

Original to:
City of Billings
Community Development
PO Box 1178
Billings, MT 59103

DEED RESTRICTION AGREEMENT

This DEED RESTRICTION AGREEMENT (this “Agreement”) is dated as of ____, 2024, by and between MITCHELL COURT LLLP (the “Developer”) and the CITY OF BILLINGS, MONTANA, 210 N. 27th ST, Montana 59101 (the “City”). The Developer and the City are each individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Developer desires to work with the City and build affordable housing on property being purchased by Developer in the City of Billings, Yellowstone County, Montana commonly known as Mitchell Court, 4154 Mitchell Court, Billings, Montana 59101 and legally described as indicated below or as amended pursuant to a to-be-filed lot aggregation filing:

Lots 1, 2 and 3, Block 2, of Grisey Subdivision, 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 No. 617384

(referred to herein as the “Property”);

WHEREAS, in July 2023, the City entered into a HOME Investment Partnership Program (“HOME”) Agreement with the United States Department of Housing and Urban Development (HUD) whereby the City will receive and administer these funds for activities and projects in compliance with the HOME Investment Partnerships Act;

WHEREAS, Developer submitted an Affordable Housing Application, attached as Exhibit A, to the City to receive \$1,200,000 of HOME funds to assist with the acquisition of the Property and the new construction of an affordable housing project on the Property to construct thirty-two (32) affordable rental units, including fourteen (14) one-bedroom, fourteen (14) two-bedroom, and four (4) three-bedroom units. Of these thirty-two (32) units, a total of six (6) of these units will be designated city HOME-assisted units. Three (3) of these city HOME-assisted units will be one-bedroom, two (2) will be two-bedroom units; and one (1) will be a three-bedroom unit. All HOME units will be floating HOME units. Each of the six (6) city HOME-assisted units will be rented to an income qualified tenant who is at or below the 60% area median income as determined by HUD’s annual income limits. The project as described in this paragraph shall be referred to herein as the “Project”;

WHEREAS, the Project will provide affordable housing for at least twenty (20) years because as a condition to receiving HOME funds, the Developer will record Restrictive Covenants (as defined herein) against the Property; and

WHEREAS, the Parties desire to enter into this Agreement which sets forth the obligations and commitments of the Parties with respect to the Project, including that the performance and administration of this Agreement and the Project shall be subject to the applicable provisions of the City's HOME Agreement with HUD.

NOW, THEREFORE, the City and the Developer, 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. Rules of Interpretation and Exhibits.

1.1 Rules of Interpretation.

(a) 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 of its particular sections or subdivisions.

(b) References to any particular section or subdivision hereof are to the section or subdivision of this Agreement in its original signed form, unless otherwise indicated.

(c) The word "or" is not exclusive but is intended to contemplate or encompass one, more or all of the alternatives conjoined.

(d) When a statute, rule, law, ordinance, or any other requirement or regulation is cited herein, the reference includes any amendment or modification to such statute, rule, law, ordinance, or any other requirement or regulation that may occur in the future.

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

Exhibit A: Affordable Housing Application

Exhibit B: Purchase and Sale Agreement

Exhibit C: City's HOME Agreement with HUD

Exhibit D: Form of Restrictive Covenants

Section 2. Representations.

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

(a) The City has received funding approval from HUD pursuant to the HOME Investment Partnerships Act (42 U.S.C. 12701 et seq.) and has executed a HOME Investment

Partnership Agreement with HUD on July 5, 2023, which will allow the City to administer funds for activities and projects in compliance with the HOME Investments Partnerships Act.

(b) Environmental Review Record has been completed and HUD has authorized the use of HOME funds for the development of the Project.

(c) Prior to this HOME funding commitment, the City has certified completion of the following: subsidy layering and underwriting analysis; assessment of the current market demand in the neighborhood; assessment of the experience and financial capacity of the Developer; and confirmation of firm written financial commitments to the Project.

