

21

INSTRUMENT NO 2011050848

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ORDINANCE NO. 3997

TECHNICAL SUPPORT

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING APPROXIMATELY 65.3 ACRES OF REAL PROPERTY LOCATED AT THE NORTHWEST CORNER OF EAST FRANKLIN ROAD & STAR ROAD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO AND ZONING THE SAME GB-1 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 65.3 acres located at the Northwest corner of East Franklin Road & Star 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 GB-1.

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

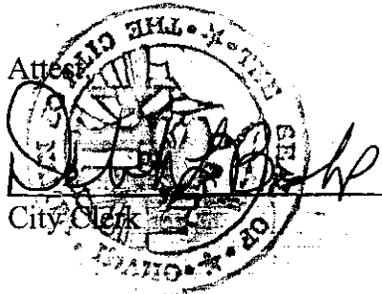
Section 4: That the City Engineer is hereby directed to alter and change the Use and Area Map of the City of Nampa, Idaho, to comply with this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 19th DAY OF December, 2011.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 19th DAY OF December, 2011.

Approved:

By [Signature]
Mayor



REQUEST NAMPA CITY OF
TYPE Ord FEE

2011 DEC 23 AM 10
CHRIS YAHAMOTO
CANYON CNTY RECORD

RECORDED

201105084

State of Idaho)

Canyon County)

On this 19th day of December, 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

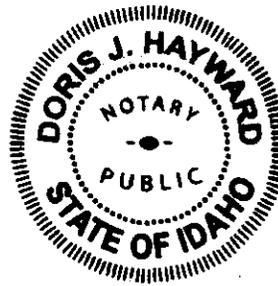


EXHIBIT "A"

A parcel located in the Southeast Quarter of Section 7, Township 3 North, Range 1 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Southeast Quarter of Section 7, Township 3 North, Range 1 West, Boise Meridian, Canyon County, Idaho (referenced below as "Section 7");

Thence North 89°11'51" West along the Southerly boundary of said Southeast Quarter a distance of 25.00 feet to the West side of an unrecorded deed of right-of-way document on file at the offices of the Nampa Highway District (City of Nampa, Idaho), said point being the POINT OF BEGINNING;

Thence North 00°16'04" East along the West side of said unrecorded deed of right-of-way a distance of 1,040.64 feet to a point;

Thence North 88°17'11" West along the Southerly boundary of the Treasure Valley Road right-of-way, as described in Instrument Number 879481 of the records of Canyon County, Idaho, 1,539.99 feet to a point;

Thence North 00°16'04" East along the Westerly boundary of said Treasure Valley Road right-of-way a distance of 60.02 feet to a point that is both the Northwest corner of said Treasure Valley Road right-of-way and the Southeast corner of a private parcel described in Instrument Number 200012022 of the records of Canyon County, Idaho;

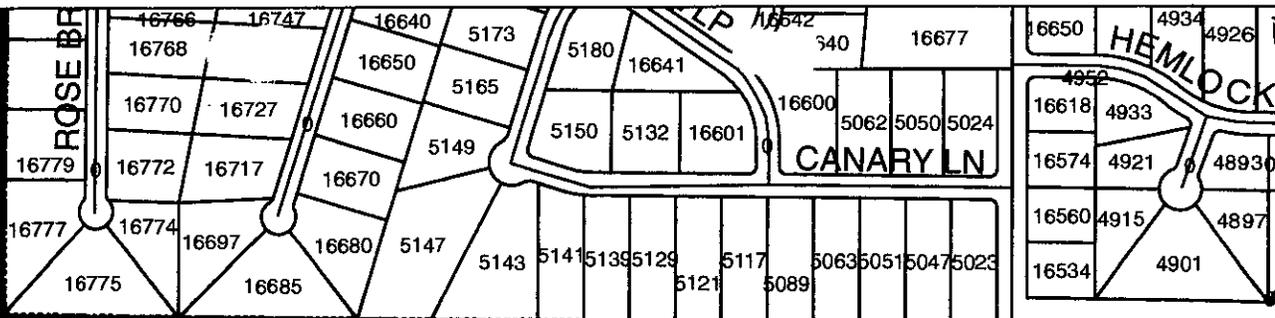
Thence North 88°17'11" West along the Southerly boundary of said private parcel a distance of 1,078.54 feet to a point which bears North 88°17'11" West a distance of 7.71 feet to the Westerly boundary of said Section 7;

Thence South 00°16'04" West a distance of 1,142.30 feet to a point on the Southerly boundary of said Section 7;

Thence South 89°11'51" East along the Southerly boundary of said Section 7 a distance of 2,617.81 feet to the POINT OF BEGINNING containing approximately 65.27 acres.

