

Recording requested by:
Jeremy Grimm on behalf of:
Tim McDonnell DBA K-M Enterprise LLC
and
Derek Mulgrew DBA M&W Holdings LLC

614 Creekside Lane
Sandpoint, Idaho 83864

When recorded return to:
City of Sandpoint
Jennifer Stapleton, City Administrator
1123 Lake Street
Sandpoint, Idaho 83864

DRAFT
DEVELOPMENT AGREEMENT
UNIVERSITY PARK SUBDIVISION

THIS DEVELOPMENT AGREEMENT (AGREEMENT), is entered into this ___ day of _____, 2020 by and between the City of Sandpoint, Bonner County, Idaho, a municipal corporation organized and existing under the laws of the State of Idaho, hereinafter referred to as the "CITY," whose address is 1123 Lake Street, Sandpoint, Idaho 83864; and K-M Enterprises of Idaho, LLC, an Idaho Limited Liability Company, and M&W Holdings, LLC, an Idaho Limited Liability Company hereinafter referred to as the "DEVELOPERS", whose addresses are P.O. Box 996, Dover, ID 83825 and 809 W Main, #303, Spokane, WA 99201 respectively. The CITY and the DEVELOPERS are sometimes referred to herein as a "party" or "parties."

WITNESSETH:

WHEREAS, the DEVELOPERS' subdivision proposal has been evaluated in accordance with CITY requirements for a subdivision, and received preliminary plat approval, which includes certain express terms, conditions and agreements, which the parties wish to memorialize as applicable to the subdivision. A draft of the proposed Subdivision Plat of University Park is attached hereto and incorporated herein as Exhibit A (the "Preliminary Plat"); and,

WHEREAS, the Planning Commission, the Mayor and the City Council of the CITY have determined that it is in the best interests of the CITY and the citizens thereof to approve the subdivision plat pursuant to the terms, covenants and conditions hereinafter set forth.

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NOW THEREFORE, pursuant to Sandpoint City Code Section 9-9-11, and in consideration of the terms, covenants and conditions set forth herein, the parties agree as follows:

1. **LEGAL DESCRIPTION:** The property affected by this Agreement (the “Property”) is described as follows:

The east half of Section 15, Township 57 North, Range 2 West Boise Meridian, Lying west of Sand Creek and north of the present wye or railroad tract connecting the Northern Pacific, the Spokane International and Great Northern Railways, less county roads.

Also, less that parcel conveyed to the State of Idaho by Quitclaim deed recorded December 15, 1958 under instrument No, 68533 in Book 100 of deeds, Page 151, records of Bonner County, ID

The historic use of the Property was an agricultural research station for the University of Idaho. The University declared the Property surplus and sold it to DEVELOPERS. The PROPERTY contains 75 acres +/- and is zoned by the City to allow urban density development. The current permitted uses of the Property shall be in accordance with the City designation of Residential Single-Family for approximately 60 acres located east of Boyer Avenue and west of the Union Pacific Railroad Tracks, south of Mountain View Drive. Approximately 5.5 Acres located between the Union Pacific Railroad Tracks and US Highway 2 are zones Commercial B. The remaining 10 acres +/- are encumbered by Railroad Right-of-way or are steep slopes or are submerged wetlands.

2. **CONCEPT PLAN:** The DEVELOPERS have prepared a concept plan for the Property, which has been made part of Preliminary Plat, attached hereto as Exhibit A.

3. **CONSTRUCTION SCHEDULE:** The DEVELOPERS’ construction schedule provides for development over four phases. A specific schedule detailing the anticipated timing for each phase is attached hereto as Exhibit B. The Phasing Plan includes the completion of all required public infrastructure and stormwater improvements prior to Final Plat and prior to issuance of any building permits. The development schedule may be modified by the mutual consent of both parties, but in no case will building permits be issued prior to Final Plat approval, per phase.

4. **UTILITIES:** The DEVELOPERS agree to use the CITY'S water and sanitary sewer systems for the Property as lots are developed and to be responsible for any fees and charges normally required of similarly situated owners pursuant to CITY Code. The CITY agrees to provide access to such systems upon payment of the customarily-required fees. DEVELOPERS may transfer the obligation to pay such fees and costs to the future owner of any Lot as shown on the Preliminary Plat (each a “Lot”). Utility service to each phase shall be fully functional consistent with City standards even if such functionality requires improvements on land designated for subsequent phases.

