

After recording, return to:
City Clerk, City of Missoula
435 Ryman Missoula,
MT 59802

Private Stormwater Facility Maintenance Covenant and Right to Access

Geocode 04-2200-18-1-04-24-0000

This Maintenance Covenant and Right to Access ("Agreement") is made this 14th day of December, 2023, between Partners Hope Foundation ("Owner") whose address is 3615 Union Pacific St, Missoula and the City of Missoula, 435 Ryman, Missoula, Montana 59802, a municipal corporation under the laws of the state of Montana (the "City").

RECITALS

- A. Owner is the owner and developer of certain real property located in the City of Missoula, Missoula County, Montana, legally described as follows, and commonly known as (the "Development"):

Lot 3 of the Payne Subdivision, a platted subdivision of Missoula County, Montana according to the official recorded plat thereof

- B. Owner has developed or will develop at the Development, private stormwater management facilities as further described below:

List the type, quantity, and location of all private stormwater facilities proposed and constructed within the development.

- Infiltration basin, 3069 cu ft., nw corner of site
- 8-inch SDR 35 Storm Drain piping, 688 lf, spread throughout site
- 30-inch catch basin, 6 total, spread throughout site
- 8-foot pre cast dry well, 3 total, spread throughout site
- Storm water swale, 2524 sf, perimeter of site
- Rain water downspout and roof drain leader, 13 total, spread throughout building

- C. The City has approved construction plans submitted by Owner for the Development, including the on-site stormwater facilities as described above (together with any other stormwater facilities that may hereafter be constructed on the Development, the "Stormwater Facilities").

- D. To protect future lot owners in the Development, as well as owners of neighboring property, the City requires Owner to enter into this Agreement as a condition to the City's approval of construction plans, building permit(s), if applicable, and the final plat, if applicable, for the Development.
- E. The Stormwater Facilities enable development of property while mitigating the adverse impacts of additional surface water and pollutants associated with stormwater runoff prior to discharge from the property to the public stormwater system. The consideration for this Agreement is connection to the City's stormwater system.
- F. The Stormwater Facilities are designed by a registered professional engineer to accommodate the anticipated volume of runoff and to detain and treat runoff in accordance with the City's regulations, engineering standards, administrative rules, and amendments.
- G. Failure to inspect and maintain the Stormwater Facilities can result in an unacceptable impact to the public stormwater system.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

1. Covenant to Maintain and Repair

Owner shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the Stormwater Facilities in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's engineering standards).

2. Covenant to Inspect

The Owner shall perform annual inspections of all Stormwater Facilities covered by this agreement annually. Any work necessary to repair or maintain the facilities in good working order that is discovered during the annual inspection shall be completed by the Owner within a reasonable period of time after the annual inspection. Owner shall apply for renewed coverage under the City stormwater permit as required by City Code.

3. Right to Access

Owner hereby grants the City, its employees, independent contractors, and designees, a nonexclusive easement for ingress and egress over, across, and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facilities and discharges therefrom, as well as allow the City to take the actions described in Sections 4 and 5 of the Agreement. Owner understands and agrees that this

easement limits the ability of Owner, its successors, and assigns from constructing any permanent buildings, structures, landscaping, or other improvements that would interfere with the functioning of the Stormwater Facilities or the City's access to perform the inspection and maintenance required under this Agreement.

4. Failure to Perform Covenant

If the City, in its sole discretion, determines that the Owner is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the City or its designee shall give the Owner written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City's satisfaction within twenty (20) days after the date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors, and designees may exercise their right under the Easement described in Section 3 of this Agreement to enter the Development to perform any and all work required bringing the Stormwater Facilities into compliance with this Agreement.

5. Emergency

If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Development with respect to the Stormwater Facilities, the City, its employees, independent contractors, and designees may immediately exercise their rights under the Easement described in Section 3 of this Agreement to immediately enter the Development to perform any and all work required to bring the Stormwater Facilities into compliance with the Agreement, and in such case the City shall use reasonable efforts to notify the Owner prior to entering the Development. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and repairing the Stormwater Facilities to their original condition and standards.

6. City Under No Obligation

Owner, for itself or its successors and assigns (including all owners of lots in the Development), agrees that the City, as well as its department, employees, independent contractors, and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 4 and 5 of this Agreement to perform the work required of the Owner, or to perform any other maintenance or repair of the Stormwater Facilities. Owner also agrees that none of the City, as well as its departments, employees, independent contractors, and/or designees shall have any liability to Owner or any of

Owner's successors or assigns (including owners of lots in the Development) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Stormwater Facilities, or the failure to perform the same.

