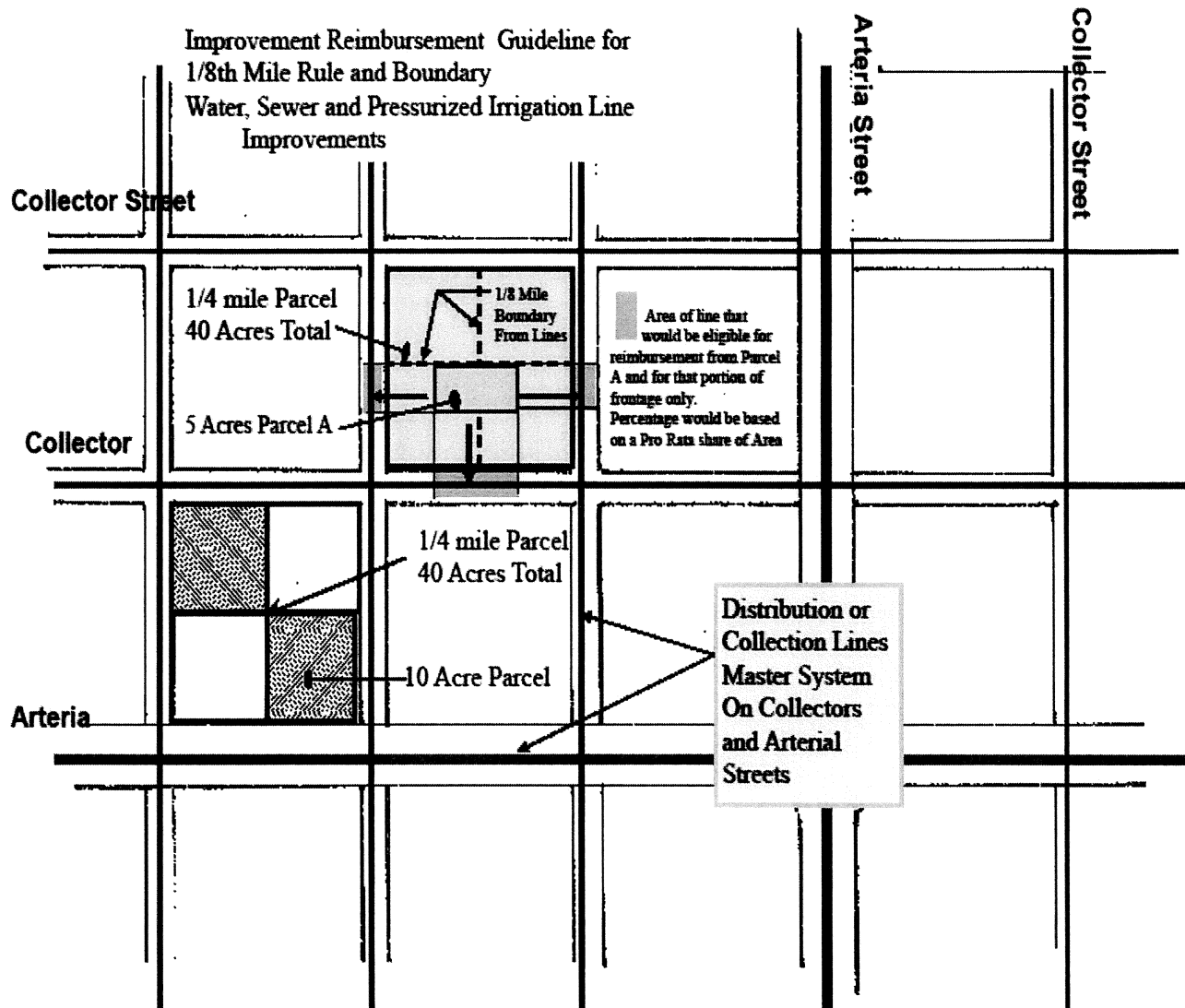
This method would apply to water distribution system, transportation, pressurized irrigation distribution system, and waste water collection system. This method would not apply to the pressured irrigation pump station systems.

Examples:

The initial developer improves a 5 acre parcel that is 660' by 330' that runs east to west and is parallel along an Arterial right of way located on the development's south property line and a Collector right of way on the development's west property line. The developer installs a 12" water main line in the Arterial right of way at a cost of \$30,000.00 and a 10" water main line in the Collector right of way at a cost of \$20,000.00. The developer also installs an 8" PI line in the Arterial right of way at a cost of \$10,000.00 and a 6" PI line in the Collector right of way at a cost of \$5,000.00 for a total improvement cost of \$65,000.00. This cost would be shared by the property or properties (see 1/8 mile rule) south of the Arterial right of way and west of the Collector right of way on a 50/50 basis. These parcels would reimburse the original developer for 50 % of the total cost of \$65,000.00 or \$32,500.00 plus an additional 15 % (See Resolution for explanation).

A 3 acre Parcel is located directly north of the original developer's property and part of the property is within 1/8 of a mile from the center line of the Arterial right of way with the water and PI improvements. This parcel would be responsible for the amount of acreage that is within 660 +/- linear feet or in this case the 3 acres would be 3/10th of the 10 acre grid method. The cost for the water main line and the PI line on the Arterial right of way was \$40,000.00. The parcels located south of the Arterial right of way would reimburse the original developer for half of the improvement cost or \$20,000.00 plus the 15 % which is \$23,000.00. Since the 3 Acre parcel is located perpendicular to the right of way, that parcel would reimburse the original developer for 3/10th of the remaining half of the cost of \$20,000.00 or \$6,000.00 plus the 15% which is \$6,900.00 for the Water and PI improvements located on the Arterial right of way. However, because the 3 acre parcel is not located within the 660 +/- linear feet measuring perpendicular from the Collector right of way, there would be not be any reimbursement by the 3 acre parcel for the cost of the water and PI improvements located on the Collector right of way.

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



Twin Falls Canal Company Water Delivery System Reimbursement Standards

The Twin Falls Canal Company, known as "TFCC" in this section, owns and operates the irrigation water delivery system consisting of irrigation structures and head gates, canals and laterals, known as "Irrigation Improvements" in this section, located in easements and right of ways throughout the City of Twin Falls. The City of Twin Falls aids the TFCC in the design, maintenance and oversight of their water delivery system. All TFCC Irrigation Improvements become part of the overall design of any subdivision and requires approval by the City of Twin Falls Engineering Department.

Proper compensation for reimbursement of costs of the TFCC water delivery systems shall use the degree of benefit as determined by the Improvement Reimbursement Commission, times the actual cost of the subject improvements, plus 15% to address costs for engineering, management, fees, interest and inspection.

The TFCC water delivery system is not a looped grid type system and per a State Agreement, the TFCC has recorded and unrecorded rights-of-ways along the sides of its main canals (50 feet), major laterals (30 feet), and smaller laterals (15 feet or a proportionate width) by a 1903 Agreement with the State of Idaho. These measurements are from the toe of the bank.

The Irrigation Improvements follow a gravity path and are not located per property boundaries. Irrigation Improvements can be located partially on two different properties and the cost of reimbursements are more difficult to calculate. The 1/8th mile rule will not apply to Irrigation Improvements reimbursement. Degree of benefit is determined by the location of the Irrigation Improvements. All reimbursements will be determined per the historical location and right of way of any Irrigation Improvement. Benefit is determined by the location of the center of the Irrigation Improvement, the toe of the bank and the TFCC right of way. The Irrigation Improvements cannot be relocated on an adjacent property to create benefit where benefit did not previously exist.

To qualify as an Irrigation Improvement eligible reimbursement, the improvement must involve replacing a canal or lateral with approved TFCC pipe using an underground installation and/or the improvement or replacement of existing or new irrigation structures and head gates; and is required as a condition of approval by the TFCC and the City of Twin Falls.

The Irrigation Improvements costs would include installation cost and additional unusual conditions like rock removal or fill requirements and all materials including piping, irrigation structures and head gates, cleanouts, and all required fittings.

If the Irrigation Improvement is required to cross an adjacent property, the adjacent property owner is responsible for 100 % of the cost of the Irrigation Improvement for that portion located on their property. If the Irrigation Improvement is located on two adjacent properties, both property owners are responsible for 50% of the cost of the Irrigation Improvement when one toe of the bank of the canal or lateral is located within their property boundary or any part of the irrigation structure is located on their property. Where a portion of the right of way is located on a property but the Irrigation Improvement is not, there is no benefit and the cost of the Irrigation Improvement is not eligible for reimbursement.

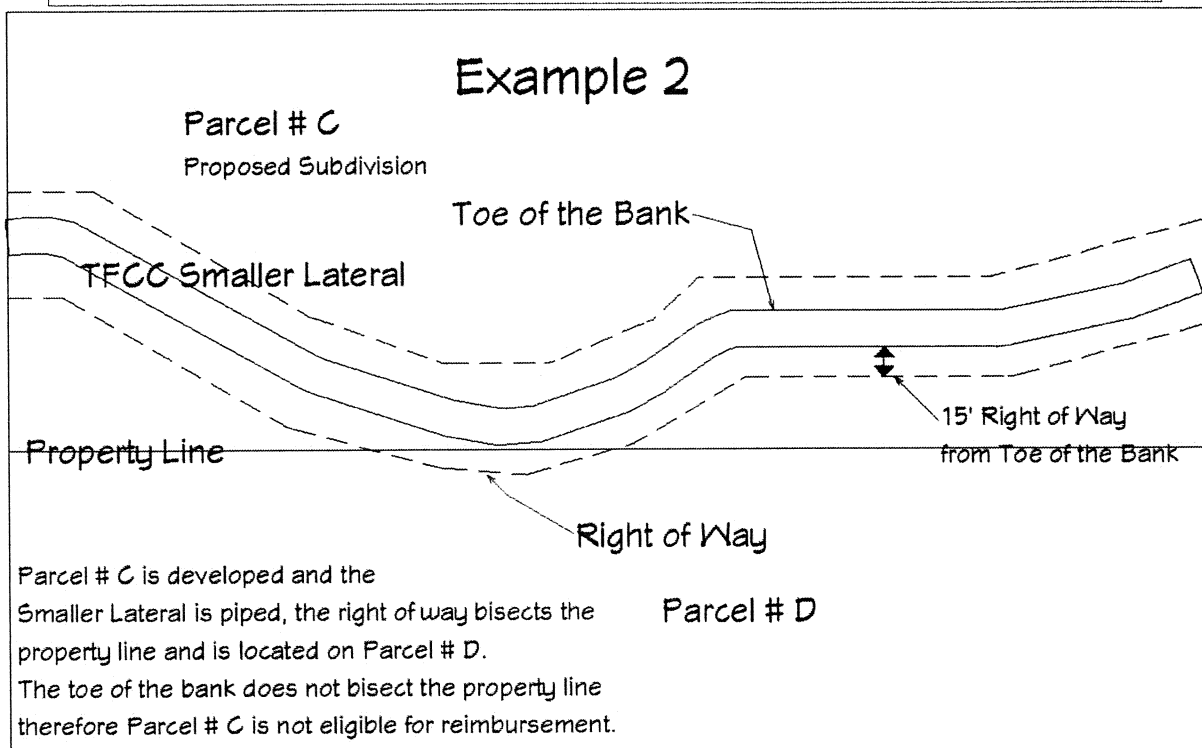
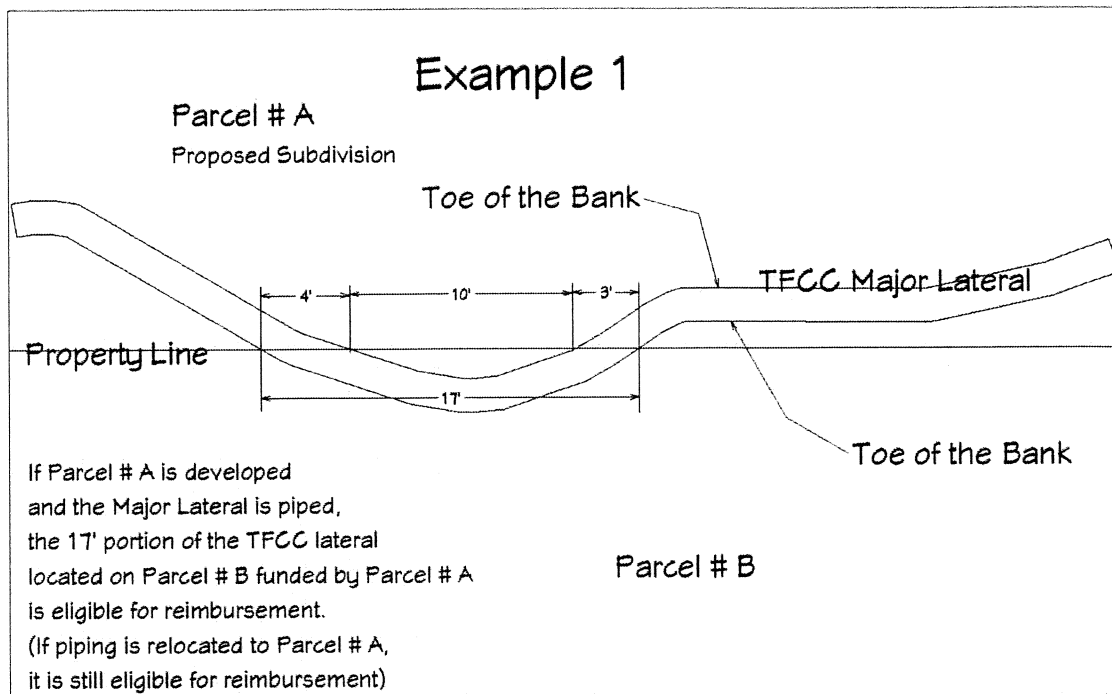
Examples:

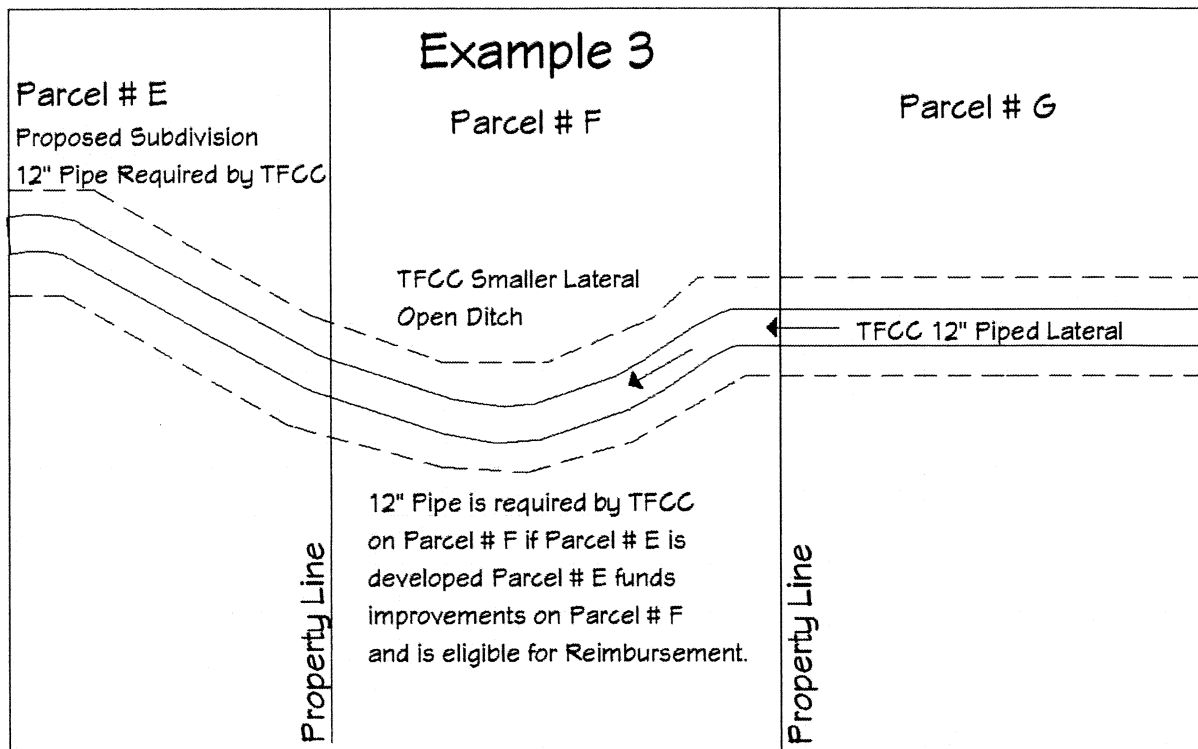
A developer of Parcel A is required to install Irrigation Improvements as part of the development of their subdivision and the Irrigation Improvements are located parallel to Parcel B and where any toe of the bank of the canal or lateral or an irrigation structure crosses Parcel B for any length those improvements are eligible for reimbursement. There is benefit to Parcel B therefore 50% of the cost of the Irrigation Improvement for the length of one toe of the bank crosses the boundary between Parcel A and B or if any portion of the irrigation structure is located on both properties are eligible for reimbursement. When both toes of the bank of the canal or lateral or all the irrigation structure is located on Parcel B, 100% of the cost of the Irrigation Improvements are eligible for reimbursement for that portion. See Example 1.

A developer of Parcel C is required to install Irrigation Improvements as part of the development of their subdivision and the Irrigation Improvements are located parallel to Parcel D. If the irrigation structure or the toe of the bank of the canal or lateral does not cross Parcel D at any point although the right of way does, there is no benefit to Parcel D therefore the Irrigation Improvement are not eligible for reimbursement. See Example 2

A developer of Parcel E is required to install Irrigation Improvements as part of the development of their subdivision and there is a canal or lateral delivering TFCC water to the subdivision on Parcel F that the TFCC requires to be improved. The developer of Parcel E will complete the required Irrigation Improvement within the TFCC right of way on Parcel F and the owner of Parcel E will be eligible for 100 % of the cost from Parcel F as an improvement reimbursement. See Example 3

The following drawing will help to illustrate the proper compensation to be paid to an initial developer under the rules set forth above. If there is any conflict between the text and the illustration, the rules contained in the text shall prevail.



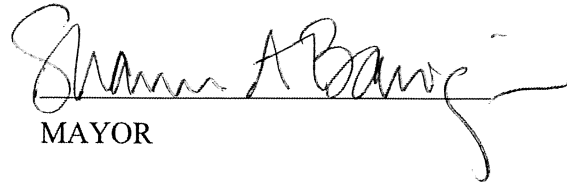


PASSED BY THE CITY COUNCIL

August 28, 2017.

SIGNED BY THE MAYOR

August 28, 2017.


MAYOR

ATTEST:

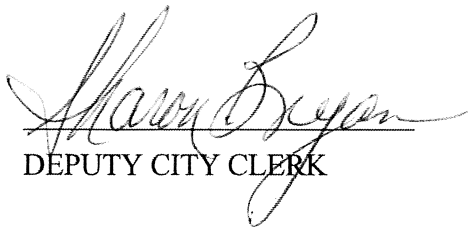

DEPUTY CITY CLERK

EXHIBIT C

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this 11th day of September, 2015 (the "Effective Date"), by and between **Rusmor, LLC**, an Idaho limited liability company, whose address is 754 North College Road, Suite A, Twin Falls, Idaho 83301 or its assignees ("Seller"), and **Gerald Martens**, whose address is 612 North College Road, Suite 100, Twin Falls, Idaho 83301 or his assignees ("Buyer").

RECITALS:

A. Seller owns certain unimproved subdivided real property commonly known as Broadmoor Subdivision (the "Seller's Real Property") located in the city of Twin Falls, Twin Falls County, state of Idaho; and

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the following lots of the Seller's Real Property: (1) Lots 1 through 13, Block 1; (2) Lots 1 through 20, Block 2; (3) Lots 1 through 20, Block 3; (4) Lots 1 through 20, Block 4; (5) Lots 1 through 20, Block 5; (6) Lots 1 through 38, Block 6; (7) Tract A; (8) Tract B; and (9) Tract C, together with all improvements and structures thereon, water rights, if any, and all other appurtenances thereto (collectively, the "Subject Real Property"); and

C. Seller shall retain the following portions of the Seller's Real Property, which portions are specifically excluded from this contemplated transaction: (1) Lots 1 through 39, Block 7; (2) Lots 1 through 20, Block 8; (3) Lots 1 through 39, Block 9; and (4) Lots 1 through 20, Block 10; (5) Tract D; and (6) Tract E, together with all improvements and structures thereon, water rights, if any, and all other appurtenances thereto (collectively, the "Retained Real Property").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The Subject Real Property. Subject to the terms and conditions of this Agreement, Seller shall sell and convey by good and sufficient warranty deed, and Buyer shall purchase of and from Seller, the Subject Real Property.
2. The Retained Real Property. Seller retains the Retained Real Property, and it is specifically excluded from this contemplated purchase and sale transaction.
3. Price and Payment Terms for the Subject Real Property. Buyer shall pay, and Seller shall accept, as the purchase price for the Subject Real Property The Purchase Price shall be paid in cash or certified funds, or by federally insured wire transfer on the date of closing.
4. Subdividing Engineering Fees and Costs. Buyer is a principal of EHM Engineers, Inc., an Idaho corporation. Buyer and Seller acknowledge EHM Engineers, Inc. provided and performed engineering and related professional services for the subdividing, and the acceptance and recordation of the subdivision plat of Broadmoor Subdivision, for which EHM Engineers, Inc. charged fees, costs and expenses. As an inducement to Seller to enter into this Agreement and to sell the Subject Real Property to Buyer, Buyer shall assume, pay and hold Seller harmless from any and all unpaid

outstanding fees, costs and expenses charged by of EHM Engineers, Inc. for said engineering and related professional services to subdivide, and cause the subdivision plat of Broadmoor Subdivision to be accepted and recorded, and otherwise attributable to Broadmoor Subdivision; or otherwise cause EHM Engineers, Inc. to waive, and release Seller from any and all liability for, said unpaid outstanding fees, costs and expenses charged by of EHM Engineers, Inc. for said engineering and related professional services to subdivide, and cause the subdivision plat of Broadmoor Subdivision to be accepted and recorded, and otherwise attributable to Broadmoor Subdivision. Notwithstanding the foregoing or anything to the contrary in this Agreement, any and all fees and charges of the city of Twin Falls, Idaho and the county of Twin Falls, Idaho for recordation of the subdivision plat of Broadmoor Subdivision shall not be assumed, paid, waived or released by EHM Engineers, Inc.; but rather, Seller shall be responsible for, and pay, any and all such fees and charges.

5. Commitment for Title Insurance; Title Insurance. Within ten (10) days of the Effective Date or within a reasonable time thereafter, Seller shall obtain, at its sole cost and expense, a commitment for title insurance from TitleFact, Inc., Twin Falls, Idaho (the "Title Company") on the Subject Real Property. Buyer shall have ten (10) business days after receipt of said commitment for title insurance in which to provide Seller notice of any material defects in said title, as shown by said commitment for title insurance. The term "material defects" means any defect that would substantially affect the marketability of the Subject Real Property. In the event Buyer does not provide such written notice to Seller of any matters shown by said commitment for title insurance, Buyer shall be deemed to have accepted the condition of the title as set forth in the commitment for title insurance (the "Permitted Exceptions"). Notwithstanding the foregoing and without the necessity of notice or objection from Buyer, any deed of trust, mortgage or other lien securing the payment of indebtedness against the Subject Real Property shall not be Permitted Exceptions. If Seller is unable to remedy such identified material defects on or before the closing as provided in Section 6 hereof, Buyer, at Buyer's option, may either accept the title as then existing or may terminate this Agreement. In the event Buyer elects to terminate this Agreement, this Agreement shall thereafter be deemed terminated and of no further force and effect; and Buyer shall have no further right, title or interest in or to the Subject Real Property.

At closing, the parties shall obtain a standard policy of owner's title insurance issued by Title Company insuring Buyer in the amount of the Purchase Price. Such policy shall show clear and marketable title in Buyer, subject to: (1) current taxes and assessments; and (2) all such encumbrances, easements, covenants, and restrictions pertaining and appurtenant to Broadmoor Subdivision; and (3) the Permitted Exceptions as defined in this Section. All costs incurred for said title insurance policy shall be borne by the Seller.

6. Closing and Prorations. The sale herein contemplated shall be closed on or before September 30, 2015, with the parties' mutual intended closing date to be September 28, 2015. Closing shall be at the offices of the Title Company. Any and all real property taxes and assessments levied on the Subject Real Property shall be prorated as of the date of closing, Seller being responsible for all such taxes and assessments to the date of closing. Such taxes and assessments attributable to the Subject Real Property after closing shall be borne by Buyer, and Buyer hereby assumes and agrees to pay the same. The proration of taxes shall be based on the current year's taxes if known, or if not known, on the previous year's taxes. All closing costs imposed by the Title Company or that may be imposed in connection with this transaction shall be borne equally by the parties, except as otherwise provided in this Agreement.

7. Title. The Subject Real Property will be conveyed, by good and sufficient warranty deed, at the time of closing to Buyer free and clear of all liens and encumbrances, with the exception of: (1) current taxes and assessments; and (2) all such encumbrances, easements, covenants, and restrictions pertaining and appurtenant to Broadmoor Subdivision; and (3) the Permitted Exceptions as defined in Section 5 hereof.

8. Risk of Loss; Possession. The risk of loss or damage to the Subject Real Property shall remain with Seller until the sale has been closed, with the risk of loss being with Buyer thereafter. Buyer shall be entitled to possession of the Subject Real Property on closing.

9. Inspection of the Subject Real Property. Upon the closing of this contemplate transaction, Buyer acknowledges he has personally, to include through agents and representatives, inspected and conducted the due diligence investigation of the Subject Real Property he deemed appropriate and necessary, and is purchasing it based upon such personal inspection and due diligence investigation, and is not relying on any representation of Seller in making the decision to purchase the Subject Real Property. Buyer purchases the Subject Real Property "AS IS" and "WITH ALL FAULTS" with no representation, warranty or covenant, express or implied, of any kind or nature, except as to title,

10. Utility Improvements to the Subject Real Property; Availability of Utilities to the Retained Real Property; Waste Water Runoff Facilities and Retention Area(s). With regard to the following agreements in this Section: (1) Buyer and Seller, or Seller's successor-in-interest to the Retained Real Property, will respectively develop and improve the Subject Real Property and the Retained Real Property for the sale and conveyance of the respective lots thereof; and (2) by the nature of Broadmoor Subdivision and the availability of utility services, to include municipal water, sanitary sewer and pressurized irrigation, the development and improvement of the Retained Real Property is to an extent dependent upon the development and improvement of the Subject Real Property; and (3) the following agreements of Buyer and Seller is their express intentions to provide for the coordinated, cooperative, economically efficient and phased development and improvement of both the Subject Real Property and the Retained Real Property; and (4) Seller, or Seller's successor-in-interest to the Retained Real Property, intend to commence, on or after one (1) year from the Effective Date, the development and improvement of the Retained Real Property, which is to be without delay or restriction caused by or attributable to the development and improvement of the Subject Real Property. In consideration of the foregoing:

(a) Within one (1) year of the Effective Date, Buyer shall provide for the development, use and benefit of the Retained Real Property active utility service connections of municipal water, sanitary sewer and pressurized irrigation, to the extent such active utility service connections do not presently exist, as follows:

- i. Municipal Water Service: Facilities for an active connection to municipal water service for the development, use and benefit of all lots of the Retained Real Property presently exist along the western boundary of the Retained Real Property, subject, however, to the payback provisions or obligations of the city of Twin Falls, Idaho; and

- ii. *Municipal Sanitary Sewer Service:* Seller shall develop the Subject Real Property to install any and all necessary and required facilities for an active connection to municipal sanitary sewer service for the development, use and benefit of all lots of the Retained Real Property. Said point of connection shall be located from and through the Subject Real Property, through Tract D within Broadmoor Subdivision, to not less than ten feet (10') into and within the right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, as depicted and identified on the copy of the "Master Utility Plan for Broadmoor Subdivision" attached, and incorporated herein, as Exhibit A. The facilities for the active connection to municipal sanitary sewer service shall be of sufficient sizing and capacity to provide municipal sanitary sewer service from all lots of the Retained Real Property. Buyer and Seller acknowledge the installation of the necessary and required facilities for an active connection to municipal sanitary sewer service for the development, use and benefit of all lots of the Subject Real Property and the Retained Real Property is subject to the city of Twin Falls issuing a "will serve" letter for Broadmoor Subdivision in its entirety. Buyer's obligation to install any and all necessary and required facilities for an active connection to municipal sanitary sewer service for the development, use and benefit of all lots of the Retained Real Property, inclusive of Buyer's obligations under Sections 10. (b), (c) and (d) herein below, is and shall be subject to, and shall be tolled pending, the city of Twin Falls issuing a "will serve" letter for Broadmoor Subdivision in its entirety; and
- iii. *Pressurized Irrigation Service:* Seller shall develop the Subject Real Property to install any and all necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Retained Real Property. Said point of connection shall be located from either Grand View Drive North right-of-way or Wendell Street right-of-way to not less than ten feet (10') into and within the right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, as respectively depicted and identified from Grand View Drive North right-of-way and from Wendell Street right-of-way on the copy of the "Master Utility Plan for Broadmoor Subdivision" attached, and incorporated herein, as Exhibit A. The facilities for the active connection to pressurized irrigation service shall be of sufficient sizing and capacity to provide pressurized irrigation service to all lots of the Retained Real Property. Buyer and Seller acknowledge the installation of the necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Subject Real Property and the Retained Real Property is subject to the city of Twin Falls proceeding with its obligation(s) of and associated with the facilities of pressurized irrigation service to Broadmoor Subdivision in its entirety. Buyer's obligation to install any and all necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Retained Real Property,

inclusive of Buyer's obligations under Sections 10. (b), (c) and (d) herein below, is and shall be subject to, and shall be tolled pending, the city of Twin Falls proceeding with its obligation(s) of and associated with the facilities of pressurized irrigation service to Broadmoor Subdivision in its entirety.

- (b) As an alternative to the foregoing, no later than one (1) year from the Effective Date Buyer may enter into an Improvement Agreement for Developments with the City of Twin Falls, Idaho providing for the development of the Subject Real Property, with secured and effective bonding for all applicable and necessary development improvements, inclusive of the utility services of municipal water, sanitary sewer and pressurized irrigation for the Subject Real Property; provided however and so long as the immediate development, sale and conveyance of each and every lot of the Retained Real Property is permissible by reason of, and not otherwise restricted or inhibited by reason of, either: (1) the then state of development of the Subject Real Property; or (2) said Improvement Agreement for Developments and the bonding for the improvements for all applicable and necessary development improvements, inclusive of the utility services of municipal water, sanitary sewer and pressurized irrigation for the Subject Real Property.
- (c) In any event, and notwithstanding anything to the contrary in this Section, Buyer shall provide active connection to municipal sanitary sewer service for the development, use and benefit of all lots of the Retained Real Property, as provided in sub-subsection (a)(ii) of this Section above, within four (4) months of written notice to Buyer from Seller, or its successors-in-interest to the Retained Real Property; provided, however, such written notice shall not be effective earlier than eight (8) months from the Effective Date, and Buyer shall have no obligation to provide the said active connection to municipal sanitary sewer service prior to one (1) year from the Effective Date.
- (d) Contemporaneous with Buyer providing active utility service connections of municipal water, sanitary sewer and pressurized irrigation, pursuant to this Section, Buyer shall construct and provide waste water runoff facilities on the Subject Real Property, to include, without limitation, retention ponds and conduits, all as necessary and appropriate for the conveyance, transfer, delivery and storage of waste water runoff from the Retained Real Property to the Subject Real Property.
- (e) Seller shall be responsible for the construction of, and all costs and expenses incurred for, the road of the right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, and the southern sidewalk, curb and gutter of and along said right-of-way. Buyer shall be responsible for the construction of, and all costs and expenses incurred for, the sidewalk, curb and gutter of and along the northern right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision. Provided however, in the event Seller constructs the sidewalk, curb and gutter of and along the northern right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, Buyer shall promptly reimburse Seller, within sixty (60) days of notice

for reimbursement, for all costs and expenses incurred by Seller for the northern sidewalk, curb and gutter of and along said right-of-way.

- (f) Buyer and Seller shall cooperatively and mutually establish Covenants, Conditions & Restrictions for and of Broadmoor Subdivision, to include establishment of a homeowner's association, with all terms and provisions typical thereto. The establishment of said Covenants, Conditions & Restrictions shall be completed on or before the closing of this contemplated purchase and sale transaction.

11. Current Farm Lease. The real property of Broadmoor Subdivision is subject to a certain "Cash Rent Farm Lease", a copy of which is attached hereto as Exhibit B (the "Farm Lease"). Notwithstanding the closing of this contemplated purchase and sale transaction: (1) the Farm Lease shall continue in full force and effect, and neither Seller nor Buyer shall disturb the tenant's quiet enjoyment of the real property of Broadmoor Subdivision under the Farm Lease; (2) Seller shall have and retain, without the necessity of apportionment or payment to Buyer, the first cash rent payment due March 15, 2015, and previously paid by tenant; and (3) the second cash rent payment due October 1, 2015 and actually hereafter paid by tenant shall be prorated, shared and distributed between Seller and Buyer on the bases of: (i) a six-month time period applicable to said cash rent payment (July 1, 2015 through December 31, 2015); (ii) the closing date of this contemplated transaction; and (iii) the proportion of the number of lots of the Subject Real Property (131 lots) and the number of lots of the Retained Real Property (118 lots) pursuant to the recorded subdivision plat of Broadmoor Subdivision.

12. Subsequent Farm Lease(s). Buyer shall negotiate and enter, with Seller's approval, into farm lease(s) of the real property of Broadmoor Subdivision for years subsequent to 2015; provided and subject to, however: (1) all such farm lease(s) shall be on a cash rent basis; (2) the term of all such farm lease(s) shall be not more than one (1) year or one (1) crop year; (3) the acreage and term of such farm lease(s) shall be coordinated to the planned development and improvement of the Subject Real Property and the planned development and improvement Retained Real Property; and (4) the rent payment(s) shall be prorated, shared and distributed between Seller and Buyer, as received, on the bases of: (i) the time period applicable to each cash rent payment; and (ii) the proportion of the number of lots of the Subject Real Property subject to such farm lease and the number of lots of the Retained Real Property subject to such farm lease pursuant to the recorded subdivision plat of Broadmoor Subdivision.

13. Real Estate Commissions. The real estate sale transaction herein contemplated does not involve a real estate broker, agent or realtor for either of the parties, and shall not give rise to any real estate commissions with respect to either party hereto. To the extent that any real estate commissions are owed as a result of this transaction by Seller, Seller shall be solely liable therefor, and Seller shall indemnify Buyer from any such commissions. To the extent that any real estate commissions are owed as a result of this transaction by Buyer, Buyer shall be solely liable therefor, and Buyer shall indemnify Seller from any such commissions.

14. Notices. Any notice required or to be given hereunder shall be in writing and shall be deemed to have been duly given: (1) the same day if personally delivered, (2) the next day if sent by an overnight courier service, or (3) after three (3) business days if sent by certified mail, return receipt requested, postage prepaid, to the party at the respective addresses identified below. Either party may

change the person and address to which written notices shall be given at anytime upon prior written notice to the other party.

Seller: Rusmor, LLC
Attn: Joe Russell
754 North College Road, Suite A
Twin Falls, Idaho 83301

Buyer: Gerald Martens
612 North College Road, Suite 100
Twin Falls, Idaho 83301

15. Binding Effect: Parties' Respective Successors-in-Interest. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, successors, personal representatives, and assigns of the parties hereto. Further, the agreements of Sections 10, 11, and 12 of this Agreement shall be binding upon and inure to the benefit of all successors-in-interest to the Subject Real Property and all successors-in-interest to the Retained Real Property without the necessity of formal assignment, recordation of a memorandum of said Sections in the property records of Twin Falls, County, or otherwise; it being specifically acknowledged and agreed the coordinated, cooperative, economically efficient and phased development and improvement of both the Subject Real Property and the Retained Real Property are material and essential to this Agreement. Either Buyer or Seller may record a memorandum of Sections 10, 11 and 12 in the property records of Twin Falls, County.

16. Attorney Fees. If a suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all costs and attorney fees from the non-prevailing party.

17. Additional Documents. Each of the parties hereto shall execute and deliver at the closing and thereafter any instruments reasonably required to effectuate the terms and conditions of this Agreement and the intent thereof.

18. Applicable Law. This Agreement shall be construed and enforced under the laws of the state of Idaho.

19. Time is of the Essence. Time and timely performance is of the essence of this Agreement and other documents required to effectuate the terms and conditions of this Agreement and the intent thereof.

20. Merger. This Agreement supersedes any and all written or verbal agreements between the parties hereto regarding the real property of Broadmoor Subdivision, the Seller's Real Property, the Subject Real Property and the Retained Real Property that are prior to the time of this Agreement. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein, and the terms and conditions of this Agreement shall survive recordation of the warranty deed(s) hereinabove referred to, and shall remain in full force and effect until duly performed by the parties hereto.

21. Attorney Representation. Buyer acknowledges that the law firm of Worst, Fitzgerald & Stover, P.L.L.C. represents Seller in this transaction. Buyer has been advised and counseled by Buyer's own attorney or other competent persons regarding all matters that pertain to this Agreement, or otherwise had the opportunity to be advised and counseled by Buyer's own attorney or other competent persons regarding all matters that pertain to this Agreement. By executing this Agreement, Seller and Buyer acknowledge, respectively, they understand all the foregoing, and consent to all terms of this transaction.

22. Provisions Severable. Every provision of this Agreement is intended to be severable. If any terms or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

23. Authority to Sign. Each signatory has full authority and consent to sign this Agreement.

24. 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. Facsimile or electronic transmission of any signed original document shall be the same as delivery of the original.

IN WITNESS WHEREOF, Seller and Buyer have hereunto set their hands the day and year first above written.

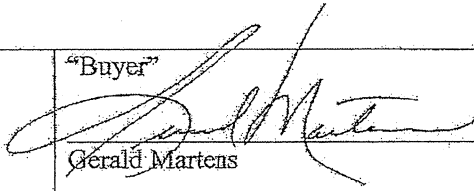
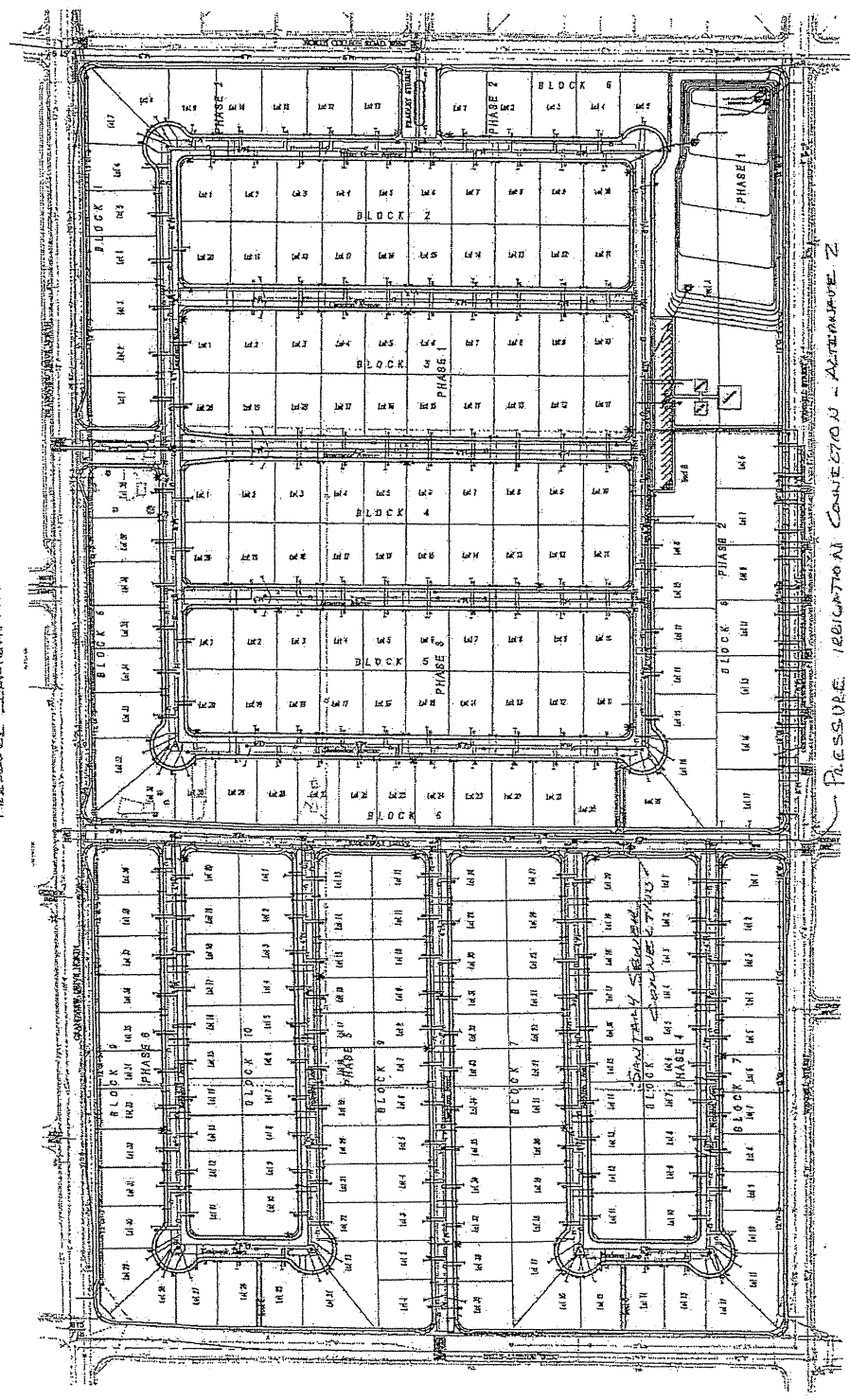
"Seller" Rusmor, LLC, an Idaho limited liability company By: _____ Joe Russell Its: Member By: Wemgary LP, an Idaho limited partnership Its: Member By: _____ William E. Morris, Its: General Partner	"Buyer"  Gerald Martens
---	---

EXHIBIT A

("Master Utility Plan for Broadmoor Subdivision" Attached)

EHM
ENGINEERS INC.



PRESSURE REGULATOR CONNECTION - AIR IN TAKE OFF

100% COTTONYATE FURVESTON, FINLITE & POLYESTER WITH MOOD PATTERNS

NAME	MR. J. L. WATSON
ADDRESS	1000 10th St.
CITY	ST. LOUIS
STATE	MISSOURI
DATE	10-10-27
TIME	10:10 AM
REMARKS	1000 10th St.

EXHIBIT B

("Farm Lease")

CASH RENT FARM LEASE

Owner: Rusmor LLC

Operator: Brad Requa and Requa Farms Year: 2015

1. **Legal Description:** See Attached Description.
2. **Term of Lease:** Beginning March 1, 2015, and ending December 31, 2015.
3. There are approximately **75 Acres** available for farming.

The following housing, buildings and storage structures located on the Real Estate may be used by the Operator for the following purposes:

Structures: None

All gated pipe and irrigation facilities on site March 1, 2015.

4. **Cash Rent:** Operator agrees to pay the Owner cash rent for the use of part or all of the Real Estate as follows:

Cropland: 75 acres + or - = \$22,500.00

Total Annual Rent: \$22,500.00

The cash rent shall be paid as follows:

Due Date: March 15, 2015 - \$11,250.00

Due Date: October 1, 2015 - \$11,250.00

If cash rent is not paid within five (5) days of due date a \$1,000.00 Late Penalty will be assessed and the entire balance will accrue interest, at the rate of Eighteen Percent Annual Percentage Rate, (18% Simple Interest) until paid. Operator additionally agrees to reimburse Owner for 100% of the cost associated with collecting any late balance owing.

5. **USDA Commodity Program Payments:** Payments shall be paid to the Operator unless otherwise agreed on with the Farm Service Agency.
6. **Listing of Property for Sale:** Property will be listed for sale and a sale of the property will include a provision that, in the event a portion of the farmed property is developed and crops are torn out prior to their harvest by Operator, Property Owner/Developer will reimburse Operator at the rate of \$1,000.00 per acre for those acres rendered no longer harvestable.
7. **Insurance:** Operator agrees to carry a minimum \$1,000,000.00 liability insurance policy to coverage all hazardous risk associated with farming activities during the period of this agreement and to name the Owner as an additional insured on the policy.

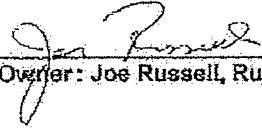
CASH RENT FARM LEASE

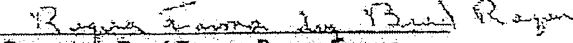
1

8. **Renewability:** This Agreement is only renewable with a written mutual consent by both parties. If not renewed, by mutual written consent, by November 1, 2015, the agreement shall terminate. If this agreement is not renewed for the 2016 crop year, Operator agrees to have his entire farm equipment and crops removed from the farm by March 1, 2016.

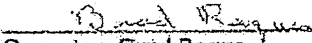
9. **Irrigation Pipe:** It is mutually agreed and understood that the irrigation piping located on the subject property is owned by the Owner and will not be removed from the property.

In Witness whereof, we agree to the terms and conditions of this lease and we affix our signatures on this 2 day of ~~January~~ ^{February}, 2015.


Owner: Joe Russell, Rusmor LLC


Operator: Brad Requa, Requa Farms

Brad Requa is to personally guarantee the Terms and Conditions of this Lease Agreement, including monetary payments to the Owner.


Operator: Brad Requa

Description
For
RUSMOR, LLC

A parcel of land being described as Lots 40, 41, 42, 61, 62, 63, 64, and 65 of the "Orchalara Subdivision," together with the vacated alley lying North of Lots 64 and 65 and together with vacated Macwaiters Avenue lying South of Lots 64 and 65, and together with the Vacated Avenue lying South of Lots 61 and 63, all in the Southwest Quarter of Section 5, Township 10 South, Range 17 East, Boise Meridian; and being more particularly described as follows:

Commencing at the West Quarter corner of Section 5. Said point lies North $00^{\circ}04'49''$ West, 2502.26 feet from the Southwest corner of Section 5. Thence South $89^{\circ}00'33''$ East 25.00 along the North boundary of SW¹, Section 5 to the REAL POINT of BEGINNING.

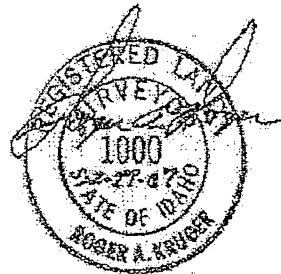
Thence South $89^{\circ}00'33''$ East 1400.40 feet along the North boundary of SW¹, Section 5.

Thence South $00^{\circ}49'46''$ West 2508.90 feet along the Westerly Right-of-Way on Wendell Street.

Thence North $89^{\circ}06'13''$ West 1360.52 feet along the Northerly Right-of-Way on Falls Avenue West.

Thence North $00^{\circ}04'49''$ West 2511.57 feet along the Easterly Right-of-Way on Grandview Drive North to the REAL POINT of BEGINNING.

Containing approx. 79.55 acres.



008-07

EXHIBIT D



EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE

To: Mr. Troy Vitek, P.E.
From: Gerald Martens, P.E. *Gerald Martens*
Date: December 29, 2017
RE: Payback Request For Broadmoor Sanitary Sewer and Pressurized Irrigation

Please accept this transmittal as formal request to be considered as an initial developer for the Broadmoor Subdivision lots located north of Ridgeway Road and eligible for reimbursement for construction costs. At my expense an extension of municipal sanitary sewer main line has been extended to the neighboring property to the south. Also, a pressurized irrigation main line has been installed to connect to the Riverhawk Pressurized Irrigation Pump Station running parallel to North College Road. Therefore, in accordance with Resolution No. 2017-13 I hereby request that I be identified as the initial developer and be reimbursed according to City Code provisions.

Sanitary Sewer Improvements - IN RIDGEWAY ROAD

182 LF of 8" PVC Sewer Main Line @ \$16.50/LF	\$3,003.00
(2) SS Manhole @ \$3,000.00/EA	\$6,000.00

Pressurized Irrigation Improvements

Connection to Existing Station @ \$800.00 Lump Sum	\$800.00
1,700 LF of 10" PVC P.I. Main Line @ \$18.00/LF	\$30,600.00
182 LF of 6" PVC P.I. Main Line @ \$13.75/LF	\$2,502.50
220 CY of ¾" Gravel for Backfill @ \$28.00/CY	\$6,160.00
525 SY of Asphalt Patch Back and Repair @ \$36.50/SY	\$19,162.50
(2) 10" Gate Valve @ \$1,200.00/EA	\$2,400.00
(3) 10" 90° Elbow @ \$500.00 Lump Sum	\$1,500.00
(1) 10"x6"x6" Tee @ \$1,500.00 Lump Sum	\$1,500.00
Traffic Control @ \$1,000.00 Lump Sum	\$1,000.00

Total Improvement Costs **\$74,628.00**

The sanitary sewer main line extension exists between lots 19 and 20 of Block 6. This installation necessitated two additional manholes and 182 lineal feet of sanitary sewer main line. Additionally, a 10" pressurized irrigation main line was installed from the NE at the intersection of Woodland Way and Drayton Ave., then in North College Road to the Riverhawk Pressurized Irrigation Pump Station. This work involved installation of the main line, asphalt patch back and repair, as well as traffic control. Also, an extension between lots 19 and 20 of Block 6 was provided to extend the service to the neighboring property to the south. A full compensation for the eligible reimbursement amount plus 15% to address the costs of engineering, management, interest, and inspection is requested for these improvements.

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

Broadmoor Subdivision Phase 1 (Base Bid)
BID TAB

DESCRIPTION	UNIT	ESTIMATED QUANTITY	Engineer's Estimate						McCoy Construction	
			ESTIMATED PRICE	ESTIMATED COST					PRICE	ESTIMATED COST
ROADWAY										
GRADING	STA	61.8	\$850.00	\$52,530.00					\$250.00	\$15,450.00
EXCAVATION	STA	61.8	\$1,000.00	\$61,800.00					\$1,000.00	\$61,800.00
ROADWAY 1 1/2" GRANULAR BASE	CY	4,390	\$40.00	\$175,600.00					\$28.00	\$122,920.00
ROADWAY 3/4" LEVELING COARSE	CY	1,330	\$40.00	\$53,200.00					\$28.00	\$37,240.00
PLANT MIX PAVEMENT 2" MATT	SY	11,014	\$12.00	\$132,168.00					\$12.25	\$134,921.50
PLANT MIX PAVEMENT 3" MATT	SY	10,081	\$16.50	\$166,086.50					\$16.50	\$168,006.50
STD. CURB & GUTTER W/ BASE	LF	5,101	\$18.00	\$91,818.00					\$16.00	\$81,618.00
ROLLED CURB & GUTTER W/ BASE	LF	2,724	\$17.00	\$46,308.00					\$16.00	\$43,584.00
5' ATTACHED SIDEWALK W/ BASE	SY	2,500	\$38.50	\$96,250.00					\$33.00	\$82,500.00
6' DETACHED SIDEWALK W/ BASE	SY	1,983	\$39.00	\$77,337.00					\$33.00	\$65,439.00
6' DETACHED SIDEWALK W/ BASE	SY	107	\$39.00	\$4,173.00					\$33.00	\$3,531.00
24' ART. 1/2 APPROACH W/ 4" V.G. & BASE*	EA	1	\$2,500.00	\$2,500.00					\$2,100.00	\$2,100.00
24' ART. 1/2 APPROACH W/ 8" V.G. & BASE*	EA	1	\$2,700.00	\$2,700.00					\$2,300.00	\$2,300.00
36' ART. APPROACH W/ 4" V.G. & BASE*	EA	2	\$4,800.00	\$9,600.00					\$4,200.00	\$8,400.00
66' ART. APPROACH W/ 4" V.G. & BASE*	EA	1	\$6,700.00	\$6,700.00					\$5,200.00	\$5,200.00
66' ART. APPROACH W/ 8" V.G. & BASE*	EA	1	\$7,100.00	\$7,100.00					\$5,800.00	\$5,800.00
69' ART. APPROACH W/ 4" V.G. & BASE*	EA	1	\$7,000.00	\$7,000.00					\$5,200.00	\$5,200.00
69' ART. APPROACH W/ 8" V.G. & BASE*	EA	1	\$7,400.00	\$7,400.00					\$5,800.00	\$5,800.00
30' DRIVEWAY APPROACH W/ BASE	EA	7	\$1,500.00	\$10,500.00					\$1,400.00	\$9,800.00
4" VALLEY GUTTER	LF	220	\$40.00	\$8,800.00					\$30.00	\$6,600.00
ASPHALT REMOVAL & PATCHBACK	SY	330	\$35.00	\$11,550.00					\$30.00	\$9,900.00
TRAFFIC CONTROL (Inclusive of 10 Barricades)	LS	1	\$5,000.00	\$5,000.00					\$5,500.00	\$5,500.00
SWPPP	LS	1	\$3,000.00	\$3,000.00					\$3,000.00	\$3,000.00
TOTAL ROADWAYS				\$1,057,940.50						\$909,463.00

WATER										
6" WATER MAIN	LF	89	\$16.00	\$1,424.00					\$16.50	\$1,468.50
8" WATER MAIN	LF	2,155	\$20.00	\$43,100.00					\$17.75	\$38,251.25
10" WATER MAIN	LF	393	\$25.00	\$9,825.00					\$20.50	\$8,066.50
FIRE HYD. VALVE, TEE & LINE	EA	6	\$4,250.00	\$25,500.00					\$3,900.00	\$23,400.00
1" WATER SERVICE	EA	43	\$1,020.00	\$43,860.00					\$900.00	\$34,400.00
6" GATE VALVE	EA	3	\$1,100.00	\$3,300.00					\$750.00	\$2,250.00
8" GATE VALVE	EA	10	\$1,375.00	\$13,750.00					\$1,050.00	\$10,500.00
10" GATE VALVE	EA	3	\$2,500.00	\$7,500.00					\$1,750.00	\$5,250.00
10" HOT TAP	EA	1	\$1,150.00	\$1,150.00					\$2,250.00	\$2,250.00
MISC. FITTINGS, ELBOWS, REDUCERS, ETC.	LS	1	\$2,500.00	\$2,500.00					\$5,200.00	\$5,200.00
TOTAL WATER				\$157,409.00						\$131,028.25

SANITARY SEWER										
8" DIA. PVC SEWER MAIN	LF	3,266	\$21.60	\$70,545.60					\$16.50	\$53,889.00
10" DIA. PVC SEWER MAIN	LF	495	\$30.00	\$14,850.00					\$18.50	\$9,157.50
SEWER MANHOLES	EA	16	\$2,600.00	\$41,600.00					\$3,000.00	\$48,000.00
4" DIA. SEWER SERVICES	EA	46	\$500.00	\$23,000.00					\$300.00	\$13,800.00
TOTAL SEWER				\$149,995.60						\$124,946.50

Broadmoor Subdivision Phase 1 (Base Bid)
BID TAB

DESCRIPTION	UNIT	ESTIMATED QUANTITY	Engineer's Estimate		McCoy Construction	
			ESTIMATED PRICE	ESTIMATED COST	PRICE	ESTIMATED COST
PRESSURE IRRIGATION						
4" PI MAIN	LF	71	\$12.00	\$852.00	\$9.75	\$692.25
6" PI MAIN	LF	4,141	\$16.00	\$66,256.00	\$11.50	\$47,821.50
8" PI MAIN	LF	242	\$20.00	\$4,840.00	\$13.75	\$3,327.50
PRESSURE IRRIGATION SERVICES	EA	48	\$480.00	\$22,080.00	\$375.00	\$17,250.00
4" GATE VALVE	EA	4	\$700.00	\$2,800.00	\$580.00	\$2,320.00
6" GATE VALVE	EA	14	\$850.00	\$11,900.00	\$750.00	\$10,500.00
8" GATE VALVE	EA	2	\$7,000.00	\$14,000.00	\$6,000.00	\$12,000.00
4" TAP TEE	EA	1	\$1,600.00	\$1,600.00	\$1,500.00	\$1,500.00
6" TAP TEE	EA	1	\$2,500.00	\$2,500.00	\$2,200.00	\$2,200.00
BLOW-OFF ASSEMBLY	EA	1	\$1,600.00	\$1,600.00	\$2,600.00	\$2,600.00
MISC. FITTINGS, TEES, ELBOWS, ETC.	LS	1	\$9,000.00	\$9,000.00	\$4,000.00	\$4,000.00
TOTAL PRESSURE IRRIGATION				\$125,828.00		\$94,111.25
GRAVITY IRRIGATION						
12" DIA. PVC GIRR MAIN	LF	2,425	\$23.00	\$55,775.00	\$16.00	\$38,800.00
3'x3' IRRIGATION BOX	EA	10	\$2,800.00	\$28,000.00	\$2,100.00	\$21,000.00
GIRR MANHOLES	EA	2	\$2,000.00	\$4,000.00	\$2,500.00	\$5,000.00
TOTAL SEWER				\$85,775.00		\$64,800.00
STORM SEWER						
12" DIA. PVC STRM MAIN	LF	130	\$23.00	\$2,990.00	\$18.50	\$2,405.00
24" DIA. PVC STRM MAIN	LF	305	\$55.00	\$16,775.00	\$43.00	\$13,115.00
STD. CATCH BASIN	EA	3	\$2,100.00	\$6,300.00	\$1,300.00	\$3,900.00
STRM MANHOLES	EA	1	\$2,300.00	\$2,300.00	\$2,800.00	\$2,800.00
TRACT A RETENTION BASIN	LS	1	\$35,000.00	\$35,000.00	\$45,000.00	\$45,000.00
TOTAL SEWER				\$63,365.00		\$67,220.00
BASE BID TOTAL				\$1,640,313.10		\$1,391,467.00



1646 Eldridge Ave-PO Box 1657
Twin Falls, ID 83303-1657

Phone # 208-733-2585
Fax # 208-734-4379

Invoice

BILL TO
Broadmoor Sub.

