

CITY OF MISSOULA LOAN AGREEMENT

Scott Street Community Land Trust Construction Loan

This Loan Agreement (“**Agreement**”) is made by and between **City of Missoula**, 435 Ryman Street, Missoula, Montana (“the **City**” or “**Lender**”) and **Ravara Development, LLC**, a Montana limited liability company whose address is 129 W Alder St, Missoula, MT 59802 (“**Ravara**” or “**Borrower**”).

RECITALS

1. The Property. On August 14, 2020 the City acquired real property legally described as Lot 3, Scott Street Lots (the "**Master Property**") pursuant to the Grant Deed found at Book 1037, Page 150, in the property records of Missoula County, Montana. The City subsequently divided the Master Property to create a right-of-way parcel and three remainder tracts, shown on the Amended Plat of Scott Street Lots, Lot 3, found at Book 39 Plats, Page 58, in the records of Missoula County Montana.

2. Community Land Trust. The City and Ravara executed a Letter of Intent on February 18, 2021, to jointly redevelop the Master Property. The Letter of Intent identified a portion of the Master Property to be developed with permanently affordable ownership housing known as the “**Home Ownership Parcel.**” The Home Ownership Parcel is legally described as:

Tract 2 of the Amended Plat of Scott Street Lots, Lot 3, a subdivision of the City of Missoula, County of Missoula, Montana.

3. Design and Construction Loan. This Agreement provides funding to facilitate the design and construction of the Home Ownership Parcel. As more specifically described in the remainder of this Agreement, Lender intends to loan money to Borrower for the construction of homes on the Home Ownership Parcel and other associated costs necessary to assure completion of the project contemplated by this Agreement and the Letter of Intent. The Lender is providing the Loan to Borrower to be used as set forth herein.

4. Repayment. The Borrower will repay the loan as set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1

DEFINITIONS

Terms not elsewhere defined in this Agreement shall have the meaning provided below:

1.01 “Collateral” shall mean the real property making up the Home Ownership Parcel and any improvements constructed thereon granted as security for this loan in a deed of trust to be executed at the same time as this Agreement.

1.02 “Design Documents” shall mean the architectural, engineering, technical, or other plans or documents necessary for the planning, construction, development, formation of the homeowner’s association, and legal documents relating to the community land trust lease of the Project, in all cases which are required to obtain a City of Missoula building permit and certificate of occupancy for the Project .

1.03 “Loan Documents” mean, collectively, this Agreement, the Promissory Note, and any other documents, executed and/or delivered in connection herewith.

1.04 “Project” means the development, construction, and sale of 89 units (“Units”) of housing on the Home Ownership Parcel in accordance with the Development Agreement entered into between Borrower and Lender concurrently with this agreement (“Development Agreement”), together with such other improvements, such as landscaping, curbing, parking and paving, as may be necessary for such residential development.

ARTICLE 2

BORROWER’S AGREEMENT TO CONSTRUCT AND LENDER’S AGREEMENT TO LOAN FUNDS

2.01 Loan. Subject to the terms and conditions of this Agreement, the Lender agrees to make a loan to Borrower in the principal amount not to exceed one million six hundred forty thousand dollars (\$1,640,818) (the “Loan”).

2.02 The Note. The Loan shall be evidenced by a promissory note (the “Promissory Note”), executed and delivered simultaneously by Borrower.

2.03 Use of Loan Amount for the Development. The Loan shall be used solely for costs necessary to execute the Project; Borrower shall retain and provide upon request documentation demonstrating the appropriate application of funds to the Project. Loan funds shall be used solely for Project costs consistent with the Development Agreement between the Parties.

2.04 Tax Receipts. Borrower shall, on demand, submit to Lender evidence showing that current property taxes and assessments for any portion of the Home Ownership Parcel have been paid. Disbursement of loan proceeds shall be suspended in the absence of evidence that all tax payments are current. It is the responsibility of the Borrower to demonstrate to the Department of Revenue that a portion or the entirety of the Home Ownership Parcel is exempt from applicable property taxes if applicable.

ARTICLE 3

COVENANTS, REPRESENTATIONS AND WARRANTIES BY THE BORROWER

3.01 Promise to Construct, Develop and Operate. The Borrower agrees to oversee and cause the Project to be completed in compliance with this Agreement and the Development Agreement.

3.02 Contractual Language Supporting City's Rights. The Borrower shall include the following language in any contract it enters into with respect to funds dispersed under this Agreement.

Ravara Development has entered into a loan agreement with the City of Missoula to fund a portion of the work produced as part of this contract. In the event Ravara Development is considered in default of the loan agreement by the City, the City shall be assigned Ravara Development's right to possess and use any work produced under the terms of this contract in furtherance of Design Documents. In the event the City notifies the design contractor that Ravara Development is in default under the loan agreement, the design contractor shall provide any Design Documents requested by the City and work with the City to complete the design of the Home Ownership Parcel.

