

**AFFORDABLE HOUSING DEVELOPMENT AGREEMENT BETWEEN PUPAW LLC/CADE
LLC AND CITY OF MISSOULA FOR SOUTH 4TH EAST AND RONALD AVE**

This Development Agreement is executed by and between PUPAW LLC/CADE LLC, 496 Graceland Drive, Laguna Beach, CA 92651-25522 (hereinafter referred to as “Developer”) and the CITY OF MISSOULA, 435 Ryman Street, Missoula, Montana 59802 (hereinafter referred to as “City”).

1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of the Agreement are the following:

- a. The Developer intends to remove the existing structures and redevelop the site with multi-dwelling structures with underground parking. The above activities are hereinafter referred to as the “Project.”
- b. The properties are identified as follows: MONTANA ADDITION, S22, T13 N, R19 W, BLOCK 12, Lot 8, & W16' OF 7 and MONTANA ADDITION, S22, T13 N, R19 W, BLOCK 12, Lot 1 - 6, & E14' OF 7 (hereinafter referred to as “South 4th East and Ronald Ave”).
- c. As a condition to close and vacate public right of way (to refer, Exhibit A: Resolution 8410) the Developer is required to address housing affordability by including a voucher preference for new multi-family rental units or by constructing permanently affordable homeownership units for a minimum of 20 percent of the total dwelling units for purchase. The Developer has elected to construct permanently affordable home ownership units for purchase.
 - i. The unit configuration for the minimum 20 percent affordable dwelling units for purchase (hereinafter referred to as “dedicated affordable homes”) will consist of a mix of studios and one bedrooms. The unit count is as follows:

Market Rate Homes (Condos for Sale)	28
Dedicated Affordable Homes (Condos for Sale)	7
Market Rate Rental Homes (Condos for Rent)	13

- ii. Pricing for the dedicated affordable homes will not exceed affordability for households earning up to 120 percent of Area Median Income annually. As calculated at the time this condition was set, affordable homes may not exceed the following sales pricing:

Unit Type	Studio	1 Bedroom
*Maximum Sales Price	\$215,121	\$243,138

*Maximum sales prices at first point of sale. Future maximum sales price will be calculated by the Department of Community Planning, Development & Innovation (CPDI) or their agent prior to listing and subsequent sale.

- iii. The dedicated affordable homes must be sold to households earning up to 120 percent of Area Median Income as defined by the Department of Housing and Urban Development. CPDI must income certify all potential buyers.
- iv. The Developer shall work with CPDI to create a sales and marketing plan, to be finalized prior to the sale of the first affordable unit, to address factors such as multiple-buyer management, marketing materials, responsibilities for marketing affordable homes, actions to be taken in the event of inability to identify qualified buyers, procedures for certification of buyer eligibility, purchase contracts, and full disclosures to buyers of their obligations and rights.

- v. The developer, or the city or its agent if the city is involved in the sale of an affordable home, shall cause to be recorded in the offices of the Missoula County Clerk and Recorder, simultaneously with the recording of each deed of conveyance for the affordable units, a restrictive covenant, deed restriction, or other legal instrument, approved as to form by the Missoula City Attorney, that fulfills the resale requirements as defined by CPDI to ensure permanent affordability.
- vi. The dedicated affordable units must serve as the primary residence of the purchaser and meet the conditions set forth in Resolution 8410.

2. Undertakings of the City. Subject to the conditions herein, the City or its agent agrees as follows:

- a. Set pricing at first point of sale and at subsequent points of sale for the dedicated affordable units that does not exceed affordability, with a methodology to be set out in the Affordable Housing Trust Fund Administrative Policies and Procedures to 1.c.v above, for households earning up to 120 percent of Area Median Income.
- b. Screen potential buyers at first point of sale and at subsequent points of sale for eligibility by completing income qualification.
- c. Enter into a contract with homebuyers of each unit, including subsequent homebuyers, to ensure appropriate marketing and eligibility screening for subsequent sales of the dedicated affordable homes.
- d. Complete annual compliance monitoring to ensure dedicated affordable units remain the primary residence and meet the condition set forth in Resolution 8410.

