

WATER SYSTEM DEVELOPMENT AGREEMENT

This Agreement is made and entered into this 3rd day of February, 1997, by and between **COMORE LOMA WATER CORPORATION**, an Idaho corporation (hereinafter "Water Corporation"), and **CO-MORE DEVELOPMENT, INC.**, an Idaho corporation (hereinafter "Developer").

WITNESSETH:

Recitals:

- A. Developer and its predecessors in interest are the developers of the Comore Loma Subdivision to the County of Bonneville, State of Idaho, which currently consists of six (6) separate divisions, namely nos. 1,2,3,4,5 and 7 (there being no Division 6) containing a total of 138 lots for dwelling sites plus one well lot (hereinafter referred to, along with its planned future divisions, as the "Subdivision").*
- B. In connection with such development, Developer's predecessors-in-interest caused the formation of the Water Corporation to provide water to the owners of lots within the Subdivision. The Water Corporation is now owned and controlled by the lot owners, under the direction of a Board of Directors which is independent from and not controlled by Developer, although the Developer does have certain membership rights.
- C. Pursuant to previous agreements, offers and modifications thereof between Developer's predecessors and the Water Corporation, Developer and its predecessors have developed, installed, and paid for all existing wells, pumps, water storage tanks, water lines and other facilities associated therewith except 67% of Well No. 4, necessary to produce and deliver water to lots within the Subdivision, have transferred the same to the Water Corporation (except for the storage tank and water lines running to and from the tank). Also pursuant to those agreements, Offers and modifications thereof, as well as the corporate responsibilities incumbent upon it, the Water Corporation installed and paid for 67% of Well No. 4 (All of said water facilities, whether previously installed by Developer and its predecessors or by the Water Corporation, are hereinafter referred to as "the Water System.") The Water Corporation owns and is responsible, at its own expense, to maintain and operate the Water System for the benefit of its members.

* There are actually 140 platted lots in Division 1 through 7 of the Subdivision. Also included within the term "Subdivision," as herein defined, is one (1) lot owned by Randy Skidmore which is not within any of the platted divisions of the Comore Lome Subdivision but which is hooked up to the Water System, and whose owner is an equal member of the Corporation, making a total of 141 lots. However, there are three lots in Division 1 of the Subdivision which are not, and will not, be hooked up to the water system (namely, Lots 1,2 and 3 of Block 2 thereof), resulting in 138 lots currently in the Subdivision, as defined herein.

- D. The Water System has been approved by the State of Idaho, Division of Environmental Quality (“DEQ”), to service up to, but not more than, 142 homes/lots. This approval is based on a required pumping capacity of 10.1 gpm per home, as determined by the DEQ. Currently 104 lots in the Subdivision are actually receiving water service from the Water Corporation, or have homes under construction which will soon receive water service. The Water Corporation desires to maintain a reserve pumping capacity above the minimum per lot capacity determined by the DEQ of 52 homes (“Reserve Pumping Capacity”).
- E. Developer has completed the final platting for Division 8 of the Subdivision, consisting of an additional 29 building lots. In addition, Developer now owns or has obtained options to purchase up to approximately 3,400 additional acres of property contiguous to the Subdivision, which it may develop over time as part of the Subdivision.
- F. The parties desire to redefine their respective rights and obligations with regard to the Water System to accommodate the development of additional divisions to the Subdivision, including the responsibilities for the installation of additional wells, pumps, and other facilities, the payment and security therefor, and the responsibility of the Water Corporation to maintain the water system and to provide water service to the lots so developed.

NOW, THEREFOR, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. **Developer’s Membership Status Within Water Corporation.** Consistent with the Amended and Restated Articles of Incorporation of the Water Corporation, there are a total of 138 lots to which membership in the Water Corporation is appurtenant. Five (5) of such memberships have never been issued (as explained in paragraph 3.d., *infra*), resulting in a total number of issued and outstanding memberships of 133. The parties agree that, as of the date hereof, Developer (or its predecessors) owns a total of 21 lots out of the 133, and the memberships appurtenant thereto.
2. **Rights and Obligations Water Corporation.**
 - a. *Ownership of Water System.* It is expressly understood and agreed between the parties that the Water Corporation owns all of the Water System except the storage tank and the water lines to and from the storage tank. Upon execution hereof, Developer will, by due and proper deeds and other instruments, convey to the Water Corporation the storage tank and water lines, but not the underlying real estate, and will also convey to the Water Corporation an easement for access to and maintenance of such tank and lines, across the following described property, to wit:

That portion of the SE1/4 of Section 1, Township 1 North, Range 38 East of the Boise Meridian, Bonneville County, Idaho, on which is actually located the water storage tank

and water lines running to and from said water storage tank. Said water lines and storage tank are generally located along and at the end, respectively, of the extension of Comish Drive as shown on a Preliminary Plat known as "The Water Plan" dated January 1974 by Benton Engineering, Job No. 1244.

