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Missoula, MT 59802

DEVELOPMENT AGREEMENT  
[Millsite Revitalization Project and City of Missoula]

THIS DEVELOPMENT AGREEMENT (the “Agreement”) made effective this \_\_\_\_ day of \_\_\_\_\_, 2023 is entered into by and between Millsite Revitalization Project LLC, whose address is 2800 South Reserve Street, Missoula, MT 59801 (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 shown on the attached Exhibit A (the “Property”); and

WHEREAS, the Developer has received preliminary plat approval for the Mill Site Subdivision (the “Mill Site Subdivision” or the “Preliminary Plat”) for the Subject Property by the Missoula City Council, on April 9, 2007, attached hereto as Exhibit B, subject to 29 conditions of preliminary plat approval (the “Conditions”); and

WHEREAS, the City, upon a request from the Developer, modified the Conditions of preliminary plat approval on November 3, 2014, as memorialized in the notice from the City’s Development Services office to Developer dated November 19, 2014, which included additional conditions (the “Phasing Plan Conditions”) attached hereto as Exhibit C; and

WHEREAS, the Mill Site Subdivision includes residential and commercial lots, streets, and parkland/common area proposed on the subject property, all in conformance with Our Missoula Growth Policy, and the updated Downtown Master Plan and Title 20 zoning ordinance; and

WHEREAS, the Developer filed the first phase of the Mill Site Subdivision, entitled Mill Site Subdivision, Phase 1 – Wyoming North; and

WHEREAS, the Developer has worked successfully to revitalize and remediate the abandoned industrial Superfund site since 2003; invested substantial capital to forward these revitalization efforts; and developed approximately \$100,000,000 worth of improvements at the Old Sawmill District (“OSD”); and

WHEREAS, the Parties agree that some flexibility on the timing of the construction of remaining Phase 1 infrastructure and the infrastructure required as part of the Phasing Plan Conditions is beneficial to reduce costs and lessen the impact caused during construction of adjacent structures; and

WHEREAS, the Parties wish to agree on the Parties' respective rights and obligations concerning the Phasing Plan Conditions, which must be satisfied prior to filing of the first sub-phase of Phase 2 of The Mill Site Subdivision; and

WHEREAS, the Developer has spent considerable amounts on planning and designing three sub-phases of Phase 2 of The Mill Site Subdivision; and

WHEREAS, the Phasing Plan Conditions (Motion for Conditional approval #1.a-d, Nov. 3, 2014) can be satisfied by the Developer and the City entering into this Development Agreement, which is deemed satisfactory by CPDI (Community Planning, Development & Innovation), PW&M (Public Works & Mobility), 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. **Common Area Green Scape ("CAGS")** – The CAGS described in this Section 1 is the CAGS immediately to the west of Moose Creek Trail, running from the southern boundary of Silver Park to the Milwaukee Trail, as depicted on Exhibit A attached hereo (the "Central CAGS"). The Phasing Plan Conditions require the Developer and the City to agree on a Development Agreement that "provides for...portions of the Common Area Green Scape (CAGS) between Silver Park and Milwaukee Trail that are not in Phase 1." The City concludes that, in order to satisfy the Phasing Plan Conditions, the Developer is required to design and construct the portions of the Central CAGS south of Silver Park and north of the Milwaukee Trail.

- (1) **CAGS Timing Generally** – Construction of the improvements to the Central CAGS not addressed in subsections 1.a.(2) and 1.a.(3) below can be delayed past the filing of a final plat for any sub-phase 2, and can be delayed past construction of adjacent structures, if the Developer enters into an Improvements Agreement (an "IA") with the City along with a security acceptable to the City as outlined in 1.a.(4) below. Any such Agreement shall provide a construction timeline, identifying when the Central CAGS will be constructed in relation to the underground utilities and the adjacent structures, but in no case may delay construction of the Central CAGS beyond December 31, 2027. Notwithstanding other provisions in this Agreement, the Parties agree that, if completion of the Central CAGS improvements are delayed for reasons not attributable to Developer, including weather, the City may issue Certificates of Occupancy for completed structures prior to the completion of the Central CAGS improvements.