3. Default and Remedies:

- a. The following shall be Events of Default under this Agreement:
 - i. Failure by the Developer to construct the dedicated affordable homes.
 - ii. Developer is, for any reason, financially unable to complete the Project.
- b. The following remedies may be exercised in the Event of Default by Developer:
 - i. If during construction the Developer is found not to be complying with the terms of this agreement with respect to construction of the designated affordable units or through the pre-sale of the designated affordable units, a Stop Work order will be issued by the City Building Official preventing further work until the issue is resolved.
 - ii. Exercise the remedies set forth in a Restrictive Covenant to be recorded against South 4th East and Ronald Ave, in a form mutually acceptable to the City and the Developer, evidencing, securing, and giving public notice of the Developer's obligation to provide dedicated affordable homes pursuant to Resolution 8410 and this Development Agreement.
 - iii. Bring an action for specific performance.
 - iv. Bring an action for damages for breach of contract.
- c. The following remedies may be exercised in the Event of Default by City:
 - i. Bring an action for specific performance.
 - ii. Bring an action for damages for breach of contract.
- d. **Notice of default.** The City and Developer agree that upon the occurrence of an Event of Default by either party under this Agreement, the non-defaulting party shall notify the defaulting party in writing of the event of default and the non-defaulting party's intention to pursue the remedies set forth in this

Agreement with respect to the default.

- e. **Defaulting party's right to cure.** Prior to exercising any remedy set forth in this Agreement, the defaulting party will have the right to cure an event of default, subject to the limitations in this agreement.
- f. **Waiver and non-waiver of events of default.** No delay or failure of either party to exercise any right or power accruing upon the occurrence of an event of default will impair that right or power or be construed to be a waiver of or acquiescence to any subsequent occurrence of that event of default. If either party waives an event of default, then both parties will be restored to their former positions and rights under this Agreement prior to the event of default, but no such waiver will extend to any subsequent or other event of default or impair any right accruing to either party upon the occurrence of any subsequent or other event of default.

4. General Provisions. The following terms and conditions apply:

- a. This Development Agreement may be mutually agreed to be amended or terminated if any of the conditions herein stated are altered, subject to the review and written approval of both parties.
- b. This Development Agreement is not intended to supersede, replace or amend any agreements or contracts the Developer may have between the Developer and other parties.
- c. All firms doing business with any agency of the City of Missoula must be in compliance with the City of Missoula's Non-Discrimination and Affirmative Action Policy as well as Title 49, Montana Code Annotated, or forfeit the right to continue such business dealings (to refer, Exhibit B: Non-Discrimination and Affirmative Action Policy).
- d. The City shall have no civil liability whatsoever for any of Developer's actions or undertakings. It is Developer's sole responsibility to ensure that Developer and all of Developer's contractors, sub-contractors, designers, architects, and engineers have adequate liability insurance, workers compensation insurance and property insurance for the project. The Developer will hold harmless, indemnify and defend the City for the conduct of the Developer or the Developer's contractors and subcontractors.
- e. With respect to the drafting and implementation of this Development Agreement, each party to this Agreement is responsible for their own attorney fees. In any action arising under or related to this Development Agreement, the ultimate prevailing party shall be entitled to be paid its reasonable attorney fees, expenses and costs by the non-prevailing party, whether in arbitration, at trial or on appeal.
- f. This Agreement expires 30 days after issuance of a Certificate of Occupancy and the filing of all required deed restrictions.
- g. If any section, sentence, clause or portion of this Development Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Development Agreement shall continue in full force and effect.
- h. This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.
 - i. This Agreement shall be construed in accordance with the laws of the State of Montana. The venue for any action seeking to interpret or enforce this Agreement shall be in the

Fourth Judicial District of Montana.

CONTRACTOR:

MAYOR
City of Missoula, Montana

John Engen

ATTEST:

Martha L. Rehbein, CMC, City Clerk

APPROVED AS TO FORM AND CONTENT:

Jim Nugent, City Attorney

(SEAL)

Return to: City Clerk
City of Missoula
435 Ryman Street
Missoula MT 59802-4297

Resolution Number 8410

A resolution to vacate public right-of-way being the portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M., as shown in Exhibit A.

