

COPY

BEFORE THE EAGLE CITY COUNCIL

**IN THE MATTER OF AN APPLICATION)
FOR AN ANNEXATION, REZONE, AND)
PRELIMINARY PLAT FOR CASTLEBURY)
WEST BUSINESS PARK FOR CAPITAL)
DEVELOPMENT, INC.)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
CASE NUMBER A-19-06/RZ-25-06 & PP-19-06**

The above-entitled Annexation, Rezone, and Preliminary Plat applications came before the Eagle City Council for their consideration on March 13, 2007. The Council continued the item to March 27, 2007, at which time public testimony was taken and the public hearing was closed. The Council made their decision at that time. The Eagle City Council, having heard and taken oral and written testimony, and having duly considered the matter, makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

A. PROJECT SUMMARY:

Capital Development, Inc, represented by Van Elg with The Land Group, is requesting an annexation and rezone from RUT (Rural Urban Transition) to M-U-DA (Mixed Use with Development Agreement), and preliminary plat approval for Castlebury West Business Park. The 8.52-acre site is generally located on the northwest corner of West Chinden Boulevard (SH 20/26) and North Meridian Road at 6615 North Meridian Road.

B. APPLICATION SUBMITTAL:

A Neighborhood Meeting was held in compliance with the application submittal requirement of Eagle City Code at 6:00 PM, November 21, 2006. The Applications for this item were received by the City of Eagle on November 22, 2006.

C. NOTICE OF PUBLIC HEARING:

Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code and the Eagle City Code on January 2, 2007. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on December 27, 2006. The site was posted in accordance with the Eagle City Code on January 10, 2007. Requests for agencies' reviews were transmitted on November 8, 2006, in accordance with the requirements of the Eagle City Code.

Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on February 26, 2007. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on February 22, 2007. The site was posted in accordance with the Eagle City Code on January 30, 2007.

D. HISTORY OF RELEVANT PREVIOUS ACTIONS: N/A

On January 16, 2007, the Eagle City Council approved a comprehensive plan amendment (CPA-09-06) from Transitional Residential (Ada County designation) to Professional

Office for this site.

- E. COMPANION APPLICATIONS: All applications are inclusive herein.
CPA-09-06 Comprehensive Plan Amendment from Transitional Residential to Professional Office.
- F. APPLICANT'S STATEMENT OF JUSTIFICATION OF A DEVELOPMENT AGREEMENT (if applicable):
The City is requesting a development agreement to ensure the development of the property is consistent with the Comprehensive plan and vision of the City of Eagle.
- G. COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP DESIGNATIONS:

	COMP PLAN DESIGNATION	ZONING DESIGNATION	LAND USE
Existing	Transitional Residential	RUT (Rural Urban Transition-Ada County Designation)	Agriculture
Proposed	Professional Office*	MU-DA (Mixed Use with Development Agreement)	Professional Office
North of site	Transitional Residential	RUT (Rural Urban Transition-Ada County Designation)	Agriculture/Church
South of site	RUT (Rural Urban Transition – Ada County Designation)	RUT (Rural Urban Transition-Ada County Designation)	SH 20/26 - Agriculture
East of site	R-1 (Residential up to one unit per acre)	R-1 (Residential up to one unit per acre)	Single family residential subdivision
West of site	Transitional Residential	R-1 (Residential up to one unit per acre)	Agriculture

* An application to amend the Comprehensive Plan for this property from Transitional Residential to Professional Office was approved by the City Council on January 16, 2007.

H. DESIGN REVIEW OVERLAY DISTRICT: Not in the DDA, TDA, CEDA, or DSDA

I. SITE DATA:

Total Acreage of Site - 8.52

Total Number of Lots - 10

Commercial - 6 (Office)

Common/Other - 4

Total Number of Residential Units - 0

Single-family - 0

Existing - 0

Proposed - 0

Total Acreage of Any Out-Parcels -- 0

Additional Site Data	Proposed	Required
Dwelling Units Per Gross Acre	N/A - Office	N/A
Minimum Lot Size	18,469 sq. ft.	7,000 sq. ft.
Minimum Lot Width	88 ft. (approximately)	50 ft.
Minimum Street Frontage	38.96 ft.	35-ft.
Total Acreage of Common Lots	2.7-acres	2.7 -acres minimum
Percent of Site as Common Area	10%	10%

J. GENERAL SITE DESIGN FEATURES:

Landscape Screening:

Eagle City Code does not require landscape screening or a buffer in a commercial development. However, the applicant is proposing a thirty foot (30') wide landscaped screen and buffer along the portion of the development fronting Chinden Boulevard (SH 20/26). All berming, fencing and landscaping details, including any proposed pump houses for pressurized irrigation, are required for Design Review Board review and approval prior to submittal of a final plat, or prior to the issuance of a building permit, whichever occurs first.

Open Space and Design:

Eagle City Code section 8-2A-7 requires that landscaping shall cover a minimum of ten percent (10%) of the property. Hardscape plaza areas, such as decorative concrete/paver patios that are integrated into the design of the landscaped area, may be included in the ten percent (10%) landscape coverage requirement.

Storm Drainage and Flood Control:

Eagle City Code section 8-4-3 requires that all parking and loading areas shall provide for proper drainage of surface water to prevent the drainage of such water onto adjacent properties or walkways. Drainage plans shall be reviewed and approved by the city engineer and, for any side abutting a public street, such plans shall be reviewed and approved by the Ada County highway district, or highway district having jurisdiction.

Utility and Drainage Easements, and Underground Utilities:

Eagle City Code section 9-3-6 requires utility easements to be not less than twelve feet (12') wide.

Fire Hydrants and Water Mains:

Hydrants are to be located and installed as required by the fire district that has jurisdiction over the property.

On-site Septic System (yes or no) – no, the applicant will extend the existing mainline sewer, located 200 feet north of the proposed site and on the west side of North Meridian Road.

Preservation of Existing Natural Features:

Eagle City Code Section 9-3-8 (B) states that existing natural features which add value to residential development and enhance the attractiveness of the community (such as trees, watercourses, historic spots and similar irreplaceable assets) shall be preserved in the design of the subdivision.

Preservation of Existing Historical Assets:

Staff is not aware of any existing historical assets on the site which would be required to be preserved. If during excavation or development of the site, any historical artifacts are discovered, state law requires immediate notification to the state.

K. STREET DESIGN:

Public Streets:

West Bavaria Street, the only access point to the property, extends along the northern boundary of the site to the west from North Meridian Road and terminates with a hammerhead turn-around. The proposed street will be thirty-five (35') wide with two landscaped islands approximately 350 feet apart.

Cul-de-sac Design:

Cul-de-sacs proposed: One 120 foot (120') long and fifty foot (50') wide hammerhead turn-around is proposed (West Bavaria Street).

Curbs, Gutters, and Sidewalks:

The applicant proposes to install a five foot (5') wide meandering detached sidewalk with rolled curbs and gutters along the east and north portion of the site fronting North Meridian Road and West Bavaria Street. Five foot (5') wide detached sidewalks are proposed for the internal streets as well.

Lighting:

Lighting for the proposed public streets is required. Location and lighting specifications shall be provided to the City Zoning Administrator prior to the submittal of the final plat. Any modifications made to the lights shall be completed before the final plat approval.

