

PARKLAND ALLOCATION AGREEMENT

THIS PARKLAND ALLOCATION AGREEMENT ("Agreement"), is made effective this 24th day of August, 2021, by and between HEH, LLC, of PO Box 2727, Missoula, MT 59806 ("HEH"), and MULLAN LAND HOLDING, LLC, of 101 E. Front Street, Suite 304, Missoula, MT59802 ("Mullan").

RECITALS

WHEREAS, on November 21, 2019, HEH and Resource Research, LTD, along with the City of Missoula and Flynn Family Limited Partnership executed a Development Agreement which is attached as Exhibit A (the "Development Agreement");

WHEREAS, the Development Agreement requires development to occur on the Subject Property, as that term is defined therein, in substantial compliance with the Master Plan shown on Exhibit B to the Development Agreement, including the development of a central park and the Development Agreement runs with the land;

WHEREAS, after executing the Development Agreement, the Flynn Family Limited Partnership recorded Certificate of Survey No. 6817 in the records of Missoula County (attached as Exhibit B), creating certain tracts of record for rights-of-way and future development, and HEH purchased Tracts 2 and 5 and Mullan purchased Tract 3 and obtained an option to purchase Tract 4 as those tracts are shown on that COS;

WHEREAS, the parties recognize that development of their respective Tracts will require the dedication of certain parkland and/or the payment of cash in lieu to satisfy City of Missoula parkland dedication requirements; and

WHEREAS, HEH and Mullan agree the park shall be 3.7 acres and shall be dedicated by HEH and/or its assigns out of Tract 2, of COS No. 6817, and agree the parties may utilize the park to satisfy future park dedication requirements pursuant to the terms of this Agreement;

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Allocation of Parkland.** The parties agree the 3.7-acre park may be utilized to satisfy parkland dedication requirements by the City of Missoula as follows: HEH may utilize up to 37.11% of the land area of the 3.7 acre park to satisfy parkland dedication requirements for development occurring on Tracts 2 and 5 of COS No. 6817; Mullan may utilize up to 62.89% of the land area of the 3.7 acre park to satisfy parkland dedication requirements for development occurring on Tracts 3 and 4 of COS No. 6817. The parties agree the costs for any park improvements required by the City shall be shared by the parties





in the proportion set forth in this Section.

2. **Payment by Mullan Land Holdings to HEH.** In exchange for HEH dedicating the 3.7 acre park out of Tract 2 of COS No. 6817, Mullan shall pay to HEH the sum of \$248,334.62 to be paid contemporaneously with the recording of the plat or certificate of survey used to create the park area.

3. **Amendment.** This Agreement may not be changed orally, but only by a writing signed by both parties.

4. **Counterpart Execution.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. **Governing Law.** This Lease shall be governed by, construed, and enforced in accordance with Montana law.

6. **Attorney Fees and Court Costs.** If legal proceedings are instituted to interpret or enforce compliance with any of the terms, covenants or conditions of this Agreement, the prevailing party shall be paid by the other party its costs and such further sum as the court may adjudge as reasonable attorney's fees; if any appeal is taken from any judgment or decree in such suit or action, the prevailing party on appeal shall likewise recover costs and reasonable attorney's fees on appeal.

7. **Assignment.** Either party may assign this agreement to another party by providing written notice of the assignment to the other party.

8. **Duration/Termination.** The parties recognize the dedication of the park is an ongoing obligation of developing the property subject to the terms of the Development Agreement, but acknowledge the timing for completing the dedication is unpredictable. The parties agree to work in good faith to diligently establish the parkland, in recognition that such timing is subject to City approvals. If desired, Mullan may undertake such efforts to establish the parkland via subdivision or subdivision exemption of Tract 2 of COS No. 6817 with the consent of HEH, which consent shall not unreasonably be withheld. In the event the Development Agreement is amended in such a manner to remove the parkland requirement, this Agreement shall automatically terminate.

9. **Abstract.** The parties may record an abstract of this Agreement in the records of Missoula County, but shall not record this Agreement.

IN WITNESS WHEREOF, the parties hereby agree and approve of the foregoing terms and affix their signatures hereto.

~ Signatures on Next Page ~





HEH, LLC

By: Wade D. Hoyt

Mullan Land Holdings, LLC

By: [Signature]