

## **DEVELOPMENT AGREEMENT**

This Development Agreement (**Agreement**) is entered into by and between the CITY OF MIDDLETON, a municipal corporation in the State of Idaho (**City**), ROBERT WATSON (**Developer**).

### **RECITALS**

WHEREAS, Developer owns 12.51 acres legally described in Exhibit A attached hereto, which is a portion of a parcel of real property in Middleton, Canyon County, Idaho commonly referred to in Canyon County Assessor's records as Parcel No. R34443; and

WHEREAS, Developer has applied to the City to rezone from R-3 (Single-family Residential) to C-1 (Neighborhood Commercial) the property legally described in Exhibit A (**Property**); and

WHEREAS, Developer intends to improve the Property according to the Middleton City Code and the City's public works standards at the time(s) the Property is improved; and

WHEREAS, the City, pursuant to Idaho Code §67-6511A, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development agreement to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and Middleton City Code.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the recitals above, which are incorporated below, and the mutual covenants, representations, and performances herein bargained for, relied on, and expected, the parties agree as follows:

**ARTICLE I  
LEGAL AUTHORITY**

This Agreement is made pursuant to and in accordance with the provisions of Idaho Code §67-6511A and Middleton City Code, Title 5, Chapter 7.

**ARTICLE II  
ZONING ORDINANCE AMENDMENT**

The City will adopt an ordinance amending the Middleton Zoning Ordinance to rezone the property described in Exhibit A to C-1 (Neighborhood Commercial). The Ordinance will become effective after it is approved, signed, published and recorded according to law, all of which actions the City will conduct with the Developer's cooperation.

**ARTICLE III  
CONDITIONS OF DEVELOPMENT**

3.1 The Property annexed by the City shall include declared or claimed right-of-ways along Willis Road and Hartley Road.

3.2 Developer will improve the Property according to the Middleton City Code and the City's public works standards at the time(s) the Property is improved.

3.3 Developer agrees to submit a traffic study to the City for review no later than with the application for the first commercial building permit on the Property, and Developer agrees to pay for transportation improvements recommended in the traffic study and approved by City Council. The traffic study shall include intersection analysis of 1) Willis Road and Hartley Road and 2) Hartley Road and State Highway 44. The City shall not issue a certificate of occupancy until after the traffic study has been approved and the City-required improvements are complete and accepted by the City.

**ARTICLE IV  
FAILURE TO COMPLY WITH AGREEMENT**

4.1 If the Developer fails to comply with any of the terms or conditions in this Agreement, then the portion(s) of this Agreement pertaining to the breach may be modified or terminated by the Middleton City Council, after complying with the notice and hearing requirement contained in Middleton City Code and Idaho Code.

If after a breach, the City Council determines that the terms of this Agreement applicable to the breach should be modified, the term(s) of this Agreement shall be amended and the Developer shall comply with the amended terms.

Any breach waived by the City shall apply solely to the breach waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

4.2 If after a breach, the City Council determines that the zoning should be reverted to R-3, or as otherwise provided in the Idaho Code, then the Developer hereby consents to such reversion or other authorized action and will cease uses not allowed or permitted in the R-3 zone.

4.3 Upon a breach of this Agreement, any 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.

4.4 **NOTICE OF FAILED PERFORMANCE.** Upon any failure of any party to this Agreement to perform its obligations under this 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 Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party with thirty (30) days of the receipt of such notice.

## **ARTICLE V GENERAL PROVISIONS**

5.1 This Agreement contains the entire agreement of the parties respecting the Property and supersedes all prior discussions, and written and verbal agreements between the parties respecting the Property.

5.2 Any amendment or addendum to this Agreement shall be in writing and made only after the City has complied with the notice and hearing provisions of Idaho Code §67-6509 and Middleton City Code Title 5, Chapter 7.

5.3 Any notice that a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same registered or certified mail with a return receipt requested, or by Federal Express or other reputable overnight delivery service. Notice shall be given to the parties at the following addresses or such other address and to such other persons as the parties may designate after giving notice. Any such notice shall be deemed given upon

delivery if by personal delivery, upon deposit in the United States mail if sent by mail pursuant to the forgoing:

Middleton: City Clerk  
City of Middleton  
P.O. Box 487  
Middleton, Idaho 83644

Developer: Robert Watson  
4300 Los Altos Drive  
Meridian, Idaho 83642

5.4 If either party shall fail to perform under this Agreement and said failure is cured with the assistance of an attorney for the other party, as a part of curing said failure, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event a suit or action is filed by either party against the other to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein, including the same with respect to an appeal.

5.5 The Agreement shall be effective after being fully executed. This Agreement shall become valid and binding only upon its approval by the City Council and execution of the Mayor and City Clerk. After its execution, the Agreement shall be recorded in the office of the County Recorder at the expense of the Developer.

5.6 Each commitment and restriction described in this Agreement shall be a burden on the Property and run with the land, and shall be appurtenant to and for the benefit of the Property, adjacent property and other residential land near the Property.

This Agreement shall be binding on the City and Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Provided, however, that if all or any portion of the Property is divided, then each owner of a legal lot shall only be responsible for duties and obligations or breaches as to their owners' parcels or lots.

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 only to such owner's lot or parcel.

5.7 The Property that is the subject of this Agreement is located in Canyon County, Idaho and the terms of this Agreement shall be construed according to the laws of the State of Idaho in effect at this time this Agreement is executed. Any

action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

5.8 If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstance shall to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

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

Dated this \_\_\_\_\_ day of October, 2012 and effective upon annexation of the Property.

**CITY OF MIDDLETON**

**ATTEST**

By: \_\_\_\_\_  
Darin J. Taylor, Mayor

By: \_\_\_\_\_  
Cindy LoPiccolo, City Clerk

State of IDAHO )  
County of Canyon ) ss.

I, a notary public, do hereby certify that on this \_\_\_\_\_ day of October, 2012, personally appeared before my Darin J. Taylor, who, being first duly sworn, declared that he is the Mayor of the City of Middleton, Idaho and signed it as Mayor of the City of Middleton.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**DEVELOPER:**

By: \_\_\_\_\_  
Robert Watson

State of IDAHO            )  
  )            ss.  
County of Canyon        )

I, a notary public, do hereby certify that on this \_\_\_\_\_ day    October,    2012,  
personally appeared before my **Robert Watson** who, being first duly sworn,  
declared that he signed

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_