

FOX SITE MASTER DEVELOPMENT AGREEMENT

This FOX SITE MASTER DEVELOPMENT AGREEMENT is dated as of February 22, 2017 by and among HOTEL FOX PARTNERS, LLC, a Montana limited liability company (the “Developer”), the CITY OF MISSOULA, MONTANA, a municipal corporation of the State of Montana (“City”), and the MISSOULA REDEVELOPMENT AGENCY, a component part of the City (the “MRA”). The Developer, the City and the MRA are each individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City owns certain real property commonly known as the Fox Site, the boundaries of which and the legal description for which are set forth on Exhibit A to this Agreement (the “Fox Site”); and

WHEREAS, at its regular meeting on May 2, 2011 the City Council of the City (the “City Council”) requested that the MRA commence a public request for proposals (“RFP”) to redevelop the Fox Site; and

WHEREAS, pursuant to the City Council request, the MRA issued an RFP for redevelopment of the Fox Site on behalf of the City in accordance with the process set forth in Montana Code Annotated (“M.C.A.”), Sections 7-15-4262 and 7-15-4263, which was advertised in accordance with Section 7-1-4127, M.C.A.; and

WHEREAS, the Developer submitted a response to the RFP, proposing to develop a hotel and conference center to include meeting and gathering space, 200 – 250 guest rooms, restaurant and retail space, and underground parking; and

WHEREAS, the Board of Commissioners of the MRA reviewed all complete responses to the RFP and recommended that the City Council grant the Developer for a period of one year the exclusive right to negotiate a satisfactory development agreement with the M.R.A. for the City Council’s review and approval; and

WHEREAS, at its December 5, 2011 regular meeting, the City Council (i) granted the Developer for a period of one year the exclusive right to negotiate a development agreement, (ii) requested that the MRA act as the City’s agent in negotiating such development agreement, and (iii) agreed not to take any actions to otherwise encumber or attempt to divest the City of the Fox Site during that one-year period; and

WHEREAS, in addition, the City Council determined that there would be greater economic and redevelopment benefits to the City if the Developer agreed to enlarge the scope of its proposed project to provide for a much larger conference center than the Developer initially proposed; and

WHEREAS, the Developer agreed to consider enlarging the proposed conference center, in recognition of which the City Council has extended the Developer's exclusive right to negotiate a development agreement with the understanding that the extended time period was needed, in part, for the Developer to complete its due diligence and economic feasibility analysis regarding the larger conference center; and

WHEREAS, the Developer, the City and the MRA commissioned from Conventions, Sports & Leisure International the Feasibility Analysis of a Proposed New Conference Center in Missoula, Montana, dated January 25, 2015 (the "Feasibility Analysis"); and

WHEREAS, the Feasibility Analysis indicated that a conference center with approximately 23,000 square feet of usable space would be optimally sized to address non-local event needs and draw larger regional and national conferences, and would generate significantly more economic benefit to the City, with direct local economic impact estimated at over \$15,000,000 annually compared with direct local economic impact estimated at \$9,250,000 annually for the smaller conference center originally proposed by the Developers; and

WHEREAS, the Feasibility Analysis also identified a number of other potential benefits of a larger sized conference center, including the transformative and iconic effect of a large-scale redevelopment of the riverfront area; increased numbers of new visitors to the City; substantial job creation; spin-off development; increased possibilities for community marketing and intangible benefits such as improvements to quality of life in the City and improved community reputation; and

WHEREAS, the Feasibility Analysis further noted that a conference center optimally sized to address non-local event needs significantly exceeds the size and scope of a conference center project that the private sector would have the ability to fund without public sector participation; and

WHEREAS, based on the Feasibility Analysis, the City Council believes there is significant public benefit—both tangible and intangible—in enlarging the proposed conference center and desires to partner with the Developer with respect to the design, construction and operation of such a conference center; and

WHEREAS, the Developer now proposes to undertake the construction and operation of a hotel with at least 200 hotel rooms (the "Hotel Fox Building"); a conference center with approximately 39,000 square feet, with an aggregate of approximately 27,000 square feet of usable public space within the City Conference Center Unit and the Private Conference Center Unit (each, as hereinafter defined) for meetings, conferences and events (the "Conference Center"); a public parking facility with spaces sufficient to accommodate parking needs of the hotel, conference center, and other public uses (the "Parking Facility" and, collectively with the Hotel Fox Building and the Conference Center, the "Project"); and related public improvements and public infrastructure at and adjacent to the Fox Site (the "Public Improvements"); and

WHEREAS, the City hereby finds that approximately 29,000 gross square feet of the Conference Center relates to the increase in size of the Conference Center necessary to attract

larger regional and national events that will generate substantially more economic and other benefits to the City, and is the portion in excess of what the private sector would customarily build; and

WHEREAS, following substantial completion of the Hotel Fox Building, the Conference Center and the Parking Facility, the City intends to acquire from the Developer ownership of a condominium unit consisting of approximately 29,000 gross square feet of the Conference Center (the “City Conference Center Unit”), representing the portion of the Conference Center that the private sector would not customarily build and which is expected to provide for additional public benefits as described above, and a condominium unit consisting of the Parking Facility, at purchase prices and subject to terms and conditions further described herein and in the related Collateral Agreements (as hereinafter defined); and

WHEREAS, the Parties expect that the City will create a special improvement district with boundaries coterminous with the Development Area (as hereinafter defined) and issue special improvement district bonds, payable from assessments on benefited property within the special improvement district, to pay the costs of the Public Improvements and incidental costs related thereto; and

WHEREAS, the Parties hereto desire to enter into this Agreement which sets forth the obligations and commitments of the Parties with respect to the Project and the Public Improvements; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the City, the MRA and Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

Section 1.1. Definitions.

“Additional Phases of the Development” means the multipurpose development in addition to the development of the Project Area that the Developer or related entities expect to undertake in the Development Area, expected to include retail, office building and/or medical office building and residential components, a preliminary conceptual drawing of which is included in the attached Exhibit C.

“Agreement” means this Fox Site Master Development Agreement, as it may be amended or supplemented from time to time in accordance with the terms hereof.

“Buy/Sell Agreement” means the agreement to be negotiated, executed and delivered by the City and the Developer as part of the Land Disposition Agreement, as described in Section 4.2.

“City” has the meaning given such term in the first paragraph of this Agreement.

