

DEVELOPMENT AGREEMENT

- PARTIES:
1. City of Meridian
 2. ~~Coleman Homes, Toll Southwest~~ LLC, ~~Owner~~/Developer

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this ~~22nd~~ day of ~~April~~, ~~2014~~~~2021~~, by and between City of Meridian, a municipal corporation of the State of Idaho, ~~hereafter~~~~hereinafter~~ called CITY, and ~~Coleman Homes, Toll Southwest~~ LLC, ~~a Delaware limited liability company~~, whose address is 3103 W. Sheryl Drive, Suite 100, Meridian, Idaho 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" for each owner, which is attached hereto and by this reference incorporated herein as if set forth in full, herein after referred to as the Property; and~~

~~1.1~~ ~~1.2~~ ~~WHEREAS, Idaho Code § 67-6511 A provides that cities may, by ordinance, require or permit as a condition of re-zoning that the Owner/Developer applicant make a written commitment concerning the use or development of the subject Property; and~~

~~1.2~~ ~~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 as well as the modification thereof; and~~

~~1.3~~ ~~1.4~~ ~~WHEREAS, Owner/Developer has submitted an application for annexation and re-zoning of the Property described in Exhibit "A", requesting a designation of to modify that certain Development Agreement dated April 22, 2014, recorded as Instrument No. 114030972 (the "Original Development Agreement"); and~~

~~1.4~~ ~~WHEREAS, the Original Development Agreement governed the development of approximately 434.45 acres of land with 221.55 acres designated as R-4 (Medium-Low Density Residential) (221.55, 155.31 acres), designated as R-8 (Medium Density Residential) (155.31, 52.05 acres), designated as R-15 (Medium High Density Residential District) (52.05, and 5.54 acres), and designated as L-0 (Limited Office) (5.54 acres) zoning districts within the City of Meridian, Ada County, as legally described therein (the "Original Property"); and~~

~~1.5~~ ~~WHEREAS, the Original Development Agreement was executed and recorded against the Original Property in connection with Case No(s). AZ-13-008, RZ-13-008, PP-13-014, and MDA-13-015, which the Meridian City Council approved on December 17, 2013 through the issuance of Findings of Fact and Conclusions of Law and Decision and Order ("Original Findings"); and~~

1.6 WHEREAS, Developer is the successor to Coleman Homes, LLC, the “Owner/Developer” under the Original Development Agreement.

1.7 WHEREAS, following the execution of the Original Development Agreement, the City has removed approximately 24.54 acres of property from the Original Property as part of the Oakwind Estates project, which property is legally described in that certain Development Agreement dated March 23, 2021, recorded as Instrument No. 2021-046527 (the “Oakwind Estates Property”); and

1.8 WHEREAS, pursuant to Case No. H-2018-0118, City has rezoned approximately 7.39 acres of land within the Original Property from the R-15 zoning district to the R-4 zoning district under the UDC—and, which generally describingdescribes how the Property will be developed and what improvements will be made, which application was approved on August 13, 2019; and

1.9 ~~1.5~~ WHEREAS, City and former owner entered into a Developer desire to amend, restate, and modify the Original Development Agreement on a portion of the property described in Exhibit A as Instrument # 109009629 on January 29, 2009 for the Oakcreek Subdivision. That Development Agreement is terminated and the subject property is hereby bound by the terms ofwith this Agreement; and

1.10 WHEREAS, this Agreement governs the development of that certain tract of land in the County of Ada, State of Idaho, legally 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

1.11 WHEREAS, the Property is a 226.48-acre portion of the Original Property;

1.12 WHEREAS, this Agreement only governs the Property, and all other portions of the Original Property, less the Oakwind Estates Property, shall remain subject to the Original Development Agreement; and

1.13 WHEREAS, the Property shall no longer be subject to or governed by the Original Development Agreement, which is terminated as to the Property, or any other development agreement(s) previously recorded against the Property, including, but not limited to, Ada County Instrument Number 109009629; and

1.14 ~~1.6~~ WHEREAS, Owner/Developer made representations at the public hearings both before the Meridian Planning & Zoning Commission and before the Meridian City Council, as to how the subject Property will be developed and what improvements will be made; and

1.15 ~~1.7~~ WHEREAS, the record of the proceedings for the requested annexation and zoning designation of the subject Propertydevelopment agreement modification held before the Planning & Zoning Commission, and subsequently before theMeridian City Council, include includes responses of government subdivisions providing services within the City of Meridian planning jurisdiction, and receivedincludes further testimony and comment; and

1.16 ~~1.8~~ WHEREAS, City Council, on the 17th[insert] day of December[insert], 20132021, the Meridian City Council approved certain Findings of Fact and Conclusions of Law and Decision and Order (“Findings”) approving the modification of the Original Development Agreement through the adoption if this Agreement, which Findings have been incorporated into this Agreement and attached as Exhibit “B”; and

