

DEVELOPMENT AGREEMENT
(PHASE II AND PHASE III OF SCOTT STREET VILLAGE)

This DEVELOPMENT AGREEMENT is dated as of December 21, 2017 by and among EDGELL BUILDING, INC., 316 Expressway, Missoula, Montana 59808 (the “Developer”), the CITY OF MISSOULA, MONTANA, 435 Ryman Street, Missoula, Montana 59802 (“City”), and the CITY OF MISSOULA REDEVELOPMENT AGENCY, 140 West Pine Street, Missoula, Montana 59802 (the “MRA”). The Developer, the City and the MRA are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), the City 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. 3534 adopted by the City on August 24, 2014, as amended by Ordinance No. 3550 adopted by the City on July 20, 2015 and Ordinance No. 3556 adopted by the City on November 2, 2015, the City has created the North Reserve - Scott Street Urban Renewal District (the “District”) as an urban renewal district and has approved the North Reserve-Scott Street 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 Developer intends to construct in the District a single and multi-family residential development known as “Scott Street Village” (the “Project”) located at the south-west corner of the intersection of Rodgers Street and Scott Street, Missoula, Montana as more fully described on Exhibit A hereto (the “Land”), and has previously completed the construction of Phase I of the Project, consisting of 29 single family residences (consisting of a combination of detached single-family homes and multi-unit structures); and

WHEREAS, the Developer now proposes to undertake the construction of Phase II of the Project, generally consisting of 24 single family residences (consisting of a combination of detached single-family homes and multi-unit structures) to be located on the Land (“Phase II of the Project”), as further described on Exhibits B and C hereto; and

WHEREAS, following completion of Phase II of the Project, the Developer expects to undertake the construction of Phase III of the Project, expected to consist of an approximately 60-unit apartment complex to be located on the Land (“Phase III of the Project”); and

WHEREAS, the Developer submitted to the MRA an application for tax increment financing assistance with respect to certain eligible costs of Phase II and Phase III (as hereinafter defined, the “Infrastructure Improvements”), as well as certain street improvements (as

hereinafter defined, the “Street Improvements”), and such application was reviewed and approved by the Board of Directors of the MRA; and

WHEREAS, the City Council of the City (the “City Council”), pursuant to Resolution No. 8010 adopted on October 5, 2015, and Ordinance No. 3556 adopted on November 2, 2015 after a duly called and noticed public hearing thereon, approved the Project as an urban renewal project and authorized the use of tax increment revenue generated from the District for the purpose of financing eligible costs of the Project; and

WHEREAS, the City Council, pursuant to the Resolution No. 8031 adopted on December 14, 2015, as amended and supplemented by Resolution No. [_____] adopted on December [11], 2017 (as so amended and supplemented, the “Bond Resolution”), has authorized the issuance of its tax increment urban renewal revenue bonds in a principal amount not to exceed \$723,514 to finance costs of the Infrastructure Improvements, the Street Improvements, and costs of issuance of such bonds, subject to the terms and conditions set forth therein, and has also authorized this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement which sets forth the obligations and commitments of the Parties with respect to Phase II of the Project, Phase III of the Project, if applicable, the Infrastructure Improvements and the Street Improvements; and

NOW THEREFORE, the City, the MRA and the Developer, pursuant to the Act, each in consideration of the representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Definitions; Rules of Interpretation; Exhibits.

1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them, respectively:

“Act” means Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended or supplemented.

“Actual Taxable Value” means the taxable value (as defined in the Act) of the Taxable Property as shown on or calculated from the assessment roll last equalized before the date of reference.

“Agreement” means this Development Agreement, dated as of December 21, 2017, by and among the City, the MRA and the Developer, as it may be amended or supplemented from time to time in accordance with the terms hereof.

“Base Taxable Value” means the Actual Taxable Value as of January 1, 2014.

“Bond Resolution” has the meaning given to it in the recitals hereof.

“City” means the City of Missoula, Montana, or any successors to its functions under this Agreement.

“City Council” means the governing body of the City.

“Department of Revenue” means the State of Montana Department of Revenue.

“Developer” means Edgell Building, Inc., a Montana corporation, and its successors and assigns.

“Developer Certificate” means the certificate attached hereto as Exhibit E.

“Disbursement Agreement” means the Disbursement Agreement dated as of the date hereof by and among the City, the MRA and the Original Purchaser.

“District” means the North Reserve - Scott Street Urban Renewal District, an urban renewal district created by the Ordinance pursuant to the Act, as such may be enlarged or reduced from time to time in accordance with the Act.

“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.

“Fiscal Year” means the period commencing on the first day of July of any year and ending on the last day of June of the next calendar year, or any other twelve-month period authorized by law and specified by the Commission as the City’s fiscal year.

“Indemnified Parties” has the meaning given to it in Section 6.1.

“Infrastructure Improvements” means the work, materials and equipment described generally in Exhibit D-1 hereto, as it may be amended or supplemented from time to time in accordance with the terms hereof and the Bond Resolution.