Street Names:

Street name approval by the Ada County Street Name Committee is required prior to the submittal of a Final Plat. Any modifications of street names shall be completed before final plat approval.

L. ON AND OFF-SITE PEDESTRIAN/BICYCLE CIRCULATION:

Pedestrian Walkways/Pathways:

Per Eagle City Code section 9-3-3, right-of-way for pedestrian walkways in the middle of long blocks may be required where necessary to obtain convenient pedestrian circulation to schools, parks or shopping areas.

Bike Paths: None proposed

M. PUBLIC USES PROPOSED:

See "Open Space and Design" noted above.

- N. PUBLIC USES SHOWN ON FUTURE ACQUISITIONS MAP: No map currently exists
- O. SPECIAL ON-SITE FEATURES:
 Areas of Critical Environmental Concern - none
 Evidence of Erosion - no
 Fish Habitat - no
 Floodplain – no
 Mature Trees – no
 Riparian Vegetation – no
 Steep Slopes – no
 Stream/Creek: no
 Unique Animal Life - no
 Unique Plant Life - no
 Unstable Soils - no
 Wildlife Habitat – no
- P. SUMMARY OF REVIEW OF ENVIRONMENTAL ASSESSMENT PLAN (IF REQUIRED):
 Not required.
- Q. AGENCY RESPONSES:
 The following agencies have responded and their correspondence is attached to the staff report. Comments which appear to be of special concern are noted below:
 City Engineer: All comments within the Engineer’s letter dated December 14, 2006, are of special concern.
 Chevron Pipeline
 Central District Health Department
 Department of Environmental Quality
 Eagle Sewer District
 Idaho Power
 Idaho Transportation Department
- R. LETTERS FROM THE PUBLIC:
 To date, no letters have been received from the public.
- S. PROPOSED TIME SCHEDULE FOR THE DEVELOPMENT OF THE SITE:
 The applicant is proposing to construct the development in one phase.
- T. APPLICANT’S STATEMENT OF JUSTIFICATION FOR THE REZONE:
 See justification letters (attached to the staff report) date stamped by the City on November 22, 2006, (incorporated herein by reference).
- U. AVAILABILITY AND ADEQUACY OF UTILITIES AND SERVICES:
 The letter from the Eagle Sewer District states that the District has not annexed this property and that the applicant will need to submit a petition for annexation. United Water Company has stated in a letter to the City that this site is serviceable.

STAFF ANALYSIS PROVIDED WITHIN THE STAFF REPORT:

- A. COMPREHENSIVE PLAN PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

CHAPTER 5 – ECONOMIC DEVELOPMENT

5.5 Implementation Strategies

f. New commercial development outside of the Central Business District should complement the Central Business District and Eagle's rural identity.

CHAPTER 6 – LAND USE

Mixed Use

Suitable primarily for a variety of uses such as limited office, limited commercial, and residential developments. Uses should complement uses within the Central Business District (CBD). Development within this land use designation should be required to proceed through the PUD and/or Development Agreement process.

6.5 Goal

To preserve the rural transitional identity.

6.6 Objectives

To encourage the preservation of open spaces.

6.7 Implementation Strategies

- b. Establish land use patterns and zoning districts that do not exhaust available services such as sewer, water, police, fire, recreational areas, highways and transportation systems.
- l. Farm related uses and activities should be protected from land use conflicts or interference created by residential, commercial, or industrial development. The Idaho Right To Farm Act should be promoted.

CHAPTER 8 – TRANSPORTATION

8.6 Implementation Strategies

- a. Work in conjunction with the Ada County Highway District (ACHD), Idaho Transportation Department (ITD), and Ada Planning Association (APA) to classify roadways on the City of Eagle Transportation/Pathway Network Maps #1 and #3 incorporated into this Comprehensive Plan by reference. The Maps are to assure conformity to designations as delineated on the Land Use Map. The maps shall be provided to the Ada Planning Association for input into the Ada Planning Association's Functional Street Classification Map and Regional Transportation Plan.
- b. Integrate all modes of travel to support air quality improvement measures.
- c. Encourage roadway design standards that are consistent with the Idaho Transportation department (ITD), Ada County Highway District (ACHD), Ada Planning Association, and other agencies that may be responsible for roadway planning and design.
 - i. Encourage street lighting to increase roadway and neighborhood safety while preserving a rural environment free of any unnecessary lighting.
 - o. Encourage arterial and collector roadway design criteria consistent with the rural nature of planned and existing developments generally within the areas designated on the Land Use Map as Residential Rural (one dwelling unit per five acres maximum) and Residential Estates (one dwelling unit per two acres maximum). Such designs should include the following:

2. Sidewalks and/or pathways should meander and be separated from any roadway edge or curb to allow for added pedestrian safety. Topography, trees, ditches and/or similar features may limit the distance between sidewalks and/or pathways and the roadway edge. Easements may be needed if portions of the sidewalk and/or pathway is to be located outside of the right-of-way.
3. Unless otherwise determined by ACHD to be necessary for public safety, roadways should be a maximum of two lanes with a center turn lane only at driveways and/or street intersections that are expected to generate a minimum of 1000 vehicle trips per day, or where determined to be necessary for safety by ACHD. Any portion of a center turn lane which is not used for such a driveway or intersection should be landscaped. Such landscaped medians would need to be maintained by the City and would require a license agreement with the highway district having jurisdiction.
4. The roadways should be constructed to provide a bike lane on both sides of the roadway.

CHAPTER 12 - COMMUNITY DESIGN

12.4 Implementation Strategies

- a. Establish and maintain a development pattern and design criteria in keeping with the rural transitional identity of Eagle. This includes growth within the Impact Area that discourages or precludes the establishment of other City centers.
- d. The City Design Review Ordinance shall set forth criteria for building design, landscaping, signage and other aesthetic standards.

12.5 Eagle Tree Plan

12.5.1 Goal

To establish and enhance areas of tree growth that will create beauty, add to a healthy environment and increase economic stability.

B. SOARING 2025 PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

- **6.4I Rim View Planning Area**

6.4I.3 Design of commercial and office uses should be compatible with the existing residential uses and contain significant landscaped buffers and design elements. Scale of the commercial development should be similar to the Eagle Marketplace and provide for pedestrian linkages to the residential areas adjacent to the site.

C. ZONING ORDINANCE PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

- 9-4-1-6 (F)(2)

Sidewalks shall be separated from the edge of the abutting roadway and/or back of curb by a minimum eight foot (8') wide landscape strip. The landscape strip shall be completed with sod, automatic irrigation, and planted with three inch (3") minimum caliper shade class trees along all streets within the subdivision.

D. SUBDIVISION ORDINANCE PROVISIONS WHICH ARE OF SPECIAL CONCERN REGARDING THIS PROPOSAL:

- Eagle City Code Section 9-3-4 (A)

Unobstructed utility easements shall be provided along front lot lines, rear lot lines and side lot lines when deemed necessary. Total easement width shall not be less than twelve feet (12').

- Eagle City Code Section 9-4-1-6 (F) (2,3 & 6) Sidewalk Design:

2. Sidewalks and crosswalks shall be constructed and maintained in accordance with the standards and specifications of the Ada County Highway District.

3. Sidewalks shall be separated from the edge of the abutting roadway and / or back of curb by a minimum five-foot (5') wide landscape strip. The landscape strip shall be completed with sod, automatic irrigation, and planted with 3-inch minimum caliper shade-class trees along all streets within the subdivision. Installation of landscaping shall be in accordance with Section 8-2A-7 of this Code.E.