- b. *Obligation to Maintain the Water System.* It is also expressly understood and agreed that the Water Corporation has the sole and exclusive obligation to operate and maintain the Water System for the benefit of its members. The parties specifically agree that Water Corporation shall maintain the Water System to the extent necessary to maintain the current pumping capacity of 1470 gpm, and as such may be increased by future expansions of the Water System as provided hereafter. In the event the Water Corporation fails to do so, after reasonable notice and opportunity from Developer, Developer may at its option make such repairs and do such maintenance, and shall be entitled to immediate reimbursement for all reasonable cost and expenses incurred therein. PROVIDED, HOWEVER, that the Water Corporation may, at its option, decide to decrease the actual pumping capacity of the Water System at any time by reducing the pumping capacity of one or more pumps, or by abandoning wells or taking them off line, and in the event of its election to do so, a corresponding downward adjustment shall be made in the Reserve Pumping Capacity required of Developer hereunder, it being the intent of the parties that any such action by the Water Corporation shall decrease the Reserve Pumping Capacity rather than increase the obligation of the Developer to provide water in connection with future development in the Subdivision.
- c. *Restriction on Right to Expand the Service Area of the Water Corporation.* The parties agree that, other than as set forth herein, the Water Corporation shall not incorporate additional geographical areas to its service area except with the consent of Developer, and then only on the terms and conditions set forth in a subsequent agreement between the parties.

3. **Currently Planned Expansion of the Water System.** There is a current need to expand the Water System in order for the Water System to be capable of providing adequate water service to unsold lots in the Subdivision, as well as to lots in the planned Division 8, while maintaining the Reserve Pumping Capacity. To facilitate and coordinate such expansion, the parties agree as follows:

- a. *Restrictions on Transfer of Membership and of Establishment of New Water Service.* The Water Corporation shall not be required to transfer the membership appurtenant to any lot beyond the currently occupied 104 lots, or to begin to provide water service to any such additional lots, unless and until Developer has completed construction of the Expansion Project described below.

b. *Construction of Expansion to Water System.*

- (i) Responsibility for Expansion and Construction. Developer shall have the responsibility and obligation, at its sole cost and expense, to develop and install the wells, pumps, booster pump, water mains, storage tanks and other facilities necessary and appropriate to expand the Water System, at a minimum, to a sufficient capacity to obtain approval from the DEQ to service an additional 29 lots (*i.e.*, Division 8 of the Comore Loma Subdivision), but developer may provide such additional pumping capacity above 29 lots as it deems advisable considering other planned divisions of the Subdivision (“the Expansion Project”). All work on the Expansion Project shall be performed to the satisfaction of a qualified project engineer, licensed in Idaho, who shall determine the quality, acceptability and fitness of the items of work and materials which are to be provided and paid for hereunder, and to the standards imposed on the Expansion Project by law and by the DEQ.
- (ii) Joint Responsibilities. The parties shall jointly share the responsibility and obligation to obtain any governmental approvals of the Expansion Project required by law, and to such end the parties shall cooperate in good faith to apply for, process and obtain such approvals in time to allow for the construction to take place within the time limits set forth below. The parties shall also jointly share the responsibility to coordinate the connection of the Expansion Project to the existing Water System, and to do all other things that require their participation to complete the planning, approval, construction and hookup of the Expansion Project in a timely, orderly and efficient fashion.
- (iii) Transfer of Expansion Project to Water Corporation. Upon completion of the Expansion Project by Developer, Developer shall take all steps necessary or appropriate to transfer ownership of the Expansion Project to the Water Corporation, such that the Water Corporation shall continue to own the Water System, as expanded by the Expansion Project. All references to the term “Water System” herein shall include the entire Water System as the same may be expanded and transferred to the Water Corporation at the applicable time in question.

- c. *Inclusion of New Divisions in the Water Corporation.* The Water Corporation shall, at such times as: (i) the final plat for each additional division (beginning with Division 8) has been accepted by the County of Bonneville, State of Idaho; (ii) the DEQ has approved the provision of water from the Water System to such division; and (iii) the Expansion Project has been completed and paid for by Developer, and

includes sufficient capacity to maintain the Reserve Pumping Capacity for the benefit of the Water Corporation; take all corporate actions necessary or appropriate to incorporate such division into the geographical area authorized to be serviced by the Water Corporation. The Water Corporation shall also at such time add the lots contained within each such new division to the membership total owned by Developer (or to such other person or entity to whom any of such lots may have been conveyed)

- d. *No Hook-up Fees or Assessments.* The fulfillment of Developer's responsibilities under this paragraph shall excuse it (and its successors-in-interest to the unsold lots in the Subdivision not actually now receiving water, and its successors-in-interest to lots in additional divisions thereof added to the Water Corporation pursuant to paragraph 3.c. of this agreement) from any responsibility to pay any hook-up fee, assessment, or other charge calculated to cover the cost of construction, installation or hookup of the Expansion Project to the Water System or to otherwise make water available to those lots. NOTWITHSTANDING THE FOREGOING, Developer or its predecessors have previously sold five (5) lots in the Subdivision without water rights, that is, without also selling to the purchaser thereof the share of stock in the Water Corporation appurtenant thereto, in consideration for which Developer gave such purchasers a discount on the price of the lots. Those five lots are:

Comore Loma Subdivision, Division 5, Block 8, Lots 15
and 16; Block 10, Lots 7 and 11; and Block 12, Lot 7

Water Corporation agrees that Developer may determine, assess and collect a hookup fee or assessment from the owner of each such lot upon application by such owner for membership in the Water Corporation.

