

DRAINAGE AGREEMENT
by and between
MUNCKY BUSINESS LLC ||
and
ADA COUNTY DRAINAGE DISTRICT NO. 3
for the
CHRISWAY TOWNHOUSES PROJECT

Commented [A1]: Confirm legal entity

This Drainage Agreement (“Agreement”) is entered into by and between Ada County Drainage District No. 3 of Ada County, Idaho, a quasi-municipal corporation organized under the laws of the state of Idaho, Chapter 29, Title 42, Idaho Code (“District”), and Muncky Business LLC, an Idaho limited liability company, its successors and assigns (“Developer”), hereinafter, collectively, referred to as “Parties.”

RECITALS

1. The District was organized to drain, reclaim, and protect lands within its boundaries in order to promote the public health, convenience, and welfare. The District owns and operates, among other facilities, Drain A in southeast Boise along with a public right-of-way easement through which Drain A passes.

2. Developer owns that certain real property with an address of 1500 Chrisway Drive Boise City, Ada County, Idaho, parcel no. R1516270086 described in **Exhibit A** and generally depicted on **Exhibit B** attached hereto (hereinafter collectively referred to as “Property”).

3. Developer plans to redevelop the Property into townhomes (hereinafter the “Development Project”). The Development Project is located in or around the District’s drainage easement/right-of-way and Drain A (“Drainage Facility”). The Developer has outlined the proposed project, anticipated drainage, and location of amenities in reference to the District’s right-of-way in the Plans, attached hereto as **Exhibit C** (“Plans”).

4. District’s drainage easement/right-of-way traverses through the Development Project, as well as continuing to provide drainage upstream and downstream from the Property and on the adjacent properties. As part of the Development Project, Developer also plans to construct and install various landscaping and on-site features, as more particularly described in **Exhibit C**.

5. The Board of Commissioners of the District, at their meetings over the course of several months in 2024, reviewed the proposed project and provided preliminary feedback on the Development Project.

6. At the meeting of the Board of Drainage Commissioners of the District (the “Board”) on November 1, 2024, the Board conceptually reviewed Developer’s proposed Plans and provided preliminary feedback on the terms and conditions that would be necessary for the District to approve the Plans and enter into a drainage agreement.

7. Developer has provided the District with updated construction concepts and proposed Plans for the Development Project, along with a Stormwater Pollution Prevention Plan outlining Best Management Practices during the construction of the Development Project.

8. Developer representatives, consultants, contractors, and subcontractors, District Counsel, and District Engineer have met on several occasions, exchanged information concerning the Plans, drainage alteration, and related activity to reach an understanding on the Development Project and the role of the District.

9. The Parties wish to execute this Agreement to set forth their respective rights and responsibilities concerning Developer's proposed Development Project, and potential non-permanent infringements into the District's easement and right-of-way, in addition to ongoing operation and maintenance that Developer will be required to provide for the Drainage Facility and the District's associated easement and right-of-way.

AGREEMENT

In consideration of the above recitals, which are hereby incorporated as binding provisions in this Agreement, and the mutual promises and obligations contained herein, and other good and valuable consideration, the District and Developer hereby covenant and agree as follows:

A. Intent of the Parties

The Parties agree the intent and purpose of this Agreement are to provide the following:

1. Mitigation and remediation of the current condition of Drain A as it traverses through the Development Project, which mitigation and remediation will benefit the Parties.

2. In consideration of the potential benefit to the District related to maintenance and operation of the Drainage Facility at the Development Project location, the District is willing to allow certain non-permanent landscaping features to exist within the Drain A easement and right-of-way.

3. Developer agrees to construct the infrastructure and landscaping related to the Drainage Facility consistent with the approved Plans, and in a manner which will not interfere with the continued receipt of existing drainage in Drain A, including certain potential irrigation discharge and certain drainage from the Property. Developer also commits to constructing the infrastructure related to the Drainage Facility in a manner as to avoid any impact on downstream properties currently served by Drain A.

4. Developer also agrees to maintain responsibility for the landscaping and Drainage Facility as it traverses through the Property in perpetuity.

5. Developer proposes to commence construction on or before [ENTER], and complete construction and landscaping adjacent to the Drainage Facility by [ENTER] in order to ensure no impacts to Drain A in receiving drainage on or before April 15, 2025.