DATE	INVOICE NO.
6/29/2016	982193

TERMS	PROJECT

DATE	DESCRIPTION	QTY	Unit	Scale#	RATE	AMOUNT
	ROADWAY					
	Roadway Total - \$909,463.00					
	WATER					
	1" Water Service	23	EA ✓		800.00	18,400.00
	Water Total - \$131,026.25					
	SEWER					
	4" Sewer Service	23	EA ✓		300.00	6,900.00
	Sewer Total - \$124,856.00					
	PRESS. IRRIGATION					
	6" PI Main	850	LF ✓		11.50	9,775.00
	PI Services	23	EA ✓		375.00	8,625.00
	PI Total - \$94,111.25					
	GRAVITY IRR.					
	Gravity Irr. Total - \$64,800.00					
	STORM SEWER					
	Storm Drain Total - \$67,220.00					
	Extras					
	10" PI	1,700	LF		18.00	30,600.00
	3/4 Gravel	220	CY		28.00	6,160.00
Total						\$80,460.00

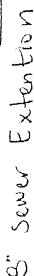
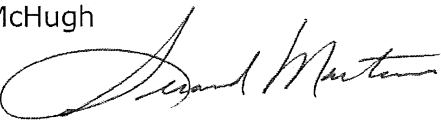


EXHIBIT E



Date: May 23, 2017

To: Jade Development, LLC
Attn: Timothy McHugh

From: Gerald Martens 

Via: mosichassoc@aol.com

Regarding: Broadmoor Subdivision

We are at the point in construction where I can accurately summarize the costs I have incurred in your behalf for the storm water related aspects of the project. I have allocated the costs based on the number of lots as the retention basin and park area replace the per lot park fee that would otherwise be required.

I have not included any cost relative to the land required or Wendell Street improvements and will absorb those costs and the increased pressure irrigation costs required by the City if we can settle quickly for the amounts detailed on the attached summary.

Please call me at 208-420-2461 if you have questions.

426-15

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.

ENGINEER'S COST ESTIMATE

BROADMOOR PLAYGROUND

Broadmoor North Broadmoor South
131 Lots 118 Lots
52.61% 47.39%

ACTIVITY DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL	COST	COST
STORM WATER IMPROVEMENTS						
RETENTION BASIN EXCAVATION	1	EA	\$45,000.00	\$45,000.00	\$23,674.50	\$21,325.50
24" PIPING	305	LF	\$43.00	\$13,115.00	\$6,899.80	\$6,215.20
12" PIPING	50	LF	\$18.50	\$925.00	\$486.64	\$438.36
OVERFLOW PIPING	45	LF	\$18.50	\$832.50	\$437.98	\$394.52
RETENTION BASIN IRRIGATION/LANDSCAPING	1	LS	\$28,532.17	\$28,532.17	\$15,010.77	\$13,521.40
PLAY GROUND IRRIGATION/LANDSCAPING	1	LS	\$35,145.56	\$35,145.56	\$18,490.08	\$16,655.48
DRAIN ROCK	75	CY	\$20.00	\$1,500.00	\$789.15	\$710.85
PLAYGROUND AREA GRAVEL	174	CY	\$32.00	\$5,568.00	\$2,929.32	\$2,638.68
PLAYGROUND AREA PAVING	778	SY	\$12.25	\$9,530.50	\$5,014.00	\$4,516.50
SUBTOTAL				\$140,148.73	\$73,732.25	\$66,416.48
CONSTRUCTION ENGINEERING 5%				\$7,007.44	\$3,686.61	\$3,320.82
TOTAL				\$147,156.17	\$77,418.86	\$69,737.31



Quote

Date 5/16/2017
Invoice # [100]
Expiration Date 5/31/2017

Rustic Ridge Landscape & Irrigation
277 Madrona St
Twin Falls, ID 83301
Phone 208-404-0105
Rusticridgelandscape@gmail.com

TO David Tebo
EHM Engineers
621 N College Rd Suite 100
Twin Falls, ID 83301
Phone 208-404-0105

Salesperson	Job	Payment Terms	Due Date
Brian Davis	Broadmoore Sub	½ Down	End of Job

Qty	Description	Unit Price	Line Total
1	Irrigation System (City Code) Baseline Controller		\$73,063.10
1	Hydro seed		\$16,700.00
1	Grade Prep		\$5,000.00
	Mow strip Irrigation/ Hydro Seed	\$31,085.37	
	Playground Irrigation/ Hydro seed	\$35,145.56	
	Retention Pond Irrigation/ Hydroseed	\$28,532.17	
Subtotal			\$94,763.10
Sales Tax			
Total			\$94,763.10

Quotation prepared by: BRIAN DAVIS

To accept this quotation, sign here and return:

Thank you for your business!



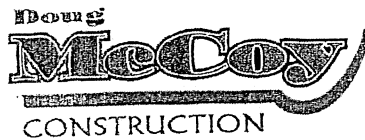
1646 Eldridge Ave-PO Box 1657
Twin Falls, ID 83303-1657
Phone # 208-733-2585
Fax # 208-734-4379

Estimate

NAME / ADDRESS
Broadmoor Sub.

DATE	ESTIMATE NO.
11/4/2015	2564

				PROJECT
DESCRIPTION	QTY	UOM	COST	TOTAL
ROADWAY				
Grading	61.8	STA	250.00	15,450.00
Excavtion	61.8	STA	1,000.00	61,800.00
1 1/2" Gravel	4,390	CY	28.00	122,920.00
3/4" Gravel	1,330	CY	28.00	37,240.00
2" Asphalt	11,014	SY	12.25	134,921.50
3" Asphalt	10,061	SY	16.50	166,006.50
STD Curb	5,101	LF	16.00	81,616.00
Rolled Curb	2,724	LF	16.00	43,584.00
5' Sidewalk Attached	2,500	SY	33.00	82,500.00
5' Sidewalk Detached	1,983	SY	33.00	65,439.00
6' Sidewalk Detached	107	SY	33.00	3,531.00
24' Art. 1/2 Approach w/4' VG	1	EA	2,100.00	2,100.00
24' Art. 1/2 Approach w/8' VG	1	EA	2,300.00	2,300.00
36' Art. Approach w/ 4' VG	2	EA	4,200.00	8,400.00
66' Art. Approach w/4' VG	1	EA	5,200.00	5,200.00
66' Art. Approach w/8' VG	1	EA	5,800.00	5,800.00
69' Art. Approach w/4' VG	1	EA	5,200.00	5,200.00
69' Art. Approach w/8' VG	1	EA	5,800.00	5,800.00
30' Driveway App.	7	EA	1,400.00	9,800.00
4' Valley Gutter	220	LF	30.00	6,600.00
Asphalt Removal and Patch Back	870	SY	36.50	31,755.00
Traffic Control (inclusive of 10 Barricades)	1	LS	5,500.00	5,500.00
SWPPP	1	LS	6,000.00	6,000.00
Roadway Total - \$909,463.00				
WATER				
6" Water Main	89	LF	16.50	1,468.50
8" Water Main	2,155	LF	17.75	38,251.25
10" Water Main	393	LF	20.50	8,056.50
Fire Hydrant	6	EA	3,900.00	23,400.00
1" Water Service	43	EA	800.00	34,400.00
6" Gate Valve	3	EA	750.00	2,250.00
8" Gate Valve	10	EA	1,050.00	10,500.00
10" Gate Valve	3	EA	1,750.00	5,250.00
Total				



1646 Eldridge Ave-PO Box 1657
Twin Falls, ID 83303-1657
Phone # 208-733-2585
Fax # 208-734-4379

Estimate

NAME / ADDRESS
Broadmoor Sub.

DATE	ESTIMATE NO.
11/4/2015	2564

				PROJECT
DESCRIPTION	QTY	UOM	COST	TOTAL
10" Hot Tap	1	EA	2,250.00	2,250.00
Misc. Fittings	1	LS	5,200.00	5,200.00
Water Total - \$131,026.25				
SEWER				
8" Sewer Main	3,266	LF	16.50	53,889.00
10" Sewer Main	495	LF	18.50	9,157.50
Manholes	16	EA	3,000.00	48,000.00
4" Sewer Service	46	EA	300.00	13,800.00
Sewer Total - \$124,856.00				
PRESS. IRRIGATION				
4" PI Main	71	LF	9.75	692.25
6" PI Main	4,141	LF	11.50	47,621.50
8" PI Main	242	LF	13.75	3,327.50
PI Services	46	EA	375.00	17,250.00
4" Gate Valve	4	EA	580.00	2,320.00
6" Gate Valve	14	EA	750.00	10,500.00
8" Gate Valve	2	EA	1,050.00	2,100.00
4" Tap Tee	1	EA	1,500.00	1,500.00
8" Tap Tee	1	EA	2,200.00	2,200.00
Blow Off Ass.	1	EA	2,600.00	2,600.00
Misc. Fittings	1	LS	4,000.00	4,000.00
PI Total - \$94,111.25				
GRAVITY IRR.				
12" G IRR.	2,425	LF	16.00	38,800.00
3'x3' IRR. Box	10	EA	2,100.00	21,000.00
G IRR Manholes	2	EA	2,500.00	5,000.00
Gravity Irr. Total - \$64,800.00				
STORM SEWER				
12" Storm Drain Pipe	130	LF	18.50	2,405.00
24" Storm Drain Pipe	305	LF	43.00	13,115.00
STD Catch Basin	3	EA	1,300.00	3,900.00
Storm Manhole	1	EA	2,800.00	2,800.00
Tract A Retention Basin	1	LS	45,000.00	45,000.00
Storm Drain Total - \$67,220.00				
Total				



1646 Eldridge Ave-PO Box 1657

Twin Falls, ID 83303-1657

Phone # 208-733-2585

Fax # 208-734-4379

Estimate

NAME / ADDRESS
Broadmoor Sub. Additive Alternate

DATE	ESTIMATE NO.
11/16/2015	2565

					PROJECT
					Phase #1 Additive A...
DESCRIPTION	QTY	UOM	COST	TOTAL	
ROADWAY					
Grading	9	STA	300.00	2,700.00	
Excavation	9	STA	1,250.00	11,250.00	
1 1/2" Gravel	542	CY	32.00	17,344.00	
3/4" Gravel	181	CY	32.00	5,792.00	
2" Asphalt	3,252	SY	12.75	41,463.00	
Rolled Curb	1,704	LF	18.00	30,672.00	
5' Attached Sidewalk	947	SY	34.00	32,198.00	
Roadway Total - \$141,419.00					
WATER					
6" Water Main	877	LF	17.50	15,347.50	
Fire Hydrant	1	EA	4,000.00	4,000.00	
1" Water Service	20	EA	800.00	16,000.00	
Misc. Fittings	1	LS	2,500.00	2,500.00	
Water Total - \$57,847.50					
SEWER					
8" Sewer Main	725	LF	18.00	13,050.00	
Manhole	2	EA	3,200.00	6,400.00	
Sewer Service	18	EA	325.00	5,850.00	
Sewer Total - \$25,950.00					
PRESSURE IRR.					
4" PI Main	877	LF	11.00	9,647.00	
PI Services	18	EA	400.00	7,200.00	
Misc. Fitting	1	LS	1,000.00	1,000.00	
PI Total - \$17,847.00					
Sales Tax			6.00%	0.00	
Total				\$222,413.50	

EXHIBIT F

Lars Lundberg

From: Troy Vitek
Sent: Tuesday, April 10, 2018 2:33 PM
To: 'gmartens@ehminc.com'
Cc: 'Dave Thibault'
Subject: Payback Request for Broadmoor Subdivision Sanitary Sewer and Pressurized Irrigation

Gerald,

We are in receipt of your request for Payback for Broadmoor. The City has reviewed the boundary and agree that Broadmoor North and South are the beneficiaries of the improvement and request that you submit the application on the standard City application along with the 3rd party review approval letter, list of affected RP numbers, associated maps, acceptance letters, receipts, etc. Once we receive the completed application we will review it and schedule it before the Reimbursement Committee.

Best Regards,
Troy

EXHIBIT G

Sent from my iPhone

Begin forwarded message:

From: Scott Allen <sallen@jub.com>

Date: May 9, 2018 at 8:04:04 AM MDT

To: "Troy Vitek (tvitek@tfid.org)" <tvitek@tfid.org>

Cc: "Brian Mosich (mosichassoc@aol.com)" <mosichassoc@aol.com>, "Mary O'Riley (jadeidaho5759@gmail.com)" <jadeidaho5759@gmail.com>

Subject: 180509 Broadmoor South - Payback & Purchase Agreement

Troy,

Gerald Martens recently submitted a payback agreement to the City for construction work completed in the north portion of Broadmoor Subdivision which would provide sewer service and pressure irrigation service to the south portion of Broadmoor Subdivision, which is owned by Jade Development. It is my understanding that the City has rejected the aforementioned application due to its incomplete form at time of submittal. Mr. Martens has also submitted separate requests to Jade Development, for prorated payment of the subdivision's park area.

The developer of Broadmoor South, Jade Development, was quite shocked at the attempted submittal of the payback agreement since it was in violation of the executed "Real Estate Purchase and Sale Agreement" for the Broadmoor property in its entirety.

Jade Development met with Mr. Martens on April 23, 2018, at John Fitzgerald's office, to discuss and resolve this matter. Unfortunately, a resolution was not achieved and the meeting was adjourned. Jade Development, via Scott Allen, also reached out to Mr. Martens, following the subject meeting, to discuss this matter in further detail. Once again, a resolution was not achieved.

Therefore, this email is being transmitted to the City as, 1) a record of Jade Development's attempts to resolve this matter, and 2) inform the City that an executed agreement exists which obligates Mr. Martens to provide storm water retention, sewer service and pressure irrigation service to the Broadmoor South development. If Mr. Martens continues to file payback agreements for Broadmoor North, Jade Development is prepared to use legal counsel, as necessary, to assure that Mr. Martens adheres to the conditions outlined in the abovementioned executed real estate purchase agreement for the Broadmoor property.

Please contact Jade Development and J-U-B immediately upon receipt of any payback agreement(s), submitted by Mr. Martens or his partners, which requests reimbursement from Jade Development.

Regards,

SCOTT L. ALLEN

*Project Manager
Land Development*

J-U-B ENGINEERS, Inc.

115 Northstar Ave. Twin Falls, ID 83301

e sallen@jub.com w www.jub.com

p 208 733 2414 ex 6033 c 208 432-2146



This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary.

Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on J-U-B's home page.

If you believe you received this email in error, please reply to that effect and then delete all copies.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

EXHIBIT H



Date: Thursday, October 25, 2018
To: Impact Fee & Improvement Reimbursement Committee
From: Gerald Martens

ACTION ITEM

Request:

Broadmoor Subdivision Reimbursement Request

Time Estimate:

Staff estimates 5-10 minutes to explain the application.

Background:

Broadmoor Subdivision has constructed improvements that are eligible for payback. A payback ordinance is in place that allows for this to happen. If the commission accepts the payback as presented, the City will enter the payback into the City GIS database and will require it to be fulfilled before executing any more approvals.

Approval Process:

The Commission can accept the application as presented, deny the application or accept with changes. A majority vote is required for execution

Budget Impact:

There is no budgetary impact to the City of Twin Falls. If the commission approves there is a requirement that the beneficiary repay the original developer to the tune of \$184,302.73 for improvements completed.

Regulatory Impact:

N/A

History:

N/A

Analysis:

N/A

Conclusion:

Staff has verified the boundary of the Payback and agrees with the applicant on the boundary. The payback was reviewed by a third party firm who verified the amounts and that the application meets the rules of the ordinance and resolutions. (letter included)

Attachments:

1. Broadmore Reimbursement Application



EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE

RECEIVED

SEP 28 2018

CITY OF TWIN FALLS
ENGINEERING DEPT.

To: Mr. Troy Vitek, P.E.

From: Gerald Martens, P.E.

Date: June 7, 2018

RE: Payback Request For Broadmoor Subdivision – Pressurized Irrigation & Storm Drainage

Please accept this transmittal as formal request to be considered as an initial developer for the Broadmoor Subdivision for the lots located north of Ridgeway Road and eligible for reimbursement for construction costs. At my expense an extension of pressurized irrigation main line has been installed to connect to the Riverhawk Pressurized Irrigation Pump Station running parallel to North College Road. Additionally, I have constructed the storm water retention basin within the park area of the City and completed seeding and other improvements for this area according to the requirements of City Code. Therefore, in accordance with Resolution No. 2017-13 I hereby request that I be identified as the initial developer and be reimbursed according to City Code provisions.

Pressurized Irrigation Improvements

Connection to Existing Station @ \$800.00 Lump Sum	\$800.00
1,700 LF of 10" PVC P.I. Main Line @ \$18.00/LF	\$30,600.00
182 LF of 6" PVC P.I. Main Line @ \$13.75/LF	\$2,502.50
220 CY of ¾" Gravel for Backfill @ \$28.00/CY	\$6,160.00
525 SY of Asphalt Patch Back & Repair @ \$36.50/SY	\$19,162.50
(2) 10" Gate Valves @ \$1,200.00 Each	\$2,400.00
(3) 10" 90° Elbows @ \$500.00 Each	\$1,500.00
(1) 10"x6"x6" Tee @ \$1,500.00 Each	\$1,500.00
Traffic Control @ \$1,000.00 Lump Sum	\$1,000.00

Storm Drainage Improvements at Park Area

Retention Basin @ \$45,000.00 Lump Sum	\$45,000.00
(40) Tree Plantings @ \$250.00/Tree	\$10,000.00
Irrigation & Hydro Seed at Park (Playground Area)	\$35,145.56
Irrigation & Hydro Seed at Park (Retention Pond Area)	\$28,532.17

Total Improvement Costs Identified Above **\$184,302.73**

This work involved installation of the pressurized irrigation main line, asphalt patch back and repair, as well as traffic control. A full compensation for the eligible reimbursement amount plus 15% to address the costs of engineering, management, interest, and inspection is requested for these improvements.

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

9/11/2018

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

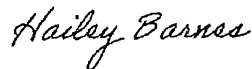
Dear Mr. Vitek,

Mr. Gerald Martens retained my services to conduct a third-party review of the submitted Improvement Reimbursement Application for the northern portion of Broadmoor Subdivision. After a thorough review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,

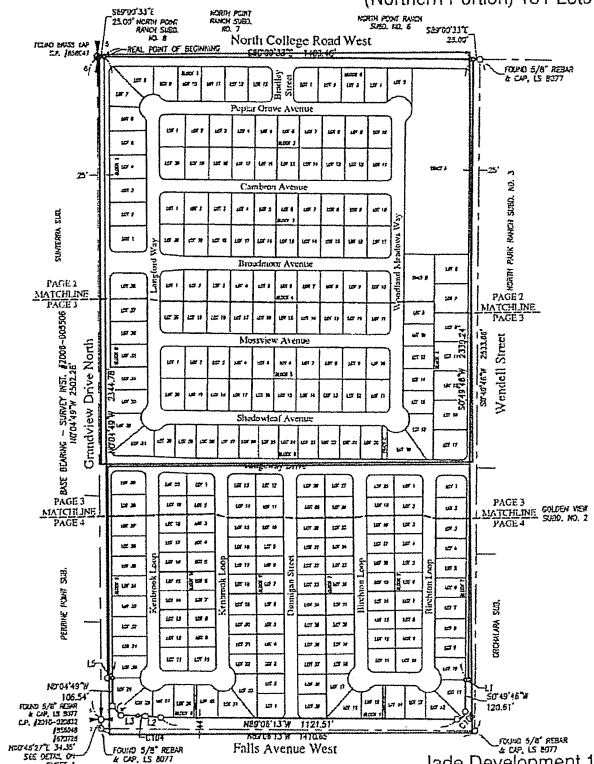
Hailey G. Barnes, P.E.



Attachments: Broadmoor Subdivision Payback Request Package

Cc: Gerald Martens, P.E.; David Thibault, P.E.

Broadmoor Subdivision (Northern Portion) 131 Lots



BROADMOOR SUBDIVISION

A SUBDIVISION OF
Lots 61 Thru 65, Lot 40 and A Portion of Lots 41 and 42 of
"ORCHALARA SUBDIVISION"
LOCATED IN A PORTION OF
SW 1/4 OF SECTION 5 &
NW 1/4 OF SECTION 8
TOWNSHIP 10 SOUTH,
RANGE 17 EAST, B.M.,
TWIN FALLS COUNTY, IDAHO
2015

Legend

SUBDIVISION BOUNDARY LINE	---
SECTION LINE	---
EASEMENT LINE	---
ADJACENT PROPERTY LINE	---
CENTERLINE OF STREET	---
LOT LINE	---
CALCULATED POINT (NOT SET)	⊙
FOUND BRASS CAP	⊙
FOUND 5/8" REBAR, LS 3077	⊙
SET 5/8" x 24" REBAR & CAP - LS 10110	⊙
TO BE SET 1/2" x 24" REBAR & CAP - LS 10110	⊙
TO BE SET 5/8" x 24" REBAR & CAP - LS 10110	⊙

Notes:

- A 15 FOOT WIDE UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOT LINES AND ADJACENT TO STREET FRONTAGES.
- ALL TRAFFIC ACCESS ON LOTS ADJACENT TO COLLECTOR OR ARTERIAL ROADS WILL BE PROVIDED FROM RESIDENTIAL STREETS INCLUDING HOUSING DRIVE EXCEPT FOR DEDICATED ACCESS ON LOTS 6, 7, 9, 11, 13 AND 15 OF BLOCK 6.

Health Certificate

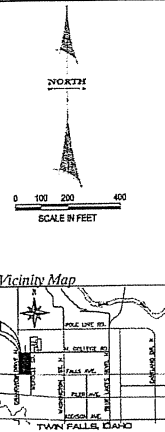
"SANITARY RESIDENCES AS REQUIRED BY IDAHO CODE TITLE 50, CHAPTER 13, HAVE BEEN CONSIDERED BASED ON THE STATE OF IDAHO, DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) APPROVAL OF THE DESIGN PLANS AND SPECIFICATIONS AND THE CONDITIONS IMPOSED ON THE DEVELOPER FOR CONTINUED SUBSTITUTION OF SANITARY RESTRICTIONS. WATER IS AVAILABLE AT THE TIME OF THIS APPROVAL. NO DRINKING WATER OR SEWER/SEPTIC FACILITIES WERE CONSTRUCTED. BUILDING CONSTRUCTION CAN BE ALLOWED WITH APPROPRIATE BUILDING PERMITS IF DRINKING WATER OR SEWER FACILITIES HAVE SINCE BEEN CONSTRUCTED OR IF THE DEVELOPER IS SIMULTANEOUSLY CONSTRUCTING THOSE FACILITIES. IF THE DEVELOPER FAILS TO CONSTRUCT FACILITIES ON NEXT OTHER CONTINGENCY OF DEC. THEN SANITARY RESTRICTIONS MAY BE RE-APPLIED, IN ACCORDANCE WITH SECTION 50-1301, IDAHO CODE. BY THE ISSUANCE OF A CERTIFICATE OF DEPARTMENTAL AND NO CONSTRUCTION OF ANY BUILDING OR SHEDDING DRINKING WATER OR SEWER/SEPTIC FACILITIES SHALL BE ALLOWED."

DISTRICT HEALTH DEPARTMENT, RENO

DATE:

Tracts Owned & Maintained By:

- TRACT A - CITY OF TWIN FALLS
- TRACT B - HOMEOWNERS ASSOCIATION
- TRACT C - CITY OF TWIN FALLS
- TRACT D - CITY OF TWIN FALLS
- TRACT E - CITY OF TWIN FALLS



Sheet Number	Sheet Title
1 OF 7	PLAT FACE
2 OF 7	PLAT SHEET 2
3 OF 7	PLAT SHEET 3
4 OF 7	PLAT SHEET 4
5 OF 7	LINE & CURVE TABLES
6 OF 7	ACKNOWLEDGEMENTS
7 OF 7	CERTIFICATE OF OWNERS

Monument Certification

THE METEOR MONUMENTS ON THIS PLAT SHOWN AS "TO BE SET" WILL BE SET IN ACCORDANCE WITH SECTION 50-1333, IDAHO CODE, ON OR BEFORE 1 YEAR AFTER THE RECOGNITION OF THE FINAL PLAT OR AS DETERMINED BY THE CITY OF TWIN FALLS.

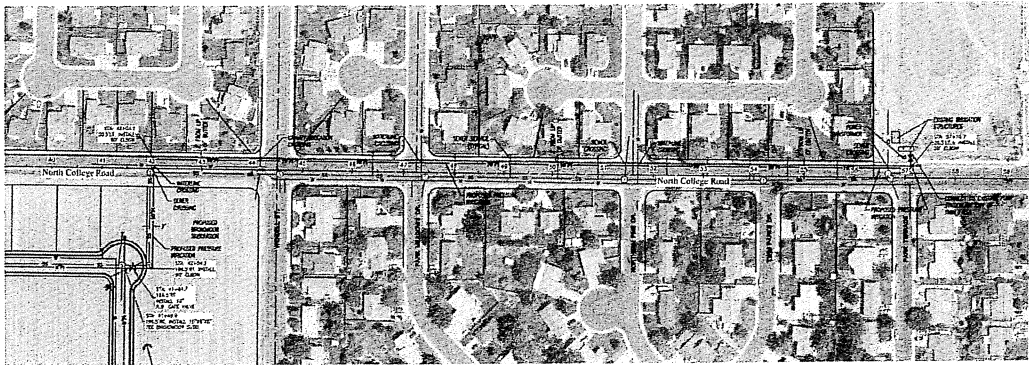
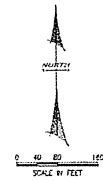
Jade Development 118 Lots in
The Falls at Broadmoor
EHM Engineers, Inc.



4-03-01 RP
SHEET 1 OF 7

10" Pressurized Irrigation Main Extension to Existing Pumping Station along North College Rd. ~ 1,700 Linear Feet of 10" Dia. PVC Pipe

- (3) 50 Degree Elbows
- (2) 10" Gate Valves
- (1) 10"x6"x6" Tee
- Roadway Cut and Patchwork
- 220 CY of 3/4" Gravel for Backfill
- 525 SF of Asphalt Patchwork
- Traffic Control Required



NOTES:
ALL PIPE INSTALLATION SHALL BE PERFORMED USING CITY OF TWIN FALLS STANDARD DRAWING T-1.

BHM Engineers, Inc.
Professional Engineer
1425 Main Street, Suite 200
Twin Falls, ID 83401
208.735.1400
www.bhmeng.com

**PROPOSED OFFSITE PRESSURE IRRIGATION PLAN
for
BROADMOOR SUBDIVISION**

Δ -
Δ -
Δ -
Δ -
Δ -

DO NOT SCALE DRAWING
DIMENSIONS SHALL BE AS SHOWN
ON THIS SET OF PLANS
UNLESS OTHERWISE NOTED
ON THIS SET OF PLANS
OR IN THE FIELD

DESIGNED BY	DLT
CHECKED BY	DLT
DATE	04/01/11
SCALE	AS SHOWN
PROJECT	C-424-11-1001-11
DATE	04/01/11

C 5.01 PI

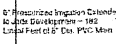




EXHIBIT I

From: Fritz Wonderlich <fwonderlich@tfid.org>
Sent: Thursday, October 25, 2018 2:50 PM
To: Scott Allen <sallen@jub.com>
Cc: Mitch Humble <Mhumble@tfid.org>; Troy Vitek <tvitek@tfid.org>; Shayne Nope <snope@tfid.org>
Subject: Fw: 181025 Broadmoor Reimbursement Request

Hi Scott,

We were all surprised by this today on very short notice. Please email to me a copy of the Purchase and Sale Agreement along with any relevant correspondence regarding this matter. We need to be able to provide informed recommendations to the Reimbursement Committee. Thanks.

From: Troy Vitek
Sent: Thursday, October 25, 2018 10:29 AM
To: Fritz Wonderlich
Cc: Shayne Nope
Subject: FW: 181025 Broadmoor Reimbursement Request

Fritz,

There is an agenda item for today at noon for reimbursement of infrastructure for Broadmoor South. Below you can see Scott's email as he wishes this issue to be resolved outside the committee. I'm not sure what we should do with the agenda item. Thoughts?

Troy

From: Scott Allen [<mailto:sallen@jub.com>]
Sent: Thursday, October 25, 2018 10:00 AM
To: Mitch Humble <Mhumble@tfid.org>; Jonathan Spendlove <JSpendlove@tfid.org>; Troy Vitek <tvitek@tfid.org>
Cc: Brian Mosich (mosichassoc@aol.com) <mosichassoc@aol.com>; Mary O'Riley (jadeidaho5759@gmail.com) <jadeidaho5759@gmail.com>
Subject: 181025 Broadmoor Reimbursement Request

Mitch, Jonathan and Troy,

I just noticed on the city website that Mr. Martens has submitted another payback agreement request for Broadmoor Subdivision. If the subject payback request boundary includes Broadmoor South (the area of Broadmoor Subdivision located south of Ridgeway Drive) then Jade Development (owner and developer of Broadmoor South) hereby requests that no action be taken on the payback agreement today.

The executed "Real Estate Purchase and Sale Agreement", for the entire Broadmoor property, states each parties responsibilities regarding installation of infrastructure and other construction items. If Broadmoor South is included in the reimbursement/payback boundary, then this reimbursement request may be in direct conflict with the original, executed purchase

agreement. These conflicts need to be resolved prior to approval of the reimbursement request.

The below email in RED was sent to Mr. Vitek (Assistant City Engineer) earlier this year to inform him of the executed purchase agreement, and actions that had occurred between Mr. Martens and Jade Development in attempts to resolve reimbursement matters which arose from the original payback agreement submittal. Please share this email with the Reimbursement Committee before any action on this item occurs today.

Original email to Troy Vitek on 05.09.18:

Troy,

Gerald Martens recently submitted a payback agreement to the City for construction work completed in the north portion of Broadmoor Subdivision which would provide sewer service and pressure irrigation service to the south portion of Broadmoor Subdivision, which is owned by Jade Development. It is my understanding that the City has rejected the aforementioned application due to its incomplete form at time of submittal. Mr. Martens has also submitted separate requests to Jade Development, for prorated payment of the subdivision's park area.

The developer of Broadmoor South, Jade Development, was quite shocked at the attempted submittal of the payback agreement since it was in violation of the executed "Real Estate Purchase and Sale Agreement" for the Broadmoor property in its entirety.

Jade Development met with Mr. Martens on April 23, 2018, at John Fitzgerald's office, to discuss and resolve this matter. Unfortunately, a resolution was not achieved and the meeting was adjourned. Jade Development, via Scott Allen, also reached out to Mr. Martens, following the subject meeting, to discuss this matter in further detail. Once again, a resolution was not achieved.

Therefore, this email is being transmitted to the City as, 1) a record of Jade Development's attempts to resolve this matter, and 2) inform the City that an executed agreement exists which obligates Mr. Martens to provide storm water retention, sewer service and pressure irrigation service to the Broadmoor South development. If Mr. Martens continues to file payback agreements for Broadmoor North, Jade Development is prepared to use legal counsel, as necessary, to assure that Mr. Martens adheres to the conditions outlined in the abovementioned executed real estate purchase agreement for the Broadmoor property.

Please contact Jade Development and J-U-B immediately upon receipt of any payback agreement(s), submitted by Mr. Martens or his partners, which requests reimbursement from Jade Development.

Regards,

SCOTT L. ALLEN
Project Manager
Land Development
J-U-B ENGINEERS, Inc.
115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



Representatives from Jade Development will be at the meeting to provide testimony and answer any questions.

Since reimbursement agreement information was not provided to Jade Development or J-U-B, as requested in the above RED email, we hereby request that the city email Jade Development and J-U-B a copy of all information submitted by Mr. Martens. Jade's representatives are cc'd in this email to provide you with their email addresses.

Please do not hesitate to call me with any questions.

Regards,

SCOTT L. ALLEN
Project Manager
Land Development
J-U-B ENGINEERS, Inc.
115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary. Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on the J-U-B home page. If you believe you received this email in error, please reply to that effect and then delete all copies.

EXHIBIT J

DECLARATION OF JOE RUSSELL

I, Joe Russell, declare as follows:

1. At all times relevant hereto, I was the principal owner of Rusmor, LLC. I make this declaration based upon my own personal knowledge and review of the real estate purchase and sale agreement ("Agreement") attached hereto as Exhibit A, and I am competent to testify thereto.

2. I was the principal owner of Rusmor, LLC, which was the original owner of property commonly known as the Broadmoor Subdivision ("Subdivision"). In 2015, I negotiated the Agreement to sell the northern portion of the Subdivision to Gerald Martens. Prior to negotiating the Agreement, I had hired Mr. Martens' engineering company to perform engineering services related to the Subdivision.

3. While negotiating the terms of the Agreement, Mr. Martens and I discussed that certain improvements were required in order to develop the Subdivision, such as additional engineering services, storm/waste-water runoff facilities, and active utility service connections for pressurized irrigation, sewer, and water. In exchange for a significant reduction to the sale price, Mr. Martens told me that he would provide, and pay for, the aforementioned services and improvements, including without limitation, additional engineering services, storm/waste-water runoff facilities, and active utility service connections to the portion of the Subdivision that Rusmor, LLC retained. Regarding the engineering fees, Mr. Martens told me that he would provide, at no cost, all engineering and related professional services necessary to subdivide the Subdivision and to cause the Subdivision plat to be accepted and recorded. The Agreement reflects our negotiated terms, and I had no reason to doubt that Mr. Martens understood and agreed to his obligations.

4. The entire property had received formal approval by the City of Twin Falls for the Preliminary Plat of the Subdivision. That Plat, approved and signed by the City and Rusmor LLC, included a subdivision swimming pool, with adequate parking for that amenity, as well as a 4 acre City of Twin Falls Park. We purposely allowed for the 4 acres for the Park, to allow for water retention to be included within the park area, without the unattractive water retention cavity appearance I have noticed within subdivisions Mr. Martens has previously designed and developed. During negotiations between myself and Mr. Martens, I suggested we incorporate into the Agreement the portion each lot would contribute towards the maintenance of the swimming pool (those contained within the property he was purchasing and those contained within the property we were retaining), so everyone would have clarity on that issue. Mr. Martens stated the swimming pool maintenance allocations per lot could be worked out at a later date. Either before or shortly after Mr. Martens purchased the northern portion of the subdivision, he persuaded the City to alter the approved Preliminary Plat (without our knowledge or consent) deleting the swimming pool and altering the park/water retention area-to allow him to include more lots on his purchased portion.

5. The negotiated terms only included the possibility of reimbursement related to Rusmor, LLC's construction of Ridgeway Drive, which is the road that divides the property that Mr. Martens was purchasing and the property that Rusmor, LLC retained. Ridgeway Drive was uniquely important to me because it provides access to the retained property. I desired to maintain responsibility for the construction of Ridgeway Drive because I intended to further develop the retained lots and wanted to have control of the timing of the construction of the road. Although Rusmor, LLC was responsible for the construction and cost of Ridgeway Drive, Mr. Martens and I discussed that each party would be responsible for its own sidewalk, curb, and gutter along

gutter along Ridgeway Drive. In other words, Mr. Martens was responsible for the construction and cost of the northern sidewalk, curb, and gutter, and Rusmor, LLC was responsible for the southern sidewalk, curb, and gutter. Due to the permitting and construction process, it is impractical to construct a road separate from the sidewalk, curb, and gutter. Therefore, Mr. Martens and I discussed that, in the event that Rusmor, LLC constructed the entire road and both the northern and southern sides of the sidewalk, curb, and gutter, Mr. Martens would reimburse Rusmor, LLC for his portion of the sidewalk, curb, and gutter. The Agreement includes a term to that effect, and I had no reason to doubt that Mr. Martens understood and agreed to his reimbursement obligation.

6. The Agreement with Mr. Martens required him to extent certain service lines to the property within one year of his purchase of the northern portion of the subdivision, provided we gave him a written notice at least four prior to the end of that period, which we did do. It is my understanding that Mr. Martens did not meet this contractual obligation within the timeframe required.

7. After selling the northern portion of the Subdivision to Mr. Martens, I sold the retained property to Jade Development, LLC. I expected Mr. Martens to follow through with his obligations because the Agreement specifies that it is binding upon, and inures the benefit to each party's successor-in-interest,

8. After I sold the property to Jade Development, LLC, I became aware that Mr. Martens was seeking reimbursement from Jade Development, LLC for the storm/waste-water runoff facilities. I understand that Mr. Martens and Jade Development representatives met in the Spring of 2018 to discuss this matter. My understanding is that during the discussion of the terms

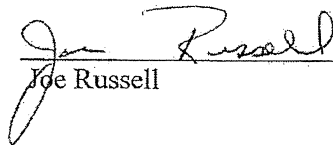
of the Agreement Mr. Martens acknowledged and confirmed his obligation to construct and pay for the aforementioned improvements.

9. I was stunned to learn that Mr. Martens appears to be once again trying to circumvent his obligations under the Agreement by filing an application with the Improvement Reimbursement Committee (IRC) seeking reimbursement from Jade Development, LLC for the storm/waste-water runoff facilities and pressurized irrigation costs that he incurred in satisfying those contractual obligations.

10. In summary, in return for his agreement to solely pay for those development costs, Mr. Martens received a substantially reduced purchase price on the property he purchased from Rusmor, LLC. If Mr. Martens underestimated the amount of those costs, that does not negate the fact that they are his sole responsibility. Further, if he is now disputing the terms of the Agreement, and specifically that he is obligated to pay all of the Subdivision's development costs outlined therein, that is a matter that should be decided by a Court of law – not the IRC.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Executed on this 16 day of November, 2018.



Joe Russell

EXHIBIT K



ATTORNEYS AND COUNSELORS

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
208.344.6000
www.hawleytroxell.com

LYNNETTE M. DAVIS
ADMITTED TO PRACTICE LAW IN IDAHO
EMAIL: LDAVIS@HAWLEYTROXELL.COM
DIRECT DIAL: 208.388.4944
DIRECT FAX: 208.954.5213

November 19, 2018

TRANSMITTED VIA E-MAIL

Travis Rothweiler, ICMA-CM
City Manager
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: trothweiler@tfid.org

Fritz Wonderlich
City Attorney
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: fwonderlich@tfid.org

Re: *Jade Development, LLC / Gerald Martens Application for Reimbursement*

Troy and Fritz:

As you are aware, I represent Jade Development, LLC (“Jade”) with respect to Gerald Martens’ application for reimbursement for the installation of pressurized irrigation and storm/waste-water retention systems in the Broadmoor Subdivision. Unfortunately, I am unable to attend the informal meeting scheduled for Monday, November 19, 2018. As Fritz and I discussed on November 12, 2018, I am providing this letter to explain Jade’s position regarding Mr. Martens’ request. This letter is divided into two sections—the first section summarizes the facts, and the second section explains Jade’s concerns.

FACTS

Rusmor, LLC (“Rusmor”) was the original owner of the Broadmoor Subdivision (“Subdivision”). Rusmor retained Mr. Martens’ engineering company, EHM Engineers, Inc. (“EHM”) to perform certain engineering work on the Subdivision. In 2015, Rusmor executed a Real Estate Purchase and Sale Agreement (“Agreement”) by which it sold the northern portion of the Subdivision to Mr. Martens (“Martens’ Property”). Rusmor retained the remaining property (“Retained Property”). The Agreement is attached hereto as Exhibit A.

Joe Russell, the principal owner of Rusmor, negotiated the Agreement with Mr. Martens. The terms of the Agreement require Mr. Martens to install, at his expense, certain utilities for the

Retained Property such as pressurized irrigation and storm/waste-water runoff systems. Further, the Agreement requires Mr. Martens and EHM to provide all remaining engineering and related services for the Retained Property. In exchange, Mr. Russell significantly reduced the purchase price of Martens' Property.

Sometime later, Rusmor sold the Retained Property to Jade. Pursuant to paragraph 15 of the Agreement and Jade's agreement with Rusmor, which expressly referenced the Agreement and Mr. Martens' obligations thereunder, Jade was bound by, and received the benefit of, the Agreement. Accordingly, Jade expected Mr. Martens to install the pressurized irrigation and storm/waste-water runoff systems for the Retained Property, which Mr. Martens did.

In May 2017, Mr. Martens sent Jade a letter requesting that Jade pay for a portion of storm/waste-water improvement costs. Mr. Martens' request is attached hereto as Exhibit B. Mr. Martens' request included a document drafted by EHM, which estimated a total cost of \$147,156.17.¹ Mr. Martens asserted that Jade was responsible for 47.39% of the cost: \$69,737.31. Also attached to the request were estimates from subcontractors for other development-related work, such as pressurized irrigation, water, and sewer. Jade discussed Mr. Martens' request with Rusmor and confirmed that Mr. Martens was obligated to pay the storm/waste-water improvement cost. Accordingly, Jade advised Mr. Martens that because it was his sole obligation to provide the storm/waste-water improvement, Jade would not pay any portion of the cost. As will be discussed in greater detail below, Mr. Martens' 2017 request is noteworthy because it demonstrates that, as of May of 2017, he was willing to pay for the pressurized irrigation costs.

On December 29, 2017, Mr. Martens sent an application for reimbursement to Troy Vitek (Assistant City Engineer) requesting reimbursement for: (1) \$9,003.00 for sanitary sewer improvements; and (2) \$65,625 for pressurized irrigation improvements. Mr. Martens' December application is attached hereto as Exhibit C. Instead of submitting Mr. Martens' request to the Improvement Reimbursement Committee ("IRC") for approval, Mr. Vitek advised Jade that the City does not like to get in the middle of disputes between private parties and suggested that Jade and Mr. Martens resolve the issue between themselves. Based upon its discussions with Mr. Vitek, Jade understood that the IRC or Mr. Vitek rejected Mr. Martens' request for reimbursement because it did not comply with the requirements of Resolution 2017-13. Jade agreed with Mr. Vitek's suggestion and organized a meeting with Mr. Martens, John Fitzgerald (attorney for Rusmor), and Scott Allen (Project Manager for Jade) and Jade personnel. The meeting occurred on April 23, 2018. During the course of the meeting, Mr. Martens

¹ Martens later acknowledged that the \$147,156.17 was an overstatement of the costs related to the storm/waste-water improvements. Indeed, he later submitted a request for nearly \$30,000 less than originally requested.

acknowledged that the Agreement required him to install, at his expense, the various utilities provided for in the Agreement. However, when it became apparent that Jade expected him to honor the terms of the Agreement, he made the following threat to Jade:

Nobody bullies me. The City and I will stop you in your tracks
unless you pay me.

Following the meeting, Scott Allen called Mr. Martens to further discuss the issue, but no resolution was achieved. Thereafter, Mr. Allen sent an email to Troy Vitek (Assistant City Engineer) wherein he: (1) confirmed that the Agreement required Mr. Martens to provide the utilities to Jade's portion of the Subdivision; (2) advised the City of Jade's attempts to resolve the issues with Mr. Martens; (3) confirmed Jade's understanding that Mr. Martens' reimbursement request had been denied by the IRC; and (4) requested immediate notice should Mr. Martens seek reimbursement from Jade in the future. Mr. Allen's email is attached hereto as Exhibit D.

On October 25, 2018, Jade discovered that Mr. Martens had submitted another reimbursement request to the IRC, and that the IRC was meeting to consider the request that day. Mr. Martens' application asserts that the total reimbursable cost was: (1) \$65,625 for pressurized irrigation; (2) \$118,677.73 for storm/waste-water retention; and (3) an additional 15% to address engineering, management, and inspection costs. Mr. Martens' application is attached hereto as Exhibit E.

Without notifying Jade, the IRC held a meeting on October 25, 2018 to evaluate Mr. Martens' reimbursement application. The City Attorney was unable to attend the IRC meeting but advised the IRC to table Mr. Martens' application. Mr. Martens, who is a member of the IRC, recused himself, and EHM's principal engineer, David Thibault, presented Mr. Martens' reimbursement application to the IRC. Mr. Thibault explained that the total improvement costs, plus 15%, totaled \$211,948.14, and based upon Jade's ownership of 47.4% of the Subdivision acreage, Jade was responsible for \$100,463.42.

In response, Jade representatives explained that Mr. Martens' reimbursement application conflicted with the Agreement. The Chairman of the IRC, Chad Debie, argued that the IRC should evaluate the reimbursement application and presumably approve it, without regard to the Agreement. Specifically, Chairman Debie stated "[T]he scope of this board has nothing to do with their purchase and sale agreement." Chairman Debie reasoned that "it doesn't make any difference whether or not [Jade and Mr. Martens] had a purchase and sale agreement in place," because Mr. Martens' entitlement to reimbursement was unrelated to the Agreement. Fortunately, City representatives explained to Chairman Debie that a premature ruling on Mr. Martens' application would likely lead to a lawsuit involving the City. Ultimately, the IRC tabled the decision for 30 days to allow the City Attorney to investigate Jade's argument.

JADE'S CONCERNS

Jade has four concerns related to Mr. Martens' reimbursement application.

1. According to the Agreement, Mr. Martens is Not Entitled to Reimbursement from Jade.

The plain language of Agreement demonstrates that Mr. Martens is not entitled to reimbursement from Jade. Indeed, paragraphs 4, 10(a)(iii), and 10(d) state as follows, in pertinent part:

EHM, Engineers, Inc. [] waive[s], and release[s] [Rusmor] from any and all liability for, said unpaid outstanding fees, costs and expenses charged by of [sic] EHM Engineers, Inc. for said engineering and related professional services to subdivide, and cause the subdivision plat of Broadmoor Subdivision to be accepted and recorded, and otherwise attributable to Broadmoor Subdivision.

....

[Mr. Martens'] obligation to install any and all necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Retained Real Property.

....

Contemporaneous with [Mr. Martens] providing active utility service connections of municipal water, sanitary sewer, and pressurized irrigation, pursuant to this Section, [Mr. Martens] shall construct and provide waste water runoff facilities on [Martens' Property], to include, without limitation, retention ponds and conduits, all as necessary and appropriate for the conveyance, transfer, delivery and storage of waste water runoff from the Retained Real Property to [Martens' Property].

Agreement §§ 4, 10(a)(iii), and 10(d).

Again, these provisions were included in the Agreement in exchange for a significant price reduction. The only provision in the entire Agreement that contemplates a reimbursement arrangement is paragraph 10(e). Paragraph 10(e) addresses the construction of Ridgeway Drive,

which is the road that divides the Retained Property and Martens' Property. Ridgeway Drive was important to Mr. Russell because it provides access to the Retained Property, and Mr. Russell planned to further develop the Retained Property. To ensure that Ridgeway Drive was constructed in a timely manner, Mr. Russell insisted on maintaining responsibility to construct the road; however, each party remained responsible to construct the sidewalk, curb, and gutter on their respective side of the road. The parties recognized that it was impractical to construct the road separate from the sidewalk, curb and gutter. Therefore, Mr. Martens and Mr. Russell discussed that, in the event that Rusmor constructed the road and both the northern and southern sides of the sidewalk, curb, and gutter, Mr. Martens would reimburse Rusmor for his portion of the sidewalk, curb, and gutter. To that end, the Agreement includes the following reimbursement clause:

[I]n the event that [Rusmor] constructs the sidewalk, curb and gutter of and along the northern right-of-way identified as Ridgeway Drive on the recorded subdivision plat of Broadmoor Subdivision, [Mr. Martens] shall promptly reimburse [Rusmor], within sixty (60) days of notice for reimbursement, for all costs and expenses incurred by [Rusmor] for the northern sidewalk, curb and gutter of and along said right-of-way.

Agreement § 10(e). This provision demonstrates that the parties had discussed reimbursement and were capable of drafting a clause to that effect. Had the parties intended for Rusmor to reimburse Mr. Martens for the other improvements (engineering, pressurized irrigation, and storm/waste-water runoff), then paragraphs 4, 10(a)(iii), and 10(d) would include a reimbursement clause. They do not. Therefore, according to the plain language of the Agreement, Mr. Martens is not entitled to reimbursement for those improvements.

I understand that Fritz has reviewed the Agreement and believes that Mr. Martens is obligated to "install" the pressurized irrigation improvements. However, I understand that Fritz is troubled by the lack of any language stating that Mr. Martens would be responsible for all "costs" associated with the installation. Due to the absence of such language, Fritz stated that he was not able to determine that it was Mr. Martens' responsibility to pay the total cost to install the utilities. Presumably, Fritz's position focuses on the term "install" in the following provision of the Agreement:

[Mr. Martens'] obligation to **install** any and all necessary and required facilities for an active connection to pressurized irrigation service for the development, use and benefit of all lots of the Retained Real Property.

Agreement, § 10(a)(iii) (emphasis added).

I respectfully disagree with Fritz's position. Fritz's position conflicts with the plain language of Resolution 2017-13, which states that an Initial Developer "who **installs** the improvement" is entitled to reimbursement. Resolution, p. 1 (emphasis added). Notably, the Resolution does not specify that the Initial Developer must "install and pay for" an improvement; rather, it implies that the word "install" includes payment. The same reasoning should be applied to the Agreement. Further, Jade's position is buttressed by the introductory phrase in section 10(a): "[Mr. Martens] **shall provide** for the development, use and benefit of the Retained Real Property active utility service connections of municipal water, sanitary sewer and pressurized irrigation . . . as follows." Agreement, § 10(a) (emphasis added). When read in conjunction, the terms "install" and "shall provide" demonstrate that Mr. Martens was obligated to install the utilities at his sole expense. Additionally, as previously mentioned, the parties were capable of drafting a reimbursement clause but did not add such a clause to the pressurized irrigation provision. Finally, Joe Russell has not only confirmed our understanding of the Agreement but has provided the IRC with a declaration, which is attached hereto as Exhibit F.

Jade's position—that Mr. Martens is not entitled to reimbursement—is further supported by Mr. Russell and his attorney's recollection. I have discussed the matter with Mr. Russell and his attorney, who drafted the Agreement. Both recalled that Mr. Martens' obligation to provide, at his sole cost, all engineering services and utilities was a material, negotiated, and mutually understood term of the Agreement. Again, the price of the sale was significantly reduced in light of Mr. Martens' obligations. As an aside, both Mr. Russell and his attorney expressed surprise and disappointment regarding Mr. Martens' attempt to deny his obligations.

Jade's position is further supported by the fact that Mr. Martens' previously acknowledged his obligations. Indeed, in his May 2017 reimbursement request, Mr. Martens requested reimbursement only for storm/waste-water improvements. At the time, Mr. Martens had estimates for other improvements, including pressurized irrigation, water, and sewer. The fact that Mr. Martens did not request reimbursement from Jade for these other improvements demonstrates that he understood that he was obligated for the pressurized irrigation costs. Similarly, in his December 2017 request, Mr. Martens did not seek reimbursement for storm/waste-water improvements; thus, he understood that he was obligated for the storm-waste-water improvement costs. The scope of Mr. Martens' request changed again in his 2018 application, where he dropped his request for sanitary sewer reimbursement, but added a request for storm/waste-water reimbursement. It stands to reason that if Mr. Martens truly believed that he was entitled to reimbursement, his requests would be consistent. The ever-changing nature of Mr. Martens' requests indicates that he did not believe that he had a true entitlement; rather, he was attempting to take whatever he could get from Jade. Moreover, in a meeting between the parties, Mr. Martens acknowledged that he was obligated to install, at his sole expense, the pressurized irrigation system.

Based on the foregoing, Mr. Martens is not entitled to a reimbursement. Therefore, the City should deny his application. At the very least, the City should refrain from ruling upon Mr. Martens' application until the dispute between Jade and Mr. Martens has been resolved by the parties or a court of law.

2. There are Numerous Red Flags Related to Mr. Martens' Reimbursement Application and the Process by Which it was Reviewed.

Assuming, *arguendo*, that the Agreement did not exist, there are still serious concerns with Mr. Martens' reimbursement application. First, as Fritz has acknowledged, initial developers are not entitled to reimbursement for storm drainage improvements. Indeed, Resolution 2017-13 makes no mention of storm drainage improvements. Therefore, Mr. Martens' reimbursement application for \$118,677.73 related to storm drainage improvements must be denied. Similarly, the Resolution provides that the following costs are not eligible for reimbursement: "[a]ll individual service connections, engineering and surveying cost, and all City of Twin Falls fees including but not limited to: application fee, review fee, connection fee, water tap fee, water meters, and any capacity fees." Resolution 2017-13, p. 4 (emphasis added). Accordingly, Mr. Martens' reimbursement application for \$800 related to a pressurized irrigation connection fee and \$2,502.50 related to a PVC connection line must be denied. Further, the 15% allotment for, *inter alia*, engineering fees, must be decreased in light of the ineligibility of engineering costs. In sum, even if the Agreement did not exist, Mr. Martens' reimbursement application overstates his entitlement by at least \$121,980.23.

As you can imagine, Mr. Martens' attempt to slip \$121,980.23 into his application raises other concerns. For instance, it raises questions related to Hailey Barnes' independent third-party review of the application. In her letter, Ms. Barnes states that "After a thorough review it is my opinion that . . . the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816." Apparently, despite conducting a thorough review, Ms. Barnes did not recognize that Resolution 1816 had been revised and replaced by Resolution 2017-13. Moreover, she failed to notice that neither the ordinance, nor Resolution 1816 or 2017-13, discuss reimbursement for storm drainage improvements.

I have similar concerns with the City Engineer's staff report. According to the Resolution, the City Engineering Department is tasked with creating a staff report for each reimbursement application. The IRC relies on the staff reports when evaluating reimbursement applications. The staff report for Mr. Martens' application is disturbingly superficial. For example, under the analysis section it states "N/A," and the conclusion section relies entirely upon Ms. Barnes' letter.

In sum, even if the Agreement did not exist, Mr. Martens' application overstates his entitlement by at least \$121,980.23. For these reason, the City should deny his application, or at

the very least, refrain from ruling upon the application until Jade and Mr. Martens resolve their dispute.

3. Mr. Martens' application for reimbursement is supported by improper motives.

Jade and Mr. Russell are both surprised and disappointed by Mr. Martens' recent application for reimbursement. More than anything, they are troubled by Mr. Martens' motives in pursuing this matter. After all, Mr. Martens has acknowledged his obligation to provide, among other things, engineering services, pressurized irrigation, and waste-water runoff systems. During the October 25, 2018 committee meeting, Mr. Thibault helped shed light on the true motivation for Mr. Martens' actions, when he stated:

Gerald grabbed me and just said that our concern is that [Jade is] continuing to pull building permits and we have over \$180,000 that we paid for improvements. If those improvements weren't put in, then they wouldn't be able to pull building permits.

