

DEVELOPMENT AGREEMENT

PARTIES: **1. City of Meridian**
 2. First Meridian LP, Owner/Developer

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2024, by and between **City of Meridian**, a municipal corporation of the State of Idaho, hereafter called “**CITY**,” whose address is 33 E. Broadway Avenue, Meridian, Idaho 83642, and **First Meridian LP**, whose address is 1556 Parkside Drive, Walnut Creek, California 94596, hereinafter called “**OWNER/DEVELOPER**.”

1. **RECITALS:**

- 1.1 **WHEREAS**, Owner/Developer is the sole owner, in law and/or equity, of a certain tract of land in the County of Ada, State of Idaho, and described in **Exhibit “A,”** which is attached hereto and by this reference incorporated herein as if set forth in full, hereinafter referred to as the “**Property**,” and
- 1.2 **WHEREAS**, Idaho Code § 67-6511A provides that cities may, by ordinance, establish provisions governing the creation, form, recording, modification, enforcement and termination of development agreements required or permitted as a condition of zoning that the Owner/Developer make a written commitment concerning the use or development of the Property; and
- 1.3 **WHEREAS**, City has exercised its statutory authority by the enactment of Section 11-5B-3 of the Unified Development Code (“**UDC**”), which authorizes development agreements and the modification of development agreements; and
- 1.4 **WHEREAS**, Owner/Developer has submitted an application for development agreement modification to remove the property listed in **Exhibit “A”** from an existing Development Agreement recorded in Ada County as Instrument #2017-041827, and for the inclusion of the Property into this new Agreement, which generally describes how the Property will be developed and what improvements will be made; and

- 1.5 **WHEREAS**, Owner/Developer made representations at the duly noticed public hearings before the Meridian City Council as to how the property will be developed and what improvements will be made; and
- 1.6 **WHEREAS**, the record of the proceedings for requested development agreement modification held before the City Council includes responses of government subdivisions providing services within the City of Meridian planning jurisdiction, and includes further testimony and comment; and
- 1.7 **WHEREAS**, on the 10th of September, 2024, the Meridian City Council approved certain Findings of Fact and Conclusions of Law and Decision and Order (“**Findings**”), which have been incorporated into this Agreement and attached as **Exhibit “B;”** and
- 1.8 **WHEREAS**, Owner/Developer deems it to be in its best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily and at its urging and request; and
- 1.9 **WHEREAS**, the property listed in **Exhibit “A”** shall no longer be subject to the terms of the existing Development Agreement (Inst. #2017-041827) and shall be bound by the terms contained herein in this new agreement; and
- 1.10 **WHEREAS**, City requires the Owner/Developer to enter into a development agreement modification for the purpose of ensuring that the Property is developed and the subsequent use of the Property is in accordance with the terms and conditions of this Agreement, herein being established as a result of evidence received by the City in the proceedings for zoning designation from government subdivisions providing services within the planning jurisdiction and from affected property owners and to ensure zoning designations are in accordance with the amended Comprehensive Plan of the City of Meridian on December 19, 2019, Resolution No. 19-2179, and the UDC, Title 11.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

2. **INCORPORATION OF RECITALS:** That the above recitals are contractual and binding and are incorporated herein as if set forth in full.

3. **DEFINITIONS:** For all purposes of this Agreement, the following words, terms and phrases herein contained in this section shall be defined and interpreted as herein provided for, unless the clear context of the presentation of the same requires otherwise:

- 3.1 **CITY:** means and refers to the **City of Meridian**, a party to this Agreement, which is a municipal Corporation and government subdivision of the state of Idaho, organized and existing by virtue of law of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho 83642.
- 3.2 **OWNER/DEVELOPER:** means and refers to **First Meridian LP**, whose address is 1556 Parkside Drive, Walnut Creek, California 94596, the party that owns and is developing said Property and shall include any subsequent owner(s)/developer(s) of the Property.
- 3.3 **PROPERTY:** means and refers to that certain parcel of Property located in the County of Ada, City of Meridian as described in **Exhibit “A”** describing a parcel to be removed from existing Development Agreement recorded in Ada County as Instrument #2017-041827, with such parcel being bound by this new Agreement, which **Exhibit “A”** is attached hereto and by this reference incorporated herein as if set forth at length.

4. **USES PERMITTED BY THIS AGREEMENT:** This Agreement shall vest the right to develop the Property in accordance with the terms and conditions of this Agreement.

- 4.1 The uses allowed pursuant to this Agreement are only those uses allowed as permitted, conditional and/or accessory uses under the UDC.
- 4.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

5. **CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:**

- 5.1 Owner/Developer shall develop the Property in accordance with the following special conditions:
- a. Future development of this site shall be generally consistent with the Concept Plan B and conceptual building elevations included in Section VIII of the Staff Report attached to the Findings of Fact and Conclusions of Law attached hereto as Exhibit “B” and the provisions contained herein.

6. **APPROVAL PERIOD:** If this Agreement has not been fully executed within six (6) months after the date of the Findings, the City may, at its sole discretion, declare the Agreement null and void.

7. **DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:**

- 7.1 **Acts of Default.** In the event Owner/Developer, or Owner’s Developer’s heirs, successors, 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 in connection with the Property, this Agreement may be terminated by the City upon compliance with the requirements of the Zoning Ordinance.

- 7.2 **Notice and Cure Period.** In the event of Owner/Developer's default of this agreement, Owner/Developer shall have thirty (30) days from receipt of written notice from City to initiate commencement of action to correct the breach and cure the default, which actions must be prosecuted with diligence and completed within one hundred eighty (180) days; provided, however, that in the case of any such default that cannot with diligence be cured within such one hundred eighty (180) day period, then the time allowed to cure such failure may be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.
- 7.3 **Remedies.** In the event of default by Owner/Developer that is not cured after notice from City as described in Section 7.2, City shall, upon satisfaction of the notice and hearing procedures set forth in Idaho Code § 67-6511A, have the right, but not a duty, to de-annex all or a portion of the Property, reverse the zoning designations described herein, and terminate City services to the de-annexed Property, including water service and/or sewer service. Further, City shall have the right to file an action at law or in equity to enforce the provisions of this Agreement. Because the covenants, agreements, conditions, and obligations contained herein are unique to the Property and integral to the City's decision to annex and/or re-zone the Property, City and Owner/Developer stipulate that specific performance is an appropriate, but not exclusive, remedy in the event of default. Owner/Developer reserves all rights to contest whether a default has occurred.
- 7.4 **Choice of Law and Venue.** This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Idaho, including all matters of construction, validity, performance, and enforcement. Any action brought by any party hereto shall be brought within Ada County, Idaho.
- 7.5 **Delay.** In the event the performance of any covenant to be performed hereunder by either Owner/Developer or City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.
- 7.6 **Waiver.** A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of City nor apply to any subsequent default of any such or other covenants and conditions.

8. **INSPECTION:** Owner/Developer shall, immediately upon completion of any portion or the entirety of said development of the Property as required by this Agreement or by City ordinance or policy, notify the City Engineer and request the City Engineer's inspections and written ordinance or policy, notify the City Engineer and request the City Engineer's inspections and written approval of such completed improvements or portion therefor in accordance with the terms and conditions of this Agreement and all other ordinance of the City that apply to said Property.

9. **REQUIREMENT FOR RECORDATION:** City shall record this Agreement, including all of the Exhibits, and submit proof of such recording to Owner/Developer.

10. **SURETY OF PERFORMANCE:** The City may also require surety bonds, irrevocable letters of credit, cash deposits, certified check or negotiable bonds, as allowed under the UDC, to insure the installation of required improvements, which the Owner/Developer agrees to provide, if required by the City.

11. **CERTIFICATE OF OCCUPANCY:** No Certificates of Occupancy shall be issued if the improvements have not been installed, completed, and accepted by the City, or sufficient surety of performance is provided by Owner/Developer to the City in accordance with Paragraph 11 above.

12. **ABIDE BY ALL CITY ORDINANCES:** That Owner/Developer agrees to abide by all ordinances of the City of Meridian unless otherwise provided by this Agreement.

13. **NOTICES:** Any notice desired by the parties and/or required by this Agreement shall be deemed delivered if and when personally delivered or three (3) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

CITY:
City Clerk
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

with copy to:
City Attorney
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

OWNER/DEVELOPER:
First Meridian LP
1556 Parkside Drive
Walnut Creek, CA 94596

13.1 A party shall have the right to change its address by delivering to the other party a written notification thereof in accordance with the requirements of this section.

14. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other

relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

15. **TIME IS OF THE ESSENCE:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the other party so failing to perform.

16. **BINDING UPON SUCCESSORS:** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement shall be binding on the Owner/Developer, each subsequent owner and any other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed. City agrees, upon written request of Owner/Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, has determined that Owner/Developer has fully performed its obligations under this Agreement.

17. **INVALID PROVISION:** If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any of the other provisions contained herein.

18. **DUTY TO ACT REASONABLY:** Unless otherwise expressly provided, each party shall act reasonable in giving any consent, approval, or taking any other action under this Agreement.

19. **COOPERATION OF THE PARTIES:** In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision in this Agreement, the parties agree to cooperate in defending such action or proceeding.

20. **REMOVED PROPERTY:** The City is hereby authorized, in its sole discretion, to remove a portion of the Property ("Removed Property") from this Agreement at any time, provided that the City and the owner of the Removed Property concurrently enter into a modified development agreement governing the development and use of the Removed Property. The remaining portion of the Property, which has not been removed from this Agreement as described above, shall continue to be bound by the terms of this Agreement.

