

After Recording
Return to:

T. Hethe Clark
Spink Butler, LLP
251 E. Front Street, Suite 200
Boise, Idaho 83701

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
[CAR15-00024 – Re-Subdivision of Lot 1, Block 1]

This First Amendment to Development Agreement ("**First Amendment**") is entered into effective this ____ day of _____, 2015, by and among Boise City, an Idaho municipal corporation ("**City**") and Hackberry Ranch Corporation, an Idaho corporation ("**Developer**"). The City and the Developer are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**."

RECITALS:

- A. Developer is the owner of record of that certain real property legally described as Lot 1, Block 1 of Hackberry Ranch Subdivision, as the same is recorded in the records of Ada County on March 27, 2014 as Instrument No. 114022452 ("**Lot 1, Block 1**");
- B. Lot 1, Block 1 and additional real property are encumbered by that certain Development Agreement for Hackberry Ranch Subdivision by and between the City and the Developer on August 15, 2013, and recorded on August 16, 2013, as Instrument No. 113094330, in the official records of Ada County, Idaho ("**Agreement**");
- C. Developer is seeking to re-subdivide Lot 1, Block 1, and, accordingly, has proposed this First Amendment to the Agreement to allow such re-subdivision;
- D. All public hearings pursuant to notice as required by law or other action required to be held or taken prior to the adoption and execution of this First Amendment have been held or taken.
- E. The Parties desire to amend the Agreement based on the terms and conditions contained herein.

AGREEMENT:

NOW THEREFORE, in consideration of the above recitals which are incorporated below, the exhibits which are incorporated by reference herein, and the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Re-Subdivision of Lot 1, Block 1: Approvals and Conditions.** Section 1 of the Agreement is hereby amended by adding the following new Section 1(A):
 - (A) **Re-Subdivision of Lot 1, Block 1.** This Agreement shall additionally vest the right to re-subdivide Lot 1, Block 1 into multiple lots with respect to the following approved applications: CAR15-00024, PUD15-00015, CFH15-00029, and SUB15-00034 (which shall be considered part of the "Approvals" as described herein) as restricted by those certain additional conditions of approval attached hereto as **Exhibit B-1** (which shall be considered part of the "Conditions").
2. **Re-Subdivision of Lot 1, Block 1: Conditions Exhibit.** The Agreement is hereby amended by adding the Exhibit A attached to this First Amendment as a new Exhibit B-1 to the Agreement.

3. **Re-Subdivision of Lot 1, Block 1, Concept Plan.** Section 2 of the Agreement is hereby amended by adding the following new Section 2(A):

(A) Concept Plan for Re-Subdivision of Lot 1, Block 1. This Agreement incorporates as **Exhibit C-1** and makes a part hereof that certain concept plan submitted and approved by the City with the Approvals relating to the re-subdivision of Lot 1, Block 1.
4. **Re-Subdivision of Lot 1, Block 1: Concept Plan Exhibit.** The Agreement is hereby amended by adding the Exhibit B attached to this First Amendment as a new Exhibit C-1 to the Agreement.
5. **Miscellaneous** Unless otherwise specified herein, any capitalized term not defined herein shall have the same meaning as in the Agreement. Except as set forth in this First Amendment, the terms and conditions of the Agreement shall remain unmodified and in full force and effect. To the extent that the terms and conditions of this First Amendment conflict with the Agreement affecting Lot 1, Block 1, the terms and conditions of this First Amendment shall control with respect to Lot 1, Block 1.
6. **Recordation.** The Developer shall record this First Amendment, including all of the exhibits attached hereto. The Developer shall submit proof of such recording to the City. Failure to comply with this Section shall be deemed a default of this First Amendment by the Developer.
7. **Effective Date.** This First Amendment will be effective upon the date first written above.

[End of Text]

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this First Amendment to be executed, on the day and year first above written, the same being done after public hearing, notice, and statutory requirements having been fulfilled.