IRC Meeting, Oct. 25, 2018, 24:42.

When Mr. Thibault's comments are coupled with Mr. Martens' threat to "stop [Jade] in its tracks" unless Jade paid him the amount demanded, one can only conclude that Mr. Martens is motivated by an intent to interfere with Jade's ability to sell its lots by blocking its ability to pull building permits – unless it pays him the disputed amount. Mr. Martens is a savvy developer and is undoubtedly aware that he would greatly benefit from the IRC approving his reimbursement application. By preventing Jade from pulling building permits, Mr. Martens is preventing Jade from competing with Mr. Martens' development. Equally appealing to Mr. Martens is the fact that if the IRC approves his request, he would receive double-payment for his work, *i.e.*, he already received payment for his work via a lower purchase price, and allowing him to receive reimbursement would double his payment. Finally, Mr. Martens is attempting to gain leverage in the impending contractual dispute with Jade. For instance, despite the plain language of the Agreement, Mr. Martens is trying to strong-arm Jade into contributing to storm water drainage and pressurized irrigation costs in exchange for releasing his reimbursement application. If the latter scenario occurs, Jade will file a lawsuit, which leads me to my final concern.

4. Jade will be forced to sue the City if the IRC prematurely rules upon Mr. Martens' reimbursement application.

Due to Mr. Martens' blatant disregard for the Agreement, legal action will be necessary to resolve the contractual dispute. To be clear, Jade does not desire to involve the City in the

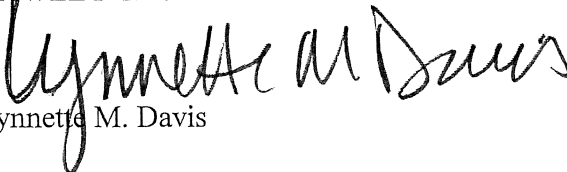
Travis Rothweiler
Fritz Wonderlich
November 19, 2018
Page 9

legal action. However, if the City prematurely rules upon Mr. Martens' reimbursement application, Jade would have a legitimate claim against the City for the unreasonable denial of building permits. Additionally, there are legitimate questions regarding the validity of Resolution 2017-13, *e.g.*, due process issues regarding notice, opportunity to be heard, and the appeal process; whether the City's reimbursement requirement is an unconstitutional appropriation of funds for a corporation; whether the Resolution is void for vagueness, etc. In sum, it is in the City's best interest to refrain from ruling upon Mr. Martens' reimbursement application until the contractual dispute between Jade and Mr. Martens is resolved.

Lastly, it is my understanding that the IRC has scheduled a meeting on Thursday, November 29, 2018 to address this matter. I also received a revised calendaring appointment which appears to reschedule for Monday, November 26, 2018, the informal meeting originally set for this afternoon. In light of my letter setting forth Jade's position relating to the pending request for reimbursement, I am uncertain if that meeting is still necessary, but I can be available to participate in the meeting if it would be helpful.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Lynnette M. Davis

LMD:ll
Attachments

cc: Twin Falls City Mayor Shawn Barigar
Twin Falls City Council Members Greg Lanting, Suzanne Hawkins,
Chris Talkington, Chris Reid, and Ruth Pierce
Jade Development, LLC
Scott Allen

EXHIBIT L

To: City of Twin Falls Engineering Department
Improvement Reimbursement Committee

Reference: Application for eligible improvements
Federation Road Extension
Rock Creek Elementary School
Twin Falls School District

- Please find enclosed the necessary completed forms and information required for this Application for consideration by the Improvement Reimbursement Committee.
- Listed below are the forms and exhibits explaining the requested reimbursements.

Project Name		Federation Road Extension	
8/1/2016			
Documents & Exhibits			
	0	3rd Party Review	
	1	Application	
	2	Vicinity Map	
	3	Narrative	
	4	Boundary of Project	
	5	Area of Benefit	
	6	1	Current Ownership
		2	Ownership List of all Lots
	7	1	Recorded Final Plat NP3
		2	Recorded Final Plat NP5
		3	Overlay showing both
	8	1	Contract Document for Actual Cost
		2	Master Payback Worksheet
		3	Worksheet on Quantities
		4	Deduct Worksheet
	9	1	As Built Construction Plan
		2	As Built Expanded View Construction Plan
		3	Road Section Federation
	10	1	Ownership Certification
	11	1	City of Twin Falls Approval Letter

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

8/29/2016

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

Dear Mr. Vitek,

Mr. Brad Wills retained my services to conduct a third party review of the submitted Improvement Reimbursement Application for the Federation Road Extension Project that was completed during the Rock Creek Elementary School project. After careful review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,


Hailey G. Barnes, P.E.

Attachments: Improvement Reimbursement Application: Federation Road Extension

Cc: Brad Wills



IMPROVEMENT REIMBURSEMENT APPLICATION

August 1, 2016

OFF SITE SEWER PROJECT

Subdivision Name: Northern Passage Subdivision 3 and 5 Acres/Lots: 10.60 Acres/ 38 Lots +/-

Subdivision Locations S1/2 NW1/4, 9 South, Range 17 East, Boise Meridian

Cross Streets: Federation Road and Columbia Drive

Initial Developer: Twin Falls School District Contact: Brady Dickinson

Address/phone #: 201 Main St. West, Twin Falls, Idaho 83301 208-733-6900

Current Contact: Twin Falls School District Contact: Brady Dickinson

Address/phone #: 201 Main St. West, Twin Falls, Idaho 83301 208-733-6900

Local Agent for Owner: Brad Wills, 222 Shoshone St. West, Twin Falls Idaho 83303-0346 208-420-0314

Property Owner: Twin Falls School District Contact: Brady Dickinson

Address/phone #: 201 Main St. West, Twin Falls, Idaho 83301 208-733-6900

Engineering Firm: EHM Engineering Contact: Tim Vawser

Address/phone #: 621 North College Road Suite 100 Twin Falls, Idaho, 83301

The City of Twin Falls adopted Ordinance Number 2974 and Resolution 1816 which allows developers to submit an application to the Improvement Reimbursement Committee (I.R.C.) of the City of Twin Falls if they wish to seek reimbursement for improvements for previously developed and accepted utilities and roadways that benefit future development. More specifically; whenever any extension is made by a private developer (initial developer) to the City of Twin Falls' (City) water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, in such a manner as to enable a subsequent private developer or property owner to connect to or extend the previously extended water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems, the subsequent private developer or property owner (subsequent developers) shall first make proper compensation to the initial developer for the costs of the water distribution system, wastewater collection system, transportation system, pressure irrigation pump stations and distribution systems (improvements).

The initial developer must maintain proper identity and current address with the City Engineer in order to be eligible for proper compensation in the future.

The lists below identify the items that are required for submittal of the Improvement Reimbursement application.

Incomplete submittals will not be accepted or reviewed. It is the responsibility of Engineering firm and/or Developer/ Owner to see that all the required information is submitted to the City in the proper form.

Include the following information:

1. Improvement Reimbursement Application
2. A Narrative describing the project overview, the initial improvements, the surrounding areas that will benefit from the improvements, the boundary of the affected area, any known developers/owners that will be included in this application and any other information that would be supportive to the commission.

3. Vicinity Map
4. Proof of past ownership of the real property included in this application.
5. AS-BUILT drawing on file with the City of Twin Falls Engineering Department of improvement.
6. The letter from the City Engineering Department approving the completion of the improvements and accepting the project for maintenance.
7. If required, an electronic GIS file indicating items subject to reimbursement.
8. A plan identifying all improvements proposed for compensation.
 - a. A separate plan for each of the individual reimbursement areas.
 - i. Include all four system for that area:
 1. water distribution system
 2. wastewater collection system
 3. transportation system
 4. pressure irrigation pump stations and distribution systems
 - ii. Identify the surrounding area that benefits from the improvements.
9. Each individual reimbursement area should include the following information;
 - i. Improvements for consideration
 - ii. The estimated boundary that will benefit from those improvements.
 - iii. Actual cost of installation
 1. Attach copy of original cost documents
 2. If costs are unavailable, other documentation per Ordinance guidelines
 - iv. Estimated proposed reimbursement

Filing Fee: \$ 200.00

Fee per Lot, tract or parcel impacted \$ 10.00

Date Submitted: August 1, 2016

Fee to be calculated after I. R. C. Approval

Application received by the City Engineering Department.

Date Reviewed by City Staff: _____

Date of Boundary Verification by Engineer Dept.: _____

Date of Notification to Improvement Reimbursement Commission: _____

Date Scheduled for Commission meeting: _____

Note: In the case of an agreement between the Initial Developer and Subsequence Developer, item #10 iii and iv will not be required and a lump sum will be included.

Additional Notes:

- There will be no consideration for depreciation or inflation.
- Improvements must be accepted by the City of Twin Falls to be eligible for reimbursement.
- The period of compensation to the initial developer shall be terminated at the earliest of any of the following conditions:
 - Full compensation for the determined eligible reimbursement amount based on the actual cost plus 15% to address costs for engineering, management, fees, interest and inspection.
 - Failure on the part of the initial developer or their assigns to maintain proper identity and address on file with the Improvement Reimbursement Commission.
 - A date twenty years after the acceptance of the improvement by the City.
- Disclaimer: City of Twin Falls and Improvement Reimbursement Committee approvals determines eligibility and benefit. All quantities and calculations are the responsibility of the applicant therefore any errors are not the liability of the City of Twin Falls or the Improvement Reimbursement Committee.

Federation Road Extension Northern Passage #3 & #5

Vicinity Sketch NTS

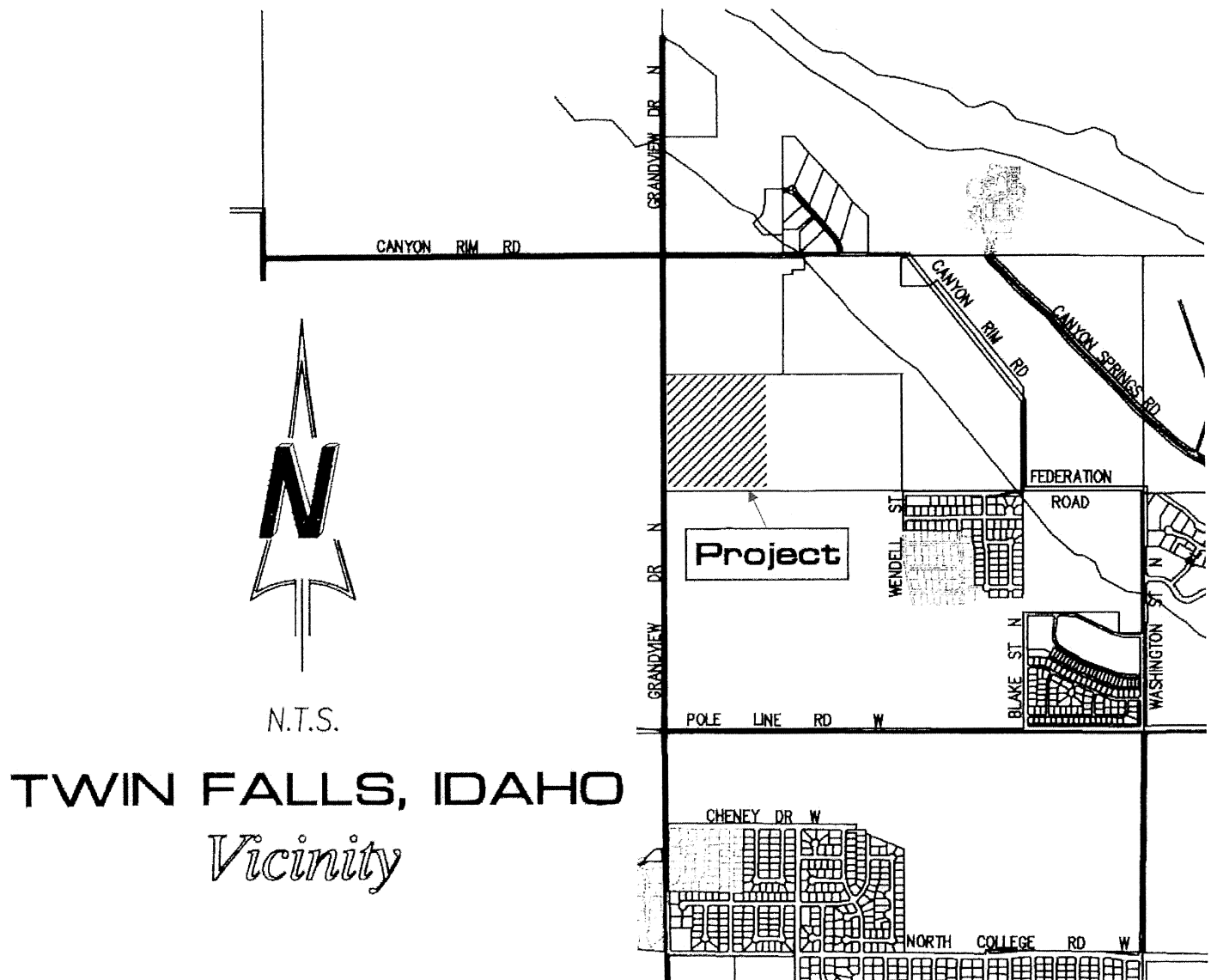


Exhibit 3

**Federation Road Extension
Twin Falls School District
201 Main Avenue West
Twin Falls, Idaho 83301**

**To: City of Twin Falls
Engineering Department
Twin Falls, Idaho**

**Reference: Improvement Reimbursement Narrative
Project: Federation Road Extension**

The Twin Falls School District (TFSD) as part of their Rock Creek Elementary School Project within the Northern Passage Subdivision 5 completed the extension of Federation Road located in Northern Passage Subdivision 3 and 5 connecting the new school project to the future Canyon Trails Subdivision 6 phase #2 to provide access to this area of development from the east. Their project is located east of Grandview Drive North on Federation Road. The TFSD contracted with ESI Contractors, Inc. to complete this section of roadway in addition to the improvement of Grandview Drive North and Federation adjacent to the TFSD new school. The cost of these improvements was covered by a change order under the main contract for the Rock Creek Elementary School project. This change order covered the entire cost of the Federation Extension. A portion of the change order was complete on the roadway south of the center line or property boundary of the Northern Passage Subdivision. This portion on the Grandview Estates Subdivision is not included in this application due to the fact Grandview Estates Subdivision had already completed other improvements benefitting the TFSD project previously.

The roadway project was completed in the fall of 2015. The City of Twin Falls has approved and accepted the Federation Road Extension project for maintenance on June 14, 2016.

We have reviewed the City Ordinance Number 2974 to determine which of these improvements would be eligible for future reimbursement.

Water Distribution System

The extension required an extension of the Water Distribution system to the outside of the roadway project and was capped for future connection. The portion to the south of the center line of Federation Road is deducted from the contract amount.

Wastewater Collection System

The extension required an extension of the Wastewater Collection system to the outside of the roadway project and was capped for future connection. The portion to the south of the center line of Federation Road is deducted from the contract amount.

Transportation System

Federation Road was built starting at east boundary of the Elementary School project located on Lot 59 Northern Passage 5 along the south frontage of Federation Road and

proceeding approximately 700 lf east to the intersection of Columbia Drive and Federation Road. A full 1/2 street with curb, gutter and sidewalk was constructed on the north side of the right of way. This will benefit the property on the north side of Federation Road.

Pressurized Irrigation Pump Station and Distribution System

No Pressurized Irrigation system was included in this project.

Gravity Irrigation Distribution System

Gravity Irrigation is not eligible for reimbursement within Twin Falls City Code. The entire cost of the gravity irrigation work was deducted from the contract amount.

Additional Note

Twin Falls City Code states the actual cost of the improvements are eligible for reimbursement so the soft cost such as Engineering, Overhead and Profit and Bond Cost are deducted from the contract amount. These soft code as to be covered by the 15% reimbursement fee.

Federation Road Extension Northern Passage #3 & #5

Boundary and Area of Benefit of Project NTS



4/18/2016

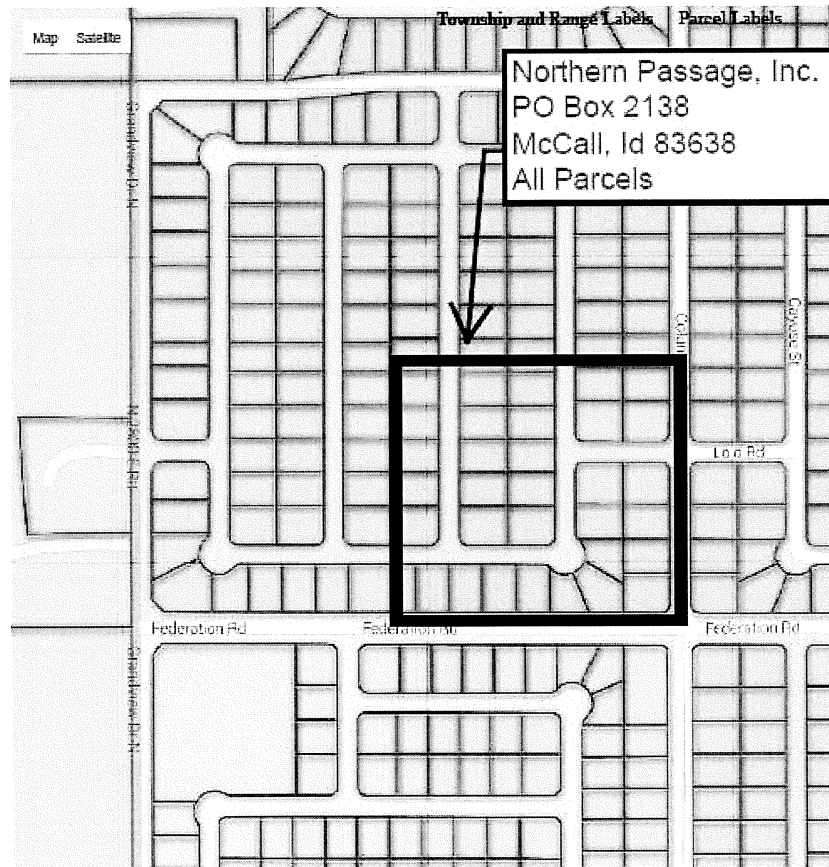
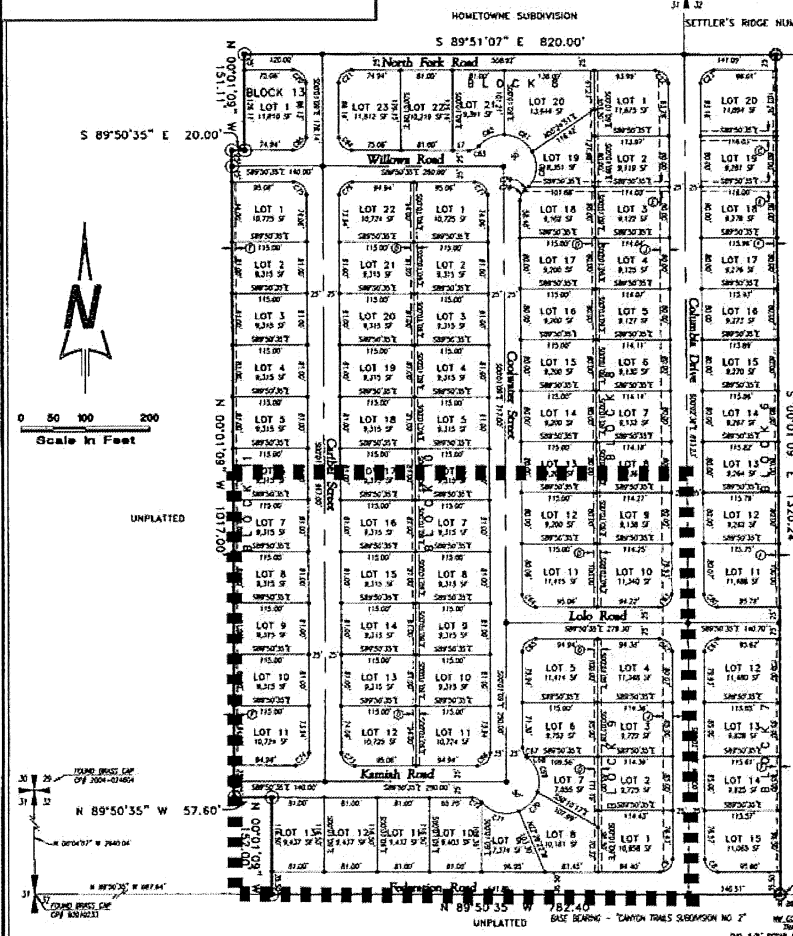


EXHIBIT 6 -2			
Ownership All 38 Lots		Northern Passage, Inc.	
		PO Box 2138 McCall, Idaho 83638	
Northern Passage 5			
Lot	Block	Address	RPT
60	51	2143 CARIBEL ST	RPT38860510600A
61	51	2127 CARIBEL ST	RPT38860510610A
62	51	795 KAMIAH RD	RPT38860510620A
63	51	783 KAMIAH RD	RPT38860510630A
Northern Passage 3			
Lot	Block	Address	RPT
8	8	2201 COLUMBIA DR	RPT38840080080A
9	8	2193 COLUMBIA DR	RPT38840080090A
10	8	714 LOLO RD	RPT38840080100A
11	8	730 LOLO RD	RPT38840080110A
12	8	2192 COOLWATER ST	RPT38840080120A
13	8	2202 COOLWATER ST	RPT38840080130A
1	9	2113 COLUMBIA DR	RPT38840090010A
2	9	2127 COLUMBIA DR	RPT38840090020A
3	9	2141 COLUMBIA DR	RPT38840090030A
4	9	713 LOLO RD	RPT38840090040A
5	9	729 LOLO RD	RPT38840090050A
6	9	2140 COOLWATER ST	RPT38840090060A
7	9	2130 COOLWATER ST	RPT38840090070A
8	9	737 KAMIAH RD	RPT38840090080A
9	9	743 KAMIAH RD	RPT38840090090A
10	9	755 KAMIAH RD	RPT38840090100A
11	9	771 KAMIAH RD	RPT38840090110A
6	10	2203 COOLWATER ST	RPT38840100060A
7	10	2191 COOLWATER ST	RPT38840100070A
8	10	2179 COOLWATER ST	RPT38840100080A
9	10	2167 COOLWATER ST	RPT38840100090A
10	10	2155 COOLWATER ST	RPT38840100100A
11	10	758 KAMIAH RD	RPT38840100110A
12	10	774 KAMIAH RD	RPT38840100120A
13	10	2158 CARIBEL ST	RPT38840100130A
14	10	2170 CARIBEL ST	RPT38840100140A
15	10	2182 CARIBEL ST	RPT38840100150A
16	10	2194 CARIBEL ST	RPT38840100160A
17	10	2204 CARIBEL ST	RPT38840100170A
6	11	2205 CARIBEL ST	RPT38840110060A
7	11	2195 CARIBEL ST	RPT38840110070A
8	11	2183 CARIBEL ST	RPT38840110080A
9	11	2171 CARIBEL ST	RPT38840110090A
10	11	2159 CARIBEL ST	RPT38840110100A

EXHIBIT 7-1

NORTHERN PASSAGE SUBDIVISION NUMBER 3

LOCATED IN
A PORTION OF THE
S1/2 NW1/4, SECTION 32
TOWNSHIP 9 SOUTH, RANGE 17 EAST,
BOISE MERIDIAN, TWIN FALLS COUNTY
IDAHO 2009



Legend:
Boundary Line
Center Line of Street
Lot Line
Easement Line (See Table)
To the Set 1/2"x24" Rubber and Cap (LS 1000)
To the Set 5/8"x24" Rubber and Cap (LS 1000)
Found 5/8" Rubber & Cap (LS 1000)

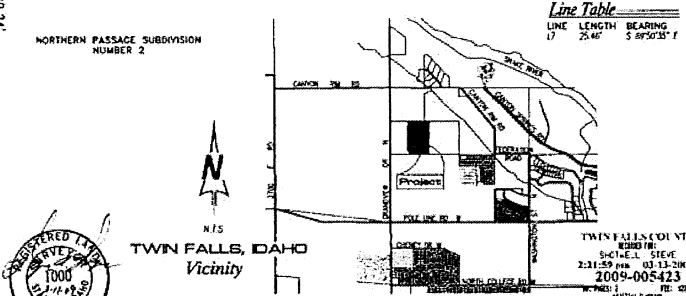
Monument Certification
The interior monuments on this Plat shown as "TO BE SET", will be set in accordance with section 50-1331, Idaho Code on or before and after from the recording date of this plat or as determined by the City of Twin Falls.

Easement Table
15.00 IRRIGATION EASEMENT CENTERED ON LOT LINES
10.00 DRAINAGE EASEMENT CENTERED ON LOT LINES
15.00 IRRIGATION & DRAINAGE EASEMENT CENTERED ON LOT LINES
5.00 DRAINAGE EASEMENT
15.00 IRRIGATION & UTILITY EASEMENT

Notes:
A 15 FOOT WIDE UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOT LINES AND ADJACENT TO STREET FRONTS.

Curve Table

CURVE	DELTA	LENGTH	RADIUS	TANGENT	CHORD	CHORD BRG
C01	11.31	20.00	18.85	28.33	34.76	347.60
C02	11.31	20.00	18.85	28.33	34.76	347.60
C03	11.31	20.00	18.85	28.33	34.76	347.60
C04	11.31	20.00	18.85	28.33	34.76	347.60
C05	11.31	20.00	18.85	28.33	34.76	347.60
C06	11.31	20.00	18.85	28.33	34.76	347.60
C07	11.31	20.00	18.85	28.33	34.76	347.60
C08	11.31	20.00	18.85	28.33	34.76	347.60
C09	11.31	20.00	18.85	28.33	34.76	347.60
C10	11.31	20.00	18.85	28.33	34.76	347.60
C11	11.31	20.00	18.85	28.33	34.76	347.60
C12	11.31	20.00	18.85	28.33	34.76	347.60
C13	11.31	20.00	18.85	28.33	34.76	347.60
C14	11.31	20.00	18.85	28.33	34.76	347.60
C15	11.31	20.00	18.85	28.33	34.76	347.60
C16	11.31	20.00	18.85	28.33	34.76	347.60
C17	11.31	20.00	18.85	28.33	34.76	347.60
C18	11.31	20.00	18.85	28.33	34.76	347.60
C19	11.31	20.00	18.85	28.33	34.76	347.60
C20	11.31	20.00	18.85	28.33	34.76	347.60
C21	11.31	20.00	18.85	28.33	34.76	347.60
C22	11.31	20.00	18.85	28.33	34.76	347.60
C23	11.31	20.00	18.85	28.33	34.76	347.60
C24	11.31	20.00	18.85	28.33	34.76	347.60
C25	11.31	20.00	18.85	28.33	34.76	347.60
C26	11.31	20.00	18.85	28.33	34.76	347.60
C27	11.31	20.00	18.85	28.33	34.76	347.60
C28	11.31	20.00	18.85	28.33	34.76	347.60
C29	11.31	20.00	18.85	28.33	34.76	347.60
C30	11.31	20.00	18.85	28.33	34.76	347.60
C31	11.31	20.00	18.85	28.33	34.76	347.60
C32	11.31	20.00	18.85	28.33	34.76	347.60
C33	11.31	20.00	18.85	28.33	34.76	347.60
C34	11.31	20.00	18.85	28.33	34.76	347.60
C35	11.31	20.00	18.85	28.33	34.76	347.60
C36	11.31	20.00	18.85	28.33	34.76	347.60
C37	11.31	20.00	18.85	28.33	34.76	347.60
C38	11.31	20.00	18.85	28.33	34.76	347.60
C39	11.31	20.00	18.85	28.33	34.76	347.60
C40	11.31	20.00	18.85	28.33	34.76	347.60
C41	11.31	20.00	18.85	28.33	34.76	347.60
C42	11.31	20.00	18.85	28.33	34.76	347.60
C43	11.31	20.00	18.85	28.33	34.76	347.60
C44	11.31	20.00	18.85	28.33	34.76	347.60
C45	11.31	20.00	18.85	28.33	34.76	347.60
C46	11.31	20.00	18.85	28.33	34.76	347.60
C47	11.31	20.00	18.85	28.33	34.76	347.60
C48	11.31	20.00	18.85	28.33	34.76	347.60
C49	11.31	20.00	18.85	28.33	34.76	347.60
C50	11.31	20.00	18.85	28.33	34.76	347.60
C51	11.31	20.00	18.85	28.33	34.76	347.60
C52	11.31	20.00	18.85	28.33	34.76	347.60
C53	11.31	20.00	18.85	28.33	34.76	347.60
C54	11.31	20.00	18.85	28.33	34.76	347.60
C55	11.31	20.00	18.85	28.33	34.76	347.60
C56	11.31	20.00	18.85	28.33	34.76	347.60
C57	11.31	20.00	18.85	28.33	34.76	347.60
C58	11.31	20.00	18.85	28.33	34.76	347.60
C59	11.31	20.00	18.85	28.33	34.76	347.60
C60	11.31	20.00	18.85	28.33	34.76	347.60
C61	11.31	20.00	18.85	28.33	34.76	347.60
C62	11.31	20.00	18.85	28.33	34.76	347.60
C63	11.31	20.00	18.85	28.33	34.76	347.60
C64	11.31	20.00	18.85	28.33	34.76	347.60
C65	11.31	20.00	18.85	28.33	34.76	347.60
C66	11.31	20.00	18.85	28.33	34.76	347.60
C67	11.31	20.00	18.85	28.33	34.76	347.60
C68	11.31	20.00	18.85	28.33	34.76	347.60
C69	11.31	20.00	18.85	28.33	34.76	347.60
C70	11.31	20.00	18.85	28.33	34.76	347.60
C71	11.31	20.00	18.85	28.33	34.76	347.60
C72	11.31	20.00	18.85	28.33	34.76	347.60
C73	11.31	20.00	18.85	28.33	34.76	347.60
C74	11.31	20.00	18.85	28.33	34.76	347.60
C75	11.31	20.00	18.85	28.33	34.76	347.60
C76	11.31	20.00	18.85	28.33	34.76	347.60
C77	11.31	20.00	18.85	28.33	34.76	347.60
C78	11.31	20.00	18.85	28.33	34.76	347.60
C79	11.31	20.00	18.85	28.33	34.76	347.60
C80	11.31	20.00	18.85	28.33	34.76	347.60
C81	11.31	20.00	18.85	28.33	34.76	347.60
C82	11.31	20.00	18.85	28.33	34.76	347.60
C83	11.31	20.00	18.85	28.33	34.76	347.60
C84	11.31	20.00	18.85	28.33	34.76	347.60
C85	11.31	20.00	18.85	28.33	34.76	347.60
C86	11.31	20.00	18.85	28.33	34.76	347.60
C87	11.31	20.00	18.85	28.33	34.76	347.60
C88	11.31	20.00	18.85	28.33	34.76	347.60
C89	11.31	20.00	18.85	28.33	34.76	347.60
C90	11.31	20.00	18.85	28.33	34.76	347.60
C91	11.31	20.00	18.85	28.33	34.76	347.60
C92	11.31	20.00	18.85	28.33	34.76	347.60
C93	11.31	20.00	18.85	28.33	34.76	347.60
C94	11.31	20.00	18.85	28.33	34.76	347.60
C95	11.31	20.00	18.85	28.33	34.76	347.60
C96	11.31	20.00	18.85	28.33	34.76	347.60
C97	11.31	20.00	18.85	28.33	34.76	347.60
C98	11.31	20.00	18.85	28.33	34.76	347.60
C99	11.31	20.00	18.85	28.33	34.76	347.60
C100	11.31	20.00	18.85	28.33	34.76	347.60



HEALTH CERTIFICATE
Sanitary restrictions as required by Idaho Code, Title 50, Chapter 13 have been satisfied based on the DEO approval of the design plan and specifications and the conditions imposed on the developer for continued satisfaction of sanitary restrictions. Buyer is cautioned that at the time of this approval, no drinking water or sewer/sanitary facilities were constructed. Building construction can be allowed with appropriate building permits if drinking water or sewer facilities have since been constructed or if the developer is simultaneously constructing these facilities. If the developer fails to construct facilities or meet the other conditions of DEO, then sanitary restrictions may be reimposed, at accordance with Section 50-1326, Idaho Code. In the absence of a certificate of disapproval, and no construction of any building or other requiring drinking water or sewer/sanitary facilities shall be allowed.

3-11-09
Date: _____
District Health Department, REHS
SHEET 1 OF 2
208-5477

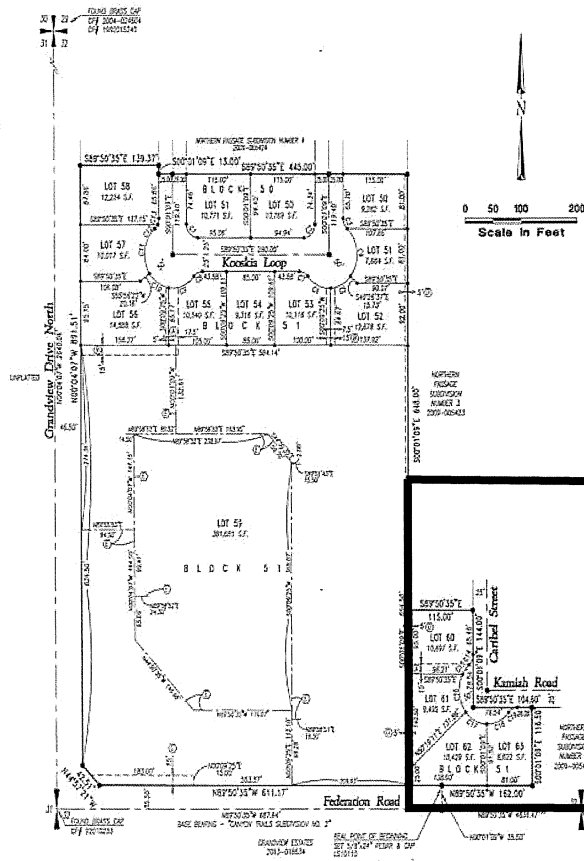
BEAM Engineers, Inc.
ENGINEERS/SURVEYORS/PLANNERS

NOTE: ALL LOTS ADJACENT TO NORTH FORK ROAD OR FERTIGATION ROAD SHALL BE ONLY ACCESSED FROM WILLOW ROAD OR KAMIAH ROAD RESPECTIVELY

EXHIBIT 7-2

NORTHERN PASSAGE SUBDIVISION NUMBER 5

LOCATED IN
A VACATED PORTION OF "NORTHERN PASSAGE SUBDIVISION NUMBER 3"
AND
A VACATED PORTION OF "NORTHERN PASSAGE SUBDIVISION NUMBER 4"
IN
A PORTION OF THE
SW 1/4 NW 1/4, SECTION 32
TOWNSHIP 9 SOUTH, RANGE 17 EAST,
BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO
2015



Legend

- Boundary Line
- Center Line of Street
- Lot Line
- Easement Line (See Table)
- Easement Centerline (See Table)
- Set 1/2" 24" Rebar and Cap (LS 10110)
- Set 5/8" 24" Rebar and Cap (LS 10110)
- Found 3/8" Rebar and Cap (LS 1000)

Easement Table

- ① Access & Utility Easement
- ② Drainage & Utility Easement
- ③ Roadway & Utility Easement
- ④ Drainage Easement
- ⑤ Centerline 15' Wide Water Line Easement

Curve Table

CURVE	PC/LA	LENGTH	RADIUS	TANGENT	CHORD	CHORD BEG
C1	89°45'34"	31.35'	20.00'	13.94'	28.24'	54495.531'E
C2	82°19'34"	31.45'	20.00'	20.06'	28.15'	N45°04'39"E
C3	49°32'42"	17.45'	50.00'	9.33'	16.30'	S23°00'33"E
C4	82°34'12"	73.04'	50.00'	52.50'	71.05'	S52°42'34"E
C5	45°41'08"	49.26'	50.00'	27.60'	56.66'	S45°52'34"E
C6	82°19'34"	48.15'	50.00'	24.85'	44.51'	N55°56'41"W
C7	49°32'42"	17.45'	50.00'	9.33'	16.30'	N45°04'39"E
C8	49°32'42"	17.45'	50.00'	9.33'	16.30'	S45°04'39"E
C9	58°27'14"	51.15'	50.00'	26.07'	48.05'	S58°27'14"E
C10	47°02'32"	41.15'	50.00'	21.82'	40.00'	N57°58'19"W
C11	84°02'10"	71.34'	50.00'	45.05'	68.94'	N57°58'19"W
C12	23°16'16"	8.15'	20.00'	4.12'	8.07'	N35°01'13"E
C13	26°43'08"	9.15'	20.00'	4.75'	8.74'	N13°20'24"E
C14	49°32'42"	17.45'	50.00'	9.33'	16.30'	S45°04'39"E
C15	21°07'32"	18.41'	50.00'	9.13'	16.34'	S32°24'25"W
C16	68°31'24"	59.60'	50.00'	34.06'	56.30'	S68°31'24"E
C17	45°41'08"	42.55'	50.00'	22.60'	41.26'	S45°04'39"E
C18	51°25'16"	44.67'	50.00'	24.07'	44.36'	N53°10'21"E
C19	47°02'32"	17.45'	20.00'	9.33'	16.30'	N57°58'19"E

Notes

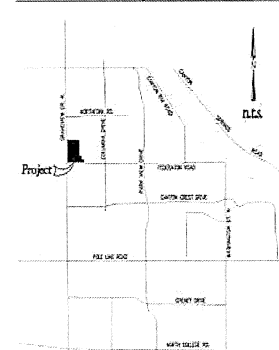
- A 15 FOOT UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOTS AND ADJACENT TO STREET FRONTS.
- ALL RESIDENTIAL LOTS ADJACENT TO GRANDVIEW DRIVE NORTH OR FEDERATION ROAD SHALL ONLY BE ACCESSED FROM KAMIAH ROAD OR KAMIAH ROAD RESPECTIVELY.

Health Certificate

Sanitary restrictions as required by Idaho Code, Title 50, Chapter 13 have been verified based on the ICD approval of the design plans and the conditions imposed on the developer for continued existence of the sanitary restrictions. It is certified that at the time of this approval, no drinking water or sewer/septic facilities were constructed. Building construction can be allowed with appropriate building permits if drinking water or sewer/septic facilities have been constructed or if the developer fails to construct these facilities. If the developer fails to construct facilities or meet the other conditions of ICD, then sanitary restrictions may be reimposed, in accordance with Section 50-1306, Idaho Code, by the issuance of a certificate of disapproval, and no construction of any building or structure requiring drinking water or sewer/septic facilities shall be allowed.

3/31/15
[Signature]
[Stamp]

Vicinity Sketch



TWIN FALLS COUNTY
EHD ENGINEERS
924 S. 3rd St. - 83402-2135
2015-006804
No. 200943 - Exp. 3/31/18
KIRSTEN A. GILKINSON
County Clerk
Deputy: MURTELL
EHD Engineers, Inc.
Engineers / Surveyors / Planners
SHEET 1 OF 3
245-14-2-EPI

CERTIFICATE OF OWNERS

This is to certify that the undersigned are the owners in fee simple of the following described property located in the Southwest quarter of the Northwest quarter of Section 32, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho. Said property being more specifically described as follows:

Commencing at the East quarter corner of said Section 32, said point lies South 89°50'35" East, 5318.11 feet from the West quarter corner of said Section 32, Thence, North 89°50'35" West, 4831.47 feet along the South boundary of the North half of Section 32 to the Southwest corner of Northern Passage Subdivision Number 3, Thence, North 0°01'09" West, 33.50 feet along the West boundary of Northern Passage Subdivision Number 3 to a point on the North right of way of Federation Road being the REAL POINT OF BEGINNING.

Thence, North 89°50'35" West, 611.17 feet along said right of way.
 Thence, North 44°37'21" East, 42.51 feet to a point on the East right of way of Grandview Drive North.
 Thence, North 0°04'40" West, 691.51 feet along said right of way to the Southwest corner of Lot 10, Block 13 of Northern Passage Subdivision Number 4.
 Thence, South 89°50'35" East, 139.37 feet along the South boundary of Lot 10, Block 13 of Northern Passage Subdivision Number 4 to the Southwest corner thereof.
 Thence, South 0°01'09" East, 13.00 feet along the West right of way of Abashka Street.
 Thence, South 89°50'35" East, 445.00 feet to the Southwest corner of Lot 21, Block 11 of Northern Passage Subdivision Number 4.
 Thence, South 0°01'09" East, 648.00 feet along the West boundary of Northern Passage Subdivision Number 3 to the Southwest corner of Lot 10, Block 11 of Northern Passage Subdivision Number 3.
 Thence, South 89°50'35" East, 115.00 feet along the South boundary of Lot 10, Block 11 of Northern Passage Subdivision Number 3 to the Southwest corner thereof and a point on the West right of way of Coribal Street.
 Thence, South 0°01'09" East, 144.00 feet along the West right of way of Coribal Street extended to a point on the South right of way of Kamiah Road.
 Thence, South 89°50'35" East, 104.80 feet along the South right of way of Kamiah Road to the Northwest corner of Lot 11, Block 9 of Northern Passage Subdivision Number 3.
 Thence, South 0°01'09" East, 116.50 feet along the West boundary of Lot 11, Block 9 of Northern Passage Subdivision Number 4 to the Southwest corner thereof and a point on the North right of way of Federation Road.
 Thence, North 89°50'35" West, 182.00 feet along said right of way to the REAL POINT OF BEGINNING.

The gross area contained in this platted land as described is 13.178 acres.

It is the intention of the undersigned to, and they do hereby include said land in this plat. That the undersigned by these presents dedicate to the public for public use forever the road rights of way as shown on this plat. The easements indicated on this plat are not dedicated to the public, but the right to use said easements is hereby perpetually reserved for public utilities and such other uses designated on this plat. No structure other than for such utility and other designated public uses are to be erected within the lines of said easements.

Pursuant to Idaho Code 50-1334, I, the undersigned, as owner, do hereby state that the lots on this plat are eligible to receive water service from the City of Twin Falls Municipal Water System.

Pursuant to Idaho Code 31-3805, I, the undersigned, as owner, do hereby state that the irrigation water rights appurtenant and the assessment obligation of the lands in this plat have not been transferred from said lands and that a satisfactory irrigation water delivery system is provided for and has been approved by the Twin Falls City Council. Lots within the subdivision will be entitled to water rights and will be obligated for assessments from the Irrigation District and/or Canal Company.

NORTHERN PASSAGE, INC., an Idaho Corporation

Steve R. Shewell
 BY: STEVE R. SHEWELL - Director

TWIN FALLS SCHOOL DISTRICT #411
 A Governmental Subdivision of the State of Idaho, A Body Politic and Corporate

Wiley DeBee
 BY: WILEY DEBEE, PH.D. - Superintendent

TITLEFACT, INC., An Idaho Corporation as Trustee

Michael J. Stivers
 BY: MICHAEL J. STIVERS - President

ACKNOWLEDGMENT

STATE OF IDAHO }
 COUNTY OF TWIN FALLS }

On this 20th day of February, 2015, at 1:16 P.M., before me, the undersigned, a Notary Public in and for said State, personally appeared Steve R. Shewell, known to me to be the Director of NORTHERN PASSAGE, INC., an Idaho Corporation and acknowledged to me that the corporation 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.

Martha Johnson
 Notary Public
 Twin Falls
 2/17/18
 Commission Expires

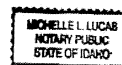


ACKNOWLEDGMENT

STATE OF IDAHO }
 COUNTY OF TWIN FALLS }

On this 19th day of February, 2015, at 2:05 P.M., before me, the undersigned, a Notary Public in and for said State, personally appeared Wiley DeBee, PH.D., known to me to be the Superintendent of TWIN FALLS SCHOOL DISTRICT #411, and acknowledged to me that the Twin Falls School District #411 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.

Michelle L. Lucas
 Notary Public
 Twin Falls
 2/15/18
 Commission Expires



ACKNOWLEDGMENT

STATE OF IDAHO }
 COUNTY OF TWIN FALLS }

On this 19th day of February, 2015, at 9:00 A.M., before me, the undersigned, a Notary Public in and for said State, personally appeared Richard B. Stivers, known to me to be the President of TITLEFACT, INC., an Idaho Corporation and acknowledged to me that the corporation 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.

Wiley DeBee
 Notary Public
 Jerome
 2/19/2017
 Commission Expires



TWIN FALLS COUNTY
 Registered in:
 EBM ENGINEERS
 920 N. ELGIN
 834-2015
 2015-006804
 No. Pages: 3 Fee: \$12.00
 KRISTINA GLASSCOCK
 County Clerk
 Deputy: SHUNTER



Ehm Engineers, Inc.
 Engineers / Surveyors / Planners

SHEET 2 OF 3
 245-14-2-1721

CERTIFICATE OF SURVEYOR

This is to certify that I, Christopher S. Harrison, a Professional Land Surveyor in the State of Idaho, made the survey of the land described in the Certificate of Owners and that this plot is a true and accurate representation of said survey as made and staked under my supervision and direction.

Christopher S. Harrison
P.L.S. 10110



APPROVAL OF CITY COUNCIL

This plot was accepted by the City Council of Twin Falls, Idaho at their meeting on the 9th day of February, 2015.

Don Hall
Mayor

Leila A. Sanders
City Clerk, Deputy

APPROVAL OF CITY ENGINEER

I have reviewed the accompanying plot and hereby certify that it conforms with the applicable ordinances of the City of Twin Falls, Idaho.

James A. Lister
City Engineer

Kurti Tully
Attest

COUNTY SURVEYOR'S CERTIFICATE

This is to certify that the undersigned has checked the foregoing plot and computations for making the same and has determined that they comply with the laws of the State of Idaho and the County of Twin Falls related thereto.

Dated this 4th day of December, 2014.

Richard H. Carlson PLS 908
Richard H. Carlson, Acting County Surveyor

ACKNOWLEDGMENT

STATE OF IDAHO } ss
COUNTY OF }

On this 4th day of December, 2014, at 8:30 PM, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard H. Carlson, personally known or identified to me to be the person whose name is subscribed to the foregoing certificate 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.

Raula Wood Chelland
Notary Public
Twin Falls
Residing At
June 11, 2015
Commission Expires

COUNTY TREASURER'S CERTIFICATE

Debbie Kauffman County Treasurer is and for the County of Twin Falls, Idaho per the requirements of Idaho Code 30-1308, do hereby certify that all County property taxes due for the property included in this plot have been paid in full. This certification is valid for the next thirty days only.

Debbie Kauffman
County Treasurer

Date *April 30, 2015*

COUNTY RECORDER'S CERTIFICATE

INSTRUMENT NO. *205-006804*

STATE OF IDAHO } ss
COUNTY OF TWIN FALLS }

On this 5th day of May, 2015, at 9:28 AM, the foregoing plot was filed for record in the office of the Recorder of Twin Falls County, Idaho and duly recorded in plot book 27 on page 44.

Buckner Hunter
Deputy

Kristina Glascock
Ex-Officio Recorder

TWIN FALLS COUNTY
Presented for
E.H.M. ENGINEERS
9:28 AM 05/05/2015
2015-006804
No Pages Fee \$ 11.00
KRISTINA GLASCOCK
County Clerk
Deputy: BRUNTER



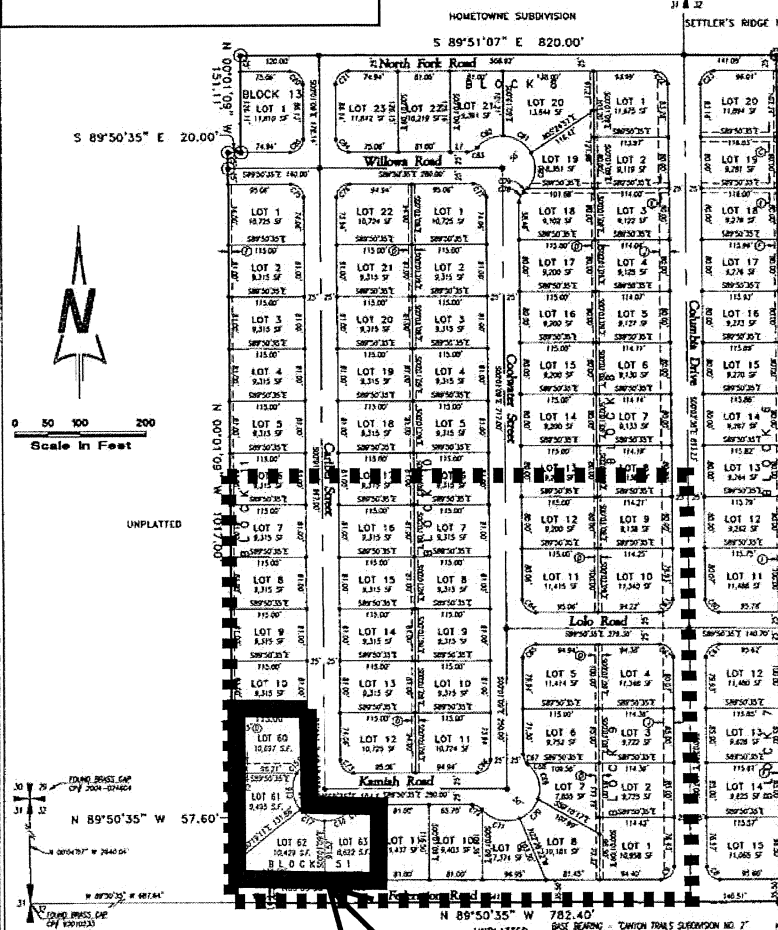
E.H.M. Engineers, Inc.
Engineers / Surveyors / Planners

SHEET 3 OF 3
243-14-8-171

EXHIBIT 7-3

NORTHERN PASSAGE SUBDIVISION NUMBER 3

LOCATED IN
A PORTION OF THE
S1/2 NW1/4, SECTION 32
TOWNSHIP 9 SOUTH, RANGE 17 EAST,
BOISE MERIDIAN, TWIN FALLS COUNTY
IDAHO 2009



Legend

- Boundary Line
- Center Line of Street
- Lot Line
- Easement Line (See Table)
- To Be Set 1/2" 24" Rebar and Cap (LS 1000)
- To Be Set 5/8" 24" Rebar and Cap (LS 1000)
- Set 5/8" 24" Rebar & Cap (LS 1000)
- Found 5/8" Rebar & Cap (LS 1000)

Monument Certification

The interior monuments on this Plat shown as "TO BE SET", will be set in accordance with section 50-1333, Idaho Code on or before one year from the recording date of this plat or as determined by the City of Twin Falls.

Easement Table

- 15.00 IRRIGATION EASEMENT CENTERED ON LOT LINES
- 10.00 DRAINAGE EASEMENT CENTERED ON LOT LINES
- 10.00 IRRIGATION & DRAINAGE EASEMENT CENTERED ON LOT LINES
- 5.00 DRAINAGE EASEMENT
- 15.00 IRRIGATION & UTILITY EASEMENT

Notes

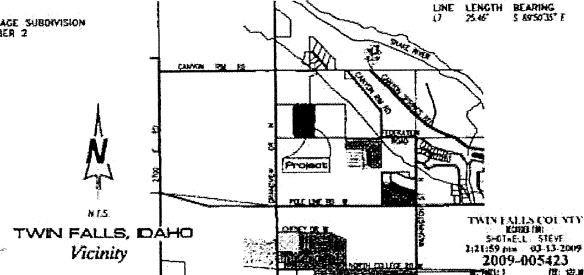
- A 15 FOOT WIDE UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOT LINES AND ADJACENT TO STREET FRONTS.

Curve Table

CURVE	DELTA	LENGTH	RADIUS	TANGENT	CHORD	CHORD BRC
C1	90.00	11.31	20.00	11.31	20.00	11.31
C2	90.00	11.31	20.00	11.31	20.00	11.31
C3	90.00	11.31	20.00	11.31	20.00	11.31
C4	90.00	11.31	20.00	11.31	20.00	11.31
C5	90.00	11.31	20.00	11.31	20.00	11.31
C6	90.00	11.31	20.00	11.31	20.00	11.31
C7	90.00	11.31	20.00	11.31	20.00	11.31
C8	90.00	11.31	20.00	11.31	20.00	11.31
C9	90.00	11.31	20.00	11.31	20.00	11.31
C10	90.00	11.31	20.00	11.31	20.00	11.31
C11	90.00	11.31	20.00	11.31	20.00	11.31
C12	90.00	11.31	20.00	11.31	20.00	11.31
C13	90.00	11.31	20.00	11.31	20.00	11.31
C14	90.00	11.31	20.00	11.31	20.00	11.31
C15	90.00	11.31	20.00	11.31	20.00	11.31
C16	90.00	11.31	20.00	11.31	20.00	11.31
C17	90.00	11.31	20.00	11.31	20.00	11.31
C18	90.00	11.31	20.00	11.31	20.00	11.31
C19	90.00	11.31	20.00	11.31	20.00	11.31
C20	90.00	11.31	20.00	11.31	20.00	11.31
C21	90.00	11.31	20.00	11.31	20.00	11.31
C22	90.00	11.31	20.00	11.31	20.00	11.31
C23	90.00	11.31	20.00	11.31	20.00	11.31
C24	90.00	11.31	20.00	11.31	20.00	11.31
C25	90.00	11.31	20.00	11.31	20.00	11.31
C26	90.00	11.31	20.00	11.31	20.00	11.31
C27	90.00	11.31	20.00	11.31	20.00	11.31
C28	90.00	11.31	20.00	11.31	20.00	11.31
C29	90.00	11.31	20.00	11.31	20.00	11.31
C30	90.00	11.31	20.00	11.31	20.00	11.31
C31	90.00	11.31	20.00	11.31	20.00	11.31
C32	90.00	11.31	20.00	11.31	20.00	11.31
C33	90.00	11.31	20.00	11.31	20.00	11.31
C34	90.00	11.31	20.00	11.31	20.00	11.31
C35	90.00	11.31	20.00	11.31	20.00	11.31
C36	90.00	11.31	20.00	11.31	20.00	11.31
C37	90.00	11.31	20.00	11.31	20.00	11.31
C38	90.00	11.31	20.00	11.31	20.00	11.31
C39	90.00	11.31	20.00	11.31	20.00	11.31
C40	90.00	11.31	20.00	11.31	20.00	11.31
C41	90.00	11.31	20.00	11.31	20.00	11.31
C42	90.00	11.31	20.00	11.31	20.00	11.31
C43	90.00	11.31	20.00	11.31	20.00	11.31
C44	90.00	11.31	20.00	11.31	20.00	11.31
C45	90.00	11.31	20.00	11.31	20.00	11.31
C46	90.00	11.31	20.00	11.31	20.00	11.31
C47	90.00	11.31	20.00	11.31	20.00	11.31
C48	90.00	11.31	20.00	11.31	20.00	11.31
C49	90.00	11.31	20.00	11.31	20.00	11.31
C50	90.00	11.31	20.00	11.31	20.00	11.31
C51	90.00	11.31	20.00	11.31	20.00	11.31
C52	90.00	11.31	20.00	11.31	20.00	11.31
C53	90.00	11.31	20.00	11.31	20.00	11.31
C54	90.00	11.31	20.00	11.31	20.00	11.31
C55	90.00	11.31	20.00	11.31	20.00	11.31
C56	90.00	11.31	20.00	11.31	20.00	11.31
C57	90.00	11.31	20.00	11.31	20.00	11.31
C58	90.00	11.31	20.00	11.31	20.00	11.31
C59	90.00	11.31	20.00	11.31	20.00	11.31
C60	90.00	11.31	20.00	11.31	20.00	11.31
C61	90.00	11.31	20.00	11.31	20.00	11.31
C62	90.00	11.31	20.00	11.31	20.00	11.31
C63	90.00	11.31	20.00	11.31	20.00	11.31
C64	90.00	11.31	20.00	11.31	20.00	11.31
C65	90.00	11.31	20.00	11.31	20.00	11.31
C66	90.00	11.31	20.00	11.31	20.00	11.31
C67	90.00	11.31	20.00	11.31	20.00	11.31
C68	90.00	11.31	20.00	11.31	20.00	11.31
C69	90.00	11.31	20.00	11.31	20.00	11.31
C70	90.00	11.31	20.00	11.31	20.00	11.31
C71	90.00	11.31	20.00	11.31	20.00	11.31
C72	90.00	11.31	20.00	11.31	20.00	11.31
C73	90.00	11.31	20.00	11.31	20.00	11.31
C74	90.00	11.31	20.00	11.31	20.00	11.31
C75	90.00	11.31	20.00	11.31	20.00	11.31
C76	90.00	11.31	20.00	11.31	20.00	11.31
C77	90.00	11.31	20.00	11.31	20.00	11.31
C78	90.00	11.31	20.00	11.31	20.00	11.31
C79	90.00	11.31	20.00	11.31	20.00	11.31
C80	90.00	11.31	20.00	11.31	20.00	11.31
C81	90.00	11.31	20.00	11.31	20.00	11.31
C82	90.00	11.31	20.00	11.31	20.00	11.31
C83	90.00	11.31	20.00	11.31	20.00	11.31
C84	90.00	11.31	20.00	11.31	20.00	11.31
C85	90.00	11.31	20.00	11.31	20.00	11.31
C86	90.00	11.31	20.00	11.31	20.00	11.31
C87	90.00	11.31	20.00	11.31	20.00	11.31
C88	90.00	11.31	20.00	11.31	20.00	11.31
C89	90.00	11.31	20.00	11.31	20.00	11.31
C90	90.00	11.31	20.00	11.31	20.00	11.31
C91	90.00	11.31	20.00	11.31	20.00	11.31
C92	90.00	11.31	20.00	11.31	20.00	11.31
C93	90.00	11.31	20.00	11.31	20.00	11.31
C94	90.00	11.31	20.00	11.31	20.00	11.31
C95	90.00	11.31	20.00	11.31	20.00	11.31
C96	90.00	11.31	20.00	11.31	20.00	11.31
C97	90.00	11.31	20.00	11.31	20.00	11.31
C98	90.00	11.31	20.00	11.31	20.00	11.31
C99	90.00	11.31	20.00	11.31	20.00	11.31
C100	90.00	11.31	20.00	11.31	20.00	11.31

Line Table

LINE	LENGTH	BEARING
1	75.46'	S 89°50'35" E



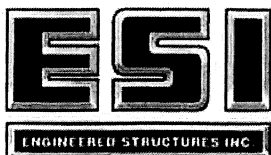
HEALTH CERTIFICATE

Sanitary restrictions as required by Idaho Code, Title 50, Chapter 13 have been satisfied based on the CEO approval of the design plans and specifications and the conditions imposed on the developer for continued satisfaction of sanitary restrictions. Buyer is cautioned that at the time of the approval, no drinking water or sewer/septic facilities were constructed. Building construction can be allowed with appropriate building permits if drinking water or sewer facilities have since been constructed or if the developer is simultaneously constructing those facilities. If the developer fails to construct facilities or meet the other conditions of CEO, then sanitary restrictions may be reimposed, in accordance with Section 50-1326, Idaho Code by the issuance of a certificate of disapproval, and no construction of any building or other requiring drinking water or sewer/septic facilities shall be allowed.

