

**CHANGE IN USE DEVELOPMENT AGREEMENT
FOR 8600, 8630 & 8650 W COLFAX AVENUE
LAKEWOOD, CO 80215**

THIS CHANGE IN USE DEVELOPMENT AGREEMENT (the “Agreement”) is made by and between Malik Tanweer (the “Owner”), and the CITY OF LAKEWOOD, a Colorado home rule municipal corporation (the “City”). The Owner and the City are collectively referred to herein as the “Parties.” The Effective Date of this Agreement shall be the date upon which the proposed rezoning is approved as identified in paragraph H of the Recitals below.

Recitals

A. The Owner owns 2.34 acres, more or less, of contiguous property located within the City at 8600, 8630 and 8650 West Colfax Avenue, more particularly described on Exhibit 1 attached hereto (the “Property”).

B. The Owner seeks to rezone the Property, which is currently zoned Mixed-Use Neighborhood Urban (M-N-U), to the Mixed-Use General Suburban (M-G-S) zone district to accommodate Motor Vehicle Sales, Minor Motor Vehicle Service and Outdoor Storage and Display land uses associated with the existing satellite facility of the Prestige Imports dealership (“Prestige”), located less than ½ of a mile from the Property at 9201 W. Colfax Avenue.

C. Prestige is currently using the Property for outdoor storage of vehicle inventory pursuant to a Long-Term Temporary Use permit that expires on January 20, 2021. Outdoor storage is not a permitted use in the M-N-U zone district; however, the proposed minor motor vehicle service land use is a permitted use in the M-G-S zone district, and the outdoor display and storage of for sale vehicles is a limited land use. As such, the M-G-S zone district would accommodate all of the foregoing proposed land uses.

D. Upon rezoning approval, Prestige seeks to begin construction of certain site improvements, including the removal of the dilapidated 5,000 SF building at 8630 W. Colfax Avenue, repaving the outdoor vehicle storage area, and installing site lighting, outdoor storage area screening and landscape improvements (the “Proposed Project”).

E. The rezoning approval results in an automatic change in use for the Property. Per Section 2.6 of the Colorado Department of Transportation (“CDOT”) Access Code, a change in use at this location triggers closure of the Property’s eastern access point to W. Colfax Avenue. The closure of this access requires certain public improvements along the Property frontage in accordance with City regulations (the “Public Improvements”).

F. The Owner and the City desire to enter into this Agreement to ensure the Public Improvements are constructed to accommodate the change in use.

G. The City desires to complete a formal site plan and civil engineering review of the Proposed Project and Public Improvements together as a single project to ensure the change in use will adequately accommodate service and emergency vehicle access across the site and that all improvements will satisfy the applicable development and design standards adopted by the City.

H. The proposed rezoning of the Property, to be achieved via Ordinance O-2020-____ (the “Rezoning Ordinance”), will be or has been submitted to the Lakewood City Council for approval upon second and final reading currently scheduled to occur on February 22, 2021.

Agreement

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Major Site Plan Submittal. The Owner shall prepare and submit to the City a formal site plan application and civil construction plans for all required Public Improvements and any proposed private improvements within six (6) months of the effective date of the Rezoning Ordinance.

2. Public Improvements Agreement. The City will prepare and provide to the Owner for signature a public improvements agreement (“PIA”) more particularly describing the Public Improvements to be constructed by the Owner. The Owner shall return the signed PIA to the City for recording. The PIA must be in place prior to any City approvals of the site plan or civil engineering plans.

3. Drainage Improvements. Upon review of the submitted site plan, the City may require detention and water quality measures if the total site disturbance exceeds 1.0 acre.

4. Uses Dependent on Improvements. The Owner acknowledges and agrees that making use of the Property as authorized by the rezoning is contingent upon the improvements contemplated in sections 2 and 3 hereof (the “Required Improvements”). Failure to construct the Required Improvements will result in the Property failing to meet the standards of the City’s Zoning Ordinance, Title 17, Lakewood Municipal Code. The Owner further acknowledges and agrees that making use of the Property without having completed the Required Improvements may subject the Owner to enforcement actions, including, but not limited to, cease and desist orders and municipal court summons.

