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## DEVELOPMENT AGREEMENT

This Development Agreement (this "**Agreement**") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and among the City of Boise City ("**City**") and Kimball Children's Irrevocable Trust (the "**Trust**"). The City and the Trust are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**."

### WITNESSETH:

WHEREAS, the Trust is the owner of record of that certain real property legally described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**");

WHEREAS, the Trust proposes that the Property be developed pursuant to and in accordance with the City's Comprehensive Plan and Zoning Ordinance in effect on the date of application, and in accordance with the terms and conditions of this Agreement and any amendments hereto;

WHEREAS, the City has determined pursuant to Section 11-8-8 of the Boise City Code that the proposed rezone by itself is appropriate under the conditions and restrictions imposed by this Agreement;

WHEREAS, the City has the authority pursuant to Section 11-8-8 of the Boise City Code and Section 67-6511A of Idaho Code to conditionally rezone the Property and to enter into this Agreement for the purpose of allowing, by agreement, the proposed development to proceed;

WHEREAS, the City's Planning & Zoning Commission and City Council have held public hearings as prescribed by law with respect to the development of the Property and this Agreement;

WHEREAS, 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 Agreement have been held and/or taken;

WHEREAS, the Trust desires to be assured that it may proceed with development of the Property in accordance with this Agreement;

WHEREAS, it is the intent and desire of the Parties that development of the Property proceed as provided herein, subject to the terms and conditions of this Agreement; and

WHEREAS, the Parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties, and obligations herein set forth.

### 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 sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Development Permitted by this Agreement. This Agreement shall vest the right to develop the Property, as described on Exhibit A, with respect to the following approved applications: \_\_\_\_\_ (the “**Approvals**”), as restricted by those certain conditions of approval identified on **Exhibit B** attached hereto and made a part hereof (the “**Conditions**”).

2. Concept Plan. In accordance with Boise City Code Section 11-8-8.E, this Agreement incorporates as **Exhibit C** and makes a part hereof that certain concept plan submitted and approved by the City with the Approvals (the “**Concept Plan**”).

3. Rezoning. The City shall, following recordation of this Agreement, enact a valid and binding ordinance zoning the Property as specified herein.

4. Recordation. The Trust shall record this Agreement, including all of the exhibits attached hereto, and submit proof of such recording to the City prior to the third reading of the zoning ordinance and formal adoption of the Approvals by the City Council. Failure to comply with this section shall be deemed a default of this Agreement by the Trust. If for any reason after such recordation City’s Council fails to adopt the Approvals by appropriate ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

5. Effective Date. In accordance with Idaho Code Section 67-6511A, this Agreement will be effective upon publication of the ordinance approving the rezone for the Property.

6. Term. The term of this Agreement shall be for \_\_\_\_\_ years from the date of recording hereof. Upon final approval of any detailed phase of the Property, and the recordation of the final plat in connection therewith, the City shall execute and record an appropriate instrument of release of this Agreement in connection with such portion of the Property.

7. Development to be Consistent the Approvals and this Agreement. Development of a portion of the Property substantially inconsistent with this Agreement, as determined by the City Planning Director, without formal modification of the Approvals or the Concept Plan pursuant to the requirements of the Boise City Code, and/or amendment of this Agreement, shall result in a default of this Agreement by the Trust in connection with such specific portion of the Property.

8. Default. In the event the Trust, its heirs, successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement in connection with a portion of the Property, this Agreement may be modified or terminated by the Boise City Council upon compliance with the requirements of Boise City Code.

a. By entering into this Agreement, the Trust, for the Trust’s heirs, successors, assigns, and personal representatives, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement in connection with a specific portion of the Property, after compliance with the requirements of Boise City Code, that this Agreement shall serve as consent to a rezone of such specific portion of the Property to \_\_\_\_\_ zoning, as provided in Idaho Code Section 67-6511A.

9. Remedies. This Agreement shall be enforceable in any court of competent jurisdiction by either the City or the Trust, or by any successor or successors in title or interest or by the assigns of the Parties. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions, and obligations contained herein.

a. In the event of a material breach of this Agreement, the Parties agree that the City and the Trust shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party’s seeking of any remedy provided for herein; provided,

however, that in the case of any such default that cannot with diligence be cured within such thirty (30) day period, if the defaulting Party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

b. In the event the performance of any covenant to be performed hereunder by either the City or the Trust is delayed for causes which 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.

10. Notices: Any and all notices, demands, requests, and other communications required to be given hereunder by either of the Parties shall be in writing and be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, or upon the sending of a facsimile, followed by a copy sent by U.S. mail as provided herein, addressed as follows:

**To City:**

Boise City  
c/o Director, Community Planning & Development Department  
P.O. Box 500  
Boise, Idaho 83702  
208/384-3753 (facsimile)

**To the Trust:**

Kimball Children's Irrevocable Trust  
c/o Beth K. Gregg, Trustee  
3747 E. Barber Drive  
Boise, Idaho 83716  
\_\_\_\_\_ (facsimile)

With a copy to:

Scott Kimball  
851 W. Front Street, Suite 100  
Boise, Idaho 83702  
\_\_\_\_\_ (facsimile)

or at such other address, or facsimile number, or to such other Party which any Party entitled to receive notice hereunder designates to the other in writing as provided above.

11. Attorneys' Fees. Should any litigation be commenced between the Parties 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. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

12. Time is of the Essence. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the Party so failing to perform.

13. Binding upon Successors: This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, assigns, and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefitted and bound by the conditions and restrictions herein expressed.

14. Final Agreement; Modification. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between the Trust and the City relative to the subject matter hereof, and there are no promises, agreements, conditions, or understanding, either oral or written, express or implied, between the Trust and the 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 unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.

a. This Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or federal laws or regulations. In the event such law prevents or precludes compliance with one or more provisions of this Agreement, the City and the Trust shall meet and confer to determine how provisions of this Agreement would need to be modified or suspended in order to comply with the law and shall prepare and process the necessary amendment or amendments to this Agreement.

15. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Agreement is held not valid which the Trust deems essential to its development of the Property, the Trust may, at its sole discretion, declare this entire Agreement null and void of no force and effect and thereby relieve all Parties from any obligations hereunder.

16. No Agency, Joint Venture or Partnership. The City and the Trust that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Trust joint venturers or partners.

17. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Trust, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

18. Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, State of Idaho.

[end of text]

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this Agreement 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.

**THE CITY:**

CITY OF BOISE CITY,  
an Idaho municipal corporation

ATTEST:

By: \_\_\_\_\_  
David H. Bieter, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**THE TRUST:**

KIMBALL CHILDREN'S IRREVOCABLE TRUST,

By: \_\_\_\_\_  
Beth K. Gregg, Trustee

**EXHIBITS:**

- Exhibit A: Legal Description of the Property
- Exhibit B: Conditions of Approval
- Exhibit C: Concept Plan

[notary signatures on following page]

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, 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 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 \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared BETH K. GREGG, known or identified to me to be the TRUSTEE of the KIMBALL CHILDREN'S IRREVOCABLE TRUST, the person who executed the instrument on behalf of said irrevocable trust, and acknowledged to me that irrevocable trust 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**

Legal Description of the Property

DRAFT

**EXHIBIT B**

Conditions of Zoning Approval

DRAFT



**EXHIBIT C**

Concept Plan

DRAFT