“Land” has the meaning given to it in the recitals hereof.

“Land Use Regulations” means all federal, state and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Land or the Project.

“MRA” means the City of Missoula Redevelopment Agency, a City agency, governed by an appointed five-member Board of Commissioners and created by City Council Resolution No. 3779, in accordance with the provisions of the Act, to effectuate urban renewal activities within the District.

“Ordinance” means Ordinance No. 3534 adopted by the City on August 24, 2014, as amended by Ordinance No. 3550 adopted by the City on July 20, 2015 and Ordinance No. 3556 adopted by the City on November 2, 2015, including any amendment thereof.

“Original Purchaser” means First Security Bank of Missoula, division of Glacier Bank, whose principal corporate offices are located at 1704 Dearborn Avenue, Missoula, Montana 59801.

“Person” means any individual, corporation, limited liability company, partnership, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Phase II of the Project” has the meaning given such term in the Recitals.

“Phase III of the Project” has the meaning given such term in the Recitals.

“Prevailing Wage Rates” means the Montana Prevailing Wage Rate for public works projects as published from time to time by and available from the Montana Department of Labor and Industry, Research and Analysis Bureau, P.O. Box 1728, Helena, Montana 59624, telephone number (800) 541-3904.

“Project” has the meaning given such term in the Recitals.

“Series 2017 Bonds” means the Tax Increment Senior-Subordinate Urban Renewal Revenue Bonds (North Reserve - Scott Street Urban Renewal District), Series 2017, issued by the City in one or more series pursuant to the Bond Resolution in a principal amount not to exceed \$723,514.

“State” means the State of Montana.

“Street Improvements” means the improvements to streets within the Project, adjacent to the Project, or benefiting, directly or indirectly, the Project and the District, as described generally in Exhibit D-2 hereto, as it may be amended or supplemented from time to time in accordance with the terms hereof and the Bond Resolution.

“Tax Increment” means the amount received by the City pursuant to the Act from the extension of levies of Taxes (expressed in mills) against the incremental taxable value (as defined in the Act) of all Taxable Property, and shall include all payments in lieu of Taxes attributable to the incremental taxable value and all payments received by the City designated as replacement revenues for lost Tax Increment, as provided in the Bond Resolution.

“Taxable Property” means all real and personal property located in the District and subject to Taxes, including land, improvements and equipment.

“Taxes” means all taxes levied on an ad valorem basis by any Taxing Body against the Taxable Property (exclusive of the six mill levy for university purposes levied by the State), and shall include all payments in lieu of taxes received by the City with respect to Taxable Property.

“Taxing Body” means the City; the County of Missoula, Montana; High School District No. 1, Missoula County, Montana; Elementary School District No. 1, Missoula County, Montana; Elementary School District No. 4 (Hellgate), Missoula County, Montana; Missoula Urban Transportation District; the State; and any other political subdivision or governmental unit which may hereafter levy Taxes against property within the District.

“Unavoidable Delay” means a delay resulting from a cause over which the Party required to perform does not have control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, accidents, war, civil unrest, embargoes, strikes, unavailability of raw materials or manufactured goods, litigation and the delays of the other Party or its contractors, agents or employees in the performance of their duties under or incident to this Agreement.

1.2. Rules of Interpretation.

(1) The words “herein,” “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

(2) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed unless otherwise indicated.

(3) Unless the context clearly otherwise requires, capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Bond Resolution.

(4) “Or” is not exclusive but is intended to contemplate or encompass one, more or all of the alternatives conjoined.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: Description of the Land

Exhibit B: Site Plan for Phase II

Exhibit C: Phase II Costs and Sources of Funds

Exhibit D-1: Description of Infrastructure Improvements

Exhibit D-2: Description of Street Improvements

Exhibit E: Form of Developer Certificate

Exhibit F: City’s Non-Discrimination and Affirmative Action Policy

Section 2. Representations.

2.1. City Representations. The City hereby represents as follows:

(a) Pursuant to the Act, and after a public hearing duly called and held, the City by the Ordinance has duly created the District.

(b) The City is authorized by law to adopt the Bond Resolution, to enter into this Agreement, to carry out its obligations hereunder and thereunder and to issue the Series 2017 Bonds.

(c) Pursuant to the Act, the Ordinance and the Bond Resolution, the City approved the use of Tax Increment to pay costs of the Infrastructure Improvements, the Street Improvements and the costs of issuing the Series 2017 Bonds in a principal amount not to exceed \$723,514, of which \$384,473 is allocated to the Infrastructure Improvements, \$302,423 is allocated to the Street Improvements and approximately \$36,618 of which represents costs of issuance of the Series 2017 Bonds.

(d) The Department of Revenue has advised the City that the Base Taxable Value is \$1,491,205.

(e) Based on the representations of the Developer and information provided by the Department of Revenue, Phase II of the Project is expected to generate Tax Increment of approximately \$40,000 in tax year 2019 (Fiscal Year 2019/2020) and thereafter.

