



CITY OF
Caldwell, Idaho

Planning & Zoning

HEARING REVIEW APPLICATION

Type of Review Requested (check all that apply)

- Annexation/Deannexation
- Appeal/Amendment
- Comprehensive Plan Map Change
- Design Review
- Ordinance Amendment
- Rezone
- Special Use Permit
- Subdivision- Preliminary Plat
- Subdivision- Final Plat
- Subdivision- Short Plat
- Time Extension
- Variance
- Other Dev. Agreement Amendment

STAFF USE ONLY:
 File number(s): DAA-19-01
Dev. Agreement Amendment
 Project name: _____
 Date filed: 5/28/19 Date complete: _____
 Related files: _____

Subject Property Information

Address: 0 Hwy 20-26 Parcel Number(s): R35307-010
 Subdivision: N/A Block: _____ Lot: _____ Acreage: 20.12 Zoning: M-1
 Prior Use of the Property: Vacant
 Proposed Use of the Property: Manufacturing

Applicant Information:

Applicant Name: Caldwell Urban Renewal Phone: _____
 Address: 411 Blaine St City: Caldwell State: Id Zip: 83605
 Email: _____ Cell: _____
 Owner Name: _____ Phone: _____
 Address: _____ City: _____ State: _____ Zip: _____
 Email: _____ Cell: _____
 Agent Name: (e.g., architect, engineer, developer, representative) _____
 Address: _____ City: _____ State: _____ Zip: _____
 Email: _____ Cell: _____

Authorization

Print applicant name: _____
 Applicant Signature: _____ Date: _____



CITY OF
Caldwell, Idaho

Planning & Zoning

APPEAL/AMENDMENT

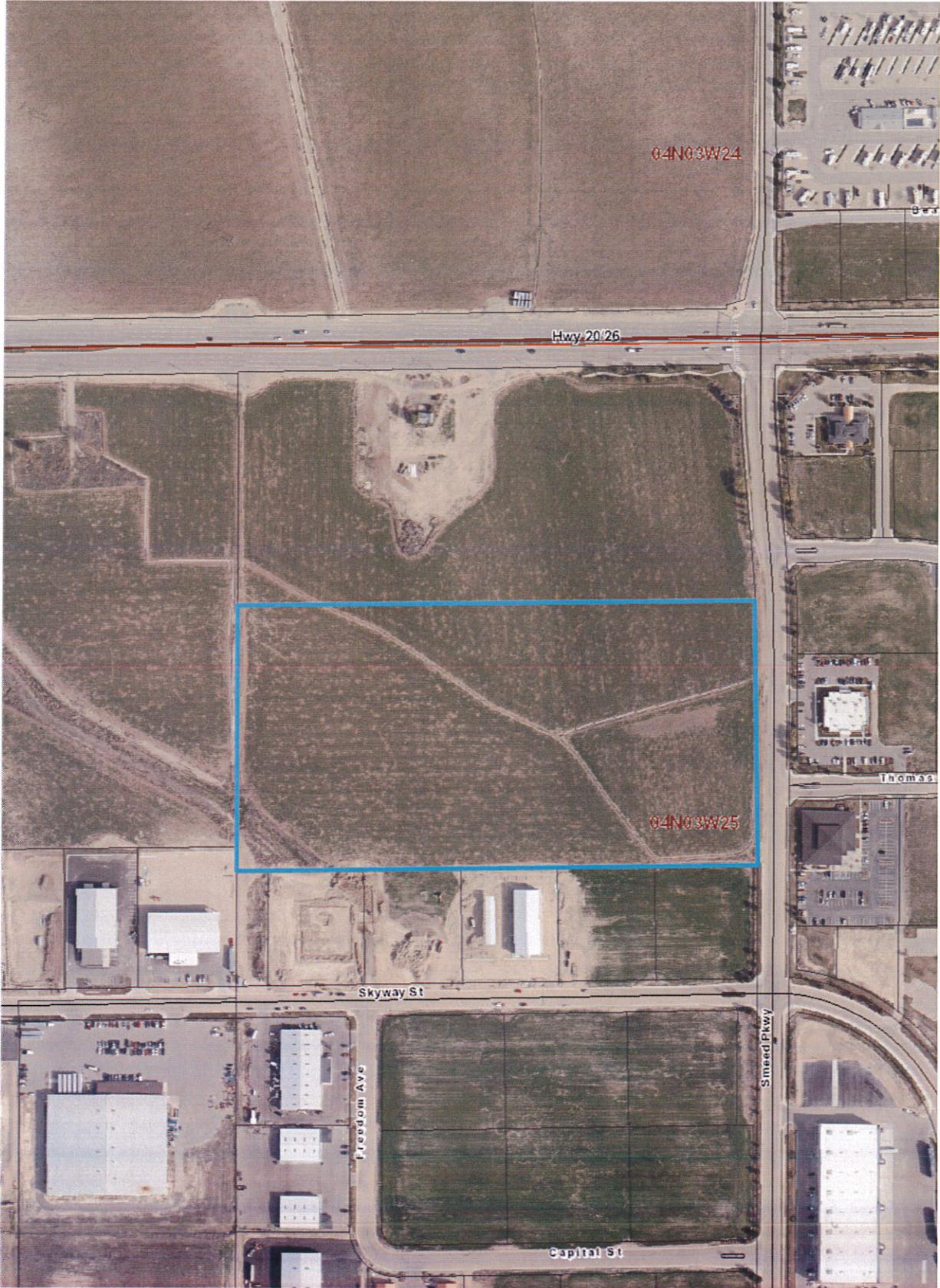
Project Name: <i>Dev. Agreement Amendment</i>	File #: <i>DAA-19-01</i>
Applicant/Agent: <i>Caldwell Urban Renewal</i>	

