

ORDINANCE NO. 3866

17 pgs

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING APPROXIMATELY 16.53 ACRES OF REAL PROPERTY LOCATED AT 2726 & 2908 SOUTHSIDE BOULEVARD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO, ZONING THE SAME RS-7 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 consisting of approximately 16.53 acres located at 2726 & 2908 Southside Boulevard, 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 RS-7.

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 4th DAY OF May, 2009.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 4th DAY OF May, 2009.

Approved:

By [Signature] Mayor

Attest: [Signature] City Clerk

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REQUEST TYPED BY [Signature] NAMP CITY OF

WILLIAM H. HURST CANYON CNTY RECORDER BY [Signature]

2009 MAY 12 PM 3 12

RECORDED

2009023569

State of Idaho)

Canyon County)

On this 4 day of May, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Diana Lambing known to be the 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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EXHIBIT "A"
DESCRIPTION FOR PROPOSED
McKIM SUBDIVISION

November 7, 2006

A PARCEL OF LAND BEING A PORTION OF LOTS 16, 17, 19, 20, 22 AND 24 OF COVERT SUBDIVISION, LOCATED IN THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 2 WEST, BOISE MERIDIAN, CANYON COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 2 WEST, B.M., THENCE S 00°48'25" W 1832.80 FEET ALONG THE WEST LINE OF THE NW 1/4 OF SAID SECTION 1 TO A POINT; THENCE S 89°14'52" E 33.00 FEET TO THE CORNER COMMON TO LOTS 16 AND 18, OF THE PLAT OF COVERT SUBDIVISION, AS RECORDED IN BOOK 3 OF PLATS, AT PAGE 2, RECORDS OF CANYON COUNTY, IDAHO, ALSO BEING ON THE EAST RIGHT OF WAY OF SOUTHSIDE BOULEVARD, THE **REAL POINT OF BEGINNING** OF THIS SUBDIVISION;

THENCE ALONG SAID EAST RIGHT OF WAY N 00°48'25" E 69.98 FEET TO A POINT;

THENCE S 89°14'52" E 190.00 FEET TO A POINT;

THENCE N 00°48'25" E 80.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 16;

THENCE S 89°14'52" E 409.92 FEET TO THE NORTHEAST CORNER OF SAID LOT 16;

THENCE N 00°48'25" E 149.98 FEET TO THE NORTHEAST CORNER OF LOT 15 OF SAID PLAT OF COVERT SUBDIVISION, ALSO BEING ON THE EAST LINE OF LOT 17;

THENCE S 89°14'52" E 459.92 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 17 AND CENTERLINE OF THE ELIJAH DRAIN, ALSO THE WESTERLY LINE OF ROYAL MEADOWS SUBDIVISION NO. 4;

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THENCE N 89°14'52" W 932.67 FEE TO THE NORTHERLY CORNER COMMON TO LOTS 22 AND 23 OF SAID COVERT SUBDIVISION;

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THENCE N 02°26'10" W 150.21 FEET ALONG AN EXISTING FENCE LINE TO A POINT ON THE COMMON LINE OF SAID LOTS 19 AND 20;

THENCE N 89°14'52" W 290.50 FEET ALONG SAID COMMON LINE TO A POINT ON THE EASTERLY RIGHT OF WAY OF SOUTHSIDE BOULEVARD;

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SAID PARCEL CONTAINS 16.53 ACRES, MORE OR LESS