(f) Based on the initial representations of the Developer and information provided by the Department of Revenue, Phase III of the Project, if constructed, is expected to generate Tax Increment of approximately \$50,000 in tax year 2020 (Fiscal Year 2020/2021) and thereafter.

(g) The City Council has duly authorized the execution and delivery of this Agreement.

(h) The MRA is authorized to act on behalf of the City with respect to implementation of this Agreement.

2.2. Developer Representations. The Developer hereby represents as follows:

(a) The Developer is a Montana corporation, duly formed, validly existing and in good standing under the laws of the State and is duly qualified to do business in the State. The Developer has the power to enter into this Agreement and by all necessary corporate action has duly authorized the execution and delivery of this Agreement.

(b) The Developer has good marketable title to the Land, free and clear of all liens, encumbrances and defects, except for liens related to Developer's real estate acquisition loans with First Security Bank and such other liens, encumbrances and defects as do not materially affect the value of the Land or materially interfere with the use made and proposed to be made of the Land by the Developer.

(c) The Developer estimates the costs of Phase II of the Project and the Infrastructure Improvements associated with Phase II of the Project to be \$4,173,800, and the Developer has the financial capability or commitments to complete Phase II of the Project and the Infrastructure Improvements associated with Phase II of the Project, in each case as set forth in Exhibit C and Exhibit D-1 hereto.

(d) The Developer has not formally committed to constructing Phase III of the Project. However, the Developer currently expects it will proceed with Phase III of the Project and preliminarily estimates the costs of Phase III of the Project and the Infrastructure Improvements associated with Phase III of the Project to be approximately \$5,650,000.

(e) The Developer is not aware of any facts the existence of which would cause the Developer to be in violation in any material respect of any Environmental Laws and Regulations applicable to Phase II of the Project, Phase III of the Project, the Infrastructure Improvements or the Street Improvements. The Developer has not received from any local, state or federal official any notice or communication indicating that the activities of the Developer may be or will be in violation of any Environmental Laws and Regulations applicable to Phase II of the Project, Phase III the Project, the Infrastructure Improvements or the Street Improvements.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof is prohibited or limited by, conflicts with or results in a breach of the terms, conditions or provisions of the certificate of formation, partnership agreement or operating agreement of the Developer or any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) There is no action, suit, investigation or proceeding now pending or, to the knowledge of the Developer, threatened against or affecting the Developer 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, that could, individually or in the aggregate, materially and adversely affect the ability of the Developer to complete Phase II of the Project, Phase III of the Project, the Infrastructure Improvements or the Street Improvements.

(h) The Developer acknowledges that the Series 2017 Bonds are special, limited obligations of the City, and shall not be payable from any funds of the City other than the Tax Increment. The Developer approves of the sale of the Series 2017 Bonds to the Original Purchaser under the terms and conditions set forth in the Bond Resolution. The Developer understands that the Series 2017 Bonds are draw-down bonds and that if there is an event of default under the Bond Resolution or Series 2017 Bonds (such as there being insufficient Tax Increment to pay debt service on the Series 2017 Bonds or maintain coverage ratio requirements), the City may not be permitted to make further draws under the Series 2017 Bonds for purposes of reimbursing the Developer for costs of the Infrastructure Improvements or the Street Improvements, as applicable. The Developer agrees that such event shall not constitute a default by the City or the MRA hereunder.

(i) The Developer acknowledges that the estimates of Tax Increment revenue set forth in Section 2.1 are estimates only and are based on variables and assumptions that the City has no control over.

Section 3. Developer Undertakings.

3.1. Determination With Respect to Phase III of the Project; the Street Improvements.

(a) Phase III of the Project and the Phase III Infrastructure Improvements.

Regardless of whether the Developer determines to proceed with Phase III of the Project, the Developer hereby agrees to undertake the Infrastructure Improvements, including those Infrastructure Improvements described under the heading “Phase III Infrastructure Improvements” on Exhibit D-1 hereto, subject to the terms and conditions of this Agreement.

(b) Street Improvements. The total cost of the Street Improvements is expected to be approximately \$302,423. Certain of the Street Improvements, which are on the Land and internal to the Project, have been or will be constructed by the Developer in connection with Phase II of the Project and Phase III of the Project, the costs of which are expected to be reimbursed to the Developer, in the manner set forth and subject to the terms and conditions of this Agreement. As more particularly described on Exhibit D-2 hereto, the MRA, Development Services and the City’s engineers are in the process of determining which Street Improvements external to the Project will be required in connection with the Project. By no later than November 1, 2018, the MRA will inform the Developer, based on the determination to be made the City’s engineers and/or Development Services, as to which Street Improvements will be required. If the Street Improvements external to the Project consist of improving Rogers Street, the Parties expect that the Developer will undertake such work and be reimbursed for the costs thereof from the proceeds of the Series 2017 Bonds. If the Street Improvements external to the Project consist of changes to the existing network of streets in the District, the Parties expect that the City would undertake such work, using a portion of the proceeds of the Series 2017 Bonds to pay a portion of the costs of such Street Improvements, and the Developer would not be obligated to undertake, nor be eligible for reimbursement for, Street Improvements other than those internal to the Project.