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

(a) The Developer is a limited liability limited partnership, duly formed, validly existing and in good standing, and is duly qualified to do business in the State of Montana. 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, or shall obtain, as set forth in the Purchase and Sale Agreement attached as Exhibit B, good marketable title to the Property, free and clear of all liens, encumbrances, and defects except such as do not materially affect the value of the Property or materially interfere with the use made and proposed to be made of the Property by the Developer.

(c) The Developer has the financial capability and/or commitments to complete the Project.

(d) The Developer is not aware of any facts in existence of which would cause the Developer to be in violation in any material respect of any Environmental Laws and Regulations applicable to the Project or any infrastructure improvements. The Developer has not received from any local, state, or federal official any notice or communication indicating that the activities of the Developer have been, may be, or will be in violation of any Environmental Laws and Regulations applicable to the Project or any infrastructure improvements.

(e) 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.

(f) 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 the Project.

(g) The Developer acknowledges and agrees that the HOME funds received by Developer are subject to the terms and conditions of the City's HOME Agreement with HUD as set forth in Exhibit C, and Developer agrees to comply with those terms and conditions including, but not limited to, the following:

- 1) Housing and Community Development Act of 1974 at 24 CFR Part 42;
- 2) HUD regulations at 24 CFR Part 92;
- 3) Funds received for affordable housing under this Agreement are repayable when the housing no longer qualifies as affordable housing and repayment shall be made as specified in 24 CFR Part 92.
- 4) Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Super / Omni Circular codified at 2 CFR Part 200;
- 5) Uniform Relocation Act which provides fair and equitable treatment of persons whose real property is acquired in Title 24, Subtitle A, Part 42 and Section 104(d);
- 6) Civil Rights and Fair Housing, Employment and Contracting Opportunity requirements at 24 CFR 570.601, 570.602, and 570.607, and Executive Order 11246. Developers shall comply with the Fair Housing Act, HUD regulations, and the Montana Human Rights Act prohibiting employment, contracting, and beneficiary discrimination based on disability, race, religious affiliation, sex, sexual orientation, gender identity, familial status, pregnancy, national origin, marital status, creed, and age;
- 7) Construction and accessibility standards referenced in Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and Architectural Barriers Act at 24 CFR Part 8;
- 8) Copeland "Anti-kickback" Act at U.S.C. 3145, which prohibits a federal building contractor or subcontractor from inducing an employee into giving up any part of the compensation that they are entitled to under the terms of their employment contract;
- 9) Contract Work Hours and Safety Standards Act at 40 USC 3701;
- 10) Requirements on the Environmental Review Record in reference to Contamination and Toxic Substances 24 CFR Part 50.3(i) and 58.5(i)(2), including radon testing and mitigation response. In addition, it is reviewed as a worker safety hazard relative to land development. The Developer is required to

assess the property for radon exposure to protect workers during construction and residents post construction;

11) The Developer will comply with the Violence Against Women Act (VAWA) requirements at 24 CFR § 92.359 to provide housing protections for people applying for or living in units subsidized by the federal government and who have experienced domestic violence, dating violence, sexual assault, or stalking, to help keep them safe and reduce their likelihood of experiencing homelessness. The City’s reference herein to HUD forms 5380, 5381, 5382, and 5383 serve as official notice and certification forms to the Developer.

Section 3. Developer Undertakings.

(a) Construction and Maintenance of Project. The Developer hereby agrees and commits to the City that it will diligently prosecute to completion the construction of the Project in accordance with this Agreement, the site plan submitted to the City and all applicable federal, State, and local laws, rules, regulations, ordinances, and plans relating to or governing the development or use of the Project, including applicable Land Use Regulations and Environmental Laws and Regulations. The Developer agrees and commits to the City that construction shall be completed in accordance with the Project Schedule in Section 3.5.

