

*Middleton Town Square  
(E. Middleton)*

WHEN RECORDED RETURN TO:

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

RECORDED  
2006 OCT 16 PM 4:30  
CITY OF MIDDLETON  
BY *[Signature]*  
REQUEST *Middleton City*  
TYPE *1/2 A* FEE *100*

DEVELOPMENT AGREEMENT  
MIDDLETON TOWN SQUARE

THIS DEVELOPMENT AGREEMENT (the "Development Agreement"), made and entered into this 4 day of October, 2006, by and between the City of Middleton, a municipal corporation (the "City"), and Richard M. Phillips and Staci Phillips Trust, ("Developer/owner"), or its successors and/or assigns.

WITNESSETH

LEGAL AUTHORITY

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.

WHEREAS, Developer/owner has applied to the City for annexation and zoning commercial C2 to develop a commercial business center in anticipation of developing the property located adjacent to and North of Highway 44 and adjacent to and West of Duff Road, encompassing approximately 37 acres, described more particularly on "Exhibit A" attached hereto (the "Property") for the development, construction, and operation of a commercial business center with related uses and self storage facilities (the "Project"); shown as "Exhibit B" concept plan and

WHEREAS, the Property is currently owned by Richard M. Phillips and Staci Phillips Trust, (collectively, the "Developer/owner"); and

WHEREAS, the Middleton City Code allows a property owner or developer to request that an application for zoning or zoning map amendment be processed in connection with the execution of a development agreement, wherein through such development agreement, a property owner or developer may agree to make written commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested; and

WHEREAS, the City desires to induce Developer/owner to develop the Property because the development proposed by Developer/owner is in the public interest. The City believes that development by Developer/owner will generate additional tax revenue, provide employment, and stimulate beneficial commercial growth and development; and

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RECEIVED

WHEREAS, the City acknowledges that Developer/owner and its successors and/or assigns are relying upon the effectiveness of this Development Agreement in the decision to purchase the Property; and

WHEREAS, the City has approved the requested annexation and zoning C2 subject to the following terms and/or commitments and desires to formalize and clarify the respective obligations of the parties.

NOW THEREFORE, in consideration of the foregoing recitals, which the parties acknowledge are true and correct, and for other good and valuable consideration, the parties hereby agree to the following commitments or terms as follows:

1. This Development Agreement shall not prevent the City in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by the City in exercise of its police powers that do not conflict with Developer/owner's property rights, the parties' commitments applicable to the Property as set forth herein, or the C2 zone classification approved hereby. Any such subsequent ordinances shall not supersede the specific commitments set forth herein.
- 2.

The Project shall generally conform in type of usage to the conceptual site development plan (the "Conceptual Plan") attached hereto as Exhibit B, provided, however, that Developer/owner Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, and to the standards that the City has in force at the time of the annexation application for the C2 zoning classification except as otherwise provided in this Agreement (the "Project"). Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City. Developer agrees that, unless otherwise agreed to by the Parties, the conceptual site development plan (the "Conceptual Plan") attached hereto as Exhibit B shall dictate the type of development to be constructed in each of the components of the Project.

The Project shall comply with the Middleton Comprehensive Plan and Middleton City Code, and all state and federal law as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement and will require a complete set of plans which shall include:

- 3.4.1 Site plan including street, curb and gutter, street signs, irrigation lines, sidewalk and site lighting.
- 3.4.2 Underground utility plan including water, sanitary sewer, storm drainage, irrigation, and fire protection.
- 3.4.3 Any other required improvements set forth as conditions of approval; Soils report, including bearing values, soils profile, ground water and other elements as requested by the City Engineer or Building Official.
- 3.4.4 Review and Approval by the City Engineer and Building Official of site, utility, and landscape plans before a building permit is issued.

3.4 Unless otherwise agreed, Developer will at its sole expense design and construct all public improvements as shown in this development agreement in strict accordance with the Middleton City Code in existence at the time of the development application or as otherwise provided in this Agreement.

3. **Scope of Development.** The project shall include approximately 20 acres for general commercial uses and 17 acres for self storage facility.

4. **Street Improvements and Access.**

- a. Developer/owner shall make any and all necessary street improvements as generally depicted on the Conceptual Plan;
- b. Developer/owner shall construct the street improvements to standards adopted by the City, including associated curb, gutter and sidewalk per the requirements of the Middleton City Code in effect as of the effective date of this Development Agreement.
- c. Project accesses shall generally conform to the diagram contained in Exhibit "B". Highway 44 access subject to approval by Idaho State Transportation Department. The South Duff Road access is subject to Canyon highway district No. 4 approval.
- d. Developer agrees to submit a traffic impact study to the City acceptable to the City Engineer. In particular, the traffic study shall be in accordance with the standards identified in the *Transportation Impact Analyses for Site Development, 2005*, by the Institute of Transportation Engineers. At a minimum, such a traffic study must consider the cumulative impacts of surrounding developments. Developer at its sole expense agrees to mitigate adverse traffic impacts as required by the City.