21. **FINAL AGREEMENT:** This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or

addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of City.

- 21.1 No condition governing the uses and/or conditions governing the Property herein provided for can be modified or amended without the approval of the City Council after the City has conducted public hearing(s) in accordance with the notice provisions provided for a zoning designation and/or amendment in force at the time of the proposed amendment.

22. **EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective upon execution of the Mayor and City Clerk.

[End of text. Acknowledgements, signatures, and Exhibits A and B follow.]

ACKNOWLEDGMENTS

IN WITNESS WHEREOF, the parties have herein executed this agreement and made it effective as hereinabove provided.

OWNER:

**First Meridian Limited Partnership,
a Wyoming limited partnership,**

**By: Western Pacific Holdings, Inc.,
a California corporation, its general partner**

By: [Signature]
Darryl Brownman, President

State of _____)
County of _____)

On this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of **First Meridian LP** and the person who signed above and acknowledged to me that they executed the same.

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

(SEAL)

[Signature]
Notary Public
My Commission Expires: _____

AK
10/9/2024

see attached certificate

CITY OF MERIDIAN

ATTEST:

By: _____
Mayor Robert E. Simison

Chris Johnson, City Clerk

STATE OF IDAHO)
: ss
County of Ada)

On this ____ day of _____, 2024, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, known or identified to me to be the Mayor and Clerk, respectively, of the **City of Meridian**, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City executed the same.

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

(SEAL)

Notary Public for Idaho
My Commission Expires: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of CONTRA COSTA

On OCTOBER 9, 2024 before me, ALLISON D. KLEIN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared DARRYL BESIMAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____



EXHIBIT A

March 4, 2024
Project No.: 123143

DEVELOPMENT AGREEMENT MODIFICATION FIRST MERIDIAN LP

An area of land being Lots 1, 2, 3 & 4, Block 2 of Firenze Plaza Subdivision, as same is shown in the official plat thereon, recorded in Book 124, Page 19867, Ada County records, located in the Southeast one quarter of the Southeast one quarter of Section 29, Township 3 North, Range 1 East, Boise Meridian, City of Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the South One Sixteenth corner of said Section 29, (from which point the Southeast corner of said Section 29, bears South 00° 37' 07" West, 1321.29 feet distant); thence North 89° 39' 52" West, 48.00 feet, to a point on the westerly right of way line of South Eagle Road; thence on said westerly right of way line, South 00° 37' 07" West, 230.27 feet, to a point common to the northeast corner of said Lot 4, Block 2 and the northeasterly corner of said Firenze Plaza Subdivision AND the **POINT OF BEGINNING**:

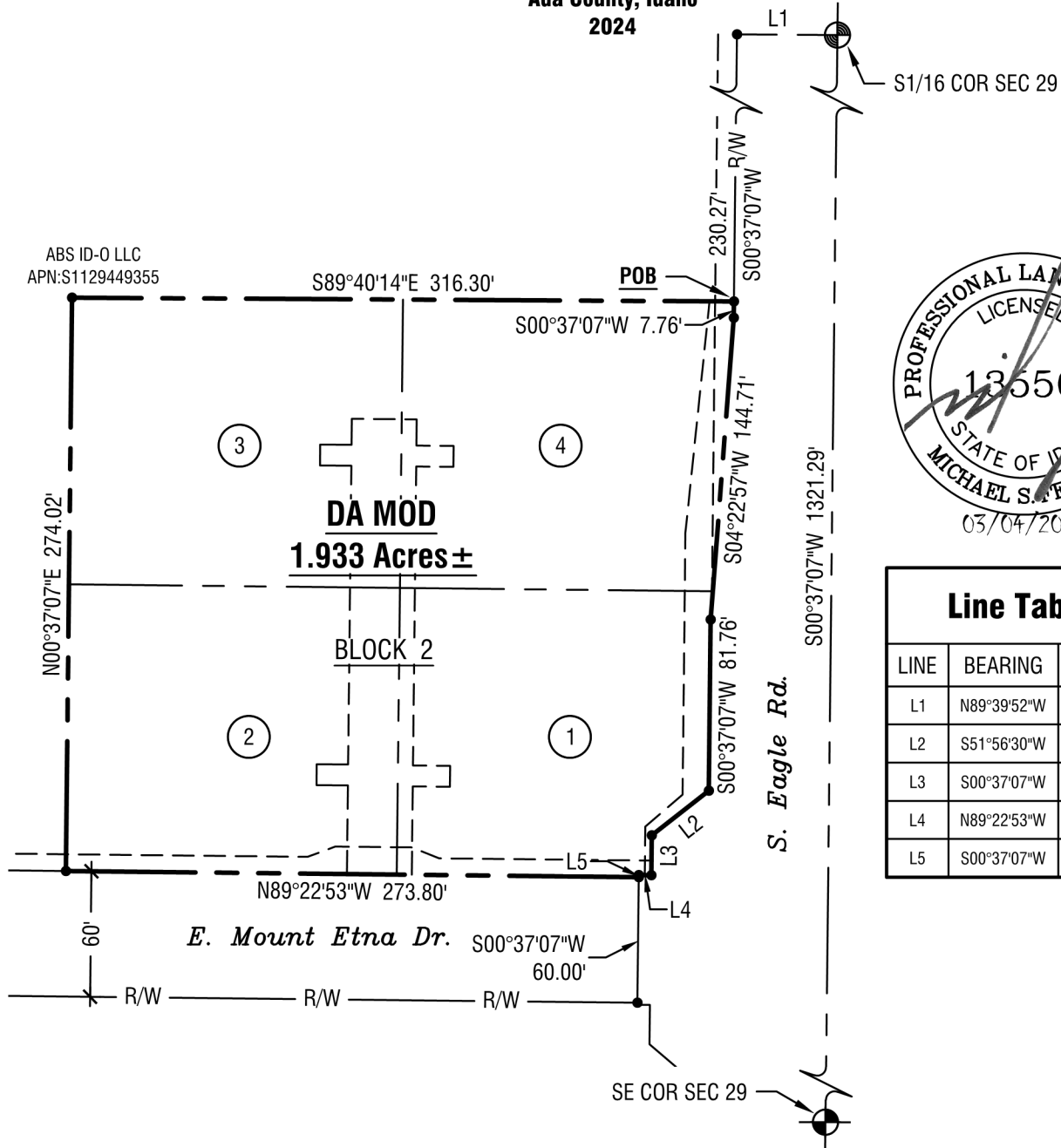
Thence continuing of said westerly right of way line, South 00° 37' 07" West, 7.76 feet;
Thence South 04° 22' 57" West, 144.71 feet;
Thence South 00° 37' 07" West, 81.76 feet;
Thence South 51° 56' 30" West, 34.58 feet;
Thence South 00° 37' 07" West, 19.09 feet;
Thence North 89° 22' 53" West, 6.00 feet;
Thence South 00° 37' 07" West, 1.00 feet, to a point common with the northerly right of way line of East Mount Etna Drive;
Thence on said northerly right of way line, North 89° 22' 53" West, 273.80 feet;
Thence leaving said northerly right of way line, North 00° 37' 07" East, 274.02 feet;
Thence South 89° 40' 14" East, 316.30 feet, to the **POINT OF BEGINNING**.

The above-described area of land contains 1.933 acres (84,225 Ft²), more or less.

PREPARED BY:
The Land Group, Inc.
Michael Femenia, PLS



**D.A. Modification
for
First Meridian LP**
Situating in a portion of the SE 1/4 of the SE 1/4 of Section 29,
Township 3 North, Range 1 East, Boise Meridian, City of Meridian,
Ada County, Idaho
2024



Line Table		
LINE	BEARING	LENGTH
L1	N89°39'52"W	48.00'
L2	S51°56'30"W	34.58'
L3	S00°37'07"W	19.09'
L4	N89°22'53"W	6.00'
L5	S00°37'07"W	1.00'

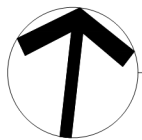
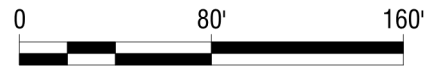


Exhibit "B"

Horizontal Scale: 1"=80'



Project No.: 123143
Date of Issuance: March 4, 2024



**Development Agreement Modification
First Meridian LP
Firenze 2**

EXHIBIT B

**CITY OF MERIDIAN
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION & ORDER**



In the Matter of the Request for Conditional Use Permit (CUP) and modification of the existing Development Agreement (MDA), by Aaron Zuzack, Browman Development Company, Inc.

