

REAL PROPERTY DONATION AGREEMENT

THIS REAL PROPERTY DONATION AGREEMENT (“**Donation Agreement**”) is made effective as of _____, 2024 (“**Effective Date**”), by and between 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 Ravara Development, LLC, a Montana limited liability company whose address is 129 West Alder Street, Missoula, MT 59802 (“**Ravara**”) (the City and Ravara are referred to individually as a “**Party**” and collectively as the “**Parties**”), with reference to the following:

- A. The City is the owner of certain property located in Missoula County, pursuant to a grant deed executed on August 14, 2020, and recorded at Book 1037, Page 150 in the records of Missoula County, Montana (the “**Grant Deed**”) which contained certain environmental restrictions, which was subsequently subdivided into several parcels, one of which is known as Parcel A, and generally referred to in the context of the project as the “Income Qualified Home Ownership Parcel” (the “**Property**”), and which is legally described on Exhibit “A”.
- B. The City and Ravara are parties to that certain Letter of Intent dated January 28, 2021, as amended (the “**Letter of Intent**”), which provided that Ravara and the City would cooperate to create an integrated design to allow for the development of 70 units targeted for income-qualified home ownership housing on the Property (the “**Project**”).
- C. Ravara has increased the number of housing units on the Property from the original 70 units as outlined in the LOI to 89 units in order to create economies of scale to facilitate the financing and development of the Project.
- D. The Parties wish to memorialize their respective rights and obligations concerning the City’s conveyance of the Property to NMCDC Pine & Sash, LLC, a Montana limited liability company, a special purpose entity of North Missoula Community Development Corporation, a Montana public benefit corporation which operates as a community land trust (the “**CLT**”) and Ravara’s development of the Project.

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

1. Donation of Property. Subject to the terms and conditions of this Agreement, the City shall donate to the CLT the Property (the “**Donation**”).

2. Closing.

- (a) The closing (“**Closing**”) of this Donation will take place within ten (10) days following the notice by Ravara that the CLT is ready to receive the Donation (the “**Closing Date**”).

(b) On the Closing Date, the City will execute and/or deliver to Insured Titles (the “**Title Company**”) the following: (i) the Deed (defined below); and (ii) affidavits and evidence of authority or other documents, if any, as may be reasonably required by Title Company.

(c) On the Closing Date, Ravara will cause the CLT to execute and/or deliver to the Title Company affidavits and evidence of authority or other documents, if any, as may be reasonably required by Title Company or this Agreement.

3. Prorations. All real property taxes, special taxes, and assessments, if any, will be prorated (employing a 365-day year) between the CLT and the City as of the Closing Date based upon the most recent property tax assessment. No special assessments will be paid at Closing, and any obligations associated with TIF financing associated with the Property will run with the land.

4. Closing Costs. The City and Ravara shall each be responsible for the following fees and costs associated with Closing: (a) its attorneys’ fees, costs, and expenses associated with this Agreement; (b) one half of the Title Company’s cost of the title commitment, title policy, and other title related costs; (c) one half of escrow or closing fees; and (d) one half of the recording fees related to the deed. CLT shall pay any and all costs related to its due diligence investigation.

5. Conditions to Closing.

(a) The obligation of the CLT to close, fund, and consummate the transaction contemplated by this Agreement is specifically contingent on the fulfillment, satisfaction, and/or completion of the following, to Ravara’s satisfaction:

(i) Ravara being able to obtain all required building permits for the Project;

(ii) The City’s representations and warranties set forth herein will be true and correct on the Closing Date;

(iii) The City having entered into a Development Agreement substantially in the form attached hereto as Exhibit “B”.

(iv) The City having entered into an Activity Area Easement substantially in the form attached hereto as Exhibit “C”.

(v) The CLT is prepared and ready to accept the Property and has consented and agreed to the terms of this Agreement pursuant to the consent and ratification attached hereto as Exhibit “D”;

(vi) The City having performed all of the City’s covenants and agreements contained in this Agreement that are required to be performed by the City on or before the Closing; and

(vii) The Conditions to Closing set forth in this section having been completed, fulfilled, or satisfied to CLT and Ravara’s reasonable satisfaction.

(b) The obligation of the City to close, fund, and consummate the transaction contemplated by this Agreement is specifically contingent on the fulfillment, satisfaction, and/or completion of the following:

(i) Ravara having entered into a Development Agreement substantially in the form attached hereto as Exhibit “B” and consented to by the CLT;

(ii) The CLT having entered into an Activity Area Easement substantially in the form attached hereto as Exhibit “C”;

(iii) Ravara’s representations and warranties set forth herein will be true and correct on the Closing Date;

(iv) Ravara having performed all of Ravara’s covenants and agreements contained in this Agreement that are required to be performed by Ravara on or before the Closing; and

(v) The Conditions of Closing waivable by the City having been completed, fulfilled, or satisfied to the City’s reasonable satisfaction.

6. Due Diligence. Ravara may complete, at its sole cost and expense, inspections, surveys (including an ALTA survey), environmental diligence (including a Phase I and Phase II Environmental Assessment), zoning and entitlement review, any due diligence investigation as defined in the Letter of Intent, and studies of the Property as Ravara deems necessary or appropriate to inspect or evaluate the Property.

7. Title Commitment. Within 10 days of the Effective Date, the City will cause to be delivered to Ravara a title commitment (“**Title Commitment**”) from the Title Company committing to issue to CLT a standard coverage owners policy of title insurance in the amount of \$1,000,000 and copies of all documents listed on Schedule B to the Title Commitment as exceptions to coverage. Ravara will have 20 days from receipt of the Title Commitment (“**Title Review Period**”) to notify the City in writing of any objections (“**Title Objections**”) to title as revealed in the Title Commitment, which writing will set forth the specific basis for Ravara’s objection(s). If Ravara fails to notify the City of any Title Objections prior to the expiration of the Title Review Period, then Ravara will be deemed to be satisfied with the condition of title and to have waived all Title Objections. If Ravara does deliver written notice of its Title Objections within the Title Review Period, Ravara will be deemed to have waived any objections to matters shown on the Title Commitment and not objected to in Ravara’s notice of Title Objections. As to those Title Objections raised by Ravara during the Title Review Period, the City will work with the Title Company to resolve, if reasonably possible, the objections. If the City notifies Ravara that the City is unable to cure or obtain insurance over the Title Objections prior to the Closing, Ravara will, at Ravara’s sole option: (a) notify the City in writing prior to the expiration of the Due Diligence Period that Ravara elects to terminate this Agreement, in which event this Agreement will terminate and neither Party will have any further rights, liabilities or other obligations under this Agreement, except with respect to those matters intended to survive termination; or (b) waive the Title Objections and direct CLT and the City to proceed to Closing. After the expiration of the Title Review Period and so long as Ravara has not terminated this Agreement, the remaining title

exceptions will be deemed “**Permitted Exceptions**”. Notwithstanding the forgoing, the City will cause to be removed from title to the Property any recorded deeds of trust, mechanics’ or materialmen’s liens, delinquent tax liens or judgment liens. Encumbrances created by Ravara shall be Permitted Exceptions and the City shall have no obligation to resolve any such exception.

8. Ongoing Development Coordination. The Parties shall continue to negotiate and coordinate in good faith the contracts and agreements identified in this Agreement.

