

**MEMORANDUM OF UNDERSTANDING
(ONE BIG SKY CENTER DEVELOPMENT PROJECT)**

THIS MEMORANDUM OF UNDERSTANDING (this “**Memorandum**”) is entered into as of the [] day of [], 2016, among the CITY OF BILLINGS, a municipality of the State of Montana (the “**City**”) and MONTDEVCO II, LLC, a Montana limited liability company and MONTDEVCO, LLC, a Montana limited liability company (together, the “**Developer**”). The City and the Developer are each herein referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, the City has established the Expanded North 27th Street Urban Renewal Area (the “**District**”); and

WHEREAS, the Developer owns or holds options or purchase rights for the property within the District reflected on Exhibit A attached hereto (the “**Development Site**”), which Development Site is located in the District; and

WHEREAS, the Developer has proposed to undertake the development and construction of a mixed use development project at the Development Site, including multi-family housing, retail, restaurant and entertainment space, commercial office space, a hotel, conference center and a parking structure (the “**Project**”); and

WHEREAS, the Developer has requested that the City use tax increment revenues of the District to help to defray the costs of the construction of public improvements associated with the Project (the “**Public Improvements**”); and

WHEREAS, the City and the Developer agree that this Memorandum represents each Party’s commitment to work cooperatively to evaluate the Project, identify and assess the Public Improvements and the City’s potential roles with respect thereto, and determine the ability of the City to participate in the financing of appropriate Public Improvements using tax increment of the District;

NOW THEREFORE, the City and the Developer agree as follows:

1. Evaluation and Negotiation. The City and the Developer shall undertake the process of evaluating the Project, identifying and assessing the Public Improvements and the City’s potential roles with respect thereto, and determining the ability of the City to participate in the financing of appropriate Public Improvements using tax increment revenues of the District. In that regard, if the City and the Developer are able to reach a preliminary agreement as to the scope of the City’s participation in the Project and with respect to the Public Improvements (including any financing thereof), City staff and consultants shall work to negotiate a definitive development agreement (the “**Development Agreement**”) and any other necessary agreements which would define the obligations of the City and the Developer with respect thereto.

2. Basic Terms of Development Agreement. The City and the Developer agree that the Development Agreement, satisfactory to each Party in its sole and absolute discretion, shall be required in order to proceed with development of the Project and the undertaking of appropriate Public Improvements. It is presently believed that such terms must necessarily address, at a minimum, the following matters, to-wit:

- (i) Define scope and costs of the Project and Public Improvements, including the Parties respective obligations and responsibilities with respect thereto.
- (ii) Define ownership and operational roles and responsibilities with respect to the Project and Public Improvements.
- (iii) Agreement with respect to plans and specifications of the design and materials for the Project and the Public Improvements.
- (iv) Proof of financing commitments with respect the Project.
- (v) Progress schedule by which the Project will be undertaken and evaluated.

3. Exclusivity. During the term of this Agreement, the City designates Developer as the exclusive developer of record with respect to the Project for so long as the Developer and/or its affiliates own, or maintain enforceable options or purchase rights with respect to, the Development Site (or portion thereof) necessary for the construction and operation of the Project.

4. Obligation of Parties to Proceed. The obligation of the Parties to proceed beyond this Memorandum is dependent upon the Parties entering into a Development Agreement prior to the termination of this Agreement. Nothing contained herein shall (i) obligate the City to create or approve the Project as an urban renewal project or undertake or finance any Public Improvements, (ii) obligate the City to create or approve a site-specific development plan for the Project, or (iii) obligate either Party to enter into a Development Agreement. The Developer further acknowledges and agrees that in entering into this Memorandum, the City in no way assumes any liability or responsibility for the Project or the Public Improvements.

5. Term of Memorandum and Termination. This Memorandum shall remain in effect until June 30, 2017 unless earlier terminated or extended by mutual agreement of the Parties.

6. Miscellaneous.

(a) Financial Liability. The City shall not be liable for any costs, expenses or debts associated with or incurred by the Developer or its affiliates in connection with this Memorandum or any development, marketing or other activities with respect to the Project and the Public Improvements.

(b) Costs. Each Party shall be solely responsible for all costs and expenses incurred by such Party in connection with this Memorandum.

(c) Assignability. Neither Party shall assign this Memorandum without the written consent of the other Party.

(d) Amendments. This Agreement may be supplemented or amended only by written instrument executed by the Parties.

(e) Applicable 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 of Montana, without giving effect to any choice of law statutes, rules, or principles. The Parties hereby submit to the exclusive jurisdiction and venue of the Montana state and federal courts in Billings, Montana with respect to any action between the Parties relating to this Memorandum.

(f) Liability. The City and the Developer hereby acknowledge that the obligations of the Parties described herein are merely a present statement of intent. Neither Party shall be held liable should it determine to not proceed with the negotiation or execution of the Development Agreement or the undertaking of the Project or the Public Improvements. Partial performance by any Party of the terms of this Memorandum shall not be deemed evidence of intent by any party to be bound by the terms of any contract or agreement. The Developer further acknowledges that the City Council must exercise its discretion in the completion of the statutory processes required for the approval of the Project and any participation of the City with respect thereto, including with respect to any Public Improvements. The City will not be held liable in the event that the City Council, through the exercise of its discretion, determines to not approve any of the actions outlined herein.

