
FORMER FEDERAL BUILDING MANAGER, LLC

OPERATING AGREEMENT

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**OPERATING AGREEMENT
OF
FORMER FEDERAL BUILDING MANAGER, LLC**

This OPERATING AGREEMENT (this “Agreement”) is made and entered into by City of Billings, Montana, as the sole member of the Company (the “City” or the “Member”).

RECITALS

WHEREAS, Former Federal Building Manager, LLC (the “Company”) was formed upon the filing of the Articles of Organization of the Company (the “Articles”) in the office of the Montana Secretary of State on [____], 2024 pursuant to the Montana Limited Liability Company Act;

WHEREAS, the City is the owner of a fee interest in the building located at 316 North 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 of land upon which the Building is located (collectively, the “Property”); and

WHEREAS, pursuant to the Lease Purchase Financing Documents (as hereafter defined): (i) the City granted a leasehold interest in the Property to First Interstate Bank, a national banking corporation (“FIB”), and (ii) FIB subleased the Property back to the City; and

WHEREAS, Former Federal Building Landlord, LLC, a Montana limited liability company (“Landlord”), acquired a sub-leasehold interest in the Property pursuant to a certain ground lease between the City and the Landlord; and

WHEREAS, rehabilitation of the Building will help ensure the preservation and protection of a historic building through the restoration of the historic interior and exterior of the Building, and the development of the Building into office space and other related amenities that will qualify for certain federal and state historic tax credits (the “Project”); and

WHEREAS, the Landlord intends to use a portion of the proceeds of (i) that certain loan made by the City out of the proceeds of the Lease Purchase Financing Documents, in the aggregate amount of \$[____]; (ii) the capital contribution by the Company to the Landlord in the aggregate amount of \$[____]; and (iii) the capital contribution by FIB Battin, LLC, a Delaware limited liability company (the “Investor”), to the Landlord in the aggregate amount of \$[____] (as may be adjusted pursuant to the terms hereof), among other sources, to acquire and rehabilitate the Property; and

WHEREAS, the Company and the Investor will acquire interests in the Landlord and the Company will also act as the managing member of the Landlord; and

WHEREAS, the Member desires to enter into this Agreement to govern the membership in and management of the Company.

The Member therefore adopts the following:

Article 1

General

. The Member ratifies the execution and filing of the Articles in the office of the Montana Secretary of State on [_____], 2024, by Andy Zoeller as the “person” forming the Company as contemplated by Section 35-8-201(1) of the Act. The Company shall be a “manager-managed company” as that term is defined in Section 35-8-102(20) of the Act.

. This Agreement constitutes the “operating agreement” of the Company within the meaning of Section 35-8-109 of the Act, that, notwithstanding the date of execution, it is effective as of the effective time and date of the filing of the Articles in the office of the Montana Secretary of State (the “Effective Date”), and that it governs the affairs of the Company and the conduct of its business, except as otherwise required by the Act.

. The name of the Company is as stated in the Articles of Organization, and the business of the Company may be conducted under that name or under such other name or names as the Manager may determine.

. The Company has been organized exclusively for the purpose of acquiring an interest in, and acting as the managing member of (the “Landlord Managing Member”), the Landlord pursuant to the Former Federal Building Landlord, LLC Operating Agreement, dated as of [_____], 2024 (as amended from time to time, the “Landlord Operating Agreement”) in connection with the Project and engaging in any other activity necessary, appropriate, desirable, or incidental thereto. In connection with the Project, the Company is authorized to and shall make a capital investment in the Landlord in the amount and as contemplated in the Contribution Agreement (the “Permitted Equity Investment”). The Manager is hereby authorized to execute and deliver on behalf of the Company, the Landlord’s Operating Agreement as the Landlord Managing Member and the Contribution Agreement.

Notwithstanding anything contained herein to the contrary, the Company shall not engage in any business, and it shall have no purpose, unrelated to its interest in the Landlord and shall not acquire any real property or own assets other than those related to the Landlord or otherwise in furtherance of the purposes of the Company. The Company shall have no indebtedness or incur any liability other than debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of business and solely in connection with its purpose.