Case No(s). H-2024-0007

For the City Council Hearing Date of: August 27, 2024 (Findings on September 10, 2024)

A. Findings of Fact

1. Hearing Facts (see attached Staff Report for the hearing date of August 27, 2024, incorporated by reference)
2. Process Facts (see attached Staff Report for the hearing date of August 27, 2024, incorporated by reference)
3. Application and Property Facts (see attached Staff Report for the hearing date of August 27, 2024, incorporated by reference)
4. Required Findings per the Unified Development Code (see attached Staff Report for the hearing date of August 27, 2024, incorporated by reference)

B. Conclusions of Law

1. The City of Meridian shall exercise the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. The Meridian City Council takes judicial notice of its Unified Development Code codified as Title 11 Meridian City Code, and all current zoning maps thereof. The City of Meridian has, by ordinance, established the Impact Area and the Comprehensive Plan of the City of Meridian, which was adopted December 17, 2019, Resolution No. 19-2179 and Maps.
3. The conditions shall be reviewable by the City Council pursuant to Meridian City Code § 11-5A.
4. Due consideration has been given to the comment(s) received from the governmental subdivisions providing services in the City of Meridian planning jurisdiction.
5. It is found public facilities and services required by the proposed development will not impose expense upon the public if the attached conditions of approval are imposed.
6. That the City has granted an order of approval in accordance with this Decision, which shall be signed by the Mayor and City Clerk and then a copy served by the Clerk upon the applicant, the Community Development Department, the Public Works Department and any affected party requesting notice.
7. That this approval is subject to the Conditions of Approval all in the attached Staff Report for the hearing date of August 27, 2024, incorporated by reference. The conditions are concluded to be

reasonable and the applicant shall meet such requirements as a condition of approval of the application.

C. Decision and Order

Pursuant to the City Council's authority as provided in Meridian City Code § 11-5A and based upon the above and foregoing Findings of Fact which are herein adopted, it is hereby ordered that:

1. The applicant's request for a CUP and MDA is hereby approved per the conditions of approval in the Staff Report for the hearing date of August 27, 2024, attached as Exhibit A.

D. Notice of Applicable Time Limits

Notice of Preliminary Plat Duration

Please take notice that approval of a preliminary plat, combined preliminary and final plat, or short plat shall become null and void if the applicant fails to obtain the city engineer's signature on the final plat within two (2) years of the approval of the preliminary plat or the combined preliminary and final plat or short plat (UDC 11-6B-7A).

In the event that the development of the preliminary plat is made in successive phases in an orderly and reasonable manner, and conforms substantially to the approved preliminary plat, such segments, if submitted within successive intervals of two (2) years, may be considered for final approval without resubmission for preliminary plat approval (UDC 11-6B-7B).

Upon written request and filed by the applicant prior to the termination of the period in accord with 11-6B-7.A, the Director may authorize a single extension of time to obtain the City Engineer's signature on the final plat not to exceed two (2) years. Additional time extensions up to two (2) years as determined and approved by the City Council may be granted. With all extensions, the Director or City Council may require the preliminary plat, combined preliminary and final plat or short plat to comply with the current provisions of Meridian City Code Title 11. If the above timetable is not met and the applicant does not receive a time extension, the property shall be required to go through the platting procedure again (UDC 11-6B-7C).

Notice of Conditional Use Permit Duration

Please take notice that the conditional use permit, when granted, shall be valid for a maximum period of two (2) years unless otherwise approved by the City. During this time, the applicant shall commence the use as permitted in accord with the conditions of approval, satisfy the requirements set forth in the conditions of approval, and acquire building permits and commence construction of permanent footings or structures on or in the ground. For conditional use permits that also require platting, the final plat must be signed by the City Engineer within this two (2) year period.

Upon written request and filed by the applicant prior to the termination of the period in accord with 11-5B-6.G.1, the Director may authorize a single extension of the time to commence the use not to exceed one (1) two (2) year period. Additional time extensions up to two (2) years as determined and approved by the City Council may be granted. With all extensions, the Director or City Council may require the conditional use comply with the current provisions of Meridian City Code Title 11(UDC 11-5B-6F).

Notice of Development Agreement Duration

The city and/or an applicant may request a development agreement or a modification to a development agreement consistent with Idaho Code section 67-6511A. The development agreement may be initiated by the city or applicant as part of a request for annexation and/or rezone at any time prior to the adoption of findings for such request.

A development agreement may be modified by the city or an affected party of the development agreement. Decision on the development agreement modification is made by the city council in accord with this chapter. When approved, said development agreement shall be signed by the property owner(s) and returned to the city within six (6) months of the city council granting the modification.

A modification to the development agreement may be initiated prior to signature of the agreement by all parties and/or may be requested to extend the time allowed for the agreement to be signed and returned to the city if filed prior to the end of the six (6) month approval period.

E. Judicial Review

Pursuant to Idaho Code § 67-6521(1)(d), if this final decision concerns a matter enumerated in Idaho Code § 67-6521(1)(a), an affected person aggrieved by this final decision may, within twenty-eight (28) days after all remedies have been exhausted, including requesting reconsideration of this final decision as provided by Meridian City Code § 1-7-10, seek judicial review of this final decision as provided by chapter 52, title 67, Idaho Code. This notice is provided as a courtesy; the City of Meridian does not admit by this notice that this decision is subject to judicial review under LLUPA.

F. Notice of Right to Regulatory Takings Analysis

Pursuant to Idaho Code §§ 67-6521(1)(d) and 67-8003, an owner of private property that is the subject of a final decision may submit a written request with the Meridian City Clerk for a regulatory takings analysis.

G. Attached: Staff Report for the hearing date of August 27, 2024

By action of the City Council at its regular meeting held on the 10th day of September, 2024.

COUNCIL PRESIDENT LUKE CAVENER

VOTED AYE

COUNCIL VICE PRESIDENT LIZ STRADER

VOTED AYE

COUNCIL MEMBER DOUG TAYLOR

VOTED AYE

COUNCIL MEMBER JOHN OVERTON

VOTED AYE

COUNCIL MEMBER ANNE LITTLE ROBERTS

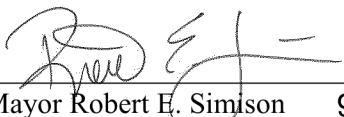
VOTED AYE

COUNCIL MEMBER BRIAN WHITLOCK

VOTED AYE

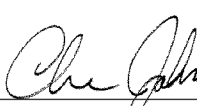
MAYOR ROBERT SIMISON
(TIE BREAKER)

VOTED _____



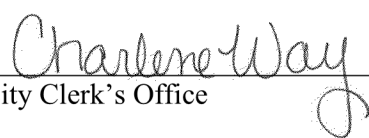
Mayor Robert E. Simison 9-10-2024

Attest:

Chris Johnson 9-10-2024
City Clerk

Copy served upon Applicant, Community Development Department, Public Works Department and City Attorney.

By:  _____ Dated: 9-10-2024
City Clerk's Office

STAFF REPORT

COMMUNITY DEVELOPMENT DEPARTMENT



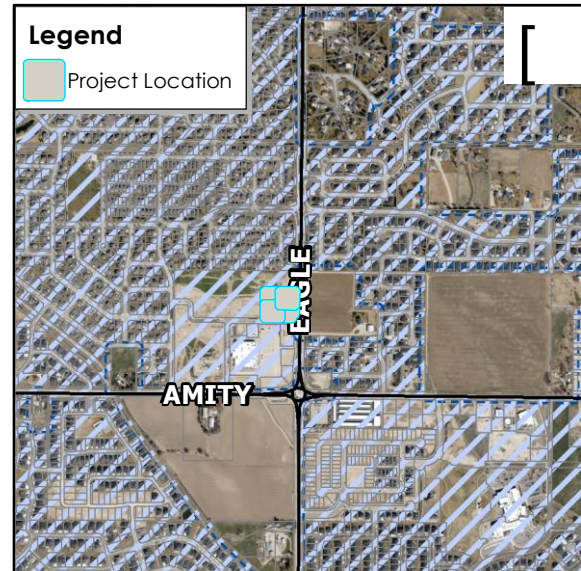
HEARING DATE: 8/27/2024

TO: Mayor & City Council

FROM: Linda Ritter, Associate Planner
208-884-5533

SUBJECT: H-2024-0007 Firenze Plaza – MDA, CUP

LOCATION: 3182 E Mount Etna Drive in the SE ¼ of the SE ¼ Section 29, Township 3N., Range 1E.



I. PROJECT DESCRIPTION

Modification to the existing Development Agreement (DA) (Inst. #2017-041827) to include new owners' information and revised concept plans for the four (4) commercial lots north of E. Mount Etna Drive. A Conditional Use Permit is being requested for a 3,320 square foot bank with drive-through for an automatic teller machine (ATM).

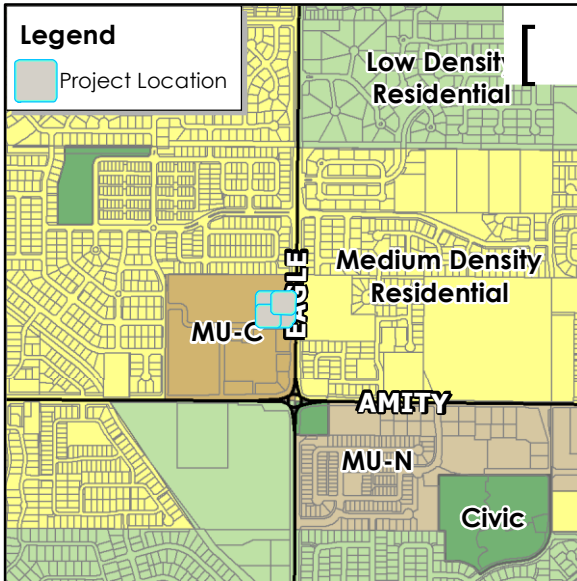
II. SUMMARY OF REPORT

A. Project Summary

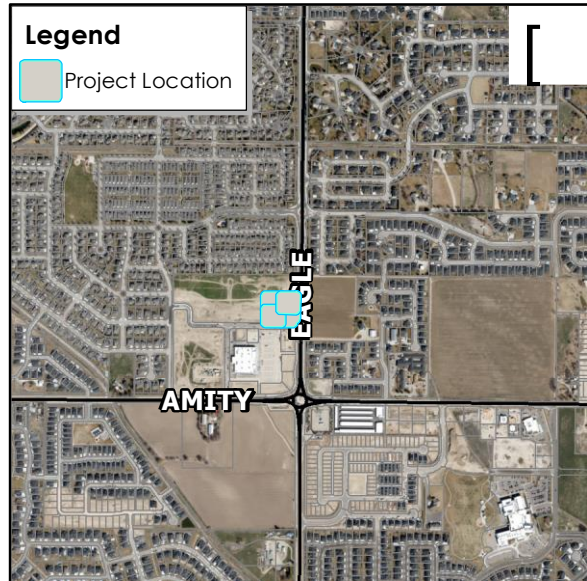
Description	Details
Acreage	1.933 acres
Future Land Use Designation	Mixed-Use Community (MU-C)
Existing Land Use	Commercial
Proposed Land Use(s)	Commercial
Current Zoning	Community Business District (C-C)
Physical Features (waterways, hazards, flood plain, hillside)	NA
Neighborhood meeting date; # of attendees:	12/12/2023
History (previous approvals)	AZ, CPAM, PP (H-2016-0102); DA Instr. #2017-041827; FP (2019-0067)

