

DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
 2. Bouma, USA, Developer
 3. Gem Innovation School, Owner

THIS DEVELOPMENT AGREEMENT (this Agreement), is made and entered into this 29th day of July, 2020, by and between **City of Meridian**, a municipal corporation of the State of Idaho, hereafter called CITY whose address is 33 E. Broadway Avenue, Meridian, Idaho 83642 and **Gem Prep: Meridian North, LLC** whose address is PO Box 86, Deary, ID 83823, hereinafter called OWNERS and **Bouma, USA** whose address is 3033 Orchard Vista Dr. Suite 309 Grand Rapids MI 48546 hereinafter called DEVELOPER.

1. **RECITALS:**

- 1.1 **WHEREAS**, Owner is the sole owner, in law and/or equity, of certain tract of land in the County of Ada, State of Idaho, described in Exhibit “A”, which is attached hereto and by this reference incorporated herein as if set forth in full, herein after referred to as the Property; and
- 1.2 **WHEREAS**, Idaho Code § 67-6511A provides that cities may, by ordinance, require or permit as a condition of zoning that the Owners and/or Developer make a written commitment concerning the use or development of the subject Property; and
- 1.3 **WHEREAS**, City has exercised its statutory authority by the enactment of Section 11-5B-3 of the Unified Development Code (“UDC”), which authorizes development agreements upon the annexation and/or re-zoning of land; and
- 1.4 **WHEREAS**, Owners and/or Developer have submitted an application for the annexation and zoning of 8 acres of land, from the RUT to the R-15 (Medium Density Residential) zoning district for the property listed in the attached Exhibit “A”, under the Unified Development Code, which generally describes how the Property will be developed and what improvements will be made; and
- 1.5 **WHEREAS**, Owners and/or Developer made representations at the public hearings both before the Meridian Planning & Zoning Commission and before the Meridian City Council, as to how the Property will be developed and what improvements will be made; and

- 1.6 **WHEREAS**, the record of the proceedings for the requested annexation and zoning of the Property held before the Planning & Zoning Commission, and subsequently before the City Council, includes responses of government subdivisions providing services within the City of Meridian planning jurisdiction, and includes further testimony and comment; and
- 1.7 **WHEREAS**, on the 21th day of July, 2020, the Meridian City Council approved certain Findings of Fact and Conclusions of Law and Decision and Order (“Findings”), which have been incorporated into this Agreement and attached as Exhibit “B”; and
- 1.8 **WHEREAS**, the Findings require the Owners and/or Developer to enter into a Development Agreement before the City Council takes final action on final plat; and
- 1.9 **WHEREAS**, Owners and/or Developer deems it to be in its best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily and at its urging and request; and
- 1.10 **WHEREAS**, City requires the Owner and/or Developer to enter into a development agreement for the purpose of ensuring that the Property is developed and the subsequent use of the Property is in accordance with the terms and conditions of this Agreement, herein being established as a result of evidence received by the City in the proceedings for zoning designation from government subdivisions providing services within the planning jurisdiction and from affected property owners and to ensure zoning designation are in accordance with the amended Comprehensive Plan of the City of Meridian on October 11, 2016, Resolution No. 16-1173, and the UDC, Title 11.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

2. **INCORPORATION OF RECITALS:** That the above recitals are contractual and binding and are incorporated herein as if set forth in full.

3. **DEFINITIONS:** For all purposes of this Agreement the following words, terms, and phrases herein contained in this section shall be defined and interpreted as herein provided for, unless the clear context of the presentation of the same requires otherwise:

- 3.1 **CITY:** means and refers to the **City of Meridian**, a party to this Agreement, which is a municipal Corporation and government subdivision of the state of Idaho, organized and existing by virtue of law of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho 83642.
- 3.2 **OWNERS:** means and refers to **Gem Prep: Meridian North, LLC** whose address is PO Box 86, Deary, Idaho 83823, the parties that own said Property and shall include any subsequent owner(s) of the Property.

3.3 **DEVELOPER:** means and refers to **Bouma, USA**, whose address is 3033 Orchard Vista Dr. Suite 309 Grand Rapids, MI 48546, the party that is developing said Property and shall include any subsequent developer(s) of the Property.

3.4 **PROPERTY:** means and refers to that certain parcel(s) of Property located in the County of Ada, City of Meridian as described in Exhibit "A" describing the parcel to be bound by this Development Agreement and attached hereto and by this reference incorporated herein as if set forth at length.

4. **USES PERMITTED BY THIS AGREEMENT:** This Agreement shall vest the right to develop the Property in accordance with the terms and conditions of this Agreement.

