

Exhibit B

DEVELOPMENT AGREEMENT

PARKCENTER BOULEVARD EXTENSION TO WARM SPRINGS AVENUE,
INCLUDING THE EAST PARKCENTER BRIDGE

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 29th day of July, 2005 by and between HARRIS FAMILY LIMITED PARTNERSHIP, an Idaho limited partnership ("Harris Family Limited Partnership"), BARBER MILL COMPANY ("Barber Mill Company"), an Idaho corporation (Harris Family Limited Partnership and Barber Mill Company are sometimes herein collectively referred to as "Harris Ranch"), and ADA COUNTY HIGHWAY DISTRICT (herein "ACHD").

WITNESSETH:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the recitals, which are incorporated in this Agreement, and in consideration of the premises and the agreements hereinafter contained, ACHD, Harris Family Limited Partnership and Barber Mill Company agree as follows:

SECTION 1. Definitions.

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

- A. The term "ACHD" shall refer to ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho whose address is 3775 Adams Street, Garden City, Idaho 83714-6499, attention: Right-of-Way & Development Services Manager, whose telephone number is (208) 387-6170 and whose fax telephone number is (208) 387-6393.
- B. The term "Agreement" shall refer to this Development Agreement.
- C. The term "Bridge Permits" shall mean all permits, reviews and agreements required to be obtained from applicable governmental agencies for crossing the Boise River and constructing the East ParkCenter Bridge and using the East ParkCenter Bridge as a public right-of-way and Highway, including but not limited to: U.S. Army Corps of Engineers Section 404 Permit, Idaho Department of Water Resources Stream Channel Alteration Permit, Boise River System Application Permit, Boise City Flood Plain Review Approval, and the Idaho Department of Lands Crossing Agreement.
- D. The term "Harris Ranch" shall refer, collectively, to Harris Family Limited Partnership, an Idaho limited partnership (successors in interest to

Harris Family Ranch, LLP, an Idaho limited liability partnership), whose address is c/o Doug Fowler, 4940 Mill Station Drive, Boise, Idaho 83716, whose telephone number is (208) 344-1131 and whose fax number is (208) 340-5585, and Barber Mill Company, an Idaho corporation, whose address is c/o David Turnbull, 12601 W. Explorer, Boise, Idaho 83713, whose telephone number is (208) 378-4000 and whose fax telephone number is (208) 377-8962.

E. The term "Harris Ranch, Idaho" shall refer to the planned mixed use development by Harris Ranch on the real property described on Exhibit "A" attached hereto.

F. The term "Highway" is as defined in *Idaho Code* Section 40-109(5).

G. The term "Impact Fee Ordinance" means the ACHD Impact Fee Ordinance and Capital Improvement Plan, as may be amended from time to time, or the term "Impact Fees" shall mean the Impact Fees set forth in such Ordinance.

H. The term "Project" shall mean the extension of ParkCenter Boulevard from the end of the pavement section near Riverside Elementary School to intersections with existing Warm Springs Avenue southeast of Starview Drive, and including a four-lane bridge across the Boise River and a crossing over Loggers Creek and all necessary facilities, including but not limited to, drainage facilities and drainage and slope protection areas, and related pedestrian and bicycle facilities. The Project is generally depicted on Exhibit "B" attached hereto. For purposes of this Agreement the Project can be divided into three parts, identified as follows:

(i) The portion of the Project that shall be a bridge over and across the Boise River, and including its structure, piers and other supports, its lanes for vehicular traffic and related bicycle lanes and pedestrian pathways over and under the same, and the bridge abutments at each end thereof (a portion of the southerly abutment shall be on ACHD Right-of-Way) and further including a crossing over Loggers Creek is referred to in this Agreement as the "East ParkCenter Bridge."

(ii) That portion of the Project that is located between the southerly end of the East ParkCenter Bridge and the end of the pavement section by Riverside Elementary School is referred to in this Agreement as the "Southerly Phase of the Project."

(iii) The portion of the Project that is located between the northerly end of the East ParkCenter Bridge to the intersections of ParkCenter Boulevard and Warm Springs Avenue is referred to as the "Northerly Phase of the Project."

I. The term "Right-of-Way" shall mean the right-of-way required for the Project, including fee simple to the Highway itself and all facilities required for drainage, slope protection and other facilities related to the proper use, operation and maintenance of the Highway.