3.1. Project Budget and Expenditure Deadlines.

(a) The total estimated permanent funding sources for the Project include:

LIHTC Equity	\$5,394,461
MBOH CTMH	\$1,700,000
MHCF Loan	\$750,000
City of Billings HOME Funds	\$1,200,000
State HOME Funds	\$1,650,000
TIF	\$500,000
<u>Deferred Developer Fee</u>	<u>\$166,072</u>
Total Sources:	\$11,360,533

<i>HOME Fiscal Year Funding Origin</i>	<i>Award Amount</i>	<i>Expenditure Deadline</i>
FY22-23 & FY23-24	\$1,200,000	Funds must be expended within four years of the date funds are committed as reflected by the date of the last signature on the Development Agreement

(b) The Developer may not modify the finalized budget without having requested and received the City’s written approval of the adjustment which shall not be unreasonably

withheld. Modifications to the budget without City approval will be considered a violation of the contract and are grounds for termination at any point without consideration for performance or compensation.

(c) The Developer has the financial capacity to complete the Project, and the Developer agrees to pay all costs thereof. If there is an increase in the costs of the Project from that shown herein, the Developer shall notify the City of the increase and submit additional evidence in a form acceptable to the City that the Developer has the financial capacity to cover such additional costs and complete the Project.

(d) At all times during the term of this Agreement, the Developer will operate and maintain, preserve, and keep the Project or cause 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 Project with at least 48 hours' prior written notice for the purpose of inspection of all work being performed in connection with the Project; provided, however, that the City shall have no obligation to inspect such work.

(e) The Developer is required to adhere to the current HOME maximum per-unit subsidy limits as established by HUD.

(f) The total HOME funding allocated to the project will be repaid to the City by the Developer if the Developer fails to comply with federal, state, or local requirements for the use of HOME funds, construction, or rental to income-eligible households.

(g) The Developer will submit a HOME Match Funds report when units are completed as determined by the Certificate of Occupancy issued by the City.

3.2. Subsidy Layering Review. The Developer will ensure compliance with subsidy layering review requirements, including the provision of the following, updated documents as soon as they become available:

- (a) Certification of Federal Assistance
- (b) Sources and Uses Budget
- (c) Development Budget
- (d) Operating Budget, including Pro-Forma for a period of operation equal to the duration of the established period of affordability.

3.3. Preparation, Review and Approval of Construction Plans. In connection with 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 hereunder 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 Planning Division, or any other building construction official review or approvals required by any federal, State, or local laws or ordinances or regulations, including any HUD regulations or requirements applicable to this Project. Nothing contained in this Agreement indicates or evidences that the City has approved or will approve the Project or any portion thereof. This Agreement does not affect or limit the City's regulatory powers with regard to the Project, including, without limitation, those relating to building

permits or other permits or the payment of fees. As further described in Section 6.1, the City shall have no liability and the Developer shall hold the City harmless with respect to any increases in costs of the Project related to or arising out of delays resulting from the City’s regulatory actions or approvals.

3.4. Construction of the Infrastructure Improvements. The Developer shall acquire, install, construct, or otherwise provide any infrastructure improvements necessary for the development of the Project, which are reflected in the site plan submitted to the City related to the Project. The Developer acknowledges and agrees that the City is not responsible for acquiring, installing, constructing, or otherwise providing the infrastructure improvements.

3.5. Project Schedule. The Developer commenced Project planning prior to the date of the application for HOME funds to the City. Developer will complete all work required by this Agreement in accordance with the following timetable:

<i>Milestone</i>	<i>Start By</i>	<i>Complete By</i>
Construction <i>Must begin 12 months following commitment of funds via written Agreement</i>	August 2025	N/A
<i>Milestone</i>	<i>Start By</i>	<i>Complete By</i>
Project Completion <i>Must be completed within four years of written Agreement date</i>	N/A	Certificate of Occupancy issued by December 2025, subject to final construction schedule
Units leased to income qualified tenants	N/A	Nine months post the date of construction completion

The Developer must communicate any anticipated or proposed changes to this schedule to the City in writing as soon as they are known for review and approval by the City. The City may, in its sole discretion, (i) determine whether such change is appropriate and, if so, fix a new and superseding milestone date and also adjust other subsequent milestone dates, along with any other terms or conditions, or (ii) terminate this Agreement, in which case the City will have no obligation to reimburse the Developer hereunder. If this Agreement is terminated as described in this Section 3.5 and the Developer has not received any reimbursement but has recorded the Restrictive Covenants described in Section 3.12, upon request of the Developer, the City agrees to cooperate with the Developer to remove the Restrictive Covenants from the Property.