B. Project Maps

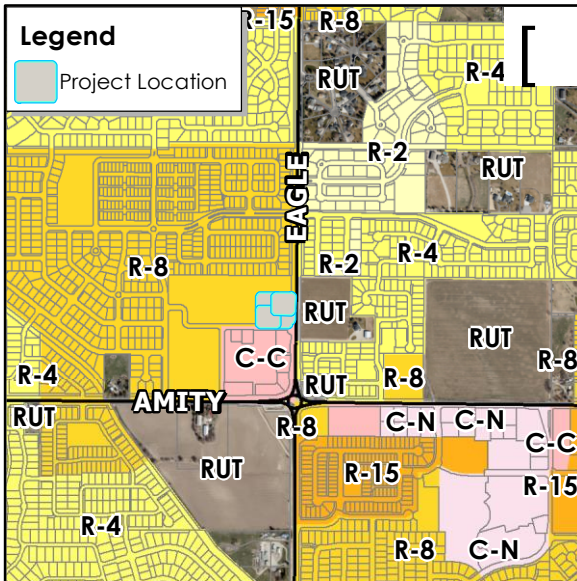
Future Land Use Map



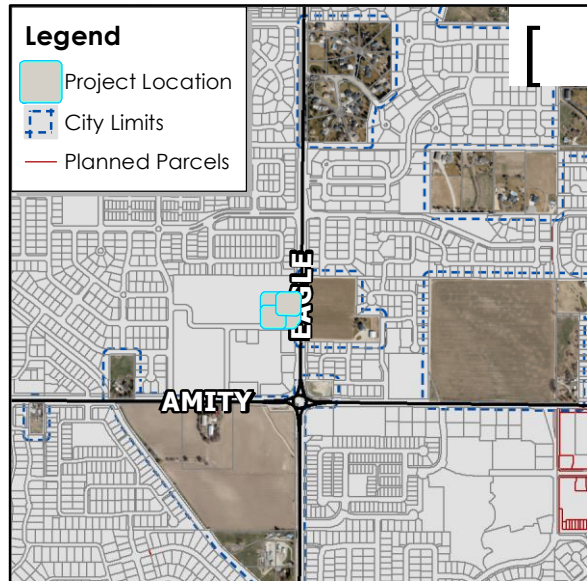
Aerial Map



Zoning Map



Planned Development Map



III. APPLICANT INFORMATION

A. Applicant:

Aaron Zuzack, Browman Development Company, Inc. – 1556 Parkside Drive, Walnut Creek, CA 94596

B. Owner:

Same as Applicant

C. Agent/Representative:

Same as Applicant

IV. NOTICING

	Planning & Zoning Posting Date	City Council Posting Date
Newspaper Notification	07/02/2024	8/6/2024
Radius notification mailed to properties within 500 feet	6/25/2024	8/5/2024
Public hearing notice sign posted on site	7/8/2024	8/9/2024
Nextdoor posting	6/25/2024	8/6/2024

V. COMPREHENSIVE PLAN ([HTTPS://WWW.MERIDIANCITY.ORG/COMPPLAN](https://www.meridiancity.org/compplan)):

A. Future Land Use Map Designation (<https://www.meridiancity.org/compplan>)

This property is designated Mixed Use Community on the Future Land Use Map (FLUM).

The purpose of this designation is to allocate areas where community-serving uses and dwellings are seamlessly integrated into the urban fabric. The intent is to integrate a variety of uses, including residential, and to avoid mainly single-use and strip commercial type buildings. Non-residential buildings in these areas have a tendency to be larger than in Mixed Use Neighborhood areas, but not as large as in Mixed Use — Regional areas. Goods and services in these areas tend to be of the variety that people will mainly travel by car to, but also walk or bike to (up to three or four miles). Employment opportunities for those living in and around the neighborhood are encouraged. Sample zoning include: R-15, R-40, TN-R, C-C and L-O.

No changes to the FLUM designation or zoning is proposed with this application.

B. Comprehensive Plan Policies (<https://www.meridiancity.org/compplan>):

Staff finds the following Comprehensive Plan policies to be applicable to this application and apply to the proposed use of this property (staff analysis in *italics*):

- “Permit new development only where it can be adequately served by critical public facilities and urban services at the time of final approval, and in accord with any adopted levels of service for public facilities and services.” (3.03.03F)

Existing city water and sewer service are available at this location.

- “Encourage compatible uses and site design to minimize conflicts and maximize use of land.” (3.07.00)

A bank with a automatic teller machine and retail building does not conflict with the existing land uses in the area.

- “Require all new development to create a site design compatible with surrounding uses through buffering, screening, transitional densities, and other best site design practices.” (3.07.01A)

With development a twenty-five (25) foot landscaped street buffer will be required along the northern property line to buffer the commercial property from the residential zoning district in accord with UDC 11-3B-9 standards. Staff is also requiring a six (6) foot privacy fence be placed along the northern boundary adjacent to the residential property.

- “Require appropriate landscaping, buffers, and noise mitigation with new development along transportation corridors (setback, vegetation, low walls, berms, etc.).” (3.07.01C)

A 25-foot wide landscape buffer and fence will be required to be provided with development along the property boundaries adjacent to the residential property. Landscaping along S. Eagle Road was installed with the development of the the plat. The developer will be required to protect the existing landscaping during development of the properties. Landscaping shall be installed per UDC Table 11-2B-3 and 11-3B-9.

- “Reduce the number of existing access points onto arterial streets by using methods such as cross-access agreements, access management, and frontage/backage roads, and promoting local and collector street connectivity.” (6.01.02B)

Access to the property is via E. Mount Etna Drive, a local road. There is no direct access to S. Eagle Road from the property.

- “Require urban infrastructure be provided for all new developments, including curb and gutter, sidewalks, water and sewer utilities.” (3.03.03G)

Curb, gutter and sidewalk was constructed with the development of the Firenze Plaza subdivision (FP-2019-0067). Hook-up to City water and sewer service was a requirement of the approved plat.

- “Support beautiful and high quality development that reinforces neighborhood character and sustainability.” (5.01.02)

The design of the building fits in with the surrounding area and neighborhood character. Staff reviewed and approved the design of the building proposed for Chase Bank to be located on the parcel addressed as 3182 N. Mount Etna Drive.

VI. STAFF ANALYSIS

The applicant is requesting a Conditional Use Permit and modification of the existing Development Agreement to reflect the change in ownership and change the layout of the parcels to include a bank with a drive through ATM and a retail tenant building with or without a drive through use. Instead of the property lay out with 4 buildings comprising of 20,000 square feet, the applicant is proposing two buildings (3,320 square foot bank with drive through ATM and a 4,900 square foot multi-tenant commercial building with a drive-through or a 7,600 square foot multi-tenant commercial building without a drive through). A maximum total of 11,000 square feet of retail/commercial uses which is a reduction of more than 9,000 square feet of allowable buildable area. A Conditional Use Permit is require

for the ATM drive through. All uses shall be required to meet the UDC standards for the C-C zoning district.

The proposed bank ATM drive through is subject to the following Specific Use Standards (UDC 11-4-3-11) – Drive-Through Establishment: (*Staff analysis in italics*)

- A. A drive-through establishment shall be an accessory use where the drive-through facility (including stacking lanes, speaker and/or order area, pick up windows, and exit lanes) is:
 - 1. Not within three hundred three hundred (300) feet of another drive-through facility, a residential district, or an existing residence; or
 - 2. Separated by an arterial street from any other drive-through facility, residential district or existing residence; or
 - 3. Not within the O-T zoning district.

Otherwise a conditional use permit is required.

- B. All establishments providing drive-through service shall identify the stacking lane, menu and speaker location (if applicable), and window location on the certificate of zoning compliance or the conditional use permit. Speakers are prohibited in the O-T zoning district.

The site plan shown in Exhibits B provide the location of the stacking lane for the proposed ATM. Speakers and menu boards are not being proposed.

