

Return to:
Missoula City Clerk
435 Ryman
Missoula, MT 59802

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

[HEH, LLC, ~~Resource Research LTD, Flynn Family Limited Partnership~~ Mullan Land Holding, LLC, Missoula Mary Jane II, LLC, The Snowfarm Project Property Owner, LLC, and City of Missoula]

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the “Agreement”) made effective this 21st day of ~~November, 2019~~, 2025, is entered into by and between HEH, LLC, whose address is C/O Hoyt Homes, PO Box 2727, Missoula MT 59806-2727, ~~Resource Research LTD~~ Mullan Land Holding, LLC, whose address is ~~5612 S Mohawk Dr., Spokane, WA 99206, and Flynn Family Limited Partnership C/O Colleen McKinley~~ PO Box 9079 Missoula, MT 59807, Missoula Mary Jane II, LLC, whose address is ~~4110 E 6th Avenue Parkway, Denver, CO 80220 together~~ 6400 East El Dorado Circle, Suite 300C, Tucson, AZ 85718, The Snowfarm Project Property Owner, LLC, whose address is 1100 W. Idaho Street Suite 630 Boise, ID 83702 collectively known as the “Developers²”, and the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana, having an address of 435 Ryman, Missoula, MT 59802 (the “City”). Each is called a “Party” in this Agreement, and collectively are called “Parties.” This Agreement amends, restates, replaces, and supersedes that certain Development Agreement dated November 21, 2019 between the Parties.

WHEREAS, the Developers are owners ~~and/or purchasers~~ of certain real property located in Missoula, Montana attached hereto as Exhibit A (the “Subject Property²”); and

WHEREAS, ~~the Developers request~~ City Council approved a Growth Policy Amendment on a portion of the “Subject Property²” revising the land use designation from Residential Medium, 3 – 11 dwelling units per acre to Neighborhood Mixed Use in combination with a Rezone on a portion of the Subject Property from Hellgate Special District to B2-1 Community Business, a standard Title 20 zoning district, and a Master Site Development Plan for a portion of the Subject Property; and

WHEREAS, the Developers have ~~a requested to (i) revise the~~ Master Site Development Plan ~~(the “Master Plan”)~~ for the Subject Property as shown in Exhibit B attached hereto, ~~(the “Revised Master Plan”)~~, and the Revised Master Plan is a conceptual diagram of the road grid network and parkland/common area proposed on the ~~subject property~~ Subject Property, with the final development plan established by City Council approval of subdivisions or other appropriate land divisions on the Subject Property; and (ii) annex a tract of land described as Tract 1 of Certificate of Survey No. 5023 (“County Parcel”) into the City of Missoula to be included within and as part of the Subject Property with a Zoning Designation of B2-1 (the “Annexation”); and

WHEREAS, the conceptual Revised Master Plan includes dedication of the road rights-of-way to the public by dividing the land through subdivisions or other appropriate processes that will be reviewed and approved by the Missoula City Council; and

WHEREAS, the Revised Master Plan includes the construction of Mary Jane Boulevard, classified as an Urban Collector road, and O'Leary Street, classified as ~~Collector roads~~ a Local Street, through the Subject Property meeting City Subdivision standards for road improvements for Urban Collector ~~roadways~~; and ~~whose~~ Local Street, respectively; and which construction ~~may be of Mary Jane Boulevard improvements was partially~~ funded through a BUILD Grant ~~or a combination of City and Developer funds~~ and which construction of O'Leary Street improvements is to be funded by the owners of parcels fronting and abutting O'Leary Street, and

WHEREAS, the Revised Master Plan includes the construction of a road grid network of local streets through the Subject Property and connecting to existing streets to the north and east meeting City Subdivision standards for road improvements for Local Residential roadways; and

WHEREAS, the Revised Master Plan limits commercial uses to Neighborhood Business Uses only, in conformance with B1 District standards, and further limits the location of Neighborhood Business Uses to a location ~~either side of Mary Jane Boulevard within five hundred (500) feet of Mullan Road at the north end of Tract 4 of Certificate of Survey No. 6817 ("Tract 4") and south of future O'Leary Street and the southwest corner of Tract 3 of Certificate of Survey No. 6817~~; and