The Parties agree that it is not the intent of this Development Agreement to create any duplication in guarantees contained in different Improvement Agreements for the same improvements. Any guarantees for specific improvements included within an IA entered into pursuant to this Development Agreement shall be removed from the overall guarantee(s) for the same improvements, or permitted to remain in one overall guarantee for the improvements, and not be included in the improvement guarantee for the new IA under this Agreement.

- (2) CAGS Within the Phase 1 - Wyoming North Plat – The portion of the Central CAGS within the Wyoming North Plat has been designed and constructed as depicted on the Wyoming North Plat, and as further described in the Phase 1 Improvements Agreement and Block 6 Improvements Mill Site Subdivision, Phase 1 – Wyoming North plan set prepared by WGM Group, Inc. and dated July 2, 2021 and the CAGS landscaping plans approved to file the Block 6 Amended Plat, which includes the following elements:
- A. The westernmost portion of the Central CAGS includes, listed from west to east:
    - (i) a 8-foot landscape strip on the westernmost edge of the Central CAGS, (ii) a 7-foot sidewalk, and (iii) Class 2 or 3 boulevard type trees west of the sidewalk, spaced according to Parks Department standards, and ensuring adequate separation from the water main and any service lines.
  - B. The Developer has constructed other parklike improvements consistent with applicable zoning between the westernmost portion and the easternmost portion of the Central CAGS.
  - C. The easternmost portion of the Central CAGS, which is adjacent to Moose Creek Trail, includes the following elements, listed from west to east, located within the right-of-way for Moose Creek Trail or within the Central CAGS: (i) a 10-foot shared use path, and (ii) a 10-foot landscape boulevard including appropriate boulevard trees spaced according to Parks Department standards.
- (3) Central CAGS Between Wyoming Street and Milwaukee Trail – The Parties agree that Developer will enter into an Improvements Agreement for the delayed construction of the portion of the central CAGS (shown on the preliminary plat adjacent to Moose Creek Trail) south of Wyoming Street, including the construction of a 10 foot wide shared use path and construction of CAGS improvements in compliance with the provisions of Condition 17 from the 2014 Phasing Plan Amendment, Amended Master List of Conditions, and such CAGS improvements shall be substantially similar to the Central CAGS improvements described in subsection 1.a.(2) above. Developer also agrees to grant easements to the City as identified in subsection 1.e below. This Improvements Agreement must encumber Lots 17A & 18A in Block 16 of the Amended Plat of Eddy Addition Lots 16 – 19 in Section 21, Township 13 North, Range 19 West, P.M.M. recorded at Book of Plats 35, Page 40 in the records of Missoula County, MT (“**Lots 17A and 18A**”) and must be executed prior to issuance of any building permit for any new structure (except for utility infrastructure) within Lot 17A and 18A not presently holding a building permit at the time this Agreement is executed. Any such Improvements Agreement shall

require plans for the design of the Central CAGS be submitted with the first building permit application on Lot 17A or Lot 18A described above. The construction of the improvements within the Central CAGS covered by this subsection shall occur prior to issuance of any certificate of occupancy for any structure built in Lots 17A and 18A. Any such Improvements Agreement shall also include a construction timeline identifying when the Central CAGS will be constructed in relation to the underground utilities and the adjacent structures. Irrespective of the progress of development within the Mill Site Subdivision, under no circumstances, including in the event that an Improvements Agreement is executed, shall the Central CAGS subject to this provision be constructed later than December 31, 2027.

(4) CAGS Adjacent to Phase 2: Montana, Moose Creek, and Silver – That portion of the Central CAGS lying north of Phase 1 – Wyoming North will be referenced on the appropriate Phase 2 plat(s) using labels and references similar to those included on the Wyoming North Plat. Developer agrees that prior to filing the final plat for any or all of the three Phase 2 sub-phases covered by this subsection (Montana, Moose Creek, and Silver), and irrespective of whether final plats are filed by no later than December 31, 2025, Developer will enter into an IA with the City, including a security, guaranteeing construction of that portion of the Central CAGS identified in (A)-(C) below (each a “Phase 2 IA”). Such CAGS improvements shall be substantially similar to the Central CAGS improvements described in subsection 1.a.(2) above. The portions of the Central CAGS identified in the following subsections (A)-(C) below shall be constructed prior to issuance of the first Certificate of Occupancy for any structure within that sub-phase lying adjacent to the Central CAGS:

- A. The IA for Phase 2 Montana shall guarantee the construction of the Central CAGS adjacent to Lots 6-11 of Phase 2 Montana, according to the updated plat for Phase 2 Montana;
- B. The IA for Phase 2 Silver shall guarantee the construction of the Central CAGS adjacent to Lots 16-20 of Phase 2 Silver including the Phase 2 Silver CAGS area; and
- C. The IA for Phase 2 Moose Creek shall guarantee the construction of any remaining then unbuilt CAGS north of Phase 1.