4. **Subsequent Expansion of the Water System.** The parties recognize that continued development of the Comore Loma Subdivision by Developer will eventually require additional expansion of the Water System. The provisions of paragraph 3, together with all of its subparagraphs, shall apply to all such future expansions and development, with the following adjustments and modifications:
- a. *Adjustment to Reserve Pumping Capacity.* In the event the DEQ shall increase or decrease the per lot pumping capacity of the Water System above or below the currently established rate of 10.1 gpm, than the Reserve Pumping Capacity of 52 homes shall be calculated based on the increased or decreased per lot pumping capacity established by the DEQ. PROVIDED, HOWEVER, that beginning with Division 8, Developer shall cause that the protective covenants for each new division of the Comore Loma Subdivision contain a restriction on the amount of water that may be used by a lot owner at any one time, and in the event that the increase in DEQ

requirements is in part a result of the use by such lot owners of a volume of water in excess of the amounts permitted under those protective covenants, then to that extent there shall be no adjustment in the Reserve Pumping Capacity for purposes of this agreement. The parties agree to cooperate in good faith to enforce the water restrictions contained and to be contained in such protective covenants.

- b. *Calculation of Actual Reserve Pumping Capacity.* The actual Reserve Pumping Capacity shall be the difference between the number of approved home/lots by the DEQ and the actual number of homes/lots receiving water service from the Water Corporation, as adjusted, if necessary, by any decision of the Corporation to reduce the Pumping Capacity of the Water System as set forth in paragraph 2.b. hereof.
- c. *Transfer of Expansion Project and Inclusion of Additional Divisions.* Developer shall have the same obligation to transfer each Expansion Project to the Water Corporation as it does with the currently anticipated Expansion Project under paragraph 3. The Water Corporation shall have the same obligation to incorporate additional divisions of the Comore Loma Subdivision to be serviced by the then expanded Water System into the geographical service area and membership of the Water Corporation as it does under paragraph 3 with the division(s) to be added thereunder.
- d. *Termination of Agreement.* The obligations of the parties with regard to the construction of future expansions to the Water System servicing the Subdivision and its future additions contemplated hereby may be terminated only by the mutual consent of the parties, it being the intent of the parties that, until so terminated or modified by mutual consent, this agreement shall govern all future development of contiguous tracts of real property by Developer and all expansions to the Water System associated therewith. Upon such termination by mutual consent, Developer shall be required to leave the Water System with the Reserve Pumping Capacity, as adjusted, if necessary, under the provisions of paragraph 2.b. hereof.

5. **Prior Agreements; Integration.** This agreement supersedes all prior agreements between the parties and any of their predecessors in interest, including but not limited to Richard T. Skidmore and Bon Adell Skidmore, all of which agreements are hereby declared to be terminated, null, void and of no further effect, and it is hereby expressly agreed that no further liabilities exist between the parties based on such prior agreements. This agreement contains the entire agreement of the parties with regard to the subject matter hereof, and there are no representations, agreements, warranties or conditions which have not been set forth herein. This agreement may not be amended, modified or terminated by the parties except in a writing signed by the parties.

6. **Exercise of Membership Rights.** Nothing contained herein shall require Developer to exercise its voting rights in the Water Corporation in any particular manner, and Developer shall remain freely able to vote on any matter coming before the membership of the Water Corporation as if it were not a party to this Agreement.
7. **Attorney fees and cost.**
- a. *Cost of preparing this agreement.* The parties agree that Petersen, Moss, Olsen, Carr, Eskelson & Hall has represented Developer in this matter, but they nevertheless agree that the parties shall pay in equal shares the portion of said attorney fees related to the drafting of this agreement. Each party shall pay its or their own attorney fees and cost incurred in negotiations and other matters regarding this agreement. Developer shall cause said attorneys to keep track of their time for such matters in separate bills.
 - b. *In Event of Default.* Should either party default in the performance of any term, condition or provision of this agreement, that party shall pay to the other party all cost and expenses, including reasonable attorney fees, incurred in seeking enforcement of this agreement or relief from its breach, whether incurred in court proceedings or otherwise.
8. **Binding Effect.** This agreement shall extend to, be binding upon and inure to the benefit of the respective heirs, personal representatives, assigns and other successors in interest of the parties hereto.

In WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

COMORE LOMA WATER CORPORATION

CO-MORE DEVELOPMENT, INCORPORATED

By: Thayne Judd
President

By: Richard Skidmore
President

Attest: Gary Adams
Secretary

Attest: Brett Skidmore
Secretary

(All signatures on file)