

200313227

RECORDED

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G NOEL HALES
CANYON COUNTY RECORDER
BY *[Signature]*

REQUEST *[Signature]*
TYPE *[Signature]* FEE *[Signature]*

INSTRUMENT NO. 200314033

Recording Requested By and
When Recorded Return to:

City Clerk.
City of Middleton
P.O. Box 487
Middleton, Idaho 83644

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the City of Middleton, a municipal corporation in the State of Idaho (hereinafter referred to as "City"), and applicant Providence Development Group, LLC, an Idaho limited liability company, whose address is 701 S. Allen Street, Suite 103; Meridian, Idaho 83642 (hereafter referred to as "Developer").

RECITALS

WHEREAS, Developer has applied to the City for a rezone to R-2 of the property more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Property").

WHEREAS, the City, pursuant to 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 Middleton City Code.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the recitals above, which are incorporated below, the parties agree as follows:

**ARTICLE I
LEGAL AUTHORITY**

1.1 This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Middleton City Code, Title 5, Chapter 7.

**ARTICLE II
ZONING ORDINANCE AMENDMENT**

2.1 The City will adopt an ordinance amending the Middleton Zoning Ordinance to rezone the property to R-2. The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Agreement.

**ARTICLE III
CONDITIONS ON DEVELOPMENT**

3.1 Applicant will develop the Property subject to the conditions and limitations set forth in this Development Agreement. Further, Applicant will submit such applications regarding flood plain development permit review, design review, preliminary and final plat reviews, and/or any conditional use permits, if applicable, and any other applicable applications as may be required by the City of Middleton.

3.2 The development shall comply with the Middleton Comprehensive Plan and City Code, as they exist in final form at the time the Development Application was submitted, except as otherwise provided in this Agreement. Unless greater requirements are established by set Middleton Comprehensive Plan and City Code, the following conditions shall be satisfied:

3.2.1 The total residential units to be developed south of the proposed alternate route shall not exceed 299 units.

3.2.1.1 A reduction in the minimum allowable lot sizes as outlined in MCC 5-2-4 Table 2 of up to 10% of the minimum allowable lot sizes allowing for a minimum lot size of 6,300 square feet.

3.2.1.2 A reduction in the minimum allowable set backs as outlined in MCC 5-2-4 Table 2 as follows:

Front living area setback	15 ft from front property line
Garage setback	20 ft from front property line
Side yard setback	5 ft from each side yard property line
Rear setback	20 ft from the rear yard property line
Corner lot side setback	20 ft from side yard property line

3.2.2 All development within the Property shall be substantially consistent with the Preliminary Plat attached hereto as **Exhibit B** attached hereto and incorporated herein.

3.2.3 A public easement for a greenbelt pathway along Mill Slough at the north and west of the Property shall be provided as required by the Middleton Comprehensive Plan. The specific design and landscape of the pathway shall be approved by the City Council prior to the City Engineer signing the final plat for the Property.

- 3.2.4 The development shall include 10.54% of the gross area that must be set aside for open space and shall conform to MCC 6-3-7 (D) and 6-5-3-1-7 as to shape, use and method of calculation.
- 3.2.5 A minimum of two emergency access points to the Boise River for the use of repair and rescue equipment and personnel shall be provided at appropriate intervals along the river. The general location of the access points shall be as provided on the Preliminary Plat attached hereto as **Exhibit B**.
- 3.2.6 The City of Middleton approvals shall be subject to any FEMA requirements regarding any revised study of the Boise River floodplain.
- 3.2.7 No portion of Lots 3 and 4, Block 4 (as provided on the Preliminary Plat attached hereto as **Exhibit B**) of the proposed development shall be used to calculate any minimum open space requirements on the remainder of the Property.
- 3.2.7.1 Lot 3 and 4, Block 4 shall be allowed under this Development Agreement, to apply for all allowed or conditionally allowed uses under the R-1, R-2, R-3, and C-1 zoning districts. Any uses not listed in MCC 5-2-4 Table 1 as "permitted" in the underlying R-2 zone shall follow the Conditional Use Permit procedure, except the following uses which will not be permitted: adult business; agricultural; road side stand; auto sales, minor repair, vehicle storage or vehicle rent; heavy equipment rental and sales; mortuary; tire shop, including recapping; travel trailer or RV park; machine shop; or cemetery.
- 3.2.8 No portion of the proposed alternate route shall be used to calculate any minimum open space requirements.
- 3.2.9 Dedication and/or purchase of the right-of-way for the proposed alternate route shall be covered in a separate agreement, including a timetable for development.
- 3.2.10 If the proposed alternate route is not dedicated or purchased, or constructed within the timetable of the separate agreement as provided in Section 3.2.9, the total residential units to be developed in the alternate route area shall not exceed 48 units.
- 3.2.11 In the event the right-of-way set aside for the proposed future alternate route is not used for that purpose, Developer shall be allowed to develop a maximum of 48 residential lots permitted on that property. The remainder of that property shall be open space to offset the loss of the alternate route

