



MEMORANDUM

TO: MRA Board of Commissioners

FROM: Ellen Buchanan, Director 

DATE: June 27, 2025

SUBJECT: Riverfront Triangle/Fox Site Development (Riverfront Triangle URD/Ward 1)

Executive Summary: The following memo details a Request for Endorsement of Agreements for Sale and Development of the City-Owned Fox Theater Site. The memo will discuss

- Project Components
- Important Construction and Phasing Elements of the Agreements
- Parking Options
- Affordable Housing Benefits
- Land Use & Development Requirements
- Public Benefits

The MRA Board will be asked to endorse the following agreements culminating in a recommendation for the sale of the City owned property to Averill Hospitality Group:

- Purchase and Sale of Real Property
- Development Agreement
- Fox Triangle Land Use and Development Requirements Agreement

Following the MRA Board meeting on July 7, the City Council will discuss the agreements in Committee on July 16 and act on them at the regular City Council meeting on July 21.

Background

The Mayor's office and the MRA have been working with the Averill Hospitality Group (AHG) for over a year on the development of the City owned property commonly known as the Fox site. The Board may recall that the Averill family was a part of the Hotel Fox Partners group that proposed to build a hotel and conference center on this property in response to the last Request for Proposals that MRA issued in 2011. That effort was not successful, in part due to the complexity of the structure that was necessary in order to include a 50K to 60K square foot conference center as part of the hotel development. Determining the scope of the project and crafting of those agreements began in 2011 and the agreements were approved by City Council in 2017, six years later. Ultimately, Hotel Fox Partners was unable to successfully move forward with the development. A subsequent proposal to build a hotel and a large performance venue was rendered unfeasible as a result of the pandemic which decimated the entertainment industry.

MRA has continued to talk with numerous parties in order to attract a developer for both the property owned by the City and the privately owned property in the URD. Over a year ago AHG expressed an interest in continuing their efforts to develop a hotel on the City owned site. That project is proving to be viable and City staff and AHG have agreed to the terms memorialized in the Purchase and Sale Agreement (PSA), the Development Agreement and a Land Use and Development Requirements

Agreement (LUA). These agreements along with a request for approval to sell the property will be presented to City Council after the MRA Board has taken action at this meeting. The request to the Board at this time will be to make a recommendation to the City Council that they approve the agreements listed above and approve the sale of the City owned property to AHG.

The Project Components

- A hotel with approximately 180 hotel rooms and condominiums.
- Approximately 15,000 square feet of space for meetings, small conferences, banquets and/or entertainment within the hotel.
- A parking facility adequate for the hotel functions plus any additional parking that the City may be in a position to purchase.
- Utilities, streets, curb, gutter, sidewalks and street trees to serve the hotel project.
- Reconstruction of the trail along the riverfront with a minimum width of 14' with 2-foot shoulders on either side.
- An 18,000 - 24,000 square foot public plaza located generally on the vacated Owen Street right of way between Front Street and the riverfront trail. The plaza will include hardscape and softscape areas and be designed to include public seating, private food and beverage service areas with seating, be ADA accessible, accommodate all modes of active transportation and possibly include interpretive displays and art.

Important Construction and Phasing Elements of the Agreements

- AHG will purchase approximately 1.99 acres of City owned property south of West Front Street and west of Orange Street for \$4M in two payments.
- \$1.7M is payable at closing in cash.
- \$2.3M is secured by a promissory note bearing no interest which will be secured by a trust indenture and shall be payable either at the time of issuance of a building permit or five years from the date of execution of the promissory note.
- If AHG fails to perform, the City has the right to repurchase the property for a price equivalent to the portion of the purchase price paid by AHG plus AHG's hard, soft and development costs in an amount not to exceed \$250K plus all costs associated with the trail and plaza.
- Phase I of the public improvements will consist of all subsurface utilities needed to serve the hotel project.
- AHG will design and construct the phase 1 public improvements with design being concurrent with design of the hotel and construction occurring only after AHG has secured construction financing and obtained building permits (or be in a position to obtain building permits) for the hotel.
- AHG will be reimbursed for phase 1 public improvements costs through the use of a portion of the purchase price for the land and TIF funds available in the FY26/27 MRA budgets.
- Phase 2 public improvements will consist of all streets, sidewalks, curb, gutter, street trees and other street infrastructure adjacent to the hotel project.
- AHG will design and construct phase 2 public infrastructure concurrently with construction of the hotel and will be reimbursed through the use of available TIF funds in the District, TIF bonding capacity and any public funds from the sale of the property that is not needed for phase 1. Should there not be adequate funds from the above sources, AHG will provide private funds that will be repaid as TIF becomes available.
- Phase 3 public improvements include the public plaza, trails, riverfront park and the Owen Street greenway system.
- AHG will commence design and construction of phase 3 in coordination with the construction of the hotel and will be funded through the use of any new increment created by the hotel project or other development in the URD, the use of any new bonding capacity and developer funding as described in phase 2 funding.
- Any developer funding that may be necessary for phases 2 or 3 will have an agreed upon carrying costs which take into consideration the 0% interest on the promissory note.

- Any funding from AHG for phases 1 and 2 will be reimbursed monthly from the sources described above.
- The costs for the plaza and trails in phase 3 may be financed through AHG's construction lender under mutually agreed upon terms and will be reimbursed by the City/MRA. AHG will be reimbursed for all soft and hard costs for phase 3 as well as any interest paid to the construction lender attributable to the phase 3 bank financing with no additional fees added by AHG.
- AHG and the City will coordinate on the design and construction of the plaza and the trail connection between Front Street and the riverfront trail and AHG will be responsible for constructing the agreed upon design with reimbursement from the City/MRA. AHG will work with MRA and Parks and Recreation staff to review the design of the trail and plaza at the pre-design phase, and at 30% and 100% schematic design and at 30% and 60% design development phases.
- The plaza and trails will be owned by the City and the plaza will be managed by AHG.

Parking Options

- The City may purchase a mutually agreed upon number of parking spaces in the subterranean parking garage under the hotel to be used as public parking with closing of the purchase no later than 30 days following substantial completion of the parking.
- If the City chooses to purchase parking spaces, the price will be market rate per parking space at the time of purchase. Market rate will be determined by all of AHG's actual hard and soft costs for designing and constructing the subterranean parking divided by the total number of parking spaces.
- AHG will own and operate the parking required for the hotel.
- The City has the right to purchase the remainder of the parking if and when there is adequate TIF or other public funding available.

Affordable Housing Benefits

- AHG has offered to collect a 1% assessment on all room and food & beverage revenue generated at the property and donate the proceeds to the Affordable Housing Trust Fund. It is estimated that this will generate approximately \$300K annually and the commitment is to donate for up to 10 years or \$3M, whichever occurs first. Once that goal is met, AHG has the option to move this to a local charitable or community organization of their choice as long as the organization is within the Missoula city limits.
- All of the proceeds from the sale of the property will go to the Affordable Housing Trust Fund but not all at once. Up to 70% of the purchase price may be needed in order to install the public improvements as well as some possible AHG financing as outlined above. Funding will be transferred to the Trust Fund as TIF funds grow as a result of development of this and other properties in the Riverfront Triangle URD.
- The Affordable Housing Trust Fund will be the beneficiary of approximately \$7M if the 1% room, food and beverage estimates are accurate.

Land Use & Development Requirements

- The previous Hotel Fox and Drift proposals for this site were governed, in part, by a Land Use Agreement that is a recorded document. That agreement preceded the City's Design Excellence requirements around building siting and architectural design. That Land Use Agreement has been revised to reflect current needs. The revised Land Use Agreement requirements are listed below.
- Unobstructed views shall be maintained along the riverfront trail and Owen Street.
- Off-street parking must be provided in structured parking garages which shall not be located at street level fronting Orange Street or along the south side of Front Street.
- Temporary surface lots can be utilized during buildout for up to two years.

- AHG may construct surface parking spaces for short term use associated with guest check-in for the hotel.
- In addition to the design, in coordination with the City, and construction of the plaza and the riverfront trail, AHG will coordinate with the City on design and construction of the riverfront park located on City owned property south of the hotel parcel.
- AHG will meet all City development regulations, grant necessary access easements needed to maintain and repair City owned facilities, work with Parks and Recreation to coordinate and properly notice all construction closures and detours, enter into maintenance and management agreements with respect to the plaza, the riverfront trail and riverfront park and coordinate with City staff to identify an appropriate location for a new pedestrian bridge connection to the south side of the river.
- AHG will be responsible for restoration of riverbank areas disturbed by the construction and will make a contribution of \$2,500 to Parks and Recreation for repair of the riverbank for existing areas not disturbed by AHG's construction.

Public Benefits

- A \$7M contribution to the Affordable Housing Trust Fund will benefit affordable housing development city-wide.
- The public improvements will set up the balance of the Riverfront Triangle properties to redevelop more quickly and result in removal of several blighted buildings in the URD.
- This large private investment will likely incentivize the sale of the other privately owned properties on Broadway and Front Streets resulting in the development of a significant number of housing units.
- The presence of a major hotel, meeting complex and public plaza will help bridge Orange Street which is currently a formidable barrier to the expansion of the downtown to the west.
- This project will create a terminus to the conversion of Main and Front Streets to two way traffic.
- The new increment created by this project and others that will likely result from this investment should provide adequate TIF funds to build a new pedestrian bridge connecting this property to McCormick Park.
- A new pedestrian bridge to McCormick Park can provide access to additional parking that will relieve the pressure on parking created by the Old Sawmill District, the baseball stadium and activities in McCormick and Silver Parks.

There is no TIF funding request at this time. The action at this meeting is to recommend to the Council that they approve the three agreements which will authorize the sale of the property to AHG. There will be subsequent MRA Board actions around approval of funding to design and construct the public improvements. Staff will present the required financial analysis and funding requests when we have a better understanding of those costs. Going into the FY26 budget, the Riverfront Triangle URD has \$1.257M in uncommitted funds and \$3.3M in bonding capacity. AHG estimates that they have approximately a year of design before being in a position to apply for building permits and break ground. Coupled with part of the proceeds from the sale of the property, we may not need to use any of the MRA bonding capacity to build the Phase 1 improvements and by the time we are ready for Phase 2, there should be value from the vertical construction of the hotel which will generate additional TIF revenues.

Recommendation: Staff recommends that the MRA Board endorse the terms of the Agreement for the Purchase and Sale of Real Property, the Development Agreement and the modified Fox Triangle Land Use and Development Requirements Agreement and direct staff to forward a recommendation to the City Council that they approve the agreements and the sale of the City's 1.99 acre parcel located in the Riverfront Triangle Urban Renewal District.

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

This Agreement for the Purchase and Sale of Real Property ("Agreement") is made and entered into as of ____ day of _____, 2025 ("Effective Date"), by and between the City of Missoula, Montana, a municipal corporation of the State of Montana ("Seller" or "City"), and Averill Hospitality, LLC, a Montana limited liability company ("Buyer").

RECITALS:

WHEREAS, as more particularly described in the Development Agreement by and among the Seller, the Buyer and the Missoula Redevelopment Agency, dated as of ____, 2025 (the "Development Agreement"), the Seller desires to sell and Buyer desires to purchase a parcel of real property depicted on the Certificate of Survey attached hereto as Exhibit A (the "Real Property") upon the terms, covenants and conditions hereinafter provided; and

WHEREAS, this Agreement constitutes the "Buy/Sell Agreement" referred to in the Development Agreement; and

WHEREAS, terms used with initial capital letters but not defined herein have the meanings given them in the Development Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, it is hereby mutually agreed by and between Seller and Buyer as follows:

1. Purchase and Sale of Property. Subject to the terms, conditions and covenants of this Agreement, Seller agrees to grant, sell and convey to Buyer by the Deed (as hereinafter defined) and Buyer agrees to purchase from Seller, the Real Property, together with all appurtenances thereto, including all structures, improvements and fixtures thereon. Such grant, sale and conveyance is subject to those items specifically reserved to the Seller in the warranty deed pursuant to which the Real Property shall be conveyed by Seller to Buyer, substantially in the form attached hereto as Exhibit B (the "Deed"). The "Property" consists of all of Seller's right, title and interest in and to:

- a. The fee simple title to the real property described in Exhibit A attached hereto consisting of approximately 1.99 acres, together with all development rights accesses, easements, rights of way, and to the extent owned and held by Seller, governmental permits, licenses, approvals, guarantees, warranties and entitlements relating to, running with and/or appurtenant thereto; and,
- b. All improvements currently situated on the Property, including without limitation any structures, currently located on, under or used in connection with the Property (the "Improvements") provided, however, that the buildings located on the

Property shall remain there until consummation of the Closing and thereafter Buyer may demolish the buildings and remove the debris from the Property at its sole cost utilizing Seller's permit, if permissible, and shall defend, indemnify and hold Seller and its Members and Managers harmless from any claims, demands, actions, causes of actions, costs and fees, arising from or in any manner associated with the demolition and removal or violation of the Seller's permit.