Applicant (v)	Please provide the following REQUIRED documentation:	Staff (v)
✓	Completed and signed Hearing Review Application	
✓	Narrative fully describing the request, including the following: <ul style="list-style-type: none"> ➤ Specific item/requirement being appealed ➤ Reasons for the appeal/amendment ➤ Site-specific limitations and/or impediments on the property ➤ Any other pertinent information to the request. Please remember the applicant has the burden of proof to show why their request should be granted 	
	Warranty deed for the subject property	
	Signed Property Owner Acknowledgement (if applicable)	
✓	Vicinity map, showing the location of the subject property	
✓	Copy of the Order of Decision, other documents for any prior approvals of the site	
	All of the above items shall be submitted in 8 ½ x 11 paper format AND in electronic format (preferably PDF or Word) on either a jump drive or CD. Please be aware the jump drive or CD will become part of the file and will not be returned	
	Fee	

<u>APPEALING A CASE DECISION</u>	<u>REQUESTING AN AMENDMENT</u>
CASE #: _____	CASE #: <i>ZON-5808</i>
<u>Case decision being appealed was rendered by:</u>	<u>Requesting an amendment of:</u>
<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Historic Preservation Commission <input type="checkbox"/> Design Review Commission <input type="checkbox"/> P& Z Director <input type="checkbox"/> Landscape Design Review Committee	<input checked="" type="checkbox"/> Development Agreement _____: Item #(s) <input type="checkbox"/> Condition(s) of Approval from Order of Decision _____: Condition #(s)

<u>STAFF USE ONLY:</u>
Date Application Received: <i>5-28-19</i>
Received by: <i>[Signature]</i>
Proposed Hearing Date: <i>6-18-19</i>
Hearing Body: <i>P&Z</i>

This request is to terminate the existing Development Agreement for the 20 acre property located just south of Hwy 20/26 on the west side of Smeed Parkway. Approval of this request will facilitate the development planned on this property as the conditions of the Development Agreement are no longer applicable.



04N03W24

Hwy 20/26

04N03W25

Skyway St

Freedom Ave

Capital St

Smeed Pkwy

Thomas

2008051187

RECORDED

2008 SEP 23 PM 3 46

WILLIAM H. HURST
CANYON COUNTY RECORDER
BY *[Signature]*

REQUEST CALDWELL CITY OF
TYPE B & A FEE *[Signature]*

**Eisenberg Rezone Development Agreement
Case No. ZON-58-08**

Recording requested by:
City of Caldwell
Planning and Zoning Dept.
P.O. Box 1179
Caldwell, Idaho 83606

For Recording Purposes Do
Not Write Above This Line

**Development Agreement
Eisenberg Rezone**

This Development Agreement is made and entered into this 5 day of ^{September} ~~August~~, 2008,
by and between the City of Caldwell, a municipal corporation in the State of Idaho
("City"), by and through its Mayor, and VVPI, L.L.C., an Arizona limited liability
company ("Owner/Applicant/Developer").

WHEREAS, the Owner/Applicant/Developer holds title to certain real estate
("Property") located in the City and more particularly described as follows:

See Exhibit "A", a legal description, attached hereto and incorporated herein by
this reference; and

WHEREAS, the Property is the subject of an application for rezone identified as
Case Number ZON-58-08; and

WHEREAS, development of the Property will be as a C-3 (Service Commercial)
development; and

WHEREAS, the Property is currently zoned M-1 (Light Industrial) in the City;
and

WHEREAS, it is the intent of this Development Agreement to protect the rights
of the Owner/Applicant/Developer's use and enjoyment of the Property, while at the
same time limiting any adverse impacts resulting from the re-zone classification of this
Property upon neighboring properties and the community and ensuring that any
development of the Property is in a manner consistent with the City's Comprehensive
Plan and City Code; and

WHEREAS, the City and Owner/Applicant/Developer desire to set forth herein
limitations and/or conditions upon the use and development of the Property; and

Eisenberg Rezone Development Agreement
Original *[Signature]*

[Handwritten initials]
CC-8

WHEREAS, all capitalized terms in this Development Agreement not herein defined shall have those meanings designated in the City Code, the City Zoning Ordinance and the City Comprehensive Plan; and

WHEREAS, the rezone approval is subject to this Development Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Owner/Applicant/Developer and the City agree as follows:

ARTICLE I LEGAL AUTHORITY

1.1 The City will adopt an ordinance to rezone the Property subject to the provisions of this Development Agreement and provided the Owner/Applicant/Developer is either the Owner of the Property or is duly authorized by the Owner of the Property. This Development Agreement shall be signed and delivered to the Caldwell Planning and Zoning Department within 20 days of the approving City Council public hearing, and prior to the Mayor's signing of the affirmative Order of Decision by the Mayor and City Council permitting the rezone classification. The rezone classification ordinance shall only become effective after its passage, approval and publication.

ARTICLE II CONDITIONS OF THE RE-ZONE CLASSIFICATION

2.1 The Property shall be utilized in the fashion and according to the terms set forth in the development application Case No. ZON-58-08 to include the following conditions:

1. Except as specifically stated otherwise in this Development Agreement, all development of the Property must meet all requirements of City codes, ordinances, rules, regulations and standards governing the Property and property under the jurisdiction of the City in effect at the date of the submittal of any development application for any type of development.
2. In the event the Property's legal description is discovered to be in error, the Owner/Applicant/Developer shall be responsible for assuming the measures necessary to provide the City with an accurate legal description.
3. Development shall be consistent with the City's Comprehensive Plan. Any flexibility granted shall be consistent with the interests of the City and in substantial compliance with said Plan.
4. In accordance with City Code, any phase of development of the Property shall require the construction of street side improvements in any public right-of-way adjacent to the Property to include curb, gutter, sidewalk, sub-base, asphalt paving, storm drainage facilities, street lights and water mains. These street

improvement features shall be required to be incorporated into the design and construction of all streets located within the development as well.

