

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
WHITENER REZONE- PLANNED UNIT DEVELOPMENT**

This Amended and Restated Development Agreement ("Agreement") is entered into by and between the City of Star, a municipal corporation in the State of Idaho, hereinafter referred to as "City", and 10206 West State Street, LLC, hereinafter referred to as "Owner" and "Developer".

WHEREAS, Owner owns a parcel of land of approximately 4.77 acres in size, currently located within the City of Star, zoned CBD and more particularly described in **Exhibit A** of Ordinance 328, which is attached hereto and incorporated by reference herein (the "Property");

WHEREAS, Developer has recently purchased the Property and is the applicant in connection with City of Star File Number DA-20-16-MOD, seeking a development agreement modification approval for the Property.

WHEREAS, on July 28, 2020, the Property was rezoned CBD-PUD-DA and made subject to that certain Development Agreement, dated February 9, 2020 between City and Philip D. Whitener and Mary Jo Prather, husband and wife, recorded on February 10, 2020 as Instrument No. 2021-022614 in the office of the Ada County Recorder ("**Original Development Agreement**");

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, and Star City Code at Title 8, Chapter 1, has the authority to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, and for a specific purpose or use and with specific approved design and dimensional standards;

WHEREAS, the City has authority to enter into development agreements to condition annexations and re-zones;

WHEREAS, it is the intent and desire of the parties hereto to proceed with development of the Property in accordance with this Agreement, which the parties agree will fully amend and replace the Original Development Agreement;

WHEREAS, the intent of this Agreement is to protect the rights of Owner's and Developer's use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City Ordinances;

THEREFORE, for and in consideration of the mutual covenants, duties and obligations herein set forth, the parties hereby agree as follows:

Section 1. Legal Authority. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Star City Code, Title 8, Chapter 1.

Section 2. Development/Uses/Standards.

2.1 Development Acreage and Number of Residential Dwelling Units Permitted.

As part of the Planned Unit Development Site Plan shown as **Exhibit B**, Owner is allowed to develop 4.77 acres as follows:

- Zoning Classification: The zoning classification shall be a CBD-PUD-DA.
- A maximum of **30** residential dwelling units is approved under this Agreement.
- The Developer shall comply with all city ordinances relating to the Whitener property and Planned Unit Development, except as otherwise provided herein.

2.2 Site Design. The **revised** conceptual plan, as set forth in **Exhibit B**, is hereby approved. The development shall include a total of two (2) amenities within the residential portion of the project. The future preliminary plat shall include a substantial open space buffer of at least 12,700 square feet **along the northern boundary of the property.**

2.3 Residential Uses. The development is hereby approved for up to **30** single-family attached or detached units.

2.4 Public Collector Roadway. The Developer shall construct a public east-west collector roadway built to ACHD standards. The roadway meets the intent of the City of Star adopted ECAMP transportation corridor map.

2.5 Development Ratio. ~~The development shall be allowed to construct no more than 50% of the residential portion of the project until the two (2) commercial buildings are constructed along W. State Street as indicated on the conceptual plan.~~

2.6 Setbacks and Dimensional Standards. The development shall comply with the following approved setbacks and dimensional standards:

- Commercial Uses – Current CBD Zoning Standards
- Minimum Residential Lot Frontage: 30 feet
- Front Setbacks (Measured from the back of sidewalk or property line): 20 feet for garage; 10' Living Area
- Rear Setbacks: 20 feet or 5' maximum for alley loaded garages;
- Interior Setbacks: **5' side for detached,** 0' feet (for zero-lot lines) ~~or 3' per story for detached~~
- Local Street Side Setbacks: 20 feet
- Maximum Building Height: 35 feet

2.8 Additional Requirements.

- **Commercial buildings shall meet the design goals of the newly established Architectural Overlay District guidelines in the CBD.**
- **Commercial building area shall include a minimum overall size of 33,300 Sq. Ft.**

