

**After Recording  
Return to:**

Brett R. Hamm  
Hawkins Companies LLC  
855 Broad Street, STE 300  
Boise, ID 83702

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

This Second Amendment to Development Agreement (this “Amendment”) is entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2014 by and among [i] the City of Boise City, an Idaho municipal corporation (“City”) and [ii] FAE Holdings 416242R, LLC, an Idaho limited liability company, JGH Shadow Hills LLC, an Idaho limited liability company, MRH Redding LLC, an Idaho limited liability company, and GP Hilltop LLC, an Idaho limited liability company (collectively “Developer”).

**WITNESSETH:**

**WHEREAS**, certain real property was approved by City for annexation and zoning (CAR00-00008/DA, CAR00-00005/DA, CAR07-00023, CAR07-00024/DA) and for development of a mixed-use development (CUP00-00007, CUP07-00023) (collectively, the “**Underlying Approvals**”);

**WHEREAS**, pursuant to the Underlying Approvals Developer’s predecessors-in-interest and City entered into a Development Agreement dated January 20, 2001, and recorded January 30, 2001, as Instrument No. 101007515, records of Ada County, Idaho (the “**Original Agreement**”) and a First Amendment to Development Agreement dated effective June 22, 2007, and recorded June 27, 2007, as Instrument No. 107091422, records of Ada County, Idaho (the “**First Amendment**”);

**WHEREAS**, the Original Agreement, First Amendment, and this Amendment may sometimes hereinafter be collectively referred to as the “**Agreement**”;

**WHEREAS**, Developer is the owner of record or contract purchaser of that certain real estate legally described on **Exhibit A** attached hereto and made a part thereof (the “**Property**”), which Property is subject to the Original Agreement, First Amendment, and Underlying Approvals;

**WHEREAS**, Developer applied to City on March 25, 2014, for rezoning in connection with the Property;

**WHEREAS**, Developer proposes that the Property be developed pursuant to and in accordance with City’s Comprehensive Plan and Zoning Ordinance in effect on the date of

application of CAR14-00010, and in accordance with the terms and conditions of the this Amendment and any further amendments hereto;

**WHEREAS**, City has identified the Property as a site which is suited for development of mixed-use authorized under the City's Comprehensive Plan and Zoning Ordinance and has conditionally approved a conceptual plan for the Property;

**WHEREAS**, the requested zoning for the Property satisfies the requirements set forth in the Zoning Ordinance for rezone findings, conclusions and approval, and this Amendment to the Original Agreement and First Amendment will assure compliance with the conditions of approval in connection with Underlying Approvals and the Plan, defined below;

**WHEREAS**, City, pursuant to § 11-8-9, Boise City Code, and § 67-6511A, Idaho Code has the authority to conditionally zone 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 specific purposes and/or uses which are appropriate in the area;

**WHEREAS**, Developer held a neighborhood meeting in connection with the Property and the proposed development on March 17, 2014 at 6:00 p.m., at Riverglen Junior High School, 6801 N. Gary Lane, Boise, Idaho;

**WHEREAS**, City's Planning & Zoning Commission and City's City Council have held public hearings as prescribe by law with respect to the rezoning and planned development of the Property and this Amendment;

**WHEREAS**, all public hearings pursuant to notice as required by law or other action required to be held or taken prior to the adoption and execution of this Amendment have been held and/or taken;

**WHEREAS**, it is the intent and desire of the parties hereto that development of the Property proceed as provided herein, subject to the terms and conditions of the Agreement as amended hereby; and

**WHEREAS**, the parties do enter into this Amendment with mutual consideration as reflected in the covenants, duties and obligations herein set forth.

**NOW THEREFORE**, in consideration of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto amend the Agreement as follows:

1. Description and Location of Property, Size of Property, Present Zoning: The zones shall apply to the Property owned by Developer, as described more specifically in **Exhibits B and C**,

attached hereto and made a part hereof. The Property is approximately 22.76 acres total; approximately 13.28 acres shall be zoned C-2D (General Commercial with Design Review and Development Agreement); and approximately 13.28 acres shall be zoned C-4D (Planned Commercial with Design Review and a Development Agreement). The Property was formerly zoned in Boise City as C-4D (Planned Commercial with Design Review and a Development Agreement), L-OD (Limited Office with Design Review and a Development Agreement), and R-2D (Multifamily Residential with Design Review and a Development Agreement).

