

CITY OF KIMBERLY

PLANNING & ZONING COMMISSION
MEETING AGENDA

JUNE 3, 2014
6:00PM

Planning & Zoning Commission meetings are televised, videotaped and/or recorded

Location: 242 Highway 30, Kimberly, Idaho 83341

CALL TO ORDER

WELCOME – PLEASE TURN OFF CELL PHONES – THANK YOU.

ROLL CALL OF COMMISSION MEMBERS

1. CONSIDER APPROVAL OF:

- a. Minutes from May 12, 2014 Meeting

2. PUBLIC HEARINGS

- a. Public Hearing and consideration on a preliminary plat application submitted by EHM Engineers, Inc., representing the owners of Redcap Corner, the application proposing to re-plat Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as 2 unit condominium plat. The re-plat would allow each created condominium unit to be divided and sold off as separate units.
- b. Continue Public Hearing and consideration on the proposed City of Kimberly Pedestrian and Bicycle Plan which is proposed to be added by resolution to the City of Kimberly Transportation Plan adopted in 2009 to July 1, 2014 regular Commission Meeting. The amendment would allow the City to utilize the plan in seeking grant funding for the pedestrian and bicycle facilities.

3. OLD BUSINESS

- a. Consideration and action on Findings of Fact for an application by Agri-Service, LLC and an ordinance to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval of the rezone, a proposed development agreement was considered by the Commission and has been agreed upon by the applicant. The area for rezone is approximately 42.99 (+ or -) acres and is within the SE1/4, Section 17, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 22326 Kimberly Road), and the rezone is from Agriculture to Commercial-Gateway (CG).

4. NEW BUSINESS

- a. June 18 – Jerry Mason Presentation, Training on Planning and Zoning in Idaho, June 18th, (1 p.m. to 4 p.m. at 630 Addison Ave Suite 1100)
- b. Operation Facelift - June 18th – June 19th (1 pm to 5 pm) Project will include preparation for and painting a residential building on South Main Street.

5. UPCOMING MEETINGS: –

- a. Regular P&Z Meeting July 1, 2014 – 6 PM

6. STAFF REPORTS

Community Development Director

6. ADJOURNMENT

Questions concerning items appearing on this Agenda or requests for accommodation of special needs to participate in the meeting should be addressed to the Office of the City Clerk, 242 Highway 30, Kimberly, Idaho 83341 or call 208-423-4151.

Ted Wasko	Leland Belin	Perry Dangerfield	Candy Weth	VACANT	Cindy Schmidt	Dan Shewmaker
		<i>Co-Chair</i>	<i>Chairperson</i>		<i>Area of Impact</i>	<i>Area of Impact</i>

STAFF REPORT

TO: Kimberly Planning & Zoning Commission
FROM: Bart Bingham, Community Development Director
RE: Preliminary Plat – Replat of Redcap Corner (creating a two-unit condominium plat)
HEARING: June 3, 2014

Applicant: Red Cap, LLC.

Request: Preliminary Plat Approval – Replat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as 2 unit condominium plat.

Location: Red Cap Subdivision is located in Kimberly, in a portion of NE4 NE4, Section 20 Township 10 South, Range 18 East, B.M. Twin Falls County, Idaho. The specific Lot and Block of the subdivision are noted above.

Zoning: Commercial Gateway (CG)

Notice

Notice for the public hearing was published in the Times News on May 19, 2014 and mailed to property owners within 300 feet and public subdivisions on May 20, 2014.

Application

Val Smith of EHM Engineers, Inc. submitted an application for preliminary plat (replat) approval of Lot 4, Block 1, Redcap Subdivision to be modified from being a single lot containing individual units for rent to being a 2 unit condominium plat, allowing for separate units to be divided and sold off as separate units.

Department Comments:

The application was reviewed by the City Engineer, the Public Works Director., and the Community Development Director. Attached are Draft Declarations of Covenants, Conditions, and Restrictions proposed for the re-plat condominium plat if it is approved.

Standards of Evaluation: Note: Standards are in dark/bold type and Staff analysis is in lighter type.

2. Combining Preliminary And Final Plats: The applicant may request that the subdivision application be processed as both a preliminary and final plat if all the following exist:

a. The proposed subdivision does not exceed ten (10) lots;

Proposed re-plat contains two condominium units, so combined plats may be used.

b. No new street dedication or street widening is involved;

Not applicable.

c. No major special development considerations are involved, such as development in floodplain or hillside development;

Not applicable.

3. Content Of Preliminary Plat: The contents of the preliminary plat and related information shall be in such a form as stipulated by the commission; however, additional maps or data as deemed necessary by the administrator may also be required.

Applicant provided appropriate materials.

c. Appropriate information that sufficiently details the proposed development within any special development area, such as hillside, planned unit development, floodplain, cemetery, mobile home, large scale development, hazardous and unique areas of development.

Not applicable.

d. To ensure adequate water supply to each new subdivision/development, all subdivision/development preliminary plat applications to the city will include water modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate water supply for domestic water and fire protection and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate domestic water and fire protection to the existing water system users.

No new water supply is required to modify to condominiums from the previous use.

e. To ensure adequate sewer treatment service by the city, each subdivision/development preliminary plat application to the city shall include sewer service treatment modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate sewer service and sewer treatment capacity by the city and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate sewer treatment capacity to the existing sewer system users.

No new sewer treatment capacity will be needed or granted by the city to the applicant to modify the previous use to condominiums.

f. The cost of the water and sewer modeling will be the responsibility of the developer.

Not applicable for modification to condominiums.

4. Requirement Of Preliminary Plats: The following shall be shown on the preliminary plat or shall be submitted separately together with any other pertinent information requested by the administrator:



a. The name of the proposed subdivision, which does not duplicate the name of any other subdivision in Twin Falls County.

Name shown is Redcap Condominiums.

b. The names, addresses and telephone numbers of the developers, the engineer or surveyor who prepared the plat and any other professional persons involved in the subdivision.

Provided.

c. The names and addresses of all surrounding property owners both adjacent to and beyond any public thoroughfares within three hundred feet (300') from the subject property on record in the county assessor's office.

Provided.

d. The legal description of the subdivision by section, township and range.

Provided.

e. A statement of the intended use of the proposed subdivision, such as: Residential single-family, two-family and multiple housing, commercial, industrial, recreational or agricultural and a showing of any sites proposed for parks, playgrounds, schools, churches or other public uses.

Provided – Intended purpose is to create a condominium from the existing building constructed as a single owner building so separate owners may own the proposed two individual building units, which would have one common parcel.

f. A map of the entire area scheduled for development if the proposed subdivision is a portion of a larger holding intended for subsequent development.

Provided.

g. A vicinity map showing the relationship of the proposed plat to the surrounding area (covering at least a 4 square mile area).

Provided.

h. The land use and existing zoning of the proposed subdivision and the adjacent land.

Provided.

i. Existing streets, street names, rights of way and roadway widths, including adjoining streets or roadways, along with type of surface and the existence of any curbs, gutters and/or sidewalks.



Will not change.

j. Approximate location and length of the boundary lines of each lot, parcel or site and the proposed lot and block numbers. Approximate acreage enclosed by subdivision.

Provided.

k. Contour lines, shown at five foot (5') intervals where land slope is greater than twenty percent (20%) and at two foot (2') intervals where land slope is twenty percent (20%) or less, referenced to an established bench mark of the city vertical control system, including its location and elevation.

Not applicable.

l. A site report and/or the approval of the appropriate health district if individual wells or septic tanks are proposed.

Not applicable.

m. Location, size and direction of flow of all existing utilities, including, but not limited to, storm and sanitary sewers, irrigation laterals, ditches, drainage, bridges, culverts, water mains, fire hydrants, gas lines, power, telephone and streetlights. If utilities are not on or adjacent to the property, indicate direction and distance to nearest ones that can serve the subdivision.

Will not change; not applicable.

n. A copy of any proposed restrictive covenants and/or deed restrictions.

Copy of proposed Covenants, Conditions, and Restrictions is attached. Parking as it is proposed to be allocated/divided between the lots (1, 2, & 4) in Section 7 titled "Limited Common Area" is a question whose answer shall be determined by the applicant. This application specifically pertains to Lot 4 with the proposed 2 units, but parking in the adjacent parking lot is proposed to be utilized for all three lots.

o. Any dedications to the public and/or easements both public and private, together with a statement of location, dimensions and purpose of such on both the subject property and surrounding properties.

Not applicable.

p. Any additional required information for special developments as specified in this title.

Not applicable.



q. A statement as to whether or not any variance will be requested with respect to any provision of this title describing the particular provision, the variance requested and the reasons therefor.

Not applicable.

r. Location, right of way width and name of all public or private trafficways, the location, right of way width and use of any proposed public or private pedestrian ways or special ways, and a statement of intended improvements to be made thereto.

Not applicable.

s. A statement as to what improvements will be made to existing utilities and what other on site improvements will be made.

Not applicable.

t. Approximate lot, corner and easement locations of all adjacent subdivisions.

Not applicable.

u. Location, size and direction of flow of all drainage, irrigation, sewer and water line improvements that will be part of the subdivision development.

Not applicable.

v. Additional drainage requirements may be requested by the administrator.

Not applicable.

Summary and Suggested Conditions

8. Commission Action:

The Commission shall review the preliminary plat, comments from the concerned persons and agencies and the report from the administrator to arrive at a decision on the preliminary plat.

b. Commission's Findings: In determining the acceptance of a proposed subdivision the commission shall consider the objectives of this title and at least the following:

- (1) The conformance of the subdivision with a comprehensive plan;
- (2) The availability of public services to accommodate the proposed development;



- (3) The continuity of the proposed development with the capital improvement program;
- (4) The public financial capability of supporting services for the proposed development;
and
- (5) The other health, safety or environmental problems that may be brought to the commission's attention.