3.6. Prevailing Wage Rates; Competitive Bidding. The Developer understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes HOME funds. The Developer agrees to comply with laws that govern City contracting obligations, including public procurement laws, such as, without limitation, laws and rules regarding prevailing wage and solicitation of work on a competitive basis. HOME

funded projects with a total number of residential units of 12 or more must comply with Davis-Bacon Act regarding prevailing wage rates and other regulations.

Without limitation of the foregoing, the Developer agrees that in the awarding of contracts for this Project (i) it will, and it will cause its contractor to, publicly bid competitively contracts for each component of the Project, and (ii) through its contract with its contractor, it will, in addition to the requirements of Sections 3.10 and 3.11, require its contractor to, pay the Prevailing Wage Rates on such contracts related to the Project. 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 bid competitively contracts for each component of the Project or to require contracts entered into directly with contractors or sub-contractors to include provisions requiring the contractor or sub-contractor to pay the Prevailing Wage Rates on the work related to the Project will be considered a breach of this Agreement and the City will be entitled, at its discretion and without obligation, to exercise any and all measures to assure compliance and retroactive compensation plus interest to workers 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 may, in the City's sole discretion, cause the Project to be ineligible for reimbursement with HOME funds, in which case the City will have no obligation to reimburse or pay the Developer hereunder.

3.7. 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.

3.8. Permits and Compliance with 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 the Project, including any additional regulations of the HOME Investment Partnerships Act and HUD. Without limiting the foregoing, the Developer will request and seek to obtain from the City or other appropriate governmental authority all necessary land use, zoning, and building permits. The Developer will comply in all material respects with all Environmental Laws and Regulations applicable to the construction, acquisition, and operation of the Project, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, Environmental Laws and Regulations. In addition, the Developer shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances related to worker safety including but not limited to the Occupational Safety and Health Act (OSHA), the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA, all applicable City, County, and State building and electrical codes, and the Americans with Disabilities Act.

3.9. Easements. To the extent that any infrastructure improvements are to be located on the Property, 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 in a form required by the City and as are reasonably necessary to permit the City to own, operate and maintain the infrastructure improvements.

3.10. Nondiscrimination and Equal Pay Requirement. The Developer shall fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Developer is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by the Developer subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. The Developer agrees that the hiring of persons to perform under this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons in performance of this Agreement.

3.11. Worker's Compensation Insurance. The Developer shall provide in its construction contracts related to the Project with all 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.

3.12. Affordable Housing Covenants.

(a) The Developer agrees that, as a condition to receiving any reimbursement under this Agreement, the Developer will file a restrictive covenant on the Property, providing that any development on the Property will include a minimum of six (6) housing units (the "Restricted Units"), which will be restricted for a period not less than 20 years for use as housing affordable to households with incomes 60% area median income ("AMI"). As a condition to reimbursement hereunder, the Developer shall record the restrictive covenants, substantially in the form attached hereto as Exhibit D (the "Restrictive Covenants") against the Property.

(b) The Restrictive Covenants must (i) run with the land, (ii) bind, for a period not less than 20 years from the date of issuance of a certificate of occupancy with respect to the Restricted Units, the Restricted Units to be affordable to 60% AMI households, as rental units with rental prices that do not exceed the HOME rent limits determined annually and (iii) provide that a third-party or government entity with experience in managing affordable housing units must manage the rental of the Restricted Units.

