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City Clerk
435 Ryman St
Missoula, MT 59802

DEVELOPMENT AGREEMENT
[Tollefson Properties LLC and City of Missoula]

THIS DEVELOPMENT AGREEMENT (the “Agreement”) made effective this ____ day of _____, 2023 is entered into by and between Tollefson Properties LLC, whose address is 17752 Wild Goose Lane, Frenchtown, MT 59834-9615 (the “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 (the “City”). Each is called a “Party” in this Agreement, and collectively are called “Parties”.

WHEREAS, Developer is the owner of certain real property located in the City of Missoula, Missoula County, Montana legally described as

Tract 1, COS 6449, on file in the property records of Missoula County, Montana (the “Property”); and

WHEREAS, the Developer has received preliminary plat and annexation approval by decision of the Missoula City Council on December 12, 2022, for the Riverfront Trails Subdivision (the “Riverfront Trails Subdivision” or the “Preliminary Plat”), subject to 50 conditions of preliminary plat approval and 22 conditions of annexation approval (the “Conditions”), approval attached hereto as Exhibit A; and

WHEREAS, the City initiated a Capital Improvement Project in 2019 for Lower Miller Creek Road between Linda Vista Boulevard and Jack Drive that included the installation of a roundabout at the intersection of Old Bitterroot Road and Lower Miller Creek Road to meet the transportation system needs of existing and future development; and

WHEREAS, the City determined that a roundabout was the appropriate intersection treatment at this location because it provided enhanced public safety, access for developments, and would be the intersection of two collector streets with future development; and

WHEREAS, Missoula City Council adopted Subdivision Condition of Approval #5 and Annexation Condition of Approval #2 that required the Developer to provide plans for and install a roundabout at the intersection of Old Bitterroot Road and Lower Miller Creek Road and to be responsible for 100% of the cost of the roundabout unless a Development Agreement for cost share is executed, subject to City Council Approval; and

WHEREAS, the Developer provided an updated Traffic Impact Study that predicted 36% of the anticipated traffic using the roundabout would be generated by Riverfront Trails Subdivision at full build out, shown in the attached Exhibit B; and

WHEREAS, the City reviewed the updated Traffic Impact Study analysis and agreed with the conclusions;

WHEREAS, the City does not currently possess the necessary right-of-way to install the roundabout as planned; and

WHEREAS, the Parties agree that coordination is needed between the Riverfront Trails Subdivision and the Lower Miller Creek Road project for the installation of the roundabout; and

WHEREAS, the Parties wish to agree on the Parties' respective rights and obligations concerning Subdivision Condition #5 and Annexation Condition #2, which must be satisfied prior to filing of Phase 1A of The Riverfront Trails Subdivision; and

WHEREAS, Subdivision Condition #5 and Annexation Condition #2 can be satisfied by the Developer and the City entering into this Development Agreement, which is deemed satisfactory by CPDI, PW&M and Parks and Recreation, and is approved by City Council.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, Developer and the City agree as follows:

1. Responsibilities and Obligations of the Developer. The Developer agrees to the following:

- a.** Contribute 36% of the cost of the roundabout as determined by the opinion of probable cost provided by the City. The contribution will include direct cash payment and a combination of dedicated right-of-way and easement as determined by the final design of the roundabout, generally shown in Exhibit C. The contribution and right-of-way dedication shall be completed prior to and as part of the filing for the Phase 1A final plat.
 - (1) Cash value of the right-of-way and easement shall be determined by mutually agreed negotiated value, based on a market valuation or appraisal of the land after subdivision, performed by a certified appraiser approved by the City, with the cost of the market valuation or appraisal borne by the Developer.
- b.** To not protest having the Property included in any future special improvement district or impact or special development fee boundary related to the construction of the roundabout and related street improvements on Lower Miller Creek Road.
- c.** Design and install a 24-foot wide temporary asphalt approach from Old Bitterroot Road to Lower Miller Creek Road. This temporary approach shall include appropriate temporary or permanent pedestrian facilities depending on timing of the roundabout

installation and certificate of occupancy for the first building in Phase 1A, subject to review and approval of Public Works and Mobility.

2. **Responsibilities and Obligations of City.** The City agrees to the following:
 - a. Determine the final location of the roundabout in order to determine the correct amount of right-of-way and easement contribution required from the Developer prior to August 1, 2023.
 - b. Complete final design for the Lower Miller Creek Road Capital Improvement Project including the roundabout at the intersection of Old Bitterroot Road and Lower Miller Creek Road.
 - c. Provide an Engineer's opinion of probable cost to determine the cost share contribution toward the roundabout prior to August 1, 2023.
 - d. Prepare appropriate documentation to support the creation of a Special Improvement District or special development fees to fund the improvement costs, not already being paid for by Developer, discussed herein, to be reviewed and approved by City Council.
 - e. Complete construction of Lower Miller Creek Road, including a roundabout at Old Bitterroot Road and Lower Miller Creek Road once design and funding for this Capital Improvement Project has been finalized.
3. **Developer's Satisfaction of the Conditions.** The Parties agree that execution of this Agreement shall be considered satisfaction of Subdivision Condition of Approval #5 and Annexation Condition of Approval #2.
4. **Effective Date.** This Agreement will be in force and effect on the date signed by the Mayor of the City and by Developer (the "Effective Date").
5. **Notices.** All notices shall be addressed as follows, or addressed in such other manner as the Party being notified shall have requested by written notice to the other Party. Refusal to accept delivery of notice shall be deemed to be receipt. Any notice in writing required to be given shall be complete when personally delivered, delivered by courier or expedited delivery service such as Federal Express, or when deposited in the United States Mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other Party at the following addresses:

Developer:

Tollefson Properties LLC
15311 Tyson Way
Frenchtown, MT 59834

Copy to:

City:

Office of the Mayor
City of Missoula
435 Ryman Street
Missoula, Montana 59802

With a copy to:

Development Services Director
City of Missoula
435 Ryman Street
Missoula, MT 59802

The Parties, by notice given under this section, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

6. **Compliance With Applicable Ordinances.** Except as provided in this Section, nothing contained in this Agreement shall be interpreted to authorize or permit Developer to violate any law, ordinance, or regulation relating to building codes, fire codes, building materials, zoning, construction methods, or use. In the event of any conflict between any law, ordinance, or regulation and the terms of this Agreement, the law, ordinance, or regulation shall prevail and Developer shall promptly notify City of the conflict. City shall cooperate with Developer to accommodate the purposes of both this Agreement and such law, ordinance, or regulation.
7. **Force Majeure.** A Party shall not be held responsible if the fulfillment of the Party's obligations under this Agreement is delayed or prevented by revolutions, wars, acts of enemies, strikes, fires, global pandemics, floods, other natural disasters, acts of God, or without limiting the foregoing, by any other cause not within the control of the Party whose performance is interfered with, and which by the exercise of reasonable diligence, the Party is unable to prevent, whether of the class of causes hereinbefore enumerated or not.
8. **Binding Effect.** This Agreement touches and concerns the use of land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, and shall run with the land: provided, the sale/transfer of individual lots within the subdivision with completed dwellings shall not be deemed an assignment of the rights and responsibilities hereunder. Further, the sale/transfer of Lot 1 and Lot 2 as depicted on the preliminary plat of Riverfront Trails shall also not be deemed an assignment of the rights and responsibilities hereunder. This Agreement will be filed with the official records of the Property at the Missoula County Clerk and Recorder's Office.
9. **Additional Provisions.**
 - a. **Modification and Amendment.** This Agreement may be amended or modified by written agreement signed by the Parties.

- b. **Time.** Time is of the essence in this Agreement. Any deadline falling on a Saturday, Sunday, or Montana State or United States legal holiday shall be extended to the next business day.
- c. **Binding Effect.** This Agreement is binding upon the heirs, successors, and assigns of the Parties: provided, the sale/transfer of individual lots within the subdivision with completed dwellings shall not be deemed an assignment of the rights and responsibilities hereunder. Further, the sale/transfer of Lot 1 and Lot 2 as depicted on the preliminary plat of Riverfront Trails shall also not be deemed an assignment of the rights and responsibilities hereunder.
- d. **Default and Remedies.** In the event of any breach of this Agreement by a Party, the non-breaching Party shall give the breaching Party written notice describing the breach and thirty (30) days in which to cure. In the event the default is not cured timely, or in the event work required to cure a default is not commenced, the Parties may seek such remedies as are available under law, which shall expressly include specific performance.
- e. **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.
- f. **Governing Law and Venue.** The law governing the interpretation or enforcement of the terms and condition of the Agreement shall be the laws of the State of Montana. The venue for any action brought pursuant to this Agreement shall be in the Fourth Judicial District of Montana, unless the issue involves a federal claim, in which case the venue shall be in the District of Montana.
- g. **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.
- h. **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.
- i. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.
- j. **Drafting of Agreement.** Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.

10. 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. (2021). 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.

11. Riverfront Trails Subdivision Phase 1A. The Parties to this Agreement acknowledge that this Agreement is being entered into in anticipation of a request by the Developer to the Missoula City Council to file the final plat for Phase 1A of the Riverfront Trails Subdivision.

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

FOR the Developer:

Tollefson Properties LLC TOLLEFSON PROPERTIES, LLC
A Montana limited liability company

By: _____ Nate Tollefson, Manager

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on _____, 2023 by Nate Tollefson as Manager of Tollefson Properties LLC, on behalf of said limited liability company.

Notary Signature: _____
Notary Public for the State of Montana

(NOTARIAL SEAL)

FOR the City of Missoula

APPROVED:

_____ Date: _____

Jordan Hess, Mayor

ATTEST:

_____ Date: _____
Marty Rehbein, City Clerk

Approved as to form:

_____ Date: _____
Jim Nugent, City Attorney