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RICK HOGABOAM

CANYON COUNTY RECORDER

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CANYON COUNTY



**Canyon County
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CANYON COUNTY DEVELOPMENT SERVICES DEPARTMENT

1115 Albany Street • Caldwell, Idaho • 83605 • Phone (208) 454-7458

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**DEVELOPMENT AGREEMENT
BETWEEN CANYON COUNTY AND APPLICANT**

Agreement number: 24-036

THIS AGREEMENT, made and entered into this 17 day of April, 2024, by and between Canyon County, Idaho, a political subdivision of the state of Idaho, hereinafter referred to as "COUNTY" and Martin Dario Maestrejuan, hereinafter referred to as "Applicant."

RECITALS

WHEREAS, Applicants have applied to the County for a conditional rezone from the "A" (Agricultural) Zone to "CR-R-R" (Conditional Rezone – Rural Residential) Zone (CR2023-0006), which are legally described in the attached EXHIBIT "A," incorporated by reference herein (hereinafter referred to as "Subject Property"); and

WHEREAS, Parcels R37244011, approximately 27.17 acres, is owned by the Applicant.

WHEREAS, on the 17 day of April, 2024 the Canyon County Board of Commissioners approved a conditional rezone with conditions of the Subject Property to a "CR-R-R" (Conditional Rezone – Rural Residential) Zone, which was done with Applicant's approval. The conditions of the approval for the conditional rezone are attached hereto as EXHIBIT "B".

WHEREAS, the parties desire to enter into an agreement to comply with Canyon County Code of Ordinances §07-06-07(2) & 07-06-07(7), Canyon County Zoning Ordinance No. 16-007 or as amended, and to ensure the Applicants will implement and be bound by the conditions of the rezone order issued by the Canyon County Board of Commissioners; and

NOW THEREFORE, the parties hereto do hereby agree to the following terms:

SECTION 1. AUTHORIZATION.

This Agreement is authorized and required by Idaho Code §67-6511A; Canyon County Code of Ordinances 07-06-07 (Conditional Rezoning).

SECTION 2. PROPERTY OWNER.

Applicants are the owner(s) of Subject Properties which is located in the unincorporated area of Canyon County, Idaho, more particularly described in EXHIBIT "A", attached hereto and incorporated herein, which real property is the subject matter of this Agreement. Applicants represent that they currently hold complete legal or equitable interest in the Subject Properties and that all persons holding legal or equitable interests in the Subject Properties or the operation of the business are to be bound by this Agreement.

SECTION 3. RECORDATION.

Pursuant to Idaho Code §67-6511A and Canyon County Code of Ordinances, this Agreement shall be recorded by the Clerk in the Canyon County Recorder's Office and will take effect upon the adoption, by the Board of County Commissioners, of the amendment to the zoning ordinance as set forth herein.

SECTION 4. TERM.

The parties agree that this Agreement shall run with the land and bind the Subject Property in perpetuity, and shall inure to the benefit of and be enforceable by the parties, and any of their respective legal representatives, heirs, successors, and assignees. Provided, however, this Agreement shall terminate if the Board of County Commissioners subsequently rezones the property to allow for a higher density use or if annexation of the Subject Property by a city occurs. In this event, however, the Agreement shall only terminate in regards to the portion of the Property that is actually rezoned or annexed, while the remainder of the Property shall remain subject to the Agreement.

If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue until twenty-one (21) years after the death of the last survivor of the now living lawful descendants of George Herbert Walker Bush, former President of the United States, or for such shorter period as may be required to sustain the validity of such provision.

SECTION 5. MODIFICATION.

This Agreement may be modified only in writing signed by the parties, or their successors in interest, after complying with the notice and hearing procedures of Idaho Code §67-6509 and the requirements of Canyon County Code of Ordinances. The modification proposal must be in the form of a revised Development Agreement and must be accompanied by a statement demonstrating the necessity for the requested modification.

SECTION 6. APPLICATION OF OTHER LAWS TO THE SUBJECT PROPERTIES.

This Agreement shall not prevent the County in subsequent actions applicable to the Subject Properties from applying new rules, regulations, or policies that do not conflict with this Agreement.

SECTION 7. COMMITMENTS.

Applicants will fully and completely comply with the conditions of the approved conditional rezone of the Subject Properties from "A" (Agricultural) Zone to "CR-R-R" (Conditional Rezone – Rural Residential) Zone, which conditions are attached hereto as EXHIBIT "B".

