

REIMBURSEMENT AGREEMENT
Between City Of Eagle and M3 Eagle, L.L.C.

THIS REIMBURSEMENT AGREEMENT (this "**Agreement**") is effective on the date last executed below (the "Effective Date") by and between the City of Eagle, a municipal corporation organized and existing under the State of Idaho, by and through its Mayor ("**Eagle**" or the "**City**") and M3 Eagle, L.L.C., a Texas limited liability company ("**M3**"). The City and M3 are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

RECITALS

A. On December 11, 2007 the City approved the Pre-Annexation and Development Agreement between the City and M3, recorded on December 27, 2007 as Instrument No. 107170114 (the "**Development Agreement**") addressing the annexation, zoning and development of the M3-owned property described in the Development Agreement (the "**Property**"). Unless otherwise noted in this Agreement, capitalized terms shall have the meaning found in the Development Agreement.

B. The Parties acknowledge that the Development Agreement provides, in part, that:

1. The development planned for the Property, including the Public Infrastructure, is contemplated to progress in phases (that may be non-contiguous) and accomplished over an estimated 20 years. Upon the annexation of the Property, M3 shall be authorized to implement the types of uses, densities and intensities of uses as set forth in the Development Agreement and shall be accorded all approvals necessary to permit M3 to implement the Development Agreement, subject to the City's review and approvals as set forth in the Development Agreement, including, without limitation: Planning Unit Master Plans, Final Development Plans, site plans, subdivision plats, grading plans, construction plans and other similar requests (individually or collectively "**Development Submittals**") in accordance with the notice and hearing procedures of Eagle City Code.

2. Prior to annexation, M3 may submit to the City the Development Submittals, which shall be processed in accordance with the M3 Development Agreement and the notice and hearing procedures of Eagle City Code.

3. The ordinances, rules, regulations, permit requirements, development fees, other infrastructure fees, exactions, other requirements, and/or official policies however denominated, applicable to and governing the development of the Property shall be those that are existing and in force as of the Date of the Development Submittals or as may be established in the M3 Development Agreement.

C. In order to facilitate and ensure the timely processing of Development Submittals, M3 agrees to reimburse the City fees for the services of appropriate land use planners, legal counsel, engineers and/or other consultants ("**Consultants**") as may be retained by the City, provided that the City determines that such additional fees for services are necessary.

D. The City Council has authorized the Mayor to enter into this Agreement on behalf of the City.

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 below, the City and M3 represent, covenant and agree as follows:

1. **Fees.** M3 shall pay the standard application processing fees as provided by Eagle City Code or applicable Eagle City fee resolution in connection with the City's processing of Development Submittals at the time the City receives said Development Submittals.

2. **Scope of Review.** The City staff and M3 shall meet and discuss the scope of the City's review ("Scope of Review") of the Development Submittals and estimate the fees for such review which are not covered by applicable fee schedules established by the City in conjunction with or directly related to the Development Submittals. The City will provide M3 with a written estimate for the time for such review and

processing of Development Submittals by City staff and its consultants. The Scope of Review is understood to be a good faith estimate that may increase or decrease as the review and processing work progresses. The fees collected by the City in connection with this Agreement shall be used solely for the purpose of reimbursing the City in connection with the City staff and/or City consultant's review and processing of the Development Submittal(s) subject to the Scope of Review and its amendments, if any.

3. **Costs for Public Hearings and Meetings.** Costs such as for notices, City Staff and City Consultant incurred in connection with public hearings and meetings before the City and required agencies shall be paid by M3 to the extent that they are not covered by other Fees in place at the time the City receives the Development Submittals from M3.

4. **Invoices.** M3 shall pay the City directly for the fees incurred in connection with the City's time for the review and processing of the Development Submittals as set forth herein, on or around the 15th day of a month when the City has delivered to M3 a detailed invoice for the same on or before the 25th day of the previous month; provided, however, all or part of such payment may be reasonably delayed if the Parties are in discussion in connection with the detail of an invoice except that payment for the uncontested portion of any invoice shall be timely remitted to the City. The City shall provide M3 with such reasonable documentation, except such information that may be privileged or otherwise undisclosed, as M3 may request to substantiate the City's demand(s) for payment.