CITY:

BOISE CITY,
an Idaho municipal corporation

ATTEST:

By: _____
David H. Bieter, Mayor

By: _____
_____, Ex-Officio City Clerk

DEVELOPER:

HACKBERRY RANCH CORPORATION,
an Idaho corporation

By: _____
Scott Glen Kimball, President

EXHIBITS:

Exhibit A: Exhibit B-1 to Agreement – Conditions of Approval: Re-Subdivision - Lot 1, Block 1
Exhibit B: Exhibit C-1 to Agreement – Concept Plan: Re-Subdivision - Lot 1, Block 1

[notary signatures on following page]

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID H. BIETER and _____, known or identified to me to be the MAYOR and EX-OFFICIO CITY CLERK of the CITY OF BOISE CITY, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared SCOTT GLEN KIMBALL, known or identified to me to be the PRESIDENT of the HACKBERRY RANCH CORPORATION, the person who executed the instrument on behalf of said corporation, and acknowledged to me that corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires: _____

EXHIBIT A TO FIRST AMENDMENT

EXHIBIT B-1 TO AGREEMENT

Conditions of Approval: Re-Subdivision - Lot 1, Block 1

Capitalized terms not defined herein shall have the same meanings as in that certain Planning & Development Services letter to Scott Kimball, Hackberry Ranch Corporation, dated August 4, 2015, which contains same conditions of approval for CAR15-00024, CFH15-00029 & SUB15-00034 as stated herein.

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received May 28, 2015 and revised site plan dated received July 9, 2015.

2. Planning

- a. The houses shall be restricted to single story in height (excluding basements).
- b. Each dwelling unit shall provide a minimum of a two car garage.
- c. The project is limited to five buildable lots, and the density of the overall Hackberry Ranch project shall not exceed 28 units.
- d. The project shall comply with all perimeter setbacks. Interior to the development, the setbacks of the R-1C zone are allowed.
- e. The applicant shall provide an easement for the private street to cross on to the adjacent open space parcel (Block 1, Lot 2, Hackberry Ranch Subdivision).
- f. The applicant shall provide a public cross access easement for the 6 foot wide paved pedestrian path that connects the development to the sidewalk along Bogus Basin Road.
- g. The applicant shall provide a landscape easement on the adjacent open space parcel (Block 1, Lot 2 Hackberry Ranch Subdivision) for use as defensible space and all WUI standards shall be met.
- h. The applicant shall comply with the conditions outlined in PUD12-00017 and CFH12-00044 unless modified by this Conditional Use and Hillside Development Permit.
- i. The applicant shall provide cross access to the adjacent property to use the private street.

3. Subdivision

- a. A note on the face of the Final Plat shall designate that Common Lots shall be owned and maintained by the Hackberry Ranch #2 Homeowner's Association. These lots cannot be developed for residential purposes in the future. The common lots shall be designated by Lot and Block.
- b. A note on the face of the Final Plat shall state: "The development of this property shall be in compliance with the Boise City Development Code or as specifically approved by PUD15-00015 and CFH15-00029."
- c. This subdivision is within Wildland Urban Interface Zone A and compliance with Boise City Code (B.C.C.) 7-01-69 is required. The required fire safety plan shall be provided in accordance with Section 4921. A note shall be placed on the plat stating: "This subdivision is located in Area "A" of the Wildland Urban Interface Code and the property development and construction of structures shall comply with the requirements of Boise City Code Section 7-01-69."

d. Covenants, homeowners' association by-laws or other similar deed restrictions which provide for the use, control and maintenance of all common areas, private streets, shared access and shared parking, and which shall be consistent with the Fair Housing Act of 1968, as amended from time to time, shall be reviewed and approved by the Boise City Attorney. After recordation of the final plat and CC&R's, no building permit shall be accepted until a copy of the recorded CC&R's has been submitted to the Boise City Attorney.