3-11-09
Date: _____
District North Department, SEHS
SHEET 1 OF 2
208-2497

BEAM Engineers, Inc.
ENGINEERS/SURVEYORS/PLANNERS

Northern Passage 5



GENERAL CONTRACTORS & CONSTRUCTION MANAGERS

3330 E Louise Dr Ste 300, Meridian, ID 83642

Phone (208) 362-3040 FAX (208) 362-3113

www.esiconstruction.com

CHANGE ORDER REQUEST #004

Owner : TWIN FALLS SCHOOL DISTRICT NO. 441
201 MAIN AVE WEST
TWIN FALLS, ID 83301

Date: 6/18/15

ESI Project No.: F014-

Project: ROCK CREEK ELEMENTARY SCHOOL - TWIN FALLS, ID
850 FEDERATION ROAD
TWIN FALLS, ID 83301

Reference : PR-02 dated 4/28/15 Federation Road
Improvements

PR-02 dated 4/28/15 Federation Road Improvements

1. Federation Road Extension: Provide a cost associated with extending the north side of Federation Road, east from the school property edge to Columbia tie-in. See attached sheets C-3, C-4, C-5 and narrative from the Civil Engineer.

2. Accessible Ramps: Provide a cost associated with adding the double accessible ramps. See attached sheets C-3, C-4, C-5 and narrative from the Civil Engineer.

1	Riedesel Engineering	4,500.00
2	Idaho Sand & Gravel	112,857.65
3	ESI	49,576.45

Total Estimated Cost of Included Items: 166,934.10

4.0000 % - OH & P: 6,677.37

0.6000 % - Bond: 1,041.67

Total CHANGE ORDER REQUEST 004 : 174,653.14

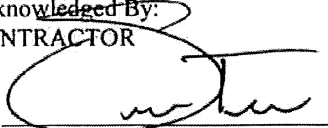
* Following approval of this CHANGE ORDER REQUEST, a Change Order will be submitted to amend the Contract Sum and/or Contract Time as approved.

* Schedule Impact (0) Days

* For breakdown on subcontract items, see attached proposals.

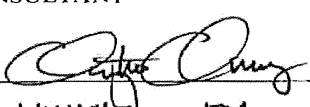
* Additional Building Permit Fees are not included.

Acknowledged By:
CONTRACTOR

By: 
Title: PM

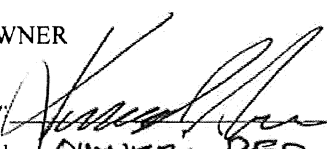
Date: 6/18/15

CONSULTANT

By: 
Title: HUMMEL - PM

Date: 8/11/15

OWNER

By: 
Title: OWNERS REP

Date: 8/13/15

"Experience ... Service ... Integrity"

LICENSES: AK, AZ, AR, CA, CO, ID, IN, IA, KS, KY, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY

CA #696242 NV #24265B AZ ROC 132139 OR CCB #77160 NM #88125 AK #27938 ID RCE-3108

OK'D BY BRADY 8/11/15

PROPOSAL REQUEST

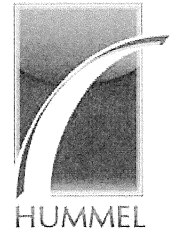
Proposal Request No.: PR-0002-00

Date of Issue: 04/28/2015

Project: Rock Creek Elementary School

TO: ESI

HA Project No.: I4009



Boise:

2785 North Bogus Basin Road
Boise, Idaho 83702
phone: (208) 343-7523
fax: (208) 343-0940



Twin Falls:

11 Shoshone Street North
Suite # 201
Twin Falls, ID 83301
phone: (208) 735-5350

www.hummelarch.com

This is not a change Order nor a direction to proceed with the Work described herein!

Provide an itemized quotation of the cost of the following changes to the Work. Include any required change in the contract time if applicable.

DESCRIPTION

[Clayton Chaney (Hummel Architects)] 1) Federation Road Extension

Provide a cost associated with extending the north side of Federation Road, east from the school property edge to Columbia tie-in. See attached sheets C-3, C-4, C-5 and narrative from the Civil Engineer.

2) Accessible Ramps

Provide a cost associated with adding the double accessible ramps. See attached sheets C-3, C-4, C-5 and narrative from the Civil Engineer.

3) Well Design

Provide a cost associated with constructing the wells for the cooling system, see attached sheets W1 & W2.

FROM: Clayton Chaney, Hummel Architects PLLC

COPY TO: file.

PR-02 Rock Creek Elementary:**Sheets C-3, C-4, C-5**

Double accessible ramps have been added at some curb returns shown on these sheets and detailed on sheet C-3. Those areas with added concrete and truncated domes are expected to add cost.

Sheet C-4

Roadway improvements to the north half of Federation Road from the east of the school district's boundary to the centerline of Columbia Drive are being required by the City of Twin Falls. The private developer to the east of Columbia Drive centerline will construct his portion separately. Work will include curb, gutter and sidewalk along with gravel base and paving to centerline on the north side of Federation including the curb return and ramp on the northwest corner of the intersection as well as the taper at the east end to centerline. Extension of the water main stubs outside of the paving area will be required. Work will also include installation of 120 linear feet of 16" diameter C-900 irrigation main, realignment of the ditch to the south and 300 feet of reconstruction of the ditch to the north to accommodate the lower pipe crossing elevation. Installation of the pipe to the invert elevations depicted on the plans are crucial.

Sheets W1 and W2

Installation of the well source cooling system as depicted on these sheets.

Marcia Ward

From: Keven Shreeve <kshreeve@Riedeseleng.com>
Sent: Wednesday, May 06, 2015 2:33 PM
To: Marcia Ward
Cc: Aaron Wert; Jeff Russell; Karolee Sorenson
Subject: RE: F014 Rock Creek Elem - PR-02 Pricing Reminder

Two-man survey crew: \$115/hr for 24 hours
Surveyor: \$90/hr. for 12 hours
Surveyor tech.: \$60 for 8 hours
Administration: \$45 for 4 hours

Total \$4500

Please let me or Aaron know if you need anything else.

From: Marcia Ward [mailto:marciaward@esiconstruction.com]
Sent: Wednesday, May 06, 2015 2:01 PM
To: Keven Shreeve
Cc: Aaron Wert; Jeff Russell
Subject: RE: F014 Rock Creek Elem - PR-02 Pricing Reminder

How many hours and what rate did you figure the \$4500.00 at?

From: Keven Shreeve [mailto:kshreeve@Riedeseleng.com]
Sent: Wednesday, May 06, 2015 1:55 PM
To: Marcia Ward
Cc: Aaron Wert
Subject: RE: F014 Rock Creek Elem - PR-02 Pricing Reminder

Marcia,

Not sure how you want this presented/transmitted but please accept this email as our request for additional compensation for surveying services for the Federation Road extension.

Construction staking of the roadway improvements, curb and gutter, and utilities will be performed for \$4500.

Thank you.

Keven Shreeve
Riedesel Engineering

From: Marcia Ward [mailto:marciaward@esiconstruction.com]
Sent: Tuesday, May 05, 2015 10:11 AM
To: Donnie Smith; 'Covey, Larry (Idaho Sand & Gravel)'; 'Andrew Campbell'; 'ryan muchow'; Keven Shreeve
Cc: Scott Tidwell; Jeff Russell
Subject: F014 Rock Creek Elem - PR-02 Pricing Reminder
Importance: High



IDAHO SAND & GRAVEL COMPANY

The Preferred Source

Nampa - 924 North Sugar Street * P.O. Box 1310 * Nampa, Idaho 83653-1310 * Phone 208-466-5001 * Fax 208-466-5166
Twin Falls - 391 East 300 South * Jerome, Idaho 83338 * Phone 208-324-5100 * Fax 208-324-5111
ISPW # 11916-AAA-1-2 Oregon # 142640 Nevada # 0054829

Sand & Rock Products • Concrete • Asphalt • Paving • Construction • Earthwork • Hauling

Cost Component Summary Report

Project Name:	Rock Creek School PR-02	Customer:	ESI
Job Number:		Billing Address:	3330 E. Louise Dr., Ste #300
Bid As:			Meridian, ID 83642
Estimator:	Lcovey	Phone:	362-3040
Project Address:		Contact:	
Completion Date:			

Crew

Crew Name	Total Quantity	UM	Average Unit Cost	Total Cost
Back-Hoe	1.97	DY	\$1,329.51	\$2,617.47
Base Gravel Under Asphalt	0.58	DY	\$1,762.26	\$1,015.41
Clear & Grubb	0.68	DY	\$4,606.82	\$3,132.64
Concrete Prep.	3.47	DY	\$1,703.00	\$5,902.61
Finish Grading	3.77	DY	\$2,004.15	\$7,553.87
Paving - Custom	0.51	DY	\$5,424.74	\$2,754.10
Scraper Exc To Waste	1.55	DY	\$4,530.92	\$7,036.97
Sidewalk Prep.	1.50	DY	\$1,822.26	\$2,741.38
Trackhoe CAT325	5.37	DY	\$1,854.00	\$9,958.64
Total:				\$42,713.09

Labor

Labor Type	Total Quantity	UM	Average Unit Cost	Total Cost
Blade Operator	86.44	HR	\$38.94	\$3,366.29
Crew Foreman	191.73	HR	\$39.21	\$7,518.15
Excavator Operator	43.76	HR	\$34.75	\$1,520.63
Finish Roller	49.88	HR	\$32.29	\$1,610.67
Grade-Checker	37.69	HR	\$31.92	\$1,202.96
Grademan-Laborer	105.93	HR	\$27.69	\$2,933.19
Laborer	19.69	HR	\$27.93	\$549.89
Loader Operator - 4 Cy To 7 Cy	41.51	HR	\$33.31	\$1,382.95
Paver Operator	6.09	HR	\$36.61	\$223.01
Raker	6.09	HR	\$29.24	\$178.15
Scraper Operator	31.06	HR	\$34.50	\$1,071.50
Screedman	12.18	HR	\$36.90	\$449.58
Sm. Back-Hoe,Grade Tractor - Up To 3/4 Cy	19.69	HR	\$33.67	\$662.87
Water Truck	15.53	HR	\$32.21	\$500.19
Total:				\$23,170.04

Equipment

Equipment Name	Total Quantity	UM	Average Unit Cost	Total Cost
Backhoe - Case 580 Backhoe	15.75	HR	\$40.00	\$630.00
Grade Tractor	33.52	HR	\$40.00	\$1,340.67
Grader - CAT 14H Motor Grader	6.80	HR	\$63.75	\$433.50

Equipment Name (continued)	Total Quantity	UM	Average Unit Cost	Total Cost
Grader - Cat 163 Grader	68.40	HR	\$45.00	\$3,078.04
Loader - CAT 966/950 Loader	31.20	HR	\$60.00	\$1,872.00
Paver - Cat 1055 Paver	5.08	HR	\$120.00	\$609.23
Roller - CA25 Single Grade Roller	19.88	HR	\$50.00	\$994.08
Roller - CR32 Sm. Asphalt Roller	5.08	HR	\$75.00	\$380.77
Roller - SD100 Single Grade Roller	17.38	HR	\$50.00	\$869.06
Roller - SD105 Med. Asphalt Roller	5.08	HR	\$50.00	\$253.85
Scraper - CAT 615 Scraper	12.42	HR	\$112.00	\$1,391.58
Scraper - CAT 623 Scraper	19.22	HR	\$150.00	\$2,883.72
Trackhoe - CAT 325 Trackhoe	45.77	HR	\$70.00	\$3,204.00
Water - 3500 Gallon Water Truck	45.79	HR	\$35.00	\$1,602.57
			Total:	\$19,543.06

Miscellaneous

Miscellaneous	Total Quantity	UM	Average Unit Cost	Total Cost
01--VFOH Expense- Grade Crew	7.00	DY	\$550.00	\$3,850.00
01--VFOH Expense- Pave Crew	1.00	DY	\$800.00	\$800.00
Allowance - Compressor Rental	1.00	EACH	\$365.00	\$365.00
Dump Fee (Budget)	50.40	CY	\$1.00	\$50.40
Water - Budget	850.00	MGAL	\$2.50	\$2,125.00
			Total:	\$7,190.40

Material

Material Type	Total Quantity	UM	Average Unit Cost	Total Cost
1-1/2" Road Base (ISG Jerome- Stutzman Pit)	1,111.00	TON	\$11.50	\$12,776.50
3/4" Road Base (Twin Falls Area) (ISG Jerome- Stutzman Pit)	288.00	TON	\$8.25	\$2,376.00
8" C900 And Caps	60.00	LF	\$14.31	\$858.60
Concrete	4.50	CY	\$125.00	\$562.50
Gravity Irrigation - 16" C-905	128.16	LF	\$38.16	\$4,890.59
Jerome- 3/4" PMX COTF 230074 (ISG - Jerome)	330.00	TON	\$73.00	\$24,090.00
Pit Run	60.00	TON	\$4.75	\$285.00
Precast Irrigation Boxes	4.00	EACH	\$0.00	\$0.00
Rebar	0.10	TON	\$1,272.00	\$127.20
			Total:	\$45,966.39

Trucking

Description	Total Quantity	UM	Average Unit Cost	Total Cost
Trucking - Super Single - Owned	60.00	TON	\$0.00	\$0.00
Trucking-Double Belly - Owned	60.00	TON	\$0.00	\$0.00
Trucking-End Dump - Owned	257.40	LCY	\$2.26	\$582.68
Trucking-End Dump - Owned	60.00	TON	\$1.28	\$77.00
Trucking-End Dump/Pup - Owned	60.00	TON	\$8.45	\$506.88
Trucking-Single Belly - Owned	1,387.00	TON	\$4.05	\$5,623.69
Trucking-Transfers - Owned	462.00	TON	\$3.79	\$1,748.79
Trucking-Tub Dump - Owned	60.00	TON	\$0.00	\$0.00
			Total:	\$8,539.03

OH + Profit @ 10%
 " " @ 5%

\$1,000.00
 \$4850.36
 \$112,857.65

CHANGE PROPOSAL REQUEST

1.PROJECT Rock Creek Elementary	2.CONTRACTOR ESI	3.PROJECT NO. F333F-014	Change Proposal # CI #1
		5.CONTRACT NO:	6.PROPOSAL DATE 5/6/2015
DESCRIPTION OF CHANGE: PR-0002 Federation Road Extension			
COST SUMMARY			
A. FOR CHANGE WORK DIRECTLY PERFORMED BY THE UNDERSIGNED CONTRACTOR			
1. Direct labor w/ labor fringes	\$ 32,268.48		
3. Materials and Equipment. Detailed quantities attached.	\$ 14,471.00		
4. Overhead & Fee @ 10% <i>First \$10,000</i>	\$ 1,000.00 4,673.95		
<i>5% over \$10,000</i>	\$ 1,836.97		
Time Extention Requested <u>10 working day</u>	\$ 51,413.42		
B. For work to be performed by subcontractors, per proposals and detailed breakdowns			
\$49,576.45			
1 SUBCONTRACTOR NAME	CATEGORY OF WORK	AMOUNT	
None			
2 TOTAL SUBCONTRACTOR AMOUNT (INCLUDING SUB. OH&P):		\$ -	
3 CONTRACTORS COMMISSION ON TOTAL SUBCONTRACTOR AMOUNT @ 5 PERCENT:		\$ -	
CONTRACTORS BOND COST			
C. TOTAL INCREASE OR DECREASE OF CONTRACT PRICE - (A8+B5)		\$ 51,413.42	
ESI CONCRETE CONTRACTOR NAME DONNIE SMITH PRINTED NAME ON PROPOSAL SIGNATURE / DATE			

ESI CONCRETE**Change Proposal Request #****CI #1****Date:** 6-May-15**Scope of change:**

PR-0002 Federation Road Extension

LABOR

Foreman	Hours	153.57	Labor Rate w/Fringe	\$ 35.00	5374.88
Carpenter	Hours	460.70	Labor Rate w/Fringe	\$ 30.00	13821.12
Laborer	Hours	153.57	Labor Rate w/Fringe	\$ 30.00	4607.04
Subsistence	Days	134.37	Geographical Rate	\$ 63.00	8465.44

TOTAL LABOR COSTS INCLUDING LABOR FRINGES \$32,268.48**MATERIAL**

Material listed below or from attached detailed material sheets - 14471.00

Other direct material not specifically included in detailed take-off - Consumables, etc. 0.00

Freight from vendor to job site if not already included in above material costs. 0.00

TOTAL MATERIAL COSTS FOR CHANGE ORDER \$14,471.00**EQUIPMENT**

Equipment Description	Est Usage	Rate	0	0.00
Equipment Description	Est Usage	Rate	0	0.00
Equipment Description	Est Usage	Rate	0	0.00
Equipment Description	Est Usage	Rate	0	0.00
Equipment Description	Est Usage	Rate	0	0.00
Equipment Description	Est Usage	Rate	0	0.00

TOTAL EQUIPMENT COSTS FOR CHANGE ORDER 0.00

ESI CONCRETE**Change Proposal Request #**

Date:

CI #1

6-May-15

Scope of change:

PR-0002 Federation Road Extension

0

0

#REF!

	Description	Quantity	Unit	Labor		Supplies/ Concrete	
				Hrs/Unit	Hours	\$/Unit	Cost
Federation Road Extension							
	PED RAMP W/ DOME	1	EA	30.00	30.00	0.00	300.00
	24" VERT CURB & GUTTER	740	LF	0.46	340.40	0.00	3800.00
	20' RADIUS ARTERIAL APPROACH W/ VALLEY GUTTER	1.00	EA	60.00	60.00	0.00	4200.00
	4" SIDEWALK	3700.00	SF	0.09	337.44	0.00	6171.00
					0.00		0.00
					0.00		0.00
					0.00		0.00
					0.00		0.00
					0.00		0.00
Hours					767.84	Mat'l	14471.00

Improvement Reimbursement Worksheet**Federation Road Extension**Reference # **FR 1****Contact Information**

Name Brad Wills
Phone 208-420-0314
E-mail: bradwills@cox.net

Project Information

Cross Streets Federation Road and Columbia Drive
RPT # If Available Multiple RPT #s
Date of City's Approval 14-Jun-16

Date of Application: 1-Aug-16
Drawing Sheet # Exhibit 9

Description of Improvements Half Width Federation Road Extension Roadway Project

Description of Boundary 1/8th mile rule to North of Federation along frontage

Status of Property Undeveloped Platted Land

Method to determine Payback Percentage of Benefit based on area of platted lots to North

Engineering Department Notes Only

Date Submitted

Boundary Reviewed

GIS Notes

3rd Party Review

Commission Approval

Description	Item	Quantity	EA	Unit Price	Amount	Percentage	Balance
Per Contract	Roadway	Per Contract					\$ 174,653.14
		Deduct from Sht 8-4					\$ (36,222.01)
						Subtotal	\$ 138,431.13
Reimbursement Fee of 15 %						15%	\$ 20,764.67
						Total	\$ 159,195.80

Support Information

Description	Reference #	Contractor	Notes
Per Contract			
Method of Percentage of Benefit			
Acreage within the 1/8 Mile Rule	Multiple Lots		

Eligible Payback

Description	RPT #	Owner	Amount of Payback
Acreage within the 1/8 Mile Rule	See RPT List	Northern Passage, Inc.	\$ 159,195.80
		Total	\$ 159,195.80

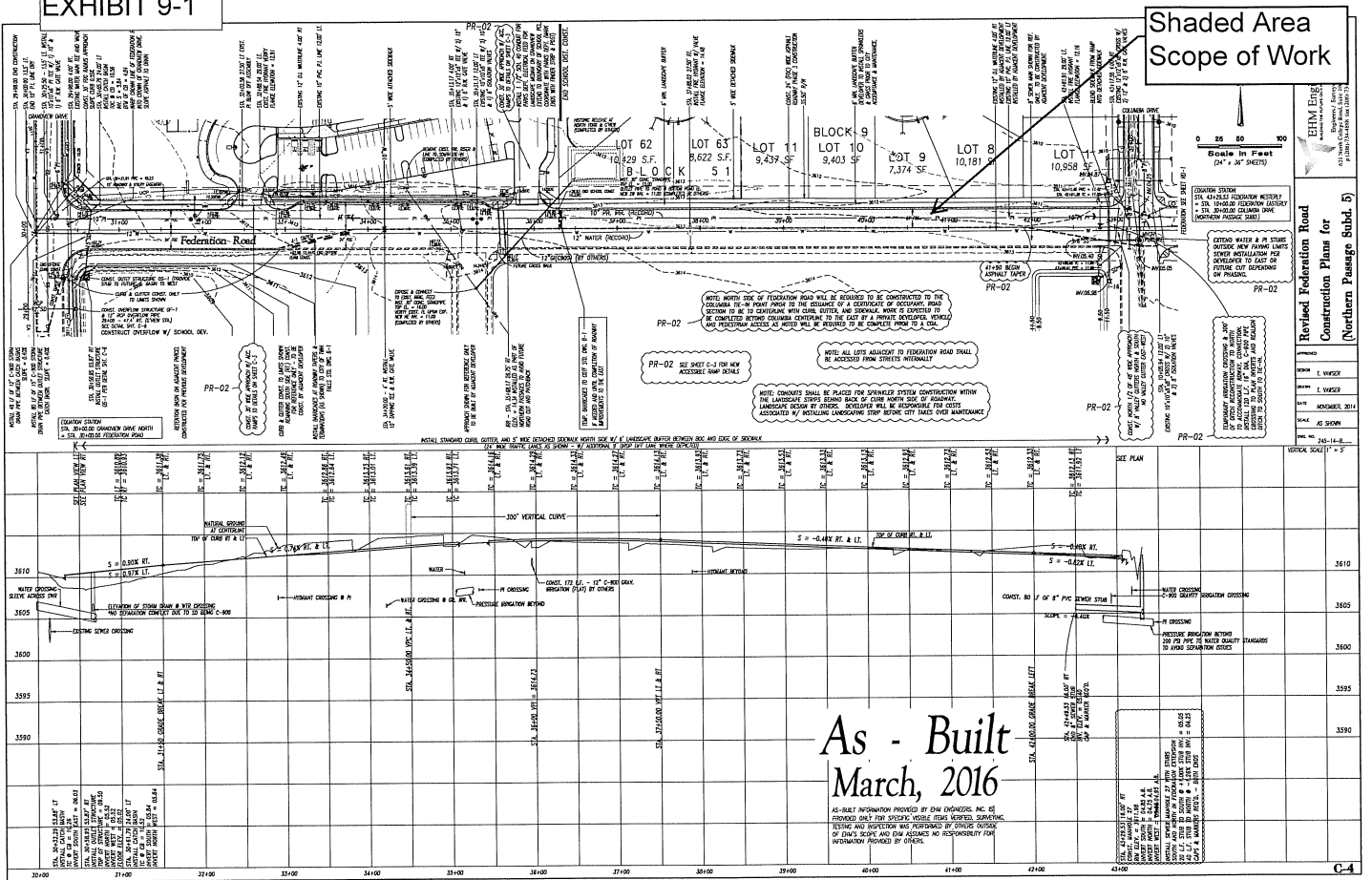
Owner Information

RPT #	Owner	Address	Phone #	Contacted
See RPT List	Northern Passage, Inc.	Box 2138, McCall, Idaho 83638		

Worksheet	Exhibit 8-3					
Roadway						
36+28.83	3628.83					
43+29.53	4329.53					
	700.70					
Split from Contract for work south of centerline						
Roadway						
43+29.53	4329.53					
41+90.00	4190.00					
	Length	Wide	SF			
	139.53	12	1674.36	9	186.04	
	24' Wide	12' Ave				
Valley Gutter	Estimated					
	Width	Length	SF			
	8.00	24	192	9	21.33	
Sewer Extension	Estimated					
Manhole	1.00					
8" Sewer	63.00					
Water Line Extension	Estimated					
8" Water	20.00					
Irrigation						
Irrigation f	2.00					
16"	128.16					
	See Contract					

Federation Road Extension			Worksheet 8-4					
Deduct for Non Benefitting Work and Storm Water.								
Soft Cost such as Engineering, OH and P, Bond Cost are included in the 15%								
	Deduct		\$4,500.00					
	OH & P		\$6,677.37					
	Bond		\$1,041.67					
					\$12,219.04			
Storm Water								
120 LF of 16" C-900 Irrigation Main, Realignment of the Ditch to the south and 300 feet of Reconstruction of the ditch to the north.								
2 Irrigation Boxes								
C-900 16"	Pipe	130	\$ 35.00	\$ 4,550.00				
Irrigation Boxes		2	\$2,500.00	\$ 5,000.00				
Realignment	Minor	50	\$ 10.00	\$ 500.00				
Reconstruction of Ditch	Excavation	300	\$ 4.00	\$ 1,200.00				
					\$11,250.00			
Roadway								
	Station	1	\$ 685.00	\$ 685.00		See Sheet 9-2		
	3" Asphalt	186	\$ 14.80	\$ 2,752.80		1674	9	186
	2" 3/4" Gravel	10	\$ 39.00	\$ 403.00		1674	12*12*2/46656	10
	9" Base Course	47	\$ 35.00	\$ 1,627.50		1674	12*12*9/46656	47
	Valley gutter	21	\$ 104.00	\$ 2,218.67		192	9	21
					\$ 7,686.97			
Water Line								
	8" Water Line	20	\$ 44.00	\$ 880.00				
					\$ 880.00			
Sewer/Manholes								
	Manhole	1	\$2,800.00	\$ 2,800.00				
	8" Sewer Line	63	\$ 22.00	\$ 1,386.00				
					\$ 4,186.00			
					\$36,222.01			

EXHIBIT 9-1



Shaded Area
Scope of Work

Revised Federation Road Construction Plans for (Northern Passage Subd. 5)

Scale: 1" = 40' (Horizontal), 1" = 10' (Vertical)

Sheet: 24-14-10-1

Author: EHM Engineering

Check: E. W. W. W.

Date: November 2014

Scale: 1" = 40' (Horizontal), 1" = 10' (Vertical)

Sheet: 24-14-10-1

EXHIBIT 9-2

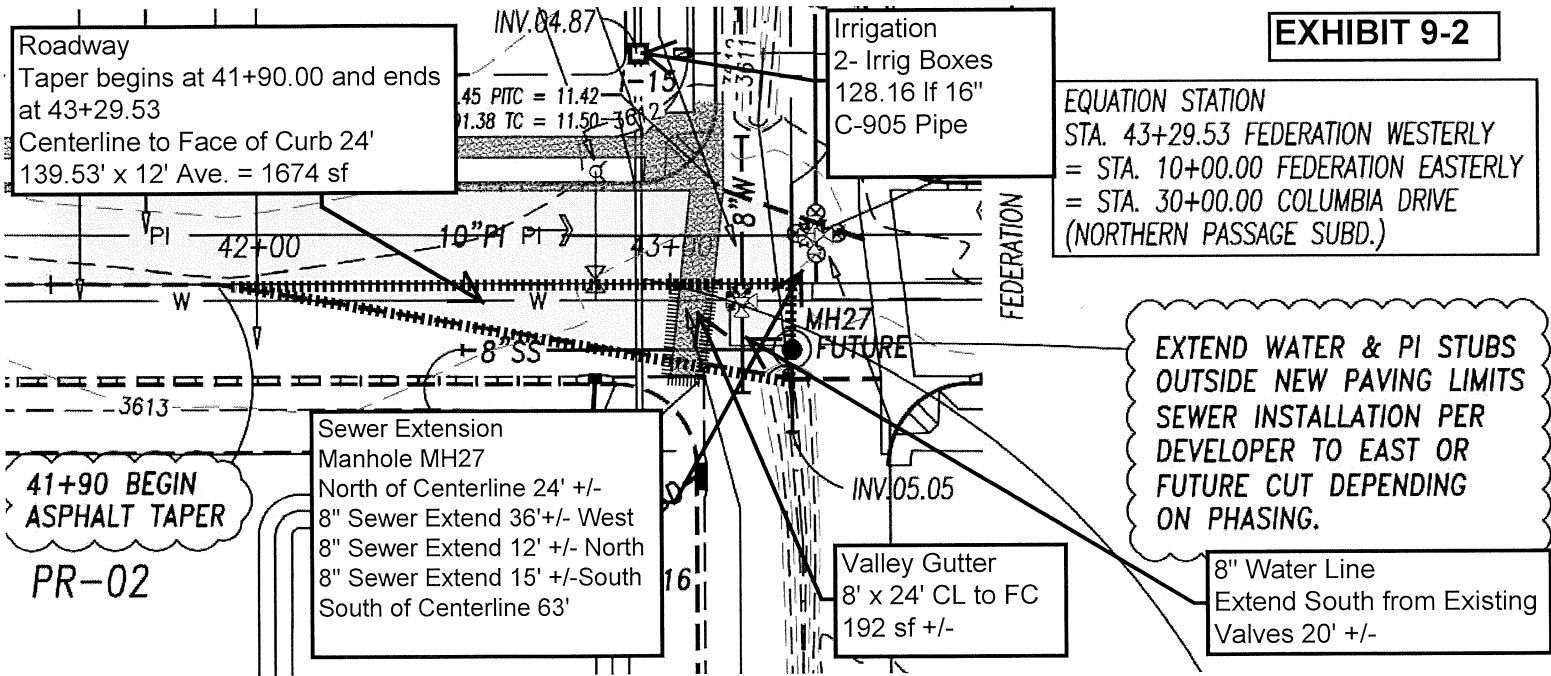
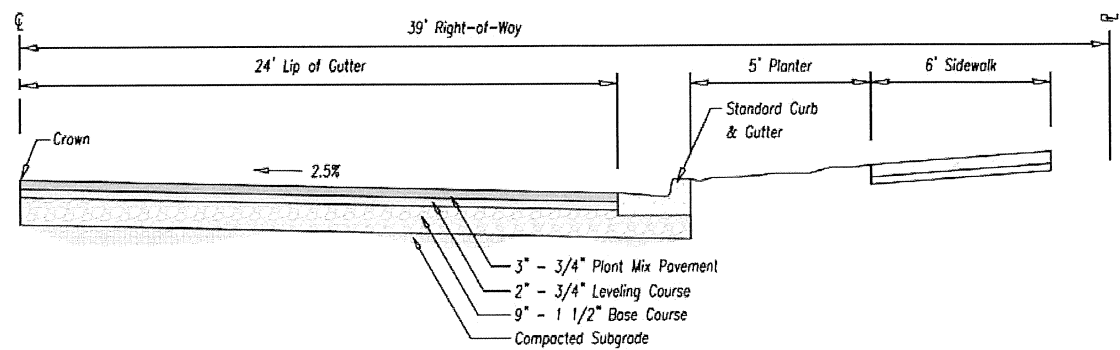


Exhibit 9-3



1

TYPICAL ROADWAY SECTION

ROAD(S): FIELD STREAM WAY

Exhibit 10**CERTIFICATE****OF****OWNERS**

This is to certify that the undersigned are the owners in fee simple of the following described property located in the Southwest quarter of the Northwest quarter of Section 32, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho. Said property being more specifically described as follows:

Commencing at the East quarter corner of said Section 32. Said point lies South 89°50'35" East, 5319.11 feet from the West quarter corner of said Section 32. Thence, North 89°50'35" West, 4631.47 feet along the South boundary of the North half of Section 32 to the Southwest corner of "Northern Passage Subdivision Number 3". Thence, North 00°01'09" West, 35.50 feet along the West boundary of "Northern Passage Subdivision Number 3" to a point on the North right of way of Federation Road being the REAL POINT OF BEGINNING.

Thence, North 89°50'35" West, 611.17 feet along said right of way.

Thence, North 44°57'21" West, 42.51 feet to a point on the East right of way of Grandview Drive North.

Thence, North 00°04'07" West, 891.51 feet along said right of way to the Southwest corner of Lot 10, Block 13 of "Northern Passage Subdivision Number 4".

Thence, South 89°50'35" East, 139.37 feet along the South boundary of Lot 10, Block 13 of "Northern Passage Subdivision Number 4" to the Southeast corner thereof.

Thence, South 00°01'09" East, 13.00 feet along the West right of way of Ahsahka Street.

Thence, South 89°50'35" East, 445.00 feet to the Southeast corner of Lot 21, Block 11 of "Northern Passage Subdivision Number 4".

Thence, South 00°01'09" East, 648.00 feet along the West boundary of "Northern Passage Subdivision Number 3" to the Southwest corner of Lot 10, Block 11 of "Northern Passage Subdivision Number 3".

Thence, South 89°50'35" East, 115.00 feet along the South boundary of Lot 10, Block 11 of "Northern Passage Subdivision Number 3" to the Southeast corner thereof and a point on the West right of way of Canibel Street.

Thence, South 00°01'09" East, 144.00 feet along the West right of way of Canibel Street extended to a point on the South right of way of Kamiah Road.

Thence, South 89°50'35" East, 104.60 feet along the South right of way of Kamiah Road to the Northwest corner of Lot 11, Block 9 of "Northern Passage Subdivision Number 3".

Thence, South 00°01'09" East, 116.50 feet along the West boundary of Lot 11, Block 9 of "Northern Passage Subdivision Number 4" to the Southwest corner thereof and a point on the North right of way of Federation Road.

Thence, North 89°50'35" West, 162.00 feet along said right of way to the REAL POINT OF BEGINNING.

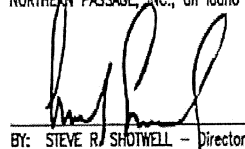
The gross area contained in this platted land as described is 13.178 acres.

It is the intention of the undersigned to, and they do hereby include said land in this plat. That the undersigned by these presents dedicate to the public for public use forever the road rights of way as shown on this plat. The easements indicated on this plat are not dedicated to the public, but the right to use said easements is hereby perpetually reserved for public utilities and such other uses designated on this plat. No structure other than for such utility and other designated public uses are to be erected within the lines of said easements.

Pursuant to Idaho Code 50-1334, I, the undersigned, as owner, do hereby state that the lots on this plat are eligible to receive water service from the City of Twin Falls Municipal Water System.

Pursuant to Idaho Code 31-3805, I, the undersigned, as owner, do hereby state that the irrigation water rights appurtenant and the assessment obligation of the lands in this plat have not been transferred from said lands and that a satisfactory irrigation water delivery system is provided for and has been approved by the Twin Falls City Council. Lots within the subdivision will be entitled to water rights and will be obligated for assessments from the Irrigation District and/or Canal Company.

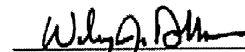
NORTHERN PASSAGE, INC., an Idaho Corporation



BY: STEVE R. SHUTWELL - Director

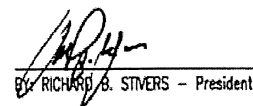
TWIN FALLS SCHOOL DISTRICT #411

A Governmental Subdivision of the State of Idaho, A Body Politic and Corporate



BY: WILEY D. QUIBBS, PH. D. - Superintendent

TITLEFACT, INC., An Idaho Corporation as Trustee



BY: RICHARD B. STIVERS - President



P.O. Box 1907 305 Third Avenue East

Twin Falls, Idaho 83303-1907

Fax: (208) 736-1501

ENGINEERING

208-735-7255

June 14, 2016

Tim Vawser
EHM Engineer, Inc.
621 N. College Rd- Suite 100
Twin Falls, Id. 83301

REF: Northern Passage Subdivision #5
Block 51, Lot 59 (Rock Creek Elementary School)

Dear Mr. Vawser,

The City of Twin Falls has field reviewed the above reference project and found that the Engineering requirements have been completed. Therefore the City of Twin Falls will accept these public improvements for maintenance upon today's date as well as the one-year warranty. Please keep in mind we will revisit this project 60 Day's prior to the anniversary of the warranty.

If you have any questions please feel free to contact me at 735-7255

Sincerely;

Garry Denton
Engineering Technician

Cc: Jackie Fields PE, City Engineer
Troy Vitek PE, Assistant City Engineer
Twin Falls School District #4
ESI

EXHIBIT M



RECEIVED

FEB 02 2016

CITY OF TWIN FALLS
ENGINEERING DEPT.

Date: February 1, 2016

To: City of Twin Falls
Attn: Troy Vitek

From: Gerald L. Martens, P.E.

Via: Hand Deliver

Regarding: Broadmoor Subdivision

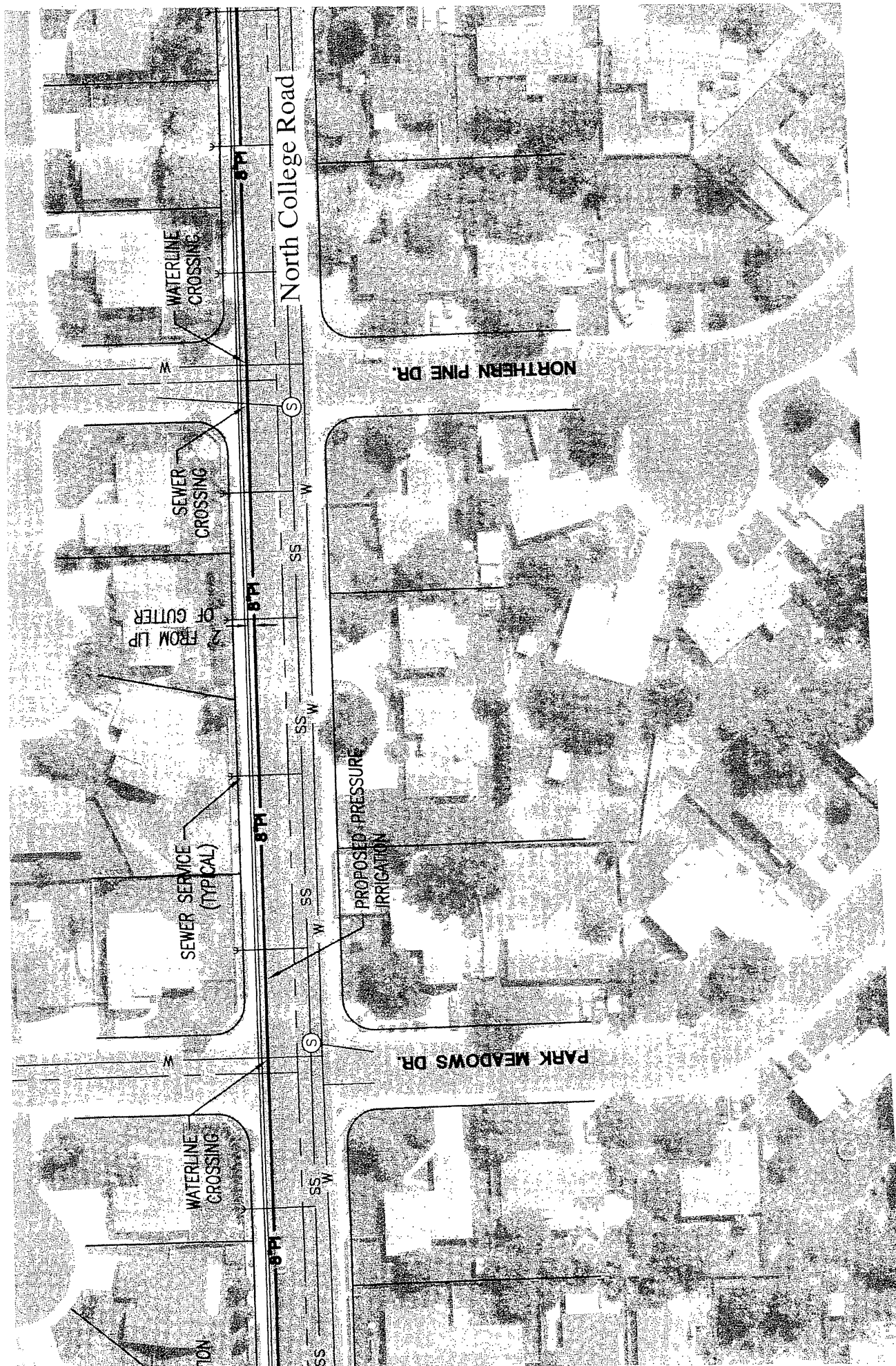
Transmitted herewith is a plan to provide pressurized irrigation to the Broadmoor Subdivision from the irrigation pump station within the Riverhawk Subdivision located adjacent to North College Road. This redesign is per your request to better allocate available pumping capacity.

With your approval this installation will be installed during the 2016 construction season.

426-15

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.



CITY OF TWIN FALLS
ENGINEER'S CHECK OFF AND CERTIFICATION
Per Section III e. of the Improvement Agreement for Developments

TYPE OF PROJECT: City Improvements
PROJECT NAME: Broadmore Subdivision Phase 1
STARTING DATE: March, 2016 FINAL DATE September, 2016
PERSON TO BE CONTACTED: David Thibault, P.E.

Each succeeding section must be completed in its entirety prior to proceeding to the next section. However, the Contractor or Developer may proceed to the next section as long as he does not go beyond a checkpoint, test point, or compact an area before the prior section is complete.

SECTION I -Initial Steps

A). GENERAL WORK PRIOR TO START OF SUBDIVISION

- X 1) Receipt of City Standard Specifications and Drawings.
- X 2) Receipt of plans signed by City Engineer.
- X 3) Notification by Developer of start of work.
- X 4) Perform soil proctors. (5-point proctor required.)
- X 5) Notify City of Twin Falls to take gravel samples for proctors.
- X 6) Acquire gravel proctors and gradation from City of Twin Falls.
- X 7) Testing of any new materials contractors want to try. Submit to City of Twin Falls for approval.
- X 8) Locate all existing utilities.
- NA 9) Submit Marshall Mix Design for approval by the City of Twin Falls.
- NA 10) Acquire approval of Marshall Mix Design from the City of Twin Falls.

SECTION II -Placement of Underground Utilities

A). WATER LINES

- X 1) Identification of Materials.
 - X a) Pipe - Type & Class per COTF Specifications X
 - Valves - Type & Class per COTF Specifications X
 - Hydrants - Type & Class per COTF Specifications X
- X 2) Inspection -pipe in trench.
 - X a) Check to see if all valves, tees, fire hydrants, etc. are in proper location, fire hydrant drain gravel is of proper type, adequate volume and proper location.
 - X b) Check thrust blocks and weep holes.
 - X c) Check trench bedding.
 - X d) Check fit and tightness of bolts and connector rods.
 - X e) Minimum depth: 30 INCHES.
 - X f) Recheck type and class of pipe.
- X 3) Inspect and Test Pipe Zone Backfill.
- X 4) Notify Water Dept. -Sterilize and pressurize.
- X 5) Pressure and Leakage Test.
- X 6) Water Line Services.
 - X a) Check materials: Water supply lines, copper tracer wire and Stainless steel stiffeners.

SECTION II - Placement of Underground Utilities - continued.

- X b) Check meter pit elevations: 36" below finish grade.
- X 7) Mark water meter locations.
- X 8) Place Final Lifts of Backfill -Inspect trench compaction per City of Twin Falls specifications (including service line trenches).
- X 9) Trench tests or compaction tests -Date passed: (SEE REPORTS) .
- B) PLACEMENT OF SEWER LINES AND SERVICES
- X 1) Identification of materials.
- X a) Pipe Main -Type & Class per COTF Specifications X
- X b) Service pipe - Type & Class per COTF Specifications _____
- NA c) Pressure line pipe -Type NA Class NA
- X d) Manhole covers - Type & Class per COTF Specifications X
- X e) Manhole rings & covers - Type & Class per COTF Specifications X
- X 2) Inspection of pipe in trench.
- X a) Check bedding.
- X b) Fit of pipe.
- X c) Minimum depth: 30 INCHES
- X d) Manholes.
- X 1) Finish work.
- X 2) Base.
- X 3) Channel shapes match Standard Drawings.
- X 4) Drop manholes.
- X 5) Grouting.
- X 6) Ramneck or rubber gasket.
- X e) Recheck type and class of pipe.
- X f) Sewer services.
- X 1) Location of tap: (PER PLANS)
- X 2) Bedding and depth: 6 INCHES
- X 3) Type of tap used: PER COTF
- X 4) Sewer tap inspected: (SEE INSPECTION REPORT)
- NA g) Pressure lines.
- 1) Thrust blocks: _____
- 2) Cleanouts: _____
- 3) Manhole: _____
- X 3) Inspect and test pipe zone backfill (if a hoe pac or drop hammer are used, II B)5 and II B)6 shall be done before II B)4).
- X 4) Hydraulic or air test (pipe stabilized) Date: (SEE REPORTS)
- X 5) Place final lifts of backfill -Inspect trench compaction per City of Twin Falls specifications.
- X 6) Trench test or compaction test. Date Passed (including service line trenches): (SEE REPORTS)
- X 7) Deflection -test with Mandrel.
- X 8) TV inspection of pipe. Notify City of Twin Falls Sewer Dept. for TV inspection. Date Passed (SEE REPORTS)

SECTION II - Placement of Underground Utilities - continued.

C) STORM SEWER AND IRRIGATION

X 1) Identification of materials.

X a) Type & Class per COTF Specifications X

X 2) Inspection of pipe in trench.

X a) Bedding.

X b) Fit of pipe.

X c) Minimum Depth: 24"

X d) Recheck type and class of pipe.

X e) Irrigation structures and catch basins.

X 1) Wall thickness: Per COTF

X 2) Materials.

NA a) Gravity: Irrigation lids std., gates and wier boards:
Yes ? No ☐

X b) Pressure Irrigation: Valves, injection assemblies, air
Release/vacuum valves, blow off assembly, risers, boxes,
and thrust blocks.

X c) Catch basin frames & grates: Yes ☐ No X

X d) Cylinder, air and slump.

X e) Rebar or wire required.

X f) Drop Inlet.

X g) Grade across bottom.

X 3) Finish Work.

X f) Location of structure: See Plans

X 3) Inspect and test pipe zone backfill (if a drop hammer or hoe pac are used
II C)5 shall be done before II C)4).

X 4) Hydraulic or air test. Date Passed: See Test Reports by Others

X 5) Trench test. Date Passed: See Test Reports by Others

D) POWER, GAS, TELEPHONE AND CABLE VISION

X 1) Minimum (2'-6'): 48"

X 2) Easement Location: See Plans

X 3) Are street crossings in? Yes ☐ No ☐

X 4) Backfill procedure: Heavy Equipment

X 5) Trench compaction test. Date Passed: See Test Reports by Others

E) PRESSURE IRRIGATION

X 1) Identification of materials.

<u>NA</u> a) Gravity Supply Pipe	-
Pressure distribution Pipe	- PER COTF SPECS.
Service Line Pipe	- PER COTF SPECS.
Valves	- PER COTF SPECS.

X 2) Inspection - pipe in trench.

X a) Check to see if all valves and tees are in the proper location.

X b) Check Trust Blocks.

X c) Check for blow off assemblies at low points of system.

X d) Check for air release /vacuum valves at high points of system.

SECTION II - Placement of Underground Utilities - continued.

- ☒ e) Check trench bedding.
- ☒ f) Check fit and tightness of bolts and connection rods.
- ☒ g) Min. depth: 30"
- ☒ h) Recheck type and class of pipe.
- ☒ 3) Inspect and test pipe zone backfill.
- ☒ 4) Pressure and leak test.
- ☒ 5) Water service installation. May be done prior to pressure test if contractor approves.
 - ☒ a) Check materials: Supply lines, valves, "non-potable" tag., valve box.
 - ☒ b) Service box location.
- ☒ 6) Mark service box locations.
- ☒ 7) Place final lifts of backfill. Inspect trench compaction per City of Twin Falls Specifications. Include service line trenches.
- ☒ 8) Trench tests for compactions tests. DATE PASSED: See Test Reports by Others

SECTION III -STREETS, CURB AND GUTTER AND SIDEWALK CONSTRUCTION

A) SUBGRADE AND EXCAVATION.

- ☒ 1) Staked street (TRAIL) for grade and alignment.
- ☒ 2) Look for soft spots.
 - ☒ a) Where irrigation ditches have been.
 - ☒ b) Where standing water has been.
- ☒ 3) Check subgrade blue tops if present or curb stakes.
- ☒ 4) Require compaction of all subgrade not just curb areas (no exceptions).
- ☒ 5) Test (VISUAL) entire subgrade. Date passed: See Test Reports by Others
- ☒ 6) Cover and protect subgrade. Cover entire subgrade, minimum 2 1/2 inches crushed gravel.

B) CURB AND GUTTER - VALLEY GUTTER PLACEMENT.

- ☒ 1) Compact the 2 1/2 or 6 1/2 inches of base material, as required by street width, beneath curb area.
- ☒ 2) Test compaction, Date passed: See Test Reports by Others
- ☒ 3) Check Forms.
 - ☒ a) Make sure forms extend to property line.
 - ☒ b) Check for wheel-chair ramps.
 - ☒ c) Check for driveway approaches.
 - ☒ d) Radii.
 - ☒ e) Depth of concrete.
 - ☒ f) Check for Expansion Material at 40' intervals and at end of all radii.
- ☒ 4) Test Concrete.
 - ☒ a) Slump and Air.
 - ☒ b) Cylinder.
 - ☒ c) Flow test and straight edge test of gutter.
 - ☒ d) Check depth (1 1/2") from flow line to lip.

SECTION III - STREETS, CURB AND GUTTER AND SIDEWALK CONSTRUCTION - continued.

- X 5) Check finish work.
 - X a) Broomed surface.
 - X b) Trueness.
 - X c) Slopes on ramps and approaches (1:12 max).
 - X d) Thickness of concrete: 4" MINIMUM
 - X e) Check for curing compound.
- C) GRAVEL BASE AND LEVELING COURSES.
 - X 1) Place remaining base and compact (if subgrade did not deteriorate).
 - X 2) Test base gravel compaction. Date Passed: (VARIED SEE REPORTS)
 - X 3) Place leveling course.
 - X 4) Require blue tops.
 - X a) Check gravel to blue tops.
 - X b) String line from blue tops to blue tops and blue tops to curb.
 - X c) Check for quarter Crown (none allowed).
 - X d) Check for proper depth from lip of gutter to gravel.
 - X 5) Test Compaction, Date Passed: See Test Reports by Others
- D) PAVEMENT PLACEMENT.
 - X 1) Confirm that mix design (Marshall only) is approved by City of Twin Falls.
 - X 2) Have all manholes and valves covers raised to grade - check slope.
 - X 3) Prime gravel, if required, within 5 days of III C) 5 and barricade street
 - X 4) Check coverage of prime, if required, through inspection and receipt of weight tickets.
 - X 5) Observe paving:
 - X a) Take plant mix sample and take to City of Twin Falls lab.
 - X b) Temperature range: 235°F to 315°F behind paver screen.
 - X c) Observe roller operation.
 - X d) Check depth of asphalt mix and see if mix is even with lip of gutter and not over 1/4" above after compaction.
 - X e) Check for bad spots - segregation, lack of or too much oil, cracks, pumping, birdbaths, etc.
 - NR 6) Core pavement - Notify City of Twin Falls to core - Low Density - Bonded By IMC
 - NR 7) Test plant mix and cores. Check with City of Twin Falls to test.
 - X 8) Have core holes filled by Contractor.
 - NA 9) Request profilograph test by City if required.
- E) SIDEWALK AND DRIVEWAY APPROACH SLABS.
 - X 1) Compact subgrade.
 - X 2) Test subgrade, Date Passed: (VARIED SEE REPORTS)
 - X 3) Place and compact gravel leveling course.
 - X 4) Test gravel. Date Passed: (VARIED SEE REPORTS)
 - X 5) Check forms.
 - X a) Slope and depth on forms.
 - X b) Expansion material on approach slabs, etc.

SECTION III - STREETS, CURB AND GUTTER AND SIDEWALK CONSTRUCTION - continued.

- ☒ c) Check for wheel chair ramps. - Bonded For 3 along N. College.
☒ d) Check for expansion material at 15' intervals.
☒ 6) Test concrete.
☒ a) Air and slump.
☒ b) Cylinders.
☒ 7) Check finish work.
☒ a) Bicycle tracks, etc.
☒ b) Brooming.
☒ c) Curing compound.

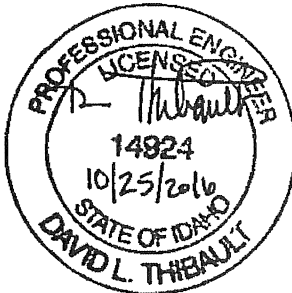
SECTION IV -CITY ENGINEER'S APPROVAL

FINAL INSPECTION MADE BY:

NAME	TITLE	DATE

DEVELOPER'S ENGINEER CERTIFICATION

On behalf of TENSOCO (Developer) on Broadmore Subdivision Phase 1, I David Thibault (Engineer) certify that the engineering surveying, testing, inspections and the Contractor's materials and workmanship performed thus far substantially comply with applicable City of Twin Falls Standard Drawings and Specifications.



David Thibault, P.E.
Engineer
Date 10/25/2016
14924
License Number
EHM Engineers, Inc.

COMPLETED CHECK OFF SHEET AND CERTIFICATION REQUIRED PRIOR TO ACCEPTANCE BY THE CITY OF TWIN FALLS.

EXHIBIT N



305 3rd Avenue East P.O. Box 1907 Twin Falls, Idaho 83303-1907 Fax: (208) 736-1501

ENGINEERING

208-735-7293

November 28, 2018

David Thibault, P.E.
EHM Engineering, Inc.
621 N. College Rd – Suite #100
Twin Falls, Id. 83301

REF: Broadmoor Subdivision Offsite PI extension acceptance.