WHEREAS, the density of the residential development is limited in the Revised Master Plan by distinct area classifications:

- a. Area A: fourteen (14) dwelling units per acre with a maximum building height of 35 feet; and,
- b. Area B: twenty-one (21) dwelling units per acre or density calculated as 2,000 square feet of parcel area per dwelling unit on the Area B portion of the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district; and
- c. Area C: thirty (30) dwelling units per acre or density calculated as 1,452 square feet of parcel area per dwelling unit on the Area C portion of the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district.

b.

The total density on the Subject Property is less than half the density allowed for lands zoned B2-1 Community Business (43 dwelling units per acre or 1,000 square feet per dwelling unit); and

WHEREAS, the Revised Master Plan limits the multi-dwelling buildings to a maximum of sixteen (16) units per multi-dwelling ~~structure~~ building in Area B, six (6) units per multi dwelling building in Area A, and one hundred seventy (170) units per multi-dwelling building in Area C, and limits attached townhouses to no more than eight (8) attached dwelling units per structure on the Subject Property; and

WHEREAS, the realization of the Revised Master Plan requires the ~~Growth Policy Amendment and Rezone~~ Annexation of the County Parcel with zoning upon annexation of B2-1 in order for the Subject Property to include a mix of neighborhood business and varying residential densities and all residential building types; and

WHEREAS, the City has adopted policies that promote compact development with mixed-use and greater density along major transportation/transit corridors provided the development enhances connectivity and extends a multi-modal transportation system accessible for all citizens; and

WHEREAS, 24% of Missoulians are over the age of 55; and

WHEREAS, 32% of Missoulians over the age of 60 are renters of dwelling units and 47% of renters over the age of 60 are considered cost burdened, paying more than 30% of their income toward housing expenses; and

WHEREAS, the City of Missoula strives to promote diverse housing types throughout the Growth Policy area to ensure residents live in housing they can afford; and

WHEREAS, the Developers recognize the financial value of this Agreement to permit additional dwelling units for the apartment project proposed in Area C (the “Affinity Project”); and

WHEREAS, the City and Developers explored the financial feasibility of dedicating set-aside dwelling units in the Affinity Project; and

WHEREAS, the City and Developers agreed that a cash-in-lieu payment of \$178,500 appropriately reflects the value of additional dwelling units made possible through this Agreement; and

WHEREAS, the City acknowledges that Mary Jane Boulevard ~~and O’Leary Street have~~has been planned as an Urban Collector ~~roadway~~roadway and O’Leary Street has been planned as a Local Street appropriate to serve the mixed-use and dense compact development supported by the Neighborhood Mixed Use land use designation in the Our Missoula City Growth Policy 2035 and the B2-1 Community Business Title 20 zoning district; and

WHEREAS, the City, through adopted policies and goals desires to ensure the orderly development of the Subject Property and adopted the Title 20 zoning ordinance with the express purpose to protect and promote the public health, safety and general welfare of the community; and

WHEREAS, the Developers own ~~or propose to own~~ all of the Subject Property and state that they have the right to obligate themselves and any associated entity purchasing parcels of the Subject Property shown in Revised Exhibit A attached hereto, to the requirements, standards and restrictions in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals contained herein, the Developers and the City agree and declare that the Subject Property shall be subject to the following covenants, standards and restrictions:

1. Development shall occur on the Subject Property in substantial compliance with the Revised Master Plan shown in Exhibit B, attached hereto, through subdivision(s) or other appropriate processes, subject to the review and approval of the Missoula City Council. For the purposes of this Agreement, substantial compliance, as determined by the Development Services Director, shall be defined as meeting the intent and purpose of the Revised Master Plan shown in Exhibit B by:
 - a. Containing, at a minimum, road and pedestrian connections as shown on the Revised Master Plan;

