

## **AGREEMENT**

This Agreement (“Agreement”) is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between Missoula County, a political subdivision of the State of Montana (“County”) on behalf of taxing jurisdictions, and Wakefield Kennedy, LLC, a Washington limited liability company (“Wakefield Kennedy”). The County and Wakefield Kennedy may be referred to individually as a “Party” and collectively as the “Parties” in this Agreement.

### **RECITALS**

A. Missoula County is a political subdivision of the State of Montana. The Missoula County Treasurer is responsible for collecting taxes for all taxing jurisdictions.

B. Whereas M2Green Redevelopment, LLC is a Illinois limited liability company (“M2Green”) that owns 15 parcels of real property in or around Frenchtown, Montana;

C. Whereas Wakefield Kennedy is a Washington limited liability company that lent funds to M2Green, repayment of which is secured by a mortgage filed against the aforementioned 15 parcels of real property in or around Frenchtown Montana, owned by M2Green Redevelopment, LLC;

D. Whereas a third party has taken assignments of 6 of the 15 parcels, including Parcels 413060001, 415205001, 415205002, 415309001, 949007, and 949109, and accordingly, tax principal, penalty and interest are considered fully paid for those parcels from the perspective of the County;

E. Whereas taxes are delinquent and principal, penalty and interest are owed on 9 of the 15 parcels, including: 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909, and 865200;

F. Whereas the parties agree that the tax delinquencies regarding Parcel 865200 are not addressed or included in this Agreement;

G. Whereas the parties wish to address the tax delinquencies regarding Parcels 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, and 948909 (“the 8 parcels”) in this Agreement;

H. Whereas as of October 16, 2017, the principal owed on the 8 parcels is \$843,553.29, the penalties assessed on these amounts are \$16,854.60, and the interest owed on these amounts is \$231,303.84, totaling \$1,091,711.73;

I. Whereas \$522,009.24 in proceeds from an auction conducted on property owned by M2Green in Frenchtown on August 10, 2017 was received by County in partial satisfaction of delinquent taxes owed by M2Green, and will be distributed to taxing jurisdictions, in accordance with the provisions set forth in this Agreement, upon the parties' receipt of a final accounting of post-auction expenses by James G Murphy Company;

J. Whereas the County agrees that the auction proceeds will not be applied to tax debt for Parcel 865200, but will be applied to the 8 parcels;

K. Whereas the remaining amount owed on the 8 parcels after applying auction proceeds is \$321,544.05; and the penalty and interest remains unchanged at \$248,158.44, totaling \$569,702.49;

L. Whereas Montana House Bill 516 was passed into law effective May 3, 2017 and allows taxing jurisdictions to pursue civil actions and obtain money judgments against real property owners under certain circumstances;

M. Whereas County has filed an action against M2Green regarding parcels 865200 and 948401, Cause No. DV-17-682 (“Litigation”);

N. Whereas the parties desire to resolve, in part, claims arising out of the Litigation, without further time and resources spent on litigation in order to facilitate timely distributions to taxing jurisdictions in need of tax revenue;

O. Whereas County is unaware of any assets of M2Green subject to attachment in order to enforce a money judgment against M2Green;

P. Whereas as of the execution of this Agreement, Wakefield Kennedy does not have actual ownership of any of the real property, referenced herein, but it desires to protect its mortgage security interest and collateral and thereby is entering into this Agreement for that specific purpose;

Q. Whereas County desires that, on or before March 1, 2018, Wakefield Kennedy initiate foreclosure proceedings to take ownership of at least the following parcels: 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909, 413060001, 415205001, 415205002, 415309001, 949007, and 949109; and Wakefield Kennedy agrees that it desires to initiate foreclosure proceedings to take ownership of said certain parcels, but only in accordance with the terms set forth herein.

The parties hereby agree as follows:

1. Payment

Wakefield Kennedy shall pay County a total of \$445,623.27 in two installments. Within five business days of the Effective Date of this Agreement, Wakefield Kennedy shall make the first installment payment to the County in the amount of \$321,544.05. On or before March 1, 2018, Wakefield Kennedy shall make a final installment payment to the County in the amount of \$124,079.22. These payments, totaling \$445,623.27, in conjunction with the \$522,009.24 received from James G Murphy Company, will total \$967,632.51 received by County payable toward existing tax debt on the 8 parcels. This total represents 89% of the total principal, penalty and interest assessed on the 8 parcels as of October 16, 2017.

2. Distribution of Auction Proceeds

The County shall distribute the \$522,009.24 received by James G Murphy Company to the principal amounts for Parcels 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909 according to the pro rata percentage of principal owed for each parcel relative to the total principal tax debt for the 8 parcels. The County shall not distribute any portion of the \$522,009.24 to tax debt for Parcel 865200.

### 3. Distribution of Funds

County shall distribute the \$445,623.27 received from Wakefield Kennedy to the taxing jurisdictions as follows:

- a. Proceeds will be applied to the principal amounts due for the following parcels: 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909.
- b. Proceeds will be applied to the penalty and interest due for the parcels referenced in 3(a) according to the pro rata amount of penalty and interest owed for each parcel in relation to the total tax debt owed.

