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435 Ryman
Missoula, MT 59802

DEVELOPMENT AGREEMENT

[HEH, LLC, Resource Research LTD, Flynn Family Limited Partnership and City of Missoula]

THIS DEVELOPMENT AGREEMENT (the “Agreement”) made effective this _____ day of _____, 2019, is entered into by and between HEH, LLC, whose address is C/O Hoyt Homes, PO Box 2727, Missoula, MT 59806-2727, Resource Research LTD, whose address is 5612 S Mohawk Dr., Spokane, WA 99206, and Flynn Family Limited Partnership C/O Colleen McKinley, whose address is 4110 E 6th Avenue Parkway, Denver, CO 80220 together known as the “Developers” 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 (the “City”). Each is called a “Party” in this Agreement, and collectively are called “Parties.”

WHEREAS, the Developers are owner and/or purchasers of certain real property located in Missoula, Montana attached hereto as Exhibit A (the Subject Property); and

WHEREAS, the Developers request a Growth Policy Amendment on the “Subject Property” revising the land use designation from Residential Medium, 3 – 11 dwelling units per acre to Neighborhood Mixed Use in combination with a Rezone on the Subject Property from Hellgate Special District to B2-1 Community Business, a standard Title 20 zoning district; and

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 of the road grid network and parkland/common area proposed on the subject property, with the final development plan established by City Council approval of subdivisions or other appropriate land divisions on the Subject Property; and

WHEREAS, the conceptual Master Plan includes dedication of the road rights-of-way to the public by dividing the land through subdivisions or other appropriate processes that will be reviewed and approved by the Missoula City Council; and

WHEREAS, the Master Plan includes the construction of Mary Jane Boulevard and O’Leary Street, classified as Collector roads, through the Subject Property meeting City Subdivision standards for road improvements for Urban Collector roadways; and whose construction may be funded through a BUILD Grant or a combination of City and Developer funds, and

WHEREAS, the Master Plan includes the construction of a road grid network of local streets through the Subject Property and connecting to existing streets to the north and east meeting City Subdivision standards for road improvements for Local Residential roadways; and

WHEREAS, the Master Plan limits commercial uses to Neighborhood Business Uses only, in conformance with B1 District standards, and further limits the location of Neighborhood Business Uses to a location either side of Mary Jane Boulevard within five hundred (500) feet of Mullan Road; and

WHEREAS, the density of the residential development is limited in the Master Plan by distinct area classifications:

- a. Area A: fourteen (14) dwelling units per acre with a maximum building height of 35 feet; and,
- b. Area B: twenty-one (21) dwelling units per acre or density calculated as 2,000 square feet of parcel area per dwelling unit on the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district.

The total density on the Subject Property is less than half the density allowed for lands zoned B2-1 Community Business (43 dwelling units per acre or 1,000 square feet per dwelling unit); and

WHEREAS, the Master Plan limits the multi-dwelling buildings to a maximum of sixteen (16) units per multi-dwelling structure, and limits attached townhouses to no more than eight (8) attached dwelling units per structure on the Subject Property; and

WHEREAS, the realization of the Master Plan requires the Growth Policy Amendment and Rezone to B2-1 in order for the Subject Property to include a mix of neighborhood business and varying residential densities and all residential building types; and

WHEREAS, the City has adopted policies that promote compact development with mixed-use and greater density along major transportation/transit corridors provided the development enhances connectivity and extends a multi-modal transportation system accessible for all citizens; and

WHEREAS, the City acknowledges that Mary Jane Boulevard and O'Leary Street have been planned as Urban Collector roadways appropriate to serve the mixed-use and dense compact development supported by the Neighborhood Mixed Use land use designation in the Our Missoula City Growth Policy 2035 and the B2-1 Community Business Title 20 zoning district; and

WHEREAS, the City, through adopted policies and goals desires to ensure the orderly development of the Subject Property and adopted the Title 20 zoning ordinance with the express purpose to protect and promote the public health, safety and general welfare of the community; and

WHEREAS, the Developers own or propose to own all the Subject Property and state that they have the right to obligate themselves and any associated entity purchasing parcels of the Subject Property shown in Exhibit A attached hereto, to the requirements, standards and restrictions in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals contained herein, the Developers and the City agree and declare that the Subject Property shall be subject to the following covenants, standards and restrictions:

1. Development shall occur on the Subject Property in substantial compliance with the Master Plan shown in Exhibit B, attached hereto, through subdivision(s) or other appropriate processes, subject to the review and approval of the Missoula City Council. For the purposes of this Agreement, substantial compliance, as determined by the Development Services Director, shall be defined as meeting the intent and purpose of the Master Plan shown in Exhibit B by:
 - a. Containing, at a minimum, road and pedestrian connections as shown on the Master Plan;

