

REQUEST *City of Middleton*
TYPE *YMA* FEE *—*

2010026501

RECORDED

ADDENDUM NO. 1
RIVER RUN SUBDIVISION 2010 JUN 10 AM 10 45
DEVELOPMENT AGREEMENT

WILLIAM H. HURST
CANYON CNTY. RECORDER

THIS RIVER RUN SUBDIVISION DEVELOPMENT AGREEMENT *Pam Norum* ("Agreement") is entered into this day of May 5, 2010, by and between the CITY OF MIDDLETON, IDAHO, a municipal corporation ("City"), and RIVERBEND ESTATES LC, a Utah limited liability company in good standing ("Developer").

RECITALS

THIS RIVER RUN SUBDIVISION DEVELOPMENT AGREEMENT is predicated upon the following facts:

WHEREAS, City is a municipal corporation having all of the powers and authority granted municipalities under the laws of the State of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, Developer owns 169.69 acres and has contracted to purchase .61 acres of real property, totaling 170.3 acres ("Property"), in Canyon County, Idaho that Developer desires to be developed through the City of Middleton as River Run subdivision ("Project");

WHEREAS, the .61 acre lot is already in City limits with R-3 Zoning, and Developer has requested that the remainder of the Property as described in Exhibit A – "Revised Exhibit A" Annexation Description" totaling 169.69 acres be annexed into City's corporate limits and developed according to the terms of this Agreement and applicable provisions of City Code;

WHEREAS, Developer requested the City upon annexation zone the Property as follows, all of which legal descriptions are attached hereto as Exhibit A with sub-exhibits alphabetically listed, and incorporated herein:

Exhibit A	Revised Exhibit "B"	R-8 Zoning	11.43 acres
Exhibit A	Revised Exhibit "C"	MU Zoning	40.07 acres
Exhibit A	Revised Exhibit "D"	R-4 Zoning	42.25 acres
Exhibit A	Revised Exhibit "E"	R-3 Zoning	33.28 acres
Exhibit A	Revised Exhibit "F"	A-R Zoning	<u>42.66 acres</u>

TOTAL 169.69 acres

WHEREAS, differences may exist between the terms of this Agreement and applicable provisions of City Code, and the parties desire that the terms of this Agreement prevail in such instances;

WHEREAS, Developer filed with City an Annexation and Zoning Application and a Preliminary Plat Application that are being processed by the City in City file named "River Run Subdivision";

WHEREAS, it is in the City's best interests that the Property be annexed into the City and developed according to the terms of this Agreement and applicable provisions of City Code;

WHEREAS, Developer and City held all lawfully-required public meetings and hearings for consideration of said applications and this Agreement, and the City Council ("Council") approved the applications subject to the terms of this Agreement verbally on September 5, 2007 and by written adopted findings of fact, conclusions of law and a decision on October 3, 2007;

WHEREAS, City Council found and concluded that 1) annexation of the Property is an orderly extension of the City's municipal boundaries and services; 2) the Property is appropriately zoned with R-3, R-4, and R-8 residential, and M-U mixed-use zoning designations as set forth in City's Zoning Ordinance and to be established on City's Zoning Map; and 3) the assisted living, real estate sales office in a development, and townhouses and condominium land uses should be specifically approved by the City.

WHEREAS, City Council found and concluded said annexation, zoning and land uses specifically approved (1) comply with the requirements of all state statutes, (2) are in harmony with applicable local plans and ordinances, (3) are in the City's best interests, and (4) no damage or injury will result to adjoining or other landowners from said Property annexation, zoning and preliminary plat, if constructed and maintained as approved; and (5) it is in City's best interests to enter into this Agreement in order to provide for orderly annexation, zoning, development, use and maintenance of the Property;

WHEREAS, the parties intend for the terms of this Agreement to ensure the Property is developed in an orderly manner consistent with City plans and ordinances and protect the Developer's property rights of use and enjoyment while at the same time mitigating potential adverse impacts of the Project on contiguous properties and the existing community; and,

WHEREAS, Developer and City enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation and development of the Property, and the parties agree to the development standards, use restrictions, and other limitations set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Developer and City hereby mutually covenant and agree as follows.

