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INSTRUMENT NO. 2008059075

ORDINANCE NO. 3831

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT THE SOUTHWEST CORNER OF NORTH MIDLAND BOULEVARD & WEST CHERRY LANE INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO, ZONING THE SAME AG, SUBJECT TO THE TERMS OF THAT CERTAIN DEVELOPMENT AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE CITY OF NAMPA, AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That the following described real property located at the Southwest corner of North Midland Boulevard & West Cherry Lane, and all thereof, be, and the same is hereby, annexed and made a part of the City of Nampa, Idaho. That the real property hereby annexed is described as follows, to-wit:

> See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That the real property so annexed, as described in Exhibit A above, shall be zoned AG.

Section 3: That this annexation and zone ordinance is subject to and limited by that certain Development Agreement entered into between the parties.

Section 4: That the City Engineer is hereby directed to alter and change the Use and Area Map of the City of Nampa, Idaho, to comply with this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 3rd DAY OF November, 2008.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 3rd DAY OF November, 2008.

Approved:

By [signature]
Mayor

Attest:

[signature]
City Clerk

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RECORDED
2008 NOV 5 PM 4 33
WILLIAM H. HURST
CANYON CNTY RECORDER
BY [signature]
REQUEST MEMBER OF
TYPE ORD FEE

2008059075

State of Idaho)

Canyon County)

On this 3rd day of November, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom Dale and Diana Lambing known to be the Mayor and City Clerk, of the City of Nampa, Idaho, a municipal corporation, who executed the foregoing instrument.

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

Julie Lockey

Julie Lockey
Residing at: Nampa, Canyon County, Idaho
My Commission Expires: 05/11/2011

JULIE LOCKEY
NOTARY
PUBLIC
STATE OF IDAHO

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EXHIBIT A

A parcel of land located in the Northeast Quarter of the Northeast Quarter of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho. Being further described as follows:

BASIS OF BEARINGS:

The East line of the Northeast Quarter of the Northeast Quarter of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, derived from found monuments and takes as South 00° 06' 38" West with the distance between monuments found to be 1,326.51 feet.

BEGINNING at the Northeast corner of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho;

thence along the East line of the Northeast Quarter of the Northeast Quarter of said Section South 00° 06' 38" West to the Southeast corner of said Northeast Quarter of the Northeast Quarter a distance of 1,326.51 feet;

thence along the South line of said Northeast Quarter of the Northeast Quarter South 89° 52' 44" West to the Southwest corner of said Northeast Quarter of the Northeast Quarter a distance of 1,322.30 feet;

thence along the West line of said Northeast Quarter of the Northeast Quarter North 00° 02' 32" East to the Northwest corner of said Northeast Quarter of the Northeast Quarter a distance of 1,327.72 feet;

thence along the North line of said Northeast Quarter of the Northeast Quarter North 89° 55' 54" East a distance of 1,323.88 feet to the POINT OF BEGINNING.

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EXHIBIT "A-1"

LEGAL DESCRIPTION FOR ANNEXATION OF RIGHT-OF-WAY FOR A PORTION OF NORTH MIDLAND BOULEVARD AND WEST CHERRY LANE

A portion of the Northeast Quarter of the Northeast Quarter of Section 8, and a portion of the Southeast Quarter of the Southeast Quarter of Section 5, and a portion of the Southwest Quarter of the Southwest Quarter of Section 4, and a portion of the Northwest Quarter of the Northwest Quarter of Section 9, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho and more particularly described as follows:

Commencing at the Northeast corner of said Section 8, thence South 00° 06' 38" West along the east line of the Northeast Quarter of the Northeast Quarter of said Section 8, a distance of 25.00 feet to a point;

Thence South 89° 55' 54" West, a distance of 25.00 feet to a point on the existing westerly right-of-way of North Midland Boulevard, said point also being on the existing southerly right-of-way of West Cherry Lane, said point being the **POINT OF BEGINNING**;

Thence continuing South 89° 55' 54" West along the existing southerly right-of-way of West Cherry Lane, a distance of 1298.85 feet to a point on the west line of the Northeast Quarter of the Northeast Quarter of said Section 8;

Thence North 00° 02' 32" East along the west line of the Northeast Quarter of the Northeast Quarter of said Section 8, a distance of 25.00 feet to a point on the north line of said Northeast Quarter of the Northeast Quarter of said Section 8;