- c. All intangible personal property owned by Seller and related to the Property and Improvements including, architectural plans, project materials, agreements with tenants, studies, models, and consultant reports, to the extent assignable, all unrecorded contracts, leases and other agreements entered into by Seller or by which Seller is bound relating to the Property which are in effect as of the Closing, and any other information or documentation with respect to the Property and Seller's ownership, development or use of the Property (hereinafter collectively referred to as the "Intangible Personal Property").

2. Purchase Price.

2.1 Purchase Price. The purchase price for the Real Property is Four Million and No/100 Dollars (\$4,000,000.00), payable pursuant to the provisions hereafter set forth ("Purchase Price"). Subject to the terms, conditions and covenants of this Agreement, Buyer hereby covenants and agrees to pay the Purchase Price as follows:

- a. One Million Seven Hundred Thousand Dollars (\$1,700,000) payable in cash at Closing (the "Down Payment Amount"); and,
- b. The remaining balance of Two Million Three Hundred Thousand Dollars (\$2,300,000) pursuant to a Promissory Note bearing no interest and in substantially the form attached hereto as Exhibit C (the "Promissory Note") to be executed by the Buyer and delivered to Seller in connection with the Closing. The Buyer's obligations under the Promissory Note shall be secured by a Trust Indenture in substantially the form attached hereto as Exhibit D (the "Trust Indenture") to be executed by the Buyer for the benefit of the Seller.

3. Title Commitment.

3.1 Title Commitment. Seller shall deliver or cause to be delivered to Buyer on or before 20 days after full execution of this Agreement a commitment to issue a standard ALTA owner's policy with respect to the Real Property (the "Title Commitment") from a title insurer acceptable to Seller and Buyer (the "Title Company") together with copies of the title exception documents referred to in such Title Commitment. If elected by Seller, Seller may also elect to request from the Title Company a commitment to issue a standard ALTA lender's policy of title insurance with respect to the lien of the Trust Indenture.

3.2 Title Defects. Buyer shall notify Seller in writing of any material financial liens or encumbrances or encumbrances that adversely affect the development of the Real Property as contemplated by the Development Agreement under the Title Commitment (each a "Title Defect")

on or before 20 days after the Title Commitment is provided to Buyer. The notice of a Title Defect, if any, shall specify the nature of the Title Defect.

3.3 Cure of Title Defects. If Buyer delivers written notice of a Title Defect, Seller may elect to (a) cure the Title Defect to the reasonable satisfaction of Buyer on or before 20 days after delivery of notice by Buyer to Seller of the Title Defect or (b) decline to cure the Title Defect. Seller shall promptly notify Buyer in writing of Seller's intent not to cure or agree in writing to cure a Title Defect. If Seller declines to cure a Title Defect or does not timely cure a Title Defect, or a Title Defect is incapable of cure, Buyer may, by 60 days from Buyer's initial receipt of the Title Commitment (the "Date for Establishing the Permitted Exceptions"), either: (i) terminate this Agreement upon prompt written notice to Seller; or (ii) proceed to Closing, and all objections and Title Defects which were raised or could have been raised shall become Permitted Exceptions. For purposes of this Agreement any matter stated on the Title Commitment not timely identified as a Title Defect by Buyer shall be a Permitted Exception for all purposes. If the Buyer has not terminated this Agreement by the Date for Establishing the Permitted Exceptions, then the parties will proceed to Closing; provided that prior to the date of the Closing, Seller shall not cause any additional Title Defects to be placed against the Real Property without the agreement of Buyer. For purposes of this Agreement, "Closing" shall mean the consummation of the transactions contemplated under this Agreement following satisfaction of all conditions to Closing, and shall be evidenced by the recording of the Deed and the Trust Indenture and the delivery of the Promissory Note to the City. The date of the Closing is the Closing Date. In addition, Seller may object to any title exceptions that pertain to any standard ALTA lender's policy of title insurance that the City elects to request that shows the City of Missoula as the insured.

3.4 Inspection. Buyer has completed, at its sole cost and expense, its inspection and review of the Real Property (the "Inspection") as of the Effective Date. Seller has provided all documents in its possession related to the status of the Real Property following the 2006 cleanup action including without limitation deeds, easements, surveys, studies, reports including any Phase I and Phase II environmental reports previously obtained in connection with Seller's original acquisition of the Real Property and other information pertaining to the condition of or around the Real Property (including without limitation, report, studies or other information pertain to soil, and environmental conditions or other aspects of the Property) and those documents and materials set forth on Exhibit E attached hereto and incorporated herein (collectively the "Due Diligence Materials"). Seller shall cooperate with Buyer to provide access to Buyer to documents Seller possesses in deep storage related to the condition of the Real Property prior to the 2006 cleanup action necessary for Buyer's review of the Property including, without limitation, authorizing any third-parties who have provided services to or on behalf of Seller related to the Property (both before and after the 2006 cleanup action) to discuss all such services with Buyer and to release to and provide Buyer any reports, studies, documents, or other information related thereto and, if necessary, paying said third-parties, or making arrangements for payment to said third-parties, for any amount owing by Seller prior to the execution of this Agreement if said payment is required as a condition to said third-parties discussing such services with Buyer or releasing and providing to Buyer said reports, studies, documents or other information releasing such information. Seller, at Buyer's request, agrees to cooperate with Buyer and provide assistance to Buyer concerning Buyer's Due Diligence investigations (define below) including, without limitation, related to the transfer of development rights in any way related to the Property or the City Property (defined below) and that may be held by Seller or someone or some entity other than Seller.

3.5 Lot Line Adjustment and Legal Description. Seller shall at its cost cause the Real Property to be surveyed so that it may be conveyed to Buyer on or before the Closing Date. Buyer shall be afforded a reasonable opportunity to review and approve of the certificate of survey including the acreage and boundaries of the Real Property before recording and the right to approve of any covenants, conditions, restrictions, and/or easements to be imposed on the Real Property in connection with the recording of such certificate of survey. The legal description set forth on the certificate of survey shall match the legal description in the Title Commitment and the Deed. In the event the legal description for the certificate of survey does not match the legal description in the Title Commitment, the City will provide a new Title Commitment to Buyer and the deadlines in Section 3.2 and 3.3 will apply to the subsequently issued Title Commitment.

4. Representations and Warranties.

4.1 Buyer Representations. Buyer represents and warrants to Seller that:

- 4.1.1 The execution and delivery by Buyer of this Agreement and the performance of its obligations hereunder, are within Buyer's powers and have been duly authorized by all requisite action. This Agreement constitutes the legal, valid and binding obligation of Buyer.
- 4.1.2 Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute an event of default or other breach under any contract or agreement to which Buyer is a party or by which Buyer is bound or affected.
- 4.1.3 Buyer is a Montana limited liability company, duly formed, validly existing and in good standing under the laws of the State of Montana and is duly qualified to do business in the State of Montana.
- 4.1.4 Buyer enters this Agreement and purchases the Real Property based on its own investigation of the Real Property and not upon any statement or representation of Seller, other than the representations of Seller expressed in this Agreement.

4.2 Seller Representations. Seller represents and warrants to Buyer that:

- 4.2.1 The execution and delivery by Seller of this Agreement and the performance of its obligations hereunder, are within Seller's powers and have been duly authorized by all requisite action. This Agreement constitutes the legal, valid and binding obligation of Seller.
- 4.2.2 Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute a breach or default under any contract or agreement to which Seller is a party or by which Seller is bound or affected.
- 4.2.3 Seller has not been notified of any pending or threatened legal proceedings affecting the Real Property, or any part thereof, including, without

limitation, any pending or threatened condemnation or similar proceeding or other legal or administrative claim affecting the Real Property.

4.2.4 Seller holds good and marketable title in fee simple to the Property, free and clear of all liens, encumbrances subject only to the Permitted Exceptions.

4.2.5 Seller, and any person signing on behalf of Seller, have full power and authority to execute this Agreement and perform Seller's obligations hereunder.

- a. Seller has not received written notice of any pending and, to Seller's knowledge, there are no threatened legal proceedings affecting the Property, or any part thereof, or affecting the right or the ability of Seller to sell the Property as provided in this Agreement, including, without limitation, actions for eminent domain, condemnation, or similar proceeding affecting the Property.
- b. There are no leases (or other agreements regarding use or occupancy) of space in the Property which will be in force on the Closing Date. Prior to the Closing, the Seller will ensure that (i) all leases or other rights of occupancy affecting the Property and known to Seller are terminated and (ii) anyone using or occupying the Property pursuant to any such lease or right of occupancy have fully vacated the Property.
- c. Seller has received no written notice to the effect that the Property is not in compliance with applicable laws. Seller has not received any written notice that any investigation has been commenced or is contemplated respecting any such possible noncompliance with respect to the Property or any portion thereof. Seller has not received written notice from any government agency or other third party of any revocation or threatened revocation of any permit or other property rights.
- d. Seller has not entered into any service contracts, equipment leasing contracts or other contracts relating to the ownership, operation or maintenance of the Property that will be in force after the Closing.
- e. Except as set forth in Section 4.3 below, neither Seller nor any of its affiliates has entered into any, and to Seller's knowledge there are no, agreements currently in effect pursuant to which any party has any right of first refusal, option or other right to purchase all or any part of the Property (other than this Agreement).
- f. No later than seven (7) days from the Effective Date, Seller will have delivered or made available to Buyer true, complete and correct copies of the Due Diligence Materials.

- g. There are no unpaid assessments for public improvements against the Property and, to the Seller's actual knowledge, the Property is not subject to assessments for any street paving or curbing heretofore installed, and there are no unpaid assessments or charges for the installation of any utilities or for making connection thereto, that have not been fully paid.
- h. There has been no known violation of any applicable building, zoning or other ordinances, resolutions, statutes or regulations of any government or governmental agency governing the Property.
- i. Seller is not a foreign person under Section 1445 of the Internal Revenue Code of 1986, as amended, and agrees to satisfy the requirements of that statute in an affidavit delivered at Closing, to the extent necessary.
- j. With the exception of the environmental matters described in the various Environmental Inspection Reports described in Section 3.4 above, to Seller's knowledge, there is no investigation, inspection, suit, demand, cause of action or claim arising out of or due to any storage, use, transport, handling, disposal, or release of Hazardous Materials on the Property. "Hazardous Materials" as used in this Agreement means any pollutants, contaminants or other dangerous, toxic or hazardous chemicals, wastes, asbestos, petroleum products or petroleum derivatives, materials or substance as defined in or governed by presently existing federal, state or local statute, law or regulation relating to human health or safety or to the environment or any other waste or substance which might subject the owner or operator of the property to any claim demand, damage, costs or other liability under any applicable law, statute, regulation or other requirement. For any remediation activity resulting in costs to remediate that are greater than \$50,000, the Seller shall be responsible for paying in full all costs, expenses and fees associated with such remediation of Hazardous Materials on the Property reasonably deemed necessary by the Buyer to accomplish its development objectives. However, before incurring any costs, Buyer shall notify the Seller within 48 hours of discovery of any hazardous materials found on the Real Property so that Seller may evaluate the scope and extent of the contamination as well as proposed remediation activities. Buyer and Seller shall also agree on remediation response activities before costs greater than \$50,000 are incurred; however, the Seller's agreement on remediation response activities shall not be unreasonably withheld. Seller shall have no obligation to pay for remediation costs pursuant to this Section if Buyer does not timely inform City of the discovery of hazardous materials on the Real Property or obtain Seller's agreement on proposed response activities. Buyer's obligation to notify Seller and obtain Seller's

agreement on response activities is ongoing in the event: new hazardous materials are discovered, the scope and extent of hazardous material contamination is discovered to be greater or less than previously thought; or remediation response activities materially change. As an alternative to paying all costs to remediate, if the costs to remediate the Property equal or exceed the Buyer's design, development and hard construction costs, the Seller, at its option, may choose to repurchase the Property for the Purchase Price plus design, development costs and hard construction costs incurred by the Buyer up through the date Seller gives written notice that it is exercising the right to repurchase the Property pursuant to this provision. The reimbursement by the Seller contemplated hereunder shall be made in cash within 180 days following receipt of the Buyer's invoice and substantiation of the aforescribed design, development and hard construction costs. In the event the City triggers the repurchase option and reimburses Buyer for soft design and development costs, Buyer shall assign all rights to own and/or use design and development documents to the City to use at its discretion.

- k. Throughout the term of this Agreement, Seller shall maintain the insurance coverages, at Seller's cost and expense, that the Seller presently maintains for the Property. To the extent possible, Seller shall cause Buyer to be named as an additional insured under such policies; and,
- l. No later than Closing, Seller shall pay any third-parties any amounts owing for services rendered by said third-parties prior to the Effective Date and that are related to the Property or Seller's ownership or planned development or use of the Property and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual, out-of-pocket cost, damages, expense, liability, lien, or claims incurred by Buyer resulting from Seller's failure to pay any such-third-parties.

