

San. 2013
APP.

DEPIX BUILDING ASSETS

	2004	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
DEPIX BUILDING ORIGINAL VALUE										213,251.50
DEPIX BUILDING WAREHOUSE ORIGINAL VALUE										45,000.00
DEPIX BUILDING WAREHOUSE IMPROVEMENTS					10,355.52			4,128.00		14,483.52
DEPIX BUILDING IMPROVEMENTS	1,000.00	3,934.24	18,696.42	3,856.18	2,436.00		300.00			1,000.00
Insulation										3,934.24
Handicapped Restrooms		8,562.16	15,300.00	8,003.08						33,650.76
Architecture & Environmental		8,500.00	109,543.90	2,680.00	740.00					31,803.08
Building Exterior			74,230.00	2,060.00	2,446.07					113,963.90
Exterior Deck				2,264.00						78,676.07
Phoenix Bldg Roof		495.70								7,484.00
Plumbing				3,799.88		2,358.16				14,534.52
Electrical Improvements				4,920.00						10,308.50
Furnace & Heating				12,029.45	2,500.00					19,892.40
1st Floor Remodel				4,315.00						9,143.78
1st Floor Lighting				664.63						3,362.95
2nd Floor Room 202 Remodel				3,366.72			4,164.15			5,094.12
3rd Floor Remodel										5,094.12
Basement Remodel			2,286.00							18,607.24
Window Replacement			322.50							6,670.90
Sidewalk Replacement				361.75						22,656.00
Sewer Replacement				22,656.00						1,612.00
				1,612.00						
TOTAL	1,000.00	21,592.10	248,909.87	58,734.48	18,477.59	2,358.16	20,793.11	16,035.05	8,481.44	381,898.23

DEPIX BUILDING ELEVATION IMPROVEMENTS

	96,551.00	136,384.07	30,012.80	55,546.57	88,727.69	78,466.00	57,469.97
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TOTAL CURRENT VALUE PHOENIX BUILDING

A Warehouse - \$14,575 (claimed) work = \$7200 owed at 50%
 B Bldg. (NO SLDWALK) - \$354,611 (claimed) work = \$177,311 at 50%
 C Elevator - \$387,571 (claimed) work / 90% complete

19-257
Amended Agree
(2)

Execution Copy

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
(NATIONAL AFFORDABLE HOUSING NETWORK)**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement"), is entered into between the City-County of Butte-Silver Bow, Montana, a municipal corporation and political subdivision of the State of Montana (the "City-County"), and National Affordable Housing Network, a Montana non-profit corporation ("NAHN"). The City-County and NAHN are each individually referred to herein as a "Party" and collectively as the "Parties." This Agreement has an effective date of July 19, 2016 (the "Effective Date").

WITNESSETH:

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), the City-County is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes collected in such areas, issue its bonds to pay the costs of such projects and pledge to the repayment of the bonds all or a portion of the tax increment and other revenues derived from projects undertaken within the urban renewal area; and

WHEREAS, pursuant to the Act and Ordinance No. 13-16 adopted by the City-County on December 18, 2013, the City-County has created the Butte Uptown Urban Renewal District (the "District") as an urban renewal district and has approved the Butte Uptown Urban Renewal Plan (the "Plan") as an urban renewal plan in accordance with the provisions of the Act, which Plan provides for the segregation and collection of tax increment revenues with respect to the District; and

WHEREAS, the City-County proposes to undertake the construction of a new public parking garage in the District (the "Parking Garage"), which will be constructed on property currently owned by the City-County and on an adjacent parcel currently owned by NAHN (the "Conveyed Parcel"); and

WHEREAS, NAHN owns additional land and a building commonly referred to as the Phoenix Building adjacent to the Conveyed Parcel, as described on Exhibit A hereto (the "Phoenix Building"), which includes a roof parking deck on the south side of the Phoenix Building (the "Phoenix Parking Deck"); and

WHEREAS, NAHN has agreed to transfer the Conveyed Parcel to the City-County and in consideration thereof the City-County will pay NAHN cash and undertake the improvements and other commitments and obligations of the City-County set forth in this Agreement; and

WHEREAS, the Parties previously entered into a Development Agreement dated as of July 19, 2016 (the "Original Agreement"), which the Parties desire to amend, supplement and restated as set forth herein.

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NOW THEREFORE, the City-County and NAHN, each in consideration of the representations, covenants and agreements of the other, as set forth herein, amend, supplement and restate the Original Agreement in its entirety as set forth herein and mutually represent, covenant and agree as follows:

Section 1. Representation, Warranties and Covenants.