Action On Combined Preliminary And Final Plat: If the Commission's conclusion is favorable for the subdivision to be considered as both a preliminary plat and final subdivision, then a recommendation shall be forwarded to the council in the same manner as herein specified for a final plat. The Commission may recommend that the combined application be approved, approved conditionally or disapproved.

The following conditions are suggested to be placed on any recommendation for approval of this application:

- a) A business owner's association for Red Cap Condominiums (including in the membership owners of units one and two of Lot 4, Block 1 of Redcap Subdivision at a minimum) shall be legally and properly formed prior to final plat recordation. The association shall provide for the needs of all Lot 4, Block 1 of Redcap Subdivision property owners at a minimum.
- b) Approved CC&R's for the business owner's association shall be recorded prior to final plat recordation. The final plat shall include a note stating that the subdivision is subject to the recorded CC&R's, along with the instrument numbers thereof.
- c) A Developer's/Improvement Agreement, shall be drafted, executed, and recorded prior to final plat recordation. This agreement shall state among other things, how parking spaces/numbers will be allocated/divided between lots (1, 2, & 4) of Red Cap Subdivisions identified in Section 7 of the draft CC&Rs.
- d) The developer, business owners, and business owner's association shall comply with the terms of the Development Agreement.
- e) The final plat shall be recorded within one year of the date of final plat approval (unless otherwise provided for within a phasing agreement.) The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and Kimberly City Code Section 17.12.020 D. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.



Motion Language:

Approval:

Motion to recommend the Council approve Red Cap, LLC's (represented by EHM Engineers) application for preliminary plat for re-plat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat, finding that all required conditions for approval for preliminary plat are satisfied.

Conditional Approval:

Motion to recommend the Council conditionally approve Red Cap, LLC's (represented by EHM Engineers) application for preliminary plat for re-plat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat, conditioning the approval on completion of conditions (a – e) as indicated above. This conditional approval allows City Staff to determine when each of the conditions have satisfactorily been completed, and then determine complete approval upon completion of all the conditions.

Deny:

Motion to recommend the Council deny Red Cap, LLC's (represented by EHM Engineers) application for preliminary plat for re-plat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat, finding that _____ [the Commission should cite which standards are not met and provided the reason why each identified standard is not met].

Table:

Motion to continue the public hearing upon Red Cap, LLC's (represented by EHM Engineers) application for preliminary plat for re-plat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat to seek additional information, the information being _____ [the Commission shall specify the information].



PROJECT NARRATAIVE

The purpose of this is to condominimize Lot 4, Block 1 of Red Cap Subdivision No.1 into two building units and one common area parcel to allow two owners of an existing building. The existing building was constructed as a single owner building in a platted subdivision lot.

TWIN FALLS COUNTY
RECORDED FOR:
TITLEFACT
4:08:04 pm 12-31-2008
2008-027146
NO. PAGES: 1 FEE: \$3.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: CHICE

MISC

TitleFact, Inc.
163 Fourth Avenue North
P.O. Box 486
Twin Falls, Idaho 83303

**** SPACE ABOVE FOR RECORDER ****

QUITCLAIM DEED

For Value Received **FIRST FEDERAL SAVINGS BANK**, does hereby convey, remise and forever quit claim unto **RED CAP, L.L.C., an Idaho Limited Liability Company**, whose address is: P.O. Box 249, Twin Falls, ID 83303-0249, the following described premises, to-wit:

PARCEL NO. 1

Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho
Section 20: Being all that certain tract of parcel of land situated in the NE¹/₄NE¹/₄, and being more particularly described by metes and bounds as follows, to wit:
COMMENCING at the East quarter corner of the aforementioned Section 20, from which the Northeast corner of said Section 20 bears North 00°05'27" East 2639.31 feet;
THENCE North 00°05'27" East 1776.16 feet along and with the Section line;
THENCE North 89°34'35" West 25.97 feet to a point on the Westerly right of way line of U.S. Highway 30, said point being the Southeast corner and the POINT OF BEGINNING of the herein described tract;
THENCE North 89°34'35" West 547.37 feet;
THENCE North 80°08'40" West 143.29 feet;
THENCE North 20°39'31" West 286.24 feet;
THENCE North 52°03'58" West 420.61 feet;
THENCE South 89°23'58" East 963.76 feet;
THENCE South 28°32'13" East 315.18 feet;
THENCE South 87°23'15" East 7.00 feet to a point on the Westerly right of way line of U.S. Highway 30;
THENCE South 00°00'05" West 267.67 feet along and with the Westerly right of way line of U.S. Highway 30 to the POINT OF BEGINNING.

EXCEPT:

Lots 1, 4 and 5, Block 1, **RED CAP SUBDIVISION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 22 of Plats, page 37, records of Twin Falls County, Idaho.

PARCEL NO. 2

Lot 1, 2, 3 and 4, Block 1, **RED CAP SUBDIVISION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 22 of Plats, page 37, records of Twin Falls County, Idaho.

together with their appurtenances.

Dated: December 31, 2008

FIRST FEDERAL SAVINGS BANK

BY: C. Alan Horner
President

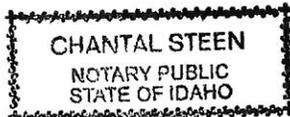
* * * * *

STATE OF IDAHO
County of Twin Falls

On this 31st day of December, 2008, before me, the undersigned, Notary Public in and for said State, personally appeared C. Alan Horner known or identified to me to be the President of the corporation that executed this instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

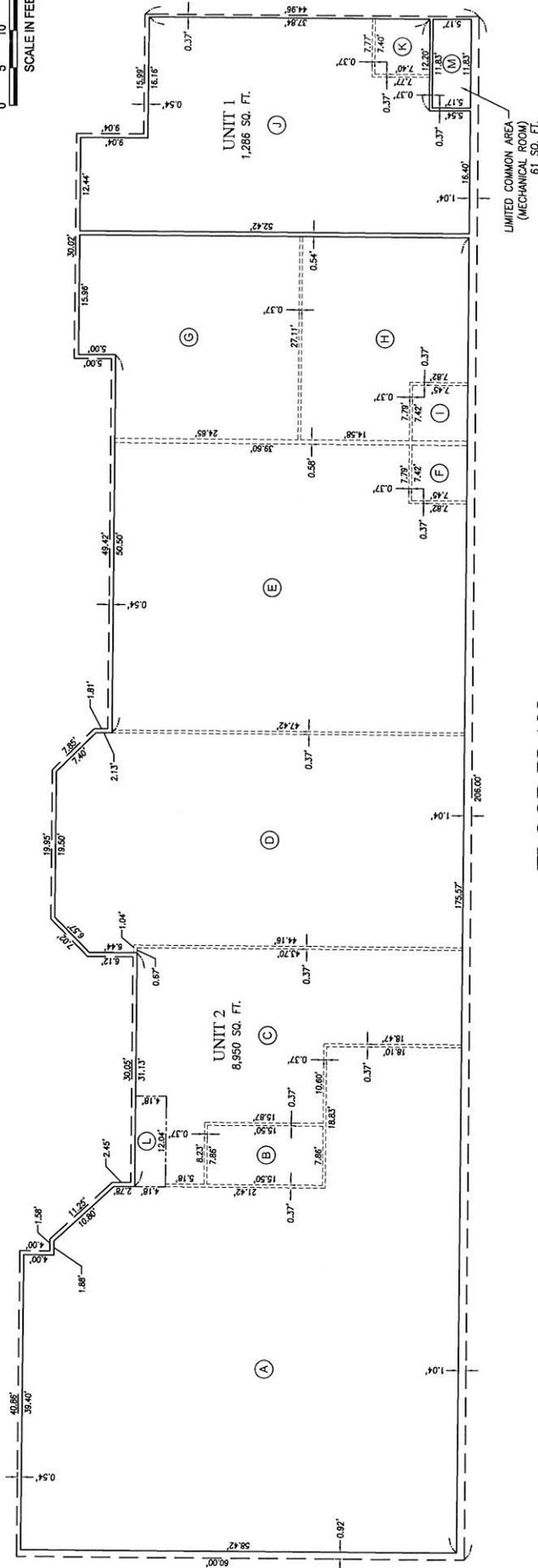
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written

Chantal Steen
Notary Public for Idaho
Residing at: Twin Falls County
My Commission expires: 06/07/2012



NOTES

1. VERTICAL PLANES SHOWN HEREON ARE MEASURED TO FINISHED FACE OF WALLS.
2. ALL WALLS ARE PARALLEL WITH AND/OR PERPENDICULAR TO EACH OTHER UNLESS NOTED OTHERWISE. ALL AREA WITHIN THE BOUNDARIES OF THIS SUBDIVISION EXCLUSIVE OF UNITS 1, 2 AND THE LIMITED COMMON AREA, MECHANICAL ROOM ARE DESIGNATED AS GENERAL COMMON AREA AND IS SUBJECT TO NON-EXCLUSIVE CROSS USE EASEMENT FOR SURFACE DRAINAGE, PARKING, UTILITIES, EMERGENCY AND SERVICE VEHICLE ACCESS AND LANDSCAPING.
3. ELEVATIONS ARE IN REFERENCE TO I.D. R/W BRASS CAP 50 FT. RT. OF STA. 100+00.00 WITH AN ELEVATION OF 3905.92 BASED ON THE NAD 1988 DATUM.
4. HORIZONTAL PLANS SHOWN HEREON ARE THE TOP OF FINISHED FLOORS AND BOTTOM OF CEILINGS.
5. THE BOUNDARY BETWEEN THE UNITS IS THE FINISHED FACE OF THE WALLS AS SHOWN.



