

DEVELOPMENT AGREEMENT

PARTIES: 1. **City of Meridian**
2. **WL Victory Crossing LLC, Owner/Developer**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2022, 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 WL Victory Crossing LLC, an Idaho limited liability company, whose address is 8385 W. Emerald St., Boise, Idaho, 83704, 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, commonly known as 3300 Eagle Rd., Meridian, Idaho 83642, 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 #111032845 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 27th of September, 2022, 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. #111032845) 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 WL Victory Crossing LLC, whose address is 8385 W. Emerald St., Boise, Idaho 83701, the party that owns said Property and shall include any subsequent owner(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 #111032845, 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. Hours of operation for any business on the subject property (3300 S. Eagle Road, Lot 1, Block 1 of the Shops at Victory Sub.) shall be restricted to the hours between 5am and 10pm.
 - b. Future development shall adhere to the previous approvals for Alternative Compliance for a reduced landscape buffer width in certain areas adjacent to the residential property to the south and east, per the landscape plan ("Landscape Plan") in Exhibit A of the Staff Report which is attached to the original Shops at Victory Development Agreement (Inst# 111032845). The Landscape Plan is incorporated herein by reference.

- c. Access to this site shall only be provided from one full-access and one right-in/right-out access to/from Eagle Road and one full-access and one right-in/right-out access to/from Victory Road, as shown on the City-approved site plan (“Site Plan”) included in the Shops at Victory Development Agreement (Inst# 111032845). The Site Plan is incorporated herein by reference. Any other vehicular access points to/from the site are prohibited.
- d. Owner/Developer shall maintain and adhere to the recorded cross-access/ingress-egress agreement for the three (3) parcels associated with the Shops at Victory subdivision.
- e. Future development of this site shall be generally consistent with the site layout, landscape plan and building elevations as approved by CZC A-2022-0019 as depicted in Section V below and the previous conditions of approval for the subject site: H-2016-0029 and H-2022-0019.

6. **COMPLIANCE PERIOD:** This Agreement must be fully executed within six (6) months after the date of the Findings or it is 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. **ZONING:** City shall, following recordation of the duly approved Agreement, enact a valid and binding ordinance zoning the Property as specified herein.

11. **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.

12. **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.

13. **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.

14. **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:
WL Victory Crossing LLC
8385 W. Emerald St.
Boise, ID 83701

14.1 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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

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.

20.1 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 on the date the Meridian City Council shall adopt the amendment to the Meridian Zoning Ordinance in connection with the annexation and zoning of the Property and 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.

OWNERS/DEVELOPER:

WL Crossing LLC

By white Leisure Development Co its Manager

[Handwritten signature of Jason White]

By [print name]: Jason White

CITY OF MERIDIAN

ATTEST:

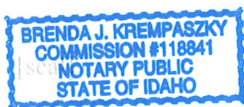
By: Mayor Robert E. Simison

Chris Johnson, City Clerk

STATE OF IDAHO)
: ss
County of Ada)

On this 24 day of October, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Jason T. White known or identified to me to be the manager of WL Crossing LLC and the person who signed above and acknowledged to me that he executed the same on behalf of said corporation.

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



[Handwritten signature of Brenda J. Krempaszky]
Notary Public
My Commission Expires: 6/6/25

STATE OF IDAHO)
: ss
County of Ada)

On this ___ day of ___, 2022, 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.

Notary Public
Commission expires: _____

[seal]

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Lot 1 in Block 1 of Shops at Victory Subdivision, according to the official plat thereof, filed in Book 110 of Plats at Pages 15698 through 15700, records of Ada County, Idaho.

EXHIBIT B

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



In the Matter of the Request for Development Agreement Modification to change allowed opening hours for an approved drive-through establishment from 6AM to 5AM at 3300 S. Eagle Road, by White Leisure Development.