In addition, the Restrictive Covenants will provide that the Restricted Units are prohibited from being used, rented, or made available as short-term rentals, which is a residential dwelling unit that is rented out for a period of 30 days or less. The affordability requirements in the Restrictive Covenants will be determined by the current HOME limits, tied to AMI, and pursuant to the Restrictive Covenants, permissible rental prices of the Restricted Units will be

based on the most recent affordability data available through the Housing and Urban Development's Housing Availability Data System of rental. The Developer's covenants described in this Section 3.12 are referred to herein as the "Affordable Housing Covenants."

(c) The Developer acknowledges and agrees that the Affordable Housing Covenants are fundamental to the City's agreements hereunder. The Parties acknowledge that, as development proceeds at the Property, it may be necessary or desirable to record other instruments to implement the Affordable Housing Covenants and provide for the affordability of the Restricted Units, either in addition to or in replacement of the Restrictive Covenants to be recorded as a condition to reimbursement of the Developer under this Agreement, and the Parties agree to cooperate with respect to recording such other instruments if necessary or desirable.

(d) Affordability requirements for the HOME program will be met, including regulations outlined for the affordability of rental housing units as per 24 CFR 92.252.

(e) The Developer expressly agrees to repay the City all funds paid on behalf of the Developer or its subcontractors if the housing constructed does not meet the affordability requirements for the specified period of affordability (24 CFR 92.504(c)(3)(ii)).

Section 4. City Undertakings. Subject to satisfaction of all conditions herein, the City agrees to reimburse the Developer in an amount not to exceed \$1,200,000 for eligible project costs.

Section 5. Reimbursement for the Eligible Costs. The City's obligation to make periodic or final payment to the Developer shall be subject to the following conditions and in accordance with the following procedures:

(a) City's receipt of HOME funds is sufficient to make such payment. Final reimbursement will be made only when the Developer is in full compliance with this Agreement.

(b) Payment is made on a reimbursement basis of actual and proper expenditures and shall be made in accordance with this Agreement between City and Developer. The Developer may only request disbursement of funds when funds are needed for payment of eligible costs, and the amount of the disbursement request must be limited to the amount needed.

(c) The City shall only reimburse HOME-eligible expenses following on-site inspection for construction compliance.

(d) At the time of the Developer's request for reimbursement (i) all of the Developer's representations as set forth in Section 2.2 must be true and correct, (ii) the Developer must not be in breach of any covenant or undertaking set forth in Section 3, and (iii) there must be adequate HOME funds available.

(e) The City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. The City may withhold

payment of the final five percent (5%) of the total award amount until the Developer has submitted, and the City has accepted, all required financial and performance report information required pursuant to either the Project or City requirements. The following documentation must be submitted for payment requests:

- 1) Completed Request for Reimbursement and Progress Report form.
- 2) Invoices, receipts, purchase orders, and/or contracts pertaining to the specific request for disbursement.

(f) The Developer must provide evidence satisfactory to the City that the Restrictive Covenants have been recorded with the Yellowstone County Clerk and Recorder's Office and have not been modified, amended, or rescinded other than with the prior written consent of the City. If residential development is proceeding or has occurred at the Property and does not comply with the Affordable Housing Covenants, this Agreement shall terminate and the Developer shall not be eligible for additional reimbursement and Developer will be subject to the repayment terms as specified in 24 CFR Part 92.

(g) 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). The Developer must demonstrate to the City's satisfaction, by a title report or other means acceptable to the City, that the infrastructure improvements are free of financial liens and any encumbrances affecting the infrastructure improvements must be acceptable to the City.

(h) If HOME funds are available and all terms and conditions have been satisfied, the City shall begin reimbursements to the Developer. Once the Developer receives HOME funds, the Restrictive Covenants shall remain in place for the full term set forth therein, regardless of whether any subsequent installments are paid to the Developer.

