



**Item:** Development Agreement – Pertaining to development of Lot 2, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, T20N, R4E, P.M.M., Cascade County, Montana – Great Falls Apartment (previously referred to as Talus Apartments)

**From:** Galen Amy, Planner II, Planning & Community Development

**Initiated By:** The Farran Group, Developer

**Presented By:** Craig Raymond, Director of Planning & Community Development

**Action Requested:** City Commission approve Development Agreement all pertaining to Lot 2, Medical Tech Park Minor Subdivision (Great Falls Apartment).

---

**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (approve/not approve) the Development Agreement between Great Falls Apartment, LLC and the City of Great Falls, regarding property located on Lot 2, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, T20N, R4E, P.M.M., Cascade County, Montana.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.

---

**Recommendation:** Ordinance 3114 to assign City zoning to Great Falls Apartment (previously referred to as Talus Apartments) was accepted by the City Commission on first reading on September 3, 2013, and a Public Hearing was set for October 1, 2013. Due to concerns about the Annexation Agreement, the owner requested the Public Hearing for October 1, 2013 be vacated and rescheduled to November 19, 2013.

To satisfy property owner concerns, the City Commission vacated the November 19, 2013 Public Hearing and voted to move the Public Hearing to January 7, 2013. Rescheduling the Public Hearing again provides enough time for the sale of the subject property to transpire, as the closing is scheduled for December 15, 2013.

The Planning and Community Development Department and the City Attorney have been working diligently with the developer and sellers to address any concerns that the parties may have. Therefore, a Development Agreement between the City of Great Falls and The Farran Group has been drafted and is attached. Staff views this as a workable solution in order to move the project forward.

**Background:** The subject property is generally located south of the projected 21st Avenue South, east of 23rd Street South and west of 26th Street South. The applicant, The Farran Group, is requesting annexation of  $\pm 11.59$  acres from Cascade County into the City of Great Falls. The subject property is currently vacant undeveloped land. In addition to the subject property, per MCA, the abutting portion of 26th Street South, comprised of  $\pm 0.77$  acres, must also be annexed as a part of the request. In total,  $\pm 12.36$  acres will be annexed into the City.

The applicant is proposing development of a 216-unit apartment complex located in six buildings along with a clubhouse for the residents that will offer various services and amenities. The complex will consist of three secure access points with the main entry off of 26th Street South. Internal roadways will be privately owned and maintained, and parking, including some carports, will be provided on site. The construction of 21st Avenue South from 23rd Street South to 26th Street South will be completed as a part of this project (attached Conceptual Site Plan for Talus Apartments).

The applicant is also requesting subdividing the subject parcel into two lots. The easterly lot, Lot 2B, will consist of  $\pm 8.59$  acres, is requested to be zoned R-6 Multi-family residential high density zoning district, and be developed as the apartment complex (attached DRAFT Amended Plat). The westerly lot, proposed Lot 2A, will consist of  $\pm 3.0$  acres. The developer does not have immediate development plans for that lot and is requesting this lot be zoned M-1 Mixed-use zoning district.

The property was originally subdivided as a part of the Medical Tech Park Minor Subdivision in 2004. Per Montana Code Annotated (MCA), any minor subdivision that is not a first minor subdivision from a tract of record, is a subsequent minor subdivision and the governing body may require the subdivision meet or exceed the requirements that apply to a first minor subdivision. A subsequent minor subdivision requires a public hearing before the Planning Advisory Board and City Commission.

The basis for decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrate that development of the proposed subdivision meets the requirements of 76-3-608 MCA. The governing body shall issue written findings of fact that weigh the criteria in 76-3-608 (3) MCA.

The proposed project meets the intent of the code requirements. Findings of Fact, Conditions of Approval, Traffic and Growth Policy Analysis, and Zoning Analysis were provided to the City Commission in agenda reports on September 3rd, 2013, October 1, 2013, and November 19, 2013, and will be provided at the rescheduled January 7, 2014 Public Hearing. These agenda reports are accessible online at: <http://www.greatfallsmt.net/Meetings>

It is anticipated that the City Commission, at the public hearing, will consider the annexation resolution, zoning ordinance, annexation agreement, and subdivision for the subject property.

**Concurrences:** The legal counsel of each party has been involved throughout the drafting, review, and approval process for this Development Agreement.

**Fiscal Impact:** The Development Agreement identifies the obligations, including financial, for each party, with the terms and conditions that those obligations shall be executed. Moreover, providing services is expected to be an additional cost to the City. Any increased costs may be covered by increased tax revenues from improved properties.

