

## ADDENDUM TO DEVELOPMENT AGREEMENT

- PARTIES:**
1. **City of Meridian**
  2. **Kimball Properties Ltd Partnership, Owner**
  3. **Alturas Capital Partners, Developer**

THIS ADDENDUM TO DEVELOPMENT AGREEMENT is dated this 9 day of September, 2022, (“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 **Kimball Properties Ltd Partnership** (“OWNER”), whose address is c/o W H Moore, P.O. Box 8204, Boise, Idaho 83707, and **Alturas Capital Partners** (“DEVELOPER”), whose address is 500 E. Shore Dr. Ste. 120, Eagle, Idaho 83616.

### RECITALS

A. OWNER/DEVELOPER has submitted an application for a Modification to the Development Agreement recorded September 2, 2005 as Instrument #105127512 in Ada County Records, and subsequently amended with a Modification to the original Development Agreement and recorded as Instrument #2017-007434, for the purpose of including residential care facilities as an allowed use on the site. The Meridian City Council approved said application with Findings of Fact and Conclusions of Law as in the attached Exhibit “A.”

B. CITY and OWNER/DEVELOPER now desire to amend said 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/DEVELOPER shall be bound by the terms of the Development Agreement recorded as Instrument #105127512 and Modification to Development Agreement recorded as Instrument #2017-007434, except as specifically amended as follows:

- a. Provision 5.1.6 is amended as follows: *Allowed uses are restaurant, retail, hotel, banks, office, and residential care facilities.*

2. That Owner/Developer agrees to abide by all ordinances of the City of Meridian and the Property shall be subject to de-annexation if the Owner/Developer, or their assigns, heirs, or successor shall not meet the conditions of this Addendum, and the Ordinances of the City of Meridian as herein provided.

3. This 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/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/Developer, to execute appropriate and recordable evidence of termination of this Addendum if City, in its sole and reasonable discretion, had determined that Owner/Developer have fully performed its obligations under this Addendum.

4. If any provision of this Addendum is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Addendum and the invalidity thereof shall not affect any of the other provisions contained herein.

5. This Addendum sets forth all promises, inducements, agreements, condition, and understandings between Owner/Developer and City relative to the subject matter herein, 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 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 Addendum shall be effective as of the date herein above written.

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

ACKNOWLEDGMENTS

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

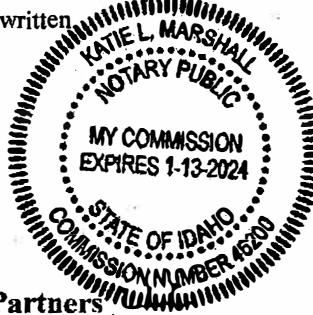
OWNER:
Kimball Properties Ltd Partnership

By [Signature]
Authorized Representative

STATE OF IDAHO )
) ss.
County of Ada )

On this 15th day of September, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeff Moore, known or identified to me to be the Authorized Representative of Kimball Properties Ltd Partnership and the person who signed above 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.



[Signature]
Notary Public for Idaho
Commission expires: 01-13-2024

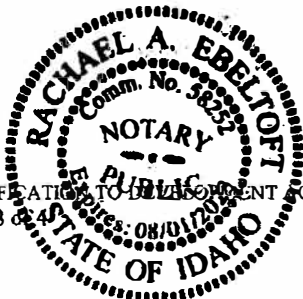
DEVELOPER:
Alturas Capital Partners

[Signature]

STATE OF IDAHO )
) ss.
County of Ada )

On this 9th day of September, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Devin Morris, known or identified to me to be the COO of Alturas Capital Partners and the person who signed above 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.



[Signature]
Notary Public for Idaho
Commission expires: 08/01/2023

**CITY OF MERIDIAN**

Attest:

\_\_\_\_\_  
Mayor Robert E. Simison

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

STATE OF IDAHO     )  
                              : ss  
County of Ada        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, known or identified to me to be the Mayor and City 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  
My Commission Expires: \_\_\_\_\_

# EXHIBIT A

**CITY OF MERIDIAN  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION & ORDER**



**In the Matter of the Request for Modification to the Existing Development Agreement (AZ-05-019 Dorado Subdivision – Inst. #105127512) to Include Residential Care Facilities as an Allowed Use on the Site, by Hatch Design Architecture.**

