

Recording requested by: _____
When recorded, please return to:
City of Boise, Planning and Development Services
PO Box 500
Boise, ID 83701

DEVELOPMENT AGREEMENT

CAR14-00003

This Agreement entered into this _____ day of _____, 2014, by and between the City of Boise City, hereinafter referred to as “City,” and KDFJ, Inc. the owner of the real property described herein and the Applicant for Boise City rezone number CAR14-0003, hereafter referred to as “Developer.”

RECITALS

WHEREAS, the Developer has applied to the City for a conditional rezone to C-3D/DA of the property described herein (Exhibit A) to develop a retail business; and

WHEREAS, the City, pursuant to Boise City Code Section 11-08-08 and Idaho Code §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 the Idaho Code and the 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-3D/DA zone shall apply to the property owned by Developer, hereinafter referred to as “the Property” and specifically legally described in EXHIBIT “A.” The commonly-associated address of the property is 9500 W. Overland Road, Boise, Idaho 83709. The property is approximately 1.17 acres. The property was formerly zoned by Boise City as A-1.
2. Uses Permitted by this Agreement: All uses for the C-3 zoning designation set forth in the Zoning Ordinance of the City of Boise are allowed except for the following which are specifically prohibited by this Agreement:
 - Halfway House
 - Shelter Home
 - Single Resident Occupancy Hotel
 - Trucking terminal
 - Truck stop
 - Bikini Bar
 - Boarding Kennel
 - Firing Range, Indoor
 - Composting Facility
3. Change of use: No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the Boise City Code. In the event the Developer or land user changes or expands the use permitted by this Agreement without formal modification of this Agreement as allowed by the Boise City Code, the Developer or land user shall be in default of this Agreement.
4. Default: In the event the Developer, her/his heirs or assigns or 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, this Agreement may be modified or terminated by the Boise City Council upon compliance with the requirements of the Boise City Code.
 - A.) 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.) In the event the Boise City Council, after compliance with the requirements of the Boise City Code, determines that this Agreement shall be terminated as a result of the default, the zoning of the property shall revert to A-1. All uses of the Property which are not consistent with A-1 zoning or otherwise approved by the City of Boise shall cease.

C.) 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. Consent to Rezone: Developer, Developer's heirs, successors, assigns and personal representatives, 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 in connection with the Property, after compliance with the requirements of Boise City Code, that this Agreement shall serve as consent to a rezone of the Property to A-1 zoning, as provided in Idaho Code §67-6511A.

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 when mailed in the United States mail, certified, return receipt requested, addressed as follows:

a.) To the City:

Director, Community Planning and Development Department

City of Boise City

P.O. Box 500

Boise, Idaho 83701-0500

b). To the Developer:

Mr. Doug Jones, Secretary/Treasurer

KDFJ, Inc.

5162 S. Yellowstone Hwy.

Idaho Falls, ID 83402

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. Developer expressly agrees to notify any successors and assigns of the need to provide City with a current address. In the event any successor or assign fails to provide an address, City obligations of mailing shall be deemed accomplished by use of the address on file with the County Tax Assessor.

7. Attorney 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.
9. Binding Upon Successors: This Agreement shall 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 shall be binding on the owner of the property, each subsequent owner and each other person acquiring an interest in the property. This Agreement shall run with the land.
10. Requirement for Recordation: The Developer shall record this document, including all the Exhibits, prior to the formal adoption of CAR14-00003 by the Boise City Council. Failure to comply with this section shall be deemed a default of this Agreement by the Developer. If for any reason after such recordation the Boise City Council fails to adopt CAR14-00003, City shall execute and record an appropriate instrument of release of this Agreement.
11. Effective Date: This Agreement shall not be effective until CAR14-00003 has been approved and published by the City.

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

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

Dated this _____ day of _____, 2014.

BOISE CITY

By: _____

David H. Bieter, Mayor

ATTEST:

DEVELOPER

By: _____

Douglas P. Jones

Title: Secretary/Treasure, KDFJ, Inc.

Exhibit A
Legal Description

Exhibit B
Conceptual Site Plan