3.2. Construction and Maintenance of Project.

(a) Phase II of the Project. The Developer hereby agrees and commits to the City that it will diligently prosecute to completion the construction of Phase II of the Project in accordance with this Agreement, the site plan submitted to the City (including agreement by the Developer and the City with respect to street use and design) and all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of Phase II of the Project, including applicable Land Use Regulations and Environmental Laws and Regulations. The Developer agrees and commits to the City that construction of Phase II of the Project shall be completed by December 31, 2018, subject to Unavoidable Delays. The total costs of Phase II of the Project and the source of funds available for payment thereof are shown on Exhibit C hereto. The Developer has the financial capacity to complete Phase II of the Project, and the Developer agrees to pay all such costs thereof. If there is an increase in the costs of Phase II of the Project from that shown on Exhibit C hereto that cannot be covered by the contingency amount, the Developer shall notify the City (through the MRA) of the increase and submit additional evidence in a form acceptable to the City (through the MRA) that the Developer has the financial capacity to cover such additional costs and complete Phase II of the Project. At all times during the term of this Agreement, the Developer will operate and maintain, preserve and keep Phase II of the Project or cause Phase II of the Project to be operated, maintained, preserved and kept for the purposes for which it was constructed, and with the appurtenances and every part and parcel thereof, in good repair and condition. The Developer agrees to permit the City and any of its officers, employees or agents access to the Land for the

purpose of inspection of all work being performed in connection with Phase II of the Project; provided, however, that the City shall have no obligation to inspect such work.

(b) Phase III of the Project. If it determines to undertake construction of Phase III of the Project, the Developer hereby agrees and commits to the City that it will diligently prosecute to completion the construction of Phase III of the Project in accordance with this Agreement, the site plan submitted to the City (including agreement by the Developer and the City with respect to street use and design) and all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of Phase III of the Project, including applicable Land Use Regulations and Environmental Laws and Regulations. At all times during the term of this Agreement, the Developer will operate and maintain, preserve and keep Phase III of the Project or cause Phase III of the Project to be operated, maintained, preserved and kept for the purposes for which it was constructed, and with the appurtenances and every part and parcel thereof, in good repair and condition. The Developer agrees to permit the City and any of its officers, employees or agents access to the Land for the purpose of inspection of all work being performed in connection with Phase III of the Project; provided, however, that the City shall have no obligation to inspect such work.

3.3. Preparation, Review and Approval of Construction Plans. In connection with Phase II and, if applicable, Phase III of the Project, the Developer, at its sole expense, shall prepare and submit construction plans, drawings, and related documents for each portion of the Project to the appropriate City officials for architectural, engineering or land use review and written approval or permits. The Developer acknowledges that no review or approval by City officials may be in any way construed by the Developer to replace, override or be in lieu of any required review, inspection, or approval by the City Building Office, or any other building construction official review or approvals required by any State laws or local ordinances or regulations.

3.4. Construction of the Infrastructure Improvements and the Street Improvements. The Developer shall install, construct or otherwise provide the Infrastructure Improvements and, if applicable, the Street Improvements. The Developer acknowledges and agrees that neither the City nor the MRA is responsible for installing, constructing or otherwise providing the Infrastructure Improvements. The Infrastructure Improvements and the Street Improvements eligible to be financed from the proceeds of the Series 2017 Bonds and the estimated costs thereof are more particularly described on Exhibits D-1 and D-2, respectively.

3.5. Prevailing Wage Rates. The Developer understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes Tax Increment. The Developer agrees that in the awarding of contracts for the Infrastructure Improvements and, if applicable, the Street Improvements that (i) it will, and it will cause its contractor to, competitively bid contracts for each component of the Infrastructure Improvements and, if applicable, the Street Improvements, and (ii) it will, and it will cause its contractor to, pay the Prevailing Wage Rates on such contracts related to the Infrastructure Improvements and, if applicable, the Street Improvements. The Developer will provide to the City all documentation requested to verify the compliance of the Developer and its contractor with the foregoing requirements. Failure of the Developer or its contractor to pay the Prevailing Wage Rates on the Infrastructure Improvements and, if applicable, the Street Improvements will be considered a breach of this Agreement and the City will be entitled to exercise any and all measures to assure

compliance and retroactive compensation plus interest to employees not paid in accordance with this Agreement, and recovery of any penalty or fine assessed by the State attributed to any failure to pay the Prevailing Wage Rates. Additionally, the Developer acknowledges that a violation of these requirements will result in the City not being able to pay or reimburse the Developer for costs of the applicable Infrastructure Improvements and/or Street Improvements.

3.6. Utilities. The Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. All connections to public utility lines and facilities shall be subject to approval of the City and any private utility company involved. The Developer at its own expense shall replace any public facilities or utilities damaged during the Project by the Developer or its agents or by others acting on behalf of or under their direction or control of the Developer.

