

26
INSTRUMENT NO. 2010004254

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ORDINANCE NO. 3901

TECHNICAL SUPPORT

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING APPROXIMATELY 86.59 ACRES OF REAL PROPERTY LOCATED AT 17309 & 17447 CAN-ADA ROAD 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 86.59 acres located at 17309 & 17447 Can-Ada 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 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 19th DAY OF January, 2010.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 19th DAY OF January, 2010.

Approved:

Tom Dahl

Mayor

Attest:
Sharon Fimbong
City Clerk

By REQUEST NAMP
TYPE OF NAMP
CITY OF

WILLIAM H. HURST
CANYON COUNTY RECORDER
BY *William H. Hurst*

2010 JAN 27 PM 3 46

RECORDED

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State of Idaho)

Canyon County)

On this 19 day of January, 2010, 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 Whereof, 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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IDAHO
SURVEY
GROUP

1450 East Watertower St.
Suite 150
Meridian, Idaho 83642

Phone (208) 846-8570
Fax (208) 884-5399

Project No. 08-101

EXHIBIT "A"

January 19, 2010

**DESCRIPTION FOR
ANNEXATION TO CITY OF NAMPA
CANYON CREEK SUBDIVISION**

A parcel of land located in the SE1/4 of Section 1, T.3N., R.2W., B.M., Canyon County, Idaho more particularly described as follows:

BEGINNING at the E1/4 corner of said Section 1;

thence along the East boundary line of said Section 1 South 00°39'49" West, 1321.94 feet to the S1/16 corner of said Section 1;

thence along the South boundary line of the N1/2 of the SE1/4 of said Section 1 North 89°30'31" West, 1615.08 feet;

thence leaving said South boundary line and along the northwesterly boundary line of Lyonsdale Park subdivision No. 2 as filed in Book 32 of Plats at Page 14, records of Canyon County, Idaho the following 5 courses:

South 00°29'37" West, 10.00 feet;

thence North 89°30'31" West, 215.92 feet;

thence South 33°54'40" West, 270.18 feet;

thence South 57°00'27" West, 240.02 feet;

thence South 50°39'23" West, 147.53 feet;

thence North 71°49'45" West, 11.86 feet;

thence North 60°44'40" West, 297.35 feet;

thence North 70°23'40" West, 99.79 feet to a point on the North-South centerline of said Section 1;

thence along said North-South centerline North 00°35'34" East, 1606.91 feet to the C1/4 corner of said Section 1;

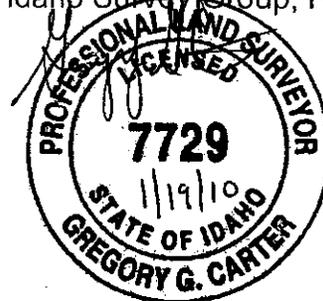
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thence along the East-West centerline of said Section 1 South 89°28'04" East, 2660.65 feet to the **POINT OF BEGINNING** containing 86.80 acres, more or less.

Prepared by:
Idaho Survey Group, P.C.



Gregory G. Carter, P.L.S.

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 12th day of January, 2010 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City**," and Sundance Investments L.L.L.P hereinafter referred to as "**Owner/Developer**."

RECITALS

- A. Owner/Developer is the owner of approximately 86.59 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 May 1, 2009 (the "**date of application**") for annexation of the Property into City and for rezoning of the Property to RS-7 with PUD 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 **RS-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 general 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 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

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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 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

County of Canyon)

On this 13 day of January, in the year of 2010, 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, Canyon County, Idaho

Commission Expires: 6-13-2013

STATE OF IDAHO)

) ss.

County of Canyon)

On this 13 day of January, in the year of 2010 before me, Sarina Fifer, Christopher Anderson, personally appeared Christopher Anderson, known or identified to me, to be Christopher Anderson of Eagle, Idaho, the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and on behalf of Christopher Anderson.

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



Sarina Fifer

Notary Public for State of Idaho

Residing at 3405 E. Overland Rd. Meridian, Id.