WAYNE K. BARBER,

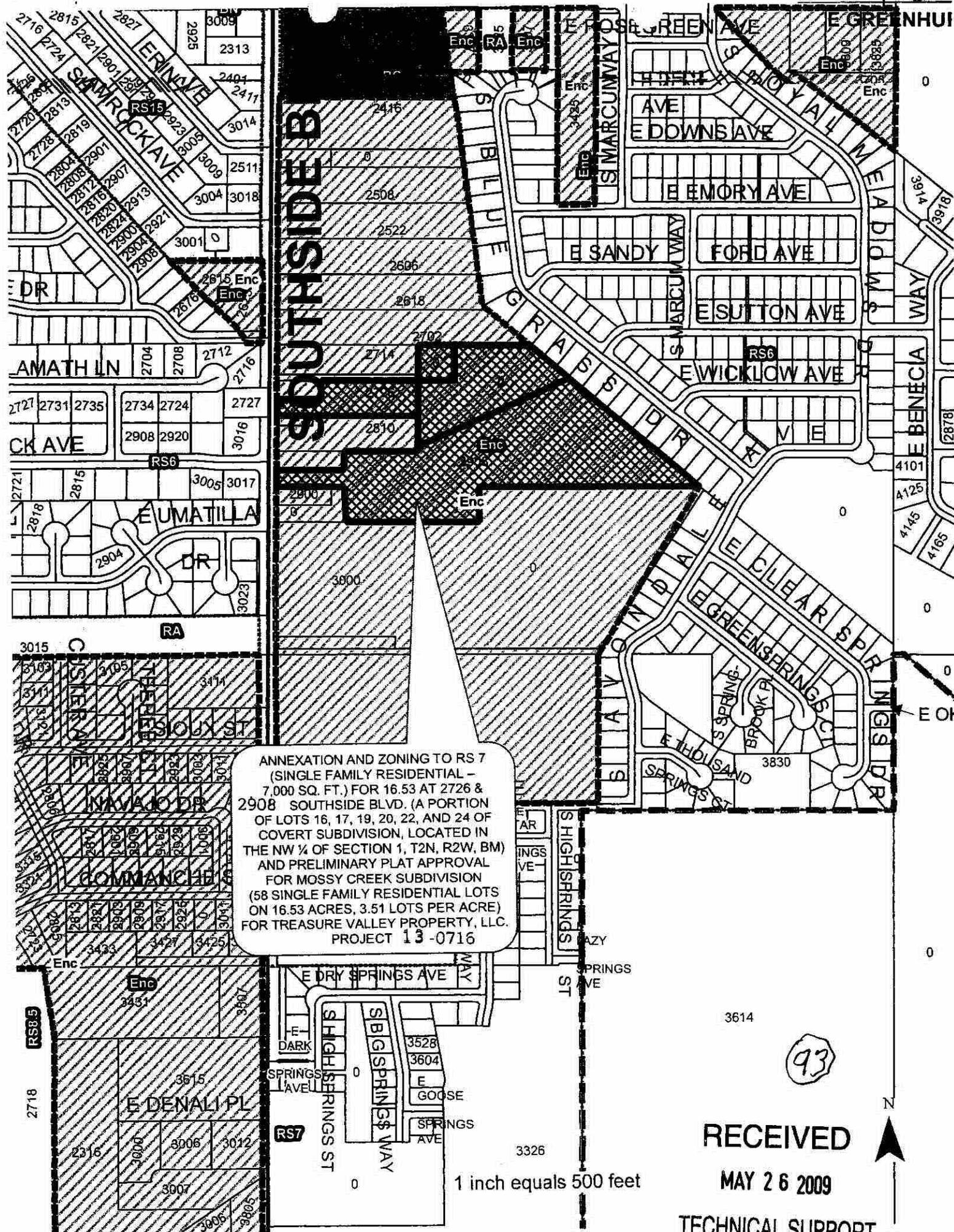


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ANNEXATION AND ZONING TO RS 7 (SINGLE FAMILY RESIDENTIAL - 7,000 SQ. FT.) FOR 16.53 AT 2726 & 2908 SOUTHSIDE BLVD. (A PORTION OF LOTS 16, 17, 19, 20, 22, AND 24 OF COVERT SUBDIVISION, LOCATED IN THE NW ¼ OF SECTION 1, T2N, R2W, BM) AND PRELIMINARY PLAT APPROVAL FOR MOSSY CREEK SUBDIVISION (58 SINGLE FAMILY RESIDENTIAL LOTS ON 16.53 ACRES, 3.51 LOTS PER ACRE) FOR TREASURE VALLEY PROPERTY, LLC. PROJECT 13-0716

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1 inch equals 500 feet

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this (the "**Effective Date**"), by and between the **City of Nampa**, a municipal corporation, hereinafter referred to as the "**City**," and **Treasure Valley Property, an LLC**, hereinafter referred to as "**Owner/Developer**."

RECITALS

- A. Owner/Developer is the owner of approximately 16.53 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 January 5, 2007 (the "**date of application**") for annexation of the Property into City and for rezoning of the Property to (R-7) in anticipation of the development and construction of a residential 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 (R-7) 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 substantial conformance with the conceptual plan attached hereto as **Exhibit "B"** and made a part hereof (the "**Conceptual Plan**"); 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 annexation/zoning assignment related approvals required from City for development of the Project in general conformance with the conceptual plan. The Owner/Developer further agrees that acceptance of the conceptual plan attached hereto as Exhibit

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“B” shall not be construed as City endorsement of said plan as the final design of the preliminary and/or final plat to be subsequently submitted, and that acceptance of the conceptual plan shall not preclude the City from requiring revision of the concept at the time of platting to address other planning issues and concerns, including but not limited to, the interconnectivity of streets between adjoining subdivision areas and undeveloped property, and the location of open space or parks.

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 the City, shall

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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.

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 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

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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.

