

**DRAFT DEVELOPMENT AGREEMENT BETWEEN
DOUGHERTY RANCH, LLC AND CITY OF MISSOULA
FOR TRACTS E-1 & F-1, CERTIFICATE OF SURVEY _____
4/21/22**

This Development Agreement (the “**Agreement**”) is executed by and between DOUGHERTY RANCH, LLC, a Montana limited liability company which an address at 1185 E Cooper Lake Shore, Ovando, MT 59854 (the “**Owner**”), and the City of Missoula, 435 Ryman Street, Missoula, Montana 59802 (hereinafter referred to as “**City**”).

RECITALS

A. The Owner owns Tract F-1 of Certificate of Survey [XXXX] as recorded in the records of Missoula County, Montana (the “**Southern Lot**”).

B. The City has been granted¹ portions of [West End Homes] including the parkland depicted on Exhibit 1 (the “**Granted Parkland**”) by [Evergreen Housing Solutions, LLC] (the “**Developer**”), which is developing a [260 Lot] project on property north and east of the Southern Lot (the “**Development**”).

C. Pursuant to an arrangement between the Developer and the Owner, the City and Owner desire to enter into this Agreement regarding the Granted Parkland and certain development matters associated with Southern Lot.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. **Release of Southern Parcel From Parkland Requirement.** Subject to the Owner’s obligations in paragraph 2, the City hereby covenants and guarantees that the parkland contributions associated with the Development are sufficient to cover any conceivable development of the Southern Parcel, and as such that no additional parkland dedication (or cash) will be required for the development of the Southern Parcel (the “**Parkland Release**”). For clarity, the Parkland Release covers the obligations under the City’s Subdivision Regulations Article 3, Section 3-080.8, Criterion B,² and all future, subsequent, or successor regulations imposed by the City with respect to parkland, open space, public and quasi-public common areas or similar types of restrictions or requirements, which are currently imposed or may be imposed in the future.

2. **Assumption of Road Right of Way.** Any development of the Southern Parcel shall require a road at the expense of the Owner, and associated right of way, to be located entirely on the Southern Parcel running the entirety of the northern [and eastern boundary] of the Southern Parcel, as more fully depicted on Exhibit 2 with specific specifications (the “**Bisect Road**”).

¹ NTD: The Development Agreement is proposed to be recorded immediately after the deeding of the parkland to the City of Missoula by the Developer.

² NTD: confirm reference.

Should Owner fail to construct the Bisect Road in conjunction with any development of the Southern Parcel, the Parkland Release shall be of no further force or effect.

3. **Restrictions and Grants related to the Granted Parkland.** The City shall not, or cause, any of the following to occur: (i) The name “Flynn” will to be used to name any of the features found in the open space or parkland features of the Development, including the Granted Parkland and the agriculture and/or farming component of the Development; or (ii) any subdivision of the Granted Parkland. The Owner shall have the right to provide a single name to be used for the park which will comprise the Granted Parkland, which shall also include a memorial monument to Eleanor “Ellie” Dougherty as further depicted on Exhibit 3.

4. **General Provisions.** The following terms and conditions apply:

(a) This Agreement may be amended if any of the conditions herein stated are altered, subject to the review and written approval of both parties.

(b) This Agreement shall run with the land, and may be recorded by either party.

(c) This Agreement is not intended to supersede, replace or amend any agreements or contracts the Owner may have between the Owner and other parties.

(d) All firms doing business with any agency of the City of Missoula must be in compliance with the City of Missoula's Non-Discrimination and Affirmative Action Policy as well as Title 49, Montana Code Annotated, or forfeit the right to continue such business dealings (Refer, Attachment F: Non-Discrimination and Affirmative Action Policy).

(e) The City shall have no civil liability whatsoever for any of Owner's actions or undertakings. It is Owner's sole responsibility to ensure that Owner and all of Owner's contractors, sub-contractors, designers, architects, and engineers have adequate liability insurance, workers compensation insurance and property insurance for the project.

(f) The parties may agree to terminate this Agreement through mutual consent.

(g) With respect to the drafting and negotiation of this Agreement, each party to this Agreement is responsible for their own attorney fees. If any action arising under or related to this Agreement, the ultimate prevailing party shall be entitled to be paid its reasonable attorney fees, expenses and costs by the non-prevailing party, whether in mediation or arbitration, at trial or on appeal.

(h) The Owner may assign its rights and obligations under this Agreement to any party acquiring the Owner's entire interest in the Southern Parcel without the consent of the City. No other assignment shall be permitted.

(i) If any section, sentence, clause or portion of this Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their officers duly authorized as of the _____ day of _____, 2022.

OWNER

Dougherty Ranch, LLC

Brian Dougherty, Member/Co-Manager

CITY

City of Missoula

John Engen, Mayor

APPROVED AS TO FORM FOR CITY

Jim Nugent, City Attorney

EXHIBIT 1
GRANTED PARKLAND

DRAFT

EXHIBIT 2
BISECTED ROAD

DRAFT

EXHIBIT 3
MEMORIAL MONUMENT

DRAFT