

DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
 2. MB Overland Wells, LLC, Owner/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 **MB Overland Wells, LLC**, whose address is 7301 Peak Drive, Suite 150B, Las Vegas, Nevada 89128, hereinafter called OWNER/DEVELOPER.

1. **RECITALS:**

- 1.1 **WHEREAS**, Owner is the sole owner, in law and/or equity, of certain tract of land located at 2700 E. Overland Road, Meridian, 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/Developer has submitted a Modification of Development Agreement to remove the Property from that certain Development Agreement between City of Meridian and Volante Investments, LLLP, dated July 5, 2016 (Instrument #2016-060157), which Property will now be bound by this Agreement to be consistent with the proposed residential concept plan, 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 hearing 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 18th day of May, 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/Developer to enter into a new Development Agreement on only the subject property listed in Exhibit “A” 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 subject property listed in Exhibit “A” shall no longer be subject to the terms of the existing Development Agreements (Inst. #2016-060157) upon the property owner(s) entering into this new agreement.
- 1.11 **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 **MB Overland Wells, LLC**, whose address is 7301 Peak Drive, Suite 150B, Las Vegas, Nevada 89128 hereinafter called OWNER/DEVELOPER, the party that is developing said Property and shall include any subsequent 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 rezoned 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/ Developer shall develop the Property in accordance with the following special conditions:

a. Development of this site shall be generally consistent with the conceptual development plan, landscape plan, qualified open space/amenities exhibit and buildings included in Section VIII of the Staff Report attached to the Findings of Fact and Conclusions of Law attached hereto as Exhibit “B” and the shall comply with the provisions contained therein.

b. All structures in the multi-family development shall comply with the design standards listed in the Architectural Standards Manual. An Administrative Design Review application is required to be submitted and approved for the structures within this development prior to submittal of building permit applications for these structures. An application for Certificate of Zoning Compliance is also required to be submitted along with Design Review application for approval of the proposed use and site design.

c. Owner/Developer shall install a 6-foot woodgrain vinyl fence along eastern boundary of property.

d. The design of the carport structures should represent the style of development and be reviewed by Staff as part of the design review process as discussed at the City Council hearing.

e. The Property shall be subdivided (preliminary plat approved) and this Agreement recorded prior to submittal of any Certificate of Zoning Compliance and Design Review applications for the overall site.

f. The traffic signal at the E. Overland Rd./S. Wells Ave. intersection shall be installed prior to issuance of the first Certificate of Occupancy for the multi-

family development as deemed warranted by the Traffic Impact Study approved by Ada County Highway District.

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/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 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 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/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.

10. **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 agree to provide, if required by the City.

11. **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 Section 10 above.

12. **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.

13. **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:
MB Overland Wells, LLC
7301 Peak Drive, Suite 150B
Las Vegas, Nevada 89128

with copy to:
Deborah Nelson
Givens Pursley LLP
601 West Bannock St
Boise, Idaho 83702

13.1 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.

14. **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.

15. **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.

16. **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/Developer have fully performed their obligations under this Agreement.

17. **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.

18. **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.

19. **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.

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 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 authorize execution by 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/DEVELOPER:
MB Overland Wells, LLC**

Ari Steinberg
By: Ari Steinberg
Its: Manager

CITY OF MERIDIAN

ATTEST:

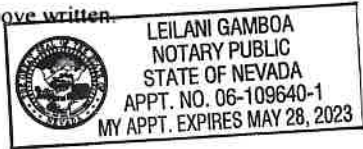
By: _____
Mayor Robert E. Simison

Chris Johnson, City Clerk

STATE OF NEVADA)
County of Clark : ss)

On this 20 day of July, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Ari Steinberg known or identified to me to be the manager of MB Overland Wells, LLC, and 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.



[Signature]
Notary Public for State of Nevada
Residing at: 7301 Pearl Drive #150 Las Vegas NV 89128
My Commission Expires 5.28.2023

STATE OF IDAHO)
County of Ada : ss)

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: _____

Exhibit A
Property Description

A parcel of land located in the SW 1/4 of the SE 1/4 Section 17, Township 3 North, Range 1 East, Boise Meridian, Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at the S1/4 corner of said Section 17 from which the SE corner of said Section 17 bears North 89°46'00" East, 2656.88 feet;

thence North 00°24'05" East, 45.00 feet to the SE corner of Destination Place Subdivision filed in Book 93 of Plats at Pages 11190 through 11192, records of Ada County, Idaho, said point also being on the North right-of-way line of E. Overland Road;

thence along said North right-of-way line the following 4 courses and distances:

thence North 89°46'00" East, 597.70 feet;

thence North 45°33'34" East, 28.68 feet;

thence North 00°24'05" East, 11.58 feet;

thence North 89°59'52" East, 71.96 feet to the **REAL POINT OF BEGINNING**;

thence leaving said North right-of-way line North 00°24'05" East, 1134.59 feet to a point on the southerly right-of-way line of Interstate 84;

thence along said southerly right-of-way line the following 2 courses and distances:

thence 633.16 feet along the arc of a non-tangent curve to the right, said curve having a radius of 1,809.86 feet, a central angle of 20°02'39" and a long chord of 629.93 feet which bears South 74°09'06" East;

thence South 64°07'46" East, 23.82 feet to a point on the West boundary line of Overland Way Subdivision filed in Book 46 of Plats at Pages 3798 and 3799, records of Ada County, Idaho;

thence along said West boundary line South 00°08'32" East, 980.83 feet to a point on the North right-of-way line of E. Overland Road;

thence along said North right-of-way line the following 4 courses and distances:

thence South 89°46'00" West, 600.41 feet

thence North 41°30'26" West, 29.30 feet;

thence North 00°24'05" East, 9.19 feet;

thence South 89°59'52" West, 18.04 feet to the **REAL POINT OF BEGINNING**
Containing 15.875 acres, more or less.



**Exhibit B
Findings**

[attached]