Commission Expires: 05/10/13

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

RECORDER SCAN

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TECHNICAL SUPPORT



IDAHO
SURVEY
GROUP

1450 East Watertower St.
Suite 150
Meridian, Idaho 83642

Phone (208) 846-8570
Fax (208) 884-5399

Project No. 08-101

January 19, 2010

LEGAL DESCRIPTION

**DESCRIPTION FOR
ANNEXATION TO CITY OF NAMPA
CANYON CREEK SUBDIVISION**

A parcel of land located in the SE1/4 of Section 1, T.3N., R.2W., B.M., Canyon County, Idaho more particularly described as follows:

BEGINNING at the E1/4 corner of said Section 1;

thence along the East boundary line of said Section 1 South 00°39'49" West, 1321.94 feet to the S1/16 corner of said Section 1;

thence along the South boundary line of the N1/2 of the SE1/4 of said Section 1 North 89°30'31" West, 1615.08 feet;

thence leaving said South boundary line and along the northwesterly boundary line of Lyonsdale Park subdivision No. 2 as filed in Book 32 of Plats at Page 14, records of Canyon County, Idaho the following 5 courses:

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thence North 89°30'31" West, 215.92 feet;

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thence South 50°39'23" West, 147.53 feet;

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thence North 60°44'40" West, 297.35 feet;

thence North 70°23'40" West, 99.79 feet to a point on the North-South centerline of said Section 1;

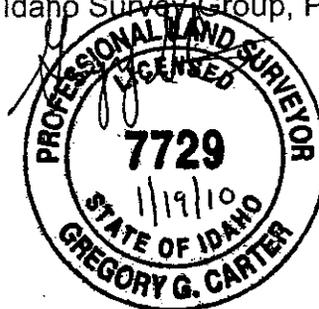
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Prepared by:
Idaho Survey Group, P.C.



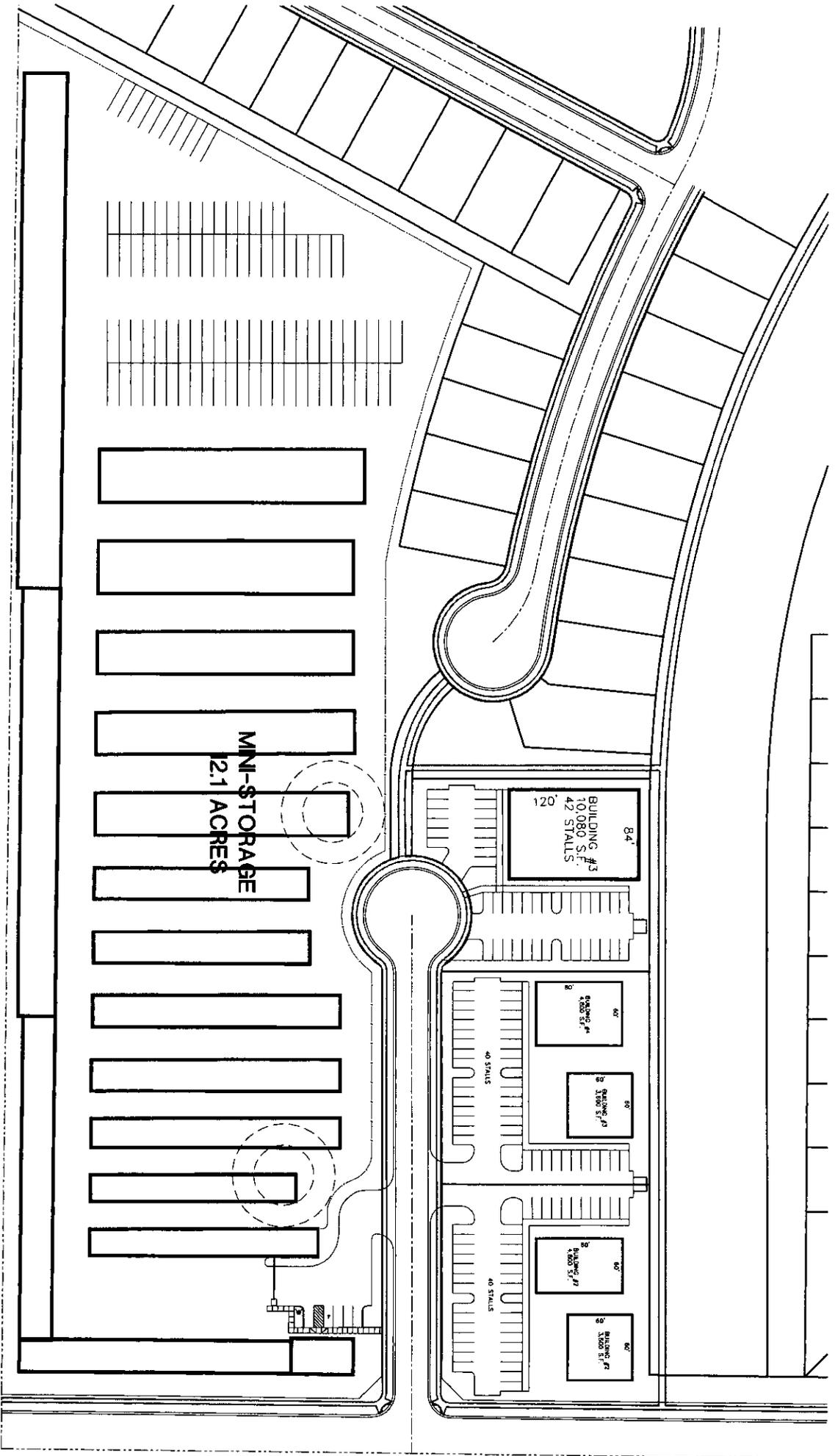
Gregory G. Carter, P.L.S.