Dear Mr. Thibault,

The City of Twin Falls has field reviewed the above reference project and found that the Engineering requirements for the pressure irrigation distribution system between the Riverhawk pump station and the north boundary line of Broadmoor subdivision as identified on the approved construction plans has been completed. Therefore the City of Twin Falls will accept this individual public improvement for maintenance and will start the one-year warranty as of today's date. Please keep in mind we will revisit this project within 60 Days prior to the warranty's ending date.

The remainder of the subdivision will need to finalize the punch list items prior to final acceptance.

If you have any questions, please feel free to contact me at 735-7256.

Sincerely;

Troy Vitek, PE
Assistant City Engineer

Cc: file



ATTORNEYS AND COUNSELORS

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
208.344.6000
www.hawleytroxell.com

LYNNETTE M. DAVIS
ADMITTED TO PRACTICE LAW IN IDAHO
EMAIL: LDAVIS@HAWLEYTROXELL.COM
DIRECT DIAL: 208.388.4944
DIRECT FAX: 208.954.5213

February 1, 2019

***TRANSMITTED VIA E-MAIL and
CERTIFIED MAIL***

Travis Rothweiler, ICMA-CM
City Manager
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: trothweiler@tfid.org

Shayne Nope
City Attorney
City of Twin Falls, Idaho
P.O. Box 1907
Twin Falls, ID 83303-1907
E-mail: snope@tfid.org

Re: *Jade Development, LLC's Appeal of the Improvement Reimbursement
Commission's Approval of Gerald Martens' Reimbursement Application*

Dear Mr. Rothweiler, Mr. Nope, and City Council Members:

Pursuant to Mr. Nope's instruction, this letter supplements our initial appeal letter (dated December 17, 2018) and provides additional evidence demonstrating that the Improvement Reimbursement Commission's ("IRC") December 3, 2018 decision was contrary to both the facts and Resolution 2017-13 ("Resolution"), which is the document that controls this analysis.

As set forth in our initial appeal letter, the IRC's decision should be vacated on several bases, including without limitation, one of the following bases:

1. The Real Estate Purchase and Sale Agreement clearly states that Mr. Martens agreed to construct the improvements at his sole cost; thus, Mr. Martens is not entitled to reimbursement.
2. The following failed to comply with the Resolution:
 - (a) Mr. Martens' reimbursement request;
 - (b) the City's staff report; and
 - (c) the IRC's review.

New information came to light after we sent our initial appeal letter. This new information further supports arguments 2 (a)–(c) (*i.e.*, that the IRC's decision should be vacated because Mr. Martens' reimbursement request, the staff report, and the IRC's review failed to comply with the Resolution).

1. The IRC's Decision Should be Vacated because the IRC Failed to Follow the Resolution.

The inadequacy of the IRC's review was underscored by Mr. Vitek's comments at the January 7, 2019 City Council meeting. Two of Mr. Vitek's comments are particularly relevant. First, in response to Councilwoman Hawkins' question regarding the composition of the IRC, Mr. Vitek explained that the City intended that all IRC members possess engineering/construction experience and understand the technical complexities of the Resolution and reimbursement requests. (*See* January 7, 2019 City Council Meeting, 43:20). Unfortunately, only one engineer currently sits on the IRC—Gerald Martens. Thus, the one IRC member who possesses the experience to evaluate the reimbursement request is the same person requesting the reimbursement. The IRC's lack of engineering experience would likely be a non-issue if the remaining members demonstrated a willingness to diligently analyze the Resolution and apply it to the facts. However, the IRC did just the opposite, which brings me to Mr. Vitek's second comment.

Mr. Vitek's second comment was made at the end of his presentation, when he emphasized that the Resolution was “a lot to digest” and explained that he had to “really dig into the language.” (January 7, 2019 City Council Meeting, 44:50). In other words, Mr. Vitek explained that the Resolution is a complicated document and must be carefully reviewed when evaluating a reimbursement request. The IRC failed to carefully review the Resolution. In fact, the IRC demonstrated a blatant disregard for the Resolution. For example, Chairman Debie disagreed with the stated purpose of the Resolution, *i.e.*, “to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for future reimbursement.” Upon learning of this provision, Chairman Debie expressed strong disagreement, stating: “I’ve been around development long enough to know that [the Resolution] was originally intended . . . to protect the initial developer, not the subsequent developer.” (November 29, 2018 IRC Meeting, 38:03). In other words, instead of taking Mr. Vitek's approach of digging into the Resolution's language, Chairman Debie ignored the Resolution because he thought he knew better. Worse yet, Chairman Debie admitted that he had not diligently reviewed the information of the Resolution, stating: “I’d feel a lot more confident if I read [the Resolution and meeting packet] three times, **but that’s not really going to happen.**” *Id.*, 2:32:13. In short, Mr. Vitek's comments at the January 7, 2019 City Council meeting highlight the fact that the IRC failed to adequately review the Resolution before deciding the reimbursement request. As a result, the IRC's decision conflicted with the Resolution and the facts; therefore, it should be vacated.

2. The IRC's Decision Should be Vacated because Mr. Martens' Reimbursement Request Failed to Comply with the Resolution.

As discussed in our initial appeal letter, Mr. Martens' third request for reimbursement ("Third Request") contained three significant errors:

- (1) the Third Request erroneously included \$118,677.73 for storm-water improvements;
- (2) there were serious concerns with the third-party review letter; and
- (3) the Third Request did not include requisite information, such as receipts of costs, acceptance letters, a list of property owners potentially affected by the reimbursement, etc.

Since our initial appeal letter, new developments have occurred, which further support the denial of the Third Request. For instance, at the January 7, 2019 City Council meeting, Mr. Vitek emphasized the importance of the third-party review letter. Specifically, Mr. Vitek explained that the City does not have the resources to verify the documentation of a reimbursement request (*e.g.*, verify receipts and confirm that the improvement qualifies under the Resolution). Consequently, the City relies heavily, if not solely, on the third-party reviewer to "look through the receipts . . . look through everything and make sure that it conforms with [the Resolution]." (January 7, 2019 City Council Meeting, 35:45). In short, the third-party reviewer plays a critical role in the reimbursement request process.

Hailey Barnes drafted the third-party review letter and, from all appearances, merely rubber stamped the Third Request. In her letter, Ms. Barnes states that "[a]fter a thorough review it is my opinion that . . . the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and **Resolution 1816**." Apparently, despite conducting a thorough review, Ms. Barnes did not recognize that Resolution 1816 had been revised and replaced by Resolution 2017-13. Moreover, she failed to notice that neither the ordinance, nor Resolution 1816 or 2017-13, discuss reimbursement for storm-water improvements. Given that there is no evidence that she reviewed any receipts of actual costs, neither the City nor the IRC should have relied upon Ms. Barnes' "independent review" of the Third Request.

It appears that Ms. Barnes may have developed a habit of rubber stamping applications for reimbursement. In response to our document request, the City produced fifteen applications for reimbursement, eight of which contained an "independent" review letter from Ms. Barnes. All eight of Ms. Barnes' review letters are attached hereto as **Exhibit A**. Ms. Barnes' letters raise two questions. First, each of the eight letters are nearly identical and are shockingly superficial, which leads us to question the depth of Ms. Barnes' review of each application. This is particularly concerning considering the City's sole reliance upon the "independent review." Second, five of the eight letters were drafted by Ms. Barnes while she worked for EHM (Mr. Martens' engineering firm).

Because Ms. Barnes merely rubber-stamped the Third Request, it appears that the Third Request did not have a thorough, independent review. Even more disturbing is the fact that Mr.

Martens has refused to provide the City the requisite information to even make an independent review possible. In order to respond to Jade's public records request relating to the acceptance of the various systems constructed with respect to the Broadmoor Subdivision, Garry Denton (a City Engineer Inspector) has made several requests to EHM for the testing reports for the pressurized irrigation line, which should have been previously provided to the City as part of its acceptance process and reviewed by Ms. Barnes as part of her independent review. Initially, EHM representatives told Mr. Denton that they were looking for the reports. But, after Mr. Denton followed up three times, EHM refused to produce the documents and told Mr. Denton to make all future requests to EHM's attorney. Mr. Denton's emails communicating the same are attached hereto as **Exhibit B**. It stands to reason that a developer should not be entitled to reimbursement if it refuses to provide the City with the documents necessary to determine whether he or the subject system (in this case the pressurized irrigation system) are eligible for such reimbursement. In sum, Jade respectfully requests that the City Council vacate the IRC's decision based upon Mr. Martens' failure to comply with the Resolution by, *inter alia*, refusing to provide required documentation.

3. The IRC's Decision Should be Vacated because the City's Staff Report Ignored that the Third Request was Untimely.

To be eligible for reimbursement, a developer **must** submit an application within 90 days of the City's acceptance of the improvement, or within 90 days of the adoption of the Resolution.¹ As discussed on page 12 of our initial appeal letter, the City's November 29, 2018 staff report failed to address the City's acceptance of the improvement (attached hereto as **Exhibit C**). Had the City investigated the timeliness of Mr. Martens' request, it would have discovered that it was untimely; thus, it was not eligible for reimbursement. The documents attached to our initial appeal letter as Attachment M indicate that the pressurized irrigation improvement was likely completed in 2016.² Since our initial appeal letter, we discovered a letter sent by Mr. Martens wherein he explained that all of the improvements for the initial phase of his development (which includes the pressurized irrigation system) were completed as of August 24, 2017 (except for "a portion of the park and storm water retention basin"). Further, Mr. Martens explained that "The areas have been **irrigated** and seeded." This letter, which is attached hereto as **Exhibit D**, conclusively establishes that the pressurized irrigation system improvement was completed, operated, and constructively accepted by the City, prior to August 24, 2017. Therefore, the 90-day reimbursement window began to run on August 24, 2017 (or at

¹ The Resolution was adopted on August 28, 2017.

² Attachment M included: (1) a letter from Mr. Martens stating that the improvement would be installed during the 2016 construction season; and (2) an EHM engineer's certification document, dated October 25, 2016, in which Mr. Thibault (the EHM engineer who has been representing Mr. Martens' with respect to the subject application) certified that the engineering, surveying, testing, inspections, materials, and workmanship for, *inter alia*, the pressurized irrigation improvement complied with the City's requirements.

the latest, when the Resolution was accepted on August 28, 2017). Based on these dates, Mr. Martens was required to submit his reimbursement request by November 25, 2017, at the very latest (based upon the date the Resolution was accepted). Mr. Martens' request was submitted on September 28, 2018—more than ten months after the expiration of the 90-day reimbursement window provided by the Resolution. Therefore, it is untimely and should have been denied by the IRC.

The purpose of the 90-day reimbursement deadline is to ensure that a developer seeks reimbursement at or near the time an improvement is accepted to avoid surprise to third-party purchasers of property who may unknowingly benefit in some fashion from the improvement constructed by that developer but rightfully assume that any reimbursement for such improvement would have been resolved within 90 days of the acceptance of that improvement. By requiring a developer to submit for reimbursement within 90 days of acceptance, the issue would most likely be addressed, at the latest, during the preliminary stages of a subsequent development. Thus, enforcing the 90-day deadline would not only provide notice to the subsequent developer of the added expense associated with the development of property, but it would limit the involvement to the initial developer and a subsequent developer – not third party purchasers of the subsequently developed property. After all, an ordinary individual purchasing a home or a lot does not anticipate having to reimburse an unknown developer for systems that benefit an entire subdivision. Unfortunately, by failing to enforce the 90-day deadline, the IRC permits developers such as Mr. Martens to strong-arm unsuspecting families who purchased their lots without knowledge of the obligation to reimburse an unknown developer for systems that were constructed and operational long before they purchased their lot. In doing so, the IRC puts those innocent third parties at risk of incurring what can be a significant and unanticipated financial obligation in order to build or complete the construction on the property they purchased.

For instance, after the City accepted Phase 1 of Jade's development approximately a year and a half ago, Jade started selling lots to individual families. At the time, Jade rightfully believed that Mr. Martens was going to abide by the Agreement and not seek reimbursement. However, Mr. Martens' untimely Third Request for reimbursement sought payment from those individual families (in addition to Jade) who own lots or homes within the Broadmoor Subdivision.³ Those families could have been required to pay the full amount of the reimbursement in order to pull a building permit for any purpose. This result would have been avoided if Mr. Martens had complied with the 90-day deadline. Indeed, a timely reimbursement request would have been evaluated long before Jade sold lots to the unsuspecting families, and at that point, the reimbursement request would have involved only Mr. Martens and Jade. The IRC should not be allowed to ignore the 90-day deadline as doing so circumvents the purpose of including such a deadline in the Resolution – to avoid imposing a significant financial obligation

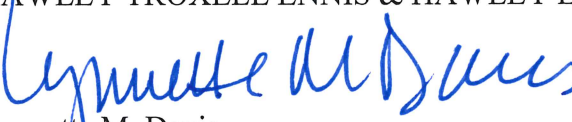
³ In this instance Jade posted a bond to avoid any problems for the families who purchased lots in its portion of Broadmoor Subdivision. However, another developer may not be willing to do so.

on a third party who purchases property without knowledge of the obligation or even the risk of the obligation being imposed. This is another reason why the IRC's decision should be vacated.

In conclusion, Jade respectfully requests that the City Council vacate the IRC's decision. The City Council may do so on several different grounds. For instance, the IRC's decision should be vacated until the private agreement between Jade and Mr. Martens is interpreted and enforced by a court of law. Alternatively, the IRC's decision should be vacated due to numerous violations of the Resolution. Although the amount currently in dispute (\$35,764.31) is relatively small, an affirmance would endorse Mr. Martens' and the IRC's disregard of the Resolution, and would likely result in Mr. Martens submitting several additional, and equally deficient, reimbursement requests relating to the co-development of the Broadmoor Subdivision. Consequently, this appeal carries significant consequences beyond the \$35,764.31 in dispute and Jade deserves a thorough review.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Lynnette M. Davis

LMD:ll
Attachments

cc: Twin Falls City Mayor Shawn Barigar
Twin Falls City Council Members Greg Lanting, Suzanne Hawkins,
Chris Talkington, Chris Reid, and Ruth Pierce
Jade Development, LLC
Scott Allen

Exhibit A

EHM Engineers, Inc.
ENGINEERS / SURVEYORS / PLANNERS

IN THE FIELDS OF:
PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
BRIDGES
ENVIRONMENTAL
QUALITY CONTROL
CONSTRUCTION MGMT.

August 20, 2012

City of Twin Falls
Engineering Department
Attn: Troy Vitek, P.E.
P.O. Box 1907
Twin Falls, Idaho 83303

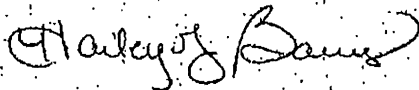
RE: Sunterra Subdivision – Application for Eligible Improvements

Troy,

EHM Engineers has completed a third party review of the application for eligible improvements for the Sunterra Subdivision that was submitted to us by Brad Wills on August 16, 2012. The application meets the requirements of the application process and the items, quantities, and associated costs appear to conform to Ordinance No. 2974 and Resolution No. 1816.

Should the City have any questions regarding this application, please feel free to contact us at 208-734-4888 or email me at hbarnes@ehminc.com.

Respectfully,



Hailey G. Barnes, P.E.
EHM Engineers, Inc.

September 5, 2012

City of Twin Falls
Engineering Department
Attn: Troy Vitek, P.E.
P.O. Box 1907
Twin Falls, Idaho 83303

RE: Fairway Estates Subdivision – Application for Eligible Improvements

Troy,

EHM Engineers has completed a third party review of the application for eligible improvements for the Fairway Estates Subdivision Phases 1 and 2 that was submitted to us by Brad Wills on August 16, 2012. The application meets the requirements of the application process and the items, quantities, and associated costs appear to conform to Ordinance No. 2974 and Resolution No. 1816.

Should the City have any questions regarding this application, please feel free to contact us at 208-734-4888 or email me at hbarnes@ehminc.com.

Respectfully,



Hailey G. Barnes, P.E.
EHM Engineers, Inc.

November 20, 2012

City of Twin Falls
Engineering Department
Attn: Troy Vitek, P.E.
P.O. Box 1907
Twin Falls, Idaho 83303

RE: Terrace Garden Subdivision Phases 1 & 2— Application for Eligible Improvements

Troy,

EHM Engineers has completed a third party review of the application for eligible improvements for the Terrace Garden Subdivision Phases 1 & 2 that was submitted to us by Brad Wills on November 16, 2012. The application meets the requirements of the application process and the items, quantities, and associated costs appear to conform to Ordinance No. 2974 and Resolution No. 1816.

Should the City have any questions regarding this application, please feel free to contact us at 208-734-4888 or email me at hbarnes@ehminc.com.

Respectfully,



Hailey G. Barnes, P.E.
EHM Engineers, Inc.



EHM Engineers, Inc.

BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE

IN THE FIELDS OF:
PLANNING
SURVEYING
HIGHWAYS
WATER
WASTEWATER
STRUCTURAL
SUBDIVISIONS
BRIDGES
ENVIRONMENTAL
QUALITY CONTROL
CONSTRUCTION MGMT.
GRANT ADMINISTRATION

March 20, 2013

City of Twin Falls
Engineering Department
Attn: Troy Vitek, P.E.
P.O. Box 1907
Twin Falls, Idaho 83303

RE: South Estates Ph. 1 – Application for Eligible Improvements

Troy,

EHM Engineers has completed a third party review of the application for eligible improvements for the South Estates Subdivision, Phase 1 that was submitted to us by Brad Wills on March 11, 2013. The application meets the requirements of the application process and the items, quantities, and associated costs appear to conform to Ordinance No. 2974 and Resolution No. 1816.

Should the City have any questions regarding this application, please feel free to contact us at 208-734-4888 or email me at hbarnes@ehminc.com.

Respectfully,

Hailey G. Barnes, P.E.
EHM Engineers, Inc.

Attachments: South Estates Subdivision Improvement Reimbursement Application

cc: Brad Wills
File



February 5, 2015

City of Twin Falls
Engineering Department
Attn: Troy Vitek, P.E.
P.O. Box 1907
Twin Falls, Idaho 83303

RE: Golden Eagle Subdivision # 3, Phase # 2 – Application for Eligible Improvements

Troy,

EHM Engineers has completed a third party review of the application for eligible improvements for the Golden Eagle Subdivision # 3, Phase 2 that was submitted to us by Brad Wills. The application meets the requirements of the application process and the items, quantities, and associated costs appear to conform to Ordinance No. 2974 and Resolution No. 1816.

Should the City have any questions regarding this application, please feel free to contact us at 208-734-4888 or email me at hbarnes@ehminc.com.

Respectfully,

Hailey G. Barnes, P.E.
EHM Engineers, Inc.

Attachments: Golden Eagle Subdivision # 3, Phase # 2 Reimbursement Application

cc: Brad Wills
File

Exhibit 0

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

4/4/2016

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

Dear Mr. Vitek,

Mr. Brad Wills retained my services to conduct a third party review of the submitted Improvement Reimbursement Application for the WS & V Subdivision First Amended Lot 1 Block 1, Offsite Sewer Project. After careful review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,

Hailey G. Barnes, P.E.



Attachments: Improvement Reimbursement Application: WS & V Subdivision First Amended Lot 1 Block 1

Cc: Brad Wills

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

8/29/2016

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

Dear Mr. Vitek,

Mr. Brad Wills retained my services to conduct a third party review of the submitted Improvement Reimbursement Application for the Federation Road Extension Project that was completed during the Rock Creek Elementary School project. After careful review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,



Halley G. Barnes, P.E.

Attachments: Improvement Reimbursement Application: Federation Road Extension

Cc: Brad Wills

815 Yakima Ave.
Filer, ID 83328
208.420.9624
Jd.hg.barnes@gmail.com

3/29/2018

City of Twin Falls
Attn: Troy Vitek, P.E.
324 Hansen St. E.
Twin Falls, ID 83301

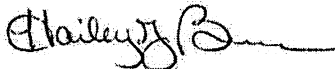
Dear Mr. Vitek,

Mr. Brad Wills retained my services to conduct a third party review of the submitted Improvement Reimbursement Application for the Federation Road Project.

After careful review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816.

Should the City have any questions regarding this review, please feel free to contact me at 208-420-9624 or jd.hg.barnes@gmail.com.

Kind regards,


Hailey G. Barnes, P.E.

Attachments: Improvement Reimbursement Application: Federation Road Extension

Cc: Brad Wills

Exhibit B

Lars Lundberg

From: Scott Allen <sallen@jub.com>
Sent: Thursday, January 17, 2019 2:36 PM
To: Lynnette Davis
Cc: Lars Lundberg; Cheri Draper
Subject: 190117 Future Record Requests from EHM

Lynnette,

I just received a phone call from Garry Denton (city testing department) regarding EHM records. EHM contacted Garry and informed him that he, or the city, needs to make all future record requests to their attorney. Garry is still looking for the subject p.i. test reports, EHM has not provided him with any additional info.

Regards,

SCOTT L. ALLEN
Project Manager
Land Development

J-U-B ENGINEERS, Inc.
115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary. Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on the J-U-B home page. If you believe you received this email in error, please reply to that effect and then delete all copies.

Lars Lundberg

From: Garry Denton <gdenton@tfid.org>
Sent: Tuesday, January 15, 2019 4:42 PM
To: Scott Allen
Subject: RE: 190115 Broadmoor - North College P.I. Testing Reports - Follow up

Scott,

Sorry once again, apparently David thought we had all the testing on the off-site PI, and so did I. We will continue to try and get that information for you and us.

Thanks, Garry

Garry Denton

City of Twin Falls
Engineering Inspector
305 3rd Ave E.
P.O. Box 1907
Twin Falls, ID. 83303-1907
(208) 735-3446 – Inspections
(208) 735-7255– Office
(208) 308-7255 – Cell
(208) 736-1501 – Fax

From: Scott Allen <sallen@jub.com>
Sent: Tuesday, January 15, 2019 2:42 PM
To: Garry Denton <gdenton@tfid.org>
Subject: RE: 190115 Broadmoor - North College P.I. Testing Reports - Follow up

Thanks Garry.

SCOTT L. ALLEN
Project Manager
Land Development

J-U-B ENGINEERS, Inc.
115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



From: Garry Denton <gdenton@tfid.org>
Sent: Tuesday, January 15, 2019 2:22 PM
To: 'dthibault@ehminc.com' <dthibault@ehminc.com>
Cc: Scott Allen <sallen@jub.com>; Troy Vitek <tvitek@tfid.org>
Subject: FW: 190115 Broadmoor - North College P.I. Testing Reports - Follow up

David,

Jay apparently is out of the office for the next few days. Please find below the third request for testing data on the above project. We would appreciate your immediate response.

Thank you, Garry

Garry Denton

City of Twin Falls
Engineering Inspector
305 3rd Ave E.
P.O. Box 1907
Twin Falls, ID. 83303-1907
(208) 735-3446 – Inspections
(208) 735-7255– Office
(208) 308-7255 – Cell
(208) 736-1501 – Fax

From: Scott Allen <sallen@jub.com>
Sent: Tuesday, January 15, 2019 8:59 AM
To: Garry Denton <gdenton@tfid.org>
Cc: Lars Lundberg <LLundberg@hawleytroxell.com>; Lynnette Davis <LDavis@hawleytroxell.com>; Troy Vitek <tvitek@tfid.org>
Subject: 190115 Broadmoor - North College P.I. Testing Reports - Follow up

Hi Garry,

I'm just following up with you to see if EHM has provided the city with any testing reports yet for the Broadmoor Subdivision p.i. delivery mainline located in N. College?

Thanks for your continued help and please respond at your earliest convenience.

SCOTT L. ALLEN
Project Manager
Land Development

J-U-B ENGINEERS, Inc.
115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



From: Garry Denton <gdenton@tfid.org>
Sent: Tuesday, January 8, 2019 1:07 PM
To: Scott Allen <sallen@jub.com>
Cc: Lars Lundberg <LLundberg@hawleytroxell.com>; Lynnette Davis <LDavis@hawleytroxell.com>; Troy Vitek

<tvitek@tfid.org>

Subject: RE: 190108 Broadmoor - North College P.I. Testing Reports

Scott,

I once again just contacted EHM for testing and inspection documentation on that. Dave Thibault said, he did have documentation and would be looking in to it. Sorry, about the snail pace. I tried to go up the chain of command this time, will see what happens.

Thanks, Garry

Garry Denton

City of Twin Falls
Engineering Inspector
305 3rd Ave E.
P.O. Box 1907
Twin Falls, ID. 83303-1907
(208) 735-3446 – Inspections
(208) 735-7255– Office
(208) 308-7255 – Cell
(208) 736-1501 – Fax

From: Scott Allen <sallen@jub.com>

Sent: Tuesday, January 8, 2019 9:34 AM

To: Garry Denton <gdenton@tfid.org>

Cc: Lars Lundberg <LLundberg@hawleytroxell.com>; Lynnette Davis <LDavis@hawleytroxell.com>

Subject: 190108 Broadmoor - North College P.I. Testing Reports

Hi Garry,

Per our telephone conversation on 12/17/18, EHM was going to provide the City with testing reports for the P.I. mainline located in North College Road. This is the P.I. line that runs from the P.I. pump station, west to Broadmoor Subdivision. Have you received any of the abovementioned records from EHM yet?

We would like to receive them as soon as possible.

Thanks,

SCOTT L. ALLEN
Project Manager
Land Development

J-U-B ENGINEERS, Inc.

115 Northstar Ave. Twin Falls, ID 83301
e sallen@jub.com w www.jub.com
p 208 733 2414 ex 6033 c 208 432-2146



THE
LANGDON
GROUP



GATEWAY
MAPPING
INC.

OTHER J-U-B COMPANIES

This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary. Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on the J-U-B home page. If you believe you received this email in error, please reply to that effect and then delete all copies.

This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary. Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on the J-U-B home page. If you believe you received this email in error, please reply to that effect and then delete all copies.

This e-mail and any attachments involving J-U-B or a subsidiary business may contain information that is confidential and/or proprietary. Prior to use, you agree to the provisions found on the Electronic Documents/Data License, which can be accessed from the footer on the J-U-B home page. If you believe you received this email in error, please reply to that effect and then delete all copies.

Exhibit C



Date: Thursday, November 29, 2018
To: Impact Fee & Improvement Reimbursement Committee
From:

ACTION ITEM

Request:

Broadmoor Subdivision Reimbursement Request

Time Estimate:

Staff estimates 15 minutes to explain the application.

Background:

Broadmoor subdivision received its preliminary plat approval on July 10, 2007 as a whole subdivision. On October 27, 2015 the final plat was recorded which included both north and south portions as shown on the attached final plat document. Part of the requirement to receive approval to record the final plat is to demonstrate that the subdivision can receive water, sewer, PI, storm drainage, parks requirement, and roadway development to support subdividing. The original developer submitted a full set of construction plans that met the requirements. At time of construction the Perrine Point pressure irrigation station was not developed as originally proposed and a new location was proposed to hook into an existing station known as the Riverhawk PI station. This change was required by the City to meet City Code section 7-8-4 (E) that reads “ (E) Notwithstanding the foregoing, the use of the city's potable water supply as the primary source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or ZDA, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or ZDA. (Ord. 3082, 12-8-2014)”. On February 1, 2016 a proposed plan of the offsite PI extension was delivered to the City and eventually approved. On March 4, 2016 the construction plans were approved for the entire Subdivision and later on June 22, 2016 a revised phasing construction plan was approved for everything south of Ridgeway Drive (Jade Portion).

Subsequent to the approval of the Final Plat of the Broadmoor Subdivision, the original developer (Rusmor) sold to Gerald Martens the northerly portion of the Broadmoor Subdivision, and later sold the remaining southerly portion of the Broadmoor Subdivision to Jade Development. Gerald Martens began development of the northerly portion of the Broadmoor Subdivision and extended pressure irrigation distribution south to the southerly portion of Broadmoor Subdivision. Gerald Martens is the “initial developer” as defined in the Improvement Reimbursement Resolution. See page 2 of the Resolution, attached.

The Improvement Reimbursement Resolution was passed to allow compensation for water distribution system, waste water collection system, transportation system, pressure irrigation pump stations, PI distribution systems, and Twin Falls Canal Company water delivery system, made by an initial developer to be compensated by a subsequent developer who benefits from the improvement. The resolution details how those reimbursements are to be made and responsibilities. No provisions are included in this resolution with regards to parks or storm water retention since the design of those improvements are meant to be only for the subdivision and not benefiting adjacent properties.

Broadmoor Subdivision has constructed an offsite Pressure irrigation distribution system that serves both

the north and south developments. This meets the requirements of the reimbursement resolution PI section. See pages 17-21 of the Resolution. It is the duty of the Improvement Reimbursement Commission to determine proper compensation, in the manner described in the Resolution. The City will enter the information into the City GIS database.

The applicant for a connection permit, final plat approval, acceptance of any improvement, or any certificate of occupancy that desires to connect to existing public improvements eligible for reimbursement, shall make application to the Engineering Department to determine the Reimbursement obligation related to those improvements. The applicant can pay the required reimbursements and provide a receipt of proper compensation to the Commission or request the Commission reevaluate the required reimbursement by appealing the reimbursement amount and providing additional information to the Commission to make a new determination of proper compensation. The Commission reserves the right to request additional documentation of proper compensation. The Initial Developer will be given a reasonable time and opportunity to respond to the appeal before the hearing, and to appear and defend the determination at the hearing.

If the initial developer and subsequent developer agree on the proper compensation, the subsequent developer may file a notarized and agreed amount between the initial developer who installed the existing system and the subsequent developer or property owner who desires to connect to the existing system. The amount may be based upon any agreed portion of the cost, such as frontage, acreage or number of lots, but shall not exceed the total cost of the system.

City staff has communicated with the initial developer and the subsequent developer and is aware of the fact that there is dispute between the parties as to whether or not proper compensation for the eligible improvement has already been satisfied in the terms of a Purchase and Sale Agreement. Neither the Commission nor the City Staff is in a position to make a legal determination as to the meaning and legal effect of the Purchase and Sale Agreement. The issue of whether or not proper compensation has already been made is for another forum and should not be a relevant subject for the Commission's determination.

Approval Process:

The Commission can accept the application as presented, deny the application or accept the application with changes. A motion with a majority vote is required for execution.

Budget Impact:

N/A

Regulatory Impact:

N/A

History:

N/A

Analysis:

N/A

Conclusion:

Staff has verified the boundary of the Payback and agrees that the Pressurized Irrigation distribution

system improvements meet the requirements of the resolution and are eligible for reimbursement. The storm water retention improvements and Park Area are not in meeting with the Resolution and recommended not to be included with this reimbursement request. A third party reviewer has attached a letter that indicates they have reviewed the items, quantities and associated costs to meet the intent of the reimbursement resolution. (Letter included)

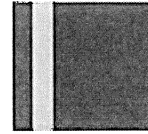
Staff recommends approval of the June 7, 2018 reimbursement request for Pressurized Irrigation Improvements totaling \$65,625.00 with a 15% markup available per the resolution for an additional \$9,843.75 for a total of \$75,468.75 with staff recommendations, as presented.

Attachments:

1. Broadmore Reimbursement Application
2. Resolution-2017-013
3. Arial of Broadmoor
4. 11505698_1_2018.11.19 Letter to Twin Falls_F. Wonderlich and T. Rothweiler

Exhibit D

Gerald Martens, P.E.
621 N. College Road, Ste 100, Twin Falls, ID 83301
208.420.2461 cell • 208.734.6049 fax • gmartens@ehminc.com



RECEIVED

AUG 29 2017

CITY OF TWIN FALLS
ENGINEERING DEPT.

Date: August 24, 2017

To: City of Twin Falls
Attn: Troy Vitek

From: Gerald Martens, P.E.

Via:

Regarding: Broadmoor Subdivision

The improvements for the following lots have been completed and the walk-thru has been completed.

Broadmoor Subdivision, Block 1, Lots 1-5
Broadmoor Subdivision, Block 2, Lots 11-20
Broadmoor Subdivision, Block 3, Lots 1-10

Attached is a financial guarantee for the uncompleted work. This will totally replace the financial guarantee held by the City for the initial phase. The only carryover is a portion of the park and storm water retention basin. The areas have been irrigated and seeded but the grass has not been established.

Please notify TitleFact that the above lots can be released for sale.

426-15





**Engineer's Opinion of Probable Cost
For
Broadmoor Subdivision Phase 1A & Phase 1B**

5' Sidewalk w/ Base (Grandview Dr.)	10 Sq. Yd.	\$39.00/Sq. Yd.	\$390.00.
Final Grading/Seeding of Park	168,765 Sq. Ft.	\$0.10/Sq. Ft.	\$16,876.50
Concrete Collars at Manholes and Valves	Lump Sum Estimate		\$2,500.00
Total Estimated Cost			\$19,736.50

The costs above are estimated for the outstanding work identified during a walk-thru Mr. Gary Denton. These outstanding items are based upon the work/improvements that have been identified in order to release certain lots from escrow.

EHM Job #426-15

621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.

CITY OF TWIN FALLS
ASSURANCE OF CONSTRUCTION
OF
SUBDIVISION IMPROVEMENTS

Assurance of Construction of Subdivision Improvements in Broadmoor No. 1 Subdivision,
dated August 29, 2017.

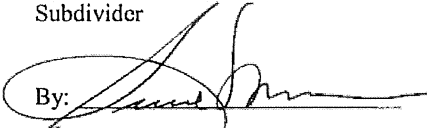
TO: CITY OF TWIN FALLS, CITY ENGINEER

For the purpose of providing the Assurance of Construction required by Section 10-12-4C of the Twin Falls City Code, Gerald Martens, herein referred to as Subdivider, and First Federal Savings Bank, herein referred to as Financial Institution, represent as follows:

1. Financial Institution is committed to Subdivider to provide sufficient funds to subdivider to cover the entire cost of installing the subdivision improvements in Broadmoor Sub No. 1 subdivision, including engineering and inspections costs, and the cost of replacement or repairs of any existing streets or improvements damaged by the Subdivider in the course of the development of the subdivision. Said funds are to be in the amount of Nineteen Thousand Seventeen Hundred thirty six and .50 (\$ 19,736.50) Dollars. (Engineer's estimate attached).
2. Such funds in a stated amount are specifically allocated and will be used by the Subdivider or on his behalf, only for the purpose of installing the subdivision improvements.
3. It is agreed that the City of Twin Falls may draw on the funds mentioned in the preceding paragraphs in order to complete construction of the subdivision improvements in the above subdivision if Subdivider abandons construction of the subdivision improvements covered by said funds within ____ year(s) of this date, unless the time for completion of the subdivision improvements is extended by agreement between the Subdivider and the City Engineer.

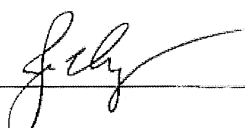
Gerald Martens

Subdivider

By: 

First Federal Savings Bank

Financial Institution

By: 

Title: VP Senior Business Banking Officer

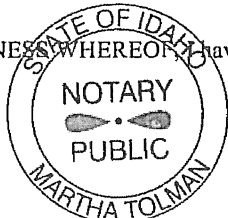
STATE OF IDAHO)

)ss.

County of Twin Falls)

On this 29th day of August, 2017, before me, the undersigned, a Notary Public for Idaho, personally appeared Gerald Martens, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner executed the same.

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



Martha Tolman
Notary Public for Idaho
Residing at Twin Falls, Idaho
Exp 10/17/18

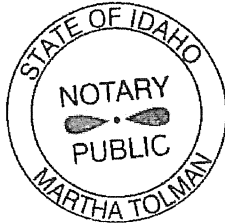
STATE OF IDAHO)

)ss.

County of Twin Falls)

On this 29th day of August, 2017, before me, the undersigned, a Notary Public for Idaho, personally appeared Jim Thompson, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner executed the same.

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



Martha Tolman
Notary Public for Idaho
Residing at Twin Falls, Idaho
exp 10/17/18

BEFORE THE TWIN FALLS CITY COUNCIL

RESPONSE TO JADE DEVELOPMENT, LLC'S APPEAL OF THE IMPROVEMENT REIMBURSEMENT COMMISSIONS' DECISION TO APPROVE GERALD MARTENS' REIMBURSEMENT APPLICATION

I.

INTRODUCTION

COMES NOW the Respondent, Gerald Martens ("Martens"), by and through his counsel, SPINK BUTLER, LLP, and pursuant to the Notice of Hearing on Appeal issued by the City of Twin Falls, issued on January 23, 2019, hereby respectfully submits Respondent's Response to Jade Development, LLC's Appeal of the Improvement Reimbursement Commissions' Decision to Approve Gerald Martens' Reimbursement Application. As noticed by the City, two issues are on appeal: (1) Is Gerald Martens eligible for reimbursement based on the language of the Resolution? And, if so, (2) Was the amount calculated for reimbursement in accordance with the Resolution?

II.

TIMELINE

The following timeline is provided for assistance with the analysis of the issues on appeal:

July 10, 2007: Broadmoor Subdivision received preliminary plat approval

July 13, 2009: Resolution No. 1816 passed

September 3, 2015: Rusmor, LLC and City entered into Improvement Agreement for Developments ("Rusmor Development Agreement"); a copy of said Improvement Agreement is submitted herewith as Exhibit 1

September 11, 2015: Gerald Martens ("Martens") purchased the portion of Broadmoor Subdivision North of Ridgeway Drive from Rusmor, LLC

October 27, 2015: Final plat for Broadmoor Subdivision ("Broadmoor") was recorded

October 28, 2015: Declaration of Covenants Conditions and Restrictions of Broadmore (sic) Subdivision recorded; a copy of said document is submitted herewith as Exhibit 2

On or about **February 1, 2016:** The City changed plans for the provision of pressurized irrigation (to Riverhawk)¹ – significantly increasing the associated expenses

At some point in this time frame Jade Development, LLC ("Jade") acquired the South portion of Broadmoor Subdivision (now known as The Falls at Broadmoor) from Rusmor, LLC²

¹ It is important to note that what was presented on the original plans when the plat was approved by the City was not the same as what the City required of Martens during construction of the pressure irrigation infrastructure, as explained by the City Engineer in its Staff Recommendation.

May 10, 2017: Amended and Partial Restatement of Declaration of Covenants, Conditions and Restrictions of Broadmoor Subdivision (North of Ridgeway Drive) ("Martens CCRs") and Amendment and Partial Restatement of the Master Declaration of Covenants, Conditions and Restrictions and Easements for Broadmoor Subdivision (The Falls at Broadmoor) ("Jade CCRs") were recorded by TitleFact, Inc. at the joint instruction of counsel to Jade and Martens; copies of the recorded Martens CCRs and Jade CCRs are submitted herewith as Exhibits 3 and 4, respectively

May 23, 2017: Martens wrote to Jade requesting payment for its share of improvement costs associated with Tract A (storm water retention basin and park area)

March 28, 2018: Jade and City entered into Improvement Agreement for Developments ("Jade Development Agreement"); a copy of said Agreement is submitted herewith as Exhibit 5

August 28, 2017: Resolution 2017-13 passed

April 23, 2018: Meeting occurred by and between Martens, John Fitzgerald (counsel to Rusmor, LLC), Scott Allen (Jade representative) and Jade personnel, wherein request for payment was made by Martens and refused by Jade

June 7, 2018: EHM Engineers, Inc. submitted to the City Martens' Payback Request for Broadmoor Subdivision – Pressurized Irrigation and Storm Drainage ("Application")

September 11, 2018: At the request of the City, Hailey G. Barnes, P.E. prepared and submitted her Third-Party Review of the Improvement Reimbursement Application

October 25, 2018: City Attorney contacted by Jade; City Attorney requested a copy of the Purchase and Sale Agreement as between Rusmor, LLC and Jade; nothing was provided in response; First Development Impact Fee Advisory Committee & Improvement Reimbursement Commission ("Commission") hearing on the Application was tabled

November 12, 2018: The City convened an informal meeting to include City staff, Martens and his representatives and Jade and its representatives to review the City's position on the Application and to provide information requested of the parties in order to provide any required clarity and context to the Application and the City's consideration with regard to its forthcoming Staff Recommendation and to work toward a resolution of the concerns of the parties – all parties, except Jade appeared for the meeting

November 28, 2018: City issued approval of the pressurized irrigation improvements installed by Martens for which he sought reimbursement

² It is not clear from the record when Jade purchased the South portion of the subdivision and Jade has refused all requests of the City Attorney to provide a copy of the Purchase and Sale Agreement associated with the transaction. What is clear from the record thus far is that Rusmor, LLC owned the real property at the time of the recording of the CCRs in October 2015, Rusmor, LLC never engaged in development and Jade owned the real property at the time it recorded its amended CCRs in May of 2017. Jade entered into a Development Agreement with the City, as referenced herein in March of 2018.

November 29, 2018: Brad Wills submitted his written comments to the Commission; a copy of said comments is submitted herewith as Exhibit 6. In addition, Mr. Wills addressed the Commission during the course of the hearing on the Application.

November 29, 2018: The Staff Recommendation issued and a Special Meeting of the Commission was held to consider the Application

December 3, 2018: Written Decision of the Commission was issued in accordance with the recommendations set forth in the Staff Recommendation for reimbursement related to the pressurized irrigation system to Martens from Jade in the sum of \$35,764.31; the portion of the Application related to storm water and park facilities was set aside until such time as those improvements are accepted by the City and the City and Mr. Wills have completed amendment to the Ordinance³, at which time the Application is expected to be considered

December 17, 2018: Jade appealed *via* Jade Development, LLC's Appeal of the Improvement Reimbursement Commission's Approval of Gerald Martens' Reimbursement Application, dated December 17, 2018, and received by the City on December 20, 2018

January 23, 2019: The City Attorney issued the Notice of Appeal Hearing before the City Council.

February 11, 2019: Scheduled date for the Appeal Hearing before the City Council to consider the issues identified for consideration.

III.

ISSUES ON APPEAL

A. Pursuant to City Resolution 2017-13, Gerald Martens is Eligible for Reimbursement Based Upon the Language of the Resolution

The Commission found, unanimously, following lengthy proceedings before it that Martens is eligible for reimbursement under the terms of the Resolution, which provides in relevant part, as its purpose:

Whenever any extension is made by a private developer (initial developer) to the City of Twin Falls' (City) ... pressure irrigation pump stations and distributions systems, in such a manner as to enable a subsequent private developer or property owner to connect to or extend the previously extended ... pressure irrigation pump stations and distribution systems, the subsequent private developer or private property owner (subsequent developer) shall first make proper compensation to the initial developer for the costs of the ... pressure irrigation pump stations and distributions systems (improvements) ...

³ Martens understanding of the status of this project, as of February 1, 2019, is that the revised Resolution has been drafted by Mr. Wills and he is prepared to present it to the City for consideration and approval. The earliest expected date of final approval of the storm water and park facilities by the City is early summer.

Resolution No. 2017-13, Purpose⁴ (emphasis added).

Here, the Staff Recommendation as approved by the Commission found Martens to be the initial developer of the pressurized irrigation system and Jade to be the subsequent developer, required to make proper compensation to Martens. It is undisputed that at no time relevant to the development of the subdivisions, construction of the infrastructure, the application under consideration by the City Engineer and Commission or on appeal has Martens waived his status or forfeited his rights as the initial developer as it relates to Broadmoor Subdivision.

In accordance with the Resolution, Martens, through EHM Engineers, Inc., made timely application for reimbursement to the Commission through the City Engineering Department within 90 calendar days of acceptance of the system by the City. Here, the Application preceded the formal acceptance of the pressurized irrigation system, which occurred November 28, 2018, just prior to the Staff Recommendation and hearing before the Commission, but nonetheless, was timely under the Resolution.

Here, the City Engineer conducted its investigation, and EHM Engineers, Inc. complied with all requests of the City Engineer, including retaining a Third-Party Review of the Application. On September 11, 2018, Hailey G. Barnes, P.E. submitted to the City Engineer the following review:

Dr. Mr. Vitek:

Mr. Gerald Martens retained my services to conduct a third-party review of the submitted Improvement Reimbursement Application for the northern portion of Broadmoor Subdivision. After a thorough review it is my opinion that the application was completed professionally and the items, quantities, and associated costs successfully meet the intent of the City of Twin Falls adopted Ordinance #2974 and Resolution 1816⁵.

⁴ Throughout its appeal, Jade argues the phrase: “The purpose of the Commission is to determine if a reimbursement is fair and equitable to the subsequent developers and qualifies for a future reimbursement” means “the IRC is supposed to represent the interest of the subsequent developers who may be required to reimburse the applicant”. This argument takes a sentence out of context and attributes “representation” inappropriately. Yes, the Commission is to consider fairness to the subsequent developer, but not to represent its interests to the detriment of the initial developer. Here, Hawley Troxell, Scott Allen and others have represented the interests of Jade.

⁵ In their appeal Jade is critical of Ms. Barnes for relying upon a previous version of the Resolution at issue, suggesting the Commission should not have relied upon her Third-Party Review due to this minor error. Ms. Barnes and the applicant acknowledge the Resolution has been amended over time. However, as it relates to Ms. Barnes’ Third-Party Review and certification, as well as the eligibility of Martens to reimbursement for installation of the pressurized irrigation system, Jade directly benefits from, there is no substantial difference between the two Resolutions and the insignificant error amounts to a minor reference error of no consequence to the analysis. In addition, to the further criticisms of Ms. Barnes, it should be noted that her certification in the “Federation Request” is submitted by Jade as a part of a “model application”, which certification nearly mirrors what was submitted here. Jade’s criticism of the Third-Party Review is weak, at best and certainly does not provide a basis for overturning the Commission’s determination. Likewise, Jade has not and cannot challenge the scope of her review and/or the City Engineer’s acceptance of said review.

Should the City have any questions regarding this review, please feel free to contact me

...

Barnes Certification, [including Broadmoor Subdivision Payback Request Package], attached to Staff Recommendation.

In consideration of the Application and the Staff Recommendation, under the Resolution, the Commission appropriately found Martens eligible for reimbursement applying the specific language of the Resolution. As noted, Martens sought reimbursement for costs associate with constructing pressure irrigation distribution from the Riverhawk Pressurized Irrigation Pump Station west down North College Road to the northerly boundary of the Broadmoor Subdivision. See Jade Appeal, Exhibit A (Written Decision of the Commission). The Commission voted unanimously to accept the Staff Recommendation to approve the total cost of the pressurized irrigation improvements to connect the Broadmoor Subdivision to Riverhwak Pressurized Irrigation Station. *Id.* As the method of allocation is more pertinent to the second issue on appeal it will be addressed hereinbelow.

Jade's appeal does little to challenge Martens eligibility for reimbursement pursuant to the Resolution and acknowledges it does not expect the City Council to interpret and/or enforce an Agreement between Martens and Rusmor, LLC. Despite its acknowledgment, however, Jade argues for pages regarding the terms of an Agreement which is irrelevant to the Commission's and Council's analysis here. Notably, despite requests of the City Attorney, Jade has refused to supply a copy of its Purchase and Sale Agreement with Rusmor, LLC. Jade argues with zero support or evidence that it (as the subsequent developer) provided fair reimbursement to Martens for public improvements required by the City. The simple fact is that Jade has provided zero reimbursement to Martens and the only documents of record executed by Jade and Martens (the respective amended CCRs submitted herewith) provide no support for Jade's arguments and demonstrate the falsity of its arguments. Likewise, Jade fails to define or quantify the alleged "discount" to Martens and/or "premium" paid by Jade.

In any event, no matter how many times Jade repeats the argument: "Jade discussed Mr. Martens' First Request with Rusmor and confirmed that the Agreement obligated Mr. Martens to pay for the entire storm-water improvement" or "[t]he terms of the Agreement require Mr. Martens to install, at his sole expense, certain improvements for the benefit of the Retained Property, such as pressurized irrigation and storm water run-off systems," Jade and its counsel know the statements are false.⁶

Just prior to Martens acquiring the North portion of the Subdivision, on September 3, 2015 Rusmor, LLC entered into an Improvement Agreement for Developments with the City, which references payback requirements (Section X, p. 6), requires of Rusmor, LLC the construction of storm water drainage system and facilities (Drainage System, p. 11) and pressure irrigation system (Pressure Irrigation System, p. 12). A copy of Rusmor, LLC's Development Agreement is submitted herewith as Exhibit 1. There is no suggestion in this Agreement, just days prior to Martens acquiring the North

⁶ Here, Jade has repeated said arguments in its appeal at least 8 times. See Jade Appeal, pp. 1,3, 4,6, 10, 12, 14. Repeating a false narrative over and over does not create a legitimate basis for appeal.

portion of the Subdivision of Martens fulfilling Rusmor, LLC's obligation for the entirety of the Broadmoor Subdivision.

Following Rusmor, LLC's sale of the North portion of the Subdivision to Martens, on October 18, 2015, Martens and Rusmor, LLC jointly recorded the Broadmoor CCRs, which cover the installation and maintenance of sprinkling and irrigation systems, but do not saddle Martens with all associated costs. A copy of the Broadmoor CCRs is submitted herewith as Exhibit 2.

Once Jade acquired the South portion of the Subdivision from Rusmor, LLC, but just a couple of weeks prior to the time Martens submitted his request for reimbursement to Jade (about which Jade feigns "shock" and "surprise"), TitleFact, Inc. recorded Jade's CCRs (executed by Jade, with the consent of Martens) at the request of Jade's counsel on May 10, 2017. Again, said CCRs do not provide for Martens to bear the total cost for all public infrastructure, instead said recorded CCRs provide in relevant part:

ARTICLE VII

RIDGEWAY DRIVE AND FALLS AT BROADMOOR

SECTION 8.01. Acknowledgment. *Declarant [Jade] herein, and those parties approving and acknowledging on behalf of the Northern Portion, namely Gerald Martens and TitleFact, Inc., as Trustee (collectively "Martens") each acknowledge that the Falls at Broadmoor Property is intended to be governed by this Amendment, and the Northern Portion, now known as Broadmoor Subdivision, is intended to be governed by the Northern Amendment. Each respective party and subsequent Association (as defined herein and in the Northern Amendment, respectively) shall be responsible for all improvement and maintenance of and on their respective common areas and shall indemnify, defend and hold harmless the other for any act or omission resulting in damage to the other.*

SECTION 8.03. Tract A. *Declarant and Martens hereby agree Tract A located on the Northern Portion is located in common area and the Northern Portion, is owned by the City of Twin Falls, and is intended to be developed as a retention basin and park facility, which retention and park facilities are intended to serve both the Northern Portion and the Falls at Broadmoor. Martens shall be responsible for all installation, maintenance and improvement of the retention basin and park facilities and the Declarant until the Association is formed and, thereafter, the Association, shall be required to reimburse Martens on a pro rata per lot basis taking into account all lots in both the Northern Portion and the Property, for Martens' reasonable costs and fees associated with its installation, maintenance and improvement of the retention and park facilities located in Tract A of the Northern Portion, until such time as the City of Twin Falls accepts*

(administratively) the improvements, at which time it is anticipated that the City of Twin Falls will be responsible for maintenance of the facilities located on Tract A.

SECTION 8.04. Other Coordination and Cooperation. Declarant and Martens agree that each respective developer and Lot Owners **shall be responsible for the real property owned by each.** **However, to the extent coordination and/or cooperation becomes reasonably necessary due to joint or connected responsibility or other issues impacting both the Northern Property and the Falls at Broadmoor Property, each party agrees to cooperate in good faith for the improvement of both portions of the original Broadmoor Subdivision and to otherwise address any such issues involving the joint or connected responsibilities or issues.** **Additionally, both parties agree to take any and all actions reasonably required to fulfill the intent of the provisions of this Article VIII.**

Jade CCRs, p. 17; a copy of which is submitted herewith as Exhibit 4 (emphasis added). Martens CCRs also provide for Reciprocal Provisions Applicable to Broadmoor, North of Ridgeway Drive and the Falls at Broadmoor, to which Jade agreed and consented to: "reimbursement of Martens on a pro rata lot basis" for Tract A (storm water and park facilities at issue). Martens CCRs, pp. 16-17, a copy of which is submitted herewith as Exhibit 3.

Finally, on March 28, 2018, Jade entered into an Improvement Agreement for Developments with the City of Twin Falls. And, like Rusmor, LLC, before it, said Development Agreement references payback requirements (Section X, p. 6), requires of Jade the construction of storm water drainage system and facilities (Drainage System, p. 11) and pressure irrigation system (Pressure Irrigation System, p. 12). A copy of Jade's Development Agreement is submitted herewith as Exhibit 5. As it relates to pressurized irrigation at issue for the present appeal, the Development Agreement provides, in relevant part: "(5) The Developer [Jade] shall be responsible for all costs incurred in designing and installing the pressure irrigation station." *Id.*, p. 13. Nowhere does it provide Martens is responsible for all costs associated with the pressurized irrigation infrastructure.

To suggest that on May 23, 2017 (less than two weeks after Jade presented for recordation its CCRs quoted above) when Martens submitted to Jade his request for reimbursement that it was "surprised" defies logic. Rather than comply with the parties' CCRs and cooperate to the mutual benefit of the respective subdivisions, Jade commenced its campaign to bully Martens into bearing the costs of improvements to the entirety of the Subdivision with no contribution or reimbursement for the substantial benefits enjoyed by Jade. Such tactic is directly contrary to the Purpose of the Resolution, quoted herein above.

As Mr. Wills notes in his November 29, 2018 letter to the Commission:

In 2012, I wrote the Improvement Reimbursement Ordinance and submitted it to the City of Twin Falls for their acceptance and approval. The intent of the ordinance is to include all development improvements required for the completion of a subdivision installed by

the original developer that benefit and adjacent property owner ... The purpose of the ordinance is to assist development in sharing improvement costs equitably. As a committee, I believe the improvements described in the last staff report [pressurized irrigation improvements] are eligible and you should approve them.

Wills letter (11-29-2018).

The letter also addresses the storm water and park facilities for which Martens intends to seek reimbursement. Mr. Wills opines it is within the intent of the Resolution as the improvements installed by the North developer benefit the South development.⁷ Martens accepts⁸ Mr. Wills proposal to the effect: "The retention and park requirements will require amending the Ordinance to be eligible", and his offer to work with the City of Twin Falls to include those improvements in the Ordinance allowing the applicant to apply again in the future. *Id.* It is understood that the amendments are underway and once approved and the storm water and park facilities are accepted by the City, Martens will file a new Application related to these facilities installed by Martens directly benefiting Jade.

With respect to Jade's argument suggesting the Commission should have biased its review and represented the interests of Jade above Martens, said argument has no support in the Resolution itself. The Commission does not "represent" Jade. Jade has been represented throughout the process by a number of consultants and attorneys. Martens respectfully submits the Commission is to consider equally the interests of the initial developer and subsequent developer – as stated by Mr. Wills: "The purpose of the ordinance is to assist development in sharing improvement costs equally." Here, the purpose of the Resolution (quoted above), provisions of the Resolution, the City Engineer (as provided during the hearing and in the Staff Recommendation), the Third-Party Reviewer (for her 9-11-2018 certification), the author of the Resolution (in Mr. Wills' 11-29-2018 letter to the Commission) and the Commission, have unanimously found Mr. Martens is eligible for reimbursement for the pressurized irrigation improvements.

Though it deserves little to no attention, the unprofessional, unnecessary and unfair personal attack leveled against the Chairman of the Commission must be rejected. Under Idaho Code, storm water facilities are public infrastructure that may well belong in the Resolution and nothing prevents the current efforts advanced by its author to include such facilities within the provisions. Likewise, the Chairman's experience in local development should not be mocked, but rather is highly relevant to consideration of the protection of initial developers and subsequent developers, alike. The very purpose of the Resolution, as well as the interpretation by its author, Mr. Wills, supports the same. And, despite Jade's petty attacks of the Chair, the Commission *unanimously* approved the Staff Recommendation – the Chair did not act alone or without the support of all but Jade.

⁷ In addition to the storm water facilities and park facilities meeting the requirements for the City, Jade also unfairly received greater than \$1,000 per lot (more than \$118,000) park in lieu contribution benefit from the construction by Martens of the park facilities.

⁸ While Martens accepts this delay for consideration of the storm water and park facilities for purposes of amendment, approval and resubmittal, it does not waive or abandon its arguments presented in favor of approval before the Commission that storm water facilities and parks should be considered public facilities even under the terms of the current Resolution.

