

After Recording Return to:
City Clerk
City of Missoula
435 Ryman St.
Missoula, MT 59802

Grantor's Parcel geocode: **04-2200-22-2-05-04-0000**
Grantee's Parcel geocode: **04-2200-22-2-10-04-0000**

EMERGENCY EGRESS EASEMENT

This Emergency Egress Easement, made this ____ day of _____, 20____, is between the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana ("Grantor"), 435 Ryman St, Missoula, MT 59802, and MC Real Estate Development, LLC, a Montana Limited Liability Company, whose address is PO Box 1084, Missoula, MT 59833 ("Grantee").

WHEREAS, Grantor owns property legally described as follows:

A parcel of land in the NE ¼ of the SW ¼ of Section 22, Township 12 North, Range 19 W, more particularly described in that certain Bargain and Sale Deed recorded in the property records of Missoula County at Book 114, Page 476, and known as Kiwanis Park ("Property");

WHEREAS, Grantee owns property legally described as follows:

MCWHIRK ADDITION, S22, T13 N, R19 W, BLOCK HRT, Lot H, aka HALTER/OTTO ("Grantee's Parcel");

WHEREAS, Grantee is proposing to develop a multi-story, multi-family residential dwelling complex on Grantee's Parcel (the "Project");

WHEREAS, City and State adopted building and fire codes require a secondary emergency egress point for the Project being proposed on Grantee's Parcel, and based on site-specific conditions there are no other reasonable alternative locations for this egress except the Property;

WHEREAS, the City of Missoula Parks and Recreation Board and the Missoula City Council reviewed and approved Grantee's request for an emergency access easement over a portion of the Property.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The Parties agree that the foregoing recitals are true and correct and are incorporated into the terms and conditions of this Easement.

2. **Grant and Purposes of Emergency Access Easement.** Grantor hereby grants to Grantee an emergency egress and safe dispersal area easement to meet relevant building and fire code secondary egress requirements (the “Easement”) for the benefit of Grantee’s Parcel. This easement shall be the minimum width and contain the minimum area necessary to meet the applicable building and fire code requirements for secondary egress from the Project. The Easement shall be located in the approximate area described here:

In the dimensions, configuration, and location shown on the attached Exhibit A, which is by this reference made a part hereof (“Easement Area”).

However, Grantor may relocate the Easement Area to any portion of the Property that it determines in its sole discretion best serves the public need to use the Property so long as the relocated Easement Area complies with the provisions of the applicable building and fire codes.

3. **Scope of Easement.** The scope of the rights granted herein is expressly limited to unobstructed emergency pedestrian egress from the Project only. The scope of this Easement specifically excludes all other rights to occupy and use the Easement Area in any manner not available to the public generally. This Easement does not authorize non-emergency access to or use of the Park from the emergency access gate by people living in the Project.
4. **Obligations of Grantee.** Grantee shall install an emergency egress gate that leads to the Easement Area which shall be marked as a “private emergency exit only” on both sides of the gate. The gate shall be installed with an alarm that activates/sounds when opened, and the alarm and gate shall be kept in good working order at all times. A safety/security light shall be installed and maintained by Grantee at the emergency egress gate on Grantee’s Property.
5. The Grantee shall install a fence along the common boundary with the park. The fence shall be designed in accordance with Crime Prevention Through Environmental Design principles. The fence plan shall be submitted for review and approval of the Parks & Recreation Director prior to making application to the City for a permit to build the fence. The approved fencing design shall be built and maintained by the Grantee consistent with the approved City Fence Permit. Any proposal to alter or replace the subject fence shall first be submitted for review and approval of the Parks and Recreation Director prior to submitting for City permits or making the alterations. The Grantee shall prohibit tenants from altering the fence or attaching elements that would affect the material design, opacity, or height of the approved fence.
6. **Easement Non-Exclusive.** The Parties acknowledge and agree that the Easement is non-exclusive. Grantor reserves the right to use the Property as a public park in any manner that is consistent with the exercise of the rights granted to Grantee in this Easement, including but not limited to public recreational use of the Property.
7. **Liens.** Grantee shall keep the Property free from liens arising in any manner out of Grantee’s activities and shall promptly discharge any such lien that may be asserted by a third party.

8. **Survey Acknowledgment.** The Parties acknowledge that the location of the Easement Area has not been surveyed, and that the map attached hereto as Exhibit A is for illustrative purposes only.
9. **Easement to Remain Unobstructed.** The Parties shall not construct or place temporary or permanent buildings, structures, or other impediments upon, over, or within the Easement Area. In this regard, the Easement Area shall remain unobstructed at all times.
10. **Termination of Easement.** The Easement shall automatically terminate upon the occurrence of any of the following:
 - A. The Project is not built within five years of execution of this Easement;
 - B. The use of the Project is changed from multi-family residential use where the emergency egress requirements of the fire and building codes are no longer applicable;
 - C. The Project is demolished; or
 - D. The provisions of the fire and buildings codes are amended such that the emergency egress requirements imposed on the Project are no longer required.
11. **Governing Law.** This Easement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.
12. **Entire Agreement; Merger of Previous Understanding.** This Easement memorializes the entire understanding between the Parties, and all prior or contemporaneous communications, conversations, understandings, and agreements had between the Parties, oral or written, are merged herein.
13. **Modification.** This Easement may be amended, modified, or changed by a written instrument signed by the Parties and recorded in the public records of Missoula County, Montana.
14. **Counterparts.** This Easement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein, "counterparts" shall include full copies of this Easement signed and delivered by facsimile or e-mail transmission, as well as photocopies of such facsimile or e-mail transmission.
15. **Attorney Fees.** If a dispute arises between the Parties under this Easement, each Party shall bear its own legal fees and costs.
16. **Severability.** If any provision of this Easement is declared to be or becomes invalid, unenforceable, or contrary to law, the Parties agree that the provision will be considered severed from the remaining provisions of this Easement and will not affect the validity, legality, or enforceability of the other provisions of this Easement, and this Easement will be interpreted as if it never contained the provision.
17. **Easement to Run with the Land.** The rights granted herein are appurtenant to, and run with title to, Grantee's Parcel. This Easement shall inure to the benefit of, and be binding upon, the Parties and their heirs, successors, and assigns.

18. Recording. This Easement shall be recorded with the Clerk and Recorder's Office in Missoula County, Montana.

IN WITNESS WHEREOF, and subject to the conditions set forth herein, Grantor grants this Easement, and Grantee accepts this Easement, as of the date set forth above.

Dated this _____ day of _____, 20____.

GRANTED ON BEHALF OF THE CITY OF MISSOULA BY:

John Engen, Mayor

Attest:

Martha L. Rehbein, CMC

FOR GRANTEE:

By: Matthew Sullivan
Title: Member

This instrument was acknowledged before me on _____, 2022, by

Matthew Sullivan as an authorized Member of MC Real Estate Development, LLC.

Notary Signature

EXHIBIT A

