

DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
 2. Endurance Holdings, LLC, Owner
 3. Challenger Development, Inc., Developer

THIS DEVELOPMENT AGREEMENT (this Agreement), is made and entered into this _____ day of _____, 2021, 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 **Endurance Holdings, LLC** whose address is, hereinafter called OWNER and **Challenger Development Inc.**, whose address is 1977 E. Overland Road, Meridian, ID 83642, hereinafter called DEVELOPER.

1. **RECITALS:**

- 1.1 **WHEREAS**, Owner is the sole owner, in law and/or equity, of certain tract of land in the County of Ada, State of Idaho, described in Exhibit "A", which is attached hereto and by this reference incorporated herein as if set forth in full, herein after referred to as the Property; and
- 1.2 **WHEREAS**, Idaho Code § 67-6511A provides that cities may, by ordinance, require or permit as a condition of zoning that the Owner and/or Developer make a written commitment concerning the use or development of the subject 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 upon the annexation and/or re-zoning of land; and
- 1.4 **WHEREAS**, Owner and/or Developer has submitted an application for a Modification of a Development Agreement as required by the existing Development Agreement (Inst. #2016-007070) to update the development plan to redevelop the property and be bound by this new Agreement under the Unified Development Code, which generally describes how the Property will be developed and what improvements will be made; and

- 1.5 **WHEREAS**, Owner and/or Developer made representations at the 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 rezoning 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 28th day of September, 2021, the Meridian City Council approved certain Revised 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**, the Findings require the Owner and/or Developer to enter into a Development Agreement before the City Council takes final action on final plat; and
- 1.9 **WHEREAS**, Owner/ Developer deem 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
- 1.10 **WHEREAS**, The property listed in Exhibit “A” shall no longer be subject to the terms of the existing Development Agreements (Inst. # 2016-007070) and shall be bound by the terms contained herein in this new agreement.
- 1.11 **WHEREAS**, City requires the Owner and/or Developer to enter into a development agreement 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 designation 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:** means and refers to **Endurance Holdings, LLC**, whose address is 1977 E. Overland Road, Meridian, ID 83642 hereinafter called OWNER, the party that owns said Property and shall include any subsequent owner(s) of the Property.
- 3.3 **DEVELOPER:** means and refers to **Challenger Development, Inc.**, whose address is 1977 E. Overland Road, Meridian, ID 83642 hereinafter called DEVELOPER, the party that owns said Property and shall include any subsequent developer(s) of the Property.
- 3.4 **PROPERTY:** means and refers to that certain parcel(s) of Property located in the County of Ada, City of Meridian as in Exhibit "A" describing a bound by this Development Agreement and 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 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. Owners/ Developer shall develop the Property in accordance with the following special conditions:
 - a. Future development of this site shall be substantially consistent with the approved plat, landscape plan, open space exhibit, and conceptual building elevations included in Section VII and the provisions contained herein.
 - b. The submitted phasing plan shall be strictly adhered to and include a secondary access to Meridian Road/SH 69 with the first phase of development.
 - c. The Applicant shall extend the water main from E. Quartz Creek Street on the east side of Meridian Road/SH 69 and not extend water down SH 69 from E. Amity Road.

- d. W. Quartz Creek Street (the new collector street along the north boundary), the required multi-use pathway, and the required collector and arterial landscape buffers adjacent to W. Quartz Creek and S. Meridian Road/SH 69 shall be constructed and vegetated with the first phase of development, in accord with the revised phasing plan.
- e. The elevations/facades of 2-story structures that face S. Meridian Road, an entryway corridor, and W. Quartz Creek Street, a collector street, shall incorporate articulation through changes in two or more of the following: modulation (e.g. projections, recesses, step-backs, pop-outs), bays, banding, porches, balconies, material types, or other integrated architectural elements to break up monotonous wall planes and roof lines that are visible from the subject public street. Single-story structures are exempt from this requirement.
- f. Building permits shall only be submitted for Phase 1, per the revised phasing plan in Exhibit VII.E of the Staff Report attached to the Findings of Fact and Conclusions of Law as Exhibit B, attached hereto; building permits for subsequent phases shall not be submitted until Meridian Fire Station No. 7 is complete and operational.