1.17 ~~1.9~~ WHEREAS, the Findings require the ~~Owner/Developer~~ to enter into at this Agreement in order to amend, restate, and modify the Original Development Agreement ~~before the City Council takes final action on annexation and zoning designation~~; and

~~1.10~~ ~~WHEREAS, Owner/Developer deem it to be in their best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily and at their urging and requests; and~~

1.18 ~~1.11~~ WHEREAS, City further 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~~designations are in accordance with the amended Comprehensive Plan of the City of Meridian on ~~April~~December 19, ~~2011~~2019, Resolution No. ~~11-78419-2179~~, and the ~~Zoning and Development Ordinances codified in Meridian Unified Development Code~~UDC, Title 11; and

1.19 ~~WHEREAS, 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.~~

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~~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 ~~A-venue~~Avenue, Meridian, Idaho 83642.

3.2 OWNER/DEVELOPER: means and refers ~~Coleman Homes,~~to Toll Southwest LLC, whose address is 3103 W. Sheryl Drive, Suite 100, Meridian, Idaho 83642, the party that is developing said Property and shall include any subsequent owner/or 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 described in Exhibit "A" ~~describing the parcels to be re-zoned Medium Low Density Residential District (R-4) (221.55 acres); Medium Density Residential District (R-8) (155.31 acres); Medium High Density Residential District (R-15) (52.05 acres); and L-0 (Limited Office) (5.54 acres) 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 City's Zoning Ordinance codified ~~at~~in the Meridian Unified Development Code.

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:

5.1.1 ~~Future development of the Property shall be generally consistent with the conceptual site plan attached in Exhibit [insert] to the Findings, which conceptual site plan is attached hereto as Exhibit "C" and by this reference incorporated herein as if set forth in full, hereinafter referred to as the "Concept Plan".~~

5.1.2 ~~5.1.1~~ The ~~Owner~~/Developer shall comply with the submitted home elevations attached in Exhibit A.5 of the ~~attached~~Original Findings, with materials and architectural features to be the same or higher quality as in the elevations.

~~5.1.2~~ ~~Future development of the office lots shall comply with the design standards listed in UDC 11-3A-19 and the guidelines contained in the Meridian Design Manual. Development of these lots shall not commence until the Owner/Developer obtains certificate of zoning compliance and design review approval.~~

~~5.1.3~~ The ~~Owner/Developer~~ shall dedicate the well lot and the lift station lot (Lot 29, Block 10) of Oaks South Subdivision to the City as proposed. The applicant shall coordinate with the City on the acquisition of the fire station lot (Lot 1, Block 16 of Oaks South Subdivision). If the acquisition is mutually agreed upon by the ~~Owner/Developer~~ and the City, the future fire station lot is entitled to impact fee credits as allowed by law.

~~5.1.4~~ Development of the multi-family lots requires conditional use permit approval. The density range in these areas shall be 8 to 15 dwelling units to the acre.

~~5.1.5~~ If mutually agreed upon by the ~~Owner/Developer~~ and WARD, the ~~Owner/Developer~~ shall dedicate Lot 4, Block 16 of Oaks South Subdivision to Western Ada Recreation District (WARD) for a neighborhood park as proposed. If an agreement cannot be reached between the parties, the ~~Owner/Developer~~ shall coordinate with the Parks Department on the dedication of the lot as a City neighborhood park.

~~5.1.6~~ For phasing purposes, the Oaks North and Oaks South plats shall be reviewed as one project and both plats will remain valid as successive phases receive City Engineer's signature. As long as the submittal and recordation of a final plan in one plat is completed in the timeline outlined in UDC 11-6B-7, the entire project remains valid and does not expire.

5.1.3 ~~5.1.7~~ The ~~Owner~~/Developer shall be responsible for all costs associated with design and construction of the required interim lift station and pressure sewer line. The station's design and capacity shall be coordinated with the Public Works Department; the design shall include communication capabilities that are consistent with the City of Meridian's SCADA system. At completion of the construction, the station will be donated to the City of Meridian who will own and maintain the lift station. The completion and acceptance of the lift station will be at the sole discretion of the Meridian Public Works Director. Any potential upgrades to the interim lift station from other surrounding parcels will be reviewed by the Meridian Public Works Department. Approved upgrades to the ~~purposed~~proposed station will be fully funded by the requestor, and will be subject as reimbursement fees to the ~~Owner~~/Developer.

