

Recording Requested By and
When Recorded Return to:

City Clerk
City of Kuna
P.O. Box 13
Kuna, Id 83634

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement entered into by and between the City of Kuna, a municipal corporation in the State of Idaho hereinafter referred to as "City", and Evans Construction Management Company, whose address is 9560 W. Pebble Brook Lane, Garden City, Idaho 83703, the applicant for Arroyo Indio Subdivision, hereafter referred to as "Developer".

WHEREAS, the developer has applied to the City for a zone change to R-4 of the property described as attached hereto and incorporated by reference herein on Exhibit A ("Property") to develop a Residential Subdivision. The Property is currently zoned A (Agricultural). Pursuant to their discussion at the August 15, 2006 meeting the City is requiring an R-4 Zone. The Developer has also applied for a subdivision plat for the same property. The Preliminary Plat as approved by the City Council is attached hereto as Exhibit B.

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Kuna City Code.

WHEREAS, the City of Kuna and The Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, it is agreed as follows:

**ARTICLE I
LEGAL AUTHORITY**

**ARTICLE II
ZONING ORDINANCE AMENDMENT**

2.1 The City will adopt an ordinance amending the Kuna Zoning Ordinance to rezone the property to R-4. The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of the Development Agreement.

**ARTICLE III
CONDITIONS ON DEVELOPMENT**

3.1 The conditions pursuant to this conditional rezone as reflected in this Agreement are as follows:

3.1.1 Developer shall provide landscaping in the common area along Indian Creek in substantial compliance with the landscape plan attached hereto and incorporated herein as Exhibit "B".

3.1.2 Developer shall construct a ten foot (10') wide asphalt pathway along Indian Creek in substantial compliance with the landscape plan attached hereto and incorporated herein as Exhibit "B".

- 3.1.3 Developer agrees that the common area along Indian Creek and the pathway shown on the landscape plan attached hereto and incorporated herein as Exhibit "B" shall be for public use.
- 3.1.4 Developer shall provide six foot (6') tall vinyl fencing along Black Cat Road, Hubbard Road, the eastern boundary of the Property, and the southern boundary of the Property.
- 3.1.5 Developer shall comply with all staff, ACHD & Fire district recommendations.
- 3.1.6 Upon submittal of the replatting of the Life Estate require the greenbelt to continue along Indian Creek.
- 3.1.7 The life estate property shall use the existing access to Black Cat Road or take access from Pelea Drive, not both. A road barrier shall be installed at the end of Pelea Drive, if the Black Cat Road access is used.
- 3.1.8 Basketball court to be moved to Lot 28 Block 4 in phase 1. Lot 28 Block 4 to be open space, owned & maintained by the homeowners association.
- 3.1.9 Developer to work with the City Engineer to develop a plan for a regional lift station.
- 3.1.10 Create a pathway between Lot 7 & Lot 8 Block 3 and Lot 17 & Lot Lot 18 Block 3.
- 3.1.11 Provide general playground equipment to include maintenance free swings and slides approved by City staff at the proposed tot lot, shown on the Preliminary Plat as Lot 1 Block 5.
- 3.1.12 Developer to install fence abutting the site along Ardell Road to match the fence at Crimson Point Subdivision to the South.
- 3.1.13 Developer to construct a pedestrian bridge across Indian Creek to connect pathway easements to proposed Lobo & Vaquaro Streets within the pathway easements with a minimum of 20-foot wide.
- 3.1.14 Provide a 5-foot wide asphalt pedestrian walkway at the undeveloped portion of Hubbard Road to connect the greenbelt to the sidewalks on both the west and east sides of Indian Creek.
- 3.1.15 Install approved landscaped islands & stone subdivision signs at the entrances to the subdivision on Hubbard in Phase 2 (eastern entrance) & Black Cat Road in Phse 3 with approved landscaping.
- 3.1.16 Provide a 10-foot wide landscaped pedestrian easement with a 5-foot wide asphalt path to provide connection to the Indian Creek greenbelt.
- 3.1.17 Install a 6-foot wrought iron fencing along the Indian Creek greenbelt.
- 3.1.18 Designate easements as pedestrian pathways and provide 5-foot paved paths on the easements with a 4-foot solid, 2-foot6 lattice vinyl fence abutting the easements.