3.7. Permits and Compliance With Environmental Laws. The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet all requirements of all local, state and federal laws, rules and regulations which must be obtained or met in connection with the acquisition and construction of Phase II of the Project, the Infrastructure Improvements and, if applicable, Phase III of the Project and the Street Improvements. Without limiting the foregoing, the Developer will request and seek to obtain from the City or other appropriate governmental authority all necessary variances, conditional use permits and zoning changes. The Developer will comply in all material respects with all Environmental Laws and Regulations applicable to the construction, acquisition, and operation of Phase II of the Project, the Infrastructure Improvements and, if applicable, Phase III of the Project and the Street Improvements, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, Environmental Laws and Regulations.

3.8. Easements and Rights-of-Way. To the extent that the Infrastructure Improvements and, if applicable, the Street Improvements are to be located on the Land, the Developer hereby agrees to grant to the City and applicable utility companies from time to time such easements, rights-of-way and similar licenses as are reasonably necessary to permit the City to own, operate and maintain the Infrastructure Improvements and, if applicable, the Street Improvements. In addition, the Developer shall deed a public right-of-way to the City with respect to the Street Improvements to be constructed on the Land as part of Phase II of the Project.

3.9. Non-Discrimination Policy. The Developer agrees to require its contractor(s) to be in compliance with both the City's Non-Discrimination and Affirmative Action Policy attached hereto as Exhibit F, as well as Title 49, Montana Code Annotated, regarding activities related to Phase II of the Project, the Infrastructure Improvements and, if applicable, Phase III of the Project and the Street Improvements.

3.10. Worker's Compensation Insurance. The Developer shall provide in its construction contracts with all of its respective contractors that such contractors are to be covered by a Worker's Compensation insurance program with the State, a private insurance carrier, or an approved self-insurance plan in accordance with State law.

Section 4. City Undertakings. The City agrees to issue the Series 2017 Bonds payable from Tax Increment in a principal amount not to exceed \$723,514. The Series 2017 Bonds will be sold to the Original Purchaser on terms set forth in the Bond Resolution. Proceeds of the Series 2017

Bonds in an amount equal to \$384,473 are authorized to be expended for the purposes and in the estimated amounts shown on Exhibit D-1 hereto, and any of such amount not needed for any particular category of Infrastructure Improvements may, in the sole discretion of the MRA (for and on behalf of the City), be applied to any of the other Infrastructure Improvements shown on Exhibit D-1 hereto or to any of the Street Improvements shown on Exhibit D-2 hereto. Proceeds of the Series 2017 Bonds in an amount equal to \$302,423 are authorized to be expended for the purposes described in Exhibit D-2 hereto, and any of such amount not needed for Street Improvements may, in the sole discretion of the MRA (for and on behalf of the City), be applied to any of the Infrastructure Improvements shown on Exhibit D-1 hereto. The remaining proceeds of the Series 2017 Bonds will be expended for costs of issuance of the Series 2017 Bonds.

Section 5. Payment for Infrastructure Improvements and/or Street Improvements. Payment or reimbursement by the MRA (for and on behalf of the City) for the Infrastructure Improvements and, as applicable, the Street Improvements, shall be subject to the following conditions and in accordance with the following procedures:

(i) (A) Phase II of the Project shall have been substantially completed, (B) the Infrastructure Improvements shall have been completed in their entirety and the City shall have delivered to the Developer written acceptance of the Infrastructure Improvements (which may be in the form of a Certificate of Completion or such other format as required by the City), (C) any Street Improvements to be undertaken by the Developer shall have been completed in their entirety and the City shall have delivered to the Developer written acceptance of such Street Improvements (which may be in the form of a Certificate of Completion or such other format as required by the City), and (D) the Developer shall have deeded a public right-of-way to the City pursuant to Section 3.8 in form and substance satisfactory to the City.

(ii) Any payment or reimbursement by the MRA for costs of the Infrastructure Improvements and/or Street Improvements will be based on paid invoices for costs incurred by the Developer, its contractors and subcontractors or utility companies. The MRA may reject, in its sole discretion, any invoice to the extent it is not part of the Infrastructure Improvements and/or Street Improvements.

(iii) The Parties agree that the MRA will not be required to pay or reimburse costs of any Infrastructure Improvements and/or Street Improvements unless at the time of such request (A) all of the Developer's representations as set forth in Section 2.2 are true and correct and (B) the Developer is not in breach of any covenant or undertaking as set forth in Section 3.

(iv) The request for payment or reimbursement must be accompanied by a signed draw request substantially in a form attached as Exhibit E hereto and acceptable to the MRA, accompanied by the invoices and lien waivers from the contractors or subcontractors performing the work to be paid or reimbursed.

(v) The MRA will cause payment or reimbursement for all properly submitted and allowable expenses to be paid within 30 days of satisfaction of the requirements of this Section 5, subject to compliance with MRA accounts payable procedures.

Section 6. Covenants to Pay Taxes.

6.1. Taxes. The Developer shall pay or cause to be paid when due and prior to the imposition of penalty all Taxes and all installments of any special assessments payable with respect to the Land, Phase II of the Project, Phase III of the Project, if applicable, and any improvements thereto or extension thereof.

