

Return to:
Missoula City Clerk
435 Ryman
Missoula, MT 59802

DEVELOPMENT AGREEMENT
(KJA Development, LLC and City of Missoula)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is executed this _____ day of _____, 2022, by and between KJA Development, LLC, whose address is 3904 Mullan Road, Missoula, MT 59808 (“Developer”), and the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana, having an address of 435 Ryman, Missoula, MT 59802 (“City”).

RECITALS

A. WHEREAS, Developer is the owner of certain real property located in Missoula, Montana as legally described on Exhibit A (the Subject Property);

B. WHEREAS, Developer has applied to rezone the Subject Property to RM 1-45, a standard Title 20 zoning district;

C. WHEREAS, the Developers have a Master Site Development Plan (the “Master Plan”) for the Subject Property attached hereto as Exhibit B, and the Master Plan is a conceptual diagram showing the general location of existing and proposed buildings, streets, parking areas, sidewalks and trails, open space, and various amenities, all of which are subject to zoning regulations, building codes and related City regulations; and

D. WHEREAS, the Master Plan limits the overall density of the development to less than allowed by the RM1-45 zoning and contains such other items which, while not necessarily required by zoning regulations, are items which Developer voluntarily incorporated into the project and which are material to the City’s decision to enter into this Agreement; and

E. WHEREAS, the Developer offered to enter into this Agreement as a demonstration the development will occur in accordance with the Master Site Development Plan and the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are material elements of this Agreement, along with the covenants and promises contained herein which the parties agree constitute sufficient consideration for the Agreement, the Developer and the City agree as follows:

1. Development of the Project to be in Substantial Compliance with the Master Plan. Development shall occur on the Subject Property in substantial compliance with the Master Plan shown in Exhibit B and subject to compliance with all applicable zoning regulations, building codes and other City regulations and ordinances. “Substantial compliance” shall mean carrying out the project generally in the form shown on Exhibit B, but shall not preclude minor adjustments to the location of buildings, streets, parking areas, trails and amenities as may be reasonably necessary to carry out the project and/or meet City requirements. Additional adjustments to streets or additional right-of-way improvements (or traffic mitigation) may be required, based on the results of the final traffic impact study to be prepared with the building permit application(s), and compliance with the required streets and right-of-way improvements (or traffic mitigation) will be considered substantial compliance with the Master Site plan for the purposes of this Agreement.

2. Additional Limitations and Obligations. Partially as an inducement to obtain City support of the project, and partially to address issues raised by the surrounding community, the Developer agrees that the following additional limitations and obligations shall apply to any development on the Subject Property:

a. No more than 700 dwelling units on the Subject Property. A dwelling unit is defined for these purposes as a living unit capable of being rented or sold as a separate unit, and which may colloquially be described as a studio, one-bedroom, two-bedroom, etc. apartment or unit.

b. Maximum height of any multi-dwelling buildings built on the Subject Property shall be 45 feet;

c. Setbacks, as that term is used in Title 20 of the Missoula Municipal Code, shall be a minimum of 30 feet from the east boundary of the Subject Property and 115 feet from the northern boundary of the Subject Property.

d. At a minimum, the Developer shall provide the following amenities on the Subject Property, and adhere to the following standards, which Developer has proposed as part of Developer’s plans for full buildout, subject to the Timing provisions set forth herein:

1. a pool which is constructed and maintained in accordance with DPHHS standards,
2. central playground and equipment which meets CPSC safety guidelines and ASTM standards
3. a fenced dog park (minimum fenced area of 0.25 acre) which meets the minimum guidelines for a dog park provide by the American Kennel Club including appropriate size based on anticipated use, along with dog waste stations, maintained by the developer, spaced throughout the development, for use by the residents of the development.

4. a minimum of 3,500 lineal feet of hiking trails, meeting City of Missoula Open Space Management Plan standards and guidelines for hiking trails, on the hillside within the Subject Property along with granting the public a license to use such trails, revocable only in the event such non-resident use causes damage (such as significant erosion, vandalism, accumulations of dog waste) to the Subject Property and/or trails or creates a nuisance due to unreasonable noise, erosion, trespass, dog waste, or similar concerns that cannot be reasonably mitigated through the combined efforts of the property owner and city management. The City Parks and Recreation Department Director, or their designee, shall work cooperatively with the property manager for potential solutions in the event that damage or nuisances are ongoing, and the parties agree to work in good faith to find a mutually agreeable solution before any partial or total revocation of the public's license occurs.
5. a 10' wide public access easement will be granted along the eastern property line in a location to allow for a multi-use trail to be constructed within this easement. The property owner shall construct a trail, meeting the City's adopted standards with a width of 5 feet. In the event the City secures an additional public access easement for a trail on the immediately adjacent property, the width of the trail may be increased and the City and property owner shall cooperate in constructing a wider trail with costs shared equally by both parties. In the event public use of this easement and trail causes damage to the Subject Property and/or trails or creates a nuisance due to unreasonable noise, erosion, trespass, dog waste, or similar concerns, the City Parks and Recreation Department Director, or their designee, shall be consulted for potential solutions in the event that damage or nuisances are ongoing, and the parties agree to work in good faith to find a mutually agreeable solution.
6. a covered shelter for transit/school bus use along Expo Parkway, with design and installation at the direction of and subject to the approval of the City Engineer in consultation with Mountain Line.
7. installation of crosswalk signs on each side of the roads where the Grant Creek Trail intersects Stonebridge and Expo Parkway to alert drivers to the presence of crosswalks.
8. development will meet multi-family activity area requirements as defined in Missoula MT Municipal Code Chapter 20.65.020
9. all streets, parking lots, and common areas will include trees per the City of Missoula Public Works Standards, zoning codes, and the Parks and Recreation Design Manual.
10. the operation and management of the project shall adhere to the Living With Wildlife and Bear Aware standards attached as Exhibit C and the information