Irrespective of the progress of development within the Mill Site Subdivision, under no circumstances, including in the event that an Improvements Agreement is executed, shall the Central CAGS subject to this provision be constructed later than December 31, 2027. Developer further agrees that in the event that (a) any portion of the Central CAGS is not built by December 31, 2027 or (b) Developer desires to construct structures (except for utility infrastructure) within the Montana, Moose Creek, and Silver sub-phases, in addition to any other available remedy the City will require that plans for the design of the Phase 2 CAGS be submitted with the filing of the first building permit application for structures within the Montana, Moose Creek, and Silver sub-phases after (a) or (b) above is triggered. Once either condition (a) or

(b) in this paragraph is triggered, the City shall require construction of the improvements within the Central CAGS lying north of Phase 1 – Wyoming North. Developer also agrees to grant easements to the City as identified in subsection 1.e below.

- b. Preliminary Plat Approved Right-of-Way Making Up Moose Creek Trail Street South of Wyoming Street** – The Phasing Plan Conditions require the Developer and the City to agree on a Development Agreement that “provides for...the portion of Moose Creek Trail south of Wyoming [Street].” The City concludes that, in order to satisfy the Phasing Plan Conditions, the Developer is required to design and construct a public street covering the area shown as Moose Creek Trail south of Wyoming Street. The Developer has already constructed private street improvements in the area shown as Moose Creek Trail south of Wyoming Street. In place of the proposed public street, within 90 days of execution of this Agreement the Developer shall grant a public access and utility easement to the City of Missoula for the existing 24-foot wide driving lanes detailed in subsection 1.e below (shown as area 4 in Exhibit A, and made up of the eastern 12 feet of Lot 18A and western 12 feet of Lot 19A-1). Maintenance of the infrastructure within the easement covered by this subsection shall remain the responsibility of the Developer until a significant change of use occurs, for instance, if the area subject to the easement is used to connect to other City right-of-way or City public access easements. The easement shall provide among other things that the City shall not have the right to obstruct, encumber, limit, or eliminate access to the parking spaces adjacent to the drive lane of Moose Creek Trail
- c. Clearwater Lane and Dakota Street Between Moose Creek Trail Street and California Street** – The Phasing Plan Conditions require the Developer and the City to agree on a Development Agreement that “provides for...the portion of Clearwater Lane and Dakota Street along the southern property boundary between Moose Creek Trail and California Street[.]” The City concludes that, in order to satisfy the Phasing Plan Conditions (Conditions 1.a-d of the motion to approve the Phasing Plan Amendment approved by City Council on November 3, 2014), the Developer is required either (i) to construct the portion of Clearwater Lane and Dakota Street along the southern boundary of the subdivision between Moose Creek Trail and California Street for circulation and emergency access; or (ii) to provide an alternative plan acceptable to the Parties and supported by a traffic impact study that meets the operational, circulation, and emergency access needs for motorized and non-motorized traffic (including block length criteria as defined in the subdivision regulations) for the entire parcel south of Wyoming and west of Moose Creek Trail at full build out (either, a “Clearwater Lane connection”). The Clearwater Lane connection (or an improvement agreement to secure the construction of the Clearwater Lane connection), or the alternative plan discussed above (or an improvement agreement to secure the construction of such an alternative plan), shall be designed, and included with the building permits, with the improvements constructed prior to the first certificate of occupancy for structures (except for utility infrastructure) within Lots 17A and 18A. In no event shall an alternative plan propose to cross the Milwaukee Trail area to the south of the Property, except that the City may consider allowing access by emergency vehicles across such Milwaukee Trail area.

