163

(14) 4

INSTRUMENT NO. 2011047030

*Re-recorded as one document.

2011048618

RECORDED

2011 DEC 8 AM 10 40

CHRIS YAMAMOTO
CANYON CNTY RECORDER
BY

REQUEST NAMPA CITY OF
TYPE Ordinance FEE

ORDINANCE NO. 3992

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT 2921 NORTH MIDDLETON ROAD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO AND ZONING THE SAME BC, 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 2921 North Middleton 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 following described portion of the Exhibit A real property so annexed, shall be ZONED BC.

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 21st DAY OF November, 2011.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 21st DAY OF November, 2011.

Approved:

By Tom Dale
Mayor

Attest:

City Clerk

THE CITY OF NAMPA IDAHO THE SEAL OF

RECEIVED
DEC 14 2011
TECHNICAL SUPPORT

REQUEST NAMPA CITY OF
TYPE Ordinance FEE

2011047030

RECORDED

2011 NOV 28 PM 1 05

CHRIS YAMAMOTO
CANYON CNTY RECORDER
BY

State of Idaho)

Canyon County)

On this 21st day of November, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom Dale and Deborah Bishop 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.

Doris J. Hayward

Doris J. Hayward
Residing at: Nampa, Canyon County, Idaho
My Commission Expires: 08/22/2013

DORIS J. HAYWARD
NOTARY
PUBLIC
STATE OF IDAHO

RECEIVED
DEC 14 2011
TECHNICAL SUPPORT

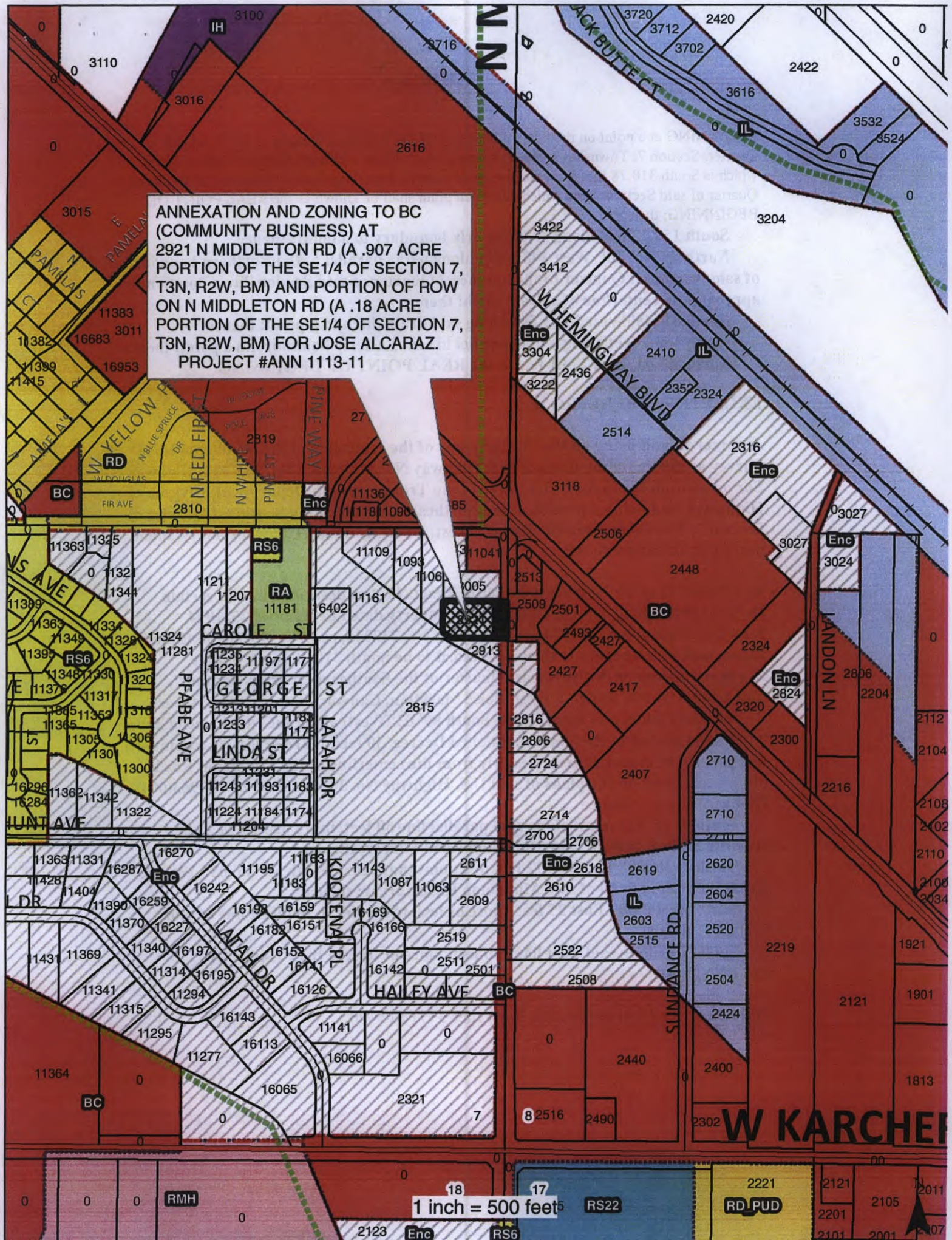
ANNEXATION AND ZONING TO BC (COMMUNITY BUSINESS) AT 2921 N MIDDLETON RD (A .907 ACRE PORTION OF THE SE1/4 OF SECTION 7, T3N, R2W, BM) AND PORTION OF ROW ON N MIDDLETON RD (A .18 ACRE PORTION OF THE SE1/4 OF SECTION 7, T3N, R2W, BM) FOR JOSE ALCARAZ.
PROJECT #ANN 1113-11
W HEMINGWAY BLVD
W YELLOW
N RED FIR
N WHITE
PINE ST
PINE WAY
CAROLE ST
GEORGE ST
LINDA ST
PFABE AVE
LATAH DR
KOOTENAI PL
HAILEY AVE
SUNDANCE RD
LANDON LN
W KARCHER
1 inch = 500 feet

