



# Application for Conditional Use Permit

City of Nampa, Idaho

This application must be filled out in detail and submitted to the office of the Planning Director for the City of Nampa, Idaho, accompanied by the appropriate fee of \$234.00 (1 acre or less) or \$463.00 (more than 1 acre).

Name of Applicant/Representative: PROVISION DEVELOPMENT Group LLC / JERRY GUNSTREAM Phone: 208-870-4584  
Address: 1123 12th AVE Rd #415 City: Nampa State: ID Zip Code: 83686  
Applicant's interest in property: (circle one) Own Rent Other BUYER OF PROPERTY  
Owner Name: DAVID & ELIZABETH FETZER Phone: -  
Address: 3210 S. KOKOMO DR City: NAMPA State: ID Zip Code: 83686

Address of subject property: TBD - UNDEVELOPED 2.97 acres WEST of 12th ON GREENHURST

Is a copy of one of the following attached? (circle one) Warranty Deed Proof Of Option Earnest Money Agreement

**Subject Property Information**  
(Please provide the following REQUIRED DOCUMENTATION to complete the CUP):

- Original Legal description of property AND a legible WORD formatted document. (Must have for final recording)  
Old or illegible title documents will need to be retyped in a WORD formatted document
- OR, Subdivision \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_

A sketch drawing of the site and any adjacent property affected, showing all existing and proposed locations of streets, easements, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped areas, preliminary or final building plans and building elevations, together with any other information considered pertinent to the determination of this matter.

**Project Description**

State (or attach a letter stating) the reason for the proposed Conditional Use Permit: SEE ATTACHED

Length of time requested for the Conditional Use Permit: \_\_\_\_\_ Months and/or PERMANENT Years.

Date conditional use is expected to begin after permit is granted: 10 / 1 / 2016  
Please note: Conditional use permits expire if not used within six (6) months after granting.

Dated this 16th day of MAY, 2016

  
Signature of applicant

**Notice to Applicant**

This application will be referred to the Nampa Planning Commission for its consideration. The Planning Commission shall hold a public hearing on the application and it shall be granted or denied. Notice of public hearing must be published in the Idaho Press-Tribune 15 days prior to said hearing. Notice shall also be posted on the premises not less than 1 week prior to the hearing. Hearing notices will also be mailed to property owners or purchasers of record within 300 feet of the subject property. You will be given notice of the public hearing and should be present to answer any questions.

If a Conditional Use Permit is granted by the Planning Commission it shall not become effective until after an elapsed period of 15 days from the date of Planning Commission action. During this time any interested person may appeal the action to the City Council. You will be notified of any pending appeals.

If the conditional use permit is denied by the Planning Commission, you may appeal the decision to the City Council within 15 days from the date such action is taken by the Planning Commission. At the time the Conditional use permit becomes effective you will be sent a document which constitutes an official "Conditional Use Permit". This document will enumerate the conditions attached to the issuance of the permit and state the consequences of failure to comply.

**For Office Use Only:**  
File Number: CUP 32 -2016 Project Name: Greenhurst Village Project

## **MEMORANDUM**

**DATE: May 17, 2016**  
**TO: Nampa Planning & Zoning Commission**  
**FROM: ProVison Development Group LLC/Jerry Gunstream**  
**SUBJECT: CUP – Project Description for Greenhurst Village**

ProVison Development Group is seeking approval of a Conditional Use Permit to develop a 2.97 acre site on W. Greenhurst Road with an upscale townhome community for active adults age 55 and older. The current zoning of RS6 requires a CUP for townhomes. If the CUP is approved, applicant will proceed to obtain all other necessary approvals including a Subdivision Plat.

Based on a lot size of at least 6,000 square feet for each building, we have created a very preliminary concept plan that illustrates a total of 13 buildings for 26 living units. These homes will be smaller in size, between 1,250 to 1,500 square feet, but with high quality design characteristics and quality materials both inside and out. The homes will be one and two story in height, a minimum of two-bedrooms and two-bathrooms, and either a two car or oversized one car garage. Boise Architect Robin Gates will be the project architect. Floorplans and building designs have not yet been drawn for this project, but some photographs of two of her townhome projects in Boise are attached.

A perimeter 6' fence will be installed on all sides of the property. The 400' of frontage along Greenhurst Road will be improved with curb, gutter and sidewalk and an elevated 4' grassed berm with mature trees and shrubs. All landscaped areas within the project, including the frontage, will be maintained through very strict CC&R's and a Homeowners Association.

The property is adjacent to residential homes, a commercial assisted living and rehabilitation facility, and across the street from South Middle School. The location is ideal for the targeted homeowner because of its central location and the fact that it is within walking distance of Walmart, Walgreens, and Albertsons and less than one-half mile of additional services that include eating establishments, medical facilities, and the Nampa Recreation and Senior Center.

### **ENCLOSURES:**

- CUP Application**
- Affidavit of Legal Interest**
- Purchase and Sale Agreement**
- Legal Description**
- Plat Map**
- Sample Building Design Photographs**
- Aerial Image**
- Concept Drawing**



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between ProVision Development Group, an Idaho Limited Liability Company, its nominee or assigns ("Purchaser"), and David A. and Elizabeth Fetzer ("Seller"). Purchaser and Seller are sometimes referred to herein as a "Party" or the "Parties".