- d. Traffic Signal at Cregg Lane and Orange Street** – The Phasing Plan Conditions require the Developer and the City to agree on a Development Agreement that “provides for...an improvement agreement guaranteed by a security for the traffic signal installation at Cregg Lane and Orange Street.” The City concludes that, in order to satisfy the Phasing Plan Conditions, the Developer is required to contribute to the cost of designing and constructing a traffic signal, including related above-ground intersection improvements such as poles, support structures, curbs, gutters, sidewalks, and ADA ramps, at the traffic signal intersection (collectively, the “Traffic Signal”), at Cregg Lane and Orange Street as part of filing the final plat for the first sub-phase in Phase 2 of the Subdivision. The provisions of this section do not limit the requirement of the Developer to pay otherwise applicable Transportation Impact Fees that are nondiscretionary, broadly-applied to all areas within the City, and in effect at the time this Agreement is executed or as may be amended in the future (“Transportation Impact Fees”).

As part of this Agreement, the Developer agrees to the following:

- (1) On July 29, 2022, the Developer prepared an updated signal warrant study and traffic projections (the “Traffic Study”) showing the proportionate share of traffic use of Wyoming Street generated by the current development within the Mill Site Subdivision along with the projected traffic at full build out of the Subdivision versus the background traffic, including an estimate of when traffic signal warrants will be met, based on the traffic projections. The Traffic Study concludes that, at full build out of the Subdivision, the improvements at the Old Sawmill District will be responsible for approximately 53% of the traffic on Wyoming Street, and underlying background traffic will make up approximately 47% of the traffic on Wyoming Street. The City and the Developer both agree with this conclusion. The Parties agree that Developer need not supply further signal warrant studies or traffic studies. The City will coordinate with the Department of Transportation to approve the timing and other requirements of the Traffic Signal. Developer will not dispute that the Traffic Signal is warranted.
- (2) The City shall design and construct the Traffic Signal subject to any requirements, approvals, and limitations imposed by the Department of Transportation. The City will fund its proportionate share of the costs of the Traffic Signal, as described in Sections 1.d.(3) and 2.b. below. While the City and Department of Transportation may design and fund additional costs related to the intersection as they determine appropriate, the Parties agree that the cost of designing and installing the Traffic Signal being shared by Developer and City will not include the cost of changing the grade, re-designing or orienting the intersection, re-alignment or grade changes of either Cregg Lane or Orange Street, installing additional electrical utilities, or installing overpasses, bridges, or on-off ramps or other improvements not usually associated with traffic signals in Downtown Missoula, or acquiring of additional right of way. In any event, the City and the Developer anticipate that the total cost of installing the Traffic Signal will be approximately Eight Hundred Thousand Dollars (\$800,000), which is a rounded-off number for the project total

of \$793,635.63, as shown on the Project Cost Estimate prepared by the City and attached hereto as Exhibit F (the “Estimated Signal Cost”).

- (3) The City has agreed to pay its proportionate share of the cost of providing for the Traffic Signal, as evidenced by the Traffic Study. Specifically, the City agrees to pay Three Hundred Seventy-Six Thousand Dollars (\$376,000), which is forty-seven percent (47%) of the costs shown on the Estimated Signal Cost; and the Developer agrees to pay Four Hundred Twenty-Four Thousand Dollars (\$424,000), which is fifty-three percent (53%) of the costs shown on the Estimated Signal Cost (the “Developer’s Share”).
  - (4) The Parties agree that, prior to or at the same time as Developer files the first sub-phase of Phase 2 of the Mill Site Subdivision, Developer shall provide an improvement agreement guaranteed by a security in the amount of Forty-Four Thousand Dollars (\$44,000), which is a portion of the Developer’s Share of the expected costs related to designing the Traffic Signal, which shall be available to the City to draw as needed.
  - (5) The Parties agree that, prior to or at the same time as Developer files the second sub-phase of Phase 2 of the Mill Site Subdivision, Developer shall provide an improvement agreement guaranteed by a security in the amount of Three Hundred Eighty Thousand Dollars (\$380,000), which is a portion of the Developer’s Share of the expected costs related to constructing the Traffic Signal, which shall be available to the City to draw as needed.
  - (6) If the cost of designing and constructing the Traffic Signal exceeds the Estimated Signal Cost provided above, or if improvements outside the scope of the Estimated Signal Cost are required by MDT, the City will pay for additional costs of the Traffic Signal.
  - (7) The Parties agree that Developer’s maximum total contribution for the design and construction of the Traffic Signal shall be Four Hundred Twenty-Four Thousand Dollars (\$424,000) (the “Developer’s Maximum Contribution”), which represents 53% of the Estimated Signal Cost. The City shall fund any remaining expenses of the engineering design and construction of the Traffic Signal in excess of the Developer’s Maximum Contribution, as provided in Section 2.b below. Aside from otherwise applicable Transportation Impact Fees defined above, the City shall not impose on Developer or any lands in the Old Sawmill District any SIDs or other assessments for costs associated with the Traffic Signal or the modifications to the intersection at Cregg Lane and Orange Street incorporated into the Traffic Signal construction project.
- e. **Grants of Easements to the City** – In lieu of providing a security guarantee at the time this Agreement is executed, within 60 days of execution of this Agreement, Developer agrees to grant to the City the easements described below, and shown generally on the attached Exhibit A. The easements shall be in a form acceptable to the City. In the event final plats are filed for areas covered by easements numbered (2) and (4) on the following list, the City shall release and extinguish the easements. The easements numbered (1), (3), and (5) on the following list, granted pursuant to this paragraph, shall include the provisions included on Exhibit E attached hereto. This section does not limit the