6.2. Maintenance of Land and Project. Developer agrees to use its commercially reasonable best efforts to maintain and operate the Land, Phase II of the Project and, if applicable, Phase III of the Project, so as to be able at all times to pay promptly and when due all property taxes levied with respect to the Land, Phase II of the Project and, if applicable, Phase III of the Project.

6.3. Injunction; Specific Performance. The Parties agree that, in the event of a breach of this Section 6 by the Developer or its successors or assigns, the City would suffer irreparable harm. Therefore, in the event the Developer or its successors or assigns fails to comply with the provisions of this Section 6, the Parties expressly agree that the City may pursue any remedy at law or in equity, including without limitation, the remedies of injunction and specific performance.

Section 7. Indemnification and Insurance.

7.1. Indemnification. The Developer releases the City and all City Council members, officers, agents, servants and employees thereof (the "Indemnified Parties") from, and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss, damage, cost (including reasonable attorneys' fees), claim, demand, suit, action or other proceeding whatsoever (i) arising or purportedly arising out of, or resulting or purportedly resulting from, the acquisition and construction of Phase II of the Project, the Infrastructure Improvements, and, if applicable, Phase III of the Project and the Street Improvements, any violation by the Developer of any agreement, condition or covenant of this Agreement, the construction of Phase II of the Project, the Infrastructure Improvements, and, if applicable, Phase III of the Project and the Street Improvements, the ownership, maintenance and operation of Phase II of the Project, the Infrastructure Improvements, and, if applicable, Phase III of the Project and the Street Improvements, or the presence on any portion of the Land, of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances; or (ii) which is proximately caused by the Developer or its officers, agents, contractors, consultants or employees.

7.2. Insurance. Developer shall keep and maintain Phase II of the Project and, if applicable, Phase III of the Project, at all times insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with facilities of the type and size comparable to Phase II of the Project and, if applicable, Phase III of the Project, respectively, and the Developer shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for direct damage insurance covering all risks of loss, including, but not limited to, the following:

1. fire
2. extended coverage perils
3. vandalism and malicious mischief

4. boiler explosion (but only if steam boilers are present)
5. collapse

on a replacement cost basis in an amount equivalent to the Full Insurable Value thereof. "Full Insurable Value" shall include the actual replacement cost of Phase II of the Project and, if applicable, Phase III of the Project, exclusive of foundations and footings, without deduction for architectural, engineering, legal or administrative fees or for depreciation. The policies required by this Section 8.2 shall be subject to a no coinsurance clause or contain an agreed amount clause, and may contain a deductibility provision not exceeding \$50,000.

Subject to the terms of any mortgage relating to Phase II of the Project and, if applicable, Phase III of the Project, policies of insurance required by this Section 8.2 shall insure and be payable to Developer, and shall provide for release of insurance proceeds to Developer for restoration of loss. The City shall be furnished certificates showing the existence of such insurance. In case of loss, Developer is hereby authorized to adjust the loss and execute proof thereof in the name of all Parties in interest.

During construction of Phase II of the Project and, if applicable, Phase III of the Project, any and all of the foregoing insurance policies may be maintained by the Developer's contractor; provided that once Phase II of the Project and, if applicable, Phase III of the Project, is placed into service, Developer shall maintain all of the foregoing insurance policies.

Section 8. General Provisions.

8.1. Conflicts of Interest; City's Representatives Not Individually Liable. No member, officer or employee of the City or the MRA shall have any personal interest, direct or indirect, in this Agreement, Phase II of the Project or the Infrastructure Improvements, or, if applicable, Phase III of the Project or the Street Improvements, nor shall 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 or the MRA shall be personally liable to Developer in the event of any default under or breach of this Agreement by the City, or for any amount that may become due to Developer for any obligation issued under or arising from the terms of this Agreement.

8.2. Rights Cumulative. The rights and remedies of the Parties of this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party hereto of any one or more of such remedies shall 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, shall 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 shall not be deemed a waiver of any rights hereunder.

8.3. Term of Agreement. This Agreement shall remain in effect until [July 1, 2042] or such earlier date upon which no Series 2017 Bonds are outstanding and all obligations of the City under the Bond Resolution have been satisfied or discharged; provided that this Agreement may be terminated by the City in its sole discretion at any time after December 31, 2019 if the Infrastructure Improvements and, if applicable, the Street Improvements, have not been fully completed in accordance with Section 3.2. Notwithstanding, Sections 6, 7, 8.1 and 8.4 shall in all events survive the termination of this Agreement.

8.4. Limitation on City Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the City contained in any document executed by the City in connection with the Infrastructure Improvements or the Series 2017 Bonds shall give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers, or shall obligate the City financially in any way except with respect to the Tax Increment. No failure of the City to comply with any term, condition, covenant or agreement herein shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Tax Increment; and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the City (except as such constitute Tax Increment). Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the City for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief shall be recoverable from the City except as may be payable from the Tax Increment or proceeds of the Series 2017 Bonds.

