

CREEKSIDE TERRACE SUBDIVISION

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into this 19 day of April, 2006 (the "Effective Date"), by and between the City of Middleton, a municipal corporation in the State of Idaho (the "City") and Willow Creek Properties, LLC, an Idaho limited liability company (the "Developer").

RECITALS

WHEREAS the Developer has applied to the City for a rezone to R-4 of property, which is more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

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

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above which are incorporated herein, and in consideration of the undertakings and agreements hereinafter contained, the parties agree as follows:

ARTICLE I

LEGAL AUTHORITY

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

ARTICLE II

ZONING ORDINANCE AMENDMENT

2.1 The City shall adopt an ordinance amending the Middleton Zoning Ordinance to rezone the Property to R-4 (the "Ordinance"). The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Agreement.

ARTICLE III

CONDITIONS ON DEVELOPMENT

3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement. Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City.

3.2 Developer agrees that only single-family, detached dwellings shall be constructed on the property.

3.3 The development shall comply with the Middleton Comprehensive Plan and City Code, as they exist in final form at the time the development application was approved, except as otherwise provided in this Agreement. As

to the number of lots and lot dimensions detailed in the Conceptual Plan, the following conditions shall be satisfied:

3.4 Minimum Lot Sizes. Minimum lot sizes will be in substantial compliance with conceptual drawing, and are not to be smaller than 4,000 square feet.

3.5 Number of Lots. This development encompasses approximately 36.23 acres and will contain a minimum number of 125 residential lots.

3.6 Set Backs. Developer shall provide the following setbacks for associated lots:

3.6.1 Rear Setbacks.

3.6.1.1 Five feet (5') for all houses which border an alley. (Red shaded on setback display)

3.6.1.2 Fifteen foot (15') rear setbacks will be required for all others. (Blue shaded on setback display)

3.6.2 Side Setbacks

3.6.2.1 Five feet (5') for all lots.

3.6.3 Front Setbacks

3.6.3.1 Twelve feet (12') for all houses bordering an alley. (Red shaded on setback display)

3.6.3.2 Fifteen feet (15') for all houses not bordering an alley. These houses shall not have a garage with a setback of less than twenty-five feet (25'). (Blue shaded on setback display)

3.6.3.3 Houses that front on Concord, Hawthorne, and 9th Street, will not have a traffic buffer area.

3.7 Landscaping. Builder shall install an automatic sprinkler irrigation system, place sod and plant one (1) tree in the parkway strip of alternating lots.

3.8 Common Areas. Developer shall install an automatic sprinkler irrigation system in common areas including, but not limited to, the common area pathway adjacent to Willow Creek detailed in the Conceptual Plan. The common areas shall be owned and maintained by the homeowners' association.

3.9 Parking. Each lot will provide a minimum of two (2) enclosed off-street parking spaces and one (1) additional off-street parking space, or a three (3) car garage. Additionally, a minimum of three (3) parking lots will be constructed in the development to provide additional visitor parking.

3.10 Home Design Mixture. Developer agrees to construct homes in a minimum of four different front appearances. A minimum of 20% either of stucco, brick, or stone fronts shall be present within the development.

3.11 Trailers. No trailer homes or manufactured homes will be allowed to be constructed within the development.

3.12 Roadways. Roadway alignments will conform to City of Middleton's Comprehensive Plan as shown on the conceptual layout, with the following exceptions: All interior subdivision roadways shall have, contained within the 50' rights-of-way, 32' paved, 2' rolled or ribbon curbing on both sides, 6' grassed and treed parkways on both sides, and a portion of a 4' detached sidewalk on both sides; Alleys shall be 20' paved and have a 30' right-of-way, as shown; One-way alleys shall have 12' paved within a 20' right-of-way and shall not be more than 450' in total length. 30' right-of-way half-widths shall be platted and constructed to City of Middleton standards along Concord and Hawthorne as shown on the conceptual plan. 9th Street will be extended and constructed as shown on the conceptual plan.

Concord and Hawthorne Streets will be improved for half-width plus ten feet (10') where the City has right-of-way or prescriptive right-of-way. Developer will make a good faith effort to purchase right-of-way from the landowner where 10' roadway width of Hawthorne (north of 8th Street) will extend onto landowner's property, since City does not currently own, or have any rights to, the necessary right-of-way.

3.13 Open Space. Open Space shall constitute over 25% of the property, including greenbelt and water

feature areas. In addition, development shall meet the City of Middleton's PUD requirement (MCC6-5-3-1-I-7) of 10% open space, counting only 25% of water surface area.

3.14 Fencing. Open fencing shall be used on all properties that border Willow Creek. No chain link fencing will be allowed.

3.15 Greenbelt. Developer will provide a minimum 7' wide paved greenbelt along the north and west boundary of development near Willow Creek as shown in conceptual plan. Greenbelt will not be required to be above base flood elevation.

3.16 Community Center. Developer will provide a community center for residents' use. Community Center will contain off street parking and will be owned and maintained through Creekside Terrace Homeowner's Association.