~~5.1.4~~ ~~5.1.8~~ Water service to this site is being proposed via extension of mains in N. Black Cat Road, McDermott Road, and McMillan Road. The ~~Owner/Developer~~ shall be responsible for the installation of water mains to and through this development through the City of Meridian's water master plan. Due to fire flow requirements the applicant will need to construct a 12-inch diameter main from the intersection of N. Black Cat Road and McMillan Road heading east to the existing 12-inch diameter main near the Ten Mile & McMillan intersection. This connection will need to be installed with phase one of the ~~Owner/Developer's~~ plan, and may be eligible for partial reimbursement. If the 12-inch water main from Ten ~~mile~~Mile & McMillan is installed by another developer prior to phase one construction, the ~~Owner/Developer~~ will not be responsible to participate in construction of the required main extension.

~~5.1.9~~—The proposed outdoor storage is an accessory use in the R-15 district for the benefit of the proposed residential developments and shall not operate as a stand-alone commercial business. Development of this lot shall not commence until the ~~Owner/Developer~~ obtains certificate of zoning compliance and design review approval of the storage facility.

~~5.1.10~~ Lot 2, Block 1 of the Oaks North Subdivision and Lot 5, Block 16 of the Oaks South Subdivision shall be preserved for future right-of-way acquisition by ITD for the construction of the McDermott Road overpass.

~~5.1.5~~ ~~5.1.11~~—The ~~Owner/Developer~~ shall comply with all City ordinances in effect at the time of final plan submittal.

~~5.1.12~~—The ~~Owner/Developer~~ shall provide a method for notifying home owners of the future multi-family developments proposed with the Oaks North and Oaks South developments as determined by the Planning Division Manager.

~~5.1.6~~ ~~5.1.13~~ With the first phase of development of the Oaks South Subdivision, the ~~Owner/Developer~~ shall develop the pool complex on Lot 1, Block 4, as proposed. With the second phase of development of the Oaks North Subdivision, the ~~Owner/Developer~~ shall develop the pool complex and the 5.71 acre neighborhood park on Lot 6, Block 12, as proposed.

~~5.1.14~~—A cross-access easement shall be recorded for the office lots within the Oaks South Subdivision in accord with UDC 11-3A-3.

6. **COMPLIANCE PERIOD:** This Agreement must be fully executed and recorded within two (2) years 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.** 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 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, ~~Owner/~~Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the Property's 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 reserves 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 either a memorandum of this Agreement or 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 rezoning 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. The parties further agree to record all releases required to remove the Original Development Agreement from title to the Property.

10. ZONING: City shall, if necessary, 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 Meridian City Code § 11-5-C, to insure/ensure that installation of the improvements, which the ~~Owner/~~Developer agrees 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.

13. ABIDE BY ALL CITY ORDINANCES: ~~That Owner/Developer~~ ~~agree~~agrees to abide by all ordinances of the City of Meridian, and the Property shall be subject to de-annexation if the owner or his assigns, heirs, or successors shall not meet the conditions contained in the Findings ~~of Fact and Conclusions of Law~~, this Development Agreement, and the Ordinances of the City of Meridian.

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~~

~~OWNER/DEVELOPER:~~

~~Coleman Homes, LLC~~
~~3103 W. Sheryl Drive, Suite 100~~
Meridian, Idaho 83642

with copy to:

City Attorney
City of Meridian
33 E. Broadway Avenue
Meridian, ID 83642

DEVELOPER:

Toll Southwest, LLC
3103 W. Sheryl Drive, Suite 100
Meridian, Idaho 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 of the Property, 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, ~~had determined~~determines 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 reasonably in giving any consent, approval, or taking any other action under this Agreement.

20. 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 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.

21. 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; (i) the parties have mutually executed this Agreement; and (ii) this Agreement is recorded in the real property records of Ada County, Idaho.~~

[end of text; signatures, acknowledgements, and Exhibits A, B and C follow]

ACKNOWLEDGMENTS

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

OWNER/DEVELOPER:

~~Coleman Homes, LLC~~

Toll Southwest LLC, a Delaware limited liability company,

By: _____

Its: _____

CITY OF MERIDIAN _____ ATTEST:

By: _____

Mayor ~~Tammy de Weerd~~

ATTEST:

~~Jaycee L. Holman~~

Robert E. Simison

Chris Johnson, City Clerk

STATE OF ~~IDAHO~~ → _____)

: ss:

County of ~~Ada~~ _____)

On this ~~15th~~ day of ~~April~~, ~~2014~~2021, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~Thomas Coleman~~, _____ known or identified to me to be the ~~President/Owner of Coleman Homes~~, _____ of Toll Southwest LLC, a Delaware limited liability company, and the person who signed above and acknowledged to me that he executed the same on behalf of said ~~Corporation~~limited liability 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.

(SEAL)

Notary Public for ~~Idaho~~ _____

Residing at: _____

My Commission Expires: _____