FLOOR PLAN

ELEVATION SCHEDULE

AREA	FLOOR ELEVATION	CEILING ELEVATION	REMARKS
(A)	3901.56	3910.76	FLAT FALSE CEILING
(B)	3901.56	3909.56	FLAT DRYWALL CEILING
(C)	3902.56	3911.76	FLAT FALSE CEILING
(D)	3902.56	3914.12	FLAT FALSE CEILING
(E)	3903.56	3912.81	FLAT FALSE CEILING
(F)	3903.56	3911.56	FLAT DRYWALL CEILING
(G)	3904.56	3913.76	FLAT FALSE & DRYWALL CEILING

AREA	FLOOR ELEVATION	CEILING ELEVATION	REMARKS
(H)	3904.56	3913.50	FLAT FALSE CEILING
(I)	3904.56	3912.56	FLAT DRYWALL CEILING
(J)	3904.56	3913.76	FLAT FALSE CEILING
(K)	3904.56	3912.56	FLAT DRYWALL CEILING
(L)	3901.56 3902.56	3911.76	FLAT FALSE CEILING RAMP FLOOR
(M)	3904.56	3913.76	FLAT FALSE CEILING

LEGEND

- OUTSIDE OF FOUNDATION WALL
- INTERIOR FINISHED WALL
- UNIT BOUNDARY
- INTERIOR FINISHED WALL
- FLOOR ELEV. AND/OR CEILING HEIGHT CHANGE
- FLOOR ELEVATION CHANGE



EHM Engineers, Inc.

Engineers / Surveyors / Planners
621 North College Road, Suite 100
Twin Falls, Idaho 83301
P (208)-734-6888 fax (208)-734-6649
web: ehmic.com

CERTIFICATE OF OWNERS

THIS IS TO CERTIFY THAT THE UNDERSIGNED IS THE OWNER, OR REPRESENTATIVE OF THE OWNER, OR REPRESENTATIVE OF THE OWNER IN FEE SIMPLE OF THE FOLLOWING DESCRIBED PROPERTY BEING LOT 4, BLOCK 1, REDCAP SUBDIVISION IN A PORTION OF THE NE1/4 NE1/4 OF SECTION 20, TOWNSHIP 10 SOUTH, RANGE 18 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO. SAID PROPERTY BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20. THENCE N89°23'58"W 349.42 FEET ALONG THE NORTH BOUNDARY OF SECTION 20. THENCE S40°32'58"E 86.40 FEET; THENCE SOUTH 79°16'07" EAST 126.09 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF U.S. HIGHWAY 30. THENCE SOUTH 00°36'02" WEST 195.75 FEET ALONG THE EASTERLY BOUNDARY OF LOT 3, BLOCK 1, "REDCAP SUBDIVISION" TO THE REAL POINT OF BEGINNING. THENCE SOUTH 00°36'02" WEST 127.00 FEET ALONG THE EASTERLY BOUNDARY OF LOT 4, BLOCK 1, "REDCAP SUBDIVISION". THENCE NORTH 89°23'58" WEST 252.18 FEET ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 4. THENCE NORTH 00°36'02" EAST 127.00 FEET ALONG THE WESTERLY BOUNDARY OF SAID LOT 4. THENCE SOUTH 89°23'58" EAST 252.18 FEET ALONG THE NORTHERLY BOUNDARY OF SAID LOT 4 TO THE REAL POINT OF BEGINNING. THE GROSS AREA CONTAINED IN THIS PLATTED LAND AS DESCRIBED IS 0.74 ACRES.

IT IS THE INTENTION OF THE UNDERSIGNED TO, AND THEY DO HEREBY INCLUDE SAID LAND IN THIS PLAT. THE EASEMENTS INDICATED ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES DESIGNATED ON THIS PLAT. NO STRUCTURES OTHER THAN FOR SUCH UTILITY AND OTHER DESIGNATED PUBLIC USES ARE TO BE ERRECTED WITHIN THE LINES OF SAID EASEMENTS.

PURSUANT TO IDAHO CODE 50-1334, I, THE UNDERSIGNED, AS OWNER, DO HEREBY STATE THAT THE UNITS ON THIS PLAT ARE ELIGIBLE TO RECEIVE WATER SERVICE FROM THE CITY OF KIMBERLY MUNICIPAL WATER SYSTEM.

PURSUANT TO IDAHO CODE 31-3805, I, THE UNDERSIGNED, AS OWNER, DO HEREBY STATE THAT THE IRRIGATION WATER RIGHTS APPURTENANT AND THE ASSESSMENT OBLIGATION OF THE LANDS IN THIS PLAT HAVE BEEN TRANSFERRED FROM SAID LANDS. UNITS WITHIN THE SUBDIVISION WILL NOT BE ENTITLED TO ANY IRRIGATION WATER RIGHTS AND WILL NOT BE OBLIGATED FOR ASSESSMENTS FROM ANY IRRIGATION DISTRICT AND / OR CANAL COMPANY.

RED CAP, L.L.C., AN IDAHO LIMITED LIABILITY COMPANY

BY: C. ALAN HORNER, PRESIDENT

ACKNOWLEDGMENT

STATE OF _____) ss
COUNTY OF _____

ON THIS _____ DAY OF _____, 2014, AT _____, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED C. ALAN HORNER, PERSONALLY KNOWN OR IDENTIFIED TO ME TO BE ONE OF THE MEMBERS OF RED CAP, L.L.C., AN IDAHO LIMITED LIABILITY COMPANY, AND THE MEMBER WHO SUBSCRIBED SAID COMPANY NAME TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAME IN THE PRESENCE OF ME AS A NOTARY PUBLIC IN AND FOR SAID STATE. IN WITNESS WHEREOF, I HAVE HERUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC _____

RESIDING AT _____

COMMISSION EXPIRES _____



EHM Engineers, Inc.

Engineers / Surveyors / Planners
621 North College Road, Suite 100
Twin Falls, Idaho 83301
Phone: 208-734-4888 fax: 208-734-6049
web: ehminc.com

CERTIFICATE OF SURVEYOR

THIS IS TO CERTIFY THAT I, ROGER A. KRUGER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, MADE THE SURVEY OF THE LAND DESCRIBED IN THE CERTIFICATE OF OWNER AND THAT THIS PLAT IS A TRUE AND ACCURATE REPRESENTATION OF SAID SURVEY AS MADE AND STAKED UNDER MY SUPERVISION AND DIRECTION.

APPROVAL OF CITY COUNCIL

THIS PLAT WAS ACCEPTED BY THE CITY COUNCIL OF KIMBERLY, IDAHO AT THEIR MEETING ON THE _____ DAY OF _____, 2014.

MAYOR _____ CITY CLERK _____

APPROVAL OF CITY ENGINEER

I HAVE REVIEWED THE ACCOMPANYING PLAT AND HEREBY CERTIFY THAT IT CONFORMS WITH THE APPLICABLE ORDINANCES OF THE CITY OF KIMBERLY, IDAHO.

CITY ENGINEER _____ ATTEST: CLERK _____

COUNTY SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT I, RICHARD H. CARLSON, HAS CHECKED THE FOREGOING PLAT AND COMPUTATIONS FOR MAKING THE SAME AND HAS DETERMINED THAT THEY COMPLY WITH THE LAWS OF THE STATE OF IDAHO AND THE COUNTY OF TWIN FALLS RELATED THERETO. DATED THIS _____ DAY OF _____, 2014.

ACTING COUNTY SURVEYOR _____

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)
ON THIS _____ DAY OF _____, 2014, AT _____, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED RICHARD H. CARLSON, PERSONALLY KNOWN OR IDENTIFIED TO ME TO BE WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE 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 _____
RESIDING AT _____
COMMISSION EXPIRES _____

COUNTY TREASURER'S CERTIFICATE

I, _____ COUNTY TREASURER IN AND FOR THE COUNTY OF TWIN FALLS, IDAHO, PER THE REQUIREMENTS OF IDAHO CODE 50-1308, DO HEREBY CERTIFY THAT ALL COUNTY PROPERTY TAXES DUE FOR THE PROPERTY INCLUDED IN THIS PLAT HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY DAYS ONLY.

COUNTY TREASURER _____ DATE _____

COUNTY RECORDER'S CERTIFICATE

INSTRUMENT NO. _____
STATE OF IDAHO)
COUNTY OF TWIN FALLS) ss
ON THIS _____ DAY OF _____, 2014, AT _____, I, _____, M., THE FOREGOING PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF TWIN FALLS COUNTY, IDAHO AND DULY RECORDED IN PLAT BOOK _____ ON PAGE _____.

DEPUTY _____ EX-OFFICIO RECORDER _____



EHM Engineers, Inc.

Engineers / Surveyors / Planners
621 North College Road, Suite 100
Twin Falls, Idaho 83301
P (208) 734-4888 fax (208) 734-6049
web: ehmic.com

DRAFT

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RED CAP SUBDIVISION, RED CAP SUBDIVISION NO. 2 AND
RED CAP SUBDIVISION NO. 3**

THIS DECLARATION is made on the date hereinafter set forth, by **RED CAP, L.L.C.**, an Idaho limited liability company, hereinafter referred to as "Declarant".