amenity. That open space shall be landscaped and maintained as approved by Middleton City Council.

3.2.12 Developer shall provide a common area lot on the project, identified on the Preliminary Plat attached hereto as **Exhibit B**, Lot 1, Block 12, for the purpose of providing a well for city water services. The City of Middleton shall provide a location and building structure to enclose the well, which will be compatible with the overall development and construction of the Property. The City of Middleton shall further be required to provide landscape screening around the well structure so as to minimize the visual impact on the surrounding neighbors. Developer shall be provided a right to reasonably review and approve the location of the well on the Lot 1, Block 12, the architectural structure of the building, and the landscape screening.

3.3 In the event the property is subdivided, Developer shall file a plat with the City and all improvements as set forth in Title 6, Chapter 4, shall be completed in accordance with the subdivision ordinance.

3.4 Developer agrees that all development will require a complete set of plans and shall include (MCC § 5-3-7):

- a. Site plan including street, curb and gutter, sidewalk and site lighting;
- b. Landscape plan, including access, egress and parking;
- c. Foundation plan;
- d. Underground utility layout including water, sanitary sewer, storm drainage, irrigation and fire protection;
- e. Any other required improvements set forth as conditions of approval;
- f. Soils report, including bearing values, soils profile ground water table and/or as requested by the City Engineer or Building Official;
- g. Copy of any local, district, state and federal environmental approvals necessary for commercial/industrial use;
- h. Review and approval by the City Council of site, utility and landscape plans in formal session before a building permit is issued.

Failure to construct the proposed development consistent with the Middleton City Code and this Agreement, and any amendments hereto, shall result in a default of this Agreement by Developer.

3.5 Conditions, bonding for Completion. All of the conditions set forth herein shall be complied with or shall be bonded for completion by Developer before signature of the Final Plat or Certificate of Occupancy 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 Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by Developer. Developer may be allowed to bond for certain conditions at one hundred and ten percent (110%) of the estimated cost of completion pursuant to Middleton City Code.

3.6 Commencement of Construction. Developer shall commence construction within two (2) years of the effective date of this Agreement. In the event Developer fails to commence construction within the time periods herein stated, Developer shall be in default of this Agreement.

3.7 Property Boundary Dispute. The City and Developer acknowledge an alleged boundary dispute has been raised by Doug Gabica, owner of property adjacent to the proposed development. At the time of execution of this Agreement, no formal action has been taken by Mr. Gabica with respect to the dispute. Developer has agreed to designate, as common area, that portion of the Property involved in the potential dispute with Mr. Gabica ("Disputed Property"). In the event the Disputed Property remains part of the Property, Developer agrees to either designate the Disputed Property as a greenbelt or include the Disputed Property as part of the adjacent residential lots within the proposed development.

ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS

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

ARTICLE V DEFAULT

5.1 In the event 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 Middleton City Council upon compliance with the requirements of Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the property shall revert to R-1 Zoning. All uses of property, which are not consistent with R-1 zoning shall cease. Nothing herein shall prevent Developer from applying for any nature of use permit consistent with R-1 zoning. A waiver by the City of any default by 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. Developer, by entering into the 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 R-1 zoning as provided in the Idaho Code.