5. **Culmination of Processing.** In the event that either Party elects to cease pursuing or processing the Development Submittals, notice of such election shall be delivered as set forth herein. M3 shall pay the cost of services performed by the City staff and City consultants prior to delivery of such notice and any balance remaining from pre-payments made by M3 to the City shall be promptly returned by the City to M3.

6. **Meetings of the Parties.** The City's Zoning Administrator, or the Zoning Administrator's designee, and M3 may meet from time to time to discuss the review of the Development Submittals and the manner in which costs might be most effectively managed. The City maintains the sole right to determine the nature and extent of the City's review of the Development Submittals provided such review is consistent with the Development Agreement. The City's Zoning Administrator or the Zoning Administrator's designee shall be the City's representative and shall oversee the City's review of the Development Submittals and coordinate all communications and carry out any and all tasks as may be required by this Agreement. The City agrees to provide oversight in connection with review of the Development Submittals and the fees associated therewith so as to promote the efficient use of time and resources and help control such fees.

7. **Miscellaneous.**

a. **Notices.** All notices, filings, consents, approvals and other communications provided for herein or delivered in connection with this Agreement shall be delivered as provided in the Development Agreement.

b. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. No modification or amendment to this Agreement made or claimed by M3 or the City shall have any force or effect unless the same shall be endorsed in writing and signed by the Party against which the enforcement of such modification or amendment is sought.

c. **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.

d. **Exhibits; Recitals; Headings.** Any exhibit attached hereto and 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. As used in this Agreement references to one gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

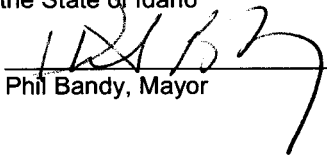
e. **Construction.** The language herein shall be constructed simply in accord with its fair meaning and not strictly for or against a Party, regardless of whether such Party prepared or caused the preparation of this Agreement.

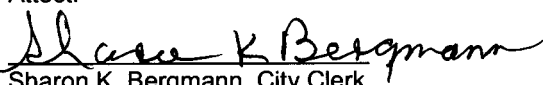
- f. **Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Idaho.
- g. **Dispute Resolution.** Any dispute, difference, claim or disagreement arising under or with respect to this Agreement, including the meaning or construction thereof, shall be governed by the dispute resolution process provided in Sections 5.3, 5.4 and 5.5 of the Development Agreement.
- h. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver by either Party thereof, and no waiver by the City or M3 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.
- i. **Successors and Assigns.** This Agreement shall be binding on the City and M3, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns.
- j. **No Third-Party Beneficiaries.** This Agreement shall not be construed to create any rights in any person or entity who is not a signatory to this Agreement and no person or entity may claim the status of a third-party beneficiary of this Agreement.
- k. **Time of Essence.** Time is of the essence in implementing the terms of this Agreement.
- l. **Further Acts.** Each of the Parties shall act in good faith when undertaking their respective obligations and covenants contained herein and 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.
- m. **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.

IN WITNESS WHEREOF, the Parties hereto, having been duly authorized, have executed this Service Reimbursement Agreement to be effective as of the Effective Date.

THE CITY:

CITY OF EAGLE, IDAHO, a municipal corporation organized and existing under the laws of the State of Idaho

By: 
Phil Bandy, Mayor

Attest:

Sharon K. Bergmann, City Clerk

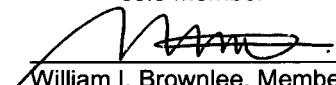
DATED: 3-31-07

DEVELOPER:

M3 Eagle L.L.C., a Texas limited liability company

By: M3 BUILDERS, L.L.C., an Arizona limited liability company, its Manager

By: The M3 Companies, L.L.C., an Arizona limited liability company, its sole member

By: 
William I. Brownlee, Member

DATED: 3/25/09