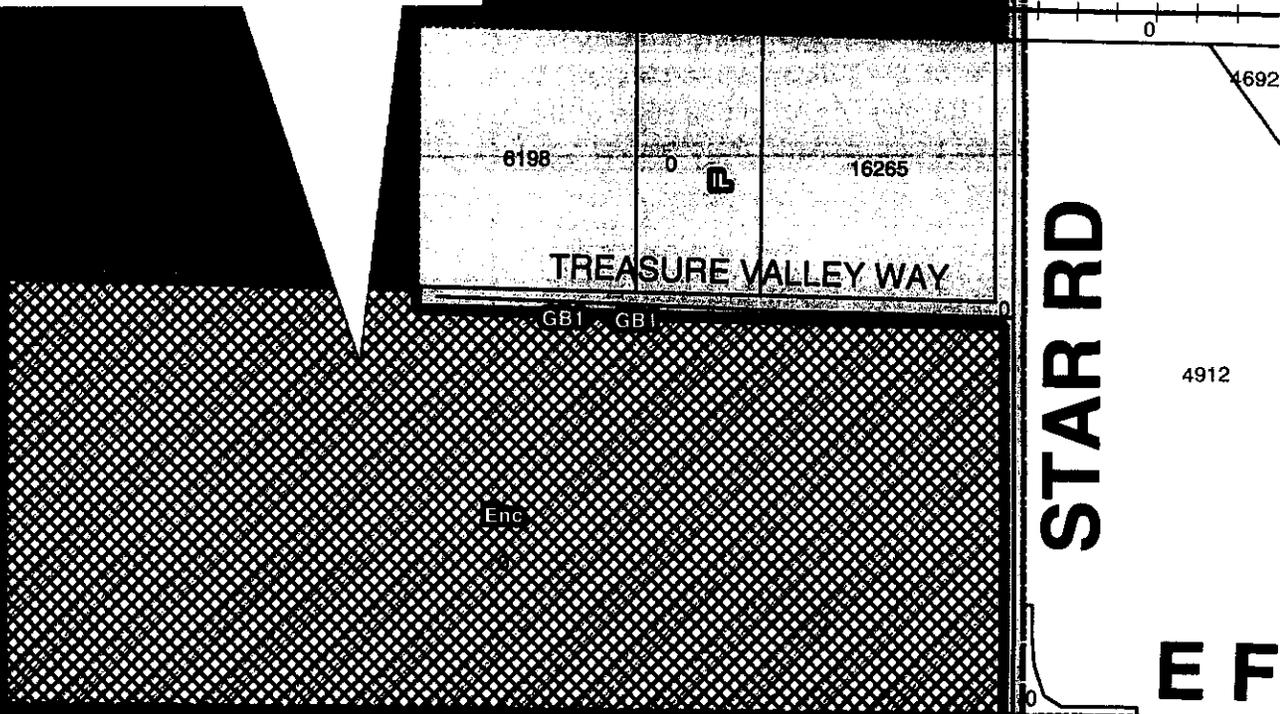
Subject to existing road rights-of-way for East Franklin Road along the southerly houndary of the above-described property, and subject to an easement described in said Instrument Number 200012022.

Said parcel being the same as depicted as the FULLER FAMILY PROPERTY on a Record of Survey, Instrument Number 200245480 in the records of Canyon County, Idaho.



16469

ANNEXATION AND DEVELOPMENT AGREEMENT
 ZONING TO GB 1 (GATEWAY BUSINESS 1) FOR
 A 65.3 ACRE PROPERTY LOCATED AT THE NW
 CORNER OF E. FRANKLIN RD. AND STAR RD.
 (IN THE SE ¼ OF SECTION 7, T3N, R2W, BM)
 FOR RICHARD F. ORTON JR.
 PROJECT #ANN 1164-11



1 inch = 500 feet



DEVELOPMENT AGREEMENT

THIS AGREEMENT (the “**Agreement**”), is made and entered into this 19th day of December, 2011 (the “**Effective Date**”), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the “**City**,” and Franklin Star Development, LLC, hereinafter referred to as “**Owner/Developer**.”

