

****ATTENTION****

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend the meeting in person in Council Chambers, second floor of City Hall, 220 N. 27th Street. In order to honor the Right of Participation and the Right to Know in Article II, Sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- . Review the Agenda Packet on the City's website at: www.billingsmt.gov and click on "Your Government," "City Council," and "Agendas & Minutes".
- . View the meeting:
 - . On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)* Channel 7 or Channel 978 - TDS Fiber.
 - . Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
 - . On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
 - . In-Person.

Citizens may submit public comment via the following methods:

- . Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- . Email: Council@billingsmt.gov.
 - . Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- . Attend the meeting in person

Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov, or at 406.657.8210, with any questions.



VISION STATEMENT:
"The Magic City: A diverse,
welcoming community
where people prosper and
business succeeds."

**WORK SESSION AGENDA
NOVEMBER 4, 2024**

COUNCIL CHAMBERS

5:30 P.M.

CALL TO ORDER: Mayor Cole

PUBLIC COMMENT ON ALL ITEMS. This is the time to comment on any matter (Agenda or Non-Agenda) falling within the scope of the Billings City Council. There will also be time in conjunction with each agenda item for public comment relating to that item. You may only speak once for each item during the meeting.

Please note, the City Council cannot take action on any item of significant interest to the public that does not appear on the agenda. Comments are limited to three (3) minutes during each public comment period or as set by the Mayor. **Speaker sign-in required.** Please sign the roster at the cart located at the back of the Council chambers or at the podium.

1. Historic Tax Credit Structure Review.

-Public Comment

2. Downtown Angle Parking Discussion.

-Public Comment

HIGHLIGHT UPCOMING AGENDA ITEMS OF COUNCIL INTEREST:

COUNCIL DISCUSSION:

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

ADJOURN:

Note:

- This meeting is an "informal" meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- In the event there is a Closed Executive Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4) (a), MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

City Council Work Session

Date: 11/04/2024
Title: Historic Tax Credit Structure Review
Presented by: Andy Zoeller, Finance Director
Department: Finance
Presentation: Yes
Legal Review: Not Applicable
Project Number: N/A

RECOMMENDATION

Staff will provide an update on the current status of the Historic Tax Credit financing structure that is being developed. The action items associated with this transaction will be on the November 12, 2024 Regular City Council Meeting. No decisions will be made at the work session, but time is being provided to ask questions and gain an understanding of the structure. Bond counsel from Dorsey & Whitney (Erin McCrady) and our historic tax credit consultant from Wishneff & Associates (Adam Markwood) will be available during the meeting for questions.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On November 28, 2022, Council approved the proposal from the consulting firm of Brian Wishneff and Associates, LLC to assist the City in obtaining historic preservation tax credits and related financing, including identifying investors for the new city hall building. The City has been advised by Wishneff as well as the State of Montana Historic Preservation Office that all or a portion of the project is eligible for federal and state historic preservation tax credits.

On December 19, 2022, Council approved that city staff move forward with the full build-out of the new city hall building. Council has indicated its intent to pursue historic preservation tax credits to partially fund expenses of the renovations.

On June 26, 2023, Council approved a resolution to pursue financing options in compliance with IRS regulations for the new city hall renovations.

On June 24, 2024, Council authorized staff to sign a letter of intent with First Interstate Bank to develop an agreement for the equity investment for the City's receipt of historic tax credits.

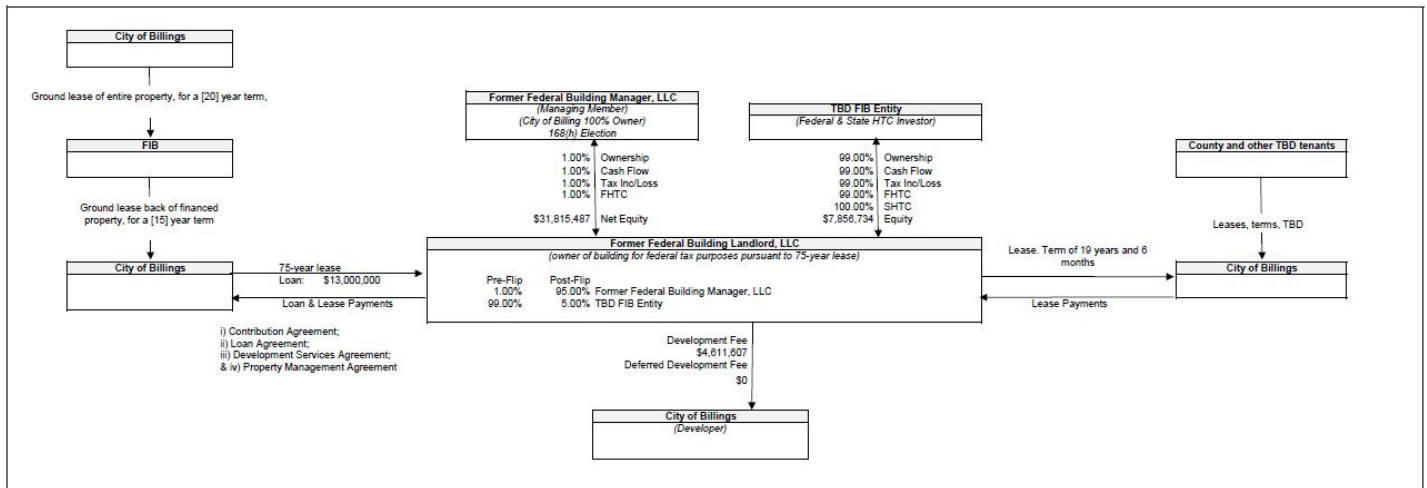
Since the authorization of the letter of intent, the City has engaged a Dorsey & Whitney, the City's bond counsel, BakerTilly Advisors, the City's Financial Advisors and additional consultants to develop the agreements which will put in place the structure needed to capture the tax credits. On November 12, 2024, Council will be asked to approve the structure establishing the entities needed to realize the tax credits.

There are two elements of the financing to be approved in these resolutions, which must be either approved or denied together as our letter of intent with FIB states that FIB will provide both elements of the financing.

The first financing piece is the lease financing transaction with First Interstate Bank (FIB). This will refinance the amounts that were approved and financed with the Montana Board of Investments. As additional construction funds are needed, FIB will provide them through completion of the project. It is estimated that total amount financed through this structure will be up to \$14 million. This includes \$12-\$13 million project costs and \$1 million in legal and financing costs. This will be paid for by the departments that occupy City Hall, the receipt of tax credit proceeds, and proceeds from the sale of existing city hall. The resolution Approving Lease Purchase Documents provides the description of the documents and what each will do associated with this portion of the project.

The second portion of the financing structure are the elements related to the historic tax credits. This resolution will provide the means for the City to recognize the proceeds from historic tax credits. Through approval of this resolution the City will establish two LLCs the Manager LLC (which the City Finance Director is appointed as the manager of for purposes of performing the obligations of the Manager LLC) and the Landlord LLC (which the City Finance Director, as the manager of the Manager LLC will perform the obligations of the Landlord LLC). The Landlord LLC will be a partnership between the Manager LLC and FIB. Through this partnership, FIB will provide funds for the tax credits, which are estimated to be a net amount to the City of approximately \$5 million. Through this structure the City will maintain fee title ownership of the building, but will lease the building to the taxable entity (Landlord LLC) for a term that transfers ownership from a tax perspective. The Landlord LLC will then lease the building back to the City.

The chart below depicts the financing structure that will be established if all items are approved. The dollar amounts below are estimates and will be finalized prior to closing.



ALTERNATIVES

No council action will occur during the work session. However, the resolutions will be included on the November 12 City Council Meeting for consideration. The resolutions must be approved or not approved together. If they are not approved, the City will have to finance the entire project through a lease financing structure over the term of 15

years. Additionally, the City will have costs associated with development of the legal documents and structure, which were previously approved by City Council, and will need to identify a source of funds to pay for this work.

FISCAL EFFECTS

The lease financing structure will allow for the City to borrow the needed construction funds to complete the new city hall project. The interest rate for the lease financing structure will be established prior to closing based upon the current FHLB 5/15 amortizing rate is plus 200 basis points. As of 10/29/2024 that rate would be 6.252%. This structure will allow for prepayment as funds are available so the amount financed can be reduced. It is estimated that the total amount financed will be \$14 million for the project plus the legal and banking costs for the entire structure. The maximum amount authorized to be financed is \$14 million.

The historic tax credit structure will provide a gross estimated \$7.8 million to the transaction. After consultant and financing fees are paid and a portion of the transaction proceeds are held back for repayment to FIB in accordance with IRS regulations, the net amount to the City is approximately \$5 million. The recommendation is to use the proceeds from this transaction to reduce the lease financed amount.

The total estimated project cost at this date are \$46,268,074. This includes all construction costs, the initial purchase, and owner provided costs. The purchase and construction costs were largely funded by cash of approximately \$34 million and \$14 million through lease financing. The additional financed amounts (estimated at \$1.8 million) will cover the legal and financing costs associated with the tax credit structure. When the tax credits are realized at the City, they will be used to reduce the financed amount. However, until that time, which is expected to occur in mid to late 2025, the City will have payments on the entire amount financed, which could be as much as \$1.47 million per year.

Attachments

Lease Purchase Finance Resolution
Historic Tax Credit Structure Resolution
Master Lease Exhibit
Manager Operating Agreement Exhibit
Landlord Operating Agreement Exhibit
Ground Sublease Exhibit
Development Agreement Exhibit
Contribution Agreement Exhibit
Forbearance Agreement Exhibit

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “RESOLUTION RELATING TO A LEASE PURCHASE FINANCING; APPROVING THE TERMS AND CONDITIONS OF THE FINANCING AND AUTHORIZING THE EXECUTION OF DOCUMENTATION RELATING THERETO” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on November 12, 2024, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____.

WITNESS my hand and seal officially this 12th day of November, 2024.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO A LEASE PURCHASE
FINANCING; APPROVING THE TERMS AND CONDITIONS
OF THE FINANCING AND AUTHORIZING THE EXECUTION
OF DOCUMENTATION RELATING THERETO

BE IT RESOLVED by the City Council (the “Council”) of the City of Billings, Montana (the “City”), as follows:

Section 1. Recitals.

1.01. This Council has previously determined to purchase the former federal courthouse building located at 316 North 26th Street in the City, and to undertake renovations of and improvements to the former federal courthouse building to make it suitable for use as a new City Hall and related uses (the “Project”). Pursuant to Resolution No. 24-11191, adopted by the Council on March 25, 2024, the City entered into a lease purchase financing agreement under the Montana Board of Investment’s INTERCAP program for the purpose of providing interim financing for the Project (the “BOI Financing”).

1.02. Pursuant to Resolution No. 24-11207, adopted by the Council on June 24, 2024, City staff have negotiated with First Interstate Bank (“FIB”) the terms of a long-term lease purchase financing with respect to the Project in the amount of up to \$14,000,000 (the “Lease Purchase Financing”) and have negotiated with FIB Battin, LLC, an affiliate of FIB, the terms of a historic tax credit transaction. The terms of the historic tax credit transaction are presented to the Council by separate resolution substantially simultaneously herewith.

1.03. The City proposes to effectuate the Lease Purchase Financing by entering into a Ground Lease with FIB, substantially in the form attached hereto as Exhibit A (the “Ground Lease”), pursuant to which the City will lease the real property underlying the Project to FIB, and a Lease Purchase Agreement with FIB, substantially in the form attached hereto as Exhibit B (the “Lease Purchase Agreement”), pursuant to which the City will lease the Project and underlying real property back from FIB.

1.04. The rental payments payable by the City pursuant to the Lease Purchase Agreement (the “Rental Payments”) shall constitute current expenses of the City and shall not constitute or be construed to be debts of the City in contravention of any constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained in the Ground Lease or Lease Purchase Agreement constitute a pledge of the City’s general tax revenues, funds or money. The Rental Payments shall 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 City has not pledged the full faith and credit or taxing power of the City to payment of amounts due under the Ground Lease or Lease Purchase Agreement.

Section 2. Approval of Lease Purchase Financing, Ground Lease and Lease Purchase Agreement. The City hereby approves the Lease Purchase Financing and the forms of the Ground Lease and the Lease Purchase Agreement, each in substantially the form attached hereto.

Each of the Mayor and the City Administrator is hereby authorized and directed to approve, execute and deliver to FIB the Ground Lease and the Lease Purchase Agreement, together with such modifications thereto as may be approved by such officers, which approval shall be conclusively evidenced by the execution thereof. Each of the Mayor, the City Administrator, the City Clerk and the City Finance Director is also authorized to enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith, in the opinion of Dorsey & Whitney LLP, as special counsel to the City, or as may be reasonably required by FIB. All actions taken to date by officers and staff of the City on behalf of the City in connection with the Lease Purchase Financing are hereby ratified and confirmed. The City hereby authorizes and directs City staff to proceed with prepayment in full of the BOI Financing with proceeds of the Lease Purchase Financing on the closing date of the Lease Purchase Financing, which is expected to be on or about November 20, 2024.

Section 3. Costs and Expenses. The City approves and authorizes payment of costs and expenses of entering into the Lease Purchase Financing, including out-of-pocket costs and expenses of FIB; fees and costs of counsel to the City and FIB; fees, costs and expenses of consultants and other third parties; recording and filing fees; title insurance premiums; and other costs and expenses as are reasonably related to the Lease Purchase Financing.

Section 4. Transcript Certification. The officers of the City are directed to furnish to Dorsey & Whitney LLP and to FIB certified copies of all proceedings and information in their official records relevant to the authorization of the Ground Lease and Lease Purchase Agreement, and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and enforceability of the Ground Lease and Lease Purchase Agreement, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

Section 5. Effective Date. This Resolution shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Passed by the City Council of the City of Billings, Montana, this 12th day of November, 2024.

Mayor

Attest: _____
City Clerk

EXHIBIT A

FORM OF GROUND LEASE

GROUND LEASE AGREEMENT

between

CITY OF BILLINGS, MONTANA
as Ground Lessor

and

FIRST INTERSTATE BANK
as Ground Lessee

Dated as of [____], 2024

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This **GROUND LEASE AGREEMENT** dated as of [____], 2024 (this “Ground Lease”), is executed by **CITY OF BILLINGS, MONTANA**, a duly organized municipality of the State of Montana (the “City”), as ground lessor, and **FIRST INTERSTATE BANK**, a national banking corporation (the “Bank”), as ground lessee.

RECITALS

WHEREAS, the City owns the real property legally described in Exhibit A, located in Yellowstone County, Montana (the “Land”);

WHEREAS, the City proposes to lease the Land to the Bank pursuant to this Ground Lease; and

WHEREAS, pursuant to a Lease-Purchase Agreement dated as of the date hereof, between the Bank, as lessor, and the City, as lessee (the “Lease”), the City will sublease the Land from the Bank and lease certain improvements thereon (as further described in the Lease, the “Improvements,” and together with the Land, the “Project”) from the Bank, with an option to purchase.

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 LEASE AND TERM

. Subject to and upon the terms, conditions, covenants and undertaking hereinafter set forth, the City hereby leases the Land to the Bank, and the Bank hereby leases the Land from the City for the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, for a term commencing on the date on which this Ground Lease is executed, and ending on [____], 2044 (the “Expected Termination Date”), unless the term of this Ground Lease 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 Bank 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 acquire, construct, operate and maintain the Improvements and lease the Land to the Bank;
- (c) the City has authority to execute and deliver this Ground Lease, 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 Lease 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 Lease, the City has complied with all open meeting laws, all public bidding laws and all other State and federal laws applicable to this Ground Lease, the lease of the Land and the acquisition, construction, operation and maintenance of the Improvements;
- (f) the execution and delivery of this Ground Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Ground Lease 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 Permitted Encumbrances (as such term is defined in the Lease);
- (h) the Land is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance that would prohibit or materially interfere with the acquisition, construction, operation and maintenance of the Improvements on the Land, as contemplated by the Lease;
- (i) 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;
- (j) the purpose or intended use of the Improvements is a permitted, conditional, interim, or accessory use, and is not a prohibited use, under applicable zoning regulations or is otherwise permitted by law, resolution or other land use agreement or arrangement;
- (k) 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;
- (l) to the best of the knowledge of the City, (i) no Hazardous Materials (as defined in the Lease) have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Land, and (ii) no above ground or underground tanks have been located under, in or about the Land and subsequently removed or filled;
- (m) to the best of the knowledge of the City, the Land is not located in a flood hazard area;

- (n) the City has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby the City's interest in any property now or hereafter included in the Project will be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Ground Lease and the Lease; and
- (o) the City has duly executed and entered into the HTC Ground Lease and the Master Lease (each, as defined in the Lease).

. The Bank represents to and covenants with the City that the Bank has authority to execute and deliver this Ground Lease, to enter into the transaction contemplated hereby, and to perform all of its obligations hereunder; that the officers of the Bank executing and delivering this Ground Lease have been duly authorized to do so; and that the execution and delivery of this Ground Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Ground Lease by the Bank 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 Bank is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Bank or any of its property, of any court or governmental body.

ARTICLE III

TERMINATION

. Subject to the other provisions of this Ground Lease, this Ground Lease shall terminate prior to the Expected Termination Date, upon the occurrence of any one of the following events:

- (a) payment by the City of all Rental Payments (as defined in the Lease) in the ordinary course, or prepayment by the City of the Lease pursuant to Sections 10.1 or 10.2 of the Lease;
- (b) termination of the Lease by the City by Nonappropriation (as defined in the Lease), and the receipt by the Bank of amounts from the sublease and/or lease of the Bank's leasehold interest in the Land and its interest in the Improvements sufficient to pay to the Bank an amount that will equal the outstanding Principal Portion (as defined in the Lease) of all Rental Payments unpaid under the Lease; or
- (c) termination of the Lease by the Bank upon the occurrence of an event of default by the City thereunder, and the receipt by the Bank of amounts from the sublease and/or lease of the Bank's leasehold interest in the Land and its interest in the Improvements sufficient to:
 - i. pay to the Bank an amount which will equal the outstanding Principal Portion (as defined in the Lease) of all Rental Payments unpaid under the Lease as of the last day of the Fiscal Year of the City in effect when the event of default occurs; and
 - (1) pay to the Bank an amount which will equal all Rental Payments due under the Lease through the end of the Fiscal Year of the City in effect when the event of default occurred and which remain unpaid by the City.