5. **Landscaping.**

- a. Developer/owner shall provide landscaping on public highway frontages in accordance with the provisions of the Middleton City Code in place as of the effective date of this Development Agreement.
- b. Developer/owner will provide landscaping along perimeters in accordance with the provisions of the Middleton City Code in place as of the effective date of this Development Agreement.
- c. Developer/owner will provide interior parking lot landscaping in accordance with the provisions of the Middleton code for C2 zoned properties in place as of the effective date of this Development Agreement as generally depicted with the Conceptual Plan.
- d. Developer/owner or its successors or assigns shall maintain all site landscape areas as required by law.

6. **Parking and Loading.**

- a. Developer/owner shall provide off-street parking in accordance with the provisions of the Middleton City Code in effect as of the effective date of this Development Agreement. Developer/owner may exceed the minimums in the code at its sole discretion.
- b. Developer/owner shall meet all standards the City has established for configuration of parking lot areas for adequate fire truck access and all special



conditions that the Middleton fire department reasonably requires as of the effective date of this Development Agreement.

7. **Setbacks.** Developer/owner shall comply with the setbacks for C2 zoned property as provided in the Middleton City Code in effect as of the effective date of this Development Agreement.

8. **Signs.** In lieu of meeting any sign requirements of the Middleton City Code, Developer/owner shall adopt sign criteria for the Project generally in conformance with Exhibit B, recognizing the need for flexibility to meet the needs of particular tenants and/or owners within the Project. Signs shall generally be on the buildings and along the street for each different tenant. There will be three free standing signs along Highway 44 and 2 free standing signs along Duff Road. The sign design will be reviewed by the design review committee.

9. **Utilities.**

- a. Developer/owner shall bring to the Property all utilities it requires for development subject to appropriate reimbursement provisions in latecomers' agreements, except for sanitary sewer.
- b. Developer/owner shall construct all on-site utilities required for development of the Property, including sewer, water, electricity, natural gas, and any others Developer/owner deems appropriate.
- c. All on-site utilities shall be constructed underground.

10. Effective upon recordation of this Development Agreement, the City has approved C2 zoning for the Property. Provided, however, that land uses allowed on the Property shall be either permitted uses "P" or the conditional uses "C" under Section 5-2-4 of the Middleton Zoning ordinance for the C2 zoning district except that the certain uses otherwise allowed in the C2 zone are not permitted for the Project, and certain uses beyond those allowed in the C2 zone shall be allowed, all as set forth in Exhibit B. Convenience stores are a permitted use and gas pumps are to be permitted with this use. "C" uses will still require a conditional use.

11. Upon Developer/owner's request, the City shall issue a letter of certification stating that, if true, Developer/owner is not in violation of this Development Agreement as of the date of the letter.

12. The City shall grant Developer/owner all easements necessary for Developer/owner to meet its obligations under this Development Agreement. Furthermore the City acknowledges and hereby allows developer to sub-divide the property as to building pads for the users who must own their site. This is to be done in the form that is standard for the shopping center industry. Middleton agrees to allow up to four signs on each frontage street.

13. Prior to issuance of any building permit beyond a foundation permit, Developer/owner shall submit detailed building, parking, sign and landscaping plans, sufficient to show compliance with this Development Agreement and the applicable provisions of the Middleton City Code. The City shall approve such submittals and issue

building permits and certificates of occupancy in conformance with the Middleton City Code in place as of the effective date of this Development Agreement.

14. This Development Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Development Agreement conflicts with any provision of the Middleton City Code, this Development Agreement shall prevail to the extent permitted by law.

15. The provisions and stipulations of this Development Agreement shall be binding on and shall inure to the benefit of the City, Developer/owner, each subsequent owner of the Property, and each other person acquiring an interest in the Property.

16. This Development Agreement may be modified only by written agreement of Developer/owner and the City Council of the City of Middleton, Idaho after complying with any notice and hearing procedures that may be required under Idaho Code 67-6509 or Middleton City Code Title 5, Chapter 7 or successor provisions.

17. Subject to Paragraph 18 below, the execution of this Development Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to R-3 designation upon failure of the conditions imposed upon Developer/owner by this Development Agreement, provided, however, that no such consent shall be deemed to have been given unless the City provides written notice of any such failure and Developer/owner or its successors and/or assigns fail to cure such failure within six months of such notice.