4.3 Mutual Representations. Irrespective of the representations above, the Buyer and Seller both acknowledge that the City Land has been subject to a number of development proposals, including development and purchase rights owned and assigned by individual-owners associated with the Buyer entity. Both Parties believe no prior development or purchase agreement is currently enforceable, but neither Buyer or Seller makes warranties, representations or other covenants concerning third party attempts to enforce the terms of any prior agreement. In the event such a third party does attempt to enforce a prior development agreement the Parties may agree to mutually terminate this Agreement or take other action; the Parties shall bear their own costs in the event such third party action is taken.

4.4 Covenants.

- 4.4.1 Occurrence of Conditions. Each of Buyer and Seller shall use its reasonable efforts to cause each of the conditions to its obligations under this Agreement to timely occur.
- 4.4.2 Ownership of the Real Property. While this Agreement remains in effect, Seller shall not transfer any interest in, or encumber, the Real Property at any time prior to the Closing Date, other than as contemplated by the Master Development Agreement and the Collateral Agreements.

5. Conditions.

5.1 Conditions to Buyer's Obligation. The Buyer's obligation to purchase the Real Property is conditioned upon each of the following:

- 5.1.1 Acceptance of the Title Commitment and the Permitted Exceptions pursuant to Section 3.3 above, as well as the certificate of survey discussed in Section 3.5 above.
- 5.1.2 The receipt by Buyer of a commitment from the Title Company to provide a standard ALTA owner's policy (the "Title Policy") with respect to the Real Property upon Closing of the transactions contemplated by this Agreement, subject to the Permitted Exceptions.
- 5.1.3 Each of Seller's representations and warranties being materially true and correct as of the Closing Date and Seller having timely performed each covenant required to be performed by it under this Agreement.
- 5.1.4 Seller shall have executed and caused to be notarized and delivered to the Title Company the Deed, and the Title Company shall, upon the satisfaction of the terms and conditions of this Agreement, be prepared to record the Deed, dated as of the date of Closing, in the real property records of Missoula County, Montana.
- 5.1.5 The City Council shall have approved this Agreement and the Development Agreement.

The conditions set forth in this Section 5.1 are for the sole and exclusive benefit of the Buyer. Buyer may, but shall not be obligated to, waive such conditions at any time, and upon such terms or agreements, as Buyer may in its sole discretion deem appropriate.

5.2 Conditions to Seller's Obligation. The Seller's obligation to sell and convey the Real Property is conditioned upon each of the following:

- 5.2.1 Delivery of the Down Payment Amount.

- 5.2.2 Each of Buyer's representations and warranties being materially true and correct as of the Closing Date and Buyer having timely performed each covenant required to be performed by it under this Agreement.
- 5.2.3 Buyer shall have executed and delivered the Promissory Note to the Title Company, and the Title Company shall, upon the satisfaction of the terms and conditions of this Agreement, be prepared to deliver the Promissory Note, dated as of the date of Closing, to the City.
- 5.2.4 Buyer shall have executed and caused to be notarized and delivered to the Title Company the Trust Indenture, and the Title Company shall, upon satisfaction of the terms and conditions of this Agreement, be prepared to record the Trust Indenture, dated as of the date of Closing, in the real property records of Missoula County, Montana.
- 5.2.5 At the discretion of Seller, the receipt by Seller of a commitment from the Title Company to provide a standard ALTA lender's policy of title insurance insuring Seller with regard to the lien of the Trust Indenture (the "ALTA Lender's Title Policy") upon Closing of the transactions completed by this Agreement, subject to the Permitted Exceptions.
- 5.2.6 The City Council shall have approved this Agreement and the Development Agreement not later than April 30, 2025.

The conditions set forth in this Section 5.2 are for the mutual benefit of the Parties. Seller may, but shall not be obligated to, waive such conditions at any time, and upon such terms or agreements, as Seller may in its sole discretion deem appropriate.

6. Closing.

6.1 Closing Date. Closing shall occur on a date mutually acceptable to Seller and Buyer that is within thirty (30) days after the occurrence of satisfaction of each of the conditions in Article 5 (such date the "Closing Date"). Either party may terminate this Agreement without further liability if the Closing Date has not occurred on or before the date that is 30 months after the Effective Date. In the event the Agreement is terminated following the expiration of this 30 month term, each Party shall be solely responsible for all costs incurred in furtherance of (i) this Agreement or (ii) the Development Agreement.

6.2 Closing Location. Closing shall be held on or before 12:00 p.m. (Mountain Time) on the Closing Date, at a time agreed to by the parties, and at the Title Company's offices in Missoula, Montana, or such other place as the Buyer and Seller may agree upon.

6.3 Seller Deliveries. At least ten (10) days before the Closing Date, Buyer and Seller shall deliver Instructions to Proceed to the Closing to cause the Title Company either to record in the real property records of Missoula County, Montana or deliver to Buyer, as applicable, the following on the Closing Date:

- 6.3.1 The Deed, duly executed, notarized, and dated, which shall be recorded in the real property records of Missoula County, Montana on the Closing Date.
- 6.3.2 Such documentary and other evidence as may be reasonably required by the Buyer or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons executing documents on behalf of Seller.
- 6.3.3 The Title Commitment dated to the Closing Date requiring the Title Company to deliver the Title Policy subject to the Permitted Exceptions to Buyer promptly following the Closing.
- 6.3.4 Such other documents and instruments as may be reasonably necessary or convenient to effectuate the intent of this Agreement with respect to the Real Property or requested by the Title Company for the Closing and the issuance of the Title Policy under the Title Commitment.
- 6.3.5 Duly executed, notarized (where applicable), and dated counterparts of the Development Agreement.

6.4 Buyer Deliveries. At least ten (10) days before the Closing Date, Buyer and Seller shall deliver Instructions to Proceed to the Closing to cause the Title Company either to record in the real property of Missoula County, Montana or deliver to Seller, as applicable, the following on the Closing Date:

- 6.4.1 The Promissory Note, duly executed and dated.
- 6.4.2 The Trust Indenture, duly executed, notarized, and dated, which shall be recorded in the real property records of Missoula County, Montana on the Closing Date.
- 6.4.3 Such documentary or other evidence as may be reasonably required by Seller or the Title Company evidencing the status and capacity of the Buyer and the authority of the person or persons executing the various documents on behalf of Buyer in connection with this Agreement.
- 6.4.4 If requested by Seller, the ALTA Lender's Title Policy dated to the Closing Date requiring the Title Company to deliver the ALTA Lender's Title Policy subject to the Permitted Exceptions to Seller promptly following the Closing.
- 6.4.5 Such other documents and instruments as may be reasonably necessary or convenient to effectuate the intent of this Agreement with respect to the Real Property or requested by the Title Company for the Closing of the purchase and sale and the issuance of the Title Policy under the Title Commitment and the issuance of the ALTA Lender's Title Policy, if requested by Seller.

6.4.6 Duly executed, notarized (where applicable), and dated counterparts of the Development Agreement.

6.5 Possession; Risk of Loss. Seller shall deliver sole and exclusive possession of the Real Property to Buyer at Closing on the Closing Date. Except as otherwise described in the Development Agreement risk of loss to the Real Property remains with the Seller until the Closing Date under this Agreement and will transfer to Buyer from and after the Closing Date.

6.6 Closing Costs; Policy Premium; Prorations. Seller shall be solely responsible for payment of the premium for the base Title Policy and Buyer shall be solely responsible for the payment of the premium for the base ALTA Lender's Title Policy, if any. All other fees, endorsements and costs, including closing fees, recording fees and similar costs of Closing, but excluding those noted in the immediately following Section, shall be borne by the Buyer. The Title Company shall prorate as of the Closing Date:

- (i) real estate taxes on the Real Property, if any, and Buyer shall be obligated to pay any and all real estate taxes owing with regard to the Real Property from and after the Closing Date;
- (ii) assessments, fees or charges against the Real Property, if any, and Seller shall be obligated to pay such assessments, fees, or charges to the Closing Date, unless Buyer has agreed in writing to pay the same, and Buyer shall be obligated to pay such assessments, fees, or charges from and after the Closing Date.

6.7 Professional Fees; Broker Buyers. Each party shall be solely responsible for (a) the professional fees, including, without limitation, attorneys' fees, incurred in the negotiation, preparation and drafting of this Agreement and the Closing and (b) real estate broker, salesman or agent fees for any broker, salesman or agent engaged by such party, if any. To the extent permitted by law, the parties shall indemnify, defend and hold harmless one another against any loss, liability, damage, cost, claim or expense (including reasonable attorney's fees) incurred by reason of any professional fee, brokerage, agent or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

7. Disclaimers and Disclosure.

7.1 As Is Condition. With the exception of the representations and warranties of the Seller expressly made and set forth herein and the representations, warranties, and covenants of the Seller in the Development Agreement, the purchase and sale of the Real Property shall be on an "AS-IS, WHERE-IS" basis.

7.2 Survival. The provisions of this Section 7 shall survive the Closing and the delivery of the Deed or earlier termination or expiration of this Agreement.

8. Miscellaneous.

8.1 Indemnification. Buyer hereby indemnifies, defends, and holds Seller harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities,

lawsuits, judgments, losses, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) asserted against or incurred by Seller and arising out of the failure of Buyer to perform its obligations pursuant to this Section 8.2. The provisions of this Section 8.2 shall fully survive the Closing without limitation.

8.2 Buyer Default; Seller Remedies. If Buyer shall fail to timely perform each of its obligations under this Agreement, the Seller may (a) pursue such rights and remedies as may be accorded at law or in equity, including, without limitation, specific performance or injunction, or (b) terminate this Agreement.

8.3 Seller Default; Buyer Remedies. If Seller shall fail to timely perform its obligations to Buyer under this Agreement then Buyer may, in addition to and not in limitation of any other right available at law or in equity, (a) terminate this Agreement or (b) seek specific performance by the Seller.

8.4 Termination and Repurchase. It is anticipated that the Buyer of the Property will secure a construction loan and other associated financing to complete the purchase of the Property and initiate construction of the Project. In the event the Buyer fails to secure its construction financing and commence construction within five (5) years from the date of this Agreement, the City shall have the right to terminate this Agreement and repurchase the Property at a price equivalent to the portion of the purchase price paid by the Buyer under the Agreement for Purchase and Sale of Real Property executed contemporaneously herewith and reimbursement of all of Buyer's (or Developer's as the case may be) hard construction soft design and development costs and any and all costs (hard and soft) associated with the design and development of the Riverfront trail system and plaza. Provided, however, that the City's obligation to reimburse soft design and development costs (other than for the trail system and plaza) shall not exceed a maximum of \$250,000 Dollars. In the event the City triggers the repurchase option and reimburses Buyer for soft design and development costs, Buyer shall assign all rights to own and/or use design and development documents to the City to use at its discretion.

The option to purchase granted hereunder shall be exercisable by the City upon ninety (90) days written notice to the Buyer. The Closing of the repurchase shall occur within one hundred eighty days from the date of the City's written notice. The City's option to purchase shall terminate upon Buyer (or Developer as the case may be) beginning to pour concrete for the foundations of the Project outlined in the Development Agreement (the "Project"). In the event that Buyer/Developer completes two of the following elements, the City's right to repurchase shall be tolled for a period of one additional year (for a total of six years): (1) the City is provided with evidence of construction financing sufficient to complete the Project; (2) excavation for the project is substantially complete; (3) private utilities necessary to support the Project have been installed; or (4) a building permit for vertical construction of the Project has been issued by the City. In the event that Buyer/Developer completes all four of the elements listed in the preceding sentence, the City's right to repurchase shall be tolled for a period of two additional years (for a total of eight years of maximum deferral).

The City shall diligently and without delay process the Developer's building permit application to ensure that construction of the Project begins expeditiously in light of the five (5)

year term described above. In the event that Developer submits building permits for the Project outlined in the Development Agreement that substantially comply with all applicable legal requirements prior to the expiration of the five year period discussed above, the City agrees to toll the repurchase option for a period of 180 days to allow the Developer to complete the building permit process. The City shall not withhold issuance of permits for otherwise approvable final building plans for the Project outlined in the Development Agreement for the sole purpose of allowing the City to exercise the right to repurchase the Property pursuant to this term.

The five (5) year time period may be extended by the Buyer upon written notice to the City upon the occurrence of an event of "Force Majeure" which shall include (i) an earthquake, hurricane, tsunami, tornado, flood, fire, acts of God, or other similar nature catastrophe, (ii) a strike, lockout, work stoppage, disturbance affecting the work or construction caused directly or indirectly by a pandemic, or failure of utility services that is not specific to the Project (iii) a building moratorium, or other governmental order or requirement that prohibits or limits construction of the Project, (iv) a riot, insurrection, terrorist act, war acts of public enemies, war or similar civil disturbance, (v) subsurface conditions for the Project, inaccessible concealed conditions at the Project, or existing structural conditions for the Property that were not reasonably capable of being anticipated by the Buyer as of the Effective Date, (vi) pandemic or other health related crises, or (ix) other extraordinary events beyond the reasonable control of the Buyer (adverse changes in economic conditions are not extraordinary events for the purposes of this term). The length of the extension above described shall be commensurate with the delay caused by the Force Majeure Event.

