

## DEVELOPMENT AGREEMENT

- PARTIES:**
1. **City of Meridian**
  2. **Brighton Ustick, LLC, Owner/Developer**
  3. **Alturus Ustick, LLC, Owner/Developer**

THIS DEVELOPMENT AGREEMENT (this Agreement), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 **Brighton Ustick, LLC**, whose address is 2929 W. Navigator Drive, Suite 400, Meridian, ID 83642 and **Alturus Ustick, LLC**, whose address is 500 E. Shore Drive, #120, Eagle, Idaho 83616 hereinafter called **OWNER/DEVELOPER**.

1. **RECITALS:**

- 1.1 **WHEREAS**, Owners are the sole owners, 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/Developer has submitted an application for a modification of an existing Development Agreement (Instrument # 2016-097989) for the purpose of incorporating a new concept plan consisting of commercial and residential uses on the property as shown 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 rezoning 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 21<sup>th</sup> day of December, 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 “D”; 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**, The Property contained in Exhibit “A” shall no longer be subject to the terms of the existing Development Agreement (Inst. # 2016-097989) or any prior development agreement and shall be bound only by the terms contained in this 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 **Brighton Ustick, LLC**, whose address is 2929 W. Navigator Drive, Suite 400, Meridian, ID 83642 and **Alturus Ustick, LLC**, whose address is 500 E. Shore Drive, #120, Eagle, ID 83616 hereinafter called OWNER/DEVELOPER, the party that owns and is developing said Property and shall include any subsequent owner(s) and/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 in Exhibit "A" describing a parcel to 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 the subject site shall be substantially consistent with the conceptual development plan, conceptual rendering, conceptual elevations, and provisions contained herein.
- b. Direct lot access to W. Ustick Road is prohibited, as shown on the submitted conceptual development plans.
- c. A cross-access easement shall be granted to the property abutting the southwest property boundary (Parcel# S0436346613). A copy of the recorded easement shall be submitted to the Planning Division prior to issuance of Certificate of Occupancy for the western commercial pad site OR when parcel S0436346613 develops, whichever occurs first.
- d. An additional north-south pedestrian connection to the proposed east-west drive aisle shall be added in the west half of the residential site with the future conditional use permit application for added pedestrian connectivity.
- e. Future development shall comply with the design standards listed in the Architectural Standards Manual; future commercial structures shall incorporate similar architectural themes and elements as the residential portion of the project for consistency.
- f. A conditional use permit is required to be submitted and approved by the Planning and

Zoning Commission for the proposed multi-family development in the C-C zoning district as set forth in UDC Table 11-2B-2. The proposed use is subject to the specific use standards listed in UDC 11-4-3-27 Multi-Family Development.

- g. A maximum of 57 multi-family units and a minimum of two commercial buildings shall be constructed on the subject site per the submitted concept plans.
- h. A Certificate of Zoning Compliance and administrative Design Review applications shall be reviewed and approved by the Planning Division prior to submittal of any building permit application(s).
- i. The Applicant shall be allowed to obtain no more than two (2) buildings permits for the commercial portion of the site prior to any subdivision of the property.

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.** 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 from City as described in Section 7.2, City shall, upon satisfaction of the notice and hearing procedures set forth in Idaho Code section 67-6511A, have the right, but not a duty, to de-annex all or a portion of the Property, reverse the zoning designations described herein, and terminate City services to the de-annexed Property, including water service and/or sewer service. Further, City shall have the right to file an action at law or in equity to enforce the provisions of this Agreement. Because the covenants, agreements, conditions, and obligations contained herein are unique to the Property and integral to City's decision to annex and/or re-zone the Property, City and Owner/Developer stipulate that specific performance is an appropriate, but not exclusive, remedy in the event of default. Owner/Developer reserves all rights to contest whether a default has occurred.

- 7.4 **Choice of Law and Venue.** This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Idaho, including all matters of construction, validity, performance, and enforcement. Any action brought by any party hereto shall be brought within Ada County, Idaho.
- 7.5 **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.
- 7.6 **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 Owner/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 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/DEVELOPER:**  
**Brighton Ustick, LLC**  
2929 W. Navigator Drive, Suite 400  
Meridian, ID 83642

**OWNER/DEVELOPER:**  
**Alturus Ustick, LLC**  
500 E. Shore Drive, #120  
Eagle, ID 83616

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 Owner/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.

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; acknowledgements, signatures and Exhibits A and B follow]

### ACKNOWLEDGMENTS

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

**OWNERS/DEVELOPER:**  
Brighton Ustick, LLC, an Idaho  
Limited Liability Company

  
By: Robert L. Phillips, Manager

**OWNER/DEVELOPER:**  
Alturus Ustick, LLC, an Idaho  
Limited Liability Company

  
By: Travis Barney, Manager

**CITY OF MERIDIAN**

**ATTEST:**

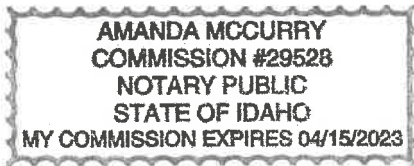
By: \_\_\_\_\_  
Mayor Robert E. Simison

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

STATE OF IDAHO )  
 : ss:  
County of Ada )

On this 13<sup>th</sup> day of January, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert L. Phillips known or identified to me to be the Manager of Brighton Ustick, LLC. and the person who signed above and acknowledged to me that he executed the same on behalf of said 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.

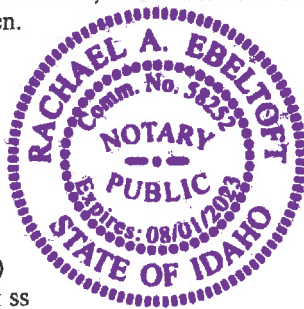


Amanda McCurry  
Notary Public for Idaho  
Residing at: Star  
My Commission Expires: 4/15/2023

STATE OF IDAHO )  
 : ss:  
County of Ada )

On this 18<sup>th</sup> day of January, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Travis Barney known or identified to me to be the Manager of Alturus Ustick, LLC. and the person who signed above and acknowledged to me that he executed the same on behalf of said 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.



Rachael A. Ebeltoft  
Notary Public for Idaho  
Residing at: Meridian, Idaho  
My Commission Expires: 08/01/2023

STATE OF IDAHO )  
 : ss:  
County of Ada )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_