



Planning & Development Services



MEMORANDUM

Derick O'Neill
Director

TO: Mayor and Boise City Council

Boise City Hall
150 N. Capitol Boulevard

FROM: Hal Simmons *HBS*
Boise City Planning and Development Services Department

Mailing Address
P. O. Box 500
Boise, Idaho 83701-0500

DATE: April 11, 2013

Phone
208/384-3830

RE: Request For Scheduling A Hearing By The Boise City Council

Fax
208/384-3814

TDD/TTY
800/377-3529

CAR12-00010 / Kimball Children's Irrevocable Trust

Web
www.cityofboise.org/pds

Location: 4441 N. Bogus Basin Road
REZONE OF 65.2 ACRES FROM A-2 (OPEN LAND) TO R-1A/DA (SINGLE FAMILY RESIDENTIAL-2.1 DU/ACRE WITH A DEVELOPMENT AGREEMENT) AND A-2/DA (OPEN LAND WITH A DEVELOPMENT AGREEMENT).

Mayor
David H. Bieter

SUB12-00034 / HACKBERRY RANCH SUBDIVISION

City Council
President
Maryanne Jordan

Location: 4441 North Bogus Basin Road
A PROPOSED PRELIMINARY PLAT FOR A SINGLE FAMILY RESIDENTIAL SUBDIVISION WITH 24 BUILDABLE LOTS AND 3 COMMON LOTS. THE PROPERTY IS ZONED A-2 ON 65.2 ACRES, LOCATED ON THE WEST SIDE OF NORTH BOGUS BASIN ROAD APPROXIMATELY 700 FEET NORTH OF CURLING DRIVE.

Council Pro Tem
David Eberle

Time: 36 minutes (March 4, 2013 Planning & Zoning Commission)
cc: David Moser, Cody Riddle, Dave Abo

Elaine Clegg
Lauren McLean
Ben Quintana
TJ Thomson

Attachment: Revised Development Agreement.

After Recording
Return to:

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

**DEVELOPMENT AGREEMENT
[CAR12-00010]**

This Development Agreement (this "**Agreement**") is entered into effective this _____ day of _____ 2013, 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**"); and

WHEREAS, the Trust is the applicant before the City of Boise seeking approval of applications CAR12-00010, PUD12-00017, and CFH12-00044; and

WHEREAS, the Property is currently zoned A-2 (open land); and

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; and

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; and

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; and

WHEREAS, the City's Planning & Zoning Commission and City Council held public hearings as prescribed by law with respect to the development of the Property and this Agreement, including: a hearing on the Trust's conceptual foothills applications before the Planning & Zoning Commission on November 5, 2012; a hearing before the Planning & Zoning Commission on March 4, 2013; and a hearing before the City Council on _____; and

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; and

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

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: CAR12-00010, PUD12-00017, and CFH12-00044 (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 from A-2 (open land) to R-1A/DA and A-2/DA.
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 CAR12-00010 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 the City 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. Development to be Consistent with 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.
7. 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 A-2 zoning, as provided in Idaho Code Section 67-6511A.
8. 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.

9. 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, addressed as follows:

To City:

Boise City
c/o Director, Planning & Development Department
P.O. Box 500
Boise, Idaho 83701-0500

To the Trust:

Kimball Children's Irrevocable Trust
c/o Beth K. Gregg, Trustee
P.O. Box 2755
Boise, Idaho 83701

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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. No Agency, Joint Venture or Partnership. The City and the Trust hereby agree 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.

16. 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.

17. 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, Ada County, 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: _____
Debbie Broughton, Ex-Officio 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 _____, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID H. BIETER and Debbie Broughton, 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 _____, 2013, 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



T-O ENGINEERS

PROJECT: 10050
DATE: May 10, 2011
PAGE: 1 of 3

EXHIBIT "A" **DESCRIPTION OF LAND FOR THE HIGHLANDS, INC.**

A parcel of land situated in the NW1/4 of the SW1/4 and the W1/2 of the NW1/4 of Section 26, Township 4 North, Range 2 East, Boise Meridian, Ada County, Idaho, being Parcel 1 and a portion of Parcel 2A of Record of Survey No. 6276, Records of Ada County, Idaho, more particularly described as follows:

BEGINNING at the W1/4 corner of said Section 26, from which the northwest corner of said Section bears N.00°07'57"W., 2640.00 feet; thence, along the westerly line of said NW1/4,

- 1) N.00°07'57" W., 2640.00 feet to the northwest corner of said Section 26; thence, along the northerly line of the W1/2 of the NW1/4 of said Section 26,
- 2) S.89°24'14"E., 606.02 feet to the centerline of North Bogus Basin Road; thence, along said centerline the following courses:
- 3) S.56°20'16"E., 238.24 feet to the beginning of a tangent curve; thence,
- 4) Southeasterly along said curve to the right having a radius of 330.00 feet, an arc length of 393.30 feet, through a central angle of 68°17'09", and a chord bearing and distance of S.22°11'41"E., 370.43 feet; thence, tangent from said curve,
- 5) S.11°56'53"W., 355.31 feet to the beginning of a tangent curve; thence,
- 6) Southwesterly along said curve to the left having a radius of 350.00 feet, an arc length of 92.42 feet, through a central angle of 15°07'45", and a chord bearing and distance of S.04°23'01"W., 92.15 feet; thence, tangent from said curve,
- 7) S.03°10'52"E., 98.50 feet to the beginning of a tangent curve; thence,
- 8) Southeasterly along said curve to the left having a radius of 1000.00 feet, an arc length of 122.27 feet, through a central angle of 07°00'20", and a chord bearing and distance of S.06°41'02"E., 122.20 feet to a parcel of land described in Right-of-Way Dedication Deed Instrument No. 101001817; thence, leaving said road centerline, non-tangent from said curve,



T-O ENGINEERS

PROJECT: 10050
DATE: May 10, 2011
PAGE: 2 of 3

- 9) S.79°48'48"W., 33.00 feet to the beginning of a non-tangent curve on the westerly right-of-way line of said N. Bogus Basin Road; thence, along the westerly right-of-way line of N. Bogus Basin Road as described in said deed instrument, the following courses:
 - 10) Southeasterly along said curve to the left having a radius of 1033.00 feet, an arc length of 142.71 feet, through a central angle of 07°54'55", and a chord bearing and distance of S.14°08'40"E., 142.59 feet; thence, tangent from said curve,
 - 11) S.18°06'07"E., 124.20 feet to the beginning of a tangent curve; thence,
 - 12) Southeasterly along said curve to the right having a radius of 317.00 feet, an arc length of 30.36 feet, through a central angle of 05°29'18", and a chord bearing and distance of S.15°21'28"E., 30.35 feet; thence, tangent from said curve,
 - 13) S.12°36'50"E., 88.81 feet to the beginning of a tangent curve; thence,
 - 14) Southwesterly along said curve to the right having a radius of 997.00 feet, an arc length of 512.43 feet, through a central angle of 29°26'55", and a chord bearing and distance of S.02°06'38"W., 506.81 feet; thence, tangent from said curve,
 - 15) S.16°50'05"W., 730.64 feet to the beginning of a tangent curve; thence,
 - 16) Southwesterly along said curve to the right having a radius of 834.00 feet, an arc length of 121.83 feet, through a central angle of 8°22'10", and a chord bearing and distance of S.21°01'10"W., 121.72 feet; thence, tangent from said curve,
 - 17) S.25°12'16"W., 36.59 feet; thence,
 - 18) S.64°47'44"E., 33.00 feet to the centerline of said North Bogus Basin Road and the beginning of a non-tangent curve; thence, leaving said right-of-way dedication deed line, along said centerline the following courses:



T-O ENGINEERS

PROJECT: 10050
DATE: May 10, 2011
PAGE: 3 of 3

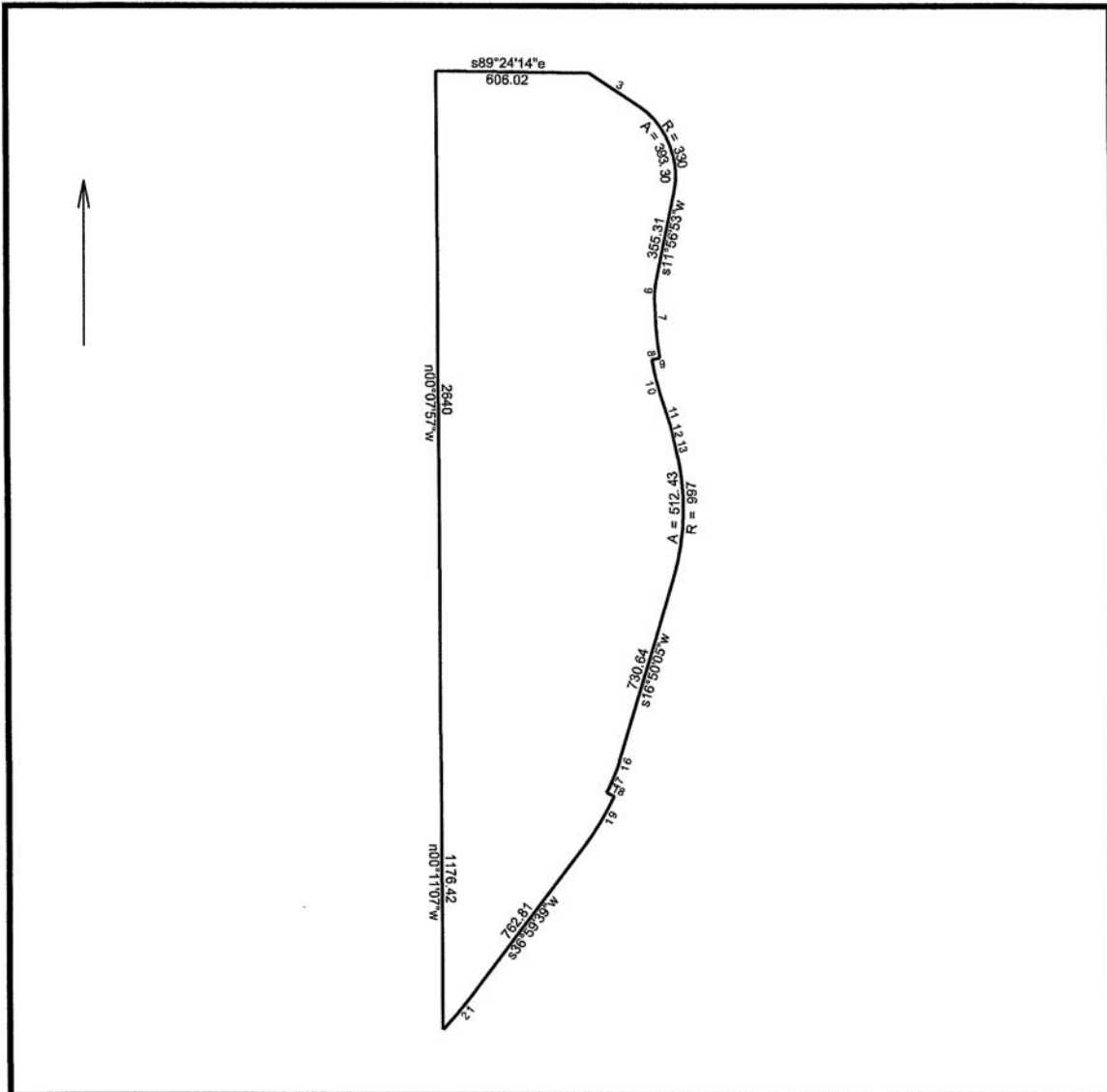
- 19) Southwesterly along said curve to the right having a radius of 1145.92 feet, an arc length of 235.80 feet, through a central angle of $11^{\circ}47'23''$, and a chord bearing and distance of $S.31^{\circ}05'57''W.$, 235.38 feet; thence, tangent from said curve,
- 20) $S.36^{\circ}59'39''W.$, 762.81 feet to the beginning of a tangent curve; thence,
- 21) Southwesterly along said curve to the right having a radius of 1432.40 feet, an arc length of 157.57 feet, through a central angle of $6^{\circ}18'10''$, and a chord bearing and distance of $S.40^{\circ}08'44''W.$, 157.49 feet to the westerly line of said NW1/4 of the SW1/4; thence, leaving said centerline, along said westerly line,
- 22) $N.00^{\circ}11'07''W.$, 1176.42 feet to the **POINT OF BEGINNING**.

CONTAINING 65.20 acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

RECORD OF SURVEY No. 6276, Instrument No. 103160580 on file with the Ada County Recorder, and by this reference, made a part hereof.





