Property Owner/Applicant(s)/Developer(s)/Engineer(s), Representative(s):
Sky Ridge Limited Partnership as land owner/ Douglas Petersen as Owner Representative/ Joe Presher as Applicant & Architect
File(s): DAMO-00029-2019
Analyst: Rodney Ashby

Requested/Needful Action Recommendation(s):

1. **Modification of an Annexation & Zoning Development Agreement** between Moonlake Consulting and the City of Nampa recorded 11/06/2017 as Instrument No. 2017-048306 (Ord. no. 4343) by amending the commitments/conditions/terms/parties thereof, and the conceptual site and building plans to accommodate senior apartment living on a single-story arrangement for Sky Ridge LP.

   (Decision Required: **Recommendation**)

   (...Said application and its attendant build-out plan are hereinafter referred to as the “Project”; alternatively the “Development”...)

Property Area and Location(s):
A 2.978 acre land located in a Limited Multiple Family Residential (RML) Zone within a portion of the NW ¼ of Section 34, T3N, R2W, Boise Meridian, Canyon County, Nampa at 412 E Hawaii Ave. (hereinafter the “Property”...)

Abbreviated History and Commentary:
In 2017 Moonlake Consulting LLC, representative of Nederend Farms, LLLP, the owner of the Property, applied for a rezone from Residential Professional (RP) zoning to Limited Multi Family Residential (RML) zoning. Moonlake Consulting LLC entered into a development agreement with the City of Nampa, in October 2017, to develop a series of two-story, multiple-family structures with associated site amenities (i.e. parking, landscaping, etc.) on the Property. Nampa Planning & Zoning Commission recommended approval of the zoning change and the development agreement and Nampa City Council approved both items on October 16, 2017.
The development agreement was recorded on November 6, 2017 as Instrument No. 2017-048306 (Ord. no. 4343).


The applicant has requested a development agreement modification “to accommodate senior apartment living on a single-story arrangement.” This modification would result in a change of the party to the agreement as well as a change from developing two-story multiple family residential buildings, to developing single-story multiple family residential buildings.

DEVELOPMENT AGREEMENT MODIFICATION

Development Agreements are land use contracts [and treated as contracts by Idaho’s Supreme Court versus a form of zoning related entitlement] authorized in state code in the Local Land Use Planning Act section (Title 67) thereof.

Criteria to guide the Council regarding the requested Development Agreement Modification(s) are absent from state statute or City ordinance. Thus, approving or not approving the Development Agreement Modification aspect of the Applicant/Developer’s application package becomes a purely subjective matter/decision on the part of the City as [controlling] party to/of the Development Agreement contract associated with this report.

The City’s Comprehensive Plan serves as a guide for development decisions. The Comprehensive Plan has limited discussion about senior housing, instead focusing on meeting the housing demands of the changing demographics. The Comprehensive Plan emphasizes the need for diversifying our housing stock, stating – “The City of Nampa aims to foster diversity in housing within the community” (Nampa 2035 Comprehensive Plan 3.0). The following were listed as concerns over a lack of diverse housing:

- Sprawl
- Traffic congestion
- Deteriorating housing in concentrated areas

The Comprehensive Plan strongly emphasizes support for infill development. It highlights many benefits for infill development, including the cost savings associated with utilizing existing community services (sewer, water, streets, public safety, etc.), and its ability to help limit sprawl (3.15.1). The proposed development currently has primary city utility services and streets in the immediate vicinity. Though there is some potential for other infill in the area, the subject parcel is generally surrounded by suburban development, making it a good example of potential infill development. The proposed change from two-story town home structures to single-story senior living structures appears to meet the needs of a growing segment of our population, further diversifying the housing in the area.

Attached hereto is a copy of Ordinance no. 4343 -- the [original] Development Agreement. The basic nature of the amendments proposed to said Agreement are as noted above in the “Requested/Needful Actions Recommendation” section of this report.
Also attached is a copy of the applicant’s proposed Amended and Restated Development Agreement. This document appears to conform to the requested action and the concept described by the Applicant. The City’s legal council will be asked to review the agreement before final approval and signature.