- C. A site plan shall be submitted that demonstrates safe pedestrian and vehicular access and circulation on the site and between adjacent properties. At a minimum the plan shall demonstrate compliance with the following standards:
 - 1. Stacking lanes shall have sufficient capacity to prevent obstruction of driveways, drive aisles, and the public right-of-way by patrons.
 - 2. The stacking lane shall be a separate lane from the circulation lanes needed for access and parking, except stacking lanes may provide access to designated employee parking.
 - 3. The stacking lane shall not be located within ten (10) feet of any residential district or existing residence.
 - 4. Any stacking lane greater than one hundred 100 feet in length shall provide for an escape lane.
 - 5. The site should be designed so that the drive-through is visible from a public street for surveillance purposes.

The drive through is visible from S. Eagle Road.

- D. The applicant shall provide a six-foot sight obscuring fence where a stacking lane or window location adjoins a residential district or an existing residence.

Dimensional Standards (UDC [11-2](#)):

The proposal would meet the dimensional standards for setbacks, landscape buffers, parking and height requirements.

Staff finds the proposed bank with an ATM drive through if approved at this location would be compatible with the existing surroundings and integrate into the community.

Hours of Operations (UDC 11-2B-3B):

The UDC (11-2B-3B) limits business hours of operation in the C-C zoning district from 6:00 a.m. to 11:00 p.m. when the property abuts a residential use or district; extended hours may be requested through a CUP. These restrictions apply to all business operations occurring outside an

enclosed structure, including, but not limited to, customer or client visits, trash compacting, and deliveries. These restrictions do not apply to business operations occurring within an enclosed structure, including, but not limited to, cleaning, bookkeeping, and after hours work by a limited number of employees.

The bank hours are within the required operating hours; however, the drive-through and walk-up ATM will be available twenty-four (24) hours/seven (7) days a weeks.

Self-Service Uses (UDC 11-3A-16)

Any unattended, self-service uses, including, but not limited to, laundromats, automatic teller machines (ATMs), vehicle washing facilities, fuel sales facilities, and storage facilities, shall comply with the following requirements. The Meridian Police Chief or designee may approve alternative standards where it is determined that a similar or greater level of security is provided.

- A. Entrance or view of the self-service facility shall be open to the public street or to adjoining businesses and shall have low impact security lighting.
- B. Financial transaction areas shall be oriented to and visible from an area that receives a high volume of traffic, such as a collector or arterial street.
- C. Landscape shrubbery shall be limited to no more than three (3) feet in height between entrances and financial transaction areas and the public street.

Staff finds the proposed bank with an ATM drive through if approved at this location meets the above requirements.

Access (UDC [11-3A-3](#), [11-3H-4](#)):

Access to the site is from E. Mt. Etna Drive via S. Eagle Road. There is no direct access to the property from S. Eagle Road. The applicant is requesting to relocate the entrance to the property further west. ACHD has approved the applicant's request to relocate the existing entrance to the property. However; staff is not in support of this proposal as the improvements have been installed and it interferes with the cross access that was approved with the recorded plat. Utilities have already been installed and would need to be relocated. Staff recommends the concept plan be revised to keep the access in its current location.

Parking (UDC [11-3C](#)):

A minimum of one (1) off-street parking space is required for every 500 square feet (s.f.) of gross floor area of the office space. Based on 3,182 s.f., a minimum of six (6) parking spaces is required. A total of thirty-two (32) parking spaces are proposed, exceeding UDC the minimum standards.

A minimum of one (1) bicycle parking space is required for every 25 vehicle parking spaces per UDC 11-3C-6G. Based on thirty-two (32) vehicle parking spaces, a minimum of two (2) bicycle parking spaces is required. A bicycle rack has been depicted on the landscape plan.

Sidewalks (UDC [11-3A-17](#)):

Sidewalks were installed with the approved Firenze Plaza subdivision along Eagle Road and E. Mt. Etna Drive. The applicant is proposing to relocate the entrance further west on E. Mt. Etna Drive.

Landscaping (UDC [11-3B](#)):

There is an existing twenty-five (25) foot landscape buffer with a ten (10) foot detached sidewalk along N. Eagle Road an arterial street. The applicant is proposing a sixteen (16) foot landscape buffer along E. Mt. Etna Drive with a five (5) foot detached sidewalk when they relocate the

entrance to the property further to the west. The applicant is also proposing a twenty-five (25) foot landscape buffer along the west property line as a buffer to the residential uses with a seven (7) foot sidewalk. Landscaping shall be installed per the standards listed in UDC 11-3B-7, UDC 11-3B-8 and UDC 11-3B-9C. The applicant shall protect the existing landscaping during construction.

Fencing (UDC [11-3A-6](#), [11-3A-7](#)):

The applicant is proposing a privacy fence along the boundary to the west and north of the properties. The fence shall meet the requirements of UDC 11-3A-7.

Outdoor Lighting (UDC [11-3A-11](#))

All outdoor lighting is required to comply with the standards listed in UDC 11-3A-11C. Light fixtures that have a maximum output of 1,800 lumens or more are required to have an opaque top to prevent up-lighting; the bulb shall not be visible and shall have a full cutoff shield in accord with Figure 1 in UDC 11-3A-11C.

Utilities (UDC [11-3A-21](#)):

Water and sewer services were installed with the development of the Firenze Plaza subdivision. Any stubs not used should be abandoned per City requirements. Location of water meter should not be in a drive or walking path and should be in a landscaping area. The City requires twenty (20) feet easements for mains, hydrant laterals and water services. Easements should extend up to the end of main/hydrant/water meter and ten (10) feet beyond it. Current water stub easement does not meet City's current standards and should be updated. No trees or permeant structures are allowed in utility easements.

Structure and Design Standards (UDC [11-3A-19](#) | [Architectural Standards Manual](#)):

Building elevations were submitted for the proposed Chase Bank as shown in Section VIII(F). Building materials consist of smooth face CMU panels, glass, and fiber cement. Staff has reviewed the design which complies with the design standards in the [Architectural Standards Manual](#) (ASM). Upon approval of the Conditional Use Permit approval of the Design Review shall be issued.

Conceptual design was submitted for the retail building as part of the Development Agreement Modification. Final plans will be submitted for review and approval prior to building permit submittal.

DEVELOPMENT AGREEMENT MODIFICATION (MDA)

The Applicant is requesting a modification to the existing Development Agreement Inst. # 2017-041827 to update the owner's information and revise the concept plan, elevations, site and landscape plans north of Mt. Edna Drive to reduce the commercial square footage from 20,000 square feet to 11,000 square feet, a reduction of 9,000 square feet.

The applicant submitted two concept plans with the DA modification. The concurrent CUP is only approving the drive-through on the southern portion of the development for the proposed bank. Staff is not in support of another drive-through on the northern property and therefore does not support Concept Plan A.

The applicant has provide a legal description for the boundary of the new DA. Staff recommends the following DA provision be included in the new DA:

1. Revision of the concept plan to show the entrance to the property at its current location.
2. Eliminate the concept plan showing the drive through on the northern property.

EXISTING SITE PHOTOS





VII. DECISION

A. Staff:

Approval:

Staff recommends ***approval*** of the proposed modification to the Development Agreement and Conditional Use Permit per the DA provisions and conditions in Sections IX and the Findings in Section X.

B. The Meridian Planning & Zoning Commission heard these items on July 18, 2024. At the public hearing, the Commission moved to recommend approval of the subject Conditional Use Permit and Development Agreement Modification requests.

1. Summary of Commission public hearing:

- a. In favor: Aaron Zuzack, Tamara Thompson
- b. In opposition: Romeo Gervais, Andrea Covolo, Joy Livingston
- c. Commenting: Romeo Gervais
- d. Written testimony: Andrea Covolo, Joy Livingston
- e. Staff presenting application: Linda Ritter, Associate Planner
- f. Other Staff commenting on application: Bill Parson, Planning Supervisor

2. Key issue(s) of public testimony:

- a. Drive-through next to residential parcel, relocation of the existing access point

3. Key issue(s) of discussion by Commission:

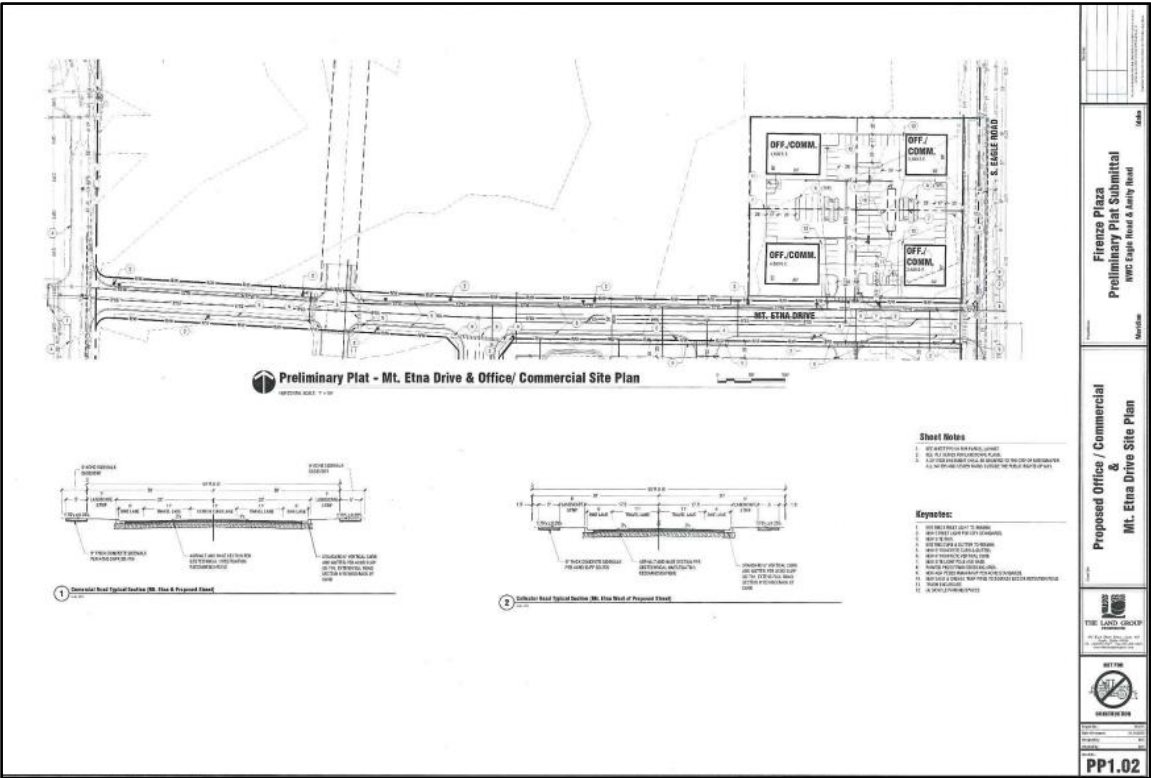
- a. Entrance location and drive-through on the north property

