

## SUBLEASE AND PARTITION AGREEMENT

THIS SUBLEASE AND PARTITION AGREEMENT (this "Agreement") dated as of the \_\_\_\_ day of \_\_\_\_\_, 2006, is from Millsite Revitalization Project, LLC ("**Sublessor**" or "**MRP**"), a Montana limited liability company having its principal office at 2800 South Reserve Street, Missoula, Montana, to The City of Missoula ("**Sublessee**" or the "**City**"), a municipal corporation and political subdivision of the State of Montana having an address of 435 Ryman, Missoula, Montana (collectively, the "**Parties**").

### Recitals

A. The City Council (the "**Council**") of the City has duly created its Urban Renewal District II (the "**District**") and adopted an urban renewal plan for the District (as amended, the "**Urban Renewal District II Plan**" or the "**Plan**"). The Plan, as adopted, contains a tax increment financing provision in accordance with the Act.

B. The Council has determined that the real property described on Exhibit A attached hereto (the "**Property**") (commonly known as the Champion Millsite Property) is and was blighted within the meaning of the Act.

C. Pursuant to action by the City, the Property has been annexed into the City and has been included in the District.

D. MRP has presented to the City a proposal for the rehabilitation and development of the Property.

E. Pursuant to Buy-Sell Agreement dated January 13, 2005 (the "**Fee Purchase Agreement**"), MRP has obtained from the owners (the "**Silver Foundation**") of the fee interest in the Property (the "**Fee**") the right to purchase such fee interest. The Fee Purchase Agreement expires on December 31, 2007 (as such date exists or may be extended, the "**Fee Purchase Agreement Expiration Date**"). Pursuant to Agreement for Purchase and Sale of Leasehold Interest in Real Estate dated March 15, 2004 (the "**Leasehold Purchase Agreement**"), MRP has obtained from Idaho Timber of Missoula, Inc. an option to acquire the leasehold estate in the Property (the "**Leasehold**").

F. The Leasehold was created by that certain lease dated January 1, 1959 by and between The Modern Plumbing & Building Supplies as lessor and Intermountain Lumber Company as lessee (together with all amendments thereto, the "**Base Lease**"). The Base Lease grants to the lessee thereunder an option (the "**Base Lease Option**") to purchase the Fee at the end of the term of the Lease, which is \_\_\_\_\_, 2033 ("**Base Lease Option Exercise Date**").

G. This Agreement is executed pursuant to the covenants set forth in Section 4 of that certain Agreement to Purchase the Idaho Timber Lease (the "Lease Purchase Agreement") dated \_\_\_\_\_, 2006, among MRP, the City and the Missoula Redevelopment Agency ("**MRA**"), which agreement contains further provisions regarding the use and purchase of the

Fee, including, without limitation a Development Agreement to be negotiated and entered into among MRP, MRA and the City (the “**Development Agreement**”).

H. Contemporaneously with the execution of this Agreement, and pursuant to Resolution No. \_\_\_\_\_ (the “**Leasehold Resolution**”), adopted by the City on July \_\_, 2006, the City has issued Urban Renewal District II bonds in the principal amount of up to \$3,800,000 (the “**URD II Bonds**”), a significant portion of the proceeds of which have been used to purchase the Leasehold pursuant to the Leasehold Purchase Agreement.

I. This Agreement is intended, among other purposes, to document the respective rights and obligations of MRP and the City with respect to the Leasehold, the Fee, and the Base Lease Option.

J. Except to the extent provided in the Development Agreement for remediation and demolition activities, MRP and the City intend for as nearly as possible to allow the City to have primary dominion and control pursuant to the Base Lease with respect to those areas of land depicted as the park land (the “**Park Parcel**”) on Exhibit B attached hereto and made a part hereof, and for MRP to have the rights of dominion and control pursuant to the Base Lease for the remainder of the Property (the “**Development Parcel**”).

#### Agreement

In consideration of the above recitals, the agreements and covenants set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### Article 1 Sublease

Section 1.1 Sublease. MRP hereby subleases, demises and lets unto the City the Park Parcel for the uses described below. The term of this sublease shall be for the remainder of the term of the Base Lease or such shorter period of time as shall exist between the date hereof and the date on which either the City or MRP, or the City and MRP jointly, exercise the Base Lease Option or either party, or both parties, otherwise acquires the Fee, in which event the parties agree to partition the Property as described below in Section 2.1.