requirements to provide the Improvement Agreement(s) and security guarantee(s) associated with the terms and timing identified in Subsections (a)-(d) above.

- (1) A non-motorized access easement covering the full width and extent of the central-CAGS adjacent to or within the Montana, Moose Creek, and Silver sub-phases north of Phase 1.
- (2) A public access easement covering the full width of that part of the proposed Silver Parkway from the northern end of the central CAGS to Silver Park, between the proposed Moose Creek Trail and west to the boundary of sub-Phase 2 - Silver.
- (3) A 20 foot wide non-motorized access easement from the west side of sub-phase Moose Creek from the southern boundary with Phase 1 to the northern boundary with Silver Park to continue the path being constructed in Phase 1.
- (4) A 24 foot wide public access and utility easement making up the drive lanes of Moose Creek Trail south of Wyoming Street, as described in Section 1.b of this Agreement.
- (5) A 105.5 foot wide non-motorized access easement covering the full width and extent of the central CAGS within the proposed Phase 3 south of Wyoming Street.

The Parties agree that the easements described in this paragraph shall include a provision indicating that the City shall not be permitted to construct or place improvements within any of the Easement areas without permission of the Developer except as allowed in this paragraph. The Parties agree that the City may, in the following limited circumstances, at the City's discretion place or construct improvements in the easement areas: (i) if Developer has not constructed the relevant portion of the Central CAGS prior to December 31, 2027; or (ii) if Developer has not constructed the relevant portion of the Central CAGS within the timeframe allowed in the Phase 2 IA, and the City has given notice to Developer that Developer is in default of the Phase 2 IA as a result of Developer's failure to construct the relevant portion of the Central CAGS. In the event the City constructs improvements in the Central CAGS pursuant to this provision, the City may only construct improvements that are substantially similar to the Central CAGS improvements described in Subsection 1.a.(2) above. The easements may reference this paragraph as an exception to the provision otherwise prohibiting the City from placing or constructing improvements within the Easement areas.

**2. Responsibilities and Obligations of City.** City agrees to the following:

- a. Pursuant to 1.d.(2) and 1.d.(3) above, the City will fund its proportionate share—that is, forty-seven percent (47%)—of the costs of engineering design and construction of the Traffic Signal. The City shall be responsible for completing the engineering design and construction of the Traffic Signal, with the use of funds contributed by Developer as described in Section 1.d above. The City agrees to share with Developer documents evidencing the cost of engineering design and construction of the Traffic Signal. The Developer's Share of construction costs for the Traffic Signal shall be drawn by the City only upon award of a construction contract to a contractor selected by the City to construct the Traffic Signal, and only as costs related to construction of the Traffic Signal



are incurred. The City shall apply such funds only to actual construction costs, and that construction will not be started unless and until the City has sufficient funds to complete the Traffic Signal. If the City does not complete the construction of the Traffic Signal by December 31, 2028, the City shall refund the Developer's Share to Developer, or the City shall release the improvement guarantee; except if the failure to construct the signal is caused by acts outside the City's control and the City has otherwise made good faith efforts to fund and complete the signal, then this provision will not apply.