**Case No(s). H-2022-0044**

**For the City Council Hearing Date of: August 9, 2022 (Findings on August 23, 2022)**

**A. Findings of Fact**

1. Hearing Facts (see attached Staff Report for the hearing date of August 9, 2022, incorporated by reference)
2. Process Facts (see attached Staff Report for the hearing date of August 9, 2022, incorporated by reference)
3. Application and Property Facts (see attached Staff Report for the hearing date of August 9, 2022, incorporated by reference)
4. Required Findings per the Unified Development Code (see attached Staff Report for the hearing date of August 9, 2022, incorporated by reference)

**B. Conclusions of Law**

1. The City of Meridian shall exercise the powers conferred upon it by the “Local Land Use Planning Act of 1975,” codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. The Meridian City Council takes judicial notice of its Unified Development Code codified as Title 11 Meridian City Code, and all current zoning maps thereof. The City of Meridian has, by ordinance, established the Impact Area and the Comprehensive Plan of the City of Meridian, which was adopted December 17, 2019, Resolution No. 19-2179 and Maps.
3. The conditions shall be reviewable by the City Council pursuant to Meridian City Code § 11-5A.
4. Due consideration has been given to the comment(s) received from the governmental subdivisions providing services in the City of Meridian planning jurisdiction.
5. It is found public facilities and services required by the proposed development will not impose expense upon the public if the attached conditions of approval are imposed.
6. That the City has granted an order of approval in accordance with this Decision, which shall be signed by the Mayor and City Clerk and then a copy served by the Clerk upon the applicant, the Community Development Department, the Public Works Department and any affected party requesting notice.

7. That this approval is subject to the Conditions of Approval all in the attached Staff Report for the hearing date of August 9, 2022, incorporated by reference. The conditions are concluded to be reasonable and the applicant shall meet such requirements as a condition of approval of the application.

#### C. Decision and Order

Pursuant to the City Council's authority as provided in Meridian City Code § 11-5A and based upon the above and foregoing Findings of Fact which are herein adopted, it is hereby ordered that:

1. The applicant's request for a modification to the development agreement is hereby approved per the provisions in the Staff Report for the hearing date of August 9, 2022, attached as Exhibit A.

#### D. Notice of Applicable Time Limits

##### Notice of Development Agreement Duration

The city and/or an applicant may request a development agreement or a modification to a development agreement consistent with Idaho Code section 67-6511A. The development agreement may be initiated by the city or applicant as part of a request for annexation and/or rezone at any time prior to the adoption of findings for such request.

A development agreement may be modified by the city or an affected party of the development agreement. Decision on the development agreement modification is made by the city council in accord with this chapter. When approved, said development agreement shall be signed by the property owner(s) and returned to the city within six (6) months of the city council granting the modification.

A modification to the development agreement may be initiated prior to signature of the agreement by all parties and/or may be requested to extend the time allowed for the agreement to be signed and returned to the city if filed prior to the end of the six (6) month approval period.

#### E. Judicial Review

Pursuant to Idaho Code § 67-6521(1)(d), if this final decision concerns a matter enumerated in Idaho Code § 67-6521(1)(a), an affected person aggrieved by this final decision may, within twenty-eight (28) days after all remedies have been exhausted, including requesting reconsideration of this final decision as provided by Meridian City Code § 1-7-10, seek judicial review of this final decision as provided by chapter 52, title 67, Idaho Code. This notice is provided as a courtesy; the City of Meridian does not admit by this notice that this decision is subject to judicial review under LLUPA.

#### F. Notice of Right to Regulatory Takings Analysis

Pursuant to Idaho Code §§ 67-6521(1)(d) and 67-8003, an owner of private property that is the subject of a final decision may submit a written request with the Meridian City Clerk for a regulatory takings analysis.

#### G. Attached: Staff Report for the hearing date of August 9, 2022

By action of the City Council at its regular meeting held on the 23rd day of August, 2022.

COUNCIL PRESIDENT BRAD HOAGLUN VOTED AYE

COUNCIL VICE PRESIDENT JOE BORTON VOTED AYE


COUNCIL MEMBER JESSICA PERREAULT VOTED AYE

COUNCIL MEMBER LUKE CAVENER VOTED AYE


COUNCIL MEMBER TREG BERNT VOTED \_\_\_\_\_


COUNCIL MEMBER LIZ STRADER VOTED AYE

MAYOR ROBERT SIMISON VOTED \_\_\_\_\_  
(TIE BREAKER)

  
\_\_\_\_\_  
Mayor Robert E. Simison 8-23-2022

Attest:

  
\_\_\_\_\_  
Chris Johnson 8-23-2022  
City Clerk



Copy served upon Applicant, Community Development Department, Public Works Department and City Attorney.