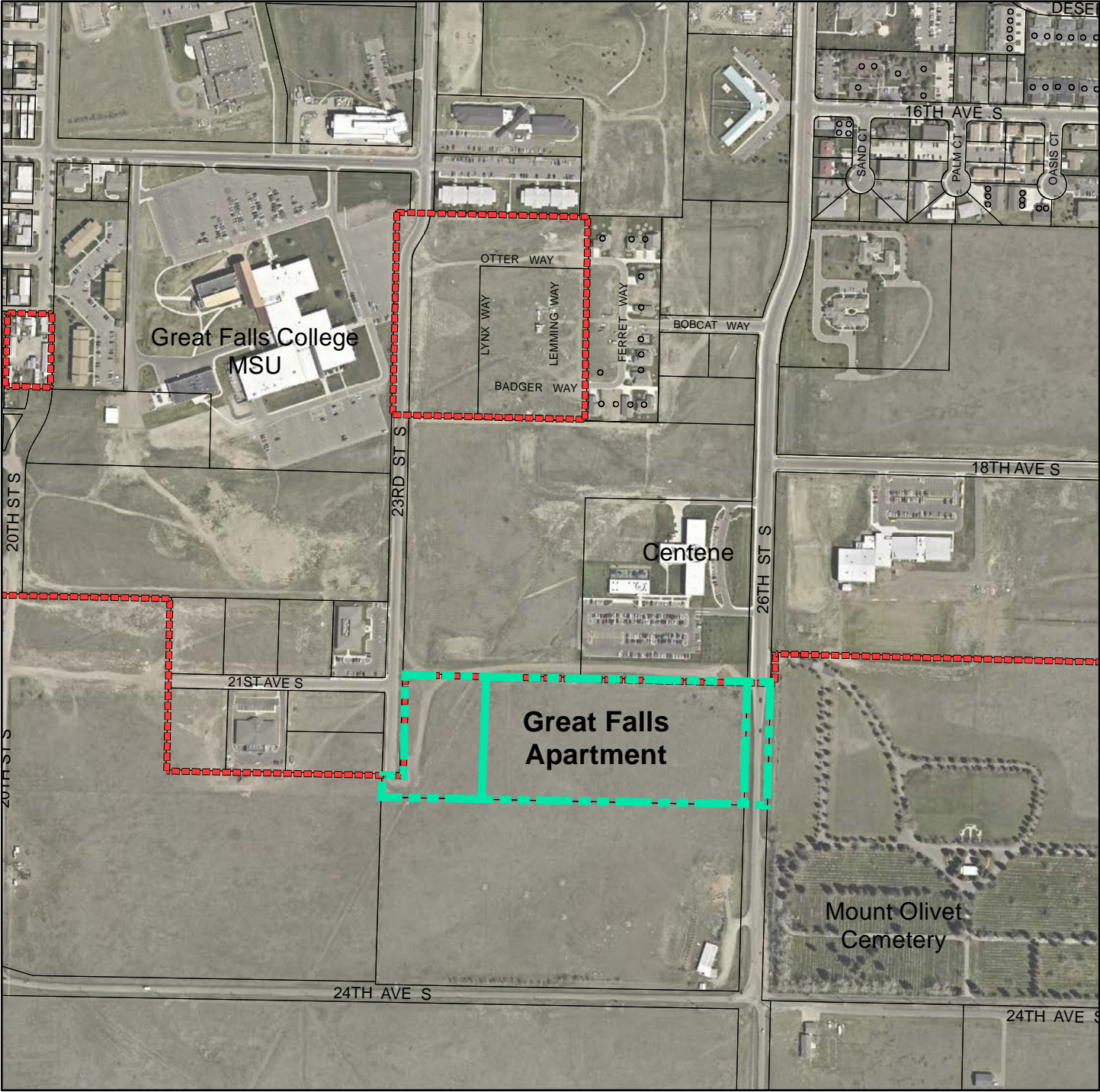
**Alternatives:** The City Commission could not approve the Development Agreement. However, this would not meet the desires of the property owner or Developer, and would essentially discourage annexation and development of the subject property at this time.




**Attachments/Exhibits:**

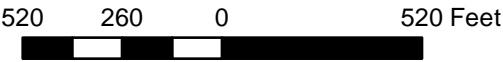
- Aerial Photo
- Conceptual Site Plan
- Draft Amended Plat
- Development Agreement

Cc: Jim Rearden, Public Works Director  
Dave Dobbs, City Engineer  
Patty Cadwell, Neighborhood Council Coordinator  
Trevor McSpadden, Morrison-Maierle, Inc., [tmcspadden@m-m.net](mailto:tmcspadden@m-m.net)  
Matt Ekstrom, Morrison Maierle, Inc., [mekstrom@m-m.net](mailto:mekstrom@m-m.net)  
Jim McLeod, The Farran Group, [jmcLeod@thefarrangroup.com](mailto:jmcLeod@thefarrangroup.com)  
John Sheffels, 39 Prospect Drive, Great Falls, MT 59401