shall be provided to all residents.

11. in the event the City of Missoula adopts an evacuation plan for the Grant Creek drainage, the property owner will ensure all tenants are provided a copy of such evacuation plan upon executing each lease.

3. Obligations of the City to Seek Trail Connections. Once the first new multi-family building (i.e. one not permitted as of the date this Agreement is executed) shown on the Master Site Plan receives building permits, the City agrees to commit staff time to attempt to secure public trail connections between the Subject Property and nearby existing or planned public trails. These potential trail connections include connecting the Subject Property to: the Blue Bird open space across Grant Creek Road; the Grant Creek Trail system; and the existing tunnel under I-90 to connect to potential new developments and public trails south of the interstate. In the event City staff identify property owners willing to grant public access easements in these areas, the City agrees to commit staff time and resources in order to attempt to seek funding for these potential trail connections through the City's Open Space Bond process, or through seeking federal, state, and local government and non-profit funding commitments. If funding is received, the City further agrees to commit staff time and resources to finalizing such acquisitions in order to allow connection(s) between the Subject Property and the identified nearby public trail(s), which should provide a valuable amenity to the Owner's project and the residents thereof.

4. Effect on Zoning and other Regulations. Excepting the limitations provided in Section 2, nothing in this Agreement is intended to override, replace, or supplant applicable local, state, or federal laws or regulations. Developers shall comply with all applicable zoning regulations, subdivision regulations, construction standards and specifications, and state and local laws that govern the development of the Subject Property.

5. Effective Date. This Agreement will be in force and effect on the date signed by the Mayor of the City and by the Developers.

6. Amendment. No part of this Agreement may be amended or deleted without prior written consent of the Missoula City Council and Developer, or their successors and assigns.

7. Enforcement. Either party may enforce this Agreement by any means permitted by law. In the event suit is brought for the enforcement of this Agreement or as a result of an alleged default, each party shall bear their own attorney fees and costs. Nothing herein shall be construed as obligating Developer to construct the project; rather, the purpose of this Agreement is to set out various requirements and limitation on the development of the Subject Property if and when any additional development occurs.

8. Governing Law. The law governing the interpretation or enforcement of the terms and conditions of the Agreement shall be the laws of the State of Montana.

9. Severability. If a part of this Agreement is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

11. Drafting of Agreement. Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.

12. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original hereof, but all of which shall constitute one and the same document. Signatures transmitted electronically shall be treated and accepted as original signatures. The parties agree to communicate regarding this Agreement by electronic means as allowed by the Montana Uniform Electronic Transactions Act, Mont. Code Ann. § 30-18-101, et seq. After this Agreement is executed, any written document made under this Agreement may be created in original or may be an electronic record; any signature may be in original, or by electronic signature.

13. Timing of Improvements. The parties recognize the project will be built over time as the market demands and, due to the practical realities of construction, certain amenities will be installed as development of the project progresses. Therefore, the amenities required in Section 2.d. shall be installed pursuant to the following schedule:

Paragraph Reference	Proposed Site Amenity	Units Permitted Prior to Construction of Amenity
2.d.1.	Pool	320
2.d.2.	Central Playground Equipment	320
2.d.3.	Fenced Dog Park	700
2.d.4.	Hillside Hiking Trails	385
2.d.5.	5' Concrete Trail Along East Boundary	597
2.d.6.	Covered Transit Shelter	502
2.d.7.	Crosswalk Signs @ Grant Creek Trail	193

14. Binding Effect. The benefits and burdens of this Agreement touch and concern the use and enjoyment of the Subject Property and the obligations and benefits stated herein shall bind and inure to the benefit of all successors and assigns to any portion of the Subject Property and shall run with the land.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year in this certificate written below.