“City Council” means the governing body of the City.

“City Conference Center Unit” means the condominium unit to be created pursuant to the Condominium Documents consisting of the meeting and events center to be constructed as part of the Conference Center within and/or contiguous to the Hotel Fox Building as a component of the Project, which will contain approximately 29,000 gross square feet, and also including the proportion of undivided common ownership interest in the Fox Site set forth in the Condominium Documents.

“Closing Date” shall mean the date on which all Collateral Agreements are executed and delivered by the parties thereto, except as otherwise provided herein.

“Collateral Agreements” means the Land Disposition Agreement, the Conference Center and Parking Facility Development Agreement, the Condominium Documents, the Land Use Agreement, the Conference Center Lease/Management Agreement and the Parking Facility Lease Agreement.

“Collateral Agreement Deadline” means the deadline by which all Collateral Agreements, with the exception of the floor plans and site plan comprising part of the Condominium Documents and some specific provisions of the Parking Facility Lease Agreement, as further described in Sections 4.4 and 4.7 hereof, will be fully executed. The Collateral Agreement Deadline is the date that is 6 months after the date this Agreement is executed (or August 22, 2017), provided that if the Collateral Agreements are not fully executed by the Collateral Agreement Deadline and the Parties agree that significant progress is being made on the Collateral Agreements, the Collateral Agreement Deadline shall be extended by 3 months (to November 22, 2017).

“Condominium Documents” means the necessary plans and plat documents, declaration, bylaws, associated documents and deeds pursuant to which the Hotel Fox Building, the Private Conference Center Unit, the City Conference Center Unit and the Parking Facility will each be created as one or more individual condominium units, as described in Section 4.4 hereto.

“Conference Center” means, collectively, the Private Conference Center Unit and the City Conference Center Unit.

“Conference Center and Parking Facility Development Agreement” means the agreement to be negotiated and executed by the City, the MRA, the MPC and the Developer and described in Section 4.3 hereto.

“Conference Center Lease/Management Agreement” means the agreement to be negotiated and executed by the City and the Developer and described in Section 4.5 hereto.

“Construction Plans” means the plans to be prepared for construction of the Project in sufficient detail to obtain a building permit from the City.

“Conveyance Date” means the date the Fox Site is conveyed to the Developer, as described in Section 4.2 hereto.

“Deed” means the quitclaim deed with respect to the Fox Site to be executed by the City and delivered to the Developer, as described in Section 4.2 hereto.

“Department of Revenue” means the State of Montana Department of Revenue.

“Developer” has the meaning given such term in the first paragraph of this Agreement.

“Development Area” means the land upon which the Project and Additional Phases of the Development are expected to be constructed, including the Fox Site, the Front Street Right of Way, the Owen Street Right of Way, and the Providence Site, as shown on Exhibit B.

“Development Area SID” means the special improvement district to be created as described in Section 4.8 hereof.

“Development Area SID Bond” means the bond or bonds to be issued by the City, the proceeds of which will be used to pay all or a portion of the costs of constructing or acquiring the Public Improvements and incidental costs, including costs of funding a deposit to the City’s special improvement district revolving fund, funding a district reserve, if necessary or desirable, and costs of creating and administering the Development Area SID and issuing the Development Area SID Bond.

“District” means the Riverfront Triangle Urban Renewal District created pursuant to Ordinance No. 3380, adopted by the City Council on July 21, 2008. The Fox Site is located within the District.

“Downtown Master Plan” means the land use plan for the City’s downtown area, approved pursuant to Resolution No. 7467, adopted by the City Council on August 24, 2009.

“Feasibility Analysis” has the meaning given such term in the recitals.

“Force Majeure” means a delay resulting from a cause over which the Party required to perform does not have any control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, weather, accidents, war, civil unrest, embargoes, strikes, failure of a contractor or subcontractor to perform and unavailability of raw materials or manufactured goods.

“Fox Site” means the real property owned by the City and expected to be transferred to the Developer pursuant to the Land Disposition Agreement, shown in yellow (or, if not printed in color, identified by gray shading) on the map attached hereto as Exhibit A.

“Front Street Right of Way” means the real property currently dedicated as public right of way along the north boundary of the Fox Site.

“Hotel Fox Building” means the hotel to be constructed on the Fox Site, expected to contain approximately 200 hotel rooms, retail and restaurant space, and other services, but excluding the Conference Center and Parking Facility.

“Land Disposition Agreement” means, collectively, the Buy/Sell Agreement, Promissory Note, Trust Indenture and Deed described in Section 4.2 hereto.

“Land Use Agreement” means the agreement described in Section 4.8 hereto, to be recorded in the real property records of Missoula County against the Development Area.

“MPC” means the Missoula Parking Commission.

“MRA” has the meaning given such term in the first paragraph of this Agreement.

“Owen Street Right of Way” means the real property currently dedicated as public right of way at the southern end of Owen Street south of West Front Street.

“Parking Facility” means the condominium unit to be created pursuant to the Condominium Documents consisting of an underground public parking structure, which is expected to include approximately 400 parking stalls, and the proportion of undivided common ownership interest in the Fox Site set forth in the Condominium Documents.

“Parking Facility Lease Agreement” means the agreement to be negotiated and executed by the Developer and MPC and described in Section 4.7 hereto.

“Parking Facility Management Agreement” means the agreement to be negotiated and executed by the City and MPC and described in Section 4.6 hereto.

“Parking Facility Revenue Bonds” means the parking facility revenue bonds of the City expected to be issued pursuant to the Conference Center and Parking Facility Development Agreement to pay a portion of the costs of acquiring the Parking Facility, to fund a deposit to a debt service reserve account, if necessary or desirable, and to pay costs of issuing the Parking Facility Revenue Bonds.

“Plan” has the meaning given such term in the recitals.

“Prevailing Wage Rates” means the Montana Prevailing Wage Rate for public works projects as published from time to time by and available from the Montana Department of Labor and Industry, Research and Analysis Bureau, P.O. Box 8011, Helena, MT 59604-8011, telephone (406) 444-6543 or from time to time on the agency’s website, currently <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

“Private Conference Center Unit” means the condominium unit to be created pursuant to the Condominium Documents consisting of the meeting and events center to be constructed as part of the Conference Center within and/or contiguous to the Hotel Fox Building as a component of the Project, which will contain approximately 10,000 gross square feet, and also including the proportion of undivided common ownership interest in the Fox Site set forth in the Condominium Documents.