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5. **REQUIRED INFRASTRUCTURE IMPROVEMENTS:** The DEVELOPERS agree to construct the following public improvements in accordance with the terms of this Agreement and the applicable standards adopted by the CITY, no later than those dates reflected in the attached phasing schedule: sanitary sewer and water system extensions, fire hydrants, stormwater management, street, signage, curbs and gutters, landscaping, illumination, drainage appurtenances and sidewalks (the “Required Infrastructure Improvements”), in accordance with the final plans, Approved For Construction. DEVELOPERS agree to confer with CITY staff during the course of the project to verify that all Required Infrastructure Improvements are in fact being installed and built in conformance with standards adopted by the CITY.

6. **STANDARDS AND WARRANTY:** The parties agree that the Preliminary Plat, the Concept Plan and the Construction Schedule submitted by the DEVELOPERS for development of the Property are generally acceptable to the CITY. The DEVELOPERS agree that all Required Infrastructure Improvements shall be built to CITY standards and permits, adhering to all CITY policies and procedures and standards adopted by the CITY, including but not limited to Idaho Standards for Public Works Construction (ISPWC) (latest edition). The DEVELOPERS further agree that the final construction plans shall be submitted to the CITY for approval prior to commencement of any construction; shall detail construction of all Required Infrastructure Improvements; and, that all such work will be constructed in a workmanlike manner. The DEVELOPERS will properly warrant all public improvements properly from defects by providing a warranty bond in an amount approved by the CITY and representing twenty percent (20%) of the estimated cost of all public improvements for a period of two years from the date of written acceptance by the CITY and prior to Final Plat approval. Should the DEVELOPERS fail to make ant required repairs within thirty days’ written notice, the CITY may exercise the warranty bond. This period may be extended by the CITY if inclement winter weather prevents repair within the thirty-day period.

7. **INSPECTION AND TESTING:** All Required Infrastructure Improvements shall be inspected and tested by qualified professionals in accordance with Idaho Standards for Public Works Construction (latest edition) with all costs of testing and inspection to be borne by the DEVELOPERS.

8. **ACCEPTANCE AND FAILURE TO COMPLY:** Inspection reports and testing records, conducted at the frequency and method(s) specified in the Idaho Standards for Public Works Construction (latest edition) for all Required Infrastructure Improvements shall be provided to the CITY within ninety days of completion of construction. A letter(s) signed by a professional engineer(s), licensed in Idaho, shall be provided by the DEVELOPERS to the CITY stating that all work was constructed in accordance with the conditions of this Agreement and subsequent permits, including but not limited to the approved plans and standards set forth herein. In no event shall the CITY accept the Required Infrastructure Improvements and/or approve a Final Plat, until such documentation has been provided and deemed acceptable by the City Engineer. The CITY

reserves the right to retain the performance bond for Required Infrastructure Improvements and/or withhold other permits until the CITY has accepted the same.

9. **COVENANTS RUN WITH THE LAND:** The terms, conditions and covenants to be performed by the DEVELOPERS under this Agreement shall run with the Property, and are binding upon the DEVELOPER, owners, co-owners, subsequent owners, and the DEVELOPERS' heirs, assigns and successors in interest. Transfer of any lot within the development to an owner shall automatically be deemed a transfer all of the obligations to be performed by the DEVELOPERS with respect to any such lot. The obligations of the DEVELOPERS, and any owners under this Agreement shall be joint and several.

10. **SECURITY FOR REQUIRED INFRASTRUCTURE IMPROVEMENTS:** The DEVELOPERS or the DEVELOPERS' contractor shall submit a security device sufficient to cover 150% of the CITY's approved estimated cost of construction, testing, and inspection for those Required Public Improvements not otherwise located on private property, including, but not limited to, streets and associated infrastructure, water main extensions, and sewer main extensions, and storm drainage facilities, in the total amount of \$_____. This security device shall inure to the benefit of CITY, and may be in the form of a performance bond, irrevocable letter of credit, cash deposit or other security device acceptable to the CITY. The CITY reserves the right to perform the Required Infrastructure Improvements and retain the security in the event that the DEVELOPERS fail to perform the work in accordance with this Agreement, as determined by the CITY. In no event will the security device be released until all Required Infrastructure Improvements have been completed in accordance with this Agreement and the Final Plat is approved by the CITY.

11. **MERGER AND AMENDMENT:** All promises and negotiations between the parties merge into this Agreement. The Parties agree that this Agreement shall be amended only in writing and signed by both parties. The Parties further agree that this Agreement is not intended to replace any other requirement of CITY Code, but instead this Agreement is to be interpreted in connection with and as a supplement to CITY Code provisions.

12. **CONDITIONS:** The DEVELOPERS shall meet the following requirements for this project.