1.01. City-County Representations, Warranties and Covenants. The City-County hereby represents, warrants and covenants as follows:

- (a) Pursuant to the Act, and after a public hearing duly called and held, the City-County by the Ordinance has duly created the District.
- (b) The City-County is authorized by law to enter into this Agreement, the special warranty deed substantially in the form attached as Exhibit B hereto (the "Special Warranty Deed").
- (c) This Agreement has been duly authorized, executed and delivered by the City-County and, assuming the due authorization and execution by each other Party hereto, will be a valid and binding agreement of the City-County, enforceable against the City-County in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability.
- (d) The execution and delivery by the City-County of, and the performance by City-County of its obligations under, this Agreement and the Special Warranty Deed will not contravene any provision of applicable law or any agreement or other instrument binding upon the City-County that is material to the City-County, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the City-County, and except as set forth in this Agreement, no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the City-County of its obligations under this Agreement and the Special Warranty Deed.
- (e) There is no action, suit, investigation or proceeding now pending or, to the knowledge of the City-County, threatened against or affecting the City-County or its business, 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, which could, individually or in the aggregate, materially and adversely affect the performance of the City-County of its obligations under this Agreement or the Special Warranty Deed.
- (f) At the request of NAHN, the City-County will grant to NAHN a non-exclusive easement (the "Easement"), for the benefit of the parcel on which the Phoenix Building is located, which Easement will run with the land, to permit NAHN and its tenants and invitees to use the Parking Garage for pedestrians access the Phoenix Parking Deck. The Easement will be perpetual, provided, however, if the City-County should demolish the Parking Garage, whether following a casualty or otherwise, the City-County may terminate the Easement.



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(iv) The City-County will have reviewed and approved in its sole discretion the condition of title to and an ALTA Survey of the Conveyed Parcel and will have received and approved in its sole discretion a standard owner's title insurance policy and any extended coverage title insurance.

(b) The City-County will have received all funding necessary for the purchase of the Conveyed Parcel.

(c) NAHN will deliver possession of the Conveyed Parcel to the City-County upon the Closing, after all monies are paid and documents delivered.

(d) After the Closing, the Title Company will deliver to the City-County the Special Warranty Deed duly executed and recorded in the Office of the City-County Clerk and Recorder, with a copy to NAHN.

Section 3. Undertakings.

3.01. Improvements.

(a) Subject to the terms and conditions of this Section 3.01, the City-County will reimburse NAHN for up to \$350,000 in the aggregate of costs of the design, construction and repair to the Phoenix Parking Deck (the "Improvements"). The nature and scope of the Improvements will be determined by the Parties in consultation with Morrison-Maierle, Inc. or another engineering firm selected by NAHN and acceptable to the City-County. Costs of the Improvements in excess of \$350,000 and all of NAHN's internal costs (including financing expenses, legal fees and other internal administrative expenses) shall be paid by NAHN. Notwithstanding anything in this Agreement to the contrary, the obligation of the City-County to reimburse for costs of the Improvements shall expire on June 30, 2021.

(b) Following the determination by the Parties as to the nature and scope of the Improvements, NAHN shall prepare and submit construction plans, drawings and related documents for the Improvements to the appropriate City-County officials for architectural, engineering or land use review and written approval or permits required by any State laws or local ordinances or regulations.

(c) NAHN will be responsible for undertaking and completing the Improvements in accordance with this Agreement and all applicable federal, State and local laws, rules, regulations and ordinances, including applicable Environmental Laws and Regulations. "Environmental Laws and Regulations" means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act ("CERCLA" or the "Federal Superfund Act") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, State, county, municipal, local or other statute, code, law, ordinance, regulation, requirement or rule which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, code, law or ordinance.

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representations as set forth in this Section 3.01 are true and correct.

(iv) The request for reimbursement must be accompanied by a signed draw request substantially in a form attached as Exhibit C (the "Reimbursement Request") hereto and acceptable to the City-County, accompanied by the invoices from the contractors or subcontractors performing the work to be reimbursed.

(v) The City-County will cause reimbursement for all properly submitted and allowable expenses to be paid within 30 days of satisfaction of the requirements of this Section 3.01, subject to compliance with City-County accounts payable procedures.