4. Commission change(s) to Staff recommendation:

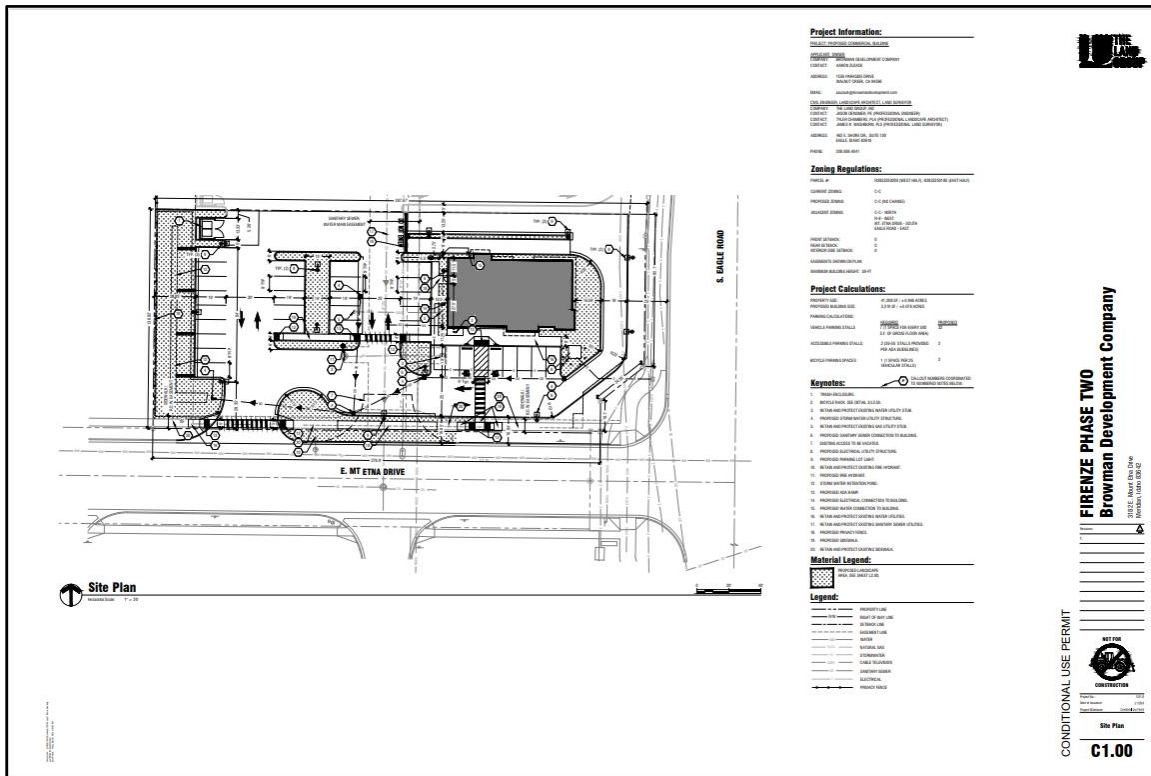
- a. Include Concept Plan A and remove the condition to leave the entrance in its current location.
 - 5. Outstanding issue(s) for City Council:
 - a. None
- C. The Meridian City Council heard these items on August 27, 2024. At the public hearing, the Council moved to approve the subject Conditional Use Permit and Development Agreement Modification request.
 - 1. Summary of the City Council public hearing:
 - a. In favor: Applicant, Aaron Zuzack, Tamara Thompson
 - b. In opposition: None
 - c. Commenting: Romeo Gervais
 - d. Written testimony: None other than those written for the Planning and Zoning Commission public hearing.
 - e. Staff presenting application: Linda Ritter, Associate Planner
 - f. Other Staff commenting on application: None
 - 2. Key issue(s) of public testimony:
 - a. Type of business being proposed for the property
 - 3. Key issue(s) of discussion by City Council:
 - a. Circulation, pedestrian focus, development and the proposed concept plan for the type of business being proposed
 - 4. City Council change(s) to Commission recommendation:
 - a. Council modified DA provision

VIII. EXHIBITS

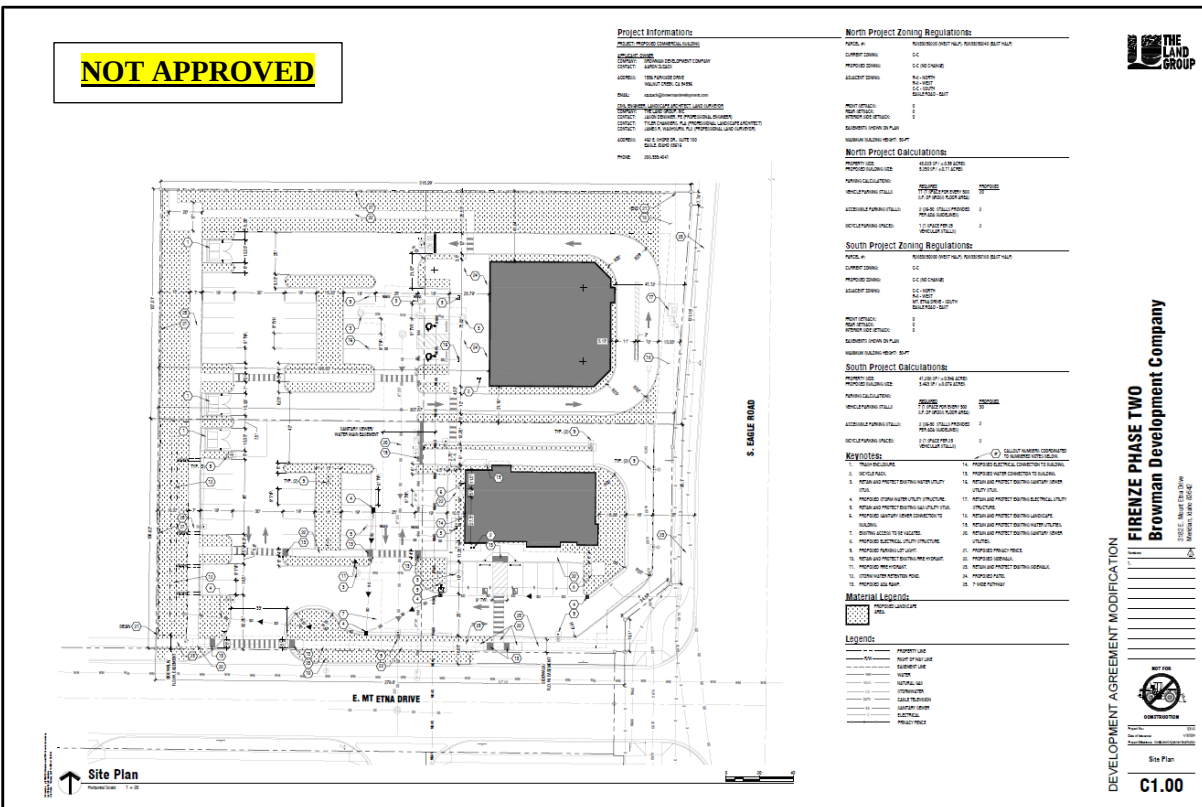
A. Existing Site Plan (5/26/2016)



B. Proposed Conditional Use Permit Site Plan (4/18/2024)



C. Proposed DA Modification Site Plan A and B (4/18/2024)



D. New DA Legal Description



March 4, 2024
Project No.: 123143

LEGAL DESCRIPTION Exhibit "A"

DEVELOPMENT AGREEMENT MODIFICATION FIRST MERIDIAN LP

An area of land being Lots 1, 2, 3 & 4, Block 2 of Firenze Plaza Subdivision, as same is shown in the official plat thereon, recorded in Book 124, Page 19867, Ada County records, located in the Southeast one quarter of the Southeast one quarter of Section 29, Township 3 North, Range 1 East, Boise Meridian, City of Meridian, Ada County, Idaho, being more particularly described as follows:

COMMENCING at the South One Sixteenth corner of said Section 29, (from which point the Southeast corner of said Section 29, bears South 00° 37' 07" West, 1321.29 feet distant); thence North 89° 39' 52" West, 48.00 feet, to a point on the westerly right of way line of South Eagle Road; thence on said westerly right of way line, South 00° 37' 07" West, 230.27 feet, to a point common to the northeast corner of said Lot 4, Block 2 and the northeasterly corner of said Firenze Plaza Subdivision AND the **POINT OF BEGINNING**:

Thence continuing of said westerly right of way line, South 00° 37' 07" West, 7.76 feet;
Thence South 04° 22' 57" West, 144.71 feet;
Thence South 00° 37' 07" West, 81.76 feet;
Thence South 51° 56' 30" West, 34.58 feet;
Thence South 00° 37' 07" West, 19.09 feet;
Thence North 89° 22' 53" West, 6.00 feet;
Thence South 00° 37' 07" West, 1.00 feet, to a point common with the northerly right of way line of East Mount Etna Drive;
Thence on said northerly right of way line, North 89° 22' 53" West, 273.80 feet;
Thence leaving said northerly right of way line, North 00° 37' 07" East, 274.02 feet;
Thence South 89° 40' 14" East, 316.30 feet, to the **POINT OF BEGINNING**.