EXHIBIT A

BEGINNING at a point on the Eastern boundary of the Northeast Quarter of the Southeast Quarter, Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, which is South 310.78 feet from the Northeast corner of said Northeast Quarter of the Southeast Quarter of said Section 7 and which described point shall be known as the REAL POINT OF BEGINNING; thence

South 159.22 feet along said Easterly boundary to a point; thence

North 89° 46° 30" West 248.3 feet along a line parallel to the Northern boundary of said Northeast Quarter of the Southeast Quarter of said Section 7 to a point on the approximate centerline of a drain ditch; thence

North 51° 48' West 38.83 feet along said drain ditch to a point; thence

North 133.2 feet along a line parallel to said Easterly boundary to a point; thence

North 89° 03' East 274.1 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM

A parcel of land being on the Westerly side of the centerline of the Middleton Road Survey as shown on the plans of U.S. Highway No. 30 Project M-7963(004) Highway Survey now on file in the office of the Idaho Transportation Department, Division of Highways, and being a portion of the Northeast Quarter of the Southeast Quarter of Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, described as follows to-wit:

BEGINNING at the Northeast corner of Tract No. 2 as described in that certain Decree Establishing Title to Community Property dated September 25, 1974, recorded September 27, 1974 as Instrument No. 737026, records of Canyon County, Idaho, and which corner is shown of record to be South 310.78 feet from the Northeast corner of the Northeast Quarter of the Southeast Quarter, Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence

Westerly (shown of record to be South 89° 03' West) along the North line of Tract No. 2 as described in the above mentioned Decree, 30 feet, more or less, to a point in a line parallel with and 30 feet Westerly from the centerline of the Middleton Road Survey as shown on the plans of said U.S. Highway No. 30, Project No. M-7963(004) Highway Survey; thence

South 0° 13' 52" West along said parallel line 30 feet, more or less, to a point opposite Station 4+00 of said Middleton Road Survey; thence

South 2° 36' 50" East 100.12 feet to a point that bears North 89° 46' 08" West 25 feet from Station 5+00 of said Middleton Road survey; thence

South 89° 46' 08" East 25 feet, more or less, to a point in the East line of said Section 7; thence

Northerly along said East line 130 feet, more or less, to the PLACE OF BEGINNING.