9. Consent to Encumber Property with Construction Financing. The Parties agree that Ravara may encumber the Project, and certain other real property identified in Exhibit “E” to obtain construction financing and for purposes of construction (including applicable construction liens) related to the Project (collectively, “**Construction Liens**”), and agree to cooperate in any way necessary to facilitate such financing. To the extent reasonably required by a lender, the Construction Liens shall be senior to the Development Agreement and therefore have priority over the Development Agreement. Ravara shall ensure that the City has cure and notice rights under each Construction Lien and such other terms as the City may negotiate.

10. Conveyance of Title. At Closing, the City shall convey to CLT title to the Property by warranty deed (“**Deed**”) which shall be prepared by Ravara’s counsel and reasonably agreed to by CLT and the City and subject only to: (a) taxes and assessments not yet due and payable for the year of Closing and subsequent years; (b) the Permitted Exceptions; (c) the specific environmental restrictions required to be carried forward in the chain of title under the Grant Deed; and (d) any Construction Liens.

11. Acceptance of Property. Except as otherwise stated in this Agreement, RAVARA REPRESENTS AND WARRANTS TO, AND COVENANTS AND AGREES WITH, THE CITY THAT CLT IS ACCEPTING THE DONATION OF THE PROPERTY IN AN “AS IS” “WHERE IS” AND “WITH ALL FAULTS” IN ITS PRESENT CONDITION AND STATE OF REPAIR, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, AND SPECIFICALLY EXCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. An Acknowledgement of this Acceptance provision shall be executed by the CLT and provided to the City at Closing.

12. Representations and Warranties.

(a) The City hereby represents, warrants, and covenants as follows, all of which are true on the date hereof and which will be true on the Closing Date:

(i) The City represents that it is a municipal corporation, validly existing and in good standing under the laws of the State of Montana, and with full power and authority to enter into and perform this Agreement in accordance with the terms and conditions hereof.

(ii) The City has full right, power, authority, and ability to execute, deliver, and perform this Agreement. This Agreement and all documents to be executed and delivered by the City at or before the Closing Date are and will be on the Closing Date duly authorized, executed and delivered by the City.

(iii) The execution, delivery and performance of this Agreement by the City will not violate or constitute a breach under: (a) the terms of any contract or other agreement to which the City is a party or by which the City is bound; or (b) any court order, injunction, stay, or similar matter to which the City is subject or by which the City is bound.

(iv) The individuals executing this Agreement and any and all related documents have been validly authorized by the City to sign on the City's behalf.

(v) To the City's knowledge, no investigation, action, suit or proceeding is pending or threatened before any court or governmental body adversely affecting the Property or seeking to restrain, prohibit or otherwise challenge the consummation of the donation of the Property pursuant to this Agreement.

(vi) To the City's knowledge, the City has appropriately disclosed all information related to any environmental restrictions on the Property including the environmental restrictions contained in the Grant Deed.

(vii) The City is not a foreign owner subject to withholding of proceeds from the sale under the Foreign Investment in Real Property Tax Act (FIRPTA) under § 1445 of the Internal Revenue Code of 1986, as amended.

(b) Ravara hereby represents, warrants, and covenants as follows, all of which are true on the date hereof and which will be true on the Closing Date:

(i) Ravara represents that it is a limited liability company validly existing and in good standing under the laws of the State of Montana and with full power and authority to enter into and perform this Agreement in accordance with the terms and conditions hereof.

(ii) Ravara has full right, power, authority, and ability to execute, deliver, and perform this Agreement. This Agreement and all documents to be executed and delivered by Ravara at or before the Closing Date are and will be on the Closing Date duly authorized, executed and delivered by Ravara.

(iii) The execution, delivery and performance of this Agreement by Ravara will not violate or constitute a breach under: (a) the terms of any contract or other agreement to which Ravara is a party or by which Ravara is bound; or (b) any court order, injunction, stay, or similar matter to which Ravara is subject or by which Ravara is bound.

(iv) The individuals executing this Agreement and any and all related documents have been validly authorized by Ravara to sign on Ravara's behalf.

The foregoing representations, warranties, and covenants will be deemed made on the date of this Agreement and again on the Closing Date. If a Party becomes aware of any fact or circumstances that would change any of its representations or warranties, then it will promptly notify the other Party of such changed fact or circumstance to the other Parties.

(c) The provisions of this Section 12 will survive Closing.

13. Brokerage Commission. The Parties represent and warrant that each has not engaged any broker or finder in connection with this particular transaction and will indemnify each other from the same.

14. Damage or Condemnation Prior to Closing. If any material portion of the Property is taken by condemnation or eminent domain or there is any actual or threatened condemnation or eminent domain affecting any material portion of the Property (a “**Condemnation Act**”) prior to Closing, then Ravara will have the right to terminate this Agreement by notice to the other and to the Title Company, in which case neither the City nor Ravara will thereafter have any obligation to each other except for those matters intended to survive.

15. Notices. During the term of this Agreement, notices required or contemplated by this Agreement must be in writing and deemed given: (a) when delivered personally; (b) on the day said communication is received or refused to be received when delivered by the U.S. mail, registered or certified mail, return receipt requested, postage prepaid; (c) the next business day after delivery of said notice to a nationally recognized overnight courier service; or (d) upon electronic delivery during normal business hours or if not delivered during normal business hours, the next business day:

To Ravara: Ravara Development, LLC
Attention: Dawn McGee
129 West Alder Street
Missoula, MT 59802
E-Mail: dawn@goodworksventures.com

With a copy to: Parsons Behle & Latimer
Attn: Ross Keogh
127 East Main Street, Suite 301
Missoula, MT 59802
Telephone: 406-317-7220
E-Mail: rkeogh@parsonsbhle.com

To The City: The City of Missoula
Attention: Current Mayor and Current Senior Deputy City Clerk
435 Ryman St.
Missoula, MT 59802
Telephone: 406-5 52-6001
E-Mail: StaffM@ci.missoula.mt.us

With a copy to: City Attorney’s Office
435 Ryman St.
Missoula, MT 59802
Attention: City Attorney
Telephone: 406-552-6020
E-Mail: adepartment@ci.missoula.mt.us

or to such other address as the Parties may from time to time designate by notice in writing to other Parties.

16. Survival. This Agreement will survive Closing, and all obligations and rights of Ravara and the City shall be valid and enforceable post-Closing.

17. Assignment by Ravara. Ravara may assign its interest in and to this Agreement to an entity related to or affiliated with Ravara, the CLT, or to a third party with the City's prior written consent, but such consent to assignment shall be in the City's reasonable discretion.

18. The City's Disclosures.

(a) Water Rights Ownership Disclosure. Under Montana law, failure of the parties at a closing or other transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to penalty. Additionally, in the case of water rights being exempted, severed or divided, failure of the parties to comply with Mont. Code Ann. § 85-2-424 could result in a penalty against the transferee and rejection of the deed for recording.

(b) Noxious Weeds Disclosure. Mont. Code Ann. § 7-22-2116, provides that it is unlawful for any person to permit any noxious weeds to propagate or go to seed on the person's land, with the exception stated in the statute. The Parties recognize that there are noxious weeds on vacant lands in Montana and noxious weeds may exist on the Property.

(c) Megan's Law Disclosure. Pursuant to the Montana Sexual and Violent Offender Registration Act, certain individuals are required to register their address with law enforcement agencies. Law enforcement officers may make such information concerning registered offenders available to the public. If you would like information regarding the registration of offenders, contact your local law enforcement agency, the Montana Department of Justice or a probation office in your community.