5. Agreement Conditioned on Approval of Rezoning. The Parties acknowledge and agree that this Agreement is dependent upon the City Council’s approval of the Rezoning Ordinance, which would rezone the Property from its current M-N-U Zone District to the M-G-S zone district. However, should the City Council fail to approve the rezoning, the Parties acknowledge and agree that this Agreement shall be void *ab initio* and shall have no effect on the Property.

6. Term. The term of this Agreement (“Term”) will commence on the Effective Date and will continue through the completion of the Proposed Project. Nothing herein will limit the ability of the Parties to amend this Agreement to extend the Term. After expiration of the Term, this Agreement will be deemed terminated and of no further force and effect; provided, however, such termination will not affect any common law vested property rights established prior to such termination.

7. Full Authority. Each Party represents that it has the full right, power and authority to enter into, perform and observe this Agreement.

8. Miscellaneous.

- a) Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement will be valid or binding.
- b) Amendment. This Agreement may be amended by written mutual agreement of the Parties.
- c) Binding Effect. The rights and obligations of the Parties to this Agreement will be binding on each of the Parties' successors, assigns, and heirs.

9. Counterparts; Electronic Delivery; Electronic Disposition. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement, and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter. The parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately represent the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF LAKEWOOD

Kathleen E. Hodgson, City Manager

ATTEST:

Bruce Roome, City Clerk

Attestation Date

RECOMMENDED AND APPROVED:

Jay N. Hutchison, Director
Public Works Department

Travis Parker, Director
Planning Department

APPROVED AS TO FORM:

Gregory D. Graham, Deputy City Attorney

[Signatures continued on following page]

MALIK TANWEER

Malik Tanweer

Malik Tanweer, Owner

STATE OF Virginia)

COUNTY OF Fairfax) SS

The foregoing instrument was acknowledged before me this 29th day of January, 2021, by Tanweer Malik, as an individual residing in Jefferson County, Colorado.

Witness my hand and official seal.

My commission expires: 5/31/2024

Charmaine K Cheng

Notary Public

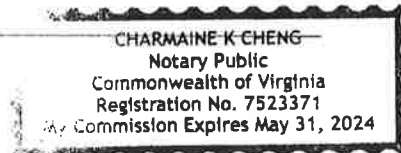


EXHIBIT 1

LEGAL DESCRIPTION FOR

8600, 8630 AND 8650 W COLFAX AVENUE

Parcel A:

That part of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West of the 6th Principal Meridian, described as follows:

Beginning at the point on the North line of said Section 3, which is 25 feet West of the Northeast corner of the West one-half of the Northeast one-quarter of the Northeast one-quarter of the said Section 3, running thence South 435.6 feet, thence West 175 feet; thence North 435.6; thence East 175 feet to the Point of Beginning, except the North 40 feet thereof, County of Jefferson, State of Colorado.

Parcel B:

A tract of land in West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ Section 3, Township 4 South, Range 69 West as follows:

Beginning at a point 200 feet West and 327 feet South of Northeast corner of West $\frac{1}{2}$ Northeast $\frac{1}{4}$ Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West; thence South 108.6 feet; thence West 193.7feet; thence North 108.6 feet; thence East 193.7 feet, more or less, to the Point of Beginning, County of Jefferson, State of Colorado.

Parcel C:

A tract of land in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 3, Township 4 South, Range 69 West described as follows:

Beginning at a point 593.20 feet West of the East line and 50 feet of the North line of said Section 3; thence South and parallel with the East line of said Section 3; 177.25 feet to the True Point of Beginning; thence continuing South and parallel with said East line, 64.75 feet, more or less, to the Easterly right of way line of Rocky Mountain Ditch; thence along said right of way line to the point of intersection with the centerline of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the said Section 3; thence Southwesterly 45.9 feet, more or less, to a point 435.6 feet South of the North line of said Section 4 and 25 feet West of the centerline of the Northeast $\frac{1}{4}$ of said Section 3; thence North and parallel with said centerline 208.35 feet, more or less, to a point 227.25 feet South of the North line of said Section 3; thence East and parallel with the said North line, 92.04 feet, more or less, to the True Point of Beginning, Except that part described in Book 876 at Page 217, County of Jefferson, State of Colorado.