1-6-2012

Scale: 1 inch = 550 feet

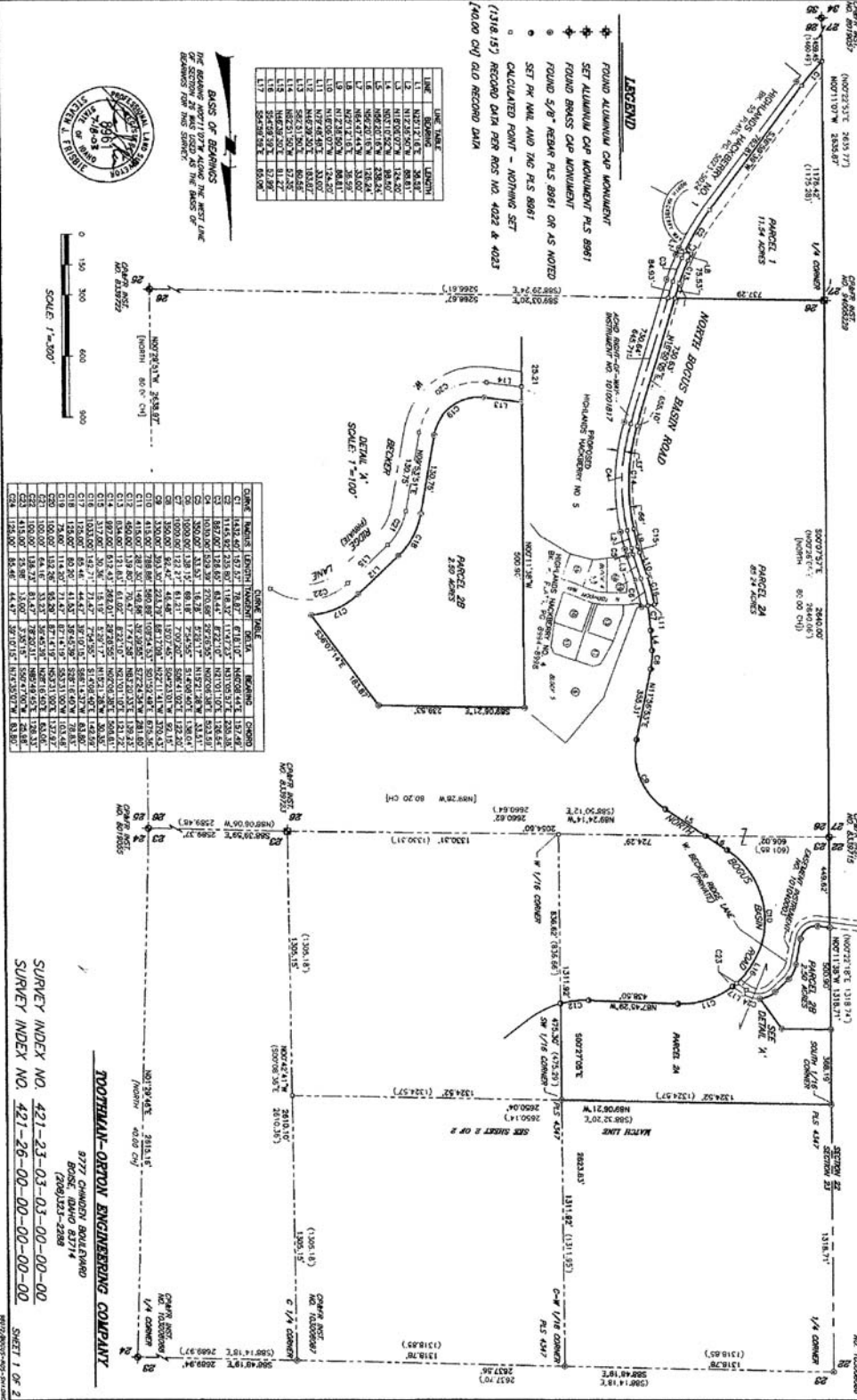
File:

Tract 1: 65.2023 Acres, Closure: n00.0000e 0.00 ft. (1/999999), Perimeter=8732 ft.