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, Mayor



Attest: Diana Lambing, City Clerk

OWNER/DEVELOPER



Keith McKim, Signing Member for Treasure Valley Property LLC

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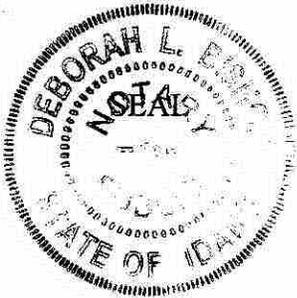
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STATE OF IDAHO)
) ss.
County of Canyon)

On this 22nd day of April, in the year of 2009, 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 IDAHO)
) ss.
County of Ada)

On this 2nd day of April, in the year of 2009 before me, **Sabrina Whitehead**, personally appeared **Keith McKim**, known or identified to me, to be a signing member, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and on behalf of **Treasure Valley Property LLC**.

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



Sabrina Whitehead
Notary Public for State of Idaho
Residing at Boise, Id
Commission Expires: March 2012

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

RECORDER SCAN

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**DESCRIPTION FOR PROPOSED
McKIM SUBDIVISION**

November 7, 2006

A PARCEL OF LAND BEING A PORTION OF LOTS 16, 17, 19, 20, 22 AND 24 OF COVERT SUBDIVISION, LOCATED IN THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 2 WEST, BOISE MERIDIAN, CANYON COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

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SAID PARCEL CONTAINS 16.53 ACRES, MORE OR LESS

WAYNE K. BARBER,



P.L.S. 8444

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EXHIBIT "B"
CONCEPTUAL PLAN

RECORDER SCAN

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EXHIBIT "C"

CONDITIONS OF APPROVAL

1. The Owner/Developer agree that they will not oppose the formation of a local improvement district for the construction of any infrastructure associated with the development of the Property.
2. The Owner/Developer agree that sewer service from the City is contingent upon successful implementation of a local improvement district to finance construction of sewer infrastructure.
3. Prior to the third reading of the annexation and zoning ordinance the Owner/Developer shall dedicate any additional right-of-way, as defined by the city engineer, adjacent the sides of the Property required for the ultimate build out of all adjacent public roadways.
4. Residential subdivision developments proposed by Owner/Developer on the Property shall conform to the following minimum design standards:
 - a. The average residential density for any subdivision development on the Property shall not exceed 3.21 dwelling units per acre (Calculated according to the gross acreage of the development.)
 - b. The minimum allowable residential buildable lot size within this development shall be seven thousand (7,000) square feet as allowed by the RS 7 zone classification.
 - c. The minimum allowable residential buildable lot size of proposed lots situated along a subdivision boundary adjoining any rural residential lots or parcels shall as approved for the Preliminary Plat of Mossy Creek Subdivision
5. The Owner/Developer shall establish and enforce Covenants, Conditions, and Restrictions to be recorded against the Property proposed for residential subdivision development which contain the following minimum design standards for single family dwellings:
 - a. The minimum floor area or minimum dwelling size shall be one thousand six hundred (1,600) square feet, exclusive of the garage area.
 - b. All dwellings shall be provided with eaves, which project not less than twelve (12) inches beyond the side of the exterior wall.
 - c. At least seventy-five (75) percent of the second story of two-story dwellings shall be set back a minimum of three (3) feet (from the wall plane) or set forward a minimum of two (2) feet (from the wall plane) when positioned over the garage; *or* two-story dwellings shall include architectural features such as but not limited to roof lines, belly bands, pop-outs, cantilevers, material variations, color variations, etc., and eave "eyebrows" constructed with a minimum overhang of thirty six (36) inches across the full width of the garage to break the plane of the lower and upper levels.
 - d. The roof pitches for dwellings shall be a minimum of 5/12 pitch.
 - e. Roof coverings for dwellings shall be of materials generally accepted as the industry standard. If the roof covering is asphalt shingles, shingles shall be "architectural" in style with a minimum warranty of twenty-five (25) years.

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- f. Elevations of dwellings shall incorporate varied wall planes or roof forms, and main entries shall be defined by incorporating architectural elements such as roof gables, dormers, stairways, vestibules, wainscoting, lighting, etc.
- g. Elevations of dwellings, including the garage, shall include stucco, stone, brick, or similar material, covering at least twenty (20) percent of each façade oriented to a street.
- h. Dwellings shall be encouraged which feature a side entry garage.
- i. Dwellings shall include design features such as recessed windows and entrance doors, pop-outs, or other architectural details around windows, entrance doors, sliding glass doors, and garage doors. Window treatments may also include additional trim, mullions, or shutters.
- j. No building elevation of any dwelling shall have less than five (5) percent of the gross wall area in glazing, excluding garage or unconditioned areas.
- k. Each dwelling shall contain a front porch, balcony or courtyard.
- l. Detached garages shall be architecturally compatible and consistent in material, design and colors with the dwelling and shall be situated to the side or rear of the site.

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