RECOMMENDED CONDITION(S) OF APPROVAL

If the Commission votes to recommend to the City Council that they approve the requested Development Agreement Modification application as proposed by the Applicant, staff recommends including the following Condition(s) of Approval in your recommendation to the Council:

Development Agreement Modification/Rezone Based:

1. That the Applicant, as Owner/Developer shall enter into a Modified Development Agreement (contract) with the City of Nampa for the Property. The Agreement shall contain such conditions, terms, restrictions, representations, exhibits, acknowledgments and timelines as necessary to facilitate development of the properties as contemplated by the Applicant and agreed to and conditioned by the City through its Council or executive departments or outside agencies properly involved in the review of the Applicant’s request(s), including pathway deeding and dedication.

2. <Any other condition(s) as the Commission concludes befit(s) the Development Agreement portion of the Application package...>

ATTACHMENTS

- Copy of GIS zoning Vicinity Map featuring Property and surrounds (page/Exhibit 4)
- Copy of DA Mod. Application (page/Exhibit 5)
- Copy of proposed Amended and Restated Development Agreement, including Conceptual Site Plan and Conceptual Elevations for Sky Ridge Senior Apartments (pages/Exhibits 6-17)
- Copy of Ord. 4343 and associated 2017 Development Agreement (pages/Exhibits 18-37)
- Copy of August 22, 2017 Staff “Decision/Action Letter” on behalf of the Nampa City Council (page/Exhibit 38)
- Copy of [any] agency/City department correspondence provided by 5pm, March 15, 2019 (page/Exhibit 39)
- No citizen correspondence was received by 5pm, March 15, 2019
APPLICATION FOR A DEVELOPMENT AGREEMENT - MODIFICATION
PLANNING AND ZONING DEPARTMENT
411 3RD STREET S., NAMPA, IDAHO 83651  P: (208) 468-4487 F: (208) 465-2261
Nonrefundable Fee: $452.00 (1 acre or less)  Nonrefundable Fee: $910.00 (more than 1 acre)

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<td>Joe Fresher</td>
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<tr>
<td>Douglas Peterson/ Sky Ridge LP</td>
<td><a href="mailto:joe@hsaarchitects.com">joe@hsaarchitects.com</a></td>
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<tr>
<td><a href="mailto:truexbill@gmail.com">truexbill@gmail.com</a></td>
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**ADDRESS OF SUBJECT PROPERTY:**
412 E HAWAII ST., NAMPA, ID

**Please provide the following REQUIRED DOCUMENTATION to complete the Development Agreement Modification:**

- [x] Completed Application
- [x] A copy of one of the following:
  - [x] Warranty Deed
  - [ ] Proof of Option
  - [ ] Earnest Money Agreement
- [x] Original Legal description of property AND a legible WORD formatted document. (Must have for final recording) Old or illegible title documents will need to be retyped in a WORD formatted document.

**Project Description**

State (or attach a letter stating) the details of the requested development agreement modification for the subject property:

**Modification to Plans to Accommodate Senior Apartment Living on a Single Story Arrangement. Schematic Elevations and Site Plan are Sent Separately**

Dated this 22nd day of FEBRUARY, 2019

**Applicant Signature**

This application will be referred to the Nampa Planning Commission for a recommendation on the development agreement. The Planning Commission shall hold a public hearing and will then make its recommendation to the City Council. The City Council will then hold a second public hearing. Notice of the public hearings must be published in the Idaho Press-Tribune 15 days prior to said hearings. Notice shall also be posted on the premises of the subject property not less than 1 week prior to the hearings. Notices will also be mailed to property owners or purchasers of record within 300 feet of the subject property. You will be given notice of the public hearings and should be present to answer any questions.
AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into this _____ day of ____________, 2019 (the effective date), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the “City,” and Sky Ridge Limited Partnership, an Idaho limited partnership, hereinafter referred to as “Owner(s)/Developer(s).”

RECITALS

A. Owner(s)/Developer(s) is the developer of approximately 2.978 acres of split-zoned [RP and RML], real property legally described in Exhibit “A” attached hereto and made a part hereof (the “Property”).

