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City Clerk
435 Ryman St
Missoula, MT 59802

DEVELOPMENT AGREEMENT
West End Farms

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) made effective this ___ day of January, 2023, is entered into by and between West End Farms Land Holdings, LLC, a Montana limited liability company whose address is 131 S Higgins Avenue, Suite P-1, Missoula, MT 59802 (“**Developer**”); 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**”); and Dougherty Ranch LLC, a Montanan limited liability company, having an address of 1185 E Cooper Lake Shore, Ovando, MT 59854 (“**Dougherty Ranch**”). Each is called a “**Party**” in this Agreement, and collectively are called “**Parties**.”

WHEREAS, the City of Missoula Subdivision Regulations¹ require that any subdivision development must include certain ratios of open space or parkland dedication (this set of regulations is hereinafter referred to as the “**City Subdivision Regulations**”; the open space or parkland required by such regulations are hereinafter referred to as “**Parkland**”);

WHEREAS, the Developer has received approval from the City of Missoula to subdivide the property identified on Exhibit “A” (the “**Property**”) pursuant to [Missoula ref] (the “**Approval**”), which subdivision required the Developer to dedicate Parkland to the City of Missoula;

WHEREAS, the Developer is dedicating more Parkland than was required by the Approval such that approximately 2.5^{2, 3} acres is intended to and does serve as additional Parkland to fulfill the future Parkland dedication obligations related to the City Subdivision Regulations of adjacent property to the south, legally described as Tract F-1 of COS 6889 (“**Tract F-1**”), as more fully described on Exhibit A (the “**Additional Dedication**”).

¹ Missoula, Mont., MISSOULA CITY SUBDIVISION REGULATIONS ch. 3-080 (1974, as amended July 18, 2022) [Article 1 \(missoula.mt.us\)](https://www.ci.missoula.mt.us/DocumentCenter/View/61730/City-Subdivision-Regulations---Adopted-7-18-2022) (last accessed at: <https://www.ci.missoula.mt.us/DocumentCenter/View/61730/City-Subdivision-Regulations---Adopted-7-18-2022>)

² NTD: This calculation is an estimate and requires verification.

³ NTD: We understand this is included in what is known as Open Space 4 on the plat.

WHEREAS, Developer intends and the City has agreed that the Additional Dedication will fulfill future Parkland dedication requirements related to the City Subdivision Regulations for the development of Tract F-1; and

WHEREAS, the Parties wish to memorialize the Parties' respective rights and obligations concerning the Developer's development of the Property, Developer's Parkland dedication, and the City's recognition of such dedication satisfies all obligations under City Subdivision Regulations, now existing or in the future associated with Tract F-1.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, Developer and the City agree as follows:

1. Responsibilities and Obligations of the Developer. Developer shall cause the Property to be developed in accordance with the Approval such that the 2.5 acres of additional Parkland is created with the development of the Property and that such Parkland is preserved pursuant to the plat associated with the Subdivision.

2. Responsibilities and Obligations of City.

(a) The City agrees and covenants that because of the Additional Dedication that no Parkland is required to be dedicated as part of the City Subdivision Regulations for the development of Tract F-1.

(b) The City agrees and covenants that the Additional Dedication fulfills the requirements of all City Subdivision Regulations, now and into the future, and that Parkland requirements for Tract F-1 are fully vested under the City Subdivision Regulations.

(c) The City agrees that no fee in lieu will be assessed related to the development of the Tract F-1, now, or any time in the future.

(d) When Tract F-1 is developed, the City and Dougherty Ranch shall cause the owner of Tract F-1 to construct a bifurcating road that separates the Tract F-1 development from the Parkland contemplated by this Agreement. The bifurcating road shall run the entirety of the northern and eastern boundary of Tract F-1 and shall be completely located on Tract F-1.

3. Notices. All notices shall be addressed as follows, or addressed in such other manner as the Party being notified shall have requested by written notice to the other Party. Refusal to accept delivery of notice shall be deemed to be receipt. Any notice in writing required to be given shall be complete when personally delivered, delivered by courier or expedited delivery service such as Federal Express, or when deposited in the United States Mail, first class, certified mail, return receipt requested, postage prepaid, addressed to the other Party at the following addresses:

Developer:

West End Farms Land Holdings, LLC
Attn: Fletcher Ray
131 South Higgins Avenue, Suite P-1
Missoula, Montana 59802
fray@wishcamperpartners.com

With a copy to:

Parsons Behle and Latimer
Attn: Ross P. Keogh
127 E. Main, Suite 301
Missoula, Montana 59802
(406)-317-7220
rkeogh@parsonsbehle.com

Dougherty Ranch:

Dougherty Ranch, LLC
1185 E Cooper Lake Shore
Ovando, Montana 59854

With a copy to:

Garlington, Lohn & Robinson
Alan McCormick
305 Ryman Street
Missoula, MT 59802
406-523-2500
afmccormick@garlington.com

City:

Office of the Mayor
City of Missoula
435 Ryman Street
Missoula, Montana 59802

With a copy to:

[City Engineer for Development Review
City of Missoula
435 Ryman Street
Missoula, Montana 59802]

The Parties, by notice given under this section, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

4. Compliance With Applicable Ordinances. Except as provided in this Section, nothing contained in this Agreement shall be interpreted to authorize or permit Developer to violate any law, ordinance, or regulation relating to building codes, fire codes, building materials, zoning, construction methods, or use. In the event of any conflict between any law, ordinance, or regulation and the terms of this Agreement, the law, ordinance, or regulation shall prevail and Developer shall promptly notify City of the conflict. City shall cooperate with Developer to accommodate the purposes of both this Agreement and such law, ordinance, or regulation.

5. Force Majeure. A Party shall not be held responsible if the fulfillment of the Party's obligations under this Agreement is delayed or prevented by revolutions, wars, acts of enemies, strikes, fires, global pandemics, floods, other natural disasters, acts of God, or without limiting the foregoing, by any other cause not within the control of the Party whose performance is interfered with, and which by the exercise of reasonable diligence, the Party is unable to prevent, whether of the class of causes hereinbefore enumerated or not.

6. Binding Effect. This Agreement touches and concerns the use of land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, and shall run with the land. This Agreement will be filed with the official records of the Property at the Missoula County Clerk and Recorder's Office.

7. Additional Provisions.

(a) Governing Law and Venue. The law governing the interpretation or enforcement of the terms and condition of the Agreement shall be the laws of the State of Montana. The venue for any action brought pursuant to this Agreement shall be in the Fourth Judicial District of Montana, unless the issue involves a federal claim, in which case the venue shall be in the District of Montana.

(b) 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.

(c) 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.

(d) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

(e) Drafting of Agreement. Both Parties have participated in the drafting of this Agreement and have been represented by their own counsel.

(f) Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate 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. (2019). 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.

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

FOR THE DEVELOPER:

West End Farms Land Holdings, LLC, a Montana limited liability company

By: West End Manager, LLC, a Montana limited liability company, manager

By: Evergreen Partners, LLC, an Oregon limited liability company, manager

By: _____

Date: _____

Name: Justin Metcalf

Title: Authorized Representative

STATE OF MONTANA)

: ss.

COUNTY OF MISSOULA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Justin Metcalf, as the Authorized Representative of Evergreen Partners, LLC, an Oregon limited liability company, manager of West End Manager, LLC, a Montana limited liability company, manager of West End Farms Land Holdings, LLC, a Montana limited liability company.

NOTARY PUBLIC

FOR THE CITY OF MISSOULA:

APPROVED:

Jordan Hess, Mayor

Date: _____

ATTEST:

Marty Rehbein, City Clerk

Date: _____

FOR DOUGHERTY RANCH LLC

**Dougherty Ranch LLC,
a Montana limited liability company**

By: _____
Name: Brian Dougherty
Title: Authorized Member

Date: _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Brian Dougherty as the Authorized Member of Dougherty Ranch LLC, a Montana limited liability company.

NOTARY PUBLIC

By: _____
Name: Sean Dougherty
Title: Authorized Member

Date: _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Sean Dougherty as the Authorized Member of Dougherty Ranch LLC, a Montana limited liability company.

NOTARY PUBLIC

EXHIBIT A

The Property and Tract F-1

The Property

Legally described as:

Tract E-1 of Certificate of Survey No. 6889, located in the NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 7, Township 13 North, Range 19 West, and the NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 12, Township 13 North, Range 20 West, P.M.M., Missoula County, Montana.

Tax ID: 420167002

Geocode: 04-2200-07-3-01-25-0000

Tract F-1

Legally described as:

Tract F-1 of Certificate of Survey No. 6889, located in Section 12, Township 13 North, Range 20 West, P.M.M., Missoula County, Montana.

Tax ID: 3213909

Geocode: 04-2199-12-1-01-15-0000