B. District Approval of Drainage Plans

1. The District hereby approves Developer's proposed Plans, subject to the conditions set forth and/or referenced herein. Operation, maintenance, and repair of the Drainage Facility at the Development Project location shall be Developer's sole responsibility and at Developer's sole

expense. If any repair, replacement, improvement, and reconstruction of said Drainage Facility on the Property is required and the District is required to cause the same to be repaired, replaced, improved, and reconstructed because the Developer has failed to do so within thirty (30) days of written notice from the District, the costs thereof shall be billed to Developer and its successors and assigns.

2. Developer shall be responsible for all operation and maintenance of the Drainage Facility at the Development Project location.

3. Developer has provided a final set of Plans to the District for formal review. The final set of design plans have been sealed and dated by a professional engineer, and any plans that depict property lines shall be sealed and dated by a professional land surveyor or equivalent. The final set of Plans shall include the following information:

- a. A metes and bounds description of the District's drainage easement and right-of-way that exists for the Property.
- b. Verification that the Drainage Facility will continue to accommodate flow from irrigation discharge. Developer shall provide District with confirmation of acceptance of the Development Project by ACHD as applicable.
- c. Developer shall provide a Stormwater Pollution Prevention Plan ("SWPPP") which will address activities related to the construction of the Development Project and Drain A. The SWPPP shall include Best Management Practices ("BMPs") to limit any discharge from the Site and ensuring Drain A is not a receiving water in the SWPPP and included in the narrative of the SWPPP. Developer shall be responsible for filing the SWPPP with any other appropriate governmental entity and to comply with such governmental entity's requirements.
- d. Developer has proposed certain landscaping features within the District's easement and right-of-way. In exchange for the ability to place such features within the District's easement and right-of-way, Developer has agreed to assume maintenance and operation of the District's Drainage Facility, easement, and right-of-way on the Property. Should the District require these features be removed or disturbed to facilitate maintenance or operation of Drain A or the easement and right-of-way, Developer shall be solely responsible for such cost and work related to this maintenance and operation. Nothing shall be permitted to be placed or constructed within the easement, by the Developer or any successor or assign, other than that specified in this Agreement and shown on the Plans provided by the Developer and attached as **Exhibit C**.
- e. By this Agreement, District grants Developer a license to enter upon the District's current easement or right-of-way for purposes of constructing the Development Project provided all drainage facilitated by Drain A is undisturbed.

- f. Developer shall submit an updated construction schedule for the Project no later than five (5) days prior to the commencement of construction and submit updates on a weekly basis during construction.
- g. Developer and its engineer shall be responsible for the inspection of the work described in this agreement and compliance with previously submitted materials and specifications. Developer and or Developer's engineer shall provide progress reports to District's engineer on a weekly basis. Should District's engineer determine any work, or activity does not conform with previously submitted materials or specifications, District Engineer shall notify District counsel who shall then notify Developer in writing of any needed corrected work or construction.

District's approval of this Agreement and the various portions thereof are specifically conditioned on the ongoing submissions and reporting by Developer as stated herein.

4. Should any issues arise as it relates to the flow of drainage through Drain A on the Property or downstream of the Property, Developer shall be responsible for remedying the issue to the satisfaction of the District and at the Developer's sole cost and expense.

5. Developer shall ensure that the Drainage Facility will continue to be capable of carrying the same amount of flow post-construction as it was capable of carrying pre-construction.

6. Developer shall ensure that all work done to remove vegetation from Drain A at the Property is done in accordance with the requirements of the Boise Public Works Department or other Boise City departments and all other applicable standards, including those standards required under the National Pollutant Discharge Elimination System (NPDES) permit to which the District is a signatory.

7. The location of the Drainage Facility and Drain A which traverse through the Property will not be changed or altered from its current location. In order to ensure that the location of the Drainage Facility and associated easement and right-of-way as it relates to the Property is clearly delineated and remains the same, Developer shall prepare as-built construction drawings showing the location of the drainage easement. No permanent or other structures shall be constructed or allowed within the Drainage Facility.

8. Developer shall ensure that the Development Project is constructed in accordance with the final Plans, as approved by the District and attached as **Exhibit C**, subject to any conditions imposed by the District which conditions must be satisfied in order to comply with this Agreement.

9. Upon approval of the final Plans by the District, Developer shall obtain the District's written approval prior to any modification to the Drainage Plans, which approval shall not be unreasonably withheld.

10. Developer shall, at its sole expense, comply with all laws, orders, and regulations of federal, state, and local authorities, and obtain all other licenses or permits that may be required to perform this Agreement and/or for any construction work subject to this Agreement.