Provided, however, there shall be no right on the part of the City to terminate this Agreement if the City has failed to timely perform any of its obligations related to reimbursement for hazardous materials response costs hereunder or for construction of public infrastructure under the Development Agreement executed contemporaneously herewith.

8.5 Notices. Any notice, demand or other communication required or permitted by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes when delivered in person or sent by registered or certified mail, return receipt requested, all postage and other charges prepaid, as follows:

If to the Seller:

City of Missoula
Attention: City Finance Director
435 Ryman Street
Missoula, Montana 59802

If to the Buyer:

Averill Hospitality, LLC
C/O Brian Averill
1380 Wisconsin Ave.
Whitefish, Montana 59937

With a Copy to:

Datsopoulos, MacDonald & Lind, P.C.
Attn: William K. VanCanagan, Esq.
201 W. Main St., Ste. 201
Missoula, MT 59802
Phone: (406) 728-0810
Email: bvancanagan@dmlaw.com

or at such other address as may be designated by notice pursuant to this Agreement.

8.5.1 Survival. All of the representations, warranties, agreements, undertakings, covenants and indemnities of the parties hereto shall survive for a period of two (2) years from the Closing Date. This means that if any action is to be brought based upon said representations, warranties, agreements, undertakings, covenants and indemnities, said claim must be commenced within two (2) years from the Closing Date or be forever barred.

8.5.2 Confidentiality. The parties agree that the “Confidential Information” (as hereinafter defined), together with any information which Buyer may obtain by reason of any examinations or inspections of the Property shall remain the property of Seller and shall be used by Buyer exclusively for the purpose of determining whether to proceed with the transaction contemplated herein. Furthermore, the parties agree to maintain all this information in strict confidence, to return to Seller or to destroy this information within ten (10) days of the termination of the undertakings set forth in this Agreement and not to disclose any of this information in any manner whatsoever, except as required by law or order of a court. Provided, however, that any documentation or information independently prepared or created by Buyer during the course of its due diligence, such as reports, studies or plans, shall be deemed proprietary and may be retained by Buyer following termination of this Agreement. “Confidential Information” includes the terms of this Agreement, and any and all information, whether in oral, written or other form related to the transactions described hereunder and the Property, including the existence of this Agreement or Buyer’s intent to acquire or interest in acquiring the Property as set forth herein and any and all information provided by Seller to Buyer. Notwithstanding anything to the contrary, (i) Buyer and Seller shall have the right to disclose the terms of this Agreement and other information to their respective directors, officers, employees, agents, contractors, attorneys, consultants, partners, lenders and such other persons or entities from whom consent to transfer is required; and (ii) Buyer shall have the right to disclose Buyer’s intended purchase of the Property and Buyer’s ownership, development or use of the Property, to any representatives, agencies or authorities of any local, state or federal government as may be necessary, as determined in Buyer’s sole discretion. The terms and provisions contained herein shall be kept in strictest confidence by Buyer and Seller until Closing. Following the Closing, the parties shall jointly announce the transaction in a statement approved by both of them. Thereafter, each party shall be free to make separate statements and comments.

8.5.3 Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or to the performance by the parties hereto, shall be first resolved by non-binding mediation with a mediator to be mutually agreed upon by the parties and with the mediation conference to be held in Missoula, Montana and if mediation is unsuccessful then by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The venue of any such arbitration shall be in Missoula, Montana and any arbitration award may be entered in a court of competent jurisdiction in Missoula County, Montana. By executing this Agreement or otherwise agreeing to be bound by its terms, each person hereby consents to arbitration and to the personal jurisdiction of the courts of Missoula County, Montana for the purposes of entering any arbitration award.

8.6 Assignment. This Agreement is unique between the Seller and the Buyer and no party may assign any rights or privileges or delegate any duties or obligations without first obtaining the written consent of the other party. This Agreement shall be binding upon, and inure to the benefit of, Seller and Buyer and their respective permitted successors and assigns. With the consent of the Director of the City's Community Planning Development and Innovation Department, which shall not be unreasonably withheld, the Buyer may assign this Agreement to a limited liability company in which the Buyer holds an interest for the purposes of holding title to the Real Property.

8.7 Survival of Agreement. Except for the provisions of Section 7, the terms, covenants, representations and warranties of this Agreement shall merge into the Deed and shall not survive the Closing of the contemplated transactions.

8.8 Complete Agreement. This Agreement represents the entire agreement of the parties with respect to the contemplated transactions and supersedes any prior agreements or negotiations, oral or written. This Agreement may be amended only by a writing signed by the parties.

8.9 Time. Time is of the essence of this Agreement.

8.10 Choice of Law. This Agreement shall be governed by Montana law.

8.11 Assurances. The parties agree to execute such further documents and instruments and take such further actions as may be reasonably necessary or convenient to effectuate the intent of this Agreement at or prior to the Closing.

8.12 Memorandum of Development Agreement. At the request of either party, the parties agree that they will sign, cause to be notarized and deliver to the Title Company an abstract or memorandum of the Development Agreement substantially in the form of the attached Exhibit G, which memorandum, if delivered to the Title Company, will be recorded in the real property records of Missoula County, Montana as part of the Closing and will be a Permitted Exception.

IN WITNESS WHEREOF, this Agreement for the Purchase and Sale of Real Property is executed by Seller as of the date first set forth above.

CITY OF MISSOULA, MONTANA

By: _____
Mayor

[SEAL]

Attest: _____
City Clerk

APPROVED FOR LEGAL CONTENT:

_____, City Attorney

IN WITNESS WHEREOF, this Agreement for the Purchase and Sale of Real Property is executed by Buyer as of the date first set forth above.

AVERILL HOSPITALITY, LLC,
a Montana limited liability company

By: _____
Brian Averill, Authorized Representative

LIST OF EXHIBITS

EXHIBIT A – Site Plan of Real Property

EXHIBIT B – Form of Deed

EXHIBIT C – Promissory Note

EXHIBIT D – Montana Trust Indenture

EXHIBIT E – Due Diligence Materials

EXHIBIT F – Environmental Inspection Reports

EXHIBIT G – Form of Memorandum of Development Agreement

EXHIBIT A

SITE PLAN OF REAL PROPERTY

EXHIBIT B

FORM OF DEED

Return to:

William K. VanCanagan, Esq.
Datsopoulos, MacDonald & Lind, P.C.
201 W. Main St., Ste. 201
Missoula, MT 59802

WARRANTY DEED

FOR VALUE RECEIVED, City of Missoula, Montana, a municipal corporation duly existing under the laws of the State of Montana (the “Grantor”), whose principal address is 435 Ryman Street, Missoula, Montana 59802, does hereby grant, bargain, sell and convey unto Averill Hospitality, LLC, a Montana limited liability company (the “Grantee”), whose principal address is 1380 Wisconsin Ave., Whitefish, Montana 59937, the real property in Missoula County, Montana legally described on the attached Exhibit A (the “Land”) and by this reference incorporated herein, together with all improvements situated as of the date of this deed on, in or under the Land (collectively, the “Improvements”); and,

TOGETHER WITH, other than as reserved or restricted or provided below, all tenements, hereditaments, and appurtenances thereunto belonging or in any way appertaining to the Property and all easements and rights of way thereto appurtenant to said premises or used in connection therewith not reserved by Grantor’s predecessors in interest, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of Grantor of, in or to the Land and the Improvements.

TOGETHER WITH, other than as reserved or restricted or provided below, the tenements, hereditaments, and appurtenances belonging thereunto or in anywise appertaining, and the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of Grantor of, in or to the Land and the Improvements; but,

SUBJECT TO real property taxes and assessments for the year 2025, and for all subsequent years thereafter; existing easements, encroachments, and rights-of-way, now of record or apparent from physical examination and inspection of the premises; and federal, state, and local laws and regulations, including zoning, building, and land use regulations affecting the premises, if any.

Except with reference to the items referred to in the immediately preceding paragraph, Grantor covenants with Grantee: that it is now seized in fee simple of the property granted; that Grantee shall enjoy the property without any lawful disturbance; that the property is free from all encumbrances; that the Grantor and all persons acquiring any interest in the property through or from Grantor will, on demand, execute and deliver to the Grantee, at the expense of the Grantee,

any further assurance of the property that may be reasonably required; and that the Grantor will warrant to the Grantee all the property against every person lawfully claiming the property.

TO HAVE AND TO HOLD the Land and Improvements, subject to the exceptions, reservations, and provisos set forth above, unto the Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand this _____ day of _____, 2025.

CITY OF MISSOULA, MONTANA

By: _____
Mayor

Attest:

City Clerk

STATE OF MONTANA)
) ss
COUNTY OF MISSOULA)

 This instrument was signed or acknowledged before me on
_____, by _____ and
_____ acting in the capacity of Mayor and City Clerk, respectively, of the City of
Missoula, Montana.

(NOTARIAL SEAL)

Printed Name: _____
Notary Public for the State of _____
Residing at _____
My commission expires _____

Exhibit A

Legal Description of the Land

EXHIBIT C

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

\$2,300,000.00

<u>Interest Rate</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Date of This Note</u>
0%	\$2,300,000	The earlier of (i) the Date of Building Permits issuance or (ii) five (5) years from the date of this Note.	_____, 2025

AVERILL HOSPITALITY, LLC, a Montana limited liability company (“Obligor”), for value received, hereby promises to pay to CITY OF MISSOULA, MONTANA (“Payee”), or assigns (the Payee or such assigns, the “Holder”), at the office of the City Finance Director in Missoula, Montana, or such other place as the Holder may designate in writing, the principal sum of Two Million Three Hundred Thousand and No One-Hundredths Dollars (\$2,300,000.00), which amount, for value received by Obligor, is outstanding hereunder and owing to Payee until all principal thereon is paid or discharged, subject to the terms and provisions of this Note. Such principal shall be payable in any coin or currency which at the time of payment is legal tender for the payment of public and private debts in the United States of America. No interest shall accrue on this Note unless payment is not made by the Maturity Date, as discussed below.

The entire remaining outstanding balance hereunder shall be due and payable in full at the earlier of the (i) time of Building Permits issuance for the Hotel Building as described in the Development Agreement between Obligor and Payee dated _____, 2025 or (ii) five (5) years from the date of execution of this Note (the “Maturity Date”).

As used herein, the following terms have the following meanings:

“Agreement for the Purchase and Sale of Real Property” means the Agreement for the Purchase and Sale of Real Property by and between Payee and Obligor, dated as of _____, 2025.

“Business Day” means any day other than a Saturday or Sunday or other day on which the Holder is not open for business.

“Date of This Note” means the Date of This Note set forth under the heading of the same name at the top of the first page of this Note.

“Property” means the real property conveyed by the City to the Obligor pursuant to the Agreement for Purchase and Sale of Real Property.

“Holder” has the meaning given such term in the initial paragraph of this Note.

“Maturity Date” has the meaning given such term in the initial paragraph of this Note

“Note” means this Promissory Note, in the original principal amount of \$2,300,000.

“Obligor” has the meaning given such term in the initial paragraph of this Note.

“Payee” has the meaning given such term in the initial paragraph of this Note.

“Purchase Price” means the purchase price of the real property under the Agreement for Purchase and Sale of Real Property in the amount of \$4,000,000.

“Trust Indenture” means the Trust Indenture of even date herewith by Obligor for the benefit of Payee and with as trustee, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

This Note is subject to prepayment, in whole or in part, upon at least thirty (30) days prior written notice to Holder, such notice specifying all the necessary details of the proposed prepayment. There shall be no prepayment premium.

This Note while held by Payee shall be held at and registered in the office of the City Clerk, of the City of Missoula, Montana.

Time is of the essence under this Note. Failure to make payment under this Note within thirty (30) days after the date on which such payment is due shall constitute an event of default under this Note (an “Event of Default”). An Event of Default shall also include any default or Event of Default under the Trust Indenture; the dissolution or termination of Obligor as an entity; the insolvency of Obligor, the appointment of a receiver with respect to any part of Obligor’s property or an assignment for the benefit of creditors, or commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Obligor against any property or collateral securing this Note. Upon the occurrence of an Event of Default, the Holder may at its right and option (subject, however, to such notice as may be required under the Trust Indenture) enforce any right conferred upon Holder under this Note or the Trust Indenture and pursue any other right or remedy allowed by law or equity. Without limitation of the foregoing, upon the occurrence of an Event of Default, the Holder may at its right and option (subject, however, to such notice as may be required under the Trust Indenture) declare immediately due and payable the principal balance of this Note together with any reasonable attorneys’ fees incurred by the Holder in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder or under the Trust Indenture, anything to the contrary herein or therein notwithstanding, and payment thereof may be enforced and recovered in whole or in part, at any time, by one or more of the remedies provided in this Note or the Trust Indenture.