RECITALS

- A. Owner/Developer is the owner of approximately sixty-five (65) 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 13 September, 2011 (the “**date of application**”) for annexation of the Property into City and asked for initial zoning of the Property to be GB1 (Gateway Business 1), in anticipation of the development and construction of a master planned commercial business park (the “**Project**”) within the area, and upon the Property involved in this Agreement.
- C. City, pursuant to Sections 10-2-4 and 10-2-5 Nampa City Code, Idaho Code Section 50-222 (category “A”) and/or Idaho Code Section 67-6511A, has the authority to annex and assign an initial zone to the Property and enter into an agreement with the Owner/Developer 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, initial zoning and development of the Property and this Agreement. City has approved the annexation and requested zoning of the Property to GB1 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’s building design and/or layout shall be developed in substantial conformance with the conceptual plans attached hereto as **Exhibit “B”** and made a part hereof (the “**Conceptual Plans**”); provided, however, that Owner/Developer shall have flexibility to

develop the Property to meet market conditions or adjust to business needs within the constraints allowed in the GB1 zone. Uses may change in accordance with the GB1 zone, and building alignments and locations may be adjusted. The only specific commitments concerning development of the Project which Owner/Developer is making are set forth herein.

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 body of this Agreement and in the additional conditions of approval section 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 revoke any entitlement or permit issued after annexation and initial zoning of the Property 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 fail to cure such failure as set forth below.

7. Any entitlements (including plats and permits) issued after this agreement shall be accompanied by a schedule, and the Owner/Developer agrees that such entitlement may be revoked by the City after written notice if the schedule is not met.

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 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.

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

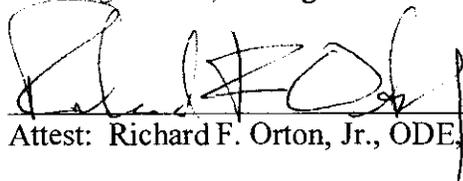


Attest: Deborah Bishop, City Clerk

OWNER/DEVELOPER, FRANKLIN STAR DEVELOPMENT, LLC



Lois Jean Fuller, Manager

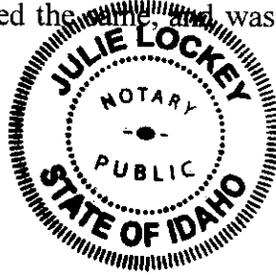


Attest: Richard F. Orton, Jr., ODE, LLC, Developer

NOTARY

STATE OF IDAHO)
) ss.
County of Canyon)

On this 19 day of December 2011, 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.



STATE OF IDAHO)
) ss.
County of Canyon)

On this 19th day of December, in the year of 2011, before me Kristi Watkins, personally appeared Lois Jean Fuller, 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.



Kristi Watkins
Caldwell, Idaho
Sept 3, 2015 expiration

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

RECORDER SCAN

LEGAL DESCRIPTION

A parcel located in the Southeast Quarter of Section 7, Township 3 North, Range 1 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Southeast Quarter of Section 7, Township 3 North, Range 1 West, Boise Meridian, Canyon County, Idaho (referenced below as "Section 7");

Thence North 89°11'51" West along the Southerly boundary of said Southeast Quarter a distance of 25.00 feet to the West side of an unrecorded deed of right-of-way document on file at the offices of the Nampa Highway District (City of Nampa, Idaho), said point being the POINT OF BEGINNING;

Thence North 00°16'04" East along the West side of said unrecorded deed of right-of-way a distance of 1,040.64 feet to a point;

Thence North 88°17'11" West along the Southerly boundary of the Treasure Valley Road right-of-way, as described in Instrument Number 879481 of the records of Canyon County, Idaho, 1,539.99 feet to a point;

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Thence North 88°17'11" West along the Southerly boundary of said private parcel a distance of 1,078.54 feet to a point which bears North 88°17'11" West a distance of 7.71 feet to the Westerly boundary of said Section 7;

Thence South 00°16'04" West a distance of 1,142.30 feet to a point on the Southerly boundary of said Section 7;

Thence South 89°11'51" East along the Southerly boundary of said Section 7 a distance of 2,617.81 feet to the POINT OF BEGINNING containing approximately 65.27 acres.

