

MEMORANDUM OF UNDERSTANDING

IDAHO FALLS REDEVELOPMENT AGENCY

THIS MEMORANDUM OF UNDERSTANDING is entered into by and between the Urban Renewal Agency of the City of Idaho Falls, Idaho, also known as and doing business under the style of the Idaho Falls Redevelopment Agency, an independent public body, corporate and politic of the state of Idaho (hereinafter the “Agency”), and Middle R Holdings, LLC, an Idaho limited liability company (hereinafter the “Developer”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of and pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended and supplemented (the “Law”), as duly established and created by the Idaho Falls City Council pursuant to the City Council Resolution adopted on July 6, 1966;

WHEREAS, the Agency is authorized to provide certain funding as defined in the Local Economic Development Act, Title 50, Chapter 29, as amended and supplemented (the “Act”);

WHEREAS, the City Council of the City of Idaho Falls (the “City”), on October 14, 2004, after notice duly published, conducted a public hearing on the River Commons Urban Renewal Plan (the “River Commons Plan”);

WHEREAS, following said public hearing, the City Council adopted its Ordinance No. 2256 on October 14, 2004, approving the River Commons Plan and making certain findings;

WHEREAS, the City Council, on December 11, 2014, after notice duly published conducted a public hearing on the Urban Renewal Plan for the Eagle Ridge Urban Renewal Project (the “Eagle Ridge Plan”);

WHEREAS, following said public hearing, the City Council adopted its Ordinance No. 2978 on December 11, 2014, approving the Eagle Ridge Plan and making certain findings;

WHEREAS, the City Council, on November 9, 2017, after notice duly published conducted a public hearing on the Urban Renewal Plan for the Jackson Hole Junction Urban Renewal Project (the “Jackson Hole Junction Plan”);

WHEREAS, following said public hearing, the City Council adopted its Ordinance No. 3142 on November 9, 2017, approving the Jackson Hole Junction Plan and making certain findings;

WHEREAS, the City Council, on November 10, 2022, after notice duly published conducted a public hearing on the Urban Renewal Plan for the Pancheri East Bank Urban Renewal Project (the “Pancheri East Bank Plan”); and

WHEREAS, following said public hearing, the City Council adopted its Ordinance No. 3492 on November 10, 2022, approving the Pancheri East Bank Plan and making certain findings;

WHEREAS, the Developer has approached the Agency Board to discuss the possibility of examining certain properties located generally along Northgate Mile, bordered by the Union Pacific Railroad on the west, Holmes Avenue on the east, College Street on the north and Cleveland Street on the south (the “Study Area”) for inclusion within a new urban renewal/revenue allocation area, which is depicted on Exhibit A, attached hereto;

WHEREAS, Developer owns or controls certain parcels within the boundaries of the Study Area;

WHEREAS, Developer has requested the Agency retain a consultant to determine the eligibility of the Study Area for an urban renewal project pursuant to Idaho Code § 50-2008(a) (the “Eligibility Report”), and if deemed eligible, the Agency Board may recommend that such Eligibility Report be approved, and forward the Eligibility Report to the City Council for its consideration and approval;

WHEREAS, in order to commence and complete the Eligibility Report and other planning activities, the Agency is in need of funds to pay for costs and expenses related to the preparation and approval of the Eligibility Report by the Agency and the City Council, along with funds to complete the process of developing and approving the urban renewal plan (the “Anticipated Urban Renewal Plan”) through City Council approval and statutory filings;

WHEREAS, the Developer is interested in developing a portion of the Study Area;

WHEREAS, the Developer has offered to provide to the Agency advance funding of costs and expenses in order to complete the Eligibility Report process;

WHEREAS, if the Study Area is deemed eligible, the Developer has also offered to provide to the Agency advance funding of costs and expenses for the preparation of the Anticipated Urban Renewal Plan;

WHEREAS, the Agency and Developer desire to analyze several development opportunities within the proposed new urban renewal/revenue allocation area in order to accommodate the objectives of the Developer and goals of the Agency, including, but not limited to, light manufacturing, commercial, retail, multi-family residential, office, mixed-use facilities, certain public improvements, including improvements to rights-of-way, public utilities and public open spaces;

WHEREAS, the Parties seek to memorialize several business points relating to the drafting, consideration, and adoption of the Eligibility Report and the Anticipated Urban Renewal Plan and the potential uses by the Developer of certain properties within the urban renewal area and to continue discussions to reach an acceptable agreement regarding the use and ownership of those certain properties;

NOW, THEREFORE, LET IT BE UNDERSTOOD AS FOLLOWS:

AGREEMENTS

1. For purposes of this Memorandum of Understanding (“MOU”) the costs for which the Agency seeks funding are generally the retention and cost of the consultant to review the Study Area and preparation of the Eligibility Report, and if the Study Area is deemed eligible, the costs of processing the approval of the Eligibility Report. Additionally, the Agency seeks funding for the costs to prepare the Anticipated Urban Renewal Plan and any costs related to processing the approval of the Anticipated Urban Renewal Plan. A more specific description of the advance-funded costs is set forth in Paragraphs 6 and 7.

