



DEVELOPMENT AGREEMENT

FOR

BROOKSHIRE SOUTH and HOLLICE WOODS SUBDIVISION

THE CITY OF RATHDRUM, hereinafter the "City", a municipal corporation of the state of Idaho, 8047 W. Main Street, Rathdrum, Idaho 83858, and Bluegrass Development, LLC, an Idaho limited liability company, 1250 Northwood Center Court, Suite A, Coeur d'Alene, Idaho 83814 and Henrickson Family Holdings LLC, a Washington corporation, licensed to do business in the State of Idaho, 575 Canterbury Ln, Moses Lake, WA 98837, hereinafter together "Owner" or "Developer", enter into this Development Agreement, hereinafter the "Agreement."

WHEREAS, Owner owns approximately 238 acres of real property located within the City of Rathdrum, which Owner plans to develop (hereinafter the "**Property**") in 18 planned phases. Development phases may be altered following the approval of the City. Of the cited acres, approximately 207 acres will be dedicated for residential development to include 539 single family residential lots, one (1) multi-family lot with a maximum of 250 units, a public park approximately 6 acres, approximately 7.50 acres for general commercial use, and an approximate 2-acre dedication to Northern Lakes Fire Protection District for the development of a new fire station. Approximately 1.9 acres are dedicated for additional public space. This development, commonly identified as Brookshire South and Hollice Woods Subdivision, will require investment in public facilities both on-site and off-site of the project area (hereinafter the "**Project**"), The Project area is more specifically identified and described in Exhibit "A", and the Preliminary Plat, Exhibit "B" which is attached hereto and incorporated, as if fully set forth herein.

WHEREAS, in order to enhance and strengthen the public planning process it is the desire of the City and the Owner to establish conditions of approval and terms of mitigation, to describe the scope of construction improvements, to foster an understanding between the Owner and the City with regards to the development of the Project described in Exhibit "B" and to ensure the maximum effective utilization of the City's resources with the least economic cost to its existing and future residents.

WHEREAS, the City has complied with the notice and public hearing requirements for the preliminary subdivision approval for the Property, with the preliminary plat for the Project herein described and as presented within Exhibit B being reviewed by the Planning and Zoning Commission on the 21st day of June 2021. Upon review of the proposal, the Planning and Zoning Commission duly recommended approval of the Project to the City Council. On the 11th day of August 2021, the City Council approved the preliminary plat for this Project to be completed as phases; and

WHEREAS, the City has determined the Project is appropriate for development conditioned upon the Owner entering into a Development Agreement with the City addressing issues relating to development and maintenance of common area landscaping and stormwater management systems, street trees, and future water and sewer infrastructure, and warranty of the infrastructure, on the terms and conditions set forth

below.

NOW THEREFORE,

IT IS HEREBY AGREED that subject to the review process for development of the Project, maintenance of continuing progress in development of the Project in compliance with the provisions of this Agreement, and the availability of utility capacity to the Project, Owner shall be allowed to develop the Project as set forth herein.

1. Property and Term.

1.1 Property Subject to this Agreement. All of the real property defined herein as the Project shall be subject to this Agreement, unless otherwise specified herein.

1.2 Term. The term of this Agreement shall commence upon the execution of this Agreement by all parties hereto and shall continue until all lands in the Project are subdivided and/or otherwise developed in accordance with the terms of this Agreement, unless earlier terminated as provided herein.

1.2.1 Section 3.5 Maintenance of Common Area Landscaping and Roadway Drainage Swales shall continue in effect after the term of this agreement and shall be an ongoing obligation of the Home Owner's Association (HOA) and/or the property owners of the whole subdivision collectively along which the landscaping and roadway drainage swales are situated within and external to the project, together with and including both the east and west sides of Meyer Road and the north side of Wyoming Avenue adjacent to the plat as well as those streets interior to the project. The lot owner of any property abutting public right of way is responsible for maintaining stormwater retention/treatment areas (grassy swales) contained within public rights of way or drainage easements for street drainage along streets interior to the plat unless otherwise maintained by the HOA.

1.3 Phased Subdivision. The duration of this Agreement envisions development commencing in the fall of 2021 with development of the Project continuing until final construction approval approximately every one to three years, subject to market conditions. If no phase is submitted and constructed for a period of three years, City is authorized to give notice to the Owner of intent to terminate this Agreement for non-performance. Upon such notice, the Owner shall be allowed a public hearing concerning the City's intent to terminate, if requested. After hearing from the Owner, in addition to comments from the public, City's governing board may decide the status of this Agreement, setting forth its rationale in writing.

1.3.1 The terms of this agreement shall apply to all phases of the development of the Project. Any additional or modified terms or

conditions for a specific phase must be in writing signed by both parties and attached to this Agreement as an Addendum.