1. **DEFINITIONS.** Throughout this Agreement, the following terms will be defined and certain restrictions and covenants are hereby placed upon the areas so defined, as follows:

- 1.1 “City” means the City of Middleton, Idaho, a municipal corporation, acting by and through City’s duly elected Council.
- 1.2 “Developer” means Riverbend Estates LC, a Utah limited liability company.
- 1.3 “Preliminary Plat” means the City-approved preliminary plat for River Run Subdivision, a copy of which is attached hereto as Exhibit B and incorporated herein.
- 1.4 “Property” means that certain real property legally described in Exhibit A.
- 1.5 “Middleton Zoning Ordinance” means the Zoning Ordinance portion of Middleton’s City Code.
- 1.6 “Middleton Subdivision Ordinance” means the Subdivision Ordinance portion of Middleton’s City Code.
- 1.7 “Traffic Impact Study” (“TIS”) means the TIS dated June 26, 2007. “Amended Traffic Impact Study” (“Amended TIS”) means the Amend TIS dated November 24, 2009.
- 1.8 “Surface Transportation Program” (“STP”) means the program utilized by the Idaho Transportation Department to select proposed projects within the state highway system.

2. **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 and other applicable state statutes and city ordinances.

3. **INFRASTRUCTURE IMPROVEMENTS.** Developer shall engineer, construct, and otherwise provide, at Developer’s sole expense, the following improvements, facilities and services (public and private) in accordance with each detailed phase of the City-approved River Run Subdivision preliminary plat and this Agreement. All utilities, including water, sewer, natural gas, cable, phone and electric shall be installed underground within the street rights-of-way or public easements prior to completion of the construction of the streets or as otherwise shown on each detailed phase of the City-approved River Run Subdivision preliminary plat.

Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer and approved by the applicable governmental entity prior to construction. Developer hereby warrants construction of all constructed improvements for one (1) year from acceptance thereof by the applicable governmental entity. All required off-site road and utility improvements must be completed as directed by the applicable governmental entity or as specified in this Agreement.

4. **FINAL CONSTRUCTION REVIEW.** Developer shall receive final construction-review approval for each detailed phase shown on the City-approved preliminary plat.

4.1 Streets. The City of Middleton has a functioning street department, and the exclusive general supervisory authority over all public streets and rights-of-way for this Project shall be under the jurisdiction of the City of Middleton.

Developer has submitted a traffic impact study to the City for review with the preliminary plat application. Said traffic study included intersection analysis at peak hour and consideration of the cumulative impacts of surrounding developments. The traffic study shall be amended by Developer to demonstrate the impacts of the extension of South Cemetery Road as planned. The amendment will add a table addressing construction of improvements in conjunction with development phases, traffic volumes and level of service at intersections.

Developer agrees to mitigate its proportionate share of off-site traffic impacts recommended in the Amended TIS that are required by City. Any such improvements will include consideration of the cumulative impacts of surrounding developments.

4.1.1 Lighting. Developer, at Developer's sole expense, shall install street lighting according to City's code. The lighting shall be installed in each block of the Property as the same is developed.

4.1.2 Streets. All streets, roadways and walkways shall be designed and constructed as shown on each detailed phase of the City-approved preliminary plat. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with digital and hard-copy "as built" drawings thereof.

4.2 Potable Water System. Pursuant to Middleton Code and adopted Standards and Specifications, Developer shall engineer, construct and extend, at Developer's sole expense, the water system throughout the Property in connection with each detailed phase of the City-approved preliminary plat. All such improvements shall be designed and constructed in accordance with the standards of and construction drawings and specifications approved by the State of Idaho, Department of Environmental Quality. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's water system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above.