RECITALS:

This Declaration is made in contemplation and furtherance of the following facts and purposes:

- A. Declarant is the owner of certain real property situated in the City of Kimberly, Twin Falls County, State of Idaho, more particularly described as Lots 1, 2, 3 and 4, Block 1, Red Cap Subdivision, according to the official plat thereof recorded as Instrument No. 2008-019088, records of Twin Falls County, Idaho ("Red Cap Subdivision"); Lots 6, 7, 9, 10, 11 and 12, Block 1, Red Cap Subdivision No. 2, according to the official plat thereof recorded as Instrument No. 2010-003856, records of Twin Falls County, Idaho ("Red Cap Subdivision No. 2"); and Tract A, Block 1, Red Cap Subdivision No. 3, according to the official plat thereof recorded as Instrument No. 2010-003857, records of Twin Falls County, Idaho ("Red Cap Subdivision No. 3").
- B. Red Cap Subdivision, Red Cap Subdivision No. 2, and Red Cap Subdivision No. 3 are hereinafter referred to collectively as "Subdivisions".
- C. The undersigned Consenting Owners are the record title owners of all real property within the Subdivisions which is not, as of the date hereof, owned by the Declarant, and by signing this Declaration the Consenting Owners do hereby join in the promulgation of this Declaration of Covenants, Conditions and Restrictions, and consent to its application to, and encumbrance of, all real property situated within the Subdivisions which is owned by them.
- D. It is the intent of this Declaration, in Articles III and IV hereinbelow, to set forth certain use restrictions and design criteria for all landscaping, buildings and other improvements hereafter constructed or installed within the Subdivisions, and to further provide for the creation of a Design Review Committee to review all proposed land uses, and all plans and specifications for proposed landscaping, buildings and improvements prior to the commencement of their installation or construction, to assure compliance with said use restrictions and design criteria.
- E. It is further intended that this Declaration shall provide for the creation of an incorporated Association, members of which shall be comprised of, and limited to, the owners of all Lots, as that term is hereinafter defined, within the Subdivisions, the sole purpose for which shall be to duly perform and discharge the obligations and duties herein imposed upon it.

- F. It is the further intention of this Declaration to assure the development and maintenance of the Subdivisions as a cohesive, quality professional and commercial real estate development, in harmony with the surrounding environment, and to secure those objectives through the observation and enforcement of the Covenants, Conditions and Restrictions set forth.

DECLARATION:

Declarant, together with the undersigned Consenting Owners, hereby declare that the Subdivisions, and all real property, lots, tracts, parcels, buildings, improvements, access roads, easements, and landscaping now or hereafter situated, constructed or installed thereon shall be developed, held, conveyed, encumbered, leased, maintained and used, subject to, and consistent with, the covenants, conditions, restrictions and equitable servitudes hereinafter set forth or provided for, all of which are for the purpose of enhancing and protecting the value, desirability, accessibility and attractiveness of the Subdivisions, and which shall run with said real property and be binding upon, and benefit, all parties now or hereafter having or acquiring any right, title or interest in or to any real property, or to any part thereof.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases, when used herein, shall have the following meanings:

Section 1. "ARTICLES" shall mean and refer to the Articles of Incorporation of Red Cap Owners Association, Inc.

Section 2. "ASSESSMENTS" shall mean and refer to the assessments authorized and described in Article VI hereinbelow.

Section 3. "ASSOCIATION" shall mean and refer to Red Cap Owners Association, Inc., a non-profit corporation organized under the laws of the state of Idaho, and its successors and assigns.

Section 4. "BOARD" or "BOARD OF DIRECTORS" shall mean and refer to the Board of Directors of the Association.

Section 5. "COMMON AREA" shall mean and refer to the following, which shall be held, maintained and managed by the Association pursuant to Article V hereinbelow: (a) Each easement for vehicular access and/or sidewalks expressly benefiting all Lots within one or more of the Subdivisions, whether now existing or hereafter granted by plat instruments, or actual usage, shall be deemed to benefit all Lots in all of the Subdivisions, and shall become Common Area from and after the date upon which it has been improved, and commences to be used for its intended purpose; (b) Tract A, Block 1, Red Cap Subdivision No. 3, title to which shall be conveyed by the Declarant to the Association for the benefit of all Lots and Owners as a location for the retention of storm water drained from the Subdivisions; (c) any real property situated within any of the Subdivisions, or any interest in such real property, which is designated as Common Area on any

plat, amended plat, or replat of any of the Subdivisions, or portions thereof, or is so identified in any instrument conveying title thereto to the Association, or which is otherwise acquired and held by the Association for the common benefit of all Lots and the Owners thereof, and their respective agents, employees, guests and business invitees.

Section 6. "DESIGN REVIEW COMMITTEE" shall mean and refer to the committee created pursuant to Article IX hereof (sometimes herein referred to as the "DRC").

Section 7. "LIMITED COMMON AREA" shall mean and refer to: (a) Lot 3, Block 1, Red Cap Subdivision, which has heretofore been developed as an automobile parking lot, title to which shall be conveyed to the Association as Limited Common Area for the benefit of Lots 1, 2 and 4, all in Block 1 of said Subdivision, and the Owners of said Lots and their respective agents, employees, guests and business invitees; (b) any real property, or interest therein, which is hereafter shown as "Limited Common Area" on any plat, amended plat, or replat of the Subdivisions, or any portions thereof, or which is so described on any instrument conveying such property to the Association, or is otherwise acquired by the Association expressly for the common benefit of some, but not all, Lots. Limited Common Area shall be held, maintained and managed by the Association exclusively for the benefit of Lots expressly entitled to such benefits, and to the Owners thereof, and their respective agents, employees, guests and business invitees, and costs reasonably incurred by the Association for such maintenance and management of each parcel of Limited Common Area shall be defrayed exclusively from the proceeds derived by assessments hereinafter authorized to be levied against the Lots and Owners who are the designated beneficiaries of that parcel. ("Benefited Lots" and "Benefited Owners").

Section 8. "LOT" shall mean and refer to any Lot within the Subdivisions, as shown on the official plats thereof identified in Recital A hereinabove, and any subsequent Lots which may hereafter be created through any amended plats or resubdivision plats duly executed and recorded and applicable to any of the real property situated within the Subdivisions.

Section 9. "MEMBER" shall mean and refer to a member of the Association, who shall be an Owner of a Lot, and shall qualify for membership in the Association in the manner hereinafter set forth.

Section 10. "OWNER" shall mean and refer to the record Owner of any Lot.

ARTICLE II GENERAL PROVISIONS

Section 1. Enforcement. The Association, and any Owner, shall have the right to enforce, by proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed pursuant to the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association or any Owner shall be required to secure legal services or advice to enforce, or defend against an alleged violation of, any covenant, condition or restriction now or hereafter imposed pursuant to the provisions of this Declaration, whether or not litigation ensues, the prevailing party with respect to such enforcement or defense shall be entitled to recover reasonable attorney fees and costs.

Section 2. Severability. Invalidation of any one of the covenants, conditions or restrictions herein set forth, by court order or judgment, shall in no way affect the validity or effectiveness of any other provisions contained herein.

Section 3. Revocation and Amendment. This Declaration, and the covenants, conditions and restrictions contained herein, shall run with and bind all real property and Subdivisions which are subject thereto, and all Lots now or hereafter situated therein, and the Owners thereof, until and unless terminated or revoked by an instrument signed by the Owners of not less than ninety percent (90%) of said Lots. This Declaration may, however, be amended at any time by an instrument signed by the Owners of not less than eighty percent (80%) of all Lots. Any such amendment, termination or revocation shall be effective only upon recordation.

Section 4. Owner's Acknowledgement. By accepting a deed to any Lot, the Owner thereof acknowledges that no water rights have been conveyed with such Lot.

ARTICLE III LOT USES

Section 1. Land Use Regulations. No building, structure, improvement or use shall be constructed, installed or maintained on any Lot in violation of the applicable provisions of any land use ordinance, building code or regulation of the City of Kimberly, Idaho, or the provisions of this Declaration.

Section 2. Commercial or Professional Purposes. The use of all Lots shall be restricted to commercial, and professional uses, as those terms are defined in the zoning ordinances of the City of Kimberly. No residential or heavy industrial uses shall occur on any Lot and no structures of a temporary character, travel trailers, storage buildings, garages, or other similar improvements be placed on any Lot, except as may be necessary, on a temporary basis, in connection with the construction of permanent buildings or improvements on a Lot.

Section 3. Restricted Uses. For so long as Lot 5 of the Red Cap Subdivision, or any part thereof, continues to be used for commercial banking purposes, no building or structure on any other Lot within said subdivision shall be occupied or used as a commercial bank, savings and loan association, savings bank, credit union, mortgage lender, mortgage or loan broker, finance company, or other similar commercial lending institution without the written consent of the Owner of said Lot 5.

ARTICLE IV BUILDING AND USE RESTRICTIONS

Section 1. Exterior Changes and Alterations. No changes or alterations to the exterior of any building or other improvement on any Lot may be made or undertaken without the prior approval of the Design Review Committee; provided, however, that this provision shall not preclude the repainting of the exterior of any building, nor the replacement or repair of any broken or damaged exterior windows, siding, trim, sidewalks, driveways, fences, or exposed structural members or foundations, if the same does not alter the size of the building or the configuration or

architectural features of its exterior, including the size and shape of windows, or the pitch or configuration of the roof lines.

Section 2. Service Facilities. All garbage cans, maintenance tools and similar items shall be screened or enclosed to conceal them from neighboring Lots.

Section 3. Nuisances. No equipment, vehicles, building materials, boats or travel trailers shall be kept or stored in excess of 48 hours on any Lot unless enclosed within an approved building or structure, or otherwise consented to in writing by the Board. No rubbish, waste or debris of any kind shall be placed or permitted to accumulate upon any Lot, and no odor shall be permitted to arise therefrom so as to render any such property, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other Lot.

Section 4. Exterior Materials. The front elevation of the exterior walls of all buildings and structures shall be of brick, synthetic stucco or other similar generic material, stucco or stone; provided, however, that window frames, eaves, and trim may be of wood or vinyl; and provided further that the use of steel non-reflective siding materials or masonry, including brick, block or exposed concrete may be used on exterior side and rear elevations, subject to approval by the Design Review Committee.

Section 5. Roof Materials and Design. Roofing materials visible from street level shall be limited to non-reflective metal or architectural grade asphalt shingles. No wood shingles shall be allowed. If the roof slope is equal to or less than one (1) inch vertical for every one (1) foot horizontal, other building materials may be approved by the Design Review Committee.