E. DISCUSSION:

- The applicant is requesting an annexation and rezone from RUT (Rural Urban Transition) to M-UDA (Mixed Use with Development Agreement), and preliminary plat approval for Castlebury West Business Park. Currently, the 8.32-acre parcel is used for agricultural purposes. The applicant is proposing a professional office complex with six (6) office lots. The only existing structure on the property is a shed which will be removed from the site prior to the City Clerk signing the Final Plat.
- Eagle City Code does not require roadside buffer areas in commercial developments, however the preliminary plat date stamped November 22, 2006 by the City does provide a thirty foot (30') buffer area between the property and Chinden Boulevard (SH 20/26). Height and landscaping of the buffer area will be subject to the City's design review process.
- The preliminary plate date stamped by the City on November 22, 2006, does not show pedestrian pathways internal to the site. The applicant should provide a revised preliminary plat showing the internal pedestrian circulation for review and approval by the design review board prior to submittal of the final plat application.
- The preliminary plat date stamped by the City on November 22, 2006, indicates that sidewalks in this development will be attached. Per Eagle City Code, sidewalks are required to be detached with an eight foot (8') wide planter strip separating the sidewalk from the curb and street. The applicant should provide a revised preliminary plat showing all sidewalks to be detached for review and approval by the design review board prior to submittal of the final plat application.

- Lot 1, Block 1 is proposed to function as joint parking area for the development. A cross access and joint parking agreement is not currently detailed for the site. The applicant should submit a cross access and joint parking agreement for review by the City Attorney prior to submittal of the final plat.
- Staff recognizes the significance of this project along an entry corridor of the City (SH 20/26) and recommends that the architecture of the structures be similar in detailing so to provide a uniform and pleasant gateway to the City and the neighboring residential uses. Staff recommends the use of an architectural control committee to ensure this consistency.
- The preliminary plat date stamped by the City of Eagle on November 22, 2006, indicates that twelve foot (12') easements will be located on all lot lines adjacent to a public right-of-way. Per Eagle City Code Section 9-3-6, unobstructed utility easements are to be provided along front lot lines, rear lot lines and side lot lines when deemed necessary. In a letter from the city engineer date stamped December 13, 2006 by the City it is recommended that in commercial/office subdivisions it may be appropriate to designate blanket easements across all lots.
- In a letter date stamped December 07, 2006 by the City of Eagle the Eagle Sewer District indicated that the property has not yet been annexed and that the applicant will need to submit an application for annexation. The applicant should complete the annexation process with the Eagle Sewer District prior to submittal of final plat.
- The property is within United Water's service area.
- The proposed design of this subdivision complies with the technical requirements (or will pursuant to the conditions outlined herein) of Eagle City Code and includes aesthetic features such as a landscaped buffering and common areas for employees and visitors.
- Idaho Transportation Department has requested a minimum of 100 feet from the center line of Chinden Boulevard (SH 20/26) be provided in a separate lot to accommodate future highway expansion. The current plan shows forty feet (40') of existing right-of-way and thirty feet (30') of buffer in a separate lot for a total of seventy feet (70').

STAFF RECOMMENDED FINDINGS:

- Rezone: With regard to Eagle City Code Section 8-7-5 "Action by the Commission and Council", and based upon the information provided to staff to date, staff believes that the proposed rezone is in accordance with the City of Eagle Comprehensive Plan and established goals and objectives because:
 - a. The requested zoning designation of R-2 (Residential-up to two units per acre) is consistent with the Residential Two designation as shown on the Comprehensive Plan Land Use Map;
 - b. The information provided from the agencies having jurisdiction over the public facilities needed for this site indicate that adequate public facilities exist, or are expected to be provided, to serve all uses allowed on this property under the proposed zone;
 - c. The proposed R-2 (Residential-up to two units per acre) is compatible with the RR (Rural Residential -Ada County designation) land use to the north and south since these areas are designated Residential Two in the Comprehensive Plan and could be developed in the same manner at a later date;
 - d. The proposed R-2 (Residential-up to two units per acre) is compatible with the R-2-DA (Residential-two units per acre with a development agreement) zone and land use to the east since that area has been developed with lots of similar size;

- e. The proposed R-2 (Residential-up to two units per acre) is compatible with the R-2-DA (Residential-two units per acre with a development agreement) zone and land use to the west since that area will be developed with lots of similar size;
 - f. The land proposed for rezone is not located within a "Hazard Area" and "Special Area" as described within the Comprehensive Plan; and
 - g. As stated in the Development Agreement, the applicant will remove all existing structures on the site. Therefore, no non-conforming uses are expected to be created with this rezone.
- Preliminary Plat: With regard to Eagle City Code 9-2-3 (D)(3)(a) "Action by the Commission and Council", and based upon the information provided to staff to date, staff believes that the proposed preliminary plat is in accordance with the City of Eagle Code because:
 - a. The subdivision will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or Eagle City Code Title 9, as shown within the findings provided within this document and the proposed residential use is in accordance with the residential land use designation of this area shown within the Comprehensive Plan;
 - b. The subdivision will be served adequately by essential public facilities such as streets, police and fire protection, schools, drainage structures, refuse disposal, water and sewer; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, as noted in the documentation provided from said agencies and as required as a part of the conditions of approval;
 - c. The proposed development will provide continuity with the capital improvement plan for municipal water through a memorandum of agreement for providing water from the City of Eagle municipal water system;
 - d. That based upon agency verification and additional written comments of the Eagle Fire District and Eagle Sewer District, as conditioned herein, there is adequate public financial capability to support the proposed development;
 - e. That any health, safety and environmental problems that were brought to the Commission and Council's attention have been adequately addressed by the applicant or will be conditions of approval as set forth within the conditions of approval herein.

STAFF RECOMMENDATION PROVIDED WITHIN THE STAFF REPORT:

Based upon the information provided staff recommends approval of the requested Annexation, Rezone, and Preliminary Plat with conditions as provided within the staff report.

PUBLIC HEARING OF THE COMMISSION:

- A. A public hearing on the application was held before the Planning and Zoning Commission on January 22, 2007. The Commission made their recommendation at that time.
- B. Oral testimony in favor of this proposal was presented to the Planning and Zoning Commission from no one (not including the applicant/representative).
- C. Oral testimony in opposition to this proposal was presented to the Planning and Zoning Commission by no one.

COMMISSION DECISION REGARDING THE REZONE AND DEVELOPMENT AGREEMENT:

The Commission voted 4 to 1 (Aspitarte against) to recommend approval of A-19-06 and RZ-25-06 for an annexation and rezone from RUT to MU-DA with the conditions to be placed within a development agreement as shown within their findings of fact and conclusions of law document dated February 5, 2007. Commissioner Aspitarate voted against the motion for approval of A-19-06 and RZ-25-06 on grounds that the developer does not plan to provide for the 100' of right-of-way from center line on Chinden Boulevard (SH 20/26) as recommended by the Idaho Transportation Department.

