

Recording Requested By and When Recorded Return to:

Planning & Zoning Administrator City of Eagle
P.O. Box 1520 Eagle, Idaho 83616

For Recording Purposes Do Not Write Above This Line

DEVELOPMENT AGREEMENT (AVIMOR)

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into by and between City of Eagle, a municipal corporation organized and existing under the State of Idaho, by and through its Mayor (“**City**”); Avimor Development, LLC, an Idaho limited liability company (“**Master Developer**”); and Spring Valley Livestock Company, Inc., an Idaho corporation, and First American Title Insurance Company, a Nebraska corporation, as Trustee of the Dual Beneficiary Trust No 8562 which Trust was created pursuant to the Subdivision Trust Agreement dated October 8, 2002 and erroneously shown of record as October 8, 2003 as amended (collectively, the “**Owner**”) this day _____ of _____, 2022 (the “**Agreement Date**”).

RECITALS

- A. Master Developer, Owner, and City desire to enter into this Agreement, to be recorded in the real property records of Ada County, Idaho; Gem County, Idaho; and Boise County, Idaho, pursuant to the provisions of: Idaho Code, Sections 50-222; 50-301; 67-6508; 67-6511; and 67-6511A; and Eagle City Code, Title 8, in order to facilitate the annexation, zoning designation, adoption of Annexation and Rezoning Ordinances, and development of the Property. Capitalized terms used in this Agreement are defined in Section 8.
- B. Owner owns the Property and Master Developer has the exclusive right to develop the Property.
- C. Within the Village 1 Area, Ada County has approved as a master planned community development. All of the Village 1 Area has received preliminary plat approval pursuant to the Ada County master planned community development approval. Master Developer and City desire to continue the same quality and style evident in the Village 1 Area throughout the Project. The Village 1 Area will continue to develop generally in accordance with the existing Ada County approvals, including the terms of the Village 1 Area Development Agreement, as applicable.
- D. It is the intent of the Parties that the Village 1 Area will be annexed by City and subject to the procedures and standards of Title 11B. The Village 1 Area is not subject to this Agreement.
- E. A portion of the Property is in the Boise County Planned Community, which Boise County has approved as a master planned community. Master Developer and City agree the area within the Boise County Preliminary Plats will proceed to be developed in accordance with the Boise

County Preliminary Plats and all other areas within the Boise County Planned Community will be developed in accordance with this Agreement and Title 11B.

F. A portion of the Property is currently part of the CID, which was duly organized and is validly existing pursuant to the CID Act. Following annexation of the Property, the boundaries of the CID will be located entirely within City, making City the CID's governing body and members of City Council the CID's district board.

G. Master Developer and City are entering into this Agreement for the purpose of providing assurances to City that the Property will be developed in substantial conformance with this Agreement and Title 11B and for the purpose of providing assurances to Owner and Master Developer that Master Developer may proceed with the Project in substantial conformance with this Agreement and Title 11B. City and Master Developer shall act in good faith when undertaking their respective obligations and covenants contained herein.

H. This Agreement shall promote and encourage the development of the Property by providing Owner, Master Developer, and Master Developer's creditors with general assurances of Master Developer's ability to timely and economically complete development of the Project.

I. Development of the Property, which, except for the Village 1 Area and Boise County Preliminary Plats is largely vacant land, requires the construction of Public Infrastructure, which Public Infrastructure may provide regional as well as local benefits.

J. The Mixed Use–Development Agreement (MU-DA) zoning designation of the Property is the appropriate zoning designation and, subject to this Agreement and Title 11B, is designed to establish proper and beneficial land use designations and regulations, densities, provisions for Public Infrastructure, design regulations, procedures for administration and implementation and other matters related to development of the Property.

K. All duly noticed and necessary meetings and public hearings have been held and City has received public comment and has otherwise duly considered all such matters in connection with this Agreement and the annexation and zoning of the Property.

L. The terms and conditions of this Agreement have undergone extensive review by City and have been found to be fair, just, and reasonable, and City concludes that the public health, safety, and welfare of City's citizens shall be best served by entering into this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the above Recitals, which are incorporated herein, and in consideration of the promises and the mutual representations, covenants and agreements herein contained, City, Master Developer, and Owner represent, covenant and agree as follows:

1. DEVELOPMENT OF THE PROPERTY.

1.1. **Conditions of Development.** Master Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement. Master Developer shall submit such development and entitlement applications for development of the Property in accordance with and as required by Title 11B.

1.2. **Planned Development.** Master Developer shall designate Land Use Districts and Sub-Use Districts on the Property and implement the types of uses, densities, and design standards for such Land Use Districts and Sub-Use Districts pursuant to Title 11B and this Agreement. City shall grant and approve all permits and approvals necessary and convenient for Master Developer to exercise the Development Rights and carry out Master Developer's rights under this Agreement and build out the Project, subject to City's review and approval of all development applications pursuant to Title 11B. Development of the Property may include, without limitation, the planning, design, engineering, construction, acquisition, installation, and provision of improvements of any sort or nature, including private infrastructure and Public Infrastructure related to development of the Property, whether located within or outside the Property. City, having exercised City's discretion in approving this Agreement, shall cooperate reasonably in processing the approval or issuance of such permits, plans, specifications, plats and other development approvals as may be requested by Master Developer administratively in order to implement the Project.

1.3. **Project Density.** The overall maximum density for the Project is the Project Density—0.5 residential units per gross acre. Residential units permitted under a Density Bonus achieved pursuant to the terms and conditions of Title 11B shall not be included in the overall Project Density calculations. This Agreement authorizes Non-Residential Uses in conformity with Title 11B and the Master Land Use Plan and development of the Property up to the full Project Density.