- | | |
|----------------------------------------------------------------------|----------------------------------------------------------------------|
| 01 n00.0757w 2640 | 15 s16.5005w 730.64 |
| 02 s89.2414e 606.02 | 16 Rt, r=834.00, delta=008.2210, arc=121.83, chord=s21.0110w 121.72 |
| 03 s56.2016e 238.24 | 17 s25.1216w 36.59 |
| 04 Rt, r=330.00, delta=068.1709, arc=393.30, chord=s22.1141e 370.43 | 18 s64.4744e 33 |
| 05 s11.5653w 355.31 | 19 Rt, r=1145.92, delta=011.4723, arc=235.80, chord=s31.0557w 235.38 |
| 06 Lt, r=350.00, delta=015.0745, arc=92.42, chord=s04.2301w 92.15 | 20 s36.5939w 762.81 |
| 07 s03.1052e 98.5 | 21 Rt, r=1432.40, delta=006.1810, arc=157.57, chord=s40.0844w 157.49 |
| 08 Lt, r=1000.00, delta=007.0020, arc=122.27, chord=s06.4102e 122.19 | 22 n00.1107w 1176.42 |
| 09 s79.4848w 33 | |
| 10 Lt, r=1033.00, delta=007.5455, arc=142.71, chord=s14.0840e 142.59 | |
| 11 s18.0607e 124.2 | |
| 12 Rt, r=317.00, delta=005.2918, arc=30.36, chord=s15.2128e 30.35 | |
| 13 s12.3650e 88.81 | |
| 14 Rt, r=997.00, delta=029.2655, arc=512.43, chord=s02.0638w 506.81 | |

RECORD OF SURVEY NO. 42210

A SURVEY FOR RICHARD B. SMITH
 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 23,
 AND THE WEST 1/2 OF THE WEST 1/2 OF SECTION 26
 TOWNSHIP 4 NORTH, RANGE 2 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO
 2003



PROFESSIONAL LAND SURVEYOR
 1995
 STATE OF IDAHO
 RICHARD B. SMITH
 1109



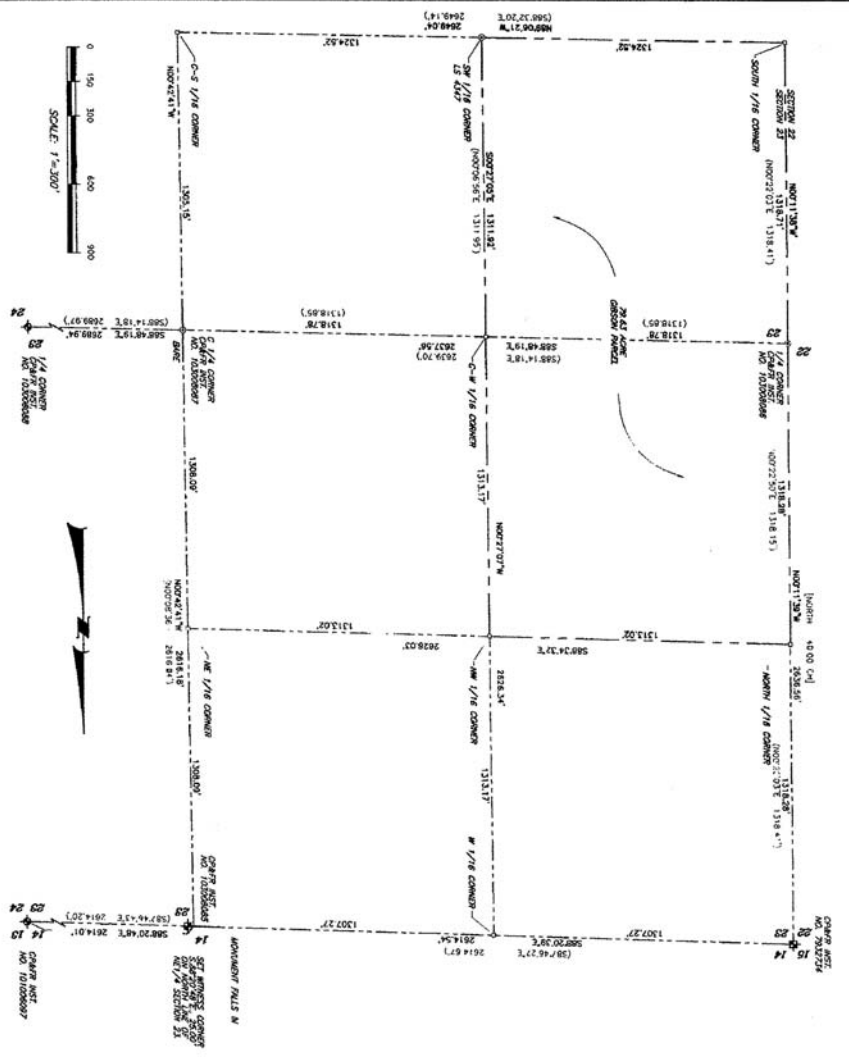
SCALE 1"=200'