19. Miscellaneous.

(a) No Third Party Beneficiary. No term or provision of this Agreement or its exhibits is intended to be, nor will any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a Party to this Agreement (including, without limitation, any broker), and no other person, firm, corporation or entity will have any right or cause of action under this Agreement.

(b) Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(c) Legal Fees. In the event legal action is instituted by either of the Parties to enforce the terms of this Agreement or arising out of the execution of this Agreement, the Parties shall bear their own attorneys' fees and costs.

(d) No Recording. Neither this Agreement nor any memorandum or notice thereof may be recorded by any Party.

(e) Applicable Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Montana.

(f) Waiver. Failure of any Party to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, will not constitute a waiver of any other Party's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(g) No Partnership. This Agreement is not intended to create and does not create a joint venture or partnership between any of the Parties.

(h) Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and will not be deemed to supplement, limit, or otherwise vary the text of this Agreement.

(i) Severability. The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if the invalid or unenforceable provision were omitted.

(j) Time. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays, or any state or national holidays. If the date or last date to perform any act or to give any notice is a Saturday, Sunday, or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday. Time is of the essence of this Agreement.

(k) Construction. The City and Ravara acknowledge that they and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement or any schedules, exhibits or amendments hereto.

(l) Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties and is binding upon the City and Ravara, their successors, legal representatives and assigns. The recitals to this Agreement are by this reference incorporated herein.

(m) Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together will constitute one and the same Agreement. E-mailed signatures will be treated as if they were originals.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Donation Agreement as of the Effective Date.

THE CITY:

The City of Missoula

Dated: _____, 2024

By: _____
Print Name:
Title:

Dated: _____, 2024

By: _____
Print Name:
Title: City Clerk

RAVARA:

Ravara Development, LLC, a Montana limited liability company

Dated: _____, 2024

By: _____
Print Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TRACT 2 OF AMENDED PLAT OF SCOTT STREET LOTS,
LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16,
TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL
MERIDIAN, MONTANA; CONTAINING 2.97 ACRES, MORE
OR LESS; ON FILE IN THE RECORDS OF MISSOULA
COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

EXHIBIT B
FORM OF DEVELOPMENT AGREEMENT

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

DEVELOPMENT AGREEMENT
Tract 2, Lot 3 Scott Street Improvements

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) made effective this _____ day of _____, 2024 (the “**Effective Date**”), is entered into by and between Ravara Development, LLC, a Montana limited liability company whose address is 129 West Alder Street, Missoula, MT 59802 (the “**Developer**”) 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**.”

WHEREAS, on January 28, 2021, as amended, the City and Developer entered into a certain Letter of Intent (the “**LOI**”) whereby Developer stated its intent to acquire and act as master developer of certain property known as Lot 3, Scott Street Lots, located in Missoula County, Montana (the “**Property**”), and the City agreed to cooperate to create an integrated design for the Property and to allow for the development of approximately 220-240 units of market rate housing and an additional approximately 70 units to be developed as income-qualified home ownership housing which has now been increased to 89 units (the “**Income-Qualified Home Ownership Project**”) on the parcel of property that is legally described as:

Tract 2: Income-Qualified Home Ownership Parcel

TRACT 2 OF AMENDED PLAT OF SCOTT STREET LOTS,
LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16,
TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL
MERIDIAN, MONTANA; CONTAINING 5.16 ACRES, MORE
OR LESS; ON FILE IN THE RECORDS OF MISSOULA
COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

Geo code: 04-2200-16-2-03-24-0000 Tax Id: 422214002

WHEREAS, the Parties wish to memorialize the Parties' respective rights and obligations concerning the City's cooperation and the Developer's development of Tract 2 of the Property and for such covenants and obligations to run with the land.

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.

(a) Developer shall use its commercially reasonable efforts to construct, or cause to be constructed on the Income-Qualified Home Ownership Parcel the quantity and types of units as set forth in Exhibit A. The City and the Developer have a mutual goal for at least 51% of the units to be sold to income qualified buyers (the "**IQ Goal**"). As of the Effective Date, this appears possible. Cost escalations may force a change in ratio as the project unfolds or if the market rate units generate less revenue than anticipated, and the Parties shall work in good faith to modify the Income-Qualified Home Ownership Project in such eventuality. For purposes of this Agreement, good faith shall mean the Parties will meet during the construction of Phase 1 of the Income-Qualified Home Ownership Project to determine if the IQ Goal can be met or needs to be adjusted based on the expense of constructing Phase 1.

(b) Developer shall utilize the applicable income restrictions and the maximum home price for each unit provided by the City in identifying an owner for each unit in the Income-Qualified Home Ownership Project, which will be based on the City's pricing formula (a "**IQ Buyer**"). The City's pricing formula accounts for interest rate, averaging Area Median Income at 105%, community land trust land lease fees, monthly Community Land Trust stewardship fees, insurance, and estimates for condominium owner association fees. Additionally, homebuyers will be assessed a transfer fee equal to 1% of the home price to be paid to NMCDC Pine & Sash, LLC, a Montana limited liability company at closing. This 1% fee will be calculated separate and above the IQ sales price. The pricing formula is outlined in the For Sale Home Pricing Worksheet attached hereto as Exhibit B (the "**Worksheet**"), which City staff will update on an annual basis. The Worksheet shall be updated for 2024 and from time to time as new data is available, but in no case more frequently than annually, and Developer agrees to use the pricing formula from the Worksheet in the sale of the income qualified buyer units produced as part of the Income-Qualified Home Ownership Project ("**Income Qualified Units**").

(c) The Parties will develop and execute administrative procedures to address affirmative marketing, sales procedures, and contingencies to expedite unit sales. However, in no event shall the Parties cause the sale of Income Qualified Units above 140% of the Area Median Income.

(d) Developer shall include in all material contracts with all designers, engineers, contractors, or any other company performing work with respect to the development of Tract 2 or the Income-Qualified Homeownership Project a provision whereby the contractor party acknowledges that the particular contract is assignable to the City in the event of default by Developer under this Agreement.

(e) The Parties agree and acknowledge that the obligations outlined in this Section (1) are to be subordinated to the construction loans provided by First Security Bank.

2. Developer Default. In the event that Developer fails to use its commercially reasonable efforts to construct the Income-Qualified Homeownership Project as described in Exhibit A, the City shall have the authority to release such Developer's obligation once Developer has (1) conveyed, delivered and assigned all design, engineering or other work product to the City, along with an assignment of the right to use the same, and (2) caused all liens and encumbrances to be cleared, except those debts reasonably incurred in the construction and development of the Income-Qualified Homeownership Project.

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:

Ravara Development, LLC
Attn: Dawn McGee
129 West Alder Street
Missoula, MT 59802
dawn@goodworksventures.com

With a copy to:

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

City:

Office of the Mayor
City of Missoula
435 Ryman Street
Missoula, Montana 59802
StaffM@ci.missoula.mt.us

With a copy to:

City Attorney
City of Missoula
435 Ryman Street
Missoula, MT 59802
adpartment@ci.missoula.mt.us

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.

7. Nondiscrimination and Affirmative Action. Developer agrees and shall comply with the City's Non-Discrimination and Affirmative Action policies attached as Exhibit C.

8. Additional Provisions.

(a) Modification and Amendment. This Agreement may be amended or modified by written agreement signed by the Parties.

