

ORIGINAL

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF UNITED WATER IDAHO INC., FOR AN
AMENDMENT TO ITS CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
NO. 142 AND FOR AN ACCOUNTING ORDER.

Case No. UWI-W-04- 03

**APPLICATION AND REQUEST
FOR MODIFIED PROCEDURE**

COMES NOW United Water Idaho Inc., (“United”, “the Company”) pursuant to Idaho Code Section 61-526 and IPUCRP 112 and 201 in support of this Application respectfully shows as follows to wit:

I.

Applicant is a public utility water corporation within the meaning of the Idaho Public Utility Law, is duly organized and existing under the laws of the State of Idaho and engaged in conducting a general water business in and about Boise City, Ada County, Idaho and in Canyon County, having its principal office and place of business at 8248 West Victory Road, P.O. Box 190420, Boise, Idaho 83719-0420.

II.

Communications in reference to this application should be addressed to:

Gregory P. Wyatt
UNITED WATER IDAHO INC.
P.O. Box 190420
Boise, Idaho 83719-0420
208/362-7325
208/362-7069 (fax)

Dean J. Miller, Esq.
MCDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702
208/343-7500
208/336-6912 (fax)

III.

A certified copy of Applicant's Articles of Incorporation, together with all amendments to date, is on file with the Commission.

IV.

For over 100 years, Applicant, together with its predecessors in interest, has owned and operated and now owns and operates an extensive and integrated water system in Boise City, Idaho, and in certain territory within Ada County in the vicinity of, but outside the present corporate limits of said Boise City, and renders general water service within such territory and to the inhabitants thereof. Applicant also provides service to isolated subdivisions in Canyon County, Idaho.

V.

In Order No. 27976, dated March 29, 1999, the Commission approved an expansion of United's Certificate of Public Convenience and Necessity to provide service to the Carriage Hill subdivision ("Carriage Hill") in Canyon County, Idaho, near the City of Nampa ("Nampa"). The expansion was pursuant to a Residential or Multiple Family Housing Non-Contiguous Water System Agreement dated November 20, 1998.

VI.

On or about December 7, 1998 Carriage Hill, doing business as Carriage Hill, L.L.C., an Idaho limited liability company, executed a Design-Build Promissory Note, a true copy of which is attached hereto as Exhibit A, in favor of United Water Works Inc., a Delaware corporation, in the original principal amount of \$350,000.00. The purpose of said note was to provide funds to assist Carriage Hill in the construction of the water system within the subdivision.

VII.

On or about August 15, 2003 the City of Nampa indicated its desire to enter into negotiations with United and Carriage Hill in connection with the ownership, operation and maintenance of the domestic water system and the connection of the system to Nampa's municipal water system.

VIII.

On August 25, 2003 Carriage Hill requested a waiver from the Idaho Department of Environmental Quality to allow an additional 10 lots in the subdivision to be connected to the water system prior to the installation of a second source of supply, which second source of supply will take the form of connection to Nampa's municipal water system. As of the date of this Application approximately 30 lots in the subdivision have been connected to the domestic water system.

IX.

Thereafter, Nampa and Carriage Hill entered into that Certain Annexation and LID Agreement, a true copy of which is attached hereto as Exhibit B. Contemporaneously therewith United and Nampa executed a Purchase Agreement (Agreement) whereby United agreed to sell and Nampa agreed to buy the Carriage Hill domestic water system. A true copy of the Agreement is attached hereto as Exhibit C.

X.

Thereafter, Nampa adopted a Resolution declaring its intent to acquire the water system and to create Local Improvement District No 140 for Nampa, Idaho. A true copy of Resolution No. 20-2004 is attached hereto as Exhibit D. Pursuant to Idaho Code 50-1710 it is anticipated that Nampa will adopt an ordinance creating the local improvement district on or after August 16, 2004. This Application is contingent upon the adoption of said ordinance.

XI.