3.2 No change in the use or restriction specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Kuna City Code. In the event Developer changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Kuna City Code, Developer shall be in default of this Agreement.

3.3 The Arroyo Indio Subdivision shall be constructed as shown on the plan attached hereto and incorporated herein as Exhibit "B". Failure to construct the development consistent with this Agreement and the plan and conditions included as Exhibit "B" or construction in accordance with this Agreement and the plan and

conditions included as exhibits without formal modification of the plan consistent with Kuna City Code, including the amendment of this Agreement, shall result in a default of this Agreement by the Developer.

3.4 **Conditions, bonding for Completion:** All of the conditions set forth herein shall be complied with or shall be bonded for completion by the Developer before a Final Plat Approval or Occupancy Permit will be granted. Failure to comply or bond for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Kuna City Code or the terms of this Agreement shall result in a default of this Agreement by the Developer. The Developer may be allowed to bond for certain conditions at one hundred and ten percent (110%) of the estimated cost of completion pursuant to Kuna City Code.

3.5 **Commencement of Construction:** The Developer shall commence construction within 365 days of the effective date of this Agreement. In the event the Developer fails to commence construction within the time periods herein stated, the Developer shall be in default of this Agreement.

ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS

4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Kuna City Code shall be provided and is incorporated herein by reference.

ARTICLE V DEFAULT

5.1 In the event the Developer, her/his heirs or assigns or subsequent owners of the property or any other person acquiring an interest in the property, fail to faithfully comply with all of the terms and conditions included in the Agreement, this Agreement may be modified or terminated by the Kuna City Council upon compliance with the requirements of Kuna City Code. In the event City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and the Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event City Council, after compliance with the requirements of the Kuna City Code, determines that this Agreement shall be terminated, the zoning of the property shall revert to RUT Zoning. All uses of property, which are not consistent with RUT Zoning, shall cease. Nothing herein shall prevent the Developer from applying for any nature of use permit consistent with RUT Zoning. A waiver by City of Kuna for any default by the Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

5.2 **Consent to Rezone:** The Developer, by entering into the Development Agreement, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement that this Agreement shall serve as consent to a reversion of the subject property to RUT zoning as provided in Idaho Code.

ARTICLE VI UNENFORCEABLE PROVISIONS

6.1 If any term, Provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

ARTICLE VII ASSIGNMENT AND TRANSFER

7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the City and the Applicant and owners, and their respective heirs, administrators, executors,

agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided and each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

**ARTICLE VIII
GENERAL MATTERS**

8.1 **Amendments.** Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provision of Idaho Code Section 67-6509, as required by Kuna City Code, Title 5, Chapter 14.

8.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Title and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

8.3 **Choice of Law.** This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

8.4 **Notice.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Kuna: City Clerk
City of Kuna
P.O. Box 13
Kuna, Idaho 83634

Developer: Evans Construction Management Company
9560 W. Pebble Brook Lane
Garden City, Idaho 83703

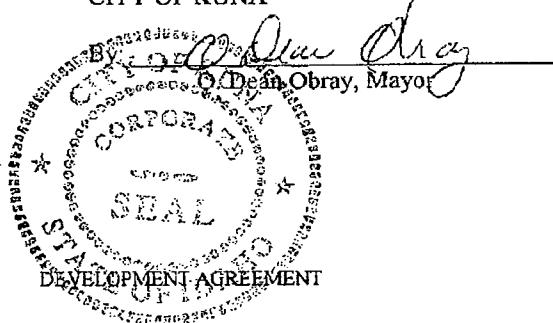
or such other address and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.5 **Effective Date.** This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this 1st day of NOV, 2006.