4.1 The uses allowed pursuant to this Agreement are only those uses allowed under the UDC.

4.2 No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

5. **CONDITIONS GOVERNING DEVELOPMENT OF SUBJECT PROPERTY:**

5.1. Owners and/or Developer shall develop the Property in accordance with the following special conditions:

- a. Future development of this site shall be generally consistent with the conceptual site plan, conceptual building elevations, conceptual landscape plan and the provisions contained in the Staff Report attached to the Findings of Fact and Conclusions of Law attached hereto as Exhibit "B".
- b. All structures shall comply with the design standards listed in the Architectural Standards Manual and the design standards listed in UDC 11-3A-19. An application for Design Review shall be submitted concurrently with the Certificate of Zoning Compliance application and approved prior to submittal of building permit applications.
- c. Applicant shall construct a segment of the City's 10-foot multi-use pathway along N. McDermott Road and the south boundary in accord with UDC 11-3A-8 and 11-3B-12. Prior to occupancy of any building, the applicant shall obtain City Council's approval of a public pedestrian easement and record said document.
- d. Applicant shall comply with any ACHD conditions of approval.
- e. The applicant shall comply with the ordinances in effect at the time of application submittal.
- f. The only use allowed to develop on the property is an education institution. Said use shall comply with the specific use standards in UDC 11-4-3-14.

- g. The applicant shall work with Staff and the City Arborist to provide tree mitigation plan at time of CZC.
- h. The applicant shall construct a 10-foot wide landscape buffer on the north boundary of Gem Street in accord with UDC 11-3B-7C.

6. **COMPLIANCE PERIOD** This Agreement must be fully executed within six (6) months after the date of the Findings for the annexation and zoning or it is null and void.

7. **DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:**

- 7.1 **Acts of Default.** Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement shall constitute default under this Agreement.
- 7.2 **Notice and Cure Period.** In the event of Owners and/or Developer's default of this Agreement, Owners and/or Developer shall have thirty (30) days from receipt of written notice from City to initiate commencement of action to correct the breach and cure the default, which action must be prosecuted with diligence and completed within one hundred eighty (180) days; provided, however, that in the case of any such default that cannot with diligence be cured within such one hundred eighty (180) day period, then the time allowed to cure such failure may be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.
- 7.3 **Remedies.** In the event of default by Owners and/or Developer that is not cured after notice as described in Section 7.2, Owners and/or Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511. Owners and/or Developer reserve all rights to contest whether a default has occurred. This Agreement shall be enforceable in the Fourth Judicial District Court in Ada County by either City or Owners and/or Developer, or by any successor or successors in title or by the assigns of the parties hereto. Enforcement may be sought by an appropriate action at law or in equity to secure the specific performance of the covenants, agreements, conditions, and obligations contained herein.
- 7.4 **Delay.** In the event the performance of any covenant to be performed hereunder by either Owners and/or Developer or City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

7.5 **Waiver.** A waiver by City of any default by Owners and/or Developer of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of City nor apply to any subsequent default of any such or other covenants and conditions.

8. **INSPECTION:** Owners and/or Developer shall, immediately upon completion of any portion or the entirety of said development of the Property as required by this Agreement or by City ordinance or policy, notify the City Engineer and request the City Engineer's inspections and written approval of such completed improvements or portion thereof in accordance with the terms and conditions of this Agreement and all other ordinances of the City that apply to said Property.

9. **REQUIREMENT FOR RECORDATION:** City shall record this Agreement, including all of the Exhibits, and submit proof of such recording to Owners and/or Developer, prior to the third reading of the Meridian Zoning Ordinance in connection with the re-zoning of the Property by the City Council. If for any reason after such recordation, the City Council fails to adopt the ordinance in connection with the annexation and zoning of the Property contemplated hereby, the City shall execute and record an appropriate instrument of release of this Agreement.

10. **ZONING:** City shall, following recordation of the duly approved Agreement, enact a valid and binding ordinance zoning the Property as specified herein.

11. **SURETY OF PERFORMANCE:** The City may also require surety bonds, irrevocable letters of credit, cash deposits, certified check or negotiable bonds, as allowed under the UDC, to insure the installation of required improvements, which the Owners and/or Developer agree to provide, if required by the City.

12. **CERTIFICATE OF OCCUPANCY:** No Certificates of Occupancy shall be issued in any phase in which the improvements have not been installed, completed, and accepted by the City, or sufficient surety of performance is provided by Owners and/or Developer to the City in accordance with Paragraph 11 above.