The Company is separate from the City and is not an instrumentality of the City.

. The Company may maintain offices and places of business at such locations as the Manager may determine. The initial principal place of business of the Company is as stated in the Articles of Organization.

. The term of the Company is perpetual, unless the Company is dissolved in accordance with this Agreement.

Article 2 Definitions

Unless the context otherwise specifies or requires, the following terms have the following definitions. Certain other capitalized terms are defined elsewhere in this Agreement. All defined terms may be used in the singular or the plural, as the context requires.

“Act” means the Montana Limited Liability Company Act, as amended from time to time.

“Affiliate” means, when used with reference to a specified Person, (i) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person; (ii) any Person that is an officer, partner, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified Person or of which the specified Person has a substantial beneficial interest; and (iv) any relative or spouse of the specified Person.

“Agreement” is defined in the preamble.

“Articles of Organization” is defined in Section 1.2.

“Building” is defined in the recitals.

“Capital Contribution” means the amount of money or the fair market value of any property contributed to the Company by the Member pursuant to Section 7.1.

“City” is defined in the preamble.

“Code” means the Internal Revenue Code of 1986. Any reference in this Agreement to a Section of the Code shall be considered also to include any subsequent amendment or replacement of that Section.

“Company” is defined in the recitals.

“Contribution Agreement” means the Contribution and Reimbursement Agreement dated the date hereof among the City, the Company and the Landlord.

“Effective Date” is defined in Section 1.1.

“Investor” is defined in the recitals.

“Landlord” is defined in the recitals.

“Landlord Operating Agreement” is defined in the recitals.

“Lease Purchase Finance Documents” means, collectively: (i) that certain Ground Lease Agreement dated as of the date hereof, by and between the City, as lessor, and First Interestate

Bank, as lessee, (ii) that certain Lease Purchase Agreement by and between First Interstate Bank, as lessor, and the City, as lessee, and [(iii) that certain Lender Letter dated as of the date hereof from First Interstate Bank to the City].

“Member” is defined in the preamble.

“Permitted Equity Investment” is defined in Section 1.4.

“Person” means a natural person, partnership, limited liability company, trust, estate, association, corporation, government, custodian, nominee, or any other individual or entity, in its own or any representative capacity.

“Project” is defined in the recitals.

“Property” is defined in the recitals.

“Treasury Regulations” means the regulations promulgated by the United States Treasury Department under the Code. Any reference in this Agreement to a Section of the Treasury Regulations shall be considered also to include any subsequent amendment or replacement of that Section.

“Unit” means a unit evidencing a membership interest in the Company, including all of the rights to which a Member or assignee holding Units is entitled as provided in this Agreement and under law, together with all of the obligations of the Member or assignee to comply with all of the terms and provisions set forth in this Agreement and under law.

Article 3 Member; Duties; Liability

. The Member is the sole member of the Company and has all of the rights, powers, and privileges of a member under the Act.

. Except as otherwise provided in this Agreement or required by law, the Member owes no express or implied duties (including fiduciary duties) to the Company.

. A debt, obligation, or other liability of the Company is solely the debt, obligation, or other liability of the Company. The Member is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the Company solely by reason of being or acting as the only Member of the Company. Neither the Company nor the Manager shall have the power to bind the Member by way of contribution or otherwise, for a debt, obligation, or other liability. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against the Member or any officer, member of the governing body or employee of the Member, past, present or future, as an individual. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of the Member or any such officer or member of the governing body or employee of the Member is hereby expressly waived and released by the Company.

. The Company shall not admit new members.

