

DEVELOPMENT AGREEMENT
OLD FARM ESTATES
Aug 10, 2021

This Development Agreement (hereinafter “Agreement”) is made this ___ day of _____, 2021, by and between the CITY OF SUGAR CITY, *an Idaho municipal corporation*, whose mailing address is 10 East Center, P.O. Box 56, Sugar City, Idaho, 83448 (hereinafter “City”), and LERWILL DEVELOPMENT, LLC, *an Idaho limited liability company*, c/o Jeff Lerwill and Ryan Lerwill, 1190 Stocks Ave. Ste. 1, Rexburg, Idaho 83440 (hereinafter “Developer”).

WITNESSETH:

WHEREAS, Developer is the owner in law or equity, of a certain tract of land in the City of Sugar City, Madison County, Idaho, which land (hereafter referred to as “the Development” or “Old Farm Estates”) is more particularly described in Exhibit A, Old Farm Estates Master Plan which outlines associated Final and Preliminary Plats as drawn and further described below, and which may at some future time also include additional preliminary plats, which will be attached hereto and incorporated herein by reference; and

WHEREAS, within said master plan, Developer has submitted, and City has approved, several subdivisions and developments that have been platted within the Development: and

WHEREAS zoning changes and relocation of platted areas are necessary to redevelop certain portions of the platted Master Plan area which will allow for a centralized park as well as other public improvements; and

WHEREAS Developer and City have negotiated in good faith the terms and conditions of this mutually beneficial development agreement to replace other preexisting Development Agreements and incorporates a Settlement Agreement with this agreement, with terms more appropriate for the current circumstances of the Development; and

WHEREAS Developer and City now desire to adopt this Development Agreement and the accompanying revised Master Plan to reflect the current and future zoning and development status of the Development, as well as other items delineated in this Development Agreement and indicated on the Master Plan document.

WHEREAS the City desires to approve the zoning as indicated below and on the master plan as well as the uses planned in the designated areas of the Development subject to the terms and conditions of this Agreement and the Special Conditions as hereinafter defined and as shown on the Master Plan;

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged and adopted pursuant to Idaho Code Section 67-6511A in such that the Parties agree that this development agreement is a contract between the Developer and the City in which the Developer hereby makes various commitments affecting

the proposed development conditioned upon receiving the necessary land use approvals, Developer and City hereby agree as follows:

1. DEVELOPMENT OF OLD FARM ESTATES. City agrees to allow the Development to be constructed and to connect to existing City water and sewer systems for water and sewer service on the terms contained herein and subject to City's acceptance and performance of the terms and conditions of this Agreement.

2. ACCEPTANCE OF REVISED MASTER PLAN AND DIVISIONS. City hereby accepts and approves the attached Master Plan and the location, general form and building presentation of all other Divisions as delineated in and attached hereto as Exhibit A (hereinafter "the Master Plan"). The Master Plan, as approved, vests and/or anticipates vesting and entitling the following zoning, open space, building types and density, land uses, signage, and other features in the Development:

- i. Old Farm Division No. 1 consists of 39 units zoned R1 with a density of 2.09 units/acre. The division code requires 10 percent open space. The developer will provide a .564 acre parcel for open space park use as a part of the park system to be deeded to the City of Sugar City. This division has been previously platted and recorded as represented. The developer has sold all the units herein to individual owners.
- ii. Old Farm Division No. 2 consists of 20 units zoned R1 with a density of 2.55 units/acre. The city ordinance requires 10 percent open space for this division. The division code requires 10 percent open space. This division has been previously platted and recorded as a portion of "Old Farm Estates Division No. 2, recorded on 07/13/2017, bearing Instrument Number 410845." The developer has sold all the units herein to individual owners. Lot 1 Block 10, Lot 2 Block 11, Lot 2 Block 12, Lot 6 Block 14 of Old Farm Estates Division No. 2, recorded 07/13/17, bearing Instrument Number 410845 shall be represented under new divisions as set forth in this agreement. The developer has sold all the units herein to individual owners, with the exception of one (1) SFR lot.
- iii. Old Farm Division No. 3 consists of 88 units 4-plex and/or 6-Plex buildings being zoned R3 with a density of 12.59 units/acre. The city ordinance requires 10 percent open space for this division. This division has been previously platted as "South Fork Villas Subdivision 2nd Amendment a Replat of Lots 11-13, 16-18, 21-23, 26-28, Block 12 of South Fork Villas Subdivision First Amended Plat," recorded 11/20/2018, bearing Instrument Number 420148. The developer has sold all the units herein to individual owners.
- iv. Old Farm Division No. 4 consists of 48 Units 8 buildings being zoned R3 with a density of 10.03 units/acre. The city ordinance requires 10 percent open space for this division. Final Plat previously recorded on 11/18/2019 Instrument # 427145 with an amended plat recorded 6/15/2020 Instrument # 431565, commonly known as "Targee Townhomes".