5.3 Remedies. Upon a breach of this Agreement, any of the parties in any court of competent jurisdiction, by action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance. Before any failure of any party to this Agreement to perform its obligations under this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party within thirty (30) days of the receipt of such notice.

ARTICLE VI UNENFORCEABLE PROVISIONS

6.1 If any term, provision, commitment or restriction of this 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 Agreement shall be recorded in the office of the County Recorder at the expense of Developer. 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 Agreement shall be binding on the City and Developer, 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 Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code, Title 5, Chapter 7.

8.2 Paragraph Headings. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this 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 Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

8.4 Notices. 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.

Middleton: City Clerk
City of Middleton
P.O. Box 487
Middleton, Idaho 83644

Developer: Providence Development Group, LLC
701 S. Allen Street, Suite 103
Meridian, Idaho 83642
Attn: Barry Teppola

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 Attorneys' Fees and Costs. If either party shall default under this Development Agreement and said default is cured with the assistance of an attorney for the other party, as a part of curing said default, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event a suit or action is filed by either party against the other to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including attorneys' fees incurred therein, including the same with respect to an appeal.

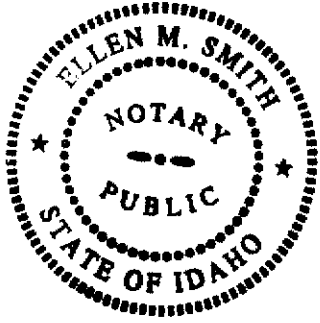
8.6 Effective Date. This Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Agreement.

8.7 Effect of Agreement. This Agreement shall become valid and binding only upon its approval by the City Council and execution of the Mayor and City Clerk. This Agreement shall be binding upon the parties to it, their respective grantees, successors, assigns or lessees.

STATE OF IDAHO)
)ss
County of Canyon)

On this 3 day of March, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared FRANK MCKEEVER, known or identified to me to be the Mayor of the CITY OF MIDDLETON, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

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



Ellen M. Smith
Notary Public for Idaho
Residing at New Plymouth
My commission expires: 4-16-08

EXHIBIT A



Project No. 4-0121300

July 22, 2002

MIDDLETON LAKES SUBDIVISION

A parcel of land located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, and Government Lots 2 and 3 and accretion lands thereto, of Section 7, T.4N., R.2W., B.M., Canyon County, Idaho, more particularly described as follows: Commencing at the corner common to Sections 8, 17, 18 and the said Section 7; Thence North $00^{\circ}39'27''$ East, 2640.12 feet to the $\frac{1}{4}$ corner common to said Section 7 and 8; thence North $89^{\circ}48'45''$ West, 1319.37 feet to the C-E $\frac{1}{16}$ corner of said Section 7 and the **REAL POINT OF BEGINNING;**

Thence along the East boundary of said Government Lot 2 South $1^{\circ}18'48''$ West, 1014.90 feet;

thence North $45^{\circ}11'41''$ West, 118.82 feet;

thence North $60^{\circ}53'42''$ West, 97.81 feet;

thence North $70^{\circ}24'57''$ West, 102.04 feet;

thence North $86^{\circ}12'53''$ West, 111.72 feet;

thence South $86^{\circ}30'51''$ West, 116.37 feet;

thence South $78^{\circ}29'09''$ West, 80.36 feet;

thence South $69^{\circ}09'57''$ West, 426.48 feet;

thence South $70^{\circ}46'28''$ West, 466.67 feet;

thence South $75^{\circ}56'09''$ West, 170.72 feet;

thence South $81^{\circ}53'10''$ West, 358.92 feet;

thence South $75^{\circ}00'11''$ West, 129.39 feet;

thence South $67^{\circ}09'54''$ West, 55.11 feet;

thence South $54^{\circ}31'32''$ West, 180.68 feet;

thence South $49^{\circ}17'30''$ West, 549.55 feet to a point in a North-South fence line;

thence along said fence line North $1^{\circ}40'27''$ East, 1771.08 feet to a point in the Mill Slough;