2. Project Regulations and Policies.

2.1 Project Development. Owner shall have the right to develop the Project in accordance with the terms and conditions of this Agreement and City shall have the right to control development of the Project as set forth in this Agreement and consistent with applicable local and state laws in effect at the time of issuance of any permit. Except as otherwise specified in this Agreement, the approvals memorialized hereby shall control the overall design, development and construction of the Project, and all on-and off-site improvements and appurtenant improvements in connection therewith, in the manner specified in this Agreement. Nothing in this Agreement shall contravene any applicable provision of law, which is not lawfully subject to modification by the City through an Agreement.

2.1.1 Annexation Agreement. As set forth in paragraph 9.3 of the Henrickson South 2020 Annexation agreement (recorded 12/18/2020 as Auditor's File No. 179934700): "No final plat approval within the annexed area shall be given until the existing Brookshire development to the north has created 85% (390) single family residential lots through platting process to ensure continuity in development, with the exception of the commercially zoned property within this annexation area. When development occurs, such shall be logically phased starting in the northern portion of the property and proceeding southward." All other conditions of approval as included within the cited annexation agreement are hereby adopted by reference and incorporated for the record.

2.1.2 Existing Approvals. Development of the Project shall be subject to all of the conditions and standards as set forth herein. The development of the Project shall be consistent with adopted rules, regulations and ordinances of the City except where such rules, regulations and ordinances are expressly and lawfully modified by the approvals accorded the Project.

2.1.3 Future Application. Sections 2.1 and 2.1.1 herein shall not preclude changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations which may be otherwise applicable to the Project. In the event State or Federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than the City prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental jurisdictions.

- 2.1.4 Fees. All applications for City approvals, permits and entitlements shall be subject to City's development and processing fees and charges at the time of consideration of the final plat map, development approval request, or building permit.
- 2.1.5 Final Plat Approval(s). During the course of development of the Project, Owner will make application to City for approval of final plat map(s) of the Project. The final plat(s) shall be submitted in accordance with Rathdrum Municipal Code Title 12, Chapter 4. During City's review process of final plat map(s), the approvals memorialized hereby, and any addenda hereto, shall control conditions imposed by City for the Project and future final plat maps.
- 2.1.6 Disclaimer of Warranties. Notwithstanding this Agreement or any action taken by any person hereunder, neither the City nor any City officer, agent or employee warrants or represents the fitness, suitability or merchantability of a property, plan, design, material, workmanship or structure for any purpose.
- 2.1.7 Governmental Authority. Nothing in this Agreement shall be deemed to compromise the governmental authority of the Mayor and City Council of the City of Rathdrum, present or future.

2.2 Hold Harmless. Owner hereby agrees to and shall hold City harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise during the construction phase and during and following the warranty period as a result of the actions of the Developer or the Developer's contractors and consultants, relating to the design or construction of the Project, excepting claims and causes of actions brought by the Owner for default of this Agreement or those arising from the negligence or willful misconduct of the City.

3. Conditions of Approval.

- 3.1 Improvements to be Constructed. Developer shall construct the improvements on-site and off-site for the Project required pursuant to the Rathdrum City Code, including any current adopted policies pending codification, this Agreement and any other conditions of approval imposed by the Rathdrum City Council prior to this Agreement.
- 3.2 Roadway Drainage Swales. Developer shall construct roadway drainage swales with drywell storm outlet in accordance with adopted policy simultaneously with construction of new roadways or improvements to existing roadways in the Project, including both sides of Meyer Road, the north side of Wyoming Avenue, and other interior roadways planned to be named Daltrey Way, Entwistle Way, Page Lane, Lennon Lane, Bonham Avenue, Plant Lane, Simmons Lane, Frehley Way, Clapton Lane, Zevon Lane, Bowmore Lane, Railway Avenue, Constantine Lane, Perkins Lane,

Moresby Avenue, Banford Lane, Ballentree Lane, Downs Way, Wyman Lane, Perkins Lane, Woolridge Way, Fastnet Boulevard, Kispert Court, Stepp Lane, and Tillie Court. All proposed road names have been approved by Kootenai County. Roadway drainage swales shall be constructed in accordance with the approved construction plans for the Project and functional prior to acceptance by the City.

