

RETURN TO:

Nicholas Irmen, Esquire
Kutak Rock LLP
2405 Grand Boulevard, Suite 600
Kansas City, MO 64108

FORBEARANCE AGREEMENT

This Forbearance Agreement (this “Agreement”) is made and entered into as of this [_____] day of [_____], 2024, by and among **FIRST INTERSTATE BANK**, a national banking corporation, with an address of 401 N. 31st St., P.O. Box 30918, Billings, MT 59116 (“FIB”); **CITY OF BILLINGS, MONTANA**, a duly organized municipality of the State of Montana, with an address of PO Box 1178, Billings, MT 59103 (the “City”); **FORMER FEDERAL BUILDING LANDLORD, LLC**, a Montana limited liability company, with an address of PO Box 1178, Billings, MT 59103 (“Landlord”); and **FIB BATTIN, LLC**, a Delaware limited liability company, with an address c/o First Interstate Bank, 401 N. 31st St., P.O. Box 30918, Billings, MT 59116 (“Investor”).

WITNESSETH THAT:

WHEREAS, the City is the fee owner of that certain building located at 316 N. 26th Street, in Billings, Montana and commonly known as the James F. Battin Federal Building (the “Building”) as well as certain other improvements, and the tract(s) of land upon which the Building is located (together with the Building collectively, the “Premises”), as further described on Exhibit A attached hereto; and

WHEREAS, FIB leases the Premises from the City pursuant to that certain Ground Lease Agreement dated on or about the date hereof, by and between the City, as lessor, and FIB, as lessee (the “Ground Lease”); and

WHEREAS, the City subleases the Premises from FIB pursuant to that certain Lease-Purchase Agreement dated on or about the date hereof, by and between FIB, as lessor, and the City, as lessee (the “Ground Sublease”); and

WHEREAS, Landlord sub-subleases the Premises from the City pursuant to that certain [Ground Sublease Agreement] dated on or about the date hereof, by and between the City, as lessor, and Landlord, as lessee (the “Ground Sub-sublease” and together with the Ground Lease and the Ground Sublease, collectively, the “Leases”); and

WHEREAS, each Lease has been recorded in the land records of Yellowstone County, Montana; and

WHEREAS, Landlord is governed by that certain Operating Agreement of Landlord dated as of the date hereof (the “Operating Agreement”), pursuant to which Investor acquired an interest in Landlord and has and will make certain equity investments, as described therein; and

WHEREAS, Landlord intends to rehabilitate the historic Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” (the “Federal Historic Tax Credits”) pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the “Code”) and the tax credit allowable pursuant to Section 15-31-151 of the Montana Code Annotated (the “State Historic Tax Credits” and together with the Federal Historic Tax Credits, collectively, the “Historic Tax Credits”).

NOW, THEREFORE, for and in consideration of the Premises and the mutual promises herein and also in consideration of the Leases, the parties hereto agree hereby as follows:

1. FORBEARANCE. During the HTC Recapture Period (as hereinafter defined), each of FIB, the City, and Landlord (each a “Lease Party” and collectively, the “Lease Parties”) shall forbear from exercising any of its respective rights to (x) take possession of the Premises or realize upon any collateral interest in the Premises or any rights or privileges attendant thereto, (y) terminate a Lease, or (z) commence any legal proceedings to facilitate any of the preceding actions described in clauses (x) or (y) (each, a “Lien Enforcement Action”), nor shall any rights or remedies exercised under a Lease result in a transfer of Landlord’s sub-subleasehold interest in the Premises to a Disqualified Person (as defined below), through the end of the HTC Recapture Period, regardless of whether or not there is any past, current or future default in the performance by a Lease Party of any terms, covenants or conditions of a Lease. Notwithstanding the limits on enforcement herein, nothing shall prohibit or prevent a Lease Party from giving notice of a default under a Lease or pursuing a collection or other legal action other than any action which could result in a Lien Enforcement Action.