3.02. Sidewalks. If and when NAHN undertakes the repair of the vaulted/double vaulted sidewalks, to the extent damaged by construction of the Parking Garage, on the south (West Galena Street), west (South Dakota Street) and north (West Park Street) sides of the Phoenix Building, NAHN shall do so in accordance with sidewalk repair program established by the City-County. NAHN shall provide estimates for review by URA staff prior to commencement of the work and will be reimbursed for 100% of the costs associated with repairs in accordance with the URA program. . .

(a) The City-County will not be responsible for the Improvements or any structural, engineering or building code deficiencies with respect to the Phoenix Building or the Phoenix Parking Deck, whether known or unknown to the City-County or its contractors or any other party engaged by the City-County with respect to work on the Parking Garage, and NAHN and its successors and assigns hereby waive, release and agree not to bring any claim, demand, cause of action or proceeding against the City-County with respect thereto. The City-County will not be responsible for obtaining any structural, engineering or building code permits or approvals with respect to the Phoenix Building or the Phoenix Parking Deck.

3.03. Cooperation by NAHN. NAHN will cooperate with the City-County in the performance of this Agreement, including participation in meetings from time to time with the City-County, its contractors or any other party engaged by the City-County with respect to work on the Parking Garage. NAHN hereby grants to the City-County, its contractor and any other party engaged by the City-County with respect to work on the Parking Garage, rights of access, ingress, and egress to and from the Phoenix Parking Deck and adjoining properties, at no cost, as reasonably necessary or convenient for the purpose of constructing the Parking Garage. NAHN covenants and agrees that it will not interfere with the construction of the Parking Garage. It is understood and agreed that NAHN will have no authority to direct the work of the City-County or its contractors or any other party engaged by the City-County with respect to work on the Parking Garage. NAHN agrees to relocate all of the contents of its Habitat for Humanity store and warehouse from the basement and under-side of the Phoenix Parking Deck to another location in the City-County in order to accommodate the City-County's construction schedule.

3.04. Moving Costs. The City-County agrees to pay for or reimburse NAHN for the actual costs (up to a maximum of \$64,000) associated with the relocation of the contents of its Habitat for Humanity store and warehouse from the basement of the Phoenix Parking Deck to another location within the City-County. The City-County may, in its sole discretion, advance

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funds to NAHN for relocation costs; *provided* that NAHN shall not be entitled to further payments or reimbursements for relocation costs if it has not provided the City-County with proper invoices and documentation for qualified costs with respect to the funds advanced.

3.05 Access to Phoenix Parking Deck. NAHN will maintain barriers and dividers between the Parking Garage and the Phoenix Parking Deck to indicate a division between the two separate structures. NAHN shall be responsible for access to the Phoenix Parking Deck and the City-County shall have not responsibility therefor. NAHN shall indemnify and hold harmless the City-County, including its officers, agents, employees and commissioners, from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation), causes of action, suits, claims, demands or judgments of any nature whatsoever to the extent arising out of or resulting from access to the Phoenix Parking Deck.

3.06. Use of West Facing Parking Garage Wall. NAHN has exclusive permission to utilize the west-facing bare concrete façade of the Parking Garage for purposes of installation of an improved visual aesthetic façade that creates continuity with the Phoenix Building's overall design implementation strategy for a green space project on the Phoenix Parking Deck (the "Façade Improvements"). The Façade Improvements and the installation thereof shall be at the sole cost and expense of NAHN and must be approved (together with the timeline for such installation) by the City-County, in its sole discretion, prior to any installation thereof. The City-County will permit NAHN to access the Parking Garage in order to install the Façade Improvements; provided that such installation will not interfere with or obstruct access to parking in the Parking Garage without the consent of the City-County. The City-County will not remove, alter or affect the Façade Improvements without first consulting NAHN with respect to any necessary changes thereto. NAHN agrees to maintain the Façade Improvements in good condition and will not let the Façade Improvements fall into disrepair. If NAHN wishes to discontinue maintenance of the Façade Improvements, it shall, at its sole cost and expense and in consultation with the City-County, restore the west-facing concrete façade of the Parking Garage to its original condition. NAHN shall indemnify and hold harmless the City-County, including its officers, agents, employees and commissioners, from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses and costs of investigation), causes of action, suits, claims, demands or judgments of any nature whatsoever to the extent arising out of or resulting from the Façade Improvements or the installation, maintenance or repair thereof, including damage to the Parking Garage related thereto.

Section 4. Parking.

(a) Temporary Tenant Parking. The Phoenix Parking Deck currently provides parking for 30 vehicles used by tenants contracting with NAHN (the "Tenants"). The City-County agrees to provide alternative parking for the Tenants (including two handicap accessible parking spaces), free of charge, during the construction of the Parking Garage.