- b. Containing no less parkland area; and
 - c. Containing no greater intensity of land use, height, or density.
2. In the event the proposed development does not substantially comply with the Master Plan, as defined herein, the Developers may seek an amendment to this Agreement and the Master Plan pursuant to Section 13 below.
 3. Unless changes are required pursuant to the City's subdivision regulations or City Council direction during subdivision review, the Developers shall construct the road grid network in substantial compliance with the Master Plan and connecting to existing streets to the north and east. Connectivity shall be provided by means of one or more of the following three options: dedicated public roadways meeting city subdivision standards, private roads with public access easements meeting Title 12 standards, or greenways with pedestrian facilities with a public access easement.
 4. Mary Jane Boulevard and O'Leary Street through the Subject Property shall meet City subdivision standards for road improvements, according to the Standards for Geometric Design of Roads and Streets. It is the intention of the City to assist with the funding of the improvements to Mary Jane Boulevard and O'Leary Street as funds become available. If Mary Jane Boulevard and O'Leary Street improvements are not fully or partially funded by the City, the developers shall construct the unfunded portions of Mary Jane Boulevard and O'Leary Street.
 5. Non-residential uses are limited to Neighborhood Business Uses only, in conformance with Title 20, B1 zoning district standards and further limits the location on the Subject Property to parcels adjacent to Mary Jane Boulevard and within five hundred (500) feet of Mullan Road.
 6. The density of the residential development is limited in the Master Plan by distinct area classifications:
 - a. Area A: fourteen (14) dwelling units per acre with a maximum building height of 35 feet; and
 - b. Area B: twenty-one (21) dwelling units per acre or density calculated as 2,000 square feet of parcel area per dwelling unit on the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district.
 7. Multi-dwelling buildings, as defined in Title 20 Section 20.100.010, with more than six (6) units per structure are limited to locations classified as Area B on the Master Plan and each multi-dwelling building shall have no more than sixteen (16) dwelling units.
 8. Multi-dwelling buildings, as defined in Title 20 Section 20.100.010, are limited to no more than six (6) units per structure in locations classified as Area A on the Master Plan.
 9. Townhouse structures, as defined in Title 20 Section 20.100.010, shall have no more than eight (8) dwelling units attached per structure on the Subject Property.
 10. The main entrances of all primary structures adjacent to public roads shall be visible from those public roadways.
 11. Excepting modifications to the B2-1 zoning district standards as provided herein, 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 subdivision regulations, construction standards and specifications, and state and local laws that govern the development of the Subject Property.
 12. Effective Date: This Agreement will be in force and effect on the date signed by the Mayor of the City and by the Developers.

13. Amendment: No part of this Agreement may be amended or deleted without prior written consent of the Missoula City Council and the Developers, or their successors and assigns. A grant of a deed or ownership interest in and to a particular subsequently developed parcel or TED ownership unit with a dwelling, unit, or building/structure and having received a temporary or final occupancy permit shall not be deemed a transfer or assignment of Developers rights and responsibilities under this Agreement.
14. Attorneys' Fees. In the event suit is brought for the enforcement of this Agreement or as a result of an alleged default, each Party shall pay their own attorney fees.
15. 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.
16. 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.
17. 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.
18. Drafting of Agreement. Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.
19. 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.
20. Runs with the Land. 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.
21. Agreement Contingent Upon Zoning Action by City Council. The Parties to this Agreement acknowledge that this Agreement is being entered into in conjunction with a request by the Developers to the Missoula City Council for a Growth Policy Amendment and a rezoning of the Subject Property to a B2-1 zoning district. This Agreement is expressly contingent upon the City Council approving the requested Growth Policy Amendment and rezoning request made by the Developers, and in the event City Council does not approve the Growth Policy Amendment or the Rezone request within ninety days of this Agreement being fully executed, the Agreement shall be null and void and have no further effect.

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

[Signature pages follow.]

HEH, LLC:

By: Wade Hoyt

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 2019 by
Wade Hoyt.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

Resource Research, LTD:

By: Rod Hoover

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 2019 by
Rod Hoover.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

Flynn Family Limited Partnership:

By: Colleen McKinley, its: _____

By: Marifrances Courtney, its: _____

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 2019 by
Colleen McKinley, as _____ of Flynn Family Limited Partnership.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 2019 by
Marifrances Courtney, as _____ of Flynn Family Limited Partnership.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

FOR the City

City of Missoula

APPROVED:

_____ Date: _____
John Engen, Mayor

ATTEST:

_____ Date: _____
Mary Rehbein, City Clerk

Approved as to form:

_____ Date: _____
Jim Nugent, City Attorney