Subject to existing road rights-of-way for East Franklin Road along the southerly boundary of the above-described property, and subject to an easement described in said Instrument Number 200012022.

Said parcel being the same as depicted as the FULLER FAMILY PROPERTY on a Record of Survey, Instrument Number 200245480 in the records of Canyon County, Idaho.

EXHIBIT "B"

CONCEPTUAL SITE AND LANDSCAPE DESIGN PLAN

RECORDER SCAN

SITE/BUILDING DATA

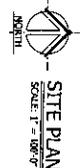
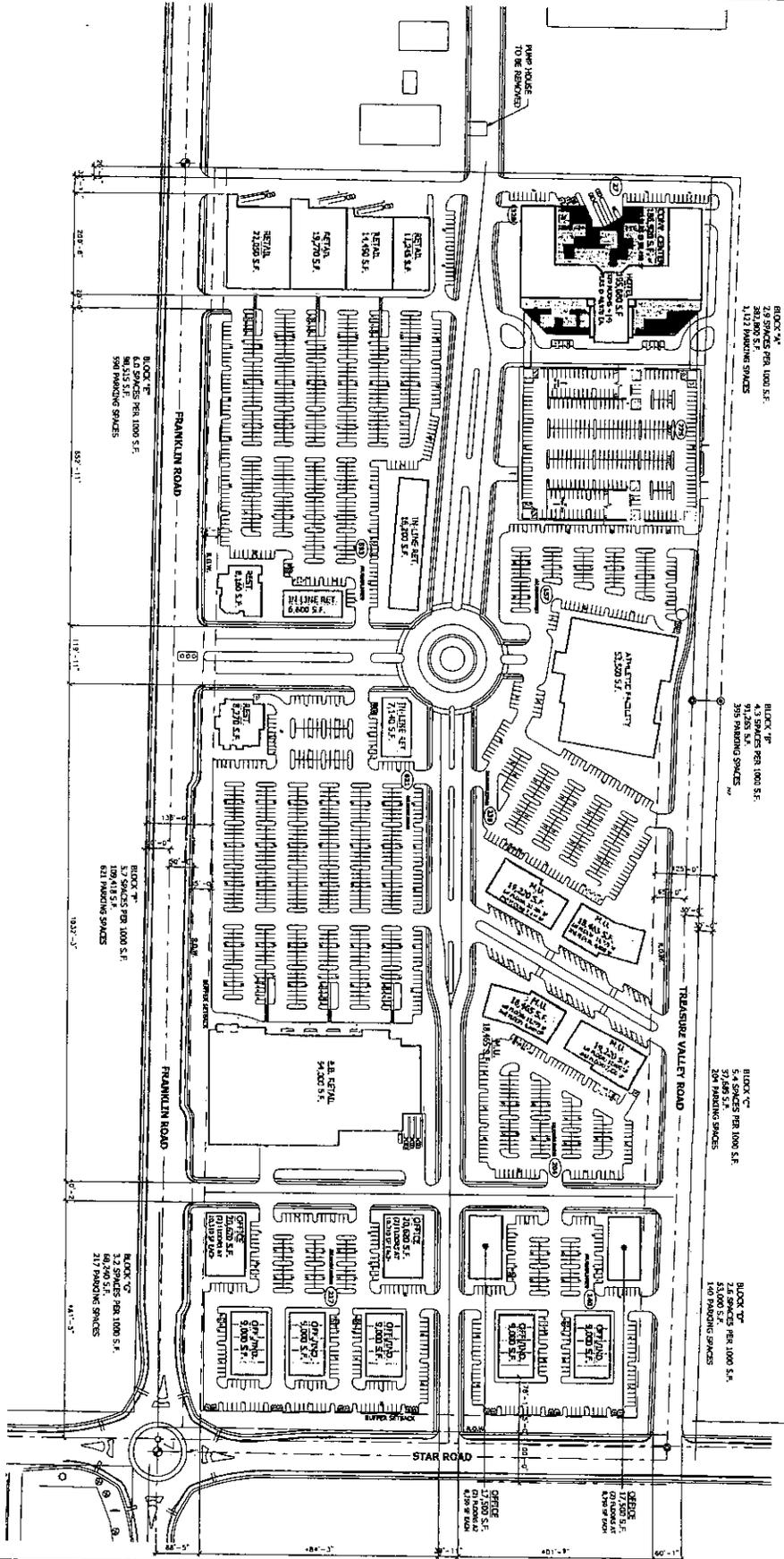
LAND SIZE: 65.26 ACRES
 NET LAND SIZE (MINUS STAR, FRANKLIN & TREASURE VALLEY
 R.O.W.'s): 59.9 ACRES
 TOTAL BUILDING AREA: 840,915 S.F.
 TOTAL PARKING COUNT: 3,292 SPACES
 PARKING RATIO: 4.61 SPACES PER 1,000 S.F. OF BUILDING
 BUILDING TO NET LAND AREA RATIO: 32.2%
 (NOT INCLUDING PARKING STRUCTURE)