- v. Old Farm Division No. 5 consists of 84 townhome units being zoned R3 with a density of 8.87 units/acre. The city ordinance requires 10 percent open space for this division. The developer will provide a minimum of 25% open space. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission on the next available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein.
- vi. Old Farm Division No. 6 consists of 338 apartment Units being zoned MU2 with a density of 21.4 units/acre. The city ordinance requires 20 percent open space for this division. The developer will provide a minimum of 35% open space, contingent on a revised parking requirement of 1.91 parking stalls per unit, with a Special Use Permit reduction of 0.09 parking stalls per unit. An original CUP was granted for a retired plat for “Teton Heights, A Portion of Division 3,” which was previously recorded and will be retired on approval. The previously approved CUP shall be applied to the new “Old Farm Estates Division No. 6 (Teton Heights)” as represented here. An application for a Special Use Permit may be requested for a lower number of parking stalls on the single bedroom units only. Applications will be submitted simultaneously with this agreement.
- vii. Old Farm Estates Division No. 7 consists of 72 townhome units being zoned R3 with a density of 10.28 units/acre. The city ordinance requires 10 percent open space for this division. The developer will provide a minimum of 30 percent open space. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission on the next available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein.
- viii. Old Farm Estates Division No. 8 consists of 6.36 acres of public park. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission on the next available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein. It is agreed by the Parties that the Park shall be built, with the Developer paying all construction and material costs, including but not limited to all landscaping, irrigation, parking and facilities. The completed Park shall be deeded to the City no later than after 853 Units have been built within the total of the Development including the currently built units. To ensure this, the Developer shall grant the City a Conservation Easement at the time of this Development Agreement’s signing. Upon completion, the Developer shall deed the Park to the City and the City shall take over all maintenance and costs to the Park. The City shall each year pay the Developer, the Developers costs for the water assessments required to adequately water the park. The City recognizes that the Park could be zoned as MU2 and agrees to recognize that value to the Developer and classified as a Gift, for tax purposes, pursuant to this

Agreement. The name of the planned park shall hereafter be “Lerwill Park”.

- ix. Old Farm Estates Division No. 9 consists of 98 twin home units zoned R2 with a density of 4.18 units/acre. The city ordinance requires 20 percent open space for this division. The division has 38% Open Space with Private Roads. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission on the next available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein. City will work with developer on the size of lot to ensure a common wall style homes can be constructed on these 98 lots. A conditional use/Planned Unit Development may be utilized for this approval as to provide this necessary affordable housing for the area.
- x. Old Farm Estates Division No. 10 consists of 25 town homes units being zoned R3 with a density of 11.75 units/acre. The city ordinance requires 10 percent open space for this division. The developer will provide a minimum of 25 percent open space, including a 0.3 acres of completed park as a part of the park system to be deeded to the City of Sugar City under the same conditions as in h. above. Applications will be submitted simultaneously with this agreement.
- xi. Old Farm Estates Division No. 11 consists of 8.5 acres with 144 townhomes/condos units being zoned R3 with a density of 16.94 units/acre, via a PUD with Private Roads. The city ordinance requires 20 percent open space for this division. The developer will provide a minimum of 25 percent open space. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission on the next available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein.
- xii. Old Farm Estates Division No. 12 consists of 2.87 acres being zoned C3. The developer will proceed through standard processes and procedures for future final plat approval per the current city ordinances. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission in a future available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein.
- xiii. Old Farm Estates Division No. 13 consists of 1.79 acres being zoned C3. The developer will proceed through standard processes and procedures for future final plat approval per the current city ordinances. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission in a future available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein.

