

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 2013, by and between SunCap Billings, LLC, a North Carolina limited liability company, 6101 Carnegie Blvd., No. 180, Charlotte, NC 28209 hereinafter referred to as “SunCap,” and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, Billings, Montana, 59101, hereinafter referred to as the “CITY.”

WHEREAS, SunCap is the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Tract 1B of Certificate of Survey 3329 Amended, Section 14, Township 1 South, Range 25 East PMM, hereinafter referred to as “SunCap Tract”

WHEREAS, SunCap Property Group, owner, has submitted to the City a Petition for Annexation to the City for SunCap Tract; and

WHEREAS, SunCap desires to annex SunCap Tract to the City,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. Sanitary Sewer. SunCap shall connect to the City sanitary sewer system at the intersection of Hesper and Gabel Roads. SunCap will construct a new 18-inch diameter main approximately 1,120 feet to the west fronting the SunCap Tract under Private Contract 656. As per City policy, the cost associated with the construction of local sanitary sewer mains is the responsibility of the City. As such, SunCap shall be compensated for the cost of installation of the 18” sanitary sewer main after completion of the private contract. Compensation

will be handled through a “Compensation Agreement” and the contractor installing the main shall be chosen through the competitive bid process. The future costs of constructing sewer services to serve the property shall be paid by SunCap. The design, size and location of the sanitary sewer and appurtenances shall be in accordance with plans and specifications approved by the appropriate City departments and the State Department of Environmental Quality.

SunCap has made application and received approval for extension/connection of water and sanitary sewer to the Public Works Distribution and Collection system.

2. Water. SunCap shall connect to the City water system at the intersection of Hesper and Gabel Roads. SunCap will construct a new 12-inch diameter main approximately 1,120 feet to the west fronting the SunCap Tract. Cost of construction for water service to serve the property shall be paid by SunCap. The design, size and location of the water line and appurtenances shall be in accordance with plans and specifications submitted to and approved by the appropriate City Departments and the State Department of Environmental Quality.
3. Storm Drain. SunCap shall connect to the City storm drain system at the intersection of Hesper and Gabel Roads and will construct a new 24-inch diameter main approximately 1,120 feet to the west fronting the SunCap Tract. Costs of extending any interior storm mains necessary to convey or store stormwater shall be paid by SunCap. The future costs of constructing storm services to serve the property shall be paid by SunCap. The design, size and location of the storm sewer and appurtenances shall be in accordance with plans and specifications approved by the appropriate City departments.
4. Right of Way. SunCap will dedicate 50 feet of right of way on the north side of Hesper Road. The additional right of way is required to construct the infrastructure described in this agreement. SunCap will not be compensated for the right of way dedication.
5. Curb and Gutter. SunCap will construct approximately 1,120 feet of curb and gutter on the north side of Hesper Road fronting SunCap Tract. Costs to construct the curb and gutter will be paid by SunCap. The design and location of the curb and gutter shall be in accordance with plans and specifications approved by the appropriate City Departments.
6. Street Widening. SunCap will construct approximately 33 feet of road widening at Hesper Road. The widening will extend the entire length of the SunCap Tract and costs will be paid by SunCap. The design and location of the street widening shall be in accordance with plans and specifications approved by the appropriate City Departments.

7. Sidewalks. SunCap will construct approximately 1,120 feet of 10-foot wide sidewalk on the north side of Hesper Road fronting SunCap Tract. The design and location of the sidewalk shall be in accordance with plans and specifications approved by the appropriate City Departments.
8. Traffic Signal. SunCap shall construct a new traffic signal at the intersection of Hesper and Gabel Roads. Cost of construction for the traffic signal shall be paid by SunCap. The design, size, and location of the traffic signal and appurtenances shall be in accordance with plans and specifications submitted to and approved by the appropriate City Departments.
9. Other Public Improvements. No specific time schedule is contemplated for construction of other public improvements serving the property. The CITY shall rely on the attached Waiver filed concurrently herewith, to insure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street construction & paving, curb & gutter, sidewalks, driveways, storm drainage, and street lighting. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof.
10. Compliance. Nothing herein shall be deemed to exempt the SunCap Tract from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.
11. Runs with Land. The covenants, agreements, and all statement in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representative, successors and assigns of the respective parties.
12. Attorney's Fees. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs, including those fees and costs of in-house counsel.
13. Amendments and Modifications. Any amendments or modifications of this Agreement shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

“SunCap”

SunCap Billings, LLC
By SunCap Investments, LLC, its manager

By: _____
J. Flint McNaughton
Manager

STATE OF _____)
:SS.
County of _____)

This instrument was acknowledged before me on _____, 20__ by J. Flint McNaughton, as Manager of SunCap Investments, LLC, the Manager of SunCap Billings, LLC.

(SEAL)

Print Name
Notary Public for the State of Montana
Residing in: _____
My Commission expires: ____/____/ 20____