#### Section 1.2 Use of the Park Parcel.

The City covenants and agrees that it will use the Park Parcel only in ways permitted by the Base Lease, and that it will not cause a breach of the Base Lease. In addition, the City covenants and agrees that while this Sublease is in effect, the City shall use the Park Parcel exclusively for development of parks and trails and that such development will be done pursuant to plans developed in consultation with MRP and the Trustees of the Silver Foundation. The City covenants and agrees that the Park Parcel will not be used for buildings except as clearly accessory to the use and maintenance of the Park Parcel for its intended purpose. Examples of such buildings include picnic facilities, a pavilion, a rest room, a structure to store maintenance

equipment or irrigation equipment used on the Park Parcel, a well and well house. Nothing herein precludes structures for flood protection or mitigation or the allowance for a riparian natural area along the river's edge.

MRP and the City will agree upon restrictive covenants or servitudes (the “**Park Covenants**”) that will be placed upon the Park Parcel upon its conveyance to the City. The Park Covenants will require the use of the Park Parcel in perpetuity for parks and trails, will set forth the permitted uses of the Park Parcel, and will limit future changes to the use of the Park Parcel. Notwithstanding any other provision of this Article 1, MRP agrees that if the City acquires the entire Leasehold, including MRP’s interest in the Development Parcel and the Project, then the City is entitled to terminate or change the Park Covenants as the City in its discretion deems appropriate.

MRP, its employees, agents, contractors, licensees, and authorized representatives of the State of Montana, the United States, and MRP’s insurers and lenders have rights of access to the Park Parcel for purposes of inspecting the Park Parcel and conducting and/or observing those remediation and other activities on the Park Parcel contemplated by the Development Agreement to be negotiated among the parties and the RLF Loan Agreement, provided however, that nothing herein shall be interpreted as imposing on MRP any obligation in excess of those set forth in the Development Agreement and the RLF Loan Agreement.

Section 1.3 MRP’s Use of Development Parcel. MRP shall have the right, subject to compliance with applicable laws, rules and regulations of the City and other applicable governmental authorities, to conduct any activity on the Development Parcel permitted under the Base Lease.

Section 1.4 Parking. The Parties intend to provide parking for the Civic Stadium according to a Parking Rights Agreement to be entered into among the City, MRP and Play Ball Missoula effective at the time when MRP and the City respectively own the Fee in the Development Parcel and Park Parcel. Until such a Parking Rights Agreement is effective, the Parties agree as follows:

(a) Within the public parking on the Park Parcel, the City agrees that it will permit parking for Stadium events (“**City Stadium Parking**”) on at least 150 parking spaces on the Park Parcel in the area immediately to the west of the Stadium or in such other location as is acceptable to Play Ball Missoula. The City will place or allow placement of signs designating the City Stadium Parking is available for the Stadium’s use on the days and at the times of the Stadium events. Such signage may be permanent or temporary as reasonably needed to accommodate Stadium events.

(b) MRP agrees that it will permit parking for Stadium events (“**MRP Stadium Parking**”) on at least 100 parking spaces on the Development Parcel, including on streets, in locations as close as feasible to the Stadium, but within a radius of 650 feet from the entrance of the Stadium shown on the Site Plan attached as Exhibit B, or as otherwise acceptable to Play Ball Missoula. MRP agrees that parking may take place on streets that MRP plans to construct on the Development Parcel until such time as there is material competition for parking with residents

and tenants on the Development Parcel. Then MRP agrees that other areas will be made available for MRP Stadium Parking.

(c) The parties agree to work together and with Play Ball Missoula to address applicable parking surface requirements and to attempt to find cost-effective solutions.

Section 1.5 Payment of Lease Payments and Taxes. As between MRP and the City, MRP shall pay all of the following: (a) all future lease payments required under the Base Lease, (b) property and other taxes due with respect to the Property. Upon MRP's request, the City will take steps to cause the Park Parcel and Park Improvements to be exempt from real estate taxes.

The Parties will allocate the cost of exercising the Base Lease Option as set forth in Section 2.2 below in the event the Base Lease Option is ever exercised.

## Article 2 Fee Purchase

Section 2.1 Fee Purchase Pursuant to Fee Purchase Agreement. In the Leasehold Purchase Agreement, the Parties have set forth their agreement regarding the Fee Purchase pursuant to the Fee Purchase Agreement, which is separate from the Base Lease Option described below.