- **Residential Units adjacent to 1st Street shall be Live/Work and will have office/storefront entrances facing 1st Street,**
- **Commercial building(s) adjacent to W. State Street shall start development in Phase 1. This does not preclude submission and approval of the residential preliminary plat, however, final plat shall not be signed until commercial development in Phase 1 has started construction.**

2.9 Proportionate Share Agreement for ITD Improvements. Developer has agreed to participate in the costs of construction or improvements to the portions of the State Highway System within the City of Star and/or City of Star Area of City Impact. The Developer will pay the traffic mitigation fee determined by the Idaho Transportation Department as uses are proposed and development applications are reviewed. The City will allocate the funds to roadway improvements in the vicinity of the project. The Developer shall pay this amount (unless otherwise revised by ITD) directly to the City of Star. The City will maintain this contribution in a specific Development Contributions account, to be distributed to ITD when requested for use with a specific Idaho Transportation Improvement Plan (ITIP) project within the City of Star Area of City Impact or City Limits in accordance with the terms of the Intergovernmental Agreement between the Idaho Transportation Department and the City of Star dated April 22, 2020.

2.10 Participation in Seneca Springs Traffic Signal. The owner shall participate in the cost of the future traffic signal located at the intersection of W. State Street and N. Seneca Springs Way. The owners share for this development shall not exceed \$25,000.00. Payment shall be made to the City prior to occupancy of the first building on the property. The owner may request phasing of the payment to coincide with the development phases of the development.

2.11 Changes and Modifications. No change in the use or restrictions specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Star City Ordinances. In the event Owner changes or expands the uses permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Star City Ordinances, Owner shall be in default of this Agreement.

2.12 Final Design Review. The developer shall receive design review and/or preliminary plat approval from the City for each phase of the Development Plan.

2.13 Commencement of Construction and/or Subdivision. The Developer shall commence construction of the Commercial and/or Residential development and Subdivision of the property within 5 years of the effective date of this Agreement. In the event the Developer fails to commence construction within the time periods herein stated, the Developer shall be in default of this Agreement.

Section 3. Conditions, Bonding for Completion. All of the conditions set forth herein shall be complied with or shall be bonded for completion before an Occupancy permit will be granted. Failure to comply with the Star City Ordinances or the terms of this Agreement shall

result in a default of this Agreement. Owner or Developer may be allowed to bond for certain conditions at one hundred and fifty percent (150%) of the estimated cost of completion pursuant to Star City Ordinances.

Section 4. Default. The failure of Owner, its heirs or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, to faithfully comply with any of the terms and conditions of this Agreement shall be deemed a default herein. This Agreement may be modified or terminated by the Star City Council as set forth in the Star City Ordinances. In the event this Agreement is modified, Owner shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Star City Ordinances, determines that this Agreement shall be terminated, the zoning of the Property or portion thereof that has not been developed in accordance with this Agreement shall revert its prior zoning designation. All uses of such property, which are not consistent with the prior zoning designation, shall cease. A waiver by the City of Star for any default by Owner of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions. Owner, by entering into this Agreement, do hereby consent to a reversion of the subject property to its prior zoning designation in the event there is a default in the terms and/or conditions of this Agreement.

Section 5. Unenforceable Provisions. If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of the instrument shall remain in full force and effect.

Section 6. Assignment and Transfer. After its execution, this Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property and shall run with the land. This Agreement shall be binding on the City and Owner, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns: provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

Section 7. General Matters.

7.1 Amendments. Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67- 6509, as required by Star City Code.

7.2 Paragraph Headings. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only

and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

7.3 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

7.4 Notices. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Star: City of Star
 Attn: City Clerk
 P.O. Box 130
 Star, ID 83669

Owner/Developer: 10206 West State Street LLC
 Evan McLaughlin
 2001 N. 20th Street
 Boise, Idaho 83702

7.5 Effective Date. This Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of this Agreement.

7.6 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 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.

[end of text; signatures and exhibits follow]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the day and year set forth below.

Dated this _____ day _____, 2021.

CITY OF STAR

By: _____
Trevor A. Chadwick, Mayor

ATTEST:

Jacob M. Qualls, City Clerk