- a. Development of the lots will be subject to all current requirements in place at the time of permit application.
- b. The 20' wide utility and emergency exit easement shown on the preliminary plat (sheet 4) shall also contain a publicly dedicated pedestrian easement which shall include a minimum 12' paved path to provide connection between what is shown to be both legs of S. Sand Creek Lane. If final utility plans necessitate access for maintenance, the access shall be capable of accommodating City maintenance vehicles.

- c. DEVELOPERS shall provide a publicly dedicated pedestrian easement which shall include the construction of a minimum 12' paved path to provide connection between North Boyer Avenue and Blue Grass Avenue.
- d. The DEVELOPERS shall adequately maintain all stormwater conveyance and treatment systems, in accordance with the Stormwater Permit issued by the CITY, in perpetuity, and shall transfer such maintenance to future, individual property owners and/or another entity by executing subdivision covenants, conditions, and restrictions, as further described in Appendix C of the Agreement.
- e. The DEVELOPERS shall maintain compliance with the United States Environmental Protection Agency's Construction General Permit (CGP) throughout development. Failure to comply with the terms of the CGP may result in orders to stop work by the CITY or others.
- f. DEVELOPERS and/or owners of individual lots shall be required to pay impact fees prior to issuance of a building permit(s) at the current rate adopted by City Council at the time of building permit issuance.
- g. In the event the DEVELOPERS do not proceed with the Final Plat, the DEVELOPERS shall provide the CITY a 30-foot wide utility easement(s), as the CITY deems necessary to access, operate and maintain any functionally complete and accepted Required Public Infrastructure.
- h. DEVELOPERS shall make full improvements to urban standards to North Boyer Avenue as defined by CITY as specified below:
 - 1 Prior to a certificate of occupancy being issued on Phase II, but no later than 2025, the Developer is to reconstruct the eastern portion of the North Boyer Avenue right-of-way along the property frontage. The total right-of-way width shall be the proposed 70-feet. The Developer shall submit a completed engineered roadway design for the City's approval to confirm layout, specifications, and details, prior to construction of frontage improvements along North Boyer Avenue. Generally, the design shall be consistent with the UATP, Figure 7-HH (excluding the utility easement) and provide a roadway section that provides for an approximate total of 42' between inside face of curbs to include a center turn lane. Final striping configuration and limits of roadway widening to be determined during design review. The Developer is responsible for right-of-way improvements totaling approximately 38' east of the new centerline of roadway; the existing western portion of the right-of-way

shall remain as-is with the new roadway accommodating existing grades and transitions as necessary. Any and all utility relocations required as a result of these improvements is the responsibility of the Developer. Frontage improvements at this location shall be in accordance with City Code and standards.

i. DEVELOPERS shall make full improvements to urban standards to East Mountain View Road as defined by CITY as specified below:

1. Prior to a certificate of occupancy being issued on Phase I, Developer to reconstruct the southern portion of the E Mountain View right-of-way along the property frontage. The total right-of-way width shall be the proposed 60-feet. The Developer shall submit a completed engineered roadway design for the City's approval to confirm layout, specifications, and details, prior to construction of frontage improvements along E. Mountain View. The design shall provide a roadway section that provides for a total of approximately 42' between inside face of curbs between North Boyer Avenue and Aspen Way to include a dedicated left turn lane. The design shall provide a roadway section that provides for a total of approximately 32' between inside face of curbs between Aspen Way and Sandcreek Lane. Final striping configuration to be determined during design review. The existing northern portion (approximately 25' in width) of the right-of-way shall be remain as-is with the new roadway accommodating existing grades and transitions as necessary. North/south crosswalk shall be provided on E Mountain View at North Boyer Avenue (east side of intersection). Frontage improvements at this location shall be in accordance with City Code and standards.

j. DEVELOPERS shall pay their "Fair Share" allocation of the cost of signalization of North Boyer Avenue and Bald Mountain Road as specified below:

i. Prior to issuance of any permit for construction, the Developer shall pay a lump sum amount of _____ as an extraordinary impact fee (City Code 12-1-12), for system improvements at the intersection of North Boyer Ave/Baldy Mountain Road, specifically to provide signalization. This amount represents development's fair share contribution of 21.84% at this location, resulting from the development, calculated in accordance with the methodology described in the adopted Urban Area Transportation Plan (UATP). The total calculated system improvements at this location include engineering and public infrastructure, and exclude possible right-of-acquisition and railroad improvements due to the lack of a preliminary design validating the necessity of either.