Acquisition of the Carriage Hill domestic water system by Nampa is consistent with the public convenience and necessity because:

- ▶ Nampa has adequate source of supply and operational capability to provide safe and reliable water service to the subdivision;
- ▶ Connection of Nampa's distribution system to the Carriage Hill domestic water system will provide a second source of supply as required by DEQ rules thus insuring reliable water supply to the subdivision and permitting further expansion of the subdivision; and
- ▶ The rates charged by Nampa for domestic water service are lower than the rates charged by United, and customers within the subdivision will therefore experience a decrease in the cost of domestic water service.

XII.

Pursuant to the Agreement the purchase price for the sale of the domestic water system is \$375,000. Subject to final adjustment at closing an amount equal to approximately \$339,000 shall be paid to United Water Works to discharge the accrued interest and principal owing pursuant to the Build-Design Promissory Note, above referenced. An amount equal to approximately \$36,000 shall be paid to United.

XIII.

Exhibit E, attached hereto, sets forth United's proposed journal entries to account for the approximately \$36,000 to be received by United at closing. This accounting proposal is consistent with established regulatory accounting principles, and United requests that the Commission approve it.

XIV.

As evidenced by letters from Nampa and Carriage Hill, attached hereto as Exhibits F and G, Nampa and Carriage Hill have reviewed this Application and support the relief requested.

XV.

Contemporaneously with the filing of this Application, United is providing notice to the Carriage Hills customers of the intended sale. A true copy of the customer notification is attached hereto as Exhibit H.

Request for Modified Procedure

United does not believe a hearing is required to consider the issues herein presented and pursuant to IPUCRP 201 requests that this matter be processed by modified procedure.

WHEREFORE, United respectfully requests that the Commission enter its orders:

1. Determining that this matter be processed pursuant to Modified Procedure;
2. Approving the modification of United's Certificate of Public Convenience and Necessity by eliminating the Carriage Hill subdivision therefrom;
3. Approving the accounting proposal set forth above; and
4. Granting such other relief as is appropriate in the circumstance.

DATED this 9 day of August, 2004.

UNITED WATER IDAHO INC.

By: 

Dean J. Miller
Attorney for Applicant

EXHIBIT A

DESIGN-BUILD PROMISSORY NOTE

\$350,000.00

December 7, 1998

FOR VALUE RECEIVED, the undersigned, Carriage Hill, L.L.C., an Idaho limited liability company ("Maker") promises to pay to the order of United Waterworks Inc., a Delaware corporation ("United Water") at 2000 First State Boulevard, Wilmington, Delaware 19804, or at such other place as holder may from time to time in writing designate, the principal sum of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00), in lawful money of the United States of America, and to pay interest on the unpaid balance thereof from time to time outstanding at the rate of Eight and one-quarter percent (8.25%) per annum.

The principal amount of this note and all interest payable hereunder with respect thereto shall be paid over a term of ten (10) years, in forty (40) equal quarterly installments, due and payable on the fifth day of February, May, August and November each year commencing with the fifth day of February, 2000 and continuing with respect to each and every succeeding quarter through November 5, 2010 (the "Maturity Date") of Twelve Thousand Nine Hundred Sixty-Seven and 27/100 Dollars (\$12,967.27) each with the final payment of all outstanding principal and accrued but unpaid interest on the Maturity Date.

There shall be added to each and every payment of principal and/or interest received by the holder more than ten (10) days after the due date thereof a late charge of three percent (3%) of the amount so overdue, for the purpose of defraying the administrative expense incident to handling such delinquent payments. The undersigned acknowledges that the exact amount of such administrative expense of holder would be difficult to calculate and that such late charge represents a reasonable estimate of a fair average compensation for the loss that may be sustained by the holder due to the failure of the undersigned to make timely payments. Such late charge shall be paid without prejudice to the right of the holder to collect any other amounts provided to be paid or to declare a default hereunder.

The undersigned waives presentment and demand for payment, notice of intent to demand or accelerated maturity, notice of demand or acceleration of maturity, protest or notice of protest and nonpayment, bringing of suit and diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and properties securing payment hereof. The undersigned agrees that the time for any payment hereunder may be extended from time to time without notice and consent, and extension of time for the payment of this note or any installment hereof shall not affect the liability of the undersigned under this note.