The above-described area of land contains 1.933 acres (84,225 Ft²), more or less.

PREPARED BY:
The Land Group, Inc.
Michael Femenia, PLS



D.A. Modification
for
First Meridian LP

Situate in a portion of the SE 1/4 of the SE 1/4 of Section 29,
Township 3 North, Range 1 East, Boise Meridian, City of Meridian,
Ada County, Idaho
2024

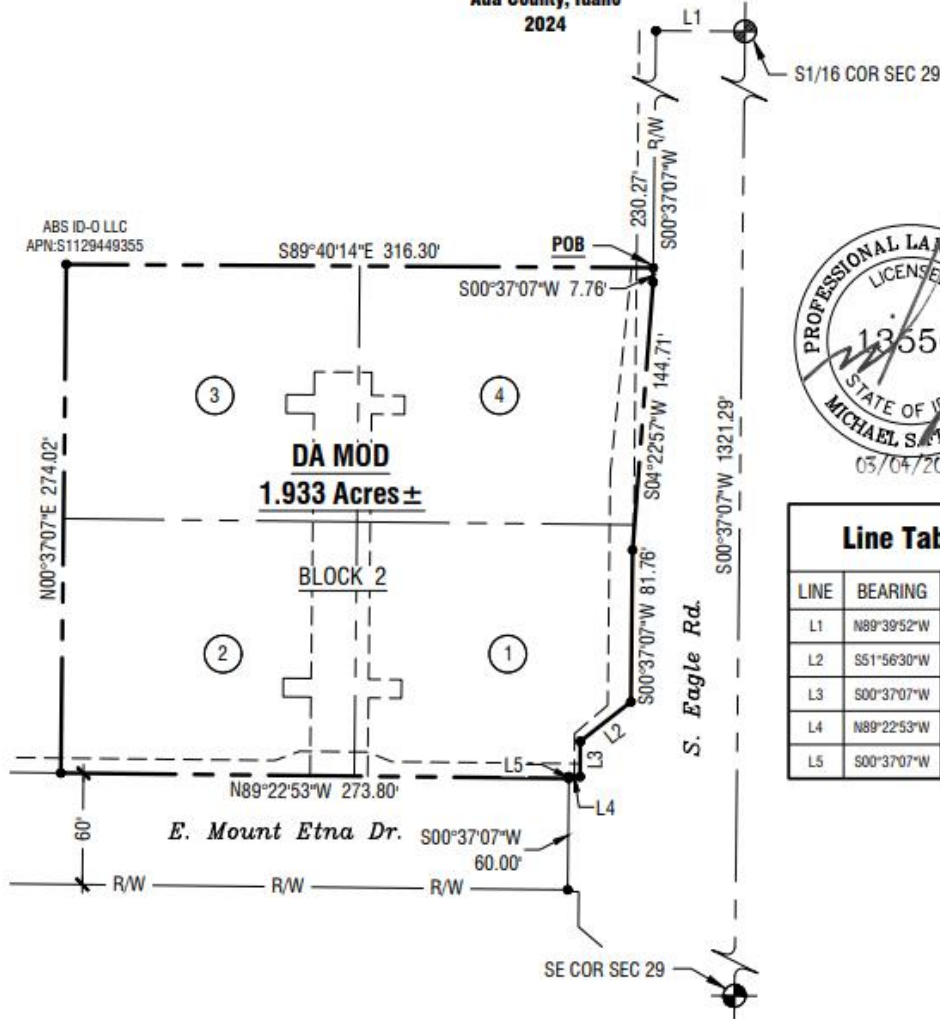
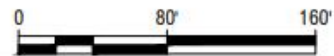


Exhibit "B"

Horizontal Scale: 1"=80'

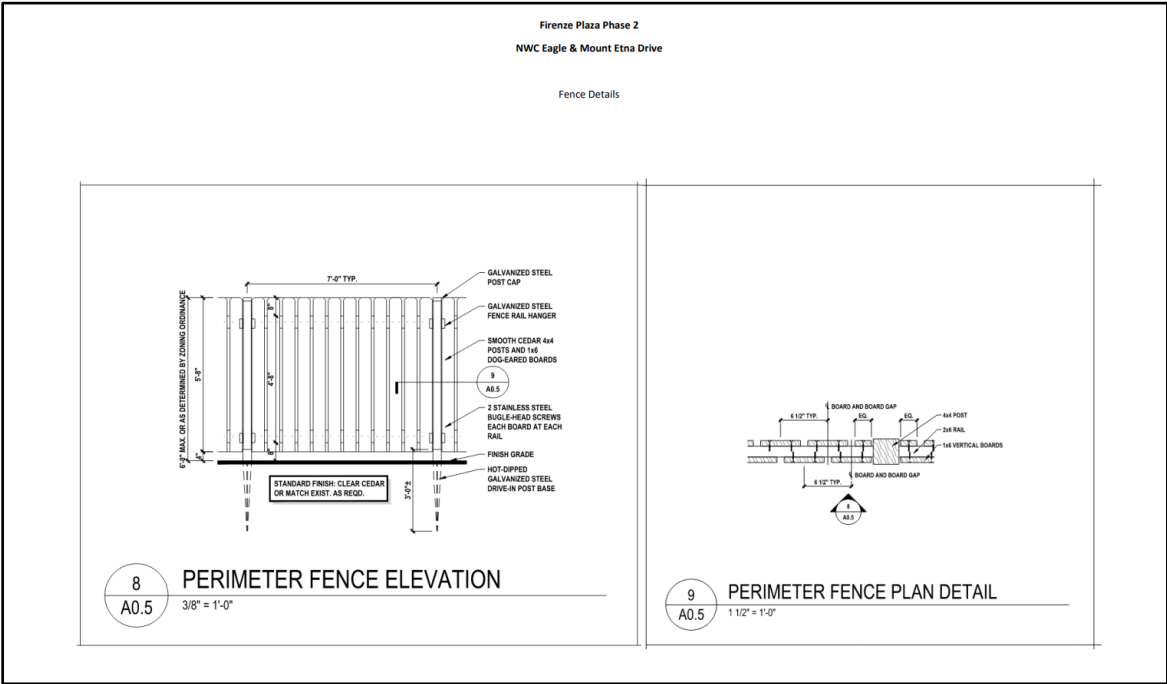
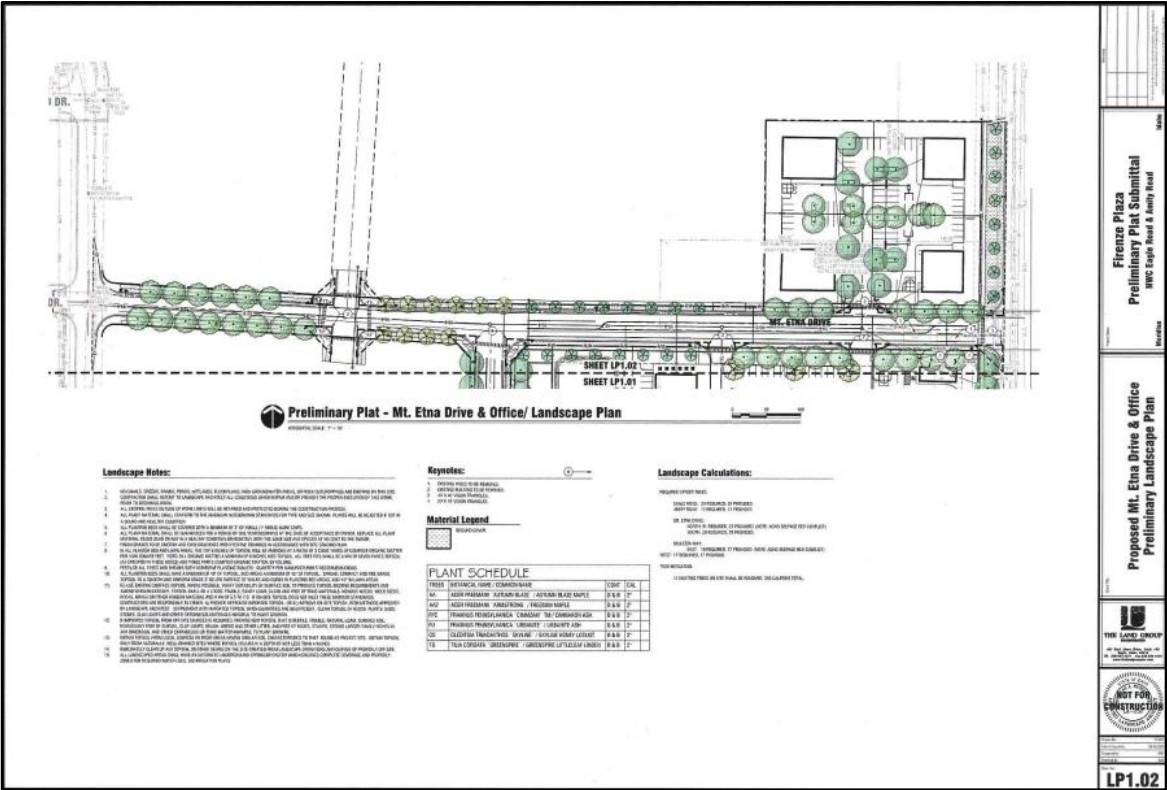