CITY OF KUNA



ATTEST:

Lynda Burgess
Lynda Burgess, City Clerk

sd
se

BOUNDARY LEGAL DESCRIPTION
EXHIBIT "A"

A parcel of land being the West 1/2 of the NW1/4 of Section 15, and a portion of the SE1/4 of the NE1/4 of Section 16, Township 2 North, Range 1 West, Boise Meridian, and more particularly described as follows:

BEGINNING at a 5/8 inch rebar marking the SW corner of said West 1/2 of the NW1/4 of Section 15, thence along the West line of said West 1/2 N00°03'34"E a distance of 594.84 feet to a point marking the centerline of Indian Creek;
Thence leaving said West line and along said centerline the following courses
N41°24'15"W a distance of 187.26 feet to a point;
Thence N33°03'11"W a distance of 60.98 feet to a point;
Thence N10°22'47"W a distance of 31.73 feet to a point;
Thence N19°39'38"E a distance of 182.39 feet to a point;
Thence N14°44'03"E a distance of 92.22 feet to a point;
Thence N27°05'11"E a distance of 115.97 feet to a point;
Thence N33°07'16"E a distance of 47.31 feet to a point on said West line;
Thence along said West line N00°03'34"E a distance of 979.21 feet to a 5/8 inch rebar;
Thence leaving said West line S89°56'26"E a distance of 300.00 feet to a 5/8 inch rebar;
Thence N00°03'34"E a distance of 150.00 feet to a 5/8 inch rebar;
Thence N89°56'26"W a distance of 300.00 feet to a 5/8 inch rebar marking a point on said West line;
Thence along said West line N00°03'34"E a distance of 300.00 feet to a brass cap monument marking the NW corner of said West 1/2;
Thence leaving said West line and along the North line of said West 1/2 N89°51'00"E a distance of 1323.45 feet to point marking the NE corner of said West 1/2, from which a 5/8 inch rebar witness monument bears N89°51'00"E a distance of 11.00 feet;
Thence leaving said North line and along the East line of said West 1/2 S00°00'31"W a distance of 2653.90 feet to a 5/8 inch rebar marking the SE corner of said West 1/2;
Thence leaving said East line and along the South line of said West 1/2 S89°59'26"W a distance of 1325.80 feet to the POINT OF BEGINNING:

Said parcel contains 80.94 acres more or less and is subject to all existing easements and rights-of-ways of record or implied.



*Ed M
AB*

LIFE ESTATE BOUNDARY LEGAL DESCRIPTION
EXHIBIT "B"

A parcel of land being a portion of the SE 1/4 of the NE 1/4 of Section 16 and the SW 1/4 of the NW 1/4 of Section 15, Township 2 North, Range 1 West, Boise Meridian, and more particularly described as follows:

Commencing at a 3/8 inch rebar marking the 1/4 corner common to said Section 16 and 15, thence along the line common to said Sections N00°03'34"E a distance of 594.84 feet to a point marking the centerline of Indian Creek, from which a brass cap monument marking the North corner common to said Sections bears N00°03'34"E a distance of 2055.81 feet, thence along said centerline N41°24'15"W a distance of 187.26 feet to a point, thence N33°03'11"W a distance of 31.29 feet to a point making the POINT OF BEGINNING:

Thence N33°03'11"W a distance of 29.69 feet to a point;

Thence N10°22'47"W a distance of 31.73 feet to a point;

Thence N19°39'38"E a distance of 182.39 feet to a point;

Thence N14°44'03"E a distance of 92.22 feet to a point;

Thence N27°05'11"E a distance of 67.24 feet to a point;

Thence S89°56'26"E a distance of 282.95 feet to a point;

Thence S00°03'34"W a distance of 377.00 feet to a point;

Thence N89°56'26"W a distance of 376.09 feet to the POINT OF BEGINNING.

Said parcel contains 3.03 acres more or less and is subject to all existing easements and rights-of-ways of record or implied.



