



CANYON COUNTY DEVELOPMENT SERVICES DEPARTMENT

1115 Albany Street • Caldwell, Idaho • 83605 • Phone (208) 454-7458

Fax: (208) 454-6633 • www.canyoncounty.org/dsd

**DEVELOPMENT AGREEMENT
BETWEEN CANYON COUNTY AND APPLICANT**

Agreement number: 24-040

THIS AGREEMENT, made and entered into this 10 day of MAY, 2024, by and between Canyon County, Idaho, a political subdivision of the state of Idaho, hereinafter referred to as "COUNTY" and Rae Lynn Kelley and Shawn Lee Kelley, hereinafter referred to as "Applicant."

RECITALS

WHEREAS, The Applicant has applied to the County for a conditional rezone from the "A" (Agricultural) Zone to "CR-R-1" (Conditional Rezone – Single Family Residential) Zone (CR2022-0033), which is legally described in the attached EXHIBIT "A," incorporated by reference herein (hereinafter referred to as "Subject Property"); and

WHEREAS, Parcel R38194010A, approximately 4.12 acres, is owned by the Applicant; and

WHEREAS, on the 10 day of MAY, 2024, the Canyon County Board of Commissioners approved a conditional rezone with conditions of the Subject Property to a "CR-R-1" Zone, which was done with Applicant's approval. The conditions of the approval for the conditional rezone are attached hereto as EXHIBIT "B"; and

WHEREAS, the parties desire to enter into an agreement to comply with Canyon County Code of Ordinances §07-06-07(2) & 07-06-07(7), Canyon County Zoning Ordinance No. 16-007 or as amended, and to ensure the Applicants will implement and be bound by the conditions of the rezone order issued by the Canyon County Board of Commissioners; and

NOW THEREFORE, the parties hereto do hereby agree to the following terms:

2024-013939

RECORDED

05/08/2024 09:23 AM



008099 13202400 13939009091

RICK HOGABOAM

CANYON COUNTY RECORDER

Pgs=9 MBROWN

NO FEE

AGR

CANYON COUNTY

SECTION 1. AUTHORIZATION.

This Agreement is authorized and required by Idaho Code §67-6511A; Canyon County Code of Ordinances 07-06-07 (Conditional Rezoning).

SECTION 2. PROPERTY OWNER.

Applicants are the owner(s) of Subject Properties which is located in the unincorporated area of Canyon County, Idaho, more particularly described in EXHIBIT "A", attached hereto and incorporated herein, which real property is the subject matter of this Agreement. Applicants represent that they currently hold complete legal or equitable interest in the Subject Properties and that all persons holding legal or equitable interests in the Subject Properties or the operation of the business are to be bound by this Agreement.

SECTION 3. RECORDATION.

Pursuant to Idaho Code §67-6511A and Canyon County Code of Ordinances, this Agreement shall be recorded by the Clerk in the Canyon County Recorder's Office and will take effect upon the adoption, by the Board of County Commissioners, of the amendment to the zoning ordinance as set forth herein.

SECTION 4. TERM.

The parties agree that this Agreement shall run with the land and bind the Subject Property in perpetuity, and shall inure to the benefit of and be enforceable by the parties, and any of their respective legal representatives, heirs, successors, and assignees. Provided, however, this Agreement shall terminate if the Board of County Commissioners subsequently rezones the property to allow for a higher density use or if annexation of the Subject Property by a city occurs. In this event, however, the Agreement shall only terminate in regards to the portion of the Property that is actually rezoned or annexed, while the remainder of the Property shall remain subject to the Agreement.

If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George Herbert Walker Bush, former President of the United States, or for such shorter period as may be required to sustain the validity of such provision.

SECTION 5. MODIFICATION.

This Agreement may be modified only in writing signed by the parties, or their successors in interest, after complying with the notice and hearing procedures of Idaho Code §67-6509 and the requirements of Canyon County Code of Ordinances. The modification proposal must be in the form of a revised Development Agreement and must be accompanied by a statement demonstrating the necessity for the requested modification.

SECTION 6. APPLICATION OF OTHER LAWS TO THE SUBJECT PROPERTIES.

This Agreement shall not prevent the County in subsequent actions applicable to the Subject Properties from applying new rules, regulations, or policies that do not conflict with this Agreement.

SECTION 7. COMMITMENTS.