7. Owner Obligation

In addition to the covenants and easement described above, Owner agrees to the following additional obligation:

- a. Owner shall construct the Stormwater Facilities as shown on City-approved construction plans.
- b. Prior to the sale of any portion of the Development, Owner shall provide to the City's Development Services Department, a copy of the Operations and Maintenance Manual for the Stormwater Facilities, which shall include detailed diagrams and descriptions identifying the components and operations of the Stormwater Facilities.
- c. Prior to final approval of the Development, Owner shall record this document in the deed records of Missoula County and provide a copy of the recorded documents to the City.
- d. Owner shall notify the City's Public Works Director in writing of the person responsible for compliance with Owner's obligations under this covenant ("Owner Designee"), and of any change in the Owner Designee. Owner expressly agrees that the Owner Designee shall have the authority to bind Owner, its successors, and assigns with respect to the matters described in this Agreement.
- e. Upon sale or transfer of the Development, or any portion thereof, including any lots in a subdivision, the Owner shall inform the purchaser of the obligations required under this Agreement.

8. Reimbursement

If the City exercises its right to enter the Development pursuant to the Easement described in Section 3 of this Agreement, Owner shall reimburse the City for all of its costs and expenses incurred in connection with any work performed pursuant to Section 4 or 5 of this Agreement within thirty (30) days after receipt of an invoice. If Owner fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. The City may pursue any available means to collect such amount, together with interest, including placing a lien on the Development (and each of the lots contained therein). If the Development is owned by more than one person (i.e., multiple lot owners), each such owner shall be jointly and severally liable for payment of the amounts provided for in this Section.

9. Indemnification

Owner agrees to indemnify, defend (with legal counsel acceptable to the City), and hold harmless the City, its employees, independent contractors, and designees from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims, or suits arising from: (1) Owner's failure to perform its obligations under this Agreement, including among other things its obligation to properly design, construct, operate, and maintain the Stormwater Facilities, and (2) the exercise of the City's rights under this Agreement.

10. Run with the Land

The parties' rights and obligations contained herein touch and concern the land, and shall run with the land and be binding upon Owner and its successors and assigns (including, without limitation, subsequent owners of lots in the Development and any homeowner's association owning common areas in the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.

11. Assignment

The obligations of Owner (and subsequent owners of lots in the Development) under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), or (b) with the prior written consent of the City, to a homeowner's association that owns and maintains the common areas of the Development.

12. Authority

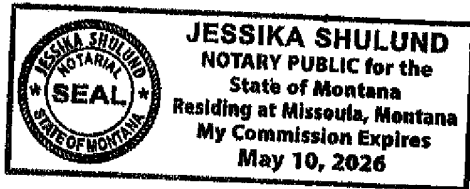
If Owner is an entity, the individual executing this Agreement on behalf of Owner represents and warrants to the City that he or she has the full powers and authority to do so and that the Owner has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date below.

By: *[Signature]*
Owner
Executive Director
Title

STATE OF MONTANA)
) ss.
County of Missoula)

This instrument was acknowledged before me on December 14th, 2023, by Amanda Heaman Melro, as Executive Director of Partners Hope Foundation, an Non Profit Organization.



Jessika Shulund
Notary Public—State of Montana
My commission expires: May 10, 2026

REVIEWED:

By: Christopher Fuchs City
Engineering

APPROVED:

By: [Signature]
Jeremy Keene (Dec 15, 2023 11:45 MST)
Jeremy Keene, PE, Public Works Director

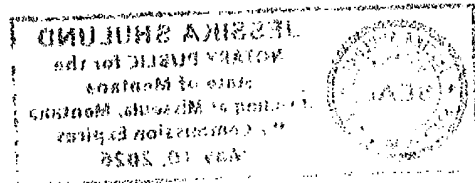
CITY OF MISSOULA, MONTANA:

By: [Signature]
Andrea Davis (Dec 15, 2023 16:38 MST)
Jordan Hess, Mayor

ATTEST:

By: [Signature]
Claire Trimble (Jan 4, 2024 12:45 MST)
Marty Rehbein, City Clerk

(Seal)