. The amounts referred to in Section 3.1, paragraphs (b) and (c), respectively, shall be known as the “Reimbursement Amount.” The Reimbursement Amount will be recovered by allowing the Bank first to retain from any sublease and/or lease rentals an amount equal to interest on the outstanding Reimbursement Amount at the rates per annum then applicable to the Lease. Any amounts of lease or sublease rentals distributed to the Bank after payment of interest shall be credited to the payment of the Reimbursement Amount.

Use of the Improvements by Bank or any subsidiary or affiliate of Bank, other than for the purpose of assuming control, making necessary changes in the Project, and the initial sublease and/or lease thereof, will be treated as the sublease and/or lease thereof on a monthly basis at the then-prevailing fair market value. In the event the Lease is terminated by the City by Nonappropriation, or terminated by the Bank upon the occurrence of an event of default by the City thereunder, the City may subsequently pay the Reimbursement Amount together with interest accrued thereon to the date of payment at the rates per annum then applicable to the Lease, in which case this Ground Lease shall be terminated.

- (a) all amounts received by Bank from any sublease and/or lease of the Project;
- (b) an analysis as to whether Bank has received the Reimbursement Amount and interest thereon, with all supporting calculations; and
- (c) the date, if any, in the next Fiscal Year of the City on which Bank expects to receive the Reimbursement Amount and interest thereon.

Such written report must be verified, at the expense of the City in the event the Lease is terminated by the Bank, but otherwise at the expense of the Bank, by a certified public accountant or firm of certified public accountants not within the regular employ of the Bank. In the event that on the last day of any Fiscal Year of the City the Bank has received the Reimbursement Amount and interest thereon, then all rentals with respect to any sublease and/or lease of the Project payable after the close of such Fiscal Year, as well as any rentals payable during such Fiscal Year in excess of the amounts Bank is entitled to receive pursuant to Section 4.2, shall be the property of the City. The City may, at its own expense, upon reasonable notice and at Bank’s offices during normal business hours, examine Bank’s records in so far as they relate to the Project and the Reimbursement Amount and interest thereon.

Section 1.2. Surrender of Project

. The Bank agrees that upon the termination of this Ground Lease 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 Bank or any assignee of Bank; provided, however, that in the event that the Project is subject to the rights of any sublessee and/or lessee of the Bank granted under any sublease and/or lease entered into in accordance with the terms of this Ground Lease after the termination of the Lease by the City by Nonappropriation or by the Bank upon the occurrence of an event of default by the City thereunder, the Bank agrees to assign and set over to the City the Bank’s entire interest in the Project granted under this Ground Lease, subject only to the rights of such sublessees and/or lessees under any such subleases or leases.

. Except in the event the Lease is terminated by the City by Nonappropriation or by the Bank upon the occurrence of an event of default by the City thereunder, in which case the Bank may possess and use the Project in accordance with the provisions of the Lease, the Bank shall use the Land solely for the purpose of subleasing it to the City pursuant to the Lease and for the acquisition, construction and operation, and the leasing of the Improvements to the City. The Bank will not use the Land or knowingly permit the Land to be used for any unlawful purpose.

. Subject to the terms of the Lease and the terms hereof, during the term of this Ground Lease, the City shall provide the Bank with the quiet use and enjoyment of the Land and the Bank shall peaceably and quietly have and hold and enjoy the Land, without suit, trouble or hindrance from the City.

. The Bank may assign this Ground Lease without the written consent of the City as provided in Section 11.1 of the Lease. If the Lease is terminated by the City by Nonappropriation or by the Bank upon the occurrence of an event of default by the City thereunder, the Bank may assign its interests in this Ground Lease and may use, sublease and/or lease the Project without the consent of the City.

Section 1.4. Further Assurances. The City shall, upon the reasonable request by the Bank, 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.

Section 1.5. Covenants Regarding Hazardous Materials. The City shall comply with its covenants regarding Hazardous Materials in the Lease and the provisions of the Lease containing such covenants are hereby incorporated into this Ground Lease by reference as if the same were fully set forth herein.

ARTICLE II

DEFAULT BY BANK; CITY REMEDIES

. It will be considered an “event of default” or a “default” hereunder if the Bank fails to (a) pay the consideration provided herein; (b) observe or perform any of the obligations of Bank otherwise provided herein; or (c) observe or perform any of its obligations under the Lease in accordance with the terms thereof.

. Upon the occurrence of an event of default by Bank hereunder which remains uncured for 30 days after receipt by the Bank of written notice from the City describing the event of default, the City may thereafter or at any time subsequently during the existence of such default, subject to its obligation to continue Rental Payments pursuant to the Lease and the rights of existing sublessees and/or lessees as provided in Section 3.4, (a) enter into and upon the Land and repossess the same, expelling and removing therefrom all persons and property, and (b) terminate this Ground Lease, holding Bank liable for damage for its default.

ARTICLE III

MISCELLANEOUS

. If any term or provision of this Ground Lease, or the application thereof to any person or circumstance, is to any extent deemed to be invalid or unenforceable, the remainder of this Ground Lease 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 Lease will be valid and enforceable to the fullest extent permitted by law.

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

. This Ground Lease 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 Lease 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 Lease or an abstract hereof in the real property records where the Land is located in the manner prescribed by law.

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

. The captions or headings in this Ground Lease 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 Lease.

. 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 Lease 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. For the avoidance of doubt Nonappropriation is not a default hereunder.

. There shall be no merger of this Ground Lease or the leasehold created by this Ground Lease 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.

. All written notices to be given under this Ground Lease are to be delivered in accordance with Section 13.1 of the Lease 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 Bank:	First Interstate Bank P.O. Box 30918 Billings, Montana 59116 Attn: Andrew Gott, VP Commercial Group Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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

FIRST INTERSTATE BANK

By: _____

Its: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY OF BILLINGS, MONTANA

By: _____

Its: Mayor

By: _____

Its: City Administrator

[COUNTERPART SIGNATURE PAGE TO GROUND LEASE AGREEMENT]

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

FORM OF LEASE PURCHASE AGREEMENT

After recording, return to:
Dorsey & Whitney LLP
125 Bank Street, Suite 600
Missoula, Montana 59802

LEASE-PURCHASE AGREEMENT

between

FIRST INTERSTATE BANK
as Lessor

and

CITY OF BILLINGS, MONTANA,
as Lessee

Dated as of [_____], 2024

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This **LEASE-PURCHASE AGREEMENT** dated as of [____], 2024 (the “Lease”), is executed by **FIRST INTERSTATE BANK**, a national banking association (the “Bank”), as lessor, and **CITY OF BILLINGS, MONTANA**, a municipality and political subdivision of the State of Montana (the “City”), as lessee.

RECITALS

WHEREAS, pursuant to Montana Code Annotated, Sections 7-1-4124 and 7-8-4104, the City is authorized to buy, sell, mortgage, rent, lease, hold, manage or dispose of any interest in real or personal property and to build or hire all necessary buildings for the use of the City; and

WHEREAS, on November 12, 2024, the City Council of the City adopted a resolution (the “Authorizing Resolution”) authorizing the execution of this Lease and the consummation of the transactions contemplated hereby; and

WHEREAS, City and Bank will enter into the Ground Lease (as defined herein) and this Lease to finance or refinance the acquisition and construction of improvements to and renovations of the Improvements (as defined herein).

NOW THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINED TERMS

. The capitalized terms used herein and in the exhibits hereto have the meanings set forth in this Section or elsewhere herein, unless otherwise stated:

“Amortization Date” means July 1, 2026.

“Applicable Interest Rate” means the interest rate used to calculate the Interest Portion of the Rental Payments. The initial Applicable Interest Rate is equal to [____]%¹ per annum, calculated on a 365/360 day basis, that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

“Business Day” means a day other than a Saturday, Sunday, United States national holiday or other day on which banks in Montana are permitted or required by law to close.

“Closing Date” means [____], 2024.

“Construction Costs” means the costs associated with the acquisition and construction of the Improvements.

¹ NTD: Interest rate to be set prior to closing date; rate will be equal to the Federal Home Loan Bank of Chicago daily rate for Fixed Rate Amortizing Advances with a term of 5 years and an amortization term of 15 years, plus 2.00%.

“Contractor” means any person or business hired by the City as a contractor to complete the Improvements or any portion thereof.

“Default Rate” means a rate of interest equal to 3% per annum over the Applicable Interest Rate.

“Disbursement Period” means the period commencing on the Closing Date and ending on March 31, 2026 during which funds are disbursed by the Bank to the City in accordance with Section 3.1.

“FHLB Index Rate” means the Federal Home Loan Bank of Des Moines daily rate for Fixed Rate Advances with a term of 5 years.

“Fiscal Year” means the twelve-month fiscal period of the City which commences on July 1 every year and ends on the following June 30.

“Ground Lease” means the Ground Lease Agreement dated as of the date hereof, between the City, as ground lessor, and the Bank, as ground lessee, relating to the Land.

“Hazardous Material” means (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (i) pose a hazard to the Project or other adjacent premises or to persons on or about the Project or other adjacent premises, (ii) cause the Project to be in violation of any local, state or federal law, rule, regulation or ordinance, or (iii) are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “pollutant or contaminant” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., (2) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq., (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., (4) the Clean Air Act, as amended, 42 U.S.C. § 7412, (5) the Toxic Substance Control Act, as amended, 15 U.S.C. § 2601 et seq., (6) the Clean Water Act, as amended, 33 U.S.C. § 1317 and 1321(b)(2)A, (7) the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, Montana Code Annotated, Title 75, Chapter 10, Part 7, and (8) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the City or its employees, the occupants of the Project or other adjacent premises or to persons on or about the Project or other adjacent premises.

“HTC Ground Lease” means the Ground Sublease Agreement, dated as of the date hereof, between the City, as lessor, and Former Federal Building Landlord, LLC, as lessee.

“Improvements” means the improvements located on the Land, as further described in Exhibit A.

“Interest Portion” means the portion of any Rental Payment designated as and comprising interest as shown in Exhibit B.

“Land” means the real property described legally described in Exhibit A.

“Lease Term” means the period during which this Lease is in effect as specified in Section 4.1.

“Master Lease” means the Master Lease, dated as of the date hereof, between the City as sublessee and Former Federal Building Landlord, LLC, as sublessor.

“Net Proceeds” means any insurance proceeds or condemnation award, paid with respect to the Project, remaining after payment therefrom of all expenses incurred in the collection thereof.

“Nonappropriation” means the determination of the governing body of the City not to appropriate money for any Fiscal Year of the City sufficient for the continued performance of this Lease by the City, as evidenced by the passage of a resolution stating such determination.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, Pub. L. 107-56 (2001).

“Permitted Encumbrances” means, as of any particular time, (a) liens for taxes and assessments not then delinquent, or which the City may, pursuant to Article VII, permit to remain unpaid; (b) this Lease and the Ground Lease and any amendments hereto; (c) the Ground Lease and any amendments thereto; (d) any mechanic’s, laborer’s, materialmen’s, supplier’s or vendor’s lien or right not filed or perfected in the manner prescribed by law, and any lien which the City may, pursuant to Article VII, permit to remain unpaid; (e) minor defects and irregularities in the title to the Project which do not, in the aggregate, in the opinion of the City, materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (f) easements or other rights that are for the benefit of the Project and authorized pursuant to Article VII and easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, that do not materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (g) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Project that do not materially impair the use of the Project for the purposes for which they are or may reasonably be expected to be held; (h) any obligations or duties affecting any portion of the Project of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit; (i) present and future valid zoning laws and ordinances; and (j) any encumbrances listed in Exhibit A.

“Prepayment Price” has the meaning given such term in Section 10.1.

“Principal Portion” means the portion of any Rental Payment designated as and comprising principal as shown in Exhibit B.

“Project” means the Land and the Improvements together.

“Rate Calculation Date” has the meaning given such term in Section 5.1.

“Rate Reset Date” means July 1, 2029 and July 1, 2034.

“Rental Payment” means each payment due from the City to the Bank on each Rental Payment Date during the Lease Term as shown in Exhibit B.

“Rental Payment Date” means the date upon which any Rental Payment is due and payable as shown in Exhibit B.

“State” means the State of Montana.

ARTICLE II

REPRESENTATIONS AND COVENANTS

. The City represents to and covenants with the Bank that

- (a) the City is a duly formed and validly existing municipal corporation of 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 acquire, construct, operate and maintain the Improvements;
- (c) the City has authority to execute and deliver this Lease, 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 Lease 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 Lease, the City has complied with all public bidding laws and all other State and federal laws applicable to this Lease, the sublease of the Land and lease of the Improvements and the acquisition, construction, operation and maintenance of the Improvements;
- (f) the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease 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 will use the Project during the Lease Term to carry out the governmental or proprietary purposes of the City;
- (h) subject to the provisions of Section 4.5, the officers of the City responsible for budget preparation will include in the annual budget request, for each Fiscal Year during the Lease Term, commencing with the Fiscal Year beginning July 1, 2025, moneys sufficient to pay and for the purpose of paying all Rental Payments and

other obligations of the City under this Lease, and will take all reasonable actions within their power to seek to have that portion of the budget approved;

- (i) the City has moneys available and sufficient to pay all Rental Payments and other obligations due under this Lease in the current Fiscal Year (if any);
- (j) the City presently intends to continue this Lease for a term sufficient to pay all the Rental Payments specified in Exhibit B as the same become due and payable, and reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated or budgeted and made available for this purpose;
- (k) this Lease does not constitute a general obligation of the City, and the full faith and credit and taxing powers of the City are not pledged for the payment of the Rental Payments or other amounts coming due, or other actions required to be performed, hereunder;
- (l) the governing body of City is not obligated to appropriate or otherwise provide moneys for the payment of the Rental Payments or any other amounts coming due hereunder in any future Fiscal Year, and in the event this Lease is terminated by the City by Nonappropriation, the City shall not be liable to the Bank, except as provided in Section 4.6;
- (m) the City does not rely on any warranty of the Bank, either express or implied, as to the title or condition of the Project or that it will be suitable to the City's needs, and recognizes that the Bank is not obligated to operate or maintain the Project or to expend any funds thereon, and acknowledges the Bank has made no such warranty either express or implied;
- (n) the City has good and merchantable title to the Land, subject only to Permitted Encumbrances;
- (o) the Land is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the acquisition, construction, operation and maintenance of the Improvements on the Land;
- (p) 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;
- (q) the Land is properly zoned for the purpose of the Improvements;
- (r) 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;
- (s) the Improvements will result in improvements which will be in compliance with all applicable building and design codes and the City's requirements;

- (t) to the best of the knowledge of the City, (i) no Hazardous Materials have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Land, and (ii) no above ground or underground tanks have been located under, in or about the Land and subsequently removed or filled;
- (u) no member of the governing body of the City or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the City or the Project or in the transactions contemplated hereby;
- (v) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the City, nor to the best knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the right of the City to execute this Lease or the ability of the City to make the payments required hereunder or to otherwise comply with the obligations contained herein, or to consummate the transactions contemplated; or (ii) the transactions contemplated by this Lease or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Lease; and
- (w) the City has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby the City's interest in any property now or hereafter included in the Project will be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Lease and the Ground Lease.

. The Bank represents to and covenants with the City that the Bank has authority to execute and deliver this Lease, to enter into the transaction contemplated hereby, and to perform all of its obligations hereunder; that the officers of the Bank executing and delivering this Lease have been duly authorized to do so; and that the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Bank 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 or any other restriction or any agreement or instrument to which the Bank is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Bank or any of its property, of any court or governmental body.

ARTICLE III

PAYMENT OF COSTS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS; LEASE AND SALE OF PROJECT

- (a) In order to ensure that moneys sufficient to pay all Construction Costs and costs of issuing the Lease will be available for such purposes when required, the Bank shall disburse to the

City, in accordance with this Section 3.1, up to \$[14,000,000], which amounts will be used by the City only to pay, reimburse or refinance Construction Costs and costs of issuing the Lease.

(b) As a condition precedent to the initial disbursement of funds on the Closing Date, the City shall deliver or cause to be delivered to the Bank a preliminary title commitment for and an extended coverage leasehold lender's title insurance policy issued by a title company selected by the City and acceptable to the Bank.

(c) The initial disbursement of funds shall be made on the Closing Date and shall include an amount sufficient to pay and discharge Property Schedule No. 1 to the Master Lease Purchase Agreement by and between the City and the Montana Board of Investments, which was used to provide interim financing of Construction Costs.

(d) The City may request additional disbursements of funds no more frequently than monthly by submitting to Bank:

- i. a disbursement request, substantially in the form attached hereto as Exhibit C, together with relevant invoices; and
- ii. conditional mechanic's and materialmen's lien waivers from the Contractor(s) with respect to the Construction Costs relating to the disbursement request being submitted, together with unconditional mechanic's and materialmen's lien waivers for work done or material supplied and paid from prior disbursement requests no later than 60 days following such payment.

(e) If moneys available to be disbursed by the Bank are not sufficient to pay all Construction Costs and complete the Improvements as planned, the Bank is not required to provide additional moneys. In such event, the City shall, without altering the Rental Payments, provide additional moneys or reduce the size or the scope of the Improvements so that the moneys in the Construction Account are sufficient to complete the Improvements without impairing the use or marketability thereof.