2. The effective date of this MOU shall be the date last executed by the Agency and the Developer and shall continue for a period of twelve (12) months, unless extended in writing by mutual agreement of the Parties. This MOU shall terminate prior to the expiration of the twelve (12) month period if the Eligibility Report or Anticipated Urban Renewal Plan is not adopted by the City Council; however, the Developer shall pay all fees and costs incurred to the termination date.

3. This MOU does not constitute a disposition of property or exercise of control over property by the Agency or Developer and does not require a public hearing. Execution of this MOU by the Parties is an expression of the Parties’ understanding of certain terms and conditions, which may be included within a proposed agreement, reserving final discretion and approval by the Agency and Developer as to any agreement and all proceedings and decisions in connection therewith.

4. The Parties intend to enter into an acceptable Owner-Participation Agreement, which will provide, *inter alia*, for the future development of certain properties within the Anticipated Urban Renewal Plan area now under the ownership and control of the Developer or properties upon which the Developer has an interest or option rights. The Parties intend to enter into such Owner-Participation Agreement within ninety (90) days of the formal adoption of the City Council Ordinance approving the Anticipated Urban Renewal Plan for the geographical area under consideration for an urban renewal project.

5. Developer acknowledges and accepts that any funds advanced by the Developer may never be reimbursed should the Anticipated Urban Renewal Plan not be adopted and approved by the City Council.

6. **Eligibility Report.** Developer agrees to provide funding in the estimated total amount of \$8,000 to facilitate the preparation, consideration, and ultimate adoption of the

Eligibility Report. This funding includes any consultant fees, allocated expenses of City planning staff and City public works, and attorney's fees and costs. Developer shall tender and deliver said amount to the Agency as follows:

- A. An amount of \$5,000 is due upon the effective date of this MOU.
- B. Any balance due and owing on the date of City Council action on the Eligibility Report.

7. **Anticipated Urban Renewal Plan.** In the event of approval of the Eligibility Report by the City Council, Developer agrees to provide funding in the additional estimated total amount of \$27,000 to prepare the Anticipated Urban Renewal Plan for consideration and ultimate adoption by the Agency Board and the City Council and to negotiate the Owner-Participation Agreement and proceed with the financing of certain public improvements as may be identified in the Anticipated Urban Renewal Plan. This funding includes any consultant fees and attorney's fees and costs along with allocated expenses of City planning staff, City public works, and mapping/engineering services. Developer shall tender and deliver said amount to the Agency as follows, in addition to the amounts set forth in Paragraph 5:

- A. An amount of \$20,000 within seven (7) days of City Council approval of the Eligibility Report.
- B. Any balance due and owing within sixty (60) days after the payment made in Paragraph 7A.

Such funds as set forth in Paragraphs 6 and 7 shall be delivered to the Agency as directed by the Agency Board. Agency agrees to provide an accounting of said funds to the Developer describing the activities for which those funds have been used. Those funds shall be used for the purpose of funding the preparation, consideration, and development of the Eligibility Report and the Anticipated Urban Renewal Plan, including the costs of any consultants and attorneys retained by the Agency, allocated City expenses, and other administrative costs, including insurance, publication costs, and other lawful expenses authorized by the Act or the Law, for negotiation of the Owner-Participation Agreement, proceeding with the placement of financing, and for any other lawful purpose.

The amounts set forth in this section do not include any surveying or mapping costs. Agency and Developer agree that surveying or mapping costs shall include the mapping and surveying costs related to the Anticipated Urban Renewal Plan. It is further agreed that any surveying or mapping costs as described will be the responsibility of the Developer unless such tasks are accepted by the City. Such costs may be considered as reimbursable expenses in the Owner Participation Agreement to be paid from the incremental tax revenues generated from the revenue allocation project area.

8. If payments are not timely made as set forth in Paragraphs 6 and 7, then the Agency will not be obligated to complete the tasks set forth therein. Further, should the Agency or City Council in its discretion fail to approve and/or adopt the Eligibility Report or the

Anticipated Urban Renewal Plan, the Developer shall pay for all costs as set forth in Paragraphs 6 and 7 incurred to the date of Agency and/or City Council action. Developer may halt or terminate efforts to advance the urban renewal project at any time and, upon Developer's notice, Agency will promptly refund to Developer any unspent funds previously advanced by the Developer.