- 3.3 Landscaping/Street Trees. Developer shall plant grass, plants, and trees within the swales and along all street frontages of Meyer Road, the north side of Wyoming Avenue, and the Moresby Avenue, Stepp Lane, and Woolridge Way frontages of Lot 1, Block 14 (Public Park). Individual lot owners shall be responsible at time of building permit phase to install, maintain or replace grass, plants, and trees when the lots are improved along those streets in accordance with Rathdrum City Code section 11-5-2(B)(1)(d) and other applicable provisions. Builder shall complete the above described for frontages along Railway Avenue.
- 3.4 Irrigation Water Service Lines to Roadway Drainage Swales and Landscape Areas. Developer shall construct water lines with valves and backflow prevention devices for the purpose of providing irrigation service to stormwater drainage swales and common area landscaping on the north side of Wyoming Avenue and both sides of Meyer Road frontages to the Project, and also the Stepp Lane, Woolridge Way and Moresby Avenue frontages of Lot 1, Block 14 (Public Park). Individual lot owners within the Project shall construct irrigation lines with valves and backflow prevention devices for the purpose of providing irrigation service to each stormwater roadway drainage swale and common landscaping areas as located in dedicated right-of-way areas fronting their individual lots within the Project. Builder shall complete the above described for each side of Railway Avenue interior to the plat.
- 3.5 Maintenance of Common Area Landscaping and Roadway Drainage Swales. The Homeowner's Association (HOA) or the owners of all lots within the Project are collectively responsible for the maintenance of that common area landscaping and all costs associated with the maintenance, including the irrigation water fees and replacement of any dead trees, shrubs and grass along Meyer Road, and the north side of Wyoming Avenue frontages to the Project. Furthermore, the owner of each lot within the Project shall irrigate and maintain the landscaping within any stormwater drainage area fronting the lot and in groundwater swales and planting strips in rights-of-way(s) adjacent to the owner's lot. The responsibility for the maintenance of that landscaping and all costs associated with the maintenance, including the water fees and replacement of any dead trees, shrubs and grass shall be the responsibility of the individual lot owners. In the event the lot owner fails to meet their obligations under this provision, the City is authorized to contract to provide the maintenance services and to assess the cost of such maintenance and water fees to the lot owners. This obligation shall be ongoing and constitute a consensual perpetual lien upon

the property within the Project. The City shall maintain all frontage improvements around the public park (Block 14, Lot 1).

- 3.6 Irrigation System Casings. Developer shall install a two (2) inch minimum diameter casing / conduit for each lot under the sidewalks to the planting strips or swales and at all lot corners abutting a right-of way during the construction of all sidewalks and/or walkways as part of the infrastructure to be installed within the Project to support future irrigation system needs. Irrigation system casings shall be presented upon the Landscape Plan component of the approved construction drawings.
- 3.7 Walkways and Stormwater. Developer shall construct planting strips and stormwater drainage swales along both sides of all improved rights-of-way within the Project. A 10-foot width asphalt pathway along the west side of Meyer Road, and the north side of Wyoming Avenue shall be constructed as approved. Streets within the development shall have 5-foot-wide sidewalks on each side as is typical.
- 3.8 Streetlights. Developer shall place streetlights along all improved rights-of-way in the Project as set forth in the approved construction plans.
- 3.9 Streets. All streets in the Project shall be built to City standards. No direct lot access shall be allowed to Meyer Road, Railway Avenue, and/or Wyoming Avenue. Acceleration and deceleration lanes shall be constructed on Meyer Road at the Bonham Avenue intersection, and on Wyoming Avenue at the Fastnet Boulevard. "No Parking" signs shall be installed along both sides of Meyer Road and Railway Avenues.
- 3.10 Construction Access. Access to the Project site shall be limited to improved streets located in existing rights-of-way directly adjacent to the area under development, which improved streets and rights-of-way shall be maintained in a clean and orderly manner kept clear of all construction debris and material.
- 3.11 Public Street Closure. When working within the existing public right-of-way outside of the Project being constructed, the Developer shall keep at least one travel lane open at all times and provide the appropriate traffic control, at no cost to the City, to allow for vehicle travel in a safe manner through the construction area. Street closures will only be allowed with prior approval by the City Engineer and only upon a showing by the Developer that the construction cannot be accomplished without a street closure. Approval for a street closure shall be for a limited duration set by the City Engineer, which shall be strictly adhered to by the Developer.
- 3.12 Phase Sustainability. The public infrastructure and other required amenities must be installed for each phase of the Project, to allow that phase to function without the construction of any subsequent phases of the Project.
- 3.13 Sediment Erosion Control Plan. Developer shall maintain sediment and erosion control measures as set forth in approved sediment and erosion control plan during all phases of construction of the Project.