B. Moonlake Consulting, LLC, an Idaho limited partnership (“Moonlake Consulting”), applied to City on or about April 26, 2017 (the date of application) to seek approval of a requested Zoning Map Amendment (i.e., a Rezone action) application to convert a portion of the Property (the southerly 150’ times the full width thereof) zoned RP (Residential Professional) to RML (Limited Multiple-Family Community Business) in anticipation of developing thereon a series of single-story, multiple-family structures (hereinafter the “Project”) with associated site amenities (i.e., parking, landscaping, etc.).

C. City approved the requested rezone of the Property from RP to RML and use of the Property for the above stated purpose pursuant to Ordinance No. 4343 passed by the Council of City on October 16, 2017. The Property is now zoned RML.

D. In connection with the rezone of the Property, City and Moonlake Consulting entered into that certain Development Agreement dated October 13, 2017 (the “Development Agreement”). Ordinance No. 4343 and the Development Agreement were recorded in the land records of Canyon County, Idaho as Instrument No. 2017-048306.

E. Owner(s)/Developer(s) acquired fee simple title to the Property on December 19, 2018.

F. Moonlake Consulting and Owner(s)/Developer(s) have complied with the terms and conditions of the Development Agreement.

G. The Owner(s)/Developer(s) applied to City on or about February 22, 2019 (the date of the application) for modification of the Development Agreement, in connection with changes to the conceptual plans for the Project to accommodate senior apartment living.

H. The Development Agreement may be modified only by the written agreement of Owner(s)/Developer(s) and City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5(D) or successor provisions.
I. City’s Planning and Zoning Commission and City’s [City] Council have complied with the notice and hearing procedures as prescribed by law with respect to the proposed modification to the Development Agreement. City has approved the requested changes to the conceptual plans for the Project and modification of the Development Agreement for the above stated purpose, subject to the terms and commitments contained in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated below, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Project shall be developed in substantial conformance with the conceptual plans (i.e., site, landscape and building elevations) attached hereto as Exhibit “B” and made a part hereof (the “Conceptual Plans”); provided, however, that Owner(s)/Developer(s) shall have limited flexibility, within code confines, to develop the Property to meet market conditions within the bounds of City’s ordinances, and, the only specific commitments concerning development of the Project which Owner(s)/Developer(s) is making are set forth herein. Upon recordation of this Agreement, Owner(s)/Developer(s) shall have all zoning entitlement approvals required from City for development of the Project in substantial conformance with the Conceptual Plan.

2. This Agreement shall not prevent City, in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by City in the exercise of its police powers that do not conflict with the parties’ commitments applicable to the Property as set forth herein, or the RML zoning designation previously approved as the Property has been deemed suitable for the uses allowed within said zoning designation.

3. This Agreement is intended to be supplemental to all other local, city, state and federal code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

4. Upon recordation of this Agreement, Owner(s)/Developer(s) shall have all entitlement approvals required from City for development of the Project in substantial conformance with the Conceptual Plan.

5. The provisions and stipulations of this Agreement shall be binding on City, Owner(s)/Developer(s), each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property by this reference incorporated herein.

6. This Agreement may be further modified only by the written agreement of Owner(s)/Developer(s) and City after complying with the notice and hearing procedures.
required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5(D) or successor provisions.

7. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner(s)/Developer(s) to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner(s)/Developer(s) or its successors and/or assigns fails to cure such failure as set forth below.

8. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner(s)/Developer(s), or each subsequent owner or each person acquiring an interest in the Property, to begin and diligently pursue completion of construction in compliance with the commitments contained herein within two (2) years after the effective date of this Agreement, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Exception: the failure to begin site development of all or a portion of the Project proposed under this Agreement does not necessarily serve as impetus to allege that the commitments contained herein are not being fulfilled. Rather, commencement of site work and/or construction then left in abandon or failure to abide by the terms of this Agreement, as herein iterated, shall serve as impetus to consider termination of this Agreement and reversion of zoning. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner(s)/Developer(s) failure to comply with the terms and conditions of this Agreement to Owner(s)/Developer(s) and Owner(s)/Developer(s) fails to cure such failure within six (6) months of Owner(s)/Developer(s) receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner(s)/Developer(s), and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

9. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of this Agreement. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is filed. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this Agreement.

