

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Middleton Industrial Holdings
1831 E. Overland Dr.
Meridian, ID 83642

DECLARATION OF CROSS ACCESS EASEMENT

This Declaration of Cross Access Easement (this “Declaration”) is made this ____ day of _____ 2024, by MIDDLETON INDUSTRIAL HOLDINGS, LLC, an Idaho limited liability company (“Middleton Industrial”), whose address is 1831 E. Overland Drive, Meridian, ID 83642.

RECITALS:

A. Middleton Industrial is the owner of fee simple title to:

Lots 3 and 4, of Middleton Industrial Park No. 2, according to the Official Plat thereof, filed in Book 57 of Plats at Page 36, records of Canyon County, Idaho, recorded July 26, 2024, as Instrument No. 2024-023408 (the “Plat”).

Lot 3 and Lot 4 are sometimes referred to herein individually as the “Lot” and collectively as the “Lots.” The Lots and the Easement Parcel, as defined below, are depicted on the Plat.

B. Middleton Industrial intends hereby to create and provide for the use and benefit of each Lot individually and for both of the Lots collectively, subject to the limitations hereinafter provided, a reciprocal, perpetual, non-exclusive easement for pedestrian and vehicular ingress, egress, passage and traffic between: (a) each of the Lots, and (b) the Lots and that certain public street commonly known as Thorsten Avenue (being contiguous to and bordering upon the Lots).

C. Middleton Industrial intends that the singular or several owners of fee simple title to the Lots, their mortgagees, lessees, occupants and such other persons as from time to time shall possess or acquire an interest in any Lot or any portion thereof, and all customers, employees, licensees, tenants and business invitees of such occupants and their respective successors and assigns (the “Permittees”) shall at all times enjoy the benefits of, and that the singular and several owners of fee simple title to the Lots (sometimes referred to herein as the “Owner” or “Owners”) shall at all times hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth.

NOW, THEREFORE, in consideration of the terms of this Declaration, and in consideration of the recitals above which are incorporated below, Middleton Industrial declares and grants as follows:

ARTICLE I
Use, Access, Relocation and Reconfiguration

1.01 Easement. Middleton Industrial hereby declares, creates and grants for the use of the Owners and their Permittees, subject to all existing easements, encumbrances and restrictions of record, an easement appurtenant to and for the benefit of Lot 3 and Lot 4, a perpetual, non-exclusive easement upon, over and across the Easement Parcel solely for the limited purpose of pedestrian and vehicular ingress, egress, passage and traffic between: (a) each of the Lots, and (b) the Lots and that certain public road commonly known as Thorsten Avenue (being contiguous to and bordering upon the Lots) (“Easement”).

1.02 Easement Parcel. The Easement shall be located over, upon and across the “Easement Parcel” which shall consist of the following: the curb cuts, driveways, roadways, traffic lanes and parking areas on the Lots extending from the curb cuts allowing access to Lot 3 and Lot 4 from Thorsten Avenue and extending across the Lots. Notwithstanding anything else herein to the contrary, subject to the limitations contained herein, Middleton Industrial hereby reserves the right to construct buildings and other improvements on the Lots which building(s), landscaping and other improvements may reduce the size of the Easement Parcel located on the Lots.

1.03 Use. Use of the Easement Parcel is not hereby exclusively granted but shall be in common with the use thereof by the Owners of the Lots upon which the Easement Parcel is located. The Owners of each Lot shall be entitled to use those portions of the Easement Parcel which shall lie in their Lots for those uses provided herein and for any other reasonable uses so long as such other uses do not interfere with or obstruct the reasonable use of the Easement Parcel by the other Owners and their Permittees. The Owners of each Lot shall specifically have the right to make any use of the subsurface of the Easement Parcel located on the Lots owned by them, at their sole cost and expense, so long as such use does not interfere with or obstruct the other Owner’s reasonable use as provided herein.

1.04 Relocation and Reconfiguration. The Owner or Owners of the Lots shall have the right, from time to time, to relocate and/or reconfigure all or that portion of the Easement Parcel lying upon the Lot owned by such Owner, all at its sole costs and expense; provided, however, nothing such Owner does in connection with such relocation and/or reconfiguration shall: (i) permanently interfere with the free and unimpeded flow of vehicular and pedestrian traffic between Lot 3 and/or Lot 4 and/or Thorsten Avenue; or (ii) interfere with the free and unimpeded flow of permitted traffic between Lot 3 and/or Lot 4 and/or Thorsten Avenue beyond the specific time reasonably required to accomplish any permitted relocation and/or reconfiguration; or (iii) permanently relocate and/or reconfigure a portion of the Easement Parcel such at the portion of the

Easement Parcel on such Owner's Lot is no longer contiguous with the portion of the Easement Parcel on the other Owner's Lot.

