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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

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**DEVELOPMENT AGREEMENT
First Amendment**

This First Amendment to the Development Agreement (Agreement) is entered into by and among the City of Middleton, a municipal corporation in the State of Idaho (City), and Viper Investments, LLC, an Idaho limited liability company, whose address is 1977 E. Overland Road, Meridian, Idaho 83642 (Developer), to amend and entirely supersede that certain Development Agreement dated April 21, 2004 by and between the City and Developer.

RECITALS

WHEREAS, the City previously approved Developer's application for Falcon Valley Subdivision consisting of several phases, two of which have been constructed;

WHEREAS, the Parties previously entered into a Development Agreement whereby the Parties agreed to rezone certain real property described in that agreement according to the terms and conditions contained in that agreement dated April 21, 2004 and recorded on July 9, 2004 in the records of Canyon County, Idaho as Instrument No. 200430804;

WHEREAS, the Developer on May 1, 2015 applied to amend the previously-approved preliminary plat for Falcon Valley Subdivision, and the City and Developer desire to amend the Development Agreement by replacing it in its entirety with this Agreement;

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; and

WHEREAS, this Agreement is to assure orderly development of the Property according to the City's adopted plans, ordinances, and public works standards.

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 4.

ARTICLE II CONDITIONS OF DEVELOPMENT

2.1 The City Council approved the annexation and zoning for Falcon Valley subdivision conditioned upon certain terms and conditions detailed in the Development Agreement. The Parties agree this Agreement supersedes in its entirety the Development Agreement between the Parties dated April 21, 2004 recorded in Canyon County, Idaho as Inst. No. 200430804.

2.2 Lot Sizes: The city requested the Developer provide an alternate method of handling storm runoff for the project, rather than swales. The Developer proposes a plan that would remove roadside swales from future phases and provided out-of-right-of-way storm drainage ponds located across the site to handle storm drainage. The lot area for these ponds was taken from adjacent lots without changing the site layout. The sizes of some lots were reduced below the required minimum square footage in order to keep the original lot count.

The City hereby approves the Developer's request to vary the minimum lot size for the following lots to the minimum lot sizes identified below.

BLOCK	LOT	Area sf
13	21	6762
21	17	6867
22	8	7037
14	19	7064
24	12	7089
14	9	7119
13	25	7152
14	8	7242

21	16	7314
13	20	7347
15	4	7365
29	9	7398
22	7	7413
13	19	7428
23	6	7444
14	18	7462
10	9	7496

2.3 Improvements of the third and subsequent phases of Falcon Valley Subdivision will be according to Middleton City Code and Middleton standards for public works construction, a supplement to the Idaho Standards for Public Works Construction, as they exist at the time of the execution of this Development Agreement. If a provision in this Agreement conflicts with any of the above, then the provision in this Agreement applies.

2.4 Design and construction of the third and subsequent phases of Falcon Valley Subdivision will use drainage facilities other than swales since the groundwater is very high.

2.5 Developer agrees to donate and convey at least seven acres of vacant land within the Falcon Valley Subdivision to the City for subsequent development by the City, at the City's sole cost and expense, as a City park (Future Park Site).

2.6 Developer agrees to donate and convey 100 feet of vacant land, 50 feet each side of the centerline, along the entire segment of Little Drain within Falcon Valley Subdivision to the City for subsequent development by the Developer, at the Developer's sole cost and expense, of a 10-foot wide asphalt pathway within the 50-foot conveyance along the north side of Little Drain in a location and layout identified by the City, with connections to the Future Park Site and to the rest of the Development (Future Pathway Site), specifically including paved pathway connecting to Duff Lane across Lot 18, Block 15, and across Lot 20, Block 24, as shown on the preliminary plat approved by the City of Middleton on July 15, 2015. Developer agrees to construct the pathway at the same time roads are constructed in the phase abutting the Future Park Site on the east or west, whichever first occurs. The City agrees to coordinate and acquire required permissions or approvals from the drainage district responsible for Little Drain.

2.7 Developer agrees to donate and convey the Future Park Site and Future Pathway Site by fee simple title, free and clear of encumbrances not agreed to by the City, within thirty (30) calendar days from the date the City approves the Developer's May 1, 2015 application to amend the preliminary plat.

2.8 Developer agrees to construct pathway connections to the east Property boundary abutting Duff Lane on Lot 18 Block 15, and Lot 20, Block 24, in a twenty-foot wide pathway easement to be dedicated to the City.

ARTICLE III FAILURE TO COMPLY WITH AGREEMENT

3.1 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.

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.

3.2 If after notice and hearing, the City Council determines there is a breach then the City may zone the property to its original zone as it existed prior to annexation into the City, or the equivalent City zone, and the Developer hereby consents to such automatic reversion and to cease uses not allowed or permitted in the reversion zone.

3.3 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, including attorney's fees, for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance.

3.4 **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 within thirty (30) calendar days of the receipt of such notice.

ARTICLE IV GENERAL PROVISIONS

4.1 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.

4.2 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 4.

4.3 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: Viper Investments, LLC
1977 E. Overland Road
Meridian, Idaho 83642

4.4 The Agreement shall be effective after being fully executed and shall be recorded.

4.5 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 City, 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 lot(s).

4.6 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. Venue shall be in Canyon County. Developer hereby submits personal jurisdiction to courts in Canyon County, Idaho.

4.7 If any provision of this Agreement shall 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 15th day of July, 2015, and effective upon annexation of the Property.

CITY OF MIDDLETON

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

By: Kandice Cotterell
Kandice Cotterell, Deputy City Clerk

DEVELOPER, VIPER INVESTMENTS, LLC

By: [Signature]
Corey Barton, Manager

State of IDAHO)
County of Canyon) ss.

I, a notary public, do hereby certify that on this 16th day of July, 2015, personally appeared before me Darin J. Taylor, who, being first duly sworn, declared that he is the Mayor of the City of Middleton, Idaho, that he is authorized by the city council to enter into this development agreement, and that he signs this agreement as Mayor of the City of Middleton.



Melissa Sorlien
Notary Public
My Commission Expires: 4/2/18

State of IDAHO)
County of Canyon) ss.

I, a notary public, do hereby certify that on this 17th day of July, 2015, personally appeared before me Corey Barton, who, being first duly sworn, declared that he is a manager or member of VIPER INVESTMENTS, LLC, that he is authorized to enter into this development agreement, and that he signs this agreement as a member of VIPER INVESTMENTS, LLC.

[Signature]
Notary Public
My Commission Expires: 7/16/16