9. Without infringing upon the Parties' ability to negotiate acceptable terms of an Owner-Participation Agreement, the Parties agree to address the following issues:

- A. The phasing of the Developer's project, the public improvements required for each phase, and the use of the property.
- B. The authority of the Developer to undertake the construction of the public improvements and compliance with all applicable public bidding laws and review by the Agency, using City or other resources, of the proposed construction costs.
- C. Joint cooperation by the Developer and Agency to obtain approval from other governmental entities.
- D. The ability of the Developer to assign its interest to another qualified developer. An example of a qualified developer would be any limited partnership or limited liability company with Developer (or its affiliate) as the entity's general partner or managing member.
- E. Formal submission of Developer's marketing and finance plan for the revenue allocation area, quantifying and providing evidence of the anticipated private development, and the generation of revenue allocation funds.
- F. Agreement on the amount of revenue allocation committed to the Developer's project, the appropriate percentage of revenue allocation for each year or by phase, determination of the eligibility of the public improvements, the process for determining the reasonableness and verification of the cost of the improvements, the sign off or approval of expenditures and other like subjects, the number of years of revenue allocation commitment, the terms of payment including frequency, amount, and other financial terms, economic development objectives to be achieved, leveraging of revenue allocation proceeds, and other sources of funds.

Both Parties acknowledge the discretion of Agency and Developer in terms of entering into such Owner-Participation Agreement.

10. Agency and Developer agree to pursue funding sources for the purpose of financing the contemplated development activities under the Anticipated Urban Renewal Plan, including property acquisition, demolition, planning costs, appraisal costs, and other public improvements. Agency and Developer agree to cooperate in any application process for such funds including applications for bank financing. Developer agrees to consider, if necessary to

obtain such financing, to defer any reimbursement of Developer's costs by Agency until the financing is formally approved and the closing of such loan transaction. The Parties agree that all funds advanced by Developer pursuant to this MOU or for any other interim financing provided by Developer for the proposed urban renewal project are reimbursable expenses from revenue allocation funds from the new urban renewal/revenue allocation area, if formed.

11. The Anticipated Urban Renewal Plan shall address the issue of Agency acquisition of real property, if necessary. Without limiting the discretion of the Agency and City to address the issue of acquisition of real property, Developer does hereby indemnify and agree to forever hold harmless the City and the Agency from and against any violations of federal, state, or local environmental protection laws and regulations and any expenditures now or hereafter required for compliance with any federal, state, or local laws or regulations now in force relating to the protection of the environment, including, without limitation, any removal costs, fines, penalties, or other costs or expenses incurred by reason of the existence on the real property of any hazardous material whether said property is purchased directly by Developer or subsequently purchased by the Developer from the Agency, provided that nothing herein will require Developer to indemnify the Agency or make the Developer liable in any way for claims or expenses arising from activities by the Agency or the Agency's contractors, employees, or invitees or from activities during any of the time the Agency owns the property. As used herein, the term hazardous material means any hazardous or toxic substances, material, or waste that is regulated by any federal authority or by any state or local authority where the substance, material, or waste is located.

12. Developer acknowledges the Agency, and ultimately the City Council, retain discretion on approval of the Eligibility Report and the Anticipated Urban Renewal Plan area and the content of the Anticipated Urban Renewal Plan. Should the Eligibility Report or the Plan not be adopted by the City Council or other impediments prevent the adoption of the Plan, Developer recognizes it will have no right or claim against the Agency or City.

13. Developer and Agency warrant that all necessary action on the part of each party to be taken in connection with execution, delivery, and performance of this MOU have been duly and effectively taken. Each party agrees to provide the other with evidence of such authority if requested.

14. It is expressly agreed that neither party shall have the right to assign its rights under this MOU without the prior written consent of the other party.

15. Developer acknowledges any participation by the Agency, including reimbursement of funds advanced for the Eligibility Report study and approval along with the Anticipated Urban Renewal Plan approval, is dependent upon taxes generated from the Study Area or Plan Area by the private development contemplated by the Developer. As such, Developer understands any property tax exemption or property tax abatement will result in less tax revenues and ability of the Agency to participate. Therefore, in recognition of that fact, Developer shall not, without the written consent of the Agency file any application with the City of Idaho Falls, Bonneville County, or the state of Idaho which could result in such property tax exemption or property tax abatement including, but not limited to the following:

The Idaho Small Employer Incentive Act of 2005, Chapter 44, Title 63, Idaho Code
The Idaho Small Employer growth incentive exemption, Idaho Code § 63-606A
New Capital Investment Incentive Act, Chapter 45, Title 63
Idaho Code § 63-602NN, business property tax exemption

(signatures on following page)

EXECUTED EFFECTIVE as of the Effective Date.

_____, 2023

AGENCY:

IDAHO FALLS REDEVELOPMENT AGENCY

By _____
Lee Radford, Chair

_____, 2023

DEVELOPER:

MIDDLE R HOLDINGS, LLC

By _____

Its _____

EXHIBIT A

Map of the Study Area

4891-3314-4890, v. 3