COMMISSION DECISION REGARDING THE PRELIMINARY PLAT:

The Commission voted 4 to 1 (Aspitarte against) to recommend approval of PP-19-06 for a preliminary plat for Castlebury West Business Park with the site specific conditions of approval and standard conditions of approval as shown within their findings of fact and conclusions of law document dated February 5, 2007. Commissioner Aspitarate voted against the motion for approval of A-19-06 and RZ-25-06 on grounds that the developer does not plan to provide for the 100' of right-of-way from center line on Chinden Boulevard (SH 20/26) as recommended by the Idaho Transportation Department.

PUBLIC HEARING OF THE COUNCIL:

- A. A public hearing on the application was held before the Council on March 13, 2007. The Council continued the item to March 27, 2007, at which time testimony was taken and the public hearing was closed. The Council made their decision at that time.
- B. Oral testimony in favor of this proposal was presented to the City Council by no one (not including the applicant or representative).
- C. Oral testimony in opposition to this proposal was presented to the City Council by no one.

COUNCIL DECISION:

The Council voted 5 to 0 to approve A-19-06 and RZ-25-06 for an annexation and rezone from RUT (Rural Urban Transition – Ada County designation) to MU-DA (Mixed Use with Development Agreement), for Capital Development, Inc., with the following Planning and Zoning Commission recommended conditions to be placed within a development agreement with underline text to be added by the Council and strike thru text to be deleted by the Council.

Further, the Council voted 5 to 0 to approve PP-19-06 for a preliminary plat for Castlebury West Business Park, PP-19-06, for Capital Development, Inc., with the Planning and Zoning Commission recommended site specific and standard conditions of approval (following the conditions to be placed within the development agreement) with underline text to be added by the Council.

CONDITIONS TO BE PLACED IN A DEVELOPMENT AGREEMENT:

- 2.1 The "Professional Office" uses of the property as allowed within the City Code Section 8-2-3 "Schedule of District Use Regulations" under the MU zoning designation:
 - a) Banks/financial institutions (no drive up service)
 - b) Beauty/Barber Shop
 - c) Office, business and professional
 - d) Office, medical and professional

- e) Day Spa (Like Two Rivers Day Spa)
 - f) Health Clubs, Spas, Weight Reduction Salons
 - g) Artist Studios
 - h) Clinic
 - i) Catering Service (No restaurants)
 - j) Communication Facilities
 - k) Home and Business Services
 - l) Laboratories
 - m) Pharmacies and Medical Services (no drive up service)
 - n) Photographic Studio
 - o) Printing/Blueprinting
 - p) Professional Activities
 - q) Travel Services
 - r) Research and Development
 - s) Research Activities
 - t) No Drive up or Drive thru services are allowed.
- 2.2 The development shall comply with applicable sections in the Eagle City Code, as it exists in final form at the time an a design review application is made, including compliance with all of the conditions as provided within this development agreement.
- 2.3 The conditions, covenants and restrictions for the Property shall contain at least the following:
- a) Provide that the association(s) shall have the duty to maintain and operate all of the common landscape areas in the subdivision in a competent and attractive manner, including the watering, mowing, fertilizing and caring for shrubs and trees, in accordance with Eagle City Code, in perpetuity.
 - b) The applicant shall install a ten foot (10') wide by six foot (6') high landscaped buffer along any boundary of the site adjacent to a residential development prior to the issuance of a certificate of occupancy for any building within the subdivision. The landscaping shall be installed in accordance with ECC Section 8-2A-7 (J)(2)(a) and shall be reviewed and approved by the Design Review Board prior to the submittal of a final plat application.
 - c) A requirement for all fencing within the development to be open-style such as wrought iron, extruded aluminum (like wrought iron), or three-rail-type wooded decorative fencing. All other fencing (ie. cedar fencing, vinyl, chain link) shall be prohibited, ~~except for decorative wall located within any buffer shall not be required to be "open style"~~.
 - d) Parking shall only be allowed in the designated parking areas.
 - e) A maintenance manual for the drive aisles requiring that association(s) shall have the duty to maintain and operate all of the drive aisles providing access to the individual lots including the repair and replacement of asphalt and sidewalks.
- 2.4 A letter of approval shall be provided to the City from the Eagle Sewer District indicating that the property has been annexed into the Eagle Sewer District's service boundaries and approving the final construction plans prior to submittal of the final plat application.

- 2.5 Landscape screening in accordance with ECC Section 8-2A-7(L)(1)(a) shall be installed on Lots 3, 5, 6 and 7, Block 1, within the twenty five foot (25') rear yard setback prior to the issuance of a certificate of occupancy for any building within the subdivision.
- 2.6 Lot 4, Block 1 shall be prepared for drainage and limited in landscaping to sod, irrigation, shrubbery and decorative rock (at the developers discretion), and a fifteen foot (15') sidewalk/transit stop license strip shall be designated within Lot 4, Block 1 (as a note placed on the final plat). The specific language (placed as a note on the plat) shall be reviewed by the City Attorney and the applicant prior to City approval of the final plat.
- 2.7 The applicant shall place a note on the final plat that all common areas are to be owned and maintained by the Owners Association(s) for the development. The applicant shall provide a copy of the CC&R's (which include a similar statement regarding the common areas) for the review and approval by the City attorney prior to the approval of the first final plat. The CC&R's shall provide that the association(s) shall have the duty to maintain and operate all of the common landscape areas in the subdivision in a competent and attractive manner, including the watering, mowing, fertilizing and caring for shrubs and trees, in accordance with Eagle City Code, in perpetuity.
- 2.8 The applicant shall provide for approval by the Eagle Design Review Committee and City Council suggested architectural standard for the development. Eagle Design Review Board and Eagle City Council approval of the detailed architectural plans for the development is required prior to the issuance of any building permits. To assure compliance with this condition, the applicant shall create an architectural control committee (ACC) as a component of the subdivision ~~CC&S's~~ CC&Rs. Provisions regarding the creation and operating procedures of the ACC shall be included in the CC&R's, and shall be reviewed and approved by the City attorney prior to the approval of the final plat.
- 2.9 To assure compliance with the conditions of approval herein, the City reserves the right to deny, at its discretion, any building permit application that does not meet the architectural requirements herein or other design requirements as may be stipulated by the Eagle Design Review Board and Eagle City Council.
- 2.10 ~~A letter of approval shall be provided to the City from the Eagle Sewer District indicating that the property has been annexed into the Eagle Sewer District's service boundaries and approving the final construction plans prior to submittal of the final plat application.~~
- 2.11 The developer shall remove all structures (houses, barns, sheds, etc.) from the site prior to the City Clerk signing the Final Plat. Demolition permits shall be obtained prior to the removal of said structures and approval permits for the removal of the existing well and septic prior to submittal of a final plat application.

SITE SPECIFIC CONDITIONS OF APPROVAL:

1. Comply with all conditions within the development agreement for rezone application RZ-25-06.
2. Comply with all conditions and restrictions for the comprehensive plan amendment application CPA-09-06.
3. Comply with all building height and setback restrictions and conditions per Eagle City Code Section 8-2-4 for the MU (Mixed Use) zone.
4. The applicant shall provide a revised preliminary plat that shows the five foot (5') minimum sidewalks along both sides of West Bavaria Street to be detached from the street by an eight foot (8') planter strip.

