

*RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:*

Planning and Development Services Department  
City of Boise City  
P.O. Box 500  
Boise, Idaho 83701-0500

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(Space Above for Recorder's Use)

**DEVELOPMENT AGREEMENT**

This Development Agreement (“**Agreement**”) is by and between the City of Boise City, a municipal corporation of the State of Idaho (the “**City**”) and Cole & Fairview, LLC, an Idaho limited liability company (the “**Developer**”), the owner of the real property legally described on **Exhibit A** attached hereto and made a part hereof (the “**Property**”) and the applicant for Boise City rezone case number **CAR\_\_-\_\_\_\_\_**.

**WHEREAS**, the Developer has applied to the City for a conditional rezone to C-2D/DA of the Property described herein (Exhibit A) to develop a retail and service commercial development of 3 lots on approximately 5.441 acres at the intersection of Fairview Avenue and Cole Road; and

**WHEREAS**, the City, pursuant to Boise City Code section 11-03-04.2 and Idaho Code section 67-6511A, has the authority to conditionally rezone 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 a specific purpose or use which is appropriate in the area, but for which the requested zoning may not be consistent with Idaho Code and Boise City Code; and

**WHEREAS**, the 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; and

**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 this Agreement and the amendments hereto.

**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. **Description and Location of Property; Size of Property; Present Zoning.** This conditional C-2D/DA zone shall apply to the Property. The commonly-associated address of the Property is 7563 W. Fairview Ave., Boise, Idaho 83704, which is identified as the

following parcels S1112110555 and detailed in **Exhibit A**. The Property is approximately 5.441 acres. The Property was formerly zoned by City of Boise as A-1.

2. **Use Permitted by this Agreement.** The sole uses allowed pursuant to this conditional rezone as reflected in this Agreement are those codified in the Boise City Code as C-2, as the same may be changed by the City from time to time, with the exception of the prohibited uses described in “Exhibit C.” The Developer agrees that this Agreement specifically allows only the uses described and specifically incorporated herein under the conditional C-2D/DA zone. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of Boise City Code. In the event the Developer changes or expands the use permitted by this Agreement without formal modification of the Agreement as allowed by the Boise City Code, the Developer shall be in default of this Agreement.
  
3. **Construction of Use in Conditional Zone.** The development and site work shall be constructed in accordance with the preliminary site plan attached hereto as **Exhibit B** and made a part hereof (the “**Preliminary Site Plan**”) and shall be consistent with the development standards set forth below, as well as the uses codified in the Boise City Code as C-2, and as excluded in **Exhibit C**. Failure to construct the development consistent with this Agreement and the Boise City Development Code or construction in variance with this Agreement, including any amendment of this Agreement, shall constitute a default of this Agreement by the Developer.
  - a. **Development Standards.** The following items, requirements, and conditions shall be applied to the rezoning the Property to a C-2D/DA zone.
    - i. **Development Type and Density.** This Property shall be developed with 3 buildable lots exclusively for future development, as shown in **Exhibit B**, as well as the uses codified in the Boise City Code as C-2D, and as excluded in **Exhibit C**.
    - ii. **Future Land Use.** Parcels shall be developed in conformance with uses as codified in Boise City Code as C-2. In the event that Parcel 3, as shown in **Exhibit B**, is developed with a single or multi-family use, the parcel may be subdivided for individual sale of homes and/or residential units.
    - iii. **Building Form & Scale.** In consideration of neighborhood residents’ concerns, no portion of Parcel 3 within the development shall exceed 35 feet in height, which is lower than the 45-foot permitted height in a C-2D zone. All exterior lighting fixtures shall be of a design that will focus the light down to prevent light trespass from the development.
    - iv. **Residential Buffering.** Upon development, the southerly property line of Parcel 3 shall contain acceptable fencing or landscaping of not less than 6

feet in height as a buffer to the adjacent single-family residential subdivision to the south.

- v. **Drive-Up/Drive-Through Lanes.** Parcel 3 shall not be permitted to have any drive-up or drive-through lanes. Parcels 1 and 2 shall be permitted for drive-up or drive-through lanes provided lighting from vehicles within the drive-up or drive-through lanes are adequately screened from neighboring properties and stacking does not interfere with the normal pattern or flow of other vehicular traffic within the development.