SECTION 8. USES, DENSITY, AND HEIGHT AND SIZE OF BUILDINGS

The density or intensity of use of the Subject Properties is specified in the commitments of Section 7 unless conditioned otherwise (see Exhibit "B"). The uses and maximum height and size of the buildings on the Subject Properties shall be those set pursuant to law, including those contained in the Canyon County Code of Ordinances, that are applicable to a "CR-R-R" (Conditional Rezone – Neighborhood Rural Residential) zone and those provisions of law that are otherwise applicable to the Subject Property.

SECTION 9. LIABILITY AND INDEMNITY OF COUNTY.

A. COUNTY REVIEW.

Applicants acknowledge and agree that the County is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates or acceptances, relating to the use and development of the property described in EXHIBIT "A," and that the County's review and approval of any such plans and the improvements or the issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure or ensure Applicants or any of Applicants' heirs, successors, assigns, tenants, and licensees, against damage or injury of any kind and/or at any time.

B. COUNTY PROCEDURES.

Applicants acknowledge that notices, meetings, and hearings have been lawfully and properly given and held by the County with respect to Applicant's conditional rezone application in Development Services Department Case Number CR2023-0006 and any related or resulting development agreements, ordinances, rules and regulations, resolutions or orders of the Board of County Commissioners. Applicants agree not to challenge the lawfulness, procedures, proceedings,

correctness or validity of any of such notices, meetings, hearings, development agreements, ordinances, rules, regulations, resolutions or orders.

C. INDEMNITY.

Applicants agree to, and do hereby, defend, hold harmless and indemnify the County, the Board of County Commissioners, all County elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any such parties in connection with (i) the County's review and approval of any plans or improvements, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and/or development of the Subject Properties; (ii) any actions taken by the County pursuant to Subsection 9(B) of this Agreement; (iii) the development, construction, and maintenance of the property; and (iv) the performance by County of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. DEFENSE EXPENSES.

Applicants shall, and do hereby agree, to pay, without protest, all expenses incurred by the County in defending itself with regard to any and all of the claims identified in Subsection 9 of this Agreement. These expenses shall include all out-of-pocket expenses, including, but not limited to, attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the County.

SECTION 10. PERIODIC REVIEW.

The County's Development Services Department will administer the Agreement after it becomes effective and will conduct a review of compliance with the terms of this Agreement on a periodic basis, including, but not limited to, each time a development of the Property is platted. Applicants shall have the duty to demonstrate Applicants' compliance with the terms of this Agreement during such review.

SECTION 11. REQUIRED PERFORMANCE.

Applicants shall timely carry out all steps required to be performed and maintain all commitments set forth in this Agreement and as set forth in County laws, ordinances, rules and regulations as they pertain to the Subject Property including, but not limited to, those concerning the commencement of development, completion of development, preliminary platting and final platting.

SECTION 12. DEFAULT AND REMEDIES.

In the event of a default or breach of this Agreement or of any of its terms or conditions, the party alleging default shall give the breaching party not less than thirty (30) days, Notice of Default, in writing, unless an emergency exists threatening the health and

safety of the public. If such an emergency exists, written notice shall be given in a reasonable time and manner in light of the circumstances of the breach. The time of the giving of the notice shall be measured from the date of the written Notice of Default. The Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time during which said default may be satisfactorily cured. During any period of curing, the party charged shall not be considered in default for the purposes of termination or zoning reversion, or the institution of legal proceedings. If the default is cured, then no default shall exist and the charging party shall take no further action.

SECTION 13. ZONING REVERSION CONSENT.

The execution of this Agreement shall be deemed written consent by Applicants to change the zoning of the Subject Properties to its prior designation upon failure to comply with the terms and conditions imposed by the approved conditional rezone and this Agreement. No reversion shall take place until after a hearing on this matter pursuant to Idaho Code §67-6511A. Upon notice and hearing, as provided in this Agreement and Idaho Code §67-6509, if the properties described in attached EXHIBIT "A" are not used as approved, or if the approved use ends or is abandoned, the Board of County Commissioners may order that the property will revert to the zoning designation (and land uses allowed by that zoning designation) existing immediately prior to the rezone action, i.e., the Subject Properties conditionally rezoned from "A" (Agricultural) Zone designation to "CR-R-R" (Conditional Rezone – Rural Residential Zone designation shall revert to the "A" (Agricultural) Zone designation.

SECTION 14. COMPLIANCE WITH LAWS.