Project No.: 123143
Date of Issuance: March 4, 2024

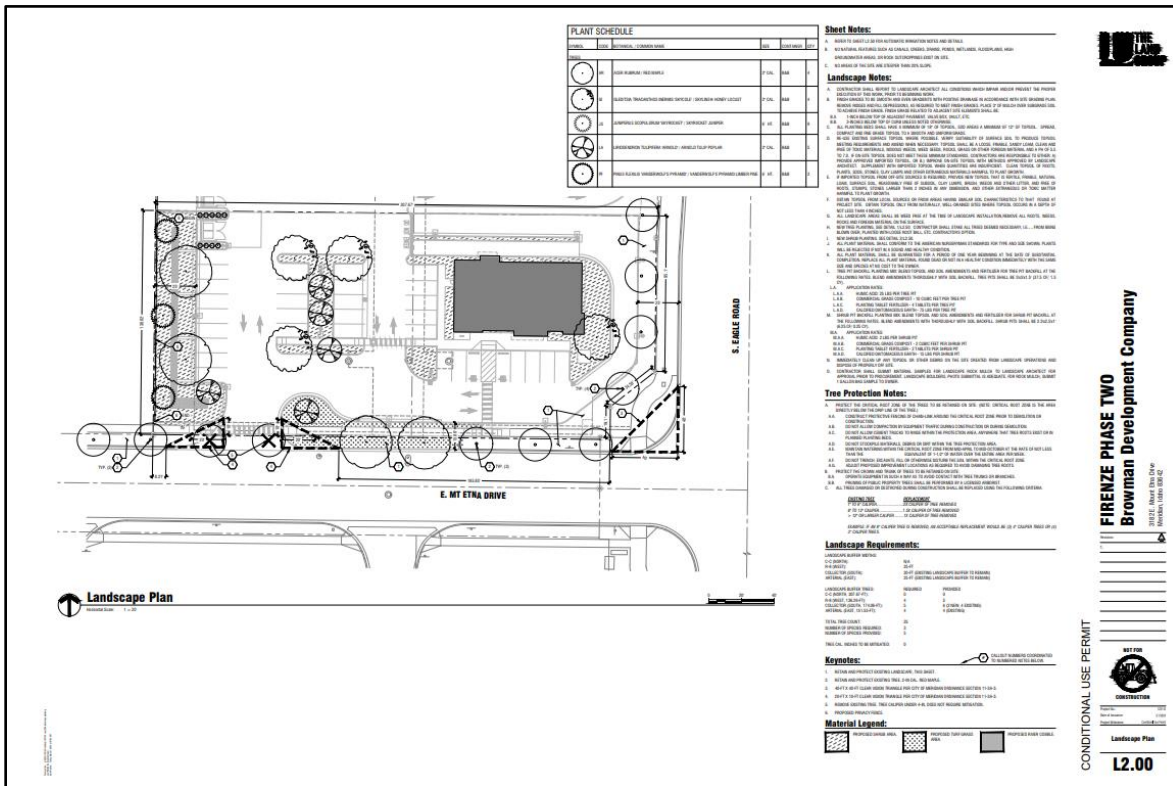


Development Agreement Modification
First Meridian LP
Firenze 2

File Location: D:\00591251\Survey\123143\123143-DA-Mod\123143-DA-Mod.dwg
Last Modified: 03/04/2024 11:58 AM
User: MFM



G. Proposed Conditional Use Permit Landscape Plan (3/01/2024)



H. Building Elevations Concept A (11/30/2023)



IX. CITY/AGENCY COMMENTS

A. PLANNING DIVISION

1. Development Agreement Modification

~~Fifteen (15) days prior to the City Council hearing, the applicant shall provide the revised concept plan that shows the property access in the existing location.~~

1.1 The new DA shall be signed by the property owner and returned to the Planning Division within six (6) months of the City Council approval of the Findings. The DA shall, at minimum, incorporate the following provisions:

- a. Future development of this site shall be generally consistent with the Concept Plan ~~A~~ or B and conceptual building elevations included in Section VIII and the provisions contained herein.

2. Conditional Use Permit

2.1 The Applicant shall comply with the specific use standards listed in UDC [11-4-3-11](#) – Drive-Through Establishment.

2.2 The Applicant shall comply with the specific use standards listed in UDC [11-3A-16](#) – Self - Service Uses.

2.3 Outdoor lighting shall comply with the standards listed in UDC [11-3A-11](#). Lighting details shall be submitted with the Certificate of Zoning Compliance application that demonstrate compliance with these standards.

2.4 The applicant shall install the privacy fence as shown on the approved site and landscape plans that is adjacent to the residential parcel to mitigate noise and glare from headlights of vehicles utilizing the proposed drive-through per UDC [11-3A-7](#).

2.5 Protect the existing landscaping on the site during construction, per UDC [11-3B-10](#).

2.6 The facility hours of public operation shall be limited to 6:00 a.m. to 11:00 p.m. because the property abuts a residential zoning district per UDC [11-2B-3B](#).

2.7 Prior to building permit submittal, the Applicant shall obtain Certificate of Zoning Compliance (CZC) and Design Review approval.

~~2.8 The site and landscape plans submitted with the Certificate of Zoning Compliance application shall depict the following:~~

- ~~a. The access to the property in it's current location.~~

2.8 The conditional use permit is valid for a maximum period of two (2) years unless otherwise approved by the City. During this time, the Applicant shall commence the use as permitted in accord with the conditions of approval, satisfy the requirements set forth in the conditions of approval, and acquire building permits and commence construction of permanent footings or structures on or in the ground as set forth in UDC 11-5B-6. A time extension may be requested as set forth in UDC 11-5B-6F.

B. PUBLIC WORKS

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=349838&dbid=0&repo=MeridianCity>

C. ADA COUNTY HIGHWAY DISTRICT (ACHD)

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=354401&dbid=0&repo=MeridianCity>

D. DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=352867&dbid=0&repo=MeridianCity>

E. BOISE PROJECT BOARD OF CONTROL (ITD)

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=352034&dbid=0&repo=MeridianCity>

F. NAMPA & MERIDIAN IRRIGATION DISTRICT (NMID)

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=353876&dbid=0&repo=MeridianCity>

G. KUNA SCHOOLS

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=349955&dbid=0&repo=MeridianCity>

X. FINDINGS

Conditional Use (UDC 11-5B-6)

Findings: The commission shall base its determination on the conditional use permit request upon the following:

1. That the site is large enough to accommodate the proposed use and meet all the dimensional and development regulations in the district in which the use is located.

Council finds the site is large enough to accommodate the proposed use (i.e drive-through establishment) and can meet all of the dimensional and development regulations of the C-C zoning district.

2. That the proposed use will be harmonious with the Meridian comprehensive plan and in accord with the requirements of this title.

Council finds the proposed use (i.e. drive-through establishment) will be harmonious with the Meridian Comprehensive Plan.

3. That the design, construction, operation and maintenance will be compatible with other uses in the general neighborhood and with the existing or intended character of the general vicinity and that such use will not adversely change the essential character of the same area.

Council finds the design, construction, operation and maintenance will be compatible with other uses in the general neighborhood and with the existing or intended character of the general vicinity and that such use (i.e. drive-through establishment) will not adversely change the essential character of the same area with the addition of a 25 foot landscape buffer and the addition of a privacy fence or wall.

4. That the proposed use, if it complies with all conditions of the approval imposed, will not adversely affect other property in the vicinity.

Council finds that the proposed use (i.e. drive-through establishment) will not adversely affect other property in the vicinity.

5. That the proposed use will be served adequately by essential public facilities and services such as highways, streets, schools, parks, police and fire protection, drainage structures, refuse disposal, water, and sewer.

Council finds the proposed use can be served by essential public facilities and services as required; the proposed use (i.e. drive-through establishment) will not have an impact to the provision of services.

6. That the proposed use will not create excessive additional costs for public facilities and services and will not be detrimental to the economic welfare of the community.

Council finds the proposed use (i.e. drive-through establishment) will not create additional costs for public facilities and services and will not be detrimental to the economic welfare of the community.

7. That the proposed use will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

Council finds the proposed use (i.e. drive-through establishment), will not involve activities or processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

8. That the proposed use will not result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of major importance. (Ord. 05-1170, 8-30-2005, eff. 9-15-2005)

Council finds the proposed use (i.e. drive-through establishment) will not result in the destruction, loss or damage of any such features.

9. Additional findings for the alteration or extension of a nonconforming use:

- a. That the proposed nonconforming use does not encourage or set a precedent for additional nonconforming uses within the area; and,

This finding is not applicable.

- b. That the proposed nonconforming use is developed to a similar or greater level of conformity with the development standards as set forth in this title as compared to the level of development of the surrounding properties.

This finding is not applicable.