

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is dated as of [____], 2015, among the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “City”) and DALI, LLC, a Washington limited liability company, licensed to do business in the State of Montana (the “Developer”).

WITNESSETH:

WHEREAS, under the provisions of the Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), an industrial district may be established so that an issuer of bonds may undertake industrial infrastructure projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such district, issue its bonds to pay the costs of such projects or redeem such bonds that paid the costs of such projects, and pledge to the repayment of the bonds all or a portion of the tax increment derived from the industrial district; and

WHEREAS, the City Commission, pursuant to Ordinance No. 2911, duly adopted on May 17, 2005, as amended and supplemented by Ordinance No. 3106, duly adopted on May 7, 2013 (as such may be further amended or supplemented in accordance with the Act, the “Ordinance”), created an industrial district known as the Central Montana Agriculture and Technology Park Tax Increment Financing Industrial District (the “District”) and adopted the Central Montana Agricultural and Technology Park Expanded Tax Increment Financing Industrial District Plan (the “Plan”) containing a tax increment financing provision; and

WHEREAS, the Developer plans to develop twelve lots in the District for industrial use, known as Great Bear Subdivision No. 2 - Phase I & II (the “Project”), as further described in an Amended Application for City of Great Falls Tax Increment Financing (TIF) Application for Funds dated [____], 2015 and attached hereto as Exhibit A (the “Application”); and

WHEREAS, in connection with the Project, the Developer has requested tax increment financing assistance with respect to certain infrastructure improvements associated with the Project, consisting of the design, construction and installation of road, natural gas, water main, electrical, fiber optic, landscaping and irrigation improvements, as further described in the Application (the “Infrastructure Improvements”); and

WHEREAS, the City has determined that it is appropriate to reimburse the Developer for a portion of the costs of the Infrastructure Improvements with tax increment (as defined in the Act) of the District, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, the City and the Developer, each in consideration of the

representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Developer's Representations. The Developer hereby represents as follows:

(a) The representations and warranties of the Developer in the Application are true and correct as of the date hereof, including with respect to the total investment to be made by the Developer with respect to the Project and the Infrastructure Improvements.

(b) The Developer has good and marketable title to the land upon which the Project shall be developed (the "**Project Site**").

(c) The Developer has the financial capability or commitments to complete the Project and the Infrastructure Improvements.

Section 2. Developer's Undertakings.

2.1. Construction and Maintenance of Project. The Developer hereby agrees and commits to the City that it will diligently undertake the Project in accordance with this Agreement, the site plan submitted to the City and all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Project, including applicable Land Use Regulations and Environmental Laws and Regulations (each, as defined in Section 5.2 hereof). In furtherance of the purpose of the District, the Developer will actively seek permitted I-2 users and also the growth and retention of Secondary Industries (as defined in Section 5.2 hereof) at the Project Site.

2.2. Construction of the Infrastructure Improvements. The Developer will install, construct or otherwise provide the Infrastructure Improvements in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the Infrastructure Improvements, including applicable Land Use Regulations and Environmental Laws and Regulations. The Developer acknowledges and agrees that the City is not responsible for installing, constructing or otherwise providing the Infrastructure Improvements. The Developer agrees to pay all costs of the Infrastructure Improvements. The Developer understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes tax increment (as defined in the Act) of the District. The Developer agrees that in the awarding of contracts or subcontracts for the Infrastructure Improvements that (i) it will, and it will cause its contractor to, competitively bid contracts and subcontracts for each component of the Infrastructure Improvements, (ii) its contractor and subcontractors will pay the Prevailing Wage Rates (as defined in Section 5.2 hereof) on such contracts or subcontracts related to the Infrastructure Improvements and (iii) it will, and it will cause its contractor to, give preference to the employment of bona fide residents of the State, as required by §18-2-403, MCA, and as such, term is defined by §18-2-401(1), MCA, and the Administrative Rules of the

State, including but not limited to A.R.M. 24.17.147, obliging Developer and its contractor to hire 50% bona fide Montana residents with respect to the installation and construction of the Infrastructure Improvements; and (iv) when making assignments of work, it will, and it will cause its contractor to, use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned. The Developer will provide to the City all documentation requested to verify the compliance of the Developer, contractors and subcontractors with the foregoing requirements. Failure of contractors and subcontractors to pay the Prevailing Wage Rates on the Infrastructure Improvements shall be considered a breach of this Agreement and the City shall be entitled to exercise any and all measures to assure compliance and retroactive compensation plus interest to employees not paid in accordance with this Agreement, and recovery of any penalty or fine assessed by the State attributed to any failure to pay the Prevailing Wage Rates. Additionally, the Developer acknowledges that a violation of these requirements shall result the City not being able to pay or reimburse the Developer for costs of the Infrastructure Improvements. The City acknowledges that NorthWestern Energy and Energy West are the sole source providers with respect to the natural gas and NorthWestern Energy is the sole source provider for electrical improvements comprising the Infrastructure Improvements.