1.4. **Preliminary Plat Details.** The Project is a multi-phase development that will develop in separate phases over time. When Master Developer is prepared to develop a portion of the Property, Master Developer shall prepare and file a preliminary plat application in accordance with Title 11B. With each preliminary plat application, for the land being platted, Master Developer shall specify: (i) the Land Use District and Sub-Use District designations; (ii) the types and locations of uses; and (iii) the density of such uses. Where a preliminary plat application and the development proposed thereunder are in general conformity with this Agreement, the Master Land Use Map, and Title 11B, City shall approve such preliminary plat application.

1.5. **Allocation of Residential Density.** Master Developer shall have the right to allocate residential density to any portion of the Property, provided such allocation: (i) does not exceed the overall Project Density for the Project as a whole; (ii) does not allow a use otherwise prohibited; and (iii) does not cause a material change to this Agreement without prior amendment to this Agreement and compliance with the applicable notice and hearing requirements. With each preliminary plat application, Master Developer shall provide City with a statement of the number of residential units approved to date, less the number

approved through a Density Bonus under Title 11B, and the number requested in such preliminary plat application.

1.6. **Non-Residential Use.** Master Developer shall have the right to designate and develop Non-Residential Uses on the Property in accordance with Title 11B.

1.7. **Mitigation.** Through the application of City-approved Grading Guidelines and Hillside Development Standards, as well as any FEMA-approved map amendment, if applicable, Master Developer may convert Constrained Lands to Unconstrained Lands for development.

1.8. **Existing Development Approvals.**

1.8.1. Final plat applications within the Village 1 Area shall be approved by City in accordance with the City of Eagle Ordinance No. [insert], which incorporates the Village 1 Area preliminary plat previously approved by Ada County and the Village 1 Area Development Agreement to maintain continuity of development.

1.8.2. Final plat applications within the area covered by the Boise County Preliminary Plats shall be approved by City so long as such final plats are in substantial conformance with the applicable Boise County Preliminary Plat previously approved by Boise County.

1.8.3. All legal Nonconforming Uses and nonconforming properties shall be permitted to continue to be used as they are at the time of annexation of the Property along with reasonable and customary repair, replacement, and expansion in accordance with Title 11B. The Parties expressly recognize the following uses are legal Nonconforming Uses on the Property as of the Agreement Date: (i) two communications towers; (ii) that certain shooting range, commonly known as the Crowfoot Shooting Range, approved as a conditional use by Boise County pursuant to CUP-2021-007; and (iii) that certain medical office and clinic operated at on the Property at 5337 Highway 55, Horseshoe Bend, Idaho 83629.

1.9. **Additional Property.** At Master Developer's request, Additional Property may be added to the Property with the consent of the owner of the Additional Property and made subject to this Agreement. Additional Property does not need to be contiguous to the Property but must be located in City's comprehensive planning area and be within or contiguous to City limits. If Additional Property requested to be added to the Property is not already within City limits then Master Developer must request that City annex such Additional Property. Upon such annexation request, the Parties will commence annexation proceedings for such Additional Property and the Additional Property will be added to the Property upon annexation. Master Developer shall apply to City for any necessary land use zoning approvals for the Additional Property consistent with this Agreement, including any necessary amendment to this Agreement, which may include, without limitation alternative plans and land use designations.

2. **INFRASTRUCTURE AND SERVICES.** Master Developer shall provide its proportionate share of the Public Infrastructure required by the Project. The specific Public Infrastructure

Master Developer will be required to provide will be determined during the preliminary plat approval process, for the portion of the Property being platted, in coordination with City and other agencies and entities that provide or have jurisdiction over Public Infrastructure. Master Developer may enter into separate agreements with other agencies and entities for the provision of Public Infrastructure. Notwithstanding the forgoing, the Parties agree to the Public Infrastructure terms set forth in this Section 2.

2.1. **Traffic & Circulation.**

- 2.1.1. **Roadway System.** Master Developer, in consultation with the applicable Transportation Entity, will design, engineer, construct, acquire, install, and permit the roads and roadway improvements required by the Project, in phases, in general conformance with the applicable preliminary plat design and approval conditions. City shall cooperate with Master Developer in pursuit of funding and reimbursement opportunities for roadways.
- 2.1.2. **Public Roads and Rights of Way.** Public roadways within the Project will be approved and governed by the applicable Transportation Entity. All public roads and/or rights-of-way within the Property will be constructed to the standards of, and dedicated by Master Developer to, the applicable Transportation Entity. City will not require Master Developer to connect or continue outside roadways through the Property.
- 2.1.3. **Private Streets and Rights of Way.** Any private streets within the Project will be constructed by Master Developer in accordance with Title 11B and such private streets will be maintained by Master Developer or an Owners' Association. Private streets may be conveyed to one or more Owners' Associations at Master Developer's election. Master Developer shall grant access licenses over private streets to service providers (e.g. police, fire, EMS, waste collection) and utility easements for installation, maintenance and repair of public utilities (e.g. water and sewer). Subject to this Section 2.1.3, Master Developer may limit access to private streets through access control structures. To the extent allowed by law, Master Developer will have the right to name private streets.

2.2. **Water.**

- 2.2.1. **Water Service.** Within the Suez Service Area, Suez will provide water service to the Project unless Master Developer and City (or an alternate service provider) enter into a subsequent agreement for water services in all or some portion of the Suez Service Area. Within the Suez Service Area, no service provider will be required to convey or dedicate any portion of its water rights or Water System to City. For areas of the Property outside of the Suez Service Area, City shall provide water service to the Project pursuant to the Water Service Agreement. Water service to the Project will generally comply with Eagle City Code Title 6, Chapter 5 subject to the terms of this Agreement, Title 11B, and the Water Service Agreement.

