BONNER COUNTY, SANDPOINT, IDAHO 7-26-2012

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MARIE SCOTT

Fee: 46.00 -Officio Recorder Deputy

DEVELOPMENT AGREEMENT MILLTOWN PARK SUBDIVISION REPLAT

THIS DEVELOPMENT AGREEMENT, entered into this 26 day of July, 2012 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 Milltown Park LLC, a Delaware limited liability company, hereinafter referred to as the "OWNER", whose address shall be c/o Prudential Real Estate Investors, 7 Giralda Farms, Madison, New Jersey 07940, Attention: PRISA II Asset Manager.

WITNESSETH:

WHEREAS, the OWNER owns all of the "Property" (as defined in Section 1 of this Agreement) other than Lot 1. OWNER wishes to subdivide its land for residential and commercial purposes; and

WHEREAS, the OWNER'S subdivision proposal has been evaluated in accordance with CITY requirements for a subdivision, and received plat approval, which includes certain express terms, conditions and agreements, which the parties wish to memorialize as applicable to the Property. The Subdivision Replat of Milltown Park which has been approved by the CITY is attached hereto and incorporated herein as Exhibit A (as modified and hereafter agreed to by the CITY and OWNER, the "Final Plat"). The Final Plat will be recorded concurrently with the recordation of this Agreement; and

WHEREAS, the Planning Commission, the Mayor and the City Council of the City of Sandpoint have determined it to be in the best interests of the CITY and the citizens thereof to **PAGE 1 OF 12**

approve the subdivision replat consistent with the Final Plat pursuant to the covenants and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the 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 site is located at the northeast corner of Larch and Boyer and described as Lots 1-4 of Milltown Park, according to the plat thereof, recorded in Book 9 of Plats, page 155, records of Bonner County, Idaho and described as Lots 2 and 4 of Milltown Park, according to the plat thereof, recorded in Book 9 of Plats, page 155, records of Bonner County, Idaho, and Lots 1A and 3A, Replat of Lots 1 and 3 of Milltown Park, according to the plat thereof, Book 10 of Plats, page 45 records of Bonner County, Idaho.

- 2. UTILITIES: OWNER agrees 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. OWNER may transfer the obligation to pay such fees and costs to the future owner of any Lot as shown on the Final Plat (each a "Lot").
- 3. **CONSTRUCTION TO CITY STANDARDS**: OWNER agrees that all infrastructure improvements required by this Agreement or by City Code shall be built to CITY standards, adhering to all CITY policies and procedures, including but not limited to, the standards adopted by the City of Sandpoint Ordinance for sanitary sewer improvements, water lines and pump station, fire hydrants, stormwater management, lighting, and other improvements.
- 4. STANDARDS AND CONSTRUCTION PLANS: Whitewater Creek Inc., on behalf of OWNER, has previously submitted to the CITY design plans, dated as of June 20, 2012 (collectively, the "Design Plans"), that have been prepared with respect to the infrastructure work that is required by the terms Sections 12(n), 12(t), 12(u) and 12(v) of this Agreement (the improvements described in such paragraphs being collectively referred to herein as the "Required Infrastructure Improvements") and the CITY acknowledges receipt and approval of the same.

OWNER agrees that construction shall be in general accordance with approved Design Plans and the Final Plat and that all Required Infrastructure Improvements will be constructed in a workmanlike manner. OWNER shall warrant each portion of the Required Infrastructure Improvements for a period of two years from the date of written acceptance by the CITY of such portion of the Required Infrastructure Improvements (each such period being referred to herein as the "Warranty Period") and agrees that if the CITY notifies OWNER that there are construction defects in the Required Infrastructure Improvements during the applicable Warranty Period, OWNER shall promptly correct or repair any such construction defect. Should the OWNER fail to make such repairs within thirty days after written notice from the CITY, the CITY may proceed with such repairs and bill the OWNER for all costs of repair. This repair period is to be extended if inclement weather or other events beyond the reasonable control of OWNER prevents repair within the thirty-day period. The CITY reserves right to make emergency repairs, if necessary in the opinion of the City Engineer, and back bill the OWNER.

