

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 West End Farms Land Holdings, LLC, a Montana limited liability company whose address is 131 S Higgins Avenue, Suite P-1, Missoula, MT 59802 (“**West End Farms**”) (the City and West End Farms are referred to individually as a “**Party**” and collectively as the “**Parties**”), with reference to the following:

- A. West End Farms is the owner of Open Space #5 of the plat of West End Homes-Phase 1, located in Missoula County (the “**Parcel**”), and consisting of approximately 16.14 acres;
- B. West End Farms received approval on January 9, 2023 from the City of Missoula to subdivide approximately 71 acres of which the Parcel was included (the “**Subdivision**”);
- C. The West End Homes – Phase I Plat was recorded on August 22, 2024 which resulted in the creation of the Parcel;
- D. The Parcel was reserved for future development as part of the Subdivision¹; and
- E. The Parties wish to effectuate the donation of the Parcel and to clarify their respective rights and obligations associated with such donation.

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

1. Integration of Recitals. The above recitals to this Donation Agreement are incorporated as if fully set forth herein.
2. Donation of Property. Subject to the terms and conditions of this Donation Agreement, West End Farms shall donate to the City the Parcel (the “**Donation**”).
3. Water Rights. No water rights are being conveyed or transferred as part of the Donation.

¹ The City of Missoula Subdivision Regulations require that any subdivision development must include certain ratios of open space or parkland dedication (this set of regulations is hereinafter referred to as the “**City Subdivision Regulations**”; the open space or parkland required by such regulations are hereinafter referred to as “**Parkland**”). As part of the Subdivision, West End Farms has set aside certain acreage (the “**Subdivision Parkland**”) as Parkland and committed to pay for certain improvements pursuant to the City Subdivision Regulations. The Parcel is not needed and was specifically excluded as Subdivision Parkland.

4. Closing.

(a) The closing (“**Closing**”) of this Donation will take place by December 23, 2024.

(b) On the Closing Date, the City will execute and/or deliver to Fidelity National Title, 320 W. Broadway, Missoula, MT (the “**Title Company**”) affidavits and evidence of authority or other documents, if any, as may be reasonably required by Title Company.

5. Prorations. All real property taxes, special taxes, and assessments, if any, will be prorated (employing a 365-day year) between West End Farms 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.

6. Closing Costs. The City and West End Farms shall each be responsible for their own attorneys’ fees, costs, and expenses associated with this Agreement. West End Farms will be responsible for: (a) one half of the Title Company’s cost of the title commitment, title policy, and other title related costs; (b) one half of escrow or closing fees; and (c) one half of the recording fees related to the deed.

7. Conditions to Closing.

(a) The obligation of the West End Farms to close, fund, and consummate the Donation contemplated by this Agreement is specifically contingent on the fulfillment, satisfaction, and/or completion of the following:

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

(ii) The City is prepared and ready to accept the Parcel.

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

(i) West End Farms’s representations and warranties set forth herein will be true and correct on the Closing Date;

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

8. Title Commitment. Within 10 days of the Effective Date, West End Farms will cause to be delivered to the City a title commitment (“**Title Commitment**”) from the Title Company committing to issue in favor of the City a standard coverage owners policy of title insurance in the amount of \$500,000 or the value determined by West End Farms, as determined by West End Farms, and copies of all documents listed on Schedule B to the Title Commitment as

exceptions to coverage. The City will have 30 days from receipt of the Title Commitment (“**Title Review Period**”) to notify West End Farms in writing of any objections (“**Title Objections**”) to title as revealed in the Title Commitment, which writing will set forth the specific basis for the City’s objection(s). If the City fails to notify West End Farms of any Title Objections prior to the expiration of the Title Review Period, then the City will be deemed to be satisfied with the condition of title and to have waived all Title Objections. If the City does deliver written notice of its Title Objections within the Title Review Period, the City will be deemed to have waived any objections to matters shown on the Title Commitment and not objected to in the City’s notice of Title Objections. As to those Title Objections raised by the City during the Title Review Period, the City will work with the Title Company to resolve, if reasonably possible, the objections. If the City notifies West End Farms that the City is unable to cure or obtain insurance over the Title Objections prior to the Closing, the City will, at the City’s sole option: (a) notify West End Farms in writing prior to the expiration of the Due Diligence Period that the City 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 the City will proceed to Closing. After the expiration of the Title Review Period and so long as the City has not terminated this Donation Agreement, the remaining title exceptions will be deemed, “**Permitted Exceptions**”. Notwithstanding the forgoing, West End Farms 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.

9. Conveyance of Title. At Closing, West End Farms shall convey to the City title to the Property by special warranty deed (“**Deed**”) in the form attached hereto as Exhibit “A” subject only to: (a) taxes and assessments not yet due and payable for the year of Closing and subsequent years; and (b) the Permitted Exceptions. The Deed will transfer all of West End Farms interest in the Parcel.

10. The City’s Acknowledgement of West End Farm’s Donation of the Parcel.

(a) The City acknowledges that West End Farms intends to seek a tax deduction for the Donation pursuant to Section 170 of the Internal Revenue Code and agrees to take all actions reasonably requested by West End Farms to accomplish the same, including but not limited to executing the Internal Revenue Services (“**IRS**”) Form 8283 and providing West End Farms a contemporaneous written acknowledgment or other verification and documentation as West End Farms determines is required to substantiate the Donation.