Section 6. Landscaping. All landscaping plans for Lots within the Subdivision shall conform to the requirements of the City of Kimberly. Initial landscaping plans for each Lot, and subsequent amendments thereto, shall include a list of planting materials and plant densities, design specifications for an adequate irrigation system and a maintenance plan, all of which shall be submitted to, and receive approval from, the DRC prior to construction and installation. After initial installation, which shall occur within 180 days after the plans therefor have been approved by the DRC, individual plantings may be replaced, as necessary, without further approval from the DRC.

Section 7. Property Maintenance. Every Owner shall at all times maintain its Lot, and all improvements situated thereon, in good condition and repair and not allow noxious weeds, debris, trash or rubbish to accumulate thereon. Further, each Owner shall promptly make such reasonable repairs and undertake such reasonable repairs and maintenance of its Lot and improvements as may, from time to time, be requested by the Board of Directors, and the Board shall be entitled to specific performance of this obligation in court against any Owner who fails or refuses to complete such reasonable repairs or maintenance when duly requested to do so by the Board.

Section 8. Improvement Completion. Upon commencement of construction of any building or structure, or any remodeling or alteration to the exterior of any existing building or structure, the Owner thereof shall cause all work thereon to be completed within one (1) year after commencement. Notwithstanding the foregoing if, during the course of construction of any such building or structure, the improvements are damaged or destroyed by fire or other casualty, then the

time period provided herein will be extended for a reasonable period of time as long as the Owner thereof promptly, following the occurrence of that damage or destruction, undertakes and thereafter diligently pursues completion of that building or structure.

Section 9. Parking Area Construction. All parking lots and other vehicular parking areas on any Lot shall be constructed of asphalt, concrete or masonry pavers. No gravel, grass or dirt parking areas shall be permitted.

ARTICLE V COMMON AREA

Section 1. Common Area. The Common Area, and all improvements situated therein, shall be exclusively managed, maintained and repaired by the Association for the common benefit, use and enjoyment of all Lots, and their respective Owners. Without limiting the foregoing, the Association shall have the exclusive right and obligation to repair and maintain all improvements now or hereafter situated within said Common Area, including, but not necessarily limited to, resurfacing, striping, seal coating, landscaping, and snow removal as necessary, and to levy such assessments against the Lots and Owners, in the manner hereinafter provided for, as may be necessary to defray all reasonable costs incurred in such activities.

Section 2. Use of Common Area. Subject to the provisions and limitations herein contained, each Lot and the Owner thereof, and their respective agents, employees, guests and business invitees, shall have a non-exclusive right and easement of enjoyment, in common with all other Lots and their Owners, in and to the Common Area, and such right and easement shall be appurtenant to, and pass with, title to each Lot.

ARTICLE VI LIMITED COMMON AREA

Section 1. Limited Common Area. The Limited Common Area, and all improvements situated therein, shall be held, and exclusively managed, maintained and repaired, by the Association for the common benefit, use and enjoyment of all Benefited Lots, and their respective Benefited Owners. Without limiting the foregoing, the Association shall have the exclusive right and obligation to repair and maintain all improvements now or hereafter situated within said Limited Common Area, including, but not necessarily limited to, resurfacing, striping, seal coating, landscaping, and snow removal as necessary, and to levy such assessments against the Benefited Lots and Benefited Owners, in the manner hereinafter provided for, as may be necessary, to defray all reasonable costs incurred in such activities.

Section 2. Use of Limited Common Area. Subject to the provisions and limitations herein contained, each Benefited Lot and the Benefited Owner thereof shall have a non-exclusive right and easement of enjoyment, in common with all other Benefited Lots and their Benefited Owners, in and to the Limited Common Area held by the Association expressly for their common benefit, and such right and easement shall be appurtenant to, and pass with, title to each Benefited Lot.

Section 3. Cross Parking Agreement. Notwithstanding anything to the contrary herein contained, the Association shall, at the request of the Owners of Lots 1, 2, 4 and 5, Block 1, Red Cap Subdivision, enter into a written agreement with the Owner of Lot 5, Block 1, Red Cap Subdivision allowing cross parking privileges on designated parking areas on both of said Lots, pursuant to terms and conditions mutually acceptable to said Owners.

ARTICLE VII THE ASSOCIATION

Section 1. Creation. Declarant shall cause to be incorporated, as a non-profit property owners' association under the laws of the state of Idaho, the Red Cap Owners Association, Inc.

Section 2. Membership. Every Owner in the Subdivisions shall be entitled and required to be a Member of the Association. If title to a Lot is held by more than one person or entity, the membership related to that Lot shall be shared by all such persons or entities in the same proportionate interest and by the same type of tenancy in which title to the Lot is held; provided, however, the co-owners of such Lot shall designate one of the co-owners as the Member for the purposes of membership in the Association, voting and representation of the interest of the co-owners in the Association. that only one membership shall be appurtenant to each Lot; and any joint or common owners of said membership shall collectively appoint one person to vote that membership in the Association. No person or entity other than an Owner may be a Member of the Association.

Section 3. Quorum and Voting Rights. A majority of the Members, represented in person or by proxy, shall constitute a quorum at any meeting of the Members of the Association. The total number of votes which may be cast by all Members of the Association shall be one (1) vote per Lot.

Section 4. Cumulative Voting. In any election of the directors of the Board of Directors, each Member entitled to vote at such election shall have the right to cumulative voting for each Director to be elected, and to thereby give one candidate or divide among any number of the candidates a whole number of votes equal to the total number of votes to which that Member is entitled to vote for all Directors to be elected. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected.

Section 5. Governance. The Association shall be governed by a Board of Directors and officers in accordance with its Articles of Incorporation and Bylaws.

Section 6. Management of the Common Area and Limited Common Area. The Association, subject to the rights of the Owners and Benefited Owners, and their respective Lots and Benefited Lots, set forth in Articles V and VI hereof, shall be responsible for exclusive management and control of any Common Area and Limited Common Area. All vehicle access drives, pavement, landscaping, storm drainage facilities, and other improvements situated on or included in the Common Area and Limited Common Area, shall be kept in good condition and repair, reasonably free of debris, obstructions, and snow by the Association. The Association shall also maintain such public liability insurance coverage on the Common Area and Limited Common Area as its Board of Directors deems appropriate.

Section 7. Rules and Regulations. The Association, by and through its Board of Directors, may make reasonable rules and regulations governing the use of the Common Area and Limited Common Area, which rules and regulations shall be consistent with the rights and duties of Owners and Benefited Owners established in this Declaration. Such rules and regulations may include, without limitation, governing the use of all vehicular access drives, parking lots, and Common Easements owned or controlled by the Association. The Association may also take judicial action against any Owner, Benefited Owner, and/or third parties to enforce compliance with any of its rules and regulations, or other terms or provisions of this Declaration.

Section 8. Implied Rights. The Association may exercise any other right or privilege given to the Association expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VIII ASSESSMENTS

Section 1. Agreement to Pay Assessments. Declarant, for each Lot owned by the Declarant, hereby covenants and agrees, and each subsequent Owner of any Lot, by the acceptance of a deed therefore, whether or not it be so expressed in said deed, shall be deemed to covenant and agree to pay to the Association all assessments duly levied against such Lot and Owner pursuant to Declaration. In the case of joint or co-ownerships this liability shall be joint and several. Such assessments shall be levied and collected against Lots and their respective Owners, from time to time in the manner provided in this Article VII.

Section 2. Annual Assessments. Annual assessments against all Lots and the Owners thereof are hereby authorized which shall be based upon advance annual estimates of cash requirements by the Association to provide for the payment of all estimated expenses to be incurred in the ensuing twelve-month period in the conduct of the Association's affairs, including the maintenance and operation of the Common Area. Such expenses may include, among other things, those incurred for insurance, legal and accounting services, road maintenance, snow removal, landscaping installation and maintenance, and the creation of a reasonable contingency reserve, surplus and/or sinking fund for capital improvements, replacements and repair. The Board of Directors shall prepare a budget showing anticipated income and expenses for the forthcoming fiscal year. The Board of Directors shall present the proposed budget to the Members at the annual meeting of the Members as established pursuant to the Bylaws of the Association. The proposed budget shall be discussed and the final annual budget shall be voted upon and must be approved by the Owners of no less than fifty one percent (51%) of the votes of the Owners present in person or by proxy and entitled to vote at the annual meeting of the Members.

Section 3. Apportionment of Annual and Special Assessments. Levies of annual and special assessments shall be apportioned equally among all of the Lots based upon the square footage thereof.

Section 4. Notice of Periodic Assessments and Time for Payment Thereof. The Association shall establish an annual assessment each year, the exact date to be determined by its Board of Directors, and shall further establish a special assessment whenever circumstances in the

opinion of the Board of Directors require it. Such assessments shall be payable quarterly unless the Association determines otherwise. The Association shall provide each Owner with notice specifying the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than 15 days after said written notice has been given and each assessment shall bear interest at the rate of 12% per annum from and after the date it becomes due and payable if not paid within 30 days after such date. Failure of the Association to give notice of the assessment shall not affect the liability of the Owner for such assessment, but the date when payment shall become due in such a case shall be deferred to a date 15 days after such notice has been given.

Section 5. Special Assessments. In addition to the annual assessments authorized hereinabove, the Association may levy at any time a special assessment against all Lots and the Owners thereof, payable over such a period and in such amounts as the Association may determine for the purpose of defraying in whole or in part the unanticipated cost of any construction, maintenance, repair, replacement or management of Common Area and/or improvements situated therein, or for any other expenses duly incurred by the Association as provided in this Declaration, but not adequately provided for by the annual assessments.

Section 6. Special Assessments on Limited Common Area. In addition to the annual and special assessments authorized hereinabove, the Association may, with respect to any parcel of Limited Common Area, levy at any time assessments against Benefited Lots and the Benefited Owners thereof, payable over such a period and in such amounts as the Association may determine, for the purpose of defraying expenses incurred by the Association exclusively for the maintenance, repair or replacement of improvements on said parcel, or its management.