5. All roadways, planned and future, shall be built to City standards and dedicated for public purpose. Public roadway improvements shall include curb, gutter, sidewalk, sub-base and asphalt paving, storm drainage facilities, streetlights, and water mains. These street improvement features shall be incorporated into the subdivision and/or development as it is developed and shall be constructed by an appropriately-licensed public works contractor.
6. At the time of development or within 90 days of a request by the City (whichever is sooner), the Owner/Applicant/Developer shall dedicate necessary right-of-way, being a forty-foot one-half width right-of-way, along the entire Smeed Parkway frontage of the Property.
 - a. At the time of the applicable phase of development, the Smeed Parkway frontage of the Property shall be improved with the required street section of a thirty-one foot half-width street section from centerline to back of curb and shall feature standard vertical curb and gutter, 6-foot wide sidewalks, sub-base and asphalt paving, required storm water drainage facilities and streetlights. Additional widening may be required during construction plan review.
7. If specifications to the current street section schedule requirements, as defined in this Development Agreement, have changed by the date of submittal of a development application, the Owner/Applicant/Developer shall be required to adhere to the more stringent requirements at time of development.
8. Any non classified-street, planned or future, shall be constructed within a minimum fifty-six (56) foot right-of-way consistent with the City subdivision ordinance or a fifty-one (51) foot right-of-way consistent with City standards for a planned unit development. The streets shall be constructed at a width of 37 feet to back of curb and shall feature standard rolled curb, gutter, 4-foot wide sidewalks, sub-base and asphalt paving, required storm drainage facilities and streetlights.
9. All development, impending and future, shall comply with City spacing and alignment standards along restricting full access approaches and intersections to a distance of no less than 440 feet, near curb to near curb, from signalized intersections or intersections likely to be signalized (intersections of classified roads) and right-in/right-out intersections a distance no less than 220 feet, near curb to near curb, from such intersections. Further, approaches on the same side of the street shall be spaced no less than 150 feet apart, near curb to near curb. Approaches or intersecting roadways to be installed across the street from existing intersections shall either be aligned within a 10-foot centerline offset or be offset by no less than 150 feet near curb to near curb.

- a. Except that a service vehicle approach shall be allowed at the southeast corner of the property. The design of the approach shall be subject to the approval of the Engineering Department. Signage shall be clearly posted at the entrance indicating that the approach is for service vehicles only.
10. Any development of the Property shall require compliance with Idaho State Statute 49-221 regarding clear sight at intersections within and adjacent to the Property and other applicable standards.
 11. Any phase of development may require participation in a traffic study if warranted under the most-recently adopted traffic study ordinance. If a study is required, said traffic study shall be commissioned by the City at the Owner/Applicant/Developer's expense. The Owner/Applicant/Developer shall be responsible to share a proportionate cost of the required improvements noted therein and any other improvements the City Engineer deems necessary as a result of his analysis of the completed traffic study.
 12. In the course of development, street improvements, traffic mitigation measures or trust investments shall be completed in equitable portions for each phase so that the cost to develop lots given the overall improvements required is as nearly the same for each phase as is practical. In no case shall a disproportionate share of the cost be delayed to later phases.
 13. Except as specifically stated otherwise in this Development Agreement, any development shall meet all requirements set forth in the City's most-recently adopted Zoning Ordinance and any portions contained therein.
 14. Except as specifically stated otherwise in this Development Agreement, any development shall meet all requirements set forth in the City's most-recently adopted Subdivision Ordinance and any portions contained therein.
 15. The Property shall be maintained in keeping with the City's nuisance abatement until such time as development is complete. Maintenance shall include the mowing of all weeds (said mowing to take place at least monthly within the months of April, May, June, July, August, September and October) within the subdivision boundaries and the immediate removal of noxious weeds when they are identified. All appropriate dust abatement procedures as part of the construction process shall be applied.
 16. At the time of development a "Rules and Regulations" sign shall be posted and maintained at the entryways to the project until it is fully developed. The signs would be intended for subcontractors performing work and should include: 1) no dogs; 2) no loud music; 3) no alcohol or drugs; 4) no abusive language; 5) dispose of personal trash and site debris; 6) clean up any mud and/or dirt that is deposited from the construction parcel onto streets; 7) installation of a temporary

construction fence that would keep debris from being blown off site by the wind;
8) no burning of construction or other debris on the Property.

17. All historical drainage discharge points from the Property shall be identified and retained for the purpose of draining on site storm water detention facilities.
18. All phases of all development shall require compliance with the City's Storm Water Management Manual and any updates adopted subsequent to the date of this Development Agreement. The engineer of record shall provide calculations which indicate that the assumptions in the stormwater drainage plan comply with the requirements of said Management Manual and said adopted updates.
19. Sewer is available from a 21" main line adjacent to the Property in Smeed Parkway. Development of any phase shall require the Property to connect to the City's Sewer System and comply with any applicable sewer study in the construction of on-site and adjacent sewer facilities. The location of sewer service, including sizing of mains, providing of easements, frontage construction, and offsite construction shall be decided by the Engineering Department during review of improvement plans. All habitable lots shall require an individual sewer service.
20. A public utility easement not less than 20 feet in width shall be provided for any sewer lines not in the public right-of-way and 30 feet in width for adjacent sewer and water lines. Said easements shall be constructed under/within an all-weather surface so as to provide access for maintenance and/or repair.
21. All development shall require all easements and/or rights-of-way to be determined and clearly indicated on all Final Plats. A note shall be placed on the Final Plat indicating that all rights-of-way are to be dedicated to the public.
22. No individual common lot or individual commercial lot or individual residential lot within any development on the Property shall be allowed to take direct access to any classified roadway. Cross-access easements shall be required across all lots.
23. Water is available from a 12-inch main line located adjacent to the Property in Smeed Parkway. All development shall require the Property to connect to the City Municipal Water System and comply with any applicable City Water Master Study.
24. At the time of each phase of development of the Property, all habitable lots shall be supplied with potable water. The location of water services, including sizing of mains, providing of easements, frontage construction and offsite construction shall be decided by the Engineering Department during review of improvement plans.