4.3 Private Irrigation Water System. Developer shall construct, and maintain at Developer's sole expense, a private irrigation system to provide irrigation water to the Property in connection with each detailed phase of the City-approved preliminary plat. Developer shall irrigate the Property using Developer's existing water rights and convey the water rights appurtenant to the Property and necessary for the irrigation of the property to the Home Owners' Association(s) created to maintain the Property.

4.4 Sewer System. Pursuant to Middleton Code and adopted Standards and Specifications, Developer shall engineer, construct and extend, at Developer's sole expense, the sewer system throughout the Property. All such improvements shall be designed and constructed in accordance with the standards of and construction drawings and specifications approved by the State of Idaho and Department of Environmental Quality. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's sewer system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above.

4.5 Electric Power. All electric power installation serving the project, on-site and off-site, shall be underground, with the exception of pad-mounted transformers and other facilities necessary to underground power facilities.

4.6 Fire. Requirements of the Middleton Rural Fire District shall be met.

4.7 Landscaping. Developer shall submit a detailed landscape plan along with the construction plans for each phase of development. The landscape plan shall include species sizes, quantities and location of vegetation.

4.8 Flood Control. Pursuant to Middleton City Code, Developer shall comply with the provisions to reduce flood damage contained in Title 4 and in the flood study submitted for each platted phase of the Property.

- 5. RECORDING THE FINAL PLAT.** Developer shall record the final plat(s) with the Office of the Canyon County Recorder within three hundred and sixty-five (365) calendar days from the date of City Council approval of said final plat(s).

Developer shall demonstrate forward progress on the Project each year as follows:

Developer shall obtain City Council approval of the first-phase final plat within seven hundred and thirty (730) calendar days from the date the City Council approved this Amended Development Agreement. The City Council may grant additional one year extensions upon written request of the Developer; and

Developer shall obtain City Council approval of each successive final plat within one year from the date the City Council approved the preceding final plat.

→ If a longer period than one year is required for either of the above, then the Developer may request the City Council grant such an extension, which request will not be unreasonably withheld.

Time extensions, when approved, shall apply mutually to and correspondingly extend each date, term, and condition included herein.

6. **FINANCIAL ASSURANCE.** Developer shall complete all required improvements prior to the City approving a final plat(s) for the Project, except Developer may, pursuant to the Middleton City Code, provide the City a guarantee for required landscaping.

5.1 7. **OWNERS' ASSOCIATION.** Developer shall form an owners' association(s), which shall be responsible for the year-around maintenance of all common areas and facilities shown on the City-approved preliminary plat that are not dedicated to a state or municipal entity charged with maintaining such, including, without limitation, parks, pathways, landscaping, wetlands, drainage, and flood mitigation areas, and snow removal to maintain access and parking, as well as emergency vehicle turnaround within the Property.

8. **USES ALLOWED BY THIS AGREEMENT.** The uses allowed pursuant to this Agreement are those uses allowed under City's Zoning Ordinance in effect on the date the City accepted Riverbend Estates LC's applications resulting in approval of the Project, and as follows, which City specifically approves on the Property as long as the uses are conducted in compliance with the Middleton City Code:

8.1 Assisted living in the M-U zone,

8.2 Real estate sales office within a development in the R-4 zone, and

8.3 Townhouses and condominiums in the M-U zone.

9. **HOUSING.** In order to assure quality and prevent the appearance of row or tract housing, Developer shall utilize a variety of external elevations, and impose and enforce covenants, conditions and restrictions pertaining to construction and appearance of buildings.