A 9493 - Private Stormwater Facility Maintenance Covenant and Right to Access

Final Audit Report

2024-01-04


Created:	2023-12-14
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Document emailed to Chris Fuchs (FuchsC@ci.missoula.mt.us) for signature
2023-12-14 - 11:21:42 PM GMT

Email viewed by Chris Fuchs (FuchsC@ci.missoula.mt.us)
2023-12-15 - 0:54:20 AM GMT

 Document e-signed by Chris Fuchs (FuchsC@ci.missoula.mt.us)
Signature Date: 2023-12-15 - 0:57:33 AM GMT - Time Source: server


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2024-01-04 - 7:38:31 PM GMT

 Document e-signed by Claire Trimble (trimblec@ci.missoula.mt.us)

Signature Date: 2024-01-04 - 7:45:06 PM GMT - Time Source: server

 Agreement completed.

2024-01-04 - 7:45:06 PM GMT



After recording return to:

All Nations
2122 Stephens Ave
Suite 105
Missoula, MT 59801

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

RECITALS

A. Partners Hope Foundation (“PHF”), a Montana nonprofit corporation, owns land in Missoula County, Montana, legally described on attached Exhibit 1, which is incorporated herein by this reference (the “PHF Property”).

B. All Nations Health Center, Inc (“ANHC”), a Montana nonprofit corporation, owns land in Missoula County, Montana, legally described on attached Exhibit 2, which is incorporated herein by this reference (the “ANHC Property”).

C. PHF and ANHC (each is a “Party,” and collectively they are the “Parties”) enter into this Declaration of Covenants, Conditions & Restrictions (the “Declaration”) to subject the PHF Property and ANHC Property (each is a “Property,” and collectively they are the “Properties”) to the Declaration.

D. The Parties' intent is for the Declaration to become effective upon the recording of the deed by which PHF conveyed the ANHC Property to ANHC (“Effective Date”).

AGREEMENT

The Parties hereby subject the Properties to the terms, conditions, restrictions, and other language in this Declaration, as it may be amended from time-to-time.

1. Incorporation. The above recitals and definitions are incorporated here.

2. Term. This Declaration shall encumber the Properties for an initial term of twenty (20) years starting on the Effective Date (the “Initial Term”). The term of this Declaration shall automatically renew for successive five (5) year renewal terms (each is a “Renewal Term”) unless either Party (the “Notifying Party”) informs the other Party in writing at least one (1) year before the end of the then-existing Initial Term or Renewal Term, as applicable, that the Notifying Party is terminating this Declaration at the end of the then-existing Initial Term or Renewal Term, as applicable. As used in this Declaration, “Term” means the span of time from the Effective Date until this Declaration is terminated pursuant to this Section.

3. Allowed Uses. Subject to additional restrictions in the Declaration, the Properties may only be used for the following purposes: general office, healthcare and medical care, retail, and residential (collectively, the “**Allowed Uses**”). Allowed Uses include the construction of facilities for general office, healthcare and medical care, retail, and residential purposes.

4. Prohibited Uses. All uses of the Property other than the Allowed Uses are prohibited. Such prohibited uses include, but are not limited to, the following: loud outdoor businesses like amusement parks, outdoor water slides, shooting ranges, and car washes; strip joints, pornography-related establishments, and other similar adult-entertainment related businesses; bars and night clubs; and food and drink establishments with drive-through service utilizing loudspeakers for order-taking.

5. Setback. No structures (excluding shade shelters as well as garden and art structures), playground equipment, sport or recreational equipment (basketball courts, etc.), or other above-ground improvements (excluding equipment necessary for the provision of utilities to the structures on a Property) shall be construed on or above the (a) eastern-most fifteen feet (15') of ANHC Property, and (b) western-most fifteen feet of the PHF Property (each is a “**Setback Areas**”). Trees, bushes, grass, flowers, and other-such landscaping may, however, be planted, installed, maintained, repaired, and replaced in, on, and throughout the Setback Areas. The intent of this provision is to create a quiet, peaceful buffer area on each of the Properties.

6. Noise Restrictions. The noise levels emanating from a source or sources on a Property shall not exceed the following levels during the following times of day (A) sixty (60) dB(A) from 7PM to 10PM; (B) fifty-five (55) dB(A) from 10PM to 7AM; and (C) sixty-five (65) dB(A) at all other times.