10. It is intended by the parties that this Agreement shall be recorded on the effective date of the Agreement or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner(s)/Developer(s), each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

11. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be affected thereby, but each
such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

12. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner(s)/Developer(s) and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between Owner(s)/Developer(s) 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 the parties or their successors-in-interests or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of City.

13. 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 attorneys' fees as determined by a court of competent jurisdiction.

14. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

15. In the event Owner(s)/Developer(s), its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner(s)/Developer(s) or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

a. A waiver by City of any default by Owner(s)/Developer(s) of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner(s)/Developer(s) of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights of remedies of Owner(s)/Developer(s) or apply to any subsequent breach of any such or other covenants and conditions.

b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner(s)/Developer(s) shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party’s seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a subsequent owner of a portion of the Property shall constitute a default by

MOONLAKE CONSULTING, LLC 412 E. HAWAII
AMENDED AND RESTATED DEVELOPMENT AGREEMENT – Page 4
Owner(s)/Developer(s) for the portion of the Property still owned by Owner(s)/Developer(s).

c. In the event the performance of any obligation to be performed hereunder by either Owner(s)/Developer(s) 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.

d. In addition to the remedies set forth above, in the event of a default by Owner(s)/Developer(s), or any other party claiming an interest herein, City may withhold building permits for any remaining lots within the Project until such time as the default is cured.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this day and year first above written.

CITY OF NAMPA

Debbie Kling, Mayor

Attest: Deborah Rosin, City Clerk

SKY RIDGE LIMITED PARTNERSHIP
An Idaho limited partnership

By: Sky Ridge Associates, LLC
An Idaho limited liability company
Its General Partner

By: MHR Investments, LLC
An Idaho limited liability company
Its Sole Member

By: ____________________________
Name: __________________________
Title: __________________________
STATE OF IDAHO )
 ) ss.
County of Canyon )

On this ___ day of __________________, in the year of 2019, before me _____________________, personally appeared Deborah Kling, known or identified to me, to be the Mayor of the City of Nampa, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Nampa.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

__________________________________________
Notary Public for State of Idaho
Residing at ____________________________
Commission Expires: ______________________

______________________ )
 ) ss.
______________________ )

On this ___ day of __________________, in the year of 2019 before me, _____________________, personally appeared ___________________, known or identified to me, to be the ___________________ of MHR Investments, LLC, an Idaho limited liability company, the Sole Member of Sky Ridge Associates, LLC, an Idaho limited liability company, the General Partner of Sky Ridge Limited Partnership, an Idaho limited partnership, the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and 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 first above written.

__________________________________________
Notary Public for State of Idaho
Residing at ____________________________
Commission Expires: ______________________
EXHIBIT “A”

LEGAL DESCRIPTION OF THE PROPERTY

Tract A

All of Block 179, KURTZ ADDITION; according to the Amended Plat filed in Book 2 of Plats, Page 37, records of Canyon County, Idaho, together with the South 1/2 of vacated East Georgia Avenue adjacent to the North boundary of said Block 179, the East 1/2 of vacated South Locust Street adjacent to West boundary of said Block 179, and the West 1/2 of vacated Juniper Street adjoining the East boundary of said Block 179.

Tract B

Lots 10, 11 and 12, Block 180, PLAT OF KURTZ ADDITION, according to the Amended Plat filed in Book 2 of Plats, Page 37, records of Canyon County, Idaho, together with the South 1/2 of vacated East Georgia Avenue adjacent to said Lot 12, and the West 1/2 of vacated South Locust Street adjacent to said Lots 10, 11 and 12.
EXHIBITS “B”
CONCEPTUAL PLANS
ORDINANCE NO. 4343