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EXHIBIT "B"
CONCEPTUAL PLAN

RECORDER SCAN

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MINI-STORAGE
2.1 ACRES

BUILDING #3
10,080 S.F.
42 STALLS

BUILDING #4
4,000 S.F.

BUILDING #3
3,000 S.F.

BUILDING #2
3,000 S.F.

BUILDING #1
3,000 S.F.

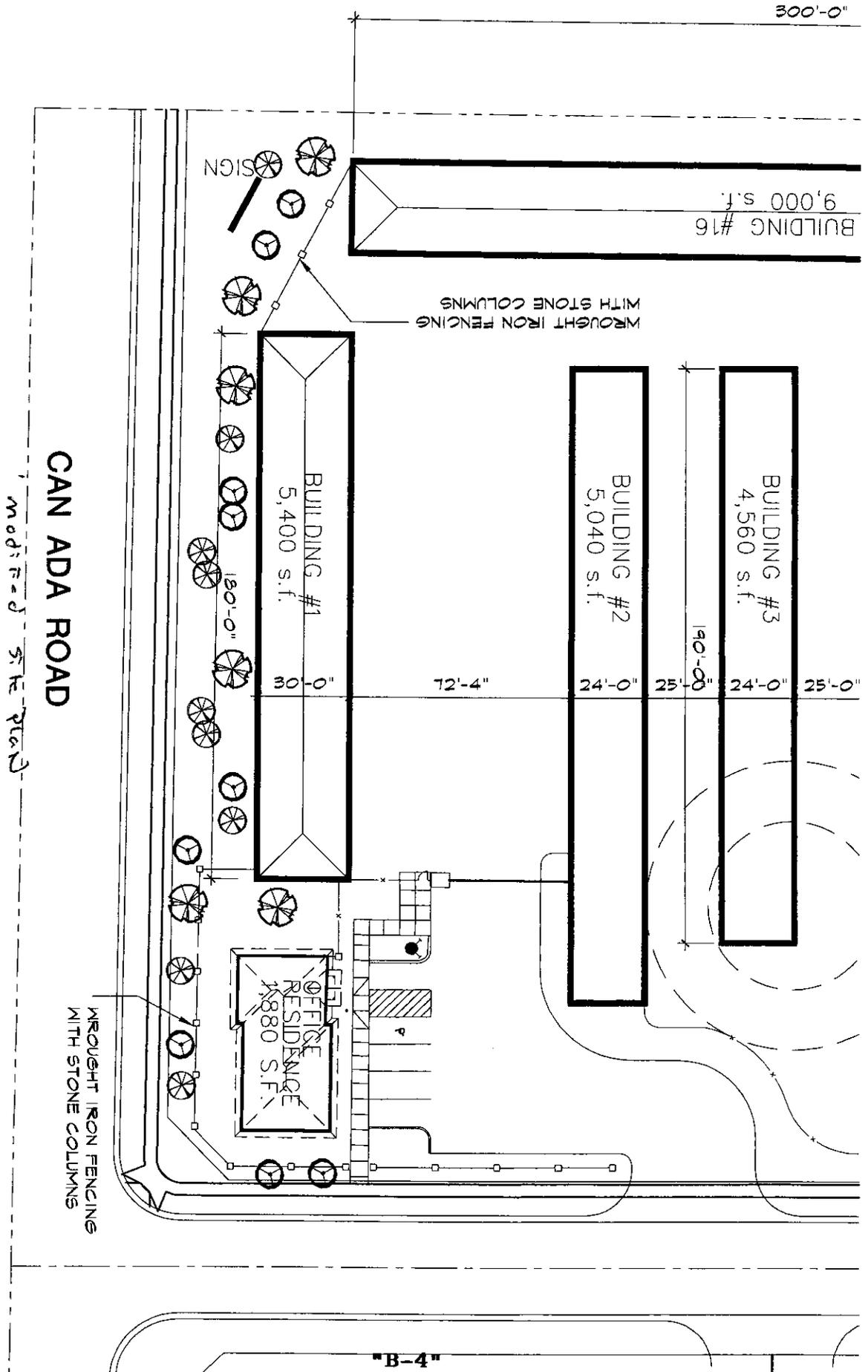
40 STALLS

40 STALLS

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EXHIBIT "C"

CONDITIONS OF APPROVAL

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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. 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 the adjacent public roadways.
3. Residential portion of Canyon Creek 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 3.3 dwelling units per acre (Calculated according to the gross acreage of the development.)
 - b. The minimum allowable residential buildable lot size within any development shall be four thousand hundred (4,000) square feet as allowed by the PUD 546-09.
 - c. The building setbacks shall be in compliance with PUD 546-09.
4. 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 three hundred (1,300) 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. The roof pitches for dwellings shall be a minimum of 3/12 pitch.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. Dwellings shall be encouraged which feature a side entry garage.
 - h. 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.

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DEVELOPMENT AGREEMENT CANYON CREEK

"C-1"

TECHNICAL SUPPORT

- i. 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 or as may required to meet Energy Star requirements
- j. Detached garages shall be architecturally compatible and consistent in material, design and colors with the dwelling.

5. The City of Nampa agrees to provide service to Canyon Creek Development via temporary connection from the Birch Sewer subject to the following requirements:

- a. Prior to any development of the project, as indicated by building permit application and issuance, the Owner/Developer shall provide proof of reserved capacity in the Birch Sewer System as follows:
 - i. Written commitment from the owner of a separate property within the Birch Sewer service area, or a property otherwise entitled to connect to the Birch Sewer System, that the subject property will not be entitled to connect to the Birch Sewer System until the capacity actually used by the Canyon Creek Development is removed from the Birch System and is physically served by the Purdam Sewer System.
 - ii. The identified property must be within the Birch Sewer Service area or be otherwise entitled to connect to the Birch Sewer System (i.e. be part of the 2006 Sewer Improvement Reimbursement Agreement.)
 - iii. One or more properties may be identified, either for the entire project or as required to provide capacity for each phase of the project.
 - iv. The identified property must restrict sewer service connection based on an acre to acre designation. The first property identified, if there is more than one, must provide sufficient acreage for the proposed storage units and the residential uses contemplated for the first phase. The first residential phase must encompass at least 20 (twenty) dwelling units.
 - v. The developer may, with written commitment from the owner and upon approval of the city, add or remove designated properties as long as sufficient capacity remains to serve existing platted lots.
 - vi. Developer shall submit proof of capacity per above requirements with the submittal of each final plat application to the City for approval.
 - vii. All commitments shall automatically be considered null and void by the City at the time of physical connection of the Canyon Creek sewer line to the operational Purdam Sewer System.
- b. The Owner/ Developer will pay all applicable connection fees at the time of building permit application. Currently, those fees include:
 - i. City wide Sewer System Connection/Treatment System/Administrative fees
 - ii. Sewer Improvement Reimbursement Agreement Latecomers fee (\$630/RU)