PAGE 2
PHASE 3

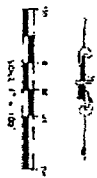
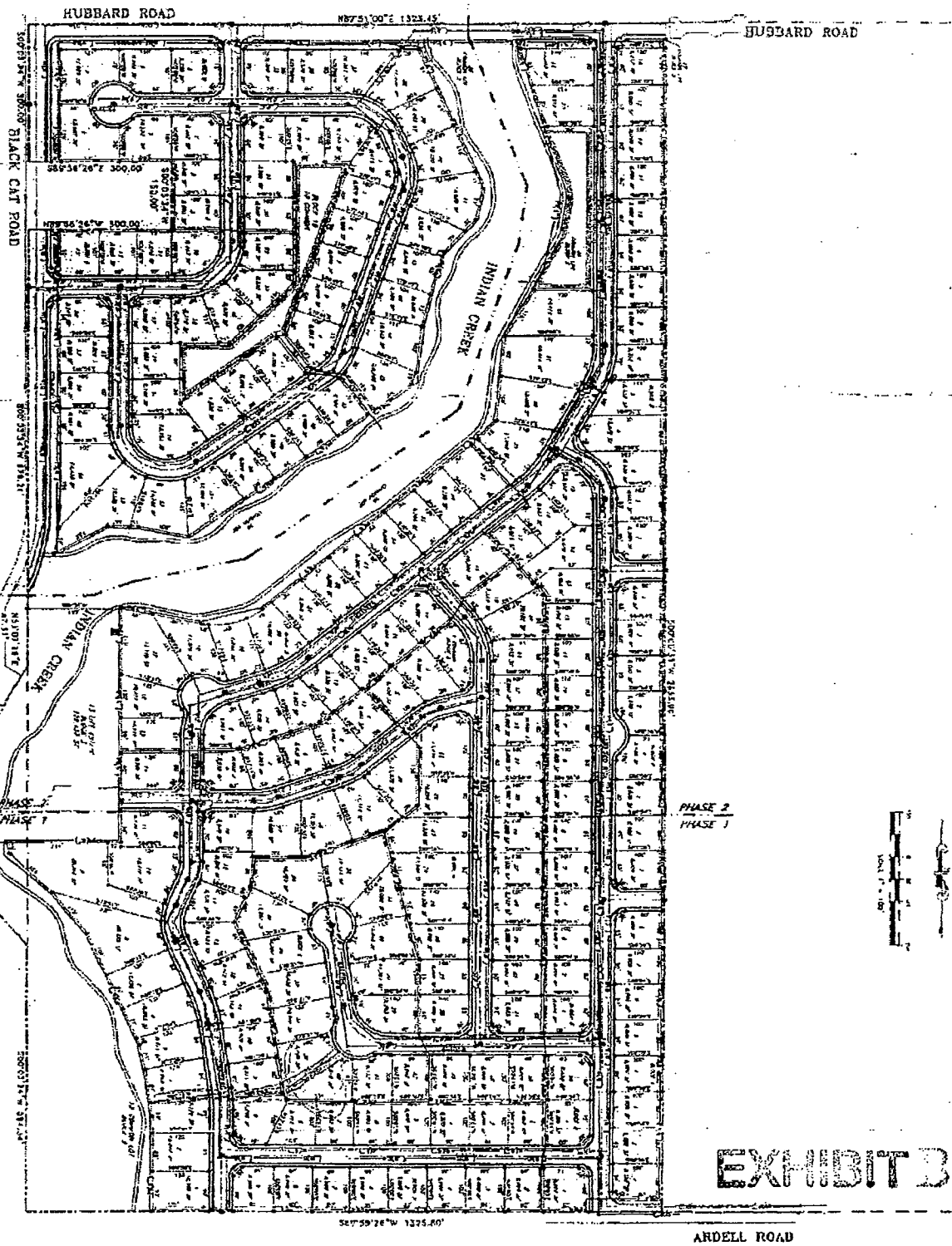


EXHIBIT B

DATE	11/14/08
DRAWN BY	DAVID ST.
DESCRIBED BY	
PROJECT NO.	08-010
PHASE	3
SCALE	AS SHOWN

ARROYO INDI SUBDIVISION
PRELIMINARY PLAN
 EVANS CONSTRUCTION MANAGEMENT CO.



PINNACI
 Engineers, Inc.
 12000 E. Grand Ave., Suite 200, Denver, CO 80231

PP-2