1.1 Definitions. The following definitions have the following meaning when used in this section:

1.1.1 “**dB(A)**” means sound level in decibels measured on the “A” scale of a standard level meter having characteristics defined by the American National Standards Institute in their applicable standards; and

1.1.2 “**Decibel**” or “**decibel**” means a unit used to express the magnitude of the change in sound intensity or some pressure level. The difference in decibels between a measured sound pressure level and a reference sound pressure level is twenty times the logarithm of their ratio (i.e., $SPL(dB) = 20 \log Pa/Po$ e.g. an increase of 6 decibels (dB) represents a doubling of the sound pressure level, and a decrease of 6 dB represents a halving of the sound pressure level (SPL).)

1.2 Maximum Permissible Noise Levels. Sound levels of noise radiating to a distance of twenty five feet or more from a source within a Property in excess of the dB(A) levels established for the time periods listed in this section shall constitute prima facie evidence this noise restriction was violated. The decibel noise shall be measured at the closest point of complaint.

1.3 Construction Projects. Notwithstanding anything to the contrary herein, construction projects shall be subject to the maximum permissible noise level of 75 dB(A) from

7PM to 10PM, 70 dB(A) from 10PM to 7AM, and 80 dB(A) from 7AM to 7PM for the period within which construction is to be completed pursuant to any applicable construction permit issued by proper authority. If no time limitation is imposed, then for a reasonable period for completion of project.

1.4 Test Measurements. To determine and classify if a noise level violates this section, the following test measurements and requirements may be applied: (A) The noise shall be measured on a sound level meter meeting current American National Standard Institute standards, operated on the "A" weighted scale. (B) In all sound level measurements, ambient noise shall be at least 10 dB(A) below the specific noise source being measured. (C) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time of such sound level measurements.

1.5 Intent. The intent of this provision is to preserve and protect the peace and quiet of the occupants and inhabitants of the buildings and structures on the Properties.

7. Dispute Resolution. Excluding provisional remedies (restraining order, injunctions, etc.), which are not subject to these mandatory dispute resolution procedures, all disputes arising from or pertaining to this Declaration shall be subject to the following dispute resolution procedures:

1.6 Negotiations. First, the Parties shall endeavor to resolve the dispute via negotiations. Initially, a Party will provide the other Party or Parties with a written demand to negotiate a dispute. If the Parties do not resolve the dispute within fourteen (14) days of the written demand to negotiate being provided, as evidenced by a written agreement signed by the Parties resolving the dispute at issue, then the Parties shall proceed to mediation.

1.7 Mediation. Second, the Parties shall endeavor to resolve the dispute via mediation administered in Missoula, Montana by the American Arbitration Association ("AAA") in accordance with its commercial mediation rules. If the dispute is not resolved within sixty (60) days of a Party providing the other Party (or parties) a written demand to mediate, as evidenced by a written agreement signed by the Parties to the dispute, then the Parties shall proceed to resolve the dispute via arbitration.

1.8 Arbitration. Third and finally, the Parties shall submit the dispute to arbitration administered in Missoula, Montana, which shall be subject to, and conducted pursuant to, the Montana Unified Arbitration Act, modified as described herein. Demand for arbitration must be in writing. Arbitration must be conducted by one arbitrator. If the Parties do not agree in writing on an arbitrator within 30 days of the initial written demand for arbitration, any Party may petition the Missoula County District Court for the appointment of an arbitrator by the Court. Once appointed, the arbitrator shall allow discovery as described in the Montana Rules of Civil Procedure. The hearing will be conducted within 120 days after the arbitrator's appointment, unless otherwise agreed in writing by all Parties. The arbitrator shall render a written decision within 30 days after completion of the hearing. The arbitration will be held in Missoula County or in such other place as may be agreed upon in writing at the time by the Parties. Judgment on the award rendered by the arbitrator may be entered in any court having

jurisdiction thereof. If any Party commences arbitration in connection with this Agreement or its breach, the prevailing party in such arbitration will be entitled to reimbursement for their reasonable costs and attorneys' fees incurred; provided that in no event shall the arbitrator have the authority to award punitive or exemplary damages.

8. Binding; Runs with Properties. The Declaration is appurtenant to, and shall run with and bind, the Properties. During the Term the Declaration shall burden and benefit the Properties, and shall bind the Parties and their respective heirs, successors and assigns, and anyone who takes title to the PHF Property or the ANHC Property.