Be it resolved by the City Council of the City of Missoula, Montana.

SECTION I. THAT it is the intention of the City Council of the City of Missoula, Montana, to close and vacate all that portion of right-of-way described below and shown on attached Exhibit A, subject to the seven (7) conditions of approval noted in Section II:

The portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M.

SECTION II. THAT the vacated right-of-way will revert to and combine with adjacent private property upon vacation approval and shall attach to the adjacent properties and the titled owners in accordance with Section 70-16-202 of the Montana Code Annotated as follows:

The portion of Ronald Avenue north of the alley adjacent to Lots 1 in Block 12 and Lots 10 & 11 in Block 13 of Montana Addition and the portion of South 4th Street East adjacent to Lots 1 through 8 in Block 12 of Montana Addition, on file and of record in Missoula County, Montana, located in Section 22, Township 13 North, Range 19 West, P.M.M.

FURTHER, that the vacation is contingent upon the approval of the rezoning and the following six (6) conditions of approval for the vacation:

1. The developer shall prepare plans for and construct right-of-way improvements to South 4th Street East, including but not limited to paving, curb, gutter, sidewalks, drainage and storm water facilities, and additional on-street parking, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
2. The developer shall prepare plans for and construct right-of-way improvements within the remaining and vacated portions of Ronald Avenue from South 5th Street East to South 4th Street East, including but not limited to paving, curb, gutter, drainage and storm water facilities, five (5) foot wide sidewalk and seven (7) foot wide boulevard within the Ronald Avenue right-of-way from South 5th Street East to the alley and a five (5) foot wide sidewalk/stairs within a public access easement from the alley north to South 4th Street East through the vacated portion of Ronald Avenue, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
3. The developer shall coordinate with the City of Missoula Parks and Recreation Department to allow staff to harvest all native grasses growing in the South 4th Street East right-of-way proposed to be vacated prior to May 1, 2020.
4. The developer shall secure a contract by April 1, 2020 to relocate those contributing structures (as identified by the Historic Preservation Officer in Attachment A) that have been determined as feasible for relocation, to an off-site location for reuse, subject to review and approval by the City Attorney and the Historic Preservation Officer. The intent is the structures would be relocated by May 1 2020, and the contract shall specify the deadline for relocation of structures. The applicant shall contribute a minimum of \$12,500.00 per structure for each contributing structure that is designated as feasible for relocation, towards the cost of the relocation of the structures if a contract with a party interested in relocation of the structures is secured. In the event the applicant is unable to secure a contract with an interested party to relocate the contributing structures, the developer shall meet the standards outlined in Attachment B provided by the Historic Preservation Officer regarding documentation of the historic resources, deconstruction, and mitigation, prior to demolition permit approval, subject to review and approval by the Historic Preservation Officer.
5. The developer shall address housing affordability by executing a Development Agreement, prior to building permit approval of the first structure that includes a voucher preference for new multi-dwelling rental units or constructing permanently affordable homeownership units, subject to review and approval by the Office of Housing and Community Development. The developer will work with the Office of Housing and Community Development on the terms of the Development Agreement to include appropriate pricing for affordable units for 20% of the dwelling units for purchase rounded up.
6. The developer shall include the following rental restriction in the Development Covenants which shall be filed with the Missoula County Clerk and Recorder for the subject property, prior to the building permit approval of the first structure, subject to review and approval by Development Services: "All dwelling units shall be owner occupied or rented with a minimum 30 day (month-to-month) lease with the option for units to be leased as short term rentals no more than sixty (60) days per calendar year. Parking for all dwelling units shall be provided on-site, including all lease options. This covenant may not be amended or deleted from the Development Covenants without City Council approval."
7. Commercial uses are prohibited on the subject property. The applicant shall file a deed restriction that prohibits commercial uses on the subject property, subject to the review and approval of the City Attorney and Development Services, prior to approval of the first building permit.

