
GROUND SUBLEASE AGREEMENT

between

**CITY OF BILLINGS, MONTANA
as Ground Lessor,**

and

**FORMER FEDERAL BUILDING LANDLORD, LLC
as Ground Lessee**

Dated as of [_____], 2024

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This **GROUND SUBLEASE AGREEMENT** dated as of [____], 2024 (this “Ground Sublease”), is executed by **CITY OF BILLINGS, MONTANA**, a duly organized municipality of the State of Montana (the “City”), as ground lessor, and **FORMER FEDERAL BUILDING LANDLORD, LLC**, a Montana limited liability company (the “Landlord”), as ground lessee.

RECITALS

WHEREAS, the City owns the real property legally described in Exhibit A, located in Yellowstone County, Montana (the “Land”), together with the improvements thereon (collectively, the “Project”);

WHEREAS, the City has leased the Land to the Bank pursuant to that certain Ground Lease dated as of the date hereof by and between the City, as lessor, and the Bank, as lessee (the “Ground Lease”); and

WHEREAS, pursuant to that certain Lease Purchase Agreement, dated on or about the date hereof, by and between the Bank, as lessor, and the City, as lessee (the “Lease”), the City has subleased the Project from the Bank; and

WHEREAS, this Ground Sublease constitutes and evidences a loan in the principal amount of \$[____] from the City to the Landlord (the “Loan”); and

WHEREAS, pursuant to this Ground Sublease, the City will sublease the Project to the Landlord, subject to the terms and conditions hereof.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

GROUND SUBLEASE AND TERM

. Subject to and upon the terms, conditions, covenants and undertaking hereinafter set forth, the City hereby subleases the Project to the Landlord, and the Landlord hereby leases the Project from the City. The Landlord agrees to pay the City rent on the dates and in the amounts set forth on Exhibit B hereto, as such Exhibit B may be amended from time to time by written agreement of the parties hereto. The rental payments to be made by the Landlord hereunder constitute repayment of the Loan. This Ground Sublease shall commence on [____], 2024, and shall terminate on [____], 2099 (the “Termination Date”), unless the term of this Ground Sublease is terminated earlier in accordance with the provisions of Section 3.1.

ARTICLE II

REPRESENTATIONS AND COVENANTS

. The City represents to and covenants with the Landlord that:

- (a) the City is a duly formed and validly existing municipality of the State of Montana (the “State”), governed by the Constitution and laws of the State;
- (b) the City is authorized under the Constitution and laws of the State to sublease the Project to the Landlord;
- (c) the City has authority to execute and deliver this Ground Sublease, to enter into the transactions contemplated hereby, and to perform all of its obligations hereunder;
- (d) the officers of the City executing and delivering this Ground Sublease have been duly authorized to do so under the terms and provisions of a resolution of the governing body of the City, or by other appropriate official action;
- (e) in authorizing and executing this Ground Sublease, the City has complied with all open meeting laws, all public bidding laws and all other State and federal laws applicable to this Ground Sublease;
- (f) the execution and delivery of this Ground Sublease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Ground Sublease by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease, agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the City or any of its property, of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party;
- (g) the City has good and merchantable title to the Land, subject only to the Ground Lease, Lease and other Permitted Encumbrances (as such term is defined in the Lease);
- (h) all taxes, assessments or impositions of any kind with respect to the Land (if any), except current taxes (if any), have been paid in full;
- (i) the Land complies in all material respects with all presently applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations;
- (j) to the best of the knowledge of the City, the Land is not located in a flood hazard area.

. The Landlord represents to and covenants with the City that the Landlord has authority to execute and deliver this Ground Sublease, to enter into the transaction contemplated hereby, and to perform all of its obligations hereunder; that the officers of the Landlord executing and delivering this Ground Sublease have been duly authorized to do so; and that the execution and delivery of this Ground Sublease, the consummation of the transactions contemplated hereby,

and the performance of or compliance with the terms and conditions of this Ground Sublease by the Landlord will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease, agreement or instrument to which the Landlord is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Landlord or any of its property, of any court or governmental body.

ARTICLE III

TERMINATION

. Subject to the other provisions of this Ground Sublease, this Ground Sublease shall terminate prior to the Termination Date only by written agreement of the parties hereto.