5. The applicant shall provide a revised preliminary plat showing internal pedestrian ~~pathways~~ sidewalks.
6. The applicant shall provide a permit or license agreement from ACHD and ITD approving the landscaping located within the public right-of-way abutting and within this site, prior to the submittal of a final plat.
7. Extend the landscaping within the required buffer area along State Highway 20/26 to within nine feet (9') from the edge of pavement. The nine feet (9') between the landscaping and the edge of pavement (along the entire frontage of this site) shall be graveled as approved by ITD. The gravel shoulder area shall be maintained and kept free of weeds and debris.
8. If separate pressurized irrigation system is required, provide detailed building elevations of any structures proposed to house the pressurized irrigation pump. The detailed elevations, colors and materials shall be reviewed and approved by the Design Review Board prior to the City Clerk signing the final plat.
9. Useable amenities such as bike racks, bollards, garbage cans, and/or similar amenities as determined by the City Council shall be provided within the open space areas. Landscape plans showing open space amenities shall be reviewed and approved by the Design Review Board prior to the City approving a final plat.
10. Comply with all requirements of the City Engineer.
11. The applicant shall submit payment to the City for all engineering fees incurred for reviewing this project, prior to the City Clerk signing the final plat.
12. Comply with all requirements of the Ada County Highway District and the Idaho Transportation Department, with the exception of Site Specific Condition #22.
13. The applicant shall provide three inch (3") minimum caliper shade-class trees (landscape plan to be reviewed and approved by the Design Review Board) along both sides of all streets within this development. Trees shall be placed at the front of each lot on the side lot lines, or as approved by the Design Review Board and within five-feet (5') of the edge of the roadway. Prior to the City Clerk signing the final plat, the applicant shall either install the required trees, sod, and irrigation or provide the City with a letter of credit for 150% of the cost of the installation of all landscape and irrigation improvements within the swales (borrow ditches). Trees shall be installed prior to obtaining any occupancy permits for the homes. A temporary occupancy may be issued if weather does not permit landscaping.
14. The applicant shall provide a landscape plan showing berming, fencing, and planting details within the buffer area along Chinden Boulevard (SH 20/26) and Meridian Road for review and approval by the Design Review Board, prior to submittal of the final plat application. Landscaping for the respective phase shall be installed prior to the issuance of any occupancy permits within the subdivision.
15. The applicant shall complete the annexation process with the Eagle Sewer District for the property prior to final plat approval.
16. The applicant shall submit a design review application showing any proposed signage and a landscape plan showing planting details within the proposed landscape islands for review and approval by the Design Review Board prior to the submittal of the final plat approval.
17. The applicant shall submit a design review application with a landscape plan showing planting details and screening details for any type of irrigation facilities for review and approval by the Design Review Board prior to the submittal of a final plat. If proposed, a pump house shall be located to comply with all required setbacks for the MU-DA zoning district.

18. Place a note on the final plat which states in general that surrounding land with farm uses and related activities shall be protected pursuant to the Idaho Right to Farm Act.
19. All street lighting shall incorporate the principles of "Dark Sky Lighting" to negate the effects of light pollution. The applicant shall submit cut sheets showing street lighting details for review and approval by the Zoning Administrator prior to the submittal of the final plat.
20. The applicant shall take care to locate and protect from damage existing utilities, pipelines and similar structures. Documentation indicating that "Digline" has performed an inspection of the site shall be submitted prior to the issuance of any building permits for the site.
21. All street names shall comply with the requirements of the Ada County Street Naming Committee.
22. Landscape screening in accordance with ECC Section 8-2A-7(L)(1)(a) shall be installed on Lots 3, 5, 6 and 7, Block 1, within the twenty five foot (25') rear yard setback prior to the issuance of a certificate of occupancy for any building within the subdivision.
23. Lot 4, Block 1 shall be prepared for drainage and limited in landscaping to sod, irrigation, shrubbery and decorative rock (at the developers discretion), and a fifteen foot (15') sidewalk/transit stop license strip shall be designated within Lot 4, Block 1 (as a note placed on the final plat). The specific language (placed as a note on the plat) shall be reviewed by the City Attorney and the applicant prior to City approval of the final plat.

STANDARD CONDITIONS OF APPROVAL:

1. The applicant shall comply with all requirements of the Ada County Highway District and/or the Idaho Transportation Department, including but not limited to approval of the drainage system, curbs, gutters, streets and sidewalks.
2. Correct street names, as approved by the Ada County Street Name Committee, shall be placed on the plat prior to the City Engineer signing the final plat.
3. Complete water and sewer system construction plans shall be reviewed and approved by the City Engineer. Required improvements shall include, but not be limited to, extending all utilities to the platted property. The developer may submit a letter in lieu of plans explaining why plans may not be necessary.
4. Idaho Department of Health & Welfare approval of the sewer and water facilities is required prior to the City Engineer signing the final plat (I.C. Title 50, Chapter 13 and I.C. 39-118).
5. Written approval of all well water for any shared or commercial well shall be obtained from the Idaho Department of Water Resources prior to the City Engineer signing the final plat.
6. Unless septic tanks are permitted, wet line sewers will be required and the applicant will be required to furnish the City Engineer with a letter from the sewer entity serving the property, accepting the project for service, prior to the City Engineer signing the final plat (B.C.C. 9-20-8.4)
7. All homes being constructed with individual septic systems shall have the septic systems placed on the street side of the home or shall have their sewer drainage system designed with a stub at the house front to allow for future connection to a public sewer system.
8. Per Idaho Code, Section 31-3805, concerning irrigation rights, transfer and disclosure, the water rights appurtenant to the lands in said subdivision which are within the irrigation entity will be transferred from said lands by the owner thereof; or the subdivider shall provide for underground title or other like satisfactory underground conduit to permit the delivery of water to those landowners within the subdivision who are also within the irrigation entity.

See Eagle City Code Section 9-4-1-9(C) which provides overriding and additional specific criteria for pressurized irrigation facilities.

Plans showing the delivery system must be approved by a registered professional engineer and shall be approved by the City Engineer prior to the City Engineer signing the final plat.

9. The applicant shall submit a letter from the appropriate drainage entity approving the drainage system and/or accepting said drainage; or submit a letter from a registered professional engineer certifying that all drainage shall be retained on-site prior to the City Engineer signing the final plat. A copy of the construction drawing(s) shall be submitted with the letter.
10. Drainage system plans shall be submitted to the City Engineer for review and approval prior to the City Engineer signing the final plat. The plans shall show how swales, or drain piping, will be developed in the drainage easements. The approved drainage system shall be constructed, or a performance bond shall be submitted to the City Clerk, prior to the City Engineer signing the final plat. The CC&R's shall contain clauses to be reviewed and approved by the City Engineer and City Attorney, prior to the City Engineer signing the final plat, requiring that lots be so graded that all runoff runs either over the curb, or to the drainage easement, and that no runoff shall cross any lot line onto another lot except within a drainage easement.
11. No ditch, pipe or other structure or canal, for irrigation water or irrigation waste water owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, shall be obstructed, routed, covered or changed in any way unless such obstruction, rerouting, covering or changing has first been approved in writing by the entity. A Registered Engineer shall certify that any ditch rerouting, piping, covering or otherwise changing the existing irrigation or waste ditch (1) has been made in such a manner that the flow of water will not be impeded or increased beyond carrying capacity of the downstream ditch; (2) will not otherwise injure any person or persons using or interested in such ditch or their property; and (3) satisfied the Idaho Standards for Public Works Construction. A copy of such written approval and certification shall be filed with the construction drawing and submitted to the City Engineer prior to the City Engineer signing the final plat.
12. Street light plans shall be submitted and approved as to the location, height and wattage to the City Engineer prior to the City Engineer signing the final plat. All construction shall comply with the City's specifications and standards.