5.1. Failure to Satisfy Conditions. If any of the conditions described herein are not satisfied in the determination of the City, the City shall have no obligation to make any reimbursement and the City's determination to refrain from reimbursing, or its inability to reimburse, any of the eligible costs shall not be or result in a default of this Agreement.

Section 6. Indemnification and Insurance.

6.1 Indemnification. The Developer releases the City and all City Council members, board members, officers, agents, servants and employees of the City (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 the Project, including any infrastructure improvements, any violation by the Developer of any agreement, condition or covenant of this Agreement, the ownership, maintenance and operation of the Project, 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.

6.2 Insurance. Developer shall keep and maintain 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 the Project, 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 on a replacement cost basis in an amount equivalent to the full insurable value thereof.

Subject to the terms of any mortgage relating to the Project, policies of insurance required by this Section 6.2 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 the Project, any and all of the foregoing insurance policies may be maintained by the Developer's contractor; provided that once the Project is placed into service, Developer shall maintain all of the foregoing insurance policies.

In addition to and independent of the above, the Developer shall at the Developer's expense secure liability insurance through an insurance company or companies duly licensed and authorized to conduct insurance business in Montana. The insurance shall not contain any exclusion for liabilities specifically assumed by the Developer in this Section. The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by the City in relation to construction of the Project and any infrastructure improvements without limit and without regard to the cause therefore. The Developer must furnish to the City an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

Commercial General Liability – including contractual and personal injury coverage of \$750,000 per claim and \$1,500,000 per occurrence for injuries, including accidental death

The above amounts shall be exclusive of defense costs. The City, its officers, agents, and employees, shall be endorsed as an additional or named insured on a primary non-contributory basis on the Commercial General Liability policy. The insurance and required endorsements must be in a form suitable to City and shall include no less than a thirty (30) day notice of cancellation or non-renewal. The City must approve all insurance coverage and endorsements prior to the Developer commencing work on Project or infrastructure improvements. Developer must notify the City within two (2) business days of Developer's receipt of notice that any required insurance coverage will be terminated or Developer's decision to terminate any required insurance coverage for any reason.

Section 7. Agreement Suspension; Termination; Repayment. This Agreement may be terminated as follows and is subject to the following provisions in accordance with 24 CFR

85.43, suspension or termination may occur if the Developer materially fails to comply with any term of the Agreement (24 CFR 92.504(C)(2)(ix)).

7.1 Contract Suspension. If the Developer fails to comply with any contractual provision, the City may, after notice to the Developer, suspend the Agreement and withhold further payments to prohibit the Developer from incurring additional obligations of contractual funds or demand repayment of funds expended, pending corrective action or a decision to terminate in accordance with provisions herein. The City may determine to allow such necessary and proper costs which the Developer could not reasonably avoid during the period of suspension, provided such costs were necessary and reasonable for the conduct of the project.

7.2 Termination Due to Loss of Funding. The parties hereto expressly recognize that Developer is to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to City under the HUD HOME Agreement for the purpose of contracting for the services provided for herein or with program income; and therefore, the Developer expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by City. In the event that such funds or any part thereof are not received by City, the City may immediately terminate or amend this Agreement.

7.3 Termination for Cause or Convenience.

(a) If the Developer shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving fifteen (15) days written notice to the Developer of such termination.

(b) It is understood that the Developer and City representatives shall enter into negotiations pursuant to Section 8.17 in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination.

(c) In the event this Agreement is terminated by the City under this Section due to a breach by the Developer, the City may use the HOME funds described in this Agreement to fund another activity or project without cause or recourse from the Developer, its agents, or subcontractors.

(d) Notwithstanding the above, the Developer shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of contract by the Developer, and the City may withhold any payment to the Developer for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer is determined.