- xiv. Old Farm Estates Division No. 14 consists of 8.798 acres being zoned R3. The developer will proceed through standard processes and procedures for future final plat approval per the current city ordinances. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission in a future available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein. Owner of said division may apply for any option granted them under the R3 entitlement, and shall be allowed if all zoning requirements are met or exceeded by applicant.
- xv. Old Farm Estates Division No. 15 consists of 11.59 acres being zoned R3. The developer will proceed through standard processes and procedures for future final plat approval per the current city ordinances. This Plat is hereby approved in concept and shall be sent to Public Hearing before the Planning and Zoning Commission in a future available meeting date for development of Findings of Fact and Conclusions of Law as well as a Recommendation to the City Council for approval upon meeting the ordinance requirements and as granted herein. Owner of said division may apply for any option granted them under the R3 entitlement, and shall be allowed if all zoning requirements are met or exceeded by applicant.
- xvi. Old Farm Estates Division No. 16 consists of 1.631 acres being zoned R3 as previously recorded. This Plat is hereby approved and was final plat recorded of OLD FARM TOWNHOMES on 12/23/2019 instrument # 427915
- xvii. Other Amenities and Features Monument signage indicating the entrance and name of the development, the location of which is indicated on the attached Master Plan is hereby approved for location and concept, pending the submission of a sign permit application and attachments.
- xviii. Multimodal Pathway. Pathways and sidewalk system as shown on the master plan are hereby approved and become a part of the larger citywide pathway and open space program. Pathway as striped and painted on 5th South Street will be applied by Developer before dedication.

Summary Statement: Old Farm Estates when built out will provide a mix of Single-family residences, commercial, multi-family, twin-homes, townhomes, and condominiums including a spectrum of housing types and pricing structures. The Development also has reserved a public park and commercial mixed-use areas with additional housing options above ground floor retail potential.

Management Plan: An individual management plan shall be provided by the Developer for each Division at the time they are applied for Development. Any property dedicated to the City will be managed according to the policies and procedures adopted by the City.

Restrictive Covenants: The individual Division's will be applied for with draft Restrictive Covenants.

City hereby accepts and approves the OFE Master Plan in its form as attached hereto as Exhibit A. All subsequent divisions of the Development shall be subject to this Agreement and the terms and conditions set forth herein. This Agreement may be amended by mutual agreement as future divisions are pursued. Adopted amendments to this Agreement affecting the Master Plan will be attached to this Agreement by addendum and become a part hereof. A master plan is a dynamic long-term planning document that provides a conceptual layout to guide future growth and development. Master planning is about making the connection between buildings, social settings, and their surrounding environments. A master plan includes analysis, recommendations, and proposals for a site's population, economy, housing, transportation, community facilities, and land use. It is based on public input, surveys, planning initiatives, existing development, physical characteristics, and social and economic conditions.

3. IMPROVEMENT PLANS. Developer agrees to abide by all applicable provisions of the City of Sugar City Code. With respect to each division of development within the Development, Developer shall submit improvement plans for (hereafter referred to as the "Improvement Plans") showing all streets, sewer lines, water lines, storm drains, street signs, traffic control devices, barricades, fire hydrants, streetlights, and other public improvements contemplated within such division of the Development. The Improvement Plans also show the proposed location of other public utilities (telephone, gas, secondary irrigation, and electricity if applicable) and facilities affected by the Development. Developer shall submit Improvement Plans for timely approval by the City engineer and public works department for each subsequent Division as each Division is platted.

4. CONSTRUCTION OF PUBLIC IMPROVEMENTS. Unless otherwise agreed to herein or in the Special Conditions, as hereinafter defined and which are a part hereof, Developer will, at its own expense, design and construct all public improvements shown in all Improvement Plans heretofore or hereafter submitted in connection with the development of any parcel within the Development. Unless otherwise agreed to in writing by the City Engineer, Developer will construct all public improvements in strict accordance with the Improvement Plans and the City standard engineering drawings and specifications (hereafter referred to as the "Standard Specifications") in effect at the time the construction is accomplished. The Standard Specifications are incorporated herein by reference as though set out in full. City agrees to issue "Will Serve" documentation to ensure project and divisions can progress.