25. Irrigation water for the Property shall be obtained from the appropriate irrigation entity, such as an irrigation district, and/or from other existing surface or ground water rights appurtenant to the Property. Pressure irrigation facilities shall be provided consistent with City specifications and dedicated to the City. City municipal water may be used for irrigation purposes only if the criteria specified in the Landscape Ordinance Section 10-07-12 are met.
26. Any water rights on the Property as of the date of this agreement, excepting those held in trust by an irrigation entity, such as an irrigation district, shall not be sold, otherwise transferred to other parties or abandoned, but shall be transferred to the City for use on the Property. The City shall assist in obtaining transfer approval. The transfer application will not be filed place until development begins.
27. Development must allow the continuance of existing drainage and/or irrigation rights-of-way across the Property in accordance with Idaho law. The appropriate irrigation and/or drainage district shall be contacted to aid in ascertaining these rights.
28. It appears that the "A" Drain crosses the southwesterly portion of the Property. Existing easements and/or rights-of-way of record for said drain and any other irrigation facility shall be determined and clearly indicated on the construction plans. Construction across or re-routing of said "A" Drain is subject to approval by Pioneer Irrigation District.
29. Except as specifically stated otherwise in this Development Agreement, all development of the Property shall be subject to the laws and requirements of State and City Code and any and all City Ordinances in place at the time of submittal of any development application.
30. Vehicular and pedestrian connectivity shall be provided to the north, east and west.
31. The above Development Agreement conditions are in addition to the regulations provided for in the zoning district as well as all codes, standards, requirements, resolutions and titles of the City.
32. The Order of Decision, including all conditions of approval, for the rezone classification of the Property is hereby made a part of this Development Agreement to be adhered to by the Owner/Applicant/Developer, and is attached hereto as Exhibit "B" and incorporated herein by this reference. In the event there is a discrepancy or conflict, the strictest condition shall generally apply but the Planning and Zoning Department shall be allowed the flexibility to clarify inconsistencies with the caveat that said Department may or may not deem it necessary to take the issue back before City Council as a new business item.

33. A temporary easement on the alignment of any master-planned sewer at a width necessary for construction of the same (not less than 30 feet in width) shall be granted and remain in effect until replaced by right-of-way or a permanent easement.
34. All requirements from the City Engineering Department related to the Property, and any development on the Property, shall be met and adhered to.
35. All requirements from the City Building and Fire Departments related to the Property, and any development on the Property, shall be met and adhered to.
36. Any note, item or drawing element on any plats, drawings, designs or plans inconsistent with City Codes, Policies and/or Ordinances shall not be construed as approved, regardless of stamped approval by any City department, unless specifically addressed as a variance or deviation by City Council and granted by the City Council as a variance or deviation.
37. In the event of Owner/Applicant/Developer's default hereunder, Owner/Applicant/Developer hereby voluntarily, knowingly and intentionally waives the rights and privileges set out in Idaho Code 67-6511(d) that might prohibit the City from rezoning the property over Owner/Applicant/Developer's objection within four (4) years after granting the zone designation sought in this current application Case No. ZON-58-08.
38. A landscaping plan that depicts all requirements of the most-recently adopted landscaping ordinance (the landscaping ordinance in place at the time of any development application) shall be submitted to the Planning and Zoning Department and approved prior to the issuance of any building permits or approval of any preliminary plats.
39. The Property is divided between the APO-1 and APO-2 zone. Divided parcels shall follow Section 10-11-08 of City Code as well as following all other portions of Section 10-11 of City Code.
40. As per Section 10-11-11 of City Code, applications for rezoning, annexation, deannexation, subdivision plats, special use permits or variances on any property lying wholly or partially within the APO-1 or APO-2 zones shall be submitted to the airport commission for comment as part of any action by the City planning and zoning director, City planning and zoning commission or City council.
41. Sign permits for signage shall be obtained prior to installing any sign at the site. All signage shall be in accordance with the most recently-adopted sign ordinance in place at the date of submittal of any sign permit application.
42. External lighting shall be downward facing.

43. All requirements of any applicable airport overlay zones shall be met prior to any City signatures on any final plat. Additionally, all requirements of any applicable airport overlay zones shall be met prior to issuance of any certificates of occupancy.
44. All requirements of applicable agencies connected to development of the Property, including all applicable City departments, shall be met prior to the issuance of building permits or certificates of occupancy, preliminary plat approvals or any City signatures on any final plat.

ARTICLE III
AFFIDAVIT OF PROPERTY OWNERS

3.1 An affidavit of the 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 is incorporated herein by reference.

ARTICLE IV
DEFAULT

4.1 Upon a breach of this Development Agreement, either of the parties in any court of competent jurisdiction, by action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance. Before any failure of any party to this Development Agreement to perform such party's obligations under this Development Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Development Agreement may be found to have occurred if performance has commenced to the complete and full satisfaction of the complaining party within thirty (30) days of the receipt of such written notice.

4.2 The parties hereto may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Development Agreement; provided, however, that Owner/Applicant/Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against City or any elected or appointed officials, officers, employees, agents, representatives, or attorneys on account of the negotiation, execution or breach of any of the terms and conditions of this Development Agreement. In the event of a judicial proceeding brought by any party to this Development Agreement against the other party for enforcement or for breach of any provision of this Development Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees incurred in connection with such judicial proceeding.

4.3 In the event of a material breach of this Development Agreement, the parties agree that each shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party's seeking the remedies provided herein; provided, however, that in the case of any such default which cannot with diligence be cured within said thirty (30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity. Due diligence in curing a breach shall be determined by the non-breaching party in the reasonable exercise of its discretion.

4.4 In addition to specific provisions of this Development Agreement, performance by any party to this Development Agreement shall not be deemed to be in default where delays or defaults are due to war, insurrection, strike, walk-out, riot, flood, earthquake, fire casualty, or act of God. As long as Owner/Applicant/Developer has provided governmental agencies all necessary information in a timely manner, performance hereunder shall not be deemed in default where delays or defaults are due to governmental agencies. An extension of time necessary to gain approval of another independent governmental agency as required in the conditions of approval may be granted upon written request. The grant of a time extension shall be in writing and shall specify the period of excused delay.