Case No(s). H-2022-0060

For the City Council Hearing Date of: September 13, 2022 (Findings on September 27, 2022)

A. Findings of Fact

1. Hearing Facts (see attached Staff Report for the hearing date of September 13, 2022, incorporated by reference)
2. Process Facts (see attached Staff Report for the hearing date of September 13, 2022, incorporated by reference)
3. Application and Property Facts (see attached Staff Report for the hearing date of September 13, 2022, incorporated by reference)
4. Required Findings per the Unified Development Code (see attached Staff Report for the hearing date of September 13, 2022, 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 September 13, 2022, 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 Development Agreement Modification is hereby approved per the conditions of approval and new DA provisions in the Staff Report for the hearing date of September 13, 2022, 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.

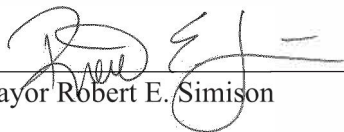
F. Notice of Right to Regulatory Takings Analysis

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 September 13, 2022.

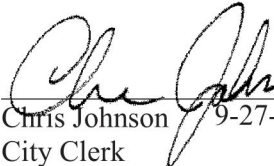
By action of the City Council at its regular meeting held on the 27th day of September, 2022.


COUNCIL PRESIDENT BRAD HOAGLUN	VOTED <u>AYE</u>
COUNCIL VICE PRESIDENT JOE BORTON	VOTED <u>AYE</u>
COUNCIL MEMBER JESSICA PERREAULT	VOTED <u>AYE</u>
COUNCIL MEMBER LUKE CAVENER	VOTED <u>AYE</u>
COUNCIL MEMBER TREG BERNT	VOTED <u>AYE</u>
COUNCIL MEMBER LIZ STRADER	VOTED _____
MAYOR ROBERT SIMISON (TIE BREAKER)	VOTED _____



Mayor Robert E. Simison 9-27-2022

Attest:


Chris Johnson 9-27-2022
City Clerk



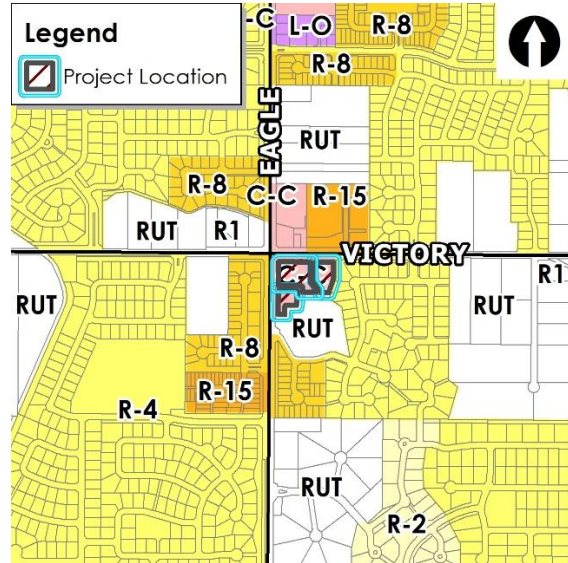
Copy served upon Applicant, Community Development Department, Public Works Department and City Attorney.

By:  _____ Dated: 9-27-2022
City Clerk's Office



COMMUNITY DEVELOPMENT DEPARTMENT

HEARING DATE: 09/13/2022
TO: Mayor & City Council
FROM: Alan Tiefenbach, Associate Planner; Joseph Dodson, Associate Planner; 208-884-5533
SUBJECT: H-2022-0060; Shops at Victory - MDA
LOCATION: SEC of S. Eagle Rd. and E. Victory Rd.



I. PROJECT DESCRIPTION

Development Agreement Modification to change allowed opening hours for an approved drive-through establishment from 6AM to 5AM at 3300 S. Eagle Road.

II. SUMMARY OF REPORT

A. Applicant / Representative:

Ken Lenz, White Leisure Development – 8385 W. Emerald St, Boise ID 83701

B. Owner:

WL Victory Crossings LLC – 8385 W. Emerald St, Boise ID 83701

III. STAFF ANALYSIS

The property is 0.84 acres in area, zoned C-C, and is one of three commercial lots comprising the Shops at Victory Development which was annexed in 2008 (AZ-008-007, PP-08-006, DA Inst. #111032845). The existing Development Agreement allows all uses allowed in the C-C zoning district, with hours of operation limited to 6am to 10pm due to the adjacent residences to southeast and east.

