

D E V E L O P M E N T A G R E E M E N T

This Development Agreement (the “**Agreement**”) is entered into this ____ day of _____, 2008, by and between the City of Boise City, hereinafter referred to as “**City**”, and SCS Development LLC, the owner of the real property described herein and the “**Applicant**” for Boise City rezone number CAR08-00018, hereafter referred to as “**Developer**”.

WHEREAS, Developer has applied to City for a conditional rezone to M-1D (Light Industrial) of the real property described herein to develop a Self-Service Storage facility, as that term is defined by Boise City Code, consisting of one or more buildings, with storage facilities divided into individually accessed units, which may be condominiumized at Developer’s discretion; provided that Developer comply with all applicable laws including, without limitation, Idaho Code §55-1501, *et seq.* and Boise City’s subdivision and zoning ordinances.

WHEREAS, City, pursuant to §11-8-9, Boise City Code, and §67-6511A, Idaho Code, has the authority to conditionally rezone the Property, defined below, 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 the Idaho Code and the Boise City Code;

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

1. **Description and Location of Property, Size of Property, Present Zoning:** This conditional M-1D zone shall apply to the real property owned by Developer, consisting

of approximately 5.34 acres, more or less, located at 1979, 2035 and 2057 S. Saturn Way, Boise, Idaho, and more specifically described in **EXHIBIT “A”** (the “**Property**”).

2. **Use Permitted by this Agreement:** The sole use of the Property allowed pursuant to this conditional rezone as reflected in this Agreement is a Self-Service Storage facility. Developer agrees that this Agreement specifically allows only the uses described and specifically incorporated herein under the conditional M-1D zone. No change in the use specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Boise City Code. In the event Developer changes or expands the use permitted by this Agreement without formal modification of this Agreement as allowed by the Boise City Code, Developer shall be in default of this Agreement.
3. **Construction of Use in Approved Zone:** The development and site work shall be constructed in accordance with Boise City Zoning Ordinance. Failure to comply with this Agreement (including any amendment hereto) and the Boise City Zoning Ordinance or construction in variance with this Agreement, shall result in a default of this Agreement by Developer.
4. **Default:**
 - a. In the event Developer, her/his heirs or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, shall fail 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:

1). If, following Developer's uncured default, in the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default.

2). If, following Developer's uncured default, in the event the City Council determines that this Agreement shall be terminated, the zoning of the Property shall revert to C-1D. All uses of the Property that are not consistent with C-1D zoning shall cease. A waiver by City of any default by 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 City or apply to any subsequent breach of any such or other covenants and conditions.

5. **Consent to Rezone:** Developer, by entering into this Agreement, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement and termination hereof by the Boise City Council, that this Agreement shall serve as consent to a reversion of the Property to C-1D zoning, as provided in Idaho Code §67-6511(d).

6. **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 three (3) days following deposit in the United States mail, when mailed in the United States mail, certified, return receipt requested, addressed as follows:

a.) To the City:

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

b). To the Developer:

SCS Development LLC
3006 E. Goldstone Drive, Suite 137
Meridian, Idaho 83642

Either party shall 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.

7. **Attorney's 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 attorney's 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.
8. **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. This Agreement shall run with the land.
9. **Binding Upon Successors**: This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and personal representatives. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property.

10. **Requirement for Recordation:** Developer shall record this document, including all the Exhibits, prior to the formal adoption of the ordinance by the City Council. Failure to comply with this Section shall be deemed a default of this Agreement by Developer. This Agreement shall not be effective until the rezone ordinance has been published.
11. **Governing Law:** This Agreement shall be governed and construed by Idaho law, without regard to conflicts of laws principles.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

CITY:

By: _____
Hon. David Bieter, Mayor

ATTEST:

DEVELOPER:

SCS DEVELOPMENT LLC

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared David Bieter, known or identified to me to be the Mayor of the City of Boise City, the municipal corporation that executed the within and foregoing 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:_____

ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of SCS Development LLC, the Idaho limited liability company that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho limited liability company, 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
Residing at:_____
My commission expires:_____