3.03 Records, Reports, and Audits. Borrower shall maintain proper books and records of account in accordance with industry best practice and make full and true entries of all dealings and transactions relating to the construction of the Project and will make such records open to inspection by the Lender, its agents and representatives upon reasonable advance written notice and at reasonable times. Borrower shall furnish Lender with such reports, financial statements, records and other information relating to the financial condition of the Borrower and the construction and operation of the Project, as Lender may reasonably request. Borrower agrees to cooperate fully with an audit survey of the Project if so requested.

3.04 Notices. Borrower shall, with reasonable promptness, but in all events within twenty-five (25) days after it has actual knowledge thereof, notify Lender in writing of the occurrence of any act, event or condition which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default. Such notification shall include a written statement of any remedial or curative actions which Borrower proposes to undertake to cure or remedy such default.

ARTICLE 4

DISBURSEMENT

4.01 Amount Disbursed. Loan disbursements shall be administered by First Security Bank, the primary construction lender for the Project, in the same manner as the Bank's loan advances are to be made. Such disbursements shall be subject to the requirements agreed upon by Borrower and

First Security Bank.

4.02 Inability to Complete Project. If the City reasonably determines that there are insufficient undisbursed Loan proceeds and/or other sources of construction financing to enable Borrower to complete the Project, or make any other payments required herein or under the Loan Documents, then the City may refuse to make any further disbursements of Loan proceeds until Borrower has provided evidence of sufficient funds in the amount as determined and certified by the City as the amount required to complete the Project.

ARTICLE 5

REPAYMENT

5.01 Application of Payments. All payments shall be applied first to the payment of interest accrued to the date of receipt thereof, and the balance, if any, to the reduction of principal and any balance thereafter, to the late fee.

5.02 Schedule. At such time that Borrower has no outstanding loan obligations to First Security Bank, and at least fifty percent (50%) of the Units have been sold, funds from all future Unit sales will repay the Lender pro-rata as follows: the number of remaining Units in the Project divided by the total due under the Promissory Note. Borrower shall provide the Lender with a schedule of sales on a monthly basis once sales have begun. In the event Borrower maintains loan obligations to First Security Bank, Lender shall delay payment on this loan until such bank loans have been repaid and all of First Security Bank's security interests have been released or reconveyed.

ARTICLE 6

SUBORDINATION

6.01 Subordination. The City acknowledges that Borrower will be pursuing additional construction loan funds from a third party lender to fund the Project, currently First Security Bank, and the City agrees that the Loan made pursuant to this Agreement, and secured by the Promissory Note and Deed of Trust discussed above, shall be subordinated to any loans obtained by Borrower except that the City will only agree to subordinate the Loan to a total of \$12,000,000 of Borrower's other loans. The City shall execute such documents as requested by Borrower or such Senior Lender to effectuate such subordination. If Borrower obtains new loan funding, Borrower shall prepare a draft subordination agreement to present to the City to be reviewed and approved in order to effectuate this provision.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

7.01 Events of Default. The following shall constitute an "Event of Default" for purposes of this Agreement:

- (a) The failure of Borrower to make any payment of principal or interest under the Promissory Note or failing to pay any other sum due under the Loan documents, within 10 days of when the same shall become due.
- (b) Except as otherwise provided herein, the failure of the Borrower to promptly and accurately perform any covenant or agreement contained in the Loan Document, and the additional failure to cure or remedy such within a period of thirty (30) days after written notice thereof; provided, however, that if such failure cannot be remedied in such time, the Borrower shall have an additional period of one hundred and twenty (120) days or such additional time as is necessary provided Borrower diligently and in good faith pursues such cure or remedy; provided, however the cure period shall not be extended beyond two hundred and seventy (270) days without Lender's written approval, and provided that the Lender may, at its sole discretion, suspend disbursements during this extended cure period.
- (c) Any written representation or disclosure made to Lender by Borrower proves to be materially false or misleading when made, whether or not that written representation or disclosure is in this Agreement.
- (d) The filing by Borrower (or against Borrower to which Borrower acquiesces or that is not dismissed within forty-five (45) days after the filing thereof) of any proceeding under the federal bankruptcy laws now or hereafter existing or any other similar statute now or hereafter in effect; the entry of an order for relief under such laws regarding Borrower; or the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of Borrower.
- (e) The insolvency of Borrower; or the execution by Borrower of an assignment for the benefit of creditors; or the convening by Borrower of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of Borrower to pay its debts as they mature; or if Borrower is generally not paying its debts as they mature.
- (f) The admission in writing by Borrower it cannot pay its debts as they mature or that it is generally not paying its debts as they mature.
- (g) Any levy or execution upon, or judicial seizure of, any portion of any Collateral or security for the Loan.
- (h) Any attachment or garnishment of, or the existence or filing of any lien or encumbrance, other than the Permitted Exceptions or any lien or encumbrance permitted by the Deed of Trust, against any portion of any Collateral or security for the Loan, that is not removed or released within 30 days after its creation. In addition, Borrower may within such thirty (30) days bond over any such lien, or on a case by case basis and in the form and substance satisfactory to Lender in Lender's sole and absolute discretion, provide other reasonable assurances to Lender.

