

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 of the execution of this developer agreement, 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 Office of Housing and Community Development 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. The Office of Housing and Community Development must income certify all potential buyers.
- iv. The Developer shall work with the Office of Housing and Community Development 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 the Office of Housing and Community Development 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, Attachment 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)