Section 2.2 Exercise of Base Lease Option. In the event the Fee is not acquired by the City or MRP pursuant to the Fee Purchase Agreement, and after the date hereof either party desires to exercise the Base Lease Option (whether at the expiration of the Base Lease pursuant to its terms or by an earlier date negotiated with the Silver Foundation or its successor in title to the Fee), the party so wishing to exercise the Base Lease Option (the "**Exercising Party**") shall provide notice to the other party at least thirty (30) days prior to the deadline for exercising such option and the other party (the "**Receiving Party**") shall within ten (10) days after the receipt of such notice provide the Exercising Party with notice of its election to either participate in the exercise of the Base Lease Option or to allow the Exercising Party the right to acquire the Fee by itself. If the Exercising Party is the City and subject to the receipt from the City of sufficient funds, MRP shall take steps necessary, on the City's behalf, to exercise the rights of the lessee under the Base Lease Option. In the event the parties desire jointly to purchase the Fee, the cost of such purchase shall, unless otherwise agreed to in writing by the parties, be borne by the parties as follows: MRP - sixty per cent (60%) of the Base Lease Option price; the City - forty per cent (40%) of the Base Lease Option price. The parties shall share all other costs of closing on the Base Lease Option in the same ratios.

If the Parties jointly purchase the Fee, the Parties agree to cause the Property to be surveyed so that the Park Parcel is separate from the Development Parcel. Each party agrees to execute such deeds and other instruments as are necessary in order to vest fee title to the Park Parcel in the City, and the fee title to the Development Parcel in MRP.

Article 3  
Maintenance of Leasehold

Section 3.1 Usage. Each of the City and MRP covenants and agrees in favor of the other party that it will comply in all material respects with the terms and conditions of the Base Lease. MRP further agrees to promptly and timely pay all leasehold costs and taxes. Neither party shall cause or fail to take any action that would constitute a default under the Base Lease.

**Section 3.2 Indemnity**. Each party (the "Indemnifying Party") agrees to indemnify and hold harmless the other party, and their respective officers, members, employees and agents (the "Indemnified Parties") with respect to any and all loss, liability, claim and expense (including reasonable attorneys fees) arising from the Indemnifying Party's actions on the Property.

Section 3.3 Escrow. MRP has assumed the Base Lease effective on \_\_\_\_\_ by Assignment and Assumption of Lease ("**Assignment of Base Lease**"), a copy of which is attached as Exhibit C. The Parties acknowledge that there is an escrow account held by Stewart Title of Missoula County, Inc. (the "**Escrow Agent**") by agreement dated as of October 1, 2000 among International Paper Company ("**IPC**") and Idaho Timber Corporation ("**Idaho**"), a copy of which is attached as to the Assignment of Base Lease (the "**Escrow Agreement**"). Idaho's interest was later assigned to Idaho Timber Corporation of Missoula, Inc. ("**ITC**").

For the purpose of providing the City with reasonable assurance that MRP will perform all requirements under the Base Lease, it is agreed that:

(a) In the event of any default by MRP in any term, covenant, condition or obligation in the Base Lease for which written notice ("Notice") is provided in accordance with Section 9 of the Base Lease, subject to MRP's right to cure and the conditions set forth in the following paragraph, the City shall have the right to cure such default and to take possession of the Property, both the Development Parcel and Park Parcel, and to continue the Base Lease as the lessee, with all rights, interests and obligations thereunder and the Base Lease will be assigned to and assumed by the City pursuant to the reassignment as provided in paragraph (c). MRP shall provide to the City a copy of any Notice within five (5) days of receipt of such Notice by MRP, unless MRP has cured or satisfied the alleged default within such five (5) day period;

(b) MRP shall have the benefit of the full ninety (90) day cure period granted to the lessee under Section 9 of the Base Lease within which to cure any default; provided, however, if MRP has not (i) cured any alleged default within sixty (60) days after Notice from Lessor of the alleged default, and (ii) delivered notice of cure to the City on or before such 60th day, then the City shall have the right upon prior written notice to MRP to cure the default within the remaining cure period. Notice of the City's intent to cure shall include the City's then current estimate of the date (if then known to the City) upon which a cure will be tendered to Lessor under the Base Lease and the reasonable costs and expenses anticipated to be incurred by the City (if then known to the City) as a result of making the cure. In the event the City cures any default of MRP, MRP shall be entitled within the balance of the cure period to pay to the City all of the City's reasonable costs and expenses in effecting the cure and to continue as lessee under

the Base Lease. If MRP fails to reimburse the City within the cure period, the City shall have the right to enter and take possession of the Property and the Base Lease shall be assigned to the City as provided in the next paragraph; and