8.5. Assignment. This Agreement is unique between the City, the MRA and Developer and no Party may assign any rights or privileges, or delegate any duties or obligations under this Agreement without first obtaining the written consent of the other Parties, which shall not be unreasonably withheld.

8.6. Successors Bound By Agreement. This Agreement will inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors in interest and permitted assignees.

8.7. Prior Agreements. This Agreement supersedes, merges and voids any and all prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement. The Parties waive and release each other from any claims, actions, or causes of action that relate in any manner to any prior discussions, negotiations, agreements and undertakings between the Parties with respect to the subject matter of this Agreement.

8.8. Entire Agreement. This Agreement, including any exhibits and attachments hereto, embodies the entire agreement and understanding of the Parties with respect to its subject matter. All Parties shall be prohibited from offering into evidence in any arbitration or civil action any terms, conditions, understandings, warranties, statements or representations, whether oral or written, with respect to the subject matter of this Agreement and that are not contained in this Agreement.

8.9. Amendments, Changes and Modifications. This Agreement may be amended and any of its terms may be modified only by written amendment authorized and executed by the

Parties hereto and subject to the limitations contained in the Bond Resolution. Notwithstanding the foregoing, any waivers or amendments of provisions that are recited to concern less than all of the Parties may be waived or amended in writing among such concerned Parties only.

8.10. Headings. The headings of articles and sections in this Agreement are inserted for convenience of reference only and do not limit or amplify the terms and provisions of the Agreement in any manner. The headings will be ignored and will not affect the construction of any provisions of this Agreement.

8.11. Notice. Any formal notice, demand or communication required or permitted by the terms of this Agreement to be given to the City or Developer will be in writing and will be delivered to such Party either: (i) by personal hand-delivery; or (ii) by depositing the same in the United States mail, certified mail with return receipt requested, addressed to such Party at the address named below, with postage prepaid thereon. Notice will be deemed complete upon receipt of the notice pursuant to any of the foregoing methods of notice.

If to City:

City of Missoula
Attention: City Finance Director
435 Ryman Street
Missoula, Montana 59802

With a copy to:

Missoula Redevelopment Agency
Attention: Director
140 West Pine Street
Missoula, Montana 59802

If to Developer:

Edgell Building, Inc.
Attention: President
316 Expressway
Missoula, Montana 59808

The Parties, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

8.12. Severability. If any provision of this Agreement is declared void or held invalid, such provision will be deemed severed from this Agreement and the remaining provisions of this Agreement will otherwise remain in full force and effect.

8.13. Duplicate Originals or Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

8.14. Place of Performance. The place of performance of this Agreement will be in the City of Missoula, Missoula County, Montana.

8.15. Governing Law. This agreement and the legal relations between the Parties hereto will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any choice of law statutes, rules, or principles.

8.16. Dispute Resolution. In the event the Parties are unable to agree upon disputed items, the Parties agree to try in good faith to settle the dispute by mediation to be administered by the American Arbitration Association under its Commercial Mediation Rules. For purposes of selecting a mediator, the Parties will first attempt to agree upon one neutral individual to mediate the matter. If the Parties are unable to agree upon a mediator, then each Party will each select one individual to assist in the selection of a mediator, and the selected individuals will then agree upon and appoint a single mediator who will attempt to resolve the matter on behalf of the Parties. In order to qualify and serve as mediator, an individual must not be employed by the any of the Parties to this Agreement, and the individual must have expertise in the subject matter of the mediation.

If the Parties are unable to reach agreement on the disputed issue by mediation pursuant to the immediately preceding paragraph, then the Parties agree that the dispute will be resolved by binding arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules for the Real Estate Industry and the Uniform Arbitration Act, Montana Code Annotated §§ 27-5-111, et. seq., as amended from time to time. The Parties agree to submit the disputed issue to binding arbitration in the following manner:

(i) The Parties will first attempt to select and agree upon a neutral individual to arbitrate the matter. If the Parties are unable to agree upon such an arbitrator, then the Parties will each select one individual to assist in the selection of an arbitrator, and the selected individuals will then agree upon and appoint a final arbitrator who will hear and resolve the matter on behalf of the Parties. In order to qualify and serve as an arbitrator, an individual must not be employed by any of the Parties, and the individual must have expertise in the subject matter of the arbitration.

(ii) The arbitrator will conduct the arbitration proceedings in accordance with the American Arbitration Association Arbitration Rules for the Real Estate Industry then in effect, except where this Agreement makes a special provision.

(iii) The arbitrator's decision will be conclusive and binding upon the Parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the dispute.

8.17. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of any phase of the Project or the Infrastructure Improvements or for carrying out the expressed intention of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the 21st day of December, 2017.

CITY OF MISSOULA, MONTANA

By _____
Mayor

[SEAL]

Attest _____
City Clerk

MISSOULA REDEVELOPMENT AGENCY

By: _____
Karl J. Englund, Chairman

APPROVED FOR LEGAL CONTENT:

Jim Nugent, City Attorney

EDGELL BUILDING, INC.