- 3.14 Fugitive Dust Control. Developer shall take all reasonable precautions to prevent particulate matter (dust) from becoming airborne during all phases of the project as required in IDAPA 58.01.01.651. Complaints and/or the identification of fugitive dust will initiate an investigation by City staff. If, after investigating, it is the determination of the Public Works Director that reasonable precautions are not being taken to control said fugitive dust, a stop work order will be issued, and construction activities will be unable to commence again until necessary actions are taken to control dusts. This applies to roadway construction, vehicle and traffic on unpaved roads, land clearing activities, topsoil management, vegetation management, and any other development activity that may commence during any phase of this Project.
 - 3.15 Dedication of Right-of-Way. Developer shall dedicate to the City the necessary rights-of-way within the Subdivision for public roads and utilities and additional rights of way for Meyer Road and Wyoming Avenue as conditioned and approved by the City Engineer on the Preliminary Plat of said Subdivision
 - 3.16 Dedication of Easements. Developer shall dedicate sufficient easements for the installation, maintenance and operation of municipal and public utilities, street surfacing for public ingress and egress and stormwater treatment and disposal over and across the on-site properties owned by Developer, including but not limited to Lot 36 Block 7, Lot 16 Block 5, and Lot 10 Block 4, (as shown on the face of the preliminary plat) as necessitated by engineering design.
 - 3.17 Water Rights. As set forth in paragraph 2.1 of the Henrickson South 2020 Annexation agreement (recorded 12/18/2020 as Auditor's File No. 179934700): "The Owner agrees to transfer the Owner's substitute water rights which are perfected under IDWR Water Right 95-2112 in lieu of the water right associated with the Described Lands." Water rights have been transferred in accordance with this requirement.
4. Improvement Construction Standards and Procedures.
 - 4.1 Any public utility service contemplated by this Agreement needs to be provided only to areas where the service is allowed by applicable law. All utility service shall conform to the rules, regulations, and tariffs of the State of Idaho to the extent they may apply.
 - 4.2 If the State of Idaho or other agency having authority disallows any utility service to be provided by the City or any utility following execution of this Agreement, requirements of this Agreement relating to the disallowed service shall be deleted from the requirements of the Owner under this Agreement. The disallowance shall not be grounds for any claim, action, or demand against the City.
 - 4.3 Owner shall bear all cost associated with the installation of all public utilities owned and operated by the City or regulated by the Idaho Public

Utilities Commission, including streetlights. These installation costs shall not be passed on to the City unless provided for otherwise within an appendix to this agreement.

- 4.4 Prior to performing any work in the existing public right-of-way, the Owner shall obtain the required encroachment permit and comply with the insurance and surety requirements associated with the permit.
- 4.5 The Owner shall minimize the tracking of materials and dirt along any developed public right-of-way through use of methods approved by the City to assure existing streets are kept free of excessive dirt and other foreign materials.
- 4.6 Owner shall not proceed with construction of the Project, except for movement or stripping of topsoil, until construction plans have been approved by the City Engineer, a construction improvement agreement is signed by the City and a pre-construction conference has been completed between the Owner and the City.
- 4.7 Owner shall be responsible to either pay the sewer and water cap fees and hookup fees or confirm that those fees have been paid by any property owner, which the Owner connects to the City sewer or water system as part of the installation of the public improvement. If individual connections are not made by the Owner, such sewer and water capitalization and hookup fees shall be paid by the individual property owner or developer at the time of building.
- 4.8 The City Engineer is authorized to approve an alternate design for the stormwater management system instead of the preliminary drawings presented at the public hearing, if, in the opinion of the City Engineer, the alternate design meets or exceeds the goals and treatment capacity provided in the design reflected on the preliminary drawings.
- 4.9 The Owner shall not obtain permits for the construction of improvements or commence the construction of improvements until this Agreement has been completed and signed by the Owner and the City, and all applicable fees have been paid as required by City ordinance or resolution.
- 4.10 Building permits may be issued, once a performance bond for the completion of the infrastructure is submitted to and accepted by the City and final plat recorded, or alternatively, once all infrastructure has been installed and approved by the City and final plat recorded. All infrastructure associated with the Project, including those items for which surety has been provided, must be completed and accepted by the City prior to the issuance of any certificate of occupancy for a building constructed within the Project.
 - 4.10.1 The Owner shall be responsible to provide written notice, at or before, the time of closing, to each purchaser of a lot before the subdivision improvements are completed that no certificate of

occupancy will be issued until such time as the subdivision improvements are completed and accepted by the City.

- 4.11 At all times after construction of the subdivision improvements are commenced, and prior to the sale of lots, the Owner shall be responsible to provide weed and dust control for the Project, including but not limited to weed removal, and to keep the construction site free of garbage and debris.

5. Performance Guaranty.

- 5.1 Owner shall guarantee, for the sole benefit of the City that the Owner will perform all of its obligations not yet completed under this Agreement for the Project at the time of final plat approval for the Project. The guaranty shall be in a form approved in Sections 5.1.1, 5.1.2, and 5.1.3. During the term of this Agreement, the Owner may, with the written consent of the City, substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified herein.

5.1.1 Performance Bond. Owner may provide a performance bond from a company qualified by law to act as a surety in the State of Idaho. The bond shall be in a form approved by the City Attorney. The bond shall name the City as the sole beneficiary and the Owner as the principal.

5.1.2 Escrow. Owner may deposit funds in an escrow account with a bank or financial institution qualified by law to do business in the State of Idaho. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City Attorney.

5.1.3 Letter of Credit. The Owner may cause a bank or financial institution qualified by law to do business in the State of Idaho to issue an irrevocable letter of credit in a form approved by the City.