. The Bank hereby irrevocably appoints the City as its agent in connection with the acquisition and construction of the Improvements. The City, as agent of the Bank, has or will enter into all contracts with the Contractors providing for the acquisition and construction of the Improvements in accordance with City's specifications, and shall use its reasonable best efforts to promptly complete construction of the Improvements. The Bank shall have no obligation whatsoever with respect to the design, acquisition, construction, installation or operation of the Improvements and no obligation whatsoever with respect to the Improvements other than the obligations set forth in Section 3.1. Upon completion of the Improvements, the City shall execute and deliver to the Bank a Certificate of Acceptance substantially in the form of Exhibit D. If completion of the Improvements and delivery of the executed Certificate of Acceptance has not occurred by March 31, 2026, the City shall provide the Bank written notice of delay including an explanation of such delay and an estimated completion date for the Improvements.

. The Bank hereby subleases the Land and leases the Improvements to the City, and the City hereby subleases the Land and leases the Improvements from the Bank, upon the terms and

conditions set forth in this Lease. The Land is subleased, and the Improvements are leased, in its/their present condition, without representation or warranty of any kind by the Bank, and subject to (a) the rights of parties in possession, (b) the existing state of title, (c) all applicable legal requirements now or hereafter in effect and (d) Permitted Encumbrances. For the avoidance of doubt, the HTC Ground Lease, the Master Lease, and the transactions contemplated thereby are expressly permitted by this Lease and by the Ground Lease.

. The Bank shall provide the City with quiet use and enjoyment of the Project during the Lease Term and the City shall peaceably and quietly have and hold and enjoy the Project during the Lease Term, without suit, trouble or hindrance from the Bank, except as expressly set forth in this Lease and the Ground Lease. The Bank will, at the request and cost of the City, join in any legal action in which the City asserts its right to such possession and enjoyment, to the extent the Bank may lawfully do so.

. The Bank will have the right during normal business hours to examine and inspect the Project and such rights of access to the Project as may be reasonably necessary to inspect construction progress during the construction period and to cause the proper maintenance thereof in the event of failure by the City to perform its obligations hereunder; provided, however that such inspections shall not occur more often than monthly and upon not less than five (5) business days' prior written notice.

. To the extent required by law, the City shall cause each Contractor to provide a payment bond or bonds and a performance bond or bonds, or another form of financial guaranty covering performance of all contracts and payment for labor and materials.

. As between Bank and City, City assumes liability for all risk of loss during the acquisition, construction, installation and operation of the Improvements. City shall require that each Contractor maintain in force during the entire acquisition, construction and installation period of the Improvements, builder's risk or property damage insurance in an amount at least equal to the full value of all work done and materials and equipment provided or delivered by the Contractor, as well as comprehensive liability insurance, worker's compensation insurance and other insurance required by law or customarily maintained with respect to like projects.

. In the event a Contractor defaults under any contract related to the construction of the Improvements, the City will promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the City against such Contractor. The City agrees to advise the Bank, in writing, of the steps it intends to take in connection with any such default. If the City so notifies the Bank, the City may, in good faith, in its own name or in the name of the Bank, with notice to the Bank, prosecute or defend any action or proceeding or take other action involving the Contractor or surety which the City deems reasonable. In such event, the Bank shall cooperate fully with the City, but at the expense of the City. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, are to be paid into the Construction Account.

ARTICLE IV

LEASE TERM; TRANSFER OR SURRENDER OF PROJECT; NONAPPROPRIATION

. This Lease shall be in effect for a term commencing upon the execution and delivery hereof and ending as provided in Section 4.2.

. The Lease Term will end and the Lease will terminate upon the first of the following events to occur:

- a) payment by the City of all Rental Payments due hereunder;
- b) payment by the City pursuant to Sections 10.1 or 10.2 hereof;
- c) termination of this Lease by the City by Nonappropriation pursuant to Sections 4.5 and 4.6 hereof; or
- d) default by the City and election by the Bank to terminate this Lease pursuant to Article XII.

. Upon termination of the Lease pursuant to Section 4.2, clauses (a) or (b), full and unencumbered legal title to the Project will pass to the City, and the Bank will have no further interest therein. In such event, the Bank and its officers shall, at the expense of the City, take all actions necessary to authorize, execute and deliver to the City such documents as the City shall reasonably require to evidence the transfer of legal title to the Project to the City.

. Upon termination of the Lease pursuant to Section 4.2, clauses (c) or (d), the City shall surrender possession of the Project to the Bank in the condition in which it was originally received from the Bank, except as improved, repaired, rebuilt, restored, altered or added to as permitted or required hereby, ordinary wear and tear excepted. The City may, in such event, remove from the Project all personal property not financed with proceeds of the Lease or otherwise a part of the Project by operation of the Lease; provided, however, that the City shall repair any damage caused by such removal.

. Upon the occurrence of an event of Nonappropriation, the City may terminate this Lease, in whole but not in part, at the end of any Fiscal Year of the City, in the manner and subject to the terms specified in this Section and Section 4.6, and the City will not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years. The City may effect such termination by giving the Bank a written notice of termination and paying to the Bank any Rental Payments which are due and have not been paid at or before the end of its then-current Fiscal Year.

. In the event of termination of this Lease by the City by Nonappropriation, the City shall surrender possession of the Project for the term of the Ground Lease to the Bank in accordance with Section 4.4 and convey to the Bank or release its interest in the Project under this Lease within 10 days after the termination of the Lease Term, and the City will not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years; provided, however, that if the City has not delivered possession of the Project to the Bank in

accordance with Section 4.4 and conveyed to the Bank or released its interest in the Project within 10 days after the termination of the Lease Term, the Lease termination will nevertheless be effective, but the City will be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due which are attributable to the number of days during which the City fails to deliver possession of the Project to the Bank.

ARTICLE V

RENTAL PAYMENTS

- (a) During the period from the Closing Date to the day immediately preceding the Amortization Date, Rental Payments shall consist only of the Interest Portion, comprised of interest accrued on the amounts disbursed hereunder at the Applicable Interest Rate, and (subject to Nonappropriation) shall be made by the City on the Rental Payment Dates in accordance with invoices prepared and provided by Bank not less than 30 days in advance of such Rental Payment Date.
- (b) Promptly following the end of the Disbursement Period (and in any event, prior to adoption by the City of a final budget for the Fiscal Year commencing on the Amortization Date, and appropriation of amounts sufficient to make all Rental Payments for such Fiscal Year), the Bank shall prepare and provide to the City a schedule, to be attached as Exhibit B hereto, showing the Rental Payments due on each Rental Payment Date for the period commencing on the Amortization Date through the remainder of the Lease Term (showing both the Principal Portion and the Interest Portion for each Rental Payment Date). Rental Payments shall be based on amounts drawn during the Disbursement Period (and not repaid), amortized over the remaining Lease Term to provide substantially equal semiannual payments, and calculating the Interest Portion of the Rental Payment at the Applicable Interest Rate.
- (c) Promptly following each Rate Calculation Date (and in any event, prior to adoption by the City of a final budget for the Fiscal Year immediately following the applicable Rate Calculation Date, and appropriation of amounts sufficient to make all Rental Payments for such Fiscal Year), the Bank and the City shall replace Exhibit B with an updated schedule of Rental Payments reflecting the remaining Rental Payments at the Applicable Interest Rate.
- (d) On March 1, 2029 and March 1, 2034 (each, a “Rate Calculation Date”), the Applicable Interest Rate will be re-calculated for the period commencing on the Rate Reset Date immediately succeeding such Rate Calculation Date to the following Rate Reset Date or final day of the Lease Term, as the case may be, to a rate equal to the greater of (i) 3.75% or (ii) the FHLB Index Rate then in effect on such Rate Calculation Date plus 2.00%. Promptly following each Rate Calculation Date (and in any event, prior to adoption by the City of a final budget for the Fiscal Year commencing on the applicable Rate Reset Date, and appropriation of amounts sufficient to make all Rental Payments for such Fiscal Year), the Bank and the City

shall replace Exhibit B with an updated schedule of Rental Payments reflecting the interest rate adjustment and calculated and effective as of the applicable Rate Reset Date.

- (e) All Rental Payments will be paid to the Bank at its offices at the address specified in Section 13.1, or to such other person or entity to which the Bank has assigned such Rental Payments pursuant to Section 11.1, at such place as such assignee may from time to time designate by written notice to the City. The City shall pay the Rental Payments exclusively from moneys appropriated and legally available therefor, in lawful money of the United States of America, to the Bank or, in the event of assignment of the right to receive Rental Payments by the Bank, to its assignee. Notwithstanding any provisions to the contrary contained herein, neither the Bank nor any subsequent successor shall be required to present this Lease to the City to receive payment of any Rental Payments due hereunder.
- (f) The City shall pay Rental Payments during the Lease Term in the amounts and on the dates specified in Exhibit B. Where any Rental Payment Date shall not be a Business Day, then (notwithstanding any other provision of this Lease) payment of the corresponding Rental Payment need not be made on such date, but such Rental Payment may be made on the next succeeding Business Day with the same force and effect as if made on the Rental Payment Date.
- (g) To the extent that the FHLB Index Rate becomes unavailable during the Lease Term, the City and the Bank shall agree on a substitute index rate and applicable spread, or other mechanism for calculating the Applicable Interest Rate.

. The obligations of the City under this Lease, including its obligation to pay the Rental Payments in any Fiscal Year for which this Lease is in effect, constitute a current expense of the City for such Fiscal Year and do not constitute an indebtedness of the City within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by the City of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of the City in the annual budget of the City or Net Proceeds of the Project, to the payment of any Rental Payment or other amount coming due hereunder.

. A portion of each Rental Payment is paid as and represents the payment of interest. Exhibit B, as amended from time to time, sets forth the interest component of each Rental Payment, herein defined as the “Interest Portion”.

. Except as provided in Section 4.5 (regarding the City’s right to terminate the Lease by Nonappropriation), the obligation of the City to make Rental Payments shall be absolute and unconditional in all events. Notwithstanding any dispute between the City and the Bank, or any other person, the City shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall the City assert any right of set-off or counterclaim against its obligation to make such Rental Payments required under this Lease. The City’s obligation to make Rental Payments during the Lease Term shall not be abated through accident or unforeseen circumstances (including, without limitation, the occurrence of any environmental liability). However, nothing herein shall be construed to release the Bank from the performance of its obligations hereunder;

and if the Bank should fail to perform any such obligation, the City may institute such legal action against the Bank as the City may deem necessary to compel the performance of such obligation or to recover damages therefor.

ARTICLE VI

INSURANCE; CITY NEGLIGENCE; DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

. Unless self-insurance is provided by the City, the City shall take such measures as may be necessary to insure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition, maintenance, use or operation of the Project or any part thereof, is covered by a blanket or other general liability insurance policy maintained by the City. The Net Proceeds of all such insurance must be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid. All insurance policies or riders required by this Section must name the City and the Bank as insured parties.

. Unless self-insurance is provided by the City, the City shall procure and maintain continuously in effect during the Lease Term, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Project damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts and need not cover land and building foundations. The Net Proceeds of insurance required by this Section will be applied to the prompt repair, restoration or replacement of the Project or to the payment of the Prepayment Price as provided herein. Any Net Proceeds not needed for those purposes shall be paid to the City. All insurance policies or riders required by this Section must name the City and the Bank as insured parties.

. If required by State law, and unless self-insurance is provided by the City, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Project. Any insurance policy or rider required by this Section must name the City as insured party.

. Unless self-insurance is provided by the City, all insurance policies (or riders) required by this Article are to be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or through Montana Municipal Interlocal Authority. Insurance policies must contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 10 days before the cancellation or revision becomes effective. The City shall furnish to the Bank certificates evidencing insurance coverage as required herein throughout the Lease Term from time to time upon request of the Bank. The Bank may rely on such certificates and will have no duty or obligation to determine the sufficiency of such insurance certificates or the insurance coverage described therein.

. As between the Bank and the City, the City assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of

the City, the Bank or of third parties, and whether such property damage be to the City or the Bank's property or the property of others, which is proximately caused by the negligent conduct of the City, its officers, employees, agents and lessees, or arising out of the operation, maintenance or use of the Project by the City, its officers, employees, agents and lessees. To the extent permitted by law, the City hereby assumes responsibility for and agrees to reimburse the Bank for all out of pocket losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Bank that relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of the City, its officers, employees and agents. Notwithstanding anything in this Agreement to the contrary, the City shall not be liable for special, incidental, consequential or indirect damages or lost profits.

. If all or a substantial portion of the Project is destroyed or damaged by fire or other casualty, or if title to or the use of all or a substantial portion of the Project, or the interest of the City or the Bank in all or a substantial portion of the Project shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the City shall apply all Net Proceeds to (a) the prompt repair, restoration, modification, improvement or replacement of the Project or substantial portion thereof and this Lease will continue in effect, or (b) pay the Prepayment Price in whole in accordance with Section 10.2. In either event, all Net Proceeds not needed for such purposes shall belong to the City.

. If the Net Proceeds required to be applied pursuant to Section 6.6 are insufficient to (a) pay the cost of repair, restoration, modification, improvement or replacement of the Project or substantial portion thereof or (b) pay the Prepayment Price in whole in accordance with Section 10.2, as the case may be, the City shall pay any amounts required to complete the work or pay Prepayment Price in excess of the amount of the Net Proceeds after application of the Net Proceeds. If by reason of insufficiency of the Net Proceeds, the City pays costs of repair, restoration, modification, improvement or replacement of the Project pursuant to the provisions of this Section, the City is not entitled to any reimbursement therefor from the Bank nor is the City entitled to any diminution of the Rental Payments due with respect to the Project.

. The Bank shall cooperate fully with the City, at the expense of the City, in filing any proof of loss with respect to any insurance policy covering the casualties and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof and will, to the extent it may lawfully do so, permit the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Bank. In no event will the Bank voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the City.

ARTICLE VII

GENERAL MATTERS

. The City shall exercise due care in the use, operation and maintenance of the Project, and shall not use, operate or maintain the Project improperly, carelessly, in violation of any State and federal law or for a purpose or in a manner contrary to that contemplated by this Lease. The City

shall obtain all permits and licenses necessary for the construction, installation, operation, possession and use of the Project.

. The City may, at its expense, remodel the Project and make repairs, replacements, substitutes, additions, modifications and improvements thereto. All such additions, modifications and improvements will comprise part of the Project and be subject to the provisions of this Lease. Permitted additions, modifications and improvements may not in any way damage the Project, and the Project, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value not less than the value of the Project immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section may be disposed of by the City in such manner and on such terms as are determined by the City. The City will not permit any mechanic's or other lien to be established or remain against the Project for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided, however, that if any such lien is established, the City may in good faith contest any lien filed or established against the Project, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Bank will cooperate fully with the City in any such contest, upon the request and at the expense of the City.

. Except as expressly limited by this Section, the City shall pay all property taxes which are at any time lawfully assessed or levied against or with respect to the Project during the Lease Term, whether assessed against the City or the Bank. The City shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other utility charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Lease Term as and when the same become due. The City shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Bank, its successors or assigns.

The City may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility charges and other charges and, in the event of any such contest, may permit the taxes, assessments, utility charges or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The City will notify the Bank in writing prior to contesting any of the above referenced charges if it intends to leave such charges unpaid during the period of such contest.

The City, at its expense, shall comply with all applicable laws to the extent any failure to comply would have a material adverse effect on the Project or the Bank's rights hereunder, or would result in the levying of any criminal or civil penalties on either party, whether or not such compliance shall require changes in the Project or property owned by the City or interfere with the use and enjoyment of the Project or any part thereof. The City will take such actions, at the City's cost and expense, to enable the City to obtain all permits and similar authorizations needed for the use of the Project.

. During the Lease Term, the City shall provide the Bank with current audited financial statements within 210 days of the end of each fiscal year, or, if the completion of the City's audit is delayed through no fault of the City's, when reasonably available. Publication of the City's audited financial statements on the City's website and/or on the Electronic Municipal Market Access website (emma.msrb.org) shall satisfy this reporting requirement.

ARTICLE VIII

TITLE

. During the Lease Term, legal title to the Improvements and any and all repairs, replacements, substitutions, additions, modifications and improvements thereto will be in the Bank, subject to the City's interests under this Lease and Permitted Encumbrances; and legal title to the Land shall be in the City, subject to the Bank's interests under the Ground Lease and Permitted Encumbrances. At the end of the Lease Term, the provisions of Sections 4.3 and 4.4 apply.

. The City hereby pledges, assigns and grants to the Bank a security interest in all of the City's right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to the Improvements comprising equipment and fixtures (as such terms are defined in Article 9 of the Uniform Commercial Code as in effect from time to time in the State or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests), if any, to secure the prompt payment and performance of this Lease.

. During the Lease Term, the City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project, other than the respective rights of the Bank and the City as herein provided and Permitted Encumbrances. Except as expressly provided in Article VII and this Article, the City shall promptly, at its expense, take such action as may be duly necessary to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Bank for any out-of-pocket expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The Bank, however, does not have any obligation to incur any expense or take any action in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

. The City may, at any time and from time to time, in its sole discretion and at its own expense, install items of personal property in or upon the Project, which items shall be identified by tags or other symbols affixed thereto as property of the City. All such items so identified shall remain the sole property of the City, in which the Bank shall have no interest, and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Project resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the City from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Project.

ARTICLE IX

WARRANTIES

. The City shall, at its expense, keep the Project in reasonable order and condition in light of the use to which the Project will be put and will repair, restore and rebuild all building enclosures and other structures and improvements located therein to the extent provided for under this Lease ordinary wear and tear excepted. The Bank has no obligation to make or pay for any repairs, replacements, restorations, improvements, alterations, or additions whatsoever on or to the Project. The Bank shall have no obligation to test, inspect, service or maintain the Project under any circumstances, but such actions shall be the obligation of the City.