ARTICLE V UNENFORCEABLE PROVISIONS

5.1 If any provision of this Development Agreement or the application of any provision of this Development Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void, or unenforceable, such provision shall be disregarded and this Development Agreement shall continue in effect. However, if such provision is not severable from the balance of the Development Agreement so that the mutually dependent rights and obligations of the parties remain materially unaffected, this Development Agreement shall become void unless the portion of this instrument determined to be invalid or unenforceable is re-negotiated in good faith between the Owner/Applicant/Developer and the City as an amendment to the Development Agreement processed in accordance with the notice and hearing provisions of Idaho Code Section 67-6509.

ARTICLE VI ASSIGNMENT AND TRANSFER

6.1 After its execution, the Development Agreement shall be recorded in the Office of the County Recorder by the City Clerk.

6.2 Each commitment and the restrictions on the development shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property and shall run with the land.

6.3 This Agreement shall be binding on the Owner/Applicant/Developer, and his/her/their respective heirs, administrators, executors, agents, legal representatives, successors, and/or 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 Development Agreement, and such obligations shall be automatically adopted by the buyer of the same.

6.4 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 Development 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 the Idaho Code Section 67-6509.

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 neutral 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 Canyon County, Idaho.

7.4 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:

Caldwell: City of Caldwell
Planning and Zoning Department
P.O. Box 1179
Caldwell, ID 83606

Owner/Applicant/Developer: VVPI, L.L.C., an Arizona limited liability company
2231 East Camelback Road
Suite 215
Phoenix, AZ 85106

Or such other addresses 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.

7.5 Merger and Integration. This writing embodies the whole Development Agreement. There are no promises, terms, conditions, or obligations other than those contained in this Development Agreement. All previous and contemporaneous communications, representation, or agreements, either verbal or written, between City and Owner/Applicant/Developer are superseded by this Development Agreement.

7.6 Third party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

7.7 Changes in State and Federal Law. This Development Agreement shall not preclude the application of changes in state or federal laws or regulations to the Property. In the event such law prevents or precludes compliance with one or more provisions of this Development Agreement, City and Owner/Applicant/Developer shall meet and confer to determine how provisions of this Development Agreement would need to be modified or suspended in order to comply with the law and shall prepare and process the necessary amendment(s) to this Development Agreement.

7.8 Effective Date. This Development Agreement shall be effective upon the date of recordation. The City shall deliver to each of the parties hereto a recorded and fully executed copied original of this Development Agreement.

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

DATED this 22nd day of September, 2008

Eisenberg Rezone Development Agreement
Original 

CALDWELL:

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

By: Garret L. Nancolas, Mayor

ATTEST:

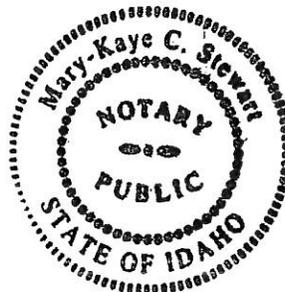
Debbie Meyer, City Clerk
DATED this 22nd day of September, 2008

STATE OF IDAHO)
 : ss.
County of Canyon)

On this 22nd day of September, 2008, before the undersigned notary public in and for the said state, personally appeared Garret L. Nancolas, known or identified to me to be the Mayor of the City of Caldwell 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.

Mary-Kaye C. Stewart
Notary Public for Idaho
Residing at: Owyhee County
My Commission Expires: 03-14-2014



OWNER/APPLICANT/DEVELOPER:

VVPI, L.L.C., an Arizona limited liability company

By: Eisenberg-Spier VVP, LLC, an Arizona limited liability company

Its: Administrative Member

By: Craig F. Eisenberg and Pamela S. Eisenberg, as Co-Trustees of the Eisenberg Family Trust U/T/A dated September 28, 1990, as amended and restated in its entirety U/T/A dated October 28, 2002

Its: Administrative Member

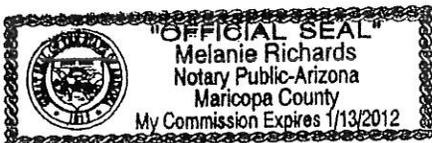
By: *Craig F. Eisenberg*
Craig F. Eisenberg, Co-Trustee

By: *Pamela S. Eisenberg*
Pamela S. Eisenberg, Co-Trustee

STATE OF Arizona)
County of Maricopa) : ss.

On this 5 day of September, 2008, before the undersigned notary public in and for the said state, personally appeared Craig F. and Pamela S. Eisenberg, Co-Trustees of the Eisenberg Family Trust U/T/A dated September 28, 1990, as amended and restated in its entirety U/T/A dated October 28, 2002, the Administrative Member of Eisenberg-Spier VVP, LLC, an Arizona limited liability company, known or identified to me to be the Administrative Member of the Owner/Applicant/Developer referenced herein and the persons who executed the foregoing instrument on behalf of VVPI, L.L.C.

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



Melanie Richards
Notary Public for State of Arizona
Residing at: Maricopa County
My Commission Expires: 1/13/2012

EXHIBIT A

A parcel of land located in the S ½ NE ¼ NW ¼ of Section 25, Township 4 North, Range 3 West, Boise Meridian, City of Caldwell, Canyon County, Idaho, being more particularly described as follows:

COMMENCING at the NE corner of the NW ¼ (N ¼ Corner) of said Section 25; thence S 89°49'32" W, 1328.86 feet coincident with the northerly line of said Section 25 to the NW corner of the NE ¼ NW ¼ (W 1/16 Corner) of said Section 25; thence S 00°34'05" W, 50.00 feet coincident with the westerly line of the NE ¼ NW ¼ of said Section 25 to the southerly right-of-way of US Highway 20/26; thence continuing S 00°34'05" W, 611.38 feet coincident with said westerly line of the NE ¼ NW ¼ of Section 25 to the NW corner of the S ½ NE ¼ NW ¼ and **POINT OF BEGINNING**; thence continuing S 00°34'05" W, 661.38 feet coincident with said westerly line of the NE ¼ NW ¼ of Section 25 to the SW corner of said S ½ NE ¼ NW ¼ (CW 1/16 Corner); thence N 89°42'59" E, 1326.12 feet coincident with the southerly line of said S ½ NE ¼ NW ¼ of Section 25 to the SE corner of said S ½ NE ¼ NW ¼ (CN1/16 Corner) and the westerly right-of-way of Smeed Parkway; thence N 00°41'19" E, 575.14 feet coincident with the easterly line of said S ½ NE ¼ NW ¼ of Section 25 and said westerly right-of-way to the beginning of a tangent curve to the left; thence along the arc of said curve to the left, coincident with said westerly right-of-way, an arc distance of 85.00 feet, said curve having a radius of 1960.00 feet, a central angle of 02°29'05", and a chord bearing of N 00°33'14" W, 84.99 feet to a point of non-tangency; thence S 89°46'16" W, 1325.65 feet coincident with the northerly line of said S ½ NE ¼ NW ¼ of Section 25 to the **POINT OF BEGINNING**. Said parcel contains 20.12 acres, more or less.

