



Item: Development Agreement Addendum, being Lot 8, of Great Bear No. 2 Subdivision – Phase I located in the N1/2 Section 30, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, herein referred to as subject property.

From: Craig Raymond, Director of Planning & Community Development

Initiated By: Dali, LLC, Property Owner & Developer

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

Action Requested: City Commission approve the Development Agreement Addendum pertaining to Great Bear No. 2 Subdivision-Phase II.

Suggested Motions:

1. Commissioner moves:

“I move that the City Commission (approve/disapprove) the Addendum to the Development Agreement pertaining to Great Bear No. 2 Subdivision-Phase II.”

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

Recommendation: The City Commission conducted a public hearing on October 1, 2013, to consider approval of the final plat and Development Agreement but official action was tabled until such time as the Development Agreement had been signed by the owner of the subject property. The executed Development Agreement is attached.

On October 15, 2013, the City Commission took final action and approved the Final Plat and Development Agreement. Staff recommends that the City Commission approve of the Addendum to the Great Bear No.2-Phase II as presented.

Background: The City Commission approved the Final Plat and Development Agreement pertaining to Great Bear No.2-Phase II subdivision in October of 2013. One of the provisions within the Development Agreement set limitations as to which lots may access Great Bear Avenue directly. Subsequent to the Commission approval, Dali, LLC, requested that the Development Agreement be modified to allow the sale and development of lots 11 and lots 12 prior to the construction of Determination Street and to allow temporary direct access onto Great Bear Avenue. At such time that Determination Street is constructed, the owners of lots 11&12 will be required to completely abandon access onto Great Bear Avenue and to establish sole access onto Determination Street. Determination Street will be required to be installed at such time as Lot 8A is developed.

Fiscal Impact: No fiscal impact is anticipated by the approval of this Addendum.

Alternatives: The City Commission could deny the requested action to approve the Development Agreement Addendum and not allow direct access onto Great Bear Avenue from Lots 11&12 of Great Bear No.2 Phase II.

Attachments/Exhibits:

Development Agreement Addendum

Exhibit A

Approved Development Agreement

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Patty Cadwell, Neighborhood Council Coordinator
Joe Stanek, joestanek@westernamericanretail.com
John Juras, TD&H, John.Juras@tdhengineering.com

**ADDENDUM TO DEVELOPMENT AGREEMENT FOR
GREAT BEAR NO. 2 SUBDIVISION - PHASE II,
BEING LOT 8 OF GREAT BEAR NO. 2 SUBDIVISION – PHASE I,
LOCATED IN THE N1/2 SECTION 30, TOWNSHIP 21 NORTH,
RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA
AFFECTING LOTS 3, 4 AND 5**

It is hereby agreed between the City of Great Falls and Dali, LLC, the owners of the above referenced subdivision, to amend the Development Agreement as follows:

Lots 3, 4, and 5 referred to in this agreement are hereby referred to as Lot 11 (formerly Lot 3), Lot 12 (formerly Lot 4) and Lot 8 (formerly Lot 5) respectively per Exhibit A.

In addition, both parties agree to amend the language in section 6 of the Development Agreement to as follows:

6. INFRASTRUCTURE IMPROVEMENTS

Owner hereby agrees to dedicate the 60-foot access and utility easement located between Lots 3 and 4 of the subdivision as public right-of-way and complete the installation of infrastructure (sanitary sewer mains, water mains, storm drainage improvements, paving, curb and gutter, conduit for wiring for potential future public roadway lighting facilities) to serve Lots 8, 11 and 12 ~~5 of the Subdivision prior to any development on Lots 3, 4 or 5 of Subdivision.~~

Primary access for Lots 11 and 12 may temporarily be permitted directly from Great Bear Avenue until such time as Determination Street, as shown on the approved plat, is installed. Upon installation, the legal lot owners of Lots 11 and 12 shall completely abandon said access onto Great Bear Avenue and establish sole access onto Determination Street.

All improvements shall be in accordance with all City and State design and construction codes, specifications, standards and other requirements. The storm drainage improvements shall include 100-year 2-hour storm capacity channel and / or conduit to accommodate peak flows from the drainage basin above and convey those flows across the subdivision to the natural drainage channel to the east. Storm drain improvements shall be provided to serve all lots within the subdivision in accordance with the City's Storm Drainage Design Manual. Additionally, upon written approval from the City Public Works Director, City may grant extension of the two-year completion date as deemed appropriate.

