

After recording return to:  
City of Billings  
Community Development Division  
P.O. Box 1178  
Billings, MT 59103

DEED RESTRICTION AGREEMENT

between

City of Billings  
A Montana Municipal Corporation  
whose address is  
P.O. Box 1178, Billings, Montana 59103  
the "City"

and

Rimrock Foundation  
A Non-Profit Organization  
whose address is  
1231 North 29<sup>th</sup> Street, Billings, Montana 59101,  
the "Owner / Developer", hereafter referred to as the "Owner"

DATE: \_\_\_\_\_

**A. PURPOSE**

This Land Use Restriction Agreement ("Agreement") is made and entered into this day by and between the City and the Owner and is in effect from the date of full lease-up for the project and continues for a period of **seven (7) years of assured affordability**;

WHEREAS the City has granted to the Owner Economic Development Initiative funding via the Consolidated Appropriations Act, 2010 (PL 111-117) as provided through the U.S. Department of Housing and Urban Development funding in the amount of **Two-hundred thousand dollars (\$200,000)** as a zero interest, deferred payment loan for the purpose of acquisition and rehabilitation of **two (2)** units of affordable rental housing commonly known and addressed as **116 South 30<sup>th</sup> Street, Billings, Montana** and legally described as:

***S03, T01 S, R26 E, BLOCK 192, Lot 005, LTS 5 & 6 BLK 192  
BILLINGS ORIGINAL TOWN, according to the official plat thereof  
on file and on record in the office of the Clerk and Recorder of said  
County; hereafter referred to as the "property"; and***

WHEREAS the Owner must agree to continuously comply with certain occupancy restrictions for each Assisted Unit for the Term of this Agreement; and the parties hereto have entered into this Agreement to evidence Owner's agreement to comply with such restrictions.

WHEREAS the City and Owner have signed a related Development Agreement regarding the

acquisition and rehabilitation of affordable housing on the property, and agreements made in the Development Agreement are in effect during the entire period of affordability in conjunction with this Agreement;

NOW, THEREFORE in consideration of the grant and other good and valuable consideration, the parties hereto do hereby agree as follows.

## B. DEFINITIONS

1. **Agreement** means this Land Use / Deed Restriction Agreement, as it may from time to time be amended.
2. **Assisted Unit** means any unit for which state and federal funds are used for acquisition, construction and / or rehabilitation.
4. **Low-Income Household** means a household with a total household income not exceeding eighty (80) percent of current area median income in the area in which the property is located, as determined by the Secretary of Housing and Urban Development.
5. **Qualifying Unit** means a housing unit:
  - a. Rented to either a Low-Income household; and
  - b. Is used in complying with the low-income and homeless occupancy requirements outlined herein.
6. **Qualified Tenant** means a family or individual tenant of a Qualifying Unit who satisfies the income and residency requirements set forth in this Agreement. Individuals / households placed in residency for this project must: (i) qualify as “homeless” according to the following definition; and (ii) satisfy the residency requirements as established by the Developer for program participation:
  - a. An individual / household lacking a fixed, regular, and adequate nighttime residence; and
  - b. An individual / household whose primary nighttime residence is:
    - i. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
    - ii. An institution that provides a temporary residence for individuals intended to be institutionalized; or
    - iii. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.
7. **Term / Period of Affordability** means a period commencing after the completion of construction and commencing on the date of full lease-up and enduring for the entire **period of affordability of seven (7) years**. Monitoring and obligations to the City may cease after the period of affordability and requirements have been successfully met.

## C. USE AND OCCUPANCY OF THE PROPERTY

1. It is agreed that, during the Term, the Owner will maintain the property as rental housing and will rent or hold available for rental each Assisted Unit on a continuous basis.
2. The Owner will make the units continuously available for occupancy for Low-Income Households and incomes for qualifying households cannot exceed eighty (80) percent of the current area median household income. As this project is considered a “group home”, the income limitations do not apply to a service provider in residence at the unit.
3. The determination of whether the annual income of a household occupying or seeking to occupy a Qualifying Unit meets the applicable income limit and homeless designation shall be made prior to admission to occupancy of such household in a Qualifying Unit. Thereafter such determinations shall be made at least annually on the

basis of an examination or reexamination of the current income of the household or individual. This information will be provided to the City on an annual basis by the Owner.

4. Anything to the contrary in the foregoing notwithstanding, the Owner will not terminate the occupancy of any tenants in occupancy on the date hereof that are not Low-Income Households for purposes of meeting the requirements of this Agreement.
5. The Owner will name and retain the City as an additional insured on insurance policies as stipulated in the Development Agreement during the entire period of affordability, **seven (7) years**.
6. The Owner will provide to the City, on an annual and ongoing basis, information pertaining to the level and cost of services the Qualified Tenant for one year prior to placement and one year post placement. The project has been funded as a “Business Consortium” project where cost-benefit data is a central component of programming and evaluation. The City has provided an approved format for cost-benefit reporting in the Request for Proposals.

#### **D. LEASE PROVISIONS, INCOME COMPLIANCE, INSPECTIONS & EXCLUSIONS**

##### **1. Lease Provisions**

All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein:

- a. Each individual lessee certifies the accuracy of the information provided in connection with the examination or re-examination of annual income of the household of such lessee;
- b. Each individual lessee certifies that the annual income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the City and that his or her failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.
- c. Initial leases between the owner and tenants must be for a least one year and are to be re-negotiated by mutual agreement for continuing leases thereafter.