. Notwithstanding anything to the contrary herein, the Company and its Member desire that the Company be treated as an association taxable as a corporation, separate and apart from its Member, and not as an agency or instrumentality of the United States, any state or political subdivision thereof, or any possession of the United States. In furtherance of the foregoing, the Company and its Member shall take all actions in order to preserve the separate entity status of the Company for federal income tax purposes as a taxable entity, and shall timely file all necessary elections in furtherance of the foregoing, including, without limitation, an election pursuant to Code Section 168(h) of the Code not to be treated as a “tax-exempt entity” (as such term is defined pursuant to Code Section 168(h); the “Section 168(h) Election”). The Member hereby covenant and agrees that it will comply with the Section 168(h) Election and shall report its income consistently therewith. Notwithstanding anything in this Agreement to the contrary, the Company and Member hereby waive any claims under any applicable, federal, state, or local law purporting to grant the Company sovereign immunity with respect to any of the activities of the Company during its term. The representations, warranties and covenants contained in this Section 3.5 shall survive any amendment to this Agreement.

Article 4

Management and Operation of Company Business

. Except as otherwise required by the Act or this Agreement, the business and affairs of the Company will be managed by or under the authority of the Manager.

(a) The Finance Director of the City will be the Manager. As of the date hereof, the Finance Director of the City is Andy Zoeller and Mr. Zoeller shall serve as the initial Manager.

(b) The Manager will hold office until he or she is no longer serving as the Finance Director for the City or his or her earlier death, resignation, removal, or disqualification. The Manager may be removed from office at any time, with or without cause, by the Member.

(c) If the Manager ceases to be the Manager, the Member may appoint a replacement Manager.

(a) The Manager has the power to do all things necessary or proper to carry out the purposes and objectives of the Company under the terms of this Agreement. Third parties dealing with the Company are entitled to rely conclusively upon the power of the Manager as set forth in this Agreement. The Manager, for and on behalf of the Company, has the full power, in addition to such powers and authorities as may be provided by law or elsewhere in this Agreement, at the expense of the Company (by direct payment or reimbursement):

(i) to take any action permitted by this Agreement and the Act to accomplish the Company’s purposes as set forth in Section 1.4;

(ii) to perform the duties and obligations of the Managing Member as provided in the Landlord's Operating Agreement;

(iii) to make the Permitted Equity Investment in an amount set forth in the Contribution Agreement;

(iv) to pay all expenses relating to the organization of the Company, including, without limitation, legal, accounting, tax advisory services, duplicating and printing, telephone, postage, travel, and other expenses and fees (including filing fees);

(v) to engage and pay such independent agents, attorneys, accountants, appraisers, custodians, finders, advisers, and any other Persons retained to assist the Company as necessary or appropriate for the affairs of the Company;

(vi) to open, maintain, and close bank, money market, and custodial accounts for the Company and to draw checks and other orders for the payment of money;

(vii) to file, on behalf of the Company, all required local, state, and federal tax returns and other documents relating to the Company;

(viii) to enter into, make, and perform such contracts, commitments, undertakings, consents, restrictions, covenants, warranties, expressions of investment intent, and other agreements or arrangements, and to do such other acts, as the Manager may deem necessary or appropriate for, or as may be incidental to, the purposes and objectives of the Company under the terms of this Agreement; and

(ix) to pay compensation for services rendered to the Company.

. Notwithstanding Sections 4.1 and 4.3, the Manager will not take any of the following actions without the prior written consent of the Member:

(a) the commencement of proceedings or the filing of a petition seeking relief under Title 11 of the United States Code or any other federal or state bankruptcy, insolvency, or similar law;

(b) the dissolution of the Company under Section 9.1;

(c) the amendment of the Articles of Organization or this Agreement under Article 10;

(d) the amendment of the Articles of Organization of the Landlord or the Landlord Operating Agreement;

(e) the commencement, defense and or setting of any litigation that pertains to the Company, including the Manager as agent of the Company, as well as the potential liabilities of any Person serving at the request of the Manager as a director of a corporation

or partner of a partnership in which the Company has an investment, or any Company assets or activities;

- (f) the granting of a lien or encumbrance upon any Company asset;
- (g) the sale of any assets or property of the Company;
- (h) the borrowing of money;
- (i) any act in contravention of this Agreement or the Articles of Organization;
- (j) any act that would make it impossible to carry on the ordinary business of the Company; or
- (k) confess a judgment against the Company.