2. Use Permitted by this Amendment. The uses allowed for the Property pursuant to the conditional zoning as reflected in the Agreement are those uses allowed under City's Zoning Ordinance in effect on the date of application of CAR14-00010. The application for CAR14-00010; the approved plan attached hereto as **Exhibit D** and made a part hereof (the "**Plan**"); final conditions of approval dated \_\_\_\_\_, 2014, attached hereto as **Exhibit E**, and made a part hereof; and all other applicable information for CAR14-00010 are on file with the Boise City Planning and Development Services Department and/or City's Clerk and are incorporated by this reference.

Developer agrees that the Agreement specifically allows only the uses described in the Zoning Ordinance and specifically incorporated herein. No change in the uses specified in the Agreement shall be allowed without modification of the Agreement pursuant to the requirements of the Boise City Code. In the event Developer changes or expands the uses permitted by the Agreement without formal modification of the Plan and the Agreement as allowed by the Boise City Code, Developer shall be in default of the Agreement.

3. Development in Conditional Zone: The mixed-use plan shall be developed substantially as approved under CAR14-00010, and as approved and/or modified in connection with the conceptual and/or detailed phase applications, including all conditional use approvals, subdivision plat approvals and/or Design Review Committee approvals. Development of any specific portion of the Property substantially inconsistent with the Agreement, as determined by the Planning Director, without formal modification of CAR14-00010, consistent with Boise City Code, and/or amendment of the Agreement, shall result in a default of the Agreement by Developer in connection with such specific portion of the Property.
4. Commercial Development. Section 3.d. of the Original Agreement as modified by Section 4 of the First Amendment is hereby deleted in its entirety and replaced as follows
  - d. Limit commercial development on the Property to no more than 70,000 square feet of floor area.
5. Hours of Operation and Restrictions on Commercial Loading Docks. The restrictions set forth in Section 4.d and 4.f of the Original Agreement shall not apply to business and

deliveries to businesses being operated adjacent to State Street on Pad A, Pad B, Pad C, and Pad D as depicted on the Plan.

6. Conditions. Developer and City are mutually bound by, and shall comply with all of the conditions contained in CAR14-00010, as applicable, which conditions may be modified and/or amended in connection with the conceptual approval and/or detail phase design
7. Rezoning. City shall, following recordation of the duly approved Amendment, enact a valid and binding ordinance zoning the Property as specified herein.
8. Effective Date of Amendment. This Amendment shall be effective on the last date the Boise City Council shall adopt the amendment to the Boise City Zoning Ordinance for the Property.
9. Requirement for Recordation. Developer shall record this Amendment, including all of the Exhibits, and submit proof of such recording to City, prior to the third reading of the zoning ordinance and formal adoption of the applicable ordinance by the City Council. Failure to comply with this section shall be deemed a default of the Agreement by Developer. If for any reason after such recordation City's Council fails to adopt the applicable ordinance, City shall execute and record an appropriate instrument to terminate this Amendment.
10. Invalid Provisions. If any provision of this Amendment is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Amendment is held not valid which Developer deems essential to its development of the Property, Developer may, at its sole discretion, declare this Amendment null and void of no force and effect and hereby relieve all parties from any obligations hereunder.
11. Controlling Provisions. In the event of any conflict between (a) this Amendment and (b) the Original Agreement and First Amendment, this Amendment shall control. All provisions of the Original Agreement and First Amendment not otherwise amended by this Amendment shall remain in full force and effect.

[End of text, signature page follows.]