##### **2. Examination and Re-examination of Incomes**

- a. The Owner shall be responsible for determination of the annual income and household composition of Qualified Tenants, and for re-examination of annual income and household composition of Qualified Tenants at least annually in accordance with procedures prescribed by the City. Documentation of this activity will be reported to the City on an annual basis.
- b. As a condition of admission to occupancy of a Qualifying Unit, Owner shall require head of household, and other such household members as it designates, to execute an approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the City such information as Owner or the City determines to be necessary. The use of disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.
- c. Owner shall not be deemed to be in violation of this Agreement if, in determining Annual Income and household composition of a Qualified Tenant:
  - i. Owner has relied in good-faith upon information which is supplied to Owner by the tenant;
  - ii. Owner has no reason to believe such information is false; and

- iii. Owner has complied with all requirements with respect to verification of household income and household composition.

### 3. **Certification by Owner of Continued Compliance**

During the term, on each anniversary of the date of full lease-up, Owner shall submit to the City a certification in a form prescribed by the City, as to Owner's compliance with all of the terms and provisions of this Agreement.

### 4. **Maintenance of Documents**

All tenant lists, applications, leases, waiting lists, income examinations and reexaminations relating to the property shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the property, and shall be maintained, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the City.

### 5. **Compliance Review**

The City periodically will monitor the Owner's compliance with the requirements of this Agreement. In conducting compliance reviews, the City will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The City may also consider relevant information gained from other sources, including litigation and citizens complaints.

### 6. **Inspections**

- a. During the Term, beginning after completion of construction and / or rehabilitation, the City or its representative shall inspect the property a minimum of every **three years** as required for projects with a total number of units between **one (1) and four (4) units** to document the property continues to comply with Section 8 Housing Quality Standards. The Owner will provide the City with source documentation verifying income of tenants every six (6) years as required, from the initial date of full lease-up.
- b. If at any time during the Term the property is found to be in noncompliance with Section 8 Housing Quality Standards, Owner agrees:
  - i. To complete the repairs necessary to bring the property into compliance within thirty (30) days of notification by the City;
  - ii. Notify the City that the repairs have been completed; and
  - iii. Contact the City to schedule re-inspection.

### 7. **Releases**

The City shall execute such documents as may be required to evidence release of the property from the covenants and restrictions set forth in this Agreement based upon the expiration of the Term as provided.

### 8. **Lease Exclusions**

Leases between the Owner and tenants *may not* contain any of the following provisions:

- a. **Agreement to be Sued:** Agreement by the tenant to be sued, to admit guilt or to judgment in favor of the Owner in a lawsuit in connection with the lease;
- b. **Treatment of Property:** Agreement by the tenant that the Owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property;
- c. **Excusing Owner from Responsibility:** Agreement by the tenant not to hold the Owner or Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- d. **Waiver of Notice:** Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;
- e. **Waiver of Legal Proceedings:** Agreement of the tenant that the owner may

evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

- f. **Waiver of a Jury Trial:** Agreement by the tenant to waive any right to a jury trial;
- g. **Waiver of Right to Appeal Court Decision:** Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease;
- h. **Tenant Chargeable with Cost of Legal Actions Regardless of Outcome:** Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

## **E. REPRESENTATIONS AND WARRANTIES OF OWNER**

Owner represents and warrants that he has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity to enter into this Agreement, to carry out Owner's obligations as described in this Agreement and to assume responsibility for compliance with all applicable federal rules and regulations.

To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

1. Will not violate any contractual covenants or restrictions between the Owner or any third party affecting the property;
2. Will not conflict with any of the instruments that create or establish Owner's authority;
3. Will not conflict with any applicable public or private restriction;
4. Does not require any consent or approval or any public or private authority which has not already been obtained;
5. Will not be threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against the Owner, without regard to capacity, any person with whom Owner may be jointly or severally liable, or the property or any part thereof; and
6. No litigation or proceedings are pending or to the best of owner's knowledge, threatened against Owner which if adversely determined could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the property, or any portion thereof, or which could in any way interferes with the consummation of this Agreement.

Owner agrees to indemnify and hold harmless the City from and against all liabilities, losses, claims, damages, judgements, costs and expenses (including, without limitation, reasonable attorney's fees) incurred by the City as a result of any material inaccuracy in any of the representations and warranties contained herein.

## **F. ENFORCEMENT AND REMEDIES**

1. If the Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the City (or for any extended period approved in writing by the City if the default or breach stated in such notice can be corrected, but not within such 60 day period, unless Owner does not commence such correction or commences such correction with such 60 day period but thereafter does not diligently pursue the same to completion within such extended period), the City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, or for such other relief as may be appropriately compensated by monetary damages in the event of Owner's default. The City shall be entitled to its reasonable attorneys' fees in any such judicial action in which the City shall prevail.

2. Each right, power and remedy of the City provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

## G. MISCELLANEOUS

### 1. Notices

All notices required or permitted to be given under this Agreement must be in writing and will be deemed to have been duly given if delivered personally or mailed, postage prepaid, by registered or certified United States mail, return receipt requested, addressed to the parties at the following address:

*FOR THE CITY:*

Community Development Manager  
Community Development Division  
PO Box 1178, Billings, Montana 59103

*FOR THE OWNER:*

Rimrock Foundation  
Chief Operating Officer  
1231 North 29<sup>th</sup> Street, Billings, Montana 59101

### 2. Binding Effect - Covenants Running with the Land

During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed **covenants running with the land** for the benefit of the City and its successors, and shall pass to and be binding upon Owner's heirs, assigns and successors in title to the property, or if the property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, reservations et al shall bind the leasehold interest as well as the property and shall pass to and be binding upon all heirs, assigns and successors to such interests.

Upon expiration of the term / period of affordability in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

If a portion or portions of the property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the property. The City, at Owner's cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or re-filed in such places, and Owner shall pay or cause to be paid all recording, filing, or payments in lieu of taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the grantee to enforce this Agreement.