. The personal liability of the Manager to the Company or the Member for monetary damages for breach of fiduciary duty as the Manager is eliminated to the fullest extent permitted by law. No amendment of this Agreement or the Articles of Organization will adversely affect the elimination of the personal liability of the Manager with respect to any act or omission that occurred before such amendment.

. The Manager shall devote such time, effort, and skill as may be reasonably required for the conduct of the business and affairs of the Company. The Manager is not required to devote the Manager's full time and attention to the affairs of the Company. The Manager may engage in and possess other occupations or interests in other business ventures.

. The Manager will not be compensated by the Company for serving as Manager.

Article 5 Indemnification

(a) To the fullest extent permitted by law, the Company and the Member shall, jointly and severally, indemnify the Manager (individually, an "Indemnitee") against all losses, claims, damages, liabilities, expenses (including legal fees and expenses), and other amounts paid in settlement, incurred, or suffered by the Indemnitee, in connection with any claim or proceeding arising out of the business or the operation of the Company.

(b) An Indemnitee will have the right to employ separate counsel in any proceeding for which indemnification may be sought under any provision of this Agreement and to participate in defending the proceeding, but the Indemnitee will be required to pay the legal fees and expenses related to the Indemnitee's separate counsel unless:

- (i) the Company and/or the Member has agreed in writing to pay the legal fees and expenses,

(ii) the Company and/or the Member has failed to employ counsel and defend the proceeding within a reasonable period of time after being given notice of the proceeding, or

(iii) the Indemnitee has been advised by its counsel that representation of that Indemnitee and other parties by the same counsel would be inappropriate under applicable standards of professional conduct (whether or not such representation by the same counsel has been proposed) due to actual or potential differing interests between them.

(c) Notwithstanding Section 5.1(b), the Company and the Member will be jointly and severally liable for the reasonable legal fees and expenses of only one separate firm of attorneys for all Indemnitees having actual or potential differing interests with the Company (whether in connection with one proceeding or separate but substantially similar or related proceedings in the same jurisdiction arising out of the same general allegations or circumstances), unless the Indemnitees have actual or potential differing interests with each other.

(d) The Company and the Member will not deny indemnification under this Article 5 merely because the Indemnitee had an interest in the transaction with respect to which the indemnification applies, if (i) the transaction was not otherwise prohibited under this Agreement, and (ii) the conduct of the Indemnitee satisfied the conditions of this Agreement, if any.

. To the fullest extent permitted by law and subject to Section 5.1(b) and 5.1(c), the Company and/or the Member will periodically advance expenses an Indemnitee incurs in defending any claim or proceeding subject to this Article 5 before the final disposition of the claim or proceeding, upon receipt by the Company and the Member of a written undertaking by the Indemnitee to repay the expenses advanced if the criteria for indemnification under this Article 5 have not been satisfied.

. Any indemnification provided under this Article 5 will be satisfied solely out of the assets of the Company and/or the Member.

. The Company and the Member will not be liable for the settlement of any proceeding effected without its written consent, but if the proceeding is settled with the Company's and the Member's written consent, or if there is a final judgment against the Indemnitee in the proceeding, the Company and the Member agree to indemnify the Indemnitee to the extent provided above.

. Any amendment of this Article 5 will not adversely affect any right or protection of an Indemnitee who was serving at the time of the amendment, and any right or protection of that Indemnitee will survive amendment with respect to events that occurred before the amendment.

Article 6
Books of Account; Reports and Fiscal Matters

. The Company will maintain at the principal office of the Company determined under Section 1.5 or such other place as the Member may designate, the information and records that the Member is entitled to obtain from the Company pursuant to Section 35-8-405 of the Act.

. The Company's funds may be deposited in the banking institutions as the Manager determines, and withdrawals may be made on the signatures the Manager determines.