If default be made in the payment in full of any sum provided for herein when due and payable, then the holder may, at its option, declare the unpaid principal balance and accrued interest on this note due and payable upon providing the undersigned with five (5) days' written notice of its intent to so accelerate the due date of any and all such amounts unless such default is therefore cured by the undersigned, and, unless so cured by the undersigned, the holder may foreclose all liens securing payment hereof, if any, pursue any and all other rights, remedies and recourses available to it, or pursue any combination of the foregoing, all remedies hereunder being cumulative.

Failure to exercise any of the foregoing options upon the happening of one or more of the foregoing events shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same or any other event. The acceptance by the holder of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time, or nullify any prior exercise of any such option, without the express written consent of the holder.

The undersigned agrees to pay all reasonable costs of collection hereof actually incurred, including the holder's reasonable attorneys' fees, whether or not any suit or action shall be instituted to enforce this note. In the event of litigation arising out of or in connection with this note, the prevailing party shall be entitled to its reasonable attorneys' fees incurred at trial and on all appeals.

Notwithstanding any provision of this note to the contrary, it is the intent of the undersigned and the holder hereof that the holder shall never be entitled to receive, collect or apply, as interest on the principal amount of the indebtedness any amount in excess of the maximum rate of interest that may be charged by applicable law; and in the event the holder ever receives, collects or applies as interest any such excess, the amount that would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such; and, if the principal amount of the indebtedness secured hereby is paid in full at such time, an amount equal to the excessive interest shall forthwith be paid to the undersigned. If the holder credits the principal hereunder or refunds excessive interest in accordance with the amount of the indebtedness above, it shall not be subject to any penalty provided by law for contracting for, charging or receiving interest in excess of the maximum lawful rate.

This note may be prepaid in part or in full at any time by the undersigned without penalty; provided, however, that until all amounts due and payable hereunder have been paid in full, the amount of the quarterly installments due and payable hereunder shall remain unchanged and shall not be recalculated to reflect the effect of any such prepayment.

Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The words "undersigned" and "holder" shall include their respective heirs, executors, administrators, legal representatives, successors, assigns and beneficiaries.

All notices, demands, requests, and other communications under this note shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, or upon transmission when sent via facsimile, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, addressed as follows:

If to Maker: Carriage Hill, L.L.C.
2800 E. Boise Avenue
Boise, Idaho 83706
(208) 336-4262
(208) 342-2274 (facsimile)

If to holder: 200 Old Hook Road
Harrington Park, New Jersey 07640
Attn: President
(201) 767-9300
(201) 767-6579 (facsimile)

or at such other address or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

This note is being delivered in the State of Idaho and is to be governed by and construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, this note has been executed by the undersigned effective as of the day first above written.

MAKER:

CARRIAGE HILL, L.L.C., an Idaho
limited liability company

By: The Development Group, Inc., an Idaho
corporation, its Managing Member

By: 
William D. Tate, President

EXHIBIT B

CARRIAGE HILL-NAMPA AGREEMENT

THIS CARRIAGE HILL-NAMPA AGREEMENT (this "LID Agreement") is made effective this 12th day of March, 2004, by and among the City of Nampa, an Idaho municipal corporation ("Nampa"), Carriage Hill, L.L.C., an Idaho limited liability company ("Carriage Hill"), Triangle Dairy, Inc., an Idaho corporation ("Triangle"), and Edward Derwyn Shank and Grace E. Shank (collectively, "Shank").

RECITALS

A. On January 21, 1998 Carriage Hill received preliminary subdivision plat approval from Canyon County in connection with a single-family residential subdivision, more particularly described on **Exhibit A**, attached hereto and made a part hereof ("**Carriage Hill Subdivision**"), which consists of 198.84 acres located west of Middleton Road and north of Greenhurst Road in southwest Canyon County in the Nampa Area of City Impact, which is that particular area of Canyon County that eventually will be annexed into Nampa. A portion of Carriage Hill Subdivision, which portion is defined as the LID Area below, is owned by Triangle and Shank. Carriage Hill is the contract-purchaser of the LID Area.