A handwritten signature in black ink, appearing to be 'AAS' or similar, located at the bottom left of the page.

ORDER OF DECISION

BY THE MAYOR AND CITY COUNCIL
CITY OF CALDWELL, IDAHO
PUBLIC HEARING HELD AUGUST 18, 2008
SIGNED SEPTEMBER 22, 2008

Subject: Case No. ZON-58-08 (Eisenberg Rezone)

THE FOLLOWING LAND USE ACTIONS ARE THE PRIMARY FEATURES OF THIS APPLICATION:

- REZONE FROM M-1 LIGHT INDUSTRIAL TO C-3 SERVICE COMMERCIAL.
- A DEVELOPMENT AGREEMENT.
- A COMPREHENSIVE PLAN MAP AMENDMENT FROM INDUSTRIAL TO COMMERCIAL.

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I COURSE OF PROCEEDINGS

- 1.1 The Caldwell Planning and Zoning Department issued a notice of Public Hearing on application ZON-58-08, to be held before the Planning and Zoning Commission on July 15, 2008. Public notice requirements set forth in Idaho Code, Chapter 65, Local Planning Act, were met. On June 29, 2008 notice was published in the Idaho-Press Tribune; on June 27, 2008 notice was mailed to all property owners within 300 feet of the project site and to all political subdivisions providing services to the site; and, on July 3, 2008 notice was posted on the site.
- 1.2 On July 15, 2008 the Caldwell Planning and Zoning Commission recommended **approval** of this request.
- 1.3 The Caldwell Planning and Zoning Department issued a notice of Public Hearing on application ZON-58-08, to be held before the Caldwell City Council on August 18, 2008. Public notice requirements set forth in Idaho Code, Chapter 65, Local Planning Act, were met. On August 3, 2008 notice was published in the Idaho-Press Tribune; on August 1, 2008 notice was mailed to all property owners within 300 feet of the project site and to all political

subdivisions providing services to the site; and, on August 7, 2008 notice was posted on the site.

- 1.4 On August 18, 2008 the Caldwell City Council **approved** this request.
- 1.5 Files and exhibits relative to this application are available for review in the Planning and Zoning Department, 621 Cleveland Blvd., as well as at applicable public hearings.

II GENERAL FACTS

2.1 APPLICANT/OWNER: Craig Eisenberg, WVPI LLC, 2231 E. Camelback, Ste. 215, Phoenix, AZ 85016.

ENGINEER: WH Pacific, Travis Foster, 3501 W. Elder, Ste. 200, Boise, ID 83705.

2.2 REQUEST: The applicant/owner is seeking a rezone of 20.12 acres from M-1 Light Industrial zoning to C-3 Service Commercial zoning, a comprehensive plan map amendment from Industrial to Commercial and a development agreement.

2.3 LOCATION: The site is located approximately 611 feet south of Highway 20/26 on the west side of Smeed Parkway.

The southwesterly corner of the property is located in the APO-1 Land Use Limitation Zone. The remainder of the property is located within the APO-2 Noise Abatement Zone.

2.4 LEGAL DESCRIPTION: A metes and bounds legal description was submitted with the application and incorporated into the file for reference purposes.

2.5 COMPREHENSIVE PLAN DESIGNATION: The Comprehensive Plan Map currently designates this parcel Industrial.

2.6 COMPREHENSIVE PLAN COMPONENTS APPLICABLE TO THE REQUEST:

2.6.1 Property Rights: Land use policies, regulations, conditions and fees should not violate private property rights.

2.6.2 Population and Economic Development: Caldwell is growing as a trading, residential, commercial and education center and the City's geographic position places it in an advantageous position to accommodate even further additional future residential and commercial growth such as is represented by this application.

2.6.3 Land Use: The subject property is within City limits with an M-1 Light Industrial zone classification, a Caldwell Comprehensive Plan Map designation of Industrial and is currently bare ground.

<u>Direction</u>	<u>Use</u>	<u>Zone</u>	<u>Comprehensive Map</u>
North	Bare ground	C-3	Commercial
South	Industrial	M-1	Industrial
East	Commercial	C-2, C-3	Commercial, Public

West Bare ground C-4 Commercial

- 2.6.4 Public Facilities – Schools: This request does not have any impact on the school district.
- 2.6.5 Public Facilities – Public Agency Offices and Utilities: The City Engineering Department, City Fire Department, City Building Department, City Police Department, Pioneer Irrigation, Canyon Highway District #4, Idaho Transportation Department, Caldwell Airport, Idaho Power and Intermountain Gas were notified of this request. The Engineering Department and the Caldwell Airport were the only agencies to respond.

The Engineering Department comments are included in the case file as Exhibit PA-1. The Caldwell Airport responded via email indicating that its main concern was restricting uses considered to noise sensitive and specifically any use that would include people trying to sleep.

- 2.7 Landscaping: A landscaping plan has not been submitted. Landscaping in accordance with the Zoning Ordinance section 10-07 is required. A landscaping plan will have to be submitted and approved prior to any preliminary plat approval; said landscaping will have to be installed prior to any final plat approval. Internal landscaping that pertains to individual buildings and associated parking would need to be approved prior to issuance of any building permits on the property and installed prior to issuance of any certificates of occupancy.