Thence continuing North 00° 02' 32" East along the west line of the Southeast Quarter of the Southeast Quarter of said Section 5, a distance of 40.00 feet to a point on the existing northerly right-of-way of West Cherry Lane;

Thence North 89° 55' 54" East along the existing northerly right-of-way of West Cherry Lane, a distance of 1323.93 feet to a point on the east line of said Southeast Quarter of the Southeast Quarter of said Section 5;

Thence continuing North 89° 55' 54" East, a distance of 40.00 feet to a point on the existing easterly right-of-way of North Midland Boulevard;

Thence South 00° 06' 38" West, a distance of 40.00 feet to a point on the south line of the Southwest Quarter of the Southwest Quarter of said section 4;

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Thence South 89° 55' 54" West along the south line of the Southwest Quarter of the Southwest Quarter of said Section 4, a distance of 15.00 feet to a point on the existing easterly right-of-way of North Midland Boulevard;

Thence South 00° 06' 38" West along the existing easterly right-of-way of North Midland Boulevard, a distance of 1326.48 feet to a point on the south line of the Northwest Quarter of the Northwest Quarter of said Section 9;

Thence South 89° 52' 44" West along the south line of the Northwest Quarter of the Northwest Quarter of said Section 9, a distance of 25.00 feet to a point on the west line of the Northwest Quarter of the Northwest Quarter of said Section 9;

Thence continuing South 89° 52' 44" West along the south line of the Northeast Quarter of the Northeast Quarter of said Section 8, a distance of 25.00 feet to a point on the existing westerly right-of-way of North Midland Boulevard;

Thence North 00° 06' 38" East along the existing westerly right-of-way of North Midland Boulevard, a distance of 1301.53 feet to the **POINT OF BEGINNING**.

Containing 3.52 acres more or less.

Subject to any rights-of-way or easements of record or implied.