J. The terms "Substantial Completion" and "Substantially Complete" shall mean that the Project has reached sufficient completion so that the Project is being used by the motoring public.

K. The term "System Improvements" is as defined in *Idaho Code* Section 67-8203(28).

L. The terms "Reimbursed" or "Reimbursement" as used herein shall be defined as repayment of funds to Developer or ACHD from Impact Fee eligible costs as allowed by ACHD's Impact Fee Ordinance and Capital Improvement Plan.

SECTION 2. Recitals.

2.1 ACHD is the owner of all the Right-of-Way required for the Southerly Phase of the Project.

2.2 Barber Mill Company is the owner of all the Right-of-Way for the Northerly Phase of the Project.

2.3 ACHD adopts a Five-Year Work Program ("FYWP") each year. The FYWP identifies and allocates funding for right-of-way construction projects in Ada County. The Project is included in the 2006-2010 FYWP attached hereto as Exhibit "C" and is identified as programmed for construction over a two-year period starting in fiscal year in 2010. ACHD acknowledges and agrees that the Project shall be subject to and included in ACHD'S future FYWPs and shall be identified and programmed in for construction in fiscal year 2008. Harris Ranch acknowledges and agrees that the programming of the Project in future FYWPs does not guarantee that the construction of the Project will begin in 2008 or be completed in fiscal year 2009.

2.4 Portions of the Project costs are presently Impact Fee eligible and other portions may become impact fee eligible in the future. The parties shall be Reimbursed or credited from Impact Fees solely as set forth in this Agreement.

SECTION 3. Responsibility for Costs of Project and Right-of-Way Responsibilities.

3.1 ACHD shall be responsible for paying all costs and expenses of (i) the design of the Project, (ii) the construction of the entire Project, and (iii) the inspection, testing and quality assurance monitoring of the construction of the Project. ACHD represents that it has adequately programmed ACHD

funds to cover design costs in connection with the Project. ACHD shall provide the Right-of-Way for the Southerly Phase of the Project.

3.2 Harris Family Limited Partnership shall provide \$3.5 million towards the costs and expenses associated with the Project, which shall be used and allocated by ACHD in its sole, absolute, and unreviewable discretion. ACHD shall draw on these funds as bills in connection with the Project are received at the commencement of the Project. In order to ensure payment of this amount, Harris Family Limited Partnership shall provide to ACHD an irrevocable letter of credit from a financially responsible Idaho lender in the amount of \$3.5 million in force through December 31, 2010, or such other date as the parties may mutually agree in writing. This letter of credit shall be provided to ACHD within ten (10) days of execution of a construction contract that obligates ACHD for payment of construction of the Project, which letter of credit shall be in a form reasonably acceptable to ACHD, and shall give ACHD the unconditional right to draw funds as necessary and upon demand to partially or fully complete and/or pay for the Project as soon as construction commences on the Project. Harris Family Limited Partnership agrees that the letter of credit shall authorize ACHD to draw upon the letter of credit as bills are received by ACHD only in connection with the construction costs and expenses associated with the Project.

3.3 Barber Mill Company shall provide the Right-of-Way for the Northerly Phase of the Project. The two center lanes of the Right-of-Way for the Northerly Phase shall be deeded to ACHD by a gift deed upon execution of this Agreement in the form attached hereto as Exhibit "D." The two outer lanes of the Right-of-Way for the Northerly Phase shall be deeded to ACHD by a warranty deed upon execution of this Agreement in the form attached hereto as Exhibit "E." The deeds described herein shall be delivered to ACHD through a mutually agreed upon closing agent instructed to obtain title insurance insuring title in ACHD free and clear of all liens and encumbrances except those approved in writing by ACHD prior to execution of this Agreement. The executed deeds shall be delivered to ACHD for recording upon execution of this Agreement. Within ten (10) days of execution of a Construction Contract that obligates ACHD for payment of construction of the Project, temporary construction easements determined necessary by ACHD shall also be granted by Barber Mill Company at no cost and shall be in effect until the Project has been completed at which time they shall then be terminated.

SECTION 4. Design and Construction; Delivery of Design Plans; Construction Easement; Bridge Permits.

4.1 The design of the Project, the preparation of the plans and specifications and the construction pursuant thereto shall all be accomplished in accordance with the standards and requirements set forth by applicable ACHD policy.