TOOTHMAN-ORTON ENGINEERING COMPANY
 9777 CHANDLER ROAD
 BOISE, IDAHO 83714
 (208) 333-2388

SURVEY INDEX NO. 421-23-03-03-00-00-00
 SURVEY INDEX NO. 421-26-00-00-00-00-00
 SHEET 1 OF 2

RECORD OF SURVEY NO. 12210

**A SURVEY FOR RICHARD B SMITH
 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 23,
 AND THE WEST 1/2 OF THE WEST 1/2 OF SECTION 26
 TOWNSHIP 4 NORTH, RANGE 2 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO
 2003**



RECORDERS CERTIFICATE

DATE OF DRAFT 11
 COUNTY OF ADA
 FILED FOR RECORD AT THE REQUEST OF RICHARD B SMITH
 AT 10:00 AM THIS 26 DAY OF
 APRIL 2003
 I, DAVID MALMRO, ADA COUNTY RECORDER
 BY AMBERLYN DEPUTY
 INSTRUMENT NO. 12210
 PL. 9100

CERTIFICATE OF SUPERVISOR

I, STEVEN J. FRISBE, DO HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, AND THAT THE SURVEY AND PLAT HEREON SUBMITTED TO ME FOR RECORD AND ACCEPTED UNDER MY DIRECT SUPERVISION AND COMPLIES WITH THE ACCEPTED STANDARDS OF SURVEYING. I FURTHER CERTIFY THAT I HAVE COMPLIED WITH TITLE 55, CHAPTER 16, IDAHO CODE.

STEVEN J. FRISBE
 IDAHO NO. 69871



TOOTHMAN-ORTON ENGINEERING COMPANY

9777 CHANDEN BOULEVARD
 BOISE, IDAHO 83714
 (208)333-2288

SURVEY INDEX NO. 421-23-03-03-00-00-00
 SURVEY INDEX NO. 421-26-00-00-00-00-00

EXHIBIT B

Conditions of Zoning Approval

Site Specific

1. Compliance with plans and specifications submitted to and on file in the Planning and Development Services Department dated received **December 26, 2012**, except as expressly modified by the following conditions.

2. Rezone

- a. The final rezone map shall be submitted to the city for review prior to scheduling before City Council. The final rezone map shall match the detailed site plan.
- b. Prior to the rezone being scheduled for consideration by the City Council, the applicant shall complete the Development Agreement associated with the property (CAR12-00010), as required by the following conditions, and approved by the City Attorney:
 - i. The agreement shall reference the approved site plan and include an exhibit of this plan.
- c. Upon approval of the rezone, the applicant shall submit a final revised copy of the Development Agreement for review and ordinance passage.
- d. Within one year of the date City Council approves the rezone, the Development Agreement shall be recorded. The three required readings of the ordinance will not be scheduled until recordation has occurred. Failure to record the Development Agreement within the one-year time frame shall automatically render approval of this modification null and void.

3. Planned Unit Development

- a. Lots 2-12 shall be graded for flat building pads.
- b. Each dwelling unit shall provide a minimum of a two car garage.
- c. The open space lots 25, 26 and 27 shall remain non buildable.
- d. The project shall comply with all perimeter setbacks as per the under the underlying zone.
- e. The applicant shall construct a 5 foot wide attached sidewalk along the west side of Bogus Basin Road from the south property line to the intersection with Paso Fino Drive.
- f. The applicant shall construct a 24 foot wide roadway from back of curb to back curb with a four wide attached sidewalk along Paddock lane.
- g. The applicant shall provide cross access to the adjacent property to use the driveway for Lot 1.

4. Subdivision

- a. The proposed private street N. Paddock Lane shall be located within a common lot on the Final Plat.