thence along the center of the Mill Slough North $50^{\circ}19'25''$ East, 1008.71 feet;

thence 214.90 feet along the arc of a curve to the right, having a radius of 309.02 feet, a central angle of $39^{\circ}50'45''$ and a long chord bearing North $70^{\circ}14'47''$ East, 210.60 feet;

thence South $89^{\circ}49'53''$ East, 457.01 feet;

thence 181.80 feet along the arc of a curve to the left, having a radius of 175.52 feet, a central angle of $59^{\circ}20'43''$ and a long chord bearing North $60^{\circ}29'49''$ East, 173.78 feet;

thence North $30^{\circ}49'31''$ East, 204.74 feet;

thence 273.06 feet along the arc of a curve to the right, having a radius of 265.42 feet, a central angle of $58^{\circ}56'45''$ and a long chord bearing North $60^{\circ}17'54''$ East, 261.18 feet;

thence North $89^{\circ}46'17''$ East, 741.37 feet to a point on the East boundary of the SW1/4 of the NE1/4 of said Section 7;

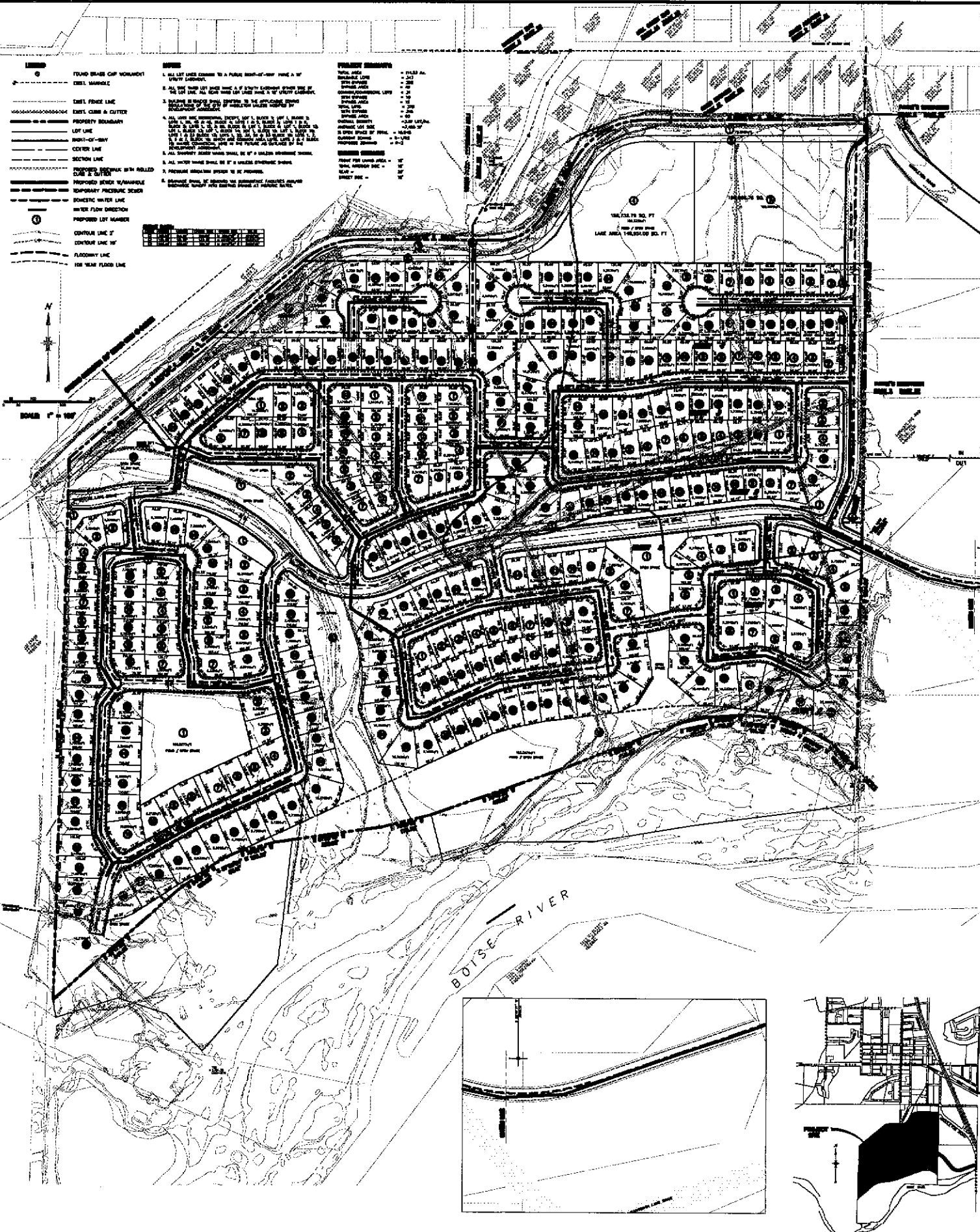
thence along said boundary South $00^{\circ}39'15''$ West, 1097.50 feet to the Point of Beginning. Containing 114.86 acres, more or less.