- b. The City will consider Developer's proposed design changes qualifying as minor adjustments to the Preliminary Plat approval within the Mill Site Subdivision that will allow the Developer to initiate timely construction on the remaining phases to reach as near full build-out as reasonably possible within the near-term. To this end the City will review proposals for (i) modifying and relocating Big Timber Street (approved by the City on February 27, 2023), (ii) minor adjustments to lot layouts (some lot layouts were approved by the City on January 3, 2023), and (iii) utility relocations for lots south of the Stadium, for substantive compliance with the approved preliminary plat in accordance with Section 4-070 of the City's Subdivision Regulations. Proposals that can be deemed non-material changes will be approved administratively by the CPDI Director, whose decision can be appealed to City Council. If any proposed change represents a material change from the preliminary plat under the City's subdivision regulations, the City will work diligently with Developer to develop alternative avenues to achieve the desired change, such as a post-final plat boundary line relocation, right-of-way vacation, or other lawful means, where such a change would achieve mutually desirable goals. Additionally, the City will consider proposals for rezoning all or portions of the subdivision to accommodate a broader range of uses, consistent with mutually desirable goals, subject to compliance with the land use designations in the City Growth Policy and zoning criteria for a zoning amendment.

3. **Developer's Satisfaction of the Phasing Plan Conditions.** The Parties agree that Developer's compliance with the terms of this Agreement shall be considered satisfaction of condition 1.a-d of the motion for approval of the Phasing Plan Conditions Amendment approved by City Council on November 3, 2014.
4. **Indemnification.** Developer, and its heirs, successors, and assigns shall indemnify, defend, and hold harmless the City from any and all actions, claims, damages, losses, liabilities, and expenses (collectively "Claims") arising out of any act, or failure to act, on the part of Developer or its agents or employees, associated with the performance or nonperformance of this Agreement. The City is not an agent or employee of Developer.

The City shall indemnify, defend, and hold harmless Developer, its heirs, successors and assigns from any and all Claims arising out of any act, or failure to act, on the part of the City, its agents or employees, associated with the performance or nonperformance of this Agreement. Developer is not an agent or employee of the City.

5. **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").

6. **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:

Millsite Revitalization Project, LLC  
Attn. Ed Wetherbee, Manager  
2800 South Reserve Street  
Missoula, MT 59801  
Email: [ewetherbee@cvmequity.com](mailto:ewetherbee@cvmequity.com)

Copy to:

Thomas J. Bourguignon, Attorney  
Maclay Law Firm  
P.O. Box 9197  
Missoula, MT 59807  
Email: [tom@maclaylawfirm.com](mailto:tom@maclaylawfirm.com)

Delivery Address:  
828 Ronald Avenue  
Missoula, MT 59801

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 59801

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

7. **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.
8. **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 nature, 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.

9. **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. This Agreement will be filed with the official records of the Property at the Missoula County Clerk and Recorder's Office.

10. **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.
- 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.

**11. 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.

**12. Mill Site Subdivision Phase 2.** 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 the first sub-phase within Phase 2 of the Mill Site 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:**

MILLSITE REVITALIZATION PROJECT, LLC  
A Montana limited liability company

By: \_\_\_\_\_  
Ed Wetherbee, Manager

STATE OF MONTANA        )  
  : ss.  
County of Missoula        )

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_ by  
Ed Wetherbee as Manager of Millsite Revitalization Project, 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: \_\_\_\_\_  
Andrea Davis, Mayor

ATTEST:

\_\_\_\_\_ Date: \_\_\_\_\_  
Marty Rehbein, City Clerk

Approved as to form:

\_\_\_\_\_ Date: \_\_\_\_\_  
Ryan Sudbury, City Attorney

Exhibit A

The Mill Site Preliminary Plat

Exhibit B

2007 Subdivision Approval letter



Exhibit C

2014 Phasing Plan Approval and Conditions

Exhibit D

Improvements Agreement

Exhibit E  
Provisions to be included in the Easements described in Section 1.e.