In sum, as noted in the Staff recommendation, unanimously approved by the Commission, Martens constructed an off-site pressure irrigation distribution system that serves both the North and South developments, which meets the requirements of the Resolution. Staff verified the boundary of the payback and agreed the pressurized irrigation distribution system improvements meet the requirements of the Resolution and are eligible for reimbursement. Staff Recommendation, p. 3 (emphasis added). The Decision is supported by all participants and evaluation, excepting Jade, who has presented no persuasive argument to the contrary.

B. The Amount Calculated for Reimbursement Was in Accordance with the Resolution

After considering lengthy argument and presentation, the Commission also unanimously approved the Staff Recommendation of a fair and equitable compensation to Martens (as the initial developer) from Jade (as the subsequent developer) is represented by the total associated costs, prorated based upon lots owned by Martens and Jade. Jade Appeal, Exhibit A (Decision of the Commission). Said recommendation was also supported by a Third-Party Reviewer, in writing, also indicating she had reviewed the items, quantities and associated costs to meet the intent of the Resolution. Staff Recommendation, p. 3. Staff recommended for reimbursement pressurized irrigation improvements totaling \$75,468.75. The Commission approved the same, finding: *"The fair and equitable compensation to be paid to Gerald Martens, as the initial developer, is represented by total costs of \$75,468.75 divided by the total number of lots within the Broadmoor Subdivision (249 lots) multiplied by the number of lots within the southerly portion of Broadmoor Subdivision (118 lots) now owned by Jade Development, LLC $\$75,468.75/249 \times 118 = \$35,764.31$."* Decision of the Commission.

It is not clear what method of allocation of costs Jade would advance other than Martens to bear the entire costs associated with the pressurized irrigation system. Clearly, application of the fairness principles of the Resolution would not support Martens bearing the totality of the associated costs, fees and expenses. Likewise, Jade has presented no evidence to suggest it has already reimbursed Martens for the system installed for its benefit. The Staff Recommendation and Commission's finding is not only in accordance with the Resolution, but also in accordance with the formula Martens and Jade agreed upon for allocation of storm water and park improvements as set forth in the CCRs quoted hereinabove. Jade CCRs, Section 8.03.

IV.

CONCLUSION

As has been addressed by Mr. Martens, Mr. Thibault, Mr. Wills, the City Engineer, the Third-Party Reviewer, and unanimously by the Commission: (1) Mr. Martens is eligible for reimbursement for the pressurized irrigation system based upon the language of the Resolution; and (2) the amount calculated for reimbursement is in accordance with the principles of the Resolution.

The Resolution at issue considered and applied by the Commission is an incredibly important tool for the City and the local development community. It provides for orderly, fair and cost effective development. Jade's demand as the subsequent developer to have its infrastructure installed entirely at

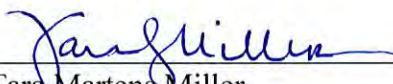
the expense of the initial developer is well beyond the scope of the intent and purpose of the Resolution.

With respect to threats of litigation and demands upon the City to take unauthorized action to stay its decision under the Resolution pending lengthy litigation, such demands are without support or basis. When Mr. Martens stated his objection to being bullied by Jade, their focus shifted to the City. Unfortunately, Jade continues its unreasonable battle - in direct contravention of its promises of record - to receive the development of its subdivision on the shoulders of the initial developer – precisely what the Resolution’s purpose is to avoid. If the Council were to overturn the Commission’s determination (or delay its Decision pending years of litigation), an atmosphere would be created encouraging inappropriate and hasty threats of litigation to avoid fair allocation as amongst developers and discourage the good-faith efforts and consideration by the volunteer Commission. Jade suggests it will be “forced” to sue the City – the threat is not valid, but rather its attempt to intimidate.

Martens respectfully requests the Council affirm the informed Staff Recommendation and unanimous decision of the Commission.

RESPECTFULLY SUBMITTED this 1st day of February, 2019.

SPINK BUTLER, LLP

By: 
Tara Martens-Miller
Attorneys for Defendant

cc: via electronic mail pursuant to instruction of City Attorney:

Shayne Nope

Lynette Davis

Lars Lundberg

Cheri Draper

Scott Allen

Gerald Martens

David Thibault

Travis Rothweiler

Mitch Humble

Troy Vitek

EXHIBIT LIST

- 1. IMPROVEMENT AGREEMENT FOR DEVELOPMENTS, dated September 3, 2015 ("Rusmor Development Agreement")**
- 2. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROADMORE (sic) SUBDIVISION, recorded October 28, 2015 ("Broadmoor CCRs")**
- 3. AMENDED AND PARTIAL RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROADMOOR SUBDIVISION (North of Ridgeway Drive), recorded May 10, 2017 ("Martens CCRs")**
- 4. AMENDMENT AND PARTIAL RESTATEMENT OF MASTER DECLARATION OF CONVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR BROADMOOR SUBDIVISION (THE FALLS AT BROADMOOR), recorded May 10, 2017 ("Jade CCRs")**
- 5. IMPROVEMENT AGREEMENT FOR DEVELOPMENTS, dated March 28, 2018 (Jade Development Agreement")**
- 6. BRAD WILLS WRITTEN COMMENTS TO THE COMMISSION, dated November 29, 2018**

EXHIBIT 1

IMPROVEMENT AGREEMENT

for

DEVELOPMENTS

This Agreement made and entered into this 3RD day of SEPT, 2015, by and between the CITY OF TWIN FALLS, State of Idaho, a municipal corporation, hereinafter called "City" and Rusmor, LLC hereinafter called "Developer" for the purpose of constructing certain improvements on property sought to be developed for the following Development Broadmoor Subdivision.

WHEREAS, there is attached hereto and incorporated herein as if the same were set out in full, a certified copy of the deed to the real property showing ownership of said real property to be in the Developer's name, or, as the case may be, there is attached hereto and incorporated herein as if the same were set out in full, a copy of the deed to the above described real property showing ownership in fee simple in someone other than Developer together with a notarized authorization, signed by the real property owner, authorizing Developer to act on behalf of said real property owner, and;

WHEREAS, Developer desires to develop said real property for the following purposes: 242 Residential Lots, 7 Townhouse Lots & 5 Tracts.

WHEREAS, the Developer is obligated to construct certain improvements pursuant to City Code Section 10-12-4.2, and;

WHEREAS, the Developer has committed to construct special features as part of the development, and;

WHEREAS, the City has certain policies, ordinances, rules and regulations governing the construction of improvements, and;

WHEREAS, it is in the best interest of the City and Developer to clearly establish in one concise document the policies, ordinances, rules and regulations which apply to developments of the type contemplated herein.

WITNESSETH

That for and in consideration of the mutual promises, conditions, and covenants contained herein the parties agree as follows:

I.

City agrees: (1) to operate and maintain all approved streets, alleys, service and roads, excluding state highways, constructed under the terms of this Agreement in any public rights-of-way

or easements and which are presently within or subsequently annexed into the City limits. Those streets, excluding state highways, lying outside the City limits and within the City Area of Impact shall be constructed to City standards but shall become the responsibility of the Twin Falls Highway District until such time as they are annexed or a maintenance agreement is signed by the City and the Twin Falls Highway District. (2) To operate and maintain all approved water lines, drainage lines, and sewer lines constructed under the terms of this Agreement in any public rights-of-way or easements and to provide water and sewer service to the Developer's real property, subject to all ordinances, rules and regulations governing sewer and water service. (3) To maintain non-pressure irrigation lines only where they cross City streets. All other maintenance of non-pressurized irrigation lines is the responsibility of the Twin Falls Canal Company or the irrigation users.

II.

In lieu of the actual installation of required public improvements before recording of the final plat, the Council may permit the subdivider to provide a financial guarantee of performance in one (1) or a combination of the following arrangements for those requirements which are over and beyond the requirements of any other agency responsible for the administration, operation and maintenance of the applicable public improvement.

a. Surety Bond

1. Accrual - The Bond shall accrue to the City covering construction, operation and maintenance of the specific public improvement.
2. Amount - the bond shall be in an amount equal to one hundred percent (100%) of the total estimated cost for completing construction of the specific public improvements, as estimated by the Developer's Engineer and approved by the City Engineer.
3. Term Length - The term length in which the bond is in force, for the duration of that phase of the project, shall be until completed and accepted by the City Engineer.
4. Bonding for Surety Company - The bond shall be with a surety company authorized to do business in the State of Idaho, acceptable to the Council.
5. The escrow agreement shall be drawn and furnished by the subdivider to the satisfaction of the Council.

b. Cash Deposit, Certified Check, Negotiable Bond, or Irrevocable Bank Letter of Credit.

1. Treasurer, Escrow Agent or Trust Company - A cash deposit, certified check, negotiable bond or an irrevocable bank letter of credit such surety acceptable by the Council, shall be deposited with an escrow agent or trust company.
2. Dollar Value - The dollar value of the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be equal to one hundred percent (100%) of the estimated cost of construction for the specific public improvements, as estimated by Developer's Engineer and approved by the City Engineer.
3. Escrow Time - The escrow time for the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be until all required improvements are completed and accepted by the City Engineer.
4. Progressive Payment - In the case of cash deposits or certified checks, an agreement between the City and the subdivider may provide for progressive payment out of the cash deposit or reduction of the certified check, negotiable bond or irrevocable bank letter of credit, to the extent of the cost of the completed portion of the public improvement, in accordance with a previously entered into agreement.

III.

Developer agrees to retain a Professional Engineer, hereinafter called the Developer's Engineer, registered by the State of Idaho to perform the following minimum Engineering Services in accordance with Title 10 Chapter 12 Section 4-1 of the City Code:

- a. Prepare a master utility plan showing the location of all existing and proposed utility lines to include but not be limited to sewer, water, gas, electricity, telephone, irrigation, pressure irrigation and storm sewer.
- b. Prepare detailed plans and specifications for construction of all improvements required by this Agreement and shall include but not be limited to a complete set of construction plans, including profiles, cross-sections, specifications and other supporting data, for all required public streets, utilities and other facilities. Such construction plans shall be based on preliminary plans which have been approved with the preliminary plat, and shall be prepared in conjunction with the final plat. Construction plans are subject to approval by the responsible public agencies. All

construction plans shall be prepared in accordance with the public agencies' standards and specifications.

- c. Perform construction surveying, staking, testing, inspection and administer the construction of all facilities required by this contract.
- d. Submit all test reports, inspection reports, change orders and construction diaries to the City Engineer every week during the construction of the development or subdivision.
- e. Prepare and submit an updated copy of the enclosed development and subdivision checklist to the City Engineer every week during the construction of the development or subdivision, and also upon completion of the project.
- f. Submit to the City Engineer the final plans, and master utility plan for the City records showing any approved changes to the original plans and specifications. A permanent drawing in ink on approved transparent polyester drafting film and an electronic media copy of the plans in ACAD 2000 using City standard format shall be provided within thirty (30) days after completion of the project.
- g. Submit a letter upon completion of construction stating that the work has been constructed in conformance to the plans and specifications, with the certification by the Developer's Engineer that improvements were constructed to the lines and grades shown.

The above work shall be subject to the approval of the City Engineer.

The City agrees to provide asphalt pavement testing for conformance with City standards, but it shall be the responsibility of Developer's Engineer to provide all necessary quality control during construction. All tests shall be taken at a frequency based upon City of Twin Falls Standard Specifications.

The Developer agrees to: (1) allow the City full and complete access to the work (2) provide all materials necessary to conduct all tests (3) supply all water necessary to test pipe joints and (4) provide the equipment and perform or have performed any testing of manufactured materials required by the City Engineer.

The Developer shall submit a letter to the City Engineer upon completion of the project, requesting that the City assume the responsibility for maintenance and operation of all public improvements as stated herein.

The Developer agrees to obtain a permit or letter of approval from the Twin Falls Highway District or the State of Idaho Department of Highways prior to constructing improvements on their respective right-of-ways. The original or a certified copy of said permit or letter shall be submitted to the City Engineer prior to beginning of construction thereon.

V.

The Developer agrees to dedicate rights-of-way to the public for the development of all streets and alleys in accordance with the City Master Street Plan and to dedicate easements for the maintenance and operation of all public utilities. The size and location of said rights-of-way and easements shall be determined by the City Engineer.

VI.

The Developer hereby agrees and petitions the City to annex into the corporate limits of said City, the above described real property that is contiguous with the same or becomes contiguous to said City limits. Developer agrees to annexation of said real property by the City upon the terms and conditions as shall be set forth by said City.

VII.

The Developer and the City agree that the improvements listed herein are required unless specifically waived by action of the City Council and that said improvements will be constructed on any public rights-of-way or easements approved and accepted by the City Council all as designed by the Developer's Engineer and approved by the City Engineer and in accordance with standards established by the City Engineer and that all required improvements will be completed in a timely manner. If improvements are not completed in a timely manner, the Developer shall provide an updated, current version of the developer's agreement and financial guarantee for City Council consideration.

VIII.

The Developer agrees to pay the total actual costs of all materials, labor and equipment necessary to completely construct all of the improvements required herein, except those costs specifically shown to be paid by the City and to construct or contract for the construction of such improvements.

IX.

Developer agrees to pay the total extra cost of all additional materials, labor and equipment necessary to construct any streets the City requires to be wider or deeper than a standard street or any water or sewer lines the City requires to be larger than the size required to properly serve the

development. The requirement for wider and deeper streets shall be based on the City Master Street Plan. Requirements for larger water and sewer lines shall be based on the citywide sewer and water system sizing guidelines.

X.

The City shall provide no compensation for the cost of an oversize water or sewer line. In the case of water or sewer lines extended adjacent to or outside the limits of development, the Developer shall be eligible for payback from adjacent property owners pursuant to Resolution No. 1182. The Developer shall also be eligible for compensation when a private developer extends or connects to any water or sewer system previously installed by private developer, pursuant to Resolution 1651.

XI

Developer agrees to request in writing that the Developer's Engineers make the inspections required herein and the Developer or his Contractors shall not proceed with the next construction phase until the required inspection is complete and the work has been approved by the Developer's Engineer, the City Engineer or the Engineer's authorized inspector. All such inspections shall be scheduled in accordance with the City of Twin Falls Standard Specifications. Developer agrees to pay all costs resulting from: 1) his failure to properly schedule and request a required test or inspection or 2) proceeding with work before receiving approval to proceed. Developer agrees to remove or correct any rejected, unapproved or defective work or materials as required by the Developer's Engineer or the City Engineer. Any such defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed within ten (10) days after written notice is given by the Developer's Engineer or the City Engineer, and the work shall be re-executed by the Contractor at his expense. The fact that either Engineer may have previously overlooked such defective work or materials shall not be a basis for acceptance of any part of it.

The issuance or approval of plans, specifications and computations shall not be construed as an approval of any violation of any provisions of City code, specifications, standards, policy, or any other ordinance of the City. Approvals of plans that may violate City code, specifications or departmental policies will not be valid.

The approval of construction plans, specifications, and other data shall not prevent the City from thereafter requiring the correction of errors or omissions in said plans or specifications prior to or during actual construction or final acceptance by the City.

The Developer shall remove from all public property all temporary structures, rubbish, and waste materials resulting from their operation or caused by his employees.

The Developer shall guarantee all materials, workmanship and equipment furnished for a period of one (1) year from the date of written acceptance of the work by the City Engineer or authorized representative.

The Developer shall be responsible for any damage to any existing public improvements and shall repair or replace any such damage as required by the City Engineer, during or after completion of this project.

XII.

The City and the Developer agree to the following minimum for Required Improvements, City Costs, Required Inspections and to any other improvements, approved or required by the City Council and shown on the approved construction plans.

PUBLIC WAYS

(a) Required Improvements

- (1) Curb, gutter and sidewalk on all public street rights-of-way.
- (2) A standard residential street thirty six feet (36') wide with an eight inch (8") gravel course and two inch (2") asphaltic concrete surface course on all public street rights-of-way serving residential use property.
- (3) Minor residential and private streets as specified in the City of Twin Falls Standard Drawings.
- (4) A standard commercial or collector street forty eight feet (48') wide with an eleven inch (11") gravel course and three inch (3") asphaltic concrete surface course on all public street rights-of-way serving commercial use property or as a collector street. Whenever a street serves an industrial use property the City Engineer will determine the appropriate structural section.
- (5) A service-road twenty four feet (24') wide with an eight inch (8") gravel course and two inch (2") asphaltic concrete surface course and with concrete curb-gutter or curb and valley-gutter on all public service road rights-of-way.
- (6) A sidewalk five feet (5') wide minimum on all public pedestrian rights-of-way. Four foot (4') sidewalks by special permission of the City Council are allowed by City of Twin Falls Standard Drawings for minor residential streets under certain conditions.

(7) Landscaping and sidewalk placement required adjacent to arterial and collector streets: A tract of land eleven feet (11') in depth behind the curb line will be dedicated as part of any residential development adjacent to arterial and collector streets. Within that tract the developer shall install landscaping six feet (6') in depth with a sprinkler system and with grass and trees behind the curb line and shall also install a five foot (5') sidewalk. The landscaping will be maintained by the city and funded through a fee added to the water bill of each account within the development. Irrevocable restrictive covenants for this development and maintenance shall provide for this funding. TFCC §10-12-4.2(O).

(8) Street signs and traffic control devices on all public streets.

(9) Street lights as determined by City policy for street light installation.

(b) City Costs

(1) The cost of any street signs or traffic control devices installed by the City on new or existing streets.

(2) The cost of any required street lights (standard luminaires mounted on a wood pole). The Developer shall pay the extra cost of any decorative luminaries or poles. Prior approval will be required, and the cost of maintenance, replacement and power usage will be considered.

(c) Required Inspections and Testing

(1) All inspections and testing shall be as required by City of Twin Falls Standard Specifications.

WATER SYSTEM

(a) Required Improvements

(1) Pursuant to City Code Section 7-8-3, 7-8-10 and 10-12-4.2 water line and fittings six inch (6") minimum diameter that will transport a flow of water, which will satisfy fire, domestic, other water demands of the development, based upon the City water pipe sizing plan and computer water model. Water line extension shall include connection from the existing City Water System to each building site and fire hydrants and then loop back to the City System in a manner that will provide a properly functioning system approved by the City Engineer, Water Superintendent and Fire

Chief. If the development is to be constructed in phases, the water system shall be looped back to the City system during the first phase. No dead-end lines will be allowed during any phase of the project.

- (2) Water lines and fittings adjacent to and internal to the development shall be sized to continue the orderly expansion of the City water distribution network in accordance with existing sizing guidelines.
- (3) Water valves that will allow temporary suspension of water flow for maintenance and repair of portions of water system without causing undue inconvenience to a large number of users or creating a critical situation in the suppression of fires.
- (4) Fire hydrant connections and fire hydrants spacing to substantially comply with the minimum standards suggested by the Fire Rating Bureau and American Water Works Association. Fire hydrants are required in all developments.
- (5) One water service line shall be constructed to each building site at the time the water lines are installed. Each service line shall not exceed fifty feet (50') in length and shall terminate at the right-of-way.

During construction of the curb the letter W shall be stamped into the top or face of the curb directly in front of the water meter box. The impression shall be not less than one and one half inches (1½") high. Meters shall be grouped at adjacent side lot lines when possible or at another location if requested by the Developer and approved by the City Engineer and Water Superintendent. Water meter boxes will not be allowed in driveway approaches. Any cost associated in relocating meters from driveway approaches will be the responsibility of the Developer or Lot Owner. Temporary address or lot number signs shall be staked at the location where the water meter box is to be installed. The City may install multiple water meters in a single water meter box.

The City will make the water line tap only after all appropriate tap fees for a Water Connection General Permit have been received and permits issued. All new water service line and connections made from existing water service mains to service any new development will be the responsibility of the

Developer. The City will make the necessary service line tap after payment of the required water connection general permit fees.

- (6) One water service line tap, meter box, and service line shall be constructed for each building connected to the City water system. It is understood and agreed that the City will make all service line taps and install all meter boxes and that the fee paid by the developer for a Water Connection General Permit will reimburse the City for such work.
- (7) It is further understood and agreed that the City will make all connections to the existing water system. The City will disinfect the new water system at the developer's expense.

(b) City Costs

- (1) None.

(c) Required Inspections

- (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

WASTE WATER COLLECTION SYSTEM

(a) Required Improvements

- (1) Pursuant to City Code Section 7-7-4, 7-7-11 and 10-12-4.2 a waste water collection system (eight-inch (8") minimum diameter) that will transport a flow of waste water, under conditions of maximum and minimum discharge from the development, to the existing City waste water system.
- (2) Waste water sewer lines adjacent to or internal to the development will be sized to continue the orderly expansion of the City Waste Water Collection System in accordance with existing sizing guidelines and computer sewer model.
- (3) Manholes to provide access for maintenance and cleaning of the sewer lines located at any change of grade or alignment of the sewer, at the end of each sewer and spaced not more than four hundred feet (400') apart.
- (4) During construction of the curb the letter S shall be stamped into the top or face of the curb directly in front of the sewer service line location. The impression shall be not less than one and one half inches (1½") high.

(b) City Costs

(1) None.

(c) Required Inspections and Testing

(1) All inspections and testing shall be as required by City of Twin Falls Standard Specifications.

DRAINAGE SYSTEM

(a) Required Improvements

(1) Any valley-gutters, ditching, grading or other surface drainage facilities necessary to convey any storm run-off originating from or traversing across the proposed development over the land surface to a point of retention, detention or discharge approved by the City Engineer.

(2) Any catch basin, storm sewer and other sub-surface drainage facilities necessary to convey any storm run-off, originating from or traversing across the proposed development, to a point of retention, detention or discharge approved by the City Engineer, that cannot, in the City Engineer's opinion, be conveyed over the land surface without causing damage to public or private property or without being an unreasonable inconvenience or hazard to a private individual, a group of individuals or the general public.

(b) City Costs

(1) None.

(c) Required Inspections and Testing

(1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

GRAVITY IRRIGATION SYSTEM

(a) Required Improvements

(1) Any pipe, boxes or other appurtenances necessary to convey all irrigation water in underground pipe across the development and any adjacent public property. Irrigation facilities outside an established City irrigation district shall be constructed in an irrigation easement on private property except where it is necessary for irrigation water to cross the public right-of-way and all such crossings shall be perpendicular to the center line of said right-of-way unless otherwise approved by the City Engineer due to some unusual condition.

- (b) City Costs
 - (1) None.
- (c) Required Inspections and Testing
 - (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

PRESSURE IRRIGATION SYSTEM

- (a) Required Improvements
 - (1) Pursuant to Section 7-8-3 of the City Code, the use of the City's potable water supply as the primary source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or PUD, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or PUD. One (1) share of Twin Falls Canal Company Water for each acre of property within the subdivision shall be deeded to the City of Twin Falls before the filing of the final plat for use in the City's pressurized irrigation system.
 - (2) Pressure irrigations water line and fittings shall be four inch (4") minimum diameter or larger that will transport a flow of water, which will satisfy all irrigation water demands of the development, based upon the computer irrigation water model that the developer's engineer has prepared.
 - (3) Water lines and fittings adjacent to and internal to the development shall be sized to continue the orderly expansion of the City Pressure Irrigation water distribution network in accordance with existing sizing guidelines.
 - (4) Water valves that will allow temporary suspension of water flow for maintenance and repair of portions of water system without causing undue inconvenience to a large number of users. One pressure irrigation water service line shall be constructed to each subdivision

lot site at the time the pressure irrigation water lines are installed. Each service line shall not exceed fifty feet (50') in length and shall terminate at the right-of-way. One Pressure irrigation water service line tap, irrigation box, and service line shall be constructed for each subdivision lot connected to the City pressure irrigation water system.

- (5) The Developer shall be responsible for all costs incurred in designing and installing the pressure irrigation station. This includes the land, pumps, motors, filters, buildings, delivery system to the station from the TFCC head gate, storage pond, Supervisory Control and Data Acquisition (SCADA) system, and power to the station.
- (6) All pressure irrigation system plans must be prepared by the Developer's engineer shall be according to the City's standard specifications and drawings. Plans submitted to the City shall be signed by a Professional Engineer for review and final approval, before the City Engineer will sign the plat or approve construction plans.
- (7) The Pressure Irrigation System shall be located with in easements, right of ways and/or property deeded to the City of Twin Falls.
- (b) City Cost.
 - (1) None
- (c) Required Inspections and Testing
 - (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

SPECIAL FEATURES

Pursuant to commitments made by the Developer as conditions of approval of the development, the following special features shall be constructed:

a) Required Improvements

b) City Costs

(1) None.

XIII.

The City and the Developer agree that the sequence of construction shall be as follows unless special approval in writing is obtained from the City Engineer:

1. Erosion and sedimentation controls.
2. Stormwater retention and detention facilities.
3. Waste water sewers and service connections.
4. Waste water manholes.
5. Storm sewers and catch basins.
6. Gravity irrigation pipes and boxes.
7. Pressure irrigation lines, service connections, etc.
8. Water lines and service connections.
9. Gas lines, power lines, telephone lines and cablevision lines.
10. Any other underground improvements that are required.
11. Sub-base preparation for public ways.
12. Gravel base course for public ways.
13. Curb-gutter, valley-gutter and sidewalk.
14. Gravel leveling course.
15. Asphalt paving.
16. Special Features.

XIV.

The Development may be phased as indicated on the attached development plan submitted by the Developer and approved by the City Engineer.

The terms of the basic agreement shall apply individually to each phase shown on the attached plan as though each phase were a separate and independent development providing each phase is begun in the sequence indicated on the development plan.

The two (2) year time limit, (indicated in Section VII of the Agreement) for completing the required improvements shall begin for each phase when the Developer sells a lot or an application or a building permit to construct a building within the phase has been received by the City.

The Developer may cease further development after completing any phase and before beginning the next phase and the basic agreement shall terminate in accordance with Section XVI, of the basic agreement for any undeveloped phases of the development originally proposed in the basic agreement.

XV.

This agreement shall bind the parties hereto, their heirs, successors in interest, and lawful assigns.

XVI.

In the event of a breach of Agreement, or should legal action of any kind be taken to enforce the provisions, hereof, the prevailing party shall be entitled to reasonable attorney fees and costs awarded by the Court.

Attest:

CITY OF TWIN FALLS, IDAHO

City Clerk_____
Mayor

Developer

Joe Russell - Managing Member
Russmor LLC

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public for Idaho, personally appeared _____, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner 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 Twin Falls, Idaho

CORPORATION

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public for Idaho, personally appeared _____, known or identified to me (or proved to me on the oath of _____) to be the president, or vice-president, or secretary or assistant secretary, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

NOTICE OF DEVELOPER'S AGREEMENT

NOTICE IS HEREBY GIVEN, that a document entitled "Improvement Agreement for Developers" (hereafter "Agreement") has been executed and filed with the City of Twin Falls, Idaho, for the following named subdivision:

The Agreement imposes certain obligations upon the developer for the development of the subject property, and upon the developer's heirs, successors in interest and lawful assigns. Details of the conditions and obligations may be found by examining or photocopying the Agreement at the Office of the City Engineer, 321 2nd Avenue East, Twin Falls, Idaho 83301.

CITY OF TWIN FALLS, IDAHO

City Clerk

Mayor

Developer

Joe Russell managing member
Russmer LLC

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 3rd day of September, 2015, before me, the undersigned, a Notary Public for Idaho, personally appeared Joe Russell, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner executed the same.

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



Lisa K. Armendariz
Notary Public for Idaho
Residing at Twin Falls, Idaho

EXHIBIT 2

TWIN FALLS COUNTY
RECORDED FOR:
TITLEFACT, INC.
03:46:44 PM 10-28-2015
2015018884
NO. PAGES 12 FEE: \$43.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: BH
Electronically Recorded by Simplifile

ELECTRONICALLY RECORDED - DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT.

678156m

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROADMORE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 28th day of October, 2015, by RUSMOR LLC, an Idaho Limited Liability Company and Gerald Martens (hereinafter referred to as "Declarant").

RECITALS:

THIS DECLARATION IS MADE in contemplation and furtherance of the following facts and purposes:

A. Declarant is the owner of certain real property located in the City of Twin Falls, Twin Falls County, State of Idaho, more particularly described on Exhibit "A" hereto (hereinafter referred to as the "Property").

B. It is the intent of the Declarant to develop the Property, in phases, and to reserve unto itself, or its successors, the right to adopt this Declaration of Covenants, Conditions and Restrictions, by reference, in an instrument making the same applicable to any other residential subdivisions which may hereafter be developed within the Property, thereby annexing and placing such subdivisions under and within the purview of this Declaration, and imposing and extending to all such subdivisions and all lots, residential units and common areas situated therein, and to the owners thereof, the obligations and benefits of this Declaration of Covenants, Conditions and Restrictions.

DECLARATION

Declarant hereby declares that the Broadmore Subdivision and all real property, lots, residential units and common areas situated therein, shall be held, conveyed, encumbered, leased and used subject to the covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said subdivision, and which shall run with title to the land situated therein, and shall be binding upon, and benefit, all parties now or hereafter having or acquiring any right, title or interest therein, or to any part thereof.

ARTICLE I DEFINITIONS

1. Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meaning:

1.1 Annexation. "Annexation" shall mean and refer to the act of the Declarant, or its successors, to place additional residential subdivisions of any portion of the Property described on Exhibit "A" hereto under and within the purview of this Declaration of Covenants, Conditions and Restrictions, in the manner herein provided for in Article III.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of Broadmore Subdivision Home Owner's Association, Inc., an Idaho Non-Profit Membership Corporation.

1.3 Assessments. "Assessments" shall mean Assessments described in Article IV.

1.4 Association. "Association" shall mean and refer to Broadmore Subdivision Homeowners Association, an Idaho non-profit membership corporation organized under the laws of the State of Idaho, its successors and assigns.

1.5 Board of Directors. "Board of Directors" shall mean and refer to the Board of Directors of the Association, and the term may hereinafter be used interchangeably with the term "Board."

1.6 Common Area. "Common Area" shall mean and refer to all real property now or hereafter owned or leased by the Association or in which the Association has an easement including all property indicated as Common Area on the official plat of any other residential subdivision hereafter placed under and within the purview of this Declaration in the manner herein provided for.

1.7 Lot. "Lot" shall mean and refer to any Lot shown on the official plat of the Broadmore Subdivision, or in the official plat of any other residential subdivision which may be placed under and within the purview of this Declaration, in the manner hereinafter provided for.

1.8 Member. "Member" shall mean and refer to a Member of the Association who shall be an Owner and shall qualify for membership in the Association in the manner hereinafter set forth.

1.9 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot within the Broadmore Subdivision or any other residential subdivision hereafter placed under and within the purview of this Declaration in the manner hereinafter provided for; provided, however, that the term "Owner" shall not include those having only a security interest in any Lot through a lien, encumbrance, deed of trust, mortgage, or similar security instrument.

ARTICLE II COMMON AREA

2.1 Common Area. In conjunction with any subdivision situated on the Property, the Declarant, or its successors may tender Common Area to the Association, which shall be accepted by the Association provided it is for the common benefit of the Property, or the common use and enjoyment of the Owners and their respective family members, guests and invitees. All such Common Area conveyed in fee simple to the Association shall be free and clear of all liens and encumbrances, except easements, restrictions and reservations, which are by record and are approved.

ARTICLE III ANNEXATION

3.1 Annexation. The Declarant or its successors may, at any time hereafter, by execution and recordation of an effective Declaration of Covenants, Conditions and Restrictions encumbering any residential subdivision owned by the Declarant or its successors, resulting from the Subdivision, re-subdivision or re-platting of any parcel within the Property described in Exhibit "A" hereto, place said residential subdivision under and within the purview the of this Declaration, and all of its covenants, restrictions and conditions. Upon the recordation of such a declaration, all Lots in said residential subdivision shall be deemed to be Lots hereunder, and all Owners thereof shall thereafter be owners and members of the Association for all purposes hereunder, in same manner, and subject to the same benefits and obligations as though said Lots were included in the Broadmore Subdivision.

3.2 Common Area. Upon Annexation of any residential subdivision pursuant to this Article III, Declarant shall deed and convey all Common Area within said Subdivision to the Association in the manner provided for in Section 2.1 hereinabove.

3.3 Notice. In the event the Declarant shall intend to annex property as provided in this Article, written notice of such intent shall be given to the Association at least thirty (30) days prior to the recordation of the Declaration purporting to effectuate the annexation.

ARTICLE IV ASSESSMENTS

4.1. Agreement to Pay Assessments. Declarant, for each Lot owned by the Declarant, hereby covenants, and each subsequent Owner of any Lot, by acceptance of a deed therefore, whether or not it be so expressed in said deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association the assessments provided for in this Declaration. In the case of joint or co-ownerships, this liability shall be joint and several. Such assessments shall be levied against Lots and collected from time to time in the manner provided in this Article IV.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to defray the costs and expenses incurred by the Association and the performance of the duties and obligations imposed upon it by this Declaration.

4.3 Assessment Years. The first assessment year for the levying of the Association's annual assessments shall commence upon the first day of January, 2017.

4.4 Annual Assessments. Annual Assessments against all Lots are hereby authorized which, unless otherwise specifically provided herein, shall be based upon advanced estimates of the cash required by the Association for each assessment year to provide payment for all expenses to be incurred in said assessment year in the conduct of the Association's affairs. Such expenses may include, among other things, those incurred for taxes, insurance, professional services, and maintenance of the Common Area.

4.5 Special Assessments. In addition to the annual assessments authorized hereinabove the Association may levy in any assessment year a special assessment payable over such time as the Association may determine for the purpose of defraying, in whole or in part, the unanticipated cost of any construction, reconstruction, repair or replacement of Common Area improvements. This Section shall not be construed as an independent authority for the Association to incur expenses, but shall be construed to prescribe an alternative manner of assessing for expenses authorized in other sections hereof.

4.6 Apportionment of Assessments. Annual and special assessments shall be payable monthly, or at such other intervals as the Board of Directors of the Association may establish. The total of any such installment of annual or special assessment shall be apportioned equally among, and be payable by, the Owners of respective Lots.

4.7 Due Dates for Assessment Payments. Unless otherwise determined by the Board, the monthly assessments and any special assessments which are to be paid in monthly installments shall be paid monthly, in advance, and shall be due and payable to the Association at its office, without notice, on the first day of each month. If any such assessment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" thereon in an amount not exceeding Ten Dollars (\$10.00) which amount may be adjusted by the Board from time to time to cover the extra expenses involved in handling delinquent assessment payments.

4.8 Liens for Assessments. The annual and special assessments provided for in this Article IV, and any and all default assessments arising hereunder (together with any and all interest, costs, late charges, expenses, and reasonable attorney's fees which may arise under this Article), shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Lot to which such assessments apply. To evidence and perfect such lien upon a specific Lot, the Board shall prepare a written lien notice setting forth the description of the Lot, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner thereof, and any and all

other information that the Board may deem proper. The lien notice shall be signed by the President or a Vice-President of the Association, or such other person as may be so authorized by the Board whose signature shall be attested by the Secretary or an Assistant Secretary of the Association, and shall be recorded in the office of the Clerk and Recorder of Twin Falls County, Idaho. Such liens may be foreclosed in the same manner as mortgages in the State of Idaho.

4.9 Successors' Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Lot to pay all assessments thereon and notwithstanding the Association's perpetual lien upon a Lot for such assessments, all successors in interest to the fee simple title of a Lot shall be jointly and severally liable with the prior Owner thereof for any and all unpaid assessments, interest, late charges, costs, expenses and attorney's fees against such Lot, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a specific Lot shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses, and attorney's fees as shown upon any certificate issued by the Association to such named successor in interest.

ARTICLE V INSURANCE

5.1 Public Liability and Additional Insurance Coverage. To the extent it deems appropriate, the Association may obtain a broad form public liability insurance policy covering the Common Area and the acts of the Association and its agents, and the Association may maintain any and all other insurance coverage as the Board may deem advisable.

5.2 Damage or Losses from Association's Insured Hazards. In the event of loss, damage, or destruction by fire or other casualty to any Common Area covered by insurance written in the name of the Association or for which the Association is named as co-insured, whether in its own name or as trustee, the Board shall, upon receipt of the insurance proceeds, contract to repair, reconstruct, or rebuild any damaged or destroyed portions of the Common Area to as good condition as formerly existed.

ARTICLE VI ARCHITECTURAL CONTROL

6.1 Architectural Controls. In order to maintain the architectural aesthetics of any portions of the Property within the purview of this Declaration no improvements, building, fences or other structures, shall be commenced, constructed, erected, altered, remodeled, or maintained upon a Lot, until the plans and specifications accurately showing the dimensions, windows, exterior materials, color and location of the same shall have been submitted to, and approved in writing as to harmony of external design and location in relation to surrounding structures by an Architectural Review Committee

("ARC") composed of one or more representatives appointed by the Board. The initial Architectural Review Committee shall consist of Gerald Martens for all lots north of Ridgeway Drive and Joe Russell for all lots south of Ridgeway Drive. In the event the Board, or the Architectural Review Committee, if one then exists, fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted, then such plans and specifications shall be deemed to have been approved as submitted.

6.2 Submittal. To obtain consideration of any proposed construction, the Owner proposing the same, shall submit two complete sets of plans therefore to the ARC, together with a design review fee to be established by the Board. Submittals should be delivered to Broadmore Home Owners Association President.

6.3 Non-Liability for Actions. Neither Declarant, the Board, nor the ARC nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the ARC for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans to the ARC for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Board or the ARC or the Declarant to recover any such damages. Approval by the ARC shall not be deemed to constitute compliance with the requirements of any local building codes, which shall be the sole responsibility of the Owner.

ARTICLE VII MAINTENANCE BY THE ASSOCIATION

7.1 Common Area. The Association shall, as authorized and directed by the Board, have full responsibility for and control over: all maintenance, repairing, replacing of the Common Area, specifically including without limiting the generality of the foregoing, the installation, maintenance and irrigation of grass, trees, shrubbery, flowers, fencing and similar landscape items, and the installation and maintenance of a sprinkling or other irrigation system.

ARTICLE VIII USE RESTRICTIONS

8.1 Land Use and Building Type. No Lot, shall be used except for residential purposes, and no prefabricated, modular, manufactured or existing homes may be moved upon any Lot.

8.2 Size of Residential Structure. Unless otherwise approved by the ARC the ground floor foot print of the residential structure, exclusive of porches and garages shall not be less than 1,300 S.F. or 15 percent of the lot area whichever is greater. The ground

level of multilevel structures, exclusive of garages and porches shall not be less than 1,200 S.F.

8.3 Minimum Exterior Requirements. Unless otherwise approved by the ARC, all Residential Structures shall have a roof pitch which is not less than a 5/12 pitch, and at least twenty percent (20%) of the front elevation shall be of rock, brick, synthetic stucco or other masonry product approved by the ARC. The 20 percent masonry requirement shall apply to all street frontages for lots with frontage on more than one street. Roof planes shall be broken with hips, dormers or other similar features. The exterior finish of any outbuildings must be compatible with that on the main residential structure, and bright, bold or very dark hues are discouraged for exterior application. The brick, stone, synthetic stucco or other approved masonry product shall be located in a manner that aesthetically enhances the appearance of the structure. The ARC may, at its sole discretion, require additional brick, stone, synthetic stucco or other masonry product to achieve an appearance that is acceptable to the ARC. Fences may be constructed on any Lot, subject to review and approval of the ARC. The fence review will include materials, height, location on the lot and other issues impacting neighboring lots and. All fence shall be constructed of white vinyl unless otherwise approved by the ARC.

8.4 Compliance with City Requirements. All improvements must conform with the applicable laws, rules and regulations of the City of Twin Falls, including, but not necessarily limited to, applicable zoning ordinance provisions, building codes, electrical codes and plumbing codes. All permits required in connection with any construction on any Lot shall be the obligation of the Lot Owner and/or the party proposing said improvements.

8.5 Signage. No signs shall be permitted which advertise any home occupation or other business activity; provided, however, that the provisions of this section shall not prevent the installation and maintenance of a sign advertising the premises for sale, provided it is of a type and size customarily used by professional realtors in the City of Twin Falls, and conforms to all applicable City regulations.

8.6 Off Street Parking. Each Lot, when improved with a Residential Structure, shall have a finished, hard surface driveway with sufficient space thereon to park at least two automobiles without encroaching into the adjoining street right-of-way. In addition, every Residential Unit constructed on a Lot shall have not less than a two car garage.

8.7 Recreational Vehicles. Recreational vehicles, including, but not necessarily limited to, boats, mobile homes, trailers, campers, and snow mobiles, shall be permitted on any Lot, provided, they are parked and/or stored behind the front yard setback area and are screened from the street and adjacent residential lot. The screening shall be a minimum of 6 feet in height. Screening location and material shall be approved by the ARC.

8.8 Animals. No animals, livestock or poultry of any kind shall be raised,

bred, or kept on any Lot; provided, however, that dogs, cats and other household pets are allowed provided they are not kept, bred or maintained for commercial purposes.

8.9 Trees. No cottonwood trees, Chinese elm trees, or other similar species subject to pest infestation shall be planted on any Lot.

8.10 Antennae. Installation of any exterior protrusions, including, but not limited to, satellite dishes, antennae, or solar collectors shall not be installed on any Lot or attached to any structure, without the prior approval of the ARC.

8.11 Landscaping. Landscaping shall be completed on all lots within 120 calendar days of occupancy. The months of December, January and February shall not be counted in calculation of the 120 days.

8.12 Construction Site. Construction scrap and debris shall be confined to owner's lot (including concrete truck cleanup and excess soil from excavation. Owner is responsible for all construction personnel and must control their equipment, vehicles and demeanor to minimize inconvenience to subdivision residents and/or other owner's contractors. The developer will designate an on-project site for the stockpiling of surplus excavation. This site shall not be used for rock. Dust control is the responsibility of the owner. As per City Code, broken sidewalks must be replaced by the owner; protect your sidewalks from heavy equipment. Construction dumpsters must be sited to minimize inconvenience to other lot owners and must not impede normal traffic flow. Temporary sanitary facilities must be sited on owner's lot as soon as excavation begins and in such location as to insure the privacy of the adjacent lots owners and construction personnel. At all times during construction, the Owner shall be responsible for keeping a clean orderly construction site. Construction debris must be removed and/or deposited in an on-site dumpster on a daily basis.

ARTICLE IX THE ASSOCIATION

9.1 Association. As defined in Article I hereinabove, the Association shall mean and refer to the Broadmore Homeowners Association, an Idaho non-profit membership corporation, vested with the duties and obligations herein imposed upon it.

9.2 Membership. Every Owner of a Lot within any subdivision which is under and within the purview of this Declaration shall be a member of the Association. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. There shall be only one membership appurtenant to each Lot, and every Owner shall be entitled to one membership for each Lot owned.

9.3 Voting Rights. Each membership shall be entitled to cast one vote in all elections or other actions in which the members are required or permitted to vote pursuant to the Articles of Incorporation and By-Laws of the Association.

ARTICLE X GENERAL PROVISIONS

10.1 Enforcement. The Association, and all Owners, shall have the right to enforce, by proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed pursuant to the provisions of this Declaration. Failure by any Owner to enforce any covenant, conditions or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Severability. Invalidity of any one of the covenants, conditions or restrictions herein contained by court order or judgment shall in no way effect the validity or effectiveness of any other provisions.

10.3 Amendment. The covenants, conditions and restrictions of this Declarations shall encumber, and run with the title to, all real property now or hereafter made subject hereto, from and after the date this Declaration is recorded in the official records of Twin Falls County, Idaho. This Declaration, or any provision hereof, may be amended at any time by an instrument signed by the Owners of not less than 66 2/3% of the total number of Lots within the purview of this Declaration. Any such amendment must be recorded in the official records of Twin Falls County, Idaho, to be effective.

DATED this 28 day of October, 2015.

DECLARANT

RUSMOR, LLC, an Idaho Limited Liability Company

By: Joe Russell
JOE RUSSELL, MEMBER

RUSMOR, LLC, an Idaho Limited Liability Company

By: **WEMGARY LP, an Idaho Limited Partnership, Member**

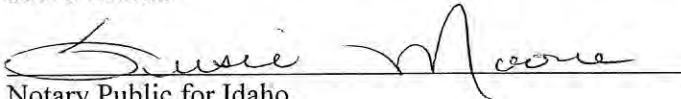
By: William E. Morris
WILLIAM E. MORRIS, GENERAL PARTNER

Gerald Martens
GERALD MARTENS

STATE OF IDAHO
County of Twin Falls

On this 20th day of October, 2015, before me, a Notary Public in and for said State, personally appeared Joe Russell, known or identified to me to be member of the limited liability company of Rusmor, **LLC**, and the member who subscribed said limited liability company name to the foregoing instrument and acknowledged to me that he executed the same in said limited liability company name.

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



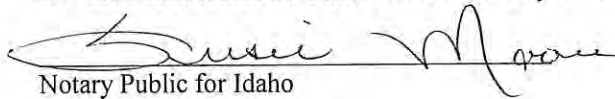
Notary Public for Idaho
Residing in Twin Falls
Commission Expires 11-28-2020



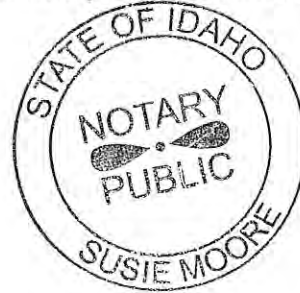
STATE OF IDAHO
County of Twin Falls

On this 20th day of October, 2015, before me, a Notary Public in and for said State, personally appeared Williams E. Morris, known or identified to me to be the general partner of the limited partnership of Wemgary LP, and the partner who subscribed said limited partnership name to the foregoing instrument and acknowledged to me that he executed the same for Wemgary LP, the member of Rusmor LLC.

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



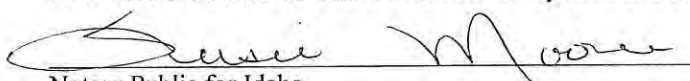
Notary Public for Idaho
Residing in Twin Falls
Commission Expires 11-28-2020



STATE OF IDAHO
County of Twin Falls

On this 20th day of October, 2015, before me, a Notary Public in and for said State, personally appeared Gerald Martens, known or identified to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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



Notary Public for Idaho
Residing at Twin Falls
Commission expires: 11-28-2020



Exhibit "A"

Broadmore Subdivision

Located in Twin Falls, Idaho

EXHIBIT "A"

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, Block 1;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 2;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 3;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 4;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 5;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, Block 6;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 7;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 8;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 9;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 10
And Tracts A, B and C **BROADMOOR SUBDIVISION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 25 of Plats, page 7, records of Twin Falls County, Idaho.

EXHIBIT 3

TWIN FALLS COUNTY
RECORDED FOR:
TITLEFACT, INC.
09:41:43 AM 05-10-2017
2017007285
NO. PAGES 23 FEE: \$76.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: SM
Electronically Recorded by Simplifile

Sm

**AMENDED AND PARTIAL RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
BROADMOOR SUBDIVISION
(North of Ridgeway Drive)**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROADMOOR SUBDIVISION ("**Declaration**") is made this 4th day of May, 2017, by Gerald Martens and Titlefact, Inc., as the Trustee (collectively, "**Declarant**") and is applicable to and supersedes a declaration of covenants, conditions and restrictions as specified in Instrument No. 201518884 recorded in Twin Falls County on October 28, 2015 (the "**Original Declaration**") as it relates to the Property defined hereinbelow. Upon the execution and recording of this Declaration, the Original Declaration shall be null and void and of no further force or effect as to the Property covered by this Declaration.

RECITALS:

THIS AMENDED DECLARATION IS MADE in contemplation and furtherance of the following facts and purposes:

A. Declarant is the Owner of certain real property located in the City of Twin Falls, Twin Falls County, State of Idaho, more particularly described on **Exhibit "A"** hereto (hereinafter referred to as the "**Property**"). The Original Declaration covered the Property, as well as the portion of the original Broadmoor Subdivision South of Ridgeway Drive, now known as the Falls at Broadmoor; Amended Declarations applicable to the Falls at Broadmoor are anticipated and Declarant intends to participate in good faith with respect to consent, also, of the Amended Declarations;

B. It is the intent of the Declarant to develop the Property as described in Exhibit A, in phases, and to reserve unto itself, or its successors, the right to adopt this Declaration of Covenants, Conditions and Restrictions, by reference, in an instrument making the same applicable to any other residential subdivisions which may hereafter be developed within the Property, thereby annexing and placing such subdivisions under and within the purview of this Declaration, and imposing and extending to all such subdivisions and all lots, residential units and common areas situated therein, and to the owners thereof, the obligations and benefits of this Declaration of Covenants, Conditions and Restrictions.

DECLARATION

Declarant hereby declares that the Property (defined hereinabove), and all real property, lots, residential units and common areas situated therein, shall be held, conveyed, encumbered, leased and used subject to the covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Broadmoor Subdivision, and which shall run with title to the land situated therein, and shall be binding upon, and benefit, all parties now or hereafter having or acquiring any right, title or interest therein, or to any part thereof. As addressed in Article XII, hereinbelow, in the event of any conflict between the terms of this Declaration and any terms or conditions of the Amendment and Partial Restatement of the Master Declaration of Covenants, Conditions and Restrictions and Easements for the Falls at Broadmoor, as it may relate to the Property covered hereby, the terms of this Declaration shall prevail.

ARTICLE I DEFINITIONS

1. Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the following meaning:

1.1 Annexation. "Annexation" shall mean and refer to the act of the Declarant, or its successors, to place additional residential subdivisions of any portion of the Property described on Exhibit "A" hereto under and within the purview of this Declaration of Covenants, Conditions and Restrictions, in the manner herein provided for in Article III.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Association.

1.3 Assessments. "Assessments" shall mean those payments required of Owners and Association Members, including Regular, Special and Limited Assessments of the Association as further defined and described in Article IV.

1.4 Association. "Association" shall mean and refer to Broadmoor Subdivision Homeowners Association, Inc., an Idaho non-profit membership corporation organized under the laws of the State of Idaho, its successors and assigns.

1.5 Board of Directors. "Board of Directors" shall mean and refer to the Board of Directors of the Association, and the term may hereinafter be used interchangeably with the term "Board."

1.6 Common Area. "Common Area" shall mean and refer to all real property now or hereafter owned or leased by the Association or in which the Association has an easement including all property indicated as Common Area on the official plat of any other residential subdivision hereafter placed under and within the purview of this

Declaration in the manner herein provided for.

1.7 Declarant. "Declarant" shall mean Gerald Martens or his successor(s) in interest to whom the rights under this Declaration are expressly transferred by assignment.

1.8 Improvement. "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, wildlife habitat improvements, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, recreational facilities, and fixtures of any kind whatsoever.

1.9 Limited Assessment. "Limited Assessment" shall mean a charge against a particular Owner, and such Owner's Lot, directly attributable to such Owner, equal to the cost incurred by the Association in connection with corrective action performed pursuant to the provisions of this Declaration, including, without limitation, damage to any Common Area, or the failure of an Owner to keep such Owner's Lot and/or Improvements in proper repair, and including interest thereon as provided in this Declaration.

1.10 Lot. "Lot" shall mean and refer to Lots shown on the official plat of the Broadmoor Subdivision, North of Ridgeway Drive, and further described in Exhibit A, or in the official plat of any other residential subdivision which may be placed under and within the purview of this Declaration, in the manner hereinafter provided for.

1.11 Member. "Member" shall mean and refer to a Member of the Association who shall be an Owner and shall qualify for membership in the Association in the manner hereinafter set forth.

1.12 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot within the Broadmoor Subdivision, North of Ridgeway Drive, or any other residential subdivision hereafter placed under and within the purview of this Declaration in the manner hereinafter provided for; provided, however, that the term "Owner" shall not include those having only a security interest in any Lot through a lien, encumbrance, deed of trust, mortgage, or similar security instrument.

1.13 Regular Assessment. "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Areas and all Improvements located thereon, and the other costs of the Association which is to be levied against the Property of and paid by each Owner to the Association, pursuant to the terms of this Declaration.

1.14 Special Assessment. "Special Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association pursuant to the provisions of this Declaration.

ARTICLE II COMMON AREA

2.1 Common Area. In conjunction with any subdivision situated on the Property, the Declarant, or its successors may tender Common Area to the Association, which shall be accepted by the Association provided it is for the common benefit of the Property, or the common use and enjoyment of the Owners and their respective family members, guests and invitees. All such Common Area conveyed in fee simple to the Association shall be free and clear of all liens and encumbrances, except easements, restrictions and reservations, which are by record and are approved. With respect to Tract A (a parcel owned by the City of Twin Falls), please see Article XII, hereinafter, which is incorporated herein by this reference.

ARTICLE III ANNEXATION

3.1 Annexation. The Declarant or its successors may, at any time hereafter, by execution and recordation of an effective Declaration of Covenants, Conditions and Restrictions encumbering any residential subdivision owned by the Declarant or its successors, resulting from the subdivision, re-subdivision or re-platting of any parcel within the Property described in Exhibit "A" hereto, place said residential subdivision under and within the purview of this Declaration, and all of its covenants, restrictions and conditions. Upon the recordation of such a declaration, all Lots in said residential subdivision shall be deemed to be Lots hereunder, and all Owners thereof shall thereafter be owners and members of the Association for all purposes hereunder, in same manner, and subject to the same benefits and obligations as though said Lots were included in the Broadmoor Subdivision.

3.2 Common Area. Upon Annexation of any residential subdivision pursuant to this Article III, Declarant shall deed and convey all Common Area within said subdivision to the Association in the manner provided for in Section 2.1 hereinabove.

3.3 Notice. In the event the Declarant shall intend to annex property as provided in this Article, written notice of such intent shall be given to the Association at least thirty (30) days prior to the recordation of the Declaration purporting to effectuate the annexation.

ARTICLE IV ASSESSMENTS

4.1 Agreement to Pay Assessments. Declarant, for each Lot owned by the Declarant, hereby covenants, and each subsequent Owner of any Lot, by acceptance of a deed therefore, whether or not it be so expressed in said deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association the Assessments provided for in this Declaration. In the case of joint or co-ownerships, this liability shall be joint and several. Such Assessments shall be levied against Lots and collected from time to time in the manner provided in this Article IV.

4.1.1. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be expressed in such deed), is deemed to covenant and agree to pay to the Association: (i) Regular or other periodic Assessments or charges; (ii) Special Assessments for capital improvements, such Assessments to be fixed, established, and collected from time to time as hereinafter provided; and (iii) Limited Assessments for the purposes set forth in Article I, Section 1.9.

4.2 Lien of Assessments. The Regular, Special, and Limited Assessments, together with interest, costs of collection, and any reasonable attorney fee shall be a charge on the Lot and shall be a continuing lien with power of sale upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection, and reasonable attorneys' fees shall be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to this Section to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

4.3 Default. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

4.4 Foreclosure of Lien. Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

4.5 Required Notice. Notwithstanding anything contained in the Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Lot(s), and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

4.6 Assessment Years. The first Assessment year for the levying of the Association's Regular Assessments shall commence upon the first day of January, 2017.

4.7 Regular Assessments. Regular Assessments against all Lots as hereby authorized, unless otherwise specifically provided herein, shall be based upon advanced estimates of the cash required by the Association for each Assessment year to provide payment for all expenses to be incurred in said Assessment year in the conduct of the Association's affairs. Such expenses may include, among other things, those incurred for taxes, insurance, professional services, and maintenance of the Common Area.

4.8 Special Assessments. In addition to the Regular Assessments authorized herein, the Association may levy in any Assessment year a Special Assessment payable over such time as the Association may determine for the purpose of defraying, in whole or in part, the unanticipated cost of any construction, reconstruction, repair or replacement of Common Area Improvements. This Section shall not be construed as an independent authority for the Association to incur expenses, but shall be construed to prescribe an alternative manner of assessing for expenses authorized in other sections hereof.

4.9 Apportionment of Assessments. Regular and Special Assessments shall be payable monthly, or at such other intervals as the Board of Directors of the Association may establish. The total of any such installment of Regular or Special Assessments shall be apportioned equally among, and be payable by, the Owners of respective Lots.