- 5. **AS BUILT DRAWINGS**: As built drawings of the Required Infrastructure Improvements shall be provided to the CITY within ninety days of completion of construction. In no event shall the CITY accept the Required Infrastructure Improvements until such "as built drawings" are provided.
- 6. INSPECTION AND TESTING: All Required Infrastructure Improvements shall be inspected and tested with all costs of testing and inspection to be borne by the OWNER. To the greatest extent possible, the CITY will have inspections done by CITY employees; inspections done by CITY employees will be billed to OWNER based on the CITY'S adopted fees schedule and out of pocket costs that are documented and itemized. A representative of the CITY shall be present at the pressure testing of water mains and sanitary sewer mains. The CITY shall be notified at least forty-eight hours in advance of such testing. After the completion of the Required Infrastructure Improvements, the inspection and testing thereof and the submission of the as-built drawings required by Section 5 of this Agreement, the CITY will accept ownership of the Required Infrastructure Improvements as well as the ongoing maintenance obligations with respect thereto.
- 7. **COVENANTS RUN WITH THE LAND**: The covenants herein contained are to be performed by the OWNER and shall be binding upon the OWNER, co-owners, subsequent owners, and the OWNER'S heirs, assigns and successors in interest. Pursuant to Sandpoint City Code Section 9-9-11(E), this Agreement shall be deemed to be covenants running with the land.

Transfer of any Lot to an owner shall automatically be deemed a transfer of the obligations with respect to any such Lot. The obligations of the Lot owners under this Agreement shall be several, and not joint.

- 8. BONDING FOR PUBLIC IMPROVEMENTS: In lieu of the customary provisions requiring either (a) completion of all of the Required Infrastructure Improvements prior to the issuance of building permits for development, or (b) the submittal of security to cover 150% of the CITY'S estimated cost of construction of any public improvements, the CITY agrees that the stipulations as set forth in Section 12 of this Agreement are sufficient to ensure adequate installation and development of the Required Infrastructure Improvements, and that no further security shall be required in connection therewith. If the infrastructure is not completed as provided in Section 12 of this Agreement, building permits will be withheld until the required infrastructure is completed.
- 9. **CONSTRUCTION HOURS:** OWNER agrees to use its best efforts to ensure that construction on the Property shall begin no earlier than 6:30 a.m. from Sunday through Saturday, and shall terminate for the day no later than 10:00 p.m.
- 10. MERGER AND AMENDMENT: All promises and negotiations of the parties merge into this Agreement. Parties agree that this Agreement shall be amended only in writing and signed by both parties. Parties 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.
- 11. **TERM**: Except for stormwater provisions applicable to each owner of a Lot to be established as set forth in Section 12(d) of this Agreement (which run with ownership of each Lot), all responsibilities of OWNER shall terminate two years after acceptance of the Required Infrastructure Improvements by the CITY.
- 12. **CONDITIONS:** The OWNER shall meet the following requirements for this project.

 All references in this Section 12 to Lot numbers shall be deemed to refer to the Lots as shown on the Final Plat:
 - (a) Four copies of infrastructure drawings (water, sewer, streets, storm) shall be submitted for review along with applicable fees. When approved, one copy will be forwarded to Department of Environmental Quality, one copy will be returned to the owner and two copies will remain with the CITY. Digital drawings of the subdivision PAGE 4 OF 12

replat and for the Required Infrastructure Improvements, in AutoCad dwg format, and geo-referenced, shall be provided to the CITY prior to acceptance of the Required Infrastructure Improvements.