# Aerial Photo

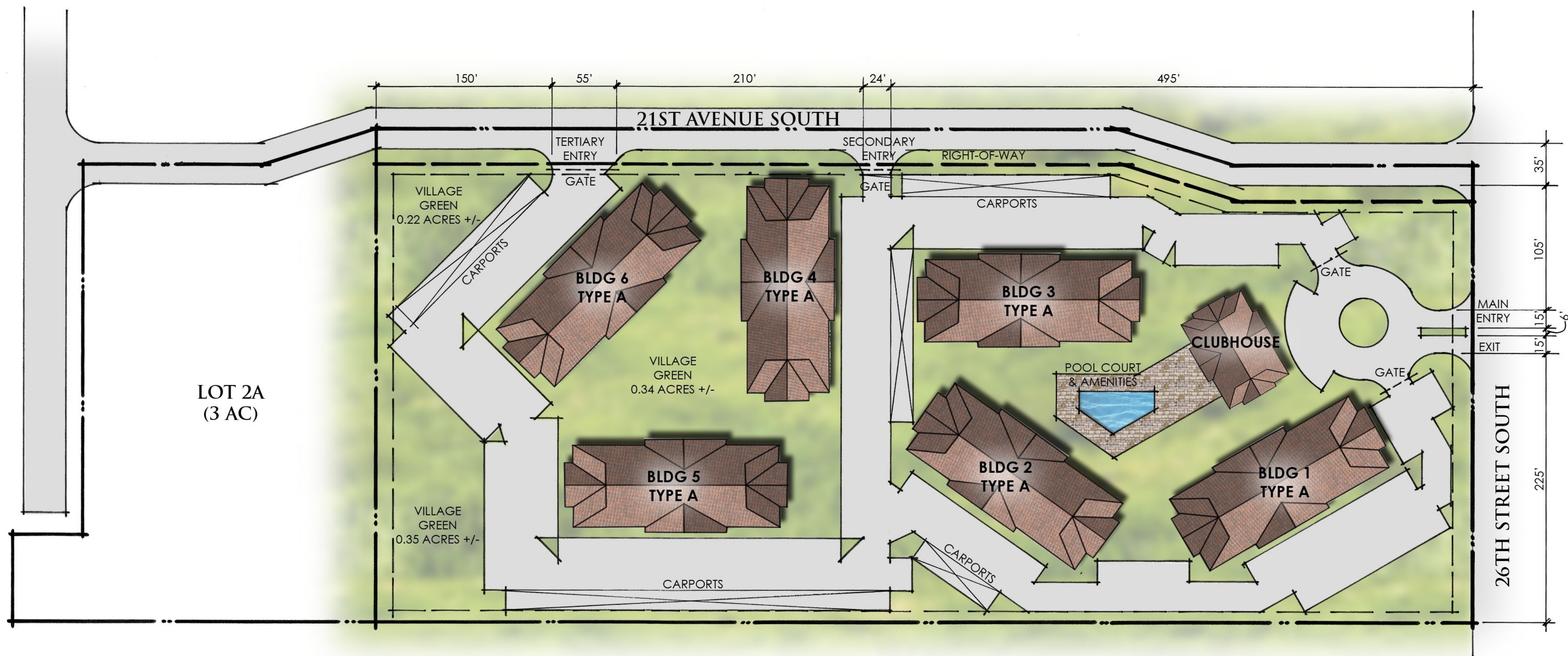


-  Great Falls Apartment site
-  City Limits
-  Tracts of Land



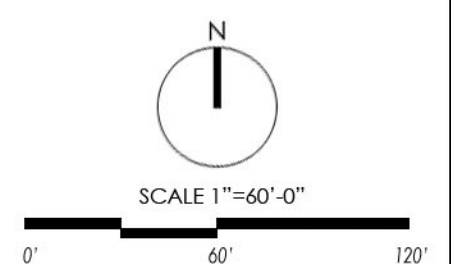
Great Falls Apartment (previously referred to as Talus Apartments)





GREAT FALLS APARTMENT (previously referred to as Talus Apartments): SCHEMATIC SITE PLAN #6

GREAT FALLS, MONTANA





DRAFT

AMENDED PLAT  
FOR THE AMENDED PLAT of LOT 2 OF THE MEDICAL TECH PARK MINOR SUBDIVISION,  
SITUATED IN THE SE1/4 SECTION 18, T20N, R4E, P.M., CITY OF GREAT FALLS,  
CASCADE COUNTY, MONTANA

OWNERS  
JOHN H. SHEFFELS ET AL  
39 PROSPECT DR.  
GREAT FALLS, MT 59405-4123

PURPOSE  
TO SUBDIVIDE LOT 2  
TO CREATE 2 LOTS

DESCRIPTION

Two tracts of land being Lot 2, of the Plat of Medical Tech Park Minor Subdivision.

Said tracts contain 11.59 acres and are subject to all existing easements.

The above described tracts of land are to be known and designated as the Amended Plat of Lot 2 of the Medical Tech Park Minor Subdivision, Cascade County, Montana.

CERTIFICATE OF DEDICATION

I, (We), the undersigned property owner(s), do hereby certify that I (we) have caused to be surveyed, subdivided, and platted into lots, parcels, blocks, roads and alleys, as shown by the plat hereto annexed, the following described land in (City and County if in Unincorporated Area), to wit:

Two tracts of land being Lot 2, of the Plat of Medical Tech Park Minor Subdivision; more particularly described as follows:

Beginning at the southeast corner of Lot 1, of the Plat of Medical Tech Park Minor Subdivision, the Point of Beginning; thence S1°36'05"W, a distance of 420.64 feet; thence N88°50'52"W, a distance of 1242.18 feet; thence N1°35'06"E, a distance of 80.00 feet; thence S88°50'52"E, a distance of 60.00 feet; thence N1°35'09"E a distance of 345.16 feet; thence S88°37'43"E, a distance of 1182.27 feet to the Point of Beginning; the parcel described above contains 11.59 Acres, as platted.

