

Recording requested by:

The Cartee Project, LLC  
3112 Los Feliz Blvd.  
Los Angeles, California 90039

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**DEVELOPMENT AGREEMENT**  
(CAR18-00000)

This Development Agreement (this “**Agreement**”) is entered into by and between City of Boise City, an Idaho municipal corporation (“**City**”) and The Cartee Project, LLC, an Delaware limited liability company (“**Developer**”). The “**Effective Date**” of this Agreement will be the date of its recording in the records of Ada County, Idaho.

RECITALS

A. Developer owns the real property legally described on Exhibit A, attached hereto (the “**Property**”).

B. Developer has applied to City for a conditional rezone to C-5DD of the Property to allow for the development of a mixed-use project that that will include commercial uses (retail, restaurant and/or office), structured parking and multi-family residential.

C. City, pursuant to Boise City Code Section 11-03-4(2) and Idaho Code §67-6511A, has the authority to conditionally rezone the property and enter into a development agreement for the purpose of allowing, by agreement, a specific purpose to proceed in a specific area for a specific purpose or use which is appropriate in the area, but for which the requested zoning may not be consistent with the Idaho Code and the Boise City Code.

D. City’s Planning & Zoning Commission and City Council have held public hearings as prescribed by law with respect to the zoning and planned development of the Property and this Agreement.

E. City and Developer intend use of the Property proceed with the rezone as provided herein, subject to the terms and conditions of this Agreement and the amendments hereto, and conditioned upon Developer’s and the Property’s compliance with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the mutual consideration as reflected in the covenants, duties and obligations herein set forth, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Original Zoning District; New Conditional Zoning District.** The Property was formerly zoned by Boise City as R-ODD. The Property will be zoned as C-5DD.

2. **Development Plan.** The Property will be developed as conceptually described and illustrated on Exhibit B (the “**Development Plan**”). Minor changes to the Development Plan may be approved through the Design Review process. Significant changes to the Development Plan, as determined by City’s Planning Director, must be approved by Boise City Council and documented in a signed and recorded amendment to this Agreement.

3. **Permitted Uses.** This Agreement and the rezone permits all uses in the C-5DD zone as specified in the Boise City Code, including the following uses currently proposed by Developer:

- a. Multi-family residential;
- b. Office, retail and/or restaurant within the podium; and
- c. Structured parking.

4. **Height Limitation.** The maximum building height on the Property may not exceed ninety-five (95) feet, as measured in accordance with Boise City Code; provided, however, rooftop enclosures (such as elevator, stairway and mechanical penthouses), mechanical equipment (and any related screening elements) may exceed the foregoing height limitation to the extent permitted by the Boise City Code.

5. **Change in Use.** No change in the uses specified in this Agreement will be allowed without modification of this Agreement pursuant to the requirements of the Boise City Code. If Developer changes or expands the uses permitted by this Agreement without the approval required by this Agreement, the Boise City Code and Idaho Code § 67-6509, then Developer will be in default of this Agreement.

6. **Construction of Use in Conditional Zone.** No new construction is proposed at this time. Any new construction must comply with this Agreement, Boise City Code, Idaho law, and all other applicable laws.

7. **Default.** If Developer, its heirs or assigns, subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement, City will have the following non-exclusive and cumulative remedies, upon City’s compliance with the requirements of the Boise City Code and Idaho Code § 67-6509:

a. If the Boise City Council determines that this Agreement ought to be modified, then the Boise City Council may amend terms of this Agreement and Developer agrees to comply with the amended terms, and Developer’s failure to comply with the amended terms will be a default of this Agreement;

b. If the Boise City Council, after compliance with the requirements of the Boise City Code, determines that this Agreement ought to be terminated as a result of the default, then the Boise City Council may terminate this Agreement and the zoning of the Property will revert to R-ODD as provided in Idaho Code § 67-6511A. In such event, all uses of the Property which are not consistent with R-ODD zoning or otherwise approved by City of Boise must immediately cease; and

c. In the event of a default by Developer, City will additionally have any and all remedies available to it in law or equity.

A waiver by City of any default by Developer of any one or more of the covenants or conditions hereof will apply solely to the default waived and will not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions.

8. **Consent to Reversion of Zone.** By entering into this Agreement, Developer does hereby agree that in the event Developer defaults in the terms and conditions of this Agreement in connection with the Property, Developer consents to any reversion of the zoning on the Property to R-ODD zoning district.