- (b) New water mains to serve the newly-created Lots within the Property shall be designed and installed when the Lots are developed and before road improvements are completed for such Lot or Lots. Payment of applicable fees for tapping, main extensions, and meter sets will be required to be paid by the applicable Lot owner at the time these services are provided to its Lot. Drawings prepared and stamped by an Idaho licensed Professional Engineer will be required for the water system.
- (c) The CITY has installed a manhole on the north side of Larch St, just east of Lot 1 which is deep enough to accommodate flows from the Property. Upon payment of applicable fees and approval of main extension drawings prepared and stamped by an Idaho licensed Professional Engineer, OWNER shall be permitted to construct the water, sanitary sewer and storm sewer service lines to be constructed as described in paragraph (n) hereinbelow.
- (d) A stormwater management plan is required for Lot 10 prior to issuance of a building permit for such Lot. Future improvements on any Lot will trigger future stormwater plans for such Lot, all of which shall be done prior to issuance of any building permit for the improvements to be constructed on such Lot. Stamped drawings from an Idaho licensed professional engineer will be required. Calculations of stormwater run off shall be included in the submitted drawings. A construction stormwater management and erosion control plan for each Lot shall be included and followed during construction activities on such Lot. Special attention will be given by the Lot Owner to the City of Sandpoint Stormwater Ordinance.
- (e) The entire frontage of Boyer Avenue shall be widened to match the cross-section in place adjacent to Lot 1, including center turn lane and planting strip between curb and sidewalk. The existing right-of-way width is currently 30 feet from centerline with a 5-foot-wide easement granted to the City of Sandpoint by Instrument No. 770179 for pedestrian and bicycle use. Six-foot-wide sidewalks will be installed along Boyer Avenue to match existing sidewalks, with said easement revised if necessary to allow for alignment with the existing cross-section. New curb and gutter shall be installed. The road shall be re-striped to match the new cross section. These street and widening improvements for Boyer Avenue will be triggered (i) along Lot 6 upon development of Lot 6 and (ii) along Lots 7, 8 and 9 when any two of Lots 7, 8 or 9 are developed.
- (f) Construction of Sixth Avenue to its full width, including curb, gutter, and sidewalk on the western side of Sixth Avenue along and through the frontage of Lots 2, 3, 4 and 5, concurrent with development of such Lots as and when required by the terms of paragraph (t).

- (g) All new roadways on the Property that are described in paragraph (t), paragraph (v), and paragraph (w) hereinbelow shall be constructed in accordance with the City of Sandpoint standards, including curb, gutter, sidewalk and landscaping.
- (h) Street signage and striping shall be provided and installed by the individual Lot owners at the time of development and construction of on-site improvements for its Lot.
- (i) A survey street monument, in a monument case, shall be provided at an intersection of streets on the Property by the individual Lot owners at the time of development and construction of on-site improvements for its Lot. The monument shall meet the requirements of the CITY and be geo-referenced.
- (j) A traffic impact analysis is not required for the work described in this Agreement or the Property, but may be required for the development of individual Lots.
- (k) All street cuts shall be backfilled and patched according to CITY standards.
- (l) Any parking lot lighting that may be installed on any Lot shall meet the requirements of the CITY'S lighting ordinance when installed by the individual Lot owner. All lighting shall be directed downward and is required to be high pressure sodium instead of metal halide. LED lighting will be considered.
- (m) Any additional fees associated with the future development of any Lot will be assessed during individual site plan review of any proposed improvements to be constructed on such Lot.
- (n) A looped water/hydrant system that is described in the Design Plans shall be installed in the utility easement areas as shown on the Final Plat with hydrant spacing to be no greater than 500 feet apart. In addition, OWNER shall be required to install in the utility easement areas as shown on the Final Plat the sanitary sewer improvements, fire hydrants, and stormwater management that are described in the Design Plans and street lighting in accordance with CITY standards.
- (o) CITY hereby agrees that OWNER shall be entitled to remove any and all utility lines that are located in the following public utility easements (both as shown on the Final Plat), (i) the easement area that runs East-West across Lot 1 and Lot 3, and (ii) the easement area that runs North-South across Lots 2, 3, 4, 5 and 10. Any such utility lines shall be relocated to the utility easement area that is shown on the Final Plat. Upon relocation of the CITY'S sewer, water and storm sewer lines located in the easement areas described in clauses (i) and (ii) above, such easements area shall automatically be deemed vacated in accordance with the Final Plat.