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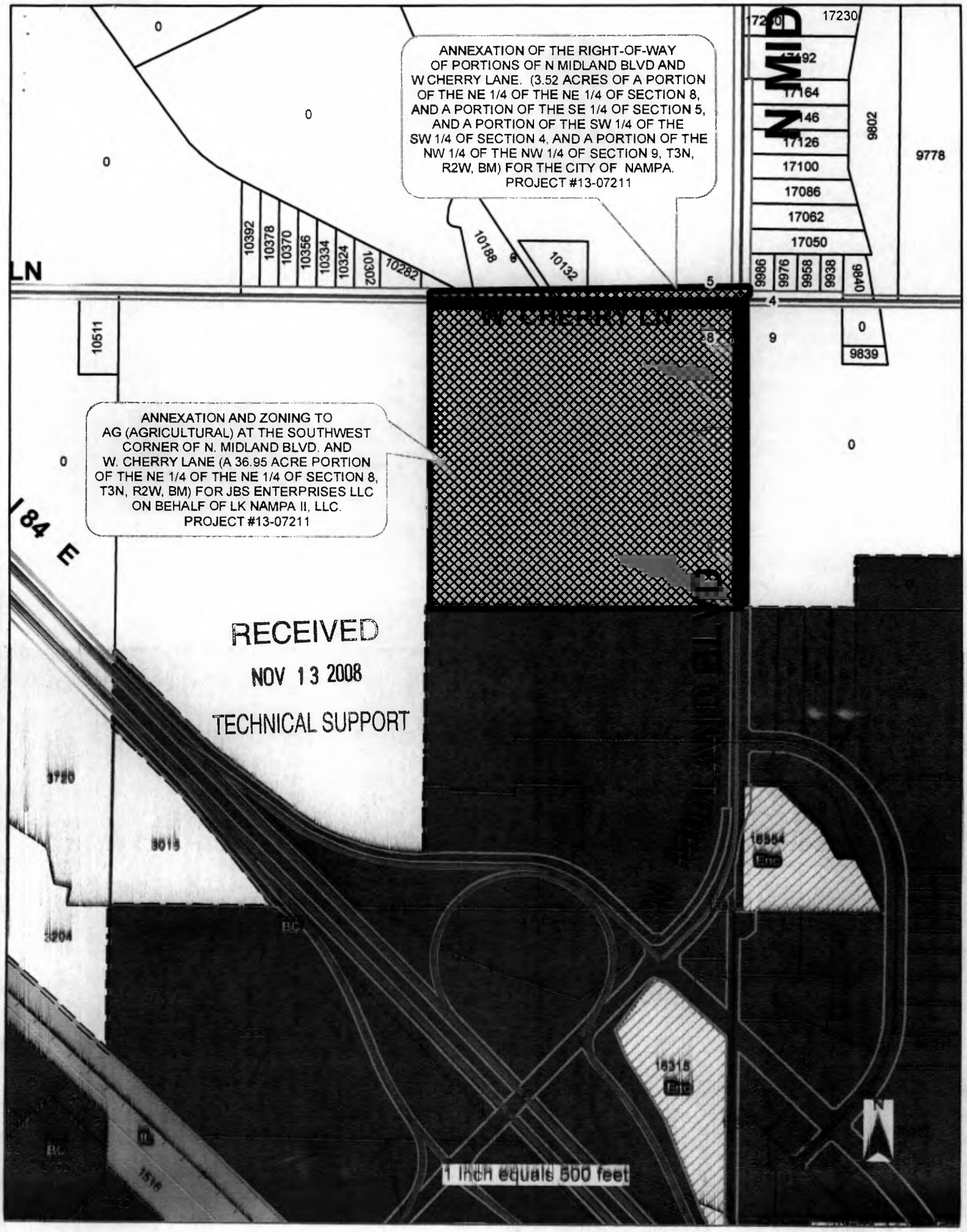
ANNEXATION OF THE RIGHT-OF-WAY OF PORTIONS OF N MIDLAND BLVD AND W CHERRY LANE. (3.52 ACRES OF A PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 8, AND A PORTION OF THE SE 1/4 OF SECTION 5, AND A PORTION OF THE SW 1/4 OF THE SW 1/4 OF SECTION 4, AND A PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 9, T3N, R2W, BM) FOR THE CITY OF NAMPA. PROJECT #13-07211
ANNEXATION AND ZONING TO AG (AGRICULTURAL) AT THE SOUTHWEST CORNER OF N. MIDLAND BLVD. AND W. CHERRY LANE (A 36.95 ACRE PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 8, T3N, R2W, BM) FOR JBS ENTERPRISES LLC ON BEHALF OF LK NAMPA II, LLC. PROJECT #13-07211
W CHERRY LN
N MIDLAND BLVD
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1 inch equals 500 feet
17230
17192
17164
17146
17126
17100
17086
17062
17050
9986
9976
9958
9938
9940
9802
9778
9839
10392
10378
10370
10356
10334
10324
10302
10282
10188
10132
10511
3720
3615
3204
1518
18564
18315

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 3rd day of November, 2008 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City,**" and LK Nampa II, LLC, hereinafter referred to as "**Owner/Developer**."

RECITALS

A. Owner/Developer is the owner of approximately 36.95 acres of real property legally described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**").

B. Owner/Developer applied to City on September 4, 2007 (the "**date of application**") for annexation and zoning of the Property to AG (Agricultural) in anticipation of the eventual use of the Property for Retail – Commercial use (the "**Project**").

C. City, pursuant to Section 10-2-5, Nampa City Code, and Idaho Code Section 67-6511A, has the authority to rezone the Property and enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses that are appropriate in the area.

D. City's Planning and Zoning Commission and City's City Council have held public hearings as prescribed by law with respect to the annexation, zoning and development of the Property and this Agreement. City has approved the requested annexation and zoning of the property to AG (Agricultural) subject to the terms and commitments contained in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated below, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. This Agreement shall not prevent City, in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by City in the exercise of its police powers that do not conflict with the parties' commitments applicable to the Property as set forth herein, or the zoning designation approved hereby as the Property has been deemed suitable for the uses allowed within said zoning designation..

2. This Agreement is intended to be supplemental to all other local, city, state and federal Code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

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4. The provisions and stipulations of this Agreement shall be binding on City, Owner/Developer, each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property and are, in no particular order, as set forth in the conditions of approval attached hereto as **Exhibit "B"**, and by this reference incorporated herein.

5. This Agreement may be modified only by the written agreement of Owner/Developer and the City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5 (D) or successor provisions.

6. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner/Developer to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner/Developer or its successors and/or assigns fails to cure such failure as set forth below.

7. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner/Developer, or each subsequent owner or each person acquiring an interest in the Property, to comply with the commitments contained herein within two (2) years after the Effective Date, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner/Developer's failure to comply with the terms and conditions of this Agreement to Owner/Developer and Owner/Developer fails to cure such failure within six (6) months of Owner/Developer's receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner/Developer, and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

8. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is file. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

9. It is intended by the parties that this Agreement shall be recorded on the Effective Date or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner/Developer, each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

10. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be effected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

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11. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner/Developer and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the parties or their successors-in-interests or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

12. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction.

13. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

14. In the event Owner/Developer, its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner/Developer or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

a. A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner/Developer of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights of remedies of Owner/Developer or apply to any subsequent breach of any such or other covenants and conditions.

b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner/Developer shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a subsequent owner of a portion of the Property shall constitute a default by Owner/Developer for the portion of the Property still owned by Owner/Developer.

c. In the event the performance of any obligation to be performed hereunder by either Owner/Developer or City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

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d. In addition to the remedies set forth above, in the event of a default by Owner/Developer, or any other party claiming an interest herein, City may withhold building permits for any remaining lots within the development until such time as the default is cured.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this day and year first above written.

CITY OF NAMPA

Tom Dale

Tom Dale, Mayor

Diana Lambing

Attest: Diana Lambing, City Clerk

OWNER/DEVELOPER
LK Nampa II, LLC, a Delaware limited liability company
By: LK Nampa Holding II, LLC, a Delaware limited liability company, its Sole Member

By: KD Nampa 1142, Inc., a Delaware corporation, its managing member

By: _____
Name: Daniel C. Slattery
Its: Vice President

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STATE OF IDAHO)
) ss.
County of Canyon)

On this 3rd day of November, in the year of 2007 before me Deborah L Bishop, personally appeared Tom Dale, known or identified to me, to be the Mayor of the City of Nampa, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Nampa.

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

Deborah L Bishop
Notary Public for State of Idaho
Residing at Nampa, Idaho
Commission Expires: 6-13-2013

STATE OF ILLINOIS)
) ss.
County of DUPAGE)

On this 29th day of January, in the year of 2~~007~~ 08 before me, Joanna G. Isdale, personally appeared Daniel C. Slattery, known or identified to me, to be the persons whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of LK Nampa II, LLC.

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

Joanna G. Isdale
Notary Public for State of Idaho
Residing at Berwyn, IL
Commission Expires: 12/4/2010

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EXHIBIT A

A parcel of land located in the Northeast Quarter of the Northeast Quarter of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho. Being further described as follows:

BASIS OF BEARINGS:

The East line of the Northeast Quarter of the Northeast Quarter of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, derived from found monuments and takes as South 00° 06' 38" West with the distance between monuments found to be 1,326.51 feet.

BEGINNING at the Northeast corner of Section 8, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho;

thence along the East line of the Northeast Quarter of the Northeast Quarter of said Section South 00° 06' 38" West to the Southeast corner of said Northeast Quarter of the Northeast Quarter a distance of 1,326.51 feet;

thence along the South line of said Northeast Quarter of the Northeast Quarter South 89° 52' 44" West to the Southwest corner of said Northeast Quarter of the Northeast Quarter a distance of 1,322.30 feet;

thence along the West line of said Northeast Quarter of the Northeast Quarter North 00° 02' 32" East to the Northwest corner of said Northeast Quarter of the Northeast Quarter a distance of 1,327.72 feet;

thence along the North line of said Northeast Quarter of the Northeast Quarter North 89° 55' 54" East a distance of 1,323.88 feet to the POINT OF BEGINNING.

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EXHIBIT "B"

CONDITIONS OF APPROVAL

1. The Owner shall dedicate any additional right-of-way needed for the eventual widening of the W. Cherry Lane and N. Midland Blvd. as determined by the city engineer.

2. All sewer, water, pressure irrigation, storm water, street improvements, and other necessary improvements to serve the property, including any required off-site improvements to existing infrastructure servicing the area shall be designed and constructed in accordance with adopted polices and procedures in force at the time of development, and in accord with appropriate master plans.

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