5. PERMITS. Developer shall obtain all rights-of-way, excavation or other permits required by local ordinance or any State agencies and comply with all requirements therein with respect to the timely performance of the work governed by such permits.

6. COMPLETION OF PUBLIC IMPROVEMENTS. Developer shall complete such public improvements within a reasonable timeframe based on the scope of work, availability of materials, market conditions, and magnitude of the project.

7. INSPECTION. Developer will retain a professional engineer (hereafter referred to as the “Project Engineer”) licensed within the State of Idaho to supervise, inspect, and test the construction of all public improvements within the Development in order to ensure such improvements are constructed in accordance with this Agreement, the Improvement Plans, and the Standard Specifications. Developer will not materially deviate from the Improvement Plans or Standard Specifications without the express written approval of the City Engineer.

8. CORRECTED IMPROVEMENT PLANS. Prior to acceptance of each division of the Development, Developer will file “As Constructed” Improvement Plans specific to each Division (hereafter referred to as the “Corrected Improvement Plans”) with the City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual “as constructed” location of all public improvements within the particular division of the Development then being constructed, including the horizontal and vertical location of all water, sewer and storm drain lines, individual building service lines, curb and gutter alignment, and street grades. Such Corrected Improvement Plans shall also specifically show all changes between the original Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Standard Specifications in effect at the time such construction was accomplished. The original Hardcopies of these “Corrected Improvement Plans” shall become the property of City. Developer shall also deliver to City a complete set of “As Constructed” Improvement plans in digital (PDF) format. The Project Engineer shall deliver to the City Engineer all compaction reports, daily construction logs, reports, written tests, analysis, and other data as may be necessary to verify or support the certification of the Project Engineer to the City Engineer within a reasonable time after completion.

9. ACCEPTANCE OF DEVELOPMENT. Upon satisfactory completion of such public improvements and facilities for each division, and Developer’s delivery of Corrected Improvement Plans for each division, City will accept the division of the Development.

10. WARRANTY. Developer warrants that the materials and workmanship employed in the construction of all public improvements within the Development shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year for each division of the Development after acceptance of that division of the Development by City, unless otherwise agreed in writing by the parties.

11. WATER & SEWER HOOKUP FEES & MONTHLY UTILITY RATES. Water and sewer hookup fees and monthly utility rates have been established by the City and are subject to updating from time to time. Individuals or entities connecting improvements on their private lot(s) within the Development to the water, sewer, or storm drain system(s) shall be responsible to pay to City the appropriate connection fee for the type and size of the utility connection, and also to commit to paying the appropriate monthly utility user fee as established by current City ordinances, resolutions, and fee structures in effect at the time of hookup. Such individuals or entities shall also purchase the necessary water meter materials as specified by the

City Water Department, for use in the water service connection, and be responsible for acquiring the required plumbing permits and for all costs associated with the installation of the water or sewer service connections.

If excavation is required within any public right-of-way, an Excavation Permit will also be required.

12. STREET IMPROVEMENTS. When constructing the Development, Developer is responsible for installing the streets, including curb and gutter; sidewalks; base gravel; and asphalt surfacing, all to the dimensions and standards set forth in the Standard Specifications. Notwithstanding the above terms, Developer shall be responsible for installation of sidewalks, but such responsibility may be deferred until after the improvements on a lot are completed. Upon the transfer of fee simple title to any parcel or real property or lot within the Development, the obligation to complete installation of sidewalks according to City specifications on such parcel of real property or lot shall be the obligation (including the obligation to bear the financial expense of installation) of such transferee and record owner thereof. City shall indemnify and hold harmless Developer from any liability or obligation to install or complete curbing and sidewalks on parcels of real property or lots located within the Development of which Developer is not the owner of record. Irrespective of whether Developer or a subsequent transferee or owner owns fee simple title to any particular parcel of real property or lot within the Development, no occupancy permit shall be issued with respect to such parcel of real property or lot within the Development until the sidewalk thereon is properly completed and inspected by the City building inspector.

City agrees to accept as public improvements the roads and streets constructed or to be constructed to city standards per the Master Plan.

