

**FIRST AMENDMENT to
DEVELOPMENT AGREEMENT
Hidden Hollow Planned Unit Development**

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (the “Amendment”) dated this ____ day of _____, 2018, by and between HANSEN & HANSEN, LLP, an Idaho limited liability partnership, hereinafter referred to as “Developer,” and the TOWN OF JACKSON, a municipal corporation of the State of Wyoming, hereinafter referred to as the “Town,” provides as follows:

WHEREAS, on December 1, 2016, the Town approved Sketch Plan P16-079, including the amendments thereto dated October 11, 2016 and November 30, 2016 (the “Sketch Plan”), for the Hidden Hollow Planned Unit Development (the “HHPUD”); and,

WHEREAS, the Developer and the Town executed that certain Development Agreement recorded in the Office of the Teton County Clerk on July 6, 2017 as document 0931258 (collectively, the “DA”), which burdens all of that certain real property specifically described on the Final Plat for Hidden Hollow First Addition to the Town of Jackson recorded on June 26, 2018 as document 0953516 in the Office of the Teton County Clerk as Plat No. 1389 (the “Property”); and

WHEREAS, on May 7, 2018 the Town Council approved funding in the amount of \$225,000 for the design and construction of the Cache Creek Tube, specifically the 600 LF within the East Mercill Section, and Town Staff has obtained additional funds from the Town of Jackson budget to supplement all of the CCT costs to be incurred along with required bonds which the parties at this time understand should not exceed _____ (125% of the estimated cost); and

WHEREAS, the Developer has agreed to amend the DA to include work as defined below and the Town has agreed to pay for all CCT work performed by the Developer and its agents in accordance with the terms and conditions of the DA; and

WHEREAS, the Developer has agreed to delay the completion of East Mercill Avenue to accommodate the Town’s construction of the CCT, as long as East Mercill can be completed in the 2018 construction season and without additional costs to Developer; and

WHEREAS, the Developer has obtained an estimate in the amount of \$122,540.00 (one hundred twenty-two thousand five hundred forty dollars and no/100), detailed on Exhibit A, for installation of the CCT and the parties hereto understand that there are excluded items specifically noted on the estimate and costs for excluded items and any additional or unforeseen items of the CCT will be billed separately to the Town by Developer, and its agents, on a time and materials basis; and

WHEREAS, Section 16 of the DA states that all modifications of the terms of the DA shall be invalid unless such modifications are in writing and executed with the same formality as the DA; and

WHEREAS, pursuant to the requirement of Section 16 of the DA the Developer and the Town desire to modify the DA in writing pursuant to the terms and conditions set forth herein and obtained the approval of the Town Council for such modification on September 17, 2018.

NOW, THEREFORE, IT IS HEREBY AGREED that for and in consideration of the aforesaid premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by each of the said parties to the other, Developer on its own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

1. Section 7, Reimbursement for Oversized and Off-Site Improvements is hereby amended to add the following sections:
 - B. The Developer and the Town shall partner to construct approximately 600 linear feet of the Cache Creek Tube (the "CCT") generally consisting of 48-inch diameter stormwater pipe, with 42-inch and 12-inch laterals, structures, and appurtenances as designed and specified in Fall 2018 CD plans prepared by Jorgensen Associates dated 09-05-2018 and shown on Exhibit B.
 - a. The Town shall purchase and have delivered to the project site the pipe, fittings, and structures.
 - b. The Developer shall contract with a contractor of their choosing, on a unit price plus time and materials basis including a fee for performance and payment bonds to construct the CCT. The Developer shall also purchase a warranty bond as required below.
 - c. The Developer shall provide their contractor's current estimate, and list of equipment, labor, and material rates to be used for the construction, Exhibit C.
 - d. The Town shall provide all survey, construction observation, and testing under a separate contract with a professional engineering and surveying consultant.
 - e. The proposed schedule for work by the Developer's contractor is to begin construction on September 24, 2018 and completed by October 10, 2018 allowing the contractor to have East Mercill ready for Curb and Gutter October 10, 2018 and paving October 17, 2018.
 - f. For the CCT work, the Town of Jackson will require a 1 year warranty and associated bond from Developer upon conveyance of the CCT infrastructure to the Town of Jackson by Bill of Sale. .

Written requests for payment shall be submitted to the Town Engineer by the Developer, and the Town Council, acting on the advice and recommendation of the Town Engineer, authorizes the payments. Applications for payment submitted by the Wednesday following the Town Council meeting will be paid the next month's first meeting with Town Engineer approval.

C. It is agreed that any additional general condition, material and labor expenses incurred by the Developer resulting from actions by the Town of Jackson that cause East Mercill to not be completed by the end of the 2018 construction season and at no fault of Developer will be reimbursed by the Town of Jackson not to exceed \$ _____. Further, it is agreed that the issuance of a Certificate of Occupancy for Building 4/5 that is currently under construction will not be withheld as a result of actions by the Town of Jackson that cause East Mercill not to be completed in the 2018 construction season provided that an all-weather access road has been installed by Developer.

[Signature Page Follows]

DRAFT

**TOWN OF JACKSON,
a municipal corporation
of the State of Wyoming**

APPROVED AS TO FORM:

_____, Mayor

Town Attorney

CONTENTS:

_____, Town Clerk

Town Engineer

Planning Director

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by

_____ as Mayor of the Town of Jackson this ___day of
_____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by _____ as Town Clerk of the Town of Jackson this ___day of _____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by Audrey Cohen-Davis as Town Attorney of the Town of Jackson this ___day of _____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by _____ as Town Engineer of the Town of Jackson this day of _____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

STATE OF WYOMING)
)ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged before me by Tyler Sinclair as Planning Director of the Town of Jackson this _day of _____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

Hansen & Hansen, LLP

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____, as the _____ of Hansen & Hansen, LLP, as its _____, this ____ day of _____, 2018.

Witness my hand and official seal.

Notary Public

My commission Expires:

DRAFT