(e) A copy of any notice of default or breach delivered to the Developer under this Agreement shall simultaneously be delivered to Community Impact Housing Fund, LLC, a Montana limited liability company (the "LIHTC Investor"), the Developer's investor limited partner, at the address specified in Section 8.11 hereof. The LIHTC Investor shall have the right, but not the obligation to cure any breach or violation by the Developer under this Agreement and any such cure by the LIHTC Investor shall be treated as a cure by the Developer

7.4 Return of Material. Subject to the rights of any Project lender or other party providing financing to the Project, in event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Developer under this Agreement, shall, at the option of the City, become the City's property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

7.5 Reversion of Assets. Upon expiration of this Agreement, the Developer must transfer to the City any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

7.6 Repayment. The Developer expressly agrees to repay to the City any funds paid on behalf of the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward within the time frame set forth herein.

Section 8. General Provisions.

8.1 Conflicts of Interest; City's Representatives Not Individually Liable.

(a) The Developer represents that it does not employ, retain, or contract with an officer or employee of the City and that no member, officer or employee of the City has a personal or financial interest, direct or indirect, in this Agreement or in the Project.

(b) The Developer acknowledges and agrees to comply with the conflict of interest provisions of 24 CFR § 92.356 prohibiting the Developer from allowing any of their employees, agents, officials, consultants, or immediate family members from occupying a HOME-assisted housing unit for the period of affordability, with the exception of management or maintenance employee(s).

(c) No member, officer or employee of the City 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. The duration of this Agreement includes the construction, lease-up, and renting of housing units for the entire period of affordability.

The project is subject to ongoing HOME compliance requirements for an affordability period of twenty (20) years from the date the Certificate of Occupancy is completed, and the project completion report is entered into HUD's Integrated Disbursement & Information System (IDIS). Information necessary for completing activities in IDIS includes finalized project budget; occupant demographic and income data; information on unit configuration; rents; and rental assistance.

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 in connection with the Project 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 then-available HOME funds. 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 then-available HOME funds; 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. 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 HOME funds. This Agreement shall not constitute or be construed to give rise to a debt of the City.

8.5 Assignment. This Agreement is unique among the City and the 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 Party, provided, however, the City acknowledges and agrees that certain obligations related to the development and construction of the Project will be completed by GL Development, LLC, a Montana limited liability company, pursuant to a development services agreement between the Developer and GL, and by contractors under construction contracts or other agreements between the Developer and such contractors.

8.6 Successors Bound By Agreement; No Third Party Beneficiary; No Property Interest. Subject to compliance with Section 8.5, 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. This Agreement is for the exclusive benefit of the Parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party. This Agreement, by itself, does not create or give rise to a property interest in the Property or the Project.

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 and no statements, promises, or inducements made by either party, or agents of either party that are not contained in or authorized by this written Agreement, are valid or binding.

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 signed by the Parties hereto.

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 the Developer will be in writing and will be delivered to such Party either: (i) by personal hand-delivery; (ii) by depositing the same in the United States mail, certified mail with return receipt requested; (iii) by depositing the same with a nationally recognized overnight delivery service; or (iv) with respect to notice to the Developer, by email (in which case the notice shall be effective as of the date of confirmed delivery). Notice will be deemed complete upon receipt of the notice pursuant to any of the foregoing methods of notice. Notices and communications to the parties must be addressed to and delivered at the following addresses:

If to City:

City of Billings
Attention: Dina Harmon, Program Coordinator
P.O. Box 1178
Billings, MT 59103

With a copy to :

City of Billings
Attention: Billings City Administrator
P.O. Box 1178
Billings, MT 59103

If to Developer:

Mitchell Court LLLP
Attention: Gene Leuwer
1625 East 6th Avenue
Helena, MT 59601

406.459.5332
gleuwer1139@msn.com

With a copy to:

Community Housing Impact Fund
c/o Slate Capital Partners
Po Box 51329
Billings, MT 59105

And

Community Housing Impact Fund
c/o Glacier Bank
49 Commons Loop
Kalispell, MT 59901
Attn: Chief Financial Officer

And

Kutak Rock LLP
1650 Farnam St.
Omaha, NE 68102-2186
Attn: Daniel Leddy, Esq.