(c) MRP shall maintain during the term of the Base Lease the previously established escrow, at MRP's expense, through which MRP will make all payments pursuant to the terms of the Base Lease. The escrow agreement requires delivery to International Paper Company of monthly statements setting forth the payments made by MRP through the escrow account. In order to facilitate assignment of the Base Lease to the City in the event of MRP's unremedied default as set forth above, MRP shall deposit with the Escrow Agent an assignment of the Base Lease to the City, executed by MRP in recordable form. The form of the assignment is attached hereto as Exhibit D. MRP shall also deposit with the Escrow Agent a quit Claim Deed ("**MRP Quit Claim Deed**") in favor of the City executed by MRP and in recordable form. The form of the MRP Quit Claim Deed is attached hereto as Exhibit E. In addition, in order to facilitate a reversion of the Lease to International Paper Company as provided above, the City shall deposit with the Escrow Agent a quit claim deed (the "**City Quit Claim Deed**") in favor of International Paper Company executed by the City and in recordable form. The form of Quit Claim Deed is attached hereto as Exhibit F.

(d) MRP acknowledges that MRP is bound by the terms and conditions of the Escrow Agreement and has been assigned all of ITC's rights therein. The City and MRP agree to execute such amendments or supplements to the Escrow Agreement as are required to implement this Sublease and Partition Agreement.

#### Article 4 Miscellaneous

Section 4.1 Notices. All notices, requests, demands, letters, waivers and other communications required or permitted to be given under this agreement shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail, return receipt requested, with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax, directed to the other party at the address set forth below, or to such other address as the party may indicate by written notice to the other party. All such notices, requests demands, letters, waivers and other communications shall be deemed to have been received (i) if by personal delivery, on the day after such delivery (ii) if by certified or registered mail, on the fifth business day after the mailing thereof, (iii) if by next-day or overnight mail or delivery, on the day delivered or (iv) if by fax, on the next day following the day on which such fax was sent, provided that a copy is also sent by one of the other permitted means of giving notice.

If to MRP: Millsite Revitalization Project, LLC  
2800 South Reserve  
Missoula, MT 59801  
Attn: Kevin Mytty  
Fax No.: (406) 542-3639

With copies to:

Edward J. Wetherbee  
2575 Park Lane, Suite 200  
Lafayette, CO 80026  
Fax No. (303) 440-4636

And

William R. Roberts  
Hogan & Hartson L.L.P.  
1470 Walnut Street, Suite 200  
Boulder, CO 80302  
Fax No. (720) 406-5301

If to City of Missoula:

Any party may, by notice in writing, direct that future notices or demands be sent to a different address.

Section 4.2 Recordation. Each party agrees that a memorandum of this Agreement may be recorded in the real property records for Missoula County, Montana, and each of the parties covenants and agrees to execute and acknowledge any such memorandum for recordation purposes.

Section 4.3 Further Assurances. The City and MRP agree to execute such documents, and take such action, as shall be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. In addition, as an owner of a real property interest in a portion of the Property, the City agrees to execute such consents and other documents as may be required by the Montana Department of Environmental Quality or as reasonably requested by MRP in connection with MRP's obtaining a closure notice pursuant to the Montana Voluntary Cleanup Redevelopment Act.

Section 4.4 Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Montana without regard to the choice of law provisions thereof.

Section 4.5 Counterparts. This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

Executed as of the date first above written.

MILLSITE REVITALIZATION PROJECT, LLC  
A Montana limited liability company

By: \_\_\_\_\_  
Ed Wetherbee, Manager

By: \_\_\_\_\_  
Kevin Mytty, Manager



THE CITY OF MISSOULA

By: \_\_\_\_\_

## EXHIBIT A

### THE PROPERTY

Lots 1 to 20 in Block 9 of Sunnyside Addition to the City of Missoula, Montana, according to the official map or plat thereof on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana.

All of Block 13 of Sunnyside Addition to the City of Missoula, lying West of the right-of-way line of the Northern Pacific Railway Company. [Note: The Base Lease refers to Block **18**, but later documents of assignment refer to Block **13**. This description shall be amended as required in order to include the correct real estate.]

Lots 6 to 12 in Block 9, and Lots 6 to 19 in Block 16 of Eddy Addition to the City of Missoula, Montana, according to the official map or plat thereof on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana.

All that portion of the S1/2NE1/4NW1/4 of Section 21, T13N, R19W, lying South of the main channel of the Missoula River.

The SE1/4NE1/4 of Section 21, T. 13N, R19W, excepting a certain right-of-way granted to the Chicago, Milwaukee, and St. Paul Railroad a corporation of Montana, by deed recorded in Volume 37 of Deeds at Page 285, and also a certain grant to the Chicago, Milwaukee and Puget Sound Railroad, a corporation of Washington, by deed recorded in Volume 56 of Deeds at Page 192, and subject to a certain right-of-way or easement for a water ditch made May 14, 1900, unto Robert M. Cobban, et al., recorded in Book 21 of Deeds at Page 257.  
[End of Exhibit A.]