The above described tracts of land are to be known and designated as the Amended Plat of Lot 2 of the Medical Tech Park Minor Subdivision, Cascade County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever.

GRANT OF UTILITY EASEMENTS

The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, internet, cable television or other similar utility or service, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities in, over, under and across each area designated on this plat as "Utility Easement" to have and to hold forever.

OWNER

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.  
(Acknowledged and notarized signatures of all record owners of platted property)

By:

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss.

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2013 by \_\_\_\_\_

Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

LEGEND

- FOUND MONUMENT AS DESCRIBED
- SET REBAR, 5/8" DIAM., 24" WITH A YELLOW PLASTIC CAP, 14732LS.

CERTIFICATE OF SURVEYOR

I, the undersigned, Daniel J. Boers, Professional Land Surveyor, do hereby certify that I have performed the survey shown on the attached plat of The Amended Plat of Lot 2 of the Medical Tech Park Minor Subdivision; that such survey was made on October 1, 2013; that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Daniel J. Boers, P.L.S., C.Fed.S.  
MT Reg. No. 14732LS  
Morrison-Maierle, Inc.

CERTIFICATE OF CITY COMMISSION

I, Gregory T. Doyon, City Manager of City of Great Falls, Montana, do hereby certify that the accompanying plat was duly examined and approved by the City Commission of Great Falls at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Gregory T. Doyon, City Manager  
City of Great Falls, Montana

CERTIFICATE OF CLERK & RECORDER

STATE OF MONTANA )  
County of Cascade ) ss.

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013, at \_\_\_\_\_ o'clock.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Clerk & Recorder  
Cascade County, Montana

CERTIFICATE OF COUNTY TREASURER

I, Jamie Bailey, Treasurer of Cascade County, Montana, do hereby certify that the accompanying plat has been duly examined and that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Jamie Bailey  
Treasurer  
Cascade County, Montana

CERTIFICATE OF PUBLIC SERVICE DIRECTOR

I, Jim Rearden, Public Service Director for the City of Great Falls, Montana, do hereby certify that I have examined the accompanying plat of \_\_\_\_\_

to the City of Great Falls, and the survey it represents, and that I find the same conform to regulations governing the platting of lands, and to presently platted adjacent land, as near as circumstances will permit and I do hereby approve the same. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Jim Rearden, Public Service Director  
City of Great Falls, Montana

CERTIFICATE OF GREAT FALLS PLANNING BOARD

We, the undersigned, \_\_\_\_\_, President, Great Falls Planning Board, and \_\_\_\_\_, Secretary of said Great Falls Planning Advisory Board, do hereby certify that the accompanying plat of \_\_\_\_\_

to the City of Great Falls, Cascade County, Montana has been submitted to the Great Falls Planning Advisory Board of Great Falls, Cascade County, Montana, for examination by them and was approved at a meeting held on \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_, President

Great Falls Planning Board

ATTEST:

\_\_\_\_\_, Secretary

Great Falls Planning Board

MORRISON  
MAIERLE, INC.  
An Employer-Owned Company

P.O. Box 1113, 2880 Technology Blvd., W. Bozeman, MT 59711 • Phone: (406) 587-0721 Fax: (406) 922-4702

CLIENT: \_\_\_\_\_

FIELD WORK: MMI

DRAWN BY: JCH

CHECKED BY: DJB

DATE: 05/20/2013

SCALE: 1"=60'

PROJ #: 3959.012

1/4 SEC. SECTION TOWNSHIP RANGE

SE 18 20N 4E

PRINCIPAL MERIDIAN, MONTANA

CASCADE COUNTY, MONTANA

PLOTTED DATE: Sep/20/2013 - 10:54:56 am

DRAWING NAME: N:\3959\012\ACAD\Survey\A\PLAT\A\PLAT-PLOT.dwg

SHEET 1 OF 1 PLOTTED BY: jrb

**DEVELOPMENT AGREEMENT FOR  
THE AMENDED PLAT OF LOT 2,  
MEDICAL TECH PARK  
MINOR SUBDIVISION,  
SE1/4, SECTION 18,  
TOWNSHIP 20 NORTH, RANGE 4 EAST, P.M.M.,  
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this 25 day of November, 2013, between, GREAT FALLS APARTMENT, LLC, a Montana limited liability company and/or assigns(hereinafter referred to as "Developer") and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana(hereinafter referred to as "City") regarding the requirements for annexation and development within the corporate limits of the City, particularly located on the Amended Plat of Lot 2, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana, hereinafter referred to as "Subject Property."