- 5.2 Amount of Guaranty. The guaranty shall be in an amount equal to 150% (one hundred fifty percent) of the estimated cost of all improvements not yet constructed or completed per City Code, not including those to be constructed by private utilities. The estimated cost shall be determined as follows. The Owner shall submit for the City Engineer's approval a cost estimate for each improvement required by this Agreement. Before submitting the cost estimates, the Owner's engineer shall have prepared, documented and certified each cost estimate. The estimated cost of all improvements shall be the sum of the estimated cost as approved by the City Engineer.

- 5.3 As soon as the earliest of the following occurs, the City shall release any performance guaranty which has not been used or encumbered:

5.3.1 The final acceptance of all improvements and the posting of warranty guaranty as provided in Section 5.4. Or,

5.3.2 The expiration of the warranty period as provided in Section 5.4.

5.4 Owner's Warranty.

- 5.4.1 Owner shall warrant the design, construction materials and workmanship of the improvements against any failure or defect in design, construction, material, or workmanship which is discovered for one (1) year, except for street improvements, which shall be warranted for two (2) years. This warranty shall cover all direct or indirect costs of repair or replacement, and damage to the property, improvements or facilities of the City or any other person, caused by such failure or defect or during repairs thereof, and any increase in cost to the City of operating and maintaining a City improvement resulting from such failures, defects, or damages.
- 5.4.2 The Owner's warranty shall not extend to any failure or defect caused solely by changes in design, construction or materials required by the City.
- 5.4.3 Except as provided in Subsection 5.4.2, the fact that the City takes any action, or omits to take any action authorized in this Agreement including, but not limited to, operation or routine maintenance of the improvements prior to acceptance or surveillance, inspections, review or approval of plans, tests or reports shall in no way limit the scope of the Owner's warranty.
- 5.4.4 To secure the Owner's performance of the warranty under subsection 5.4.1, the performance guaranty provided by the Owner under Section 5.1 shall remain in effect until the end of the warranty period, or the Owner shall provide a warranty guaranty by one or more of the methods described in Sections 5.1.1 through 5.1.3.

5.5 City's Remedies Under Warranty.

- 5.5.1 The City shall notify the Owner in writing upon its discovery of any failure or defect covered by the warranty in Section 5.4.1. The City shall notify the Owner before conducting any test or inspections to determine the cause of failure or defect to the extent the circumstances will allow and shall notify the Owner of the results of all such tests and inspection.
- 5.5.2 Owner shall correct or make a diligent effort to correct any failure or defect covered by the warranty within thirty (30) days of receiving notice of the failure or defect from the City. Owner shall correct the failure or defect at its own expense and to the reasonable satisfaction of the City.
- 5.5.3 If the Owner fails to correct the failure or defects within the time allowed by Section 5.5.2, the City may correct the failure or defect at Owner's expense. If the Owner fails to pay the City for the corrective work within thirty (30) days of the City sending the bill, the City may pursue any remedy provided by law or this Agreement to recover the cost of the corrective work, including calling upon the

Owner's security. The City's attorney's fees in pursuit of such remedy shall be an allowed cost.

5.5.4 In case of an emergency affecting public health and safety, the City may make immediate required repairs and shall notify the Owner and warranty bond surety as quickly as possible.

6. Consistency with Comprehensive Plan.

6.1 The parties agree that the terms of this Agreement are compatible with the City's Comprehensive Plan, and its implementation is in the best interests of the City and the health, safety and welfare of its residents.

7. Notices.

7.1 Formal written notices or demands by the parties pursuant to this Agreement shall be sufficiently given if dispatched by a recognized overnight courier such as Federal Express or UPS, or by certified mail, postage prepaid, return receipt requested, to the offices of the City and Owner indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time-to-time designate by mail as provided in this section. Notices may also be delivered by personal delivery to an officer of the Owner or the Public Works Director of the City.

DEVELOPER / OWNER

Bluegrass Development, LLC
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814

Henrickson Family Holdings, LLC
575 Canterbury Lane
Moses Lake, WA 98837

CITY

Mayor, City of Rathdrum
8047 W. Main Street
Rathdrum, Idaho 83858

8. Default, Remedies, Termination, and Review.

8.1 General Provisions. Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, failure by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. In the event of default under this Agreement or any of its terms or conditions, the party alleging such default or breach shall give the alleged breaching party not less than thirty (30) days' notice in writing, measured from the date of delivery to a recognized overnight courier such as Federal Express or UPS, or certified mailing, specifying the nature of the alleged default and, when appropriate, the manner by which said default may be satisfactorily cured. During any such thirty-day period of curing, the party charged shall not be considered in default for purposes of termination or institution of legal proceeding, unless the act of default is conclusive and incapable of cure. The parties agree to meet face-to-face in the event of any

such notice of default. After proper notice, meeting and expiration of said thirty (30) day cure period without cure, or if such cure cannot be accomplished within such thirty (30) day period, or if the cure has not been commenced within such period and diligent effort has not been made to effect cure thereafter, the party to this Agreement alleging the default, at its option, may institute legal proceedings to enforce this Agreement by specific performance or give notice of termination of this Agreement. Failure or delay in giving notice of default pursuant to the Notice provision of this Agreement shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. City is allowed to withhold approval of subsequent phases of the Project or issuance of building or construction permits when a material condition of default exists.