(b) Default and Remedies. In the event of any breach of this Agreement by a Party, the non-breaching Party shall give the breaching Party written notice describing the breach and thirty (30) days in which to cure. In the event the default is not cured timely, or in the event work required to cure a default is not commenced, the Parties may seek such remedies as are available under law, including the following specific remedies. In the event of a Developer Default or upon foreclosure by any financing institution, the CLT agrees to: (a) develop the Property, or such portion of the Property that it retains after a Developer default or foreclosure, in accordance with the intent of the Development Agreement to develop the Property with residential owner-

occupied units where at least fifty one percent (51%) of the units are Income Qualified Units; or (b) quitclaim the Property, or such portion of the Property that the CLT retains after a Developer default or foreclosure, back to the City.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

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

(h) 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.

(i) Termination. Upon the completion of the Income-Qualified Home Ownership Project and the transfer of each unit to a homeowner this Agreement shall terminate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and authorized as of the Effective Date.

FOR THE DEVELOPER:

Ravara Development, LLC, a Montana limited liability company

By: _____ Date: _____
Name: Dawn McGee
Its: Authorized Representative

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by Dawn McGee, as the Authorized Representative of Ravara Development, LLC, a Montana limited liability company.

FOR THE CITY OF MISSOULA:

APPROVED:

Andrea Davis, Mayor

Date: _____

ATTEST:

Claire Trimble, City Clerk

Date: _____

CONSENT BY CLT:

The undersigned hereby acknowledges and consents to this Agreement and agrees to take title to the Property subject to the terms of this Agreement, and specifically agrees to be bound by the requirements outlined in Section 8(b) of this Agreement.

NMCDC Pine & Sash, LLC, a Montana limited liability company

By: NORTH-MISSOULA COMMUNITY DEVELOPMENT CORPORATION,
a Montana nonprofit corporation, its sole member

By: _____
Its: _____
Date: _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, as the _____ of North-Missoula Community Development Corporation, a Montana nonprofit corporation, as sole member of NMCDC Pine & Sash, LLC, a Montana limited liability company.

EXHIBIT A

Income-Qualified Home Ownership Project

Subject to permitting, constructability, and budget, Developer shall construct 89 units as outlined in the Zoning Compliance Permit submitted to the City of Missoula, or the necessary adjustments to the site in accordance with local and state law on the Income-Qualified Home Ownership Parcel. Developer is working towards a development with the following approximate unit composition with final to be mutually agreed upon.

- 35 townhomes in three- and four-bedroom layouts lining the north, west, and east portions of the site.
- 54 condos
 - two 12-unit buildings with three studios, three one-bedroom and six two-bedroom units each.
 - two 15-unit buildings with six studios, three one-bedroom and six two-bedroom units each.

A portion of the units on the Income-Qualified Home Ownership Parcel may be sold at market rate (“**Unrestricted Units**”) with revenues generated from the sale flowing back into the project and providing project-earned subsidy for the Income Qualified Units. During the development process, the developer shall allocate a mix of units throughout the site to sell at market rate as follows:

Prior to each phase of construction, Developer shall deliver to City the estimated total cost to construct the units with Developer's proposed ratio of Income Qualified Units and Unrestricted Units that meets bank financing requirements, align with Section 1(b), and yield a positive net income derived as total net sales price (after all fees associated with closing) minus construction costs (including landscaping, construction, entitlements, engineering, architecture and the like) ("**Positive Net Income**").

Developer intends for the following number of Unrestricted Units and Income-Qualified Units in each phase of development:

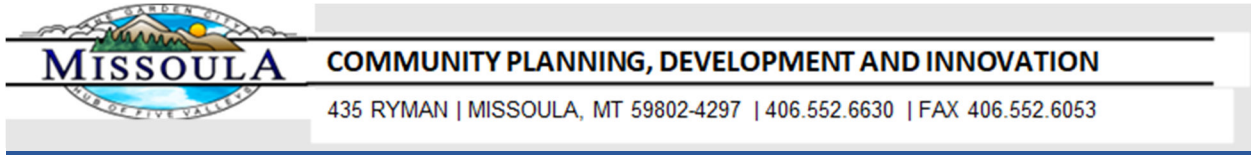
- Phase 1: 44 total units consisting of:
 - 23 Unrestricted Units
 - 21 Income-Qualified Units
- Phase 2: 45 total units consisting of:
 - 20 Unrestricted Units
 - 25 Income-Qualified Units

In the final phase of the Income-Qualified Home Ownership Project the Developer shall make any necessary adjustments in the Income Qualified Units and Unrestricted Units ratio to meet the Positive Net Income element.

No developer fee shall be taken on the Income-Qualified Home Ownership Project. Upon the completion of the Income-Qualified Home Ownership Project, but not before, the Developer or its

affiliates are entitled to receive direct expense reimbursement which includes salaries, overhead, equipment, cost of capital, and the like of up to \$250,000. Excess funds beyond the initial project budget due to additional subsidies identified during construction or increased revenue from the sale of unrestricted units due to market conditions shall be dedicated to increasing the number of Income Qualified units sold. Upon completion of the Income Qualified Home Ownership Project, if the excess funds fail to meet the required subsidy to add additional Income Qualified units, the funds shall be directed to the Affordable Housing Trust Fund (e.g. if there is \$25k in profit and the next unit requires \$55k of subsidy, there is a \$30k shortfall and funds shall be directed to the Affordable Housing Trust Fund).

EXHIBIT B



Pricing Methodology: Affordable Housing prices are set using a standard formula that calculates home prices affordable based on averaging 15% below the maximum-Area Median Income (AMI) level, current interest rate +1% and homeowner/condominium association and insurance assumptions. Household are to pay a maximum of 31% of their monthly income towards housing costs. Consistent with other communities and through technical assistance provided by ABT associates and Grounded Solutions Network, the maximum sales price factors in an averaging of the AMI range to 15% below the maximum AMI level widen the pool of buyers. For example, if the maximum income limit is 120% of AMI, the formula will be calculated based off of 105% of AMI. The pricing formula is reviewed by the Community Development Division of Community Planning, Development & Innovation annually. The formula includes:

- Area Median Income for the region which is updated annually by the U.S. Department of Housing and Urban Development (HUD)
- Median Home Sales Price for one-to-four-bedroom units updated annually
- Monthly Community Land Trust ground lease fees
- Monthly real estate taxes estimate
- Monthly property insurance estimate
- Monthly HOA/Condo Association fees
- Current interest rate +1%

Incomes by HUD AMI Levels for Missoula, by Household Sizes (2022)						
% Area Median Income	Number of Persons in Household:					
	1	2	3	4	5	6
30%	\$17,150	\$19,600	\$23,030	\$27,750	\$32,470	\$37,190
50%	\$28,600	\$32,650	\$36,750	\$40,800	\$44,100	\$47,350
60%	\$34,320	\$39,180	\$44,100	\$48,960	\$52,920	\$56,820
80%	\$45,750	\$52,250	\$58,800	\$65,300	\$70,550	\$75,750
100%	\$57,200	\$65,300	\$73,500	\$81,600	\$88,200	\$94,700
120%	\$68,640	\$78,360	\$88,200	\$97,920	\$105,840	\$113,640

Maximum Home Prices: Maximum home prices are set using the minimum occupancy equivalent to the size of the unit. Because pricing cannot be variable for the same unit, the minimum occupancy number is used to set the maximum prices to ensure affordability for all potential buyers. For example, the home price for a one-bedroom unit is set using one occupant.