Applicants agree that they will comply with all federal, state, county and local laws, rules and regulations, which appertain to the Subject Property.

SECTION 15. RELATIONSHIP OF PARTIES.

It is understood that this Agreement between Applicants and the County is such that Applicants are an independent party and are not an agent of the County.

SECTION 16. CHANGES IN LAW.

Any reference to laws, ordinances, rules, regulations, or resolutions shall include such laws, ordinances, rules, regulations, or resolutions as they have been, or as they may hereafter be amended.

SECTION 17. NOTICES.

Except as otherwise provided in this Agreement and/or by law, all notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof, (1) when delivered in person on a business

day at the address set forth below, or (2) in the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage paid, certified or registered mail, return receipt requested, at the addresses set forth below.

Notices and communications required to be given to County shall be addressed to, and delivered at, the following address:

Director
Development Services Department
Canyon County Administration
111 North 11th Avenue, #310
Caldwell, Idaho 83605

Notices and communications required to be given to Applicants shall be addressed to, and delivered at, the following addresses:

Name: Martin Maestrejuan
Street Address: PO BOX 250
City, State, Zip: Wilder, ID 83676

A party may change its address by giving notice, in writing, to the other party, in the manner provided for in this section. Thereafter, notices, demands, and other pertinent correspondence shall be addressed and transmitted to the new address.

SECTION 18. TERMINATION.

This Agreement may be terminated in accordance with the notice and hearing procedures of Idaho Code §67-6509, and the zoning designation upon which the use is based reversed, upon failure of Applicants, a subsequent owner, or other person acquiring an interest in the property described in attached EXHIBIT "A" to comply with the terms of this Agreement. Applicants shall comply with all commitments in this Agreement prior to establishing the approved land use.

SECTION 19. EFFECTIVE DATE.

The commitments contained in this Agreement shall take effect in the manner described in this Agreement upon the County's adoption of the amendment to the zoning ordinance as set forth herein.

SECTION 20. TIME OF ESSENCE.

Time is of the essence in the performance of all terms and provisions of this Agreement.

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

**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO**

APPLICANT

Commissioner Holton

Martin Dario Maestrejuan
Martin Dario Maestrejuan, Property Owner

Commissioner Van Beek

Commissioner Brooks



ATTEST: Rick Hogaboam, Clerk

BY: Monica Reyes
Deputy

DATE: 4-17-24

(All Applicants must sign and their signatures must be notarized)

STATE OF IDAHO)
) ss.
County of Canyon)

On this 17th day of April, 2024, before me, a notary public, personally appeared Martin Maestreyuan, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he/she executed the same on behalf of the Applicant.

Jennifer D. Almeida
Notary Public for Idaho

Residing at: Canyon County

My Commission Expires: 4/7/28

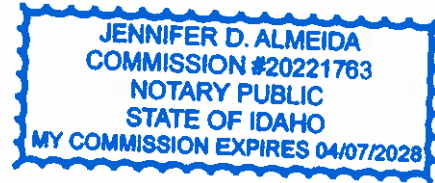


EXHIBIT "A"
LEGAL DESCRIPTION

A portion of the Northeast quarter of the Southwest quarter of Section 34, Township 4 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of said Northeast quarter of the Southwest quarter; thence South 89°44'57" East along the North boundary of said Northeast quarter of the Southwest quarter a distance of 449 feet to the True Point of Beginning; thence continuing South 89°44'57" East along said North boundary a distance of 873.46 feet to the Northeast corner of said Northeast quarter of the Southwest quarter; thence South 0°26'01" West along the East boundary of said Northeast quarter of the Southwest quarter a distance of 1321.18 feet to the Southeast corner of said Northeast quarter of the Southwest quarter; thence North 89°44'49" West along the South boundary of said Northeast quarter of the Southwest quarter a distance of 918.07 feet; thence North 2°22'03" East a distance of 1322.05 feet to the True Point of Beginning.