“Project” means the design, development and construction of the Hotel Fox Building, the Conference Center and the Parking Facility and related improvements pursuant to this Agreement and the Collateral Agreements.

“Project Area” means the land located within the District on which the Project will be constructed, which includes the Fox Site and, with respect to the Public Plaza and other Public Improvements, includes land owned by the City.

“Promissory Note” means the promissory note to be executed by the Developer in favor of the City with respect to the Fox Site, as described in Section 4.2 hereto.

“Providence Site” means the land located within the District that has been or will be purchased by the Developers from Providence Health & Services-Montana.

“Public Improvements” means the design, development and construction of certain public improvements pursuant to this Agreement and the Collateral Agreements, including (a) all public sidewalks, riverfront trail, traffic mitigation, curbs, gutters, drains, paving, public art, storm drain collector systems, landscaping, street lamps, irrigation systems, and other elements required or included in the sidewalk and street along Orange Street and West Front Street within the Project Area, (b) the Public Plaza, (c) the pathways, landscaping, and other improvements constructed or installed in the public riverfront area contiguous to the Project, and (d) installation or upgrade of primary main lines of municipal potable and fire suppression water, wastewater sewer, power, gas, communications, and any other public improvements the City may agree are necessary in the Project Area that are consistent with the design of the Project and the public riverfront parks and trails system, all shown on Exhibit B hereto.

“Public Plaza” means the area that will provide public non-motorized access between the public riverfront area and West Front Street, which is expected to comprise 18,000 to 24,000 square feet and to include hardscape and softscape elements, may include one or more water feature and multiple locations for public seating.

“Site Plan” means the preliminary site plan dated as of August 7, 2015, depicting the expected location and placement of the Hotel Fox Building, the Conference Center, the Parking Facility, the Public Plaza and the Public Improvements, as well as expected elements of the Additional Phases of the Development, attached to this Agreement as Exhibit B.

“TIF Bonds” means the tax increment revenue bonds of the City expected to be issued in one or more series pursuant to the Conference Center and Parking Facility Development Agreement to pay the costs of acquiring the City Conference Center Unit, to fund a deposit to a debt service reserve account, if necessary or desirable, and to pay a portion of the costs of acquiring the Parking Facility and to pay costs of issuing the TIF Bonds.

“Trust Indenture” means the trust indenture to be executed by the Developer to a person or entity eligible to serve as trustee under Montana state law in favor of the City with respect to the Fox Site, as described in Section 4.2 hereto.

Section 1.2. Exhibits.

- a. Exhibit A shows the parcels of land that constitute the Fox Site and sets forth the legal descriptions of those parcels.
- b. Exhibit B is the Site Plan. This Site Plan is preliminary in nature and is not intended to depict detailed uses, designs or end product. Changes are inevitable as part of the development process.
- c. Exhibit C consists of a conceptual design drawing of the Project, the Public Improvements and expected elements of the Additional Phases of the Development. This drawing is preliminary in nature and is not intended to depict detailed uses, designs or end product. Changes are inevitable as part of the development process.

ARTICLE II. PURPOSE AND EFFECT OF AGREEMENT.

This Agreement sets forth the intention of the Parties to undertake the Project and the Public Improvements and to enter into the Collateral Agreements and complete the undertakings, in each case as described below, in furtherance of the Project and the Public Improvements. Once all Collateral Agreements have been entered into and all undertakings completed by the respective deadline provided herein, this Agreement shall be of no further effect with regard to matters contained herein that are governed by the Collateral Agreements, and the Parties shall be governed by the terms of the Collateral Agreements with respect to such matters and the Project and the Public Improvements. If a Collateral Agreement is fully executed and this Agreement is in effect and such Collateral Agreement contains a provision that is more specific than or that conflicts with a provision in this Agreement, such provision in the Collateral Agreement shall prevail and control.

ARTICLE III. REPRESENTATIONS OF THE PARTIES.

Section 3.1. Developer Representations. Developer hereby represents as follows:

- a. Developer is a Montana limited liability company, duly formed, validly existing and in good standing under the laws of the State and is duly qualified to do business in the State.
- b. The Developer has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.
- c. Developer has the financial capability or commitments to complete the Project and the Public Improvements at a cost estimated to be \$60,000,000.

d. Developer has been permitted access to the Fox Site and has conducted its reasonable due diligence with respect to the Fox Site.

e. There are no pending or threatened legal proceedings of which the Developer has knowledge which seek to restrain or enjoin the transactions contemplated by the Agreement or which question the authority of the Developer to execute and deliver this Agreement or the validity of this Agreement.

Section 3.2. City Representations. The City hereby represents as follows:

a. The City is a municipal corporation duly organized and existing under the laws of the State of Montana. Under the laws of the State of Montana and City policies and procedures, the City has the power to enter into this Agreement and carry out its obligations hereunder.

b. The City has marketable title to the Fox Site, subject to such liens, encumbrances and defects of record and such other exceptions to title customarily set forth in an ALTA owner's policy of title insurance.

c. There is no action, suit, investigation or proceeding now pending or, to the knowledge of the City, threatened against or affecting the City or its operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that individually or in the aggregate materially and adversely affects the validity of the transactions contemplated hereby, ability of the City to complete its obligations under this Agreement, or the validity or enforceability of this Agreement.

Section 3.3. MRA Representations. The MRA hereby represents as follows:

a. The MRA is a redevelopment agency duly organized and existing under the laws of the State. Under the provisions of M.C.A., Title 7, Chapter 15, Parts 42 and 43, as amended and the terms of Ordinance No. 3380 adopted by the City on July 21, 2008, the MRA has the power to enter into this Agreement and carry out its obligations hereunder.

b. There is no action, suit, investigation or proceeding now pending or, to the knowledge of the MRA, threatened against or affecting the MRA or its operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that individually or in the aggregate materially and adversely affects the validity of the transactions contemplated hereby, the ability of the MRA to complete its obligations under this Agreement, or the validity or enforceability of this Agreement.

ARTICLE IV. COLLATERAL AGREEMENTS.