**CONVEYANCE OF EASEMENT FOR NON-MOTORIZED ACCESS  
TO CITY OF MISSOULA and  
CITY OF MISSOULA'S ACCEPTANCE**

FOR VALUE RECEIVED, effective \_\_\_\_\_, **MILLSITE REVITALIZATION PROJECT, LLC**, a Montana limited liability company, whose address is 2800 South Reserve Street, Missoula, MT 59801 ("**Grantor**"), hereby conveys to **THE CITY OF MISSOULA**, a municipal corporation and political subdivision of the State of Montana having an address of 435 Ryman, Missoula, Montana 59802 ("**Grantee**"), its successors and assigns, a permanent, non-exclusive easement for non-motorized access (the "**Easement**") over, upon, along and across the real property located in the City of Missoula, Missoula County, State of Montana more particularly described as \_\_\_\_\_ (the "**Easement Area**") shown on Exhibit \_\_ attached hereto, subject to the terms, provisions, and conditions described below.

TO HAVE AND TO HOLD the Easement unto the said Grantee, its successors and assigns, forever. Grantor covenants that it is the lawful owner and seized of the real property over and upon which the Easement described herein is granted, and that it has good and lawful right and authority to grant said Easement.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN INSTITUTIONAL CONTROL (RESTRICTIVE COVENANT). Drinking water wells are prohibited on this property. The original restrictive covenant was dated September 17, 2012 and recorded September 21, 2012 in Book 900 of Micro Records at Page 993, records of Missoula County, Montana. A partial removal of the restrictive covenant changed the notice requirements but did not change any of the substantive restrictions, and can be found at Book 946 of Micro Records at Page 1204.

RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS the rights and obligations of Grantor under the Declaration of Restrictive Covenants on Real Property recorded in Book 900 of Micro Records at Page 993, as amended by Book 946 of Micro Records at Page 1204.

Terms and Conditions

The Easement is conveyed to Grantee, its successors and assigns, to use in common with Grantor, and its successors and assigns, subject to the terms, provisions, and conditions described below:

1. Purpose. The Easement described on Exhibit \_\_ hereto is for pedestrian and non-motorized bicycle use, and use by motorized or other traffic as needed for the user's barrier free accessibility under the Americans with Disabilities Act or other applicable laws and regulations, over, upon, along and across the Easement Area shown on Exhibit \_\_. Grantee

may extend its rights and privileges for use of the Easement to members of the public. Notwithstanding the foregoing, Grantor reserves the right to prevent members of the public from engaging in specific activities within the Easement Area, including but not limited to the following: camping; sleeping; use of the Easement Area between the hours of 10 PM and 7 AM; or erecting or using tents or other temporary lodging; having outdoor fires including campfires; installing shade or other structures; deposit or storage of personal property within the Easement Area; using electrical outlets for personal equipment; installation of sewage disposal sites such as “porta-potties” without Grantor’s permission; sound levels in excess of 60 decibels and radiating a distance of twenty-five feet or more between 7 AM and 10 PM; or sound levels in excess of 55 decibels and radiating a distance of twenty-five feet or more between 10 PM and 7 AM.

2. Crossing and Use; Additional Easements; Restrictions of Use.

- a. Relative Interests. The Easement is subordinate to the rights of enjoyment of the Grantor, its successors and assigns, as owner of the Easement Area. The right and authority of Grantor, its successors and assigns, over the Easement Area and the Easement is absolute and supersedes any right of public use granted on the Easement Area by this Easement.
  
- b. Use. Grantor, and its successors and assigns, reserves the right to use at all times and for any purpose, and to go over, upon, under, across and recross, at any place on grade or otherwise, the land encumbered by the Easement and to construct, maintain, improve, repair, and replace and remove (collectively “**construct**”) improvements thereon in a manner that will not unreasonably interfere with the rights granted hereunder. Examples of such improvements that may be constructed, but not as limitation, are:
  - i. sidewalks and trails;
  - ii. landscaping;
  - iii. structures (temporary and permanent);
  - iv. overpasses and underpasses;
  - v. water features;
  - vi. fencing;
  - vii. lighting; and
  - viii. utilities.

All use shall be in compliance with applicable statutes, ordinances, and regulations, including, without limitation, applicable zoning.

- c. Additional Easements. Grantor, and its successors and assigns, reserves the right to grant easements, licenses, and/or permits to others for the use and occupancy of the Easement Area and for construction of improvements thereon, all in a manner that will not unreasonably interfere with the rights granted hereunder.
  