Unit Size	Household Size Range
Studio & One Bedroom	1-2
Two Bedroom	2-4
Three Bedroom	3-6
Four Bedroom	4-8

Incentives and Set-aside Units: Projects that plan to utilize available development incentives including parking reductions and/or density bonuses will follow the set-aside unit formula outlined in Title 20-Zoning of Montana Municipal Code and the Public Forum held on September 18, 2023. Community Development staff will work with the developer to identify the appropriate proportion of set-aside units based on the balance of requested incentives and public benefit.

Affordability/Restricted Use Compliance Tools: The City of Missoula will impose a period of affordability based on project type and level of investment. All housing stock created in partnership with the City of Missoula will require use as primary residence for the duration of the compliance period.

Compliance Tool	Period of Affordability	Summary	Use Restrictions	Stewardship
Community Land Trust (CLT) Ground Lease	Permanent; the ground lease is 75 years with option to renew and the CLT keeps the resale restrictions indefinitely.	Renewable and inheritable ground leases used to restrict the resale price of homes.	The CLT owns the land under the structure and the homeowner owns the house. When the owner sells the house, their equity is limited by formula and they must sell to another income-qualified purchaser who will enter a new ground lease with the CLT.	Facilitated by an established CLT: <ul style="list-style-type: none"> • Lease compliance and restrictions • Homeowner support • Foreclosure intervention • Resale process

Expectations for all housing units developed in partnership with the City of Missoula:

- Compliance with all applicable state and federal laws including but not limited to Fair Housing Act, the Violence Against Women Act (VAWA) and Montana Residential Landlord and Tenant Act Requirements.
- Consider all relevant sources for housing payment, including Housing Choice Vouchers and third-party support
- Evaluate and address impact of housing displacement for current tenants
- Use of Affirmative Marketing practices to identify eligible buyers and renters

EXHIBIT C

Missoula City Non-Discrimination and Affirmative Action Policies

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

EXHIBIT C
ACTIVITY AREA EASEMENT

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

ACTIVITY SPACE EASEMENT AGREEMENT

THIS ACTIVITY SPACE EASEMENT AGREEMENT (“**Agreement**”) is made effective as of _____, 2024 (“**Effective Date**”), by and between the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana (the “**City**”), as grantor, having an address of 435 Ryman, Missoula, MT 59802, and NMCDC Pine & Sash, LLC, a Montana limited liability company as grantee (“**NMCDC**”). NMCDC and the City are sometimes referred to herein collectively as the “**Parties**” and individually as a “**Party**”) with reference to the following:

A. Pursuant to that certain Real Property Donation Agreement the City has donated the real property located in Missoula County and legally described in Exhibit “A” (referred to hereafter as “**Tract 2**”) to NMCDC (the “**Donation**”) on which 89 income-qualified home ownership housing units will be developed (the “**Income-Qualified Home Ownership Project**”);

B. As a condition to the City’s approval of the Income-Qualified Home Ownership Project as meeting the requirements of Title 20, as well as the City’s Donation, an activity space for the use and benefit of the occupants of Tract 2 must be created on the adjacent parcel, which is legally described in Exhibit “A” and referred to herein as “**Tract 3**”.

C. The Parties now desire to enter into this Agreement to specify the terms of identifying the Activity Space Easement Area (defined below) and the terms of the easement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, NMCDC and the City agree as follows:

1. Incorporation of Recitals. The recitals to this Agreement are incorporated as if fully set forth herein.

2. Grant of Easements.

(a) Activity Space Easement. The City hereby grants and conveys to NMCDC a perpetual, non-exclusive easement for the purposes of ensuring occupants of Tract 2 have adequate common recreation and/or garden areas (the “**Activity Space**”) on, over, and across a certain portion of Tract 3 (the “**Activity Space Easement Area**”), the location of which shall be designated at a later date by the owner of Tract 3.

(b) Activity Space. The Activity Space shall consist of the amount of land necessary to satisfy the open space or activity area requirements, found in Title 20, Missoula Municipal Code, applicable to the Income-Qualified Home Ownership Project at the time the such project is approved. In the event the open space or activity area requirements applicable to the Income-Qualified Home Ownership Project are reduced or eliminated through a change to the City's development regulations, the Activity Space subject to this Agreement may be reduced upon written approval and release by the City.

(c) Benefited Property. The Activity Space shall benefit NMCDC, or the NMCDC-affiliated entity created to hold title to Tract 2. NMCDC, or the NMCDC-affiliated entity created to hold title to the Tract 2 shall allow owners of the units created as part of the Income-Qualified Home Ownership Project to have access to the Activity Area, but such owners are not beneficial owners, and their agreement is not required to amend or terminate this Agreement.

(d) Activity Space Easement Area. Upon 45 days' notice that a structure on Tract 2 is set to receive a Final Certificate of Occupancy, the owner of Tract 3 shall designate a portion of Tract 3 that meets the requirements set forth in this Agreement to be designated as the Activity Space Easement Area. Once the Activity Space Easement Area is designated, this Agreement shall be amended to include and incorporate Exhibit "B", which will depict and legally describe the Activity Space Easement Area.

3. Use of Easement Area. The City, in its capacity as owner of Tract 2, its successors and assigns, reserves the right to use the Activity Space Easement Area in any manner that does not unreasonably interfere with NMCDC's rights granted under this Agreement.

4. Compliance with Law; Mechanics' Liens. The Parties will comply with all applicable laws in their use of the Activity Space Easement Area. The Parties will at all times keep the Activity Space Easement Area free from mechanics' liens or similar liens arising on account of or resulting from any act by or on behalf of each Party. In the event any mechanics' lien or similar lien is recorded against the Activity Space Easement Area on account of any act by or on behalf of a Party, that Party will, within 30 days after notice from the other Party, cause such mechanics' lien to be removed from the Activity Space Easement Area. Notwithstanding the foregoing NMCDC may lien the Activity Space Easement Area as necessary for the development of the Income-Qualified Home Ownership Project.

5. Remedies. Each Party will be entitled to exercise all remedies provided by law or in equity. No remedy herein conferred upon or reserved to a Party will exclude any other remedy herein, by law or in equity, but each will be cumulative.

6. Costs and Expenses and Limitation on Damages. In the event of a breach in any of the covenants or agreements contained herein, the breaching Party will pay all costs and expenses, including reasonable attorneys' fees and experts' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Montana, whether such remedies are pursued by filing suit or otherwise. Notwithstanding any other provisions of this Agreement to the contrary, and to the fullest extent permitted by law, under no circumstances will the Parties be liable for any consequential, exemplary, punitive, special, indirect or incidental

damages or economic losses arising out of any claim, demand, or action brought with respect to this Agreement.

7. Mutuality; Runs With the Land.

(a) The easements, rights, and obligations granted or created hereby are appurtenances to the Property, except as specifically provided herein, none of the easements, rights, or obligations may be transferred, assigned, or encumbered except as an appurtenance to such Property.

(b) Each of the easements and rights contained in this Agreement (whether affirmative or negative in nature) (i) will constitute covenants running with the land; (ii) will bind every person having a fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent such portion is affected or bound by the easement or right in question, or to the extent that easement or right is to be performed on such portion; and (iii) will inure to the benefit of and be binding upon the Parties and their respective successors and assigns as to their respective portion of the Property.