2.2.2. **Water Infrastructure Construction, Dedication, and Reimbursement.** Master Developer shall comply with the terms and conditions of the Water Service Agreement for the construction and dedication of the Project's Water System. Master Developer's obligation to construct Water System improvements shall be carried out in phases as the Project progresses and such Water System improvements are necessary. Following dedication of any Water System facilities pursuant to this Agreement or the Water Service Agreement, City shall own and maintain the dedicated Water System facilities. Master Developer may seek reimbursement for eligible Water System costs pursuant to the Water Service Agreement.

2.2.3. **Assured Water Capacity.** Master Developer's water rights dedicated or assigned to City pursuant to this Agreement or the Water Service Agreement shall be used by City first to provide water service to the Project in accordance with the Water Service Agreement.

2.2.4. **Irrigation and Related Uses.** The method of providing water for non-potable uses shall be at the discretion, and under the control, of Master Developer so long as an adequate system and source of supply is provided. Any irrigation system shall meet the requirements of Title 11B and IDEQ.

2.2.5. **Water Conservation.** Notwithstanding anything to the contrary herein, to the extent that Master Developer undertakes measures that result in the conservation of water resources on the Property or development of alternative water resources, including, but not limited to, development of and adherence to a water budget for the Property, retention and reuse of effluent from wastewater treatment for the Property, or aquifer recharge, then Master Developer will be entitled to retain the benefits of such conservation measures including any credits, rights or permits arising from such conservation measures.

2.3. **Wastewater Treatment and Disposal.**

2.3.1. **Wastewater Facilities.** AWRC has constructed and will continue to construct Wastewater System improvements to serve the Project. Master Developer shall cause AWRC's construction, operation and maintenance of the Project's Wastewater System to be in compliance with Title 11B and the requirements of IDEQ and the Central District Health Department or the Southwest District Health Department to the extent such entities have jurisdiction. AWRC, or its assigns, will own and maintain all Wastewater System improvements constructed as part of the Project.

2.3.2. **Master Wastewater Study.** Major Wastewater System improvements shall be constructed in accordance with the Master Wastewater Study.

2.3.3. **Assured Wastewater Capacity.** Concurrently with the submittal of a preliminary plat application, Master Developer shall submit an engineering report evidencing the adequacy of the Wastewater System to serve the area and uses within such

preliminary plat area. A letter of approval shall be provided to City from the AWRC prior to issuance of any certificate of occupancy as required by law.

2.3.4. **Re-use Water.** Master Developer shall retain for irrigation, irrigation and aesthetic storage, recreational or aquifer recharge purposes all rights, title and interest in any Re-use Water. City disclaims any rights, title and interest in the Re-use Water and acknowledges that Master Developer may use Re-use Water for irrigation of Open Space, aquifer recharge, and any other lawful use, which uses will be subject to applicable governmental and agency approval.

2.4. **Storm Water Drainage.**

2.4.1. **Transportation Entity.** Post-development storm water management includes drainage collection, diversion, detention, retention, dispersal, use and discharge, which shall be provided by the applicable Transportation Entity or some other public or private provider allowed to operate in City and having jurisdiction over the Drainage System.

2.4.2. **Assured Drainage.** In connection with each preliminary plat application, Master Developer shall submit evidence that the Drainage System is or shall be adequate to satisfy all proposed uses in connection with the development of such preliminary plat area.

2.5. **Parks, Trails and Open Space.**

2.5.1. **Open Space.** With each preliminary plat within the Project, a minimum 20% Open Space will be designated. Overall, the Project will provide a minimum of 50% Open Space, inclusive of all platted Open Space.

2.5.2. **Conservation Land.** For every two (2) acres of developed and improved land within each preliminary plat (excluding Open Space), Master Developer will reserve one (1) acre of unfragmented habitat land for permanent conservation, which land may be owned and/or controlled by a third party. With each preliminary plat application, Master Developer shall provide City with a statement of the number of acres of unfragmented habitat reserved to date and the additional number of acres that will be reserved by the pending preliminary plat. Based on Master Developer's voluntary contribution and reservation of 240 acres of unfragmented habitat land into permanent conservation, the Project has a credit of 240 acres of conservation lands that may be used to offset future development within the Project prior to reserving any additional conservation lands.

2.5.3. **Pathways, Parks & Facilities Map.** A Parks, Trails and Facilities Map shall be submitted as part of each preliminary plat that conforms to Title 11B and addresses roadway crossings, habitat, trails, ownership or intent to dedicate park facilities if known at the time of submittal.

2.5.4. **Full Parks and Trails Impact Fee Credit.** City acknowledges and agrees the quantity and type of parks, pathways and trails developed and planned within Project and described in the Pathways, Parks & Facilities Plan create connectivity between

regional open space areas, are open to public, and provide significant recreational benefits to all City residents. Accordingly, pursuant to the Idaho Development Impact Fee Act, Idaho Code § 67-8201 *et seq.*, City agrees all development within Avimor is entitled to a full credit against City's Parks and City Trails Impact Fee, as currently established or as may be amended, and City agrees not to assess or collect any parks or trails impact fees within Avimor. City further acknowledges that Avimor residents contribute a portion of the funding necessary to maintain trails within Avimor, which are open to use by all members of the public. Master Developer and City will work together to secure additional funding for trail maintenance from third party grants, City Parks and Recreation Department, possible trail user fees, and other sources. This Agreement constitutes a written impact fee credit agreement between City and Master Developer as required by IDIFA.