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

CITY OF GREAT FALLS

A Municipal Corporation of the State of Montana
Party of the First Part

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

REVIEWED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

DALI LLC, S. JOSEPH STANEK
Party of the Second Part

State of _____)
County of _____
City of _____)

:ss.

On this _____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of _____, personally appeared S. Joseph Stanek, known to me to be the person whose name is subscribed to the foregoing instrument within and acknowledged to me that (s)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.

Notary Signature

Notary Signature Printed

Notary Public for the State of _____

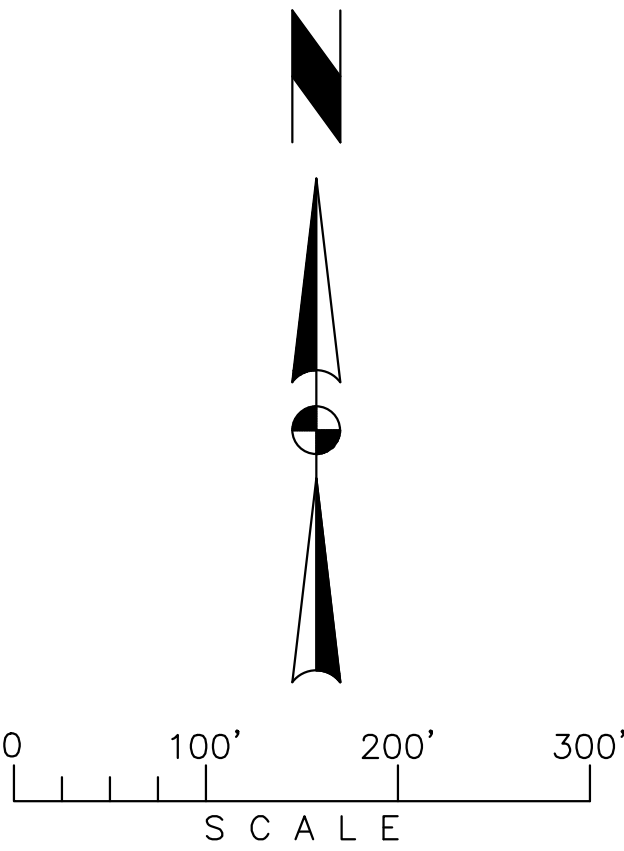
Residing at _____

My commission expires _____, 20____

(NOTARIAL SEAL)