8. Notices. All notices required to be given under this Agreement will be in writing and will be transmitted either by personal delivery, electronic mail sent with return receipt requested, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice will be effective upon delivery, if delivered by personal delivery or overnight courier, and 72 hours after dispatch, if mailed in accordance with the above. Notices to the respective Parties will be sent to the following addresses:

To NMCDC: NMCDC Pine & Sash, LLC, a Montana limited liability company
c/o North-Missoula Community Development Corporation
1500 Burns Street
Missoula, MT 59802
Attention: Executive Director
E-Mail: brittany@nmcdc.org

To The City: The City of Missoula
Attention: Current Mayor and Current Senior Deputy City Clerk
435 Ryman St.
Missoula, MT 59802
Telephone: 406-5 52-6001
E-Mail: StaffM@ci.missoula.mt.us

With a copy to: City Attorney's Office
435 Ryman St.
Missoula, MT 59802
Attention: City Attorney
Telephone: 406-552-6020
E-Mail: adepartment@ci.missoula.mt.us

9. General Provisions.

(a) Representation of Ownership. The City represents and warrants that it holds fee simple title to Tract 3, including the Activity Space Easement Area, and has the authority to enter into this Agreement and perform under this Agreement.

(b) Incorporation of Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full herein.

(c) Interpretation. The paragraph headings in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation and construction. The use of the singular in this Agreement will include the plural, where the context is otherwise appropriate.

(d) Further Assurances. The Parties, from time to time, will execute, acknowledge, subscribe, and deliver to, or at the request of the other Party, such documents and further assurances as may be reasonably required for the purpose of evidencing, preserving, or confirming the agreements contained herein.

(e) No Waiver. Failure of a Party to insist upon strict performance of any provisions of this Agreement will not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Agreement will be waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.

(f) Severability. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

(g) No Relationship. The Parties will not, by virtue of this Agreement nor by the act of any Party, be deemed principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

(h) Assignment. NMCDC may assign its interest in and to this Agreement to an entity related to or affiliated with NMCDC or to a third party with the City's prior written consent, such consent to assignment shall be in the City's reasonable discretion.

(i) Third Party Rights. Nothing in this Agreement, expressed or implied, is intended to confer any rights upon any person or entity other than the Parties and their successors and assigns.

(j) Amendment. No modification of this Agreement will be made or effective unless and until such modification is executed by the Parties, or their successors or assigns.

(k) Entire Agreement. This Agreement constitutes the sole agreement between the Parties and supersedes any and all other Agreements, whether oral or written, with respect to the obligations identified herein. The Parties acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any party or anyone acting on behalf of any Party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement will be valid or binding.

(l) Applicable Law. This Agreement will be construed, administered and enforced according to the laws of the State of Montana.

(m) Counterparts. This Agreement may be executed in any number of counterpart originals, each of which will be deemed an original instrument for all purposes, but all of which will comprise one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the day and year first above written.

THE CITY:

The City of Missoula

Dated: _____, 2024

By: _____

Print Name:

Title:

Dated: _____, 2024

By: _____

Print Name:

Title: City Clerk

NMCDC:

NMCDC Pine & Sash, LLC, a Montana limited liability company

By: North-Missoula Community Development Corporation, a Montana corporation, manager

By: _____

Name: _____

Title: Executive Director

STATE OF MONTANA)
 : ss.
County of Missoula)

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, Executive Director of North-Missoula Community Development Corporation.

Notary Public

**EXHIBIT A
TO
EASEMENT AGREEMENT**

Tract 2: Income-Qualified Home Ownership Project (“**Tract 2**”)

TRACT 2 OF AMENDED PLAT OF SCOTT STREET LOTS, LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; CONTAINING 5.16 ACRES, MORE OR LESS; ON FILE IN THE RECORDS OF MISSOULA COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

Geo code: 04-2200-16-2-03-24-0000 Tax Id: 422214002

Tract 3: Market Rate Housing Project (“**Tract 3**”)

TRACT 3 OF AMENDED PLAT OF SCOTT STREET LOTS, LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; CONTAINING 5.16 ACRES, MORE OR LESS; ON FILE IN THE RECORDS OF MISSOULA COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

Geo code: 04-2200-16-2-03-26-0000 Tax Id: 422214003

EXHIBIT D

CONSENT AND RATIFICATION AGREEMENT

The undersigned has reviewed and acknowledges and accepts the conditions and covenants of this Real Property Donation Agreement and agree to accept title to the Property.

NMCDC Pine & Sash, LLC, a Montana limited liability company

By: **NORTH-MISSOULA COMMUNITY DEVELOPMENT CORPORATION,**
a Montana nonprofit corporation, its sole member

By: _____
Its: _____
Date: _____

EXHIBIT E

PROPERTY TO BE ENCUMBERED FOR CONSTRUCTION FINANCING

TRACT 4 OF AMENDED PLAT OF SCOTT STREET LOTS, LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; CONTAINING 9.14 ACRES, MORE OR LESS; ON FILE IN THE RECORDS OF MISSOULA COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

DEVELOPMENT RIGHTS AGREEMENT

THIS DEVELOPMENT RIGHTS AGREEMENT (the “**Agreement**”) is made this ____ day of _____, 2024, (the “**Effective Date**”) by and between Ravara Development, LLC, a Montana limited liability company whose address is 129 West Alder Street, Missoula, MT 59802 (“**Developer**”), and NMCDC Pine & Sash, LLC, a Montana limited liability company (“**Owner**”).

Recitals:

A. Owner is acquiring certain real property located in Missoula County, Montana, containing approximately 5.16 acres (the “**Property**”), which will be donated to the Owner by the City of Missoula (the “**City**”). The Property is more particularly described and identified in **Exhibit “A.”**

B. Developer is a special purpose entity created for the purpose of developing the Property into an Income Qualified Home Ownership Project (the “**Project**”), which is more particularly described in the Development Agreement, dated _____, 2024, by and between Developer and the City, which Owner consented to and encumbers the Property (the “**City Development Agreement**”).

Agreement:

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Development Rights. Subject to terms and conditions of this Agreement and the reservations and exclusions in the warranty deed for the Property delivered to Owner by the City and the City Development Agreement, Owner hereby grants to Developer the exclusive right to possess the Property to develop the Project together with all rights appurtenant to the Property needed to develop, construct, own, sell, lease, mortgage, and otherwise dispose of the Project, as provided in this Agreement (collectively, the “**Development Rights**”). The Development Rights are intended to be in the nature of a property interest sufficient to confer possession of the Property and ownership of all improvements comprising the Project to Developer.

(a) Developer will develop and construct 89 units (each, a “**Unit**”) on the Property, of which 40 Units are currently targeted for income-qualified home ownership housing (each, a “**Restricted Unit**”). The current plan depicting the Project is attached to this Agreement as **Exhibit “B.”** Each Unit will be a townhome or condominium unit established pursuant to the Declaration and the Unit Ownership Act.

(b) To compensate Owner for Owner Costs (defined below) and for Owner’s overhead related to Owner’s permanent role as the community land trust for the Restricted Units, Owner collects a transfer fee equal to one percent (1%) of the gross sale price of each Restricted Unit (the “**Restricted Unit Transfer Fee**”). The Restricted Unit Transfer Fee applies to the initial sales of Restricted Units by Developer (subject to credits for advances paid to Owner for Owner costs as provided in subsection “(c)” below) pursuant to this Agreement and to the subsequent

resale of each Restricted Unit pursuant to the ground lease or deed restriction (as applicable) affecting each Restricted Unit.