III TESTIMONY BEFORE THE PLANNING AND ZONING COMMISSION, JULY 15, 2008

- 3.1 Anne Marie Skinner, Senior Planner, presented the staff report and verbally reviewed the facts of the request.
- 3.2 Laila Maqpool, applicant's representative, testified in favor of the request.

TESTIMONY BEFORE THE CITY COUNCIL, AUGUST 18, 2008

- 3.3 Anne Marie Skinner, 621 Cleveland Blvd., acknowledged being sworn in and outlined the staff report as presented. She presented an aerial map of the site, which the Mayor labeled as CC-1000. She noted that the Development Agreement was revised on August 15th and distributed to Council for their review. She stated that the surrounding property within the area is zoned C-2 (Community Commercial), C-3 (Service Commercial), C-4 (Interstate Commercial), and M-1 (Light Industrial). The property is located within the APO-1 and APO-2 zones. The Caldwell Industrial Airport and Engineering Department were the only agencies providing comments concerning the development. At the time of development, a landscaping plan will be required.
- 3.3 Laila Magbool, 3501 W. Elder, Boise, acknowledged being sworn in and spoke in favor of the request. She stated that the developer is requesting a rezone of the south 20 acres to give continuity with the north 20 acres, which is currently zoned commercial.
- 3.4 Craig Eisenberg, 2231 E. Camel Back, Suite 215, Phoenix, Arizona, acknowledged being sworn in and spoke in favor of the request. He noted that he desires the rezone for the purpose of a shopping center development at the site to possibly include one or two large format users, retail shops, banks, and some restaurants.
- 3.5 **MOVED** by Hopper, **SECONDED** by Oates to close the public testimony portion of the hearing.
- 3.6 Those voting yes: unanimous.

- 3.7 MOTION CARRIED
- 3.8 The Mayor presented the Evidence List: staff report, sign up sheets, and CC-1000 (the aerial map of the site presented by Anne Marie Skinner).
- 3.9 MOVED by Hopper, SECONDED by Blacker to accept the Evidence List as presented.
- 3.10 Those voting yes: unanimous.
- 3.11 MOTION CARRIED
- 3.12 MOVED by Hopper, SECONDED by Oates to accept the Comprehensive Plan Analysis as presented in the staff report under roman number V.
- 3.13 Roll call vote. Those voting yes: Hopper, Callsen, Dakan, Sobba, Blacker, and Oates. Those voting no: none. Absent and/or not voting: none.
- 3.14 MOTION CARRIED
- 3.15 MOVED by Hopper, SECONDED by Blacker to accept the general facts as outlined in the staff report, the public testimony that was given in this matter, the evidence list that was presented, and note there was no opposition to the request.
- 3.16 Roll call vote. Those voting yes: Hopper, Callsen, Dakan, Sobba, Blacker, and Oates. Those voting no: none. Absent and/or not voting: none.
- 3.17 MOTION CARRIED
- 3.18 MOVED by Hopper, SECONDED by Blacker that the Caldwell City Council has the authority to hear this case and to make the decision to approve or deny; and the public hearing was noticed and heard within the guidelines of applicable state codes and local ordinances.
- 3.19 Roll call vote. Those voting yes: Hopper, Callsen, Dakan, Sobba, Blacker, and Oates. Those voting no: none. Absent and/or not voting: none.
- 3.20 MOTION CARRIED
- 3.21 MOVED by Hopper, SECONDED by Blacker, based on the Findings of Fact and Conclusions of Law, the Caldwell City Council hereby orders that based on the Findings of Fact and Conclusions of Law, the City Council hereby orders that Case No. ZON-58-08, a request by VVPI LLC, Craig Eisenberg, and W&H Pacific for a rezone of 20.12 acres from M-1 Light Industrial to C-3 Service Commercial, a comprehensive plan map amendment from Industrial to Commercial and a development agreement is approved with the conditions as outlined in the staff report.
- 3.22 Roll call vote. Those voting yes: Hopper, Callsen, Dakan, Sobba, Blacker, and Oates. Those voting no: none. Absent and/or not voting: none.
- 3.23 MOTION CARRIED
- 3.24 MOVED by Hopper, SECONDED by Oates to close the public hearing.

3.25 Those voting yes: unanimous.

3.26 MOTION CARRIED

IV APPLICABLE LEGAL STANDARDS:

4.1 City of Caldwell Comprehensive Plan, as amended.

4.2 City of Caldwell Zoning Ordinance No. 1451, as amended.

4.3 Idaho Code, Chapter 65, Local Planning Act, as amended.

V COMPREHENSIVE PLAN ANALYSIS

5.1 The Caldwell City Council accepted the Comprehensive Plan components as listed below.

5.1.1 The request is consistent with the following components of the Comprehensive Plan:

A. Property Rights –

GOAL: To ensure that land use policies, restrictions, conditions and fees do not violate property rights, adversely impact property values or create unnecessary technical limitations on the use of the property.

OBJECTIVE A: To establish a sound basis for land use and environmental regulations through comprehensive planning and adopted policies and ordinances.

OBJECTIVE B: To identify potential takings of private property prior to a regulatory or administrative action on specific property.

OBJECTIVE D: To assure that development pays its fair share by establishing a rational, equitable basis for calculation the type of any exaction, or the amount of any impact fee.

POLICY 1: Planning and zoning actions may be subject to a regulatory takings analysis provided in section 67-8003 of the Idaho Code. Staff will follow the Attorney General's Checklist Criteria outlined in the Idaho Regulatory Taking Act Guidelines prior to initiating any proposed regulatory or administrative action on specific property, and to request legal counsel's review if any one of the criteria is answered in the affirmative.

B. Economic Development –

GOAL I: To promote economic development initiatives relating to housing, business, jobs, schools, recreational opportunities, infrastructure systems, public utilities and facilities, and public services.

GOAL II: To encourage business expansion and labor retention in areas that are most suitable for commercial development.

GOAL IV: To create neighborhoods where citizens can live, work and play.

OBJECTIVE C: To promote economic development growth that is environmentally manageable, that will assist in maintaining the City's fiscal stability, and that will reduce the need for residents to commute out of the City.

