

ORDINANCE NO. 3670

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING AND ZONING RD REAL PROPERTY LOCATED AT 2305 EAST POWERLINE ROAD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO 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 2305 East Powerline Road, 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 RD.

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 20th DAY OF February, 2007.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 20th DAY OF February, 2007.

Approved. [Signature]
By Mayor

Attest: [Signature]
City Clerk

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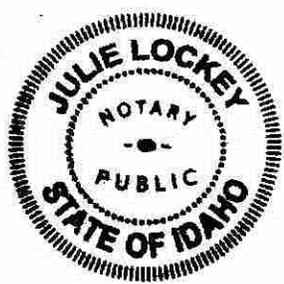
State of Idaho )

Canyon County )

On this 20 day of February, 2007, 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



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## **FOX Land Surveys, Inc.**

**4696 W Overland Rd, Ste 162 □ Boise, ID □ 83705 □ 208-342-7957 □ 208-342-7437 FAX**

### **PROPERTY DESCRIPTION**

**A PORTION OF THE WEST ½ OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF THE  
NORTHEAST ¼ OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 2 WEST, BOISE MERIDIAN,  
CANYON COUNTY, IDAHO**

A Portion of the West ½ of the Northwest ¼ of the Northwest ¼ of the Northeast ¼ of Section 26, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows;

Commencing at a found 5/8 inch rebar with illegible plastic marking the North ¼ corner of Section 26, from which a found Brass Cap Monument marking the Northeast corner thereof bears South 89°16'33" East, a distance of 2,651.27 feet;

thence along the Northerly boundary of Section 26 (also being the center line of Power Line Road), South 89°16'33" East, a distance of 20.00 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Easterly Right-of-Way of Sugar Avenue, the **TRUE POINT OF BEGINNING**;

thence continuing along said boundary and center line, South 89°16'33" East, a distance of 311.41 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking the Northeastly corner of the West ½ of the Northwest ¼ of the Northwest ¼ of the Northeast ¼ of Section 26;

thence along the Easterly boundary of said West 1/2 South 00°19'13" West, a distance of 659.24 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the North-North 1/64<sup>th</sup> line of Section 26;

thence along said 1/64<sup>th</sup> line North 89°13'35" West, a distance of 311.66 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Easterly Right-of-Way of Sugar Avenue;

thence along said Right-of-Way North 00°20'31" East, a distance of 658.97 feet to the **TRUE POINT OF BEGINNING**;

Containing 205,328 square feet, 4.713 Acres, more or Less.

### **EXCEPTING THEREFROM:**

A Portion of the West ½ of the Northwest ¼ of the Northwest ¼ of the Northeast ¼ of Section 26, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at a found 5/8 inch rebar with illegible plastic marking the North ¼ corner of Section 26, from which a found Brass Cap

Monument marking the Northeast corner thereof bears South 89°16'33" East, a distance of 2,651.27 feet;

thence along the Northerly boundary of Section 26 (also being the center line of Power Line Road), South 89°16'33" East, a distance of 253.8 feet (formerly 270.8 feet) to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Westerly Right-of-Way of the North Nampa Lateral, the **TRUE POINT OF BEGINNING**;

thence continuing along said boundary and center line, South 89°16'33" East, a distance of 56.26 feet (formerly 55.8 feet) to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Easterly Right-of-Way of the North Nampa Lateral;

thence along said Right-of-Way South 26°33'08" East (formerly South 26°30' East), a distance of 47.24 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Easterly boundary of the West 1/2 of the Northwest 1/4 of the Northwest 1/4 of the Northeast 1/4 of Section 26;

thence along said boundary South 00°19'13" West, a distance of 110.62 feet to a set 5/8 inch rebar with plastic cap stamped "FLSI PLS 7612" marking its intersection with the Westerly Right-of-Way of the North Nampa Lateral;

thence along said Right-of-Way North 26°33'08" West (formerly North 26°30' West), a distance of 171.69 feet to the **TRUE POINT OF BEGINNING**;

Containing 5,473 square feet, 0.125 Acres, more or Less.

The net land area (main parcel minus exception) is 199,855 square feet, 4.588 acres, more or less.

The dimensions listed herein as 'formerly' are in accordance with the exception (for the North Nampa Lateral) described in Warranty Deed Instrument Number 200574220. The exception description is ambiguous and cannot be used as written. This description is based on record documents and the physical (surveyed) location of the canal.

Subject to easements and rights-of-way of record and not of record.

Fox Land Surveys, Inc.  
Timothy J. Fox, President, PLS 7612

**END OF DESCRIPTION**

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**DEVELOPMENT AGREEMENT**

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THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 30<sup>th</sup> day of February, 2007 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City**," and CONSTANTINE LLC, an LLC, hereinafter referred to as "**Owner/Developer**."

**RECITALS**

A. Owner/Developer is the owner of approximately 4.71 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 9/29/06 for annexation of the Property into City and for rezoning of the Property to RD in anticipation of the development and construction of a subdivision (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, rezoning and development of the Property and this Agreement. City has approved the annexation and requested rezoning of the Property to RD 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. The Project shall be developed in general conformance with the Conceptual Plan attached hereto as **Exhibit "B"** and made a part hereof; provided, however, that Owner/Developer shall have limited flexibility to develop the Property to meet market conditions, and the only specific commitments concerning development of the Project which Owner/Developer is making are set forth herein. Upon recordation of this Agreement, Owner/Developer shall have all approvals required from City for development of the Project in general conformance with the Conceptual Plan.

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3. 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.

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 "C"**, 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.

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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.

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, either verbal or written, expressed 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 or 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.





**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**



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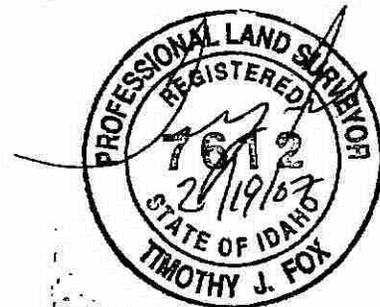
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