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.1 "Property" means:

(a) The real property consisting of approximately 2.97 acres and more particularly described on Exhibit "A" and Exhibit "A-1" attached hereto and incorporated herein by reference, together with any and all improvements thereon and appurtenances thereto ("Land"); and

(b) Any tangible and intangible personal property associated with the ownership, operation and maintenance of the Land including without limitation:

(i) Any improvements located thereon and all maps, plans, specifications and other such documents prepared in connection with the development, construction or operation of such improvements;

(ii) Any all rights and appurtenances belonging or pertaining thereto;

(iii) Warranties, guarantees and other assurances of performance;

(iv) All rights, title and interests of Seller in and to any easements, leases ("Leases"), rights-of-way, rights of ingress or egress or other interests in, on or to any land, highway, street, road or avenue, open or proposed, in, on, in front of, abutting, adjoining or benefiting the Land and improvements;

(v) All irrigation and water rights associated with the property including but not limited to, any membership or stock in any water or irrigation association company; and

(vi) All right, title and interests of Seller in and to all applications, licenses, permits, plats, plans, governmental approvals, soils and engineering reports, reimbursements for costs or fees paid relating to the Land, development fees, development fee waivers or other entitlements from any applicable governmental authority relating to the Land, utility service commitments or allocations, and any other rights and benefits relating to the development of the Land.

1.2 "Escrow Holder" means Pioneer Title Company.

1.3 "Title Insurer" means Escrow Holder and an affiliate of Title Insurer authorized to issue title insurance policies in the county in which the Property is located.

1.4 "Effective Date" means the date on which an original of this Agreement has been signed by and delivered to both Purchaser and Seller.

1.5 "Closing" means such time as Escrow Holder is in receipt of all Closing Documents (as defined in Section 9 below) and is able and prepared to comply with Seller's and Purchaser's Closing instructions. Closing shall occur as set forth in Section 6 below, unless otherwise agreed to in writing by each party hereto.

2. Purchase and Sale. Purchaser agrees to purchase from Seller and Seller agrees to sell to Purchaser fee simple title to all of Seller's right, title, and interest in and to the Property, on the terms and conditions set forth in this Agreement.

3. Purchase Price and Earnest Money.

3.1 Purchase Price: Purchaser shall pay Seller for the Property, an amount of Two Hundred Eighty-Four Thousand Dollars (\$284,000).

3.2 Earnest Money. With the complete execution of this Agreement, payment of Three Thousand Dollars (\$3,000.00) ("Earnest Money") shall be paid into the trust account of Escrow Holder.

3.3 Refund of Earnest Money. Notwithstanding any other provision hereunder, in the event this Agreement is terminated for any reason other than Purchaser's default hereunder, Escrow Holder shall promptly refund the Earnest Money to Purchaser without further instruction from any party hereto.



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4. Title Matters.

4.1 Seller's Title. At Closing, Seller's title in the Land shall be free of liens, encumbrances, easements or defects, subject only to such exceptions to title as are acceptable to Purchaser pursuant to this Section 4 ("Permitted Exceptions").

4.2 Commitment. On or before fifteen (15) business days following the Effective Date, Purchaser shall request Title Insurer to prepare and provide to Purchaser a title commitment ("Commitment") for an ALTA owner's extended coverage title policy with respect to the Land, insuring fee simple title in the Land in Purchaser or its nominee, subject only to the Permitted Exceptions, together with any endorsements requested by Purchaser, and all exception and requirement documents identified in the Commitment ("Title Policy").

4.3 Survey. On or before twenty (20) business days following the Effective Date, Purchaser will obtain a new ALTA land title survey of the Land prepared by a surveyor licensed in the state in which the Land is located, showing the special exceptions to the Commitment ("Updated Survey"). The form and content of the Updated Survey shall be subject to the approval of Purchaser. Seller shall deliver to Purchaser any existing survey of the Land currently in Seller's possession on or before twenty (20) business days following the Effective Date.

4.4 Objection Notice. On or before twenty (20) days following the later of (i) the date of receipt of the Commitment, with legible copies of all exceptions to title identified in the Commitment, and (ii) the Updated Survey, Purchaser may notify Seller of any title matters to which Purchaser objects in its sole discretion ("Purchaser's Objection Notice"). On or before ten (10) days following the date of Seller's receipt of Purchaser's Objection Notice ("Cure Notice Deadline"), Seller may notify Purchaser whether Seller will cure the title matters to which Purchaser objected in Purchaser's Objection Notice. If Seller states that Seller will cure any of the title matters objected to by Purchaser, Seller shall cure such title matters on or before Closing and the cure of such title matters shall become a Condition to Close (as defined in Section 6 below). If Seller does not timely provide notice to Purchaser about Seller's intent to cure such title matters, Seller shall be deemed to have declined to cure the title matters objected to by Purchaser. On or before ten (10) days following the Cure Notice Deadline, Purchaser shall notify Seller whether it accepts or rejects those title matters that Seller has declined to cure. In the event that Purchaser notifies Seller that Purchaser rejects those title matters that Seller has declined to cure, then this Agreement shall terminate. In the event that Purchaser notifies Seller that Purchaser accepts such title matters, such title matters shall be deemed to be the Permitted Exceptions. If Purchaser does not timely provide Seller with notice that Purchaser accepts or rejects those title matters that Seller has declined to cure, Purchaser shall be deemed to have rejected all title matters objected to by Purchaser that Seller will not cure and this Agreement shall terminate.