13. CITY'S PARTICIPATION IN THE COST OF CERTAIN IMPROVEMENTS The Parties acknowledge the necessity of constructing certain infrastructural improvements and related facilities on or within the Development to wit: a wastewater collection system and related facilities; a pressure sewer line; a water distribution system and related facilities; a storm water disposal system and related facilities; and streets, roads, curbing, and gutters. City will bear that portion of the expense of Infrastructural Improvements related to capacity more than what is reasonably necessary for the Development that are required because of future service needs originating from properties not owned by Developer and yet located within the vicinity of the Development. All such work for which City shall be required to bear a portion of the expense and for which sound planning requires construction to accommodate future expansion and development shall be known herein as "Up Sizing."

14. SPECIAL CONDITIONS. In recognition of the unique circumstances relative to this Development, the Parties agree to the special conditions attached hereto and by this reference made a part hereof (hereinafter "the Special Conditions").

15. OCCUPANCY. No building within the Development shall be used or occupied for any purpose other than for the construction of such building or structure unless all public improvements related or corresponding to such building or structure have been completed and accepted by the City Engineer.

16. PHASING. As stated above in Section 2, the City agrees and approves the Master Plan as it is attached hereto as Exhibit A. This agreement shall be binding on all subsequent divisions of the Development. It is hereby agreed that Developer and the City shall comply with the procedural requirements for Preliminary and Final Platting as contained in Sugar City Ordinances and the Idaho Local Land Use Planning Act and in accordance with Ordinances in effect at the time of approval of each division of the Development. It is further agreed that upon approval by City of the actual final plats of subsequent divisions, Developer shall provide Improvement Plans specific to that division and that the construction of that division shall comply with the terms contained herein.

17. WATER RIGHTS AND SECONDARY IRRIGATION SYSTEM. There are 10.78 shares in the Teton Island Canal Company and 139.5 acre feet of storage water rights in the Fremont-Madison Irrigation District associated with Old Farm Estates. It is hereby acknowledged by the parties that it is mutually beneficial to use any associated surface water rights from the Development for non-culinary purposes whenever reasonably possible and further agree to not put the water in risk of forfeiture. Therefore, the Developer shall agree to build, maintain and operate a secondary irrigation system to service Old Farm Estates as indicated on the Improvement Plans. The Developer will retain any required portion of the applicable water rights associated with the Development to be beneficially used for non-culinary use within Old Farm Estates. Any water rights not so used shall be transferred to the City at the time of completion of the secondary irrigation system or two years from the date of this agreement, whichever is soonest. The water that shall be transferred to the City will be calculated by the acreage of the Development that is not being serviced by the secondary irrigation system or that no longer can put the water to beneficial use, such as acreages that now contain buildings, homes, roads, parking lots etc. The Developer agrees to immediately pay all water right assessments and bring all assessments current. The City shall pay the Developers assessment costs for any retained water it uses for its public use applications. The Parties agree to negotiate in good faith to utilize or transfer the water rights to best reduce the reliance on pumping of culinary City water and work cooperatively to receive any required approvals from the relevant water authority.

18. SEVERABILITY. If one or more of the provisions in the Agreement is found invalid, illegal, or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not be affected. Any such provisions will be revised as required to make them enforceable.

19. EFFECTIVE DATE. This Agreement shall become valid and binding only upon its approval by the city council of the City of Sugar City. The term "Effective Date" in this Agreement and the Special Conditions shall refer to the last date on which a Party executes this Agreement.

20. COVENANTS APPURTENANT TO THE LAND. All covenants and conditions set forth herein shall be appurtenant to and run with the Development and shall be binding upon Developer's heirs, successors in interest, and assigns.

21. ENTIRE AGREEMENT & HARMONIZATION WITH SETTLEMENT AGREEMENT. This Agreement adopted pursuant to Idaho Code Section 67-6511A, entirely supersedes and replaces the Original Development Agreement, which is recorded in the records of Madison County, Idaho as Instrument No. 365687. Except as hereinafter provided, this Agreement, along with the attached exhibits and the Special Conditions hereto, evidences the final and complete agreement between the Parties and, except as otherwise provided in this Agreement, no other prior statement, representation, or understanding shall be binding upon the Parties unless expressly set forth herein.