Section 7. Apportionment of Limited Common Area Assessments. Assessments levied for Limited Common Area Expenses related to any parcel of Limited Common Area shall be apportioned equally against the Benefited Lots.

Section 8. Lien of Assessment. Payment of any delinquent assessments duly levied against any Lot and/or Benefited Lot may be secured by a lien on said Lot and/or Benefited Lot in favor of the Association. To create and perfect any such liens, the Association shall prepare a written notice of the delinquent assessments for which it is filed, setting forth the amount thereof, the date due, the unpaid balance, the name of the record Owner or Benefited Owner of the Lot or Benefited Lot, and the legal description of said Lot or Benefited Lot. Such notice shall be signed by an officer of the Association and recorded in the office of the County Recorder of Twin Falls County, Idaho. The priority date of the lien shall be the date of its recordation, and it may be foreclosed and enforced in the manner permitted for consensual liens by the laws of the state of Idaho. In addition to all other sums which may be due and owing for which a lien is recorded, the Owner or Benefited Owner of the lien property shall be obligated to pay all costs and expenses incurred by the Association in preparing, filing, foreclosing said lien, or otherwise collecting the assessment to which it is related, including all attorneys fees. All such costs and expenses shall be deemed to be secured by the lien being foreclosed.

Unless sooner satisfied and released, or the enforcement initiated as provided earlier in this section, any lien created pursuant to this section shall expire and be of no further force or effect one year from the date said notice of assessment has been duly recorded; provided, however, said one year period may be extended by the Association for an additional period not to exceed one year by a

written extension signed by an officer of the Association and recorded in the office of the county recorder of Twin Falls County, Idaho, prior to the expiration of the initial one year period.

Section 9. Personal Obligation of Owner. The amount of any assessment against any Lot or Benefited Lot shall be the personal obligation of the Owner or Benefited Owner thereof to the Association. A suit to recover a money judgment for such obligation can be maintained by the Association without foreclosure or waiver of the lien securing the same, and no Owner or Benefited Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the common area, or by the sale or abandonment of the Lot or Benefited Lot.

Section 10. Personal Liability of Purchasers. Subject to the provisions of Section 9 immediately hereinabove, the purchaser of a Lot or Benefited Lot shall be jointly and severally liable with the seller for all unpaid assessments appurtenant thereto including any such assessments due and owing prior to said purchaser's acquisition of said Lot or Benefited Lot.

ARTICLE IX DESIGN REVIEW COMMITTEE

Section 1. Design Review and Approval. No initial landscaping (or changes thereto), building, structure, or other improvement (including signs), on any Lot, nor any alteration or change to the exterior of any building, structure or improvement, on any Lot, shall be constructed, installed or completed until the plans and specifications therefore have been submitted to, and approved in writing by, the Design Review Committee (hereinafter "DRC"). All plans and specifications shall be evaluated as to compliance with this Declaration, as the same may be duly amended, and compatibility with surrounding structures within the Subdivisions.

Section 2. Design Review Committee. The DRC shall be composed of three (3) members. The initial DRC will be composed of C. Alan Horner, Gerald Martens and Todd Blass. For a period of five (5) years from the date on which this Declaration is recorded in the records of Twin Falls County all individuals serving on the DRC shall be appointed by, and serve at the pleasure of, the Declarant. Thereafter, individuals serving on the DRC shall be appointed by, and serve at the pleasure of, the Board of Directors. The individuals serving on the DRC may be compensated by the Association through fees to be collected as set forth in Section 3(c) of this Article.

Section 3. Powers and Duties of the DRC. The DRC shall have the following powers and duties:

(a) To require submission to the DRC of complete sets of plans and specifications for any building, exterior improvement, alteration, change of structure proposed for any Lot. Such submission shall include the building footprint, elevations, site plan, landscaping and conceptual grading plans. The DRC may also require submission of samples of building materials proposed for any such project and may require such additional information as is reasonably necessary to evaluate the proposed work.

(b) To approve or deny any proposed building, or alteration, addition, change, modification or improvement to the exterior of any existing building on any Lot. All

decisions of the DRC shall be submitted in writing to the applicant, and signed by all individuals serving on the DRC participating in such decision, whether voting in favor or against the proposal.

(c) To set and adjust, as necessary from time to time, and collect on behalf of the Association a fee, in an amount reasonably calculated to defray the reasonable costs incurred to review proposed development plans, including the costs incurred for the services of the individuals serving on the DRC, or any architects, engineers or other professional consultants engaged by the DRC to assist it in the review process. The fee for any such submission shall be Six Hundred Dollars (\$600), until and unless amended by the Board of Directors.

(d) To obtain, and pay, with the fees collected pursuant to Section 3(c), immediately hereinabove, for, the services of architects, engineers or other professional consultants which the DRC deems necessary or appropriate to assist in the review process.

(e) Upon approval of an Owner's plan, and upon the request of an Owner, to provide notice to Twin Falls County of DRC's approval of an Owner's plan.

Section 4. Appeal of DRC Decisions. Upon receipt of a denial of any application by the DRC, the applicant shall, for a period of thirty (30) days, have the right to file an appeal the denial with the Declarant (if filed within five years from the date on which this Declaration was recorded in the records of Twin Falls County) or with the Board of Directors if filed thereafter. Within thirty (30) days after an appeal has been duly filed the Declarant or Board of Directors, as the case may be, shall consider the appeal and render a final decision on it in writing delivered to the appellant.

ARTICLE X MISCELLANEOUS

Section 1. Compliance. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and all rules and regulations duly enacted by the Association. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Association or any Owner.

Section 2. Notice of Meeting and Mailing Address. Not later than ten days prior to the date of any regular or three days prior to the date of a special meeting of the members, notice of said meeting, including the time, place, and purpose of the meeting, shall be given to each member by personal service or by mail; provided, however, that if notice is given by mail, it shall be placed in the U.S. mail, postage prepaid, addressed to the member to whom it is directed at member's last known address, not later than fifteen days prior to the date of the regular meeting or not later than three days prior to the date of a special meeting. Each Owner shall provide the Association with such Owner's mailing address, which address shall be used for the mailing or other service of any and all notices, assessments or communications from the Association. Any notice referred to in this section shall be deemed given by the Association when it has been deposited in the United States mail, postage prepaid, addressed to the Owner at the given address.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

On May 12, 2014, the Kimberly Planning and Zoning Commission considered an application submitted by Agri-Service, LLC to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicant has consented to a development agreement with its conditions, of which the Commission has also agreed to with the conditions. The proposed amendment would change the zoning of the approximately 42.99 (+ or -) acres within the SE ¼, Section 17, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 22326 Kimberly Road) from Agriculture to Commercial-Gateway (CG). The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

Notice

Notice for the public hearing was published in the Times News on April 27, 2014 and was mailed to owners within 300 feet and to public agencies on April 28, 2014.

Application

Applicant Agri-Service, LLC made application to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. The amendment would change the zoning from Agriculture to Commercial-Gateway (CG) for the property noted above.

Procedural History

The P&Z Commission conducted a public hearing on May 12, 2014.

Standards of Evaluation

Note: **Standards are in bolded typed**, staff analysis is in lighter type.

17.14.040: COMMISSION ACTION:

Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission, which shall evaluate the request to determine the extent and nature of the amendment requested.

The rezone application was submitted to the Commission, which evaluated the request and made a determination that rezone as proposed was appropriate.

B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided;

The Commission determined the request for rezone as proposed was in accordance with the comprehensive plan.

C. If the request is not in accordance with the comprehensive plan, the request shall be submitted to the commission or, in its absence, the council, which shall recommend and the council may adopt or reject an amendment to the comprehensive plan under the notice and hearing procedures provided in Idaho Code section 67-6509. After the comprehensive plan has been amended, this title may then be amended as hereinafter provided for.

The applicant previously submitted an application to the Commission for amendment to Comprehensive Plan, which was subsequently approved by the Council on May 27, 2014. With the Comprehensive Plan amendment, the request for rezone is in accordance with the Comprehensive Plan.

Summary

The Commission, after conducting at least one public hearing, may recommend a zoning map amendment that is in accordance with a comprehensive plant to the Council.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Recommendation:

1. Adequate notice, pursuant to the requirements of the City of Kimberly Code Title 17 and Idaho Code, Section 67-6511, was provided.
2. The Zoning Map amendment is in accordance with the Kimberly Comprehensive Plan, the proposed uses are compatible with the surrounding area; and the proposed amendment will promote the public health, safety and the general welfare.



RECOMMENDATION

The City of Kimberly Zoning Map amendment to change the zoning of the approximately 42.99 (+ or -) acres within the SE ¼, Section 17, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 22326 Kimberly Road) from Agriculture to Commercial-Gateway (CG) is hereby recommended to the City Council for adoption, with the following conditions:

1. The Draft Development Agreement, showing attached Exhibit A (pgs 1 -2) shall be signed by the applicant, and notarized prior to Council consideration.
2. The applicant and all future applicable parties shall abide the Development Agreement and its conditions.

Signed this _____ day of _____, 2014.

Candy Weth, Commission Chair
City of Kimberly

Attest:

Bart Bingham, Community Development Director
City of Kimberly



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated this ___ day of _____, 2014, by and between the CITY OF KIMBERLY, IDAHO, a municipal corporation ("City") and AGRI-SERVICE, LLC ("Owner") the owner of 63.56 (+ or -) acres of property within the jurisdiction of Kimberly proposed to be developed and covered within this Agreement ("63.56 Acres").

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to zone and enforce zoning within the boundaries of the property and the power to contract.

B. Owner, as an undivided interest holder is the owner in fee simple of the 63.56 Acres which is located within the City of Kimberly Area of Impact, more particularly described as shown on attached **Exhibit A** ("Agri-Service Site 2014 Rezone Plan")

C. The portion of the 63.56 Acres (legally described in metes and bounds) to be rezoned from Agriculture to Commercial-Gateway (CG) is the 42.99 (+ or -) acres shown to be south of the line described as N89° 49' 20" E 1317.75' within the metes and bounds area as shown on **Exhibit A** ("42.99 Acres").