11. Developer shall comply with all laws, rules, regulations, and orders of federal, state, and local authorities promulgated to provide and maintain maximum water quality for domestic, industrial, agricultural, manufacturing, municipal, and groundwater recharge purposes, to abate pollution of streams and lakes, to enhance and preserve the quality and value of the water resources of the state of Idaho, and to assist in the prevention, control, and abatement of water pollution, to the extent the same are applicable to Developer's activities contemplated by this Agreement.

12. Developer shall, at its own expense, install, construct, modify, and/or maintain any and all facilities that may be required by local, state, or federal authorities to prevent discharges of unlawful water pollution initiating from the Property.

13. The District, at all times, reserves the right to observe the in-progress construction and improvement of the Drainage Facility to determine that such construction is performed in accordance with the Drainage Plans and the conditions referenced or contained herein.

14. This Agreement is subject to all applicable permits issued by the city of Boise and the Ada County Highway District.

15. Developer shall complete the construction and installation of all landscaping improvements on or before [date needed]. The time-limits contained in this provision are subject to revision upon mutual agreement of the Parties to this Agreement.

C. Indemnity

1. Developer shall be solely responsible for any liability, cost, or loss incurred by the District as a result of (1) injury to person or property caused by a lack of adequate drainage facilities upon the Property, (2) injury to persons or property upon or adjacent to the Property caused by improper construction or maintenance of Drain A or the portion of Drain A that the Developer is required by this Agreement to maintain or associated landscaping; or (3) any injury or damage to person or property caused by Developer's unpermitted discharge of irrigation or drainage into Drain A, no matter what amount is discharged.

2. Developer shall indemnify, defend, save, and hold the District harmless from and for any and all losses, claims, actions, or judgments for damages or injuries to persons or property and losses and expenses (hereinafter "Liability") to the extent caused by Developer, its employees, agents, business invitees, and independent contractors as a result of this Agreement or for the performance of the work involved as herein described including, but not limited to, alteration to vegetation and infrastructure in and around Drain A and the operation and maintenance of the Drainage Facility on the Property. Developer shall fully indemnify and hold the District harmless for any such Liability and shall pay the costs of defense (including the reasonable attorney fees of legal counsel acceptable to the District) of the District in any legal action or claim filed against the District involving any of the circumstances of this Agreement in connection with the Development Project.

3. Developer shall save and hold the District harmless of any liability or responsibility to the extent caused by Developer's activities that result in a violation of water quality standards imposed by federal, state, and local authorities.

D. Bodily Injury, Property Damage, and Workers' Compensation Insurance

Developer shall, or through its contractor shall, at its sole cost, obtain and maintain in full force and effect prior to commencement of construction through completion and inspection of the Development Project, insurance of the following types, with limits not less than those set forth below with respect to the Development Project, and with the following requirements:

- a. Commercial General Liability Insurance (Occurrence Form) with a minimum combined single limit liability of \$2,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$2,000,000 each person for personal and advertising injury liability. Such policy shall have an aggregate products/completed operations liability limit of not less than \$2,000,000 and a general aggregate limit of not less than \$2,000,000. The products/completed operations liability coverage shall be maintained in full force and effect for not less than eighteen months following completion of the Project or issuance of a certificate of occupancy, whichever is later. The policy shall be endorsed to name District, including its officers, directors, and employees of each as additional insureds. All policies shall be occurrence form policies and not a claims-made policy. The required limits of liability may be achieved with an umbrella policy if the umbrella policy provides coverage as least as broad as the underlying Commercial General Liability policy.
- b. During the construction of the Project, Builder's Risk Insurance or equivalent upon the Development Project covering one hundred percent (100%) of the replacement cost of the Project. This policy shall be written on a builder's risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the construction, temporary buildings, falsework, and construction in transit, and shall insure against at least the following perils: (i) fire; (ii) lighting; (iii) explosion; (iv) windstorm or hail; (v) smoke; (vi) aircraft or vehicles; (vii) riot or civil commotion; (viii) theft; (ix) vandalism and malicious mischief; (x) leakage from fire extinguishing equipment; (xii) sinkhole collapse; (xiii) collapse; (xiv) breakage of building glass; (xv) falling objects; (xvi) debris removal; (xvii) demolition occasioned by enforcement of laws and regulations; (xviii) weight of snow, ice, or sleet; (xx) weight of people or personal property;
- c. Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Developer's employees, and Employer's Liability Insurance with minimum limits as required by law. Developer shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