(a) Upon execution of this Agreement, Harris Ranch shall forward to ACHD copies of all previously prepared design plans for the Project in its and/or its consultant's (i.e., HDR Engineering, Inc. ("HDR")) possession, including but not limited to design plans and consultant reports prepared by third parties, soil reports, engineering reports, and right-of-way plans (collectively "design plans"). Harris Ranch specifically authorizes ACHD to use any and all of these design plans to the extent authorized by law and Harris Ranch shall obtain any necessary third-party consents required by ACHD to use such plans; that portion of the design plans that remain useable and/or useful in connection with the Project shall be as determined by HDR in HDR's reasonable judgment. Without limiting the foregoing, Harris Ranch shall obtain the consent of HDR for ACHD to use the design plans previously prepared for the design of the Project in the form attached hereto as **Exhibit "F."** ACHD hereby indemnifies and holds Harris Ranch harmless from and against any and all loss, injury, death and damage, and attorney's fees and costs that might be incurred by Harris Ranch in defending any claim that may result solely from the use of the design plans by ACHD, its Commissioners, employees, contractors and/or agents.

4.2 At all times during the development of the Project, Barber Mill Company shall provide ACHD access to the Right-of-Way for the Northerly Phase of the Project, including granting ACHD a temporary construction easement in the form attached hereto as **Exhibit "G."**

4.3 A portion of the Right-of-Way provided in fee by Barber Mill Company shall provide ACHD with slope protection for the north side of the East ParkCenter Bridge. Such portion of the Right-of-Way is often provided to ACHD in the form of an easement. However, ACHD shall acquire this slope protection area in fee as part of the Right-of-Way. Once such slope protection area is acquired by ACHD, if requested by Barber Mill Company, ACHD shall transfer fee title to such slope protection area back to Barber Mill Company at a price of \$3.50 per square foot provided that Barber Mill Company provides ACHD with a permanent slope easement providing ACHD with permanent access and use of such real property required by ACHD for the north side of the East ParkCenter Bridge in the form attached hereto as **Exhibit "H."**

4.4 ACHD shall prepare and submit all applications for, and obtain all Bridge Permits. Harris Ranch shall cooperate with ACHD in its efforts to obtain the Bridge Permits.

4.5 The parties agree and understand that the final engineering plans for the Project have not been completed. Upon final completion of the plans and specifications, it is anticipated that there may be adjustments required to the real property granted by Barber Mill Company to ACHD. The parties agree that if adjustments are made to the property conveyed by Barber Mill Company to ACHD due to the alignment of the Project that the deeds shall be amended and

re-recorded to reflect these required changes. Barber Mill Company agrees to execute any correction deeds within ten (10) days of submission of such deed to Barber Mill Company by ACHD. If such amended deeds require additional square footage to be provided to ACHD, ACHD shall provide Barber Mill Company with an upward adjustment of Impact Fee credits, calculated at \$7.00 per square foot. If such amended deeds require a reconveyance of real property to Barber Mill Company, ACHD shall provide Barber Mill Company with a downward adjustment of Impact Fee Credits calculated at \$7.00 per square foot.

SECTION 5. Design and Construction of the Project.

5.1 ACHD shall design the Project, which design shall be in ACHD's sole, absolute and unreviewable discretion, which shall include plans for four lanes for vehicular traffic through the Northerly Phase, the East ParkCenter Bridge, and the Southerly Phase.

5.2 ACHD shall enter into such construction or design-build contracts, as it desires with respect to the Project and to engage all necessary third parties in connection with completion of the Project.

5.3 ACHD may have to provide wetland mitigation as is required by the U.S. Army Corps of Engineers or other governmental agencies. Harris Ranch agrees to cooperate in assisting ACHD in any wetland mitigation requirements identified during the permitting process, including but not limited to donating a portion of wetlands owned by Harris Ranch in order to accomplish the wetland mitigation required by governmental agencies; provided, however any such provision of wetlands shall be eligible for Impact Fee Reimbursement collected only in Harris Ranch, Idaho.

SECTION 6. Impact Fees Reimbursement.