Middleton Road Survey Station Reference 3+71 to 5+00.

LEGAL DESCRIPTION FOR DEDICATION OF RIGHT-OF-WAY FOR 2921 N MIDDLETON RD

A portion of land located in the Northeast Quarter of the Southeast Quarter of Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho and more particularly described as follows:

BEGINNING at a point on the Eastern boundary of the Northeast Quarter of the Southeast Quarter, Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, which is South 310.78 feet from the Northeast corner of said Northeast Quarter of the Southeast Quarter of said Section 7 and which described point shall be the REAL POINT OF BEGINNING;

Thence South 159.22 feet along said Easterly boundary to a point;

Thence North 89° 46' 30" West 50.00 feet along a line parallel to the Northern boundary of said Northeast Quarter of the Southeast Quarter of said Section 7 to a point;

Thence North 158.39 feet along a line that is parallel to and 50.00 feet Westerly of said Easterly boundary to a point;

Thence North 89° 03' 00" East 50.01 feet to the **POINT OF BEGINNING**.

Containing 0.18 acres more or less.

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

INSTRUMENT NO 2011047031

9

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 21st day of November, 2011 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City,**" and Jose Akaraz + Maria Gonzalez hereinafter referred to as "**Owner/Developer**."

RECITALS

A. Owner/Developer is the owner of approximately .907 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 24 June 2011 (the "**date of application**") for annexation of the Property into City and for (re)zoning of the Property from County to City BC (Community Business) in anticipation of the development and construction of a future restaurant and associated outdoor improvements (the "**Project**") within the area, and upon the Property involved in this Agreement.

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 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 BC zoning, 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.

3. 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 body of this Agreement and in the additional conditions of approval section attached hereto as **Exhibit "B"**, and by this reference incorporated herein.

4. 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.

5. 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.

6. 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. (Failure to initiate development shall not be considered as breach of this provision, only failure to finish building/site improvements within the specified time frame as per Nampa's Zoning Ordinance.)

7. 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 and fire codes for structures shall be the codes in effect within the City of Nampa when a complete application for a building permit is filed. 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.

8. 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.

9. 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.

10. 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, whether verbal 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.

11. 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.

12. 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.

13. 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.

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.

RECORDER SCAN

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

Debbie L Bishop

Attest: Deborah Bishop, City Clerk

OWNER/DEVELOPER

Jose R Alcaraz.

Jose R Alcaraz

Maria E Gonzalez

Maria E Gonzalez

STATE OF IDAHO)
) ss.
County of Canyon)

On this 18 day of November, in the year of 2011, before me Julie Lockey, 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.

JULIE LOCKEY NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO)
) ss.
County of Canyon)

On this 19 day of October, in the year of 2011, before me Magdalena A. DeLeon, personally appeared Jose R. Alcaraz, known or identified to me, to be the Owner/Developer, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he/she executed the same.

MAGDALENA A. DeLEON NOTARY PUBLIC STATE OF IDAHO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On 11/03/2011 (Date) before me, G. Hernandez Rosales Notary Public (Here Insert Name and Title of the Officer)

personally appeared Maria E Alvarez De Gonzalez (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

G. HERNANDEZ ROSALES
Commission # 1853286
Notary Public - California
Santa Barbara County
My Comm. Expires Jun 9, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: _____ Number of Pages: 5

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

RECORDER SCAN

EXHIBIT A

BEGINNING at a point on the Eastern boundary of the Northeast Quarter of the Southeast Quarter, Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, which is South 310.78 feet from the Northeast corner of said Northeast Quarter of the Southeast Quarter of said Section 7 and which described point shall be known as the REAL POINT OF BEGINNING; thence