- b. Containing no less parkland area; and
 - c. Containing no greater intensity of land use, height, or density.
2. In the event the proposed development does not substantially comply with the Revised Master Plan, as defined herein, the Developers may seek an amendment to this Agreement and the Revised Master Plan pursuant to Section 13 below.
 3. Unless changes are required pursuant to the City's subdivision regulations or City Council direction during subdivision review, the Developers shall construct the road grid network in substantial compliance with the Revised Master Plan connecting to existing streets to the north and east. Connectivity shall be provided by means of one or more of the following three options: dedicated public roadways meeting city subdivision standards, private roads with public access easements meeting Title 12 standards, or greenways with pedestrian facilities with a public access easement.
 4. Mary Jane Boulevard and O'Leary Street through the Subject Property shall meet City subdivision standards for road improvements, according to the Standards for Geometric Design of Roads and Streets. It is the intention of the City to assist with the funding of the improvements to Mary Jane Boulevard ~~and O'Leary Street as funds become available.~~ If Mary Jane Boulevard ~~and O'Leary Street~~ improvements are not fully or partially funded by the City, the ~~developers~~ Developers shall construct the unfunded portions of Mary Jane Boulevard ~~and O'Leary Street~~ to the extent and in such configuration as may be appropriate pursuant to the Revised Master Plan and applicable subdivision or other development review process.
 5. O'Leary Street improvements are to be funded by the owners of the parcels fronting and abutting O'Leary Street.
 - a. Eastern O'Leary Improvements. With respect to the O'Leary Street improvements east of Mary Jane Boulevard (the "Eastern O'Leary Improvements"), the City has approved a latecomer's agreement between the owners of the parcels fronting and abutting the Eastern O'Leary Improvements related to the cost sharing of the construction costs thereof.
 - b. Western O'Leary Improvements. With respect to the O'Leary Street improvements between Mary Jane Boulevard and Flynn Lane (the "Western O'Leary Improvements"), if the developer of one of the parcels fronting and abutting the Western O'Leary Improvements (the "Western O'Leary Parcels") funds construction of the Western O'Leary Improvements, the owner(s) of the other Western O'Leary Parcel(s) shall participate in a latecomer's agreement to share in the cost thereof on a pro rata basis based on the respective acreage of the Western O'Leary Parcels. If development of the Western O'Leary Parcels is not commenced within three (3) years of the date of this Agreement and the City determines the Western O'Leary Improvements are needed to support existing uses, the Western O'Leary Improvements may be funded through an SID set up by the City.
 - ~~5.6.~~ Non-residential uses are limited to Neighborhood Business Uses only, in conformance with Title 20, B1 zoning district standards and further ~~limits~~ limited to the location on the Subject Property to parcels adjacent to Mary Jane Boulevard and ~~within five hundred (500) feet south of Mullan Road~~ future O'Leary Street as shown on Exhibit B.
 - ~~6.7.~~ The density of the residential development is limited in the Revised Master Plan by distinct area classifications:
 - a. Area A: fourteen (14) dwelling units per acre with a maximum building height of 35 feet; and

- b. Area B: twenty-~~one~~ (21) dwelling units per acre or density calculated as 2,000 square feet of parcel area per dwelling unit on the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district.
- c. Area C: thirty (30) dwelling units per acre or density calculated as 1,452 square feet of parcel area per dwelling unit on the Subject Property, and with a maximum building height of 40 feet, which is the maximum allowed in the B2-1 Community Business zoning district.

7.8. Multi-dwelling buildings, as defined in Title 20 Section 20.100.010, with more than six (6) units per structure are limited to locations classified as Area B and Area C on the Revised Master Plan ~~and each.~~ Each multi-dwelling building in Area B shall have no more than sixteen (16) dwelling units. ~~Each multi-dwelling building in Area C shall have no more than one hundred seventy (170) dwelling units.~~ Each multi-dwelling building in Area A shall have no more than six (6) dwelling units.

8.9. Multi-dwelling buildings, as defined in Title 20 Section 20.100.010, are limited to no more than six (6) units per structure in locations classified as Area A on the Revised Master Plan.