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- iii. Purdam Sewer System Connection fees. Currently there is no established fee.
- c. The Owner/ Developer shall design the Canyon Creek Development to flow to the future Purdam Sewer and install a private sewer lift station that will pump back to the Birch Sewer. Installation of the lift station and pressure lines will be at the Owner/Developers sole expense. Design is contemplated to include the future trunk line as shown on the City's Sewer Master Plan, a private sewer lift station near the north boundary of the property and Ten Mile Creek which has the ability to be upgraded to include up to 500 residential units and a six inch pressure main which will be routed south on Can-Ada Road to an existing gravity main at Birch Lane. The actual design and operation will be subject to the engineering requirements of Nampa City upon review.
- d. The city will allow application for an individual septic system to serve the caretaker's residence for the proposed Self Storage Units under the following conditions:
 - i. The system shall meet the requirements of the city and Southwest District Health Department.
 - ii. Final Plat Application for the first residential phase must be submitted at the same time as the Storage Units phase.
 - iii. Proof of reserved capacity in the Birch Sewer System per the requirements of section a. above must be provided at the time of application. The commitment must include at least the same acreage as the combined storage units phase and the first residential phase.
 - iv. The developer must commit to having the sewer lift station operational within 2 years of the issuance of the building and septic permit.

6. Commercial portion of Canyon Creek Subdivision developments proposed by Owner/Developer on the Property shall conform to the following minimum design standards:

- e. Commercial/ Office buildings: In addition to the specific design criteria shown for PUD 546-09, it is agreed to the following:
 - 1. Office uses have a zero building setback to the open space adjacent to the Creek and the landscape buffer along Can-ada Road. The building materials and concept design similar to elevations per attached **Exhibit D**.
 - 2. Office Buildings parking lots shall comply with Nampa City Code for the use and square footage of the buildings.
 - 3. All lighting within the Commercial development shall be non-obtrusive to the adjacent residential uses.
- f. Commercial/ Storage building : In addition to the specific design criteria shown for PUD 546-09, it is agreed to the following:

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1. Storage Buildings will have a zero building setback to the southern property except at the areas shown in **Exhibit B** and the landscape buffer along Can-ada Road. The building materials and concept design similar to elevations per attached **Exhibit D**.
2. Storage Buildings shall comply with Nampa City Code for Building permits for the buildings.
3. All lighting within the Commercial development shall be non-obtrusive to the adjacent residential uses.
4. No fencing is required along Can-ada Road or where the building is the at a zero lot line setback.

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EXHIBIT "D"

BUILDING ELEVATIONS

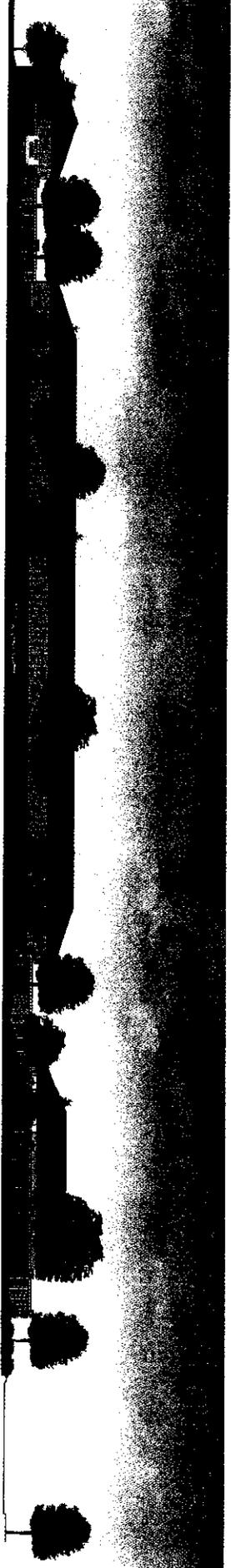
RECORDER SCAN

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STANDARD STEEL BUILDING ELEVATION

- One or two colors
- No soffit
- No fascia
- Direct Lighting
- No landscape berm
- Gable roof ends
- 1/2 roof pitch
- Cedar fence (no stone columns)
- Building does not have a break at corner



UPGRADED STEEL BUILDING ELEVATION

- Hip roof along Canada Road
- 3 Building colors creating a wainscot appearance
- 3' to 5' berm along Canada with trees to help lower the apparent height of buildings
- 3/12 roof pitch
- Indirect lighting under eaves
- Wrought iron fence with stone columns
- Break at corner creates a more aesthetic view for neighbors
- Break at corner will allow visual access for emergency personnel

Canyon Creek

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