2.6. **Master Environmental Design Plan.**

2.6.1. **Landscape; Signage; Lighting.** All development of the Property shall comply with the landscape, signage and lighting standards of Title 11B.

2.6.2. **Habitat Mitigation Plan.** The Habitat Mitigation Plan has been prepared by Master Developer in cooperation with City and identifies areas where mitigation is required, the type of mitigation actions, if any, required, and the rationale for such actions. Master Developer may coordinate, cooperate, and consult with other agencies in the application and implementation of the Habitat Mitigation Plan, but approval authority for the application and implementation of the Habitat Mitigation Plan shall rest solely with the Avimor Conservation Director. Master Developer shall show compliance with the Habitat Mitigation Plan with each preliminary plat application within the Project. Nothing in the Habitat Mitigation Plan may be construed as either incorporating state and/or federal standards and/or regulations that are not applicable to the Property or Project or otherwise conferring any approval authority for the Habitat Mitigation Plan to City or any state or federal agency.

2.7. **Public Infrastructure Development Fee Credit; Reimbursement.** Notwithstanding anything to the contrary herein, in the event Master Developer is obligated to construct, fund or contribute system improvements in excess of the proportionate share allocable to the development of the Property pursuant to the terms of this Agreement, Master Developer will be entitled to credit and/or reimbursement for that portion of such investment in excess of the proportionate share of the demand generated by the development of the Property so as to ensure that Master Developer has not been required to fund more than the development's proportionate share of such infrastructure through the contribution of money, dedication of land or improvements, or payments of any fees. The Public Infrastructure to be provided by Master Developer shall confer a benefit on the Property and, in certain instances, may confer a benefit on land areas outside the Property. In recognition of such benefits to the Property, in connection only with the Public Infrastructure under the jurisdiction of City, City shall take into account and credit and/or reimburse Master Developer against the sum total of all applicable Public Infrastructure development fees and/or impact fees, under City's jurisdiction and control, now existing or

adopted by City in the future, owed by Master Developer or anticipated builders/residents on the Property. In recognition of such benefits to land areas outside of the Property, City shall take into account and reimburse Master Developer against the sum total of all of Master Developer's costs and expenses associated with constructing, acquiring, and/or installing such Public Infrastructure benefiting such other land areas. This section shall survive the termination of this Agreement.

- 2.8. **Community Infrastructure District.** City and Master Developer will work together to maximize the use and utility of the CID to timely construct Public Infrastructure in accordance with the CID Act; this includes, but is not limited to: (i) expansion of the boundary of the CID or formation of a new community infrastructure district to be co-terminus with the boundary of the Property and (ii) amendment of the CID's governing documents to facilitate the Project.

3. REGULATION OF DEVELOPMENT.

- 3.1. **Applicable Rules.** The ordinances, rules, and regulations applicable to and governing the development of the Property and the Project shall be those existing and in effect as of the Date of Application, together with Title 11B as adopted and enacted by City contemporaneously herewith, and the Development Plans. Titles 8 and 9 of the Eagle City Code are not applicable to the Property or the Project and have been replaced in their entirety by Title 11B. In the event of conflict between this Agreement or Title 11B, this Agreement shall control.
- 3.2. **Reliance on Development in Accordance with Applicable Rules.** The development standards set forth in Title 11B, including, but not limited to: (i) the right of Master Developer to designate portions of the Property as specific Land Use Districts and Sub-use Districts; (ii) the design standards, and, (iii) the densities and allowed uses permitted on the Property are material, and Master Developer and Owner have expressly relied on such development rights in consenting to annexation of the Property and entering into this Agreement.
- 3.3. **Permissible Additions or Amendments to the Applicable Rules.** Except as otherwise expressly provided in this Agreement, City may only enact the following categories of ordinances, rules, or regulations, which may be applicable to and govern development of the Property:
 - 3.3.1. Ordinances, rules, or regulations consistent with this Agreement and Title 11B, which do not impair Master Developer's ability to develop the Property in the manner provided in this Agreement and Title 11B;
 - 3.3.2. Ordinances, rules, or regulations, Master Developer agrees in writing, in Master Developer's sole discretion, apply to the development of the Property;

- 3.3.3. Ordinances, rules, or regulations, or other requirements enacted to comply with mandatory requirements imposed on City by state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of City;
- 3.3.4. Ordinances, rules, or regulations, to implement future updates of, and amendments to, building, fire, plumbing, mechanical, electrical, dangerous buildings, and similar construction and safety related codes, such as the International Building Code, to the extent adopted by the State of Idaho and City of Eagle.
- 3.4. **Title 11B Additions or Amendments.** Subject the restrictions and limitations set forth in Section 3.3 above, to the extent Title 11B is modified or amended in any way, such modification or amendment shall be processed in the manner set forth in Title 11B, this Agreement, and any other applicable law. With the exception of modifications or amendments to Title 11B requested by Master Developer, all other modifications or amendments to Title 11B shall not be effective without Master Developer's written consent.
- 3.5. **Development Plan Additions or Amendments.** During the course of Master Developer's development of the Project, the Parties acknowledge and agree the Development Plans may need to be updated, amended, or revised. Amendments to the Development Plans that do not have a material impact on the Project or the Parties' rights and obligations under this Agreement may be made by Master Developer and submitted to City to be kept on file with City. A major modification to a Development Plan that has a material impact on the Project or the Parties' rights and obligations under this Agreement must be adopted and incorporated into this Agreement through the amendment standards and procedures set forth in Section 6.1.
- 3.6. **No Restrictions.** No moratorium, future ordinance, resolution or other land use rule or regulation imposing a limitation on the development, or the rate, timing or sequencing of the development, of the Property or any portion thereof shall apply to or govern the development of the Property whether affecting land use permits, subdivision plats, building permits, occupancy permits or other entitlements issued or granted by City, except as otherwise provided in this Agreement. Nothing in this section shall prohibit City from withholding the issuance of certificates of occupancy for a structure to be occupied if the Public Infrastructure improvements set forth in this Agreement and preliminary plat required to serve the applicable portion of the Property on which a structure to be occupied is to be located are not in place prior to occupation of such structure.
- 3.7. **Vested Rights.** As set forth in this Agreement, Master Developer shall have a vested right to develop the Property in accordance with this Agreement and the Exhibits hereto. This Section 3.7 shall survive termination of this Agreement. The promises and the mutual representations, covenants and agreements of the Parties memorialized in this Agreement, together with the assurances provided to the Parties in this Agreement, including this Section 3.7, are bargained for and in consideration for the undertakings of the Parties set forth herein and contemplated by this Agreement, and are intended to be and have been