. The Manager, in consultation with the Company's tax advisers, shall make or refrain from making any elections required or permitted to be made by the Company under the Code and shall choose the Company's tax accounting method from all available tax accounting methods. The Manager may, at the time and in the manner provided in Treasury Regulations Section 1.754-1(b), cause the Company to elect pursuant to Code Section 754 to adjust the basis of the assets of the Company in the manner provided in Code Sections 734 and 743.

Article 7
Units and Capital Contributions

. The Member may make Capital Contributions to the Company from time to time; however, the Member shall have no obligation to make Capital Contributions. In furtherance of the foregoing, any Capital Contribution by the Member would be payable only from current funds which are budgeted and appropriated for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated. The Member has not pledged the full faith and credit or taxing power of the Member to payment of any amounts to the Company under this Agreement.

. The Member will receive 1,000 Units. No additional Units will be issued by the Company. The Member shall not transfer the Member's Units.

. The Units of the Company will not be certificated.

. The Member may, but is not obligated to, make loans to the Company from time to time. Any loans from the Member will not be treated as Capital Contributions to the Company for any purpose, but the Company shall be obligated to the Member for the principal amount of and any accrued interest on such loans pursuant to any agreed upon terms.

. No creditor who makes a loan to the Company will have or acquire at any time as a result of making the loan any direct or indirect interest in the profits, capital, or property of the Company, other than any interest as a secured creditor. Notwithstanding the foregoing, this provision will not prohibit a secured creditor from participating in the profits of operation or gross or net sales of the Company or in the gain on sale or refinancing of the Company, all as may be provided in its loan or security agreements.

Article 8
Allocation of Income, Gains and Losses; Distributions

The income, profits, gains, losses, and tax credits of the Company and distributions of cash or property of the Company to the Member will be treated for federal income tax purposes as if the Company were a sole proprietorship, branch, or division of the Member, as applicable, in accordance with Treasury Regulations Section 301.7701-2(a). Distributions will be made to the Member at the times and in the amounts determined by the Manager.

Article 9
Dissolution and Liquidation

. The Company will be dissolved only upon the occurrence of any of the following events:

- (a) The written consent of the Member; or
- (b) The final decree of a court that dissolution is required under applicable law.

. If the Company is dissolved pursuant to Section 9.1, the Company will be liquidated and the Manager (or other Person or Persons designated by the Manager or by a decree of court) shall wind up the affairs of the Company. The Manager or other Persons winding up the affairs of the Company shall promptly proceed to the liquidation of the Company and distribute the assets of the Company in the following order of priority:

- (a) To the payment of all debts and liabilities of the Company in the order of priority as provided by law (other than outstanding loans from the Member);
- (b) To the establishment of any reserves deemed necessary by the Manager or the Person winding up the affairs of the Company for any contingent liabilities or obligations of the Company;
- (c) To the repayment of any outstanding loans from the Member to the Company; and
- (d) The balance, if any, to the Member.

Article 10
Amendment

Any provision of the Articles of Organization or this Agreement may be amended or waived only by an instrument in writing signed by the Member. No course of dealing will amend, waive, or terminate any provision of this Agreement or any rights or obligations of any Person under or by reason of this Agreement.

Article 11
Miscellaneous Provisions

. The headings in this Agreement are for convenience only and do not affect the meaning of this Agreement.

. If any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded. If a provision is modified or disregarded in accordance with this Section 11.2, then the rest of this Agreement will remain in effect as written. Any unenforceable provision will remain as written in any circumstance other than those in which the provision is held to be unenforceable.

. All matters relating to the interpretation, construction, validity, and enforcement of this Agreement will be governed by the internal laws of the state of Montana, without giving effect to any choice of law provisions. Any conflict or apparent conflict between this Agreement and the Act will be resolved in favor of this Agreement, except as otherwise specifically required by the Act.

. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Member (in its capacity as such) any rights of any nature whatsoever, except that the Indemnitee will be entitled to the enforcement of Article 5 as intended third-party beneficiary thereof, to the extent that the obligations sought to be enforced are those of the Company and/or the Member.

The undersigned has signed this Agreement as of the Effective Date intending to be bound by it.

City of Billings, Montana

By: _____

Its: _____