e. Prior to the City Engineer's Certification of the Final Plat and prior to earth disturbing activities, an erosion and sediment control (ESC) permit must be obtained. An ESC plan conforming to the requirements B.C.C. 8-17, is to be submitted to the Director of Planning and Development Services for review and approval. No grading or earth disturbing activities may start until an approved ESC permit has been issued.

f. An individual who has attended the Boise City Responsible Person (RP) certification class, or has obtained Interim Certification for Responsible Person is not identified for this project. A permit will not issue until such time as the name and certification number of the RP has been provided to Boise City. This information can be faxed to 388-4735 or e-mailed to ejenkins@cityofboise.org.

g. No Building Permit for the construction of any new structure shall be accepted until the Final Plat has been recorded pursuant to the requirements of the B.C.C. 11-09-04.1.

h. The 24 foot wide private street shall be signed "No Parking" on both sides of the roadway.

i. The developer shall make arrangements to comply with all requirements of the Boise City Fire Department and verify in one of the following ways:

i. A letter from the Boise City Fire Department stating that all conditions for water, access, and/or other requirements have been satisfied,
OR

ii. A non-build agreement has been executed and recorded with a note on the face of the Final Plat identifying the instrument number.

j. The name, Hackberry Ranch #2 Subdivision, is reserved and shall not be changed unless there is a change in ownership, at which time, the new owner(s) shall submit their new name to the Ada County Engineer for review and reservation. Should a change in name occur, applicant shall submit, in writing, from the Ada County Engineer, the new name to the Department of Planning and Development Services and re-approval by the Council of the "revised" Final Plat shall be required. Developer and/or owner shall submit all items including fees, as required by the Planning and Development Services Department, prior to scheduling the "revised" Final Plat for hearing.

k. Correct street names as approved by the Ada County Street Name Committee shall be placed on the plat (B.C.C. 9-06-05.M).

l. A letter of acceptance for water service from the utility providing same is required (B.C.C. 11-09-04.3).

m. Developer shall provide utility easements as required by the public utility providing service (B.C.C. 11-09-04.12).

n. Developer shall provide a letter from the United States Postal Service stating, "The Developer and/or Owner has received approval for location of mailboxes by the United States Postal Service."

Contact: Dan Frasier, Postmaster
770 S. 13th St.
Boise, ID 83708-0100
Phone No. (208) 433-4341

FAX No. (208) 433-4400

o. Prior to submitting the Final Plat for recording, the following endorsements or certifications must be executed: Signatures of owners or dedicators, Certificate of the Surveyor, Certificate of the Ada County Surveyor, Certificate of the Central District Health Department, Certificate of the Boise City Engineer, Certificate of the Boise City Clerk, signatures of the Commissioners of the Ada County Highway District and the Ada County Treasurer (I.C. Title 50, Chapter 13).

p. Developer shall comply with B.C.C. 11-03-04.4 which specifies the limitation on time for filing and obtaining certification. Certification by the Boise City Engineer shall be made within two years from date of approval of the Final Plat by the Boise City Council.

i. The developer may submit a request for a time extension, including the appropriate fee, to the Boise City Planning and Development Services Department for processing. Boise City Council may grant time extensions for a period not to exceed one year provided the request is filed, in writing, at least twenty working days prior to the expiration of the first two year period, or expiration date established thereafter.

ii. If a time extension is granted, the Boise City Council reserves the right to modify and/or add condition(s) to the original preliminary or Final Plat to conform with adopted policies and/or ordinance changes.

iii. The Final Plat shall be recorded with the Ada County Recorder within one year from the date of the Boise City Engineer's signature. If the Final Plat is not recorded within the one-year time frame it shall be deemed null and void.

4. Prior to the Development Agreement modification being scheduled for consideration by City Council, the applicant shall make the following changes, with the final draft to be approved by the City Attorney:

- a. The agreement shall reference and include the approved site plan as an exhibit.
- b. The agreement shall include the required conditions as an exhibit.

5. Within one year of the date City Council approves the revised Development Agreement, it shall be recorded. Failure to record the Development Agreement within the one-year time frame shall automatically render approval of this modification null and void.