- (p) Additional *International Fire Code* requirements for the improvements that are to be constructed on any Lot will be addressed during the site plan review and building permit process for such Lot.
- (q) Addressing for each building constructed within the Property shall comply with City Code and shall be posted to be visible from the street by Public Safety agencies.
- (r) Each Lot shall be required to meet minimum off-street parking requirements for the use of such Lot.
- (s) Lot 1 and Lots 6 through 9 are allowed as double frontage lots to provide a more integrated street plan. Boyer Avenue will be considered the primary frontage for Lots 6, 7, 8 and 9.
- (t) "Sixth Avenue" shall be required to be constructed in accordance with the Design Plans from Larch Street to the northern boundary of the Property. The same has been platted and dedicated on the Final Plat, and shall be constructed as set forth herein. This street shall be located in the approximate area as shown on the Final Plat, with the entrance from Larch Street to be realigned as shown on the Final Plat. Sixth Avenue between Chestnut Street and Larch Street shall be constructed in accordance with the terms of the Design Plans and the other terms of this Agreement as and when necessary for vehicular access to Lots 2, 3, 4 or 5. The entrance to Sixth Avenue from Larch Street shall required to be constructed upon the earlier to occur of (i) the development of Lot 2, and (ii) the development of Lot 3, if Lot 4 or Lot 5 have not been previously developed.
- (u) A 10-foot wide bike path between Larch Street and Boyer Avenue is to be constructed in accordance with the Design Plans within the road right-of-way for Sixth Avenue located on the Property and the 10-foot easement area on the northern boundary of Lot 9 as shown on the Final Plat, and, after completion of such construction, the same shall be platted and dedicated.
- (v) "Chestnut Street" shall be constructed in accordance with the Design Plans from Boyer Avenue to the eastern boundary of the Property. The same has been platted and dedicated on the Final Plat, and shall be constructed as set forth herein. This street shall be located in the approximate area as shown on the Final Plat.
- (w) "Spruce Street" shall be required to be constructed in accordance with the Design Plans from Boyer Avenue to the intersection of Sixth Avenue as shown on the Final Plat. The same has been platted and dedicated on the Final Plat, and shall be constructed as set forth herein. This street shall be located in the approximate area as shown on the Final Plat. Spruce Street shall be constructed in accordance with the terms of design plans approved by the CITY and the other terms of this Agreement as and when necessary for vehicular access to Lot 6.

No certificate of occupancy for the development of Lot 10 shall be issued until the following portions of the Required Infrastructure Improvements have been completed in accordance with the terms of the Design Plans and the other terms of this Agreement: (i) construction of Chestnut Street to its full width from Boyer Avenue to the eastern boundary of the Property, (ii) construction of Sixth Avenue to its full width from Chestnut Street to the northern boundary of the Property, (iii) construction of the bike path within the right of way easement for Sixth Avenue (as shown on the Final Plat) from Larch Street to the northern boundary of the Property, and (iv) construction of the water main and sewer line servicing the Property in the utility easement area as shown on the Final Plat.

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

CITY OF SANDPOINT, BONNER COUNTY, IDAHO

Marsha Ogilvie, Mayor

ATTEST:

Maree J. Peck, City Clerk

OWNER

MILLTOWN PARK LLC, a Delaware limited liability company

By: Brownfield Development I, LLC, a Delaware

limited liability company, its sole member

By: The Prudential Insurance Company of America, a New Jersey corporation

Name James L. Street

le. Vice President

STATE OF Malo.) ss. County of Malo.)

On this 4 day of July, 2012, before me, a Notary Public, personally appeared, Marsha Ogilvie, known, or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity as Mayor of the City of Sandpoint, Idaho and that by her signature on the instrument the City of Sandpoint, Idaho executed the instrument.

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

NOTAR LEREA COLLINIA DE LOCALICA DE LOCALI

Notary Public for Idaho

STATE OF I	linois	_ §
COUNTY OF	Cork	§ §.

On July 25, 2012, before me, the undersigned, a notary public in and for said State, personally appeared James L. Street, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

My Commission Expires: 03/21/15

OFFICIAL SEAL
KATIE SEIDELMAN
Notary Public, State of Hinois
My Commission Expires
March 21, 2015

Exhibit A – Final Plat

[see attached]