For purposes of this Section, a “Disqualified Person” means (a) any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof); (b) any organization described in Section 501(c) of the Code and exempt from tax under Section 501(a) of the Code; (c) any person who is not a “United States person” as defined in Section 7701(a)(3) of the Code (other than a foreign partnership or foreign pass-through entity), unless such person is a foreign person or entity that is subject to United States federal income tax on more than 50% of the gross income for the taxable year derived by such person from the Premises; (d) any entity described in Treasury Regulation Section 1.48-4(a)(1)(v) (e.g., a real estate investment trust, regulated investment company, certain domestic building and loan associations, a mutual savings or cooperative bank or a cooperative described in Section 1381(a) of the Code); and (e) any partnership or other pass-through entity (including a single-member disregarded entity) and any partner (or other holder of an equity or profits interest) of which is a Disqualified Person; the parties recognize that the Master Lease (as defined in the Operating Agreement) (and the County Lease referenced in the Master Lease) does not violate this provision). For purposes of this Agreement, the “HTC Recapture Period” shall mean the period of time commencing on the date on which any of the Qualified Rehabilitation Expenditures (as that term is defined in Section 47(c)(2) of the Code) on which Investor shall have claimed Historic Tax Credits was first placed in service (as that term is used in the Code and the regulations thereunder in connection with Historic Tax Credits), and concluding on the fifth (5th) anniversary of the date on which any of

such Qualified Rehabilitation Expenditures was last placed in service.

2. RIGHT TO CURE DEFAULTS.

A. The Lease Parties agree to give notice to Investor of any default by a Lease Party under a Lease, simultaneous with delivery of notice of such default to the applicable Lease Party, specifying the nature of such default, and thereupon Investor shall have the right (but not the obligation) to cure such default (and the applicable Lease Party shall accept performance by or on behalf of Investor as though and with the same effect as if such has been performed by the applicable Lease Party), and if a Lease Party is entitled to terminate a Lease or abate any rent payable thereunder by reason of such default, such Lease Party shall not terminate such Lease, abate the rent payable thereunder or exercise any other remedy under such Lease by reason of such default unless and until it has afforded Investor thirty (30) days after Investor's receipt of such notice to cure such default and a reasonable period of time in addition thereto (x) if the circumstances are such that the default cannot reasonably be cured within the thirty (30) day period and Investor has commenced and is diligently pursuing such cure, or (y) during and after any litigation action. Notwithstanding anything in this Agreement or the Leases, nothing herein or therein shall prohibit the City from, or delay the City in, terminating the Ground Sublease by Nonappropriation (as defined in the Ground Sublease) pursuant to and in accordance with the Ground Sublease.

B. The Lease Parties agree that any transfer of Investor's interest in Landlord pursuant to the Put Option (as defined in the Operating Agreement) shall not in and of itself constitute a default under any Lease.

3. LEASE PAYMENTS. If in the future there is a default by a Lease Party in the performance and observance of the terms of a Lease (after the expiration of any applicable grace, notice and cure periods), such Lease Party (to the extent acting in its capacity as a landlord under a Lease) may require that all rents and other payments due under each subordinate Lease be paid directly to it. Upon notification to that effect by a Lease Party, each subordinate Lease Party agrees to pay any payments due under the terms of the subordinate Leases to the notifying Lease Party. Any payments by a subordinate Lease Party to a senior Lease Party in accordance with this Agreement shall be deemed and shall constitute a payment of rental under the applicable Lease(s).

4. RESTRICTION ON SALE OF PREMISES. The Lease Parties agree that during the HTC Recapture Period, and subject to the other provisions of this Agreement, neither the Premises nor any improvements thereon (or any interest therein) can be sold or otherwise transferred by a Lease Party to a governmental or other tax-exempt entity or to any other entity, the transfer to which would cause the recapture of the Historic Tax Credits under Section 50 of the Code; the parties recognize that the Master Lease (as defined in the Operating Agreement) (and the County Lease referenced in the Master Lease) does not violate this provision).

5. FURTHER ASSURANCES. The Lease Parties shall not, without obtaining the prior written consent of each other Lease Party, which consent shall not be unreasonably withheld, (i) enter into any agreement amending, modifying or terminating a Lease, (ii) prepay any of the rents, additional rents or other sums due under a Lease for more than one month in advance of the

due dates thereof, (iii) voluntarily surrender the Premises demised by a Lease or terminate a Lease or shorten the term thereof other than pursuant to the provisions of such Lease, (iv) assign a Lease or sublet the Premises or any part thereof other than pursuant to the provisions of such Lease or the Operating Agreement, or (v) pledge, mortgage, grant a lien, assign or transfer or otherwise encumber such Lease Party's right, title or interest in or to any sublease, license, contract or other agreement for use and/or occupancy of the Premises or any part thereof, or in any rents, proceeds, payments, or other consideration or amounts arising from the Premises on any proceeds of any of the foregoing, except as otherwise permitted by the Operating Agreement or otherwise consented to in writing by Investor such consent not to be unreasonably withheld.