- 8.2 Applicable Law / Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the action shall be brought in Kootenai County, Idaho and the prevailing party shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be found by the Court.

9. Subsequent Laws As Superseding Terms.

- 9.1 Supersedure by Subsequent Laws. If any agency other than City imposes any law or regulation ("Law") after the date of this Agreement, which prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. In addition, Owner shall have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

10. Mortgagee Protection; Certain Rights of Cure.

- 10.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Project or any portion thereof after the date of recording this Agreement, including the lien of any deed of trust or mortgage

("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Project, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

- 10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, unless the City releases its interest in performance by action of the City Council.
- 10.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City is authorized to deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has committed an event of default. If City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Owner. Each Mortgagee shall have the rights during the same period available to Owner to cure or remedy the event of default claimed or the areas of noncompliance set forth in the City's notice. Owner is obliged hereby to notify the City of any Mortgagee with an interest in the Project.

11. Transfers and Assignments.

- 11.1 Right to Assign. Owner shall have the right to sell, assign or transfer, any and all of its rights, duties and obligations under this Agreement, to any entity during the Term of this Agreement; provided, however, in no event shall the rights, duties and obligations conferred upon Owner pursuant to this Agreement be at any time so transferred or assigned except through a transfer of Owner's interest in the Property, or portion thereof transferred. This right to assign or transfer shall not compromise the rights of the City to require surety to assure completion of Owner's obligations established hereby or by law. Any purchaser or assignor shall remain obligated to all duties and rights accorded hereby to Owner. Nothing in this Section 11 shall prevent transfer of some or all of the ownership interest in Owner.
- 11.2 Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights, responsibilities and interests under this Agreement consistent with Section 11.1 above, Owner shall be released from its obligations under this Agreement with respect to its interest in the Project or portion thereof, so

transferred arising subsequent to the effective date of such transfer if (1) Owner is not then in default under this Agreement; (2) Owner has provided to City notice of such transfer, (3) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth; and (b) the transferee expressly and unconditionally, upon provision of sufficient surety or other assurance of performance, assumes all of the obligations of the Owner under this Agreement with respect to the Project, or portion thereof transferred; and (4) City approves the transferee, which approval City will not unreasonably withhold if such transferee is financially capable of performing the obligations of transferor pursuant to this Agreement or if surety is provided to guarantee performance. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 12 below, nor shall such failure negate, modify, or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

12. Covenants Run With The Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants, duties and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Project real property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and do hereby constitute covenants running with the land pursuant to applicable laws.

13. General Provisions.

13.1 No Joint Venture or Partnership. City and Owner agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Owner a joint venture or partners. It is specifically understood and agreed by the parties that the Project contemplated by this Agreement is a private development; that the City has no interest in or responsibility for or duty to third persons concerning any of Owner's obligations regarding said improvements; that Owner shall have full power over and exclusive control of the Project herein described subject only to the limitations and obligations of the Owner under this Agreement and applicable provisions of law. The only relationship between City and Owner is that of a governmental entity regulating the development of private property pursuant to the laws of the City and the State of Idaho.

13.2 Severability. City and Owner agree that if any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and

shall remain in full force and effect unless amended or modified by mutual consent of the parties.

- 13.3. Entire Agreement. This Agreement is the entire Agreement and may only be modified in writing signed by both parties.
- 13.4. Minor Changes to Agreement. Minor changes in the manner of implementation of the approval memorialized hereby can be made by mutual agreement of the Owner and the City's administrative staff.
- 13.5. Completion of Performance. Upon completion of performance by the parties or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of the City and Owner shall be recorded in the Official Records of Kootenai County, Idaho. Any such release shall not signal completion or release of any provision which confers a public benefit, and which is intended to run with the land unless expressly approved by the governing board of the City.
- 13.6. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions by those not party to this Agreement) or by other causes beyond such party's control (inability to obtain funding on the part of the Owner shall not constitute a cause beyond the Owner's control). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than three (3) years.
- 13.7. Estoppel Certificate. Owner may, at any time, and from time to time, deliver written notice to the City requesting such party to certify in writing that, to the knowledge of the certifying party (1) this Agreement is in full force and effect and a binding obligation of the parties; (2) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (3) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of such defaults. A party receiving a request hereunder shall execute and return such certificate or give a written detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. City's Mayor shall have the right to execute any certificate requested by Owner hereunder. City

acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

13.8 Duty To Record. This Agreement or a Memorandum referencing the existence of this Agreement shall be recorded by City.

Executed this 28 day of October, 2021.