. The Bank hereby assigns to the City for and during the Lease Term, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Project or any portion thereof, and the Bank hereby authorizes the City to obtain the customary services furnished in connection with such warranties and guarantees at the City's expense.

. The Bank hereby assigns to the City for and during the Lease Term, all of its interest in patent indemnity protection provided by any Contractor with respect to the Project. Such assignment of patent indemnity protection by the Bank to the City shall constitute the entire liability of the Bank for any patent infringement by Project furnished pursuant to this Lease.

. THE PROJECT IS DELIVERED AS-IS, AND BANK MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROJECT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

ARTICLE X

OPTION TO PREPAY; DISCHARGE

. The City may prepay the outstanding Principal Portion of the Rental Payments at any time and from time to time, in whole or in part, at a Prepayment Price equal to 100% of the Principal Portion to be prepaid plus accrued and unpaid interest thereon, without premium; provided that in the event that the City refinances this Lease with a bank other than the Bank, the Prepayment Price shall be calculated as follows:

Period ²	Prepayment Price
[November 21, 2024 through November 20], 2025	Principal Portion to be prepaid x 103% plus interest accrued thereon

² NTD: Assumes closing on November 20, 2024.

[November 21, 2025 through November 20], 2027	Principal Portion to be prepaid x 102% plus interest accrued thereon
[November 21, 2027 through November 20], 2030	Principal Portion to be prepaid x 101% plus interest accrued thereon
[November 21], 2030 and thereafter	Principal Portion to be prepaid x 100% plus interest accrued thereon

No such premium shall be payable if payment of the Prepayment Price is made from funds the City has available therefor, from the receipt of historic tax credit investment funds, the sale of the prior city hall building, or otherwise.

Payment of the Prepayment Price constitutes the City’s purchase option hereunder. No interest of the Bank in the Project will be released unless payment of the Prepayment Price is in whole. In the event of payment of the Prepayment Price in whole, the provisions of Section 4.3 will apply. In the event of payment of the Prepayment Price in part, the prepaid Principal Portion shall be applied to the installments of the Principal Portion on a pro rata basis over the remaining Lease Term, and the Bank shall promptly provide the City with a revised Exhibit B reflecting the prepayment.

Section 10.2. Extraordinary Prepayment Option. Notwithstanding the optional prepayment provisions in Section 10.1, the City may prepay its obligations under this Lease in whole but not in part in the event of damage or destruction of the Project or taking thereof by eminent domain as described in Section 6.6 and 6.7, by paying to the Bank an amount equal to the Principal Portion of all Rental Payments thereafter coming due as set forth on Exhibit B, and any accrued and unpaid interest to the date of prepayment of the Lease, without premium. Upon such prepayment the provisions of Section 4.3 will apply.

. The City shall give written notice to the Bank of its intention to prepay pursuant to Section 10.1 or 10.2 not less than 5 (five) days in advance of the date of prepayment, and shall pay to the Bank on the date of prepayment, the Prepayment Price.

ARTICLE XI

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

. The Bank may not delegate or assign its obligations under this Lease, and no purported delegation or assignment thereof will be effective. However, all of the Bank’s right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder, the Ground Lease and the Project may be assigned and reassigned by Bank, in whole but not in part, to one or more assignees or subassignees at any time, without the consent of City; provided that any such assignment or reassignment shall be made only in accordance with applicable law and the provisions hereof, to (a) an affiliate of the Bank or (b) one or more banks. The Bank and its assignees further retain the right to sell or assign participation interests in this Lease to one or more entities listed in (a) or (b) of this Section 11.1, provided that any participation, custodial or similar agreement under which multiple ownership interests in this Lease are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity,

owner, servicer or other fiduciary or agent acting on behalf of all of the assignees to act on their behalf with respect to the rights and interests of the registered owner of this Lease, including with respect to the exercise of rights and remedies of the registered owner on behalf of such owners upon the occurrence of an event of default under this Lease. Written notice of such assignment must be provided to the City identifying the Bank's assignee. The City shall pay all Rental Payments due hereunder to the Bank, or, at the direction of the Bank, to the assignee named in the most recent assignment or notice of assignment filed with the City.

. The Bank acknowledges and agrees that the City's interest in the Project may be assigned or subleased by the City without the written consent of the Bank, provided that the City agrees that it shall enter into the Master Lease, pursuant to which it will sublease and occupy a majority of the net rentable floor space in the entire property.

. During the Lease Term and except as otherwise provided herein (including pursuant to the HTC Ground Lease, the Master Lease, and the other Permitted Exceptions), the City will not mortgage, sell, assign, transfer or convey its interest in the Project or any portion thereof during the Lease Term without the written consent of the Bank.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

. The following are "events of default" under this Lease and the terms "event of default" or "default" mean, whenever they are used with respect to this Lease, any one or more of the following events:

(a) Failure by the City to pay any Rental Payment or other payment required to be paid under this Lease during any Fiscal Year for which such funds have been appropriated at the time specified herein and the continuation of said failure for a period of ten (10) days after written notice is given by the Bank to the City stating that the payment referred to in such notice has not been received, or for a period of ten (10) days after telephonic or other electronic notice is given by the Bank, such telephonic or other electronic notice to be subsequently confirmed in writing.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease or the Ground Lease, other than as referred to in clause (a) of this Section, for a period of 45 days after written notice is given by Bank to City specifying such failure and requesting that it be remedied, unless the Bank agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period but can be corrected, the Bank will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its governmental or proprietary function or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions

of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

. Whenever any event of default hereunder has occurred and is continuing, the Bank may, at its option, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Applicable Interest Rate shall be increased to the Default Rate.

(b) The Bank, with or without terminating this Lease, may declare all Rental Payments appropriated by the City and due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by the City, whereupon such Rental Payments shall be immediately due and payable.

(c) The Bank may terminate this Lease, enforce the Ground Lease and repossess the Project by giving the City written notice to surrender the Project to the Bank for the remaining term of the Ground Lease, whereupon the City shall do so in the manner provided in Section 4.4. Notwithstanding the fact that the Bank has taken possession of the Project, the City shall continue to be responsible for the Rental Payments due during the Fiscal Year in effect when such default occurs. If this Lease has not been terminated, the Bank shall return the Project to the City at the City's expense when the event of default is cured.

(d) If the Bank terminates this Lease and takes possession of the Project, the Bank shall use its reasonable efforts to sell or lease its interest under the Ground Lease and in the Project or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. The Bank shall apply the proceeds of such sale or lease pursuant to Section 3.2 of the Ground Lease.

(e) Notwithstanding anything herein to the contrary, the Bank acknowledges and agrees that no event of default under this Lease or the Ground Lease shall permit the Bank to terminate the HTC Ground Lease.

. No remedy conferred upon or reserved to the Bank by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by the Bank or its assignee.

Section 12.4. Force Majeure. Notwithstanding anything to the contrary herein, the City cannot be deemed to be in default under this Lease if it is unable to carry out its obligations under this Lease, other than its obligation to pay Rental Payments when due, which obligation continues notwithstanding the provisions of this paragraph, by reason of *force majeure*. The term "*force majeure*" as used herein means, without limitation, any of the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or

canals; or any other cause or event not reasonably within the control of the City and not resulting from its negligence. The City agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the City from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of the City and the City shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the City unfavorable to the City.

ARTICLE XIII

ADMINISTRATIVE PROVISIONS

. All notices, certificates, legal opinions or other communications hereunder will be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below, or by certified mail, overnight delivery, or when delivered by electronic means; provided, however, that the Bank and the City, by notice given hereunder, may designate in writing different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

	If to the City:	City of Billings, Montana P.O. Box 1178 Billings, Montana 59103 Attention: City Finance Director
	If to the Bank:	First Interstate Bank P.O. Box 30918 Billings, Montana 59116 Attn: Andrew Gott, VP Commercial Group Manager

. If any term or provision of this Lease, or the application thereof to any person or circumstance, is to any extent deemed to be invalid or unenforceable, the remainder of this Lease 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 Lease will be valid and enforceable to the fullest extent permitted by law.

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

Section 13.4. Counterparts. This Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Lease by signing any such counterpart.

. This Lease 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 Lease or an abstract hereof in the real property records where the Land is located in the manner prescribed by law.

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

. The captions or headings in this Lease 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 Lease.

. 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.

. The City shall cause to be filed such financing statements or any copy of this Lease as are necessary or desirable to perfect and maintain the perfection and priority of the Bank's security interest granted in Section 8.2, if any, including financing statements to be filed in the real property records for purposes of perfecting the Bank's interest in fixtures (as defined in Article 9 of the Uniform Commercial Code as in effect from time to time in the State). The City further agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at City's expense, such supplements hereto and such further instruments or documents as may reasonably be required to establish and maintain a valid and perfected security interest as set forth in Section 8.2, as applicable, to correct any inadequate or incorrect description of the Project hereby leased or intended so to be, to vest in the Bank or any participant with or assignee of the Bank or any agent of either the right to receive and apply the payments of Rental Payments required hereunder, or to otherwise carry out the expressed intention of this Lease.

. In the event either party to this Lease should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other out of pocket 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 out of pocket expenses so incurred by the non-defaulting party.

Section 13.12. No Rating, CUSIP Number or Securities Depository. The Lease has not, is not expected to be, rated by a nationally recognized organization which regularly rates such obligations, assigned a CUSIP number or registered with or made eligible for registration with any securities depository, including but not limited to the Depository Trust Company, New York, New York.

Section 13.13. Patriot Act Notice. The Bank hereby notifies the City that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the City, including the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act. The City hereby agrees that it shall promptly provide such information upon request by the Bank.

Section 13.14. City's Notice Filings Related to Lease for SEC Rule 15c2-12. In connection with the City's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Undertaking") entered into by the City on and after January 24, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the Bank acknowledges that the City may be required to file with EMMA notice that the

City has incurred obligations under this Lease and notice of certain subsequent events reflecting financial difficulties in connection with this Lease. The City agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about the Bank or its affiliates: address and account information of the Bank or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Bank or its affiliates, unless otherwise required for compliance with the Rule or otherwise required by law. The City acknowledges that the Bank is not responsible for the City's compliance or noncompliance with the Rule or any Continuing Disclosure Undertaking.

Section 13.15. Bank Origination Fee. In accordance with its term sheet related to this Lease, the Bank shall be paid a one-time origination fee of \$67,500 at or prior to the execution and delivery of this Lease.

Section 13.16. No Advisory or Fiduciary Relationship. In connection with any aspect of the transactions contemplated by this Lease (including in connection with any amendment, waiver, or other modification hereof), the Bank acknowledges and agrees that (i) the transactions contemplated hereby are arm's length commercial transactions between the City and the Bank, (ii) the Bank is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent, or fiduciary for the City or any other Person, (iii) the Bank has not assumed a fiduciary responsibility in favor of the City or any other Person with respect to the Lease or the process leading to the parties' entering into this Lease and that the Bank has no other obligation to the City except the obligations expressly set forth in this Lease, (iv) the Bank does not provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or undertaken a solicitation of a municipal entity, within the meaning of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010), and (v) the City has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the transactions contemplated herein.

Section 13.17. Jury Trial Waiver. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS LEASE, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

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

FIRST INTERSTATE BANK

By: _____

Its: _____

STATE OF MONTANA)
) ss.
COUNTY OF YELLOWSTONE)

This instrument was signed or acknowledged before me on
_____, 2024, by _____, as
_____ of FIRST INTERSTATE BANK.

Notary Public
Commission Expiration: _____

(NOTARIAL SEAL)

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY OF BILLINGS, MONTANA

By: _____

Its: Mayor

By: _____

Its: City Administrator

STATE OF MONTANA)
) ss.
COUNTY OF YELLOWSTONE)

This instrument was signed or acknowledged before me on
_____, 2024, by William Cole and Chris Kukulski, as Mayor and
City Administrator, respectively, of CITY OF BILLINGS, MONTANA.

Notary Public
Commission Expiration: _____

(NOTARIAL SEAL)

[COUNTERPART SIGNATURE PAGE TO LEASE-PURCHASE AGREEMENT]

EXHIBIT A

DESCRIPTIONS OF LAND, IMPROVEMENTS AND CERTAIN PERMITTED ENCUMBRANCES

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.

DESCRIPTION OF IMPROVEMENTS

The former federal courthouse at 316 North 26th Street in downtown Billings, Montana, consisting of an approximately 211,141 square foot building with a basement level including parking and mechanical systems and five stories of office space.

CERTAIN PERMITTED ENCUMBRANCES

HTC Ground Lease

Master Lease

[Schedule II exceptions, including sublease to County]

EXHIBIT B

RENTAL PAYMENT SCHEDULE

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

First Interstate Bank
Billings, Montana

Ladies and Gentlemen:

In accordance with the terms of the Lease Purchase Agreement dated as of [_____], 2024 (the "Lease"), between First Interstate Bank (the "Bank") and the undersigned (the "City"), the City hereby requests that the Bank make a disbursement in the amount or amounts set forth below to the order of the payee or payees named below. Capitalized terms used herein are used with the meanings given to them in the Lease:

<u>Name and Address of Payee</u>	<u>Description of Construction Cost</u>	<u>Amount</u>
--------------------------------------	---	---------------

The undersigned hereby states and certifies that:

(a) The amounts set forth above have been paid or incurred and were necessary for the acquisition, construction, installation or equipping of the Improvements. Related invoices are attached hereto.

(b) None of the costs set forth above was included in any prior disbursement request. The persons listed on this disbursement request are entitled to payment or, in the case of reimbursement to the City, have been paid, in the amount listed.

(c) No default or Nonappropriation by the City has occurred and is continuing under the Lease, and all representations and warranties made by the City in the Lease are true and correct on and as of the date of this disbursement request with the same effect as if made on such date.

(d) Attached hereto are conditional mechanic's and materialmen's lien waivers for work done or materials supplied relating to this disbursement request.

(e) To date, the following amounts have been disbursed pursuant to Section 3.1 of the Lease:

Amount paid from previous Draw Requests

Amount of this Draw Request

Total paid to date (including this Draw Request)

CITY OF BILLINGS, MONTANA

By: _____

Title: _____

Date: _____

EXHIBIT D

FORM OF ACCEPTANCE CERTIFICATE OF CITY

First Interstate Bank
Billings, Montana

Ladies and Gentlemen:

In accordance with the terms of the Lease Purchase Agreement dated as of [_____], 2024 (the "Lease"), between First Interstate Bank (the "Bank") and the undersigned (the "City"), the City hereby certifies and represents to and agrees with Bank as follows:

The Improvements, as such term is defined in the Lease, have been constructed and accepted on the date indicated below.

The City has conducted such inspection and/or testing of the Improvements as it deems necessary and appropriate and hereby acknowledges that it accepts the Improvements for all purposes.

CITY OF BILLINGS, MONTANA

By: _____

Title: _____

Date: _____

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “RESOLUTION RELATING TO A HISTORIC TAX CREDIT TRANSACTION; APPROVING THE TERMS AND CONDITIONS OF THE TRANSACTION AND AUTHORIZING THE EXECUTION OF DOCUMENTATION RELATING THERETO” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on November 12, 2024, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____.

WITNESS my hand and seal officially this 12th day of November, 2024.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO A HISTORIC TAX CREDIT TRANSACTION; APPROVING THE TERMS AND CONDITIONS OF THE TRANSACTION AND AUTHORIZING THE EXECUTION OF DOCUMENTATION RELATING THERETO

BE IT RESOLVED by the City Council (the “Council”) of the City of Billings, Montana (the “City”), as follows:

Section 1. Recitals.

Section 1.01 This Council has previously determined to purchase the former federal courthouse building located at 316 North 26th Street in the City (the “Building”), and to undertake renovations of and improvements to the Building to make it suitable for use as a new City Hall and related uses (the “Project”). The City, in consultation with Brian Wishneff and Associates, LLC, its tax credit consultant, has determined that the Project will qualify for the federal historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986 (the “Federal Tax Credits”) and the State of Montana tax credit allowable pursuant to Section 15-31-151, Montana Code Annotated (the “State Tax Credits”).

Section 1.02 Pursuant to Resolution No. 24-11207, adopted by the Council on June 24, 2024, City staff have negotiated with a historic tax credit investor, FIB Battin, LLC (the “HTC Investor”), the terms of a historic tax credit transaction with respect to the Project, and have negotiated with First Interstate Bank (“FIB”), an affiliate of the HTC Investor, the terms of a long-term lease purchase financing with respect to the Project. The terms of the long-term lease purchase financing are presented to the Council by separate resolution substantially simultaneously herewith.

Section 1.03 In connection with the lease purchase financing, the City will enter into a Ground Lease with FIB (the “Ground Lease”), pursuant to which the City leases the real property underlying the Project to FIB, and a Lease Purchase Agreement with FIB (the “Lease Purchase Agreement”), pursuant to which the City leases the Project and underlying real property back from FIB.