relied upon by the Parties to the Parties' detriment in undertaking the obligations of the Parties under this Agreement.

4. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

- 4.1. **Compliance Reviews.** As long as Master Developer maintains the right to develop the Property, or any portion thereof, Master Developer, or its representatives, shall meet with the Administrator at least once per year during the Term, to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year.
- 4.2. **Agreement to Cooperate.** In the event of any legal or equitable action or other proceeding instituted by a third-party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action or proceeding. City and Master Developer may agree to select mutually agreeable legal counsel to defend such action or proceeding with the parties sharing equally in the cost of such joint counsel, or each Party may select its own legal counsel at each Party's expense. All other costs of such defense(s) shall be shared equally by the parties. Each Party shall retain the right to pursue its own independent legal defense.
- 4.3. **Default.** Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of 90 days following written notice thereof from the other Party (the "**Cure Period**"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than 90 days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be reasonably necessary to perform or comply so long as such Party commences performance or compliance within such 90-day period and diligently proceeds to complete such performance or fulfill such obligation (the "**Extended Cure Period**"). The written notice provided for above shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event a default of Master Developer is not cured within the Cure Period or the Extended Cure Period, if applicable, the zoning of that portion of the Property related to such default may be converted to the A-R (Agricultural-Residential) zoning designation and, in addition, City shall have all remedies available at law or in equity. In the event a default of City is not cured within the Cure Period or the Extended Cure Period, if applicable, upon written notice from Master Developer, Master Developer shall have all remedies available at law or in equity.
- 4.4. **Attorneys Fee.** In the event a Party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses including reasonable attorneys' fees incurred by the prevailing Party. Similarly, all fees and costs associated with an appeal to any appellate court thereafter, including, without limitation, the prevailing Party's attorneys' fees, shall be paid by the non-prevailing Party.

5. NOTICES AND FILINGS.

- 5.1. **Manner of Serving.** All notices, filings, consents, approvals and other communications provided for herein or delivered in connection herewith shall be validly delivered, filed, made, or served if in writing and delivered personally or delivered by a nationally recognized overnight courier or sent by certified United States Mail, postage prepaid, return receipt requested, if to:

City: City Clerk
City of Eagle
660 E. Civic Lane
Eagle, ID 83616

Master Developer/Owner: Avimor Development, LLC
18454 N. McLeod Way
Boise, ID 83714
Attn: Dan Richter

With a copy to: Deborah Nelson or Jeff Bower
Givens Pursley LLP
601 W. Bannock St
Boise, ID 83702

or to such other addresses as either Party hereto may from time to time designate in writing and delivery in a like manner.

- 5.2. **Mailing Effective.** Notices, filings, consents, approvals and communication given by mail shall be deemed delivered immediately if personally delivered, 24 hours following deposit with a nationally recognized courier, or 72 hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

6. MISCELLANEOUS.

- 6.1. **Amendment.** City and Master Developer acknowledge that amendments to this Agreement may be necessary or appropriate from time to time in order to carry out the goals expressed in this Agreement and the overall development of the Project. When the Parties agree an amendment to this Agreement is necessary or appropriate, such amendment shall be adopted and implemented subject to the requirements of Idaho Code Section 67-6511A. All amendments to this Agreement shall be in writing and executed by the Parties and recorded against the Property. The Parties shall cooperate in good faith to agree upon and use reasonable efforts to process any amendments to this Agreement.
- 6.2. **Termination Upon Completion of Development.** City shall, upon written request of Master Developer, execute appropriate and recordable evidence of termination of this Agreement if City has determined reasonably that Master Developer has fully performed Master Developer's obligations under this Agreement in connection with all or a portion of the Property.

6.3. **Status Statements.** Any Party may, at any time, and from time to time, deliver written request to any other Party requesting that such other Party provide in writing that, to the knowledge of such other Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended, identifying the amendments; and (iii) 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 any such defaults. A Party receiving a request hereunder shall execute and return such statement within a reasonable time following the receipt thereof. City acknowledges that such statement hereunder may be relied upon by transferees and mortgagees. City shall have no liability for monetary damages to Master Developer, and transferee or mortgagee, or any other person in connection with, resulting from or based upon the issuance of any statement hereunder.

7. GENERAL.

7.1. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver by either Party thereof, and no waiver by City or Master Developer of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

7.2. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single document so that the signatures of all Parties may be physically attached to a single document.

7.3. **Headings.** This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

7.4. **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein with the same force and effect as if fully set forth in the body hereof. The Recitals set forth above shall be deemed to have been incorporated herein with the same force and effect as if fully set forth in the body hereof. The Definitions set forth prior to the Recitals shall be deemed to have been incorporated herein with the same force and effect as if fully set forth in the body hereof.