CITY OF RATHDRUM

Vic Holmes
Vic Holmes, Mayor

OWNER,

[Signature]
By:

By:

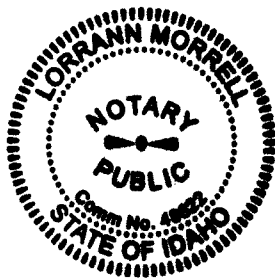
ATTEST:

[Signature]
Sherri Halligan, City Clerk

STATE OF IDAHO)
):ss
County of Kootenai)

On this 28 day of October, 2021, before me, a Notary for the state of Idaho, personally appeared Vic Holmes and Sherri Halligan known, or identified to me, to be the Mayor and City Clerk of the City of Rathdrum, Kootenai County, Idaho, executing the herein instrument, and acknowledged to me that such city of Rathdrum executed the same.

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

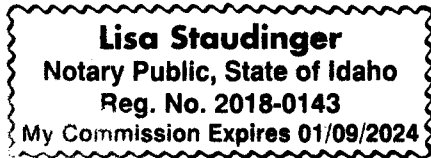


Lorran Morrell
Notary Public for the State of Idaho
Residing at: Rathdrum
Commission Expires: 11/1/24

STATE OF IDAHO)
):ss
County of Kootenai)

On this 2 day of November, 2021, before me, a Notary for the state of Idaho, personally appeared Thomas Andrel known, or identified to me, to be the manager or member of the limited liability company that executed this instrument or the person who executed the instrument on behalf of said corporation, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the foregoing instrument, and acknowledged to me that such corporation / company executed the same.

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



Lisa Staudinger
Notary Public for the State of Idaho
Residing at: Kootenai
Commission Expires: 1/9/24

STATE OF _____)
):ss
County of _____)

On this ___ day of _____, 2021, before me, a Notary for the state of Idaho, personally appeared _____ known, or identified to me, to be the manager or member of the limited liability company that executed this instrument or the person who executed the instrument on behalf of said corporation, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the foregoing instrument, and acknowledged to me that such corporation / company executed the same.

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

Notary Public for the State of _____
Residing at:
Commission Expires:

EXHIBIT A
BROOKSHIRE SUBDIVISION
BOUNDARY DESCRIPTION

A PARCEL OF LAND BEING THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 7 AND THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 51 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 8, BEING A 5/8 INCH REBAR WITH YELLOW PLASTIC CAP MARKED "PLS 9367" PER CP&F FILED AS INSTRUMENT NUMBER 2066670000, RECORDS OF KOOTENAI COUNTY, IDAHO, FROM WHICH THE SOUTHWEST CORNER BEARS SOUTH 01°29'54" WEST 2619.12 FEET;

THENCE ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, SOUTH 88°43'22" EAST 2644.26 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 8, BEING 2 INCH ALUMINUM CAP MARKED "PLS 4182" PER CP&F FILED AS INSTRUMENT NUMBER 2757976000, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, SOUTH 01°23'34" WEST 2618.28 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 8, BEING A 5/8 INCH REBAR PER CP&F FILED AS INSTRUMENT NUMBER 821131, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, NORTH 88°44'26" WEST 2649.09 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 7, BEING A 3-1/4 INCH ALUMINUM CAP MARKED "PLS 10699" PER CP&F FILED AS INSTRUMENT NUMBER 1912849, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE SOUTH LINE OF THE EAST HALF OF SAID SOUTHEAST QUARTER, NORTH 89°17'32" WEST 1305.29 FEET TO THE EAST 1/16TH CORNER OF SAID SECTION 7;

THENCE ALONG THE WEST LINE OF SAID EAST HALF OF THE SOUTHEAST QUARTER, NORTH 01°15'01" EAST 2629.28 FEET TO THE CENTER-EAST 1/16TH CORNER OF SAID SECTION 7;

THENCE ALONG THE NORTH LINE OF SAID EAST HALF OF THE SOUTHEAST QUARTER, SOUTH 88°50'39" EAST 1316.58 FEET TO THE POINT OF BEGINNING;
CONTAINING 238.08 ACRES OF LAND, MORE OR LESS.