10. **ACCESS AND CHANGES TO DEVELOPMENT PLAN, DOCUMENTS AND THIS AGREEMENT.**

5.2 10.1 **State Highway 44 Alternate Route.** Both parties acknowledge that the State of Idaho and City have discussed and are studying the possibility of an alternate route for State Highway 44 that could transverse the Property. The parties acknowledge that the possible alternate route should be preserved until October 31, 2011 and then not be preserved by the Developer without compensation any longer unless on October 31, 2011, construction of an alternate route that transverses the Property is on the State Transportation Improvement Program adopted by the State of Idaho ensuring funding within the six (6) years following October 31, 2011.

5.3 10.2 **Secondary Access / Offsite Acquisitions / Improvements.** River Run Subdivision, prior to build-out, shall be connected to the following City Streets: Sawtooth Lake Drive, Boise Street via South First Avenue East, South Cemetery Road, and Hawthorne Drive. Priority and timing of

connections shall be tied to specific phases of development as determined by the Amended TIS when approved by the City.

Sawtooth Lake Drive / South Cemetery Road. Sawtooth Lake Drive and South Cemetery Road in River Run subdivision will function as a residential collector with no direct access from lots. The street is curved to slow traffic while maintaining an east-west transportation route as shown on the City of Middleton/Canyon Highway District #4 Circulation and R-O-W Plan Map. Vehicular access to residential lots within the subdivision will be by public roads constructed according to Middleton's City Code and Public Works Standards Manual.

South First Avenue East and South Hawthorne Drive. South First Avenue East and South Hawthorne Drive will function as local residential streets allowing direct access from lots. Hawthorne Drive is currently a half right of way. If the City obtains the other half of the right of way prior to the commencement of the paving of the roadway(s) in the final phase of the project then Developer shall construct the Full street improvements for that applicable section of Hawthorne Street.

Traffic Impact Study. An Amended TIS for River Run Subdivision demonstrating the construction of South Cemetery Road shall be prepared by the Developer. Developer shall construct required on-site improvements and pay its proportionate share of required off-site improvements recommended in the Amended TIS and/or as agreed to with the City.

10.3 Improvements Anticipated Pursuant to Amended Traffic Study

Middleton Road. Developer will construct right and left turn lanes from Middleton Road to Sawtooth Lake Drive as recommended in the Amended TIS and required by the City of Middleton.

State Highway 44 - Alternate Route. Upon the State of Idaho acquiring land for the alternate route (the time line for these actions is currently projected by the STP program to be some year after 2014, but an actual year for funding will be dependent upon the Idaho Transportation Department and related agencies.) Developer will construct to Canyon County Highway District standards (Standard Drawing No. ACCHD-101, under 1,200 ADT) a two-lane collector road on the alternate route right-of-way in the Project and, off-site of the Project, to Crane Creek Way to the east, and/or to State Highway 44 to the north west on City-owned right-of-way. If the right of way is acquired and South Cemetery Road is included in the STP program then Developer is not required to make any improvements to State Highway 44 alternate route.

South Cemetery Road. City and Developer agree to apply to the State of Idaho as a public-private partnership for funding to construct South Cemetery Road and a new bridge across Willow Creek. The project will commence at State

Highway 44 (SH 44) and end at the easterly side of the bridge where the road transitions into Sawtooth Lake Drive. An application was submitted on November 10, 2008 for the roadway segment and amended on February 6, 2009 to include the bridge component for a project amount of \$2,231,000. The City is the public sponsor responsible for preparing and submitting the application under the State Transportation Plan program, entering into the State/Local Agreement, providing for preliminary engineering (\$373,000), providing for securing right-of-way through eminent domain if required, granting donation acknowledgement on IRS Form 8283 when applicable, granting each acquired property access, and project administration. Developer is responsible for acquiring the necessary right-of-way and reimbursing the City for any cost associated with right-of-way acquisition, acquiring and maintaining a performance bond or letter of credit sufficient to guarantee construction of Sawtooth Lake Drive to the easterly side of the bridge, provide for the non-reimbursed local portion of project cost (\$163,755), and for providing for environmental mitigation for the bridge. The sequence for these actions is as follows:

1	Developer provides an irrevocable Letter of Credit in the amount of \$163,755 for the project and a second Letter of Credit to guarantee construction of Sawtooth Lake Drive through the subject Property.
2	State of Idaho provides a date for project construction in the STP program and allocates design funds.
3	Upon notice of project funding, City and State proceed to develop the project-specific State/Local Agreement.
4	When State/Local Agreement is approved, City pays the up-front administration cost assigned by State.
5	When these actions are complete, Developer submits amount of \$163,755 to City.