9. Attorneys' Fees. In the event of a dispute arising out of this Declaration, the substantially prevailing Party shall be entitled to reimbursement for all reasonable fees and costs, including attorneys' fees and costs, incurred in the dispute, including, without limitation, court and arbitration costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy court proceeding.

10. Nonwaiver. Any Party's failure to, or decision not to, enforce their rights or remedies contained herein shall not constitute a waiver of the right to insist, at any later date, that the owner of the Properties comply with this Declaration.

11. Enforcement. Subject to the above provision titled "Dispute Resolution," in the event of any conduct inconsistent with the rights and obligations created by this Declaration, the Parties shall be entitled to any and all remedies available at law or in equity, including but not limited to the equitable remedies of specific performance or mandatory or prohibitory injunction issued by a court of competent jurisdiction.

12. Severability. If any provision of this Declaration is determined to be invalid or unenforceable, then that provision shall be severed and the remainder of this Declaration shall continue in effect and be enforceable to the fullest extent permitted by law.

13. Legal. This Declaration shall be construed under the laws of the State of Montana. Venue shall exclusively be in a State or Federal court in Missoula County, Montana with requisite jurisdiction over the Parties and the issues and subject matter of the dispute. This Agreement may be signed in any number of counterparts, which together shall constitute a single document.

14. Entire Agreement; Amendments. This Declaration is the entire agreement between the Parties related to its subject matter, and it wholly supersedes and replaces any and all discussions, negotiations, and understandings between the Parties related to its subject matter. This Declaration may only be amended via a writing signed by all the then-existing fee title owners of the Properties.

15. Notices. Any notices, payments, demands, or communication required or permitted to be given by this Declaration will be deemed to have been given (A) on the date the party designated to receive the notice is served with the notice by in-person delivery, or (B) on the third business day after the notice is sent by certified mail, postage and charges prepaid, directed to the party's address below its signature block below, or to such other or additional addresses as any party may designate by written notice to the other party.

// The Parties' Signatures and Notary Acknowledgments Follow on Page 6 //

The Parties sign below intending to bind themselves, and subject their respective Property, to the Declaration.

PARTNERS HOPE FOUNDATION

ALL NATIONS HEALTH CENTER, INC.

Anne Murphy

[Signature]

By: Anne Murphy

By: Azure S. McGinty

Its: Board President
Partners Hope Foundation

Its: Executive Director

Date: _____

Date: 6-8-2023

Address for Notices:

Address for Notices:

Partners Hope Foundation
Attn: Anne Murphy
P.O. Box 1262
Missoula, MT 59806

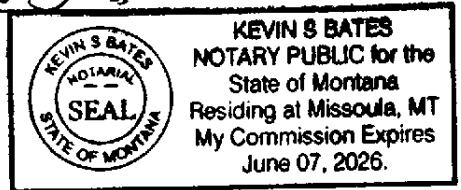
All Nations Health Center, Inc.
Attn: Sky McGinty
825 W. Central Ave.
Missoula, MT 59801

STATE OF MT
COUNTY OF Missoula

This record was acknowledged before me on June 7, 2023, 202__ (date) by
Anne Murphy (name(s) of
individual(s)) as Board President (title or capacity) of or for Partners
Hope Foundation.

[Signature]

STATE OF MT
COUNTY OF Missoula



This record was acknowledged before me on June 8, 2023, 202__ (date) by
Azure Skye McGinty (name(s) of
individual(s)) as Executive Director (title or capacity) of or for All Nations
Health Center, Inc.

[Signature]

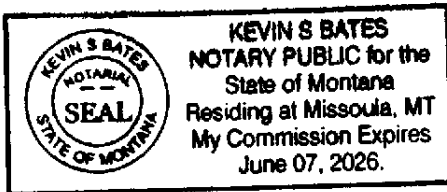


EXHIBIT 1
TO
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

PHF Property

Lot 3A of the Amended Plat of Payne Subdivision, Lots 2 and 3, a platted subdivision in the city of Missoula, Missoula County, Montana according to the official recorded plat thereof.

EXHIBIT 2
TO
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

ANHC Property

Lot 1 of Payne Subdivision, a platted subdivision in the city of Missoula, Missoula County, Montana, according to the official recorded plat thereof; and

Lot 2A of the Amended Plat of Payne Subdivision, Lots 2 and 3, a platted subdivision in the city of Missoula, Missoula County, Montana, according to the official recorded plat thereof.