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

8.12 Ownership and Publication of Materials. All reports, information, data, and other materials related to the Project and prepared by any subcontractor pursuant to this Agreement are to be the property of the Developer and the City, which each have the nonexclusive and unrestricted authority to release, publish or otherwise use in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission of the City and the Developer.

8.13 Survival of Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and attachments hereto which may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

8.14 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.

8.15 Place of Performance. The place of performance of this Agreement will be in the City of Billings, Yellowstone County, Montana.

8.16 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.

8.17 Dispute Resolution.

(a) Any claim, controversy, or dispute between the Parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each Party duly authorized to execute settlement agreements.

(b) If the Parties are unable to resolve the dispute, the matter will be referred to HUD for resolution.

(c) Upon mutual agreement of the Parties, the Parties may invite an independent, disinterested mediator acceptable to the Parties to assist in the negotiated settlement discussions.

(d) If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute may only be resolved in a court of competent jurisdiction in compliance with the applicable law and the provisions of this Agreement.

8.18 Attorney's Fees; Costs. In the event of any dispute or litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and expenses, including reasonable attorneys' fees, costs, and expenses.

8.19 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 the Project or for carrying out the expressed intention of this Agreement.

8.20 Reports/Accountability/Public Information.

(a) The Developer agrees to develop and/or provide documentation as requested by the City demonstrating the Developer's compliance with the requirements of this Agreement. The Developer shall allow the City, its auditors, and other persons authorized by the City, with at least 48 hours' prior written notice, to inspect and copy its books and records for the purpose of verifying that the monies reimbursed to the Developer pursuant to this Agreement were used in compliance with this Agreement and all applicable provisions of federal, state, and local law, including any requirements of the HOME Investment Partnerships Act and/or HUD. The Developer shall not issue any statements, releases or information for public dissemination regarding this Agreement or the work contemplated hereunder without prior written approval of the City.

(b) Upon completion of the project's predevelopment, the Developer will submit to the City the following project predevelopment records:

- 1) Property acquisition records, including, but not limited to:
- 2) Property Appraisal
- 3) Title Report
- 4) Site Control Status
- 5) Property Survey
- 6) Soils Report
- 7) Engineer's Report
- 8) Environmental Reports

(c) The Developer will submit to the City the following property construction or rehabilitation records including, but not limited to:

- 1) Documentation that the project meets applicable property standards for HOME rehabilitation activities and / or new construction.
- 2) Documentation that the rents charged in each HOME-assisted unit conforms to HOME program requirements.
- 3) For each household renting a HOME-assisted unit, a copy of the rental application, income verification, and rental Agreement and subsequent annual income verifications.
- 4) An approved Affirmative Marketing Plan which complies with 24 CFR 92.351 for projects with five (5) or more HOME-assisted units.
- 5) Immediate written notification of any pending legal action which names the Developer and the real property assets covered under this Agreement.
- 6) Copies of invoices submitted for payment.
- 7) Verification of matching contributions.

(d) The records described in this Section 8.20 must be retained for a period of five years after project closeout.

(e) Records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the conclusion of the required period of affordability.

(f) If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(g) Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

[Signature and notary pages to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Development and Use Restriction Agreement to be executed on the _____ day of _____, 2024.

CITY OF BILLINGS, MONTANA

MITCHELL COURT LLLP
a Montana limited liability limited partnership

By: Echo Development 2022 LLC,
a Montana limited liability company,
its General Partner

By: _____
William A. Cole, Mayor

By: _____
Gene Leuwer
its Manager

ATTEST:

By: _____
Denise Bohlman, City Clerk

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On the _____ day of _____, 2024, before me, _____,
a Notary Public for the State of Montana, personally appeared _____
and whose name is subscribed to the within instrument and acknowledged to me that they
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the
day and year first above written.

Printed Name: _____
Notary Public for the State of Montana
Residing At: _____
My Commission Expires: _____