Section 4.1. Statement of Intent. The following descriptions of the Collateral Agreements are intended to describe the major business points that will be set forth therein. The descriptions do not purport to be complete and the Parties intend that each Collateral Agreement

will include such provisions, terms and conditions as may be standard to or typically included in such agreements and are expected to address details that emerge with the passage of time and negotiations. The Parties intend that all Collateral Agreements, with the exception of the floor plans and site plan comprising part of the Condominium Documents and the Land Use Agreement, will be executed as of the same date, which date will be on or before the Collateral Agreement Deadline, and, other than the floor plans and site plan comprising part of the Condominium Documents and the Land Use Agreement, it shall be a condition precedent to the execution of each Collateral Agreement that all other Collateral Agreements are executed. The Parties acknowledge that the Land Use Agreement may be executed prior to the execution of the other Collateral Agreement, but must be executed by the Collateral Agreement Deadline as further set forth in Section 4.7 herein, and that the floor plans and site plan comprising part of the Condominium Documents are not subject to the Collateral Agreement Deadline, as further set forth in Section 4.4 herein. If matters material to any Collateral Agreement cannot reasonably be known at the time of the Collateral Agreement Deadline, both Parties may mutually agree to resolve such material matters by an addendum to a Collateral Agreement that must be fully executed by no later than ninety (90) days prior to the date that the City acquires the City Conference Center Unit and the Parking Facility and which addendum will be a condition to such acquisition.

Section 4.2. Land Disposition Agreement. The City and the Developer intend to execute a Buy/Sell Agreement, Trust Indenture, Promissory Note and Deed (collectively, the “Land Disposition Agreement”) with respect to the Fox Site.

a. Pursuant to an appraisal dated January 4, 2016, the Fox Site appraised for \$2,300,000. Pursuant to the Buy/Sell Agreement, the Developer will purchase the Fox Site from the City for a purchase price of \$2,300,000, as described in the Buy/Sell Agreement. The purchase price of the Fox Site will be paid by the Developer to the City over time in accordance with the Promissory Note, which will be secured by the Trust Indenture.

b. The Promissory Note will bear interest at the applicable federal rate or AFR in effect on the date that the Fox Site is conveyed to the Developer (the “Conveyance Date”), will mature on the 15-year anniversary of the Conveyance Date, and will be subject to prepayment without penalty at any time and from time to time, in whole or in part, at the option of the Developer. Interest only on the entire principal amount of the Promissory Note will be due semiannually until the 5-year anniversary of the Conveyance Date. On the 5-year anniversary of the Conveyance Date, principal and interest will amortize over the remaining 10-year term in equal semi-annual payments that will be sufficient to provide for the amortization of all principal and interest under the Promissory Note not later than the 15-year anniversary of the Conveyance Date. The City expects to set aside all or a portion of payments made by the Developer under the Promissory Note to fund a reserve account to pay costs of non-routine repair and maintenance of the City Conference Center Unit, as described under Section 4.5(c) hereto.

c. The Developer currently intends to convey fee title to a portion of the Providence Site in the block bounded by West Broadway, Orange Street, West Front Street and Owen Street to the City for development as a public parking structure. The Parties understand and agree that the actual conveyance of fee title to the property would be subject to subsequent City Council

approval of the material terms of the conveyance. In the event the City Council approves the conveyance of such property to the City by the Developer while the Promissory Note is outstanding, the value of the conveyed property, which shall be the lesser of \$32 per square foot or \$1,250,000, in any event not to exceed the principal amount then outstanding under the Promissory Note, shall be credited as a principal payment against the Promissory Note and the outstanding principal of the Promissory Note will be reamortized at the AFR over the then-remaining term of such note in equal semi-annual installments of principal and interest.

d. On the Closing Date, the Promissory Note, Trust Indenture and Deed will go into an escrow, to be released in accordance with an escrow agreement between the City, the Developer and an escrow agent, substantially simultaneously with the later of the date of the Developer's closing on its construction financing for the Project or the date of issuance of all building permits by the City with regard to the Project. Once released from escrow, the Deed and Trust Indenture shall be recorded in the real property records of Missoula County, Montana and the Promissory Note will be delivered to the City.

e. The Deed will be in form satisfactory to the Developer and is expected to:

(1) Reserve to the City an option to purchase the Fox Site at fair market value on the 99th anniversary of the Conveyance Date.

(2) Reserve to the City all necessary utility easements and easements allowing public access to the riverfront trail, along the river, in the Front Street Right of Way, and such other public access easements as are reasonable and appropriate.

(3) Provide that any conference center constructed at the Fox Site, a portion of which is owned by or in which the City has an interest, will continue to be operated as a conference center after any disposition of the City's interests in all or a portion of the conference center, subject to the change in use process to be set forth in the Condominium Documents, which will provide for a change in use by mutual written agreement of the Parties.

Section 4.3. Conference Center and Parking Facility Development Agreement. The MRA, the MPC, the City and the Developer intend to enter into a Conference Center and Parking Facility Development Agreement.

a. Pursuant to the Conference Center and Parking Facility Development Agreement:

(1) Project Construction. The Developer will agree to construct the Project to completion, including the City Conference Center Unit and the Parking Facility.

(2) The City Conference Center Unit.

(a) The City will agree to purchase the City Conference Center Unit from the Developer for a purchase price equal to the lesser of \$6,525,000 (based on the Parties' estimate that the City Conference Center Unit will contain 29,000 square feet at a cost of \$225 per square foot) or the actual cost of constructing the City Conference Center Unit, subject to the

City's ability to issue the TIF Bonds to fund the purchase price and other terms and conditions set forth in the Conference Center and Parking Facility Development Agreement. The Parties currently project that the taxable value of the completed Project will equal approximately \$660,000. If costs of construction of the City Conference Center Unit are greater than \$6,525,000, and if the actual taxable value of the completed Project is greater than \$660,000 in the tax year in which the City will acquire the City Conference Center Unit or is projected to be greater than \$660,000 in the tax year following the tax year in which the City will acquire the City Conference Center Unit (in each case, based on information from the Montana Department of Revenue), the City reserves the right, pursuant to a subsequent amending and/or restated bond resolution that would need to be approved by the City Council, to increase the purchase price of the City Conference Center Unit in an amount that can be financed by the increase in tax increment bonding capacity attributable to such increased taxable value of the Project; provided that the purchase price shall not exceed the cost of construction of the City Conference Center Unit. The Developer acknowledges and agrees that no money or credit of the City is available to fund the purchase price of the City Conference Center Unit other than proceeds available from the TIF Bonds and if the City is not able to issue such TIF Bonds in the aggregate amount of such purchase price, the City will be unable to pay such purchase price.