4.5 Entitlement Proceedings. Prior to Closing Purchaser may elect to initiate entitlement proceedings with appropriate governmental authorities, which may include, but not by way of limitation, subdivision or lot line adjustments, filing applications for conditional use permits or re-zoning, filing of development plans or other similar proceedings ("Entitlement Proceedings"). Seller agrees to take any action reasonably requested by Purchaser to commence and prosecute the Entitlement Proceedings. No Entitlement Proceeding shall be completed by Purchaser prior to the date of Closing, without the express written consent of Seller. All costs related to the Entitlement Proceedings shall be paid by Purchaser.

5. Due Diligence.

5.1 Receipt of Due Diligence Documents. On or before fifteen (15) business days following the Effective Date, Seller shall deliver to Purchaser the Due Diligence Documents listed on Exhibit "B," in Seller's or Seller's agents' possession or control or reasonably obtainable by Seller or Seller's agents. During the Due Diligence Period, Seller shall deliver to Purchaser any additional items reasonably requested by Purchaser.

5.2 Due Diligence Review. For a period of one hundred twenty (120) days ("Due Diligence Period") following Purchaser's receipt from Seller of the Due Diligence Documents ("as further defined in this section below"), Purchaser, at its sole expense, shall conduct its due diligence review of the Property ("Due Diligence Review"). The Due Diligence Review may include, in Purchaser's sole discretion, studies, inspections and tests of the Property, including the soil and water and all environmental and physical conditions of the Property. Purchaser may also inspect all surveys, reports, records, and files relating to the Property, including without limitation the documents listed on Exhibit "B," attached hereto



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and incorporated herein by reference (the "Due Diligence Documents"), and all other matters affecting the feasibility of the Property for Purchaser's intended purpose.

5.3 License to Enter. Seller hereby grants to Purchaser a license to enter onto the Property and agrees to cooperate in allowing access to the Property for the purposes of this Section 5. Seller represents and warrants that Seller has the right and authority to grant Purchaser such license. Purchaser shall indemnify, defend, and hold Seller and the Property harmless from and against physical damage to the Property directly caused by Purchaser in connection with its entry on or about the Property pursuant to this Section 5, excepting any such physical damage resulting from Seller's or Seller's agents' misrepresentation, breach of warranty, conditions existing on the Property, whether known or unknown, or Seller's or Seller's agent's own misconduct or negligence. Purchaser shall promptly repair and restore any damage for which it indemnifies Seller under this Section 5.3.

5.4 Due Diligence Review Approval/Disapproval. Notwithstanding any other provision hereunder, prior to the expiration of the Due Diligence Period, Purchaser, in its sole discretion, may disapprove the Due Diligence Review and terminate this Agreement for any reason whatsoever. On or before the expiration of the Due Diligence Period, Purchaser may notify Seller of its approval or disapproval of the Due Diligence Review. If Purchaser notifies Seller of its disapproval of the Due Diligence Review, this Agreement shall terminate. If Purchaser does not notify Seller of its approval or disapproval, Purchaser shall be deemed to have disapproved the Due Diligence Review and this Agreement shall terminate.

6. Closing.

6.1 Purchaser's Conditions to Close. The conditions precedent to Closing ("Purchaser's Conditions to Close") set forth in this Section 6.1 must each be fully satisfied or waived in writing by Purchaser in its sole discretion before Purchaser is obligated to purchase the Property. Purchaser's Conditions to Close are for Purchaser's sole benefit and may be waived only by Purchaser. All of Purchaser's Conditions to Close must be satisfied as of Closing and any earlier date as provided in this Section 6.1; provided, that if any of Purchaser's Conditions to Close is unsatisfied on the date of Closing or such earlier date, Purchaser may waive such remaining Purchaser's Condition to Close in writing and proceed to Closing. In the case that this Agreement is terminated, Escrow Holder shall promptly refund the Earnest Money to Purchaser, all without further instruction from any party hereto. The provisions of this Section 6.1, with respect to refund of the Earnest Money, shall survive the termination of this Agreement. Purchaser's Conditions to Close are as follows:

(a) There is no material adverse change in the physical or environmental condition of the Property between the date of expiration of the Due Diligence Period and the date of Closing;

(b) Title Insurer is prepared to issue the Title Policy subject only to the Permitted Exceptions;

(c) Seller delivering to Escrow Holder a duly executed, acknowledged, and recordable general warranty deed ("Warranty Deed"), conveying fee simple title in the Land to Purchaser, subject only to the Permitted Exceptions;

(d) Escrow Holder's receipt of fully executed originals of all other Closing Documents (as defined in Section 9 below);

(e) Receipt of all federal, state, county and city permits, approvals and licenses necessary for Purchaser's intended development of the Property including any zoning changes, site plan approvals, variances or platting required, subdivision, special or conditional use permits. This shall be deemed to include confirmation of the availability to the Property at reasonable expense of water, sewer, gas, power, telephone, cable and all other necessary utilities, but does not include the building permits required for construction of the proposed development. Purchaser shall be responsible for costs and processes associated with subdivision and or administrative lot line adjustments based on City or County requirements;

(f) Purchasers receipt of an appraisal of the Property in an amount acceptable to Purchaser; and

(g) Purchasers verification that the intended project can be developed within budget.