The applicant shall delineate on the face of the final plat an easement, acceptable to the City Engineer, for the purpose of installing and maintaining street light fixtures, conduit and wiring lying outside any dedicated public right-of-way, prior to the City Engineer signing the final plat.

The applicant shall pay applicable street light inspection fees on the proposed subdivision prior to signing of the final plat by the Eagle City Engineer.
13. The applicant shall provide utility easements as required by the public utility providing service, and as may be required by the Eagle City Code, prior to the City Engineer signing the final plat.
14. An approval letter from the Eagle Fire Department shall be submitted to the City prior to the City Engineer signing the final plat. The letter shall include the following comments and minimum requirements, and any other items of concern as may be determined by the Eagle Fire Department officials:
 - a. The applicant has made arrangements to comply with all requirements of the Fire Department.

- b. The proposed fire hydrant locations shall be reviewed and be approved in writing by the Eagle Fire Department prior to the City Engineer signing the final plat.
 - c. Minimum flow per hydrant shall be 1,000 gallons per minute for one and two family dwellings, 1,500 gallons per minute for dwellings having a fire area in excess of 3,600 square feet, and 1,500 gallons per minute for non-residential uses (i.e.; Commercial, Industrial, Schools, etc.). Flow rates shall inspected in accordance with all agencies having jurisdiction, and shall be verified in writing by the Eagle Fire Department prior to issuance of any building permits.
 - d. The proposed fire protection system shall be reviewed and approved by the Eagle Fire Department prior to issuance of a building permit.
15. Covenants, homeowner's association by-laws or other similar deed restrictions, acceptable to the Eagle City Attorney which provide for the use, control and mutual maintenance of all common areas, storage facilities, recreational facilities, street lights or open spaces shall be reviewed and approved by the Eagle City Attorney prior to the City Engineer signing the final plat.
- A restrictive covenant must be recorded and a note on the face of the final plat is required, providing for mutual maintenance and access easements.
- Appropriate papers describing decision-making procedures relating to the maintenance of structures, grounds and parking areas shall be reviewed and approved by the Eagle City Attorney prior to the City Engineer signing the final plat.
16. Should the homeowner's association be responsible for the operation and maintenance of the storm drainage facilities, the covenants and restrictions, homeowner's association by-laws or other similar deed restrictions acceptable to the Eagle City Attorney shall be reviewed and approved by the Eagle City Attorney prior to the City Engineer signing the final plat.
17. The applicant shall submit an application for Design Review, and shall obtain approval for all required landscaping, common area and subdivision signage prior to the City Engineer signing the final plat.
18. Any recreation area, greenbelt area or pathway area along the Boise River, Dry Creek or any other area designated by the City Council or Eagle City Pathway/Greenbelt Committee for a path or walkway shall be approved in writing by the Eagle City Pathway/Greenbelt Committee prior to approval of the final plat by the City Council.
19. Conservation, recreation and river access easements (if applicable) shall be approved by the Eagle City Pathway/Greenbelt Committee and shall be shown on the final plat prior to approval of the final plat by the City Council.
20. The applicant shall place a note on the face of the plat which states: "Minimum building setback lines shall be in accordance with the applicable zoning and subdivision regulations at the time of issuance of the building permit or as specifically approved and/or required".
21. The applicant shall comply with the provisions of the Eagle City Code, pertaining to floodplain and river protection regulations (if applicable) prior to the City Engineer signing the final plat.
22. The development shall comply with the Boise River Plan (if applicable) in effect at the time of City Council consideration of the final plat.
23. The applicant shall obtain written approval of the development relative to the effects of the Boise River Flood Plain (if applicable) from the Corps. of Engineers prior to approval of the final plat by the City Engineer.

24. The applicant shall obtain approval of the development relative to its effects on wetlands or other natural waterways (if applicable) from the Corps. of Engineers and the Idaho Department of Water Resources and/or any other agency having jurisdiction prior to the City Engineer signing the final plat.
25. Basements in homes in the flood plain are prohibited.
26. The Americans with Disabilities Act, Uniform Building Code, Eagle City Code, Eagle Comprehensive Plan, and all applicable County, State and Federal Codes and Regulations shall be complied with. All design and construction shall be in accordance with all applicable City of Eagle Codes unless specifically approved by the Commission and/or Council.
27. No change in the terms and conditions of this approval shall be valid unless they are in writing and signed by the applicant or the applicant's authorized representative and an authorized representative of the City of Eagle. The burden shall be upon the applicant to obtain written confirmation of any change from the City of Eagle.
28. No public board, agency, commission, official or other authority shall proceed with the construction of or authorize the construction of any of the public improvements required by the Eagle City Code Title 9 "Land Subdivisions" until the final plat has received the approval of the City Council (ECC 9-6-5 (A) (2)).
After Council approval of the final plat, the applicant may construct any approved improvements before the City Engineer signs the final plat. The applicant shall provide a financial guarantee of performance in the amount of 150% of the total estimated cost for completing any required improvements (see resolution 98-3) prior to the City Engineer signing the final plat. The financial guarantee shall be a Letter of Credit, Certificate of Deposit, cash deposit or certified check.
29. In accordance with Eagle City Code, failure to obtain a recorded final plat for the subdivision within one year following City Council approval shall cause this approval to be null and void, unless a time extension is granted by the City Council.
30. Prior to submitting the final plat for recording, the following must provide endorsements or certifications: Owners or dedicators, Registered Land Surveyor, County Engineer, Central District Health Department, Ada County Treasurer, Ada County Highway District Commissioners, City Engineer, and City Clerk.
31. The City's actions on the application does not grant the applicant any appropriation of water or interference with existing water rights. The applicant indemnifies and holds the City harmless for any and all water rights, claims in any way associated with this application.
32. The applicant shall submit cut sheets showing street lighting details for review and approval by the Zoning Administrator prior to the submittal of the final plat. The plans shall show how the streetlights will facilitate the "Dark Sky" concept of lighting.
33. The applicant shall take care to locate and protect from damage existing utilities, pipelines and similar structures. Documentation indicating that "Digline" has performed an inspection of the site shall be submitted prior to the issuance of any building permits for the site.
34. Place a note on the final plat which states in general that surrounding land with farm uses and related activities shall be protected pursuant to the Idaho Right to Farm Act.
35. The applicant shall install at the entrance to the subdivision a 4' x 4' plywood or other hard surface sign (mounted on two 4"x 4" posts with the bottom of the sign being a minimum of 3-feet above the ground) noticing the contractors to clean up daily, no loud music, and no dogs off leash.

CONCLUSIONS OF LAW:

1. A Neighborhood Meeting was held at 6:00 PM, November 22, 2006, in compliance with the application submittal requirement of Eagle City Code. The annexation, rezone and preliminary plat applications for this item were received by the City of Eagle on November 26, 2006.
2. Notice of Public Hearing on the application for the Eagle Planning and Zoning Commission was published in accordance with the requirements of Title 67, Chapter 65, Idaho Code and the Eagle City Code on January 2, 2007. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on December 27, 2006. The site was posted in accordance with the Eagle City Code on January 10, 2007. Requests for agencies' reviews were transmitted on November 8, 2006, in accordance with the requirements of the Eagle City Code.