Applicants will fully and completely comply with the conditions of the approved conditional rezone of the Subject Properties from "A" (Agricultural) Zone to "CR-R-1" (Conditional Rezone – Single Family Residential) Zone, which conditions are attached hereto as EXHIBIT "B".

SECTION 8. USES, DENSITY, AND HEIGHT AND SIZE OF BUILDINGS

The density or intensity of use of the Subject Properties is specified in the commitments of Section 7 unless conditioned otherwise (see Exhibit "B"). The uses and maximum height and size of the buildings on the Subject Properties shall be those set pursuant to law, including those contained in the Canyon County Code of Ordinances, that are applicable to an "CR-R-1" (Conditional Rezone – Single Family Residential) zone and those provisions of law that are otherwise applicable to the Subject Property.

SECTION 9. LIABILITY AND INDEMNITY OF COUNTY.

A. COUNTY REVIEW.

Applicants acknowledge and agree that the County is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates or acceptances, relating to the use and development of the property described in EXHIBIT "A," and that the County's review and approval of any such plans and the improvements or the issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure or ensure Applicants or any of Applicants' heirs, successors, assigns, tenants, and licensees, against damage or injury of any kind and/or at any time.

B. COUNTY PROCEDURES.

Applicants acknowledge that notices, meetings, and hearings have been lawfully and properly given and held by the County with respect to Applicant's conditional rezone application in Development Services Department Case Number CR2022-0033 and any related or resulting development agreements, ordinances, rules and regulations, resolutions or orders of the Board of County Commissioners. Applicants agree not to challenge the lawfulness, procedures, proceedings, correctness or validity of any of such notices, meetings, hearings, development agreements, ordinances, rules, regulations, resolutions or orders.

C. INDEMNITY.

Applicants agree to, and do hereby, defend, hold harmless and indemnify the County, the Board of County Commissioners, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any such parties in connection with (i) the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and/or development of the Subject Properties; (ii) any actions taken by the County pursuant to Subsection 9(B) of this Agreement; (iii) the development, construction, and maintenance of the property; and (iv) the performance by County of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. DEFENSE EXPENSES.

Applicants shall, and do hereby agree, to pay, without protest, all expenses incurred by the County in defending itself with regard to any and all of the claims identified in Subsection 9 of this Agreement. These expenses shall include all out-of-pocket expenses, including, but not limited to, attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the County.

SECTION 10. PERIODIC REVIEW.

The County's Development Services Department will administer the Agreement after it becomes effective and will conduct a review of compliance with the terms of this Agreement on a periodic basis, including, but not limited to, each time a development of the Property is platted. Applicants shall have the duty to demonstrate Applicants' compliance with the terms of this Agreement during such review.

SECTION 11. REQUIRED PERFORMANCE.

Applicants shall timely carry out all steps required to be performed and maintain all commitments set forth in this Agreement and as set forth in County laws, ordinances, rules, and regulations as they pertain to the Subject Property including, but not limited to, those concerning the commencement of development, completion of development, preliminary platting and final platting.

SECTION 12. DEFAULT AND REMEDIES.

In the event of a default or breach of this Agreement or of any of its terms or conditions, the party alleging default shall give the breaching party not less than thirty (30) days, Notice of Default, in writing, unless an emergency exists threatening the health and safety of the public. If such an emergency exists, written notice shall be given in a reasonable time and manner in light of the circumstances of the breach. The time of the giving of the notice shall be measured from the date of the written Notice of Default. The Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time during which said default may be satisfactorily cured. During any period of curing, the party charged shall not be considered in default for the purposes of termination or zoning reversion, or the institution of legal proceedings. If the default is cured, then no default shall exist and the charging party shall take no further action.

SECTION 13. ZONING REVERSION CONSENT.

The execution of this Agreement shall be deemed written consent by Applicants to change the zoning of the Subject Properties to its prior designation upon failure to comply with the terms and conditions imposed by the approved conditional rezone and this Agreement. No reversion shall take place until after a hearing on this matter pursuant to Idaho Code §67-6511A. Upon notice and hearing, as provided in this Agreement and in Idaho Code §67-6509, if the properties described in attached EXHIBIT "A" are not used as approved, or if the approved use ends or is abandoned, the Board of County Commissioners may order that the property will revert to the zoning designation (and land uses allowed by that zoning designation) existing immediately prior to the rezone action, i.e., the Subject Properties conditionally rezoned from "A" (Agricultural) Zone designation to "CR-R-1" (Conditional Rezone – Single Family Residential) Zone designation shall revert to the "A" (Agricultural) Zone designation.

