

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 Plant 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, which Developer has proposed as part of Developer’s plans for full buildout, subject to the Timing provisions set forth herein:

1. a pool,
2. central playground equipment,
3. a fenced dog park (minimum fenced area of 0.25 acre), and 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 on the hillside within the Subject Property along with granting the public a license to use such trails, revocable only in the event such public use 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 before any partial or total revocation of the public's license occurs.

5. a 5' wide concrete trail along the east side of the Subject Property along with granting the public a license to use such a trail, revocable only in the event such public use 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 before any partial or total revocation of the public's license occurs.
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.

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; the Prospect open space; 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)

: ss.

County of Missoula)

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.

EXHIBIT B
Master Site Development Plan