South 159.22 feet along said Easterly boundary to a point; thence

North 89° 46° 30" West 248.3 feet along a line parallel to the Northern boundary of said Northeast Quarter of the Southeast Quarter of said Section 7 to a point on the approximate centerline of a drain ditch; thence

North 51° 48' West 38.83 feet along said drain ditch to a point; thence

North 133.2 feet along a line parallel to said Easterly boundary to a point; thence

North 89° 03' East 274.1 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM

A parcel of land being on the Westerly side of the centerline of the Middleton Road Survey as shown on the plans of U.S. Highway No. 30 Project M-7963(004) Highway Survey now on file in the office of the Idaho Transportation Department, Division of Highways, and being a portion of the Northeast Quarter of the Southeast Quarter of Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho, described as follows to-wit:

BEGINNING at the Northeast corner of Tract No. 2 as described in that certain Decree Establishing Title to Community Property dated September 25, 1974, recorded September 27, 1974 as Instrument No. 737026, records of Canyon County, Idaho, and which corner is shown of record to be South 310.78 feet from the Northeast corner of the Northeast Quarter of the Southeast Quarter, Section 7, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence

Westerly (shown of record to be South 89° 03' West) along the North line of Tract No. 2 as described in the above mentioned Decree, 30 feet, more or less, to a point in a line parallel with and 30 feet Westerly from the centerline of the Middleton Road Survey as shown on the plans of said U.S. Highway No. 30, Project No. M-7963(004) Highway Survey; thence

South 0° 13' 52" West along said parallel line 30 feet, more or less, to a point opposite Station 4+00 of said Middleton Road Survey; thence

South 2° 36' 50" East 100.12 feet to a point that bears North 89° 46' 08" West 25 feet from Station 5+00 of said Middleton Road survey; thence

South 89° 46' 08" East 25 feet, more or less, to a point in the East line of said Section 7; thence

Northerly along said East line 130 feet, more or less, to the PLACE OF BEGINNING.

Middleton Road Survey Station Reference 3+71 to 5+00.

EXHIBIT "B"

[ADDITIONAL] CONDITIONS OF APPROVAL

1. 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 Property required for the ultimate build out of any adjacent public roadway(s); and,

2. Owner/Developer shall agree to emplace all required site related improvements (curb, gutter, sidewalk, landscaping storm drainage, street pavement widening, etc.), at their expense, at such time as required by the City's adopted zoning ordinance (N.C.C. 10-1-6).

3. The Owner/Developer agree that they will not oppose the [potential] formation of a [future] local improvement district (LID) for the construction of any infrastructure associated with the development of the Property.

4. Owner/Developer(s) agree(s) that signing this Agreement and accepting the terms therein does not abrogate Owner/Developer(s) need to comply with other requirements/conditions imposed upon the Property by virtue of its development as set forth in adopted city codes and policies and as imposed by vote of the City's Planning and Zoning Commission and City Council.

5. Owner/Developer(s) agree(s) that they will enter into a Deferral Agreement with the City to defer construction of the frontage improvements that will be required at such time as the Property is developed, a change of use takes place, or an LID for this area is created. These improvements will include, but not be limited to: curb, gutter, sidewalk, landscaping, storm drainage facilities, pavement widening and any striping required (of Middleton Road) in accordance with City's adopted engineering policies and procedures, otherwise named, and pertinent municipal/zoning codes all as required in the April 21, 2011 memorandum from the Nampa Engineering Department authored by Jim Brooks appertaining to this matter (2 pages – copy hereto attached)…

6. Owner/Developer(s) shall cause that site/Property access and site preparation be kept free of litter and debris, that dust control be conducted on the Property as needed to reduce its drift onto neighboring properties; and, that N. Middleton Road shall not be blocked off save as required for installation of utility lines and street improvements as required and approved by the City Engineering Department and regulated by the same agency; and, in (accordance with City of Nampa adopted site development standards) that stormwater and water runoff be kept on site during and after construction; and, that any irrigation flow through/across the Property be maintained for down system users all at such time as the Property is developed with one or more commercial uses thereon; and,

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CHRIS YAMAMOTO
CANYON CNTY RECORDER
BY
NAMPA CITY OF