k. DEVELOPERS shall pay their "Fair Share" allocation of the cost of signalization of US 2 and Larch Street as specified below:

i. Prior to issuance of any permit for construction, the Developer shall pay a lump sum amount of _____ as an extraordinary impact fee (City Code 12-1-12),

for system improvements at the intersection of US-2/Larch Street, specifically, to provide additional and dedicated turn lanes for eastbound and westbound motorists. This amount represents the development's fair share contribution of 2.45% at this location, resulting from the development, calculated in accordance with the methodology described in the adopted Urban Area Transportation Plan (UATP). The total calculated system improvements at this location include engineering and public infrastructure; sufficient right-of-way exists for necessary system improvements. *[This condition is pending agency comments from ITD that may provide new or relevant information].*

- l. DEVELOPER shall provide a northbound right turn lane on North Boyer Avenue at the project driveway at Ebbett Way, prior to 2025.
- m. DEVELOPERS shall confirm capacity of existing sewer lift station and upgrade as specified below:
 - i. Based upon the submitted report, the City does not anticipate that upsizing will be required. However, depending upon the results of an approved report, the Developer shall be responsible for the project costs associated with upsizing and/or other necessary upgrades, as determined by the City Engineer.
- n. DEVELOPERS shall demonstrate compliance with wetland requirements.
 - i. Prior to issuance of any permit for construction impacting wetlands, the Developer shall provide evidence of authorization issued by the United States Army Corps of Engineers and including, receipt of payment for any required wetland credits.
- o. Other conditions related to system improvements – pending ITD and Agency comments and potential direction from P&Z / Council (none received yet).

13 DEVELOPERS shall demonstrate to CITY that they have applied to Bonner County for a Reservation of Street Names for those streets reflected on the Preliminary Plat. All new street names shall be mutually exclusive from one another.

14. Prior to approval of the Final Plat, DEVELOPERS shall demonstrate the creation of a Homeowners' Association to ensure long-term maintenance of private park and storm drainage facilities, Such demonstration shall include Articles of Incorporation, By-laws, and Covenants, Conditions and Restrictions (CC&Rs) for the Homeowners' Association and included as EXHIBIT C.

15. **AFFIDAVIT OF OWNER:** The DEVELOPERS are the legal Property Owner.

16. **JURISDICTION/VENUE/ATTORNEY FEES:** Any action brought to enforce this Agreement, or to interpret its terms, covenants and conditions, shall be governed by Idaho law,

and brought in the District Court of the First Judicial District, Bonner County, Idaho. The prevailing party in any such action may recover its reasonable attorney fees in addition to any other remedy available at law or equity.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Sandpoint have executed this contract on behalf of CITY, the City Clerk has affixed the seal of CITY hereto, and DEVELOPER has caused the same to be executed the day and year first above written.

CITY OF SANDPOINT,

DEVELOPERS

Shelby Rognstad, Mayor

By: K-M Enterprise LLC

ATTEST:

Melissa Ward, City Clerk

Tim McDonnell

State of _____)

County of _____)

By: M&W Holdings LLC

Derek Mulgrew

On this _____ day of _____, in the year of 20____, before me, a Notary Public, personally appeared, Shelby Rognstad , known to me to be the Mayor of the City of Sandpoint, Idaho whose name is subscribed to the within instrument, and acknowledged to me that he has the authority to executed the same on behalf of the City of Sandpoint, Idaho.

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

Notary Public: State of Idaho

My Commission expires: _____

On this _____ day of _____, in the year of 20____, before me, a Notary Public, personally appeared, Tim McDonnell, legal representative of K-M Enterprises, LLC, proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

On this _____ day of _____, in the year of 20____, before me, a Notary Public, personally appeared, Derek Mulgrew, legal representative of M&W Holdings, LLC, proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Notary Public: State of Idaho
My Commission expires: _____

**AFFIDAVIT OF PROPERTY OWNERS
SANDPOINT CITY CODE SECTION 9-9-11(C)**

I, the undersigned owners of the above described Property, hereby acknowledge and agree to submission of the use of said Property pursuant to the terms, covenants and conditions of this Agreement.

Dated this ___ day of _____, 2020.

Tim McDonnell DBA K-M Enterprise LLC

Derek Mulgrew DBA M&W Holdings LLC

SUBSCRIBED AND SWORN TO before me this ___ day of July, 2020.

Notary Public, State of Idaho
My commission expires:

**EXHIBIT B
CONSTRUCTION SCHEDULE**

Pending

Needs more definition

I.e.:

**Public Infrastructure
Final Plat**

Phase 1 & 2: 2020 or as soon as approvals are received.

Phase 3: 2022 or sooner as determined by market conditions

Phase 4: 2023 or sooner as determined by market conditions.

EXHIBIT C
Homeowner Association Documents

To be provided by Developer