(b) The City hereby warrants and represents to West End Farms, and any state of federal taxing authority, that (i) West End Farms did not receive goods, services, or other things of value, from the City as condition or a result of the Donation of the Parcel; (ii) that the City’s the approval of the Subdivision was independent of the Donation and the Subdivision would have been approved on the same terms and conditions irrespective of the Donation; and (iii) that the Parcel is developable in accordance with the Subdivision Regulations and that the Parcel is not needed to satisfy, and has not been earmarked, for any parkland or other requirement associated with the Subdivision Regulations.

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

11. Acceptance of Property. Except as otherwise stated in this Agreement, THE CITY REPRESENTS AND WARRANTS TO, AND COVENANTS AND AGREES WITH WEST END FARMS THAT THE CITY 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.

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 Donation Agreement. This Donation 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 Donation 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 Donation Agreement and any and all related documents have been validly authorized by the City to sign on the City’s behalf.

(b) West End Farms 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) West End Farms 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 Donation Agreement in accordance with the terms and conditions hereof.

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

(iii) The execution, delivery and performance of this Donation Agreement by West End Farms will not violate or constitute a breach under: (a) the terms of any contract or other agreement to which West End Farms is a party or by which West

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@parsonsbehle.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-Civil
Telephone: 406-552-6150
E-Mail: civilattorney@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 Donation Agreement will survive Closing, and all obligations and rights of West End Farms and the City shall be valid and enforceable post-Closing.

17. Miscellaneous.

(a) No Third Party Beneficiary. Except as provided herein, no term or provision of this Donation 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 Donation Agreement (including, without limitation, any broker), and no other person, firm, corporation or entity will have any right or cause of action under this Donation Agreement.

(b) Amendment. Neither this Donation 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 Donation Agreement, the Parties shall bear their own attorneys' fees and costs.

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

(e) Applicable Law. This Donation 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 Donation Agreement.

(g) No Partnership. This Donation 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 Donation Agreement.

(i) Severability. The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Donation 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 Donation 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 Donation Agreement.

(k) Construction. The City and West End Farms acknowledge that they and their counsel have reviewed and revised this Donation 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 Donation Agreement or any schedules, exhibits or amendments hereto.

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

(m) Counterparts. This Donation 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.

Formatted: Justified

[SIGNATURE PAGE FOLLOWS]

Donation Agreement

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

WEST END FARMS:

Dated: _____, 2024

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

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

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

By: _____
Name: Justin Metcalf
Title: Authorized Representative

EXHIBIT A
FORM OF DEED

RETURN RECORDED DOCUMENT TO:

[The City of Missoula
Attn:
435 Ryman
Missoula, MT 59802]

SPECIAL WARRANTY DEED

FOR VALUABLE CONSIDERATION, WEST END FARMS LAND HOLDINGS, LLC, a Montana limited liability company, its successors, and assigns, whose address is 131 South Higgins Avenue, Suite P-1, Missoula, MT 59802 (the “**Grantor**”), as of _____, 2024, hereby grants, sells, transfers, and conveys to 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 (“**Grantee**”) in fee simple forever, the real property located in Missoula County, Montana, and more particularly described as follows (the “**Property**”):

Open Space #5 of the plat of West End Homes-Phase 1, according to the map of plat thereof on file and of record in the office of the Clerk & Recorder of Missoula County, Montana.

Tax ID: [TBD]

Geocode: [TBD]

TOGETHER WITH all right, title, and interest of the Grantor in the buildings, improvements, fixtures, rights, privileges, easements, rights of way, reversions, remainders, rents, royalties, issues, and profits which are appurtenant to or obtained from the Property, including, without limitation, all development rights and entitlements which are appurtenant to the Property.

LESS AND EXCEPTING all water rights and ditch rights, appurtenant to or used on the property not otherwise reserved by Grantor’s predecessors in interest.

SUBJECT, HOWEVER, TO THE FOLLOWING

- (a) Reservations and exceptions in patents from the United States or the State of Montana;
- (b) Easements, rights-of-way and other real property rights, encumbrances and restrictions apparent or of public record;

(c) All outstanding interests and reservations pertaining to all water rights, mineral, gas, oil, and other hydrocarbon rights reserved by Grantor's predecessor in title, if any;

(d) Taxes and assessments for 2024 and subsequent years; and

(e) ~~Grantor intends for the Property to be used and/or maintained by the City as Open Space as defined in MMC § 12.56.015 (2024) until December 31, 2074, and Grantee agrees to accept the Parcel subject to this restriction and comply with this particular purpose of the donation.~~
The Grantor covenants as follows:

1. That the Grantor owns the Property in fee simple;
2. That the Property is free from liens, covenants, encumbrances, easements, restrictions, and burdens not excepted above;
3. That the Grantor has the right and power to convey fee simple ownership of the Property to the Grantee;
4. That the Grantee will quietly enjoy the Property; and
5. That the Grantor will forever warrant the title to the Property and defend the Grantee against all persons who claim a lawful interest in the Property, by, through, or under Grantor, but not further or otherwise, and further except for persons who claim interests under the exceptions described above.

[Signature page follows]

DATED _____, 2024.

WEST END FARMS:

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

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

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

By: _____
Name: Justin Metcalf
Title: Authorized Representative

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Justin Metcalf as the Authorized Representative of Evergreen Partners, LLC, an Oregon limited liability company, manager of West End Manager, LLC, a Montana limited liability company, manager of West End Farms Land Holdings, LLC, a Montana limited liability company.

NOTARY PUBLIC