SECTION 14. COMPLIANCE WITH LAWS.

Applicants agree that they will comply with all federal, state, county, and local laws, rules, and regulations, which appertain to the Subject Property.

SECTION 15. RELATIONSHIP OF PARTIES.

It is understood that this Agreement between Applicants and the County is such that Applicants are an independent party and are not an agent of the County.

SECTION 16. CHANGES IN LAW.

Any reference to laws, ordinances, rules, regulations, or resolutions shall include such laws, ordinances, rules, regulations, or resolutions as they have been, or as they may hereafter be amended.

SECTION 17. NOTICES.

Except as otherwise provided in this Agreement and/or by law, all notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof, (1) when delivered in person on a business day at the address set forth below, or (2) in the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage paid, certified or registered mail, return receipt requested, at the addresses set forth below.

Notices and communications required to be given to the County shall be addressed to, and delivered at, the following address:

Director
Development Services Department
Canyon County Administration
111 North 11th Avenue, #310
Caldwell, Idaho 83605

Notices and communications required to be given to the Applicant shall be addressed to, and delivered at, the following addresses:

Name: Shawn and Rea Lynn
Street Address: 24720 Harvey Road
City, State, Zip: Caldwell, ID 83607

A party may change its address by giving notice, in writing, to the other party, in the manner provided for in this section. Thereafter, notices, demands, and other pertinent correspondence shall be addressed and transmitted to the new address.

SECTION 18. TERMINATION.

This Agreement may be terminated in accordance with the notice and hearing procedures of Idaho Code §67-6509, and the zoning designation upon which the use is based reversed, upon failure of Applicant(s), a subsequent owner, or other person acquiring an interest in the property described in attached EXHIBIT "A" to comply with the terms of this Agreement. Applicants shall comply with all commitments in this Agreement prior to establishing the approved land use.

SECTION 19. EFFECTIVE DATE.

The commitments contained in this Agreement shall take effect in the manner described in this Agreement upon the County's adoption of the amendment to the zoning ordinance as set forth herein.

SECTION 20.

TIME OF ESSENCE.

Time is of the essence in the performance of all terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

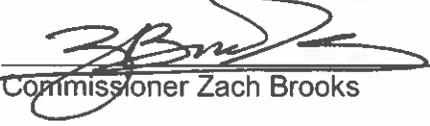
**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO**



Commissioner, Leslie Van Beek

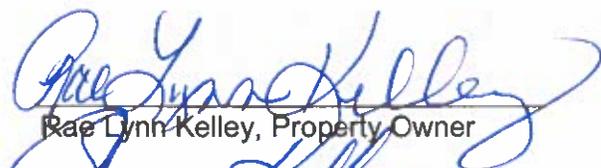


Commissioner Brad Holton



Commissioner Zach Brooks

APPLICANT

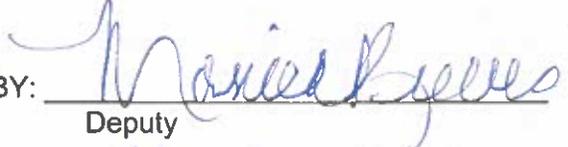


Rae Lynn Kelley, Property Owner



Shawn Lee Kelley, Property Owner

ATTEST: Rick Hogaboam, Clerk

BY: 

Deputy

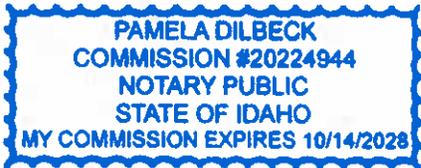
DATE: May 6, 2024



(All Applicants must sign and their signatures must be notarized)

STATE OF IDAHO)
) ss.
County of Canyon)

On this 6th day of May, 2024, before me, a notary public, personally appeared Rae Lynn Kelley, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he/she executed the same on behalf of the Applicant.