Section 1.04 In connection with the historic tax credit transaction:

(a) the City will form a Montana limited liability company, designated “Former Federal Building Manager, LLC” (the “Company”), of which the City shall be the sole member, and the City shall enter into an operating agreement with respect to the Company (the “Company Operating Agreement”), pursuant to which Andy Zoeller, the City Finance Director, will serve as the manager of the Company;

(b) the Company and the HTC Investor will form a Montana limited liability company, designated “Former Federal Building Landlord, LLC” (the “Landlord”), of which the

Company and the HTC Investor will be the sole members, and the City and the HTC Investor will enter into an operating agreement with respect to the Landlord (the "Landlord Operating Agreement"), pursuant to which the Company will serve as the managing member of the Landlord (the "Managing Member");

(c) the City will enter into (i) a Ground Sublease Agreement, by and between the City and the Landlord (the "Ground Sublease"), pursuant to which the City will grant a sub-leasehold interest in the Property to the Landlord and which will evidence a loan from the City to the Landlord as provided therein (the "Loan"); (ii) a Master Lease Agreement, by and between the Landlord and the City (the "Master Lease"), pursuant to which the Landlord will grant a further sub-leasehold interest in the Property to the City; (iii) a Forbearance Agreement, by and among the City, the Landlord, the Bank and the HTC Investor (the "Forbearance Agreement"), pursuant to which the City, the Landlord and the Bank will agree to temporarily forbear from exercising certain rights with respect to the Property under the Ground Lease, the Lease Purchase Agreement and the Ground Sublease; (iv) a Development Agreement, by and between the City and the Landlord (the "Development Agreement"), pursuant to which the City is appointed by the Landlord to oversee the Project; and (v) a Contribution Agreement, by and among the City, the Company and the Landlord (the "Contribution Agreement"), pursuant to which the City will contribute to the Company its capital expenses with respect to the Project (the "Pre-Incurred Costs") and thereafter the Company will contribute the Pre-Incurred Costs to the Landlord in exchange for an interest in the Landlord (the "Company Contribution"); and

(d) The HTC Investor will make a capital contribution to the Landlord in one or more installments pursuant to the Landlord Operating Agreement (the "Investor Member Contribution"). The Investor Member Contribution shall equal the sum of (i) with respect to the Federal Tax Credits allocated to the Investor Member, 20% of the federal qualified rehabilitation expenses multiplied by 89% and (ii) with respect to the State Tax Credits allocated to the Investor Member, 25% of the amount the Investor Member claims with respect to the Federal Tax Credits multiplied by 92%, in each case subject to adjustment as set forth in the Landlord Operating Agreement.

Section 1.05 Forms of Documents. Forms of the following documents and agreements have been provided to this Council (collectively, the "Transaction Documents"):

- (a) Company Operating Agreement;
- (b) Landlord Operating Agreement;
- (c) Ground Sublease;
- (d) Master Lease;
- (e) Forbearance Agreement;
- (f) Development Agreement; and
- (g) Contribution Agreement.

Section 2. Approval of Historic Tax Credit Transaction. This Council hereby determines that it is in the best interests of the City and the Project to enter into, undertake and perform the historic tax credit transaction described in Section 1.04 hereof and in the Transaction Documents (collectively, the "Transaction") in order to provide additional financing for the Project.

Section 3. Approvals Relating to the Transaction and the Transaction Documents.

3.01. In furtherance of the Transaction, this Council hereby authorizes and directs City staff to do all things necessary or desirable to form the Company. This Council further approves the Company Consent, in substantially the form attached hereto as Exhibit A, and the Company Operating Agreement in substantially the form provided to this Council, and authorizes and directs the Mayor, City Administrator and City Clerk to execute and deliver the Company Consent and Company Operating Agreement in the name and on behalf of the City and authorizes and directs the City Finance Director, as Manager of the Company, to execute and deliver the Company Consent and Company Operating Agreement as Manager, in each case with such modifications as may be necessary or desirable and approved by the City Finance Director, the execution and delivery of any such document to conclusively establish approval thereof. Following execution of the Company Consent and the Company Operating Agreement, this Council acknowledges, approves, directs, ratifies and consents to the City Finance Director, as Manager of the Company, taking such actions and executing such documents (including execution of the Transaction Documents to which the Company is a party), for and on behalf of the Company and as Manager of the Company as may be necessary or desirable in connection with the Transaction and in accordance with the Company Operating Agreement.

3.02. In furtherance of the Transaction, this Council hereby authorizes and directs City staff to do all things necessary or desirable to form the Landlord. This Council further approves the Landlord Consent, in substantially the form attached hereto as Exhibit B, and the Landlord Operating Agreement in substantially the form provided to this Council, and authorizes and directs the City Finance Director, as Manager of the Company, to execute and deliver the Landlord Consent and Landlord Operating Agreement in the name and on behalf of the Company, in each case with such modifications as may be necessary or desirable and approved by the City Finance Director, the execution and delivery of any such document to conclusively establish approval thereof. Following execution of the Landlord Consent and the Landlord Operating Agreement, this Council acknowledges, approves, directs, ratifies and consents to the City Finance Director, as Manager of the Company, taking such actions and executing such documents (including execution of the Transaction Documents to which the Landlord is a party), for and on behalf of the Landlord and in the Company's capacity as Managing Member of the Landlord as may be necessary or desirable in connection with the Transaction and in accordance with the Landlord Operating Agreement.

3.03. Council hereby adopts, approves and confirms the Transaction and the Transaction Documents in substantially the forms provided to this Council, and authorizes and directs the Mayor, City Administrator and City Clerk to execute and deliver the Transaction Documents to which the City is a party, for and on behalf of the City, in each case with such modifications as may be necessary or desirable and approved by the Mayor, City Administrator

and City Clerk, the execution and delivery of any such document to conclusively establish approval thereof.

Each of the Mayor, the City Administrator, the City Clerk and the City Finance Director is also authorized to execute, enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith, in the opinion of Dorsey & Whitney LLP, as special counsel to the City, or as may be reasonably required by the HTC Investor. All actions taken to date by officers and staff of the City on behalf of the City in connection with the Transaction are hereby ratified and confirmed.

Section 5. Costs and Expenses. The City approves and authorizes payment of costs and expenses of the Transaction, including out-of-pocket costs and expenses of the HTC Investor and FIB; fees and costs of counsel to the City, the HTC Investor and FIB; fees, costs and expenses of consultants and other third parties; recording and filing fees; title insurance premiums; and other costs and expenses as are reasonably related to the Transaction, the closing of the Transaction, and performance by the City, the Manager and the Managing Member of their respective obligations in connection with the Transaction.

Section 6. Limitation of Liability. The obligations of the City, the Manager and the Managing Member under the Transaction Documents shall not constitute or be construed to be debts of the City in contravention of any constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained in the Transaction Documents constitute a pledge of the City's general tax revenues, funds or money. The City has not pledged the full faith and credit or taxing power of the City with respect to any obligations under the Transaction Documents.

Section 7. Transcript Certification. The officers of the City are directed to furnish to Dorsey and to the HTC Investor certified copies of all proceedings and information in their official records relevant to the authorization of the Transaction, and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and enforceability of the Transaction Documents, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

Section 8. Effective Date. This Resolution shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Passed by the City Council of the City of Billings, Montana, this 12th day of November, 2024.

Mayor

Attest: _____
City Clerk

EXHIBIT A

FORM OF COMPANY CONSENT

**JOINT WRITTEN CONSENT
OF THE MEMBER AND MANAGER OF
FORMER FEDERAL BUILDING MANAGER, LLC**

The undersigned, constituting the sole member and the manager of Former Federal Building Manager, LLC, a Montana limited liability company (the “Company”), as required by the Montana Limited Liability Company Act, does each hereby consent to, authorize and adopt the following resolutions, and shall file this written consent (this “Written Consent”) with the records and minutes of the Company. This Written Consent is to be effective as of _____, 2024.

ADOPTION OF OPERATING AGREEMENT AND APPOINTMENT OF MANAGER

WHEREAS, the City of Billings, Montana (the “City”), deems it advisable and in the best interests of the Company and the City to adopt and enter into the Operating Agreement of the Company, substantially in the form attached hereto as Exhibit A (the “Operating Agreement”), to govern the affairs of the Company, the conduct of the Company’s business, and the relations of its members.

NOW, THEREFORE, BE IT RESOLVED, that the form, terms, and provisions of the Operating Agreement are hereby authorized, adopted, approved, and confirmed in all respects, with such changes thereto as the Manager shall approve, the execution and delivery of any such document or taking of any such action to conclusively establish the approval by the Manager with respect thereto.

RESOLVED FURTHER, that the Company shall issue 1,000 membership interest units to the City as set forth in the Operating Agreement.

RESOLVED FURTHER, that the City hereby appoints Andy Zoeller to serve as the manager of the Company (the “Manager”) pursuant to the terms of the Operating Agreement and the Managing Member is authorized and directed to perform the obligations of the Manager under the Operating Agreement.

FINANCING OF THE PROJECT – LEASE PURCHASE FINANCING AND HISTORIC TAX CREDIT FINANCING

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”), and the real property upon which the Building is located (the “Land” and, together with the Building, the “Property”).

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 (the “Project”) will qualify for the federal historic rehabilitation tax credits allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986 and the State of Montana tax credit allowable pursuant to Section 15-31-151, Montana Code Annotated.

WHEREAS, in connection with the Project, Company and FIB Battin, LLC, a Delaware limited liability company (the “Investor Member”), will enter into that certain Operating Agreement of the Former Federal Building Landlord, LLC (the “Landlord”), substantially in the form attached hereto as Exhibit B

(the “Landlord Operating Agreement”), to govern the affairs of the Landlord, the conduct of the Landlord’s business, and the relations of its members.

WHEREAS, the Company will serve as the Managing Member of the Landlord pursuant to the terms of the Landlord Operating Agreement (the “Managing Member”).

WHEREAS, in connection with the Project, the City will enter into (i) a Ground Lease Agreement, by and between the City and First Interstate Bank, a national banking corporation and an affiliate of the Investor Member (the “Bank”), substantially in the form attached hereto as Exhibit C (the “Ground Lease”), pursuant to which the City will grant a leasehold interest in the Land to the Bank and (ii) a Lease Purchase Agreement, by and between the Bank and the City, substantially in the form attached hereto as Exhibit D (the “Lease Purchase Agreement”), pursuant to which the Bank will lease the Property to the City.

WHEREAS, in connection with the Project, the City will enter into (i) a Ground Sublease Agreement, by and between the City and the Landlord, substantially in the form attached hereto as Exhibit E (the “Ground Sub-Lease”), pursuant to which the City will grant a sub-leasehold interest in the Property to the Landlord and which will evidence a loan from the City to the Landlord as provided therein, (ii) a Master Lease Agreement, by and between the City and the Landlord, substantially in the form attached hereto as Exhibit F (the “Master Lease”), pursuant to which the Landlord will grant a further sub-leasehold interest in the Property to the City, (iii) a Forbearance Agreement, by and among the City, the Landlord, the Bank and the Investor Member, substantially in the form attached hereto as Exhibit G (the “Forbearance Agreement”), pursuant to which the City, the Landlord and the Bank will agree to temporarily forbear from exercising certain rights with respect to the Property under the Ground Lease, the Lease Purchase Agreement and the Ground Sub-Lease, and (iv) a Development Agreement, by and between the City and the Landlord, pursuant to which the City is appointed by the Landlord to oversee the Project (the “Development Agreement”).

WHEREAS, in connection with the Project, the Investor Member will make a capital contribution to the Landlord in one or more installments pursuant to the Landlord Operating Agreement (the “Investor Member Contribution”) in exchange for an interest in the Landlord as set forth on Schedule A to the Landlord Operating Agreement.

WHEREAS, in connection with the Project, the City, the Landlord and the Company will enter into that certain Contribution Agreement, substantially in the form attached hereto as Exhibit H (the “Contribution Agreement”), pursuant to which the City will contribute to the Company its capital expenses with respect to the Project (the “Pre-Incurred Costs”) and thereafter the Company will contribute the Pre-Incurred Costs to the Landlord in exchange for an interest in the Landlord as set forth on Schedule A to the Landlord Operating Agreement (the “Company Contribution”).

WHEREAS, the City deems it advisable and in the best interests of the Company and the City that the Landlord undertake the Project.

NOW, THEREFORE, BE IT RESOLVED, that the form, terms and provisions of the Landlord Operating Agreement, and the transactions contemplated thereby, are in the best interests of the Company and the City and are hereby authorized, adopted, approved, and confirmed in all respects.

RESOLVED FURTHER, that the Manager is hereby authorized to execute and deliver, in the name and on behalf of the Company, the Landlord Operating Agreement, with such changes thereto as the Manager shall approve, the execution and delivery thereof to conclusively establish the approval by the Manager with respect thereto.

RESOLVED FURTHER, that the Company will serve as the Managing Member of the Landlord pursuant to the terms of the Landlord Operating Agreement and the Manager is hereby authorized to execute and deliver, in the name and on behalf of the Managing Member of the Landlord, any such documents and undertake any such actions and transactions contemplated by the Landlord Operating Agreement, the execution and delivery of any such documents or taking of any such actions and transactions to conclusively establish the approval by the Managing Member of the Landlord with respect thereto.

RESOLVED FURTHER, that the form, terms and provisions of the Ground Lease, the Lease Purchase Agreement, the Ground Sub-Lease, the Master Lease, the Forbearance Agreement, the Development Agreement and the Contribution Agreement (collectively, the “Transaction Documents”), and the transactions contemplated thereby, are in the best interests of the Company and the City and are hereby authorized, adopted, approved, and confirmed in all respects.

RESOLVED FURTHER, that the Manager is hereby authorized to execute and deliver, in the name and on behalf of the Company, the Transaction Documents to which the Company is a party, each with such changes thereto as the Manager shall approve, and to cause the Company to perform the obligations of the Company under the Transaction Documents, and to take all other actions as may be necessary or desirable, in the discretion of the Manager and pursuant to the authority and limitations set forth in the Operating Agreement, to fully effectuate and consummate the transactions contemplated by the Transaction Documents, the execution and delivery of any such document or taking of any such action to conclusively establish the approval by the Manager with respect thereto.

OMNIBUS RESOLUTIONS

RESOLVED FURTHER, that that the Manager is hereby authorized and empowered, in the name and on behalf of the Company, to prepare, execute, deliver and file, as applicable, any and all documents, certificates or instruments and to take any and all actions as may be necessary or appropriate in order to carry out the intent or accomplish the purposes of the foregoing resolutions, the execution and delivery of any such document or taking of any such action to conclusively establish its authority with respect thereto.

RESOLVED FURTHER, that that any action taken by the Manager prior to the date hereof that, if taken after the date hereof, would have been authorized by the foregoing resolutions, is hereby affirmed, ratified, confirmed, authorized and approved in all respects.

RESOLVED FURTHER, that this Consent may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

[Signature page follows]

This joint action by written consent shall be effective as of the date first written above. By executing this joint action by written consent, each of the undersigned is giving written consent in favor of the above resolutions and consents. This joint action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this joint action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This joint action by written consent shall be filed with the minutes of the proceedings of the Company.

MEMBER:

CITY OF BILLINGS, MONTANA

By: _____
Its: Mayor

By: _____
Its: City Administrator

Attest: _____
City Clerk

MANAGER:

Andy Zoeller

Exhibit A

Form of Operating Agreement

[See Attached]

Exhibit B

Form of Landlord Operating Agreement

Exhibit C

Form of Ground Lease

[See Attached]

Exhibit D

Form of Lease Purchase Agreement

[See Attached]

Exhibit E

Form of Ground Sub-Lease

[See Attached]

Exhibit F

Form of Master Lease

[See Attached]

Exhibit G

Form of Forbearance Agreement

[See Attached]

Exhibit H

Form of Contribution Agreement

[See Attached]

EXHIBIT B

FORM OF LANDLORD CONSENT

**WRITTEN CONSENT
OF THE MEMBERS OF
FORMER FEDERAL BUILDING LANDLORD, LLC**

The undersigned, constituting all of the members of Former Federal Building Landlord, LLC, a Montana limited liability company (the “Company”), as required by the Montana Limited Liability Company Act, do hereby consent to, authorize and adopt the following resolutions, and shall file this written consent (this “Written Consent”) with the records and minutes of the Company. This Written Consent is to be effective as of [_____], 2024.

ADOPTION OF OPERATING AGREEMENT AND APPOINTMENT OF MANAGING MEMBER

WHEREAS, Former Federal Building Manager, LLC, a Montana limited liability company (the “Managing Member”) and FIB Battin, LLC, a Delaware limited liability company (the “Investor Member”) and, together with the Managing Member, the “Members”), deem it advisable and in the best interests of the Company and the Members to adopt and enter into the Operating Agreement of the Company, substantially in the form attached hereto as Exhibit A (the “Operating Agreement”), to govern the affairs of the Company, the conduct of the Company’s business, and the relations of its members.

NOW, THEREFORE, BE IT RESOLVED, that the form, terms, and provisions of the Operating Agreement are hereby authorized, adopted, approved, and confirmed in all respects, with such changes thereto as the Members shall approve, the execution and delivery of any such document or taking of any such action to conclusively establish the approval by the Members with respect thereto.

RESOLVED FURTHER, that the Members hereby appoint the Managing Member to serve as the Managing Member of the Company pursuant to the terms of the Operating Agreement and the Managing Member is authorized and directed to perform the obligations of the Managing Member under the Operating Agreement.

FINANCING OF THE PROJECT – LEASE PURCHASE FINANCING AND HISTORIC TAX CREDIT FINANCING

WHEREAS, the City of Billings, Montana (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”), and the real property upon which the Building is located (the “Land” and, together with the Building, the “Property”).

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 (the “Project”) will qualify for the federal historic rehabilitation tax credits allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986 and the State of Montana tax credit allowable pursuant to Section 15-31-151, Montana Code Annotated.

WHEREAS, in connection with the Project, the City will enter into (i) a Ground Lease Agreement, by and between the City and First Interstate Bank, a national banking corporation and an affiliate of the Investor Member (the “Bank”), substantially in the form attached hereto as Exhibit B (the “Ground Lease”), pursuant to which the City will grant a leasehold interest in the Land to the Bank and (ii) a Lease-Purchase Agreement, by and between the Bank and the City, substantially in the form attached hereto as Exhibit C (the “Lease Purchase Agreement”), pursuant to which the Bank will lease the Property to the City.