2. SUPPORTING DOCUMENTS

- A. Amended Plat of Lot 2, Medical Tech Park Minor Subdivision, prepared by Morrison-Maierle, Inc., and filed and recorded in the Clerk and Recorder's Office of Cascade County, Montana.
- B. Final engineering drawings, specifications and cost estimates prepared by Morrison-Maierle, Inc., providing for the design of sanitary sewer mains, water mains, drainage improvements, curb and gutter, paving, sidewalk and conduit for wiring for potential future public roadway lighting facilities. Said drawings and specifications are on file in the City's Engineering Division.
- C. Loan commitment letter dated \_\_\_\_\_, 2013, by \_\_\_\_\_ Bank of \_\_\_\_\_, to indicate the capability of Owner to pay for the public improvements referenced in Paragraph 2B hereinabove. A copy of the same is filed in the office of the Great Falls Planning and Community Development Department.

3. AMENDMENTS

Minor changes to engineering documents and revisions to the engineering drawings as are deemed appropriate and necessary by the City's Engineer and City's Public Works Department and which do not materially affect the hereinabove mentioned Amended Plat, can be made as follows:

- A. The proposed revision will be submitted to City's Public Works Department for review and, if approved, the City Engineer or Public Works Director will sign and adequately annotate the change.
- B. The annotated revision becomes a part of this Agreement upon City's Public Works Department approval.
- C. Changes during construction shall be made by written change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied to City's Engineering Division upon completion of the construction.
- E. All amendments to this Agreement, except as allowable above in this section, shall be in writing and approved by City and Developer.

4. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Developer that subsequent to the date of this Agreement, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. It is, therefore, agreed that the parties may by mutual subsequent written agreement modify the terms, conditions and covenants of this Agreement.

5. FEES AND CHARGES

- A. Prior to annexation of the Subject Property, Developer shall pay, and deposit into escrow, as the case may be, the following fees as provided by City policy and resolution;

a. Storm Sewer Fee (\$250/acre x 11.59 acres)	\$ 2,897.50
b. Park Fee in Lieu of Land Dedication (216 dwelling units x 0.03 acres per dwelling unit = 6.48 acres (282,268.8 sq. ft.) x 11% x \$0.35 per s.f.)	\$ 10,867.35
c. Escrow for completion of 26 <sup>th</sup> Street South water main improvements:	\$ 48,312.00
d. Escrow for completion of 23 <sup>rd</sup> Street South street improvements:	\$ 19,855.80
e. Escrow for completion of 23 <sup>rd</sup> Street South storm drain improvements:	\$ 12,720.00
f. Escrow for completion of 23 <sup>rd</sup> Street South sanitary sewer improvements:	\$ 12,000.00
g. Escrow for completion of 23 <sup>rd</sup> Street South water main improvements:	\$ 8,760.00
h. Recording fees for Agreement and Resolution (\$11 per page x 11 pages)	\$ 121.00
Total fees made payable to City of Great Falls	\$ 115,533.65



The escrow deposits referenced in subparagraphs 5Ab through g inclusive above shall be subject to and governed by the escrow provisions set forth in Section 6Dbelow.

These fees are in addition to the \$700 fee for establishing City zoning, \$100.00 fee for Resolution, and \$600.00 fee for Minor Subdivision, which have been paid.

- B. Developer, or its successors or assigns, shall reimburse City for its expenses incurred for inspection, testing and acceptance of public utilities and streets to serve Subject Property at the rates charged by City for said work at the time performed.
- C. Water service tapping and water and sewer service connection and inspection fees will be assessed at the time of installation.
- D. The absence of any fee from this agreement which is lawfully charged by the City in connection with construction activity associated with Subject Property shall not constitute a waiver by the City.

6. PUBLIC INFRASTRUCTURE IMPROVEMENTS

A. 21<sup>st</sup> AVENUE SOUTH PUBLIC IMPROVEMENTS

Within two years of the date of Annexation of the property identified above, pursuant to an annexation agreement, Developer hereby agrees to dedicate 21<sup>st</sup> Avenue South across its northerly frontage and the Southern boundaries of the Centene Corporation Property and the Great Falls Port Authority real property from 23<sup>rd</sup> Street South to 26<sup>th</sup> Street South as a part of the Amended Plat of Lot 2, Medical Tech Park Minor Subdivision as depicted in detail and with specificity on Exhibit "A" attached hereto and by this reference incorporated herein. In this regard, the Developer shall dedicate to the City of Great Falls the portion of the public road easement and right-of-way consisting of the strip of real property thirty feet (30 feet) wide traversing the northern boundary of the Developer's property as depicted in detail on the specificity on the preliminary plat and Exhibit "A" attached. The parties further acknowledge and agree that subject to the terms and conditions of the Memorandum of Understanding made and entered into by and among the Developer, Centene Corporation and Great Falls Port Authority, whereby Centene Corporation and the Great Falls Port Authority have agreed to dedicate to the City of Great Falls the portion of the public road easement and right-of-way consisting of the strip of real property thirty feet (30 feet) wide traversing the southern boundaries of Lots 1A and 2A as depicted in detail on the specificity on the preliminary plat in Exhibit "A" attached. Developer further agrees to construct 21<sup>st</sup> Avenue South, as a 35-foot wide (60-foot right-of-way) local urban design standard (paving, curb, gutter, and sidewalk).