**EXHIBIT B
BROOKSHIRE SUBDIVISION
PRELIMINARY PLAT**

| NO. | DESCRIPTION | DATE |
|-----|-------------|------|
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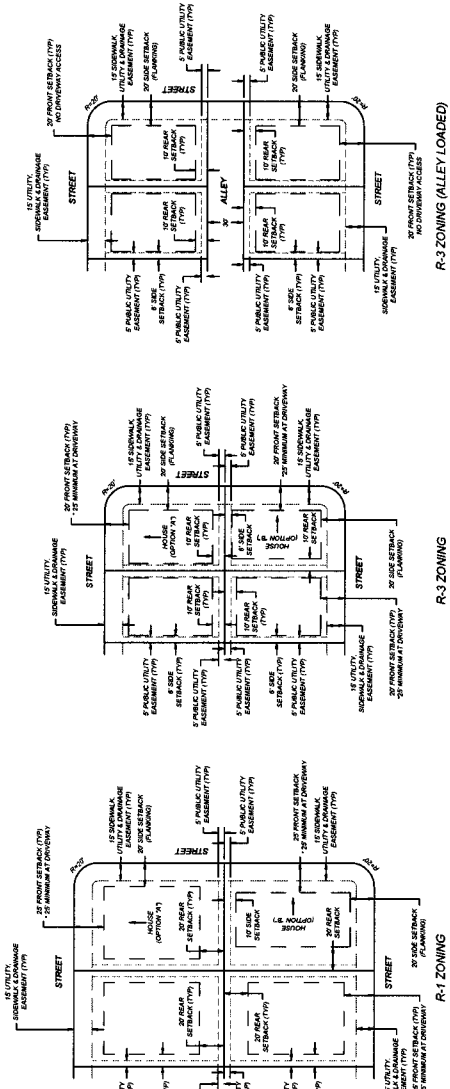
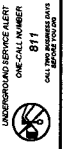
REVISION BLOCK



PRELIMINARY
NOT FOR CONSTRUCTION

BROOKSHIRE SOUTH AND HOLLICE WOODS
RATHRUM, IDAHO
DETAILS

DESIGNED BY:
DRAWN BY:
CHECKED BY:
DATE:
SCALE: AS SHOWN
SHEET NO.: 4
OF 5



NOTE: SETBACKS ARE DETERMINED FROM RATHRUM CITY CODE AND SHOWN FOR INFORMATION ONLY.
TYPICAL BUILDING SETBACKS

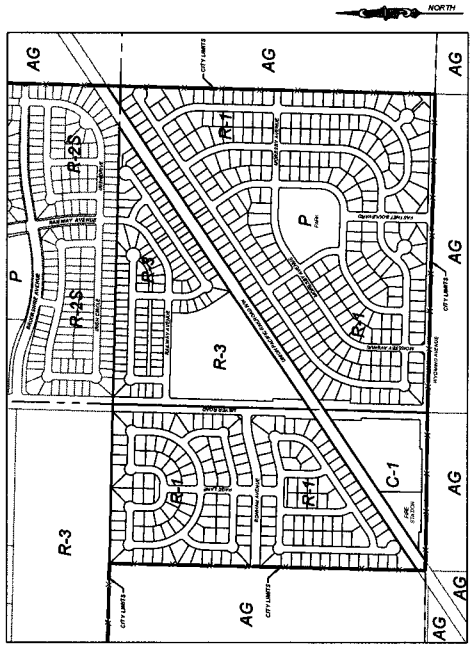
BROOKSHIRE SOUTH

| LOT | BLOCK | AVERAGE WIDTH | AVERAGE DEPTH | RATIO |
|-----|-------|---------------|---------------|-------|
| 25 | 1 | 86.1 | 186.3 | 1.22 |
| 26 | 1 | 90.4 | 175.2 | 1.19 |
| 4 | 4 | 68.3 | 124.8 | 1.19 |
| 5 | 4 | 65.0 | 160.9 | 1.25 |
| 27 | 5 | 66.8 | 116.3 | 1.17 |
| 28 | 5 | 51.8 | 126.4 | 1.25 |

HOLLICE WOODS

| LOT | BLOCK | AVERAGE WIDTH | AVERAGE DEPTH | RATIO |
|-----|-------|---------------|---------------|-------|
| 6 | 1 | 92.2 | 117.4 | 1.13 |
| 8 | 1 | 101.8 | 117.4 | 1.12 |
| 12 | 1 | 91.0 | 159.9 | 1.18 |
| 13 | 1 | 108.4 | 152.1 | 1.12 |
| 18 | 1 | 105.2 | 122.8 | 1.12 |
| 19 | 1 | 105.2 | 122.8 | 1.12 |
| 23 | 1 | 131.2 | 124.8 | 1.12 |
| 24 | 1 | 118.5 | 124.0 | 1.11 |
| 30 | 1 | 118.3 | 123.1 | 1.11 |
| 31 | 1 | 131.9 | 128.1 | 1.10 |
| 33 | 1 | 132.9 | 126.3 | 1.10 |
| 38 | 1 | 123.9 | 129.3 | 1.10 |
| 41 | 1 | 123.3 | 144.8 | 1.12 |
| 42 | 1 | 82.7 | 164.8 | 1.20 |
| 46 | 1 | 113.5 | 128.8 | 1.12 |
| 48 | 1 | 118.2 | 120.7 | 1.10 |
| 7 | 6 | 114.4 | 120.8 | 1.11 |
| 20 | 6 | 108.9 | 121.2 | 1.10 |
| 14 | 7 | 100.3 | 163.8 | 1.18 |
| 15 | 7 | 129.8 | 151.3 | 1.12 |
| 30 | 7 | 128.7 | 138.1 | 1.11 |

LOT WIDTH TO DEPTH RATIO TABLES



ZONING MAP
SCALE: 1" = 80'