Agency Requirements

6. The applicant shall comply with any conditions of the Boise Fire Department from the memo dated July 29, 2015. Any deviation from this plan is subject to Fire Department approval. For additional information, contact Romeo Gervais at 208-570-6567.

7. The applicant shall comply with the requirements of ACHD as per their final staff report dated June 10, 2015.

8. The applicant shall comply with the requirements of Boise City Public Works Hillside memo dated July 16, 2015.

9. The applicant shall comply with the requirements of Boise City Public Works Hydrology Report dated July 22, 2015.

10. The applicant shall comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, sewers, street lights and subdivisions per Department comments dated May 29, 2015, June 1, 2015, June 3, 2015, and July 9, 2015. Please contact BCPW at (208) 384-3900. All items required by BCPW shall be included on the plans/specifications that are submitted for a Building Permit. Please note

that any changes or modifications by the owner to the approved plans must be submitted to the Public Works Department for approval.

11. The applicant shall comply with the requirements of Boise City Public Works Solid Waste Department memo dated May 29, 2015.

12. Applicant shall comply with all requirements stated in the letter dated June 17, 2015 from the Independent School District of Boise City #1.

Standard Conditions of Approval

13. Building Permit approval is contingent upon the determination that the site is in conformance with the Boise City Subdivision Ordinance. Contact the Planning and Development Services, Subdivision Section at (208) 384-3998 regarding questions pertaining to this condition.

14. All landscaping areas shall be provided with an underground irrigation system. Landscaping shall be maintained according to current accepted industry standards to promote good plant health, and any dead or diseased plants shall be replaced. All landscape areas with shrubs shall have approved mulch, such as bark or soil aid.

15. Swales/retention/detention areas shall not be located along the streets, unless it can be shown that landscaped berms/shrubs will screen the swales.

16. In compliance with Title 9, Chapter 16, Boise City Code, anyone planting, pruning, removing or trenching/excavating near any tree(s) on ACHD or State right-of-ways must obtain a permit from Boise City Community Forestry at least one (1) week in advance of such work by calling 384-4083. Species shall be selected from the Boise City Tree Selection Guide.

17. Deciduous trees shall be not less than 2" to 2 1/2" inch caliper size at the time of planting, evergreen trees 5' to 6' in height, and shrubs 1 to 5 gallons, as approved by staff. All plants are to conform to the American Association of Nurseryman Standards in terms of size and quality.

18. Any outside lighting shall be reflected away from adjacent property and streets. The illumination level of all light fixtures shall not exceed two (2) footcandles as measured one (1) foot above the ground at property lines shared with residentially zoned or used parcels.

19. Trash receptacles and on-grade and rooftop mechanical fixtures and equipment shall be concealed from public view by use of an approved sight-obscuring method. All screening materials shall be compatible with the building materials/design.

20. Utility services shall be installed underground.

21. An Occupancy Permit will not be issued by the Planning and Development Services Department until all of these conditions have been met. In the event a condition(s) cannot be met by the desired date of occupancy, the Planning Director will determine whether the condition(s) is bondable or should be completed, and if determined to be bondable, a bond or other surety acceptable to Boise City will be required in the amount of 110% of the value of the condition(s) that is incomplete.

22. No change in the terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his authorized representative and an authorized representative of Boise City. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Boise City.

23. Any change by the applicant in the planned use of the property, which is the subject of this application, shall require the applicant to comply with all rules, regulations, ordinances, plans, or other regulatory and legal restrictions in force at the time the applicant, or successors of interest, advise Boise City of intent to

change the planned use of the property described herein, unless a variance in said requirements or other legal relief is granted pursuant to the law in effect at the time the change in use is sought.

EXHIBIT B TO AMENDMENT

EXHIBIT C-1 TO AGREEMENT

Concept Plan: Re-Subdivision of Lot 1, Block 1

[1 page attached]