6.1 A portion of the Project presently is a System Improvement, and such portion of the Project shall be eligible for Reimbursement from Impact Fees collected by ACHD on and after the date of this Agreement in Harris Ranch, Idaho and in the Southeast Service Area as defined by the Impact Fee Ordinance subject to the condition set forth in Section 6.1(a). Harris Ranch shall be entitled to Impact Fee eligible credits as follows:

(a) ACHD acknowledges Barber Mill Company's right to submit to ACHD a traffic analysis conducted by a professional engineer that attempts to demonstrate that the deeded right-of-way for the two center lanes may qualify as a System Improvement in accordance with Idaho law.

Barber Mill Company shall submit its traffic impact analysis no later than November 1, 2005, in order for its analysis to be fully considered in ACHD's next Capital Improvement Plan update in 2006. If ACHD, following the necessary statutory process, determines that the two center lanes qualify as System Improvements and are included in the updated Capital Improvement

Plan, Barber Mill Company shall be entitled to Reimbursement for the deeded Right-of-Way for such two center lanes as a portion of the allocated impact fee eligible costs provided in this Agreement calculated at \$7.00 per square foot, subject to the limitations that Reimbursement shall be limited to Impact Fees collected only in Harris Ranch, Idaho, and no where else in the Southeast Service Area. If all of the above criteria are not established in the 2006 update, there shall be no Reimbursement for the two center lanes.

(b) The \$3.5 million payment by Harris Family Limited Partnership to ACHD for Project construction qualifies for Impact Fee Reimbursement, which shall be allocated to Impact Fee eligible costs associated with the construction of the Project.

(c) The value of all real property conveyed by Barber Mill Company to ACHD, including but not limited to wetlands, Right-of-Way and slope protection areas, excluding the two center lanes deeded by Harris Ranch to ACHD as described on Exhibit D. The two outer lanes of the Right-of-Way for the Northerly Phase provided by Barber Mill Company, any necessary slope protection areas and wetlands as set forth herein, shall be subject to Impact Fee Reimbursement calculated at \$7.00 per square foot.

(d) The value of wetlands donated by Harris Ranch for wetlands mitigation required by governmental agencies due to the Project, which shall be Reimbursed at \$7.00 per square foot.

(e) The Two Hundred Thousand Dollars (\$200,000) representing the value of the HDR plans delivered by Harris Ranch to ACHD, of which One Hundred Eighty Thousand Dollars (\$180,000) shall be Reimbursed to Harris Family Limited Partnership, and Twenty Thousand Dollars (\$20,000) shall be Reimbursed to Barber Mill Company.

(f) The costs and expenses paid by ACHD in connection with the design and construction of the Project that qualify for Impact Fee Reimbursement.

6.2 Harris Ranch shall be Reimbursed for the eligible Impact Fee costs set forth herein from any and all Impact Fees collected by ACHD in connection with Harris Ranch, Idaho, and shall be eligible for Reimbursement commencing upon execution of this agreement in accordance with the priority schedule set forth in Section 6.3.

In addition, Harris Ranch and ACHD may also be Reimbursed the eligible Impact Fee costs set forth herein from any and all additional Impact Fees collected by ACHD in the Southeast Service Area as defined by the Impact Fee Ordinance, which are not being allocated to repay the existing loan balance in the Southeast Service Area and/or allocated to fund other impact fee eligible projects as identified in the Southeast Service Area 2006-1010 FYWP.

Harris Ranch shall be Reimbursed by ACHD for unpaid Impact Fee credits on October 1, 2009, or upon Substantial Completion of the Project, which ever occurs later, but in no event shall Reimbursement be later than December 31, 2012. The parties agree that Harris Ranch shall be Reimbursed for its reimbursable Impact Fees provided for herein before ACHD receives any reimbursable Impact Fees as provided herein.

6.3 Reimbursement to Harris Family Limited Partnership, Barber Mill Company and ACHD shall be made by ACHD in the following priority:

(a) One Hundred Eighty Thousand Dollars (\$180,000) to Harris Family Limited Partnership representing a partial value of the HDR plans delivered by Harris Ranch to ACHD.

(b) Twenty Thousand Dollars (\$20,000) to Barber Mill Company representing a partial value of the HDR plans delivered by Harris Ranch to ACHD.

(c) The value agreed to herein of all real property conveyed by Harris Ranch to ACHD.

(d) The \$3.5 Million provided by Harris Family Limited Partnership.

(e) The Impact Fee eligible costs and expenses paid by ACHD in connection with the design and construction of the Project.

SECTION 7. Remedies.