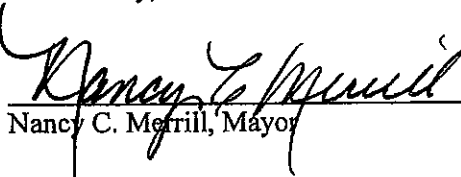
Notice of Public Hearing on the application for the Eagle City Council was published in accordance for requirements of Title 67, Chapter 65, Idaho Code and the Eagle City ordinances on February 26, 2007. Notice of this public hearing was mailed to property owners within three-hundred feet (300-feet) of the subject property in accordance with the requirements of Title 67, Chapter 65, Idaho Code and Eagle City Code on February 22, 2007. The site was posted in accordance with the Eagle City Code on January 30, 2007.

3. The Council reviewed the particular facts and circumstances of this proposed annexation and rezone (A-19-06/RZ-25-06) with regard to Eagle City Code Section 8-7-5 "Action by the Commission and Council", and based upon the information provided concludes that the proposed annexation and rezone is in accordance with the City of Eagle Comprehensive Plan and established goals and objectives because:
 - a. The requested zoning designation of MU-DA (Mixed Use with a development agreement) is consistent with the Professional Office designation as shown on the Comprehensive Plan Land Use Map;
 - b. The information provided from the agencies having jurisdiction over the public facilities needed for this site indicate that adequate public facilities exist, or are expected to be provided, to serve all uses allowed on this property under the proposed zone;
 - c. The proposed MU-DA zone (Mixed Use with a Development Agreement) is compatible with the RUT (Rural Urban Transition, Ada County designation) zones and land uses to the north since this area currently agricultural in use and platted for future development;
 - d. The proposed MU-DA zone (Mixed Use with a Development Agreement) is compatible with the RUT (Rural Urban Transition, Ada County designation) zone and land uses to the west since that area has the same Comprehensive Plan designation as this site.
 - e. The proposed MU-DA zone (Mixed Use with a Development Agreement) is compatible with R-1 (Residential, one unit per acre maximum) zone to the east since this area will be buffered from the proposed development by Meridian Road.
 - f. The land proposed for rezone is not located within a "Hazard Area" and "Special Area" as described within the Comprehensive Plan; and
 - g. As stated in the Development Agreement, the applicant will remove all existing structures on the site, therefore, no non-conforming uses are expected to be created with this rezone.
4. The Council reviewed the particular facts and circumstances of this proposed preliminary plat (PP-19-06) and based upon the information provided concludes that the proposed preliminary plat application is in accordance with the City of Eagle Title 9 (Subdivisions) because:

- a. The development will be harmonious with and in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or Eagle City Code Title 9, as shown within the findings provided within this document and the proposed commercial use is in accordance with the Professional Office designation of this area shown within the Comprehensive Plan;
- b. The development will be served adequately by essential public facilities such as streets, police and fire protection, schools, drainage structures, refuse disposal, water and sewer; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, as noted in the documentation provided from said agencies and as required as a part of the conditions of approval;
- c. The proposed development will provide continuity with the capital improvement plan for municipal water through a memorandum of agreement for providing water from the United Water municipal water system;
- d. That based upon agency verification and additional written comments of the Eagle Fire District and Eagle Sewer District, as conditioned herein, there is adequate public financial capability to support the proposed development;
- e. That any health, safety and environmental problems that were brought to the Commission and Council's attention have been adequately addressed by the applicant or will be conditions of approval as set forth within the conditions of approval herein.


DATED this 10th day of April 2007.

CITY COUNCIL
OF THE CITY OF EAGLE
Ada County, Idaho

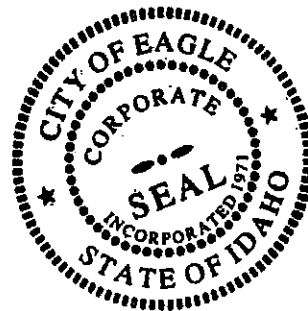


Nancy C. Merrill, Mayor

ATTEST:



Sharon K. Bergmann, Eagle City Clerk



Recording Requested By and
When Recorded Return to:

City of Eagle
660 E. Civic Lane
P.O. Box 1520
Eagle, Idaho 83616

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

This Development Agreement, made and entered into on the date as indicated herein, by and between the City of Eagle, a municipal corporation in the State of Idaho ("Eagle"), by and through its Mayor, and Donald and Tricia Flynn, Inc. ("Applicant").

WHEREAS, the Applicant is the owner of record of certain real estate located at 6615 North Meridian Road, Eagle, Idaho, ("Property"), as specifically defined in the attached legal description (Exhibit A) which is the subject of an application for Rezone identified as Rezone Application No. RZ-25-06; and

WHEREAS, the proposed development includes properties within an area currently zoned RUT (Rural Urban Transition, County Designation); and

WHEREAS, the Applicant desires a MU-DA (Mixed Use with a development agreement) zoning classification to develop a ten (10) lot professional office subdivision on the above described property, which is herein referred to as the "Property"; and

WHEREAS, the Planning and Zoning Commission and the City Council of Eagle have determined that allowing an MU (Mixed Use) zoning designation for the Property must be limited with a development agreement to prevent undue damage to, and to otherwise be in harmony with the Comprehensive Plan, the existing uses on the site and the community; and

WHEREAS, the intent of this Development Agreement is to protect the rights of Applicant's use and enjoyment of the Property while at the same time limiting any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with Eagle's Comprehensive Plan and City Code; and

WHEREAS, the Applicant has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and has consented to a MU-DA (Mixed Use with a development agreement) zoning designation for the Property with the requirements set forth in this Development Agreement; and

WHEREAS, the Applicant has previously provided Eagle with an affidavit agreeing to submit the Property to a Development Agreement pursuant to Eagle City Code Section 8-10-1(C)(1); and

WHEREFORE, the Applicant and the City of Eagle desire to resolve the issues and concerns that have arisen and for and in consideration of the mutual covenants contained herein, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 Eagle will adopt an ordinance amending the Eagle Zoning Ordinance to rezone the property that is the subject of the application to an MU-DA (Mixed Use with a development agreement) zoning designation, after recordation of, and subject to the provisions of this Development Agreement. The ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.