If any payment required under this Note is not received by Holder within thirty (30) days after the date on which such payment is due, Borrower shall incur interest at a rate of seven percent (7%) annually, calculated for each day the payment is overdue, until the payment is made.

Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. Obligor hereby waives demand, protest, and notice of demand with respect to this Note.

It is intended that this Note is made with reference to and shall be construed as a Montana contract and governed by the laws of the State of Montana, without giving effect to the conflicts-of-law principles thereof.

This Note may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. No modification of the terms and conditions of this Note shall be effective without the written consent of Holder.

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

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, happen, and be performed precedent to or in the making and delivery of this Note do exist, have happened and have been performed in regular and due time, form and manner as required by law.

IN WITNESS WHEREOF, Obligor, as principal and not as surety, has caused this Note to be duly executed by its duly authorized officer as of the ____ day of _____, 2025.

AVERILL HOSPITALITY, LLC,
A Montana limited liability company,

By: _____
Brian Averill, Authorized Representative

EXHIBIT D

FORM OF MONTANA TRUST INDENTURE

Return to:

William K. VanCanagan, Esq.
Datsopoulos, MacDonald & Lind, P.C.
201 W. Main Street, Suite 201
Missoula, MT 59802

MONTANA TRUST INDENTURE

THIS TRUST INDENTURE, is by and among Averill Hospitality, LLC, a Montana limited liability company with a mailing address of 1380 Wisconsin Ave., Whitefish, Montana 59937, as GRANTOR, _____ Title Company of _____, as TRUSTEE, and the City of Missoula, a municipal corporation of the State of Montana with a mailing address of 435 Ryman Street, Missoula, Montana 59802, as BENEFICIARY.

WITNESSETH: That Grantor hereby irrevocably GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, nevertheless, WITH POWER OF SALE in that certain real property located at _____, legally described as follows (the "Real Property"):

See Exhibit A attached hereto and by this reference incorporated herein.

TOGETHER with all the improvements now or hereafter erected on the Real Property, and all easements, rights, appurtenances, rents, royalties and all fixtures now or hereafter a part of the Real Property, together with the rents, issues and profits of the Real Property, all of which shall act as security for the full performance of terms, conveyance and conditions hereinafter set forth. All replacements and additions shall also be covered by this Trust Indenture. All of the foregoing is referred to in this Trust Indenture as the "Property";

FOR THE PURPOSE OF SECURING: Payment of the principal sum of Two Million Three Hundred Thousand and No/100 Dollars (\$2,300,000.00) according to the terms of (i) a Promissory Note of even date herewith made by Grantor, as the borrower, and payable to the order of Beneficiary, as the lender.

Grantor covenants that Grantor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that Grantor will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Grantors' interest in the Property.

TO PROTECT THE SECURITY OF THIS TRUST INDENTURE, AND FOR OTHER PURPOSES, GRANTOR AGREES:

To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

To pay before delinquent all taxes and assessments, including interest and penalties, affecting said premises and improvements. The failure of Grantor to make any of such payments shall constitute a default under this trust if not cured by Grantor within thirty (30) days of the date Beneficiary provides Grantor written notice of Grantor's default.

To pay, upon written notice, all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of interest provided in the Promissory Notes that this Trust Indenture secures until paid, and the payment thereof shall be secured hereby.

To keep the property and the improvements on the property in good condition and repair, not to remove or demolish any building thereon; to complete and restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof, nor commit, suffer or permit any act upon said property in violation of the law; to do all other acts from which the character or use of said property may be reasonably necessary, the specific enumerations herein, not excluding the general. Grantor further agrees to allow Beneficiary to inspect the property at all times providing such inspection shall be done during normal working hours and upon reasonable notice. Should Grantor or any Borrower fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes.

IT IS MUTUALLY AGREED THAT:

Without affecting the liability of any person, including Grantor, for the payment of any indebtedness secured hereby, or the lien of this Trust Indenture on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows; Beneficiary may from time to time and without notice:

- (a) Release any person liable for payment of any of the indebtedness,
- (b) Extend the time or otherwise alter the terms of payment of any of the indebtedness either with the Grantor's written consent or upon the determination of a mutually agreed upon mediator,
- (c) Release any property securing the indebtedness.

Trustee may, at any time and from time to time, upon written request of Beneficiary:

- (a) Consent to the making of any map or plat of the property,
- (b) Join in any subordination or other agreement affecting this Trust Indenture or lien or charge thereof,
- (c) Reconvey, without warranty, all or any part of the property.

Trustee may, at any time and from time to time, upon written request of Grantor and Beneficiary, join in granting any easement or creating any restrictions thereon.

Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Indenture and the Promissory Notes to Trustee for cancellation and retention and upon payment by Beneficiary of its fees, Trustee shall reconvey to Grantor, without warranty, the property then held hereunder.

As additional security, Grantor hereby assigns to Beneficiary the rents, royalties, issues and profits of the property provided that Grantor shall, prior to acceleration or abandonment of the property, have the right to collect and retain such rents, royalties, issues and profits as they become due and payable. Upon acceleration as provided herein or abandonment of the property, Beneficiary shall be entitled to enter upon, take possession and manage the property and collect the rents, royalties, issues and profits of the property, including those past due. All rents, royalties, issues and profits collected by Beneficiary shall be applied first to payment of the cost of management of the property and collection of rents, royalties, issues and profits, including, but not limited to, any receivers' fees, premiums on receivers' bonds, and reasonable attorneys' fees, and then to the sums secured by this Trust Indenture. Beneficiary shall be liable to account only for those rents, royalties, issues and profits actually received. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, or option, nor an assumption of liability under, nor subordination of the lien or charge of this Trust Indenture to any such tenancy, lease, or option. The entering upon and taking possession of said property, the collection of such rents, royalties, issues, and profits, or the proceeds of fire or other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

Time is of the essence hereof. Upon default by Grantor or any Borrower in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary, prior to acceleration, shall mail notice to Grantor at Grantor's address set forth above, or to such other address as Grantor may designate by notice to Beneficiary (such notice to be given by certified mail, return receipt requested, to Grantor), which notice shall specify: (1) The breach; (2) The action required to cure such breach; (3) A date, not less than thirty (30) days from the date notice is mailed to Grantor, by which such breach must be cured; and (4) That failure to cure such breach on or before the date specified and the notice may result in acceleration of the sum secured by this Trust Indenture and sale of the property. The notice shall further inform Grantor of the right to reinstate after acceleration and of the right to bring a court action to assert the nonexistence of a default or any other

defense of Grantor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Beneficiary at Beneficiary's option may declare all of the sums secured by this Trust Indenture to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided by this Trust Indenture, including but not limited to reasonable attorneys' fees.

If Beneficiary invokes the power of sale, Beneficiary shall give Trustee notice of the occurrence of an event of default and of Beneficiary's election to cause the property to be sold. Beneficiary or Trustee shall record a notice of sale in the county in which the property is located and Trustee shall mail copies of such notice in the manner prescribed by applicable law to Grantor and other persons prescribed by applicable law. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of default and notice of sale having been given as then required by law, Trustee, or its attorney, without demand on Grantor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding fifteen (15) days by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary (but excluding Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustees' and attorney's fees, Trustee shall apply the proceeds of sale to payment of all amounts secured hereby and due hereunder, including all sums expended by the Trustee and Beneficiary, or either of them, with accrued interest thereon at the rate of interest provided in the Promissory Notes that this trust indenture secures from the date of expenditure thereof, and the surplus, if any, to the person or persons legally entitled thereto; provided that the Trustee, in its discretion, may deposit such surplus with the County Clerk and Recorder of the county in which the sale took place.

Grantor agrees to surrender possession of the herein above described trust property to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, in the event such possession has not previously been delivered by Grantor.

Each abstract of title, title insurance policy and all other evidences of title, and all hazard insurance policies placed or deposited with the Beneficiary shall be deemed an incident to the title to the trust property and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for payment of the indebtedness secured hereby.

Notwithstanding Beneficiary's acceleration of the sums secured by this Trust Indenture, Grantor shall have the right to have any proceedings begun by Beneficiary to enforce this Trust Indenture discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to

the power of sale contained in this Trust Indenture or (ii) entry of a judgment enforcing this Trust Indenture if: (a) Grantor pays Beneficiary all sums which would be then due under this Trust Indenture and the Promissory Notes had no acceleration occurred; (b) Grantor cures all breaches of any other covenants or agreements of Grantor contained in this Trust Indenture or the Promissory Notes; (c) Grantor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Grantor contained in this Trust Indenture and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Grantor takes such action as Beneficiary may reasonably require to assure that the lien of this Trust Indenture, Beneficiary's interest in the Property and Grantor's obligation to pay the sums secured by this Trust Indenture shall continue unimpaired. Upon such payment and cure by Grantor, this Trust Indenture and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

Upon the occurrence of any default hereunder and the expiration of the sixty (60) day notice as provided herein, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Indenture in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the Court.

Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including a reasonable attorney's fee, incurred by either of them in instituting, prosecuting or defending any Court action in which Grantor does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof by a party hereto, including but not limited to an action to obtain possession of the above described property after exercise of the power of sale granted hereunder. Beneficiary shall similarly pay to Grantor such costs and expenses in any such Court action in which Grantor is the prevailing party.

If all or any part of the Property or an interest therein is sold or transferred by Grantor without Beneficiary's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Trust Indenture, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Trust Indenture to be immediately due and payable. Beneficiary shall have waived such option to accelerate if, prior to the sale or transfer, Beneficiary and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Beneficiary and that the interest payable on the sums secured by this Trust Indenture shall be at such rate as Beneficiary shall request. If Beneficiary has waived the option to accelerate as provided herein, and if Grantor's successor in interest has executed a written assumption agreement accepted in writing by Beneficiary, Beneficiary shall release Grantor from all obligations under this Trust Indenture.

If Beneficiary exercises such option to accelerate, Beneficiary shall mail Grantor notice of acceleration. Such notice shall provide a period of not less than sixty (60) days from the date the notice is mailed within which Grantor may pay the sums declared due. If Grantor fails to pay such

sums prior to the expiration of such period, Beneficiary may, without further notice or demand on Grantor, invoke any remedies permitted by law.

This Trust Indenture shall apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. All obligations of Grantor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledge, of the Promissory Notes secured hereby. In this Trust Indenture, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Trustee accepts this Trust when this Trust Indenture, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other trust indenture or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

This Trust Indenture is made within the State of Montana pursuant to the Small Tract Financing Act of Montana and is not made or taken in substitution for any mortgage in existence on the effective date of said Act.

Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Grantor at the address herein above set forth.

Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Montana as to all indebtedness secured by this Trust Indenture.

Grantor agrees to pay reasonable attorneys' fees in the event Beneficiary brings a claim or lawsuit against Grantor to enforce the terms of this Trust Indenture.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed this ____ day of _____, 2025.

GRANTOR:

AVERILL HOSPITALITY, LLC,
a Montana limited liability company

By: _____
Brian Averill
Its: Authorized Representative

STATE OF MONTANA)
 : ss.
County of Missoula)

Acknowledged before me this ____ day of _____, 2025 by Brian Averill, Authorized Representative of Averill Hospitality, LLC, a Montana limited liability company.

(SEAL)

Notary Public for the State of Montana

Exhibit A

Legal Description

EXHIBIT E

DUE DILIGENCE MATERIALS

EXHIBIT F

ENVIRONMENTAL INSPECTION REPORTS

EXHIBIT G

FORM OF MEMORANDUM OF DEVELOPMENT AGREEMENT

Return to:

Datsopoulos, MacDonald & Lind P.C.

Attn: William K. VanCanagan

201 W. Main St., Ste. 201

Missoula, MT 59802

MEMORANDUM OF DEVELOPMENT AGREEMENT

_____, 2025

There is an agreement in writing entitled Development Agreement, dated as of _____, 2025 (as amended or restated from time to time in accordance with its terms, the “Development Agreement”), among the CITY OF MISSOULA, MONTANA, a political subdivision of the State of Montana (“City”), AVERILL HOSPITALITY, LLC, a Montana limited liability company (“Developer”), and the MISSOULA REDEVELOPMENT AGENCY, a component part of the City (the “MRA”).

The Development Agreement pertains to certain real property in Missoula County, Montana legally described as follows and commonly known as the _____:

This Memorandum of Development Agreement (this “Memorandum”) is executed to evidence and confirm the Development Agreement, to which reference is made for its terms and conditions, which include the following:

- (1) Initial Term: Date of Development Agreement through the date of full performance of the obligations of the parties including construction and financing of the improvements contemplated thereunder.
- (2) The Development Agreement includes, without limitation, subject to the terms and conditions thereof, provisions regarding the development of the Project, the option to purchase certain parking condominium units, Bonds, the construction of Public Improvements in the Project Area, and the undertaking of other things; and numerous other provisions, all as set forth more particularly in the Development Agreement to which reference is made for all purposes.