6.2 Date of Closing. Except as otherwise provided hereunder, Closing shall occur on or before thirty (30) days following expiration of the Due Diligence Period. Purchaser may elect to extend the date of Closing for an additional thirty (30) days upon delivery of written notice to Seller three (3) business days prior to the scheduled date of Closing.



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6.3 Possession. Possession of the Property shall be delivered by Seller to Purchaser as of Closing.

6.4 Risk of Loss. Except as expressly provided herein, prior to Closing, Seller shall bear the risk of loss to the Property.

7. Prorations.

7.1 Real Estate Taxes and Assessments. At or prior to the Closing, Seller shall pay in full all real estate taxes and assessments due and payable as of the date of Closing. Real estate taxes and installments of assessments due and payable for the year of Closing shall be prorated as of the date of Closing, computed on the basis of the last available tax rate and valuation as shown on the tax duplicate; provided, that in the case that Purchaser, in its sole discretion, determines that the last available tax rate and valuation is an inadequate basis for such computation, Purchaser and Seller shall prorate taxes and assessments on the basis of a reasonable estimate and shall enter into an agreement at Closing to adjust the proration between the parties after Closing when the actual amount of taxes and assessments for the prorated period is established.

7.2 Utilities. At or prior to the Closing, Seller shall pay in full all water, electricity, gas, and other utility payments or charges due and payable as of the date of Closing. Water, electricity, gas, and other utility payments or charges due and payable after the date of Closing shall be prorated as of the Closing Date, computed on the basis of the last available statements; provided, that water, electricity, gas, or other utility payments or charges shall not be prorated if readings can be made on the date of Closing by the applicable utility company.

7.3 Deposits. Purchaser shall be credited through escrow with the amount of any refundable or non-refundable deposits held with respect to any Leases on the Property by Seller or on behalf of Seller.

7.4 Other Income and Expenses. All other income and/or expenses associated with the Property shall be prorated or adjusted through escrow.

7.5 Indemnity for Seller. Purchaser shall assume and pay all debts, charges, claims, damages, and liabilities relating to the Property vested, accruing and/or arising after Closing and shall hold Seller harmless therefrom and indemnify and defend Seller against same, except liabilities expressly retained in writing by Seller.

7.6 Indemnity for Purchaser. Seller shall assume and pay all debts, charges, claims, damages, and liabilities relating to the Property vesting, accruing and/or arising prior to Closing, and shall hold Purchaser harmless therefrom and indemnify and defend Purchaser against same, except liabilities expressly disclosed to and assumed in writing by Purchaser.

8. Closing Costs.

8.1 Seller's Closing Costs. Seller shall pay:  
(a) one-half of Escrow Holder's fee;  
(b) the premium for the Title Policy;  
(c) the cost of the Updated Survey;  
(d) all interest, prepayment fees and defeasance costs incurred as the result of Seller paying any loan secured by the Property or any existing liens encumbering the Property at Closing;  
(e) Seller's prorations as set forth in Section 7 above;  
(f) recording fees for sale documents;  
(g) any excise, transfer, sales, use or similar taxes resulting from the conveyance of the Property, or any portion thereof;  
(h) real estate commissions and finder's fees as Seller has agreed herein to pay, if any; and

(i) Seller's legal counsel fees.  
8.2 Purchaser's Closing Costs. Purchaser shall pay:  
(a) one-half of Escrow Holder's fee;  
(b) Purchaser's prorations as set forth in Section 7 above;  
(c) the additional extended coverage portion of the Title Policy, if requested, together with endorsements requested by Purchaser; and  
(d) Purchaser's legal counsel fees.

8.3 Other Closing Costs. Any other costs of Closing not specifically provided for herein shall be divided evenly between Seller and Purchaser.



9. Closing Documents. On or before the date of Closing, Seller and Purchaser shall deposit with Escrow Holder fully executed originals of the following documents ("Closing Documents"), conforming to the terms and conditions of this Agreement:

(a) A duly executed, acknowledged, and recordable Warranty Deed;  
(b) Any transfer, excise tax, sales/use tax returns, and any affidavit or certificate required by the state in which the Land is located to be filed in connection with the conveyance of the Property;

(c) Purchaser's Closing instructions;  
(d) Seller's Closing instructions; and  
(e) Any other documents or instruments reasonably required to consummate the transaction contemplated hereunder.

10. Seller's Obligations Pending Closing. From the Effective Date until the date of Closing as long as this Agreement is in effect, Seller shall (a) maintain the Property in good order and condition, subject to normal wear and tear; (b) not enter into any agreements affecting the Property without prior disclosure to Purchaser of the parties to and the terms and conditions of such agreements and Purchaser's written consent thereof, which consent may be withheld in Purchaser's sole discretion if Purchaser has approved its Due Diligence Review; or (c) not sell, assign, or convey any right, title, or interest in the Property to any third party without Purchaser's written approval or permit any lien, encumbrance, or charge thereon without discharging the same prior to Closing.