There is an existing 30-foot utility easement on Lots 1A & 1B, Medical Tech Park Minor Subdivision (north of subject property). The 21st Avenue South public improvements referenced above will require the dedication of said utility easement as public right-of-way. Cooperation with the property owner to the north of the Subject Property will be required. The ultimate alignment of 21st Avenue South will be subject to the dedication of said easement. If Developer is unable to secure said easement, it shall be the responsibility of the Developer to provide the full 60-foot right-of-way for 21<sup>st</sup> Avenue South on the Subject Property.

Within two years of the date of Annexation of the property identified above, pursuant to an annexation agreement, Developer hereby agrees to install an 8-inch sanitary sewer main in the proposed 21<sup>st</sup> Avenue South right-of-way from its existing location in 23<sup>rd</sup> Street South, easterly to the furthest building location of the Subject Property.

Within (30) days of acceptance of the installations and appropriate billing, including Developer's provision of documentation supporting said costs, City agrees to reimburse the Owner 25% of the Owner's actual out-of-pocket costs to install 21<sup>st</sup> Avenue South public street improvements, not to exceed \$56,400.

**B. 23<sup>th</sup> STREET SOUTH PUBLIC IMPROVEMENTS**

Developer hereby agrees to escrow monies to pay for the full cost to extend a standard City roadway section paving, curb & gutter, water main, sewer main and storm drain in 23<sup>rd</sup> Street South to the southerly boundary of the Subject Property a length of 80 lineal feet (see Item 5 above for estimated improvement costs). Subject to the escrow requirements set forth in Section 6D below, a certificate of deposit shall be deposited into escrow in the names of the Developer and City to cover the estimated escrow costs specified in Item 5 above. When the actual out-of-pocket costs of the above referenced roadway and utility improvements are definitely determined after completion, amounts equal to said costs shall be transferred from the Escrow Agent described in Section D below to City. Upon said transfer(s), any remaining balance in the above referenced financial surety shall be released by the Escrow Agent to Developer.

Developer further agrees to install sidewalk on the eastern side of 23<sup>rd</sup> Street South at such time as development occurs on Lot 2A of the Amended Plat of Lot 2, Medical Tech Park Minor Subdivision.

Within two years of the date of Annexation of the property identified above, pursuant to an annexation agreement, Developer hereby agrees to install a 15-inch storm sewer main in 23<sup>rd</sup> Street South right-of-way from its existing location near the intersection of 21<sup>st</sup> Avenue South and 23<sup>rd</sup> Street South, southerly to the current south end of the 23<sup>rd</sup> Street South right-of-way.

**C. 26<sup>TH</sup> STREET SOUTH PUBLIC IMPROVEMENTS**

Subject to the escrow provisions set forth in Section 6D below, Developer hereby agrees to escrow monies for the full cost to extend an eight inch (8") water main southward in 26<sup>th</sup> Street South from its existing location to the south boundary of the Subject Property extended (see Item 5 above for estimated improvement cost). A certificate of deposit shall be deposited into escrow pursuant to Section 6D below in the names of the Developer and City to cover the estimated escrow costs specified in Item 5 above. At such time should the actual out-of-pocket cost of the above referenced roadway improvements are definitely determined, amounts equal to said costs shall be transferred by the escrow agent from the above referenced certificates of deposit to City. Upon said

transfer(s), any remaining balance in the above referenced certificates of deposit shall be released by the escrow agent to Developer.

D. ESCROW

All proceeds described in this Development Agreement for deposit into escrow including but not limited to the escrow deposits described in Section 5Ab through g inclusive above, Sections 6B and C, and Section 7A through F, inclusive below shall upon execution of this Development Agreement be deposited into an escrow account at First American Title Company of Great Falls, Montana (the "Escrow Agent" for purposes of this Agreement) and shall be held by the Escrow Agent pending full and final satisfaction of the conditions to closing described in detail on the specificity in Section 24 below. In the event that the conditions to closing are not satisfied, the Escrow Agent shall fully refund all of the amounts deposited by the Developer into escrow along with the fees paid by the Developer pursuant to Section 5Aa and b, above. Upon full satisfaction of the conditions to closing, the Escrow Agent is instructed to release from escrow the proceeds on deposit and distribute the proceeds in accordance with the requirements of the specific Sections of this Development Agreement which deal with escrow deposits. All costs of the Escrow Agent shall be borne by Developer.

7. FUTURE REIMBURSEMENTS

The requirements hereinafter set forth are subject to the Closing Conditions of Section 24 below.