The time line for these actions is currently projected by the STP program to be some year after 2014, but an actual year for funding will be dependent upon the Idaho Transportation Department and related agencies. The date for STP funding is not in the control of the City or Developer.

Boise Street. Developer will construct to City standards curb, gutter and sidewalk in both sides of Boise Street right-of-way, where they do not already exist, from First Avenue to Middleton Road. If the right of way is acquired and South Cemetery Road is included in the STP program then Developer is not required to make any improvements to Boise Street.¹

Hawthorne Drive. Developer will construct to City standards curb, gutter and sidewalk in both sides of Hawthorne Drive right-of-way where they do not

¹ The parties currently disagree as to the extent of the required improvements referenced in this Paragraph regarding Boise Street. If South Cemetery Road is removed from the STP Program and the alternate route right-of-way is not acquired then the parties agree to review and discuss the improvements required in this paragraph in good faith.

already exist, from Donna Drive to the north boundary of the Property. City is responsible to obtain any right of way that does not currently exist and any such right of way must be obtained prior to recording of the last final plat in the last phase of the development for the Developer to be obligated to construct the above noted improvements.

Mill Creek Lane. If Mill Creek Lane is constructed as shown on the approved preliminary plat, Mill Creek Lane across the alternate route will be extinguished when the alternate route has been constructed and accepted as a highway by the Idaho Transportation Department ("ITD").

10.4 FEMA Flood Areas. Both parties acknowledge that the Federal Emergency Management Agency and the State of Idaho are studying and preparing revised maps showing floodway and floodplain boundaries that could include a portion of the Property. The parties acknowledge that the results of the approved FEMA floodway study and revised maps, and subsequent revisions required to the development will not, unless otherwise superseded by federal or state law, be considered by the City a material change or substantial change to previous City approvals.

5.4 10.5 Modification of Development Plans and Documents. Both parties acknowledge that the development plans, data, documents and plats, whether or not previously approved by City, may be subsequently modified by Developer based on the results of the now pending state alternate route environmental study, traffic impact study, secondary access / offsite acquisitions/improvements, FEMA floodway study, and/or a U.S. Army Corp of Engineers 404 Permit for the project and that such modifications will not be considered by City as a material change or substantial change to previous City approvals unless otherwise superseded by federal or state law. Changes to city approved plans, unless required by federal or state law, and will not require additional City public hearings for approval, although City staff and/or contract engineer shall review said modifications for compliance with the City Code, Standards for Public Works Construction, and other City-ordered conditions of approval, and may hold public meetings and/or hearings in its discretion to memorialize said modifications. The maximum density for Phases I through VI is 333 residential units.

11. SALE OR TRANSFER OF THE PROPERTY. This Agreement, which shall be duly recorded in the records of Canyon County, Idaho, shall run with the Property, and shall be binding upon and benefit the City and Developer, and Developer's successor(s)-in-interest to all or any portion of the Property. No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not substantially conform to this Agreement. In the event that Developer or a successor-in-interest sells or transfers all or any portion of the Property before City approves final plat(s) for the entire Project, written notice of said transaction shall be given to City no less than fifteen (15) days prior to the closing in

connection with such transfer. This requirement shall not apply to the sale and/or transfer of individual lots.