AN ORDINANCE OF THE CITY OF NAMPA, IDAHO, TO PROVIDE RML (LIMITED-MULTIPLE FAMILY RESIDENTIAL) ZONE DESIGNATION FOR CERTAIN LANDS, COMMONLY KNOWN AS 412 E. HAWAII AVENUE; DETERMINING THAT SAID ZONING IS IN THE BEST INTEREST OF THE CITIZENS AND CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY OF NAMPA, IDAHO; REZONING SAID PROPERTY FROM RP (RESIDENTIAL PROFESSIONAL) TO RML (LIMITED-MULTIPLE FAMILY RESIDENTIAL); PROVIDING FOR RECORURATION; INSTRUCTING THE CITY ENGINEER TO DESIGNATE SAID PROPERTY AS RML (LIMITED-MULTIPLE FAMILY RESIDENTIAL) ON THE OFFICIAL ZONING MAP AND OTHER AREA MAPS OF THE CITY; PROVIDING FOR AN EFFECTIVE DATE; AND REPEALING ALL ORDINANCES, RULES AND REGULATIONS, AND PARTS THEREOF, IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF NAMPA, CANYON COUNTY, STATE OF IDAHO;

SECTION 1. Whereas, it has been determined by the Nampa City Council, upon the recommendation of the Nampa Planning & Zoning Commission and the public notice and hearing processes required by Idaho Code chapter 65, Title 67, that a rezone request applied for by Chance Hobbs (ZMA 028-17) to rezone the hereinafter described real property from RP (Residential Professional) to RML (Limited-Multiple Family Residential) should be approved.

SECTION 2. It is hereby determined to be in the best interests of the public, and consistent with the Nampa Comprehensive Plan, that the following described property in the City of Nampa, Canyon County, Idaho, commonly known as 412 E. Hawaii Avenue, be, and hereby is, rezoned from RP (Residential Professional) to RML (Limited-Multiple Family Residential), to-wit:

See Exhibit “A,” attached hereto and made a part hereof by this reference.

SECTION 3. That the recordation of this ordinance shall be deemed for all intents and purposes as an amendment to the zoning ordinance and zoning map of the City of Nampa. The City Engineer is instructed to designate said property as RML (Limited-Multiple Family Residential) on the Official Zoning Map and other area maps of the City of Nampa.

SECTION 4. This ordinance shall be in full force and effect from and after its passage, approval, publication and recordation according to law.

SECTION 5. All ordinances, rules and regulations, and parts thereof, in conflict herewith are repealed.


Approved:

Mayor Robert L. Henry
EXHIBIT "A"

Legal Description

Lots 4, 5, 6, 7, 8, 9 of Block 179 of Kurtz Addition (now vacated), and the East 1/2 of Vacated South Locust Street and the West 1/2 of Vacated South Juniper St, in the NW ¼ Section 34 Township 3 North Range 2 West, B.M., Nampa, Canyon County, Idaho according to the Amended Plat filed in Book 2 of Plats, Page 37, records of Canyon County.
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this 12th day of October, 2017 (the effective date), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "City," and:

MOONLAKE CONSULTING, LLC, hereinafter referred to as "Owner(s)/Developer(s)."

RECITALS

A. Owner(s)/Developer(s) is the developer of approximately 2.978 acres of split-zoned [RP and RML], real property legally described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Owner(s)/Developer(s) applied to City on or about April 26, 2017 (the date of application) to seek approval of a requested Zoning Map Amendment (i.e., a Rezone action) application to convert a portion of the Property (the southerly 150' times the full width thereof) zoned RP (Residential Professional) to RML (Limited Multiple-Family Community Business) in anticipation of developing thereon a series of two story, multiple-family structures (hereinafter the "Project") with associated site amenities (i.e., parking, landscaping, etc.).

C. City, pursuant to Sections 10-2-3 & 10-2-5, Nampa City Code, and Idaho Code Section 67-6511, has the authority to rezone the Property for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses that are appropriate in the area.