(b) The Developer will submit to the MRA design documents relating to the City Conference Center Unit prepared by the Developer's architect at the time design is 30% complete. The design of the City Conference Center Unit must be approved by the MRA on behalf of the City at the time the design is 30% complete. Any material deviation from the 30% design documents relating to the City Conference Center Unit must be initiated or approved by the MRA.

(3) The Parking Facility.

(a) The City will agree to purchase the Parking Facility from the Developer for a purchase price equal to the lesser of \$8,800,000 or the actual cost of constructing the Parking Facility, subject to the City's ability to issue the TIF Bonds and the Parking Facility Revenue Bonds to fund the purchase price and other terms and conditions set forth in the Conference Center and Parking Facility Development Agreement. The Developer acknowledges and agrees that no money or credit of the City is available to fund the purchase price of the Parking Facility other than proceeds available from the TIF Bonds and the Parking Facility Revenue Bonds and if the City is not able to issue such TIF Bonds and Parking Facility Revenue Bonds in the amount of such purchase price, the City will be unable to pay such purchase price.

(b) The Parties acknowledge that the purchase price of \$8,800,000 is based on the Parties' estimate that the Parking Facility will include 400 spaces and will cost approximately \$22,000 per space to construct. In the event that the Developer demonstrates to the City's satisfaction that actual construction costs per space are materially higher, the number of spaces to be constructed in the Parking Facility and/or the purchase price may be adjusted, and/or the Developers may build 400 spaces and, with the prior, written consent of the City, apply the dollar amount by which the cost of constructing such 400 spaces exceeds \$8,800,000 to purchase and own a portion of the underground parking structure contiguous to the City-owned Parking Facility.

(c) The MPC must deliver its requirements and specifications for the Parking Facility to the Developer prior to 30% design of the Parking Facility. The Parking Facility must be designed and constructed in accordance with the requirements and specifications provided by the MPC. The MPC must approve the design of the Parking Facility on behalf of the City at the time design is 30% complete and again at the time design is complete, prior to the time the Developer applies for building permits. Any material deviation from the requirements and specifications provided by MPC relating to the Parking Facility and approved as described in the prior sentence must be initiated or approved by the MPC.

(4) The City will agree to issue the TIF Bonds under terms and conditions provided in the Conference Center and Parking Facility Development Agreement and a bond resolution relating to the TIF Bonds. The Parties acknowledge that the TIF Bonds allocable to the City Conference Center Unit are expected to be issued on a taxable basis, and that all or a portion of the TIF Bonds allocable to the Parking Facility may be issued on a taxable basis.

(5) The City will agree to issue the Parking Facility Revenue Bonds under terms and conditions provided in the Conference Center and Parking Facility Development Agreement and a bond resolution relating to the Parking Facility Revenue Bonds. The Parties acknowledge that all or a portion of the Parking Facility Revenue Bonds may be issued on a taxable basis.

b. The Parties' obligations under the Conference Center and Parking Facility Development Agreement are expected to be subject to certain conditions, including requirements that:

(1) The Developer demonstrates financial commitments or capability reasonably acceptable to the City and the MRA in an aggregate amount sufficient to complete the Project and the Public Improvements at a cost of not less than \$60,000,000;

(2) The Developer agrees:

(a) to cause Prevailing Wages to be paid with respect to all work on the City Portion of the Conference Center and the Parking Facility;

(b) to follow a procurement process acceptable to the City, including, as appropriate, an alternative project delivery method;

(c) to design and construct the City Portion of the Conference Center in accordance with specifications acceptable to the City;

(d) to design and construct the Parking Facility in accordance with specifications provided by MPC;

(e) to submit final plans and specifications for the Project to the City within 18 months after the date of the Conference Center and Parking Facility Development Agreement;

(f) following approval by the City and other bodies or authorities of such plans and specifications, to apply for building permits for the Project based on the plans and specifications so approved within 24 months after the date of the Conference Center and Parking Facility Development Agreement;

(3) The Parties receive from the Montana Department of Revenue an estimate of the amount of taxable value to be generated by the Project; and

(4) Such other terms and conditions as the Parties may agree.

c. The City expects to reserve its ability to sell the City Conference Center Unit in accordance with and subject to any limitations imposed by law, including the procedures outlined in Sections 7-15-4262 and 7-15-4263, M.C.A., and, based on the public benefits the City expects to flow from operation of the City Conference Center Unit as a conference center, expects that it is in the public interest to give preference to sell the City Conference Center Unit to the owner of the Hotel Fox Building, provided that after any such sale the City Conference Center Unit will continue to be used as a conference center, subject to the change in use provisions included in the Condominium Documents, which shall provide for a change in use by mutual written agreement of the Parties.

Section 4.4. Condominium Documents.

a. The City and the Developer shall negotiate the Condominium Documents, pursuant to which the Hotel Fox Building, the Private Conference Center Unit, the City Conference Center Unit and the Parking Facility will each be created as individual units pursuant to and in accordance with the Unit Ownership Act, codified at Title 70, Chapter 23, M.C.A. Pursuant to the Condominium Documents, the Hotel Fox Building and the Private Conference Center Unit will be owned by the Developer and, upon payment of the respective purchase prices and conveyance to the City, the City Conference Center Unit and the Parking Facility will be owned by the City. The Condominium Documents will be recorded on a date mutually agreed to by the Parties, but not later than the date the City acquires the City Conference Center Unit and the Parking Facility. The Condominium Documents are expected to include:

- (1) Floor plans
- (2) Site plan
- (3) Declaration of Condominium
- (4) Articles of Incorporation of Condominium Association
- (5) Bylaws
- (6) Condominium Property Deed for Parking Facility Condominium Unit to

City

- (7) Condominium Property Deed for City Conference Center Condominium Unit to City
- (8) Condominium Property Deed for Hotel Fox Building Condominium Unit to Developer
- (9) Condominium Property Deed for Private Conference Center Condominium Unit to Developer

b. The floor plans and site plan are not subject to the Collateral Agreement Deadline, and the Parties acknowledge that the floor plans and site plan will not be available at the time the other Collateral Agreements are expected to be signed. The Developer will prepare, for the City's review and approval, the floor plans and the site plan prior to the date that the City acquires the City Conference Center Unit and the Parking Facility.

c. The Condominium Documents are expected to provide that the Hotel Fox Building Condominium Unit, the Private Conference Center Unit and City Conference Center Unit, and the Parking Facility are to be maintained for use as a hotel, a conference center, and a parking facility, respectively, and to provide for a process by which the uses of the condominium units can be changed by mutual written agreement of the Parties.