7.5. **Further Acts.** Each of the Parties shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

7.6. **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.

- 7.7. **Assignment of Master Developer Rights.** The rights and obligations of Master Developer to develop the Project pursuant to this Agreement and the rights and obligations of Master Developer as the Master Developer under Title 11B, shall remain solely with Master Developer unless expressly assigned in a written instrument executed by Master Developer. Master Developer's rights and obligations with respect to Project and the Property may assigned in whole or in part. Any assignment entered into pursuant to this Section 7.7 shall be recorded in the real property records of Ada County, Idaho; Gem County, Idaho; and Boise County, Idaho and a copy of such recorded assignment shall be provided to City within sixty (60) days of recordation.
- 7.8. **Agreement Appurtenant to the Property.** This Agreement, together with all terms, conditions, and covenants set forth herein shall run with the Property and shall be binding on the Parties and their successors and assigns.
- 7.9. **No Partnership; Third Parties.** It is hereby specifically understood, acknowledged and agreed that neither City nor Master Developer shall be deemed to be an agent of the other for any purpose whatsoever. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Master Developer and City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any third-party, person, firm, organization or legal entity not a party hereto, and no such other third-party, person, firm, organization or legal entity shall have any right to cause of action hereunder.
- 7.10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification or amendment to this Agreement of any kind whatsoever shall be made or claimed by Master Developer or City shall have any force or effect whatsoever unless the same shall be endorsed in writing and signed by all parties hereto. Such amendment shall be recorded in the office of the Recorder for Ada County, Idaho; Gem County, Idaho; and Boise County, Idaho. Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of Title 11B.
- 7.11. **Construction.** All Parties hereto have either been represented by separate legal counsel or have had the opportunity to be so represented. Thus, in all cases, the language herein shall be constructed simply in accord with its fair meaning and not strictly for or against a Party, regardless of whether such Party prepared or caused the preparation of this Agreement.
- 7.12. **Names and Plans.** Master Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the request of Master Developer in connection with the Property and the Project; provided, however, that in connection with any conveyance of portions of the Property to City, such rights pertaining to the portions of the Property so conveyed shall be assigned to City to the extent that such rights are assignable.

- 7.13. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.
- 7.14. **Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Idaho in effect on the Date of Application. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.
- 7.15. **Recordation.** After its execution, this Agreement shall be recorded in the office of the Recorder for Ada County, Idaho; Gem County, Idaho; and Boise County, Idaho at the expense of Master Developer. Each commitment and restriction on the Project shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property and shall run with the land. This Agreement shall be binding on Master Developer and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns; provided, however, that if all or any portion of the Project is sold, the sellers shall thereupon be released and discharged from any and all obligations arising under this Agreement in connection with the portion of the Property sold. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect to the Property or portion thereof.
- 7.16. **No Obligation to Proceed.** Nothing contained herein shall be deemed to obligate Master Developer or Owner to commence or complete any part or all of the Project.
- 7.17. **Authority.** Each Party represents to the other Parties that the individual executing this Agreement on behalf of such Party is authorized and empowered to bind the Party on whose behalf each such individual is signing. Master Developer further represents to City that Master Developer is an Idaho limited liability company duly qualified to do business in Idaho.

8. DEFINITIONS.

- 8.1. “**ACHD**” is the Ada County Highway District.
- 8.2. “**Additional Property**” is all or any portion of real property that is added to the Project subject to the requirements of this Agreement; the definition of “Property” shall automatically include all such Additional Property.
- 8.3. “**Administrator**” is the administrator of the Eagle Planning & Zoning Department.
- 8.4. “**Agreement**” is this Development Agreement (Avimor) inclusive of all Exhibits attached hereto, as may be amended from time to time.

- 8.5. “**Annexation and Rezoning Ordinances**” includes any and all Annexation and Rezoning Ordinances in connection with the Property and Additional Property.
- 8.6. “**Avimor Water Reclamation Company (AWRC)**” is the entity that owns and operates the sewer Treatment Facilities, irrigation facilities, and reuse water.
- 8.7. “**Avimor Conservation Director**” is the individual responsible for the management of the Habitat Management Plan.
- 8.8. “**Boise County Planned Community**” includes that certain real property shown on **Exhibit B**, attached hereto and incorporated herein, which is a planned community approved from Boise County, Idaho. All of the land within the Boise County Planned Community is within the Property.
- 8.9. “**Boise County Preliminary Plats**” include three approved preliminary plats within the Boise County Planned Community for the Avimor Phase 1 Subdivision, the Avimor Phase 2 Subdivision, and the Howell Vineyards Subdivision, as shown on **Exhibits C-1, C-2, and C-3**, attached hereto and incorporated herein.
- 8.10. “**Charter**” is the Covenants, Conditions and Restrictions that encumber the Property and govern the Project through one or more Owners’ Associations, which establishes quality control through the Property both during development and during maturing of the community.
- 8.11. “**CID Act**” is the Community Infrastructure District Act, Title 50, Chapter 31, Idaho Code.
- 8.12. “**City**” is City of Eagle, Idaho.
- 8.13. “**Community Infrastructure District (CID)**” is the Avimor Community Infrastructure District No. 1 (Ada County, Idaho), a community infrastructure district duly organized and validly existing pursuant to the laws of the State of Idaho and a political subdivision of the State of Idaho.
- 8.14. “**Constrained Lands**” are those lands within the Property with slopes in excess of 25% and lands within a FEMA-identified floodway.
- 8.15. “**Date of Application**” is the date Master Developer’s applications to City for annexation and rezoning in connection with the Property (collectively, the “**Application**”) were deemed complete by City. The Date of Application is [insert].
- 8.16. “**Density Bonus**” is an increase in the allowed maximum density within any single-family residential Sub-Use District as permitted by Title 11B.
- 8.17. “**Development Plans**” collectively means the Grading Guidelines and Hillside Development Standards, the Habitat Management Plan, the Master Wastewater Study, the Avimor Master Drainage Report, and the Municipal Water and Pressurized Irrigation

System Master Plan–Avimor Development. Each of which is kept on file with City, as may be amended from time to time pursuant to this Agreement.