D. Owner filed an application to rezone the 42.99 Acres from Agriculture to Commercial Gateway (CG) on March 26, 2014, all in accordance with and pursuant to the provisions of the City's Zoning Ordinance. The 42.99 Acres is presently located in the City of Kimberly's Area of City Impact and located immediately north of US Highway 30, northwest of the present Red-Cap Corner location.

E. Owner intends to relocate its sales and service facilities and approximately seventy-five (75) employees from its Twin Falls operations to the 42.99 Acres. Within the proposed Commercial Gateway (CG) zoning district, retail stores and services and equipment rental and sales yards are permitted uses. Therefore, the sales and services facilities proposed by Owner are appropriate for property zoned CG in Kimberly or within its Area of City Impact.

F. After consideration of the rezone by the Kimberly Planning & Zoning Commission, but prior to consideration of the rezone by the City of Kimberly City Council and the Twin Falls County Board of Commissioners, this Agreement shall be accepted and executed by the applicant (including being signed by the applicant and notarized by an authorized notary). The City's acceptance and execution of this Agreement shall be after consideration and approval of this Agreement by the City Council and Twin Falls County Board of Commissioners.

G. The Parties agree the property shall be developed in accordance with the

terms and conditions of this Agreement and any additional conditions and requirements imposed by the City during the approval of the rezone application.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the parties covenant and agree as follows:

1) Incorporation of Recitals. The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2) Zoning Designation. Upon approval of this Agreement and the Rezone by the Kimberly Planning and Zoning Commission, the Kimberly City Council, and the Twin Falls Board of County Commissioners, the 42.99 Acres shall be classified and zoned Commercial Gateway (CG). The parties acknowledge that the rezoning of the 42.99 Acres cannot exist solely by virtue of this Agreement.

3) Development of Property. Owner agrees the 42.99 Acres shall generally be developed as set forth in the Findings of Fact and Conclusions of Law which may be adopted by the Kimberly City Council and the Twin Falls County Board of Commissioners approving the rezone of the 42.99 Acres, which shall be attached hereto as **Exhibit B** and incorporated herein. Also previously noted and attached as **Exhibit A** is the “Agri-Service Site 2014 Rezone Plan,” which shows the 42.99 Acres for rezone and the 63.56 Acres which are subject to the conditions contained in paragraphs 3(A - E) for the rezone, which conditions shall run with the land:

- A. The owner or all owners of the property making up the 63.56 Acres or any portion thereof, consent to the City of Kimberly creating or causing to create a Local Improvement District (LID) encompassing the 63.56 Acres, any property combined with it or any portion of either. The purpose of the LID could be or may be to make the following improvements for any portion of the 63.56 Acres or any portion combined to it: To purchase, acquire, construct, improve, and/or repair city sewer and water service providing service to the Local Improvement District; provided any improvements for sanitary sewer facilities shall conform with the rules of the Idaho Department of Environmental Quality.
- B. Whenever and at such time City of Kimberly water and sewer service is available at or within twenty (20) feet of the present perimeter of the 63.56 Acres or any other property combined with it, the owner or owners of property making up the 63.56 Acres (and any other land combined with it) agree to immediate annexation into the City of Kimberly of the 63.56 Acres and any other land combined with it.
- C. Whenever and at such time City of Kimberly water and sewer is available

at or within twenty (20) feet of the present perimeter of the 63.56 Acres or any other property combined with it, the owner or owners of the 63.56 Acres and any other property combined with it agree as follows:

- i. To immediately consent to and extend city water and sewer service to any and all buildings and any other improvement utilizing water and/or sewer service, except those buildings or other improvements which utilize water which is entirely provided by surface irrigation water and no sewer is used by such buildings and other improvements, within a year's time from the time service is within the twenty foot distance;
- ii. To halt and no longer use any and all well or non-city septic tank service or facilities within the 63.56 Acres or any property combined to it;
- iii. To pay any and all costs and fees associated with installing and connecting into city water and sewer services from where the City provides the service within the twenty foot distance of the perimeter of the 63.56 Acres or any other property added to it and to pay any and all costs associated with closing off, removing, and/or capping off any and all onsite wells and/or septic facilities as may be required.

D. Whenever any portion of the 63.56 Acres is platted, appropriate utility easements shall be included on the plat to provide for the water and sewer requirements noted herein and City of Kimberly Subdivision requirements.

E. Whenever and at such time an Urban Renewal District (URA) is created or proposed to be created encompassing the 63.56 Acres or any portion thereof (as shown on **Exhibit A**), the owner or owners of property making up the 63.56 Acres (and any other land combined with it or any portion of it or land combined with it) consent to inclusion within the Urban Renewal District.

4) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, zoning ordinance and subdivision ordinance requirements for the Property.

5) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto and as evidenced by amended plats and development plans.

6) Remedies. In the event the Property is not developed in accordance with this Agreement, or if Owners, either individually or jointly, or their successors and assigns, if any, materially breach, default or fail to perform any material obligation under this Agreement and do not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, the Owners, either individually or jointly fail within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, the City has the right to take any and all remedies allowed at law or equity. Subject to the conditions set forth herein, in the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

7) Attorney's Fees. If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney fees" shall mean and include (i) attorney fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

8) Successors and Assigns; Covenant Running with Land. This Agreement shall inure to the benefit of the City and Owners and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

9) Recordation and Release. This Agreement may be recorded with the Twin Falls County Recorder by either party.

10) No Waiver. In the event that the City or Owners, or their successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owners, the City, or their successors and assigns, to the other party under this Agreement, shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

11) Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the

interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

12) Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

13) Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

14) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

15) Time of Essence. Time is of the essence in this Agreement.

16) Necessary Acts. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written herein.

DATED this _____ day of _____, 2014.

“CITY”

CITY OF KIMBERLY

By: _____
Tracy Armstrong, Mayor

ATTEST:

Shoshonie Heitmann, City Clerk

AGRI-SERVICE, LLC

By _____
Clint Schnoor
President

AGRI-SERVICE

THE SE1/4, SECTION 17, TOWNSHIP 10 SOUTH, RANGE 18 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 17, THENCE NORTH 89°39'17" WEST A DISTANCE OF 2641.88 FEET ALONG THE SOUTH SECTION LINE, THENCE NORTH 00°05'28"W A DISTANCE OF 49.95' TO A POINT ON THE NORTH RIGHTS OF WAY OF U.S. HIGHWAY 30, THENCE SOUTH 89°39'59" EAST A DISTANCE OF 617.81 FEET ALONG THE NORTH RIGHTS OF WAY OF U.S. HIGHWAY 30 TO THE REAL POINT OF BEGINNING;

THENCE NORTH 00°11'41" WEST A DISTANCE OF 302.98 FEET;

THENCE NORTH 56°28'21" WEST A DISTANCE OF 89.96 FEET;

THENCE NORTH 00°05'37" WEST A DISTANCE OF 562.71 FEET;

THENCE NORTH 89°38'57" WEST A DISTANCE OF 542.32 FEET TO A POINT ON THE WEST BOUNDARY OF THE SE1/4, SECTION 17;

THENCE NORTH 00°05'28" WEST A DISTANCE OF 1677.50 FEET ALONG THE WEST BOUNDARY OF THE SE1/4, SECTION 17;

THENCE SOUTH 89°40'28" EAST A DISTANCE OF 1316.75 FEET ALONG THE NORTH BOUNDARY OF THE SE1/4, SECTION 17;

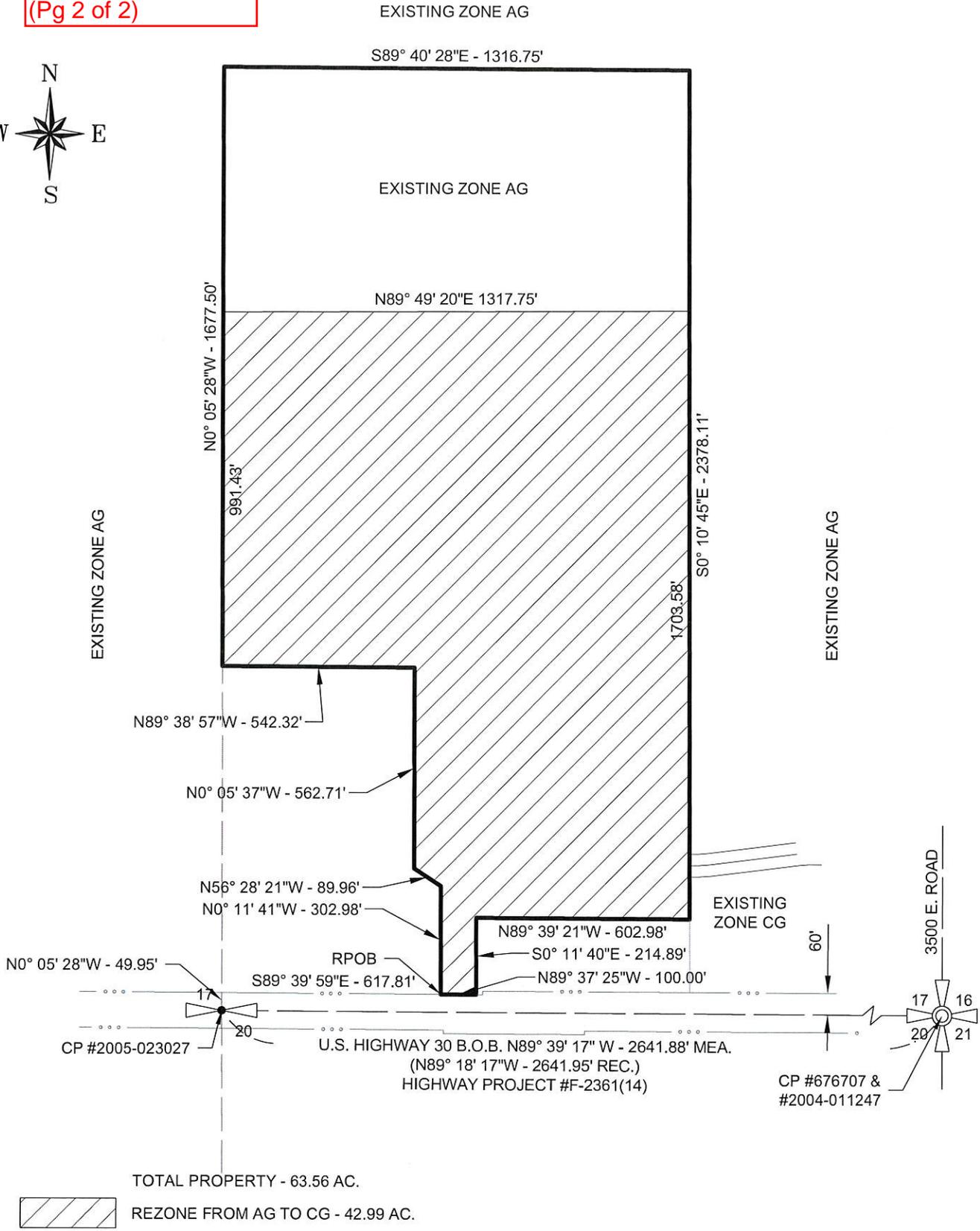
THENCE SOUTH 00°10'45" EAST A DISTANCE OF 2378.11 FEET ALONG THE EAST BOUNDARY OF THE WEST HALF OF THE SE1/4, SECTION 17;