18. This Development Agreement and the commitments contained herein shall be terminated, and the zoning designation upon which the use is based reversed, upon the failure of Developer/owner or each subsequent owner or each person acquiring an interest in the subject parcel to comply with the commitments contained herein within 5 years of the effective date of this Development Agreement and after complying with the notice and hearing procedures of Idaho Code 67-6509; provided, however, no such termination or reversal shall occur unless the City provides written notice of any such failure to comply and Developer/owner (or its successors and/or assigns) fails to cure such failure within six months of such notice; further provided that no default by a subsequent owner of a portion of the Property shall constitute a default by Developer/owner for the portion of the Property still owned by Developer/owner. Following Developer/owner's application for extension of this Development Agreement, the City may extend the five-year period of time for compliance with the commitments in this Development Agreement, after complying with the notice and hearing provisions of Idaho Code 67-6509.

19. Following execution of this Development Agreement, the City shall promptly record it at the developers expense, and the Development Agreement shall thereafter run with the Property, as described in Exhibit A, consisting of \_ pages, attached hereto and incorporated herein by this reference. Further, Developer/owner/owners shall have the right to assign the Development Agreement, without prior approval of the City, on the assignment, sale, or

transfer of the Property or any interest therein or portion thereof (as to that portion of the Property).

20. Final building permit approval and construction of the improvements on the Property, in accordance with those approved conceptual plans as submitted, shall be deemed to satisfy the conditions and obligations of Developer/owner set forth in this Development Agreement.

21. Revocation or reversal of zoning as set forth in Paragraphs 15 and 16 shall be the City's remedy if Developer/owner's obligations and/or conditions under this Development Agreement are not met. Any costs associated with or improvements required to be completed by this agreement will be at the expense of the developer.

22. 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.

Middleton:

City Clerk

City of Middleton

P.O Box 487

Middleton, Idaho 83644

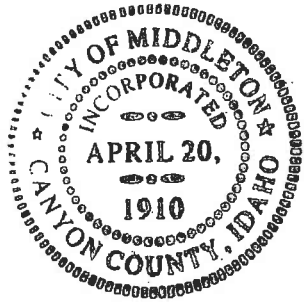
Developer: Mr. Richard Phillips and Staci Phillips Trust  
210 Murray Street  
Boise, Idaho 83714

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.

23. 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.

24. Effective Date. This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this day and year first above written.



CITY OF MIDDLETON:

Frank M. Keen

Mayor, City of Middleton, Idaho

Ellen Smith CMC

Attest: \_\_\_\_\_, City Clerk  
City of Middleton, Idaho

STATE OF IDAHO )

County of Canyon )

On this 12 day of October, in the year of 2006, before me Elena Gomez, personally appeared Frank M. Keen and Ellen Smith, known or identified to me, to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same, and were so authorized to do so for and on behalf of said City of Middleton.

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



Elena Gomez  
Notary Public for Idaho  
Residing at Middleton, Idaho  
My Commission expires: 3-14-11



By: Richard M. Phillips

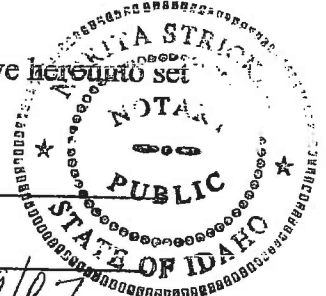
By: Richard M. Phillips  
Its: Trustee

STATE OF IDAHO )  
 )ss  
County of Ada)

On this 7 day of Sept, in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the Trustee of the Staci Phillips Trust and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of Staci Phillips Trust.

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

My Commission expires: 2/9/07

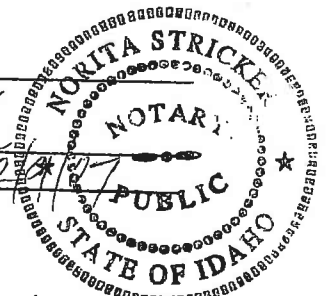


STATE OF IDAHO )  
 )ss.  
County of Ada )

On this 7 day of Sept, in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the person whose name is subscribed to the within and forgoing instrument, and acknowledged to me that he executed the same.