- 8.18. “**Development Rights**” is development allowed to be undertaken by Master Developer in accordance with this Agreement and pursuant to Title 11B.
- 8.19. “**Drainage System**” is a drainage and flood control system and facilities for collection, diversion, detention, retention, dispersal, use and discharge of surface water.
- 8.20. “**FEMA**” is the U.S. Federal Emergency Management Agency.
- 8.21. “**Grading Guidelines and Hillside Development Standards**” are those certain Grading Guidelines and Hillside Development Standards dated March 2022 submitted to City with the annexation application and kept on file with City, as may be amended from time to time.
- 8.22. “**Habitat Management Plan**” is that certain Habitat Mitigation Plan, dated April 20, 2022 submitted to City with the annexation application and kept on file with City, as may be amended from time to time.
- 8.23. **Land Use District:** The zoning districts within Avimor, pursuant to Title 11B, where designated land uses are regulated including; (1) Village Center; (2) Mixed Use/Commercial; (3) Village Residential; (4) Foothills Residential; and (5) Open Space. See also, “Sub-Use District” definition.
- 8.24. “**IDEQ**” is the Idaho Department of Environmental Quality.
- 8.25. “**ITD**” is the Idaho Transportation Department.
- 8.26. “**Master Developer**” is Avimor Development, LLC, an Idaho limited liability company, and all successors or assigns who have been expressly assigned rights as Master Developer pursuant to this Agreement.
- 8.27. “**Master Land Use Map**” is the overall conceptual development plan for the Project as a whole, on file with the City, as approved by the City and as may be amended from time to time.
- 8.28. “**Master Wastewater Study**” is that certain Avimor Water Reclamation Company Master Wastewater Study, stamped April 12, 2022, as may be amended from time to time.
- 8.29. “**Mitigation**” is the process of converting Constrained Lands to Unconstrained Lands by application of City-approved Grading Guidelines and Hillside Development Standards or by any FEMA-approved map amendment.
- 8.30. “**Nonconforming Use**” is a building, structure or use of land existing on the Property at the Agreement Date, and which does not conform to the regulations of Title 11B.

- 8.31. **“Non-Residential Use”** may include commercial, retail and office related uses. Non-Residential Use does not include public and/or civic uses.
- 8.32. **“Open Space”** for use by residents of Avimor or the general public for recreation, agriculture, habitat, vegetation, scenic or similar uses. Open Space may be developed or natural and may include: (i) public and private parks, sports fields, and trails; (ii) golf courses; (iii) equestrian centers; (iv) vineyards and other agricultural lands; (v) landscape easements or common areas inside or outside of public rights of way; (vi) floodplains and floodways; (vii) the lesser of 50 percent of school sites or the area of playfields, (viii) scenic corridors; (ix) undeveloped hillsides; (x) wetlands, wildlife habitat, drainage areas, and unique or sensitive plant areas; and (xi) conservation easements or permanent open space on private lands or lots subject to deed restriction. Open Space may be publicly or privately owned and may be accessible or inaccessible to the public.
- 8.33. **“Owner”** means, collectively, Avimor Development LLC, an Idaho limited liability company, Spring Valley Livestock Company, Inc., an Idaho corporation, and First American Title Insurance Company, a Nebraska corporation, as Trustee of the Dual Beneficiary Trust, Trust No. 8562, which Trust was created pursuant to the Subdivision Trust Agreement dated October 8, 2003, and their successor and assigns in ownership of the Property.
- 8.34. **“Owners’ Association”** is one or more non-profit entities created or to be created by Master Developer, that shall be responsible for, without limitation, the perpetual management of the Common Area, as such is defined in the Charter encumbering or to encumber the Property, which management is at the expense of the ultimate owners of the Project.
- 8.35. **“Party or Parties”** is, individually or collectively, the parties to this Agreement.
- 8.36. **“Project”** is the mixed-use master planned community on the Property as generally depicted on the Master Land Use Map, which will provide a variety of housing, jobs, recreational, educational, wildlife, Open Space and cultural opportunities integrated into City.
- 8.37. **“Project Density”** is the total maximum gross residential density for the Project (residential units per gross acre), which is 0.5 dwelling units per gross acre. Residential units approved through a Density Bonus shall not be included in calculating the overall Project Density.
- 8.38. **“Property”** is that certain real property located in Ada, Gem and Boise Counties, legally described on **Exhibit A**, plus any Additional Property that may later be added.
- 8.39. **“Public Infrastructure”** is infrastructure facilities and services improvements, including without limitation on-site roads; sewer, water and irrigation facilities.
- 8.40. **“Re-use Water”** is all water captured or discharged from any Wastewater System.