KJA DEVELOPMENT, LLC:

By: Ken Ault, authorized member

STATE OF MONTANA)

County of Missoula) : ss.

This instrument was acknowledged before me on _____, 2022 by Ken Ault as authorized member of KJA Development, LLC.

Notary Signature: _____
Notary Public for the State of Montana

CITY OF MISSOULA

APPROVED:

By: John Engen, Mayor

Date

ATTEST:

Mary Rehbein, City Clerk

Date

Approved as to form:

Jim Nugent, City Attorney

Date

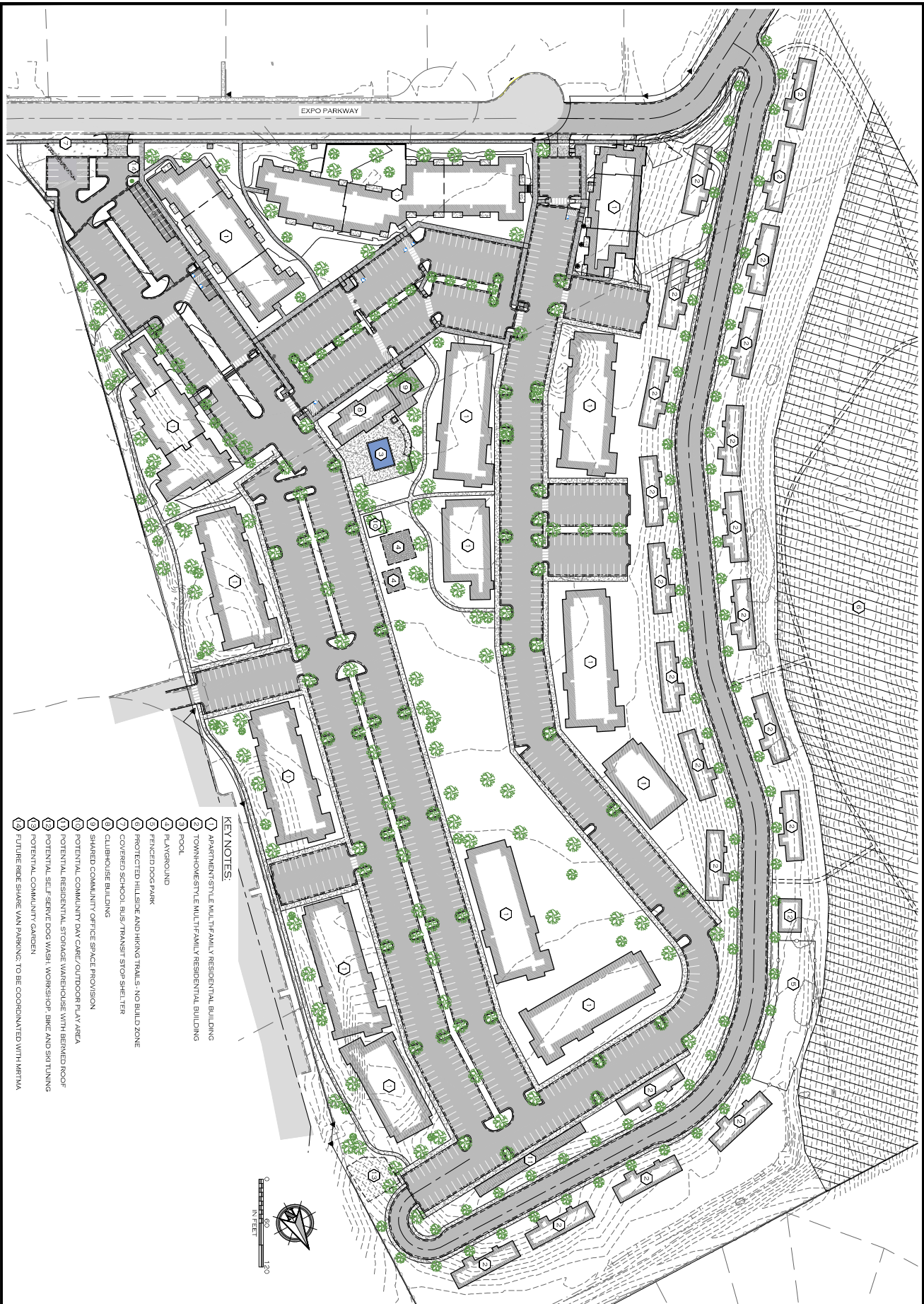
EXHIBIT A
Legal Description of Subject Property

PARCEL 1:

Government Lot 4, Section 5, Township 13 North, Range 19 West, M.P.M., Missoula County, Montana, including Portion "B" of Certificate of Survey No. 4831, Missoula County, Montana.

PARCEL 2:

A tract of land located in and being a portion of the NW 1/4 of Section 5, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana, more particularly described as Amended Tract A of Certificate of Survey No. 3750, including Portion C of Certificate of Survey No. 4831, also including Portion A of Commerce Center, Phase II, Amended, Missoula County, Montana.