(c) Developer shall be responsible for all costs and expenses associated with the Project, including, without limitation, the costs and expenses of permits, entitlements, impact fees, utility connection fees, design, construction, construction loan fees and interest, and real estate taxes and other costs and expenses of carrying the Property during construction; provided, however, certain costs associated with establishing and administering the community land trust component of the Project will be borne by Owner, including costs related to (i) organization of the Owner entity; (ii) legal review and negotiation of this Agreement, preparing transfer instruments for Restricted Units, and other legal services related to the Project on behalf of Owner; (iii) Owner's accounting and bookkeeping (e.g., software subscription and professional accounting fees); (iv) marketing and advertising of Restricted Units; (v) staff time and expenses for income-qualifying prospective buyers of Restricted Units; and (vi) legal representation for Unit Buyers of Restricted Units (collectively, "**Owner Costs**").

(d) Developer agrees that its occupation of the Property shall be in its existing condition, AS-IS, WHERE IS, without any representation or warranty of any kind from Owner. Owner is taking title to the Property before construction of the Project is completed at the request of the City and Developer to facilitate the Project. Owner has not inspected, and will not inspect, the Property or any information related to the Property.

(e) Developer will prepare a draft of the declaration of unit ownership and covenant, conditions, and restrictions for the Project (the "**Declaration**") for review by Owner. Developer and Owner will work collaboratively to finalize the structure for the community land trust to be established on the Property. The Declaration shall be consistent with and shall enable the agreed-upon structure for the community land trust and the affordability targets in the City Development Agreement. The provisions of the Declaration that will impose material obligations upon Owner or that have material impacts on the community land trust or Restricted Units will be subject to Owner's approval, not to be unreasonably withheld. Owner will be the "declarant" or provide a landowner's consent, as appropriate, to the agreed-upon form of Declaration. Developer will be responsible for recording the Declaration and providing the certificates and approvals required in connection with recording.

(f) Developer shall hold title to and own the improvements associated with each Unit beginning at the commencement of construction until the Unit is sold to a Unit Buyer. Owner shall maintain fee ownership of the land. The sale prices of Restricted Units shall be governed by the City Development Agreement. Developer shall be entitled to all net proceeds from Unit sales, subject to payment of (i) the Restricted Unit Transfer Fees to Owner, and (ii) any outstanding construction loan liens.

(g) At the closing of each Restricted Unit, described on the final plat as townhomes or condos, Owner shall execute, as landlord, a ground lease to the buyer of the applicable property interest (the "**Unit Buyer**"). Developer and Owner will work collaboratively to finalize the form of ground lease in concert with finalizing the Declaration, as described in Section 1(e) above.

(h) At the closing of each Unit, Developer shall convey the improvements associated with each Unit to the Unit Buyer pursuant to a form of deed and bill of sale to be negotiated by the parties.

(i) Developer or its general contractor will deliver to each Unit Buyer a residential home warranty for their Unit as required by Mont. Code Ann. § 28-2-2202. Developer will perform, and cause its general contractor to perform, their obligations to Unit Buyers under residential home warranties.

2. Term. This Agreement will remain in effect until the earlier to occur of (as applicable, the “**Term**”): (a) each and every Unit is sold to a Unit Buyer, or (b) mutual agreement of earlier termination by the Developer and the Owner.

3. Entitlements. Subject to the terms of this Agreement, Developer shall have the right to pursue and shall be responsible to apply and pay for any and all entitlements and/or approvals from applicable governmental entities for the Project that Developer deems necessary or appropriate in Developer’s sole discretion (the “**Entitlements**”). Developer shall be responsible to pay all application fees and other costs required to obtain the Entitlements. Owner shall cooperate with Developer in connection with the Entitlements and to sign any applications or other documents requested by Developer to enable Developer to obtain the Entitlements. Developer shall have the right to complete all applications and represent the Project in all meetings with governmental staff and hearings before boards, planning commissions, and city/county councils.

4. Financing.

(a) The Parties agree to cooperate with mortgage loan brokers, as needed, to obtain construction financing for the Project, and to satisfy all conditions precedent to closing and funding of the loan. Developer shall be responsible to pay all commitment fees and other fees required in connection with loans. Developer will retain the sole authority to make all binding decisions concerning financing of the Project.

(b) The Parties agree that Developer may encumber the Property to obtain construction financing and for purposes of construction (including applicable trust indentures, and construction liens) related to the Property, and Owner agrees to cooperate in any way necessary to facilitate such financing, at no material cost to Owner. Owner’s liability with respect to any Developer financing will be limited to its interest in the Property.

(c) Any Developer financing secured by Units and/or the Property must provide for partial releases as to Units that are completed and sold to Unit Buyers. Owner’s applicable property interest associated with Restricted Units shall be free and clear of all monetary liens when such Restricted Units are sold to Unit Buyers.

5. Design and Construction. Developer is developing the Project on its own behalf (and not for or on behalf of Owner) and as such Developer will have complete discretion over the design, development, and construction of the Project, including, without limitation, the right and responsibilities of (a) selecting and hiring architect(s) and contractors to design and construct the Project, (b) negotiating the terms of all design and construction contracts, and entering into such contracts; (c) communicating and interfacing with the architect and contractors; (d) reviewing

drawings, plans and specifications prepared by the architect; (e) providing or contracting for construction management services.

6. Sale of Property. Until all Units have been sold, Owner shall not sell any portion of the Property without the prior written consent of Developer, or permit any lien or encumbrance to be placed on the Property without the Developer's prior written consent.

7. Termination.

(a) Termination by Developer. Developer may terminate this Agreement in the event of an Owner Default. The following shall constitute an "**Owner Default**": failure of Owner to comply with any material provision of this Agreement, and the continuation of such failure for sixty (60) calendar days after written notice thereof from Developer to Owner; provided, however, that if the time required to cure and remedy such default shall exceed sixty (60) calendar days, Owner shall not be in default hereunder if Owner commences to cure such failure as soon as reasonably practicable in view of all circumstances and thereafter diligently prosecutes such curative efforts to completion. In addition to the right to terminate this Agreement, upon the occurrence of any Owner Default (after any applicable notice and cure periods), Developer may, at any time while such Owner Default continues, exercise any other remedies that may be provided at law or in equity. During the continuance of any Owner Default, Developer may also suspend Developer's performance under this Agreement, and any such suspension by Developer shall not constitute a breach of this Agreement. Nothing in this Section shall prevent Developer from seeking monetary damages from Owner in the event of Developer's termination hereunder.

(b) Termination by Owner. Owner may terminate this Agreement in the event of a Developer Default. The following shall constitute a "**Developer Default**": (i) failure of Developer to comply with any material provision of this Agreement, and the continuation of such failure for sixty (60) calendar days after written notice thereof from Owner to Developer; or (ii) Developer's default under the City Development Agreement and the continuing of such default after notice from the City and expiration of applicable cure periods; provided, however, that with respect to clause "(i)" above, if the time required to cure and remedy such default shall exceed sixty (60) calendar days, Developer shall not be in default hereunder if Developer commences to cure such failure as soon as reasonably practicable in view of all circumstances and thereafter diligently prosecutes such curative efforts to completion. In addition to the right to terminate this Agreement, upon the occurrence of any Developer Default (after any applicable notice and cure periods), Owner may, at any time while such Developer Default continues, exercise any other remedies that may be provided at law or in equity. During the continuance of any Developer Default, Owner may also suspend Owner's performance under this Agreement, and any such suspension by Owner shall not constitute a breach of this Agreement. Nothing in this Section shall prevent Owner from seeking monetary damages from Developer in the event Owner's termination hereunder.