- A. Developer shall pay from escrowed monies specified above the full cost of a future installation of an 8-inch water main in 26<sup>th</sup> Street South abutting the Subdivision, but shall be entitled to reimbursement for one-half of the actual out-of-pocket costs from the owner of the property to the east (Lot 1B3A, Block 1, Mount Olivet Subdivision, Section 17, T20N, R4E, PMM, Cascade County, Montana), upon annexation of same to City. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.
- B. Developer shall pay from escrowed monies specified above the full cost of a future installation of an 8-inch water main to be in 23<sup>th</sup> Street South abutting the Subdivision, but shall be entitled to reimbursement for one-half of the actual out-of-pocket costs from the owner of the property to the west (Lot 4, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana), upon annexation of same to City. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.
- C. Developer, shall pay from escrowed monies specified above the full cost of a future installation of an 8-inch sanitary sewer main to be installed in 23<sup>rd</sup> Street South abutting the Subdivision, but shall be entitled to reimbursement for one-half of the actual out-of-pocket costs from the owner of the property to the west (Lot 4, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana), upon annexation of same to City. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.



- D. Developer shall pay the full cost of the 15-inch storm drain, to be installed immediately along 23<sup>rd</sup> Street South between the end of the existing storm drain and the abutting Subdivision, but shall be entitled to reimbursement for one-half of the actual out-of-pocket costs from the owner of the property to the west (Lot 4, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana), upon annexation of same to City. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.
- E. Developer, shall pay from escrowed monies specified above the full cost of a future installation of an fifteen inch (15") storm drain to be installed in 23<sup>rd</sup> Street South abutting the Subdivision, but shall be entitled to reimbursement for one-half of actual out-of-pocket costs from the owner of the property to the west (Lot 4, Medical Tech Park Minor Subdivision, in the SE1/4, Section 18, Township 20 North, Range 4 East, P.M.M., Cascade County, Montana), upon annexation of same to City. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.
- F. Developer shall provide the City with documentation of its actual out-of-pocket costs of the installation of the hereinabove mentioned water mains, sanitary sewer mains and storm drain within twelve (12) months after approval and acceptance thereof by City. In the event of Developer's failure to provide City with said cost data, City shall not be obliged to undertake collection of the reimbursement provided for herein, and the responsibility for collection thereof shall be that of Owner, its heirs, successors and assigns. Failure of Developer to provide City with said cost data for reimbursement as herein required shall in no way alter the obligation of any other party to make reimbursement as provided for herein, said failure affecting only City's obligation to assist in collection thereof. The City acknowledges and agrees that the Annexation Agreement shall contain an express provision memorializing the requirements of this subparagraph.

8. DESIGN OF PUBLIC INFRASTRUCTURE TO BE INSTALLED IN FUTURE

Subject to the Closing Conditions described in Section 24 below, Developer agrees to complete the design and prepare the plans for the portion of the street, water main, sanitary sewer main, and storm drain improvements which monies are being escrowed.

9. SOIL AND/OR GROUNDWATER CONDITIONS

Subject to the Closing Conditions described in Section 24 below, the Owner/Developer of the Subject Property shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and against all claims, debts, liabilities, fines, penalties, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the Subject Property but not including the public right-of-way to be divided by the Developer to the City which shall be the sole responsibility of the City. For purposes of this Section 9, the phrase "adverse soil or groundwater conditions" shall relate strictly to settling or other conditions associated with the composition of the soil which are not the result of any contamination. This indemnity obligation runs with the land. Upon the transfer of ownership of the Subject

Property, the prior owner's (whether the Owner/Developer that enters into this Development Agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released as to that owner and the indemnity obligation runs to the new owner of the property. Only the owner of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, fine, penalty, obligation or cost is obligated to indemnify and no owner of property is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the Owner/Developer of the Subject Property shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

10. SITE DUST MITIGATION

When the disturbance of land (e.g. grading) or construction activity has the potential to result in a significant increase of fugitive dust, the Developer shall take reasonable measures to mitigate and reduce resulting dust according to a City approved Dust Control Plan. Said Plan shall be submitted to, reviewed by, and approved by the City prior to any disturbance of land in the Subject Property.

11. RESTRICTIONS ON BUILDING PERMITS AND OCCUPANCY

Building permits for Subject Property shall not be issued until the contracts for installation of the public improvements have been executed. Developer acknowledges that City will not permit the occupancy of any residential structure on Subject Property until street improvements and water and sanitary sewer mains related to Subject Property have been installed, tested and accepted by City, which acceptance will not be unreasonably withheld by City.

12. RESTRICTIONS ON DEVELOPMENT OF LOT 2A, MEDICAL TECH PARK MINOR SUBDIVISION

As plans for development associated with the proposed Lot 2A, of the Subject Property have presently not been formalized, Developer hereby agrees not to place or erect any structure requiring water and/or sanitary sewer service upon said Lot 2A or attempt to further subdivide the area defined by said Lot 2A until development plans and financing for the necessary infrastructure to serve said Lot 2A have been reviewed and approved by City's Planning and Community Development and Public Works Departments.

13. INFRASTRUCTURE EASEMENTS

Subject to the Closing Conditions described in Section 24 below, Developer hereby agrees to provide to City, prior to Developer receiving service from said water, sanitary sewer systems and storm drain system, reasonable appropriate easements to accommodate said water, sanitary sewer and storm drain systems to serve Subdivision. Developer further agrees to provide, when reasonably deemed necessary by City, any additional easements within the Subdivision to accommodate future infrastructure, including, but not limited to, the sanitary sewer mains, water mains, storm drainage improvements, paving, sidewalk, conduit for wiring for potential future public roadway lighting facilities, curb and gutter, referenced in

Paragraph 6 herein, with the location of said easements to be determined mutually between Developer and City.