Section 4.5. Conference Center Lease/Management Agreement. The City and the Developer shall negotiate, execute and deliver the Conference Center Lease/Management Agreement, pursuant to which the Developer shall lease or manage the City Conference Center Unit for a term of 25 years, subject to two 10-year extensions, and subject to the following terms and conditions:

a. The Developer will be responsible for costs, expenses and obligations relating to the City Conference Center Unit as negotiated by the City and the Developer, except as expressly provided in the Conference Center Lease/Management Agreement, including special assessments related to the Development Area SID Bond, all utility payments, and all routine repair and maintenance of the City Conference Center Unit (i.e., the Conference Center Lease/Management Agreement will be "triple-net").

b. The Developer will be entitled to all revenues derived from operation of the City Conference Center Unit.

c. The City will be responsible for all or a portion of the costs, as negotiated by the City and the Developer, of non-routine repair and maintenance of the City Conference Center Unit, including the foundations, bearing walls, flooring, subflooring, ceiling and roof and HVAC, mechanical, electrical, plumbing and sewage systems, all as more particularly set forth in the Conference Center Lease/Management Agreement or an addendum thereto. The Parties acknowledge that the costs or portions of costs for which each Party is responsible depend in some regards on the design of the City Conference Center Unit and the Conference Center generally, and that specifics regarding each Party's responsibilities will be set forth in an

addendum to the Conference Center Lease/Management Agreement, to be executed prior to the date that the City acquires the City Conference Center Unit and the Parking Facility.

d. The City Conference Center Unit must be made available for a minimum of 12 days per year for community events, to be determined by the Mayor of the City, at a cost equal to the Developer's operating cost for such event, with 6 months' advance written notice of such events and subject to space being then available. Community events are expected to be for the benefit of local nonprofit organizations, unless otherwise agreed by the Parties.

e. The City Conference Center Unit must be made available by the Developer to other local hotels for other local hotels' events with 6 months' advance written notice of such events and subject to space being then available.

f. The term of the Conference Center Lease/Management Agreement and any option to extend such term will be subject to customary performance criteria and default provisions set forth in the Conference Center Lease/Management Agreement.

Section 4.6. Parking Facility Lease Agreement.

a. The Developer and the City shall negotiate, execute and deliver the Parking Facility Lease Agreement, pursuant to which the Developer will lease parking spaces in the Parking Facility in a number and manner that will not threaten or endanger the tax-exempt status of any TIF Bonds or Parking Facility Revenue Bonds issued on a tax-exempt basis and that will preserve the status of the Parking Facility as a public improvement.

b. Because the lease of spaces under the Parking Facility Lease Agreement constitutes "private use" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), the Parties acknowledge that, absent additional cash contributions allocated to such leased spaces, a portion of the TIF Bonds and/or Parking Facility Revenue Bonds allocable to the leased spaces will likely need to be issued on a taxable basis. Providing parking for the Conference Center, including the City Conference Center Unit, will be a central reason for the lease of parking spaces to the Developer.

c. The Parties acknowledge that particulars regarding the number of parking spaces to be leased under the Parking Facility Lease Agreement and other details of the leasing arrangement will be addressed in an addendum or supplement that the Parties acknowledge will be executed prior to the date that the City acquires the City Conference Center Unit and the Parking Facility. The Parties further acknowledge that if the City bonds that finance the acquisition of the Parking Facility bear interest at tax-exempt rates, then the particulars of parking spaces to be leased and other details of the leasing arrangement will be constrained by the private activity and private use limitations set forth in the Code and applicable Treasury Regulations.

Section 4.7. Land Use Agreement. The City and the Developer shall negotiate, execute and deliver the Land Use Agreement, which will be recorded in the real property records

of Missoula County, Montana, against the Development Area. The Land Use Agreement will contain certain restrictions and obligations with respect to the Development Area, including that:

a. The Developer will provide mixed-uses to include a minimum of four of the following uses within the Development Area: conference center, hotel, housing, office space, medical office space, small retail (under 3,000 square feet), large retail (over 3,000 square feet), restaurants and parking. Some element of housing will be developed within the Development Area.

b. The Developer will extend the Riverfront Trail across the entire Development Area along the Clark Fork River, with approval by the Missoula Parks and Recreation department for the design of the trail.

c. The Developer will provide a connecting greenway space with a minimum width of 30' for non-motorized public access use and recreational use, to be located in the Front Street ROW and to run from the current intersection of Broadway and West Front Street to a roundabout to be developed at the intersection of West Front and Owen Streets.

d. The Developer will provide the Public Plaza at the current general location of the Owen Street ROW for events, pedestrian travel, and as a community gathering spot. This will connect the roundabout to be developed at the intersection of West Front and Owen Streets with the Riverfront Trail and will offer unimpeded public access between West Front Street and the Riverfront Trail, with visibility to be preserved from the roundabout to the river and Riverfront Trail.

e. The Developer will consider views, both from the Development Area to vistas to the north and south and through and into the Development Area, and will ensure that a wide range of views are created or enhanced.

f. The Developer will provide parking within the Development Area. During the construction of the Additional Phases of Development, the Developer may utilize surface parking lots, but permanent parking for the Development Area shall be provided in the form of structured parking garages. When the Development Area is fully developed, there will be a minimum of 0.75 times the parking required by Chapter 20.60 of Title 20 of the City's Municipal Code. In addition, the Developer will provide bicycle parking, including street level parking for bicycles, in accordance with Chapter 20.60 and will work with the Missoula Urban Transportation District to make transit an integral part of transportation to and from the Development Area.

g. To the extent possible and feasible, the Developer will design, curate and install public interpretive displays and art installations along the portion of the Riverfront Trail within the Development Area and in the greenway and Public Plaza, as well as in the center of the roundabout to be developed at the intersection of West Front and Owen Streets that will incorporate and celebrate the City's culture, history and/or unique location.

ARTICLE V. UNDERTAKINGS.