EXHIBIT B

Beneath this page is the Site Plan for the Property

EXHIBIT C

Beneath this page is the Assignment and Assumption of Lease entered into between  
Idaho Timber Corporation of Missoula, Inc. and MRP

EXHIBIT D  
ASSIGNMENT AND ASSUMPTION OF LEASE  
[FROM MRP TO THE CITY]

EXHIBIT E

QUIT CLAIM DEED FROM MRP TO CITY

When Recorded Return to:

QUITCLAIM DEED

FOR VALUE RECEIVED, MILLSITE REVITALIZATION PROJECT, LLC, a Montana limited liability company having an address of 2800 South Reserve, Missoula, MT 59801 ("Grantor"), as successor in interest to Idaho Timber Corporation of Missoula, Inc., an Idaho corporation, does hereby convey, release, remise and forever quitclaim unto THE CITY OF MISSOULA, having an address of \_\_\_\_\_, Missoula, MT \_\_\_\_\_, ("Grantee"), all of Grantor's right, title and interest in and to the following described property in Missoula County, State of Montana, more particularly described on Exhibit A attached hereto and made part hereof.

together with its appurtenances. This deed is effective from the date of execution through the date of recording.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MILLSITE REVITALIZATION PROJECT, LLC
A Montana limited liability company

By: \_\_\_\_\_
Ed Wetherbee, Manager

By: \_\_\_\_\_
Kevin Mytty, Manager

STATE OF MONTANA )
: ss.
County of Missoula )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Ed Wetherbee and Kevin Mytty, Managers of Millsite Revitalization Project, LLC, on behalf of said limited liability company.

Notary Signature: \_\_\_\_\_
Printed Name: \_\_\_\_\_
Notary Public for the State of Montana

(NOTARIAL SEAL) Residing at: \_\_\_\_\_
My Commission expires: \_\_\_\_\_.

## EXHIBIT A

Lots 1 to 20 in Block 9 of Sunnyside Addition to the City of Missoula, Montana, according to the official map or plat thereof on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana.

All of Block 13 of Sunnyside Addition to the City of Missoula, lying West of the right-of-way line of the Northern Pacific Railway Company. [Note: The Base Lease refers to Block **18**, but later documents of assignment refer to Block **13**. This description shall be amended as required in order to include the correct real estate.]

Lots 6 to 12 in Block 9, and Lots 6 to 19 in Block 16 of Eddy Addition to the City of Missoula, Montana, according to the official map or plat thereof on file and of record in the office of the County Clerk and Recorder of Missoula County, Montana.

All that portion of the S1/2NE1/4NW1/4 of Section 21, T13N, R19W, lying South of the main channel of the Missoula River.

The SE1/4NE1/4 of Section 21, T. 13N, R19W, excepting a certain right-of-way granted to the Chicago, Milwaukee, and St. Paul Railroad a corporation of Montana, by deed recorded in Volume 37 of Deeds at Page 285, and also a certain grant to the Chicago, Milwaukee and Puget Sound Railroad, a corporation of Washington, by deed recorded in Volume 56 of Deeds at Page 192, and subject to a certain right-of-way or easement for a water ditch made May 14, 1900, unto Robert M. Cobban, et al., recorded in Book 21 of Deeds at Page 257.  
[End of Exhibit A.]

EXHIBIT F

QUIT CLAIM DEED  
FROM THE CITY TO INTERNATIONAL PAPER COMPANY

When Recorded Return to:

QUITCLAIM DEED

FOR VALUE RECEIVED, THE CITY OF MISSOULA, having an address of \_\_\_\_\_, ("Grantor"), as successor in interest to Millsite Revitalization Project, LLC, a Montana limited liability company, does hereby convey, release, remise and forever quitclaim unto INTERNATIONAL PAPER COMPANY, a New York corporation, whose current address is 3 Paragon Drive, Montvale, New Jersey 07645-0436 ("Grantee"), all of Grantor's right, title and interest in and to the following described property in Missoula County, State of Montana, more particularly described on Exhibit A attached hereto and made part hereof.

together with its appurtenances. This deed is effective from the date of execution through the date of recording.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF MISSOULA

(SEAL)

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MONTANA            )  
  : ss.  
County of Missoula            )

This instrument was acknowledged before me on \_\_\_\_\_, 2006 by \_\_\_\_\_, and \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ of the City of Missoula.

Notary Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana

(NOTARIAL SEAL)   Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_.



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[End of Exhibit A.]