PARKING CRITERIA

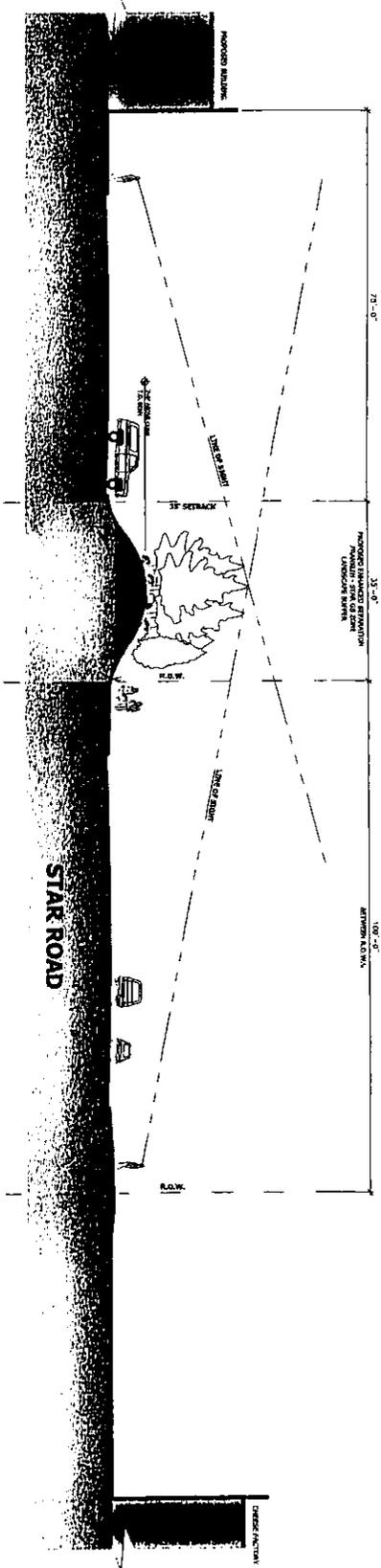
HOTEL: 1 SPACE PER ROOM (320 SPACES)
 CONVENTION CENTER: 4 SPACES PER 1,000 SF
 IN-LINE / LIGHT RETAIL: 4.5 SPACES PER 1,000 SF
 HEAVY / BIG BOX RETAIL: 5 SPACES PER 1,000 SF
 OFFICE: 3 SPACES PER 1,000 SF
 INDUSTRIAL W/ OFFICE: 3 SPACES PER 1,000 SF
 RESTAURANT: 10 SPACES PER 1,000 SF