4.10 Due Dates for Assessment Payments. Unless otherwise determined by the Board, the monthly Regular Assessments and any Special Assessments which are to be paid in monthly installments shall be paid monthly, in advance, and shall be due and

payable to the Association at its office, without notice, on the first day of each month. If any such Assessment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" thereon in an amount not exceeding Ten Dollars (\$10.00) per month which amount may be adjusted by the Board from time to time to cover the extra expenses involved in handling delinquent Assessment payments.

4.11 Successors' Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Lot to pay all Assessments thereon, and notwithstanding the Association's perpetual lien upon a Lot for such Assessments, all successors in interest to the fee simple title of a Lot shall be jointly and severally liable with the prior Owner thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Lot, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a specific Lot shall be entitled to rely upon the existence and status, or absence thereof, of unpaid Assessments, interest, late charges, costs, expenses, and attorney's fees as shown upon any certificate issued by the Association to such named successor in interest.

4.12 City Assessments. The City of Twin Falls may make Assessments for maintenance of common area landscaping located adjacent to public streets within or adjacent to the subdivision. Said Assessment shall be made by the City and payments shall be made to the City of Twin Falls in accordance with City ordinances.

4.13 Limited Assessments and Enforcement of CCRs and Association Rules. The Board may levy a Limited Assessment against an Owner as a remedy to reimburse the Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with this Declaration and with any Association Rules, or for damage caused by the Owner (or any member of such Owner's family, representatives, or invitees) to any Common Area or any other portion of the Property. Notwithstanding anything to the contrary contained in the Declaration, no Limited Assessments may be imposed upon an Owner for a violation of the terms of the Declaration by an Owner unless the following requirements are complied with by the Board:

A. A majority vote by the Board shall be required prior to imposing any Limited Assessment on an Owner for a violation of any covenants and restrictions pursuant to the rules and regulations of the Association;

B. Written notice by personal service or certified mail of the meeting during which such vote is to be taken shall be made to the Owner at least thirty (30) days prior to the meeting;

C. In the event the Owner begins resolving the violation prior to the meeting, no Limited Assessment shall be imposed so long as the Owner continues to address the violation in good faith until fully resolved; and

D. No portion of any Limited Assessment may be used to increase the remuneration of any member of the Board or an agent of the Board.

4.14 Association Rules. The Association shall have the power to adopt, amend, and repeal by majority vote of the Board such Association rules and regulations as the Board deems reasonable (the "**Association Rules**"). The Association Rules shall be limited in scope and shall include rules regarding the use and operation of Common Area and fines for certain activities prohibited by the Declaration, with such fines being treated as Limited Assessments and administered in accordance with this Declaration, including Section 4.13. In no event shall the Association Rules conflict with the Declaration and, in the event of any such conflict, the Declaration shall control. The Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration. A copy of the Association Rules as they may from time to time be adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any challenge to any Association Rule, the Association Rule shall be upheld unless it is found by clear and convincing evidence to be: (i) in express violation of the Declaration; (ii) in express violation of federal, state, or local government law; or (iii) arbitrary, capricious, unreasonable, and oppressive.

ARTICLE V INSURANCE

5.1 Public Liability and Additional Insurance Coverage. To the extent it deems appropriate, the Association may obtain a broad form public liability insurance policy covering the Common Area and the acts of the Association and its agents, and the Association may maintain any and all other insurance coverage as the Board may deem advisable.

5.2 Damage or Losses from Association's Insured Hazards. In the event of loss, damage, or destruction by fire or other casualty to any Common Area covered by insurance written in the name of the Association or for which the Association is named as co-insured, whether in its own name or as trustee, the Board shall, upon receipt of the insurance proceeds, contract to repair, reconstruct, or rebuild any damaged or destroyed portions of the Common Area to as good condition as formerly existed.

ARTICLE VI ARCHITECTURAL CONTROL

6.1 Architectural Controls. In order to maintain the architectural aesthetics of any portions of the Property within the purview of this Declaration, no Improvements, building, fences or other structures, shall be commenced, constructed, erected, altered, remodeled, or maintained upon a Lot, until the plans and specifications accurately

showing the dimensions, windows, exterior materials, color and location of the same shall have been submitted to, and approved in writing as to harmony of external design and location in relation to surrounding structures by an Architectural Review Committee ("ARC") composed of one or more representatives appointed by the Board. The initial Architectural Review Committee for all Lots situated on the Property shall consist of Gerald Martens, David Thibault and Martha Tolman. In the event the Board, or the Architectural Review Committee, if one then exists, fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been submitted, then such plans and specifications shall be deemed to have been approved as submitted.

6.2 Submittal. To obtain consideration of any proposed construction, the Owner proposing the same, shall submit two complete sets of plans therefore to the ARC, together with a design review fee to be established by the Board. Submittals should be delivered to the Association President.

6.3 Non-Liability for Actions. Declarant, the Board, the ARC and their respective successors or assigns shall not be liable in damages to anyone submitting plans to the ARC for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans to the ARC for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Board or the ARC or the Declarant to recover any such damages. Approval by the ARC shall not be deemed to constitute compliance with the requirements of any local building codes, which shall be the sole responsibility of the Owner.

ARTICLE VII MAINTENANCE BY THE ASSOCIATION

7.1 Common Area. The Association shall, as authorized and directed by the Board, have full responsibility for and control over: all maintenance, repairing, replacing of the Common Area, specifically including without limiting the generality of the foregoing, the installation, maintenance and irrigation of grass, trees, shrubbery, flowers, fencing and similar landscape items, the installation and maintenance of a sprinkling or other irrigation system, and installation and maintenance of retention pond. Without waiving the foregoing, and specifically with regard to the retention pond and park improvements as depicted in Tract A, as referenced in the Agreement with City of Twin Falls, said facilities serve the interests of Broadmoor Subdivision (North of Ridgeway Drive) and the Falls at Broadmoor (South of Ridgeway Drive). Said Tract A improvements shall serve each development, and Declarant (or Association following development) shall assess to each subdivision and be reimbursed for the costs and fees associated with installation, including, but not limited to excavation, piping, grading and landscaping of said facilities, pro rata, based upon the number of lots in each development, namely Broadmoor Subdivision (North of Ridgeway Drive) and the Falls at Broadmoor, and as addressed by Article XII, hereinafter. It is anticipated that these

facilities will be maintained by the City of Twin Falls following (administrative) acceptance of the improved Tract A.

7.2 Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining their Lot which would otherwise be the Associations' responsibility to maintain, the Board of the Association, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner's Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association, as the case may be, for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Article IV of this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments. Each Owner shall have the remedial rights set forth herein if the Association fails to exercise its rights within a reasonable time following written notice by such Owner.

ARTICLE VIII USE RESTRICTIONS

8.1 Land Use and Building Type. No Lot, shall be used except for residential purposes developed in accordance with City of Twin Falls R2 standards, and no prefabricated, modular, manufactured or existing homes may be moved upon any Lot.

8.2 Size of Residential Structure. Unless otherwise approved by the ARC the ground floor foot print of the residential single level structure, exclusive of porches and garages shall not be less than 1,500 S.F. The ground level of multilevel structures, exclusive of garages and porches shall not be less than 1,200 S.F. Duplex units shall not be less than 1,300 square feet per living unit.

8.3 Minimum Exterior Requirements. Unless otherwise approved by the ARC, all Residential Structures shall have a roof pitch which is not less than a 5/12 pitch, and at least twenty percent (20%) of the front elevation shall be of rock, brick, synthetic stucco or other masonry product approved by the ARC. The 20 percent masonry requirement shall apply to all street frontages for lots with frontage on more than one street. Roof planes shall be broken with hips, dormers or other similar features. The exterior finish of any outbuildings must be compatible with that on the main residential structure, and bright, bold or very dark hued colors are discouraged for exterior application. The brick,

stone, synthetic stucco or other approved masonry product shall be located in a manner that aesthetically enhances the appearance of the structure. The ARC may, at its sole discretion, require additional brick, stone, synthetic stucco or other masonry product to achieve an appearance that is acceptable to the ARC. Fences may be constructed on any Lot, subject to review and approval of the ARC. The fence review will include materials, height, location on the lot and other issues impacting neighboring lots and. All fence shall be constructed of tan vinyl unless otherwise approved by the ARC.

8.4 Compliance with City Requirements. All Improvements must conform to the applicable laws, rules and regulations of the City of Twin Falls, including, but not necessarily limited to, applicable zoning ordinance provisions, building codes, electrical codes and plumbing codes. All permits required in connection with any construction on any Lot shall be the obligation of the Lot Owner and/or the party proposing said Improvements.

8.5 Signage. No signs shall be permitted which advertise any home occupation or other business activity; provided, however, that the provisions of this section shall not prevent the installation and maintenance of a sign advertising the premises for sale, provided it is of a type and size customarily used by professional realtors in the City of Twin Falls, and conforms to all applicable City regulations.

8.6 Off Street Parking. Each Lot, when improved with a Residential Structure, shall have a finished, hard surface driveway with sufficient space thereon to park at least two automobiles without encroaching into the adjoining street right-of-way. In addition, every Residential Unit constructed on a Lot shall have not less than a two car garage.

8.7 Recreational Vehicles. Recreational vehicles, including, but not necessarily limited to, boats, mobile homes, trailers, campers, and snow mobiles, shall be permitted on any Lot, provided, they are parked and/or stored behind the front yard setback area and are screened from the street and adjacent residential lot. The screening shall be a minimum of 6 feet in height. Screening location and material shall be approved by the ARC.

8.8 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot; provided, however, that dogs, cats and other household pets are allowed provided they are not kept, bred or maintained for commercial purposes.

8.9 Trees. No cottonwood trees, Chinese elm trees, or other similar species subject to pest infestation shall be planted on any Lot.

8.10 Antennae. Installation of any exterior protrusions, including, but not limited to, satellite dishes, antennae, or solar collectors shall not be installed on any Lot or attached to any structure, without the prior approval of the ARC.

8.11 Landscaping. Landscaping shall be completed on all lots within 120 calendar days of occupancy. The months of December, January and February shall not be counted in calculation of the 120 days.

8.12 Construction Site. Construction scrap and debris shall be confined to owner's lot (including concrete truck cleanup and excess soil from excavation. Owner is responsible for all construction personnel and must control their equipment, vehicles and demeanor to minimize inconvenience to subdivision residents and/or other owner's contractors. The developer will designate an on-project site for the stockpiling of surplus excavation. This site shall not be used for rock. Dust control is the responsibility of the owner. As per City Code, broken sidewalks must be replaced by the owner; protect your sidewalks from heavy equipment. Construction dumpsters must be sited to minimize inconvenience to other lot owners and must not impede normal traffic flow. Temporary sanitary facilities must be sited on owner's lot as soon as excavation begins and in such location as to insure the privacy of the adjacent lots owners and construction personnel. At all times during construction, the Owner shall be responsible for keeping a clean orderly construction site. Construction debris must be removed and/or deposited in an on-site dumpster on a daily basis.

8.13 Tracts A, B and C. Nothing herein shall preclude development of Tracts A, B or C with amenities benefiting the uses of Tracts A, B, C or resubdivision of Tract B for residential purposes.

ARTICLE IX THE ASSOCIATION

9.1 Association. As defined in Article I hereinabove, the Association shall mean and refer to the Broadmoor Subdivision Homeowners Association, Inc., an Idaho non-profit membership corporation, vested with the duties and obligations herein imposed upon it.

9.2 Membership. Every Owner of a Lot within any subdivision which is under and within the purview of this Declaration shall be a member of the Association. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. There shall be only one membership appurtenant to each Lot, and every Owner shall be entitled to one membership for each Lot owned.

9.3 Voting Rights. Each membership shall be entitled to cast one vote in all elections or other actions in which the members are required or permitted to vote pursuant to the Articles of Incorporation and By-Laws of the Association.

ARTICLE X EASEMENTS

10.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unwillful placement or settling or shifting of the Improvements including but not limited to structures, walkways, bike paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph.

10.2 Easements of Access. Declarant expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Lots, and Common Areas, resulting from the normal use of adjoining Lots or Common Areas, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Declarant, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot or Common Area.

10.3 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Lot in the Property to a purchaser.

10.3.1 Improvement of Drainage and Utility Easement Areas. The Owners of Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas as shown on the Plat of Broadmoor Subdivision or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose; provided, however that the Owner of such Lots and the Declarant, Association or

designated entity with regard to the landscaping easement described in this Article X, shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the Architectural Review Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Lot whose Improvements were so damaged.

10.4 Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Lots within the Property with respect to utilities shall be governed by the following:

10.4.1 Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Lots owned by an Owner other than the Owner of the Lot served by the connections, the Owner of the Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Lot or to have their agent enter upon any Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

10.4.2 Whenever utility house connections are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Lot.

10.5 Driveway Easements. Whenever a driveway is installed within the Property which in whole or in part lies upon a Lot owned by an Owner other than the Owner of the Lot served, or installed to serve more than one Lot, the Owner of each Lot served or to be served by such driveway shall be entitled to full use and enjoyment of such other Lot as required to service such Owner's Lot or to repair, replace or maintain such driveway.

10.6 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections or driveways, or with respect to the sharing of the cost therefore, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

10.7 General Landscape Easement. An easement is hereby reserved to the Association, its contractors and agents, to enter those portions of Lots, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as the Association shall determine to be necessary from time to time.

10.8 Overhang Easement. There shall be an exclusive easement appurtenant to each Lot over the Common Areas for overhanging eaves, and for any projections from the buildings, which projections shall not extend beyond the eave line.

10.9 Maintenance and Use Easement Between Walls and Lot Lines. Whenever the wall of a structure, or a fence or retaining wall, constructed on a Lot under plans and specifications approved by the Architectural Review Committee is located within three (3) feet of the lot line of such Lot, the Owner of such Lot is hereby granted an easement over and on the adjoining Lot (not to exceed 3 feet from the Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Lot is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure or fence. The Association has the right to enter onto any Lot to repair and/or replace any fencing located along the Common Area boundary line, and the Association is granted an easement (not to exceed 5 feet from the Lot line) for such purposes. Owners are prohibited from repairing or replacing any Common Area boundary fencing, and the Association may bill an Owner for such Owner's proportionate share of fencing maintenance performed by the Association.

ARTICLE XI GENERAL PROVISIONS

11.1 Enforcement. The Association, and all Owners, shall have the right to enforce, by proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed pursuant to the provisions of this Declaration. Failure by any Owner to enforce any covenant, conditions or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2 Severability. Invalidity of any one of the covenants, conditions or restrictions herein contained by court order or judgment shall in no way effect the validity or effectiveness of any other provisions.

11.3 Amendment. The covenants, conditions and restrictions of this Declaration shall encumber, and run with the title to, all real property now or hereafter made subject hereto, from and after the date this Declaration is recorded in the official records of Twin Falls County, Idaho. Except as addressed hereinafter as it relates to

Declarant amendment, any amendment to any provision of the Declaration, other than to this Section, Article XII or any easements herein granted, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing at least two-thirds (2/3) of the total voting power in the Association, except where a greater percentage is required by express provision in this Declaration, and such amendment shall be effective upon its recordation with the Twin Falls County Recorder's Office. Any amendment to this Article XI shall require the vote or written consent of Owners representing ninety percent (90%) of the voting power of the Association. Notwithstanding anything to the contrary in this Section, until Declarant shall have no title interest in any Lots in the Property, or until Declarant shall relinquish his rights to Declarant amendment, whichever shall occur first, this Declaration may be amended or terminated by Declarant by recordation of a written instrument signed by Declarant and acknowledging setting forth such amendment or termination. Amendment by Declarant shall not apply to Title XII, hereinbelow.

ARTICLE XII
RECIPROCAL PROVISIONS APPLICABLE TO BROADMOOR, NORTH OF
RIDGWAY DRIVE AND THE FALLS AT BROADMOOR

12.1 Acknowledgment. Declarant herein, and those parties approving and acknowledging on behalf of the Falls at Broadmoor (South of Ridgway Drive), namely Jade Development, LLC, a California limited liability corporation, and Pioneer Title Company of Ada County, as Trustee and for the benefit of Jade Development, LLC, (collectively, "Jade") each acknowledge that portion of the original Broadmoor Subdivision (North of Ridgway Drive), more particularly described on Exhibit A, attached hereto is intended to be governed by this Declaration, and the portion of the original Broadmoor Subdivision (South of Ridgway Drive), now known as Falls at Broadmoor, more particularly described in Exhibit B to the Amendment and Partial Restatement of the Master Declaration of Covenants, Conditions, Restrictions and Easements for Broadmoor Subdivision (the Falls at Broadmoor) ("Falls at Broadmoor Amendment"), is intended to be governed by the Falls at Broadmoor Amendment. Each respective party and subsequent Association (as defined herein and in the Falls at Broadmoor Amendment) shall be responsible for all improvement and maintenance of and on their respective common areas and shall indemnify, defend and hold harmless the other for any act resulting in damage to the other.

12.2 Controlling Document in Event of Conflict. Jade and Declarant agree that in the event of any conflict between the terms of this Declaration and any terms or conditions of the Falls at Broadmoor Amendment, as it may relate to the Property covered hereby, the terms of this Declaration shall prevail and as it may relate to the Falls at Broadmoor's property, the Falls at Broadmoor Amendment shall prevail.

12.3 Tract A. Declarant and Jade hereby agree Tract A located on the Property is located in Common Area of Broadmoor Subdivision (North of Ridgeway), is

owned by the City of Twin Falls, and is intended to be developed as a retention basin and park facility, which retention and park facilities are intended to serve both Broadmoor Subdivision (North of Ridgeway) and the Falls at Broadmoor. The Declarant shall be responsible for all installation, maintenance and improvement of the retention basin and park facilities and the Falls at Broadmoor shall be required to reimburse Declarant, on a pro rata per lot basis taking into account all Lots in the original Plat covering both the Property and the Falls at Broadmoor, for Declarant's reasonable costs and fees associated with its installation, maintenance and improvement of the retention and park facilities located in Tract A of the Property, until such time as the City of Twin Falls accepts (administratively) the improvements, at which time it is anticipated that the City of Twin Falls will be responsible for maintenance of the facilities located on Tract A.

12.4 Other Coordination and Cooperation. Declarant and Jade agree that each respective developer and Lot Owners shall be responsible for the real property owned by each. However, to the extent coordination and/or cooperation becomes reasonably necessary due to joint or connected responsibility or other issues impacting both the Property and the Falls at Broadmoor, each party agrees to cooperate in good faith for the improvement of both portions of the original Broadmoor Subdivision and to otherwise address any such issues involving the joint or connected responsibilities or issues. Additionally, both parties agree to take any and all actions reasonably required to fulfill the intent of the provision of this Article XII.

12.5 Amendment to Article XII. Declarant and Jade agree the provisions of this Article XII are reciprocal and may be amended only by the written consent of the Owners representing at least two-thirds (2/3) of the total voting power in each Broadmoor Falls Homeowners Association, Inc. and Broadmoor Subdivision Homeowners Association, Inc., each voting as separate blocks.

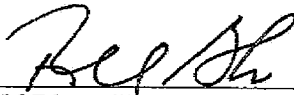
[signature pages follow]

DATED this 8th day of May, 2017.

DECLARANT:


Gerald Martens, Owner

TITLEFACT, INC., as Trustee

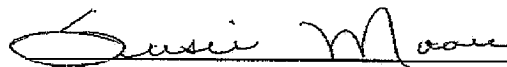
By: 
Todd Blass, Vice President

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 9th day of May, 2017, before me, a Notary Public in and for said county and state, personally appeared Gerald Martens, known or identified to me to be 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: Twin Falls
My commission expires: 11-28-2020

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 7th day of May, 2017, before me, a Notary Public, in and for said County and State, personally appeared Todd Blass, known or identified to me to be the Vice President of TitleFact, Inc., the corporation that executed the foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.



Susie Moore
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My commission expires: 11-28-2020

APPROVAL OF AMENDMENT:

The undersigned, representing the Owners of Lot 1 thru 39, Block 7, Lots 1 thru 20 Block 8, Lots 1 thru 39 Block 9, Lots 1 thru 20, Block 10 Broadmoor Subdivision, Twin Falls, Idaho ("Broadmoor Falls"), has reviewed and approved this Amended Declaration Of Covenants, Conditions And Restrictions Of Broadmoor Subdivision, and specifically consents and agrees to Article XII, hereinabove.

Jade Development, LLC,
a California limited liability company

By: [Signature]
Timothy McHugh, Member

PIONEER TITLE COMPANY OF ADA COUNTY, as Trustee and for the benefit of JADE DEVELOPMENT, LLC, a California limited liability company

By: _____
Jesse Hamilton, Its General Counsel and S.V.P.

A notary public or other officer completing this certificate verifies only the identity of the individual(s) who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

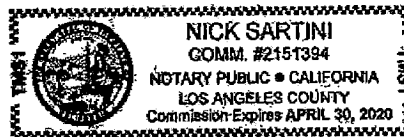
STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On 5-4-17 before me Nick Sartini Notary Public,
personally appeared Timothy McHugh

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Nick Sartini

(Seal)

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document _____

Number of Pages _____ Document Date _____

Signers Other Than Named Above: _____

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this _____ day of _____, 2017, before me, a Notary Public, in and for said County and State, personally appeared Todd Blass, known or identified to me to be the Vice President of TitleFact, Inc., the corporation that executed the foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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: _____

APPROVAL OF AMENDMENT:

The undersigned, representing the Owners of Lot 1 thru 39, Block 7, Lots 1 thru 20 Block 8, Lots 1 thru 39 Block 9, Lots 1 thru 20, Block 10 Broadmoor Subdivision, Twin Falls, Idaho ("Broadmoor Falls"), has reviewed and approved this Amended Declaration Of Covenants, Conditions And Restrictions Of Broadmoor Subdivision, and specifically consents and agrees to Article XII, hereinabove.

Jade Development, LLC,
a California limited liability company

By: _____
Timothy McHugh, Member

PIONEER TITLE COMPANY OF ADA COUNTY, as Trustee and for the benefit of JADE DEVELOPMENT, LLC, a California limited liability company

By: Jesse Hamilton
Jesse Hamilton, Its General Counsel and S.V.P.

STATE OF IDAHO)
)ss.
County of Ada)

On this _____ day of _____, 2017, before me, a Notary Public, in and for said County and State, personally appeared Timothy McHugh, known or identified to me to be the Member of Jade Development, LLC, the limited liability company that executed the foregoing instrument, or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company 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

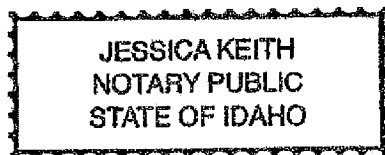
Residing at: _____

My commission expires: _____

STATE OF IDAHO)
)ss.
County of Ada)

On this 4th day of May, 2017, before me, a Notary Public, in and for said County and State, personally appeared Jesse Hamilton, known or identified to me to be the General Counsel and S.V.P. of Pioneer Title Company of Ada County, the corporation that executed the foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.



Jessica Keith
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 8/18/2020

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 thru 13, Block 1;

Lots 1 thru 20, Block 2;

Lots 1 thru 20, Block 3;

Lots 1 thru 20, Block 4;

Lots 1 thru 20, Block 5;

Lots 1 thru 38, Block 6;

And Tracts A, B and C; BROADMOOR SUBDIVISION, Twin Falls County, Idaho,
according to the official plat thereof recorded in Book 25 of Plats, page 7, records of
Twin Falls County, Idaho.

EXHIBIT 4

Recording Requested By and
When Recorded Return to:

Jon Bauer

HAWLEY TROXELL ENNIS & HAWLEY LLP

P.O. Box 1617

Boise, Idaho 83701

TWIN FALLS COUNTY

RECORDED FOR:
TITLEFACT, INC.

09:41:46 AM 05-10-2017

2017007286

NO. PAGES 45 FEE: \$142.00

KRISTINA GLASCOCK
COUNTY CLERK

DEPUTY: SM
Electronically Recorded by Simplifile

SM

SPACE ABOVE THIS LINE FOR RECORDER'S
USE ONLY

**AMENDMENT AND PARTIAL RESTATEMENT OF THE MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
BROADMOOR SUBDIVISION
(THE FALLS AT BROADMOOR)**

THIS AMENDMENT AND PARTIAL RESTATEMENT of the Master Declaration of Covenants, Conditions, Restrictions and Easements for Broadmoor Subdivision (hereinafter referred to as "**Amendment**") is made on this 4th day of May, 2017, by Jade Development, LLC, a California limited liability company ("**Declarant**") and Pioneer Title Company of Ada County, as Trustee for the benefit of Declarant. Upon the recordation of this Amendment the Original Declaration (defined below) shall be void as to the Falls at Broadmoor Property (as defined below).

ARTICLE I.

RECITALS

WHEREAS, RUSMOR LLC, an Idaho limited liability company and Gerald Martens ("**Mr. Martens**") and together with the Declarant, the "**Current Developers**") together was the original Declarant (the "**Original Declarant**") under that certain Master Declaration of Covenants, Conditions and Restrictions for Broadmoor Subdivision (hereafter "**Original Declaration**"), dated October 28, 2015 and recorded on October 28, 2015, as Instrument Number 2015018884, and re-recorded November 9, 2015, as Instrument Number 2015019548, in the office of the County Recorder, Twin Falls County, Idaho; and

WHEREAS, the Original Declaration was recorded to apply to and encumber that certain residential subdivision in Twin Falls County, Idaho, described more particularly in **Exhibit A** (hereafter "**Subdivision**") attached hereto and incorporated herein by this reference; and

WHEREAS, the Declarant, as a successor to the Original Declarant, is the current owner of a portion of the Subdivision described more particularly in **Exhibit B** (hereafter "**Falls at Broadmoor Property**") attached hereto and incorporated herein by this reference; and

WHEREAS, Mr. Martens continues to be the owner and/or developer of the portion of the Subdivision (the "**Northern Portion**") described on **Exhibit C** attached hereto and incorporated herein by this reference; and

WHEREAS, the Current Developers together wish to amend and restate the Original Declaration in its entirety by recording this Amendment that will apply to the Falls Property and the Amended

AMENDMENT TO THE DECLARATION
FOR BROADMOOR SUBDIVISION
(FALLS AT BROADMOOR)- 1

Declaration of Covenants, Conditions and Restrictions of Broadmoor Subdivision (North of Ridgeway Drive) (the "**Northern Amendment**") that will be recorded simultaneously with this Amendment.

NOW THEREFORE, Declarant and Mr. Martens hereby declare that this Amendment, together with the Northern Amendment, amend and restate the Original Declaration in its entirety and that the Falls at Broadmoor Property shall be held, sold, conveyed and subject only to this Amendment and not to the Original Declaration or the Northern Amendment. By way of example but not by limitation, the Owners of Lots (as defined below) that are part of the Falls at Broadmoor Property shall be members of only the Falls at Broadmoor Subdivision Home Owner's Association, Inc. (the "**Association**") and not any homeowner association related to the Northern Portion (the "**Northern HOA**"). Similarly, the owners of lots or other property within the Northern Portion shall not be members of the Falls at Broadmoor Subdivision and shall not be entitled to any rights or benefits of membership in the Association. With respect to the Falls at Broadmoor Property, in the event of any conflict between the terms of this Amendment and any terms or conditions of the Northern Amendment, the terms of this Amendment shall prevail.

ARTICLE II.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares that as of the date of recording of the Amendment, the Falls at Broadmoor Property and each lot, tract or parcel thereof (hereafter called "**Lot**," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "**Covenants and Restrictions**"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Falls at Broadmoor Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons or entities having or acquiring any right, title or interest in the Falls at Broadmoor Property or any Lot therein; shall inure to the benefit of every Lot in the Falls at Broadmoor Property and any interest therein; and shall inure to the benefit of and be binding upon the Declarant and each Owner, and each successor in interest of each, and may be enforced by the Declarant, by any Owner, or by the Association, as hereafter provided. Notwithstanding the foregoing, no provision of this Amendment shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Falls at Broadmoor Property in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot in the Falls at Broadmoor Property. No development or construction activities shall be deemed to constitute a nuisance or violation of Amendment by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion.

ARTICLE III.

DEFINITIONS

As used in Amendment, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for the Falls at Broadmoor Property.

ACC Standards: The Architectural Design and Construction Standards promulgated by the Declarant and amended or modified by the Declarant and/or the ACC as set forth in Section 5.28

AMENDMENT TO THE DECLARATION
FOR BROADMOOR SUBDIVISION
(FALLS AT BROADMOOR)- 2

herein. The ACC Standards shall be subject to enforcement pursuant to the provisions of Amendment and are thereby incorporated herein by this reference.

Assessment: Any amount levied against any Lot by the Association, including Regular, Special or Limited Assessments or Fines as provided in Amendment.

Association: shall mean and refer to the Falls at Broadmoor Homeowners Association, Inc., a homeowners association created pursuant to the terms of this Amendment.

Board: The duly elected and qualified board of directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

Development: The project to be undertaken by the Declarant resulting in the improvement of the Falls at Broadmoor Property, including landscaping, amenities, construction of roadways, utility services, irrigation systems, drainage systems and other improvements.

Declarant: The undersigned owner of the land comprising the Falls at Broadmoor Property, including a successor of the undersigned Declarant, which successor succeeds to the ownership of all of the Declarant's interest in the whole of the Falls at Broadmoor Property.

Fines: Any charge levied by the Association against any Lot or Lots, but not upon all Lots within the Falls at Broadmoor Property, for any violation and/or breach of Amendment and/or the rules or regulations as adopted by the Association.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, landscaping, parking lots, sidewalks, walkways, walls, fences, screens, poles, signs and lighting. Improvements shall not include those items that are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Limited Assessment: Any Assessment levied by the Association against any Lot or Lots, but not upon all Lots within the Falls at Broadmoor Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Falls at Broadmoor Property which is a legally described tract or parcel of land within the Falls at Broadmoor Property or which is designated as a Lot on any recorded Plat.

Member: Any person(s) who is an Owner of a Lot within the Falls at Broadmoor Property.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in the Falls at Broadmoor Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in Amendment shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot within the Falls at Broadmoor Property.

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot within the Falls at Broadmoor Property owned by an Owner. Unless otherwise specifically provided, the reference to

a "Mortgagee" in Amendment shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including the Declarant, holding fee simple title to a Lot within the Falls at Broadmoor Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering all or any portion of the Falls at Broadmoor Property, as recorded in the office of the County Recorder, Twin Falls County, Idaho, the current such plat being as depicted and described in **Exhibit D** attached hereto and incorporated herein by this reference, as the same may be amended by duly recorded amendments thereto.

Regular Assessment: Any Assessment levied by the Association against any Lot to provide funds to pay the ordinary estimated expenses of the Association.

Amendment shall mean this Amendment to the Original Declaration.

Falls at Broadmoor Property shall mean and refer to that certain real property hereinabove described and more particularly described in **Exhibit B** attached hereto and incorporated herein by this reference.

Common Area shall mean all real property, including easements or other interests therein, located within the Falls at Broadmoor Property in which the Association owns any interest, controls or is obligated to maintain, including, but not limited to, any easements within the Falls at Broadmoor Property as shown on the Plat, and which are owned, held, controlled or maintained for the betterment of the Owners and Occupants of the Falls at Broadmoor Property and Tract A located within the Northern Portion (addressed in more detail in ARTICLE VIII below).

Special Assessment: Any assessment levied by the Association against any Lot other than a Regular or Limited Assessment.

Subdivision: The Broadmoor Subdivision and reflected in that certain Plat as depicted and described in **Exhibit D** attached hereto and incorporated herein by this reference, as the same may be amended by duly recorded amendments thereto.

ARTICLE IV.

PURPOSE

The Falls at Broadmoor Property is hereby made subject to the Covenants and Restrictions contained in this Amendment, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant

thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Falls at Broadmoor Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- (b) The prevention of the erection within the Falls at Broadmoor Property of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and/or method of construction.
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Falls at Broadmoor Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas within the Falls at Broadmoor Property and adequate free spaces between Improvements.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ACC Standards existing from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

As used hereafter, "**Project Objectives**" shall mean the foregoing specified purposes.

ARTICLE V.

PERMITTED USES AND PERFORMANCE STANDARDS

SECTION 5.01. Use. Lots shall be used only for residential purposes and such uses as are customarily incidental thereto, including, but not limited to, a home office provided that such incidental use does not result in a consistent increase in traffic and demand for parking, and Common Area. As used herein and elsewhere in Amendment, "residential" shall mean the use of the Improvements on a Lot for living accommodations by one (1) or more related or unrelated persons, including guests of the principal occupant(s), which guests reside therein on a temporary basis. Notwithstanding the provisions of §67-6530 et. seq., Idaho Code, as used in Amendment, "residential" is not intended, nor shall the same be construed, to include the use of Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.

SECTION 5.02. Buildings. Except as allowed by the zoning ordinance applicable to the Lot, no Lot shall be improved except with one (1) dwelling unit.

SECTION 5.03. Approval of Use and Plans and Specifications. No Improvements shall be built, constructed, erected, placed or materially altered within the Falls at Broadmoor Property unless and until the Plans and Specifications, as defined in Section 11.07 below, therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article XI, below.

SECTION 5.04. Prohibited Buildings/Prohibited Uses. No trailer or other vehicle, tent, shack or garage shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Falls at Broadmoor Property by

reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

SECTION 5.05. Set-Backs. No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a Lot nearer to the boundary of the Lot than the distance permitted by (i) the ordinances of the City of Twin Falls, Idaho, applicable to the Falls at Broadmoor Property except as may be modified by a permit issued by the City of Twin Falls, Idaho, or (ii) the ACC Standards, whichever requires the greater distance.

SECTION 5.06. Antennae. No radio and/or television antennae shall be erected on any Lot without written consent from the ACC, which may require them to be screened from the street view. Satellite dishes or receivers that are smaller than thirty six (36) inches shall not require review or approval by the ACC.

SECTION 5.07. Easements. Declarant hereby reserves for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Falls at Broadmoor Property, the following easements:

- (a) **Plat and Other Recorded Easements.** Any easements as depicted and created on the recorded Plat for the Falls at Broadmoor Property and all other easements or instruments of record created and recorded as a result of conditions of approval imposed by any governmental entity, including, but not limited to the City of Twin Falls.
- (b) **Maintenance.** There is hereby reserved to the Declarant and the Association, their respective contractors, employees and agents, an easement to enter upon the Lots within the Falls at Broadmoor Property for the purpose of accomplishing all maintenance, repair and replacement provided for under Amendment, including the performance of any work necessitated by the failure of any Owner or Occupant to fulfill its obligations as set forth in Section 5.14 below.
- (c) **Public Utilities.** For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, including, but not limited to the fifteen foot utility easement shown on the recorded Plat for the Falls at Broadmoor Property.
- (d) **Water.** For water drainage, irrigation, retention, recreation or amenity purposes.
- (e) **Access to Common Areas.** For the purpose of permitting the Declarant or the Association, their contractors and agents, to enter onto those portions of Lots contiguous to any Common Area to maintain, repair, replace and restore the Improvements within the Common Area.
- (f) **Encroachment.** Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.

The easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

SECTION 5.08. Lighting. To the extent required by the ACC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be provided in the ACC Standards.

SECTION 5.09. Roofs. The type, pitch and roof covering material(s) that shall be required on Buildings within the Falls at Broadmoor Property shall be as set forth in the ACC Standards. No gravel roofs shall be permitted.

SECTION 5.10. Animals. No animals, including, but not limited to, poultry, swine, cows, horses, birds, insects or rabbits, shall be raised, bred, or kept on any Lot, except that no more than two (2) cats or two (2) dogs or one (1) cat and one (1) dog or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.

SECTION 5.11. Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Falls at Broadmoor Property.

SECTION 5.12. Grading and Drainage. An Owner shall not change or alter any grading on a Lot or construct or alter any berms or swales on a Lot, including the drainage swales, if any, located in the public right-of-way adjacent to such Lot, which will affect or change the drainage on a Lot or any other Lot within the Falls at Broadmoor Property, without the prior written approval of the ACC. Such approval by the ACC, shall not however, constitute any representation or warranty by the ACC as to the condition of the soil, the suitability of the grading or any other condition regarding the property or proposed modifications. The Owner recognizes that neither the ACC nor its members have any liability towards the Owner in reviewing or approving any modification to the grading or drainage of the Owner's Lot in conformance with Section 11.04 below.

SECTION 5.13. Commercial Use Prohibited. No Lot shall be used at any time for commercial or business activity, provided, however, that the Declarant or persons authorized by the Declarant may use a Lot(s) for development and sales activities relating to the Falls at Broadmoor Property, model homes or real estate sales. As used herein, "commercial or business activity" shall not include the use of a Lot for an incidental use as described in Section 5.01, above, or the rental by an Owner of a Lot and the Improvements thereon for residential purposes. The use of a Lot for a shelter home, as the same is defined in §67-6530 et. seq., Idaho Code, whether or not operated for profit, shall, for the purposes of Amendment, be a commercial or business use.

SECTION 5.14. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.

- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) Vacant Buildings and unimproved Lots shall not be exempt from the provisions of Amendment.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot or adjacent to a Lot if under the control of the Owner, which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in Amendment. If the Owner does not promptly correct such event or condition, the Association shall have the right to correct the same pursuant to subsection (h), below.
- (g) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Declarant or the Association upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the Lot in violation shall be personally liable, and such Owner's Lot may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due as set forth herein. Each owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article X of this Amendment.

SECTION 5.15. Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Declarant or the Association may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

SECTION 5.16. Storage of Vehicles, Equipment and Automobiles. Trailers, mobile homes, trucks larger than standard-size pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, including, but not limited to, motorcycles or other motorized means of conveyance (hereafter "**Vehicles or Equipment**"), when not in actual use, shall be kept at all times in an enclosed structure and, except for a temporary period not to exceed twenty-four (24) hours, at no time shall any such Vehicles or Equipment be parked or stored on a Lot in public view or on a public or private right-of-way within the Falls at Broadmoor Property. No Vehicles or Equipment permissibly stored upon a lot in conformance with this Section shall be visible above the fence line. No operative automobile or standard sized or smaller pickup (hereafter collectively referred to as "**Automobiles**") shall be parked or

stored for a period in excess of seventy-two (72) consecutive hours on any portion of a Lot between the front of a Building and the abutting public right-of-way. No inoperative Automobiles (which, as used herein shall include a standard or smaller pickup) shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. The primary purpose of the garage required on each Lot is for the parking and storage of Automobiles. No other use of a garage, which prohibits or limits the use of a garage for the parking or storage of the number of Automobiles for which it is designed, shall be permitted. The Owner shall provide sufficient garage space or other enclosed parking approved by the ACC for all Automobiles used by the Occupants of a Lot, which Automobiles shall be kept within the garage, and the parking thereof in the driveway on the Lot or in a public right-of-way within the Falls at Broadmoor Property, other than for temporary purposes (as determined by the ACC), is prohibited.

SECTION 5.17. Garage Doors. Garage doors shall be closed except when open for a temporary purpose.

SECTION 5.18. Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Standards.

SECTION 5.19. Use of Vehicles, Equipment and Automobiles. The use of all Vehicles, Equipment and Automobiles, shall be subject to ACC Standards, which may prohibit or limit the use thereof within the Falls at Broadmoor Property, provide parking regulations and other rules regulating the same.

SECTION 5.20. Exterior Energy Devices. No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the Plans and Specifications approved by the ACC.

SECTION 5.21. Mailboxes. Free-standing mailboxes shall be constructed or installed on each lot only at those locations approved by the US Postmaster and the ACC. The Owner of the Lot where a free-standing mailbox is located shall be solely responsible for its maintenance and repair.

SECTION 5.22. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Falls at Broadmoor Property shall be permitted, provided the same is approved by the ACC prior to installation. Notwithstanding the foregoing, the ACC shall have the right to adopt ACC Standards with respect to signs allowed within the Falls at Broadmoor Property, which ACC Standards, if adopted, shall regulate all signs within the Falls at Broadmoor Property and shall control over the specific provisions of this Section.

SECTION 5.23. Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or to obligate the ACC to approve any Falls at Broadmoor Property. In addition, the conveyance of an insignificant portion of a Lot to the Owner of the

Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.24. Fences. No fence or wall of any kind shall be constructed on a Lot unless the Plans and Specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the ACC Standards, it being the intent of the Declarant that all such privacy fencing shall present, to the extent reasonably practicable, a uniform appearance throughout the Falls at Broadmoor Property. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of the City of Twin Falls, Idaho, applicable to the Falls at Broadmoor Property.

In addition to the requirements of the ACC Standards applicable to fences, all fences and walls shall be subject to the following restrictions:

- (a) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (b) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Amendment or shown on the recorded Plat(s) of the Falls at Broadmoor Property.
- (c) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the ACC. Notwithstanding the foregoing, this subsection (c) shall not be construed or applied in any way to create or to reserve any view easement on or across any Lot ("Affected Lot") in favor of any Lot which is adjacent to or in the vicinity of the Affected Lot.
- (d) No fence higher than six feet (6') shall be allowed without the prior approval of the ACC.

SECTION 5.25. Landscaping. The following provisions shall govern the landscaping of Lots within the Falls at Broadmoor Property:

- (a) The Owner shall prepare a landscape plan and shall submit the same to the ACC as provided in Article XI, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. The use of berms and sculptures in planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan.
- (b) All required landscaping on a Lot shall be installed within thirty (30) days after substantial completion of the Building on the Lot, with a reasonable extension allowed for weather.
- (c) The ACC Standards shall set forth the initial minimum landscaping required on each Lot.
- (d) Failure to complete all landscaping of a Lot or to maintain all landscaping of a Lot that has been installed as set forth herein shall constitute a violation of Amendment and shall entitle the Declarant and/or the Association to take such action pursuant to Section 5.14. The Owner shall be liable as set forth in Section 5.14 for all costs and expenses incurred by Declarant or the Association in completing the work set forth in this Section 5.25, maintaining the landscaping required for each Lot, and in collecting such amounts.

SECTION 5.26. Intentionally Deleted.

SECTION 5.27. Intentionally Deleted.

SECTION 5.28. ACC Standards/Amendment and Enforcement. The Declarant has or will adopt ACC Standards that are incorporated herein by reference. All ACC Standards shall be consistent with the provisions of this Amendment. Violation of the ACC Standards shall constitute a violation of this Amendment and may be enforced as any other provision of this Amendment.

SECTION 5.29. Exemption of Declarant. Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Falls at Broadmoor Property or to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Falls at Broadmoor Property owned or controlled by the Declarant, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of Development of the Falls at Broadmoor Property. This Amendment shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain ACC approval of any Improvements constructed or placed within the Falls at Broadmoor Property by the Declarant in connection with the Development of the Falls at Broadmoor Property. The Declarant shall be entitled to the non-exclusive use, without charge, of any Common Area within the Falls at Broadmoor Property in connection with the marketing of the Lots therein. In addition, the Declarant shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas and on the Lot(s) owned by the Declarant for such a period of time as is reasonably deemed by the Declarant to be necessary.

ARTICLE VI.

FALLS AT BROADMOOR HOME OWNERS ASSOCIATION, INC.

SECTION 6.01. Organization of Association. Falls at Broadmoor Homeowners Association, Inc. shall be organized by the Declarant as an Idaho non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws and this Amendment. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Amendment.

SECTION 6.02. Members. Each Owner (including the Declarant) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association and no Owner shall have more than one membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 6.03. Classes of Membership. The Association shall have two (2) classes of membership:

CLASS A. Class A Members shall be all Owners of Lots within the Falls at Broadmoor Property, with the exception of the Declarant and its successor(s) in title to any Lot. The Class A Members shall be non-voting Members of the Association until such time as voting rights of the Class B

Member(s) expire, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member(s).

CLASS B. Class B Members shall be the Declarant and its successor(s) in title to any Lot, and to which successor the Declarant has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be considered to be a Class A Member with respect to each Lot owned. The Class B Members shall be entitled to five (5) votes for each Lot owned. The Class B membership, the Class B voting rights and the rights as Declarant provided in this Amendment shall cease and be converted to Class A membership when the Declarant (or its successors in title to whom the Declarant has granted the Class B voting rights, as above provided) no longer owns a Lot within the Falls at Broadmoor Property.

SECTION 6.04. Board and Officers. The affairs of the Association shall be conducted by a Board and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time.

SECTION 6.05. Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Idaho subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Amendment. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Amendment, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Amendment, including, but not limited to, the following:

- (a) **Assessments.** The power to determine the amount of and to levy Regular, Special and Limited Assessments or Fines on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Amendment.
- (b) **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, this Amendment or ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) **Delegation of Powers.** The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.
- (d) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- (e) **Association Rules.** The Association has the power to adopt, amend, and repeal such rules and regulations as the Association deems necessary. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property

owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Amendment. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Amendment. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Amendment, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

- (f) **Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (g) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
 - (iii) Any similar public or quasi-public improvements or facilities.
- (h) **Fiscal Year.** The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 6.06. Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Amendment, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) **Operation and Maintenance of Common Area.** Perform, or provide for the performance of, the operation, maintenance and management of any Common Area, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant, and the maintenance, management, repair or replacement all other property owned or controlled by the Association.
- (b) **Taxes and Assessments.** Pay all real and personal property taxes and assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any

property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

- (c) **Utilities.** Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- (d) **Insurance.** The Association may obtain from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the following policies of insurance:
 - (i) Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all Improvements, equipment, fixtures and other property located within the Common Area owned or controlled by the Association, including such equipment, fixtures and other property not located in the Common Area, if the same are used or necessary for the use of the Common Area or easement areas under the control of the Association.
 - (ii) Comprehensive public liability insurance insuring Association, the Board, officers, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board.
 - (iii) If elected by the Board, full coverage directors and officers liability insurance in an amount determined by the Board.
 - (iv) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
 - (v) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
 - (vi) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
 - (vii) Notwithstanding any other provision herein to the contrary, the Association shall continuously maintain in effect such casualty, liability and other insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee

or Owner of a Lot within the Falls at Broadmoor Property, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA or FHLMC, as applicable.

- (e) **Administration Fees - Costs.** Pay to the Declarant, so long as the Declarant manages the Association, all actual out-of-pocket costs paid or incurred by the Declarant in the management and administration of the affairs of the Association plus an administrative fee equal to ten percent (10%) of the total income received by the Association, which administrative fee shall be compensation to the Declarant for the services provided to the Association.
- (f) **Identification Signs.** Maintain, repair and replace all permanent entry and special identification signs for the Falls at Broadmoor Property, whether the same is located within or without the boundaries of the Falls at Broadmoor Property.
- (i) **Rule Making.** Make, establish, promulgate, amend and repeal Association rules if deemed necessary by the Association.
- (j) **Architectural Control Committee.** Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Amendment.
- (k) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Amendment, as may be reasonably necessary to enforce any of the provisions of this Amendment and the Association rules.

SECTION 6.07. Cost of Maintenance, Repairs and Replacement. The cost of the maintenance, repairs and replacements of the Improvements located on Common Area located within the Falls at Broadmoor Property, or any other Improvement, property or facility required by this Amendment to be maintained, repaired or replaced by the Association and the continuing operational expenses in connection therewith, including taxes, shall be paid by the Association from the funds of the Association obtained by Regular or Special Assessments against the Lots within the Falls at Broadmoor Property which are served thereby. Such costs and expenses (hereafter "**Common Expenses**") shall be apportioned among the Lots within the Falls at Broadmoor Property served thereby on an equal basis. In the event the Association does not have adequate funds to pay the Common Expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, on an equal basis, as a Special Assessment.

The decision as to what Common Expenses are required and the timing of the payment thereof shall rest solely with the Board.

SECTION 6.08. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed to each Member as follows:

- (a) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than thirty (30) days after the beginning of each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

SECTION 6.09. Effective Date. The provisions of this Article VI shall become operative upon the creation by the Declarant of the Association and the conveyance to said Association of fee simple title to

the Common Area within the Falls at Broadmoor Property. Until the creation and organization of the Association, the Declarant shall have the right to exercise all of the powers of the Association and the Board set forth in this Amendment.

ARTICLE VII.

ASSOCIATION PROPERTIES

SECTION 7.01. Use. Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties, subject to the following:

- (a) **Governing Instruments.** The provisions of the Articles and By-Laws of the Association, this Amendment, and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association.
- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Falls at Broadmoor Property.
- (d) **Conveyance of Common Area.** Except as provided in subsection (c), above, no portion of the Common Area shall be conveyed by the Association unless the Board determines that such conveyance is in the best interests of the Falls at Broadmoor Property, which determination shall be made following a regular or special meeting of the Members of the Association at which meeting the proposed conveyance is presented by the Board and the Members have the opportunity to present testimony in support of or against such proposed conveyance.
- (e) **Mortgage of Common Area.** After the Class A Members become entitled to voting rights, no portion of the Common Area shall be mortgaged by the Association without the prior approval of at least two-thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 9.11, below, shall apply.

SECTION 7.02. Liability for Damage. In the event that any maintenance, repair or replacement of all or any portion of the any Improvements located on Common Area located within the Falls at Broadmoor Property, or any other Improvement, property or facility required by Amendment to be maintained, repaired or replaced by the Association, is performed by the Association as a result of the willful or negligent act of an Owner or Occupant, or a family member, guest or invitee of an Owner or Occupant, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in this Amendment and may be collected as provided in Article IX, below.

SECTION 7.03. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, as the case may be, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 7.04. Condemnation. If at any time any part of Common Area or other property owned by the Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association, whichever entity owns said property. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE VIII.

RIDGEWAY DRIVE AND FALLS AT BROADMOOR

SECTION 8.01. Acknowledgement. Declarant herein, and those parties approving and acknowledging on behalf of the Northern Portion, namely Gerald Martens, and Titlefact, Inc., as Trustee, (collectively, "Martens") each acknowledge that the Falls at Broadmoor Property is intended to be governed by this Amendment, and the Northern Portion, now known as Broadmoor Subdivision, is intended to be governed by the Northern Amendment. Each respective party and subsequent Association (as defined herein and in the Northern Amendment, respectively) shall be responsible for all improvement and maintenance of and on their respective common areas and shall indemnify, defend and hold harmless the other for any act or omission resulting in damage to the other.

SECTION 8.02. Controlling Document in Event of Conflict. Martens and Declarant agree that in the event of any conflict between the terms of this Amendment and any terms or conditions of the Northern Amendment, as it may relate to the Property covered hereby, the terms of this Amendment shall prevail and as it may relate to the Northern Portion, the Northern Amendment shall prevail.

SECTION 8.03. Tract A. Declarant and Martens hereby agree Tract A located on the Northern Portion is located in common area of the Northern Portion, is owned by the City of Twin Falls, and is intended to be developed as a retention basin and park facility, which retention and park facilities are intended to serve both the Northern Portion and the Falls at Broadmoor. Martens shall be responsible for all installation, maintenance and improvement of the retention basin and park facilities and the Declarant, until the Association is formed and, thereafter, the Association, shall be required to reimburse Martens, on a pro rata per lot basis taking into account all lots in both the Northern Portion and the Property, for Martens' reasonable costs and fees associated with its installation, maintenance and improvement of the retention and park facilities located in Tract A of the Northern Portion, until such time as the City of Twin Falls accepts (administratively) the improvements, at which time it is anticipated that the City of Twin Falls will be responsible for maintenance of the facilities located on Tract A.

SECTION 8.04. Other Coordination and Cooperation. Declarant and Martens agree that each respective developer and Lot Owners shall be responsible for the real property owned by each. However, to the extent coordination and/or cooperation becomes reasonably necessary due to joint or connected responsibility or other issues impacting both the Northern Property and the Falls at Broadmoor Property, each party agrees to cooperate in good faith for the improvement of both portions of the original Broadmoor Subdivision and to otherwise address any such issues involving the joint or connected responsibilities or issues. Additionally, both parties agree to take any and all actions reasonably required to fulfill the intent of the provisions of this Article VIII.

SECTION 8.05. Amendment to Article XII. Declarant and Jade agree the provisions of this Article VIII are reciprocal and may be amended only by the written consent of the Owners representing at least two-thirds (2/3) of the total voting power in both the Association and the Northern HOA, each voting as separate blocks.

ARTICLE IX.

ASSESSMENTS

SECTION 9.01. Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or Fines or other charges made by the Association. All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of his Lot.

SECTION 9.02. Regular Assessments. Regular Assessments shall be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

SECTION 9.03. Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on Common Area, unexpected repair or replacement of Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Amendment.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

SECTION 9.04. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Area or any other portion of the Falls at Broadmoor Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written

notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall perform all such work specified in the written notice provided to the Owner of the Lot and shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

- (b) **Correction of Violations.** In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Amendment or the ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in this Article VIII and Article IX of this Amendment.
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose, which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 9.05. Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence the date of the closing of the first sale of a Lot to an Owner. Provided, however, that any Lot owned by the Declarant shall not be subject to Assessments while the Class B membership is in effect and has not been converted pursuant to Section 6.03.

SECTION 9.06. Uniform Rate of Assessment. Except as expressly provided to the contrary in this Amendment, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

SECTION 9.07. Assessment Due Date. The due dates for Assessments shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 9.08. Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

SECTION 9.09. Estoppel Certificate. The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Amendment and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not

extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

SECTION 9.10. Notice Requirements. Notwithstanding anything to the contrary contained in either the Articles or the By-Laws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 9.03, above, or a Limited Assessment described in Section 9.04, above, shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than thirty (30) days in advance of the meeting.

SECTION 9.11. Quorum Requirements. A majority of the directors shall constitute a quorum for the transaction of business by the Board, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than thirty (30) days after the date of initial meeting. The presence at any meeting requiring action by the Members of the Association, in person or by proxy, of the Members entitled to vote at least a majority of the total votes shall constitute a quorum. If the required quorum of Members is not present, the meeting may be rescheduled by the Board for a date not later than thirty (30) days after the date of initial meeting. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 9.04, above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

ARTICLE X.

ENFORCEMENT OF ASSESSMENTS

SECTION 10.01. Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Amendment, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

SECTION 10.02. Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Falls at Broadmoor Property pursuant to this Amendment, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees, which amounts shall be deemed to be Assessments once incurred by the Association. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Amendment except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Twin Falls County, Idaho, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law. All other lien holders acquiring liens on any Lot after recordation of this Amendment shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

SECTION 10.03. Notice of Assessment Lien. If an Owner fails to pay an Assessment within thirty (30) days of the Owner's receipt of notice of the Assessment, then the Association shall prepare a written Notice of Assessment Lien. The Notice of Assessment Lien shall include:

- (a) A true statement of the amount due for the unpaid Assessment after deducting all just credits and offsets;
- (b) The name of the Owner, or reputed Owner, if known;
- (c) The name and address of the Association; and
- (d) A description of the Lot to be charged with the lien pursuant to the Notice of Assessment Lien.

The Notice of Assessment Lien shall be verified by the oath of an officer of the Association having knowledge of the facts underlying the notice of assessment, acknowledged by a Notary Public and recorded in the office of the Twin Falls County Recorder. Within twenty-four (24) hours after recording the Notice of Assessment Lien against the Lot, the Association shall serve, by personal delivery to the Owner or reputed Owner of the Lot, or by certified mail to the last known address to the Owner or reputed Owner of the Lot a true and correct copy of the recorded Notice of Assessment Lien. At such time as a delinquent Assessment, which is described in the Notice, is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

SECTION 10.04. Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Idaho for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

SECTION 10.05. Notice Required. Notwithstanding anything to the contrary contained in this Amendment, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 10.06. Notice to Mortgagees. The Association shall have no obligation to provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 10.05, above, unless and until Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) that shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Falls at Broadmoor Property;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Twin Falls County, Idaho, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent, a reasonable fee established by the Board, for such notification and such charge shall be a cost of collection deemed to be an Assessment and secured by the Assessment lien described in Section 10.02, above. The charge for such notification shall be subject to change by the Board.

SECTION 10.07. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Amendment shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

SECTION 10.08. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Amendment shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity, including but not limited to pursuit of legal action for costs and damages incurred by the Declarant or the Association as a result of the Owner's non performance, seeking injunctive relief as may be appropriate, and undertaking commercially reasonable collection measures.

ARTICLE XI.

ARCHITECTURAL CONTROL COMMITTEE

SECTION 11.01. Members of the Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

SECTION 11.02. Appointment. So long as the Declarant owns any portion of the Falls at Broadmoor Property, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

SECTION 11.03. Compensation. The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder. Nothing herein shall prohibit or restrict the ACC from contracting with a member of the ACC who is professionally qualified as an architect, engineer or designer for the review of the Plans and Specifications described in Section 11.07, below.