This Memorandum is merely a memorandum of the Development Agreement and is recorded, in part, to provide notice of the Development Agreement. This Memorandum is and the Property and portions of the surrounding area are subject to the provisions in the Development Agreement. This Memorandum shall not be deemed or construed to define, limit, or modify the Development Agreement or any provision thereof. In the event of any conflict between the

provisions of the Development Agreement, on the one hand, and this Memorandum, on the other, the provisions of the Development Agreement shall prevail. This Memorandum is binding upon and shall inure to the benefit of the successors and assigns of the parties.

CITY:

CITY OF MISSOULA, MONTANA

By: _____
Mayor

Attest:

City Clerk

ACKNOWLEDGMENT OF CITY

STATE OF MONTANA)
)ss.
COUNTY OF MISSOULA)

On this ____ day of _____, personally appeared _____, known to me to be the _____ of the City of Missoula, Montana and acknowledged this Memorandum of Development Agreement to be the voluntary act and deed of such City.

Printed Name of Notary Public: _____
Notary Public for the State of _____
My Commission Expires: _____
Residing at: _____

DEVELOPER:

AVERILL HOSPITALITY, LLC,
A Montana limited liability company,

By: _____
Brian Averill, Authorized Representative

ACKNOWLEDGMENT OF DEVELOPER

STATE OF MONTANA)
)ss.
COUNTY OF MISSOULA)

On this ____ day of _____, personally appeared Brian Averill, known to me to be the Authorized Representative of Averill Hospitality,, LLC, a Montana limited liability company, and acknowledged this Memorandum of Development Agreement to be the voluntary act and deed of such company.

Printed Name of Notary Public: _____
Notary Public for the State of _____
My Commission Expires: _____
Residing at: _____

MRA:

MISSOULA REDEVELOPMENT AGENCY

By: _____
Its: _____

ACKNOWLEDGMENT OF MRA

STATE OF MONTANA)
)ss.
COUNTY OF MISSOULA)

On this ____ day of _____, 2025 personally appeared _____,
known to me to be the _____ of Missoula Redevelopment Agency, a component
part of the City of Missoula, Montana, and acknowledged this Memorandum of Development
Agreement to be the voluntary act and deed of such company.

Printed Name of Notary Public: _____
Notary Public for the State of _____
My Commission Expires: _____
Residing at: _____

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT is dated as of _____, 2024, by and among AVERILL HOSPITALITY, LLC, a Montana limited liability company (the “Developer”), the CITY OF MISSOULA, MONTANA, a municipal corporation of the State of Montana (“City”), and the MISSOULA REDEVELOPMENT AGENCY, a component part of the City (the “MRA”). The Developer, the City and the MRA are each individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City owns certain real property located at the southwest corner of Orange Street and Front Street in Missoula, Montana, legally described in Exhibit A, attached hereto (the “City Land”); and

WHEREAS, the Developer proposes to purchase a portion of the City Land shown on the Site Plan attached hereto as Exhibit B (the “Developer Site”) and to undertake the construction and operation of a hotel with approximately 180 hotel rooms and condominiums including approximately 15,000 sf of space for meetings, small conferences, banquets, and/or entertainment (the “Hotel Building”) and a parking facility with spaces sufficient to accommodate parking needs of the hotel and the sale of spaces to the City or MRA as hereinafter provided (the “Parking Facility”); and

WHEREAS, the City has determined that the Project will contain various public benefits and further various City and MRA goals including, without limitation, meaningful progress towards workforce housing goals, improved circulation and safety on City streets, implementation of the greenway on Owen Street, provision of a relief valve for the intersection of Broadway and Orange Street, enhancement of trail connectivity along the Clark Fork River, improved pedestrian access across Broadway and Orange Street, connection to the Front & Main Streets Conversion project, creation of a public plaza providing a viewshed to the south, a public gathering space and access to opportunities along the Clark Fork River, enhancement of the riverfront trail and greenway through the Developer Site, provision of additional hotel rooms and space for meetings, small conferences, banquets and/or entertainment available for rent by the public; and contribution to growth of the City’s tax base; and

WHEREAS, to facilitate the Project and development of the remainder of the Riverfront Triangle, the City or MRA proposed to undertake the construction of public improvements and public infrastructure at and adjacent to the Developer Site hereinafter defined as the “Public Improvements”; and

WHEREAS, the Parties expect that the City will use tax increment financing (“TIF”) to pay the costs of the Public Improvements and incidental costs related thereto; and

WHEREAS, the Parties hereto desire to enter into this Agreement which sets forth the obligations and commitments of the Parties with respect to the Project and the Public Improvements;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the City, the MRA and Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

Section 1.1. Definitions.

“Agreement” means this Development Agreement, as it may be amended or supplemented from time to time in accordance with the terms hereof.

“Buy/Sell Agreement” means the Agreement for the Purchase and Sale of Real Property of even date herewith between the City and the Developer providing for the purchase and sale of the Developer Site.

“City” has the meaning given such term in the first paragraph of this Agreement.

“City Council” means the governing body of the City.

“Closing Date” shall mean the closing of the purchase and sale of the Developer Site as provided in the Buy/Sell Agreement.

“Condominium Documents” means the necessary floor plans, declaration of unit ownership, covenants, conditions, restrictions, easements, and bylaws, pursuant to which the Parking Facility will be submitted to the condominium form of ownership, as described in Section 3.4 below.

“Developer” has the meaning given such term in the first paragraph of this Agreement.

“Developer Site” means that portion of the City Land to be transferred to the Developer pursuant to the Land Disposition Agreements as shown on Exhibit A, attached hereto.

“District” means the Riverfront Triangle Urban Renewal District created pursuant to Ordinance No. 3380, adopted by the City Council on July 21, 2008. The Project Area is located within the District.

“Force Majeure” means a delay resulting from a cause over which the Party required to perform does not have any control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, weather, accidents, war, civil unrest, embargoes, strikes, failure of a contractor or subcontractor to perform and unavailability of raw materials or manufactured goods.

“Hotel Building” means the hotel to be constructed on the Developer Site, expected to contain approximately 180 hotel rooms, condominiums, and including approximately 15,000 sf of space for meetings, small conferences, banquets, and/or entertainment, retail and restaurant space, and other services, but excluding the Parking Facility.

“Land Disposition Agreements” means, collectively, the Buy/Sell Agreement together with the Promissory Note, Trust Indenture, and Deed described in the Buy/Sell Agreement.

“MRA” has the meaning given such term in the first paragraph of this Agreement.

“Parking Facility” means the subterranean parking garage to be constructed and operated by Developer containing approximately 185 parking spaces (with the exact number to be determined during final design) and to be submitted to the condominium form of ownership to facilitate the City’s or MRA’s purchase of parking spaces pursuant to the Purchase Option.

“Project” means the Hotel Building, the Parking Facility, and the Public Improvements, collectively.

“Project Area” means the land located within the District on which the Project will be constructed, which includes the Developer Site and, with respect to the Public Improvements, includes land owned by the City and owners of adjacent private property.

“Public Improvements” means the design, development and construction of certain public improvements pursuant to this Agreement, including (a) all public sidewalks, traffic mitigation, curbs, gutters, drains, paving, storm drain collector systems, landscaping, street lights, irrigation systems, and other elements required or included in the sidewalk and street along Orange Street and West Front Street within or adjacent to the Project Area, (b) the trail/greenway and public plaza shown on the Site Plan, (c) enhancements to the pathways, greenway system, and other improvements constructed or installed in the public riverfront within or adjacent to the Project Area, (d) installation or upgrade of primary main lines of municipal potable and fire suppression water, wastewater sewer, power, gas, communications, and any other public improvements the City may agree are necessary within or adjacent to the Project Area that are consistent with the design of the Project and the public riverfront parks and trails system, all as generally shown on Exhibit C, attached hereto.

“Purchase Option” means the City and MRA’s option to purchase parking spaces in the Parking Facility as provided in Section 3.3 below.

“Site Plan” means the preliminary site plan dated as of _____, depicting the expected location and placement of the Hotel Building, the Parking Facility, and the Public Improvements, attached hereto as Exhibit B.

Section 1.2. Incorporation. The Recitals and all exhibits attached to this Agreement are incorporated herein by reference.

ARTICLE II. REPRESENTATIONS OF THE PARTIES.

Section 2.1. Developer Representations. Developer hereby represents as follows:

a. Developer is a Montana limited liability company, duly formed, validly existing and in good standing under the laws of the State and is duly qualified to do business in the State.

b. The Developer has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

c. Developer has been permitted access to the Developer Site and has conducted its reasonable due diligence with respect to the Developer Site.

d. There are no pending or threatened legal proceedings of which the Developer has knowledge which seek to restrain or enjoin the transactions contemplated by the Agreement or which question the authority of the Developer to execute and deliver this Agreement or the validity of this Agreement.

Section 2.2. City Representations. The City hereby represents as follows:

a. The City is a municipal corporation duly organized and existing under the laws of the State of Montana. Under the laws of the State of Montana and City policies and procedures, the City has the power to enter into this Agreement and carry out its obligations hereunder.

b. The City has marketable title to the Developer Site, subject to such liens, encumbrances and defects of record and such other exceptions to title customarily set forth in an ALTA owner's policy of title insurance approved by the Developer and subject to the more detailed provisions of the Buy/Sell Agreement.

c. There is no action, suit, investigation or proceeding now pending or, to the knowledge of the City, threatened against or affecting the City or its operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that individually or in the aggregate materially and adversely affects the validity of the transactions contemplated hereby, ability of the City to complete its obligations under this Agreement, or the validity or enforceability of this Agreement.

Section 2.3. MRA Representations. The MRA hereby represents as follows:

a. The MRA is a redevelopment agency duly organized and existing under the laws of the State. Under the provisions of M.C.A., Title 7, Chapter 15, Parts 42 and 43, as amended and the terms of Ordinance No. 3380 adopted by the City on July 21, 2008, the MRA has the power to enter into this Agreement and carry out its obligations hereunder.

b. There is no action, suit, investigation or proceeding now pending or, to the knowledge of the MRA, threatened against or affecting the MRA or its operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that individually or in the

aggregate materially and adversely affects the validity of the transactions contemplated hereby, the ability of the MRA to complete its obligations under this Agreement, or the validity or enforceability of this Agreement.

ARTICLE III. PARKING PURCHASE OPTION.

Section 3.1. Parking Purchase Option Timing. The Parking Purchase Option granted hereunder by the Developer to the City shall be subject to the terms and conditions set forth in this Article III. The Condominium Documents described in Section 3.4 below shall be executed and recorded on a date that is mutually acceptable to the Parties, but in no event later than sixty (60) days following the date upon which the City or MRA exercises the Purchase Option described in Section 3.3 below.

Section 3.2. Land Disposition Agreements. Provisions for the execution and recording (where applicable) of the Land Disposition Agreements are set forth in the Buy-Sell Agreement.

Section 3.3. Option to Purchase Parking Spaces. The City's option to purchase the parking spaces described below is subject to the following requirements:

a. Developer grants City and MRA the option to purchase parking spaces in the Parking Facility (the "Purchase Option"), the number of which shall be mutually agreed upon by the parties at the time the Purchase Option is exercised. The closing of the purchase of such parking spaces shall occur not later than thirty (30) days following substantial completion of the Parking Facility, as evidenced by a certificate of occupancy issued by the City or a certificate of substantial completion issued by the Project architect. The Purchase Option may be exercised at any time prior to substantial completion upon written notice by the City to the Developer. The City is under no obligation to exercise this Purchase Option nor purchase parking spaces.

b. The purchase price shall be market rate per parking space at the time the Purchase Option is exercised, as mutually agreed upon by the parties, provided that in no event shall the market rate for any parking space be less than all of Developer's actual hard and soft costs attributable, or reasonably apportionable, to designing and constructing the Parking Facility (including, without limitation, general conditions and carrying costs) divided by the total number of parking spaces in the Parking Facility.

c. In addition to the fixed percentage of parking spaces set forth above, the City and MRA shall have the option to purchase the remainder of the parking spaces in the Parking Facility exclusively with available TIF funds in the District, on the same terms described above and subject to the availability and prioritization of TIF funds pursuant to the requirements set forth in this Section 3.3.

d. Developer will own and operate the parking it requires for the Hotel Building, and the Developer shall notify the City in writing prior to substantial completion of the Parking Facility of the portions of the Parking Facility that are excluded from the City and MRA's Purchase Option.

Section 3.4. Condominium Documents. The Parties shall negotiate and finalize the Condominium Documents prior to Closing following the exercise of the Purchase Option, including the declaration of unit ownership, any covenants, conditions, restrictions, and easements to be set forth therein, and the bylaws of the condominium association, pursuant to which the Parking Facility will be submitted to the condominium form of ownership and the parking spaces therein will be created as individual units pursuant to and in accordance with the Unit Ownership Act, codified at Title 70, Chapter 23, M.C.A. The Parties acknowledge that the site plan and floor plans to be recorded with the declaration of unit ownership will not be finalized prior to Closing following the exercise of the Purchase Option, and Developer will prepare such site plan and floor plans in due course during final design of the Parking Facility. The Condominium Documents will be executed and recorded on a date mutually agreed to by the Parties, but not later than sixty (60) days following the date upon which the City or MRA exercises the Purchase Option. The Condominium Documents are expected to include floor plans; a site plan; a declaration of unit ownership; covenants, conditions, restrictions, and easements that are reasonably necessary or appropriate for the condominium ownership and operation of a commercial/public parking garage facility; articles of incorporation of the condominium association; and bylaws of the condominium association.