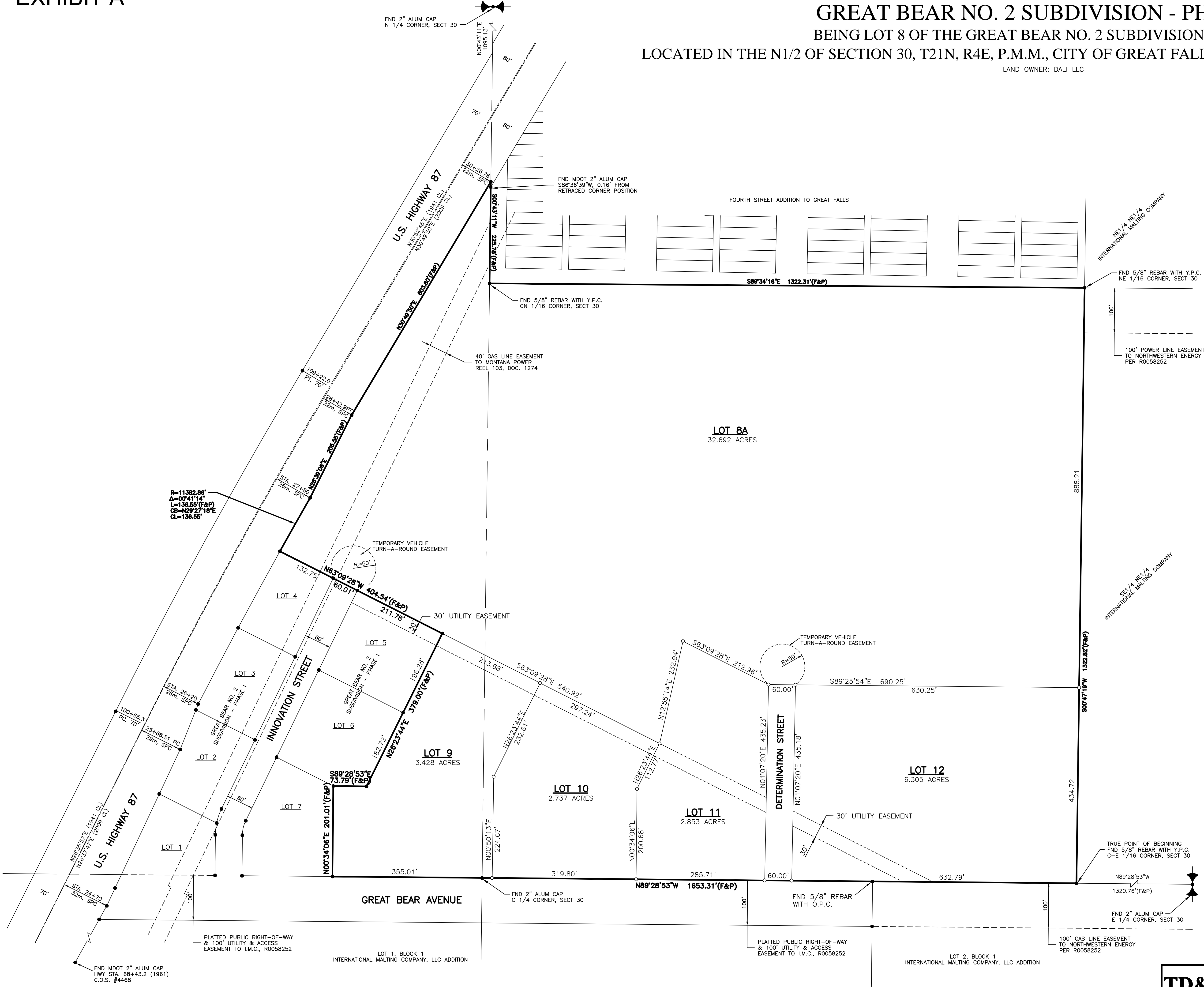
EXHIBIT A

GREAT BEAR NO. 2 SUBDIVISION - PHASE II
BEING LOT 8 OF THE GREAT BEAR NO. 2 SUBDIVISION - PHASE I,
LOCATED IN THE N1/2 OF SECTION 30, T21N, R4E, P.M.M., CITY OF GREAT FALLS, CASCADE COUNTY, MONTANA
LAND OWNER: DALI LLC



AREA OF LOTS = 48.016
AREA DEDICATED STREETS = 0.599
TOTAL AREA = 48.615 ACRES

LEGEND	
SUBDIVISION BOUNDARY	—
SET 5/8"x24" REBAR WITH "15625LS KENCZKA" YPC	○
FOUND MONUMENT "15625LS KENCZKA" YPC UNLESS NOTED OTHERWISE	●
FOUND SECTION CORNER	⊕
FOUND QUARTER CORNER	⊕
EASEMENT LINE	- - -
LOT LINE	—
SECTION LINE	—
FIELD MEASUREMENT	(F)
PLATTED MEASUREMENT	(P)



**DEVELOPMENT AGREEMENT FOR
GREAT BEAR NO. 2 SUBDIVISION - PHASE II,
BEING LOT 8 OF GREAT BEAR NO. 2 SUBDIVISION – PHASE I,
LOCATED IN THE N1/2 SECTION 30, TOWNSHIP 21 NORTH,
RANGE 4 EAST, P.M.M., CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2013, between Dali, LLC, hereinafter referred to as “Owner”, and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for subdivision of Great Bear No. 2 Subdivision-Phase II, being Lot 8 of Great Bear No. 2 Subdivision – Phase I, located in the N1/2 Section 30, Township 21 North, Range 4 East, P.M.M., Cascade County, Montana, hereinafter referred to as “Subdivision.”

2. SUPPORTING DOCUMENTS

- A. The Subdivision Plat of Great Bear No. 2 Subdivision – Phase I prepared for the Owner, and filed in the office of the Clerk and Recorder of Cascade County, Montana, on the _____ day of _____, 2013.
- B. The Subdivision Plat of Great Bear No. 2 Subdivision – Phase II prepared for the Owner, and filed in the office of the Clerk and Recorder of Cascade County, Montana, on the _____ day of _____, 2013.
- C. Engineering drawings, specifications and cost estimates prepared for the Subdivision, consisting of documents for sanitary sewer mains, water mains, storm drainage improvements, paving, conduit for wiring for potential future public roadway lighting facilities, curb and gutter. Said drawings and specifications are on file in the City Engineer’s office.
- D. Regarding the bonding requirements to ensure construction of public improvements as referenced in Section 76-3-507, MCA, Owner shall provide, in conjunction with submittal and approval of the final plat of any future phase within Great Bear No. 2 Subdivision – Phase II, a financial surety to ensure the construction and installation of public improvements to serve the area within said final plat.