D. City's Planning and Zoning Commission and City's [City] Council have held public hearings as prescribed by law with respect to the proposed zoning map amendment and contemplated development of the Property and the terms of this Agreement. City has approved the requested rezone of the portion of the Property zoned RP to RML and use of the Property for the above stated purpose, subject to the terms and commitments contained in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated below, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Project shall be developed in substantial conformance with the conceptual plans (i.e., site, landscape and building elevations) attached hereto as Exhibits "B" (1-7) and made a part hereof (the "Conceptual Plans"); provided, however, that Owner(s)/Developer(s) shall have limited flexibility, within code confines, to develop the Property to meet market conditions within the bounds of the City's ordinances, and, the only specific commitments concerning development of the Project which Owner(s)/Developer(s) is making are set forth herein. Upon
recordation of this Agreement, Owner(s)/Developer(s) shall have all zoning entitlement approvals required from City for development of the Project in substantial conformance with the Conceptual Plan.

2. This Agreement shall not prevent City, in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by City in the exercise of its police powers that do not conflict with the parties’ commitments applicable to the Property as set forth herein, or the zoning designation approved hereby as the Property has been deemed suitable for the uses allowed within said zoning designation.

3. This Agreement is intended to be supplemental to all other local, city, state and federal code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

4. Upon recordation of this Agreement, Owner(s)/Developer(s) shall have all entitlement approvals required from City for development of the Project in substantial conformance with the Conceptual Plan.

5. The provisions and stipulations of this Agreement shall be binding on City, Owner(s)/Developer(s), each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property by this reference incorporated herein.

6. This Agreement may be modified only by the written agreement of Owner(s)/Developer(s) and the City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5(D) or successor provisions.

7. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner(s)/Developer(s) to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner(s)/Developer(s) or its successors and/or assigns fails to cure such failure as set forth below.

8. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner(s)/Developer(s), or each subsequent owner or each person acquiring an interest in the Property, to comply with the commitments contained herein within two (2) years after the effective date thereof, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Exception: the failure to begin site development of all or a portion of the Project proposed under this Agreement does not necessarily serve as impetus to allege that the commitments contained herein are not being fulfilled. Rather, commencement of site work and/or construction then left in abandon or failure to abide by the terms of this Agreement, as herein iterated, shall serve as impetus to consider termination of this Agreement and reversion of zoning. Provided, however,
no such termination or reversal shall occur unless City provides written notice of Owner(s)/Developer(s) failure to comply with the terms and conditions of this Agreement to Owner(s)/Developer(s) and Owner(s)/Developer(s) fails to cure such failure within six (6) months of Owner(s)/Developer(s) receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner(s)/Developer(s), and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

9. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is filed. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

10. It is intended by the parties that this Agreement shall be recorded on the effective date of the Agreement or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner(s)/Developer(s), each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

11. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be effected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

12. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner(s)/Developer(s) and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between Owner(s)/Developer(s) 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 the parties or their successors-in-interests or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

13. 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 attorneys’ fees as determined by a court of competent jurisdiction.

14. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

MOONLAKE CONSULTING, LLC 412 E. HAWAII DEVELOPMENT AGREEMENT – Page 3
15. In the event Owner(s)/Developer(s), its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner(s)/Developer(s) or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

   a. A waiver by City of any default by Owner(s)/Developer(s) of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner(s)/Developer(s) of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights of remedies of Owner(s)/Developer(s) or apply to any subsequent breach of any such or other covenants and conditions.

   b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner(s)/Developer(s) shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party’s seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a subsequent owner of a portion of the Property shall constitute a default by Owner(s)/Developer(s) for the portion of the Property still owned by Owner(s)/Developer(s).

   c. In the event the performance of any obligation to be performed hereunder by either Owner(s)/Developer(s) 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.

   d. In addition to the remedies set forth above, in the event of a default by Owner(s)/Developer(s), or any other party claiming an interest herein, City may withhold building permits for any remaining lots within the Project until such time as the default is cured.
IN WITNESS WHEREOF, the parties hereto have heretunto set their hands on this day and year first above written.

CITY OF NAMPA

[Signature]
Robert L. Henry, Mayor

Attest: Debbie Bishop, City Clerk

OWNER(S)/DEVELOPER(S)

[Signature]
MOONLAKE CONSULTING, LLC

STATE OF IDAHO ) ss.
County of Canyon )

On this 17th day of October, in the year of 2017, before me, personally appeared Robert L. Henry, known or identified to me, to be the Mayor of the City of Nampa, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Nampa.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.