6. REPRESENTATIONS AND WARRANTIES. Each Lease Party hereby represents and warrants to Investor that as of the date hereof, with respect to each Lease that such Lease Party is party to, (i) such Lease Party is the owner and holder of the lessor's or lessee's interest, as applicable, under such Lease, (ii) such Lease has not been modified or amended, (iii) such Lease is in full force and effect, (iv) no Lease Party is in default under any of the terms, covenants or provisions of such Lease and such Lease Party knows of no event which but for the passage of time or the giving of notice or both would constitute an event of default by a Lease Party under such Lease, (v) such Lease Party has not commenced any action or given or received any notice for the purpose of terminating such Lease, (vi) all rents, additional rents and other sums due and payable under such Lease have been paid in full and no rents, additional rents or other sums payable under such Lease have been paid for more than one month in advance of the due dates thereof, and (vii) to the knowledge of the Lease Party, there are no existing offsets or defenses to the payment by a Lease Party of the rents, additional rents, or other sums payable under such Lease.

7. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their heirs, administrators, representatives, successors, and assigns, including without limitation each and every, from time to time, holder of an interest in a Lease or any other person having an interest therein.

8. CHOICE OF LAW. This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the State of Montana (the "State").

9. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

10. MISCELLANEOUS.

A. This Agreement may not be modified or terminated except by an agreement in writing signed by the parties or their respective successors in interest.

B. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing sent by either hand delivery service providing dated evidence of delivery, overnight courier service providing dated evidence of delivery, or mailed by certified

or registered mail, return receipt requested, to the party to whom the notice, demand or request is being made at its address set forth herein. Any party may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement.

C. If any of the terms of this Agreement or the application thereof to any person or entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or entity or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

D. To the fullest extent permitted by law, the parties hereto each hereby irrevocably and unconditionally:

(i) agree that any action, suit or proceeding by any person or entity arising from or relating to this Agreement or any statement, course of conduct, act, omission, or event in connection therewith (collectively, “Related Litigation”) shall be brought in any state court of competent jurisdiction sitting in Billings, Montana, submit to the jurisdiction of such courts, and agree not to bring any Related Litigation in any other forum;

(ii) acknowledge that such courts will be the most convenient forum for any Related Litigation, waive any objection to the laying of venue of any Related Litigation brought in any such court, waive any claim that any Related Litigation brought in any such court has been brought in an inconvenient forum, and waive any right to object, with respect to any Related Litigation, that such court does not have jurisdiction over it;

(iii) consent and agree to service of any summons, complaint, or other legal process in any Related Litigation by registered or certified U.S. mail, postage prepaid, to it at the address for notices described in this Agreement, and consent and agree that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law); and

(iv) to the extent permissible under applicable law, waive the right to trial by jury in any Related Litigation.

E. This Agreement may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have set their hands to this Forbearance Agreement this day and year first above written.

LANDLORD:

**FORMER FEDERAL BUILDING
LANDLORD, LLC,**
a Montana limited liability company

By: Former Federal Building Manager, LLC,
a Montana limited liability company,
its managing member

By: _____
Name: Andy Zoeller
Title: Manager

STATE OF _____)
) ss.
CITY/COUNTY OF _____)

On this _____ day of _____ in the year 2024, before me personally appeared Andy Zoeller, as Manager of Former Federal Building Manager, LLC, a Montana limited liability company, the managing member of Former Federal Building Landlord, LLC, a Montana limited liability company, known to me to be the person who executed this Agreement on behalf of said Montana limited liability company and acknowledged to me that they executed the same for the purposes therein stated.

Witness my hand and notarial seal this _____ day of _____, 2024.

Notary Public
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

(See attached)

EXHIBIT A