11. Default.

11.1 Seller's Default.

(a) Notwithstanding any provision otherwise provided in this Agreement to the contrary, upon Seller's uncured default or breach of any terms or conditions hereunder prior to Closing, Purchaser may do any or all of the following: (i) terminate its obligation to further perform under this Agreement by delivering notice thereof to Seller; and (ii) force Seller to consummate the transaction contemplated herein by commencing legal action for specific performance of Seller's obligations under this Agreement, which may include, without limitation, filing of a lis pendens against the Property. Notwithstanding and in addition to the foregoing, Purchaser may pursue any other rights and remedies available at law.

(b) As a condition precedent to the effective exercise of Purchaser's option to terminate its obligation to further perform hereunder or take other action pursuant to this Section 11, Purchaser shall give Seller notice stating with particularity the alleged default or breach of Seller and the action required to be taken by Seller to cure such default or breach. Seller shall have a period of ten (10) business days following receipt of such notice to cure the alleged default or breach to Purchaser's reasonable satisfaction, and to thereby cure the default or breach.

11.2 Purchaser's Default.

(a) Notwithstanding any provision in this Agreement to the contrary, if the sale and purchase of the Property contemplated by this Agreement is not consummated because of the Purchaser's uncured breach or default of any terms or conditions hereunder, Seller as its sole and exclusive remedy may terminate this Agreement by delivering notice thereof to Purchaser and retain any Earnest Money deposited with Escrow Holder as liquidated damages.

(b) As a condition precedent to the effective exercise of Seller's option to terminate this Agreement or take other action pursuant to this Section 11, Seller shall give Purchaser notice stating with particularity the alleged default or breach of Purchaser and the action required to be taken by Purchaser to cure such breach or default. Purchaser shall have a period of ten (10) business days following receipt of such notice to cure the alleged default or breach to Seller's reasonable satisfaction, and to thereby cure the default or breach.

12. Seller's Covenants, Representations, and Warranties. In order to induce Purchaser to purchase the Property, Seller hereby covenants, represents, and warrants to Purchaser that:

12.1 Title. Seller is the sole owner of good, fee simple, unencumbered, marketable title to all of the Property, subject only to the Permitted Exceptions.

12.2 Easements and Encroachments. Except as disclosed in the Commitment or the Updated Survey, there are no encroachments, easements, or rights-of-way on, over, under, or across the Property or any part of the Property.



05/12/16  
9:00AM EDT



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9:05AM EDT

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12.3 Restrictions. Except as disclosed in the Commitment or Updated Survey, no part of the Property is subject to any building or use restrictions which would impair or interfere with the development of the Property.

12.4 Pending Changes. Seller has received no notice that there are any proposed or pending changes in zoning or roadway, water, or sewer construction affecting the Property or any portion thereof.

12.5 Condemnation. Seller has received no notice that there are any condemnation proceedings pending, contemplated against the Property, or any part thereof, or of the intent or desire of any public authority or public utility to take or use the Property or any portion thereof.

12.6 Pending Assessments. Seller has received no notice of any pending proceedings for the imposition of any special assessment, or the formation of a special assessment district, which would affect in any manner the Property or any portion thereof.

12.7 Taxes. All taxes required to be paid by Seller with respect to the Property or operation of the Property by Seller, and which are or could become liens against the Property, have been fully paid or will be fully paid on or prior to Closing.

12.8 Liens. No labor has been performed or materials supplied for the Property for which has not been fully paid or will not be fully paid on or prior to Closing or for which a mechanic's lien or materialman's lien or other lien or liens may be claimed by any person or entity.

12.9 Hazardous Material.

(a) Except as disclosed in any environmental report obtained by Purchaser prior to the expiration of the Due Diligence Period, (i) no Hazardous Material (as defined in Section 12.9(b) below) is or has been transported to or from, or generated, placed, held, released, located, stored, or disposed of on, under, or at the Property; (ii) neither the Property nor any part of any improvements and equipment thereon contains any asbestos or polychlorinated biphenyls; (iii) Seller has not received any notice of any action or proceeding relating to any Hazardous Material or notice of any release or threatened release thereof on, under or at the Property or any notice contrary to (i) and (ii) above; and (iv) no underground or above-ground storage tanks are or have been located on the Property.

(b) "Hazardous Material" means, without limitation, any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" (including toxic mold) or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment, or natural resources.

12.10 Compliance with Laws. Seller has received no notice that the Property, or any portion thereof, is not in full compliance with all building, land use, insurance, health and other applicable laws governing the use and operation thereof.

12.11 No Litigation or Other Breach. No litigation, administrative, or other proceeding, order or judgment is pending or outstanding, or threatened against or relating to any portion of the Property.

12.12 Verification. All statements made and all information given to Purchaser in connection with this Agreement are true and accurate in every material respect.

12.13 Authority. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its respective terms. Seller has full power and has been duly authorized to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by Seller hereunder.

13. Purchaser's Covenants, Representations, and Warranties. Purchaser represents and warrants to Seller, that to the best of Purchaser's knowledge:

13.1 Organization. Purchaser is validly organized and is in good standing under the laws of its state of organization.

13.2 Authority. This Agreement constitutes the legal, valid, and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms. Purchaser has full power and has been duly authorized to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by Purchaser hereunder.