. The Landlord agrees that upon the termination of this Ground Sublease it will surrender the Project to the City, in reasonable order and condition in light of the use to which the Project will be put, ordinary wear and tear excepted, and free and clear of all liens and encumbrances created by or arising under Landlord or any assignee of Landlord.

. The Landlord shall use the Project solely for the purpose of the historic rehabilitation and leasing of the Improvements to the City or other tenants. The Landlord will not use the Project or knowingly permit the Project to be used for any unlawful purpose.

. During the term of this Ground Sublease, the City shall provide the Landlord with the quiet use and enjoyment of the Land and the Landlord shall peaceably and quietly have and hold and enjoy the Land, without suit, trouble or hindrance from the City.

. The Landlord may assign its interests in this Ground Sublease and may use, sublease and/or lease the Project without the consent of the City.

. The City shall, upon the reasonable request by the Landlord, execute and deliver any and all documents and instruments required to effectuate the provisions hereof, provided that such further acts shall not adversely affect the rights or obligations of the City as contemplated hereby.

. The Landlord shall be permitted to perform any alterations, additions or improvements to the Project provided that such alterations, additions or improvements shall be performed in a satisfactory manner and shall not weaken or impair the structural strength, or materially lessen the value of, the Project; provided that the Landlord shall not undertake any rehabilitation, repairs or other work on the Project inconsistent with the Secretary's Standards; or construct any new or replacement capital improvements on the Project which substantially alter the Project or its use, except (A) replacements and remodeling in the ordinary course of business or under emergency conditions, or (B) reconstruction paid for from insurance proceeds. The Landlord will, within 60 days after filing of a lien, pay and discharge any mechanic's, materialmen's or other lien against the Project resulting from the Landlord's failure to make payment for any improvements in the Project made by the Landlord or at its direction. The Landlord will immediately notify the City of any claim of lien or other action of which it has knowledge which relates to any improvements in

the Project made by the Landlord or at its direction. As used herein, “Secretary’s Standards” means the standards for rehabilitation set forth in Title 36 of the Code of Federal Regulations, Part 67.7, or any successor provisions, as amended from time to time. The parties agree that the rehabilitation and improvement project being undertaken at the Project pursuant to the plans and specifications provided to the Landlord as of the date hereof does not violate this Section 11.

ARTICLE II

TRIPLE NET LEASE

. This Lease is a triple net lease requiring payment by the Landlord of all operating expenses including without limitation all taxes (as provided in Section 5.3), utilities, costs applicable to the Project under any restrictive covenants, costs of improvements (as permitted herein), maintenance, repairs, alterations, additions, replacements, and insurance relating to the Project shall be at the sole cost and expense of the Landlord. The Landlord acknowledges and agrees that the City shall not have any obligation to make any improvements, repairs, alterations, additions, or replacements whatsoever to the Project.

. The Landlord shall pay the providers of metered utilities directly.

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- (a) The Landlord shall pay (or cause to be paid) on or before the last day on which payment may be made without penalty or interest, all taxes, assessments, or other governmental charges that shall or may be imposed during the term of this Ground Sublease upon, or arise in connection with the use of, the Project by the Landlord. Notwithstanding the foregoing, the City may elect to pay all such taxes, charges, or other assessments and obtain reimbursement from the Landlord within 30 days after written verification of all such taxes, charges, or assessments paid by the City. The foregoing shall not require payment by the Landlord of any income taxes assessed against the City or of any capital levy, franchise, estate, succession, inheritance or transfer tax due from the City.
- (b) The Landlord shall pay (or cause to be paid) to the proper taxing authority, on or before their due date, all real property taxes payable with respect to the Project for the term of this Ground Sublease. All real property taxes with respect to tax periods in which the commencement date or termination date of the term of this Ground Sublease fall will be prorated between the City and the Landlord in their appropriate shares, calculated based on the lease term and the pre-lease and post-lease time periods associated with such tax periods. Notwithstanding the foregoing, the City may elect to pay such real property taxes and obtain reimbursement from the Landlord within 30 days after written verification of such taxes paid by the City.
- (c) Notwithstanding the foregoing, taxes shall not include any income, capital levy, capital gains, transfer, recordation, mortgage, franchise, capital stock, gift, estate or inheritance tax; taxes or assessments on the personal property of the City or any

subtenants; or any penalty, interest, delinquency, charge or other addition to the amount of the actual tax or assessment.