**IN WITNESS WHEREOF**, the parties, having been duly authorized, have hereunto caused this Amendment to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

**CITY:**

CITY OF BOISE CITY  
an Idaho municipal corporation

By: \_\_\_\_\_  
David H. Bieter, Mayor

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**DEVELOPER:**

FAE HOLDINGS 416242R, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Gary R. Hawkins, Manager

JGH SHADOW HILLS LLC,  
an Idaho limited liability company,

By: \_\_\_\_\_  
Jason G. Hawkins, Manager

MRH REDDING LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Mark R. Hawkins, Manager

GP HILLTOP LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Robert L. Phillips, Manager

**SCHEDULE OF EXHIBITS**

- Exhibit A Legal Description of the Property
- Exhibit B Description of the Portion of the Property Zoned C-2D
- Exhibit C Description of the Portion of the Property Zoned C-4D
- Exhibit D Site Plan
- Exhibit E Conditions of Approval

STATE OF IDAHO            )  
  ) ss.  
County of Ada                )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID H. BEITER and \_\_\_\_\_, known or identified to me to the MAYOR and CITY CLERK of the CITY OF BOISE CITY, 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.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF IDAHO            )  
  )ss  
COUNTY OF ADA            )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a notary public, personally appeared GARY R. HAWKINS, known or identified to me to be the MANAGER of FAE HOLDINGS 416242R, LLC, an Idaho limited liability company, who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said company's name.

\_\_\_\_\_  
Notary Public, State of Idaho  
My commission expires: \_\_\_\_\_

STATE OF IDAHO                    )  
  )ss  
COUNTY OF ADA                 )

On this \_\_\_ day of \_\_\_\_\_, 2014, before me, a notary public, personally appeared JASON G. HAWKINS, known or identified to me to be the MANAGER of JGH SHADOW HILLS LLC, an Idaho limited liability company, who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said company's name.

\_\_\_\_\_  
Notary Public, State of Idaho  
My commission expires:\_\_\_\_\_

STATE OF ARIZONA    )  
  )ss  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledge before me this \_\_\_ day of \_\_\_\_\_, 2014, by MARK R. HAWKINS, MANAGER of MRH REDDING LLC, an Idaho limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public for Arizona  
My commission expires:\_\_\_\_\_

STATE OF IDAHO                    )  
  )ss  
COUNTY OF ADA                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a notary public, personally appeared ROBERT L. PHILLIPS, known or identified to me to be the MANAGER of GP HILLTOP LLC, an Idaho limited liability company, who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said company's name.

\_\_\_\_\_  
Notary Public, State of Idaho  
My commission expires:\_\_\_\_\_



## Exhibit A

### Legal Description of the Property

Lots 2, 3, 4, 5, 6, 7, 8, and 9 of Block 1, and Lots 1 and 2 of Block 2, Northwest Passage Project, according to the official plat thereof, filed in Book 92 of Plats at Pages 10998 through 10999, Records of Ada County, Idaho.

AND

A tract of land situated in Section 24, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, being a portion of Lots 1 and 2 of GARY'S PROJECT, according to the official plat thereof, filed in Book 3 of Plats at Page 121, records of Ada County, Idaho, described as follows:

Commencing at a brass cap marking the North quarter corner of said Section 24;  
thence South 0°12'47" West 1300.94 feet along the Westerly boundary of the said Gary's Project to a 5/8" x 30" rebar marking the Northwest corner of Lot 1 of said Gary's Project, the real point of beginning;  
thence continuing South 0°12'47" West 762.83 feet, formerly 762.07 feet, to a point on the Northeasterly right-of-way of State Highway No. 44;  
thence Southeasterly along said Highway right-of-way along the arc of a curve to the right having a central angle of 7°26'05", formerly 7°26'51", a radius of 1970.0 feet, and a long chord which bears South 54°40'45" East 255.45 feet, formerly South 54°06'24" East 255.91 feet, to a 5/8" x 30" rebar;  
thence North 35°47'44" East 86.71 feet, formerly 88.64 feet, to a 5/8" x 30" rebar;  
thence North 00°15'07" East 839.09 feet, formerly North 0°12'07" East 839.26 feet to a 5/8" x 30" rebar on the North line of Lot 2 of said Gary's Project;  
thence North 89°45'23" West, formerly North 89°47'23" West, 260.00 feet to the Real Point of Beginning.

**Exhibit B**

Description of the Portion of the Property Zoned C-2D

**Exhibit C**

Description of the Portion of the Property Zoned C-4D

Exhibit D

Site Plan



**Exhibit E**

Conditions of Approval