(g) City Representatives Not Personally Liable. No member of the governing body, official, employee or agent of the City shall be personally liable to Developer, or any successor in the interest to Developer, pursuant to the provisions of this Memorandum, for any default or breach of the Memorandum by the City, or for any amount that may become due to Developer for any obligation issued under or arising from the terms of this Agreement.

(h) Not A Partnership; Developer Not an Agent of City. The provisions of this Memorandum are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership or any other similar relationship between the Parties. The Developer has no authority, express or implied, to act on behalf of City as an agent, or to bind City to any obligation whatsoever. The Developer shall be solely responsible for the performance of any of its employees, agents or sub-contractors under this Agreement. No agency or employment relationship is created between the Developer and the City by the execution of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

MONTDEVCO II, LLC

Name:
Title:

MONTDEVCO, LLC

Name:
Title:

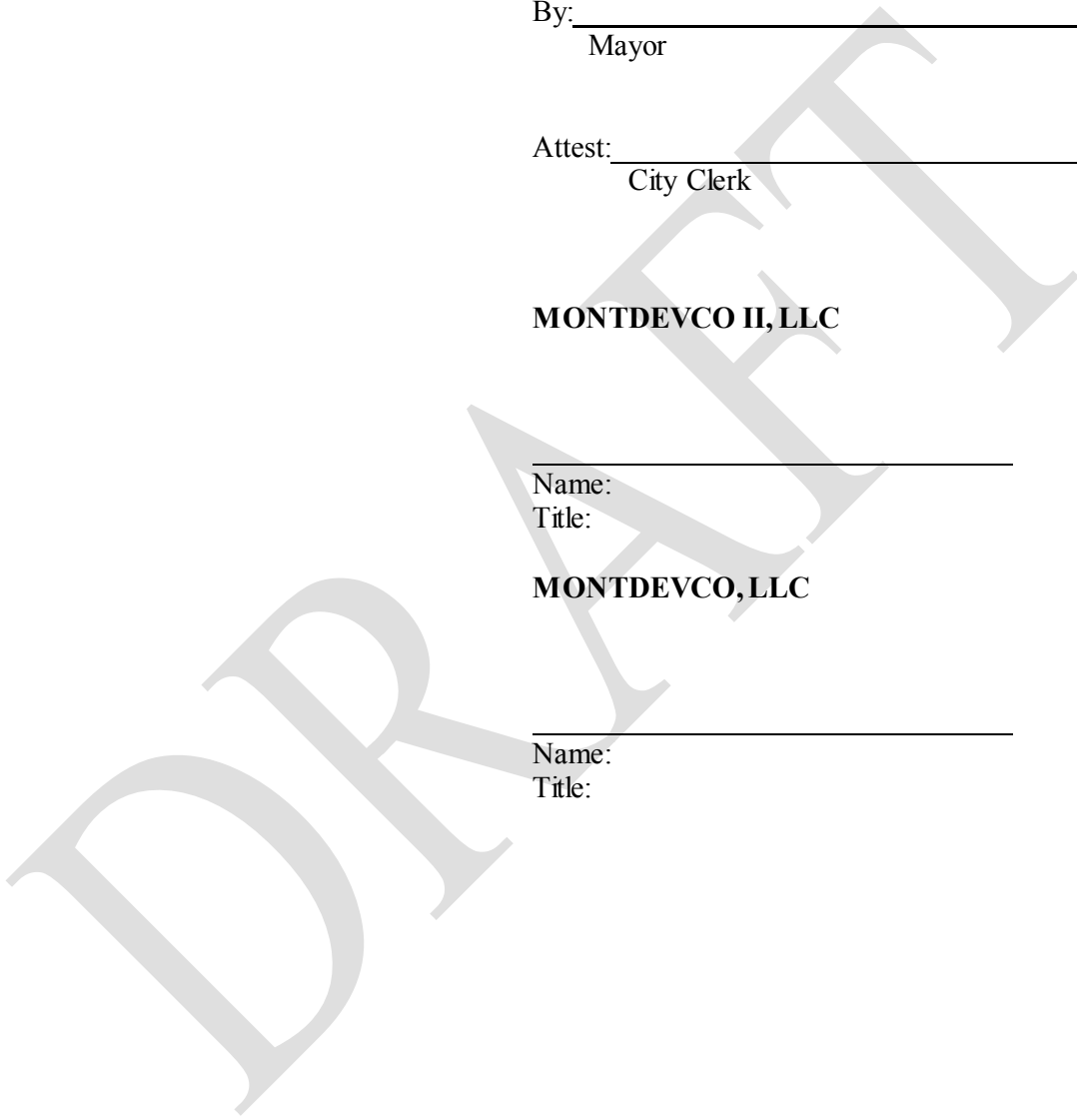


EXHIBIT A