Alternative Compliance was approved as part of the annexation to allow a residential buffer with widths as little as 10 feet where 25 feet is typically required along the south and eastern property lines, with a condition that a 6 ft tall Verti-Crete wall be constructed within the reduced buffer—much of this buffer does meet the standard 25-foot width. The final plat for this property was completed in 2016 after four time-extensions were approved (H-2016-0029). The Rite Aid on the hard corner

received administrative approvals in 2015 (A-2015-0061) with construction occurring in 2016. The eastern most commercial has received conditional use permit approval and administrative approvals to construct a daycare center but construction of that facility has not yet started (H-2021-0003 & A-2021-0072, respectively).

In May of 2022, a conditional use permit (CUP) was approved for this subject property (3300 S. Eagle) to allow a drive-through establishment within 300 feet of an existing residence and another drive through facility (H-2022-0019); a CZC was issued in July of 2022 (A-2022-0134) for the coffee shop drive-through. With the CUP, the applicant mentioned their desire for an opening time of 5AM rather than the 6AM noted in the DA. As this was a development agreement requirement, the project was conditioned to operate from 6AM to 10PM per the recorded development agreement *unless otherwise modified through a subsequent development agreement modification*.

There is an existing single-family residence on a 5-acre lot directly east and south of the subject property. This would be the property owner most impacted by any proposed changes to the allowed hours of operation. At the time of the CUP for the drive through establishment, the property owner submitted a letter in support stating the applicant had been very receptive to all their requests with the initial development, they had installed a Verti-Crete fence along their property line that was higher quality than would have been required, ensured lighting impacts were mitigated and expressed their faith that the applicant's choice of location was acceptable. Staff has not received any further correspondence from this property owner. North of the subject property is the existing Rite Aid and S. Eagle Rd is to the west so Staff finds the proposed additional hour of operation in the morning should not have any impact on the existing commercial use.

The existing development agreement states "The applicant shall be responsible for all costs associated with the sewer and water service extension as set forth in Exhibit C attached hereto and by this reference incorporated herein as if set forth in full. Said costs shall be paid prior to commencement of any building construction." As of August 16, 2022, this Applicant has paid their required proportionate share of this agreement and has satisfied this DA provision for the subject property. In addition, many of the existing provisions have been satisfied over the years and are no longer applicable for the subject site. Therefore, Staff is recommending this parcel be removed from the existing DA and placed into its own for the purpose of governing this lot in perpetuity. Staff's recommended DA provisions are below.

IV. DECISION

A. Staff:

1. **Staff recommends the City Council approve the applicant's request for a development agreement modification and enter into a new DA with the following provisions at a minimum:**
 - a. Hours of operation for any business on the subject property (3300 S. Eagle Road, Lot 1 Block 1 of the Shops at Victory Sub.) shall be restricted to the hours between 5am and 10pm.
 - b. Future development shall adhere to the previous approvals for Alternative Compliance for a reduced landscape buffer width in certain areas adjacent to the residential property to the south and east, per the landscape plan attached in Exhibit A of the staff report attached in the original development agreement for the Shops at Victory Development Agreement (Inst# 111032845).
 - c. Access to this site shall only be provided from one full-access and one right-in/right-out access to/from Eagle Road and one full-access and one right-in/right-out access to/from Victory Road, as shown on the City approved site plan included in the development
-

agreement for the Shops at Victory Development Agreement (Inst# 111032845). Any other vehicular access points to/from the site are prohibited.

- d. Owner/Developer shall maintain and adhere to the recorded cross-access/ingress-egress agreement for the three (3) parcels associated with the Shops at Victory subdivision.
- e. Future development of this site shall be generally consistent with the site layout, landscape plan and building elevations as approved by CZC A-2022-0019 as depicted in Section V below and the previous conditions of approval for the subject site: H-2016-0029 and H-2022-0019).

B. The Meridian City Council heard these items on September 13, 2022. At the public hearing, the Council moved to approve the subject Development Agreement Modification request.