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

My Commission expires: 2/28/87





# ANNEXATION SURVEY MAP

A PORTION OF THE NE 1/4 OF  
SECTION 8, T.4 N., R.2 W., BOISE MERIDIAN  
CANYON COUNTY, IDAHO  
- JOHNSON ENGINEERING 2006 -

EXHIBIT "A"

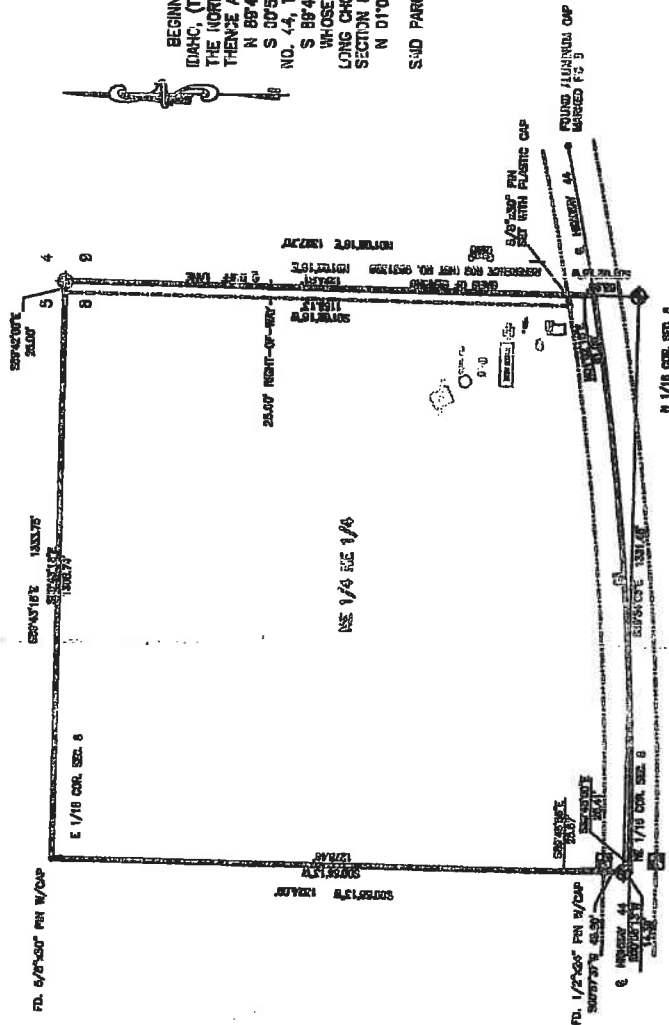


EXHIBIT A

## BOUNDARY DESCRIPTION

BEGINNING AT THE NORTHEAST CORNER OF SECTION 8, T.4 N., R.2 W., B.M., CANYON COUNTY, IDAHO, (THE BASIS OF BEARINGS FOR THIS SURVEY IS THE EAST SECTION LINE OF SAID SECTION 8 BETWEEN THE NORTH 1/16 CORNER AND THE NORTHEAST CORNER OF SAID SECTION 8, SAID LINE BEARS N 01°02'16" E), THENCE ALONG THE NORTH LINE OF SAID SECTION 8  
N 89°43'18" W 1333.71 FEET, TO THE EAST 1/16 CORNER OF SAID SECTION 8, THENCE  
S 89°43'00" E 26.41 FEET TO A POINT, THENCE ON A CURVE TO THE LEFT  
WHOSE RADIUS IS 7639.44 FEET, WHOSE LENGTH IS 1313.05 FEET, WHOSE DELTA IS 8°50'52" AND WHOSE LONG CHORD BEARS N 89°18'18" E 1311.45 FEET TO A POINT ON THE EAST SECTION LINE OF SAID SECTION 8, AND THE CENTERLINE OF THE DUFF LANE RIGHT-OF-WAY, THENCE ALONG SAID EAST SECTION LINE  
N 01°02'16" E 1224.81 FEET TO THE POINT OF BEGINNING.  
SAID PARCEL CONTAINS 32.81 ACRES.



WHITELEY SURVEY

ANNEXATION SURVEY

JOHNSON  
ENGINEERING

9225 CHADRON BLVD. SUITE J  
GARDEN CITY, IDAHO 83714  
(208) 323-7993  
SHEET: 1 OF 1  
DATE: 3/21/06  
SCALE: 1" = 200'  
DESIGNED BY: R.B.J.  
INDEX: 10-1-1-0-0

GRAPHIC SCALE  
(IN FEET)  
1 inch = 200 ft.



LEGEND

- HIGHWAY RIGHT-OF-WAY MONUMENT
- 1/2" x 3/4" PIN WITH PLASTIC CAP
- 3/4" x 3/4" PIN WITH PLASTIC CAP
- LAND CORNER
- FOUND PIN AS SHOWN
- RIGHT-OF-WAY MONUMENT NO. 44

Exhibit B

Energy Access

Sign

Sign

Sign

Sign