WHEREAS, in connection with the Project, the Company will enter into (i) a Ground Sublease Agreement, by and between the City and the Company, substantially in the form attached hereto as Exhibit D (the “Ground Sub-Lease”), pursuant to which the City will grant a sub-leasehold interest in the Property to the Company and which will evidence a loan from the City to the Company as provided therein, (ii) a Master Lease Agreement, by and between the Company and the City, substantially in the form attached hereto as Exhibit E (the “Master Lease”), pursuant to which the Company will grant a further sub-leasehold interest in the Property to the City, (iii) a Forbearance Agreement, by and among the City, the Company, the Bank and the Investor Member, substantially in the form attached hereto as Exhibit F (the “Forbearance Agreement”), pursuant to which the City, the Company and the Bank will agree to temporarily forbear from exercising certain rights with respect to the Property under the Ground Lease, the Lease Purchase Agreement and the Ground Sub-Lease, and (iv) a Development Agreement, by and between the City and the Landlord, pursuant to which the City is appointed by the Landlord to oversee the Project (the “Development Agreement”).

WHEREAS, in connection with the Project, the Investor Member will make a capital contribution to the Company in one or more installments pursuant to the Operating Agreement (the “Investor Member Contribution”) in exchange for an interest in the Company as set forth on Schedule A to the Operating Agreement.

WHEREAS, in connection with the Project, the City, the Company and the Managing Member will enter into that certain Contribution Agreement, substantially in the form attached hereto as Exhibit G (the “Contribution Agreement”), pursuant to which the City will contribute to the Managing Member its capital expenses with respect to the Project (the “Pre-Incurred Costs”) and thereafter the Managing Member will contribute the Pre-Incurred Costs to the Company in exchange for an interest in the Company as set forth on Schedule A to the Operating Agreement (the “Managing Member Contribution”).

WHEREAS, the Members deem it advisable and in the best interests of the Company and the Members that the Company undertake the Project.

NOW, THEREFORE, BE IT RESOLVED, that the form, terms and provisions of the Ground Lease, the Lease Purchase Agreement, the Ground Sub-Lease, the Master Lease, the Forbearance Agreement, the Development Agreement and the Contribution Agreement (collectively, the “Transaction Documents”), and the transactions contemplated thereby, are in the best interests of the Company and the Members and are hereby authorized, adopted, approved, and confirmed in all respects.

RESOLVED FURTHER, that the Managing Member is hereby authorized to execute and deliver, in the name and on behalf of the Company, the Transaction Documents to which the Company is a party, each with such changes thereto as the Managing Member shall approve, and to cause the Company to perform the obligations of the Company under the Transaction Documents, and to take all other actions as may be necessary or desirable, in the discretion of the Managing Member and pursuant to the authority and limitations set forth in the Operating Agreement, to fully effectuate and consummate the transactions contemplated by the Transaction Documents, the execution and delivery of any such document or taking of any such action to conclusively establish the approval by the Managing Member with respect thereto.

OMNIBUS RESOLUTIONS

RESOLVED FURTHER, that that the Managing Member is hereby authorized and empowered, in the name and on behalf of the Company, to prepare, execute, deliver and file, as applicable, any and all documents, certificates or instruments and to take any and all actions as may be necessary or appropriate in order to carry out the intent or accomplish the purposes of the foregoing resolutions, the execution and delivery of any such document or taking of any such action to conclusively establish its authority with respect thereto.

RESOLVED FURTHER, that that any action taken by the Managing Member prior to the date hereof that, if taken after the date hereof, would have been authorized by the foregoing resolutions, is hereby affirmed, ratified, confirmed, authorized and approved in all respects.

RESOLVED FURTHER, that this Consent may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

[Signature page follows]

This action by written consent shall be effective as of the date first written above. By executing this action by written consent, each of the undersigned is giving written consent in favor of the above resolutions and consents. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This action by written consent shall be filed with the minutes of the proceedings of the Company.

MEMBERS:

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

Andy Zoeller, Manager

**FIB BATTIN, LLC,
a Delaware limited liability company**

[name], [title]

Exhibit A

Form of Operating Agreement

[See Attached]

Exhibit B

Form of Ground Lease

[See Attached]

Exhibit C

Form of Lease Purchase Agreement

[See Attached]

Exhibit D

Form of Ground Sub-Lease

[See Attached]

Exhibit E

Form of Master Lease

[See Attached]

Exhibit F

Form of Forbearance Agreement

[See Attached]

Exhibit G

Form of Contribution Agreement

[See Attached]

MASTER LEASE AGREEMENT

This Master Lease Agreement (this “Lease”), dated as of _____, 2024, is entered into by and between FORMER FEDERAL BUILDING LANDLORD, LLC, a Montana limited liability company (“Landlord”), and the CITY OF BILLINGS, MONTANA (“Tenant”).

WHEREAS, the Tenant is the owner of real property legally described on Exhibit A hereto (the “Land”) and the improvements located thereon and having an address of 316 North 26th Street, Billings, Montana (collectively, the “Premises”); and

WHEREAS, the Tenant has leased the Land to First Interstate Bank (the “Bank”) pursuant to that certain Ground Lease dated as of the date hereof by and between the Tenant, 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 Tenant, as lessee (the “Lease Purchase Agreement”), the Tenant has subleased the Premises from the Bank; and

WHEREAS, the Tenant and the Landlord are parties to that certain Ground Sublease Agreement, dated as of the date hereof (the “Ground Sublease”), pursuant to which the Tenant has subleased the Premises to the Landlord for a period of 75 years; and

WHEREAS, the Tenant and Landlord now intend to provide for the lease of the Premises from the Landlord to the Tenant subject to and in accordance with the terms and conditions of this Lease.

1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, including all common access ways, stairways, elevators, lobbies, lavatories, sidewalks, parking areas and hallways (“Common Areas”).

2. Term. The term of this Lease commences on _____, 2024 (the “Commencement Date”) and shall continue for a period of nineteen and one-half years thereafter, unless terminated sooner as provided in this Lease (the “Term”).

3. Rent. Tenant agrees to pay Landlord “Rent” on the dates and in the amounts set forth on Exhibit B hereto, as such Exhibit B may be modified from time to time by written agreement of the parties hereto. Except as set forth to the contrary in this Lease, Tenant will pay Rent to Landlord at the address set forth in Section 29, or such other place in the United States as Landlord may designate, in advance on the first day of each month during the Term, without demand, deduction or setoff except as expressly permitted by this Lease. Rent will begin on the Commencement Date. Rent for partial months during the Term will be prorated based upon the number of days in such months.

4. Triple Net Lease. This Lease is a triple net lease requiring payment by Tenant of all operating expenses including without limitation all taxes (as provided in Section 6), utilities, costs applicable to the Premises under any restrictive covenants, costs of improvements (as permitted herein), maintenance, repairs, alterations, additions, replacements, and insurance relating to the Premises shall be at the sole cost and expense of Tenant. Tenant acknowledges and agrees that Landlord shall not have any obligation to make any improvements, repairs, alterations, additions, or replacements whatsoever to the Premises.

5. Utilities. Tenant shall pay the providers of metered utilities directly.

6. Taxes.

(a) Tenant shall pay 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 Lease upon, or arise in connection with the use of, the Premises by Tenant. Notwithstanding the foregoing, Landlord may elect to pay all such taxes, charges, or other assessments and obtain reimbursement from Tenant within 30 days after written verification of all such taxes, charges, or assessments paid by Landlord. The foregoing shall not require payment by Tenant of any income taxes assessed against Landlord or of any capital levy, franchise, estate, succession, inheritance or transfer tax due from Landlord.

(b) Tenant shall pay to the proper taxing authority, on or before their due date, all real property taxes payable with respect to the Premises for the Term of this Lease. All real property taxes with respect to tax periods in which the Commencement Date or termination date of the Term of this Lease fall will be prorated between Landlord and Tenant 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, Landlord may elect to pay such real property taxes and obtain reimbursement from Tenant within 30 days after written verification of such taxes paid by Landlord.

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

7. Possession. If Tenant pays the Rent and other charges and performs Tenant's obligations under this Lease, Landlord promises that Tenant may peaceably and quietly possess and enjoy the Premises under this Lease and make reasonable use of the Common Areas.

8. Use.

8.1 Use of Premises. Tenant shall use the Premises for governmental purposes and any other lawful uses.

8.2 Tenant Care of Premises. Tenant will keep the Premises in good order and condition. Tenant shall, at all times during the Term of the Lease, and at its own cost and expense,

repair, replace, and maintain in a good and safe condition the Premises and Common Areas, including all improvements and additions thereto, and shall use all reasonable precautions to prevent the waste, damage or injury to the Premises and Common Areas. In addition, Tenant shall be responsible (at its own cost and expense) for the care and maintenance of all grounds, parking and landscaping at the Premises, including regular lawn mowing and trimming, and for all snow removal from sidewalks and parking lots.

9. Regulated Substances and Environmental Laws. Except as provided below, Landlord shall clean up and mitigate the effect of any Regulated Substances or violations of Environmental Laws, other than those caused by Tenant. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any and all loss, cost, liability or expense, including, without limitation, reasonable attorneys' fees, resulting from the clean up or mitigation of Regulated Substances released by Tenant or the violation of Environmental Laws by Tenant. "Regulated Substances" means any substance for which its use, manufacture, storage, transport, treatment, release or disposal is regulated by an Environmental Law; asbestos containing materials; PCB's; petroleum products; and all other toxic, dangerous or hazardous chemicals, materials, substances, pollutants or wastes which pose a hazard to the health and safety of the occupants of the Premises as the same may be defined under the Environmental Laws. "Environmental Laws" means any and all federal, state or local statutes, ordinances, rules, regulations, standards, policies, or other requirements relating to pollution or protection of human health and safety and the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended by SARA, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, and the Clean Water Act and any similar law of the state, county or city in which the Premises are located.

10. Requirements of Law. Tenant is responsible for compliance with Legal Requirements which are applicable to all or any part of the Premises. Tenant hereby agrees, to the extent permitted by law, to indemnify, defend and hold Landlord harmless from any and all loss, cost, liability or expense, including, without limitation, reasonable attorneys' fees, resulting from Tenant's failure to comply with all Legal Requirements. "Legal Requirements" means all laws, ordinances, orders, rules and regulations, whether local, state, federal or promulgated by other agencies or bodies applicable to the Premises, including, without limitation, all building codes and regulations, indoor air quality requirements and Title Three of the Americans with Disabilities Act (but excluding Environmental Laws which are governed by Section 9).

11. Alterations. Tenant shall be permitted to perform any alterations, additions or improvements to the Premises 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 Premises; provided that Tenant shall not undertake any rehabilitation, repairs or other work on the Premises inconsistent with the Secretary's Standards; or construct any new or replacement capital improvements on the Premises which substantially alter the Premises 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. Tenant will, within 60 days after filing of a lien, pay and discharge any mechanic's, materialmen's or other lien against the Premises resulting from Tenant's failure to make payment for any improvements in the Premises made by Tenant or at its direction. Tenant will immediately notify Landlord of any claim of lien or other action of which it has knowledge which relates to any

improvements in the Premises made by Tenant 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 Premises pursuant to the plans and specifications provided to the Landlord as of the date hereof does not violate this Section 11.

12. Entry by Landlord. Landlord and its agents have the right to enter the Premises at any reasonable time upon 48 hours prior written notice during the Term for inspecting the Premises. Landlord shall use reasonable efforts to minimize interference with Tenant’s use of the Premises.

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

14. Estoppel Certificates. Each of the parties to this Lease 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 Lease is unmodified and in full force and effect or, if there has been any modification, that the said Lease 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.

15. Assumption of Risks. Tenant assumes all risk of loss or damage of Tenant’s property within the Premises, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause. Landlord will not be liable to Tenant, or those claiming through Tenant, for property damage occurring in the Premises. Landlord assumes all risk of loss or damage of Landlord’s property, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of Tenant, or other cause. Tenant will not be liable to Landlord, or those claiming through Landlord, for property damage occurring in the Premises. Notwithstanding the above, if, as a result of any interruption of services, the Premises will be uninhabitable or unusable by Tenant for five consecutive business days, then Rent shall be abated to the extent to which such condition interferes with Tenant’s use of the Premises commencing on the first day of such condition and continuing until such condition is corrected.

16. AS-IS. THE PREMISES IS BEING LEASED “AS IS, WHERE IS AND WITH ALL FAULTS AND DEFECTS” AND TENANT ACKNOWLEDGES, AGREES AND ACCEPTS

THE PREMISES IN SUCH CONDITION INCLUDING BUT NOT LIMITED TO ALL DEFECTS, IF ANY, IN AND TO THE PREMISES. LANDLORD MAKES AND HAS MADE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, FITNESS OR SUITABILITY OF THE PREMISES FOR A PARTICULAR USE OR PURPOSE). TENANT ACKNOWLEDGES AND AGREES THAT TENANT HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES AND TO HAVE QUALIFIED EXPERTS INSPECT THE PREMISES PRIOR TO ITS EXECUTION OF THIS LEASE AND UNDERSTANDS AND AGREES TO ACCEPT THE PREMISES IN ITS AS-IS CONDITION WITH ALL FAULTS.

17. Indemnification. Notwithstanding any provision of this Lease, but subject to Section 20, Tenant will, to the extent permitted by law, indemnify Landlord against all claims, demands and actions, and all related costs and expenses (including reasonable attorneys' fees) for injury, death, disability or illness of any person occurring in the Premises to the extent caused by (a) Tenant's negligence, (b) Tenant's breach of this Lease, or (c) Tenant's violation of Legal Requirements.. Notwithstanding any provision of this Lease, but subject to Section 20, Landlord will indemnify Tenant against all claims, demands and actions, and all related costs and expenses (including reasonable attorneys' fees) for injury, death, disability or illness of any person to the extent caused by (a) Landlord's negligence, (b) Landlord's breach of this Lease, or (c) Landlord's violation of Legal Requirements.

18. Tenant Insurance. Tenant shall keep the Premises and all buildings, improvements, and personal property on the Premises, insured against loss or damage by fire or other casualty in an amount and in forms of insurance policies customary in the industry in which Tenant operates. Tenant shall also maintain comprehensive general liability insurance covering injury, death, disability or illness of any person, or damage to property, occurring on the Premises, in an amount and in forms of insurance policies customary in the industry in which Tenant operates.

19. Release of Landlord. IF THE PREMISES, OR ANY PART THEREOF, IS DAMAGED BY FIRE OR OTHER CAUSE AGAINST WHICH TENANT IS REQUIRED TO CARRY INSURANCE PURSUANT TO THIS LEASE, LANDLORD SHALL NOT BE LIABLE TO TENANT FOR ANY LOSS, COST OR EXPENSE ARISING OUT OF OR IN CONNECTION WITH SUCH DAMAGE INCLUDING (WITHOUT LIMITATION) ANY RIGHT TO RECOVER ANY DEDUCTIBLE. TENANT HEREBY RELEASES LANDLORD FROM ANY LIABILITY, CLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH SUCH DAMAGE AND WAIVES AND RELEASES ANY RIGHT OF SUBROGATION THAT ANY INSURER OF TENANT WOULD, BUT FOR THIS WAIVER, HAVE AGAINST LANDLORD PARTIES, INCLUDING (WITHOUT LIMITATION) ANY CLAIM FOR ANY DEDUCTIBLE.

20. Waiver of Insurable Claims. Notwithstanding anything to the contrary set forth hereinabove, Landlord and Tenant do hereby waive any and all claims against one another for damage to or destruction of real or personal property to the extent such damage or destruction can be covered by commercially available "all risks" property insurance. The risk to be borne by each party shall also include the satisfaction of any deductible amounts required to be paid under the applicable "all risks" fire and casualty insurance carried by the party whose property is damaged,

and each party agrees that the other party shall not be responsible for satisfaction of such deductible. These waivers shall apply if the damage would have been covered by a customary “all risks” insurance policy, even if the party fails to obtain such coverage. The intent of this provision is that each party shall look solely to its insurance with respect to property damage or destruction which can be covered by commercially available “all risks” property insurance. Each such policy shall include a waiver of all rights of subrogation by the insurance carrier against the other party, its agents and employees with respect to property damage covered by the applicable “all risks” fire and casualty insurance policy.

21. Assignment and Subletting. Tenant shall be permitted to sublease all or a portion of the Premises to one or more third parties; provided that Tenant shall not enter into any sublease with any “tax-exempt entity” as that term is defined in Section 168(h) of the Internal Revenue Code of 1986, as amended, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; or any foreign person or entity, if such sublease results in any portion of the Property being treated as “tax-exempt use property” as that term is defined in Section 168(h) of the Code (as modified by Section 47(c)(2)(B)(v) of the Code; the parties recognize that none of the Ground Lease, the Lease Purchase Agreement, the Ground Sublease and the County Lease violates this provision). Landlord acknowledges that the Premises is currently subject to that certain Lease for a Portion of the Third Floor of the Stillwater Building between Tenant, as lessor, and Yellowstone County, a political subdivision of the State of Montana, as lessee, dated January 23, 2018 (the “County Lease”). The parties acknowledge and agree that the County Lease shall be treated as a sublease for all intents and purposes under this Lease. Landlord acknowledges and agrees that it shall not disturb the County’s rights under the County Lease for any reason except for County’s failure to pay rent under the County Lease and that Landlord shall honor the County Lease in the event of any default and early termination of this Lease.

22. Damage, Destruction and Condemnation. If all or a substantial portion of the Premises is destroyed or damaged by fire or other casualty, or if title to or the use of all or a substantial portion of the Premises, or the interest of the Landlord or the Tenant in all or a substantial portion of the Premises shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Tenant shall apply all Net Proceeds as set forth in the Lease Purchase Agreement.