WHEREAS, the City Council adopted on the 18th day of November, 2019 Resolution No. 8395 declaring the City Council's intention to close and vacate said right-of-way herein described; and

WHEREAS, the City Council heard, on the 27th day of January, 2020, all matters pertaining to the proposed closing and vacation of said right-of-way as herein described; and

WHEREAS, the property intended to be vacated is subject to any and all utility easements over and across said property in accordance with Section 7-14-4115 of the Montana Code Annotated to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

FURTHER, in the event the conditions are not met, this vacation approval shall be withdrawn, the vacation will be declared null and void and the right-of-way shall be returned to public use.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Missoula, Montana, that the aforesaid right-of-way as herein before described, be and the same is, hereby closed and vacated subject to the four conditions of approval noted herein and subject to any utility easements over and across said property to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

PASSED by the City Council of Missoula, Montana, and approved by the Mayor this 27th day of January, 2020.

ATTEST:

/s/ Martha L. Rehbein

Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen

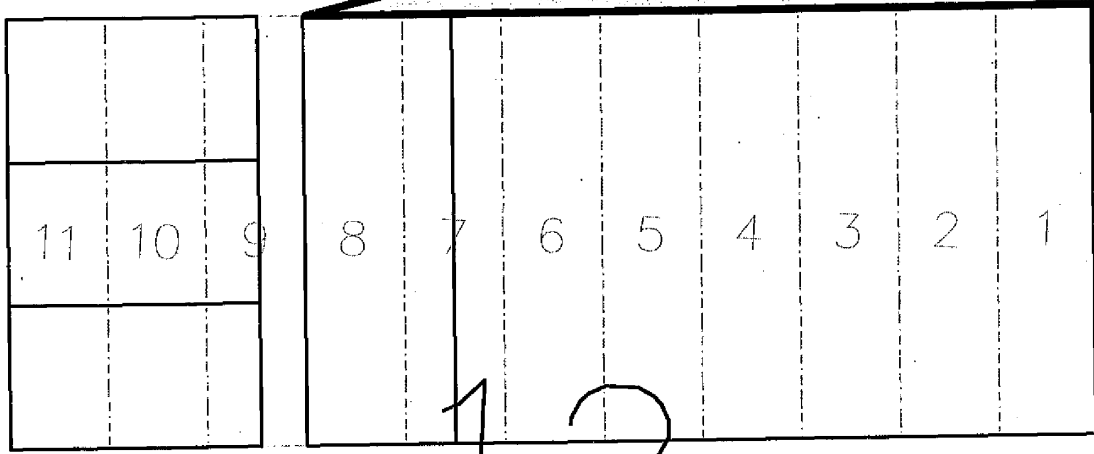
John Engen
Mayor

(SEAL)

RES. NO. 4413 09/17/1984
 17A
 BK 14, PG 82
 18A
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 RES. NO. 1450 & 13 01/06/1948




RES. NO. 4428 11/19/1984

S 4TH ST E



RONALD AVE

Legend

-  Proposed Vacation
-  ROW Vacations
-  Parcel Boundaries

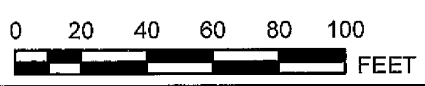
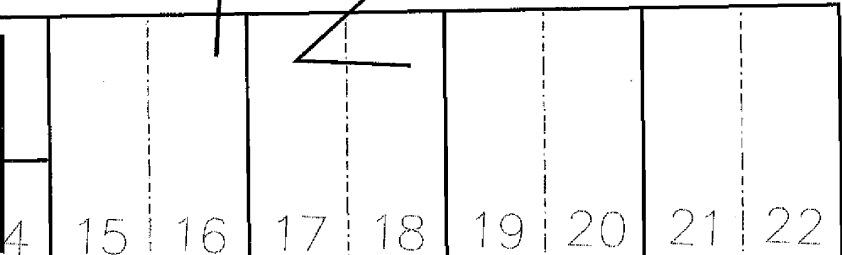


EXHIBIT "A"

All Located in Section 22, T.13 N., R.19 W., P.M.M.
 Prepared by: CITY OF MISSOULA GIS SERVICES

Exhibit B

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status, sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.