By: _____
Name: David Edgell
Title: President

EXHIBIT A

DESCRIPTION OF THE LAND

Lot 1 of SCHOOL ADDITION, TRACTS 24, 25, 32, and 33, an amended subdivision of the City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

EXHIBIT B
PHASE II SITE PLAN

EXHIBIT C

PHASE II COSTS AND SOURCES OF FUNDS

PROJECT COMPONENT:	COST:
Demolition	
Building construction (6 single family houses and 18 townhomes)	
Sewer mainline to the site	
Water mainline to the site	
Storm drainage system	
Street/sidewalk/curb construction	
Improvements to existing Rodgers Street or other Street Improvements	
Estimated miscellaneous, permits, insurance, traffic control, etc.	
Land cost (including closing costs)	
Total Project Costs:	

SOURCE OF FINANCING:	AMOUNT:
Total Financing:	

EXHIBIT D-1

PHASE II INFRASTRUCTURE IMPROVEMENTS

Sewer mainline to the site	\$49,212
Water mainline to the site	\$42,228
Storm water system.....	\$12,580
Demolition for Phase II area only.....	\$60,000
Engineering/permits/traffic control for eligible items	<u>\$106,155</u>
Total:	\$270,175

PHASE III INFRASTRUCTURE IMPROVEMENTS

Sewer mainline to the site	\$19,200
Water mainline to the site	\$40,100
Engineering/permits/traffic control for eligible items	<u>\$54,998</u>
Total:	\$114,298

Total for all Infrastructure Improvements:\$384,473

EXHIBIT D-2

STREET IMPROVEMENTS

The total cost of all Street Improvements is expected to be approximately \$302,423.

Certain of the Street Improvements, which are on the Land and internal to the Project, have been or will be constructed by the Developer in connection with Phase II of the Project and Phase III of the Project, the costs of which are expected to be reimbursed to the Developer, in the manner set forth and subject to the terms and conditions of the Agreement.

A significant portion of the budgeted costs of the Street Improvements is for improving Rogers Street as a neighborhood collector street, as directed by the City's engineers. However, the Master Plan for the District calls for Rogers Street to revert to its platted status as an alley, with the traffic to and from the landfill and industrial activities to the South and West of the Project to be routed around the residential area created by the Project, which would require changes to the existing network of streets in the District. The MRA, Development Services and the City's engineers are in the process of determining which Street Improvements external to the Project will be required in connection with the Project. By no later than November 1, 2018, the MRA will inform the Developer, based on the determination to be made the City's engineers and/or Development Services, as to which Street Improvements will be required. If the Street Improvements external to the Project consist of improving Rogers Street, the Parties expect that the Developer will undertake such work and be reimbursed for the costs thereof from the proceeds of the Series 2017 Bonds. If the Street Improvements external to the Project consist of changes to the existing network of streets in the District, the Parties expect that the City would undertake such work, using a portion of the proceeds of the Series 2017 Bonds to pay a portion of the costs of such Street Improvements, and the Developer would not be obligated to undertake, nor be eligible for reimbursement for, Street Improvements other than those internal to the Project.

EXHIBIT E

FORM OF DEVELOPER CERTIFICATE

TO: Missoula Redevelopment Agency
FROM: Edgell Building, Inc. (the "Developer")
SUBJECT: Payment/Reimbursements for Infrastructure Improvements and/or Street Improvements

This represents Developer Certificate No. _____ in the total amount of \$ _____ for payment of the [Infrastructure Improvements][Street Improvements].

The undersigned, as Authorized Developer Representative, intends that this certificate will satisfy the requirements of Section 5(iv) of the Development Agreement and does hereby certify on behalf of the Developer that:

- (a) the expenditures for which payment is to be made or for which reimbursement is requested are listed in summary form in the attached schedule;
- (b) the amounts requested are to be or have been paid by the Developer for property or to contractors, subcontractors, materialmen, engineers, architects or other persons who will perform or have performed necessary or appropriate services or will supply or have supplied necessary or appropriate materials for the acquisition, construction, renovation, equipping, and installation of the Project, as the case may be, and that, to the best of my knowledge, the fair value of such property, services, or materials is not exceeded by the amounts requested to be paid;
- (c) the contractor or subcontractor has paid the Montana prevailing wage for such work;
- (d) no part of the several amounts requested to be paid, as stated in such certificate, has been or is the basis for the payment of any money in any previous or then pending request;
- (e) the payment of the amounts requested will not result in a breach of any of the covenants of the Developer contained in the Development Agreement; and
- (f) attached hereto are invoices and satisfactory lien waivers from persons or entities that have performed the portion of the work on the [Infrastructure Improvements][Street Improvements] for which payment/reimbursement is sought by the Developer.

Dated: _____, 20__

EDGELL BUILDING, INC.

By: _____
Authorized Developer Representative

Schedule to Developer Certificate No. _____

Payee

Purpose

Amount

EXHIBIT F

CITY'S NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of 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, or 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 or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, or gender identity or expression. 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.