INSTRUMENT NO. 2012009615

RECEIVED
MAR 20 2012
TECHNICAL SUPPORT

12/ 018

ORDINANCE NO. 4008

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT 1124 NORTH MIDDLETON ROAD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO AND ZONING THE SAME RS-6, 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 1124 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 RS-6.

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 5th DAY OF March, 2012.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 5th DAY OF March, 2012.

Approved:

By _____
Mayor

Attest:

_____
City Clerk

RECORDED
2012 MAR 12 PM 3 32
CHRIS YAMAMOTO
CANYON COUNTY RECORDER
BY _____

2012009615

State of Idaho)

Canyon County)

On this 5th day of March, 2012, 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"

LEGAL DESCRIPTION

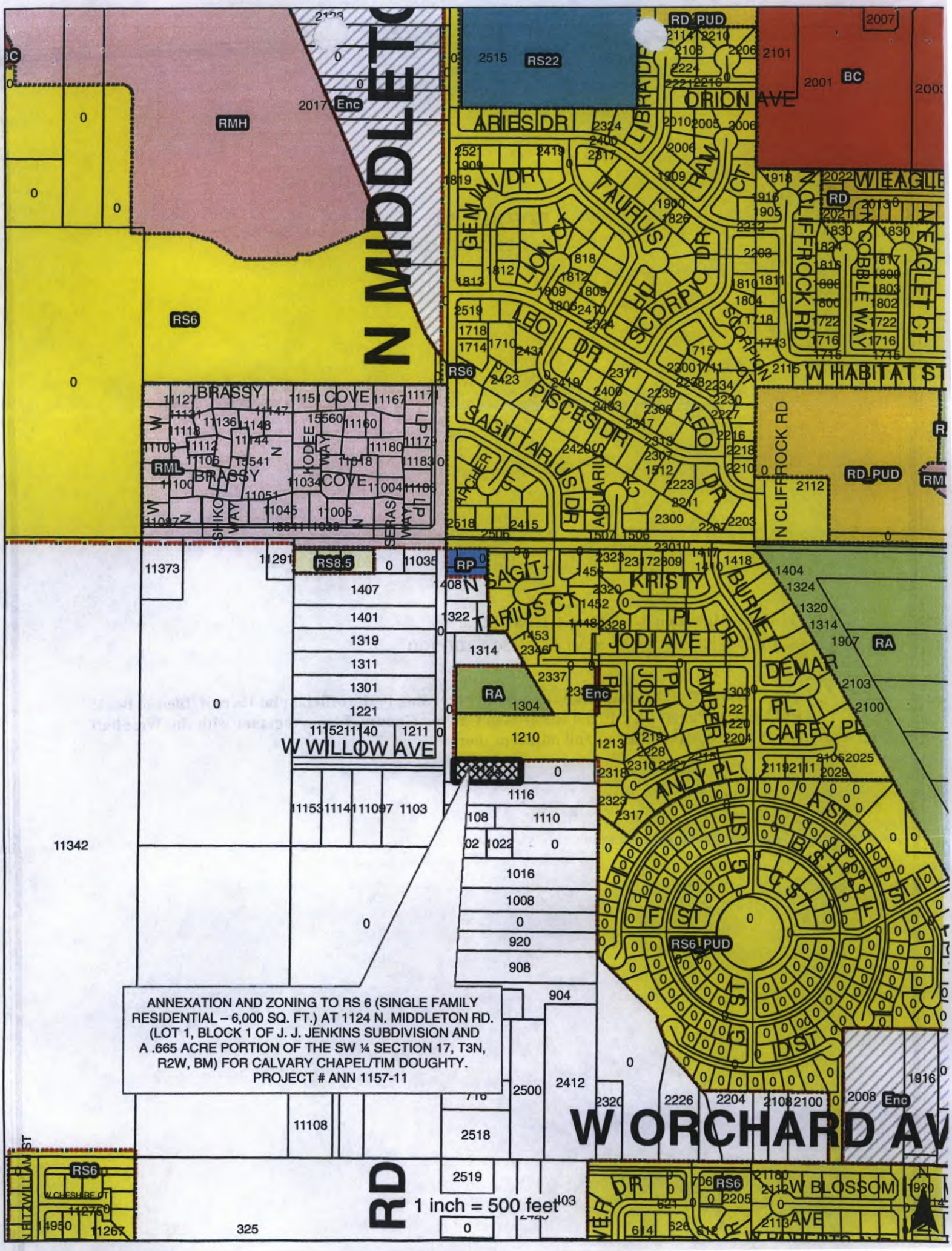
Calvary Chapel of Nampa, Inc.,

1124 N. Middleton Road, Nampa, ID, 83651,

Canyon County Account R2311200000

Lot 1 in Block 1 of J.J. Jenkins Subdivision, according to the official plat thereof, filed in Book 11 of Plats at Page(s) 9, Official Records of Canyon County, Idaho, together with the West half of the vacated Street East of and adjacent thereto.

