

## DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
  2. Idaho Auto Mall LLC, Owner/Developer

THIS DEVELOPMENT AGREEMENT (this Agreement), is made and entered into this 9 day of July, 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 **Idaho Auto Mall LLC**, whose address is 3449 E. Copper Point Drive, Meridian, ID 83642, hereinafter called OWNER/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/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/Developer has submitted an application for annexation and zoning of 25.87 acres of land to the C-G (General Retail and Service Commercial) zoning district on the property listed in Exhibit "A", 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/Developer made representations at the public hearings before Planning and Zoning Commission and 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 annexation and zoning held before Planning and Zoning Commission and 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 15<sup>th</sup> day of June, 2021, 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**, the Findings require the Owner/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**, City requires the Owner/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/DEVELOPER:** means and refers to **Idaho Auto Mall, LLC**, whose address is 3449 E. Copper Point Drive, Meridian, ID 83642, hereinafter called OWNER, the party that owns said Property and shall include any subsequent owner(s) and developer (s) of the Property.

3.3 **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 parcel to be annexed and 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 and/or Developer shall develop the Property in accordance with the following special conditions:

- a. Development of the subject property shall be generally consistent with the preliminary plat, landscape plan and conceptual building elevations submitted with the annexation application contained herein.
- b. Prior to development of the commercial/office portion of the development, the development agreement shall be amended to include a conceptual development plan that demonstrates consistency with the land use, transportation and design elements of the Ten Mile Interchange Specific Area Plan (TMISAP), including but not limited to the following:
  - (1) Provide minimum 6-foot wide parkways/planting strips and detached minimum 5-foot wide sidewalks along all streets within the development (Pedestrian & Bicycle System, pg. 3-27). *The minimum width of parkways planted with Class II trees is 8-feet; the minimum width of parkway planters for Class I and III trees is 10-feet. Planter widths for Class II trees may be reduced to 6-feet if root barriers are installed per the standards listed in UDC 11-3A-17E.*
  - (2) Sidewalks/pathways shall include dedicated crosswalks at the intersection with all streets within commercial activity centers and shall be distinguished from surrounding paving (Crosswalks, pg. 3-28).
  - (3) Street furnishings such as seating, newspaper racks, bollards, trash receptacles, bicycle racks and other elements important to the functioning of an effective pedestrian environment shall be provided (Street Furniture, pgs. 3-28 – 3-29).
  - (4) Exterior lighting should be used to provide illumination for the security and safety of entry drives, parking, service and loading areas, pathways, courtyards and plazas, without intruding on adjacent properties. Site lighting should be architecturally compatible and consistent in design between sites. (Lighting, pg. 3-30).

- (5) Future development along Overland Rd. and internal local streets should incorporate street-oriented design consistent with the TMISAP for commercial developments.
- (6) Building orientation and setbacks should be close to the street with the main entrance of buildings oriented to the street (Street-Oriented Design, pg. 3-33).
- (7) A continuous unbroken frontage along required build-to lines to a minimum height of 30-feet should be constructed for at least 75% of the property frontage. Adjustments to this requirement may be allowed, such as modest setbacks to accommodate additional sidewalk space for café seating, or breaks in frontage for the creation of pocket parks.

New Buildings at street intersections should “hold the corners” and avoid introducing additional building setbacks unless a new public space is specified.

At least 40% of the linear dimension of the street level frontages shall be in windows or doorways; street level windows shall be clear or tinted visually permeable glass (mirrored or reflective glass is prohibited). Window sills shall be located no higher than 3’6” above adjacent exterior grade; headers shall be located no lower than 8’0” above adjacent exterior grade. No wall frontage shall continue uninterrupted by a window or a functional public access doorway for a linear distance of greater than 12’.

The principal doorway for public entry into a building shall be from the fronting street. Corner entrances may be provided on corner lot buildings (Commercial and Mixed-Use Buildings, pg. 3-33). No parking should be placed between a building and the fronting primary or secondary street (Commercial Activity Centers, pg. 3-37).

- (8) The space between a building façade and the adjacent sidewalk or walkway should be appropriately landscaped with a combination of lawn, groundcover, shrubs and appropriate trees (Building Facades, pg. 3-38).
- (9) Low-rise buildings of 2-4 stories over much of the area is desired (Building Heights, pg. 3-38).
- (10) Buildings should be designed with clearly delineated bases, bodies and tops (Base, Body and Top, pg. 3-39).
- (11) Comply with the general recommendations for Activity Centers noted on pg. 3-40.
- (12) Awnings shall be provided on building facades for climate protection for pedestrians and shall extend a minimum of 5-feet from the façade of the fronting structure – 8-feet is preferable in wider pedestrian environments (Awnings, pg. 3-45).
- (13) Signs should be designed to contribute to the overall character, identity and way finding system. The colors, materials, sizes, shapes and lighting of signs should be compatible with the architecture of the buildings and the businesses they identify (Signs, pg. 3-46).
- (14) High quality public art should be incorporated into the design of streetscapes, public buildings, parks, transit, infrastructure, and other public projects (Public

Art, pg. 3-47).

(15) Open civic spaces should be provided in commercial activity centers/mixed use environments and should be located adjacent to an accessible from at least one primary street (3-48).

- c. Minimum 5-foot wide pedestrian walkways shall be provided from the perimeter sidewalks along Overland and Linder Roads to the main building entrances in accord with UDC 11-3A-19B.4a.
- d. Internal pedestrian walkways shall be provided between buildings within the site for pedestrian connectivity. Internal walkways shall be distinguished from the vehicular driving surfaces through the use of pavers, colored or scored concrete, or bricks in accord with UDC 11-3A-19B.4b.
- e. All future structures constructed on this site shall comply with the design guidelines in the TMISAP and the design standards in the Architectural Standards Manual.
- f. The final plat shall be recorded prior to issuance of building permits for any structures beyond those on the Kendall Ford site (i.e. Lot 1, Block 1). *The Kendall Ford site is allowed to develop and obtain building permits prior to recordation of the plat, subject to approval by the Building Department.*
- g. Compliance with the specific use standards listed in UDC 11-4-3-38: Vehicle Sales or Rental and Service is required.
- h. If fencing is proposed for security around the Kendall Ford site, it shall be of a higher quality than chain-link (i.e. wrought iron).

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, 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 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/Developer that is not cured after notice as described in Section 7.2, Owners 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/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/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/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/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 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/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 Owners 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/Developer to the City in accordance with Paragraph 11 above.

13. **ABIDE BY ALL CITY ORDINANCES:** That Owner/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/DEVELOPER:**  
**Idaho Auto Mall LLC**  
3449 E. Copper Point Drive  
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/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 Owners 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 Owners 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/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 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]

