

## 2<sup>nd</sup> ADDENDUM TO DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
  2. William Bienapfl, Owner
  3. FlexSpace, LLC, Developer

THIS ADDENDUM TO DEVELOPMENT AGREEMENT is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, (“ADDENDUM”), by and between **City of Meridian**, a municipal corporation of the State of Idaho (“CITY”), whose address is 33 E. Broadway Avenue, Meridian, Idaho 83642 and **William Bienapfl**, (“OWNER”), whose address is 2674 S. Andos Way, Meridian, ID 83642 and **Flexspace LLC**, whose address is 4824 W. Fairview Avenue, Boise, ID 83706, (“DEVELOPER”).

### RECITALS

A. CITY and OWNER and/or DEVELOPER entered into that certain Development Agreement that was recorded on March 24, 2017 in the real property records of Ada County as Instrument No. 2017-012608 (“DEVELOPMENT AGREEMENT”) and the Addendum to Development Agreement that was recorded on February 19, 2018 in the real property records of Ada County as Instrument No. 2018-012456 (“ADDENDUM TO DEVELOPMENT AGREEMENT”) as they pertain to the property listed in Exhibit “A”, which terms have been approved by the Meridian City Council in accordance with Idaho Code Section 67-6511.

B. CITY and OWNER and/or DEVELOPER now desire to amend the Development Agreement, which terms have been approved by the Meridian City Council in accordance with Idaho Code Section 67-6511.

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

1. OWNER and/or DEVELOPER shall be bound by the terms of the Development Agreement recorded as Instrument No. 2017-012608 and Instrument No. 2018-012456, except as specifically amended to add the following:

#### 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 consistent with the conceptual site plan, conceptual building elevations, landscape plan, and qualified open space exhibits included in Section VII of the Staff Report that is attached to of the Findings of

JL

Facts and Conclusions of Law approved by the Meridian City Council on May 4, 2021, attached hereto as Exhibit "A" and the conditions contained herein, with the following revisions:

- i. Add a shared plaza to be used by the commercial and multi-family residential within the development located somewhere within the area of the proposed commercial buildings along Overland.
  - ii. Include at least one (1) pedestrian crossing from the multi-family townhomes to the shared plaza and commercial that is clearly delineated from the driving surface by being constructed with brick pavers, stamped concrete or similar.
- b) The allowed uses within the future commercial buildings shall be flex-space, office, retail, personal and professional services, restaurant, and daycare uses to aid in the integration and compatibility with the multi-family residential; no drive throughs shall be permitted within this development with obtaining a modification to this agreement.
  - c) No building permits shall be issued for this development until the property has been subdivided in accord with the approved preliminary plat (H-2017-0104).
  - d) The owner and/or developer shall grant cross-access with the adjacent property to the east (Parcel #S1121110200) located somewhere along the shared eastern property boundary; copy of the agreement shall be provided with the Certificate of Zoning Compliance application.
  - e) The units along the southern boundary of parcel #S112112103 shall be restricted to single-story only.
2. That Owner and/or Developer agrees to abide by all ordinances of the City of Meridian and the Property shall be subject to de-annexation if the Owner and/or Developer, or their assigns, heirs, or successor shall not meet the conditions of this 2<sup>nd</sup> Addendum, and the Ordinances of the City of Meridian as herein provided.
3. This 2<sup>nd</sup> Addendum shall be binding upon and insure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Addendum shall be binding on the Owner and/or Developer of the Property, each subsequent owner and any other person(s) 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 hereon 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 and/or Developer, to execute appropriate and recordable evidence of termination of this 2<sup>nd</sup> Addendum if City, in its sole and reasonable discretion, had determined that Owner and/or Developer have fully performed its obligations under this Addendum.
4. If any provision of this 2<sup>nd</sup> Addendum is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this 2<sup>nd</sup> Addendum and the invalidity thereof shall not affect any of the other provisions contained herein.

5. This 2<sup>nd</sup> Addendum sets forth all promises, inducements, agreements, condition, and understandings between Owner and/or Developer and City relative to the subject matter herein, and there are no promises, agreements, conditions or under-standing, either oral or written, express or implied, between Owner and/or Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Addendum 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.

a. Except as herein provided, no condition governing the uses and/or conditions governing development of the subject Property herein provided for can be modified or amended within 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.

6. This 2<sup>nd</sup> Addendum shall be effective as of the date herein above written.

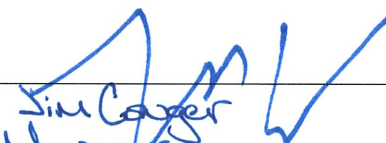
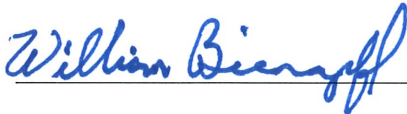
7. Except as amended by the Addendum, all terms of the previous Agreements shall remain in full force and effect.

#### ACKNOWLEDGMENTS

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

**OWNER:**  
William Bienapfl

**DEVELOPER:**  
Flexspace LLC



By: Jim Cager  
Its: Manager

**CITY OF MERIDIAN**

**ATTEST:**

By: \_\_\_\_\_  
Mayor Robert E. Simison

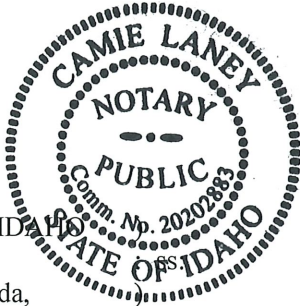
\_\_\_\_\_  
Chris Johnson, City Clerk

STATE OF IDAHO )  
: ss:  
County of Ada, )

On this 14 day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **William Bienapfl** known or identified to me to be the person who signed above and acknowledged to me that he executed the same.

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

(SEAL)



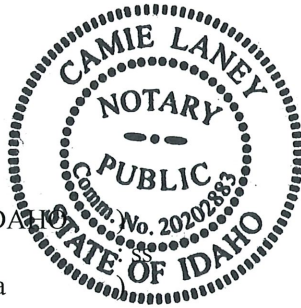
Camie Laney  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 8-3-2026

STATE OF IDAHO )  
County of Ada, )

On this 14 day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Jim D longer known or identified to me to be the member of FlexSpace LLC 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.

(SEAL)



Camie Laney  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 8-3-2026

STATE OF IDAHO )  
County of Ada )

On this \_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, know 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 on 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  
Residing at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_