Section 3.5. Developer Site Uses. The City and the Developer hereby agree upon the following uses and restrictions regarding the Developer Site:

a. The Developer will provide the following uses within the Developer Site: hotel, including approximately 15,000 sf of space for meetings, small conferences, banquets, and/or entertainment.

b. Developer agrees to facilitate the collection of a 1% assessment on all Room and Food & Beverage revenue generated at the property which will be donated in full to the Affordable Housing Trust Fund and – this will generate an estimated amount of \$300,000 annually. This assessment will last for 10 years or until a total of \$3,000,000 has been contributed to the Affordable Housing Trust Fund, whichever comes later, at which point Developer has the option to move this to a local charitable or community organization of its choice within City limits. The assessment will commence once Certificate of Occupancy is issued for the Hotel.

c. The Developer will pay all permit fees and impact fees for the Hotel Building and Parking Facility as and when they become due and payable.

d. The City will own the public plaza and trail/greenway, described in Section 4.3 below, and Developer will control, operate, and maintain the plaza for both public and private use on terms mutually acceptable to the City and Developer and set forth in an operating agreement to be reduced to writing and mutually agreed upon by the parties following the Closing of the purchase of the Property. The Operating Agreement shall be executed by the Parties prior to the final Certificate of Occupancy for the hotel being issued. The City will be responsible for any future capital improvements to the plaza and trail/greenway, which it deems necessary and in the public interest.

ARTICLE IV. UNDERTAKINGS.

Section 4.1. Public Improvements. The Developer will construct the Public Infrastructure in phases utilizing public funds including (i) up to 70% the Purchase Price paid to the City pursuant to the Buy/Sell Agreement, (ii) TIF Funds as provided in Section 4.2 below, and (ii) to the extent the costs of constructing Public Infrastructure exceed the available public funds from the foregoing, Developer financing as further provided in Section 4.2 below. Refer to the Site Plan attached hereto as Exhibit B and the depiction of Public Improvements attached hereto as Exhibit C for more detail regarding the location and scope of Public Improvements. The general phasing plan for construction and funding of the Public Infrastructure is attached hereto as Exhibit D. This Section 4.1 contains a preliminary framework for phasing the Public Improvements. The Parties will cooperate to finalize the phasing plan for Public Improvements as the Project commences.

a. Phase 1 Public Improvements include all subsurface utilities sufficient to serve the Project. The Developer will commence design of the Phase 1 Public Improvements promptly upon completion of the sale of the Developer Site and the Developer's payment of all applicable impact fees. Prior to initiating construction of the Public Improvements, the Buyer shall have closed on its construction financing for the Project and Buyer shall have obtained or be in a position to obtain building permits (meaning approvable construction plans are complete) with regard to the Project and be in a position to commence construction of the Project as determined by the City. Once the City and Developer determine that the foregoing has been satisfied, the Developer thereafter will diligently pursue completion of the Phase 1 Public Improvements. The costs of designing and constructing the Phase 1 Public Improvements shall be paid for by the City/MRA using the sources of funds identified in clauses "(i)" and "(ii)" above.

b. Phase 2 Public Improvements include all street paving, sidewalks, curb, gutter, street trees, and other street infrastructure adjacent to the Developer Site. The Developer will commence design and construction of the Phase 2 Public Improvements in coordination with the construction schedule of the Hotel and upon a determination that there is sufficient Developer financing, District bonding capacity, or available public funds as described in clause "(i)" above to pay for the Phase 2 Public Improvements and thereafter will diligently pursue completion of the Phase 2 Public Improvements. Provided, however, that the Parties acknowledge and agree that any costs of the Public Improvements above described incurred and financed by the Developer shall be paid for and reimbursed by the City as TIF or other sources of City funding become available as further provided in Section 4.2 below.

c. Phase 3 Public Improvements include the public plaza, trails, and greenway system. The Developer will commence design and construction of the Phase 3 Public Improvements in coordination with the construction schedule of the Hotel and upon a determination that there is sufficient Developer financing or District bonding capacity (or at the City's discretion other public funding) to pay for the Phase 3 Public Improvements and thereafter will diligently pursue completion of the Phase 3 Public Improvements. Provided, however, that the Parties acknowledge and agree that any costs of the Public Improvements above described incurred and financed by the Developer shall be paid for and reimbursed by the City as TIF or other sources of City funding become available as further provided in Section 4.2 below.

Section 4.2. Funding of Public Improvements. Developer, the City, and the owner(s) of adjacent private property in the Project Area as appropriate will work together to complete an Infrastructure Agreement or Agreements memorializing the scope, design, phasing, and cost of Public Improvements. In certain cases it may be determined that it will be most expedient or efficient for the Developer and/or the owner(s) of adjacent private property to finance and construct certain Public Improvements with reimbursement through TIF funds (including available increment and/or District bonds) as such TIF funds become available, with agreed-upon carrying costs which take into consideration the zero percent (0%) interest on the promissory note associated with Developer's purchase of the Developer Site. The City may also provide other interim financing from other sources at its own discretion.

Any funding provided by the Developer for the costs of Phase 1 and 2 Public Improvements will be promptly reimbursed (with no additional developer fees (0%)) by monthly draws from the sources of public funds described in Section 4.1 above.

All costs of Phase 3 Public Improvements may be initially financed through the Developer's construction lender ("Phase 3 Bank Financing") and will ultimately be reimbursed by the City/MRA using the sources of public funds described in Section 4.1 above. The City, the Developer, and the construction lender will agree on mutually acceptable terms for Phase 3 Bank Financing. The City may prepay the Phase 3 Bank Financing at any point as funds become available. The City may assume the Phase 3 Bank Financing at any point or will refinance the Phase 3 Bank Financing at the end of the loan term.

The costs reimbursable to the Developer include any and all hard and soft design and development costs, including but not limited to costs directly and indirectly related to the design and development of any Public Improvements, and fees and interest paid to the lender attributable to the Phase 3 Bank Financing. The City will be 100% responsible for any financing provided by the Developer for Phase 3. The Developer will not add any additional fees to the financing cost.

Section 4.3. Public Plaza and Trail Connections. The City and Developer shall coordinate on the design and construction of a public plaza and trail connection between Front Street and the existing Riverfront Trail. The City shall be responsible for the costs of design, development, construction and finishes (such as art) through the means identified in Section 4.2 above, but Developer shall be responsible for constructing the agreed upon public improvements in coordination with the construction of the Hotel. Developer shall meet with Missoula Redevelopment Agency and with the City's Parks and Recreation staff to review the design for the trail and public plaza at the pre-design phase, and at 30% and 100% Schematic Design, and at 30% and 60% Design Development points.

a. The public plaza is intended to allow for a community gathering spot which is expected to comprise 18,000 to 24,000 square feet and to include hardscape and softscape elements. The plaza shall include public seating along with privately owned and constructed adjoining food and beverage concessions. The plaza will be designed to host public and private events, food and beverage seating, and to accommodate all modes of active transportation including ADA access, in order to provide public non-motorized access between the public riverfront area and West Front Street. To the extent possible and feasible, the Developer will

design, curate and install public interpretive displays and art installations within the Public Plaza that will incorporate and celebrate the City's culture, history and/or unique location. The Developer shall have the right to manage the plaza as described above.

b. The development of the property shall include construction of Riverfront Trail along the north shore of the Clark Fork River beginning at the existing Riverfront Trail under the Orange Street Bridge and extending to and through the Owen Street right-of-way. The trail shall meet City of Missoula Parks standards, and shall have a minimum width of 14 feet with 1-foot shoulders on either side of the path. If the City constructs a wider path through Caras Park to the east, the City may update this standard to the standard applied where this trail meets the existing trail. Design of the Riverfront Trail and any variation from the standards, including surface width of the trail and shoulder, lighting, landscaping, and provision for trash receptacles and benches shall be specific to the site and approved by the City. The trail shall provide for a potential future connection to continue the Riverfront Trail on the adjacent property to the west along the riverfront, as well as connect through the public plaza to Front Street. The trail/greenway will be maintained by the City as described in the operation agreement for the public plaza. The Developer will construct the Riverfront Trail subject to the City's obligation to reimburse the Developer for any and all costs of design, development or construction as provided in Section 4.2, "Funding of Public Improvements" above.

ARTICLE V. EVENTS OF DEFAULT AND REMEDIES.

Section 5.1. Events of Default Defined. The following shall be Events of Default under this Agreement:

a. Failure to complete any undertaking by the applicable deadline provided herein is an event of default, unless the failure is the result of an event of Force Majeure;

b. Any representation set forth in Article III hereof is determined to be untrue or incorrect;

c. Failure by the Developer, the City or the MRA to substantially observe or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement beyond the applicable cure period; or

d. For Developer to:

i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Code or under any similar federal or state law; or

ii. make an assignment for the benefit of its creditors; or

iii. admit in writing its inability to pay its debts generally as they become due;

or

iv. be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 5.1 occurs, the City or MRA shall provide written notice to the Developer or the Developer shall provide written notice to the City or the MRA, whatever the case may be, specifying the nature of the default and the actions necessary to cure the default. If the Event of Default referred to in Section 5.1(a), (b) or (c) is not cured within thirty (30) days after the defaulting Party's receipt of such notice, or for any Default under Section 5.1(d), the non-defaulting Party may take any one or more of the actions set forth below:

a. After providing written notice to the defaulting Party, suspend its performance under this Agreement until it receives assurances from the defaulting Party that the defaulting Party will cure its default and continue its performance under this Agreement.

b. After providing written notice to the defaulting Party, cancel and rescind or terminate this Agreement.

c. Take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) days, if the defaulting Party provides the non-defaulting Party with written assurances satisfactory to the non-defaulting Party that the Event of Default will be cured as soon as reasonably possible. No written notice is required under this Section 5.2(c). If the Event of Default continues, a non-defaulting Party that initially proceeds under this Section 5.2(c) is not prevented from proceeding under Sections 5.2(a) or 5.2(b).

Section 5.3. Force Majeure. Upon the occurrence of any Force Majeure event, the Parties shall cooperate in extending performance deadlines or requirements for a commercially reasonable period of time. For the avoidance of doubt, any delay resulting from a Force Majeure event shall not be an Event of Default under this Agreement.

Section 5.4. Exclusive Remedies. Without in any way limiting remedies for a default, remedies for an Event of Default under this Agreement are intended to be limited to the remedies set forth in Section 5.2(a) through (c) above.

Section 5.5. No Implied Waiver. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be construed to be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. In the event any agreement contained herein should be breached by any Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VI. GENERAL PROVISIONS.

Section 6.1. Conflicts of Interest; City's Representatives Not Individually Liable. No member, officer or employee of the City or the MRA shall have any personal interest, direct or indirect, in this Agreement, the Project or the Public Improvements, nor shall any such member, officer or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested. No member, officer or employee of the City or the MRA shall be personally liable to Developer in the event of any default under or breach of this Agreement by the City.

Section 6.2. Term of Agreement. This Agreement shall remain in effect until the later of (a) the City acquires ownership of the Parking Facility or (b) the parties have fully performed their respective obligations hereunder, subject to earlier termination under Section 5.2 hereof.

Section 6.3. Regulatory Approvals. The Developer acknowledges that references in this Agreement to the "MRA" and "City" do not mean or include the City Development Services Department, City Building Office, City Public Works Department or other regulatory body within the City that is charged with reviewing and/or approving a portion or aspect of the Project. No review or approval by MRA or City officials will in any way be construed by Developer to replace or be in lieu of any required review or approval of the City Development Services Department, City Building Office, City Public Works Department or other regulatory body within the City, or any other official review or approvals required by any State laws or local ordinances or regulations.

Section 6.4. Assignment. This Agreement is unique between the City, the MRA and Developer and no Party may assign any rights or privileges or delegate any duties or obligations under this Agreement without first obtaining the written consent of the other Parties. With the consent of the Director of the City's Development Services Department and the Director of MRA, which shall not be unreasonably withheld, the Developer may assign this Agreement to a limited liability company in which the Developer holds a majority interest for the purposes of holding title to the Developer Site.

Section 6.5. Successors Bound By Agreement. This Agreement will inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors in interest and permitted assignees.

Section 6.6. Prior Agreements. This Agreement supersedes, merges and voids any and all prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement. The Parties waive and release each other from any claims, actions, or causes of action that relate in any manner to any prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement.