- E. Legal documents, including articles of incorporation, bylaws and covenants, establishing and outlining responsibilities of the Owners within Subdivision, shall be filed in the Clerk and Recorder's Office of Cascade County, Montana.

3. AMENDMENTS

Minor changes to engineering documents and such revisions to the engineering drawings as are deemed appropriate and necessary by City's Engineer and City's Public Works Department and which do not materially affect the hereinabove mentioned Subdivision, 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 change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied to City's Engineer 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 Owner.

4. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owner that subsequent to the time this agreement was entered into, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. In this perspective, it is, therefore, agreed that the parties may by mutual subsequent agreement modify the terms, conditions and covenants of this Agreement.

5. FEES AND CHARGES

- A. Prior to approval of Subdivision, Owner shall, in addition to the Plat Fee of \$800.00 which has been paid, pay the recording fees of \$121.00 (\$11.00 per page x 11 pages) as provided by City policy, ordinances and resolutions.
- B. Owner or its successors or assigns shall reimburse City for its expenses incurred in testing and acceptance of public utilities to serve Subdivision at the rates charged by City for said work at the time performed.
- C. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.
- D. The absence of any fee from this agreement lawfully charged by the City in connection with construction activity associated with Subdivision shall not constitute a waiver by the City.

6. INFRASTRUCTURE IMPROVEMENTS

Owner hereby agrees to dedicate the 60-foot access and utility easement located between Lots 3 and 4 of the Subdivision as public right-of-way and complete the installation of infrastructure (sanitary sewer mains, water mains, storm drainage improvements, paving,

curb and gutter, conduit for wiring for potential future public roadway lighting facilities) to serve Lot 5 of Subdivision prior to any development on Lots 3, 4 or 5 of Subdivision.

All improvements shall be in accordance with all City and State design and construction codes, specifications, standards and other requirements. The storm drainage improvements shall include 100-year 2-hour storm capacity channel and / or conduit to accommodate peak flows from the drainage basin above and convey those flows across the Subdivision to the natural drainage channel to the east. Storm drain improvements shall be provided to serve all lots within the subdivision in accordance with the City's Storm Drainage Design Manual. Additionally, upon written approval from the City Public Works Director, City may grant extension of the two-year completion date as deemed appropriate.

7. CENTRAL MONTANA AGRICULTURE & TECHNOLOGY PARK TAX INCREMENT FINANCING DISTRICT

It is mutually understood that the Subdivision is part of the existing Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (CMATP TIFID) that currently comprises the Great Bear No. 2 Subdivision, Malt Plant property (Lot 2, Block 1, International Malting Company LLC Addition), and the ADF International property (Lot 1A, Block 1, International Malting Company LLC Addition).

It is mutually understood that the Owner of the proposed Subdivision has sought to use funds in the CMATP TIFID to pay for eligible infrastructure improvements in the TIFID, with the increment from future development of those properties within the TIFID anticipated to repay expenses incurred by Owner for additional eligible infrastructure improvements. Priority for expending funds in the CMATP TIFID may be given to infrastructure improvements that serve all owners in the TIFID. City's costs, including those for TIFID administration and over-sizing utilities, are also eligible for reimbursement from the TIFID. TIFID expenditures are at the discretion of the City Commission.

8. FUTURE INFRASTRUCTURE FACILITIES

Owner hereby agrees to waive right to protest any future area wide special improvement district for infrastructure to pay a proportionate share of any future infrastructure improvements which service Subdivision 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 Subdivision, which is a contributor to the infrastructure demand of which Subdivision is a part.

9. STORM DRAINAGE PLAN FOR INDIVIDUAL LOTS

Owner hereby agrees to prepare plans and design reports, and construct improvements in accordance with the City's Storm Drain Design Manual prior to the development of each lot. Those improvements shall be designed to release flows at pre-development conditions. Said improvements will be privately owned, operated, and maintained. Said drainage plans and design reports shall be submitted, reviewed and approved by the City

Public Works Department prior to City issuing an occupancy permit for the Subdivision. The drainage plan may require an agreement with upstream and or downstream contributor land owner(s) for permanent use of existing pond facilities, as well as repairs and future maintenance to these pond facilities. Owner further agrees to be responsible for and to mitigate any downstream impacts that may result from surface runoff from Subdivision.