B. On or about November 20, 1998, Carriage Hill and United Water Idaho Inc., an Idaho corporation ("**UWID**"), entered into that certain Residential or Multiple Family Housing Non-contiguous Water System Agreement (the "**Water System Agreement**"), which Water System Agreement provides for, without limitation: the permitting and construction of the "**Domestic Water System**," as defined in that certain Purchase Agreement, dated concurrently herewith, by and between UWID and Nampa (the "**Purchase Agreement**").

C. On March 9, 1999, the final subdivision plat for the first phase of Carriage Hill Subdivision was recorded in Canyon County. On December 29, 1999, Carriage Hill transferred to UWID that portion of the Domestic Water System constructed in connection with the first phase of Carriage Hill Subdivision.

D. On February 11, 2002, the final subdivision plat for the second phase of Carriage Hill Subdivision was recorded in Canyon County. On December 18, 2003, Carriage Hill transferred to UWID that portion of the Domestic Water System constructed in connection with the second phase of Carriage Hill Subdivision.

E. Nampa has extended its municipal water system to the intersection of Middleton Road and Iowa Street in Nampa's City limits in the vicinity of Carriage Hill Subdivision.

F. On August 15, 2003, Nampa indicated its desire to enter into negotiations with UWID and Carriage Hill in connection with ownership, operation and maintenance of the Domestic Water System, and the connection of the Domestic Water System to Nampa's municipal water system. Thereafter, the parties hereto entered into that certain Memorandum of Understanding, dated October 15, 2003, as amended (the "**MOU**"), which MOU contemplated, *inter alia*, the negotiation and execution of the Purchase Agreement and this LID Agreement.

G. Carriage Hill, Triangle and Shank have made application to Nampa requesting that the LID Area be annexed into the City of Nampa. Carriage Hill, Triangle, and Shank have requested that the City of Nampa establish a LID, as defined below, on the LID Area contingent upon the LID Area being annexed into the City of Nampa.

REQUEST
TYPE *B&A* FEE *30*
NAMPA CITY OF

RECORDED
MAR 30 PM 1 06
CANYON COUNTY RECORDER
[Signature]

200423253

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are incorporated herein, and in consideration of the premises and the mutual representations, covenants, and agreements hereinafter contained, Carriage Hill and Nampa represent, covenant, and agree as follows:

1. INTERTIE; FURTHER COOPERATION.

a. Intertie. Nampa, at Nampa's sole cost and expense, shall develop design plans for an intertie between Nampa's potable water system and the Domestic Water System (the "**Intertie**") and submit such design plans to all applicable reviewing governmental agencies as soon as practicable following the annexation of the Carriage Hill Subdivision. Nampa, or Nampa's designee, at Nampa's sole cost and expense, shall commence and complete construction of the Intertie as soon as practicable following receipt of approval from all applicable reviewing governmental agencies. The parties hereto acknowledge that the Intertie shall not connect to the Domestic Water System unless and until Nampa takes possession of the Domestic Water System.

b. Further Cooperation. Carriage Hill shall reasonably and timely cooperate in connection with Nampa's efforts to obtain, without limitation, all necessary permits, information, and consents required by the appropriate federal, state and/or local governmental authorities, agencies or officials in connection with the design and construction of the Intertie. Carriage Hill shall provide Nampa, at no cost to Nampa, any and all easements reasonably necessary in connection with the Intertie that lie on real property owned by Carriage Hill.

2. ANNEXATION; FURTHER COOPERATION.

Carriage Hill has made application to Nampa in connection with the annexation of the Carriage Hill Subdivision into the City of Nampa. Nampa shall use all good faith efforts to annex the Carriage Hill Subdivision and to rezone the LID Area, defined below, to a zoning designation that allows residential density of up to seven (7) dwelling units per acre. Carriage Hill and Nampa shall reasonably and timely cooperate with one another in connection with Carriage Hill's application for annexation.