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

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE OF OFE MASTER PLAN DEVELOPMENT AGREEMENT

FOR THE CITY OF SUGAR CITY

APPROVED AS TO FORM:

City Attorney

APPROVED

ATTESTED

By: Steven Adams
Mayor, City of Sugar City

By: Wendy McLaughlin
Clerk, City of Sugar City

STATE OF IDAHO)
) ss.
COUNTY OF MADISON)

On this ____ day of _____, 2021, before me, the undersigned, a notary public for Idaho, personally appeared Steven Adams, known or identified to me to be the Mayor of the City of Sugar City, the municipal corporation that executed this instrument, and acknowledged to me that such City executed the same.

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

Notary Public for Idaho
Residing at: _____
My commission expires: _____
(SEAL)

SIGNATURE PAGE OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT
OF OLD FARM ESTATES SUBDIVISION

FOR THE DEVELOPER

LERWILL DEVELOPMENT, LLC,
An Idaho limited liability company

By: Jeff Lerwill, Manager or Managing Member

By: Ryan Lerwill, Manager or Managing Member

STATE OF IDAHO)
) ss.
COUNTY OF MADISON)

On this _____ day of _____, 2021, before me, the undersigned, a notary public for Idaho, personally appeared Jeff Lerwill and Ryan Lerwill, in their capacities as members of Lerwill Development, LLC, *an Idaho limited liability company*, known or identified to me to be the individuals that executed this instrument, 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 first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____
(SEAL)

SPECIAL CONDITIONS
OLD FARM ESTATES DEVELOPMENT

Administrative Special Conditions

The following Administrative Special Conditions shall be met prior to commencing or initiating any construction or improvement of each division of the Development.

- SC-1 **Surety:** Within seven (7) days prior to construction of any Public Infrastructural Improvements located within an approved division or division of the Development, Developer shall furnish City with a performance and payment surety in an amount equivalent to 125% of the estimated cost of completion of that particular division. Alternatively, security may be provided in the form of a cash deposit, cashiers' check, irrevocable bank letter of credit, or the pledge as security of any other asset or assets, whether real, personal, or intangible property, having a fair market value of 125% of the estimated cost of completion of the particular division for which security is given. City will acknowledge receipt and completion of surety requirement to developer at time of submittal.
- SC-2 **Zoning:** All zoning within the development has been vested with the adoption of the Master Plan and this agreement and after following the required process. Future zone changes will follow the City of Sugar City re-zoning process.

Wastewater Special Conditions

The following Wastewater Special Conditions shall be met as a part of the Development, all as reviewed and approved by the City Engineer or City's designated representative.

- SC-3 **Wastewater Collection System:** Developer will design and construct a gravity wastewater collection system within the Development. The design and construction of the gravity wastewater collection system shall be approved and constructed as required by the City Engineer and be consistent with reasonable and customary engineering practices. As a pump system was necessary, the pump station shall be equipped with emergency standby power facilities, and the means of automatically notifying maintenance personnel, via a SCADA system, of problems occurring in the station and allow them to monitor and view the system. Which shall be approved and coordinated through the public works department.

The pump station for the Development shall be sized for serving surrounding properties outside of the Development that can be reasonably served by gravity collection piping, except that the pumps installed within this development need not be sized for wastewater flow needs beyond those associated with this Development. However, each pump, if the same is necessary, shall be sized to carry one hundred percent (100%) of the peak flow of this Development when fully developed. Provision for serving future adjacent developable areas shall be provided by installing an 8-inch diameter sewer pipeline at such a location and in such a manner as to provide maximum possible depth for serving areas adjacent to this Development by gravity flow.

Developer may use single-phase power supply to provide power to this pump station provided that proper equipment is installed in the control panel for each pump (such as VFD's) that would convert and allow for three-phase power. The equipment will need to be properly sized for appropriate deration and any filtering required by the power company for such an arrangement will also need to be installed. Engineering specifications may be varied in accordance with best practice at the time.

The cost of the gravity wastewater collection system Developer has constructed or will construct in the Development shall be borne by Developer and City as follows:

Developer shall bear the cost of designing and constructing the gravity wastewater collection system within the Development and, if necessary, the central wastewater pump station within the Development, but only such cost as is necessary to service the needs of the Development, not the cost necessary to service the needs or absorb impact on the system caused by properties located outside the Development.