SECTION 11.04. Non-Liability. Neither the ACC, or any member thereof, or the Declarant or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of Plans and Specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit in either law or equity against

the Association, the Board, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assign thereof.

SECTION 11.05. Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Falls at Broadmoor Property without the prior express written approval of the ACC.

SECTION 11.06. Waivers. The ACC may waive compliance with the requirements of any conditions and restrictions contained in this Amendment, the ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such waivers must be evidenced in a writing signed by at least two (2) members of the ACC. If a waiver is granted as provided herein, no violation of this Amendment, ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the waiver was granted. The granting of such a waiver shall not operate to waive or invalidate any of the terms and provisions of this Amendment or the ACC Standards for any purpose except, as to the particular subject matter of the waiver thereof and the specific Lot covered thereby. The ACC shall have the right to consider and grant a waiver as herein provided either with or without notice to other Owners or a hearing of Owners thereon. The granting of a waiver by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with any regulation or ordinance applicable to the Falls at Broadmoor Property adopted by the jurisdiction where the Falls at Broadmoor Property is located.

SECTION 11.07. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Falls at Broadmoor Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided. All applications must contain, or have submitted therewith, the following material (collectively the "**Plans and Specifications**") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements.
- (b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped, which shall show the location, type and size of trees, plants, ground cover, shrubs, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

SECTION 11.08. Application Payment. At the time of the submission of the application under Section 11.07, above, the Owner shall pay a reasonable review fee as determined by the ACC ("**Review Fee**"). The Review Fee is nonfundable. Additionally, the Owner shall deposit with the ACC an application payment as determined by the ACC (the "**Application Payment**"). The Application Payment

shall be held by the ACC as security for the Owner's completion of all improvements on the Lot as approved by the ACC, including, but not limited to the landscaping as provided in Section 5.25, above. The Application Payment shall be refunded to the Owner without interest if Owner completes all Improvements in a timely manner consistent with the Plans and Specifications. If the Owner fails to complete such improvements in a timely manner consistent with the Plans and Specifications, the ACC shall have the right to deduct from the Application Payment the amount of any penalties, off-sets and costs as set forth in this Amendment or the ACC Standards, including any costs which may be paid or incurred by the Association or a third party to complete such Improvements. Any Inspection Fee(s) payable by an Owner to the ACC under Section 11.17, below, shall be deducted from the Application Payment.

SECTION 11.09. Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Falls at Broadmoor Property as a quality residential development. Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within forty-five (45) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application. A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate. A denial of an application shall state with particularity the reasons for such denial.

SECTION 11.10. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Amendment or the ACC Standards or the approved Plans and Specifications. The ACC is empowered to receive from other Owners ("**Complainant**") complaints in writing involving deviations from approved applications or violations of this Amendment or any applicable ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise. Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity that constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

SECTION 11.11. Hearing. An Owner submitting an application under Section 11.07, above, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten

(10) days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 11.13, below.

SECTION 11.12. Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.11, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

At the hearing the Owner, Complainant, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the

Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 11.13, below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

SECTION 11.13. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Falls at Broadmoor Property, the continuation of which violates the provisions of this Amendment, the ACC Standards or the approved Plans and Specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article X, above.

SECTION 11.14. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article X, above.

SECTION 11.15. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 11.13 and 11.14, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 11.16. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

SECTION 11.17. Inspection Fee(s). The ACC shall have the right to charge an Owner a reasonable inspection fee (hereafter "**Inspection Fee**") for each inspection of the Improvements constructed on a Lot if the initial inspection, which shall be performed by the ACC without cost to the Owner, reveals that the Improvements do not comply with the approved application or is deviating therefrom or is violating this Amendment or the ACC Design Standards or the approved Plans and Specifications, and an additional inspection(s) is required to assure such compliance. Any collection of Inspection Fee(s) so charged by the ACC to an Owner shall be enforceable as provided in Section 11.13, above.

ARTICLE XII.

DE-ANNEXATION

SECTION 12.01. De-Annexation. The Declarant shall have the right to delete all or a portion of the Falls at Broadmoor Property from the coverage of this Amendment and the jurisdiction of the Association, so long as the Declarant is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Amendment is recorded in the office of the Twin Falls County Recorder.

ARTICLE XIII.

PROTECTION OF MORTGAGEES

SECTION 13.01. Effectiveness of Amendments. No amendment of this Amendment shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recordation of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Amendment, as amended.

SECTION 13.02. Right to Notice. A Mortgagee, shall be given written notice in accordance with Section 10.06, above, by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Amendment, the ACC Standards, the Articles or the Bylaws of the Association (hereafter collectively referred to as "**Project Documents**"), which default is not cured within thirty (30) days after the Association has notice of such default.

ARTICLE XIV.

MISCELLANEOUS

SECTION 14.01. Term. Except as provided herein, the term of this Amendment shall be for a period of thirty (30) years ("**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Amendment shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, prior to the date of expiration of the Primary Period or Extension Period then in effect, it is extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Amendment and such written instrument is recorded with the Twin Falls County Recorder.

SECTION 14.02. Amendment. This Amendment may be amended as follows:

AMENDMENT TO THE DECLARATION
FOR BROADMOOR SUBDIVISION
(FALLS AT BROADMOOR)- 27

- (a) **By Declarant.** Until title to a Lot within the Falls at Broadmoor Property is conveyed by the Declarant to an Owner, this Amendment may be amended or terminated by the Declarant by recordation of a written instrument signed by the Declarant and acknowledged setting forth such amendment or termination.
- (b) **By Owners.** Except as otherwise expressly provided in this Amendment, the provisions of this Amendment, other than this Section, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has, been approved by a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by a majority of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or a majority of the Class A Members, as the case may be. Such amendment shall be effective upon its recordation with the Twin Falls County Recorder. Any amendment to this Section 14.02 shall require the vote of a majority of the total of the Class B votes cast by the Class B Member(s), or after the Class A Members become entitled to voting rights, by seventy-five percent (75%) of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose and/or by the approval in writing by the Class B Member(s) or seventy-five percent (75%) of the Class A Members, as the case may be. Such amendment to this Section shall be in the form of an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment to this Section has been approved as provided herein, and shall be effective upon its recordation with the Twin Falls County Recorder.

SECTION 14.03. Intentionally Omitted.

SECTION 14.04. Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe. The Association may charge the Owner seeking copies of said books and records the Association's actual cost of preparing said books and records for inspection and actual cost of copying the same. Such charges shall be deemed to be an Assessment, and collected as an Assessment, if unpaid.

SECTION 14.05. Non-Waiver. The failure of the Declarant, the Association, the ACC, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Amendment or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 14.06. Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Amendment and agrees to be bound by the same.

SECTION 14.07. Indemnification. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the

Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Association or prior thereto during the period the Declarant is exercising the powers of the Association.

SECTION 14.08. Notices. Any notice permitted or required to be delivered as provided in this Amendment shall be in writing and shall be delivered either personally or by mail and shall be provided upon the time periods set forth herein. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 14.09. Interpretation. The provisions of this Amendment shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Idaho. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Amendment are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

SECTION 14.10. Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

SECTION 14.11. Not a Partnership. The provisions of this Amendment are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Declarant.

SECTION 14.12. No Third Party Beneficiary Rights. This Amendment is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

SECTION 14.13. Injunctive Relief. In the event of any violation or threatened violation by any person of any of the covenants, easements and restrictions contained in this Amendment, the Declarant, the Association, and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Amendment or provided by law.

SECTION 14.14. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Amendment shall entitle any Owner to terminate this Amendment, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Amendment. Any breach of this Amendment shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Amendment shall be binding upon and, be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

SECTION 14.15. Attorneys' Fees. In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Amendment, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding the prevailing party's reasonable costs and attorneys' fees, including the same with respect to an appeal.

SECTION 14.16. Force Majeure. The period of time provided in this Amendment for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, acts of war or terrorism the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

[Signatures and notary appear on following pages.]

CIVIL CODE § 1189

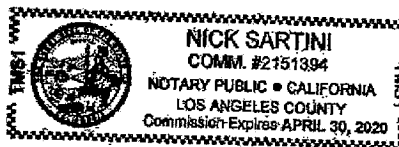
STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On 5-4-17 before me Nick Sartini Notary Public,
personally appeared Timothy McHugh

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Nick Santino

(Seal)

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document _____

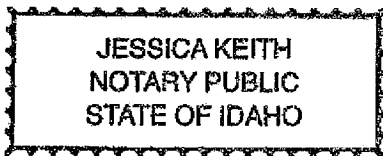
Number of Pages _____ Document Date _____

Signers Other Than Named Above: _____

STATE OF IDAHO)
)ss.
County of Ada)

On this 4th day of May, 2017, before me, a Notary Public, in and for said County and State, personally appeared Jesse Hamilton, known or identified to me to be the General Counsel and S.V.P. of Pioneer Title Company of Ada County, the corporation that executed the foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.



Jessica Keith
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 8/18/2020

APPROVAL OF AMENDMENT:

The undersigned, representing the Owners of Lot 1 thru 13, Block 1, Lots 1 thru 20 Block 2, Lots 1 thru 20 Block 3, Lots 1 thru 20, Block 4, Lots 1 thru 20, Block 5 and Tract B, all in Broadmoor Subdivision, Twin Falls, Idaho ("Broadmoor North"), has reviewed and approved this Amended and Partial Restatement of the Master Declaration of Covenants, Conditions, Restrictions and Easement of Broadmoor Subdivision, and specifically consents and agrees to Article VIII, hereinabove.

DECLARANT:

[Signature]
Gerald Martens, Owner

TITLEFACT, INC., as Trustee

By: [Signature]
Todd Blass, Vice President

[Continued on next page.]

AMENDMENT TO THE DECLARATION
FOR BROADMOOR SUBDIVISION
(FALLS AT BROADMOOR)- 32

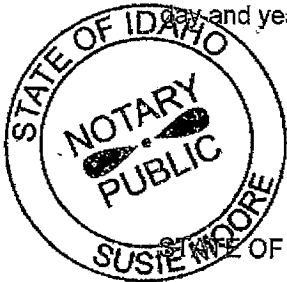
STATE OF IDAHO

County of Twin Falls

)
)ss.
)

On this 9th day of May, 2017, before me, a Notary Public in and for said county and state, personally appeared Gerald Martens, known or identified to me to be 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.



Susie Moore
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My commission expires: 11-28-2020

STATE OF IDAHO

County of Twin Falls

)
)ss.
)

On this 7th day of May, 2017, before me, a Notary Public, in and for said County and State, personally appeared Todd Blass, known or identified to me to be the Vice President of Titlefact, Inc., the corporation that executed the foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.



Susie Moore
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My commission expires: 11-28-2020

EXHIBIT A

Legal Description of Subdivision

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, Block 1;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 2;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 3;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 4;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 5;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, and 38, Block 6;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 7;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 8;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 9;
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 10
And Tracts A, B and C **BROADMOOR SUBDIVISION**, Twin Falls County, Idaho, according to the
official plat thereof recorded in Book 25 of Plats, page 7, records of Twin Falls
County, Idaho.

EXHIBIT B

Legal Description of Falls at Broadmoor Property

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 7;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 8;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, Block 9;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, Block 10

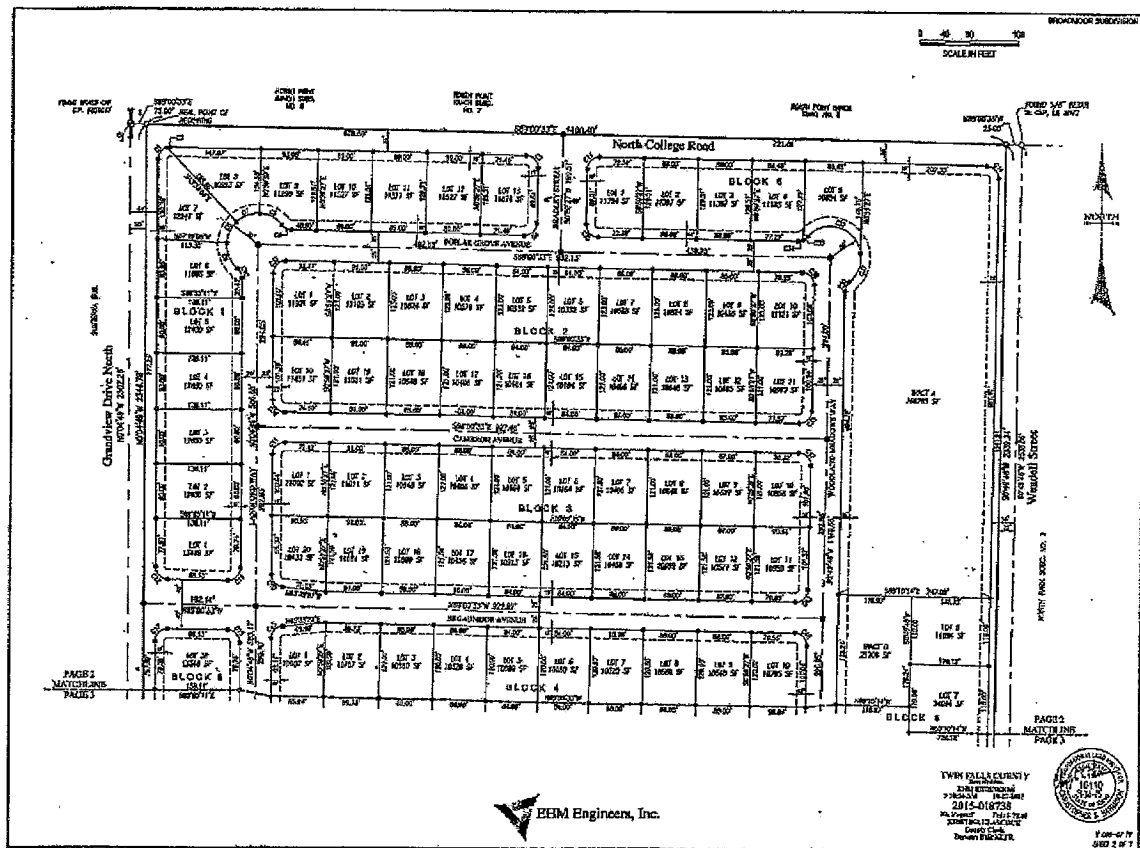
And Tracts D and E; all in BROADMOOR SUBDIVISION, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 25 of Plats, page 7, records of Twin Falls County, Idaho.

EXHIBIT C

Legal Description of Northern Portion

Lots 1 thru 13, Block 1;
Lots 1 thru 20, Block 2;
Lots 1 thru 20, Block 3;
Lots 1 thru 20, Block 4;
Lots 1 thru 20, Block 5;
Lots 1 thru 38, Block 6;

And Tracts A, B and C; BROADMOOR SUBDIVISION, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 25 of Plats, page 7, records of Twin Falls County, Idaho.



AMENDMENT TO THE DECLARATION
 FOR BROADMOOR SUBDIVISION
 (FALLS AT BROADMOOR)- 38

49052.0001.8926771.1

49052.0001.8926771.1

CERTIFICATE OF SURVEYOR	BROADMOOR SUBDIVISION
THIS IS TO CERTIFY THAT I, CHRISTOPHER S. HARRISON, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF FLORIDA, HAVE MADE THE SURVEY OF THE LAND DESCRIBED IN THE CERTIFICATE OF OWNER AND THAT THIS PLAT IS A TRUE AND ACCURATE REPRESENTATION OF SAID SURVEY AS MADE AND STATED UNDER MY SUPERVISION AND DIRECTION. 	THIS IS TO CERTIFY THAT I, RICHARD H. CARLSON, HAVE CHECKED THE FORFEITURE PLAT AND COMPUTATIONS FOR MARKING THE SAME AND HAVE DETERMINED THAT THEY CORRECTLY SHOW THE LINES OF SAID TRACT FOR THE COUNTY OF TRINITY FALLS, FLORIDA, DATED THIS 22nd DAY OF OCTOBER, 2015. <i>Richard H. Carlson</i> ACTING COUNTY SURVEYOR PL3908
APPROVAL OF CITY COUNCIL THIS PLAT WAS ACCEPTED AND APPROVED BY THE CITY COUNCIL OF TRINITY FALLS, FLORIDA AT THEIR MEETING ON THE 22nd DAY OF OCTOBER, 2015. <i>Donnell Williams</i> MAYOR <i>David A. Janczy</i> CITY CLERK, TRINITY FALLS	ACKNOWLEDGMENT STATE OF FLORIDA } COUNTY OF TRINITY FALLS } ss ON THIS 22nd DAY OF OCTOBER, 2015, AT 10:00 A.M., BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARING RICHARD H. CARLSON, PERSONALLY KNOWN OR IDENTIFIED TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING CERTIFICATE AND ACKNOWLEDGED TO ME THAT HE ENJOINED THE SAME. IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST BEING WRITTEN. <i>Donnell Williams</i> NOTARY PUBLIC TRINITY FALLS, FL COMMISSION EXPIRES 01-1-2018 
APPROVAL OF CITY ENGINEER I HAVE REVIEWED THE ACCOMPANYING PLAT AND HEREBY CERTIFY THAT IT CONFORMS WITH THE APPLICABLE ORDINANCES OF THE CITY OF TRINITY FALLS, FLORIDA. <i>Donnell Williams</i> TRINITY FALLS CITY ENGINEER <i>David A. Janczy</i> TRINITY FALLS CITY ENGINEER	COUNTY TREASURERS CERTIFICATE I, Debbie Huffman, COUNTY TREASURER, IN AND FOR THE COUNTY OF TRINITY FALLS, FLORIDA, DO HEREBY CERTIFY THAT ALL COUNTY PROPERTY TAXES DUE FOR THE INCLOSURE OF SAID DOCE 20-1300, AND HEREBY CERTIFY THAT ALL COUNTY PROPERTY TAXES DUE FOR THE INCLOSURE OF SAID PLAT HAVE BEEN PAID IN FULL. THIS CERTIFICATE IS VALID FOR THE NEXT THIRTY DAYS ONLY. <i>Debbie Huffman</i> COUNTY TREASURER <i>Debbie Huffman</i> DATE: October 22, 2015
COUNTY RECORDERS CERTIFICATE INSTRUMENT NO. 2015-018738 STATE OF FLORIDA } COUNTY OF TRINITY FALLS } ss ON THIS 22nd DAY OF OCTOBER, 2015, AT 10:00 A.M., THE FOREGOING PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF TRINITY FALLS COUNTY, FLORIDA AND WAS RECORDED IN PLAT BOOK 22 ON PAGE 13. <i>Bushy Justice</i> DEPUTY <i>Kristine Glascock</i> CLERK OF RECORDS	TRINITY FALLS COUNTY ENGINEERS HARRISON, HARRISON 2015-018738 AS FILED HARRISON ENGINEERS SURVEYING 800-800-0000 4 625-00 11 0007 1 1 1

AMENDMENT TO THE DECLARATION
 FOR BROADMOOR SUBDIVISION
 (FALLS AT BROADMOOR)- 43

49052.0001.8926771.1

EXHIBIT 5

✓ TWIN FALLS COUNTY

Recorded for:

TWIN FALLS, CITY OF
2:39:07 PM 04-23-2018

2018-006165

No. Pages: 18 Fee: \$
KRISTINA GLASCOCK
County Clerk
Deputy: SWADE

IMPROVEMENT AGREEMENT

for

DEVELOPMENTS

C-4806

This Agreement made and entered into this 28 day of March, 2018, by and between the CITY OF TWIN FALLS, State of Idaho, a municipal corporation, hereinafter called "City" and JADE Development LLC hereinafter called "Developer" for the purpose of constructing certain improvements on property sought to be developed for the following Development BROADMOOR (SOUTH) - Phase 2.

WHEREAS, there is attached hereto and incorporated herein as if the same were set out in full, a certified copy of the deed to the real property showing ownership of said real property to be in the Developer's name, or, as the case may be, there is attached hereto and incorporated herein as if the same were set out in full, a copy of the deed to the above described real property showing ownership in fee simple in someone other than Developer together with a notarized authorization, signed by the real property owner, authorizing Developer to act on behalf of said real property owner, and;

WHEREAS, Developer desires to develop said real property for the following purposes:
SF Residential

WHEREAS, the Developer is obligated to construct certain improvements pursuant to City Code Section 10-12-4.2, and;

WHEREAS, the Developer has committed to construct special features as part of the development, and;

WHEREAS, the City has certain policies, ordinances, rules and regulations governing the construction of improvements, and;

WHEREAS, it is in the best interest of the City and Developer to clearly establish in one concise document the policies, ordinances, rules and regulations which apply to developments of the type contemplated herein.

WITNESSETH

That for and in consideration of the mutual promises, conditions, and covenants contained herein the parties agree as follows:

I.

City agrees: (1) to operate and maintain all approved streets, alleys, service and roads, excluding state highways, constructed under the terms of this Agreement in any public rights-of-way

or easements and which are presently within or subsequently annexed into the City limits. Those streets, excluding state highways, lying outside the City limits and within the City Area of Impact shall be constructed to City standards but shall become the responsibility of the Twin Falls Highway District until such time as they are annexed or a maintenance agreement is signed by the City and the Twin Falls Highway District. (2) To operate and maintain all approved water lines, drainage lines, and sewer lines constructed under the terms of this Agreement in any public rights-of-way or easements and to provide water and sewer service to the Developer's real property, subject to all ordinances, rules and regulations governing sewer and water service. (3) To maintain non-pressure irrigation lines only where they cross City streets. All other maintenance of non-pressurized irrigation lines is the responsibility of the Twin Falls Canal Company or the irrigation users.

II.

In lieu of the actual installation of required public improvements before recording of the final plat, the Council may permit the subdivider to provide a financial guarantee of performance in one (1) or a combination of the following arrangements for those requirements which are over and beyond the requirements of any other agency responsible for the administration, operation and maintenance of the applicable public improvement.

a. Surety Bond

1. Accrual - The Bond shall accrue to the City covering construction, operation and maintenance of the specific public improvement.
2. Amount - the bond shall be in an amount equal to one hundred percent (100%) of the total estimated cost for completing construction of the specific public improvements, as estimated by the Developer's Engineer and approved by the City Engineer.
3. Term Length - The term length in which the bond is in force, for the duration of that phase of the project, shall be until completed and accepted by the City Engineer.
4. Bonding for Surety Company - The bond shall be with a surety company authorized to do business in the State of Idaho, acceptable to the Council.
5. The escrow agreement shall be drawn and furnished by the subdivider to the satisfaction of the Council.

b. Cash Deposit, Certified Check, Negotiable Bond, or Irrevocable Bank Letter of Credit.

1. Treasurer, Escrow Agent or Trust Company - A cash deposit, certified check, negotiable bond or an irrevocable bank letter of credit such surety acceptable by the Council, shall be deposited with an escrow agent or trust company.
2. Dollar Value - The dollar value of the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be equal to one hundred percent (100%) of the estimated cost of construction for the specific public improvements, as estimated by Developer's Engineer and approved by the City Engineer.
3. Escrow Time - The escrow time for the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be until all required improvements are completed and accepted by the City Engineer.
4. Progressive Payment - In the case of cash deposits or certified checks, an agreement between the City and the subdivider may provide for progressive payment out of the cash deposit or reduction of the certified check, negotiable bond or irrevocable bank letter of credit, to the extent of the cost of the completed portion of the public improvement, in accordance with a previously entered into agreement.

III.

Developer agrees to retain a Professional Engineer, hereinafter called the Developer's Engineer, registered by the State of Idaho to perform the following minimum Engineering Services in accordance with Title 10 Chapter 12 Section 4-1 of the City Code:

- a. Prepare a master utility plan showing the location of all existing and proposed utility lines to include but not be limited to sewer, water, gas, electricity, telephone, irrigation, pressure irrigation and storm sewer.
- b. Prepare detailed plans and specifications for construction of all improvements required by this Agreement and shall include but not be limited to a complete set of construction plans, including profiles, cross-sections, specifications and other supporting data, for all required public streets, utilities and other facilities. Such construction plans shall be based on preliminary plans which have been approved with the preliminary plat, and shall be prepared in conjunction with the final plat. Construction plans are subject to approval by the responsible public agencies. All

construction plans shall be prepared in accordance with the public agencies' standards and specifications.

- c. Perform construction surveying, staking, testing, inspection and administer the construction of all facilities required by this contract.
- d. Submit all test reports, inspection reports, change orders and construction diaries to the City Engineer every week during the construction of the development or subdivision.
- e. Prepare and submit an updated copy of the enclosed development and subdivision checklist to the City Engineer every week during the construction of the development or subdivision, and also upon completion of the project.
- f. Submit to the City Engineer the final plans, and master utility plan for the City records showing any approved changes to the original plans and specifications. A permanent drawing in ink on approved transparent polyester drafting film and an electronic media copy of the plans in ACAD 2000 using City standard format shall be provided within thirty (30) days after completion of the project.
- g. Submit a letter upon completion of construction stating that the work has been constructed in conformance to the plans and specifications, with the certification by the Developer's Engineer that improvements were constructed to the lines and grades shown.

The above work shall be subject to the approval of the City Engineer.

The City agrees to provide asphalt pavement testing for conformance with City standards, but it shall be the responsibility of Developer's Engineer to provide all necessary quality control during construction. All tests shall be taken at a frequency based upon City of Twin Falls Standard Specifications.

The Developer agrees to: (1) allow the City full and complete access to the work (2) provide all materials necessary to conduct all tests (3) supply all water necessary to test pipe joints and (4) provide the equipment and perform or have performed any testing of manufactured materials required by the City Engineer.

The Developer shall submit a letter to the City Engineer upon completion of the project, requesting that the City assume the responsibility for maintenance and operation of all public improvements as stated herein.

IV.

The Developer agrees to obtain a permit or letter of approval from the Twin Falls Highway District or the State of Idaho Department of Highways prior to constructing improvements on their respective right-of-ways. The original or a certified copy of said permit or letter shall be submitted to the City Engineer prior to beginning of construction thereon.

V.

The Developer agrees to dedicate rights-of-way to the public for the development of all streets and alleys in accordance with the City Master Street Plan and to dedicate easements for the maintenance and operation of all public utilities. The size and location of said rights-of-way and easements shall be determined by the City Engineer.

VI.

The Developer hereby agrees and petitions the City to annex into the corporate limits of said City, the above described real property that is contiguous with the same or becomes contiguous to said City limits. Developer agrees to annexation of said real property by the City upon the terms and conditions as shall be set forth by said City.

VII.

The Developer and the City agree that the improvements listed herein are required unless specifically waived by action of the City Council and that said improvements will be constructed on any public rights-of-way or easements approved and accepted by the City Council all as designed by the Developer's Engineer and approved by the City Engineer and in accordance with standards established by the City Engineer and that all required improvements will be completed in a timely manner. If improvements are not completed in a timely manner, the Developer shall provide an updated, current version of the developer's agreement and financial guarantee for City Council consideration.

VIII.

The Developer agrees to pay the total actual costs of all materials, labor and equipment necessary to completely construct all of the improvements required herein, except those costs specifically shown to be paid by the City and to construct or contract for the construction of such improvements.

IX.

Developer agrees to pay the total extra cost of all additional materials, labor and equipment necessary to construct any streets the City requires to be wider or deeper than a standard street or any water or sewer lines the City requires to be larger than the size required to properly serve the

development. The requirement for wider and deeper streets shall be based on the City Master Street Plan. Requirements for larger water and sewer lines shall be based on the citywide sewer and water system sizing guidelines.

X.

The City shall provide no compensation for the cost of an oversize water or sewer line. In the case of water or sewer lines extended adjacent to or outside the limits of development, the Developer shall be eligible for payback from adjacent property owners pursuant to Resolution No. 1182. The Developer shall also be eligible for compensation when a private developer extends or connects to any water or sewer system previously installed by private developer, pursuant to Resolution 1651.

XI

Developer agrees to request in writing that the Developer's Engineers make the inspections required herein and the Developer or his Contractors shall not proceed with the next construction phase until the required inspection is complete and the work has been approved by the Developer's Engineer, the City Engineer or the Engineer's authorized inspector. All such inspections shall be scheduled in accordance with the City of Twin Falls Standard Specifications. Developer agrees to pay all costs resulting from: 1) his failure to properly schedule and request a required test or inspection or 2) proceeding with work before receiving approval to proceed. Developer agrees to remove or correct any rejected, unapproved or defective work or materials as required by the Developer's Engineer or the City Engineer. Any such defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed within ten (10) days after written notice is given by the Developer's Engineer or the City Engineer, and the work shall be re-executed by the Contractor at his expense. The fact that either Engineer may have previously overlooked such defective work or materials shall not be a basis for acceptance of any part of it.

The issuance or approval of plans, specifications and computations shall not be construed as an approval of any violation of any provisions of City code, specifications, standards, policy, or any other ordinance of the City. Approvals of plans that may violate City code, specifications or departmental policies will not be valid.

The approval of construction plans, specifications, and other data shall not prevent the City from thereafter requiring the correction of errors or omissions in said plans or specifications prior to or during actual construction or final acceptance by the City.

The Developer shall remove from all public property all temporary structures, rubbish, and waste materials resulting from their operation or caused by his employees.

The Developer shall guarantee all materials, workmanship and equipment furnished for a period of one (1) year from the date of written acceptance of the work by the City Engineer or authorized representative.

The Developer shall be responsible for any damage to any existing public improvements and shall repair or replace any such damage as required by the City Engineer, during or after completion of this project.

XII.

The City and the Developer agree to the following minimum for Required Improvements, City Costs, Required Inspections and to any other improvements, approved or required by the City Council and shown on the approved construction plans.

PUBLIC WAYS

(a) Required Improvements

- (1) Curb, gutter and sidewalk on all public street rights-of-way.
- (2) A standard residential street thirty six feet (36') wide with an eight inch (8") gravel course and two inch (2") asphaltic concrete surface course on all public street rights-of-way serving residential use property.
- (3) Minor residential and private streets as specified in the City of Twin Falls Standard Drawings.
- (4) A standard commercial or collector street forty eight feet (48') wide with an eleven inch (11") gravel course and three inch (3") asphaltic concrete surface course on all public street rights-of-way serving commercial use property or as a collector street. Whenever a street serves an industrial use property the City Engineer will determine the appropriate structural section.
- (5) A service-road twenty four feet (24') wide with an eight inch (8") gravel course and two inch (2") asphaltic concrete surface course and with concrete curb-gutter or curb and valley-gutter on all public service road rights-of-way.
- (6) A sidewalk five feet (5') wide minimum on all public pedestrian rights-of-way. Four foot (4') sidewalks by special permission of the City Council are allowed by City of Twin Falls Standard Drawings for minor residential streets under certain conditions.

- (7) Landscaping and sidewalk placement required adjacent to arterial and collector streets: A tract of land eleven feet (11') in depth behind the curb line will be dedicated as part of any residential development adjacent to arterial and collector streets. Within that tract the developer shall install landscaping six feet (6') in depth with a sprinkler system and with grass and trees behind the curb line and shall also install a five foot (5') sidewalk. The landscaping will be maintained by the city and funded through a fee added to the water bill of each account within the development. Irrevocable restrictive covenants for this development and maintenance shall provide for this funding. TFCC §10-12-4.2(O).
 - (8) Street signs and traffic control devices on all public streets.
 - (9) Street lights as determined by City policy for street light installation.
- (b) City Costs
- (1) The cost of any street signs or traffic control devices installed by the City on new or existing streets.
 - (2) The cost of any required street lights (standard luminaires mounted on a wood pole). The Developer shall pay the extra cost of any decorative luminaries or poles. Prior approval will be required, and the cost of maintenance, replacement and power usage will be considered.
- (c) Required Inspections and Testing
- (1) All inspections and testing shall be as required by City of Twin Falls Standard Specifications.

WATER SYSTEM

- (a) Required Improvements
- (1) Pursuant to City Code Section 7-8-3, 7-8-10 and 10-12-4.2 water line and fittings six inch (6") minimum diameter that will transport a flow of water, which will satisfy fire, domestic, other water demands of the development, based upon the City water pipe sizing plan and computer water model. Water line extension shall include connection from the existing City Water System to each building site and fire hydrants and then loop back to the City System in a manner that will provide a properly functioning system approved by the City Engineer, Water Superintendent and Fire

Chief. If the development is to be constructed in phases, the water system shall be looped back to the City system during the first phase. No dead-end lines will be allowed during any phase of the project.

- (2) Water lines and fittings adjacent to and internal to the development shall be sized to continue the orderly expansion of the City water distribution network in accordance with existing sizing guidelines.
- (3) Water valves that will allow temporary suspension of water flow for maintenance and repair of portions of water system without causing undue inconvenience to a large number of users or creating a critical situation in the suppression of fires.
- (4) Fire hydrant connections and fire hydrants spacing to substantially comply with the minimum standards suggested by the Fire Rating Bureau and American Water Works Association. Fire hydrants are required in all developments.
- (5) One water service line shall be constructed to each building site at the time the water lines are installed. Each service line shall not exceed fifty feet (50') in length and shall terminate at the right-of-way.

During construction of the curb the letter W shall be stamped into the top or face of the curb directly in front of the water meter box. The impression shall be not less than one and one half inches (1½") high. Meters shall be grouped at adjacent side lot lines when possible or at another location if requested by the Developer and approved by the City Engineer and Water Superintendent.

Water meter boxes will not be allowed in driveway approaches. Any cost associated in relocating meters from driveway approaches will be the responsibility of the Developer or Lot Owner. Temporary address or lot number signs shall be staked at the location where the water meter box is to be installed. The City may install multiple water meters in a single water meter box.

The City will make the water line tap only after all appropriate tap fees for a Water Connection General Permit have been received and permits issued. All new water service line and connections made from existing water service mains to service any new development will be the responsibility of the

Developer. The City will make the necessary service line tap after payment of the required water connection general permit fees.

- (6) One water service line tap, meter box, and service line shall be constructed for each building connected to the City water system. It is understood and agreed that the City will make all service line taps and install all meter boxes and that the fee paid by the developer for a Water Connection General Permit will reimburse the City for such work.
- (7) It is further understood and agreed that the City will make all connections to the existing water system. The City will disinfect the new water system at the developer's expense.

(b) City Costs

- (1) None.

(c) Required Inspections

- (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

WASTE WATER COLLECTION SYSTEM

(a) Required Improvements

- (1) Pursuant to City Code Section 7-7-4, 7-7-11 and 10-12-4.2 a waste water collection system (eight-inch (8") minimum diameter) that will transport a flow of waste water, under conditions of maximum and minimum discharge from the development, to the existing City waste water system.
- (2) Waste water sewer lines adjacent to or internal to the development will be sized to continue the orderly expansion of the City Waste Water Collection System in accordance with existing sizing guidelines and computer sewer model.
- (3) Manholes to provide access for maintenance and cleaning of the sewer lines located at any change of grade or alignment of the sewer, at the end of each sewer and spaced not more than four hundred feet (400') apart.
- (4) During construction of the curb the letter S shall be stamped into the top or face of the curb directly in front of the sewer service line location. The impression shall be not less than one and one half inches (1½") high.

(b) City Costs

(1) None.

(c) Required Inspections and Testing

(1) All inspections and testing shall be as required by City of Twin Falls Standard Specifications.

DRAINAGE SYSTEM

(a) Required Improvements

(1) Any valley-gutters, ditching, grading or other surface drainage facilities necessary to convey any storm run-off originating from or traversing across the proposed development over the land surface to a point of retention, detention or discharge approved by the City Engineer.

(2) Any catch basin, storm sewer and other sub-surface drainage facilities necessary to convey any storm run-off, originating from or traversing across the proposed development, to a point of retention, detention or discharge approved by the City Engineer, that cannot, in the City Engineer's opinion, be conveyed over the land surface without causing damage to public or private property or without being an unreasonable inconvenience or hazard to a private individual, a group of individuals or the general public.

(b) City Costs

(1) None.

(c) Required Inspections and Testing

(1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

GRAVITY IRRIGATION SYSTEM

(a) Required Improvements

(1) Any pipe, boxes or other appurtenances necessary to convey all irrigation water in underground pipe across the development and any adjacent public property. Irrigation facilities outside an established City irrigation district shall be constructed in an irrigation easement on private property except where it is necessary for irrigation water to cross the public right-of-way and all such crossings shall be perpendicular to the center line of said right-of-way unless otherwise approved by the City Engineer due to some unusual condition.

- (b) City Costs
 - (1) None.
- (c) Required Inspections and Testing
 - (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

PRESSURE IRRIGATION SYSTEM

- (a) Required Improvements
 - (1) Pursuant to Section 7-8-3 of the City Code, the use of the City's potable water supply as the primary source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or PUD, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or PUD. One (1) share of Twin Falls Canal Company Water for each acre of property within the subdivision shall be deeded to the City of Twin Falls before the filing of the final plat for use in the City's pressurized irrigation system.
 - (2) Pressure irrigations water line and fittings shall be four inch (4") minimum diameter or larger that will transport a flow of water, which will satisfy all irrigation water demands of the development, based upon the computer irrigation water model that the developer's engineer has prepared.
 - (3) Water lines and fittings adjacent to and internal to the development shall be sized to continue the orderly expansion of the City Pressure Irrigation water distribution network in accordance with existing sizing guidelines.
 - (4) Water valves that will allow temporary suspension of water flow for maintenance and repair of portions of water system without causing undue inconvenience to a large number of users. One pressure irrigation water service line shall be constructed to each subdivision

lot site at the time the pressure irrigation water lines are installed. Each service line shall not exceed fifty feet (50') in length and shall terminate at the right-of-way. One Pressure irrigation water service line tap, irrigation box, and service line shall be constructed for each subdivision lot connected to the City pressure irrigation water system.

- (5) The Developer shall be responsible for all costs incurred in designing and installing the pressure irrigation station. This includes the land, pumps, motors, filters, buildings, delivery system to the station from the TFCC head gate, storage pond, Supervisory Control and Data Acquisition (SCADA) system, and power to the station.
- (6) All pressure irrigation system plans must be prepared by the Developer's engineer shall be according to the City's standard specifications and drawings. Plans submitted to the City shall be signed by a Professional Engineer for review and final approval, before the City Engineer will sign the plat or approve construction plans.
- (7) The Pressure Irrigation System shall be located with in easements, right of ways and/or property deeded to the City of Twin Falls.
- (b) City Cost.
 - (1) None
- (c) Required Inspections and Testing
 - (1) All inspections and testing shall be as required by the City of Twin Falls Standard Specifications.

SPECIAL FEATURES

Pursuant to commitments made by the Developer as conditions of approval of the development, the following special features shall be constructed:

a) Required Improvements

b) City Costs

(1) None.

XIII.

The City and the Developer agree that the sequence of construction shall be as follows unless special approval in writing is obtained from the City Engineer:

1. Erosion and sedimentation controls.
2. Stormwater retention and detention facilities.
3. Waste water sewers and service connections.
4. Waste water manholes.
5. Storm sewers and catch basins.
6. Gravity irrigation pipes and boxes.
7. Pressure irrigation lines, service connections, etc.
8. Water lines and service connections.
9. Gas lines, power lines, telephone lines and cablevision lines.
10. Any other underground improvements that are required.
11. Sub-base preparation for public ways.
12. Gravel base course for public ways.
13. Curb-gutter, valley-gutter and sidewalk.
14. Gravel leveling course.
15. Asphalt paving.
16. Special Features.

XIV.

The Development may be phased as indicated on the attached development plan submitted by the Developer and approved by the City Engineer.

The terms of the basic agreement shall apply individually to each phase shown on the attached plan as though each phase were a separate and independent development providing each phase is begun in the sequence indicated on the development plan.

The two (2) year time limit, (indicated in Section VII of the Agreement) for completing the required improvements shall begin for each phase when the Developer sells a lot or an application or a building permit to construct a building within the phase has been received by the City.

The Developer may cease further development after completing any phase and before beginning the next phase and the basic agreement shall terminate in accordance with Section XVI, of the basic agreement for any undeveloped phases of the development originally proposed in the basic agreement.

XV.

This agreement shall bind the parties hereto, their heirs, successors in interest, and lawful assigns.

XVI.

In the event of a breach of Agreement, or should legal action of any kind be taken to enforce the provisions, hereof, the prevailing party shall be entitled to reasonable attorney fees and costs awarded by the Court.

Attest:

CITY OF TWIN FALLS, IDAHO

Sharon Bryan
City Clerk

Shawn A. Barigar
Mayor

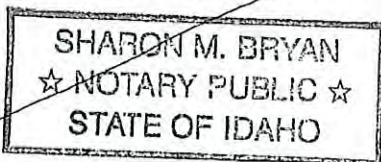
Developer

JADE Development, LLCBY: Brian March Authorized

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 16 day of April, 2018, before me, the undersigned, a Notary Public for Idaho, personally appeared Shawn A. Barigar, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner executed the same.

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



Sharon Bryan
Notary Public for Idaho
Residing at Twin Falls, Idaho

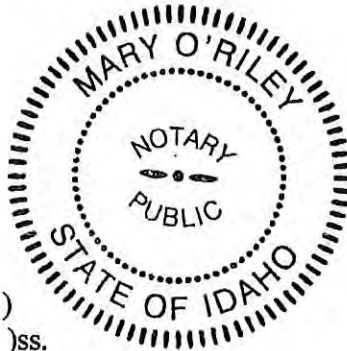
Expire Date: Jan 21, 2024

CORPORATION

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 28 day of March, 2018, before me, the undersigned, a Notary Public for Idaho, personally appeared Brian Nasich, known or identified to me (or proved to me on the oath of D. L.) to be the ~~president, or vice-president, or secretary or assistant secretary~~ Authorized agent of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Mary O'Riley
Notary Public for Idaho
Residing at Twin Falls, Idaho

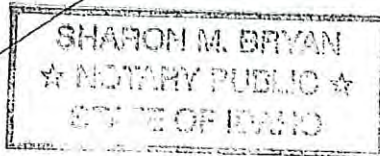
Date of Exp.
12-15-2023

PARTNERSHIP

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 16th day of April, 2018, before me, the undersigned, a Notary Public for Idaho, personally appeared Shawn A. Baaligar, known or identified to me (or proved to me on the oath of office) to be one of the partners in the partnership of The City of Twin Falls, and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

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



Sharon Bryan
Notary Public for Idaho
Residing at Twin Falls, Idaho
Expire Date: Jan 21, 2024

NOTICE OF DEVELOPER'S AGREEMENT

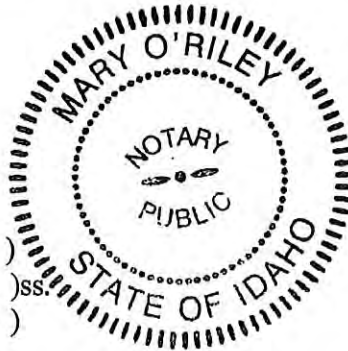
NOTICE IS HEREBY GIVEN, that a document entitled "Improvement Agreement for Developers" (hereafter "Agreement") has been executed and filed with the City of Twin Falls, Idaho, for the following named subdivision:

The Agreement imposes certain obligations upon the developer for the development of the subject property, and upon the developer's heirs, successors in interest and lawful assigns. Details of the conditions and obligations may be found by examining or photocopying the Agreement at the Office of the City Engineer, 321 2nd Avenue East, Twin Falls, Idaho 83301.

CITY OF TWIN FALLS, IDAHO

[Signature]
City Clerk

[Signature]
Mayor



Developer
Jate Development, LLC.
By: Brian Mosick with Agent

STATE OF IDAHO)
County of Twin Falls)

On this 28 day of March, 2018, before me, the undersigned, a Notary Public for Idaho, personally appeared Brian Mosick a _____, known to me to be the persons whose names are subscribed to the within instrument on behalf of said Owner and acknowledged to me that said Owner executed the same.

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

[Signature]
Notary Public for Idaho
Residing at Twin Falls, Idaho
Date of Exp. 12-15-2023

EXHIBIT 6

Brad Wills
222 Shoshone St. West
Twin Falls, Idaho 83301

November 29, 2018

To: Improvement Reimbursement Committee

Reference: Broadmoor Subdivision Improvements

In 2012 I wrote the Improvement Reimbursement Ordinance and submitted it to the City of Twin Falls for their acceptance and approval. The intent of the ordinance is to include all development improvements required for the completion of a subdivision installed by the original developer that benefit an adjacent property owner.

The situation that has occurred with the Broadmoor subdivision has never happened since the Ordinance was written and was not addressed in the current Ordinance. The retention and park improvements provided by the original north developer have benefitted the adjacent south Broadmoor property.

Improvements that meet minimum standards within the boundary of your project are not eligible but upgrades like oversized water, sewer or PI lines are eligible. This would hold true to the oversized park and retention area that benefit another property. The purpose of the ordinance is to assist development in sharing improvement cost equitably.

As a committee, I believe the improvement described in the last staff report are eligible and you should approve them.

The retention and park requirements will require amending the Ordinance to be eligible. I will work with the City of Twin Falls to include those improvements in the Ordinance and the applicant can apply again in the future.

Brad Wills



RECEIVED

FEB 02 2016

CITY OF TWIN FALLS
ENGINEERING DEPT.

Date: February 1, 2016

To: City of Twin Falls
Attn: Troy Vitek

From: Gerald L. Martens, P.E.

Via: Hand Deliver

Regarding: Broadmoor Subdivision

Transmitted herewith is a plan to provide pressurized irrigation to the Broadmoor Subdivision from the irrigation pump station within the Riverhawk Subdivision located adjacent to North College Road. This redesign is per your request to better allocate available pumping capacity.

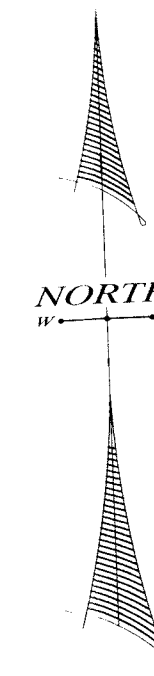
With your approval this installation will be installed during the 2016 construction season.

426-15

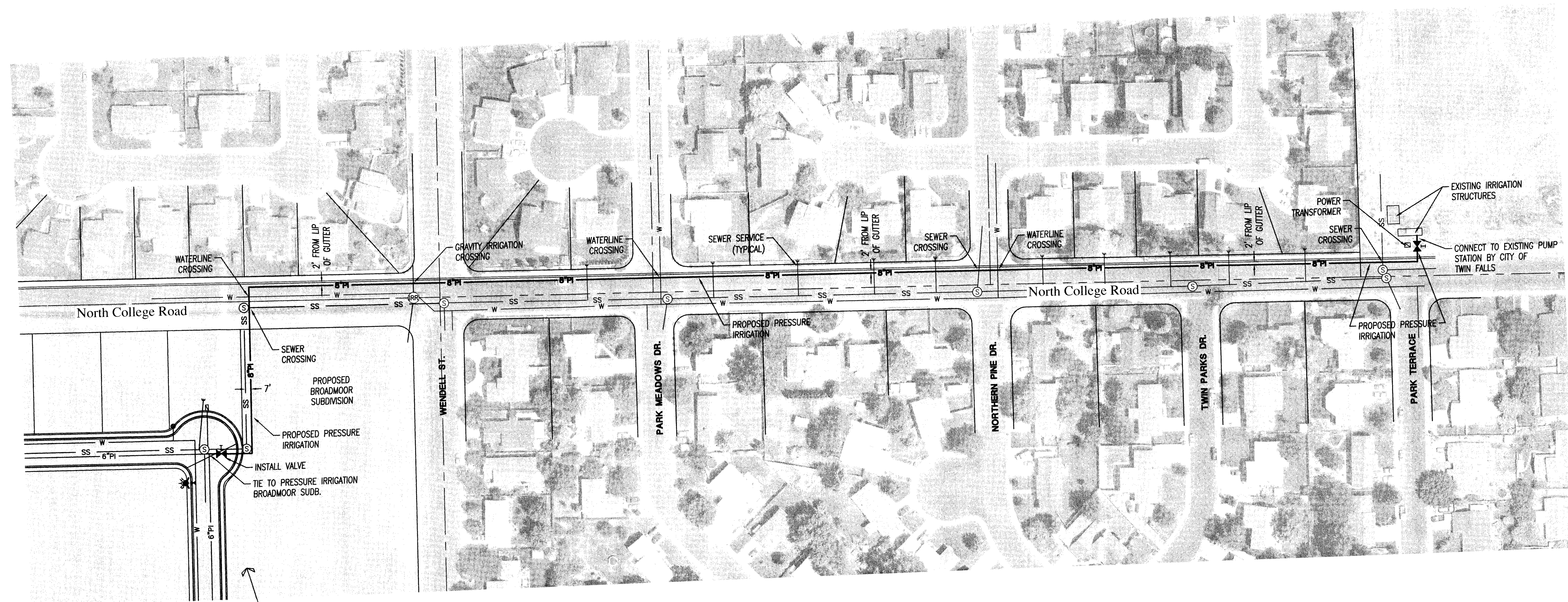
621 North College Rd., Suite 100 • Twin Falls, Idaho 83301 • [208] 734-4888 • Fax [208] 734-6049
3501 W. Elder St., Suite 100 • Boise, Idaho 83705 • [208] 386-9170 • Fax [208] 386-9076

IN THE FIELDS OF:
PLANNING • SURVEYING • HIGHWAYS • WATER • SEWAGE • STRUCTURAL • SUBDIVISIONS • BRIDGES • ENVIRONMENTAL • QUALITY CONTROL • CONSTRUCTION MGMT.

RECEIVED
FEB 02 2016
CITY OF TWIN FALLS
ENGINEERING DEPT



0 40 80 160
SCALE IN FEET



SEE BROADMOOR SUBDIVISION PLANS
FOR DISTRIBUTION SYSTEM WITHIN THE
SUBDIVISION.

PROPOSED OFFSITE PRESSURE IRRIGATION PLAN
for
BROADMOOR SUBDIVISION

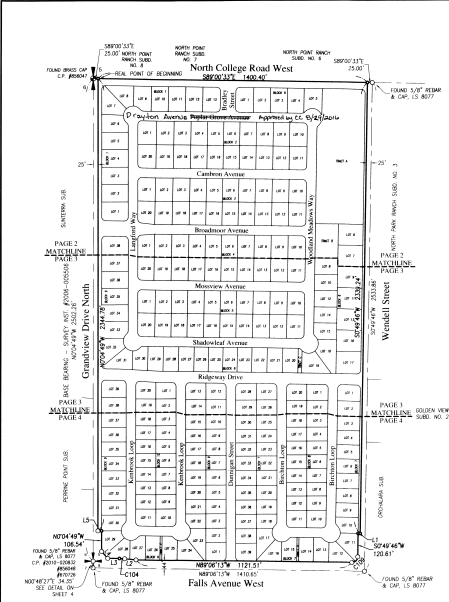
- REVISIONS
- △ -
 - △ -
 - △ -
 - △ -
 - △ -
 - △ -

DO NOT SCALE DRAWINGS
CONTRACTOR SHALL VERIFY ALL
CONDITIONS AND DIMENSIONS AT
THE JOB SITE AND NOTIFY THE
ENGINEER OF ANY DIMENSIONAL
ERRORS, OMISSIONS, OR DIS-
CREPANCIES BEFORE BEGINNING
OR FABRICATING ANY WORK.

STAMP
PRELIMINARY

APPROVED	DLT
DESIGN	DLT
DRAWN	DJS
DATE	2/1/2016
SCALE	AS SHOWN
C 426-15 N COLL PI	
SHEET	C 5.01 PI

EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE
Engineers / Surveyors / Planners
621 North College Road, Suite 100 Twin Falls, Idaho 83301
P (208) 734-4888 fax (208) 734-6049 web: ehmc.com



BROADMOOR SUBDIVISION
A SUBDIVISION OF
Lots 61 Thru 63, Lot 40 and A Portion of Lots 41 and 42 of
"ORCHALARA SUBDIVISION"
LOCATED IN A PORTION OF
SW 1/4 OF SECTION 5 &
NW 1/4 OF SECTION 8
TOWNSHIP 10 SOUTH
RANGE 17 EAST, B.M.
TWIN FALLS COUNTY, IDAHO
2015

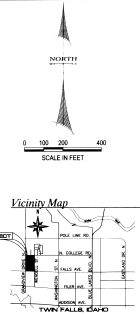
- Legend**
- SUBDIVISION BOUNDARY LINE
 - SECTION LINE
 - ENCLOSURE LINE
 - ADJACENT PROPERTY LINE
 - CENTERLINE OF STREET
 - LOT LINE
 - CALCULATED POINT (NOT SET)
 - FOUND BRASS CAP
 - FOUND 5/8" x 3/4" IRON NAIL
 - SET 5/8" x 3/4" IRON NAIL
 - TO BE SET 1/2" x 24"
 - REMARK: CAP - LS 10110
 - TO BE SET 5/8" x 24"
 - REMARK: CAP - LS 10110

- Notes:**
- A 10 FOOT WIDE UTILITY EASEMENT EXISTS ADJACENT TO ALL FRONT LOT LINES AND ADJACENT TO STREET FRONTAGES.
 - ALL UTILITY ACCESS ON LOTS ADJACENT TO COLLECTOR OR ARTERIAL ROADS WILL BE PROVIDED FROM INTERIOR REARLANDS, STREETS INCLUDING REARLAND WIDE EASEMENT, FOR COMBINED ACCESS ON LOTS 6, 7, 8, 11, 12 AND 18 OF BLOCK 8.

Health Certificate
"STANDARD RESTRICTIONS AS REQUIRED BY IDAHO CODE TITLE 24, CHAPTER 13, HAVE BEEN SAVED BASED ON THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) APPROVAL OF THE DESIGN PLANS AND SPECIFICATIONS AND THE CONDITIONS IMPOSED ON THE DEVELOPER FOR COMBINED ACCESSION OF SANITARY RESTRICTIONS, BLOCK 8, CANNOT BE AT THE TIME OF THIS APPROVAL, NO DRAINING WATER OR SEWERAGE FACILITIES WERE CONSTRUCTED. BUILDING CONSTRUCTION CAN BE ALLOWED AND SHALL BE CONSTRUCTED ON 1/2 OF THE DEVELOPER'S OWNERSHIP OF THE LOT. IF THE DEVELOPER HAS BEEN CONSTRUCTED OR IF THE DEVELOPER IS CONSTRUCTING CONSTRUCTING THESE FACILITIES, IF THE DEVELOPER FAILS TO CONSTRUCT FACILITIES ON THE LOT, THE CONDITIONS OF THIS HEALTH CERTIFICATE MAY BE RE-IMPOSED. IN ACCORDANCE WITH SECTION 24-13-12, IDAHO CODE, IF THE ISSUANCE OF A HEALTH CERTIFICATE IS DEFERRED, AND NO CONSTRUCTION OF ANY BUILDING OR FACILITIES INCLUDING DRAINING WATER OR SEWERAGE FACILITIES SHALL BE ALLOWED."

Tracts Owned & Maintained By:

- TRACT A - CITY OF TWIN FALLS
- TRACT B - HOMEOWNERS ASSOCIATION
- TRACT C - CITY OF TWIN FALLS
- TRACT D - CITY OF TWIN FALLS
- TRACT E - CITY OF TWIN FALLS



Sheet Number	Sheet Title
1 OF 7	PLAT PAGE
2 OF 7	PLAT SHEET 1
3 OF 7	PLAT SHEET 2
4 OF 7	PLAT SHEET 3
5 OF 7	PLAT SHEET 4
6 OF 7	ACKNOWLEDGMENTS
7 OF 7	CERTIFICATE OF OWNERS

Monument Certification
THE RELEVANT MONUMENTS ON THIS PLAT DRAWN AS TO BE SET WILL BE SET IN ACCORDANCE WITH SECTION 20-1-101, IDAHO CODE, OR AS SET BY THE CITY OF TWIN FALLS, IDAHO, AFTER THE RECORDATION OF THIS PLAT OR AS DETERMINED BY THE CITY OF TWIN FALLS.

EHM Engineers, Inc.

TWIN FALLS COUNTY
COUNTY CLERK
JANUARY 14, 2015
2015-011518
Twin Falls, IDAHO
County Clerk
Dorothy R. RYAN