1. Summary of the City Council public hearing:

- a. In favor: Jason White, Applicant; Bob Aldridge, neighbor.
- b. In opposition: None
- c. Commenting: Jason White; Bob Aldridge.
- d. Written testimony: David Palumbo – noted concerns with development in South Meridian overall, not specific to this project.
- e. Staff presenting application: Bill Parsons, Planning Supervisor
- f. Other Staff commenting on application: None

2. Key issue(s) of public testimony:

- a. Support for proposed change and noted agreement with developer by affected neighbor to the south/southeast;

3. Key issue(s) of discussion by City Council:

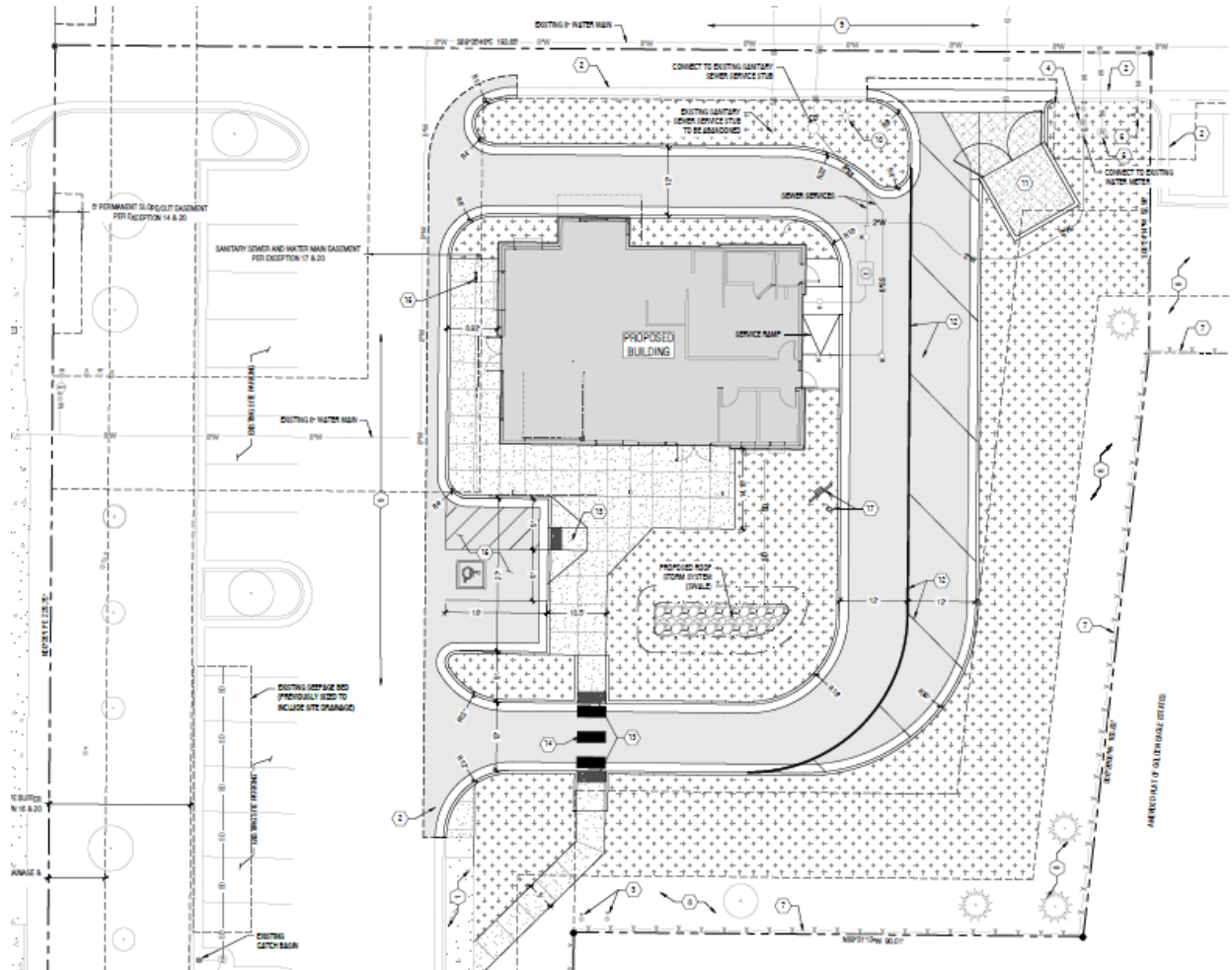
- a. None

4. City Council change(s) to Staff recommendation:

- a. None
-

V. EXHIBITS

A. Approved CZC Site Plan



C. Approved CZC Elevations



2 DRIVE THRU ELEVATION



1 FRONT ELEVATION



4 SIDE ELEVATION
3/8\"/>



3 REAR ELEVATION
3/8\"/>

C. Existing Development Agreement Provisions

5. CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:

5.1 Owner/Developer shall develop the Property in accordance with the following special conditions:

1. The applicant shall be responsible for all costs associated with the sewer and water service extension as set forth in Exhibit C attached hereto and by this reference incorporated herein as if set forth in full. Said costs shall be paid prior to commencement of any building construction.

2. Any and all existing domestic wells and/or septic systems within this project will have to be removed from their domestic service, per City Ordinance Section 5-7-517, when services are available from the City of Meridian. Wells may be used for non-domestic purposes such as landscape irrigation.

3. No signs are approved with the subject annexation approval. All business signs will require a separate sign permit in compliance with UDC 11-3D.

4. The request for Alternative Compliance for a reduced buffer width in certain areas adjacent to the residential property to the south, is approved per the landscape plan attached in Exhibit A of the staff report and in accordance with the DA provisions and conditions of approval noted in the Shops at Victory staff report.

5. Construct a minimum 6-foot tall verti-crete wall adjacent to the residential property to the south in the areas where the buffer width is below the required 25-feet, as shown on the fencing plan in Exhibit A.5, as approved through Alternative Compliance with this application. Construct a minimum 6-foot tall solid vinyl fencing in all other areas along the perimeter boundary adjacent to residential uses. All fencing shall be constructed in accordance with the standards listed in UDC 1 1-3A-7C.