9.10. Townhouse structures, as defined in Title 20 Section 20.100.010, shall have no more than eight (8) dwelling units attached per structure on the Subject Property.

10.11. The main entrances of all primary structures adjacent to public roads shall be visible from these public roadways.

11.12. Excepting modifications to the B2-1 zoning district standards as provided herein, nothing in this Agreement is intended to override, replace, or supplant applicable local, state, or federal laws or regulations. Developers shall comply with all applicable subdivision regulations, construction standards and specifications, and state and local laws that govern the development of the Subject Property.

13. ~~Parcel~~Effective The developer of the Affinity Project in Area C, consisting of Tract 4 and the County Parcel, shall make a cash-in-lieu payment of \$178,500 to the City of Missoula's Affordable Housing Trust Fund to approximate the value of the density bonus afforded through this Agreement (the "Cash-in-Lieu Payment"). The Cash-in-Lieu Payment structure is outlined in Exhibit C. The Cash-in-Lieu Payment is due prior to the issuance of any building permit for structures in Area C.

14. As additional consideration for the amendments made herein, which would not be approved by the City without this provision, the owners of Tract 4, the County Parcel, and Tract 5 of Certificate of Survey No. 6817 agree to waive the right to protest the establishment of a Special Improvement District ("SID") for the construction of the Western O'Leary Improvements. This waiver is tied to the release of land use servitudes and touches and concerns the use of land, and shall be binding on successors-in-interest to the parcel or any divisions thereof. If the City sets up an SID to construct the Western O'Leary Improvements, the SID shall split the costs to design, administer and construct the Western O'Leary Improvements on a pro rata basis between the owners of the Western O'Leary Parcels based on their respective acreage.

12.15. Effective Date: This Agreement will be in force and effect on the date signed by the Mayor of the City and by the Developers.

13.16. Amendment: No part of this Agreement may be amended or deleted without prior written consent of the Missoula City Council and the Developers, or their successors and assigns. A

grant of a deed or ownership interest in and to a particular subsequently developed parcel or TED ownership unit with a dwelling, unit, or building/structure and having received a temporary or final occupancy permit shall not be deemed a transfer or assignment of Developers rights and responsibilities under this Agreement.

~~14~~17. Attorneys' Fees. In the event suit is brought for the enforcement of this Agreement or as a result of an alleged default, each Party shall pay their own attorney fees.

~~15~~18. Governing Law. The law governing the interpretation or enforcement of the terms and conditions of the Agreement shall be the laws of the State of Montana.

~~16~~19. Severability. If a part of this Agreement is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

~~17~~20. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

~~18~~21. Drafting of the Agreement. Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.

~~19~~22. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicated original hereof, but all of which shall constitute one and the same document. Signatures transmitted electronically shall be treated and accepted as original signatures. The parties agree to communicate regarding this Agreement by electronic means as allowed by the Montana Uniform Electronic Transactions Act, Mont. Code Ann. § 30-18-101, et seq. After this Agreement is executed, any written document made under this Agreement may be created in original or may be an electronic record; any signature may be in original, or by electronic signature.

~~20~~23. Runs with the Land. The benefits and burdens of this Agreement touch and concern the use and enjoyment of the Subject Property and the obligations and benefits stated herein shall bind and inure to the benefit of all successors and assigns to any portion of the Subject Property: (including, without limitation the purchaser and developer of the Affinity Project in Area C that will make the Cash-in-Lieu Payment).

~~21~~24. Agreement Amendment Contingent Upon Zoning Action by City Council Upon Annexation of the County Parcel. The Parties to this amended Agreement acknowledge that this Agreement is being entered into in conjunction with a request by the Developers the Annexation of the County Parcel through a petition for annexation to the Missoula City Council for a Growth Policy Amendment the County Parcel and a rezoning zoning upon annexation of the Subject Property County Parcel to a B2-1 zoning district. This Agreement is expressly contingent upon the City Council approving the Growth Policy Amendment rezoning Annexation (including the zoning upon annexation request made by the developers, Developers), and in the event City Council does not approve the Growth Policy Amendment or Annexation (including the Rezone zoning upon annexation request) within ninety days of this Agreement being fully executed, the Amended and Restated Agreement shall be null and void and have no further the original Agreement without the amended provisions contained herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year in
this certificate written below.