ARTICLE III

MISCELLANEOUS

. If any term or provision of this Ground Sublease, or the application thereof to any person or circumstance, is to any extent deemed to be invalid or unenforceable, the remainder of this Ground Sublease or the application of such term or provision to persons or circumstance other than those as to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Ground Sublease will be valid and enforceable to the fullest extent permitted by law.

. This Ground Sublease is binding upon, and inures to the benefit of, the parties hereto, and their respective successors and assigns.

. This Ground Sublease may be executed in counterparts, each of which shall constitute one and the same instrument. In addition, the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. The parties agree that electronic signatures shall be binding upon the parties.

. This Ground Sublease will be interpreted and enforced in accordance with the laws of the State of Montana without regard to its conflicts of law provisions.

. The City shall record this Ground Sublease or an abstract hereof in the real property records where the Land is located in the manner prescribed by law.

. This Ground Sublease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by the City and the Landlord.

. The captions or headings in this Ground Sublease are for convenience only and in no way define, limit or describe the scope or intent of any provision, article, section or clause of this Ground Sublease.

. In the event any covenant hereunder should be breached by either party and thereafter waived by the other party, the parties agree that such waiver is limited to the particular breach so waived and not deemed to waive any other breach hereunder.

. In the event either party to this Ground Sublease should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefore pay to the non-defaulting party the reasonable fee of such attorneys and such other expenses so incurred by the non-defaulting party.

. There shall be no merger of this Ground Sublease or the leasehold created by this Ground Sublease with any other estate in the Land or any part thereof by reason of the fact that the same entity may acquire or own or hold, directly or indirectly, (a) the Land or any part thereof or any interest therein or (b) the Improvements or any part thereof or any interest therein, and no such merger shall occur unless and until all persons having any interest in the Improvements or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

. This Ground Sublease will be subject and subordinate to the Ground Lease and the Lease Purchase Agreement and, at the request of any ground lessor, this Ground Sublease will be subject and subordinate to any mortgage or other ground lease that may hereafter encumber the premises. Upon request, the Landlord will execute, acknowledge and deliver to the City a commercially reasonable subordination, attornment and non-disturbance agreement evidencing such subordination and the Landlord's agreement to attorn to such mortgagee or ground lessor if such mortgagee or ground lessor acquires title to the Project; provided, however, that this Ground Sublease remains unmodified and that the mortgagee or ground lessor agrees in such subordination, attornment and non-disturbance agreement that the Landlord's peaceable and quiet possession of the Project under this Ground Sublease will not be disturbed so long as the Landlord is not in default under this Ground Sublease. In no event will the Landlord's possession of the Project be disturbed as long as the Landlord is not in default beyond applicable cure periods under this Ground Sublease.

. Each of the parties to this Ground Sublease shall, without charge, at any time and from time to time, within twenty (20) days after written request by the other party, deliver a written instrument to such party or to any other person specified by such party, duly executed and acknowledged, certifying that this Ground Sublease is unmodified and in full force and effect or, if there has been any modification, that the said Ground Sublease is in full force and effect as modified, stating any and all such modifications, and specifying the dates to which the rental and other charges provided for herein have been paid.

. All written notices to be given under this Ground Sublease are to be delivered by first class mail, postage prepaid, to the addresses specified below.

	If to the City:	City of Billings, Montana P.O. Box 1178 Billings, Montana 59103 Attention: City Finance Director
	If to the Landlord:	Former Federal Building Landlord, LLC P.O. Box 1178 Billings, Montana 59103 Attn: City Finance Director

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Ground Sublease as of the date first above written.

FORMER FEDERAL BUILDING LANDLORD,
LLC,

a Montana limited liability company

By: FORMER FEDERAL BUILDING
MANAGER, LLC, its managing member

By: _____

Name: Andy Zoeller

Its: Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY OF BILLINGS, MONTANA

By: _____

Its: Mayor

By: _____

Its: City Administrator

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 43, of the Original Town (now City) 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 No. 16312.

EXHIBIT B
SCHEDULE OF RENTAL PAYMENTS