Prepared by:
Hubble Engineering, Inc.



D. Terry Peugh, P.L.S.

EXHIBIT B



- SYMBOLS**
- FOUND GRADE OF WORKSHEET
 - DEEL MARKING
 - EXIST. FENCE LINE
 - EXIST. CURB & GUTTER
 - PROPERTY BOUNDARY
 - LOT LINE
 - RIGHT-OF-WAY
 - CEYER LINE
 - SECTION LINE
 - PROPOSED DRIVE WITH FILLLED
 - EXIST. DRIVE
 - PROPOSED DRIVE (UNFILLABLE)
 - EXISTING DRIVE
 - DOMESTIC WATER LINE
 - WATER FLOW DIRECTION
 - PROPOSED LOT NUMBER
 - CONTOUR LINE 2'
 - CONTOUR LINE 10'
 - FLOODING LINE
 - 100 YEAR FLOOD LINE

- NOTES**
1. ALL LOT LINES EXCEPT TO A PUBLIC RIGHT-OF-WAY SHALL BE 10' WIDE.
 2. ALL THE TRACTS AND LOTS SHALL BE 10' WIDE EXCEPT WHERE SHOWN OTHERWISE.
 3. ALL LOTS ARE TO BE 10' WIDE EXCEPT WHERE SHOWN OTHERWISE.
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 9. ALL LOTS ARE TO BE 10' WIDE EXCEPT WHERE SHOWN OTHERWISE.
 10. ALL LOTS ARE TO BE 10' WIDE EXCEPT WHERE SHOWN OTHERWISE.

- PROPOSED DRIVE**
- 10' WIDE
 - 12' WIDE
 - 14' WIDE
 - 16' WIDE
 - 18' WIDE
 - 20' WIDE
 - 22' WIDE
 - 24' WIDE
 - 26' WIDE
 - 28' WIDE
 - 30' WIDE
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 - 96' WIDE
 - 98' WIDE
 - 100' WIDE

- PROPOSED DRIVE**
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 - 96' WIDE
 - 98' WIDE
 - 100' WIDE

<p>HYDRA ENGINEERING, INC. ENGINEERING - SURVEYING - PLANNING</p> <p>701 E. ALLEN ST. SUITE 102 MIDWORTH, IDAHO 83647 (208) 322-8922</p>	<p>PROVIDENCE DEVELOPMENT GROUP, LLC 701 E. ALLEN ST. SUITE 102 MIDWORTH, IDAHO 83647 (208) 322-8922</p>	<p>MASTER PLAN MIDDLETON LAKES PLANNED COMMUNITY</p>	<p>PRELIMINARY PLAN LOCATED IN THE SW 1/4, SECTION 7, T.4N., R.2W., MIDDLETON, IDAHO JULY 2002</p> <p>JOB NO. 4-01-213 SHEET NO. 1</p>
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200314033

RECORDED

2003 MAR 10 PM 1 30

6 PAGE FILES
CANYON COUNTY RECORDER

BY *John M. Kane*

REQUEST *City of Madras*

TYPE *Best Fee*