8. General Indemnification. Owner and Developer shall each indemnify, defend, protect and hold harmless the other Party, and each of its shareholders, partners, directors, officers, members, managers, employees, agents, attorneys, representatives, successors, and assigns (collectively, the "**Indemnified Parties**") to the fullest extent permitted by applicable law, from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without

limitation, attorneys' fees, costs, and expenses, but specifically excluding any consequential, special, or punitive damages) arising from, relating to, or in connection with: (a) gross negligence, fraud, or willful misconduct; (b) an event of default; or (c) acts outside the scope of authority granted under this Agreement.

Notwithstanding the foregoing general indemnification, Developer hereby indemnifies and releases Owner and North-Missoula Community Development Corporation, from any claims arising from personal injury, construction defects, failure to pay Project costs, release of hazardous materials, and violations of law or environmental restrictions related to the Developer's development of the Project, except to the extent that such claims are a result of Owner or North-Missoula Community Development Corporation's negligence or willful misconduct.

9. No Personal Liability. In no event shall any member, shareholder, manager, director, officer, employee, representative, attorney, or agent of a party hereto or their respective Affiliates have any personal liability for the performance of such party's obligations under this Agreement.

10. Insurance. Developer will maintain, at its sole cost and expense, the following insurance coverages throughout the term of this Agreement:

(a) Commercial general liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Automobile liability insurance covering owned, hired, and non-owned vehicles, with a limit of at least \$1,000,000 each accident.

(c) Excess liability insurance insuring losses in excess of the insurance required under Sections 12(a) and (b) equal to at least \$1,000,000 per occurrence.

(d) Owner and North-Missoula Community Development Corporation shall be named as additional insureds on Developer's insurance policies. Owner shall also be named as additional insured on the general contractor's liability insurance policies procured in connection with the Project. All insurance shall be obtained from companies with a rating of A or better by A.M. Best and require at least thirty (30) days advance notice to Owner of an intention to cancel the policy. Developer shall deliver to Owner evidence satisfactory to Owner of such insurance within 15 days receiving a written request from Owner. Owner shall not reimburse Developer for the cost of such insurance or for any other coverages that Developer obtains related to this Project.

(e) Developer shall also hold property insurance insuring the full replacement value of the improvements comprising the Project whether in the form of a builder's risk policy or as otherwise required by the construction lender (the "**Property Insurance Policy**").

11. Casualty. In the event of a fire or other casualty, Developer shall cause the damaged portions of the Project to be completely restored or removed from the Property so that damaged improvements are not allowed to remain and become an eyesore or nuisance or diminish the value of the Property, and the proceeds of the Property Insurance Policy shall be applied to such obligation. Construction lender shall have the right to direct the proceeds of the Property Insurance

Policy in compliance with the terms of the Construction Deed of Trust and the Construction Loan Agreements.

12. Specific Performance.

(a) The Parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity.

(b) Each Party further agrees that: (i) no such Party will oppose the granting of an injunction or specific performance as provided herein on the basis that the other Party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity; (ii) no such Party will oppose the specific performance of the terms and provisions of this Agreement; and (iii) no other Party or any other person or entity shall be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 12, and each Party irrevocably waives any right it may have to require the obtaining, furnishing, or posting of any such bond or similar instrument.

13. Cumulative Remedies. The rights and remedies of either party under this Agreement with respect to the occurrence of a default are cumulative with, and in addition to, any other right or remedy available to such party at law, in equity, or both.

14. Ownership; Authority. Owner is the fee simple owner of the Property and the transactions contemplated under this Agreement have been authorized by all action required by Owner's governing instruments. Owner has the authority and power to sign this Agreement, to perform all of Owner's obligations under this Agreement, and to sign and deliver all of the documents required to be signed and delivered by Owner as contemplated under this Agreement, without the consent or approval of any other person. The persons signing this Agreement represent and warrant that they have all power and authority necessary to bind Owner to this Agreement.

15. Miscellaneous.

(a) Force Majeure. In discharging its duties as set forth in this Agreement, Developer shall be held to a standard of reasonableness and shall not be liable to Owner for matters outside its control, including but not limited to acts of God, civil riot, war, pandemic, strikes, labor unrest, or shortage of material.

(b) Attorneys' Fees. Should any party breach any of the covenants or agreements made by that party herein, the party committing the breach shall pay all costs, expenses, and reasonable attorneys' fees which any other party may incur in enforcing or terminating this Agreement, or in pursuing any other remedy provided for hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, including, without limitation, costs, expenses and fees incurred in successfully defending against counterclaims or third party claims and in any successful appeals. In addition, should any party hereto file bankruptcy or be subject to involuntary bankruptcy proceedings, that party shall pay all costs,

expenses and reasonable attorneys' fees incurred by any other party hereto in protecting its rights or remedies hereunder in said bankruptcy proceeding.

(c) Modification or Amendments. No amendment or modification of this Agreement shall be valid unless in writing and signed by Developer and Owner.

(d) Binding Nature; Successors and Assigns. The terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that the rights and obligations of either party under this Agreement may not be assigned without the express written consent of the other Party, such consent not to be unreasonably withheld, conditioned, or delayed.

(e) Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire understanding and agreement of the parties and any and all prior agreements, understandings or representations relating to the subject matter of this Agreement are hereby terminated and canceled in their entirety and are of no force and effect. All exhibits attached hereto and referred to herein are incorporated into this Agreement by reference and form a part hereof.

(f) 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.

(g) 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.

(h) 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.

(i) No Third-Party Beneficiaries. This Agreement is being entered into for the benefit of the Parties together with their respective successor and permitted assignees, but not with the intention of benefiting and not for the benefit of any other party, including, without limitation, any creditor of any party.

(j) Cooperation by Owner. Owner shall cooperate with Developer in connection with Developer's timely performance and discharge of the services provided by it to Owner as contemplated under this Agreement, and, in furtherance of the foregoing, Owner, or an individual or entity authorized to sign on Owner's behalf, shall promptly sign any applications, submittals, draws, invoices or other documents or instruments reasonably requested by Developer in connection with the development, leasing and the construction of the Project.

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

(1) Conflicting Agreement. In the event of any conflict or inconsistency between the City Development Agreement and the Agreement, this Agreement shall govern and control.

16. Relationship of the Parties. Nothing in this Agreement shall be construed to create a partnership or joint venture between Owner and Developer. Developer is developing the Project on its own account and is not acting as an employee or independent contractor for Owner.

17. 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.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Owner and Developer have signed and delivered this Agreement effective as of the Effective Date, on the dates set forth below.

DEVELOPER:

RAVARA DEVELOPMENT, LLC,
a Montana limited liability company

By: _____
Its: _____
Date: _____

OWNER:

NMCDC Pine & Sash, LLC, a Montana limited liability company

By: **NORTH-MISSOULA COMMUNITY DEVELOPMENT CORPORATION,**
a Montana nonprofit corporation, its sole member

By: _____
Its: _____
Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

TRACT 2 OF AMENDED PLAT OF SCOTT STREET LOTS, LOT 3, LOCATED IN THE NORTH HALF OF SECTION 16, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; CONTAINING 5.16 ACRES, MORE OR LESS; ON FILE IN THE RECORDS OF MISSOULA COUNTY, MONTANA, AT BOOK 39 OF PLATS, PAGE 58.

EXHIBIT B