THENCE NORTH 89°39'21" WEST A DISTANCE OF 602.98 FEET;

THENCE SOUTH 00°11'40" EAST A DISTANCE OF 214.89 FEET TO A POINT ON THE NORTH RIGHTS OF WAY OF U.S. HIGHWAY 30;

THENCE NORTH 89°37'25" WEST A DISTANCE OF 100.00 FEET ALONG THE NORTH RIGHTS OF WAY OF U.S. HIGHWAY 30 TO THE REAL POINT OF BEGINNING. CONTAINING 63.56 ACRES MORE OR LESS.

SECTION 17, T. 10 S., R. 18 E., B.M.



TOTAL PROPERTY - 63.56 AC.



REZONE FROM AG TO CG - 42.99 AC.

KIMBERLY ORDINANCE NO. 613

Rezone Ordinance:

AN ORDINANCE REZONING 42.99 (+ or -) ACRES OF REAL PROPERTY SITUATED IMMEDIATELY NORTH OF KIMBERLY ROAD (APPROXIMATELY 22326 KIMBERLY ROAD) WITHIN THE CITY OF KIMBERLY AREA OF IMPACT AND WITHIN THE SE ¼, SECTION 17, TOWNSHIP 10 SOUTH, RANGE 18 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO, REZONING TO PROPERTY FROM AGRICULTURE TO COMMERCIAL GATEWAY (CG).

WHEREAS, application was made for rezone of the property in 2014; and

WHEREAS, duly noticed public hearings were held both before the Kimberly Planning & Zoning Commission and Kimberly City Council; and

WHEREAS, an ordinance adopting the rezone is required as part of a rezone;

BE IT ORDAINED by the Mayor and City Council of the City of Kimberly, County of Twin Falls, State of Idaho, as follows:

THAT the property shown in this ordinance and specifically described to be south of the line shown as N 89° 49' 20"E 1317.75' within the ordinance and legally described area below is hereby rezoned, from Agricultural to Commercial Gateway (CG):

The SE1/4, Section 17, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho more particularly described as follows:

Commencing at the Southeast Corner of said Section 17, thence north 89° 39' 17" West a distance of 2641.88 feet along the south section line, thence north 00°05'28"W a distance of 49.95' to a point on the north rights of way of U.S Highway30, thence south 89°39'59" East a distance of 617.81 feet along the north rights of way of U.S. Highway 30 to the real property point of the beginning;

Thence north 00°11'41" West a distance of 302.98 feet;



Rezone Ordinance – 42.99 (+ or -) acres at approximately 22326 Kimberly Rd. from Agriculture to Commercial Gateway (CG).

Thence north 56°28'21" West a distance of 89.96 feet;

Thence north 00°05'37" West a distance of 562.71 feet;

Thence north 89°38'57" West a distance of 542.32 feet to a point on the West boundary of the SE 1/4, Section 17;

Thence north 00°05'28" West a distance of 1677.50 feet along the west boundary of the SE 1/4, Section 17;

Thence south 89°40'28" East a distance of 1316.75 feet along the north boundary of the SE1/4, Section 17;

Thence south 00°10'45" East a distance of 2378.11 feet along the east boundary of the west half of the SE1/4, Section 17;

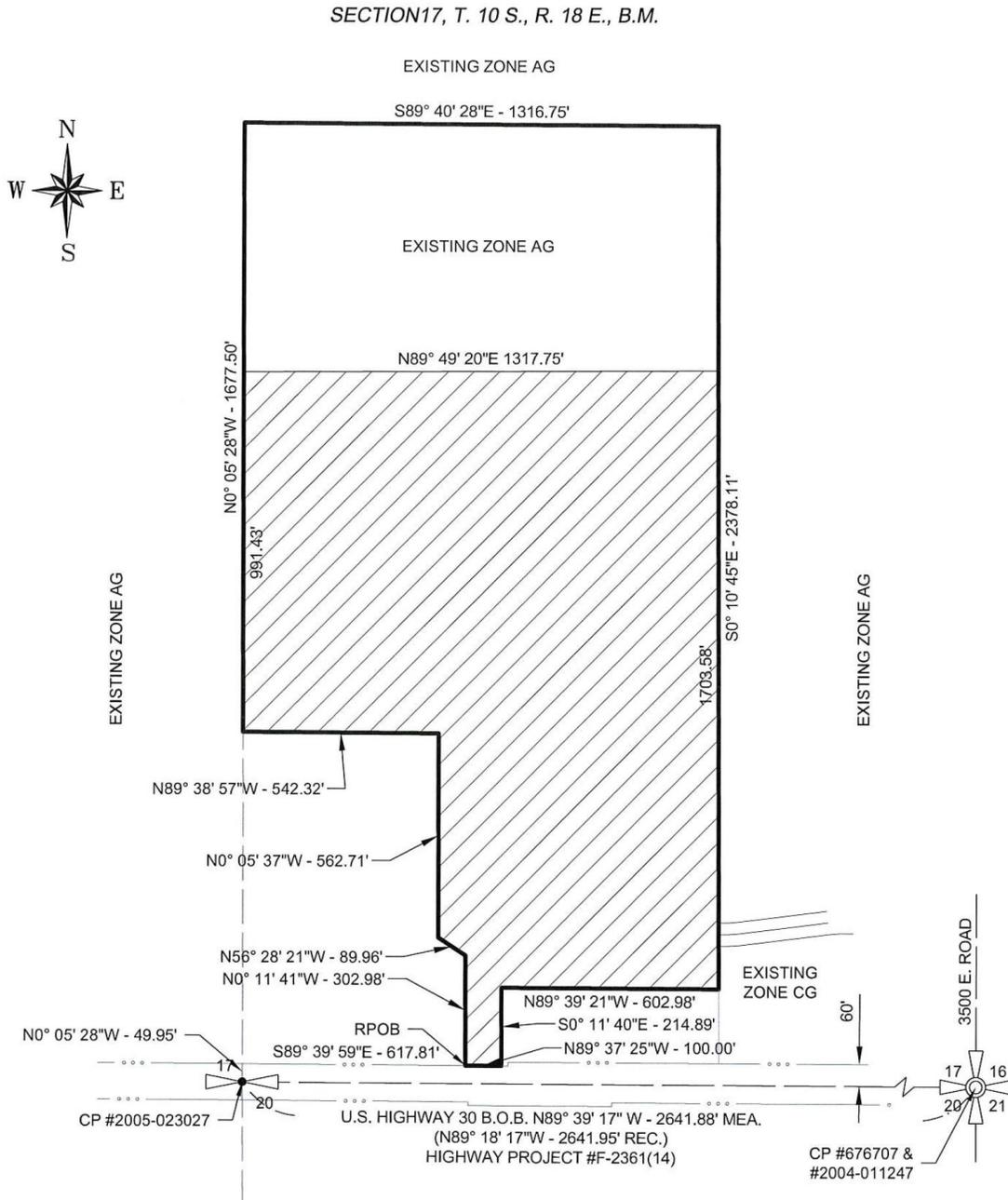
Thence north 89°39'21" West a distance of 602.98 feet;

Thence south 00°11'40" East a distance of 214.89 feet to a point on the north rights of way of U.S. Highway 30;

Thence north 89°37'25" West a distance of 100.00 feet along the north rights of way of U.S. Highway 30 to the real point of beginning. Containing 63.56 acres more or less.



AND WHEREAS, the subject property is shown and highlighted immediately below:



Rezone Ordinance – 42.99 (+ or -) acres at approximately 22326 Kimberly Rd. from Agriculture to Commercial Gateway (CG).

That the Zoning Map for the City of Kimberly be amended to reflect this rezone

This Ordinance is PASSED AND ADOPTED BY THE KIMBERLY CITY COUNCIL
AND APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2014.

TRACY ARMSTRONG, MAYOR, CITY OF KIMBERLY

Attest:

SHOSHONIE HEITMANN, CITY CLERK

Publish: Times News _____, 2013



Rezone Ordinance – 42.99 (+ or -) acres at approximately 22326 Kimberly Rd. from
Agriculture to Commercial Gateway (CG).