2.3. Utilities. The Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. The City will use commercially reasonable efforts to provide such written approval within 15 days following the request of the Developer; provided that the Developer acknowledges that additional approvals may be required by the relevant utility companies which the City does not control. All connections to public utility lines and facilities shall be subject to approval of the City and any private utility company involved. The Developer at its own expense shall replace any public facilities or utilities damaged during the Project or the Infrastructure Improvements by the Developer, its agents or by others acting on behalf of or under the direction or control of the Developer and in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to such public facilities and/or utilities.

2.4. Easements. To the extent that the Infrastructure Improvements are to be located on the private property, the Developer will grant to the City from time to time such easements, rights-of-way and similar licenses the City may reasonably request.

2.5. Permits; Environmental Laws. The Developer will obtain or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet all requirements of all local, State and federal laws, rules and regulations which must be obtained or met in connection with the acquisition and construction of the Project and the Infrastructure Improvements. Without limiting the foregoing, the Developer will request and obtain, or caused to be requested and obtained, from the City or other appropriate governmental authority all necessary variances, conditional use permits and zoning changes with respect to the Project and the Infrastructure Improvements. The Developer will comply in all material respects with all

Environmental Laws and Regulations (as hereinafter defined) applicable to the construction, acquisition and operation of the Project and the Infrastructure Improvements, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, Environmental Laws and Regulations.

2.6. Nondiscrimination. The Developer agrees that all hiring by the Developer and its contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin, or other class protected by State and/or federal law.

Section 3. Reimbursement.

3.1. Reimbursement Obligation. Subject to the provisions of this Section 3, the City will reimburse the Developer for costs of the Infrastructure Improvements in an amount equal to the 50% of the actual cost of the Infrastructure Improvements; provided that such reimbursement amount shall not exceed \$191,653 in the aggregate. The obligation of the City to reimburse the Developer for costs of the Infrastructure Improvements will not arise until (i) the completion of the Project, including delivery to the Developer by the City Public Works Department of a letter stating that the Project has been completed and (ii) the completion and acceptance by the City of the Infrastructure Improvements and the approval by the City of the costs thereof pursuant to Section 3.2 hereof. The City's obligation to reimburse the Developer for costs of the Infrastructure Improvements will be payable solely from tax increment (as defined in the Act) of the District. Notwithstanding anything herein to the contrary, if the Developer's conditions to reimbursement set forth in this Section 3.1 and Section 3.2 hereof are not satisfied by December 31, 2016, the City shall have no obligation to reimburse the Developer for costs of the Infrastructure Improvements. Nothing in this Agreement shall prevent the Developer from applying for additional tax increment funds pursuant to one or more additional applications submitted to the City.

3.2. Reimbursement Limitations and Conditions. Reimbursement for costs of the Infrastructure Improvements will be based on actual paid invoices for incurred costs provided by the Developer. The City may reject any invoice amounts to the extent not related to Infrastructure Improvements. Notwithstanding Section 3.1, the parties agree that the City will not be required to reimburse the Developer for the Infrastructure Improvements unless:

(a) all of the representations of the Developer as set forth in Section 1 hereof are true and correct;

(b) the Developer is not in breach of any covenant or undertaking as set forth in Section 2 hereof as of the time of such reimbursement; and

(c) a certificate signed by Developer in substantially the form attached as Exhibit B hereto shall accompany any invoices or requests for reimbursement by the City (the "**Developer Requisition Form**").

Within 30 days of receipt from Developer of a Developer Requisition Form, the City shall issue a check payable to Developer in the amount thereby requested pursuant to the terms and conditions of this Agreement or shall otherwise communicate with Developer regarding the remaining conditions to reimbursement set forth in Section 3.1 hereof and this Section 3.2 to be satisfied by Developer prior to such check being issued.

Section 4. Release and Indemnification.

(a) The Developer releases the City and the Commission members, officers, agents, servants and employees thereof (the "**Indemnified Parties**") from, and covenants and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person arising out of or resulting from the construction, installation, operation, ownership or maintenance of the Project by the Developer or which is proximately caused by the Developer; provided that the indemnity shall not apply if and to the extent such loss or damage is caused by the gross negligence or willful misconduct of the City, its agents or employees.