- (i) The institution of any legal action or proceedings to enforce any lien or encumbrance upon any portion of any collateral or security for the Loan, that is not dismissed within 20 days after Borrower becomes aware thereof.

7.02 Remedies Upon Events of Default. Upon the occurrence of an Event of Default, at its option and without notice, the Lender may (but shall not be required to)

- (a) terminate its commitment to make any disbursement hereunder;
- (b) institute any other action, suit, or other proceeding of law or equity, which the Lender shall deem necessary or proper for the protection of its interest; or

(c) use any of the Design Documents produced using any funds from this Agreement. Borrower hereby agrees to assign its rights to use the Design Documents to Lender upon an event of default that is continuing.

7.03 Nonrecourse. The Loan is a nonrecourse obligation of Borrower. Neither Borrower nor any partner of Borrower shall have any personal liability for the repayment of the Loan. Notwithstanding the foregoing, Borrower shall be personally liable to Lender for the repayment of the portion of the Loan equal to any loss or damage suffered by Lender as a result of fraud or willful material misrepresentation by Borrower or any officer, director, general partner, manager, member or employee of Borrower in connection with the application for or creation of the Loan or any request for any action or consent by Lender.

ARTICLE 8

MISCELLANEOUS

8.01 Relationship. Nothing contained in this Agreement or other agreements between Lender and Borrower, nor any act of Lender including inspections and approval of the Project, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship between the City and any entity contracted with or otherwise engaged by Borrower. The signatory parties hereby expressly agree and acknowledge that unless otherwise stipulated by the Letter of Intent, Development Agreement, or other instrument their relationship is that of the Lender and Borrower and that no other relationship is created by this Agreement.

8.02 Security. In addition to any collateral pledge to secure the loan, Borrower expressly agrees that in the case of an Event of Default, Lender shall have the right to use any of the Design Documents, all other construction, architectural and engineering contracts, all operating, management and supervision agreements, and all other documents relating to the development of the Project and the improvements on the Project, each as acceptable to Lender in its sole discretion. Borrower hereby agrees to assign its rights to use the Design Documents to Lender. Borrower agrees to acknowledge this assignment right in favor of Lender as required in Section 3.02 above.

8.03 Borrower Indemnification. Borrower agrees to indemnify, defend, and hold harmless, the City, its officers, administrators, agents, employees, and representatives against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect,

or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury, and property damage, arising out of:

- (a) the execution or delivery of any Loan Document or any agreement or instrument contemplated in any Loan Document, the performance by the parties thereto of their respective obligations under any Loan Document, or the consummation of the transactions contemplated by the Loan Documents; or
- (b) the violation of any representation or warranty of Borrower;
- (c) the construction of the Project.

8.04 City Indemnification. The City agrees to indemnify and hold harmless Borrower and its officers, administrators, agents, employees, and representatives against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect, or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury, and property damage, arising out of:

- (a) the execution or delivery of any Loan Document or any agreement or instrument contemplated in any Loan Document, the performance by the parties thereto of their respective obligations under any Loan Document, or the consummation of the transactions contemplated by the Loan Documents; or
- (b) the violation of any representation or warranty of the City.

8.05 Insurance.

(a) Borrower shall maintain and keep in full force and effect a policy of commercial general liability insurance against claims for personal injury, death, or property damage occurring on, in, or as a result of use of the Property, with a combined single limit for personal or bodily injury and property damage of not less than One Million Dollars (\$1,000,000), and combined single limit of liability of \$1,500,000.00 each occurrence for bodily injury or property damage for all owned, hired, and non-owned automobiles, which term shall include any land motor vehicle, trailer, or semi-trailer designed for travel on public roads, but excluding mobile equipment. Borrower shall furnish to the City evidence of the insurance coverages required herein. The City shall be listed as “additional insured” on the business liability insurance policy. Borrower shall maintain and keep in full force and effect such a policy for the Home Ownership Parcel for the duration of the Project.

(b) Borrower shall ensure that Borrower’s contractor must get and keep in force the following insurance policies ("Contractor's Insurance"): (i) a builder's all risk insurance policy (with Borrower's loss payable clause in favor of Lender and with a physical loss form endorsement), without co-insurance, in an amount not less than one hundred percent (100%) of the replacement cost of the Improvements, with the standard conditions; (ii) public liability insurance with limits of liability equal to at least \$500,000 per occurrence; (iii) workers'

compensation insurance as required by applicable state law; and (iv) automobile liability insurance with limits of liability equal to at least \$300,000 per occurrence. The Contractor's Insurance will be in force until Lender accepts the Improvements as completed.