- d. Automobile Liability Insurance covering use of all, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence.
- e. All insurance provided by Developer under this Agreement shall include a waiver of subrogation by the insurers in favor of District. Developer hereby releases District, including its respective officers, directors, and employees, for losses or claims for bodily injury, property damage, or other insured claims arising out of Developer's performance under this Agreement or construction of the Project unless otherwise as the result of the negligence or willful misconduct of District or its commissioners, directors, and employees.
- f. Developer (or Developer's contractor(s), as applicable) shall provide certificates of insurance satisfactory in form to District (ACORD form or equivalent) evidencing that the insurance required above is in force. To the extent available on commercially reasonable terms, the policy will be endorsed to provide not less than thirty (30) days' written notice will be given to District prior to any cancellation of the policies. Developer will provide evidence (by endorsement, if required) that the waivers of subrogation are in force. Developer (or Developer's contractor(s), as applicable) shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements required in this Agreement. At District's request, Developer shall provide a certified copy of each insurance policy required under this Agreement.
- g. All policies of insurance required by this Agreement shall be issued by insurance companies with a general policyholder's rating of not less than A and a financial rating of AAA (or equivalent ratings if such are changed) as rated in the most current available "Best's Insurance Reports" and qualified to provide the identified insurance coverage in the State of Idaho.
- h. The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by District. Developer's Commercial General Liability Insurance policy shall contain a Cross-Liability or Severability of Interest clause. The fact that Developer has obtained the insurance required in this Section shall in no manner lessen or affect Developer's other obligations or liabilities set forth in the Agreement.

E. Development Project Requirements

a. Warranty on Drainage Facility and Landscaping; and Record Drawings

Upon completion of the construction, Developer shall file Record Drawings with the District Engineer. Developer warrants that the materials and workmanship employed in the construction of the Development Project and associated landscaping shall be good and sound and

shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after final completion, provided nothing herein shall limit the time within which District may bring an action against Developer on account of Developer's failure to otherwise construct such improvements in accordance with this Agreement. The one-year warranty period does not constitute a limitation period with respect to the enforcement of Developer's other obligations under the Agreement.

b. Covenants; Successors and Assigns

The rights, obligations, and duties described in this Agreement constitute an encumbrance running with the land and shall inure to and bind the parties hereto together with their respective heirs, representatives, successors, and assigns. Should Developer wish to assign its rights and responsibilities under this Agreement to any successor or assignee, for the Property, Developer shall provide written notice of such assignment to the District and proof of assignment and assumption by the successor or assignee. It shall be the Developer's responsibility to ensure that such successor and assignee understands that should the Developer assign its responsibilities and obligations under the Drainage Agreement, the successor and assignee will be bound by the terms and conditions of the Drainage Agreement.

F. Attorney and Engineering Fees

In consideration of this Agreement, Developer agrees, upon demand from the District, to pay the District's attorney fees and costs, and engineering fees and costs, charged by the attorney for the District, or by the engineers for the District, in connection with the negotiation and preparation of this Agreement.

District acknowledges Developer has previously tendered the amount of \$2,500 as a retainer for District Attorney's Fees and Engineering Fees. District shall provide Developer with periodic invoices for fees and costs related to preparation of this Agreement and through completion of the construction of the Development Project. The District's final invoices will be sent within thirty (30) days of completion of construction. Developer shall pay said amount within forty-five (45) days of District sending the invoice. Upon request, District shall provide Developer with its then currently accrued amount for attorney's fees, engineering fees, and costs and an estimate through completion of construction of the new Drainage Facility.

In any action brought to enforce any of the terms or conditions of this Agreement, the successful or prevailing party in such action shall be entitled to receive its costs and expenses incurred, including reasonable attorney, accountant, engineering, and expert fees, whether such action be prosecuted to judgment or not.

G. Anti-Boycott Against Israel Certification

Developer hereby certifies pursuant to Section 67-2346, Idaho Code, that the Developer, its wholly owned subsidiaries, majority owned subsidiaries, parent companies and affiliates, are not currently engaged in, and will not for the duration of this Agreement, knowingly engage in, a boycott of goods or services from Israel or territories under its control.

H. Contract With A Company Owned or Operated By the Government of China Prohibited

Developer hereby certifies pursuant to § 67-2359, Idaho Code, that the Developer is not currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China.

I. Prohibition on Contracts with Companies Boycotting Certain Sectors

Participant hereby certifies pursuant to § 67-2347A that the participant shall not, during the course of this Agreement, engage in any boycott of any individual or company who engages in or supports:

1) the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture;

2) or engages or supports the manufacture, distribution, sale, or use of firearms, as defined in Idaho Code § 18-3302(2)(d).