3.17 Late Comers Agreement for Sewer Extension. The City shall not allow additional properties within the service area to connect upstream of beginning of sewer line extension - 3rd and Dewey, where an 18" sewer system extension will be constructed, until a Late Comers Fee as defined in Section 7-2-17(I)2 of City Code has been assessed. The credit used to calculate the Late Comers Fee shall be determined by using the following equation from Section 7-2-17(G)6 of City Code.

$$\text{Credit} = \text{Actual Construction Cost} \left[\frac{\text{Total Service Area(aces)} - \text{Total Development Area(aces)}}{\text{Total Serviceable Area(aces)}} \right]$$

The Late Comers Fee shall be calculated by allocating the Credit to the Total Service Area less the Total Development Area on a benefits derived basis in compliance with Section 7-2-17(I) of City Code. The Late Comers Fee shall expire ten (10) years after the date this agreement is approved. All fees collected by the City for reimbursement herein provided for shall be accounted for separately as the City of Middleton / Willow Creek Properties, LLC Reimbursement Account. Said funds shall be remitted to the Developer quarterly.

3.18 All development within the Property shall be substantially consistent with the Conceptual Plan.

3.19 Developer agrees that all development will comply with the Middleton City Code, except as otherwise provided in this Agreement, and will require a complete set of plans which shall include:

- a. Site plan including street, curb and gutter, and sidewalk;
- b. Underground utility plan including water, sanitary sewer, storm drainage, irrigation and fire protection;
- c. Soils report, including bearing values, soils profile, ground water table and other elements as requested by the City Engineer or Building Official, and
- d. Review and approval by the City Engineer or Building Official of site, utility and landscape plans before a building permit is issued.
- e. Any other required improvements set forth as conditions of approval;
- f. Compliance with the City of Middleton Floodplain Ordinance

3.20 Conditions for Completion. All of the conditions set forth herein shall be complied with or Developer shall provide City with sufficient security for the completion of such conditions in the form of a letter of credit, or other sufficient security, before signature of the Final Plat or Certificate of Occupancy will be granted. Failure to complete or provide such security for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by Developer. Developer may be allowed to provide security for completion of such conditions at one hundred and fifty percent (150%) of the estimated cost to complete the condition.

3.21 Commencement of Construction. Developer shall commence construction of utilities within two (2) years of the date the Development Agreement becomes effective. In the event Developer fails to commence construction within this time period, Developer shall be in default of this Agreement. Developer shall have the option to apply for a one-year extension at the end of the two-year period if preliminary plat has been approved by City of Middleton. An automatic extension will be granted on subject Development Agreement should city services be

unavailable for some reason beyond the control of Developer at the time of final plat. The timeframe associated with the extension will be equal to that of the delay timeframe on providing city services.

3.22 Willow Creek. Developer acknowledges that the City may require an agreement between the Developer and Middleton Mill Ditch Company as a condition of preliminary plat approval.

3.23 3.23 Dedications. Developer shall construct all streets, sewer and water facilities according to city standards and dedicate the same to the City of Middleton upon successful final inspection by the City.

ARTICLE IV DEFAULT

4.1 In the event Developer, her/his heirs or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Middleton City Council in compliance with the requirements of the Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the Property shall revert to R-3 zoning. All uses of the Property, which are not consistent with R-3 zoning shall cease. A waiver by the City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

4.2 Remedies. Developer, by entering into this Agreement, does hereby agree that in the event there shall be a default in the terms and conditions of this Agreement, that this Agreement shall serve as consent to a reversion of the Property to R-3 zoning.

ARTICLE V UNENFORCEABLE PROVISIONS

5.1 If any term, provision, commitment or restriction of this 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 remain in full force and effect.

ARTICLE VI ASSIGNMENT AND TRANSFER

6.1 After its execution, this Agreement shall be recorded in the office of the Canyon County Recorder at the expense of Developer. Each commitment and restriction on the development subject to this Agreement 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 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, each owner of a legal lot shall only be responsible for duties and obligations associated with the owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. A 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.

ARTICLE VII GENERAL MATTERS

7.1 Amendments. Any alteration or change to this Agreement shall be made only after complying with the

notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code.

7.2 Paragraph Headings. This 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 Agreement.

As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others wherever and whenever the context so dictates.

7.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this 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.

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

Developer: Willow Creek Properties, L.L.C.
P.O. Box 384
Middleton, Idaho 83644

or such other address and to such other persons as the parties may hereafter designate in writing to the other parties. 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 foregoing.

7.5 Attorneys' Fees and Costs. In the event an action is brought to enforce any provision of this Agreement, or in the event an action is brought to recover damages for breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred, including attorneys' fees and cost incurred on appeal.

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

Dated this 19 day of April, 2006.

CITY:

CITY OF MIDDLETON

ATTEST:



Frank McKeever

Mayor Frank McKeever

Ellen Smith

City Clerk

DEVELOPER:

WILLOW CREEK PROPERTIES, LLC, an Idaho limited liability company

By:

Sherry Maupin

Sherry Maupin, Member

By:

Will Dilmore

Will Dilmore, Member