6. Provide a minimum 5-foot wide detached sidewalk along both Eagle Road and Victory Road beyond the ultimate right-of-way of the reconstructed and widened intersection. Said sidewalk shall extend across the Aldridge property along Eagle Road to Falcon Drive and be located within a public pedestrian easement.

7. Access to this site shall only be provided from one full-access and one right-in/right-out access to/from Eagle Road and one full-access and one right-in/right-out access to/from Victory Road, as proposed by the applicant, as shown on the City approved site plan attached hereto as Exhibit D and by this reference incorporated herein as if set forth in full. Any other vehicular access points to/from the site are prohibited.

8. A cross-access/ingress-egress easement shall be recorded to/from Eagle Road and Victory Road benefitting all lots within the subdivision.

9. Provide a pedestrian connection (pathway and break in the fence) from this site to the future pathway in Harcourt Subdivision.

10. A minimum of 2 buildings shall be constructed on the site and the maximum building footprint of any one building shall not exceed 20,000 square feet.

11. Hours of operation for the businesses within this development shall be restricted to the hours between 6 am and 10 pm.

12. The Applicant shall comply with the tree preservation standards listed in UDC 1 1-3B-10 for protection of existing trees that are proposed to be retained and existing trees 4-inch caliper and greater that are proposed to be removed. The applicant's proposal to plant trees along the southern and eastern property boundaries as mitigation for trees removed from the site is approved per the landscape plan included in Exhibit A of the staff report.

13. The detailed site plan and building elevations submitted with any future CUP and/or CZC application for this site shall substantially comply with the conceptual site plan and building elevations submitted to the City as shown in Exhibit A of the staff report.

14. The Applicant shall submit a letter of final approval from Ada County Development Services for the Boundary Line Adjustment and a recorded copy of the Record of Survey, prior to approval of the annexation ordinance by City Council and publication of the ordinance in the newspaper.