OBJECTIVE F: To mitigate incompatibility that might arise between agricultural uses and new development through buffer and screening strategies.

OBJECTIVE G: To generate employment opportunities that support local economies and reduce vehicle miles traveled between home and work.

OBJECTIVE H: To provide commercial uses that meet all of the consumer needs for residents within the community and thereby reduce vehicle miles traveled and land required for parking.

POLICY 1: Encourage development that generates new job opportunity.

C. Land Use –

GOAL I: To establish land-use management policies that protect property rights and the environment, maintain a high quality of life, provide adequate land for all types of development and adequately buffer non-compatible uses.

GOAL II: To create a strong sense of community and place.

GOAL III: To create communities that are more livable, affordable and ecologically sustainable.

OBJECTIVES APPLICABLE TO ALL LAND USES:

OBJECTIVE A: To guide the growth and development of land uses in such a way that the health, safety, and general welfare of residents will be protected.

OBJECTIVE B: To establish requirements that would adequately and appropriately buffer incompatible uses.

OBJECTIVES APPLICABLE TO COMMERCIAL AND INDUSTRIAL LAND USE:

OBJECTIVE A: To encourage commercial and industrial uses in areas that are readily accessible to regional and principal arterials and public transit.

OBJECTIVE B: To establish, in cooperation with Canyon County, an Airport Overlay Zone that would provide for uses that are compatible with the Caldwell Industrial Airport, and adjacent land uses.

POLICIES FOR COMMERCIAL/INDUSTRIAL USE:

POLICY 3: Develop landscape standards for new industrial and commercial development so they will be unobtrusive and compatible with adjacent areas.

POLICY 4: Encourage the development of commercial and light industrial to be located along principal and minor arterials and with access to public transportation.

POLICY 6: Encourage the location of neighborhood convenience stores in residential areas that are considerable distance from commercial districts and/or corridors, as a means of reducing vehicle trip generation.

D. Transportation –

GOALS APPLICABLE TO CIRCULATION:

GOAL I: To provide for the efficient, safe and cost-effective movement of people and goods.

GOAL III: To create communities with more cohesive, interconnected and walkable neighborhoods.

GOAL IV: To promote healthy lifestyles.

GOALS APPLICABLE TO PUBLIC TRANSPORTATION:

GOAL IV: Promote the development of pathways as a means to enhance connectivity.

E. Community Design –

GOAL: Foster growth in a manner that will enhance and improve the City's visual image.

OBJECTIVE A: To promote, encourage and maintain an aesthetically pleasing city.

OBJECTIVE E: To ensure that new development enhances rather than distracts from the visual image of surrounding areas.

OBJECTIVE G: To establish requirements that will assist in mitigating adverse impacts that occur during on-site construction activities.

POLICY 1: Establish landscape buffer standards for new developments fronting on a principal arterial, minor arterial or collector street.

POLICY 2: Establish standards for landscape installation at the entrances to new development that meet requirements for safe traffic site distance and conditions.

POLICY 3: Establish landscape buffer widths between different classifications of use.

VI FINDINGS OF FACT

6.1 The Caldwell City Council accepted the general facts outlined in the staff report, public testimony noting there was no opposing testimony, and the evidence list as approved through a previous motion.

VII CONCLUSIONS OF LAW

7.1 The Caldwell City Council has the authority to hear this request and to order that it be approved or denied. The public notice requirements were met and the hearing was conducted within the guidelines of applicable Idaho Code and City ordinances.

VIII ORDER OF DECISION

8.1 Based on the Findings of Fact and Conclusions of Law, the City Council hereby orders that Case No. ZON-58-08, a request by VVPI LLC, Craig Eisenberg, and W&H Pacific for a rezone of 20.12 acres from M-1 Light Industrial to C-3 Service Commercial, a comprehensive plan map amendment from Industrial to Commercial and a development agreement is **approved** with the following conditions:

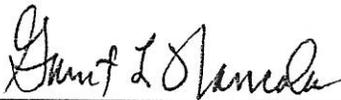
8.2 The Applicant/Owner shall enter into a development agreement as a condition of the rezone approval. The Order of Decision for the rezone shall not be signed nor shall the rezone

ordinance be adopted and published until the signed development agreement has been submitted to the Planning and Zoning Department. The signed development agreement shall be submitted to the Planning and Zoning Department within 20 days of the approving public hearing or this rezone application shall become null and void.

- 8.3 A landscaping plan that depicts all requirements of the most-recently adopted landscaping ordinance (the landscaping ordinance in place at the time of any platting application or building permit application) shall be submitted to the Planning and Zoning Department and approved prior to the issuance of any building permits or approval of any preliminary plats. All aspects of approved landscaping plans must be completed prior to the issuance of any permanent certificates of occupancy or prior to any final plat approvals (unless a letter of credit is in place for said landscaping because weather conditions prohibited timely installation).
- 8.4 Sign permits for signage shall be obtained prior to installing any sign at the site. All signage shall be in accordance with the most recently-adopted sign ordinance in place at the date of submittal of any sign permit application.
- 8.5 External lighting shall not reflect onto adjacent properties.
- 8.6 All requirements of any applicable airport overlay zones shall be met prior to any final plat approvals or issuance of any certificates of occupancy.
- 8.7 All requirements of applicable agencies connected to development of the Property, including all City departments, shall be met prior to the issuance of building permits or certificates of occupancy or preliminary or final plat approvals.

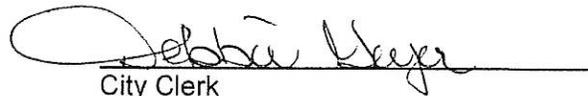
CASE NO. ZON-58-08 WAS HEARD BY THE MAYOR AND CITY COUNCIL AT A PUBLIC HEARING HELD AUGUST 18, 2008.

WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DECISION WERE APPROVED BY CITY COUNCIL MEMBERS AND SIGNED BY MAYOR NANCOLAS AT A REGULARLY SCHEDULED MEETING HELD SEPTEMBER 22, 2008.



Mayor Garret L. Nancolas

ATTEST:



City Clerk