13. **ABIDE BY ALL CITY ORDINANCES:** That Owners and/or Developer agree to abide by all ordinances of the City of Meridian unless otherwise provided by this Agreement.

14. **NOTICES:** Any notice desired by the parties and/or required by this Agreement shall be deemed delivered if and when personally delivered or three (3) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

CITY:
City Clerk
City of Meridian
33 E. Broadway Ave.
Meridian, Idaho 83642

with copy to:
City Attorney
City of Meridian
33 E. Broadway Avenue
Meridian, Idaho 83642

OWNERS:

Gem Prep: Meridian North, LLC
PO Box 86
Deary, ID 83823

DEVELOPER:

Bouma, USA
3033 Orchard Vista Dr. Suite 309
Grand Rapids, MI 48546

14.1 A party shall have the right to change its address by delivering to the other party a written notification thereof in accordance with the requirements of this section.

15. **ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

16. **TIME IS OF THE ESSENCE:** The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the other party so failing to perform.

17. **BINDING UPON SUCCESSORS:** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement shall be binding on the Owners and/or Developer, each subsequent owner and any other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed. City agrees, upon written request of Owners and/or Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, had determined that Owners and/or Developer have fully performed their obligations under this Agreement.

18. **INVALID PROVISION:** If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any of the other provisions contained herein.

19. **DUTY TO ACT REASONABLY:** Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

20. **COOPERATION OF THE PARTIES:** In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision in this Agreement, the parties agree to cooperate in defending such action or proceeding.

21. **FINAL AGREEMENT:** This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owners and/or Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owners and/or Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of City.

21.1 No condition governing the uses and/or conditions governing re-zoning of the subject Property herein provided for can be modified or amended without the approval of the City Council after the City has conducted public hearing(s) in accordance with the notice provisions provided for a zoning designation and/or amendment in force at the time of the proposed amendment.

22. **EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective on the date the Meridian City Council shall adopt the amendment to the Meridian Zoning Ordinance in connection with the annexation and zoning of the Property and execution of the Mayor and City Clerk.

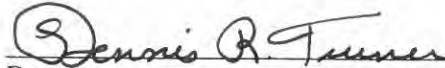
[end of text; signatures, acknowledgements, and Exhibits A and B follow]

ACKNOWLEDGMENTS

IN WITNESS WHEREOF, the parties have herein executed this agreement and made it effective as hereinabove provided.

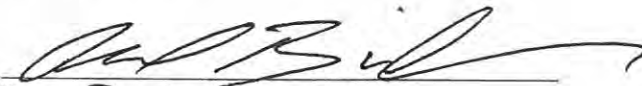
OWNERS:

Gem Prep: Meridian North, LLC


By: Dennis R. Turner
Its: Board chairman

DEVELOPER:

Bouma, USA


By: Paul Bierlein
Its: Chief operating officer

CITY OF MERIDIAN

ATTEST:

By: _____
Mayor Robert E. Simison

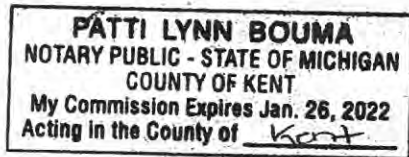
Chris Johnson, City Clerk

STATE OF Michigan
: ss:
County of Kent)

On this 29 day of July, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul A Bickel known or identified to me to be the COO of Bouma, USA, and the person who signed above and acknowledged to me that he executed the same on behalf of said entity.

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

(SEAL)



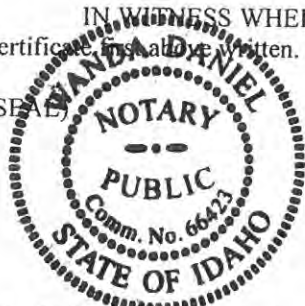
Patti Lynn Bouma
Notary Public for State of Michigan
Residing at: Kent County
My Commission Expires: 11/26/2022

STATE OF IDAHO)
County of Bannock : ss:
Ada)

On this 29 day of July, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Dennis R. Turner, known or identified to me to be the Board Chairman of Gem Prep: Meridian North LLC and acknowledged to me that he executed the same on behalf of said school.

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

(SEAL)



Wanda Daniel
Notary Public for Idaho
Residing at: Bannock County Farm Bureau
My Commission Expires: 9-21-21

STATE OF IDAHO)
County of Ada : ss:
)

On this _____ day of _____, 2020, before me, a Notary Public, personally appeared **Robert E. Simison and Chris Johnson**, known or identified to me to be the Mayor and Clerk, respectively, of the City of Meridian, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City 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.

(SEAL)

Notary Public for Idaho
Residing at: _____
Commission expires: _____