Section 5.1. Zoning. The Developer has provided a zoning change petition to the City. The Parties acknowledge that approval of the Developer's petition (or zoning changes substantially similar to the Developer's petition and that the Developer agrees are sufficient) is a condition that must be satisfied prior to commencement of construction on the Project.

Section 5.2. Street Vacations. The Developer has provided a petition to vacate the Owens Street ROW and the Front Street ROW. The Parties acknowledge that approval of the Developer's petition (or right-of-way vacations substantially similar to those provided for in the Developer's petition and that the Developer agrees are sufficient) is a condition that must be satisfied prior to commencement of construction on the Project. The Parties acknowledge that City approval of the petition to vacate the Front Street ROW will be subject to satisfaction of certain conditions, including demonstration that Developer is proceeding with Additional Phases of the Development.

Section 5.3. Lot Line Adjustment. The City shall initiate lot line adjustments within the Project Area reasonably sufficient to permit development of the Project. The City acknowledges that approval of such lot line adjustments is a condition that must be satisfied prior to execution of the Land Disposition Agreement.

Section 5.4. Parking Facility Management Agreement. The City and MPC shall negotiate, execute and deliver the Parking Facility Management Agreement, pursuant to which MPC agrees to manage the Parking Facility as a public parking facility in accordance with the terms and conditions to be provided in the Parking Facility Management Agreement. The City acknowledges that the Parking Facility Management Agreement must be fully executed on or prior to the date the City acquires the City Conference Center Unit and the Parking Facility.

Section 5.5. Development Area SID and Public Improvements.

a. Following receipt from the Developer of a petition signed by 100% of the owners of property to be included within the Development Area SID, the City will create the Development Area SID. The boundaries of the Development Area SID will be coterminous with the Development Area (or may extend beyond the Development Area if determined appropriate by the Parties). Following creation of the Development Area SID, the City will use its commercially reasonable efforts to sell and issue the Development Area SID Bond, expected to be issued in the principal amount of \$2,500,000, the proceeds of which will be used to pay all or a portion of the costs of constructing or acquiring the Public Improvements and incidental costs, including costs of funding a deposit to the City's special improvement district revolving fund, funding a district reserve, if necessary or desirable, and costs of creating and administering the Development Area SID and issuing the Development Area SID Bond.

b. (i) The Developer may construct the Public Improvements, after which the City would use proceeds of the Development Area SID Bond to acquire the Public Improvements, upon substantial completion, from the Developer. In that event, the Developer will submit to the MRA design documents relating to the Public Improvements prepared by the

Developer's architect at the time design is 30% complete. The design of the Public Improvements must be approved by the MRA on behalf of the City at the time the design is 30% complete. Any material deviation from the 30% design documents relating to the Public Improvements must be initiated or approved by the MRA. In addition, the Developer will agree to follow a procurement process acceptable to the City with respect to the Public Improvements.

(ii) Alternatively, the City may construct the Public Improvements, in which case it will coordinate with the Developer on the design and construction of the Public Improvements. The City will need to follow a procurement process applicable to the City relating to public improvements financed with special assessment bonds.

c. The City and the Developer will enter into an assessment agreement providing that the Developer and not the City will be responsible for paying as due special assessments against the City Conference Center Unit and the Parking Facility resulting from the creation of the Development Area SID and the sale and issuance of the Development Area SID Bond.

d. Though the documents relating to the creation of the Development Area SID and the sale and issuance of the Development Area SID Bond are not Collateral Agreements, the Parties acknowledge that this is the manner in which the Parties expect to finance, in whole or in part, the Public Improvements and is an essential part of the development of the Fox Site. The Parties agree to work cooperatively to create the Development Area SID, provide necessary assurances for the pledge by the City of its revolving fund to the repayment of the Development Area SID Bond and provide for the Public Improvements in a timely manner to coordinate with the construction of the Project.

e. Nothing in this Section is intended to limit the right of the City to order in curb, gutter, and sidewalk improvements and assess the costs thereof.

Section 5.6. No Limitation. The undertakings listed in this Section 5 are not intended to be, nor shall they be construed as, limiting the undertakings of the Developer in connection with regulatory or permitting or other approvals required by the City, State or federal governments.

ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES.

Section 6.1. Events of Default Defined. The following shall be Events of Default under this Agreement:

a. Failure to enter into any Collateral Agreement by the Collateral Agreement Deadline or any mutually agreed upon extension or complete any undertaking by the applicable deadline provided herein is an event of default, unless the failure is the result of an event of Force Majeure;

b. Any event of default under a Collateral Agreement;

c. Any representation set forth in Article III hereof is determined to be untrue or incorrect;

d. Failure by the Developer, the City or the MRA to substantially observe or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; or

e. For Developer to:

(1) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Code or under any similar federal or state law; or

(2) make an assignment for the benefit of its creditors; or

(3) admit in writing its inability to pay its debts generally as they become due;
or

(4) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment.

Section 6.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 occurs, the City or MRA shall provide written notice to the Developer or the Developer shall provide written notice to the City or the MRA, whatever the case may be, specifying the nature of the default and the actions necessary to cure the default. With respect to an Event of Default referred to in Section 6.1(b), the Parties shall have all remedies and all rights to cure provided for in the applicable Collateral Agreement. If the Event of Default referred to in Section 6.1(a), (c) or (d) is not cured within thirty (30) days after the defaulting Party's receipt of such notice, the non-defaulting Party may take any one or more of the actions set forth below:

a. After providing written notice to the defaulting Party, suspend its performance under this Agreement until it receives assurances from the defaulting Party that the defaulting Party will cure its default and continue its performance under this Agreement.

b. After providing written notice to the defaulting Party, cancel and rescind or terminate this Agreement.

c. Take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) days, if the defaulting Party provides the non-defaulting Party with written assurances satisfactory to the non-defaulting Party that the Event of Default will be cured as soon

as reasonably possible. No written notice is required under this Section 6.2(c). If the Event of Default continues, a non-defaulting Party that initially proceeds under this Section 6.2(c) is not prevented from proceeding under Sections 6.2(a) or 6.2(b).

d. Remedies expressly available under a Collateral Agreement, if applicable to the Event of Default, are separate from the remedies available under this Agreement.

Section 6.3. Force Majeure. Upon the occurrence of any Force Majeure event, the Parties shall cooperate in extending performance deadlines or requirements for a commercially reasonable period of time. For the avoidance of doubt, any delay resulting from a Force Majeure event shall not be an Event of Default under this Agreement.