NATHAN HAVEMAN
Notary Public for State of Idaho
Residing at Meridian, ID
Commission Expires: 10-12-2022

STATE OF IDAHO )
) ss.
County of Canyon )

On this 13th day of October, in the year of 2017 before me,
Jessie Hobbs, personally appeared Chance Hobbs, known or
identified to me, to be manager, of Moon Lake Consulting, the person
whose name is subscribed to the within and foregoing instrument and acknowledged to me that
he executed the same for and on behalf of Moon Lake Consulting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.

Jessie Hobbs
Notary Public for State of Idaho
Residing at Meridian, Idaho
Commission Expires: 10-15-2019

MOONLAKE CONSULTING, LLC 412 E. HAWAII
DEVELOPMENT AGREEMENT – Page 6
EXHIBIT “A”

Legal Description

Lots 4, 5, 6, 7, 8, 9 of Block 179 of Kurtz Addition (now vacated), and the East 1/2 of Vacated South Locust Street and the West 1/2 of Vacated South Juniper St, in the NW ¼ Section 34 Township 3 North Range 2 West, B,M., Nampa, Canyon County, Idaho according to the Amended Plat filed in Book 2 of Plats, Page 37, records of Canyon County.
EXHIBITS "B"

CONCEPTUAL PLANS

Change

Elevations
August 22, 2017

Moonlake Consulting
attn.: Chance Hobbs
3818 Osprey Circle
New Meadows, Idaho 83654

Re: Request for approval of an application to Rezone land ("Zoning Map Amendment") from RP (Residential Professional) to RML (Limited Multiple-Family Residential) - pertaining to the southerly some 150' of the property located at 412 E. Hawaii Ave. (Section 34, T3N, R2W, NW ¼, Kurtz Addition, Block 179, ½ of the adjacent vacated street on the north of said property, and, ½ of the vacated streets lying adjacent to the property on its east and west sides (hereinafter the "Property") for, and in behalf of, Moonlake Consulting, Chance Hobbs representing; City case file no. ZMA 028-2017

Dear Mr. Hobbs:

The Nampa City Council, during their regularly scheduled public hearing of August 21, 2017, after receiving testimony and reviewing your application, voted to approve the above referenced action request. The Council made their decision contingent on Developer/Development compliance with the following condition(s):

1. That the Applicant, as Owner/Developer, [shall] enter into a Development Agreement (contract) with the City of Nampa appertaining to the use and development of the Property. The Agreement shall contain such conditions, terms, restrictions, representations, exhibits, acknowledgments and timelines as necessary to facilitate development of the properties as contemplated by the Applicant and agreed to and conditioned by the City through its Council or executive departments [e.g., as relevant those requirements noted in the Engineering memo dated May 10, 2017] or outside agencies properly involved in the review of the Applicant's request(s)...

If you should have any questions concerning this matter, please contact me during normal business hours, Monday through Friday at 468-5457.

Sincerely,

Robert Hobbs
Assistant Director
On Behalf of the Council

GRH/rh

cc: Jim Brooks, City Engineering
files ZMA 28-17
Good Afternoon Everyone!

Re: DAMO-00029-2019

Joe Presher representing Douglas Petersen, Sky Ridge LP has requested a Modification of Zoning Development Agreement between Moonlake Consulting, LLC and the City of Nampa recorded 11/06/2017 as Inst. No. 2001-048306 modifying the conceptual site and building plans to accommodate senior apartment living on a single-story arrangement for a 2.978-acre portion of the NW ¼ of Section 34, T3N, R2W, BM).

This application will go before the Planning and Zoning Commission as a public hearing item on the March 26, 2019 agenda.

Please find attached DAMO-00029-2019 file for your review and send all comments to my attention or to Sylvia Mackrill (mackrill@cityofnampa.us) no later than March 13, 2019.

Thank you & Have a great day!

Shellie A. Lopez, Planning Administrative Specialist
O: 208.468.4487, F: 208.468.5439
411 3rd Street South, Nampa, ID 83651
Planning and Zoning - Like us on Facebook

Nampa Proud