05/12/2016  
9:00AM EDT



05/12/2016  
9:05AM EDT

14. Tax-Free Exchange. Purchaser may acquire or Seller may sell the Property through a tax-free exchange under Section 1031 of the Internal Revenue Code. In connection therewith, each party hereto agrees to execute such documents as are reasonably necessary or appropriate and to otherwise cooperate with the other to effectuate such exchange; provided the other party and its representatives shall have a reasonable opportunity to review such documents prior to Closing. Each party hereto hereby indemnifies and holds the other free and harmless from any liability (including, but not limited to, the tax ramification to the other of such tax-free exchange) arising by reason of performing the acts required hereby to effectuate such exchange, except insofar as any such liability is attributable to the failure of the other to perform as required hereunder. No party hereto shall be required to take title or otherwise assume any liability with respect to the property to be exchanged with the Property.

15. Brokers. Except as otherwise provided in this Section 15, Seller shall pay all real estate commissions and finder's fees due as a result of the purchase and sale as contemplated herein and that otherwise may arise in connection with the sale of the Property in accordance with a separate agreement, if any. The commissions shall be paid out of escrow at Closing. Seller shall indemnify and hold Purchaser harmless from any and all other demands for real estate commissions and/or finder's fees from said brokers to the extent not specifically contracted for in writing by Purchaser.

16. Notices. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (a) hand-delivery, (b) established express delivery service that maintains delivery records, (c) certified or registered U.S. mail, postage prepaid, return receipt requested, to the parties hereto at the following addresses, or at such other address as the parties hereto may designate, or (d) facsimile or other electronic means:

SELLER:

David A. and Elizabeth Fetzer  
3210 S. Kokomo Drive  
Nampa, ID 83686  
Telephone: (208) \_\_\_\_\_  
E-mail: \_\_\_\_\_

PURCHASER:

ProVision Development Group LLC  
Attention: Jerry Gunstream, Managing Partner  
1123 12<sup>th</sup> Avenue Road, #415  
Nampa, ID 83686-5738  
Telephone: (208) 870-4584  
E-mail: jerry@provisiondg.com

Each such notice or other communication shall be deemed given upon (i) hand-delivery, (i) deposit with an established express delivery service that maintains delivery records or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices by way of facsimile or other electronic means are effective upon confirmed delivery. Any party hereto may give notice of a change of its address to the other party.

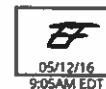
17. Capitalization. Seller and Purchaser covenant, represent and warrant that they are, and shall be subsequent to Closing, sufficiently capitalized to satisfy all of their respective post-Closing obligations, indemnities, and warranties hereunder.

18. Successors and Assigns. Seller shall not assign its rights and/or obligations under this Agreement without Purchaser's prior written consent. Purchaser shall not assign its rights and/or obligations under this Agreement without Seller's prior written consent, which consent shall not be unreasonably withheld; provided, that Purchaser may assign its rights hereunder to a partnership, limited liability company or other entity formed by Purchaser for the purpose of financing, acquiring, and holding the Property, without Seller's prior consent.

19. Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the



05/12/2016



05/12/2016

application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

20. Waiver. The failure of a party hereto to insist upon strict performance of any of the terms set forth herein shall not be deemed a waiver of any rights or remedies that the party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms contained herein by the same or any other party.

21. Attorneys' Fees. If a party hereto commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party to be fixed by the court in the same action.

22. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior understandings, agreements, representations, and warranties, if any, with respect to such subject matter.

23. Amendment. This Agreement may only be amended and modified by a writing executed by Purchaser and Seller.

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

25. Headings. The headings of the various paragraphs of this Agreement have been inserted only for convenience and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement or be used in any manner in the interpretation of this Agreement.

26. Time is of Essence. Time is expressly made of the essence of all the provisions of this Agreement.

27. Dates of Performance. Whenever a date for an action required to be performed or any other period of time set forth in this Agreement falls on a Saturday, Sunday, or federal holiday, then such date shall be extended to the following business day.

28. Further Assurances. Each party hereto shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

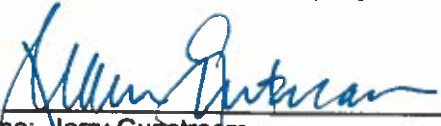
29. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same Agreement.

30. Acceptance: This Agreement is made subject to the acceptance of Seller and Purchaser on or before May 6, 2016 at 5:00 pm (MST). If acceptance of this Agreement is not received within the time specified, the offer is withdrawn and terminated.

IN WITNESS WHEREOF, this Agreement is signed by each Party's authorized representative on the dates set forth below.


PURCHASER:

PROVISION DEVELOPMENT GROUP  
an Idaho Limited Liability Company

By:   
Name: Jerry Gunstream  
Its: Managing Partner  
Date: 4/27/2016

SELLER:

DAVID A. FETZER

By:  dotloop verified  
05/12/16 9:00AM EDT  
UVYX-ENIS-GA6G-XP14  
Date: 05/12/2016

ELIZABETH FETZER

By:  dotloop verified  
05/12/16 9:05AM EDT  
1A6W-Q1KR-HQ2L-IE4X  
Date: 05/12/2016

THE ABOVE SIGNATURES ARE SUBJECT TO THE TERMS OF THE ATTACHED  
COUNTER OFFER #5 DATED MAY 11, 2016.