Section 6.7. Entire Agreement. This Agreement, as it may be amended under Section 6.8, including any exhibits and attachments hereto, embodies the entire agreement and understanding of the Parties with respect to its subject matter. All Parties shall be prohibited from

offering into evidence in any arbitration or civil action any terms, conditions, understandings, warranties, statements or representations, whether oral or written, with respect to the subject matter of this Agreement and that are not contained in this Agreement, as it may be amended under Section 6.8.

Section 6.8. Amendments, Changes and Modifications. This Agreement may be amended and any of its terms may be modified only by written amendment authorized and executed by the Parties hereto. Notwithstanding the foregoing, any waivers or amendments of provisions that are recited to concern less than all of the Parties may be waived or amended in writing among such concerned Parties only.

Section 6.9. Headings. The headings of articles and sections in this Agreement are inserted for convenience of reference only and do not limit or amplify the terms and provisions of the Agreement in any manner. The headings will be ignored and will not affect the construction of any provisions of this Agreement.

Section 6.10. Notice. Any formal notice, demand or communication required or permitted by the terms of this Agreement to be given to the City, the MRA or the Developer will be in writing and will be delivered to such Party either: (i) by personal hand-delivery; or (ii) by depositing the same in the United States mail, certified mail with return receipt requested, addressed to such Party at the address named below, with postage prepaid thereon. Notice will be deemed complete upon receipt of the notice pursuant to any of the foregoing methods of notice.

If to City:

City of Missoula
Attention: City Finance Director
435 Ryman Street
Missoula, Montana 59802

If to MRA:

Missoula Redevelopment Agency
Attention: Director
140 West Pine Street
Missoula, Montana 59802

If to Developer:

Averill Hospitality, LLC
Attn: Brian Averill
1380 Wisconsin Ave.
Whitefish, MT 59937

With a Copy To:

Datsopoulos, MacDonald & Lind, P.C.
Attention: William K. VanCanagan, Esq.
201 West Main Street, Suite 201
Missoula, Montana 59802

The City, the MRA and the Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

Section 6.11. Severability. If any provision of this Agreement is declared void or held invalid, such provision will be deemed severed from this Agreement and the remaining provisions of this Agreement will otherwise remain in full force and effect.

Section 6.12. Duplicate Originals or Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 6.13. Place of Performance. The place of performance of this Agreement will be in the City of Missoula, Missoula County, Montana.

Section 6.14. Governing Law. This agreement and the legal relations between the Parties hereto will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any choice of law statutes, rules, or principles.

Section 6.15. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or the Public Improvements or for carrying out the expressed intention of this Agreement.

Section 6.16. Contractual Impairment. The obligations and commitments set forth in this Agreement are necessary for proceeding with the development of the Project and are being relied upon by the Parties in proceeding to the realization of mutual benefits to the parties to be derived by the Project. This Agreement creates an obligation of contracts, contractual relationships and vested rights subject to impairment by the legislature of the State of Montana and other governmental or regulatory bodies (other than the City or the MRA).

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the _____ day of _____, 2024.

CITY OF MISSOULA, MONTANA

By: _____
Mayor

[SEAL]

Attest: _____
City Clerk

MISSOULA REDEVELOPMENT AGENCY

By: _____
Karl J. Englund, Chairman

APPROVED FOR LEGAL CONTENT:

City Attorney

AVERILL HOSPITALITY, LLC,
a Montana limited liability company

By: _____
Brian Averill, Authorized Representative

EXHIBIT A

LEGAL DESCRIPTION OF CITY LAND

EXHIBIT B

SITE PLAN

[See attached.]

EXHIBIT C

PUBLIC IMPROVEMENTS

EXHIBIT D

PUBLIC INFRASTRUCTURE PHASING PLAN

[See attached.]

Fox Triangle Land Use and Development Requirements Agreement

July X, 2025

This Land Use and Development Requirements Agreement (hereinafter the “Agreement”) is entered into between Averill Hospitality (“Developer”) and the City of Missoula (“City”). This Agreement covers the Development of the real property described in Exhibit A attached to this Agreement (the “Real Property”).

The Parties previously entered into a similar agreement on June 7, 2017. This Agreement is intended to replace the commitments and covenants made in the 2017 agreement, which the parties voluntarily and mutually agreed to rescind based on the commitment to enter into this Agreement and assume the responsibilities, obligations and covenants contained herein.

The Developer is the owner of the Real Property, and the Developer and the City agree and declare that all the Real Property shall be subject to the following standards and restrictions and that this Agreement shall be binding upon all parties having or acquiring any right, title or interest in the Real Property and shall be binding upon each successor in interest of all portions of the Real Property.

Standards and Restrictions

- 1. Permitted Uses.** The Real Property may be developed with uses listed as permitted and conditional in the CBD-4 Central Business District per Title 20, City Zoning Ordinance. In the event the City Zoning Ordinance is amended by action of City Council, the Real Property may be developed in accordance with the zoning designation provided in the updated City Zoning Map.

- 2. Required Development Elements.** The development of the Real Property shall not occur unless the development includes the construction and operation of a hotel with at least 150 hotel rooms, as well as at least 15,000 square feet of space for meetings & events, which in addition to large conference rooms also include board rooms, small conferences rooms, banquets spaces, and pre-function spaces, along with parking spaces sufficient to accommodate the parking needs of the hotel and conference spaces. If the development of the Real Property includes these elements, the development may contain such other residential or commercial development as the Developer deems suitable. Unless otherwise agreed to in a Development Agreement between the Developer and the City, any development utilizing Missoula Redevelopment Agency Tax Increment Financing funds to cover costs associated with the construction of public infrastructure must comply with that agency’s rules regarding mandatory contributions to the City’s Affordable Housing Trust Fund.

3. **Building Design Standards.** Building designs shall comply with the applicable standards in place at the time of building permit application submittal.
4. **Views.** Development of the Real Property shall maintain unobstructed views through the site along the Riverfront Trail, along W Front Street and Owen Street including the full width of the public access easements located within the vacated portions of the right-of-way.
5. **Parking.** Development of the Real Property shall include the following requirements for off-street parking:
 - a. Off-street parking shall be provided in structured parking garages, either above or below grade. Structured parking garages shall not be located at street level fronting Orange Street or along the south side of Front Street. Structured parking garages shall comply with the development regulations in place at the time of building permit submittal.
 - b. Surface parking lots may be utilized to provide off-street parking, temporarily, prior to build-out of the real property. However, as development occurs temporary surface parking lots shall be replaced with development meeting applicable City standards. Permanent surface parking lots are prohibited; and no temporary parking lot may exist for a period longer than two years. Irrespective of the foregoing, Developer may to construct up to ten surface lot parking spaces for short term use associated with guest check-in, valet services & event parking queuing if the design of the hotel necessitates such a need.
 - c. Off-street parking spaces, except required ADA spaces, may be provided off-site subject to parking agreements filed prior to building permit approval.
 - d. Short-Term and Long-Term bicycle parking spaces shall meet applicable City development regulations in place at the time of building permit application.
6. **Riverfront Trail.** Development of the Real Property shall include construction of the Riverfront Trail along the north shore of the Clark Fork River beginning at the existing Riverfront Trail under the Orange Street Bridge and extending to the western edge of the Real Property, with the intent to connect to West Broadway without interruption or detour. The minimum constructed trail width shall be 14 feet with 2 foot shoulders on either side of the path. Design of the Riverfront Trail and any variation from applicable standards, including surface width of the trail, lighting, provision for trash receptacles and benches, shall be specific to the site and approved by City Parks and Recreation. Development shall include a bicycle commuter connection from the Riverfront Trail to W Broadway or W Front Street either through the site in the general area of the vacated Owen Street right-of-way or through a north/south public access easement on the western edge of the Real Property. City pays for construction

Plaza - Owen Street vacated ROW. Development of the Real Property shall include construction of a Plaza and active transportation facilities within a public access easement

that is no less than 60 feet in width and up to 90 feet in width as necessary to contain the "Plaza" and active transportation facilities, to be located within the general area of the vacated portion of Owen Street connecting the Riverfront Trail to the active transportation facilities at the intersection of W Front Street and Owen Street. Unobstructed views from properties north of W Broadway to the River shall be maintained for the full width of the Plaza. The design of the Plaza shall accommodate all modes of active transportation. Developer shall grant an easement for the public access easement discussed in this section prior to any construction activities occurring on the Real Property if no such public easement is already in place, or prior to any conveyance of the Real Property, whichever occurs first.

- 7. Greenway and Plaza Design.** The Developer will meet with Missoula Redevelopment Agency (MRA) and with the City's Parks and Recreation staff to review the design for the Plaza within the Owen Street vacated right-of-way at the pre-design phase, and at 30% and 100% Schematic Design, and at 30% and 60% Design Development points.
- 8. Design and Development Standards.** Development of the Real Property shall meet all applicable City of Missoula development regulations (including Public Works and Parks Manual standards) in place at the time of building permit application submittal. Parks and Recreation standards include, but are not limited to, Public Landscape and Recreation Facilities Design Manual, Urban Forest Management Plan, as well as best practices for Crime Prevention through Environmental Design (CPTED).
- 9. Grant of Easements.** The Developer will grant to the City administrative access easements to allow the City motorized, administrative and maintenance access to any publicly-managed portion of the site for maintenance and repairs. The motorized, administrative access easements will include a temporary construction easement, which is a minimum of 20' and allows for heavy equipment access to the Riverfront Trail. The easement may be modified to address site specific design issues by mutual written agreement of both the City and the Developer. The easements identified in this Section shall be granted prior to any development on the Real Property or prior to conveyance of any part of the Real Property, whichever occurs first.
- 10. Construction Closures and Detours.** The Developer will submit a plan to the Missoula Parks & Recreation and City's Bicycle and Pedestrian Office for approval addressing detours and advanced notification signage for bicyclists and pedestrians for any public pedestrian trail through the Real Property at least 30 days in advance of any closures, temporary or otherwise occurring on the site.
- 11. Riverfront Park.** The Developer will engage Parks and Recreation in the design of the remainder of the City-owned parcel of land that will be a riverfront park. The Developer will schedule design review meetings with Parks and Recreation at the following points in the design process: Pre-design, 30% Schematic Design, 100% Schematic Design (approval by Department of Parks and Recreation required,) 30% Design Development, 60% Design

Development, 100% Design Development (approval by Department of Parks and Recreation required,) 75% Construction Documents (final redline by City). Storm drainage structures are acceptable in the City Riverfront Park land but must be sub-surface infrastructure that does not limit the park, trail or green space values. Storm water drainage plans shall be reviewed and approved by Missoula Public Works and Mobility Department.

12. Maintenance and Management Agreements. The Developer and the City shall enter into maintenance agreements to delineate each party's obligations for maintenance and management of the various public spaces on the site, including but not limited to the Greenway within the West Front Street vacated right-of-way, the Plaza within the Owen Street vacated right-of-way, the Riverfront Park, and the Riverfront Trail. Any management agreement for the site may include provisions allowing private or public events, but shall include provisions ensuring that the public can travel through the site at all times, unless closed for emergencies or construction/safety purposes.

13. Street Tree Design. Prior to beginning development of the Real Property, the Developer will meet with Parks and Recreation to review and approve the design and selection of street trees.

14. Future Pedestrian Bridge. The Developer shall meet with Parks and Recreation to determine the best location for a potential future pedestrian bridge across the Clark Fork River from City park land at McCormick Park on the south side of the river to the Real Property on the north side of the River. The Developer will document and define this location in its plans and will facilitate future design and construction of this bridge as part of the public plaza design by placing any necessary infrastructure within the Real Property to accommodate a future bridge and that could not be placed after development of the Real Property. City pays for development and construction of any bridge or associated infrastructure to support such a bridge.

15. Riverbank Stabilization and Vegetation.

- a. For Areas Disturbed by Developer Activities. In any area where the riverbank is disturbed by the Developer's activities, the Developer will repair and stabilize any damage and will plant native riparian shrubs along the riverbank in the disturbed area to stabilize against erosion and enhance the natural environment along the river. The Developer will work with Parks and Recreation to select the specific type of vegetation, but will select drought tolerant plants with characteristics that discourage people from accessing the bank. Additionally, along the riverbank and Riverfront Trail, the Developer shall work with Parks and Recreation to determine if physical barriers (eg. fencing, boulders, signage etc.) along the edge of the stream bank is required to prevent erosion, to direct users to sustainable river access points and/or prevent undesired access to the river, and shall install such physical barriers if deemed necessary. Developer shall also consult with the City Floodplain Administrator to determine applicable regulations and permit requirements.

- b. For Existing Areas Not Disturbed by Developer Activities: The Developer will pay an allowance of \$2,500.00 to City Parks and Recreation to cover the cost of purchasing and installing native plants and restoration/stabilization materials to repair existing erosion and stabilize the riverbank in the area between the river and the top of bank. City Parks and Recreation is responsible for procuring plant materials and carrying out or supervising planting in this area.

16. Amendments. No part of this Agreement may be amended or deleted without prior written consent of the Missoula City Council and the Developer, or their successors and assigns.