- KEY NOTES:**
- 1 APARTMENT-STYLE MULTIFAMILY RESIDENTIAL BUILDING
 - 2 TOWNHOUSE-STYLE MULTIFAMILY RESIDENTIAL BUILDING
 - 3 POOL
 - 4 PLAYGROUND
 - 5 FENCED DOG PARK
 - 6 PROTECTED HILLSIDE AND HIKING TRAILS - NO BUILD ZONE
 - 7 COVERED SCHOOL BUS/TRANSIT STOP SHELTER
 - 8 CLUBHOUSE BUILDING
 - 9 SHARED COMMUNITY OFFICE SPACE PROVISION
 - 10 POTENTIAL COMMUNITY DAY CARE/OUTDOOR PLAY AREA
 - 11 POTENTIAL RESIDENTIAL STORAGE WAREHOUSE WITH BERMED ROOF
 - 12 POTENTIAL SELF-SERVE DOG WASH, WORKSHOP, BIKE AND SATTING
 - 13 POTENTIAL COMMUNITY GARDEN
- 14 FUTURE RIDE SHARE VAN PARKING, TO BE COORDINATED WITH WRTMA

REZONING


EX-B	GRANT CREEK VILLAGE		 WOITH ENGINEERING, INC. ENGINEERS & SURVEYORS <small>400 3RD STREET NW, SUITE 206 • GREAT FALLS, MT 59404 • 406-676-1855 3860 O'LEARY STREET, SUITE A • MISSOULA, MT 59808 • 406-624-9585 • WWW.WOITHENGINE.COM •</small> <small>COPYRIGHT © WOITH ENGINEERING, INC. 2021</small>	DESCRIPTION	DATE		JOB #	2120
	MISSOULA	MONTANA					DRAWN	MOH
	MASTER SITE PLAN						DESIGN	...
							QA	KTS/BMW
						DATE	12/22/2021	

EXHIBIT C
Living With Wildlife Standards and
Bear Aware Provisions

Property owners and residents must accept the responsibility of living with wildlife (LWW) and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food and other potential attractants. Property owners and residents must be aware of potential problems associated with the possible presence of wildlife such as deer, black bear, mountain lion, coyote, fox, skunk, and raccoon. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for information that can help property owners and residents “live with wildlife.” Alternatively, see FWP’s web site at <http://fwp.mt.gov> for LLW information.

The following provisions are designed to help minimize problems that property owners and residents could have with wildlife, as well as helping property owners and residents protect themselves, their pets and property, and the wildlife that Montanans value.

- a. There is potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees. Property owners and residents should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems.
- b. Landscaping comprised of native vegetation is less likely to suffer extensive feeding damage by deer than non-native plants. Planting native flowering plants will benefit pollinating insects, and native shrubs and trees produce favorable food resources and nesting sites for a variety of bird species. Landscape plants can often spread beyond the original planting site, so using native plants also avoids problems with non-native plants spreading in nearby open areas.
- c. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe and rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries. To promote bear-resistance, all gardens should incorporate fencing designed to reduce conflict with bears in coordination and consultation with FWP. All compost should be stored within bear-resistant enclosures and shall not incorporate meat, fish, or similar attractants.
- d. Do not feed wildlife or offer supplements (including salt or mineral blocks), attractants, or bait for deer or other wildlife, including during the winter. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission among wildlife. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (§ 87-6-216, Montana Code Annotated [MCA]) to purposely or knowingly attract any ungulates (deer, elk, etc.), bears, mountain lions or wild turkeys with supplemental food attractants (any food, garbage, or other attractant for game animals). Also unlawful is purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals or wild turkeys that may potentially contribute to the transmission of disease or that constitutes a threat to public safety. Finally, residents must be aware that deer can attract mountain lions to an area.
- e. Pets should be confined to the dwelling or a fenced yard when not under the immediate control of the owner, and not be allowed to roam as they can chase and/or kill big game and small birds and mammals. Under current state law it is illegal for a person to purposely, knowingly, or

negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal, and the owner may be held personally responsible (§ 87-6-404, MCA).

f. Pet food must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, and raccoons. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

g. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the wire or injuring themselves when trying to jump the fence. Contact FWP or see its website for information or a brochure regarding building fence with wildlife in mind.

h. Grills and other outdoor related appliances should be kept reasonably clean of food waste and grease and stored indoors or in bear-resistant enclosures when not in use where practical.

i. Birdfeeders are discouraged and, if used, be elevated to a point inaccessible to bears or other wildlife.

j. All garbage should be stored in bear-resistant containers or within a bear-resistant enclosure while also meeting the requirements of commercial waste haulers serving the City of Missoula.