 5/11/2016

 dotloop verified  
05/12/16 9:00AM EDT  
VWJ-RYQI-7542-RJJ1 05/12/2016

 dotloop verified  
05/12/16 9:05AM EDT  
JRDJ-C17F-EURE-8236 05/12/2016



**EXHIBIT "B"**

**DUE DILIGENCE DOCUMENTS**

1. All soils, water, geotechnical, geophysical, environmental assessment, property condition and engineering reports with respect to the Property. NONE
2. Any appraisals of the Property. NONE
3. Most recent property assessments, tax bills, special assessment bills and insurance bills for the Property.
4. Any surveys and plats of the Property.
5. Any zoning and/or conditional use or similar permits or actions permitting the current use of the Property and any other governmental permits or licenses applicable to the Property. NONE
6. Copies of any documents relating to any Property use restrictions and any correspondence or notices from any property owner's association. NONE
7. Any documents relating to water or mineral rights of the Property. Irrigation bill only
8. Copies of any title reports, title commitments or title policies. From 2014
9. Any correspondence or notice from any governmental or quasi-governmental agency regarding the condition of the Property and any structure or activity located or occurring thereon. NONE
10. Any documents which relate, refer or pertain to the condition of the Property or improvements thereon, its environmental condition, any activities occurring thereon and the location of the boundaries of the Property. NONE
11. Any other documents reasonably obtainable by Seller and requested by Purchaser.

  
05/12/16  
9:00AM EDT  
05/12/2016

  
05/12/16  
9:05AM EDT  
05/12/2016



**Exhibit A**



To the Purchase and Sale Agreement by and between ProVison Development Group (Buyer) and David A. Fetzer and Elizabeth Fetzer (Seller) dated April 27, 2016.

Legal Description for approximately 2.97± acres gross located on W. Greenhurst in Nampa, Idaho.

**Description:**

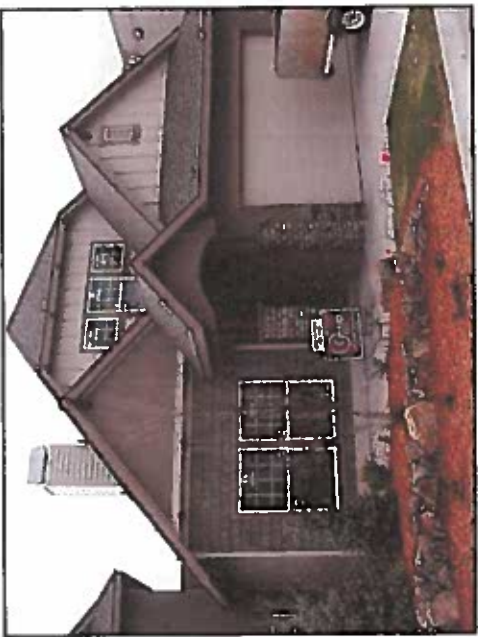
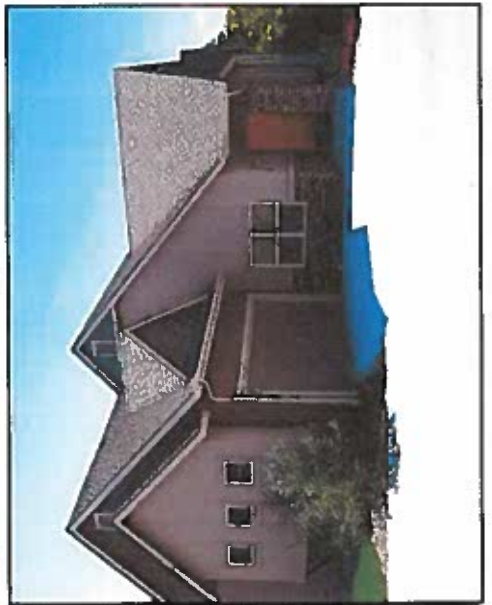
A parcel of land being a portion of the South half of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section 33, Township 3 North, Range 2 West, Boise Meridian, Nampa, Canyon County, Idaho, as shown on Record of Survey filed for record in the office of the County Recorder, Caldwell, Idaho under Instrument No. 2013-053145 and more particularly described as follows:

Commencing at a brass cap marking the Southeast corner of said Section 33; thence along the South boundary of said Section 33, which is also the centerline of West Greenhurst Road North 89°04'10" West 754.85 feet to a PK nail and washer, said point marking the Point of Beginning; thence continuing North 89°04'10" West, 396.89 feet to a PK nail and washer; thence leaving said South boundary North 00°49'00" East, 296.13 feet to an iron pin; thence at right angles South 89°11'00" East 2.50 feet to an iron pin; thence at right angles North 00°49'00" East, 32.72 feet to an iron pin on the North boundary of said South half of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section 33; thence along said North boundary South 89°04'09" East, 388.09 feet to an iron pin; thence leaving said North boundary along a line 565.00 feet East of and parallel with the West boundary of said South half of the Southwest quarter of the Southeast quarter Southeast quarter of Section 33 South 00°16'55" East, 328.92 feet to the Point of Beginning.