- 8.41. **Sub-Use District:** A specific use district within each Land Use District in Avimor where designated land uses are regulated pursuant to Title 11B including: (1) Rural Residential; (2) Estate Residential; (3) Single-Family Detached 1 (SF1); (4) Single-Family Detached 2 (SF2); (5) Single-Family Detached 3 (SF3); (6) Single-Family Zero Lot Line (SFZL); (7) Single-Family Special Lot (SFSL); (8) Single-Family Attached (SFA); (9) Medium Density Multi-Family (MF1); (10) High Density Multi-Family (MF2); (11) Village Center (C/VC); (12) Mixed Use (MU); (13) Highway Mixed Use (HMU); (14) Neighborhood Commercial (NC); and (15) Community Commercial (CC).
- 8.42. **“Suez”** is Suez Water Idaho.
- 8.43. **“Suez Service Area”** is the area within the Property not served by the Water Service Agreement, in which Suez will provide water service to the Project unless Master Developer and City (or an alternate service provider) enter into a subsequent agreement for water services in all or some portion of this area.
- 8.44. **“Title 11B”** is the zoning and subdivision ordinance adopted by City in conjunction with annexation of the Property that sets forth the standards and guidelines applicable to the Property and development of the Project and is codified as part of the Eagle City Code.
- 8.45. **“Transportation Entity”** is ACHD, ITD, or a public or private entity, with jurisdiction over roadways and public right-of-way within the Property, whether by statute or by private agreement.
- 8.46. **“Treatment Facility(ies)”** is the sewage treatment facility and delivery system that also produces treated effluent to use for irrigation owned by the Avimor Water Reclamation Company.
- 8.47. **“Unconstrained Lands”** are those lands within the Property with slopes under 25%, lands not within a FEMA-identified floodway, lands not defined as habitat areas of special concern, or lands that were Constrained Lands at one time but have undergone Mitigation.
- 8.48. **“Village 1 Area”** includes that certain real property shown on **Exhibit D**, attached hereto and incorporated herein, which is the original master planned community approved by Ada County.
- 8.49. **“Village 1 Area Development Agreement”** is that certain Development Agreement between The County of Ada, Idaho, and Suncor Idaho, LLC, and Idaho limited liability company, recorded with the Ada County Recorder as instrument number 106028086 on February 23, 2006, as amended.
- 8.50. **“Wastewater System”** is a wastewater collection, storage, treatment, and disposal system to treat and dispose of wastewater generated at the Property that includes, without limitation, Treatment Facilities, major sewer lines and wastewater pumping stations, where required.
- 8.51. **“Water System”** is a water production, storage, treatment, and delivery system to serve potable municipal uses on the Property, which includes without limitation wells,

reservoirs, pumps, diversion structures, water transmission and distribution pipes and related plumbing, pump houses, well houses, water treatment facilities, water storage tanks, and meters, together with water rights authorizing the diversion and use of ground water for municipal purposes. Water System shall not include those portions of the Wastewater System used for the storage, delivery and use of treated sewage effluent on the Property, any water right or entitlements associated with ditch company shares or Re-Use Water, any surface water or groundwater for irrigation held or acquired by Master Developer, or any additional water rights or permits that may be associated with irrigation, storage, aesthetic, or recreational purposes.

- 8.52. **“Water Service Agreement”** is that certain Agreement for Service by and between Avimor Development, LLC, Sage Investment Partners, LLC, and City of Eagle dated effective March 22, 2022.

[end of text; remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto, having been duly authorized, have executed this Agreement to be effective on the date first written above.

CITY:

CITY OF EAGLE,
an Idaho municipal corporation

By: _____
Jason Pierce, Mayor

ATTEST:

By: _____
Sharon K. Bergmann, City Clerk

MASTER DEVELOPER:

AVIMOR DEVELOPMENT, LLC,
an Idaho limited liability company

By: _____
Dan Richter, its Manager

OWNER:

SPRING VALLEY LIVESTOCK COMPANY,
INC., an Idaho corporation

By: _____
Name: _____
Title: _____

and

FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, as Trustee of the Dual Beneficiary Trust No 8562

By: _____
Name: _____
Title: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2022, before me a Notary Public in and for said State, personally appeared Jason Pierce, known or identified to me to be the Mayor of the **CITY OF EAGLE**, an Idaho municipal corporation that executed the said instrument, and acknowledged to me that such City of Eagle executed the same.

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

Notary Public for Idaho
Residing at _____
My Commission Expires _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared Dan Richter, known or identified to me to be the Manager of **AVIMOR DEVELOPMENT, LLC**, an Idaho limited liability company, the Manager who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

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

Notary Public for Idaho
Residing at _____
My Commission expires _____

STATE OF IDAHO)
) ss.
County of _____)

On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of **SPRING VALLEY LIVESTOCK COMPANY, INC.**, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My Commission expires _____

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of **FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, as Trustee of the Dual Beneficiary Trust No 8562**, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public _____
Residing at _____
My Commission expires _____

LIST OF EXHIBITS:

Exhibit A – Legal Description of the Property

Exhibit B – Boise County Planned Community Map

Exhibit C-1 – Boise County Avimor Phase 1 Subdivision Preliminary Plat

Exhibit C-2 – Boise County Avimor Phase 2 Subdivision Preliminary Plat

Exhibit C-3 – Boise County Howell Vineyard Subdivision Preliminary Plat

Exhibit D – Village 1 Area Map

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
BOISE COUNTY PLANNED COMMUNITY MAP

EXHIBIT C-1
BOISE COUNTY AVIMOR PHASE 1 SUBDIVISION PRELIMINARY PLAT

EXHIBIT C-2
BOISE COUNTY AVIMOR PHASE 2 SUBDIVISION PRELIMINARY PLAT

EXHIBIT C-3
BOISE COUNTY HOWELL VINEYARD SUBDIVISION PRELIMINARY PLAT

**EXHIBIT D
VILLAGE 1 AREA MAP**