10. REQUIRED UPSIZING OF IMPROVEMENTS

- A. Owner agrees to install an oversized water main as determined by the City's Public Works Department to serve Lot 5 of Subdivision instead of the standard eight-inch (8") water main in the portion of Subdivision. City agrees to reimburse the Owner for its actual costs incurred by the over sizing cost of water main installed in Subdivision within (30) days of its acceptance of the installations and appropriate billing, including provisions of adequate information and documentation supporting said costs. These costs to the City shall be eligible for reimbursement from the TIFID.
- B. Owner agrees to install an oversized storm sewer main and drainage basin as determined by the City's Public Works Department instead of the standard sized storm drainage facilities in portions of the Subdivision abutting other properties. City agrees to reimburse the Owner for its actual costs incurred by the over sizing cost of storm sewer main installed in Subdivision within (30) days of its acceptance of the installations and appropriate billing, including provisions of adequate information and documentation supporting said costs. These costs to the City shall be eligible for reimbursement from the TIFID.

11. RESTRICTIONS ON DEVELOPMENT OF LOT 5, IN SUBDIVISION

As plans for infrastructure associated with Lot 5 of Subdivision have presently not been formalized, Owner hereby agrees not to place or erect any structure or improvement and or infrastructure upon said Lot 5, Great Bear Subdivision No.2 – Phase II or attempt to further subdivide the area defined by said Subdivision until plans and financing for the necessary infrastructure to serve said Lot 5 have been reviewed and approved by City's Public Works Department.

12. INFRASTRUCTURE EASEMENTS

Owner hereby agrees to provide to City, prior to Owner 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. Owner 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 Owner and City.

13. MAINTENANCE DISTRICTS

Owner waives its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant, street maintenance and

Special Lighting Maintenance Districts and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to lots in Subdivision.

14. MASTER PLAN AND RESULTANT INFRASTRUCTURE

Owner hereby agrees to cooperate and participate with development of an overall conceptual plan for the contemplated value added agricultural commodities park comprising in part the Subdivision. Owner further agrees, if and when deemed necessary by City, to dedicate public road, utility right-of-way, easements for utilities, and vehicular and pedestrian access and to extend and pay for proportionate share of all sanitary sewer mains, lift stations, water mains, storm drainage improvements and detention facilities, paving, sidewalk, conduit for wiring for potential future public roadway lighting facilities, curb and gutter to the boundaries of Subdivision.

15. SOIL AND/OR GROUNDWATER CONDITIONS

The owner of the property in the Subdivision 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 owner's property in the Subdivision. This indemnity obligation runs with the land. Upon the transfer of ownership of the property in the Subdivision, the prior owner's (whether the Owner that made this annexation 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 in the Subdivision is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the owner of the property in the Subdivision shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

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

After the public utilities, drainage and street improvements described in Paragraph 2 hereof 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. However, to the extent installed by Owner, Owner or its contractor shall guarantee said improvements against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

Installation of the public utilities and street improvements described in this Agreement shall be subject to City's infrastructure inspection policy in place at the time of installation.

17. PUBLIC ROADWAY LIGHTING

In connection with the lawful implementation of any future Special Lighting Maintenance Districts for public roadway lighting facilities that service Subdivision, Owner agrees to pay for its proportionate share of the costs associated with roadway lighting which services Subdivision that may be installed with or without a Special Lighting Maintenance District.

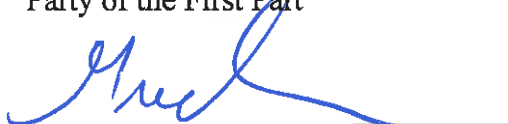
18. BINDING EFFECT

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, 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.

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

CITY OF GREAT FALLS

A Municipal Corporation of the State of Montana
Party of the First Part




Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

REVIEWED FOR LEGAL CONTENT:



Sara R. Sexe, City Attorney

DALI LLC, S. JOSEPH STANEK

Party of the Second Part

Dali LLC by S Joseph Stanek

State of Montana

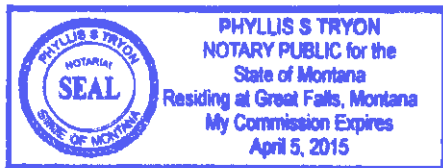
County of Cascade

City of Great Falls

:ss.

On this 2nd day of Oct, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared S. Joseph Stanek, known to me to be the person whose name is subscribed to the foregoing instrument within and acknowledged to me that (s)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)

Phyllis A Tryon
Notary Signature

Notary Signature Printed _____
Notary Public for the State of _____
Residing at _____
My commission expires _____, 20____