- d. Restriction of Access.

- i. Grantor, its successors and assigns, in its discretion may restrict or prohibit access to the Easement from time-to-time for special events, or to construct improvements.
    - ii. Grantee and members of the public to which Grantee extends its rights and privileges for use of the Easement have no right under this document to require Grantor to obtain their permission for any temporary closure of the Easement Area. As a courtesy to Grantee, Grantor, its successors and assigns, will give seven (7) days' advance written notice of any temporary closure to Grantee upon the following conditions:
      - (1) Improvements have been constructed, and the entire Easement Area is ready and available for use by Grantor and Grantee, subject to the terms and conditions contained in this document;
      - (2) More than fifty per cent (50%) of the Easement Area is to be temporarily closed at any time;
      - (3) Grantor expects closure to involve longer than twenty-four hours; and
      - (4) No emergency exists which makes notice impracticable.
    - iii. Grantor is responsible notifying the public of any temporary closure of the Easement by visibly marking the portion of the Easement Area temporarily closed.
  - e. Restriction of Noise and Use. Grantor, its successors and assigns, may in its discretion restrict noise, activities, and use of the Easement to those that, in the judgment of the Grantor, its successors and assigns, are congruent with the character of the Easement Area, adjoining uses, and uses of Grantor, its successors and assigns.
3. Existing Rights. The Easement is subject to all covenants, conditions, exceptions, agreements, easements, and rights of way existing, apparent, or of record.
  4. Construction of Improvements in Easement. Grantee has no right to construct, repair, replace, maintain, or operate improvements in the Easement without express written consent of Grantor, its successors and assigns. Grantee shall maintain and repair or cause to be repaired at its sole cost and expense any improvements installed by Grantee. In the event of Grantee's disturbing or excavating of the land encumbered by the Easement, or damaging any improvements constructed thereon by Grantor, Grantee shall promptly restore the surface of the property and/or the improvements thereon to as close as reasonably possible to its original condition before disturbance or damage by the Grantee.

Grantor alone shall bear the expenses of construction of such road, trail, sidewalks and/or other improvements within the Easement as Grantor constructs, unless Grantor and Grantee agree in writing to share the cost of such improvements. Once improvements providing

pedestrian and/or non-motorized bicycle use are constructed, Grantee shall be entitled to use them along with Grantor. In the event of Grantor's damaging any improvements constructed thereon by Grantee with Grantor's consent, Grantor shall promptly restore the surface of the property and/or the improvements thereon to as close as reasonably possible to its original condition before disturbance or damage by the Grantor.

Notwithstanding the foregoing, the Grantee may at its discretion construct improvements within the Easement pursuant to the terms, provisions, and conditions, and subject to the timing and design constraints, contained within Section 1.e of the Development Agreement between Millsite Revitalization Project, LLC and the City of Missoula dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Book \_\_\_\_ of Micro Records at Page \_\_\_\_, records of Missoula County, Montana.

5. Exercise of Rights. Grantee may permit its contractors, licensees, lessees, and agents, to exercise the rights granted to it herein.
6. Indemnification. Grantee agrees to indemnify and hold harmless Grantor from and against any and all manner of claims, demands, causes of action, judgments or other losses (including court costs and reasonable attorneys' fees) arising from or incident to the negligent or willful acts or omissions of Grantee, its employees, contractors, licensees, lessees, and agents or the public resulting from the activities hereunder.

Grantor agrees to indemnify and hold harmless Grantee from and against any and all manner of claims, demands, causes of action, judgments or other losses (including court costs and reasonable attorneys' fees) arising from or incident to the negligent or willful acts or omissions of Grantor, its employees, contractors, licensees, lessees, and agents resulting from the activities hereunder.

7. Rights and Obligations. Grantee may assign its interest in this Easement only to another political subdivision of the State of Montana or agency, and only if the entire interest in the Easement is included in such assignment. There is no restriction on Grantor's assignment of its interest in this Easement or the lands encumbered by it. The rights and obligations hereunder shall inure to the benefit of and be binding upon the successors and assigns of each party, to the extent they are assignable under this document.

[End of Exhibit E]

Exhibit F  
Estimate of Probable Cost for Traffic Signal Construction