63-702-1


N MIDDLETON RD
W ORCHARD AV
W WILLOW AVE
W HABITAT ST
W EAGLE CT
W BLOSSOM AVE
ORION AVE
ARIES DR
TAURUS DR
GEMINI DR
LIBRA DR
RAM CT
LION CT
SCORPIO DR
SCORPIO CT
LEO DR
PISCES DR
SAGITTARIUS DR
AQUARIUS CT
ARCHER CT
BRASSY COVE
KODEE WAY
SHIKO WAY
SERAS WAY
KRISTY PL
JODI AVE
BURNETT DR
DEMAR PL
CAREY PL
ANDY PL
JOSH PL
AMBER PL
N CLIFFROCK RD
COBBLE WAY
RMH
RS6
RML
RS8.5
RP
RA
RD PUD
RS22
BC
Enc
ANNEXATION AND ZONING TO RS 6 (SINGLE FAMILY RESIDENTIAL – 6,000 SQ. FT.) AT 1124 N. MIDDLETON RD. (LOT 1, BLOCK 1 OF J. J. JENKINS SUBDIVISION AND A .665 ACRE PORTION OF THE SW ¼ SECTION 17, T3N, R2W, BM) FOR CALVARY CHAPEL/TIM DOUGHTY. PROJECT # ANN 1157-11
1 inch = 500 feet

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this 21 day of Feb, 2012 (the "Effective Date"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "City," and Calvary Chapel inc. / Tim Dough hereinafter referred to as "Owner/Developer."

RECITALS

A. Owner/Developer is the owner of approximately .665 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 22 of August 2011, (the "date of application") for annexation and zoning of the Property to RS 6 (Single Family Residential, 6,000 sq. ft. min. buildable property size) in anticipation of connection to the City's sewer system).

C. City, pursuant to Section 10-2-5, Nampa City Code, and Idaho Code Section 67-6511A, has the authority to annex 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 annexing the Property and this Agreement. City has approved the requested annexation and zoning of the Property to RS 6 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. Upon recordation of this Agreement, Owner/Developer shall have all annexation/rezoning related approvals required from City to facilitate their seeking connection to the City's sewer system. This does not abrogate Owner/Developer's need to apply through City's Engineering Department for connection thereto.

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 "B"**, 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. Exception: the failure to begin site development of all or a portion of a project proposed under this Agreement does not necessarily serve as impetus to allege that the commitments contained herein are not being fulfilled. Rather, commencement of site work and/or construction then left in abandon or failure to abide by the terms of this Agreement, as herein iterated, shall serve as impetus to consider termination of this Agreement and reversion of zoning. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner/Developer's failure to comply with the terms and conditions of this Agreement to Owner/Developer and Owner/Developer fails to cure such failure within six (6) months of Owner/Developer's receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner/Developer, and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

8. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a Building Permit is file. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

9. It is intended by the parties that this Agreement shall be recorded on the Effective Date or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner/Developer, each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

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, 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.

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 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

Tom Dale, Mayor

Debbie L Bishop

Attest: Debbie Bishop, City Clerk

OWNER/DEVELOPER:

STATE OF IDAHO)
) ss.
County of Canyon)

On this 5 day of March, in the year of 2012, 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.

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

Julie Lockey

Notary Public for State of Idaho
Residing at Nampa, Canyon County, Idaho
Commission Expires: 5/11/2017

JULIE LOCKEY NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO)
) ss.
County of Canyon)

On this 21st day of February, in the year of 2012 before me, Donna J. Silverthorn, personally appeared Timothy Doughty, known or identified to me, to be associate Pastor, of Calvary Chapel, the owner/developer whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and on behalf of Calvary Chapel.

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

Donna J. Silverthorn
Notary Public for State of Idaho
Residing at Nampa
Commission Expires: 7/10/12

SEAL

DONNA J. SILVERTHORN NOTARY PUBLIC STATE OF IDAHO

EXHIBIT "A"

LEGAL DESCRIPTION

Calvary Chapel of Nampa, Inc.,

1124 N. Middleton Road, Nampa, ID, 83651,
Canyon County Account R2311200000

Lot 1 in Block 1 of J.J. Jenkins Subdivision, according to the official plat thereof, filed in Book 11 of Plats at Page(s) 9, Official Records of Canyon County, Idaho, together with the West half of the vacated Street East of and adjacent thereto.

EXHIBIT "B"

CONDITION(S) OF APPROVAL

1. Prior to the third reading of the annexation and zoning ordinance the Owner/Developer shall dedicate any right-of-way, as defined/required by the City Engineer, adjacent the Property as may be required for the ultimate build out of those public roadways; and,

2. The Owner/Developer shall enter into a Deferral Agreement with the City to defer construction of the frontage improvements. The improvements will be required at such time a change of use of the Property takes place, or upon notification by the City to construct said improvements in accordance with Nampa City Code 9-1-8: Curbs, Gutters and Sidewalks, Ord. 3371, or, an LID (Local Improvement District) for the area in which the Property is located is created. Improvements associated with any such LID will, again, include: curb, gutter and sidewalk, landscaping as may be requisite, storm drainage facilities and pavement widening and striping as may be needed; and,

3. The Owner/Developer and any successors thereto along with the Property and any proposed development thereon comply with all applicable codes, laws and ordinances appertaining to Property development as this Agreement shall not have the effect of abrogating, nullifying, altering, amending or otherwise providing exception to the same except as specifically delineated by the terms and conditions of this Agreement.