- b. A Waiver of Subdivision Ordinance Section 9-20-07.E.4.a is hereby granted, allowing the proposed private street (N. Paddock Lane) to be 24 feet in width (back of curb to back of curb) with a four foot wide sidewalk located on one side in lieu of the required 28 foot width with four foot wide sidewalks located on both sides.
- c. A note on the face of the Final Plat shall state: "Lots 25, 26, and 27 are common lots to be owned and maintained by the Hackberry Ranch Subdivision Homeowner's Association. These lots cannot be developed for residential purposes in the future."
- d. A note on the face of the Final Plat shall state: "The development of this property shall be in compliance with the Boise City Zoning Ordinance or as specifically approved by PUD12-00017, and CFH12-00044."
- e. West Paso Fino Drive shall be improved with five foot wide attached sidewalks as proposed.
- f. For streets having a width less than 36 feet back of curb to back of curb parking shall be restricted on (1) one side; for streets having a width less than 29 feet back of curb to back of curb parking shall be restricted on both sides; and for standard ACHD cul-de-sacs parking shall be restricted on both sides. A note on the face of the Final Plat is required noting the parking restriction prior to signing of the Final Plat by the Boise City Engineer.

NOTE: "No Parking" signs and curb painting shall be required on streets having a width less than 36-feet, back of curb to back of curb. Contact the Boise City Fire Department for sign placement and spacing. Developer may either construct prior to final platting or post bond in the amount of 110% of the estimated costs with the Boise City Planning and Development Services Department.
- g. Covenants, homeowners' association by-laws or other similar deed restrictions acceptable to the Boise City Attorney, which provide for the use, control and maintenance of all common areas, storage facilities, recreational facilities or open spaces shall be reviewed and approved by the Boise City Attorney.
- h. 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. Title 8 Chapter 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.
- i. 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 kmjohnson@cityofboise.org.
- j. 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 Boise City Subdivision Ordinance, Section 9-20-08.A.2.
- k. 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.

- l. The name, Hackberry Ranch 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.
- m. Correct street names as approved by the Ada County Street Name Committee shall be placed on the plat (I.C. Title 50, Chapter 13).
- n. A letter of acceptance for water service from the utility providing same is required (B.C.C. 9-20-8.C).
- o. Developer shall provide utility easements as required by the public utility providing service (B.C.C. 9-20-7.F).
- p. 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) 433-4300
FAX No. (208) 433-4400

- q. 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).
- r. Developer shall comply with B.C.C. 9-20-5.D.2 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.
- s. 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.
 - 1 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.

- 2 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.

Other Agency Requirements

5. The applicant shall comply with the requirements of ACHD as per their letter dated **January 29, 2013** and the final staff report dated **October 18, 2012**.
6. The applicant shall comply with the requirements of the Boise City Public Works Department (BCPW) for drainage, grading, irrigation, sewer, street lights and solid waste per Department comments dated **January 9, 2013, January 14, 2013, January 25, 2013, February 12, 2013 and February 13, 2013**. 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.
7. The applicant shall comply with any conditions of the Boise Fire Department from the memo dated **February 20, 2013**. Any deviation from this plan is subject to Fire Department approval. For additional information, contact Romeo Gervais at 208-570-6567.
8. The applicant shall comply with any conditions of the Independent School District of Boise City #1 letter dated **August 14, 2012**.
9. The applicant shall comply with the requirements of the Central District Health Department memo dated **February 6, 2013**.
10. The applicant shall comply with any conditions of the Northwest Boise Sewer District letter dated **January 11, 2013**.

Standard Conditions of Approval

11. 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.
12. Swales/retention/detention areas shall not be located along the streets, unless it can be shown that landscaped berms/shrubs will screen the swales.
13. 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.
14. 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.
15. Utility services shall be installed underground.

16. 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 bond-able, 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.
17. 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.
18. 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.
19. This approval shall be valid for a period not to exceed two years from the date of approval by the Planning and Zoning Commission. Within this period, the holder of the permit must commence the use permitted by the permits in accordance with the conditions of approval.
20. Prior to the expiration of this approval, the Commission may, upon written request by the holder, grant a two year time extension. A maximum of two extensions may be granted.
21. Hours of construction for subdivision infrastructure shall be limited to between 7am to 7pm Monday through Friday and 9am to 5 pm on Saturday.

EXHIBIT C

Concept Plan