7.1 In the event Harris Ranch defaults or fails or neglects to perform its obligations hereunder in the time and manner required herein, ACHD shall be entitled to all remedies available to it at law or in equity, including but not limited to the following remedies:

(a) ACHD may immediately draw upon and pursue all rights under Harris Family Limited Partnership's line of credit as set forth in Section 3.2 above;

(b) ACHD may deny any preliminary and/or final plats within Harris Ranch, Idaho, not previously approved; and

(c) ACHD shall have no obligation to pay Harris Ranch any credits or Reimbursement from Impact Fees as provided herein.

7.2 In the event ACHD defaults or fails or neglects to perform its obligations hereunder in the time and manner required herein, Harris Ranch shall be entitled to all remedies available to Harris Ranch at law or in equity.

SECTION 8. Attorneys' Fees.

Should any party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach of this Agreement, or to resolve any disagreement in interpretation of this Agreement, the unsuccessful party in any final judgment entered therein agrees to reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment.

SECTION 9. Notices.

Any and all notices given by any of the parties hereto shall be in writing and deemed delivered when: (i) delivered personally, or (ii) sent by fax to the other party at the fax telephone number set forth in Section 1, or (iii) deposited in the United States Mail, certified, return receipt requested, postage prepaid, addressed to the other party at the address set forth in Section 1, in each case with a copy to JoAnn C. Butler, 251 E. Front Street, Suite 200, Boise, Idaho 83702, whose telephone number is (208) 388-1000 and whose fax telephone number is (208) 388-1001, or such other fax telephone number or mailing address as may be provided by written notice of such change given to the other party in the same manner as above provided.

SECTION 10. Applicable Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho. It is understood and agreed that this Agreement shall in no way be construed so as to bind or obligate ACHD beyond the term of any particular appropriation of funds as set forth in Article VII of the Idaho Constitution.

SECTION 11. Incorporation of Exhibits.

It is agreed that all exhibits to this Agreement are incorporated herein by reference and made a part of the terms, provisions and covenants of this Agreement.

SECTION 12. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 13. Time of Essence.

All times provided for in this Agreement or in any other instrument or document incorporated herein or contemplated hereby for the performance of an

act shall be strictly construed, it being agreed that time is of the essence of this Agreement.

SECTION 14. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SECTION 15. Joint and Several Liability.

Harris Family Limited Partnership and Barber Mill Company, and each of them, shall be jointly and severally liable for all obligations of Harris Family Ranch Limited Partnership and Barber Mill Company under this Agreement.

SECTION 16. Future Applications.

Harris Ranch acknowledges and agrees that ACHD's execution of this Development Agreement does not confer any additional rights or constitute any approval of any related developments or other applications submitted to ACHD.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

HARRIS FAMILY LIMITED PARTNERSHIP,
an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: Felicia Harris Burkhalter
Felicia Harris Burkhalter
Manager

By: Mildred H. Davis
Mildred H. Davis
Manager

By: Brian Randolph Harris
Brian Randolph Harris
Manager

By: Alta M. Harris
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By: Larry Williams
Larry Williams
President

Attest:

Secretary

ADA COUNTY HIGHWAY DISTRICT

By: John Strawn
Title: President

Attest:

William J. Schweitzer
Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

HARRIS FAMILY LIMITED PARTNERSHIP,
an Idaho limited partnership

By: Harris Management, LLC, its General Partner

By: Felicia Harris Burkhalter
Felicia Harris Burkhalter
Manager

By: Mildred H. Davis
Mildred H. Davis
Manager

By: Brian Randolph Harris
Brian Randolph Harris
Manager

By: Alta M. Harris
Alta M. Harris
Manager

BARBER MILL COMPANY, an Idaho corporation

By: Larry Williams
Larry Williams
President

Attest: Mareanna Sullivan
Secretary

ADA COUNTY HIGHWAY DISTRICT

By: _____
Title: President

Attest:

Director

LOCATION:

RX TIME 07/29 '05 08:18

EXHIBITS TO DEVELOPMENT AGREEMENT

- Exhibit "A" Legal Description of Harris Ranch, Idaho
- Exhibit "B" Depiction of Project
- Exhibit "C" ACHD 2006-2010 Five Year Work Plan
- Exhibit "D" Gift Deed
- Exhibit "E" Warranty Deed
- Exhibit "F" Consent of HDR Engineering, Inc.
- Exhibit "G" Construction Easement
- Exhibit "H" Slope Easement