14. MAINTENANCE DISTRICTS

Developer hereby agrees to waive its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay its proportionate share of the costs associated with said maintenance districts as they may be applied the Subject Property.

15. FUTURE STORM DRAINAGE FACILITIES

Developer hereby agrees to waive its right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay for its proportionate share of any future storm drainage improvements that service the Subject Property that may be installed with or without an area wide special improvement district. The term "area wide" as used herein, means any area larger than that covered by Subject Property, which is a contributor to the drainage sub-basin of which Subject Property is a part.

16. PUBLIC ROADWAY LIGHTING

Developer hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities that service the Subject Property, and further agrees to pay for its proportionate share of the costs associated with roadway lighting which services the Subject Property that may be installed with or without a special lighting district.

17. SIDEWALKS

Subject to the Closing Conditions described in Section 24 below, within two years of the date of Annexation of the property identified above, pursuant to an annexation agreement, or the installation of curb and gutter for the adjacent public streets (whichever occurs first), developer agrees to complete the installation of standard sidewalk in the public right-of-way in accordance with the drawings and specifications referenced in Paragraph 2B above and filed in the City Engineer's office.

18. WAIVER OF PROTEST OF ANNEXATION

Owner hereby agrees to waive any and all statutory procedure notice on right of protest to annexation of Subject Property, as provided for by State law.

19. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITY AND STREET IMPROVEMENTS

A. After the public utilities, drainage and street improvements described in Paragraph 2B above have been installed and accepted by City, the same shall be in all respects treated, owned and maintained as though the same had been constructed and installed by City. Developer and/or its contractor shall guarantee said improvements referenced above against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.



- B. Installation of the public utilities and street improvements described in Paragraph 2.B above, shall be subject to City's infrastructure inspection policy in place at the time of installation.

20. ANNEXATION PREREQUISITES

Subject Property is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Subject Property, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.

21. ADHERENCE TO SITE PLAN

Developer hereby agrees that development upon Subject Property shall be substantially in accordance with the Site Plan approved in conjunction with said Subject Property and applicable City Codes, and the terms and conditions contained in this Agreement.

22. DESIGN REVIEW BOARD

Developer hereby agrees to apply for and obtain Design Review Board approval of the site plans and structures proposed to be constructed and/or modified on parcels within the Subject Property, including landscaping, signage, yard lighting and sight-obscuring fence or other such improvements, as defined by the Design Review Board.

23. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, including but not limited to any subsequent Purchaser, of all or part of the property identified herein, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

24. CLOSING CONDITIONS

The parties acknowledge and agree that the Developer's responsibility to perform its obligations under this Development Agreement are expressly contingent upon the following:

1. Formal approvals of this Development Agreement by the Commission of the City of Great Falls;
2. Consummation of the closing of the Subject Property by the Developer; and
3. Formal approval by the Commission of the City of Great Falls of the Developer's application for annexation, zoning and subdivision of the Subject Property.

The parties further acknowledge and agree that the Conditions to Closing as described in detail and with specificity set forth above shall occur on or before January 7, 2014 unless extended in writing by mutual agreement of the parties. In the event that any of the Conditions of Closing remain unsatisfied following the expiration of the January 7, 2014

deadline referenced in the preceding sentence, all fees and proceeds deposited by the Developer with the Escrow Agent shall be returned to the Developer.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA  
A Municipal Corporation of the State of Montana

\_\_\_\_\_  
Gregory T. Doyon, City Manager

ATTEST:

\_\_\_\_\_  
Lisa Kunz, City Clerk

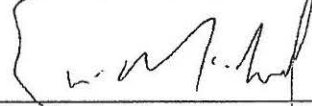
(Seal of City)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Sara R. Sexe, City Attorney

Developer:

Great Falls Apartment, LLC a Montana limited liability company



By: Jim McLeod, Managing Member

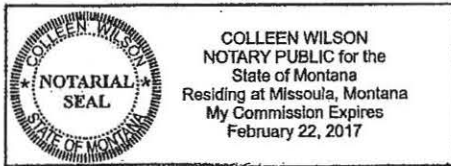
State of Montana )

:SS.

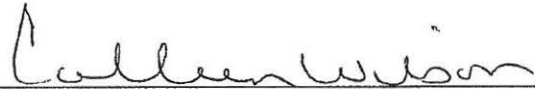
County of Cascade)

On this 25 day of Nov, in the year Two Thousand and Thirteen, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Jim McLeod, known to me to be the person whose name is subscribed to the instrument within and acknowledged to me that he executed the same.

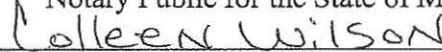
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



(NOTARIAL SEAL)



Notary Public for the State of Montana



Notary Public for the State of Montana (Printed)

Residing at Missoula, MT

My commission Expires Feb. 17, 2017