J. Memorandum of Agreement

The parties shall enter into a Memorandum of Agreement which shall summarize the pertinent terms and conditions of this Agreement directing those inquiring to this full Agreement and which shall be recorded in the Ada County Recorder's Office.

K. Recording of Agreement

The District shall record the Memorandum of Agreement and easement in the records of Ada County, Idaho, upon execution of this Agreement and completion of the Development Project. The District shall provide the Developer with conformed copies of the recorded instruments. Developer shall reimburse the District for the recording fees for both the Memorandum of Agreement and the easement.

signatures on following page

This Agreement is effective as of the _____ day of _____, 2024.

DRAINAGE DISTRICT NO. 3

By _____
Steve Sweet
Chairman, Board of Directors

ATTEST:

[enter]
Secretary, Board of Directors

MUNCKY BUSINESS LLC ||

Commented [A2]: Confirm legal entity

By: _____
Name: _____
Its: _____

STATE OF IDAHO)
) ss:
County of Ada)

On this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Steve Sweet, known or identified to me to be the Chairman of the Board of Commissioners of DRAINAGE DISTRICT NO. 3, an Idaho quasi-municipal corporation that executed the within and foregoing instrument 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
My Commission Expires: _____

STATE OF IDAHO)
) ss:
County of Ada)

On this ____ day of _____2024, before me, the undersigned, a Notary Public in and for said county and state, personally appeared [ENTER], known or identified to me to be the Acting Secretary of the Board of Commissioners respectively of DRAINAGE DISTRICT NO. 3, an Idaho quasi-municipal corporation that executed the within and foregoing instrument 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
My Commission Expires: _____

Exhibit A
Description of Property

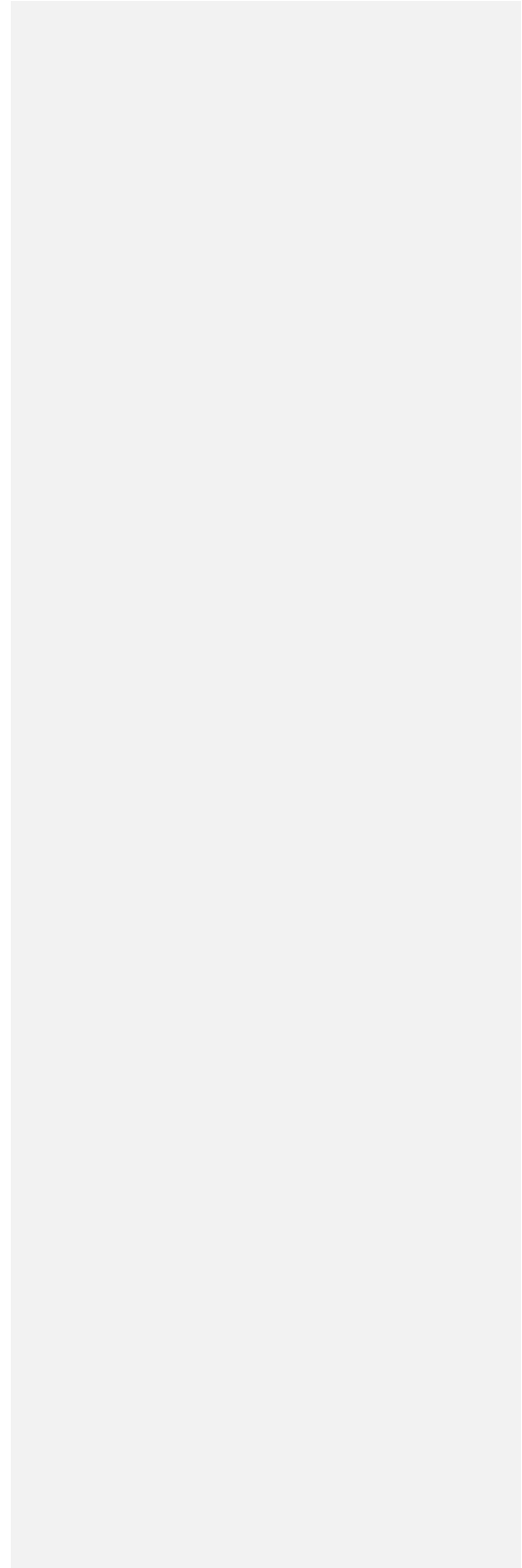


Exhibit B
Depiction of Property



Exhibit C
Plans