ABBREVIATIONS

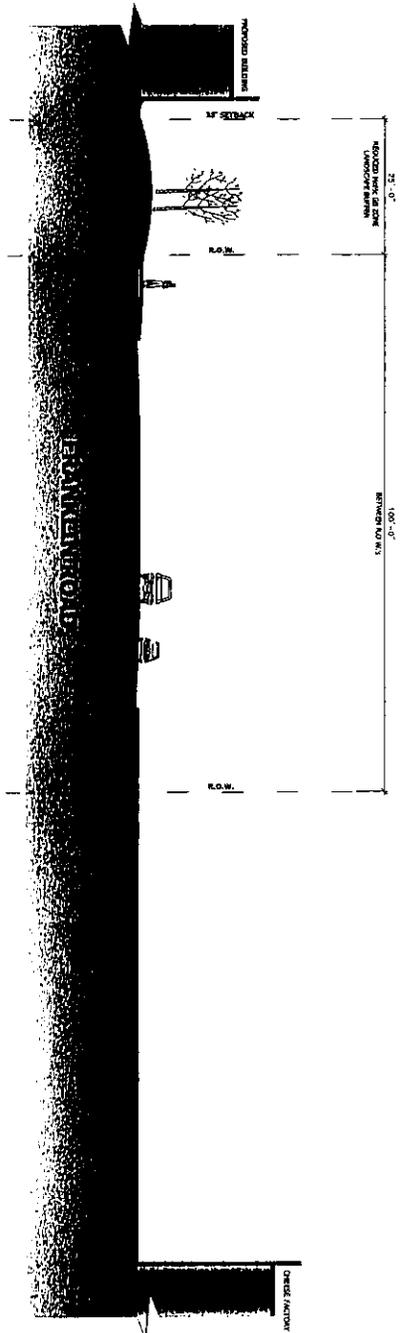
OFF. - OFFICE
 IND. - INDUSTRIAL
 REST. - RESTAURANT
 B.B. - BIG BOX
 RET. - RETAIL
 M.U. - MIXED USE
 R.D.W. - RIGHT OF WAY



SHEET SD1.2	DATE 9.15.04 CHECKED JDR JOB NO. 00132	DRAWN DM / GBO	PROPOSED DEVELOPMENT FOR: FRANKLIN STAR FRANKLIN AND STAR ROADS HANNA, IDAHO	BRS ARCHITECTS 1010 S. ALLANTE PL. SUITE 100 BOISE, IDAHO 83709 (208) 336-8370 FAX (208) 336-8380	NO. REVISIONS DATE
		REVISIONS DATE			



1 FRANKLIN-STAR PROPOSED TRANSITION CONCEPT
SCALE: 3/32" = 1'-0"



2 MCMC, LLC EXISTING TRANSITION CONCEPT
SCALE: 3/32" = 1'-0"

DATE: 08/13/12
DRAWN BY: J. B. BROWN
CHECKED BY: J. B. BROWN
APPROVED BY: J. B. BROWN

NO.	REVISIONS	DATE

PROPOSED DEVELOPMENT FOR:
FRANKLIN STAR
COMPARATIVE LANDSCAPE TRANSITION ANALYSIS
FRANKLIN AND STAR ROADS NAMPA, IDAHO

BRS ARCHITECTS
1010 S. ALLANTE PL.
SUITE 100
BOISE, IDAHO 83709
(208) 336-8370
FAX (208) 336-8380

EXHIBIT "C"

CONDITIONS OF APPROVAL

1. Owner/Developer shall dedicate right-of-way along Star Road at such time as any portion of the property is developed in a manner that increases traffic on Star Road by more than 400 vehicles per day (VPD). In addition right-of-way will also be dedicated at such time as the street improvements are completed by the Owner/Developer or by others. This means that an adjacent property owner or the City can agree to build a portion of Star Road and the applicant will dedicate the necessary right-of-way accordingly.
2. Owner/Developer shall agree to emplace all required site related improvements (curb, gutter, sidewalk, landscaping storm drainage, street pavement widening, etc.) adjacent to any parcel for which a building permit has been issued, at their expense, at such time as required by the City's adopted zoning ordinance (N.C.C. 10-1-6).
3. Owner/Developer and the City agree that they will work together in good faith towards the establishment of an improvement district for the construction of infrastructure associated with the development of the Property. At present, the potential size (land area and number of property owners), scope and type of improvement district cannot be determined with certainty, but both parties agree to work together in good faith to determine and establish the best way to construct all necessary infrastructure.
4. Owner/Developer agrees 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. The parties agree that the landscape mitigation shown in **Exhibit "B"** is satisfactory in protecting compatibility with adjacent land uses.
6. The parties agree that they shall each comply with those terms and conditions listed in the Memorandum of Understanding between the City of Nampa and Franklin Star Development LLC, copy hereafter attached, signed by Franklin Star Development on the 10th day of October, 2011.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered into this 10th day of October, 2011, between the CITY OF NAMPA, CANYON COUNTY, IDAHO ("City") and Franklin Star Development, LLC ("FSD").