(b) The Developer agrees to protect, indemnify and defend the Indemnified Parties and further agrees to hold the Indemnified Parties harmless from and against, any loss, damage, cost (including reasonable attorneys' fees), claim, demand, suit, action or other proceeding whatsoever initiated by any Person whatsoever and arising or purportedly arising out of (i) violation by the Developer or any owner or tenant of a lot in the Project Site of any agreement or condition of this Agreement, (ii) the acquisition, construction, installation, ownership, maintenance and operation by the Developer or any owner or tenant of a lot in the Project Site, or (iii) from the presence on any portion of the Project Site, of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any federal, State or local law, statute, code, ordinance, regulation, requirement or rule relating thereto, and also including ureaformaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Project Site to any damages, penalties, liabilities or expense of clean up under any applicable Environmental Laws and Regulations.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer, any owner or tenant of a lot in the Project Site or their respective officers, agents, servants or employees or any other person; provided that the such damage or injury is not caused by the gross negligence or willful misconduct of the City, its agents or employees.

Section 5. General Provisions.

5.1. Notices. All notices, certificates or other communications required to be given to the City or the Developer hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows or, solely with respect to the Developer, sent to the email address below:

If to the City: City of Great Falls
P.O. Box 5021
Great Falls, Montana 59403
Attn: Fiscal Services Director

If to the Developer: Dali, LLC
c/o Joe Stanek and Linda Stanek
P.O. Box 443
Holualoa, HI 96725
Email: joestanek@westernamericanretail.com and
lindastanek9@aol.com

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

5.2. Defined Terms. As used in this Agreement, the following terms shall have the following respective meanings:

“Environmental Laws and Regulations” means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act (“CERCLA” or the “Federal Superfund Act”) as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, State, county, municipal, local or other statute, code, law, ordinance, regulation, requirement or rule which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, code, law or ordinance.

“Land Use Regulations” means all federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Project Site or the Project.

“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 1728, Helena, Montana 59624, telephone number (800) 541-3904.

“Secondary Industries” means those industries that use mechanical or chemical processes to transform materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual.

“State” means the State of Montana.

5.3. Assignment. This Agreement is unique between the City and the 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.

5.4. Binding Effect. The right and obligations set forth in this Agreement shall inure to the benefit of and shall be binding upon the City and the Developer and their respective successors and assigns.

5.5. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5.6. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Developer.

5.7. 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, without giving effect to any choice of law statutes, rules, or principles.

5.8. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

5.9. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the _____ day of _____, 2015.

CITY OF GREAT FALLS, MONTANA

[SEAL]

By _____
Gregory T. Doyon, City Manager

Attest:

Lisa Kunz, City Clerk

APPROVED FOR LEGAL CONTENT:

Sara Sexe, City Attorney

STATE OF MONTANA)
 : ss.
County of Cascade)

 This instrument was acknowledged before me on _____, 20__ by
Gregory T. Doyon, Lisa Kunz and Sara Sexe, as the City Manager, City Clerk and City Attorney
of the City of Great Falls, Montana, respectively.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission Expires: _____

DALI, LLC Dali LLC

Dali LLC
Name: S. Joe Stanek
Title: Manager

STATE OF SOUTH CAROLINA)

: ss.

County Of Horry

This instrument was acknowledged before me on March 30, 2015 by
S. Joe Stanek of Dali, LLC, on behalf of said limited liability company.

Teresa W. Walls
Printed Name: Teresa W. Walls
Notary Public for the State of
South Carolina
Residing at N. Myrtle Bch, Horry County
South Carolina
My Commission Expires: 08.04.19

(Notarial Seal)

EXHIBIT A
APPLICATION

EXHIBIT B

DEVELOPER REQUISITION FORM

TO: City of Great Falls, Montana (the "City")
FROM: Dali, LLC (the "Developer")
SUBJECT: Reimbursements for Infrastructure Improvements

This represents Developer Requisition No. _____ in the total amount of \$_____ for payment of the Infrastructure Improvements.

The undersigned, as Authorized Developer Representative, intends that this certificate will satisfy the requirements of Section 3 of the Development Agreement, dated as of [____], 2015 among the City and the Developer, and does hereby certify on behalf of the Developer that:

- (a) the expenditures for which reimbursement is requested are listed in summary form in the attached schedule;
- (b) the amounts requested have been paid by the Developer for property or to contractors, subcontractors, materialmen, engineers, architects or other persons who will perform or have performed necessary or appropriate services or will supply or have supplied necessary or appropriate materials for the acquisition, construction, renovation, equipping and installation of the Infrastructure Improvements, as the case may be, and that, to the best of my knowledge, the fair value of such property, services, or materials is not exceeded by the amounts requested to be paid;
- (c) the cost of work to be reimbursed has been competitively bid and the contractor or subcontractor has paid the Montana prevailing wage for such work;
- (d) no part of the several amounts requested to be reimbursed, as stated in such certificate, has been or is the basis for the reimbursement of any money in any previous or pending request; and
- (e) the reimbursement of the amounts requested will not result in a breach of any of the covenants of the Developer contained in the Agreement.

Dated: _____, 20__

DALI, LLC

By: _____
Authorized Developer Representative

Schedule to Developer Requisition No. _____

<u>Payee</u>	<u>Purpose</u>	<u>Amount</u>
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