

EXHIBIT E – ENCROACHMENT AND EASEMENT AGREEMENT

[SEPARATELY ATTACHED]

Upon recording, return to:
Doug James
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

ENCROACHMENT AND EASEMENT AGREEMENT

This Encroachment and Easement Agreement (“Agreement”) is made effective the ____ day of September, 2021, between **WC COMMERCIAL, LLC**, an Alaska limited liability company, (“WC”), **CRMX-233, LLC**, a Montana limited liability company, (CRMX), and **THE CITY OF BILLINGS, MONTANA**, (“City”).

RECITALS

- A. WC is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Building”, and is more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

The foregoing parcel shall be referred to as the “Stillwater Building Parcel”.

- B. CRMX is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Garage”, and is more particularly described as follows:

LOTS 17, 18, 19, 20, 21, 22, 23, AND 24, BLOCK 42, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Stillwater Garage Parcel”.

- C. A pedestrian Sky Bridge connects the Stillwater Building on the Stillwater Building Parcel to the Stillwater Garage Parcel. CRMX is the Owner of the Sky Bridge and the Stillwater Garage Parcel. This Sky Bridge was approved by the City on June 18, 2018, pursuant to Resolution No. 18-10729. The Sky Bridge is generally defined as:

That Sky Bridge over the City street described as 26th Street, lying between the Stillwater Building Parcel and the Stillwater Garage Parcel. The Sky Bridge is approximately 98 feet long, 10 feet wide, and 10 feet tall.

- D. The City has entered into a purchase and sale agreement with WC for the purchase of the Stillwater Building Parcel.
- E. CRMX intends to transfer ownership of the Stillwater Garage Parcel and the Sky Bridge to WC.
- F. WC, CRMX, and the City enter into this Agreement for the purpose of defining their respective rights and duties with respect to the Sky Bridge.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

AGREEMENT

1. **Permanent Easement.** CRMX grants to the City and its successors and assigns forever a permanent access easement for the City and its employees, guests, and invitees to use the Sky Bridge for the purpose of ingress and egress to and from the Stillwater Building Parcel over and through the Sky Bridge that connects to the Stillwater Garage Parcel. Through this easement, CRMX grants to the City and its successors and assigns, employees, guests, and invitees, access to and from the Stillwater Garage and the Stillwater Garage Parcel through the Sky Bridge. This easement shall be appurtenant to the Stillwater Building Parcel. For the purposes of this easement, the Stillwater Building Parcel is the “Dominant Estate” and the Stillwater Garage Parcel is the “Servient Estate”. This easement shall not be terminated without the express written consent of the owner(s) of the Stillwater Building Parcel.
2. **Sky Bridge Encroachment.** The Sky Bridge connects the Stillwater Garage Parcel to the Stillwater Building Parcel. The Sky Bridge encroaches upon and is attached to the Stillwater Building. The encroachment or “Encroachment Area” refers to that portion of the Sky Bridge that encroaches upon and attaches to the Stillwater Building as well as the support columns under the Sky Bridge on the east side of the Stillwater Building. The “Encroachment Area” means the specific area where the Sky Bridge attaches to the Stillwater Building and includes the connecting portions of both the Sky Bridge and the Stillwater Building as well as the support columns. The attached Exhibit A details the location and scope of the encroachment. WC and the City consent to the encroachment as depicted on Exhibit A and further grant CRMX and its successors and assigns an easement to construct, maintain, and use the Sky Bridge and Encroachment Area.
3. **Sky Bridge Maintenance.** CRMX covenants and agrees that CRMX and its successors and assigns shall keep and maintain the Sky Bridge and Encroachment Area and ensure that the

Sky Bridge is kept in good order and repair, consistent with a first-class office building in Billings, Montana. The cost of maintaining the Sky Bridge and Encroachment Area shall be borne entirely by CRMX and its successors and assigns, including but not limited to WC . The City and its successors and assigns acknowledge and agree that, subject to applicable laws and regulations, CRMX and its successors and assigns shall, at all times, have exclusive control over and responsibility for all aspects involving maintenance or construction of the Sky Bridge; however, in no event shall such maintenance or construction increase the scope of the encroachment or easement described in this Agreement.

4. **Maintenance of Encroachment.** CRMX and WC covenant and agree to reimburse the City for any and all costs to repair damage to the Stillwater Building caused by CRMX or WC's maintenance, or lack of maintenance, of the Sky Bridge or the Encroachment Area. The City covenants and agrees to reimburse WC for any and all costs to repair any damage to the Sky Bridge caused by the City or the City's maintenance of the Stillwater Building.