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(b) Replacement Parking. As a result of the sale of the Conveyed Parcel to the City-County and the construction of the Parking Garage, the Phoenix Parking Deck will permanently lose a number of parking spaces previously available for visitors and guests of the Phoenix Building. NAHN intends to convert the Phoenix Building into a hotel (the "Hotel Project") and thereafter, the City-County agrees to provide up to 25 parking passes for the Parking Garage solely for use by hotel guests. In connection with the completion of the Hotel Project, the Parties will work to negotiate the terms, uses and rates for such parking passes pursuant to a separate parking agreement; provided that the parking passes may not be leased, sold or transferred except to a person or entity that purchases the Hotel Project in its entirety.

Section 5. Termination. The City-County may terminate this Agreement at any time prior to the Closing upon written notice to NAHN. Upon such termination, neither NAHN nor the City-County will have any further rights or obligations hereunder, except as described in Section 7.03.

Section 6. Mutual Obligations. The Parties agree that each Party's obligations under this Agreement are dependent on the fulfillment of the obligations of the other Party's obligations under this Agreement.

Section 7. General Provisions.

7.01. Conflicts of Interest: City-County Representatives Not Individually Liable. No member, officer or employee of the City-County will have any personal interest, direct or indirect, in this Agreement, the Parking Garage or the Improvements, nor will 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-County will be personally liable to NAHN in the event of any default under or breach of this Agreement by the City-County, or for any amount that may become due to NAHN for any obligation arising from the terms of this Agreement.

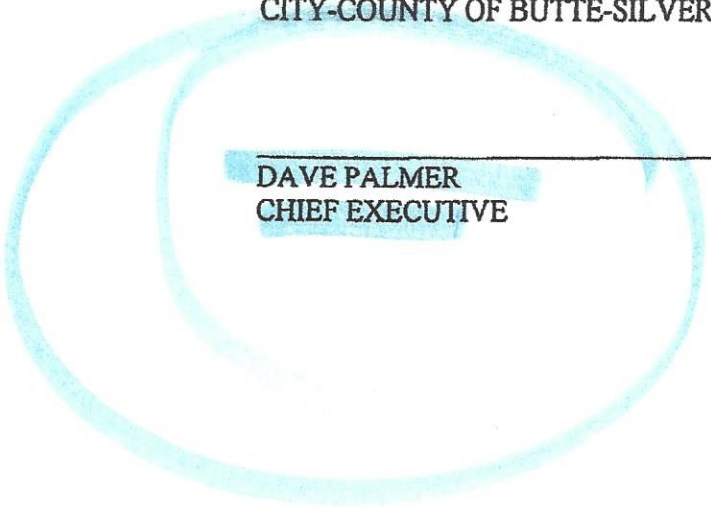
7.02. Rights Cumulative. The rights and remedies of the Parties of this Agreement, whether provided by law or by this Agreement, will be cumulative, and the exercise by any Party hereto of any one or more of such remedies will not preclude the exercise by such Party, at the same or different times, of any other remedy for the same default or breach or of any of its remedies for any other default or breach of the Party subject to the limitation of remedies provided herein. No waiver made by such Party with respect to the performance or the manner or time thereof, of any obligation under this Agreement, will be considered a waiver with respect to the particular obligation of the other Party or a condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver of any obligations of the other Party. Delay by a Party hereto instituting or prosecuting any cause of action or claim hereunder will not be deemed a waiver of any rights hereunder.

7.03. Survival. The provisions of this Section 7 will in all events survive the termination of this Agreement.

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**SIGNATURE PAGE TO DEVELOPMENT AGREEMENT BETWEEN CITY-COUNTY
OF BUTTE-SILVER BOW AND NATIONAL AFFORDABLE HOUSING NETWORK**

CITY-COUNTY OF BUTTE-SILVER BOW



DAVE PALMER
CHIEF EXECUTIVE

ATTEST:
SALLY J. HOLLIS
CLERK & RECORDER

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

STATE OF MONTANA)
) ss.
COUNTY OF SILVER BOW)

On this ____ day of _____, 2019, before me, a Notary Public for the State of Montana, personally appeared Dave Palmer and Sally J. Hollis, known to me to be the Chief Executive and Clerk and Recorder, respectively, the City-County of Butte-Silver Bow, a political subdivision and municipal corporation organized and existing under the laws of the state of Montana, and acknowledged to me that they executed the foregoing instrument on behalf of the City-County of Butte-Silver Bow.

Witness my hand and official seal.

(SEAL)

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