12. **AMENDMENT OF AGREEMENT.** This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing and recorded.
13. **SUPERSEDING PRIOR AGREEMENTS.** This Agreement supersedes and extinguishes all prior agreements, if any, between the parties with regard to the Property or any portion thereof.
14. **DEFAULT AND ENFORCEMENT.** In the event Developer, Developer's heirs, successors, assigns or any other person acquiring an interest in the Property, fail to substantially comply with all of the terms and conditions included in the Agreement, this Agreement may be modified or terminated by City upon compliance with the requirements of the Zoning Ordinance, Chapter 10. Additionally, the City may withhold issuing building or occupancy permits after a written notice has been issued to the developer with a 30-day time period to remedy any items of concern. In the event City 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 City, after compliance with the requirements of City's Code, determines that this Agreement shall be terminated, the zoning of the property shall revert to A-R (Agriculture Residential) zoning. All land uses that are not consistent with A-R (Agriculture Residential) zoning shall cease. In such event, nothing herein shall prevent the owner of any portion of the Property from applying for any nature of use permit consistent with A-R (Agriculture Residential) zoning.

In the event of default, all outstanding instruments of financial assurance in which the City is a beneficiary, including but not limited to, construction bonds, irrevocable letters of credit, late comer's agreements, or other financial guarantees or instrument held by, for, or on behalf of the City shall revert and may be applied to any cost incurred to obtain completion of the development or any of its component parts. Upon completion and acceptance of the development, any remaining funds shall be refunded to developer, his assigns or successors.

A written waiver by 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 City or apply to any subsequent breach of any such or other covenants and conditions.

15. **REMEDIES.** Consent to Rezone. 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 subject property to A-R (Agriculture Residential) Zoning.

16. **POLICE POWERS.** Nothing contained herein is intended to limit the police powers of City or City's discretion in reviewing subsequent applications regarding development and construction of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.
17. **TIMELINES.** Time and timely performance are of the essence of this Agreement.
18. **RELATIONSHIP OF PARTIES.** It is understood the contractual relationship between City and Developer is such that Developer is not the agent, partner, or joint venture of City. Developer hereby guarantees substantial development and performance in accordance with the terms and conditions set forth herein.
19. **FORCE MAJEURE.** If either party hereto is delayed in the performance of any of such party's obligations hereunder because of inclement weather, labor dispute or strike, civil strife, act of God, the time of performance for completion of such obligation shall be extended for the same time as lost by Developer.
20. **ATTORNEY FEES AND COSTS.** If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.
21. **NOTICES.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

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

Notices required to be given to Developer shall be addressed as follows:

Riverbend Estates LC
1549 W. 7800 S.
West Jordan, Utah 84088

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

22. **BINDING EFFECT AND COVENANTS RUNNING WITH THE LAND.** Upon becoming effective, this Agreement shall inure to the benefit of and be binding upon City and Developer, their successors and assigns, and be a covenant running with the Property.

The words "successors and assigns" as used in this Agreement shall include all successors, assigns, personal representatives, administrators, trustees and holders of a security interest in the Property or any portion thereof or interest therein.

23. **NO WAIVER.** In the event City or Developer does not strictly comply with any of City's or Developer's respective obligations or duties herein thereby causing a default of this Agreement, or any forbearance of any kind that may be granted or allowed by City or Developer to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.
24. **RECORDATION.** This Agreement, including subsequent amendments thereto, shall be recorded in the Offices of the Canyon County Recorder, Caldwell, Idaho, by Developer and Developer shall pay the recording costs.
25. **PARTIAL INVALIDITY.** In the event any portion of this Agreement or part thereof shall be determined by any Court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.
26. **ENTIRE AGREEMENT.** This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by either party or such party's officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.
27. **NO PRESUMPTION.** No presumption shall exist in favor or against any party to this Agreement as a result of the drafting and preparation of this Agreement.
28. **NO THIRD PARTY BENEFICIARIES.** Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.
29. **RULES OF CONSTRUCTION.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.
30. **CHOICE OF LAWS.** 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.
31. **EXHIBITS.** Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