Pamela Dilbeck
Notary Public for Idaho

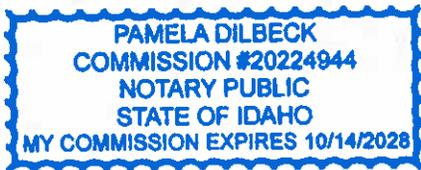
Residing at: Canyon County Idaho

My Commission Expires: 10/14/2028

(All Applicants must sign and their signatures must be notarized)

STATE OF IDAHO)
) ss.
County of Canyon)

On this 6th day of May, 2024, before me, a notary public, personally appeared Shawn Lee Kelley, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he/she executed the same on behalf of the Applicant.



Pamela Dilbeck
Notary Public for Idaho

Residing at: Canyon County Idaho

My Commission Expires: 10/14/2028

EXHIBIT "A"

LEGAL DESCRIPTION – Parcel R38194010A

Parcel 2 of Record of Survey recorded as Instrument No. 2022-007396, more particularly described as part of the Northwest Quarter of the Northwest Quarter of Section 35, Township 5 North, Range 3 West of the Boise Meridian, Canyon County, Idaho described as:

Beginning at a found 5/8" rebar marking the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 35, Township 5 North, Range 3 West of the Boise Meridian, Canyon County, Idaho and running thence North 00° 01'07" West, 354.90 feet along the West line of the Northwest Quarter of the Northwest Quarter of said Section to a point on the South bank of an existing canal;

Thence along said South bank the following ten (10) courses:

- (1) Thence South 67° 47'22" East, 50.49 feet;
- (2) Thence South 49° 41'01" East, 146.09 feet;
- (3) Thence South 59° 11'40" East, 63.66 feet to a point of curve;
- (4) Thence Easterly 122.44 feet along said curve to the left (Curve data: Radius= 96.00', Delta= 73° 04'44", Chord Bearing and Distance= North 84° 15'58" East, 114.31 feet);
- (5) Thence North 47° 43'36" East, 139.13 feet to a point of curve;
- (6) Thence Northeasterly 36.48 feet along said curve to the right (Curve data: Radius= 49.00', Delta= 42° 39'39", Chord Bearing and Distance= North 69° 03'25" E, 35.65 feet);
- (7) Thence South 89° 36'45" East, 60.35 feet to a point of curve;
- (8) Thence Northeasterly 52.29 feet along said curve to the left (Curve data: Radius= 76.00', Delta= 39° 25'22", Chord Bearing and Distance= North 70° 40'33" East, 51.27 feet);
- (9) Thence North 50° 57'52" East, 32.63 feet to a point of curve;
- (10) Thence Northeasterly 47.65 feet along said curve to the left (Curve data: Radius= 201.00', Delta= 13° 34'59", Chord Bearing and Distance= North 44° 10'23" East, 47.54 feet);

Thence South 00° 01'07" East, 399.19 feet parallel to the West line of the Northwest Quarter of the Northwest Quarter of said Section to a point on the South line of the Northwest Quarter of the Northwest Quarter of said Section;

Thence North 89° 51'37" West, 630.00 feet along said South line to the Point of Beginning.

EXHIBIT "B"

CONDITIONS OF APPROVAL

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the property.
 - a. Prior to the Board of County Commissioners signing of the final plat, the private road shall comply with CCZO Section 07-17-29 & 31.
 - b. Prior to the Board of County Commissioners signing of the final plat, Highway District #4 and Southwest District Health signatures must be on the final plat.
2. The subject parcel, 4.15 acres, shall be divided in compliance with County Subdivision requirements (Chapter 7, Article 17, Canyon County Zoning Ordinance, in substantial compliance with the conceptual site plan (Attachment B) subject to the following restrictions:
 - a. Secondary dwellings (CCZO §07-10-27 & 07-14-25) are prohibited.
 - b. Further division of the parcels is prohibited unless the development agreement is modified or approval of a zoning map amendment.
 - c. A utility easement along Harvey Road shall be included to ensure the development does not impede the city's ability to extend city services to the area in the future. The applicant shall work with the City of Middleton to ensure the utility easement width is adequate.
 - d. Pressurized irrigation shall be provided. Use of water rights shall comply with Idaho Code Section 67-6537(1).
 - 3 The applicant must comply with all standards and regulations outlined in the Black Canyon Irrigation District Letter (Exhibit 4e, Staff Report).
 - 4 Historic irrigation lateral, drain, and ditch flow patterns shall be maintained and protected. Modifications or improvements shall be approved in writing by the local Irrigation District.
3. The developer shall comply with CCZO §07-06-07 (4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."