Section 6.4. Exclusive Remedies. Without in any way limiting remedies for a default or an event of default under a Collateral Agreement, remedies for an Event of Default under this Agreement are intended to be limited to the remedies set forth in Section 6.2(a) through (c) above.

Section 6.5. No Implied Waiver. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be construed to be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. In the event any agreement contained herein should be breached by any Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VII. GENERAL PROVISIONS.

Section 7.1. Conflicts of Interest; City's Representatives Not Individually Liable. No member, officer or employee of the City or the MRA shall have any personal interest, direct or indirect, in this Agreement, the Project or the Public Improvements, nor shall any such member, officer or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, officer or employee of the City or the MRA shall be personally liable to Developer in the event of any default under or breach of this Agreement by the City.

Section 7.2. Term of Agreement. This Agreement shall remain in effect until the City acquires ownership of the City Conference Center Unit and the Parking Facility, subject to earlier termination under Section 6.2 hereof.

Section 7.3. Regulatory Approvals. The Developer acknowledges that references in this Agreement to the "MRA" and "City" do not mean or include the City Development Services Department, City Building Office, City Public Works Department or other regulatory body within the City that is charged with reviewing and/or approving a portion or aspect of the Project. No review or approval by MRA or City officials will in any way be construed by Developer to replace or be in lieu of any required review or approval of the City Development Services Department, City Building Office, City Public Works Department or other regulatory

body within the City, or any other official review or approvals required by any State laws or local ordinances or regulations.

Section 7.4. Assignment. This Agreement is unique between the City, the MRA and Developer and no Party may assign any rights or privileges, or delegate any duties or obligations under this Agreement without first obtaining the written consent of the other Parties.

Section 7.5. Successors Bound By Agreement. This Agreement will inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors in interest and permitted assignees.

Section 7.6. Prior Agreements. This Agreement supersedes, merges and voids any and all prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement. The Parties waive and release each other from any claims, actions, or causes of action that relate in any manner to any prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement.

Section 7.7. Entire Agreement. Except for executed Collateral Agreements, this Agreement, as it may be amended under Section 7.7, including any exhibits and attachments hereto, embodies the entire agreement and understanding of the Parties with respect to its subject matter. All Parties shall be prohibited from offering into evidence in any arbitration or civil action any terms, conditions, understandings, warranties, statements or representations, whether oral or written, with respect to the subject matter of this Agreement and that are not contained in this Agreement, as it may be amended under Section 7.7, other than executed Collateral Agreements.

Section 7.8. Amendments, Changes and Modifications. This Agreement may be amended and any of its terms may be modified only by written amendment authorized and executed by the Parties hereto. Notwithstanding the foregoing, any waivers or amendments of provisions that are recited to concern less than all of the Parties may be waived or amended in writing among such concerned Parties only.

Section 7.9. Headings. The headings of articles and sections in this Agreement are inserted for convenience of reference only and do not limit or amplify the terms and provisions of the Agreement in any manner. The headings will be ignored and will not affect the construction of any provisions of this Agreement.

Section 7.10. Notice. Any formal notice, demand or communication required or permitted by the terms of this Agreement to be given to the City, the MRA or the Developer will be in writing and will be delivered to such Party either: (i) by personal hand-delivery; or (ii) by depositing the same in the United States mail, certified mail with return receipt requested, addressed to such Party at the address named below, with postage prepaid thereon. Notice will be deemed complete upon receipt of the notice pursuant to any of the foregoing methods of notice.

If to City:

City of Missoula
Attention: City Finance Director
435 Ryman Street
Missoula, Montana 59802

If to MRA:

Missoula Redevelopment Agency
Attention: Director
140 West Pine Street
Missoula, Montana 59802

If to Developer:

Hotel Fox Partners, c/o
Datsopoulos, MacDonald & Lind, P.C.
Attention: William K. VanCanagan, Esq.
201 West Main Street, Suite 201
Missoula, Montana 59802

The City, the MRA and the Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

Section 7.11. Severability. If any provision of this Agreement is declared void or held invalid, such provision will be deemed severed from this Agreement and the remaining provisions of this Agreement will otherwise remain in full force and effect.

Section 7.12. Duplicate Originals or Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 7.13. Place of Performance. The place of performance of this Agreement will be in the City of Missoula, Missoula County, Montana.

Section 7.14. Governing Law. This agreement and the legal relations between the Parties hereto will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any choice of law statutes, rules, or principles.

Section 7.15. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or the Public Improvements or for carrying out the expressed intention of this Agreement.

Section 7.16. Contractual Impairment. The obligations and commitments set forth in this Agreement are necessary for proceeding with the development of the Project and are being relied upon by the Parties in proceeding to the realization of mutual benefits to the parties to be derived by the Project. This Agreement creates an obligation of contracts, contractual relationships and vested rights subject to impairment by the legislature of the State of Montana and other governmental or regulatory bodies (other than the City or the MRA).

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the date first set forth above.

CITY OF MISSOULA, MONTANA

By  _____
Mayor

[SEAL]

Attest

 _____
City Clerk



MISSOULA REDEVELOPMENT AGENCY

By: _____
Karl J. Englund, Chairman

APPROVED FOR LEGAL CONTENT:

 _____
Jim Nugent, City Attorney

[Signature page to Fox Site Master Development Agreement]

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the date first set forth above.

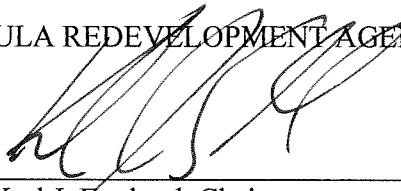
CITY OF MISSOULA, MONTANA

By _____
Mayor

[SEAL]

Attest _____
City Clerk

MISSOULA REDEVELOPMENT AGENCY

By:  _____
Karl J. Englund, Chairman

APPROVED FOR LEGAL CONTENT:

Jim Nugent, City Attorney

[Signature page to Fox Site Master Development Agreement]

HOTEL FOX PARTNERS, LLC

By: Sean Averill
Name: Sean Averill
Title: Managing Member

[Signature page to Fox Site Master Development Agreement]

EXHIBIT A

[Map]

EXHIBIT B

[Site Plan]



EXHIBIT C

[Conceptual and schematic design drawing]