Recitals

WHEREAS, the City has a need to repair and reconstruct Franklin Road between North Gate Boulevard and the Star/Robinson Roads intersection and ensure that the project is compatible with the ultimate 5-lane configuration; and

WHEREAS, FSD owns the entire north side of the project limits and has expressed a desire to have the ultimate 5-lane pavement section be designed and the section north of the Franklin Road centerline to be constructed; and

WHEREAS, FSD and the City jointly desire to make these improvements on Franklin Road ("the Project"), including associated improvements to city utilities.

NOW, THEREFORE, the City and FSD hereby agree as follows:

1. The City will be responsible, in consultation and coordination with JUB, for design, bidding, construction, and management of these improvements, allowing for future design and installation of curb, gutter, planter strip and sidewalk on the north side of Franklin Road by FSD.
2. The City will design and construct a straight edge-of-pavement with appropriate shoulder, borrow pits and rural access points to allow for continued farming. The City will locate three rural gravel access roads (single lane) where they are ultimately expected to be as shown on Exhibit A/Option 1.
3. FSD will, within one calendar month after execution of this contract, provide a deed to the City for Right-Of-Way (ROW) consisting of fifty feet north of the section line approximately on the Franklin Road centerline along the entire project limits along with instructions for recordation. Both parties recognize that recordation of this deed will coincide with conclusion of two other actions: an annexation request for the FSD property and the sale of ROW on the southwest corner of the FSD property to the City for construction of a roundabout at the intersection of Franklin Road and Star/Robinson Road.
4. The constructed lane configuration north of the aforementioned section line in Franklin Road will be 7' of center lane, a 12' interior lane, and a 14' outside lane. The City will be responsible for all costs associated with the center and interior lane construction, including extending water, sewer and pressurized irrigation connections. FSD will be responsible for all costs associated with the outside lane, 2' shoulder, drainage swale and

further extension of water, sewer and pressurized irrigation lines 3' beyond the north edge-of-pavement.

5. FSD agrees and understands that it will be required to install curb, gutter, planter strip and sidewalk at such time as the property is further developed.
6. FSD will be reasonably available for comment and consultation during project design, bidding and construction.
7. The City agrees to confine runoff to an 8' swale located between back of curb and sidewalk to the extent possible. FSD agrees to negotiate the granting of additional drainage easements to the extent that said easements are necessary and reasonable.
8. FSD will pay its entire portion of construction costs for work defined in paragraph 4 immediately after construction bid award. Should FSD fail to pay its entire portion of construction costs, that portion of the project will be removed from the project and FSD agrees to pay \$15,298 to the City for the additional engineering costs incurred.
9. Entire Agreement. The parties agree that this Agreement constitutes the entire agreement between the parties.
10. Attorney Fees. In the event an action is brought to enforce any of the terms or provisions of this Agreement, or enforce forfeiture thereof for default thereof by either of the parties hereto, the successful party to such action or collection shall be entitled to recover from the losing party a reasonable attorney fee, together with such other costs as may be authorized by law.
11. Severability. In the event any of the provisions of this Agreement shall be deemed illegal or unenforceable, such determination shall not operate to invalidate any of the remaining provisions of this Agreement.
12. Headings. The underlined paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in interpreting or construing this Agreement.
13. Binding Effect. The provisions and stipulations of this Agreement shall inure to and bind the heirs, personal representatives, assigns and successors in interest of the parties hereto.
14. Entity Authority. Each individual executing this Agreement on behalf of an entity represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said entity.

FRANKLIN STAR DEVELOPMENT, LLC

By: Lois J. Fuller
Lois J. Fuller, Manager

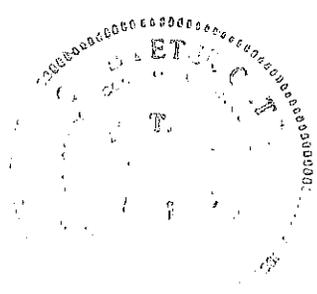
STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

On this 10 day of October, 2011, before me, the undersigned, a Notary Public, in and for said State, personally appeared Lois J. Fuller, known to me to be the person whose name is subscribed.

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

[Signature]
Notary Public for Idaho
Commission expires: 1/30/2014

SEAL



CITY OF NAMPA, CANYON COUNTY, IDAHO

By: _____
Tom Dale, Mayor

Attest:

Deborah Bishop, City Clerk