Neither party shall do or permit to be done any act or thing that would tend to jeopardize the structural, cosmetic, or architectural integrity of the Stillwater Building, the Sky Bridge, or the Stillwater Garage, nor shall they perform any act in relation to the Encroachment Area that would cause damage to any portion of the respective portions of the Sky Bridge or Stillwater Building.

5. **Security and Fire Suppression.** CRMX and its successors and assigns shall be responsible for all security, alarm systems, cameras, and fire suppression systems located in the Stillwater Garage and/or the Sky Bridge. All systems located within the Sky Bridge shall be independent of and from the Stillwater Building, with the exception of the fire suppression system which shall remain connected to the Stillwater Building. Accordingly, the alarms, cameras, data cables, electrical wiring, and other shared systems in the Sky Bridge shall not be connected to our operated from the Stillwater Building or any of the equipment or systems located in the Stillwater Building. CRMX shall remove and eliminate all connected systems between the Sky Bridge and the Stillwater Building, with the exception of the fire suppression system.
6. **Cost Reimbursement.** CRMX and its successors and assigns, including but not limited to WC, shall reimburse the City for its proportionate share of all costs of using and maintaining the fire suppression system that is part of the Sky Bridge. The proportionate share of costs to be paid by CRMX shall be determined by multiplying the total cost by a fraction, the numerator of which shall be the square footage of the Sky Bridge (98 square feet) and the denominator of which shall be the leasable square footage of the Stillwater Building (129,600 square feet) plus the square footage of the Sky Bridge (98 square feet). The City shall bill CRMX or its successor on an annual basis. The billing invoice shall itemize all costs included in calculation and the amount paid by the City and the amount to be paid by CRMX or its successor. CRMX or its successor shall pay the invoiced amount within forty (40) days of the invoice date.
7. **Control and Access to Stillwater Building.** The City shall have the exclusive right to limit or control access to the Stillwater Building through the Sky Bridge. The City may, in its sole and exclusive discretion, limit or prohibit access to the Stillwater Building through the Sky Bridge. Provided, however, the City shall generally keep the door between the Stillwater

Building and the Sky Bridge open during the City's normal business hours on days when the City is open for business in the Stillwater Building. The door from the Stillwater Building to the Sky Bridge shall be locked during those days and hours when the City Offices in the Stillwater Building are not open to the general public, including hours after closing, Saturdays, Sundays, and holidays. The City may lock the door to the Sky Bridge on a short-term basis for security, maintenance, or public safety purposes. Similarly, CRMX and its successors and assigns shall keep the door from the Sky Bridge to the Stillwater Garage open during general business hours when City offices in the Stillwater Building are open to the general public.

8. **Destruction or Damage of the Stillwater Building; Termination of Easement.** In the event the Stillwater Building is destroyed, damaged in a way that prevents occupancy, or razed, for any reason, the covenants, agreements, obligations, duties, or property interests, including easement interests granted to CRMX by this Agreement, shall terminate.

If CRMX and its successors and assigns fail to properly maintain the Skybridge consistent with a first-class office building located in Billings, Montana, then the City may provide a notice of default to CRMX or the current owner of the Stillwater Garage Parcel the ("Maintenance Notice"). If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the maintenance default within sixty (60) days of receiving the Maintenance Notice, the City may provide an additional notice of the City's intention to terminate this Encroachment Agreement and all easements upon thirty (30) days additional notice. If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the default after receiving a second Maintenance notice, then the City may record a Notice of Termination with the two default notices attached. Upon the recording of the Default Notice, this Encroachment Agreement and all easements shall be terminated. In the event of termination, CRMX or the current owner of the Stillwater Garage Parcel shall cause the removal of the Skybridge within sixty (60) days and shall make all repairs to the Stillwater Building necessary or prudent to restore the integrity and appearance of the building. If CRMX or the current owner of the Stillwater Garage Parcel fails to timely remove the skybridge, the City may do so at the expense of CRMX or the current owner of the Stillwater Garage Parcel. In such event, CRMX or the current owner of the Stillwater Garage Parcel shall pay to the City 110% of the City's out of pocket costs plus interest from the date invoiced until paid at the legal rate of interest in the State of Montana.