3. LOCAL IMPROVEMENT DISTRICT; FURTHER COOPERATION.

a. As soon as practicable after the date hereof, Nampa shall use all good faith efforts to adopt a Local Improvement District ("**LID**") to cover that portion of Carriage Hill Subdivision that previously has not been finally platted (the "**LID Area**"). The LID shall:

- (i) Be equal to Two Hundred Fifty Thousand and no/100ths Dollars (\$250,000.00).
- (ii) Encumber the land that comprises the LID Area and not be tied to specific individuals.

A portion of the proceeds of the LID in the amount of Two Hundred Fifty Thousand and 00/100ths Dollars (\$250,000.00) shall be paid to UWID as more further provided in the Purchase Agreement.

In addition, Carriage Hill and Nampa shall reasonably document a "**latecomer's agreement**" between Nampa and Carriage Hill, which latecomer's agreement provides that, in

connection with the building permit for each and every residential lot in the LID Area, Nampa shall pay to Carriage Hill an amount equal to Twelve Hundred and no/100ths Dollars (\$1,200.00). Such payment by Nampa to Carriage Hill will continue until all residential lots in the LID Area have been sold and all payments made irregardless of the time limit of the LID. Further, Carriage Hill and Nampa shall cooperate to document the agreement of Nampa and Carriage Hill that Nampa shall reimburse Carriage Hill for the cost of the construction of certain water and sewer system extensions constructed by Carriage Hill immediately south of Carriage Hill Subdivision within one (1) year of the adoption of the LID, which costs are equal to Seventeen Thousand Four Hundred Forty-one and 50/100ths Dollars (\$17,441.50).

b. Further Cooperation. Carriage Hill shall reasonably and timely cooperate with Nampa's efforts to adopt the LID as provided further herein.

4. REPRESENTATIONS OF CARRIAGE HILL.

Carriage Hill hereby represents and warrants to Nampa that as of the date hereof and/or as of the Closing Date:

a. Authority. That Carriage Hill is an Idaho limited liability company that has been duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of Idaho, and has full power and authority to: (i) enter into this LID Agreement; and (ii) carry out and consummate the transactions contemplated by this LID Agreement.

b. Effect of Transactions. That neither the execution of this LID Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Carriage Hill is a party or by which Carriage Hill is bound; or (ii) violate any existing statute, law, regulation, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Carriage Hill is subject.

5. REPRESENTATIONS OF NAMPA.

Nampa hereby represents and warrants to Carriage Hill that as of the date hereof and as of the Closing Date:

a. Authority. That Nampa is an Idaho municipal corporation that has been duly organized and is validly existing and in good standing as a municipal corporation under the laws of the State of Idaho, and has full power and authority to: (i) enter into this LID Agreement; and (ii) carry out and consummate the transactions contemplated by this LID Agreement.

b. Effect of Transactions. That neither the execution of this LID Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Nampa is a party or by which Nampa is bound; or (ii) violate any existing statute, law, regulation, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Nampa is subject.

6. DEFAULT AND REMEDIES.

a. Default by Nampa. If Nampa should fail to consummate the transaction contemplated herein for any reason other than default by Carriage Hill, Carriage Hill may elect any one or more of the following remedies: (i) to enforce specific performance of this LID Agreement; (ii) to bring a suit for damages for breach of this LID Agreement; (iii) to terminate this LID Agreement whereupon Nampa will reimburse Carriage Hill for Carriage Hill's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorney's fees; or

(iv) pursue any and all remedies at law or equity. No delay or omission in the exercise of any right or remedy accruing to Carriage Hill upon the breach by Nampa under this LID Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Carriage Hill of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

b. Default by Carriage Hill. If Carriage Hill should fail to consummate the transaction contemplated herein for any reason other than default by Nampa, Nampa may elect any one or more of the following remedies: (i) to enforce specific performance of this LID Agreement; (ii) to bring a suit for damages for breach of this LID Agreement; (iii) to terminate this LID Agreement whereupon Carriage Hill will reimburse Nampa for Nampa's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorney's fees; or (iv) pursue any and all remedies at law or equity. No delay or omission in the exercise of any right or remedy accruing to Nampa upon the breach by Carriage Hill under this LID Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Nampa of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