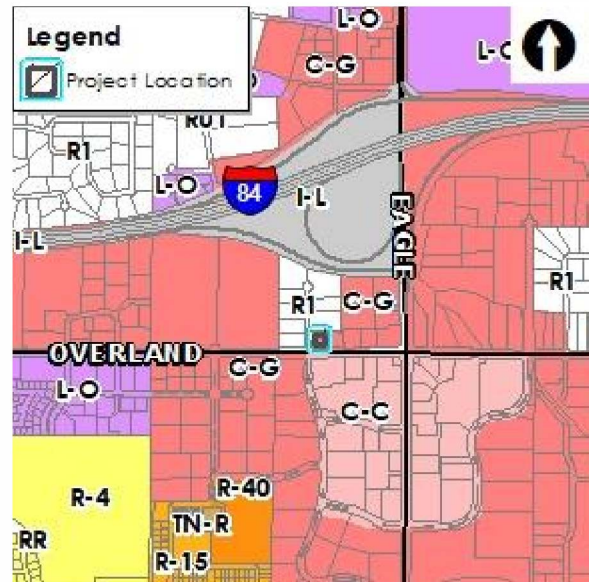
By:   
\_\_\_\_\_  
City Clerk's Office

Dated: 8-23-2022

**STAFF REPORT**  
**COMMUNITY DEVELOPMENT DEPARTMENT**



HEARING DATE: August 9, 2022  
 TO: Mayor & City Council  
 FROM: Sonya Allen, Associate Planner  
 208-884-5533  
 SUBJECT: H-2022-0044  
 Brightstar Overland (aka Dorado Subdivision)  
 LOCATION: 2940 E. Overland Rd., in the SE 1/4 of Section 17, T.3N., R.1E.



**I. PROJECT DESCRIPTION**

Modification to the existing Development Agreement (AZ-05-019 Dorado Subdivision – Inst. #105127512) to include residential care facilities as an allowed use on the site.

**II. SUMMARY OF REPORT**

A. Applicant:

Steve Thiessen, Hatch Design Architecture – 200 W. 36<sup>th</sup> St., Garden City, ID 83714

B. Owner:

Devin Morris, Alturas Capital Partners – 500 E. Shore Dr., Ste. 120, Eagle, ID 83616

C. Representative:

Jeff Hatch, Hatch Design Architecture – 200 W. 36<sup>th</sup> St., Garden City, ID 83714

**III. NOTICING**

	<b>City Council Posting Date</b>
Notification published in newspaper	7/24/2022
Notification mailed to property owners within 300 feet	7/22/2022
Applicant posted public hearing notice on site	7/29/2022



#### IV. STAFF ANALYSIS

The existing Development Agreement (DA) (AZ-05-019 Dorado Subdivision – Inst. #[105127512](#), amended with H-2016-0131 – Inst. #[2017-007434](#)) is proposed to be amended to include residential care facilities as an allowed use on the site (Lot 1, Block 1, Dorado Subdivision). This will be the second addendum/modification to this DA.

A provision (#5.1.6) of the original DA limits uses within the overall Dorado Subdivision to restaurant, retail, hotel, banks and office uses. The applicant proposes to amend this provision to include residential care facilities as an allowed use. Per UDC [Table 11-2B-2](#), residential care facilities are listed as a conditional use in the C-G zoning district and are subject to the specific use standards listed in UDC [11-4-3-29](#). Approval of the proposed modification to the DA will allow the Applicant to submit a conditional use permit application for the proposed use and proceed forward with development if approved.

Single-family residential uses exist to the north of this site and across S. Loder Pl. to the west in Overland Way subdivision. Due to the residential nature of the proposed use, Staff is of the opinion it would be an appropriate use adjacent to existing residential uses. Therefore, Staff is supportive of the proposed amendment to provision #5.1.6 of the DA, as follows: “Allowed uses are restaurant, retail, hotel, banks, ~~and office~~, and residential care facilities.”

#### V. DECISION

##### A. Staff:

Staff recommends approval of the modification to the DA with the change noted above in Section IV.

##### C. The Meridian City Council heard this item on August 9, 2022. At the public hearing, the Council moved to approve the subject MDA request.

##### 1. Summary of the City Council public hearing:

- a. In favor: Jeff Hatch
  - b. In opposition: None
  - c. Commenting: None
  - d. Written testimony: Jeff Hatch
  - e. Staff presenting application: Sonya Allen
  - f. Other Staff commenting on application: None
2. Key issue(s) of public testimony:
    - a. None
  3. Key issue(s) of discussion by City Council:
    - a. None
  4. City Council change(s) to Commission recommendation:
    - a. None