City shall bear 1) the cost of designing and constructing any line (8-inch diameter as above or otherwise) providing for future flow from developments adjacent to or located elsewhere in City or the area of impact of City (as may hereafter be enlarged); and 2) the cost of constructing the pump station or the actual pumps used above that which is reasonably needed for the Development shall also be borne by City).

Notwithstanding the above or any other special condition, the construction of any pump station or pump, shall occur when such station becomes necessary, in connection with then-active development of property within the Development, according to reasonable engineering standards. Developer has installed a wet well and dry well with partial completion of gravity flow lines into the wet well on the corner of 5th South and 3rd West. This pump station is partially completed. The Developer shall have the right to complete this station and to connect the remaining gravity flow into this system as well as connect the pressure lines out to the main trunk line along Railroad Avenue from this system. City will acknowledge these improvements that have already been installed as adequate and City will accept the final completion when finished in writing upon completion.

- SC-4 Pressure Sewer Line: As is necessary, Developer shall design and construct a 6-inch diameter PVC pressure sewer line from the Development to the existing gravity interceptor line running between Sugar City and Rexburg, or tie into an existing sewer line that is acceptable to the City. City will allow Developer to connect to and use the existing City sewer facilities, provided Developer covers all costs necessary to make the proper connection, including the connection fee in effect at the time of actual hookup.

The initial construction cost of this improvement will be borne by Developer. Subject to the conditions of this special condition, City shall have the right to allow for future connection to this pressure sewer line by later developer(s).

- SC-5 Connection and Fees: Connection to the sewer system by properties being developed within the Development is mandatory. City shall have the right to assess and collect individual sewer connection fees and monthly sewer user charges from those properties within the Development who hook up to the sewer system. City shall be responsible for purchasing additional wastewater treatment capacity at the Rexburg Regional Wastewater Treatment Facility using the proceeds from the connection fees. Similarly, City shall use proceeds from the monthly sewer user fees to provide for operation and maintenance of the wastewater collection system, pump station, and pressure line once those systems have been completed by Developer and are approved and accepted by City. City will provide developer with 516 (Five-Hundred Sixteen) Discount certificates valued at \$1,250 for use at the will and pleasure of the developer for individual wastewater connections on any division of the Old Farm Estates Development. These certificates are transferrable to future owners within the Old Farm Estates Master Plan. Connection numbers are based on “equivalent dwelling units” or EDU’s as defined in the City of Sugar City Code and as published by the USDA Rural Development. City will notify applicants of hookup fees of this discount coupon available in attempt provide assistance in developer monetizing said coupons and discounts.

Water Special Conditions

The following Water Special Conditions shall be met as a part of the Development, all as reviewed and approved by the City Engineer or City’s designated representative.

- SC-6 Water Distribution System: Developer will design and construct a water distribution system within the Development appropriately sized to deliver required fire flow and provide water service and pressure to the Development commensurate with other areas of City. City will allow Developer to connect its water distribution system required hereunder to the existing City water facilities, provided Developer covers all costs necessary to make the proper connection. Water mains along any boundary area of the Development that will likely connect to an adjacent area for future development shall not be less than 8 inches in diameter, but all other water mains located within the Development must be at least 6 inches in diameter.
- SC-7 Connection and Fees: Connection to the City water system by properties being developed within the Development is mandatory. City shall have the right to assess and collect individual water connection fees and monthly water user charges from those properties within the Development that hook up to the water system. City will use proceeds from the monthly water user fees to provide for operation and maintenance of the water system once it has been completed by Developer and is approved and accepted by the City. City will provide developer with 516 (Five-Hundred Sixteen) Discount certificates valued at \$1,250 for use at the will and pleasure of the developer for individual water connections on any division of the Old Farm Estates Development. These certificates are transferrable to future owners within the Old Farm Estates Master

Plan. Connection numbers are based on “equivalent dwelling units” or EDU’s as defined in the City of Sugar City Code and as published by the USDA Rural Development. City will notify applicants of hookup fees of this discount coupon available in attempt provide assistance in developer monetizing said coupons and discounts.

- SC-8 Additional Water Supply Facilities: The City has installed a new well that will give sufficient water for the development demands withing the Old Farm Estates development. Developer shall have the right to connect to this existing and new water supply facility without need for additional improvements or fees toward City facilities.