### 4. Reduction of Penalty and Interest

County agrees that in exchange for payment of \$967,632.51 to County, County will waive, abate or write-off 50% of the penalty and interest accrued for the 8 parcels as of October 16, 2017, totaling \$124,079.22. Additionally, the County will waive, abate or write off 100% of any penalty assessed and interest accrued for the 8 parcels from October 16, 2017 through the date of the County's receipt of the entire payment due of \$967,632.51.

Accordingly, upon approval of this Agreement by the Court and receipt of payment by Wakefield Kennedy, the Missoula County Treasurer shall waive, abate, or write-off all remaining penalty and interest accrued as for Parcels 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909. It is the parties' intent that payment pursuant to this settlement will result in no penalty and interest further owed on the 8 parcels.

Notwithstanding the foregoing, the Missoula County Treasurer shall be authorized hereunder to administratively apply the agreed-upon amounts received in any manner that accomplishes the same net result set forth above, and results in a reduction of penalty and interest as set forth above.

5. To provide clarity to the figures associated with the settlement terms, set forth in this Agreement, an accounting of the specific figures referenced herein is set forth in Exhibit A, attached hereto.

6. The parties agree that DV-17-682 shall be dismissed without prejudice.

7. The parties agree that this Agreement resolves only taxes assessed for tax years 2016 and prior, and that the calculations provided herein utilize a penalty and interest date of October 16, 2017, notwithstanding the fact that actual payment may not be provided by Wakefield Kennedy until the date set forth in Paragraph 1 above.

8. The parties agree that this Agreement does involve or address parcels 865200, 413060001, 415205001, 415205002, 415309001, 949007, and 949109.

### 9. Foreclosure

Wakefield Kennedy agrees to initiate foreclosure proceedings on parcels 415196001, 415205003, 5825877, 7003802, 865104, 948003, 948401, 948909, 413060001, 415205001, 415205002, 415309001, 949007, and 949109 on or before March 1, 2018.

10. No Admission of Liability

It is understood that neither the payment of the sum by Wakefield Kennedy nor the negotiations for settlement shall be considered as an admission of liability.

11. Public Agreement

The parties agree that this Agreement will be discussed and approved by the Missoula County Commissioners in a public meeting after public notice and opportunity for public comment, and is conditioned on approval by the Missoula County Commissioners after public meeting, notice and opportunity to comment.

12. Agreement Conditioned on Court Order

The parties agree that this Agreement shall be filed with the Court with a joint motion to approve and adopt this Agreement as a Court Order. This Agreement is conditioned on Court approval, and will not be enforceable against parties without Court approval.

13. Conditions, Effective Date, and Miscellaneous Terms.

- a. Effective Date. The date on which the Court approves and adopts this Agreement shall be the “Effective Date” of this Agreement.
- b. Representations. Each Party hereby represents and warrants that each Party has the full power and authority to enter into, execute, and deliver this Agreement, and to perform the obligations set forth in this Agreement. This Agreement constitutes a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- c. Authorization of Signatories. The persons executing this Agreement have the full power and authority on behalf of such Party to bind that Party to the terms and conditions set forth in this Agreement.
- d. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- f. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as referenced hereinabove.

**Wakefield Kennedy, LLC**

**By:** \_\_\_\_\_  
Steven J. Malsam, Manager

**Date:** \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS**  
Missoula County, Montana

\_\_\_\_\_  
Jean Curtiss, Chair

**Date:** \_\_\_\_\_

\_\_\_\_\_  
Nicole Rowley, Commissioner

**Date:** \_\_\_\_\_

\_\_\_\_\_  
David Strohmaier, Commissioner

**Date:** \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Tyler R. Gernant  
Clerk & Recorder

**EXHIBIT A  
AGREEMENT  
MISSOULA COUNTY-WAKEFIELD KENNEDY, LLC**

<b>Accounting-Settlement of M2Green Redevelopment, LLC's Outstanding Taxes Missoula County-Wakefield Kennedy, LLC</b>				
Parcel #	Tax	Penalty	Interest	Total
415196001	154.10	1.58	4.97	160.65
415205003	216.42	2.82	8.87	228.11
5825877	95.01	0.40	1.26	96.67
7003802	93.41	0.36	1.16	94.93
865104	966.54	17.85	56.29	1,040.68
948003	5.00	0.10	75.32	80.42
948401	771,499.61	15,425.53	219,280.78	1,006,205.92
948909	70,523.20	1,405.96	11,875.19	83,804.35
	<b>\$ 843,553.29</b>	<b>\$ 16,854.60</b>	<b>\$ 231,303.84</b>	<b>\$ 1,091,711.73</b>
		<b>Total P&amp;I</b>	<b>\$ 248,158.44</b>	

Total Debt	\$ 1,091,711.73	
Less: Auction Proceeds Applied	<u>(522,009.24)</u>	
Total Remaining Balance after Auction		\$ 569,702.49
Less: Waiver of One-Half of Interest and Penalties		<u>(124,079.22)</u>
Total Remaining Balance with P&I		\$ 445,623.27
Lump Sum Due With Settlement		(321,544.05)
Balance Due on or before March 1, 2018		<u>(124,079.22)</u>
Remaining Balance		<u><u>\$ -</u></u>