 04/29/2016 7:25PM EDT  
 04/29/2016 7:12PM EDT









45

Holylin

Hickory Ct

Fall Dr

Autumn Dr

W Greenhurst Rd

12th Avenue Rd

E Greenhurst Rd

S Canyon St

Walmart



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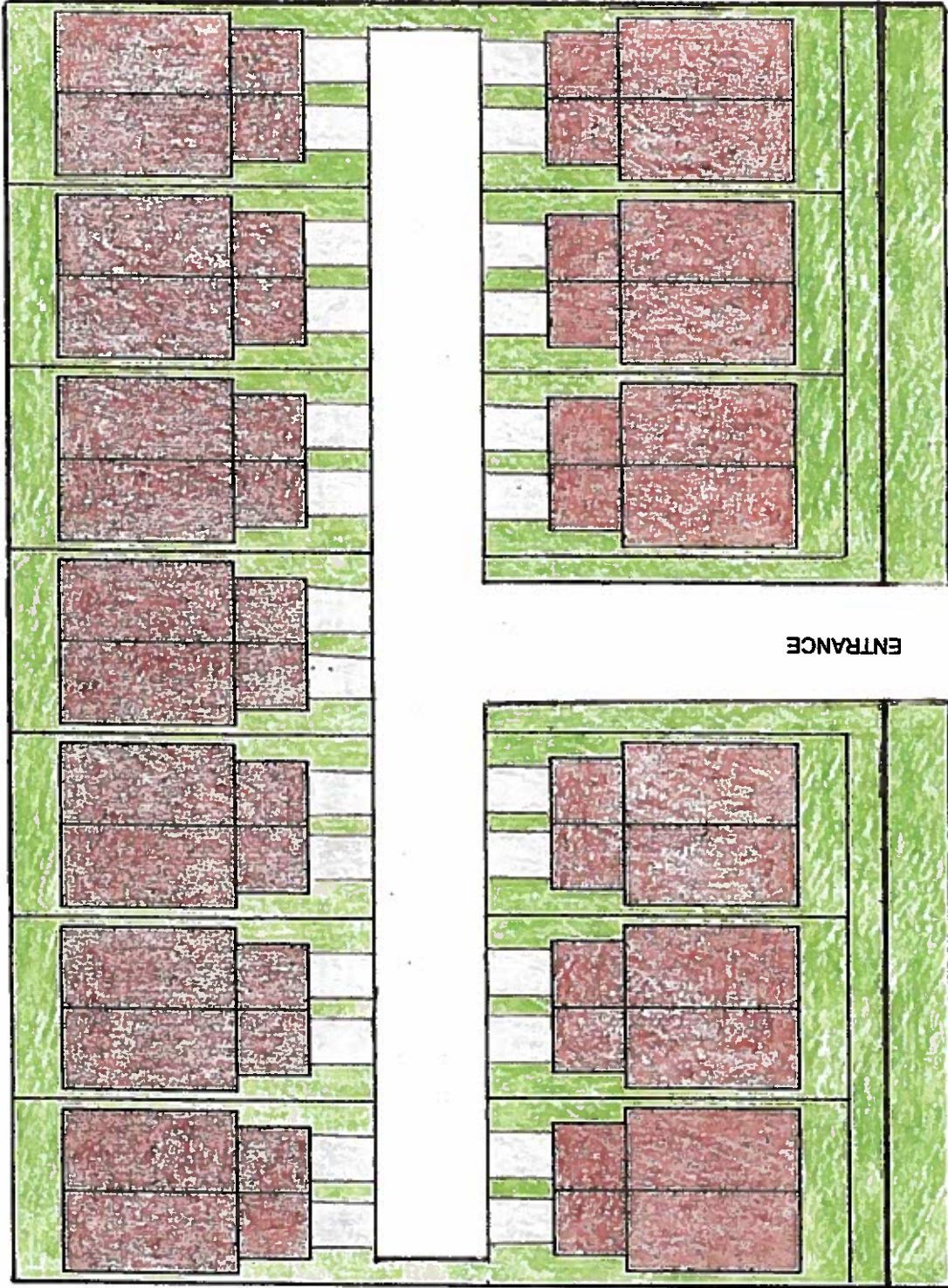
Imagery Date: 4/1/2016 43°32'51.30" N 116°34'30.55" W Elev 2502 ft eye alt -4509 ft

1992

# PRELIMINARY CONCEPT PLAN

ProVision Development Group

Nampa, Idaho



PARCEL:  
•396' wide  
•328' deep

LOTS:  
•55'-5" x 110'

TOWNHOMES:  
•1250-1500 sf

Perimeter Fence

W. Greenhurst Road

RECEIPT (TRC-1392426-18-05-2016)



**BILLING CONTACT**  
Jerry Gunstream  
Provision Development Group LLC  
1123 12TH Ave Rd, 415  
Nampa, ID 83686

REFERENCE NUMBER	FEE NAME	TRANSACTION TYPE	PAYMENT METHOD	AMOUNT PAID
CUP-00032-2016	Conditional Use Permit (More than 1 Acre)	Fee Payment	Check #5096	\$463.00
<b>SUB TOTAL</b>				<b>\$463.00</b>

**TOTAL \$463.00**