ARTICLE II Maintenance

2.01 Maintenance and Easement Parcel. Each Owner shall pave, repair, and at all times maintain in good condition and provide Maintenance as hereinafter defined on those portions of the Easement Parcel which fall within that Owner's Lot. In the event the parties cannot agree on the necessity of such Maintenance, the matter may be submitted to mediation as provided below.

Maintenance of the Easement Parcel shall include without limitation:

1. Maintenance, repair and replacement of the surface and subsurface of the Easement Parcel, as necessary, to maintain the Easement Parcel in a level, smooth and evenly covered condition with the types of materials and at the same grade and elevation as used by the Owner or Owners on the date of the completion of construction of the Easement Parcel, or portion thereof, except that the Owners shall be permitted to use such substitute materials as will in all respects be equal to or better than the materials originally used by the Owners with respect to quality, appearance and durability.
2. Removal from the Easement Parcel of paper, rubbish, debris, ice, snow and other hazards to persons using the Easement Parcel, and washing or thoroughly sweeping paved areas as required.
3. Maintenance of such appropriate parking signs and pavement markings, entrance, exit and directional signs and markers and lights so as to be uniform with those used on both Lots.
4. Such painting and repainting of traffic lines and parking lines to maintain the Easement Parcel in first-class condition so as to be uniform with and provide for safe traffic flow between the Lots.
5. Maintenance, repair and replacement of any drainage facilities located on each Owner's Lot so that any paid facilities shall remain in good working order and condition.

All of the foregoing shall be referred to collectively herein as "Maintenance."

2.03 Mediation in the Event of Failure to Agree. In the event a disagreement arises between the Owners related to the Easement Parcel, an Owner may demand mediation and shall give written notice to that effect to the other Owner specifying in such notice the name, address, and professional qualifications of the person designed to act as mediator on behalf of the Owner

requesting mediation. Within ten (10) days after delivery of such notice, the other Owner shall give written notice to the Owner desiring such mediation specifying the name, address and professional qualifications of the person designated to act as mediator on said other Owner's behalf. If the two mediators so selected cannot agree upon the matter submitted to mediation within thirty (30) days after the appointment of the second mediator, the two mediators shall within ten (10) days thereafter, select a third mediator. The decision of the mediators so chosen shall be rendered within a period of twenty (20) days after the appointment of such third mediator. Each party shall pay the fees and expenses of the mediator appointed by or on behalf of such party and one-half of the fees and expenses of the third mediator. If an Owner receiving a request for mediation fails to appoint a mediator within the time above specified, or if the two mediators so selected cannot agree on the selection of a third mediator within the time above specified, or if the result of such mediation is unsatisfactory to one or more Owners, then any Owner may avail itself of any legal or equitable remedy available to it under Idaho law.

ARTICLE III

Miscellaneous

3.01 Not a Public Dedication. Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Lots to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention that this Declaration will be strictly limited to and for the purposes expressed herein. Each Owner shall be permitted, from time to time, to take whatever reasonable action it deems necessary to prevent any portion of the Easement Parcel from being dedicated or taken for public use or benefit.

3.02 Termination of Covenant Liability. Whenever a transfer of ownership of a Lot or any portion of a Lot herein burdened occurs, to the extent of the portion transferred, the liability hereunder of the transferor for breach of covenant occurring thereafter automatically shall terminate and the transferee shall become liable for the covenants and obligations herein provided from and after such transfer of ownership.

3.03 Duration. The Easement herein agreed to, created, declared and granted shall be perpetual, and may not be terminated without the express consent of the City of Middleton.

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

3.05 Enforcement. In the event of a breach of any term, covenant, restriction or condition of this Declaration by an Owner, the other Owner or Owners shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of competent jurisdiction. Further, failure by the Owners to agree upon necessary Maintenance may be submitted for mediation as set forth in Article II hereof.

3.06 Applicable Law. This Declaration shall be construed and enforced in accordance with the laws of the State of Idaho.

3.07 Running of Benefits and Burdens. All provisions of this Declaration, including the benefits and burdens hereof, run with the land and are binding upon and inure to the benefit of the Owners and the respective heirs, assigns, successors, and personal representatives of the Owners.

IN WITNESS WHEREOF, the parties hereto, having been duly authorized and intending to be legally bound hereby, have caused this Declaration of Cross Access Easement to be duly executed the day and year first above written.

MIDDLETON INDUSTRIAL HOLDINGS, LLC

By: _____
Robert Nash, Manager

STATE OF IDAHO)
) ss.
County of _____)

On this ____ day of _____, 2024, before me _____, personally appeared Robert nash, known or identified to me (or proved to me on the oath of _____) to be the manager of Middleton Industrial Holdings, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____