[Signature pages follow.]

HEH, LLC

STATE OF _____)

)

County of _____)

On this ____ day of _____, _____, before me the undersigned, a Notary Public for the State of _____, personally appeared _____, acting in the capacity of _____ of HEH, LLC, known to me personally (or provided to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

(Signature)

(Printed name)

(SEAL)

Notary Public for the State of _____

Residing at _____

My Commission Expires _____

Date _____

Mullan Land Holding, LLC

STATE OF _____)

)

County of _____)

On this ____ day of _____, _____, before me the undersigned, a Notary Public for the State of _____, personally appeared _____, acting in the capacity of _____ of Mullan Land Holding, LLC, known to me personally (or provided to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

(Signature)

(Printed name)

(SEAL)

Notary Public for the State of _____

Residing at _____

My Commission Expires _____

Date _____

Missoula Mary Jane II LLC, an Arizona limited liability company

By: Miramonte Holdings, LLC, an Arizona limited liability company, Manager

By: Kemmerly Miramonte, LLC, an Arizona limited liability company, Sole Member

By: _____
Christopher Kemmerly, Sole Member

STATE OF _____)

)

County of _____)

On this ____ day of _____, _____, before me the undersigned, a Notary Public for the State of _____, personally appeared Christopher Kemmerly, acting in the capacity of Sole Member of Kemmerly Miramonte, LLC, the sole member of Miramonte Holdings, LLC, the Manager of Missoula Mary Jane II, LLC, known to me personally (or provided to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

(Signature)

(Printed name)

(SEAL)

Notary Public for the State of _____

Residing at _____

My Commission Expires _____

Date _____

The Snowfarm Project Property Owner, LLC

STATE OF _____)

)

County of _____)

On this ____ day of _____, _____, before me the undersigned, a Notary Public for the State of _____, personally appeared _____, acting in the capacity of _____ of The Snowfarm Project Property Owner, LLC, known to me personally (or provided to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

(Signature)

(Printed name)

(SEAL)

Notary Public for the State of _____

Residing at _____

My Commission Expires _____

Date _____

FOR The City of Missoula

APPROVED:

_____ Date _____

Andrea Davis, Mayor

ATTEST:

_____ Date _____

Claire Trimble, City Clerk

Approved as to form:

_____ Date _____

Ryan Sudbury, City Attorney for Civil Services

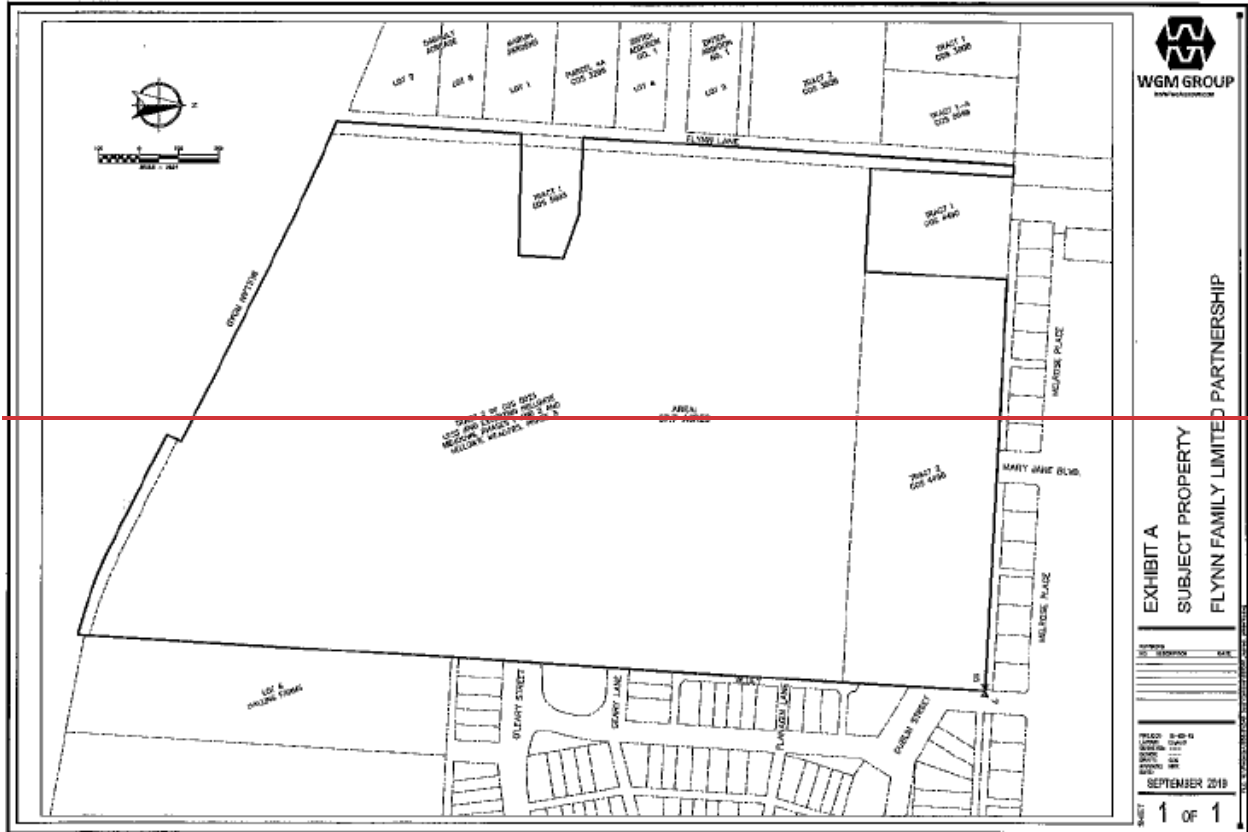


Exhibit (A)
Subject Property



Revised Master Plan

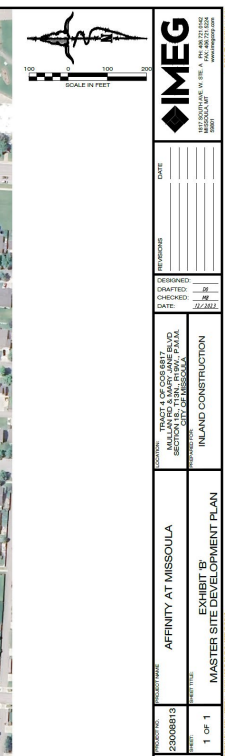


Exhibit (C)

Cash-in-Lieu ~~Payment~~ Calculation for ~~the~~ Affinity ~~Project~~

Rental Units:

The ~~city~~City uses a **Price Index Fee** calculation method to set a percentage for which units would otherwise be income restricted in the project. The fee is determined by the number of bedrooms in each dwelling unit. For the purposes of the Affinity ~~project~~Project on Tract 4 of Certificate of Survey No. 6817 and Tract 1 of Certificate of Survey No. 5023 (the County Parcel), 25% was used as the set aside percentage for cash-lieu calculations.

For the Affinity ~~project~~Project, 25% of 21 units was calculated, which represents the additional units the project gains with the ~~proposed amendment of the Development~~ Agreement.

1. Studio = \$25,000
2. 1 bedroom= \$27,000
3. 2 Bedrooms= \$32,250
4. 3+ bedrooms= \$37,250

~~This development~~The Affinity Project will be primarily 1- and 2-bedroom units. Twenty-five percent of 21 is 5.25. With the ~~developer's~~Developer's agreement, the number of units was rounded up to six (6) set-aside units and calculated the fee with three 1-bedroom units and three 2-bedroom units.

One-bedroom units= $\$27,000 \times 3 = \$81,000$

Two-bedroom units= $\$32,500 \times 3 = \$97,500$

Total in-lieu fee: \$178,500