4. **Default.** In the event the Developer, its heirs or assigns, or subsequent owners of the Property, or any other person acquiring an interest in the Property, changes or expands the use permitted by this Agreement without formal modification of this Agreement as allowed by Boise City Code, or fails to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Boise City Council upon compliance with the requirements of Boise City Code in accordance with the terms set forth below.

a. **Amendment.** In the event the Boise City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended, and the Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default.

b. **Termination.** In the event the Boise City Council, after compliance with the requirements of Boise City Code, determines that this Agreement shall be terminated as a result of default, the zoning of said parcel(s) in default shall revert to the City of Boise A-1 zoning. All uses of said parcel(s) in default which are not consistent with the City of Boise A-1 zoning or otherwise approved by the City shall cease.

c. **Non-Waiver.** A waiver by the City of any default by the Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

5. **Effective Date.** This Agreement shall be effective on the date that the City has adopted and published an ordinance by the Boise City Council zoning the Property as described herein and pursuant to case number \_\_\_\_\_ (the “**Rezoning Ordinance**”).

6. **Consent to Rezone.** The Developer, and its heirs, successors, assigns and personal representatives, by entering into this Agreement, do hereby agree that in the event there shall be a default in the terms and conditions of this Agreement in connection with the individual parcels, after compliance with the requirements of Boise City Code, this Agreement shall serve as consent to a rezone of said parcel(s) in default to the City of Boise A-1 zoning, as

provided in Idaho Code section 67-6511A.

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

a. To the City:

Director, Planning and Development Services Department  
City of Boise City  
P.O. Box 500  
Boise, Idaho 83701-0500

b. To the Developer:

Cole & Fairview, LLC  
Attn: Michael N. Fery  
350 N. 9<sup>th</sup> St., #200  
Boise, Idaho 83702

Either party shall give notice to the other party of any change of its address for the purpose of this section by giving written notice of such change to the other in the manner herein provided. The Developer expressly agrees to notify any successors and assigns of the need to provide the City with a current address. In the event any successor or assign fails to provide an address, the City's obligation of mailing shall be deemed accomplished by use of the address on file with the County Tax Assessor.

8. **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall 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 shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

9. **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 shall constitute a breach of and a default under this Agreement by the party so failing to perform.

10. **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties' respective successors, assigns, and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner of the Property, and each other person acquiring an interest in the Property. This Agreement shall run with the land.

11. **Requirement for Recordation.** The City shall record this Agreement, including all exhibits

attached hereto, prior to adopting and publishing the Rezoning Ordinance. If for any reason after such recordation the Boise City Council fails to adopt such an ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

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

[end of text – signatures on following pages]

**IN WITNESS WHEREOF**, the parties to this Agreement have caused it to be executed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY:**

CITY OF BOISE CITY,  
an Idaho municipal corporation

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

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF IDAHO    )  
                                  ) ss.  
County of Ada        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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, the Idaho municipal corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho municipal corporation, and acknowledged to me that such Idaho 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  
My commission expires: \_\_\_\_\_

**DEVELOPER:**

COLE & FAIRVIEW, LLC,  
an Idaho limited liability company

By: \_\_\_\_\_  
Michael N. Fery, its Manager

[notary blocks for developer entities on following page]

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a notary public in and for the State of Idaho, personally appeared Michael N. Fery, known or identified to me the Manager of Cole & Fairview, LLC, the Idaho limited liability company that signed the within and foregoing instrument, and acknowledged to me that such Idaho limited liability company 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  
My commission expires:\_\_\_\_\_



**EXHIBIT A**  
Property Legal Description

**EXHIBIT B**  
Preliminary Site Plan

**EXHIBIT C**  
Prohibited Uses

Parcel “3” as shown in **Exhibit B** shall prohibit uses as follows:

1. Halfway House
2. Food Kitchen
3. Shelter Home
4. Single Resident Occupancy Hotel
5. Communication Facility (all uses)
6. Club, Lodge, Social Hall
7. Mortuary
8. Mausoleum
9. Hospital
10. Bus Station
11. Utility (all uses)
12. Bikini Bar
13. Animal Daycare
14. Boarding Kennel
15. Tavern/Lounge/Brew Pub within or over 300’ of Residential
16. Laundry and Dry Cleaning Service/Plant, provided that on-site service oriented to pickup and delivery only by the ultimate consumer is acceptable
17. Tattoo Parlor and Body Piercing Establishments
18. Recreation and Entertainment (all uses)
19. Vehicles and Equipment (all uses)
20. Hotel/Motel
21. Recreational Vehicle Park
22. Newspaper & Printing Establishment
23. Composting Facility
24. Recycling Drop-Off Center