7. NOTICES.

All notices, demands, requests, and other communications under this LID Agreement shall be in writing and shall be properly served or delivered if delivered by hand to the party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, or when received when sent via facsimile, addressed as follows:

If to Nampa:	411 Third Street South Nampa, Idaho 83651 Attn: Paul Raymond, P.E. 208/465-2261 (fax)
If to Carriage Hill:	P.O. Box 1184 Nampa, Idaho 83653-1184 Attn: Sandra J. Johnson 208/461-9428 (fax)
If to Shank:	c/o Carriage Hill P.O. Box 1184 Nampa, Idaho 83653-1184 Attn: Edward Derwyn and Grace Shank
If to Triangle:	c/o Carriage Hill P.O. Box 1184 Nampa, Idaho 83653-1184 Attn: William D. Tate

or at such other address or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

8. MISCELLANEOUS.

a. Successors. This LID Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns; provided, however, this LID

Agreement shall not be assigned by any party without the written consent of the other parties hereto, not to be unreasonably withheld.

b. Time for Performance. Wherever under the terms and provisions of this LID Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day.

c. Entire Contract. This LID Agreement embodies the entire contract between the parties hereto with respect to the subject matter hereof. No modification or amendment to or of this LID Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and be signed by the party against which the enforcement of such modification or amendment is sought, and then only to the extent set forth in such instrument.

d. Representation. 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 construed simply and in accordance with its fair meaning and not strictly for or against a party, regardless of which party prepared or caused the preparation of this LID Agreement.

e. Captions. The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the text.

f. Governing Laws. This LID Agreement shall be governed by the laws of the State of Idaho.

g. Prevailing Party. If either party shall default in the full and timely performance of this LID Agreement and said default is cured with the assistance of an attorney for the other party and before the commencement of a suit thereon, as a part of curing said default, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event that either party to this LID Agreement shall file suit or action at law or equity to interpret or enforce this LID Agreement hereof, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party, including the same with respect to an appeal.

h. Time of Essence. All times provided for in this LID Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence of this LID Agreement.

i. Rights. This LID Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

j. Counterparts. This LID Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together will constitute one and the same instrument.

k. Interpretation. In the event any term or provisions of this LID Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this LID Agreement shall not be affected thereby but each such term and provision shall be valid and shall remain in full force and effect.

l. Survival. The terms, provisions, agreements and indemnities shall survive the closing of the transaction contemplated herein and the delivery of the deed, and this LID Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

m. Authority. Each party represents to the other that it has authority to execute this LID Agreement and to perform all of the terms and conditions required of them as provided under this LID Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Carriage Hill-Nampa Agreement as of the date set forth first above.

NAMPA:

By: Stephen Kren
Tom Dale, Mayor

ATTEST:

By: Wiana Lembing
City Clerk

CARRIAGE HILL:

Development Group, Inc., an Idaho corporation

By: William D. Tate
William D. Tate, President

TRIANGLE:

Triangle Dairy, Inc., an Idaho corporation

By: William D. Tate
William D. Tate, Vice President

SHANK:

Edward Derwyn Shank
Edward Derwyn Shank

Grace E. Shank
Grace E. Shank

Schedule of Exhibits:

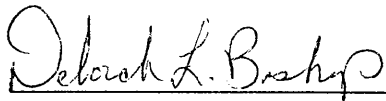
Exhibit A: Legal Description of Carriage Hill Subdivision

State of Idaho)

Canyon County)

On this 19th day of April, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen Kren and Diana Lambing known to me to be the Council President and the City Clerk, of the City of Nampa, Idaho, a municipal corporation, who executed the foregoing instrument.

In Witness Whereof, I have hereunto set my hand and affixed by official seal, the day and year in this certificate first above written.

 _____

Deborah L. Bishop

Residing at: Nampa, Canyon County, Idaho

My Commission Expires: 6/13/2007