8.06 Assignment. Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the City. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8.07 Nondiscrimination. All hiring related to the Project 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. Borrower shall comply with the City of Missoula's Affirmative Action Policy Statement, and Title 49 Montana Codes Annotated, entitled "Human Rights." The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula is committed to implement affirmative action to provide all persons equal opportunity for employment without regard to race, ancestry, color, religion, national origin, sex, age, marital or familial status, creed, physical or mental disability, sexual orientation, gender identity or gender expression. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility of actively facilitating equal opportunity for 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 personnel actions are administered on the basis of job necessity.

Specific responsibility for development, implementation, monitoring and reporting will be assigned to the City Personnel staff under the supervision of the Mayor's Administrative Assistant.

It is the policy of the City of Missoula to take affirmative action to eliminate discrimination in personnel policies and procedures that have adverse impact on the "affected class" unless sex, ex-offenders status, and/or physical or mental handicap relates to a bona fide occupational qualification. Equal opportunities shall be provided for all City employees during their terms of employment. All applicants for City employment shall be recruited from the available labor market, and 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.

8.08 No Waiver. This Agreement may be amended, waived or discharged only by writing signed by the party against whom enforcement of the amendment, waiver or discharge is sought. Any oral waiver, change or discharge of any provision of this Agreement by any representative of the parties hereto shall be without authority and of no force or effect.

8.09 Parties Bound. This Agreement shall be binding upon and inure to the benefit of each party and their successors and assigns. This Agreement is a contract by and among the parties hereto for their mutual benefit.

8.10 Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.11 No Waiver. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.

8.12 Choice of Law. This Agreement and the rights and obligations of the parties hereto under this Agreement and under all documentation executed incident to this Agreement shall be construed in accordance with, and governed by, the laws of the State of Montana, without regard to principles of conflicts of laws. The Borrower hereby consents and submits to personal jurisdiction in any state or federal court located within the State of Montana.

8.13 Notices. All notices, requests, demands, approvals, or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by (i) hand or sent by (ii) registered or certified mail, return receipt requested, (iii) by recognized overnight courier, or (iv) facsimile with confirmation by the delivery methods described at 6.05 (i), (ii), and (iii) herein addressed as follows:

If to Lender: Leigh Griffing, Finance Director
City of Missoula
435 Ryman St
Missoula, MT 59802

If to Borrower: Ravara Development LLC
129 W. Alder St.
Missoula, MT 59802
Attn: Dawn McGee

8.14 Headings and Titles. The headings and titles of the articles, sections, and subsections used in this Agreement are for convenience purposes only and shall not be used to interpret any of the provisions of this Agreement.

8.15 Amendments. No part of this Agreement or any other Loan Document may be amended unless there is a written instrument executed by the parties hereto.

8.16 Recitals. The recitals and/or whereas clauses are hereby incorporated as a part of this Agreement.

8.17 Counterparts. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which shall together constitute this Agreement.

8.18 Entire Agreement. This Agreement, the Exhibits hereto, and the agreements referenced herein and therein, embody the entire agreement and understanding between the Lender and the Borrower relating to the Loan and supersede all and any prior verbal or written agreements by and among the parties unless specifically referenced in this Agreement, including without limitation any other Loan Document.

8.19 Effective Date. This Agreement shall be effective upon the date that it is executed by all parties.

8.20 Waiver of Jury Trial. The Lender and the Borrower, after consulting or having the opportunity to consult legal counsel, knowingly, voluntarily and intentionally waive any right such parties may have to a trial by jury in any litigation based upon, or arising out of, this Agreement or any other Loan Document, or any of the transactions contemplated by this Agreement or any course of conduct, dealing, statements (whether oral or written), or actions of any of them. Neither the Lender nor the Borrower shall seek to consolidate by counterclaim or otherwise any action in which a jury trial has been waived with any other action in which a jury trial cannot or has not been waived.

8.21 Survival. All representations, warranties, covenants and agreements made by the Borrower in connection with this Agreement hereto and all certificates delivered by the Borrower, the Project contractor, and the Project architect shall survive the termination of this Agreement and the completion of the Project.

[signature pages follow]

IN WITNESS WHEREOF, the Lender and Borrower have each duly executed, or caused to be duly executed, this Agreement as of the date first written above.

BORROWER:

Ravara Development, LLC

By: _____

Name: Dawn McGee

Title: Authorized Representative

LENDER:

City of Missoula

By: _____

Its: Mayor

Date: _____

Attest: By: _____

City Clerk

Date: _____