23. Defaults. An Event of Default (“Event of Default”) exists under this Lease if (a) Tenant fails to pay Rent or other amounts under this Lease within 10 business days after the date on which Tenant receives Landlord’s written notice that such payment is past due; or (b) Tenant fails to perform any other obligation under this Lease and Tenant fails to commence to cure such failure within sixty (60) days after written notice by Landlord to Tenant and to thereafter diligently pursue such cure. Landlord may, with or without terminating this Lease, cure the Event of Default and charge Tenant all costs of doing so. Landlord also may elect by written notice to Tenant, after an Event of Default, to terminate this Lease and to require Tenant to pay to Landlord all past due amounts under this Lease. No right or remedy will preclude any other right or remedy, no right or remedy will be exclusive of or dependent upon any other right or remedy, and any right or remedy may be exercised independently or in combination.

24. Effect of Nonappropriation. This Lease may be terminated by the Tenant by Nonappropriation. In the event of termination of this Lease by the Tenant by Nonappropriation, the Tenant shall surrender possession of the Premises to the Landlord. “Nonappropriation” means the determination of the governing body of the Tenant not to appropriate money for any fiscal year of the Tenant sufficient for the continued performance of the Lease-Purchase Agreement. Notwithstanding anything herein to the contrary, Nonappropriation shall not constitute an Event of Default under Section 23.

25. Landlord Default. For purposes hereof, a “Landlord Default” exists if Landlord fails to perform any of its obligations under this Lease within 30 days after receiving notice from Tenant specifying the nature and extent of such failure; provided, however, if the obligation is not reasonably curable within such 30 day period, the time for curing will be extended so long as Landlord continues to use reasonable efforts to effect a cure. If a Landlord Default has occurred, then, in addition to all rights, powers or remedies permitted by law or in equity, Tenant may cure such Landlord Default and charge the cost thereof to Landlord, or sue for specific performance or sue for damages. Landlord is liable for, and shall pay to Tenant within 30 days after receiving Tenant’s invoice, all reasonable attorneys’ fees and other costs incurred by Tenant as a result of a Landlord Default. If Landlord fails to pay within such 30-day period the amount due, Tenant has the right to offset such amounts against the next installments of Rent due hereunder.

26. Waiver of Lease Provisions. No waiver of any provision of this Lease will be deemed a waiver of any other provision, and waiver of a right or remedy in one instance will not preclude enforcement of that same right or remedy in the future.

27. Return of Possession to Landlord. On expiration or termination of this Lease, Tenant will return possession of the Premises to Landlord, without notice from Landlord, in good order and condition, except for ordinary wear. Tenant will give Landlord all keys for the Premises and will inform Landlord of combinations on any locks and safes on the Premises.

28. Notices. All notices and other communications given or made pursuant hereto will be in writing and will be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by email, *provided* that a copy is also mailed by registered mail, return receipt requested; (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications will be sent to the respective parties at the addresses shown below (or to such other addresses and fax numbers as a party may designate by notice to the other parties):

	If to the Tenant:	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

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29. Broker's Commission. Landlord and Tenant represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this Lease and to the extent permitted by law agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any other such fees or commissions resulting from their actions or agreements regarding the execution or performance of this Lease, and will pay all costs of defending any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorney's fees.

30. Governing Law; Waiver of Jury Trial. THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MONTANA WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH OF THE UNDERSIGNED DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR WITH RESPECT TO THIS LEASE OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR RELATING OR INCIDENTAL HERETO.

31. Jurisdiction. Each of the parties submits to the exclusive jurisdiction of any state court sitting in or federal court with jurisdiction over Yellowstone County, Montana, in any action or proceeding arising out of or relating to this Lease, and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Lease in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect to any such action or proceeding.

32. Amendment. This Lease may not be amended except by a written agreement executed by the party to be charged with the amendment.

33. Successors and Assigns. All provisions of this Lease will be binding on and for the benefit of the successors and assigns of Landlord and Tenant, except that no person or entity holding under or through Tenant in violation of any provision of this Lease will have any right or interest in this Lease or the Premises.

34. Holding Over. In the event Tenant remains in possession of the Premises after the expiration or termination of this Lease, it shall be deemed to be occupying said premises as a tenant from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy until the termination of such tenancy. .

35. Limitation of Liability. Neither Landlord nor Tenant is liable to the other under, or in connection with, this Lease for any consequential damages, and both Landlord and Tenant waive, to the full extent permitted by law, any claim for consequential damages.

36. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be an original, and all of which constitutes one and the same Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease Agreement as of the date first written above.

LANDLORD:
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

TENANT:

CITY OF BILLINGS, MONTANA

By: _____
Its: Mayor

By: _____
Its: City Administrator

EXHIBIT A

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

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: _____

**FORMER FEDERAL BUILDING LANDLORD, LLC,
A MONTANA LIMITED LIABILITY COMPANY**

OPERATING AGREEMENT

Dated as of [____], 2024

THE MEMBERSHIP INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR FOREIGN JURISDICTION AND HAVE NOT BEEN REGISTERED OR QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR ANY OTHER JURISDICTION. THE MEMBERSHIP INTERESTS ARE BEING SOLD IN RELIANCE UPON EXEMPTION FROM SUCH REGISTRATION OR QUALIFICATION REQUIREMENTS. THE MEMBERSHIP INTERESTS EVIDENCED BY THIS AGREEMENT MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, PLEDGED, ASSIGNED OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE FEDERAL, STATE OR FOREIGN SECURITIES LAWS AND THE TRANSFER OR OTHER DISPOSITION RESTRICTIONS AS PROVIDED IN THIS AGREEMENT.

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Schedule A - Members, Capital Contributions, and Percentage Interests

Exhibit A - Insurance Provisions

Exhibit B-1 - Form of Installment Payment Notice

Exhibit B-2 - Form of Managing Member's Certificate

Exhibit C - Architect's Certificate

Exhibit D - Projections

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

This OPERATING AGREEMENT (this “Agreement”) is made and entered into as of the Admission Date, by and between the undersigned parties.

RECITALS

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

WHEREAS, the City of Billings, Montana (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 “Land” and, together with the Building, the “Property”); and

WHEREAS, pursuant to the Lease Purchase Finance 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, the Company acquired a sub-leasehold interest in the Property pursuant to the Ground Lease (as hereafter defined); and

WHEREAS, the 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 Federal Historic Tax Credits (as hereinafter defined) and State Historic Tax Credits (collectively, the “Project”); and

WHEREAS, FIB Battin, LLC, a Delaware limited liability company (together with any successors thereto, the “Investor Member”), has acquired an interest in the Company; and

WHEREAS, the Investor Member intends to make a capital contribution in one or more installments in the aggregate amount of \$[____] (as may be adjusted pursuant to the terms hereof) to the Company; and

WHEREAS, Former Federal Building Manager, LLC, a Montana limited liability company (the “Managing Member”), is the managing member of the Company; and

WHEREAS, the Company intends to use a portion of the proceeds of (i) that certain loan made by the City, in the aggregate amount of \$[____] (the “Loan”), which Loan is evidenced and repaid by the Ground Lease (as hereafter defined); (ii) the capital contribution by the

Managing Member in the aggregate amount of \$[_____]; and (iii) the capital contribution by the Investor Member, among other sources, to acquire and rehabilitate the Property; and

WHEREAS, the parties hereto now desire to enter into this Agreement to (i) admit the Investor Member to the Company as the Investor Member; (ii) admit and appoint the Managing Member as the Managing Member of the Company; (iii) assign Interests in the Company; and (iv) set forth all of the provisions governing the Company.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree to continue the Company pursuant to the Act, as set forth in this Agreement, which reads in its entirety as follows:

ARTICLE I.
GENERAL

1.01 Articles of Organization and Limited Liability Company Agreement.

The Members ratify the execution and filing of the Articles in the office of the Secretary of State of the 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, and the Managing Member is hereby appointed as the initial manager of the Company in accordance with the terms and conditions hereof.

This Agreement constitutes the “operating agreement” of the Company within the meaning of Section 35-8-109 of the Act and this Agreement governs the affairs of the Company and the conduct of its business, except as otherwise required by the Act.

1.02 Name.

The name of the Company is Former Federal Building Landlord, LLC.

1.03 Principal Executive Offices; Agent for Service of Process.

The principal executive office of the Company shall be 210 North 27th Street, Billings, Montana 59101. The Company may change the location of its principal executive office to such other place or places as may hereafter be determined by the Managing Member. The Managing Member shall promptly notify all other Members of any change in the principal executive office. The Company may maintain such other offices at such other place or places as the Managing Member may from time to time deem advisable.

The name and address of the Agent for service of process is Gina Dahl with an address of 210 North 27th Street, Billings, Montana 59101.

1.04 Term.

The term of the Company commenced as of [_____], 2024, and shall continue until the Company is dissolved by law or in accordance with the provisions of this Agreement.

1.05 Recording of Articles.

Upon the execution of this Agreement by the parties hereto, the Managing Member shall take all actions necessary to assure the prompt recording of an amendment to the Articles of the Company, if required by the Act, including filing with the Office of the Secretary of State of the State. All fees for filing shall be paid out of the Company's assets. The Managing Member shall take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State and shall register the Company under any assumed or fictitious name statute or similar law in force and effect in the State or the State, as required.

ARTICLE II. **DEFINED TERMS**

1.01 Certain Definitions.

In addition to the defined terms set forth in the Recitals to this Agreement, the following defined terms used in this Agreement shall have the meanings specified below:

“2024 Delay Amount” has the meaning set forth in Section 5.01(f)(v)(A).

“2025 Delay Amount” has the meaning set forth in Section 5.01(f)(v)(B).

“Accountants” means, with respect to any Cost Certifications and the Projections, BakerTilly US LLP, or such other firm of independent certified public accountants as may be engaged by the Managing Member with the Consent of the Investor Member.

“Act” has the meaning set forth in the Recitals.

“Actual Federal Historic Tax Credits” means, for a particular year or in the aggregate, as the context may require, the total amount of Federal Historic Tax Credits properly claimed by the Company and properly allocable to the Investor Member under the terms of this Agreement, as subsequently adjusted, if applicable, as provided for herein.

“Actual State Historic Tax Credits” means, for a particular year or in the aggregate, as the context may require, the total amount of State Historic Tax Credits properly claimed by the Company and properly allocable to the Investor Member under the terms of this Agreement, as subsequently adjusted, if applicable, as provided for herein.

“Adjuster Differential Amount” has the meaning set forth in Section 5.01(f)(iii) herein.

“Adjustment Date” means the first day following the latest to occur, to the satisfaction of the Investor Member in its sole and reasonable discretion, of (i) receipt by the Investor Member of evidence of no continuing Event of Default (as defined in any Operating Document) then exists

(including any default by the Managing Member of its obligation pursuant to Section 9.05(c)); (ii) receipt by the Investor Member of evidence of satisfaction of any accrued and unpaid charges owed to Investor Member, including any accrued and unpaid Priority Return and Special Tax Distribution; (iii) the first day of the first month following the last day of the Compliance Period; and (iv) the end of the last taxable year in which any Historic Tax Credits are allocated to the Investor Member (without taking into account the “at-risk” rules under Section 49 of the Code).

“Adjustment Year” shall have the meaning set forth in Section 6225(d) of the Code.

“Admission Date” means the date upon which this Agreement is executed and delivered by the Investor Member.

“Affiliate” means, with respect to a specified Person, (i) any Person directly or indirectly controlling, controlled by or under common control with the Person specified, (ii) any Person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of the Person specified, (iii) any officer, director, partner, trustee or member of the immediate family of the Person specified, (iv) if the Person specified is an officer, director, general partner, manager, managing member or trustee, any corporation, partnership or trust for which that Person acts in that capacity or (v) any Person who is an officer, director, general partner, manager, managing member, trustee or holder of 10% or more of outstanding voting securities or beneficial interests of any Person described in clauses (i) through (iv). The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“After-Tax Basis” means, with respect to any payment to be received by the Investor Member, the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all taxes (net of any current credits, deductions or other tax benefits arising and realized from the payment by the Investor Member of any amount, including taxes, for which the payment to be received is made) imposed on the Investor Member by any governmental authority or other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment to be received; provided, however, for the purposes of this definition, and for purposes of any payment to be made to the Investor Member on an After-Tax Basis, it shall be assumed that taxes are payable by the Investor Member at the Applicable Tax Rate, which rate shall be certified in writing by the Investor Member to the Managing Member upon request.

“Agreement” means this Operating Agreement, as amended from time to time in accordance with its terms.

“Applicable Laws” means any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on any Developer Entity, or their assets including the Property.

“Applicable Securities Laws” means, collectively, the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the securities laws or regulations of any state or other jurisdiction.

“Applicable Tax Rate” means the combined effective federal, state, and local income tax rate of a taxpayer applicable in any given Company Fiscal Year assuming in each case the maximum tax rate applicable to the taxpayer without regard to actual taxable income.

“Architect” means JLG Architects or such other firm as may be engaged by the Company with the Consent of the Investor Member to provide architectural services in connection with the Rehabilitation.

“Architect’s Certificate” means the certificate executed by the Architect in the form attached hereto as Exhibit C.

“Articles” has the meaning set forth in the Recitals.

“Bankruptcy” or “Bankrupt” as to any Person means the filing of a petition for relief as to any such Person as debtor or bankrupt under the Bankruptcy Code or like provision of law (except if such petition is contested by such Person and has been dismissed within 60 days of the filing of such petition); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of its assets; commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, provided that if such proceeding is commenced by another, such Person indicates its approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within 60 days.

“Bankruptcy Code” has the meaning set forth in Section 6.03(f).

“Budget” has the meaning set forth in Section 8.16.

“Building” has the meaning set forth in the Recitals.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which commercial banks in Billings, Montana are authorized or required to be closed.

“Capital Account” means the capital account of a Member as described in Section 11.05.

“Capital Contribution” means with respect to any Member the total amount of money or the Fair Market Value of other property (net of liabilities thereon) contributed or agreed to be contributed, as the context requires, to the Company by such Member or the amount of any obligation of the Company assumed by any Member pursuant to the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor holder of the Interest of such Member.

“Capital Contribution Adjustments” means any negative Credit Adjustment, Recapture Differential Amount, or Delay Differential Amount as the same may be reduced by any payments made pursuant to Article XI hereof.

“Capital Index” means, with respect to Federal Historic Tax Credits, 89%, and with respect to State Historic Tax Credits, 92%, in the case of any Credit Adjustment.

“Capital Transaction” means (i) a sale, assignment, or other disposition of all or substantially all of the assets; (ii) a mortgage, financing or refinancing; (iii) a casualty (excluding proceeds from loss of income and business interruption insurance), condemnation or similar event of any part with respect to the Property, where the gross proceeds from such event are not used to rebuild or repair the Property (but only to the extent such rebuild or repair is feasible, as determined by FIB in its discretion); (iv) a title defect giving rise to payments to the Company under the Title Policy to the extent such proceeds are not required to cure such title defect; or (v) any other transaction generating cash proceeds to the Company that are not includable in determining Net Cash Flow.

“Certification Application” means for the Property, the Historic Preservation Certification Application provided for in Title 36 of the Code of Federal Regulations, Part 67.

“Change of Law” means any of the following occurring after the date of this Agreement: (i) amendments to the Code; (ii) any amendment to the Treasury Regulations promulgated under the Code; or (iii) the promulgation of any new Treasury Regulations after the date of this Agreement, in each case that material and adversely affect the Tax Credits or the Investor Member’s ability to claim the Tax Credits; provided, however, that a “Change of Law” shall not include the promulgation of new or amended Treasury Regulations or other administrative authority to the extent that the same do not alter in any material respect the Treasury Regulations or administrative authority that were promulgated or issued on or prior to the date of this Agreement with respect to the Tax Credits.

“City” has the meaning set forth in the Recitals.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

“Company” has the meaning set forth in the Recitals.

“Company Adjustment” means any adjustment to any item of income, gain, loss, deduction, or credit of the Company, or any Member’s distributive share thereof, in either case as described in any applicable Treasury Regulations or other guidance prescribed by the IRS.

“Company Fiscal Year” means the fiscal and tax year of the Investor Member as provided in Section 13.06.

“Compliance Period” means the time period ending upon the fifth full year after the last date upon which QREs taken account of for purposes of calculating the Actual Federal Historic Tax Credits and/or Actual State Historic Tax Credits for any year were placed in service, or any longer time period during which Federal Historic Tax Credits and/or State Historic Tax Credits attributable to the Property are subject to recapture pursuant to the Code or pursuant to the State HTC Statute.

“Consent” means the prior written consent or approval of the Investor Member, or any other Member, as the context may require, to do the act or thing for which the consent is solicited.

“Construction Contract” means the guaranteed maximum price construction contract (including all exhibits, attachments thereto and change orders approved by the Developer, the Managing Member, and, if required, the National Park Service) for on-site and off-site work and pre-construction services entered into between the Developer and the Contractor pursuant to which the Property is being rehabilitated.

“Contractor” means Dick Anderson Construction, which is the general construction contractor for the Project, or such other firm as may be engaged by Company with the Consent of the Investor Member (in its reasonable discretion) to provide general contractor services in connection with the Project.

“Contribution Agreement” means the Contribution and Reimbursement Agreement dated the date hereof among the Developer, the Managing Member, and the Company.

“Controlling Interest” means the power to direct the management of any Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“Cost Certification” means a written certification of the Accountants as to the itemized amounts of the QREs incurred in connection with the Rehabilitation and the Actual Federal Historic Tax Credits and Actual State Historic Tax Credits, which certification shall constitute no less than an “examination report.”

“Counsel” or “Counsel for the Company” means such attorneys or law firm or firms upon which the Investor Member and the Managing Member shall agree; provided, however, that if any section of this Agreement either (i) designates particular counsel for the purpose described therein, or (ii) provides that counsel for the purpose described therein shall be chosen by another method or by another Person, then such designation or provision shall prevail over this general definition.

“Credit Adjustment” has the meaning set forth in Section 5.01(f)(ii).

“Credit Determination” has the meaning set forth in Section 5.01(f)(i).