ARTICLE II CONDITIONS OF DEVELOPMENT

2.1 The "Professional Office" uses of the property as allowed within the City Code Section 8-2-3 "Schedule of District Use Regulations" under the MU zoning designation:

- a) Banks/financial institutions (no drive up service)
- b) Beauty/Barber Shop
- c) Catering Service
- d) Day Spa (like Two Rivers Day Spa)
- e) Office, business and professional
- f) Office, medical and professional
- g) Artist Studios
- h) Clinic
- i) Communication facilities
- j) Daycare Center
- k) Health Clubs, Spas, Weight Reduction Salons
- l) Personal Improvement
- m) Home and Business services
- n) Laboratories
- o) Pharmacies and Medical Sales
- p) Photographic Studio
- q) Printing/Blueprinting
- r) Professional activities

- s) Travel Services
 - t) Research and Development
 - u) Research Activities
 - v) Christmas Tree Sales (only until building on the property has begun)
 - w) No Drive up or Drive thru services are allowed.
- 2.2 The development shall comply with applicable sections in the Eagle City Code, as it exists in final form at the time application is made, including compliance with all of the conditions as provided within this development agreement.
- 2.3 The conditions, covenants and restrictions for the Property shall contain at least the following:
- a) Provide that the association(s) shall have the duty to maintain and operate all of the common landscape areas in the subdivision in a competent and attractive manner, including the watering, mowing, fertilizing and caring for shrubs and trees, in accordance with Eagle City Code, in perpetuity.
 - b) The applicant shall install a ten foot (10') wide by six foot (6') high landscaped buffer along any boundary of the site adjacent to a residential development prior to the issuance of a certificate of occupancy for any building within the subdivision. The landscaping shall be installed in accordance with ECC Section 8-2A-7 (J)(2)(a) and shall be reviewed and approved by the Design Review Board prior to the submittal of a final plat application.
 - c) A requirement for all fencing within the development to be open-style such as wrought iron, extruded aluminum (like wrought iron), or three-rail-type wooded decorative fencing. All other fencing (ie. cedar fencing, vinyl, chain link) shall be prohibited.
 - d) Parking shall only be allowed in the designated parking areas.
 - e) A maintenance manual for the drive aisles requiring that association(s) shall have the duty to maintain and operate all of the drive aisles providing access to the individual lots including the repair and replacement of asphalt and sidewalks.
- 2.4 A letter of approval shall be provided to the City from the Eagle Sewer District indicating that the property has been annexed into the Eagle Sewer District's service boundaries and approving the final construction plans prior to submittal of the final plat application.
- 2.5 Landscape screening in accordance with ECC Section 8-2A-7(L)(1)(a) shall be installed on Lots 3, 5, 6 and 7, Block 1, within the twenty five foot (25') rear yard setback prior to the issuance of a certificate of occupancy for any building within the subdivision.
- 2.6 Lot 4, Block 1 shall be prepared for drainage and limited in landscaping to sod, irrigation, shrubbery and decorative rock (at the developers discretion), and a fifteen foot (15') sidewalk/transit stop license strip shall be designated within Lot 4, Block 1 (as a note placed on the final plat). The specific language (placed as a note on the plat) shall be reviewed by the City Attorney and the applicant prior to City approval of the final plat.
- 2.7 The applicant shall place a note on the final plat that all common areas are to be owned and maintained by the Owners Association(s) for the development. The applicant shall provide a copy of the CC&R's (which include a similar statement regarding the common areas) for the review and approval by the City attorney prior to the approval of the first final plat. The CC&R's shall provide that the

association(s) shall have the duty to maintain and operate all of the common landscape areas in the subdivision in a competent and attractive manner, including the watering, mowing, fertilizing and caring for shrubs and trees, in accordance with Eagle City Code, in perpetuity.

- 2.8 The applicant shall provide for approval by the Eagle Design Review Committee and City Council suggested architectural standard for the development. Eagle Design Review Board and Eagle City Council approval of the detailed architectural plans for the development is required prior to the issuance of any building permits. To assure compliance with this condition, the applicant shall create an architectural control committee (ACC) as a component of the subdivision CC&Rs. Provisions regarding the creation and operating procedures of the ACC shall be included in the CC&R's, and shall be reviewed and approved by the City attorney prior to the approval of the final plat.
- 2.9 To assure compliance with the conditions of approval herein, the City reserves the right to deny, at its discretion, any building permit application that does not meet the architectural requirements herein or other design requirements as may be stipulated by the Eagle Design Review Board and Eagle City Council.
- 2.10 The developer shall remove all structures (houses, barns, sheds, etc.) from the site prior to the City Clerk signing the Final Plat. Demolition permits shall be obtained prior to the removal of said structures and approval permits for the removal of the existing well and septic prior to submittal of a final plat application.

ARTICLE III AFFIDAVIT OF PROPERTY OWNERS

- 3.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Eagle City Code Section 8-10-1 shall be provided and is incorporated herein by reference.

ARTICLE IV DEFAULT

- 4.1 In the event the Applicant fails to comply with the commitments set forth herein, within thirty (30) days of written notice of such failure from Eagle, Eagle shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Development Agreement or to terminate the Development Agreement following the process established in Eagle City Code Section 8-10-1.
- 4.2 If required to proceed in a court of law or equity to enforce any provision of this Development Agreement, Eagle shall be entitled to recover all direct out-of-pocket costs so incurred to cure or enjoin such default and to enforce the commitments contained in this Development Agreement, including attorneys' fees and court costs.

ARTICLE V
UNENFORCEABLE PROVISIONS

- 5.1 If any term, provision, commitment, or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument shall terminate and the zoning of the property shall revert to the RUT (Residential Urban Transition – Ada County designation) zoning designation unless the portion of this instrument determined to be invalid or unenforceable is re-negotiated in good faith between the Applicant (or other appropriate party) and Eagle as an amendment to the Development Agreement processed in accordance with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Eagle City Code Section 8-10-1.

ARTICLE VI
ASSIGNMENT AND TRANSFER

- 6.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property, and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors, and assigns; provided, however, that if all or any portion of the development is sold, the sellers shall thereupon be released and discharged from any and all obligations in connection with the property sold arising under this Agreement. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect to the Property or portion thereof.

ARTICLE VII
GENERAL MATTERS

- 7.1 Amendments. Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Eagle City Code Section 8-10-1.
- 7.2 Paragraph Headings. This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 7.3 Choice of Law. This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent

jurisdiction located in Ada County, Idaho.

7.4 Legal Representation. Both the Applicant and Eagle acknowledge that they each have been represented by legal counsel in negotiating this Development Agreement and that neither party shall have been deemed to have been the drafter of this agreement.

7.5 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below;

Eagle: City of Eagle
 660 E. Civic Lane
 Eagle, Idaho 83616

Owner: Capital Development, Inc.
 6200 Meeker Road
 Boise, Idaho 83713

Or such other address and to such other persons as the parties may hereafter designate. Any such notice shall be deemed given upon receipt if by personal delivery, forty-eight (48) hours after deposit in the United States mail, if sent by mail pursuant to the foregoing, or twenty-four (24) hours after timely deposit with a reputable overnight delivery service.

7.6 Effective Date. This Development Agreement shall be effective upon the signing and execution of this agreement by both parties.

7.7 Termination. This agreement terminates upon completion of Conditions of Development or after 7-years after the Effective Date, whichever occurs first.

IN WITNESS WHEREOF, the parties have executed this Development Agreement.

DATED this ____ day of _____, 2006.

CITY OF EAGLE, a municipal corporation organized
and existing under the laws of the State of Idaho

By: _____
Nancy C. Merrill, Mayor

ATTEST:

Sharon K. Bergmann, City Clerk

By: _____

(Donald and Tricia Flynn)

STATE OF IDAHO)
 : ss.
County of Ada)

On this ____ day of _____, 2006, before the undersigned notary public in and for the said state, personally appeared NANCY C. MERRILL, known or identified to me to be the Mayor of the City of Eagle and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Idaho
Residing at: _____
My Commission Expires: _____

STATE OF IDAHO)
 : ss.
County of Ada)

On this ____ day of _____, 2006, before the undersigned notary public in and for the said state, personally appeared Donald and Tricia Flynn, known or identified to me to be the owners of the property referenced herein. and the persons who executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for Idaho
Residing at: _____

My Commission Expires: _____