A - Legal Descriptions

Exhibit A	Revised Exhibit "A" Annexation Description	169.69 acres
Exhibit A	Revised Exhibit "B"	R-8 Zoning 11.43 acres
Exhibit A	Revised Exhibit "C"	MU Zoning 40.07 acres

Exhibit A	Revised Exhibit "D"	R-4 Zoning	42.25 acres
Exhibit A	Revised Exhibit "E"	R-3 Zoning	33.28 acres
Exhibit A	Revised Exhibit "F"	A-R Zoning	42.66 acres
B – Preliminary Plat			
C – Land Use List			

32. **RECITALS INCORPORATED.** The recitals set forth in this Agreement are hereby incorporated herein by reference.
33. **AUTHORITY TO EXECUTE.** Each of the persons executing this Agreement represent and warrant that such person has the lawful authority and authorization from such person's respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.
34. **EFFECTIVE DATE.** This Agreement is subject to and shall become effective upon annexation of the Property with the conditions acceptable to City.
35. **RELIANCE BY THE CITY.** This Agreement is intended by Developer to be considered by City as part of Developer's request for annexation. Developer acknowledges and intends for City to consider and rely upon this Agreement in City's review and consideration of said annexation request.
36. **RELIANCE BY THE DEVELOPER.** This Agreement is intended by City to be considered by Developer as part of City's approval of annexation, zoning and platting. City acknowledges and intends for Developer to consider and rely upon this Agreement in Developer's infrastructure improvements and platting that expand and extend City's tax base, utilities, employment opportunities, State Highway 44 corridor preservation, and other considerations in City's interest. The City and Developer intend and acknowledge that the provisions of this Agreement prevail if determined in the future to be inconsistent with the Middleton City Code.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the State of Idaho, the date and year first written above.

CITY:

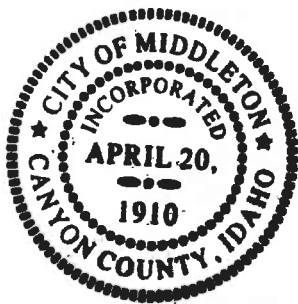
CITY OF MIDDLETON CITY
an Idaho municipal corporation

DEVELOPER:

RIVERBEND ESTATES LC
A Utah limited liability company

By: Vicki Thurber
Vicki Thurber, Mayor

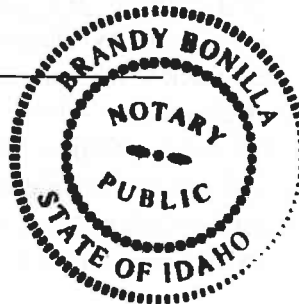
By: Reed Larsen
Reed Larsen, Manager



STATE OF IDAHO)
County of Canyon) S.S.

On this 7 day of June, 2010, before me, a Notary Public in and for said State, personally appeared VICKI THURBER, Mayor of the City of Middleton, Idaho, known or identified to me to be the person whose name is subscribed to the within instrument as the Mayor of the City of Middleton, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Middleton, Idaho.

Brandy Bonilla
Notary Public
Commission expires 11-3-12

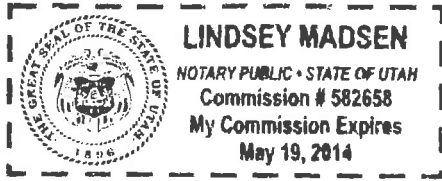


CITY CLERK:

Elen Smith CMC
ATTEST

STATE OF UTAH)
County of Salt Lake) S.S.

On this 21st day of May, 2010, before me, a Notary Public in and for said State, personally appeared REED LARSEN, known or identified to me to be Manager of Riverbend Estates LC, that he is the person who executed the instrument as Manager of Riverbend Estates LC on behalf of Riverbend Estates LC and acknowledged to me that such limited liability company executed the same.



Lindsey Madsen

Notary Public

Commission expires May 19, 2014