City reserves the right to allow for future connection to any water distribution system improved or used by the Development and utilize the capabilities of such water supply, storage, and booster pumping facilities for other developers in order to provide convenient and adequate water; or to use the supply, storage, and pumping capability to provide for other needs and demands within the existing City water supply and distribution systems.

Storm Water Special Conditions

The following Storm Water Special Conditions shall be met as a part of the Development, all as reviewed and approved by the City Engineer or City’s designated representative.

- SC-9 Storm Water Disposal: City will allow for storm water disposal through a system mutually approved by City and Developer, provided the details of design and construction meet the requirements of and are approved by the Idaho Department of Environmental Quality, and all necessary fees and permits for such with the Idaho Department of Water Resources are provided for by Developer. The City Engineer shall approve details of design. All future drain systems shall be constructed with infiltrators or other approved best practice. These shall be placed in locations specified by Developer’s Engineer and approved by the City Engineer.

The initial construction cost of the stormwater disposal system required by this section will be borne by Developer. Upon completion of the construction of the storm water disposal system, City will accept and assume responsibility for all servicing, maintenance, repair, care, and any future upgrading or enhancements of these systems.

- SC-10 Commercial Storm Water: Commercial development including large parking areas within the Development shall provide for necessary on-site detention and infiltration facilities and other appropriate storm water systems or styles as required to properly manage storm water runoff. Property owners within the development shall meet EPA’s construction stormwater pollution prevention requirements when developing or improving the property.

Street and Roadway Special Conditions

The following Street and Roadway Special Conditions shall be met as a part of the Development, all as reviewed and approved by the City Engineer or City's designated representative.

SC-11 Rights-of-Way: Developer shall dedicate public road rights-of-way within the Development for public use. Right-of-way on local residential streets shall not be less than 60 feet. Right-of-way on 5th South shall not be less than 80 feet and will include intermodal pathway.

SC-12 Typical Sections: Residential streets within the Development shall not be less than 42 feet measured back of curb to back of curb. All sidewalks in the proposed Development shall meet city code.

Developer shall be responsible for installation of sidewalks, but such may be deferred until after the improvements on a lot are completed. Upon the transfer of fee simple title to any parcel or real property or lot within the Development, the obligation to complete installation of sidewalks according to City specifications on such parcel of real property or lot shall be the obligation (including the obligation to bear the financial expense of installation) of such transferee and record owner thereof.

SC-13 5th South Access: There will be no individual residential driveway access to 5th South, but rather on a street other than 5th South on any lots abutting said street. However, parking lot entrances and private roads through this Division are allowed.

Huckleberry Lane: Huckleberry Lane, having had been previously built, shall remain a private road and capped off at 5th South.

SC-14 Turning lanes shall be required on all legs of the 5th South and Railroad Avenue intersection as indicated on the Master Plan paid by the Developer. It is also hereby acknowledged that City will continue to work towards the straightening of Railroad Ave. as per the concept shown in the Master Plan.

SC-15 Open Space: Developer shall cause to be donated, transferred, or otherwise conveyed to City the following parcels of real property within the Development for Use as a Public Park. Developer will also provide documentation of fair market value for use by the City. City will then provide a letter to the developer with an estimated fair market value of the park donation to the city for project tax purposes. City will also include the value of any other non-required donations, such as bike path right of way, that have been freely given for the benefit and enhancement of the project as described below:

1. 6.22 Acre Central Park and associated equipment and amenities according to the terms as listed in Division 8 above.
2. Dedicated Intermodal Pathway System upon completion and acceptance by the City according to this Agreement. On W. 5th S. the Developer shall stamp the pathway every 150' or at every intersection.
3. 0.3 acres of the completed park in Division 10 as a part of the park system with the recording of the Division 10 Plat.

SC-16 Buried Utilities and Common Utility Trench: The Development is to be served by underground utilities throughout (power, telephone, natural gas, cable TV, etc.), and all utility lines are to be coordinated with the respective utility companies to be placed in a common trench when possible and within the designated utility easement. An updated utility plan and impact study will be provided by the Developer.

-End of Special Conditions-

EXHIBIT A
MASTER PLAN OF OLD FARM ESTATES DEVELOPMENT
(Including associated Final and Preliminary Plats)