9. **Easement and Covenants to Run with the Land.** Notwithstanding the foregoing provisions, the grant of the easements and covenants described herein shall run with the land and shall be binding on and shall inure to the benefit of the parties of this Agreement, and their respective successors or assigns.
10. **Indemnity.** Each of the parties agree to indemnify and to hold the other party harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to maintenance, repair, or access undertaken by the other party during the time this Agreement is in place. Neither party shall be required to indemnify the other party for such other party's intentional or negligent acts or omissions. Notwithstanding any other provisions contained herein, WC agrees that upon conveyance of the Sky Bridge by CRMX to WC, WC shall indemnify and hold harmless

CRMX, its members, agents and representatives from any further liability arising under the terms of the agreement including, but not limited to, the obligations set forth herein.

11. **Insurance.** CRMX and its successors and assigns, including but not limited to WC, shall maintain commercial general liability insurance covering (i) WC's liability with respect to the Sky Bridge; and (ii) any construction that WC may perform in connection with the Sky Bridge. Such insurance shall provide limits of not less than \$1,500,000 general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian Sky Bridge, in compliance with City Resolution No. 18-10729. WC shall name the City as additional insured under the insurance policy and such policy shall provide thirty (30) days' advance written notice to the City of any cancellation or reduction in coverage.
12. **Negligent Acts or Omissions.** If the negligent acts or omissions of the owners, agents, or employees of CRMX, WC or the City cause damage to or destruction of the Stillwater Building, the Sky Bridge, or the Encroachment Area, then such negligent party shall bear the entire cost of repair or reconstruction caused by the negligent acts or omissions. If either party to this Agreement fails or refuses to pay its share, or all costs in case of any negligent act or omission, the other party may perform the required repairs or restoration and shall be entitled to seek contribution from the negligent party. The party performing the repairs shall be entitled to recover attorney's fees along with all further and additional relief afforded under the law.
13. **Notices.** Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

To the City:	City of Billings c/o City Administrator PO Box 1178 Billings, MT 59101
Email:	kukulskic@billingsmt.gov
Phone:	406-657-8433

With a copy to (but which shall not constitute notice to the City)

	City of Billings c/o City Attorney PO Box 1178 Billings, MT 59101
Email:	dahlg@billingsmt.gov
Phone:	406-657-8205

To WC: WC Commercial, LLC
c/o Joseph W. Holden
5404 Bundy Road
Worden, MT 59088
Email: joe@holden7.com
Phone: 406-690-1394

With a copy to (but which shall not constitute notice to WC)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

To CRMX: CRMX-233, LLC
c/o Max Hansen
8 South Idaho Street, Ste A.
Dillon, MT 59725
Email: maxh@accruit.com
Phone: 406-660-4206

With a copy to (but which shall not constitute notice to CRMX)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement.

14. **Binding Effect.** This Agreement, and the terms, conditions and covenants described herein, shall be binding on and shall inure to the benefit of The City of Billings', CRMX-233,LLC, and WC's successors and assigns, and any person or entity that at any time hereafter shall become the owner of the Stillwater Building Parcel, the Stillwater Garage Parcel, and/or the Sky Bridge, or portion thereof.
15. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.
16. **Attorney's Fees.** In the event it shall be necessary for any Party to place this Agreement in the hands of an attorney for the enforcement of any of such Party's rights hereunder or for the recovery of any monies due to any such owner hereunder, and if it is necessary for them to

bring suit for the enforcement of such rights or such recovery, the prevailing Party in such suits shall recover from the unsuccessful Party all costs of court, reasonable attorney's fees and any other relief authorized by law.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
18. **Severability.** Invalidation of any one of the provisions or covenants herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.
19. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

DATED this ____ day of September, 2021.

[Signature Pages to Follow]

CRMX-233, LLC
By: Accruit Equity Acquisitions, LLC,
Sole Member

By: _____
Max A. Hansen
Its: Executive Vice President

STATE OF MONTANA)
 : ss.
County of _____)

This instrument was acknowledged before me on this ____ day of September, 2021 by Max Hansen, known to me to be Executive Vice President of Accruit Equity Acquisitions, LLC, sole member of CRMX-233, LLC.

Notary Public for the State of Montana

CITY OF BILLINGS, MONTANA

By: William A. Cole

Its: Mayor

STATE OF MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of September, 2021, by William A. Cole, Mayor of **The City of Billings**.

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

WC COMMERCIAL, LLC,
An Alaska limited liability company

By: Joseph W. Holden
Its: Member

STATE OF MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of September, 2021, by Joseph W. Holden, Member of **WC Commercial, LLC.**

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

EXHIBIT A – LOCATION AND SCOPE OF ENCROACHMENT