EXHIBIT "B"
CONDITIONS OF APPROVAL

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the property.
2. The subject parcel, approximately 27 acres, zoned "R-R" (Rural Residential, two-acre average lot size) shall be divided in compliance with Chapter 7, Article 17 (Subdivision) of the Canyon County Zoning Ordinance (CCZO) in substantial compliance with the conceptual site plan (Attachment B) subject to the following restrictions:
 - a. A secondary dwelling (CCZO §07-10-27 & 07-14-25) is prohibited.
 - b. Irrigation water rights shall be utilized via a pressurized system (Idaho Code Sections 31-3805 & 65-6737. Irrigation Agreement between the applicant and neighbor (Exhibit "D") shall be recorded and honored.
 - c. Conditions of the draft CC&Rs provided by the applicant (Exhibit "C") shall be adhered to whether recorded as CC&Rs or not.
3. Historic irrigation lateral, drain, and ditch flow patterns shall be maintained and protected. Modifications or improvements shall be approved in writing by the local Irrigation District. A crossing agreement between the applicant/owner and the Bureau of Reclamation is required unless waiver by said jurisdiction.
4. The developer shall comply with CCZO §07-06-07 (4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."

EXHIBIT "C"

Flying Arrow Landing Subdivision Proposed CC&R's

General Provisions:

1. I require owner acknowledgement that owners waive all protests regarding the surrounding farm operations, control of plant and/or animal species, to include the use of herbicides, pesticides, traps, or other methods of eradication. Owners will be asked to sign and agree to the disclosure that no complaints will be made formally to the HOA against the existing neighbors and farm operations unless that mentioned neighbor is breaking local governmental laws.
2. Owners are not prohibited from growing small crops, gardens, have animals or livestock, and will not be prohibited from doing business in the subdivision. A right to farm clause will be established in the HOA.
3. Owners may keep domesticated animals or livestock for their own purposes so long as they do not become a nuisance and if they do not violate any governmental laws regarding care, housing, pasturing etc.
4. Animal owners indemnify and hold harmless the developer, other owners, and the HOA from all damages caused to natural persons, personal property, real property etc. by their domesticated animals or livestock. This includes pollution, infection, contamination caused by their presence or the presence of their urine, feces, or dead bodies or body parts, medicines used to treat them etc.
5. Any animal found roaming, running, straying or being away from owner's lot will be declared to be a nuisance and the animal may be impounded according to applicable county ordinance.
6. Weed control- All owners are financially responsible for weed control of noxious plants to their platted lot and may work with others to maintain and control the spread of noxious weeds in the subdivision, adjacent neighbors, or local farm operations.
7. All lot owners are responsible for providing clean up of the construction site, resulting from construction activities (building waste, vegetation clean up, landscaping, etc.), and for any manure produced from livestock or animal wastes.
8. All lot owners must provide for sufficient on-site parking and shall not allow any vehicles, at any time, to be parked on the private roadway of the subdivision.
9. No burning of trash, rubbish, or vegetation unless a county permit is obtained, and local fire jurisdictions are aware of such controlled burns.
10. Each lot owner(s) shall be responsible for compliance with all applicable federal, state, county and/or governmental statutes, ordinances and regulations, and any amendments relating in any way to the ownership and/or improvement of the lots within the plat.
11. No future land splits will be available to the platted lots and that disclosure will be agreed upon by the owner upon purchase.
12. All owners will be responsible for their easements and their respective maintenance on their property. All easements for utilities, drainage, etc. shall remain free of obstructions

EXHIBIT "D"

Proposed Development Agreement

Current property owner: Martin Maestresjuan

18257 Batt Corner Rd.

Wilder, ID 83676

Recipient: Chester Mervin

26747 Boehner Rd.

Wilder, 83676

Responsibilities of developer to recipient upon project approval from Canyon County are as follows:

1. Developer will be responsible for providing new pump irrigation station on recipient's property. Pressurized irrigation system will be installed on recipient's property and financial responsibility from the power pole to the end of the existing underground irrigation water line only. Does not include any above ground irrigation equipment such as wheel lines, hand lines, solid set sprinklers, etc.

Developer's Responsibilities Itemized:

- A. Power pole, electrical panel, sized irrigation pump, and all underground irrigation pipe from pump station to existing main line with risers running east and west on south end of property. Will also install continuous pipe fence with woven no climb wire material from property corner next to pump station adjacent to residence to corner that turns next to irrigation risers.

Recipients' Responsibilities:

- A. Electrical permitting with Idaho Power and the Division of Building Safety.
2. A proposed easement of 20' will be granted on Lot #5 of the preliminary plat to allow recipient access of agricultural equipment only to the property from the private road access in the subdivision. Any future sale agreement of Lot #5 that occurs, the new owner will agree to this condition upon purchase of the property and will also be informed of this condition prior to the sale. Communication responsibilities will need to be established between the recipient and the future property owner of Lot #5, not the developer.