9. **Notices.** Any and all notices required to be given by either of the parties hereto must be in writing and will be deemed delivered upon personal service, if hand-delivered, or when mailed in the United States mail, certified, return receipt requested, addressed as follows:

To City: Director, Community Planning and Development Department  
City of Boise City  
PO Box 500  
Boise, Idaho 83701-0500

To Developer: The Cartee Project, LLC  
3112 Los Feliz Blvd.  
Los Angeles, California 90039

Each party agrees to give notice to the other party of any change of their address for the purpose of this section by giving written notice of such change to the other in the manner herein provided. Developer expressly agrees to notify any successors and assigns of the need to provide City with a current address. If any successor or assign fails to provide an address, City's obligation to mail will be deemed accomplished by use of the address of the Owner of the Property on file with the Ada County Assessor's Office.

10. **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party will be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision will survive any default, termination or forfeiture of this Agreement.

11. **Time Is Of The Essence.** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder will constitute a breach of and a default under this Agreement by the party so failing to perform.

12. **Binding Upon Successors; Agreement Runs with the Land.** This Agreement will be binding upon and inure to the benefit of the parties respective successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement will run with the land and is benefit and be binding on Developer and all subsequent owners of the Property, who will be considered a "Developer" as used herein.

13. **Requirement for Recordation.** Developer will record this document, including all the Exhibits, in conjunction with the formal adoption of CAR18-00000 by the Boise City Council, and immediately provide a recorded copy to City. Failure to comply with this Section will be deemed a default of this Agreement by Developer.

14. **Effective Date.** This Agreement will not be effective until CAR18-00000 has been approved by City and this Agreement has been recorded in the records of Ada County, Idaho.

15. **Entire Agreement.** This Agreement is the entire agreement of the parties regarding the subject matter hereto.

16. **Recitals and Exhibits.** The recitals herein and exhibits attached hereto are hereby incorporated by reference.

17. **Modification or Termination.** This Agreement may only be modified and/or terminated as follows: (a) by mutual agreement of Developer and City; and/or (b) unilaterally by City, so long as it complies with Boise City Code and Idaho state law. Any modification and/or termination must be recorded in the records of Ada County, Idaho.

18. **Authority.** Developer represents and warrants to City that the person signing this Agreement has the authority to sign the Agreement on behalf of Developer. Developer represents and warrants to City that Developer owns the Property and that this Agreement is binding and enforceable on the Property.

19. **Invalid Provisions.** If any provision of this Agreement is held not valid, such provision will be deemed to be excised there from and the invalidity thereof will not affect any of the other provisions contained herein.

[ end of text; counterpart signature pages follow ]

EXECUTED EFFECTIVE as of the Effective Date.

**CITY OF BOISE CITY**, an Idaho municipal corporation

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

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lynda Lowry  
EX-OFFICIO CITY CLERK

Date: \_\_\_\_\_

STATE OF IDAHO    )  
                                  ) ss.  
County of Ada        )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **David H. Bieter**, known or identified to me to be the Mayor of the City of Boise City, and **Lynda Lowry**, the Clerk of the City of Boise City, the municipal corporation that executed the within and foregoing instrument, or the persons 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: \_\_\_\_\_

EXECUTED EFFECTIVE as of the Effective Date.

**THE CARTEE PROJECT, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF IDAHO    )  
                                  ) ss.  
County of Ada        )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of The Cartee Project, LLC, a Delaware limited liability company, that executed the foregoing said instrument, and acknowledged to me that he/she executed the same in the limited liability company's name.

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: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

Lots 11 through 20, inclusive, in Block 5 of Central Subdivision, according to the official plat thereof, filed in Book 1 of Plats at Page 7, records of Ada County, Idaho.

**EXHIBIT B**  
**DEVELOPMENT PLAN**

The Development Plan is to develop the Property into mixed-use project that that will include commercial uses (retail, restaurant and/or office), structured parking and multi-family residential.

The massing perspective below conceptually illustrates the presently anticipated bulk and massing of the development, but the actual bulk and massing will be as approved by the City through the Design Review process.



**H O L S T**

THE CARTEE PROJECT

Project #  
18-001

SITE REZONE

05.24.2018

DATE:  
CONCEPTUAL  
MASSING

Sheet #

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