6. **COMPLIANCE PERIOD** This Agreement must be fully executed within six (6) months after the date of the Findings for the annexation and zoning or it is null and void.

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

- 7.1 **Acts of Default.** Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement shall constitute default under this Agreement.
- 7.2 **Notice and Cure Period.** In the event of Owner and/or Developer's default of this Agreement, Owners/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 action 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 and/or Developer that is not cured after notice as described in Section 7.2, Owner and/or Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511. Owner and/or Developer reserve all

rights to contest whether a default has occurred. This Agreement shall be enforceable in the Fourth Judicial District Court in Ada County by either City or Owner and/or Developer, or by any successor or successors in title or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the specific performance of the covenants, agreements, conditions, and obligations contained herein.

7.4 **Delay.** In the event the performance of any covenant to be performed hereunder by either Owner and/or 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.

7.5 **Waiver.** A waiver by City of any default by Owner and/or 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 and/or 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 approval of such completed improvements or portion thereof in accordance with the terms and conditions of this Agreement and all other ordinances 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 and/or Developer, prior to the third reading of the Meridian Zoning Ordinance in connection with the re-zoning of the Property by the City Council. If for any reason after such recordation, the City Council fails to adopt the ordinance in connection with the annexation and zoning of the Property contemplated hereby, the City shall execute and record an appropriate instrument of release of this Agreement.

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 and/or Developer agree to provide, if required by the City.

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

13. **ABIDE BY ALL CITY ORDINANCES:** That Owners and/or Developer agree 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 Avenue
Meridian, Idaho 83642

OWNER:
Endurance Holdings, LLC
1977 E. Overland Road
Meridian, ID 83642

DEVELOPER:
Challenger Development, Inc.
1977 E. Overland Road
Meridian, ID 83642

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 and/or 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 and/or Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, had determined that Owner and/or Developer have fully performed their 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 reasonably 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 and/or 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 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 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 re-zoning of the subject 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; signatures, acknowledgements, 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:
Endurance Holdings, LLC

By: Corey Barton
Its:

DEVELOPER:
Challenger Development, Inc.

By: Corey Barton
Its:

CITY OF MERIDIAN

ATTEST:

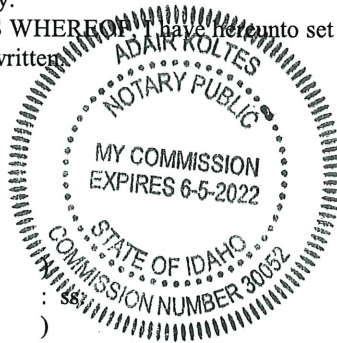
By: _____
Mayor Robert E. Simison

Chris Johnson, City Clerk

STATE OF IDAHO)
 : ss:
County of Ada)

On this 18th day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **Corey Barton** known or identified to me to be the Member of **Endurance Holdings, LLC**, and the person who signed above and acknowledged to me that he executed the same on behalf of said Company.

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

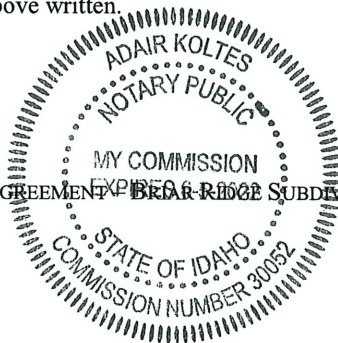


Adair Koltes
Notary Public for Idaho
Residing at: Nampa, ID
My Commission Expires: 6-05-22

STATE OF IDAHO)
 : ss:
County of Ada)

On this 18th day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **Corey Barton** known or identified to me to be the President of **Challenger Development, Inc.**, and the person who signed above and acknowledged to me that he executed the same on behalf of said Company.

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



Adair Koltes
Notary Public for Idaho
Residing at: Nampa, ID
My Commission Expires: 6-05-22

STATE OF IDAHO)
 : ss
County of Ada)

On this _____ day of _____, 2021, 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
Residing at: _____
Commission expires: _____