“Debt Service” means all payments of principal, interest, or other charges, or any combination thereof, due on the Loan pursuant to the Ground Lease. For the avoidance of doubt, Debt Service shall be deemed to include all amounts payable under the Ground Lease, whether denominated as principal, interest, rent or other charges due and payable by the Company under the Ground Lease.

“Delay Differential Amount” has the meaning set forth in Section 5.01(f)(v).

“Depreciation” means, for each Company Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Company Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Company Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to such

beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Company Fiscal Year or other period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Company Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

“Designated Individual” means the person appointed by the Partnership Representative to be the “designated individual” with the sole authority to bind the Partnership Representative pursuant to the Revised Partnership Audit Rules.

“Developer” means the City.

“Developer Entity” means each of the Developer, the Managing Member, the Company, and each Affiliate of any of them that has any obligations to or rights or benefits with respect to the Property or the Company; provided, however, that the Investor Member shall not be deemed a Developer Entity.

“Development Agreement” means that certain Development Agreement of even date herewith by and between the Company and the Developer for services rendered by the Developer in connection with the Rehabilitation of the Building.

“Development Costs” means all expenditures of the Company that are required to (i) complete the Rehabilitation, (ii) achieve Substantial Completion, (iii) achieve the Final Closing, (iv) pay any applicable loan assessment fees, discounts or other expenses incurred by the Company as a result of the occurrence of Final Closing, and (v) fund any Operating Reserves required to be funded from Development Sources. Without limiting the generality of the foregoing, the term “Development Costs” shall include (1) any loan assessment fees, discounts or other expenses incurred by the Company, including those that result from the occurrence of Final Closing, (2) any interest, taxes, and property insurance premiums that are the responsibility of the Company incurred prior to the Final Closing, (3) any construction cost overruns and the cost of any change orders, (4) sums necessary to remedy any defects, including latent defects, in connection with the rehabilitation or construction, if such defects are not cured by the Contractor within a reasonable period of time, (5) any escrow deposit requirements which are conditions to the Final Closing, including without limitation, any amounts necessary for local taxes, utilities, earthquake and other insurance premiums and other purposes, which might be required (provided, however, that if any such deposits are made by the Managing Member and the funds, or any portion thereof, subsequently are released from such deposit, the funds so released shall be paid to the Managing Member), and (6) any Operating Deficits arising during the Property Development Period.

“Development Fee” means, in the aggregate, the fees payable to the Developer pursuant to the provisions of the Development Agreement.

“Development Sources” means the aggregate amount of (i) the paid-in portion of the capital contributions to the Company, (ii) the net, funded proceeds of the Loan, and (iii) the Company’s share of any casualty insurance or condemnation award proceeds to the extent received during the Property Development Period, necessary for rebuilding of the Property, and available therefor.

“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 Project; (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) that has a partner (or other holder of an equity or profits interest) which is a Disqualified Person.

“Economic Interest” means the elements of an Interest that (i) are limited to the right to receive allocations of Operating Profits and Operating Losses and distributions of Net Cash Flow and proceeds from a Capital Transaction pursuant to Sections 11.01, 11.03 and 11.04 and Capital Account balance; and (ii) do not include any rights to vote, grant any consent or participate in any way in the management of the Company.

“Environmental Laws” means the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 9601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Occupational Safety and Health Act, each as amended from time to time and any other federal, state, or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, judicial decision, common law rule, decree, agency interpretation, injunction or other authorization or requirement whenever promulgated, issued, or modified, including the requirement to register underground storage tanks, relating to (i) emissions, discharges, spills, releases, or threatened release of pollutants, contaminants, Hazardous Substances (as hereinafter defined), materials containing Hazardous Substances, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, septic systems or onto land; or (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Substances, materials containing Hazardous Substances or hazardous or toxic wastes, material, products, or by-products (or of equipment or apparatus containing Hazardous Substances).

“Environmental Reports” means the Phase I Environmental Site Assessment for the Property prepared by Green Environmental Management, and dated August 14, 2024.

“Excess Development Costs” means all Development Costs in excess of Development Sources.

“Excluded Event” means (i) any sale or disposition of a direct or indirect Interest in the Company by the Investor Member; (ii) any change in the Investor Member’s tax status to a Disqualified Person; (iii) any other act or omission by the Investor Member that was the cause of a Recapture Event or negative Credit Adjustment; and (iv) any loss or disallowance of Federal

Historic Tax Credits due to the structure of the transaction, including the failure of (a) the Company to be treated as a partnership for federal income tax purposes; (b) the Investor Member and Managing Member to be treated as the sole partners in the Company for federal income tax purposes; (c) the allocations of tax items (i.e., income, gain, loss, deduction and credit) to the Members of the Company; or (d) an IRS challenge of all or any portion of the transaction structure of the Company not already described in (iv) any of which items (i) through (iii) was not caused directly or indirectly by Managing Member Acts or Omissions.

“Fair Market Value” means the amount for which the real estate or other property will sell in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably in an arm’s-length transaction. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under circumstances in which: (i) the buyer and the seller are motivated by customary commercial considerations; (ii) each party is well-informed or well-advised and each is acting in what it considers its own best interest; (iii) a reasonable time is allowed for soliciting offers in the open market; (iv) payment is made in cash or its equivalent; (v) financing, if any, is on terms generally available in the community on the closing date that are typical for similar types of property in the same geographic area; and (vi) the price represents a normal consideration for the property sold unaffected by special financing amounts, terms, services, fees, costs or credits incurred in connection with the transaction.

“Federal Historic Tax Credits” means the tax credit allowable pursuant to Section 47 of the Code for QREs incurred in connection with the “certified rehabilitation” of a “certified historic structure.”

“FIB” has the meaning set forth in the Recitals.

“Final Closing” means the date upon which the Investor Member has received from the Company evidence of each of the following: (i) Substantial Completion; (ii) final lien-free completion of the Rehabilitation including all outstanding punchlist items and receipt of certificate of final completion covering 100% of the Rehabilitation from the Architect and receipt of any required prior approvals from FIB pursuant to the Lease Purchase Finance Documents; and (iii) receipt of any required final prior approvals from FIB as prerequisites to the disbursement of any remaining proceeds under the Lease Purchase Finance Documents, all as evidenced by such supporting documentation as shall be acceptable to the Investor Member.

“Final Determination” means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the date on which the IRS (or, if applicable, any state or local taxing authority) has entered into a binding agreement with the Company with respect to such issue or on which the IRS (or such state or local taxing authority) has reached a final administrative or judicial determination with respect to such issue which, whether by law or agreement, is not subject to appeal, (iii) the date on which the time for instituting a claim for refund has expired, or if a claim was filed the time for instituting suit with respect thereto has expired with no such suit having been filed, or (iv) the date on which the applicable statute of limitations for

raising an issue regarding a federal (or, if applicable, a state or local) income tax matter with respect to the Company has expired with such issue not having been raised.

“First Installment” has the meaning set forth in Section 5.01(c)(i).

“Forbearance Agreement” means that certain Forbearance Agreement among FIB, the City, the Company, and the Investor Member, dated as of the date hereof.

“Former Member” means any Person who was a Reviewed Year Member but does not hold an interest in the Company at any time during the Adjustment Year.

“GAAP” has the meaning set forth in Section 13.01.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as determined by the contributing Member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as determined by the Managing Member, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be the gross Fair Market Value of such asset on the date of distribution as determined by the Managing Member; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and Section 11.05 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (iv) to the extent the Managing Member determines that an adjustment pursuant to clause (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section (i), (ii) or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

“Ground Lease” means that certain Ground Sublease Lease dated as of the date hereof by and between the City, as ground lessor, and the Company, as ground lessee, pursuant to which the Company acquired a sub-leasehold interest in the Property.

“Hazardous Substance” means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any applicable Environmental Laws, (ii) petroleum and petroleum products including crude oil and any fractions thereof, (iii) natural gas, synthetic gas, and any mixtures thereof, (iv) asbestos and any material which contains any hydrated mineral silicate, including but not limited to chrysolite, amosite, crocidolite, tremolite, anthophyllite, and actinolite, whether friable or non-friable, (v) PCBs, or PCB-containing materials or fluids, (vi) radon, (vii) any other hazardous, radioactive, toxic, or noxious substance, materials, pollutant, or solid, liquid or gaseous waste, and (viii) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring, or remediation.

“Imputed Underpayment” shall have the meaning set forth in Section 6225 of the Code.

“Initial Operating Period” means the period commencing on the Admission Date and running through the first day of the first month following the end of the expiration of the Put Option Period.

“Installment” means, as the context requires, one or more of the installments of the Investor Member’s Capital Contribution paid or payable to the Company pursuant to Section 5.01, or as otherwise provided herein.

“Interest” or “Company Interest” means the ownership interest of a Member of the Company at any particular time, including the right of such Member to any and all benefits to which such Member may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and of said Act. Such Interest of each Member shall, except as otherwise specifically provided herein, be that percentage of the aggregate of such benefit or obligation set forth in Schedule A as such Member’s Percentage Interest.

“Investor Member” means FIB Battin, LLC, a Delaware limited liability company, and its successors and assigns, and in the event of more than one Investor Member, Investor Member means, collectively, all such Investor Members.

“IRS” means the Internal Revenue Service.

“Land” has the meaning set forth 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 FIB, as lessee, (ii) that certain Lease-Purchase Agreement by and between FIB, as lessor, and the City, as lessee, and (iii) that certain Lender Letter dated as of the date hereof from FIB to the City.

“Liquidator” means the Managing Member or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be

responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company upon its dissolution.

“Managing Member” means Former Federal Building Manager, LLC, a Montana limited liability company, and its successors pursuant to this Agreement.

“Managing Member Acts or Omissions” means the direct or indirect acts or omissions of the Managing Member or any Affiliate of the Managing Member with respect to the Company or the Project which directly or indirectly causes a Recapture Event.

“Master Lease” means that certain Lease Agreement of even date herewith by and between the Company, as landlord, and the City, as tenant, with respect to the lease of the Property.

“Member” means any or each Person who is a member of the Company as the context shall require.

“Net Cash Flow” means for each Company Fiscal Year the sum of (i) Operating Income and (ii) any other funds deemed available for distribution by the Managing Member, less the sum of all Operating Expenses (including Debt Service), and all other cash expenditures (whether or not such expenditure are deducted, amortized, or capitalized for tax purposes). Net Cash Flow shall be determined separately for each Company Fiscal Year, commencing on the day after Final Closing and shall not be cumulative.

“Net Interim Cash Flow” means the amount by which the sum of (i) Operating Income attributable to the Property Development Period and (ii) Development Sources (including interest income, rental income, other income from the Project, and any reserves, escrows or insurance proceeds), even if actually received after such period, exceeds the sum of (iii) any Operating Expense attributable to the Property Development Period and (iv) all other Development Costs, regardless of when expended.

“Non-Member Manager” has the meaning set forth in Section 8.12(b).

“Notice” means a writing containing the information required by this Agreement to be communicated and either given by U.S. mail return receipt requested, by a nationally recognized next-business-day courier service, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by electronic mail (provided such electronic mail is received by the recipient no later than 5:00 p.m. Mountain Time on the date of such notice), or sent by personal delivery by a nationally recognized courier service for next day delivery; provided, however, that any written communication containing such information actually received shall constitute Notice for all purposes of this Agreement.

“Operating Deficit” means for any period, the amount by which Operating Income for such period of time is exceeded by Operating Expenses and Debt Service due from the Company with respect to the Loan. For purposes of this definition, all expenses shall be deemed payable on a 60-day current basis.

“Operating Deficit Loans” has the meaning set forth in Section 8.09(b).

“Operating Documents” means and includes (i) this Agreement; (ii) the Development Agreement; (iii) the Construction Contract; (iv) the Master Lease; (v) the Ground Lease, and any other documents evidencing, guarantying, and securing the Loan; and (vi) the Forbearance Agreement.

“Operating Expenses” mean all expenses of operation of the Property and the Company, as incurred by the Company in the reasonable discretion of the Managing Member, and determined to be fixed expenses in the reasonable discretion of the Managing Member, including Debt Service, costs of utilities, maintenance, repairs professional and management fees, miscellaneous expenses, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably determined from time to time by the Managing Member with the approval of the Investor Member, which approval shall not be unreasonably withheld, to be advisable for the operation of the Company, but excluding Development Costs and any other expenses of the Company to be paid from Development Sources pursuant to this Agreement; any payments or distributions of Net Cash Flow; and depreciation, amortization deductions and other non-cash items. For purposes of this definition, all expenses shall be deemed paid on the earlier of the stated due date or on a 60-day current basis.

“Operating Income” means all cash received from operation of the Property and the Company in the ordinary course of business and recognizable by the Company for income tax reporting purposes, including rents, sublease payments, and all other sources; provided, however, that Operating Income shall exclude Development Sources and the proceeds of any other loans to the Company, proceeds from Capital Transactions, tenant security and other deposits (except to the extent applied in payment of delinquent rent, property damage or other tenant obligations) and interest earned on the Operating Reserve (unless withdrawn as aforesaid).

“Operating Profits” or “Operating Losses” means, for any Company Fiscal Year, the Profits or Losses, as the case may be, of the Company for that year as determined for federal income tax purposes by the Accountants with the adjustments described in the definition of “Profits or Losses,” excluding Profits or Losses from a Capital Transaction and determined without regard to any adjustments to basis pursuant to Sections 734 or 743 of the Code.

“Operating Reserve” has the meaning set forth in Section 8.17.

“Operating Reserve Amount” has the meaning set forth in Section 8.17.

“Ordinary Income Amount” has the meaning set forth in Section 11.03(c).

“Part 1 Approval” means (i) the individual listing on the National Register of Historic Places of the Building; or (ii) the determination by the National Park Service pursuant to Part 1 of the Certification Application that the Building is a “certified historic structure” as provided for in Section 47(c)(3)(A)(ii) of the Code.

“Part 2 Approval” means the conditional determination by the National Park Service, pursuant to Part 2 of the Certification Application, that the Rehabilitation of the Building described in the Plans and Specifications is consistent with the historic character of the Building, or the historic district in which the Building is located, and meets the Secretary’s Standards, as such Part 2 Approval may be amended with the Consent of Investor Member.

“Part 3 Approval” means the determination by the National Park Service, pursuant to Part 3 of the Certification Application, that the completed Rehabilitation of the Building is a “certified rehabilitation” of a “certified historic structure” under Section 47 of the Code.

“Partnership Representative” means the Member designated in Section 11.07 to be the Partnership Representative as provided for in the Revised Partnership Audit Rules.

“Percentage Interest” means the percentage Interest of each Member as set forth in Schedule A.

“Person” means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

“Placement in Service” or “Placed in Service” means with respect to the Rehabilitation or any phase thereof the occurrence of the events necessary to establish placement in service thereof for purposes of Section 1.48-12(f)(2) of the Treasury Regulations, including, if applicable, the issuance of all necessary temporary or permanent certificates of occupancy from the applicable governmental jurisdictions or authorities with respect to such portion.

“Plans and Specifications” means the Plans and Specifications for the Rehabilitation of the Building approved by the Developer and Investor Member, including specifications for materials, and all amendments and modifications thereof.

“Preservation Consultant” means Gilmore Franzen Consulting LLC or such other firm as may be engaged by the Company with the Consent of the Investor Member to provide preservation consulting services in connection with the Rehabilitation.

“Priority Return” means a cumulative, annual distribution to the Investor Member (prorated for periods of less than a full year) of an amount equal to 2% of its paid-in Capital Contribution made in connection with the Federal Historic Tax Credits as determined by the Capital Index associated therewith and as adjusted hereby beginning on the first January 1st after the Admission Date, payable from Net Cash Flow or the proceeds of a Capital Transaction in the manner set forth in Article XI. Beginning on the Substantial Completion Date, any Priority Return not paid currently shall bear interest from the date due until the date paid at the lesser of 8% and the maximum interest rate permitted under Montana law, compounding annually.

“Profits” or “Losses” means, for each Company Fiscal Year or other period, an amount equal to the Company’s taxable income or loss, as the case may be, for such Company Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Any items described in Sections 705(a)(1)(B) and 705(a)(1)(C) of the Code which are not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss.

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss.

(iii) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(iv) In the event of a distribution of Company assets to a Member (whether in connection with a liquidation or otherwise), or in the event the Gross Asset Value of any Company asset is adjusted upon the acquisition of an additional interest in the Company, unrealized income, gain, loss and deduction inherent in such distributed or adjusted assets (not previously reflected in Capital Accounts) shall be allocated pursuant to Section 11.03 hereof as if there had been a taxable disposition of such distributed or adjusted assets at Fair Market Value.

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Company Fiscal Year or other period, computed in accordance with the definition of “Depreciation” set forth herein.

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 11.10 hereof shall be taken into account in computing Profits or Losses only if required under the applicable provisions of the Code and Treasury Regulations.

“Profits or Losses from a Capital Transaction” means the Profits or Losses, if any, recognized by the Company as a result of a Capital Transaction, as determined for federal income tax purposes by the Accountants with the adjustments described in the definition of “Profits or Losses,” but without regard to any adjustments to basis pursuant to Section 734 and 743 of the Code.

“Project” has the meaning set forth in the Recitals.

“Projected Federal Historic Tax Credits” means Federal Historic Tax Credits in the amount of \$[] with respect to the Building, of which \$[] the Investor Member has projected (and which have been reviewed and accepted by the Managing Member) to be the total amount of Federal Historic Tax Credits to be allocated to the Investor Member in connection with the Rehabilitation.

“Projected State Historic Tax Credits” means State Historic Tax Credits in the amount of \$[], 100% of which shall be allocated to the Investor Member (and which have been reviewed and accepted by the Managing Member) to be the total amount of State Historic Tax Credits to be allocated to the Investor Member in connection with the Rehabilitation.

“Projections” means the financial projections attached hereto as Exhibit D.

“Property” has the meaning set forth in the Recitals.

“Property Development Period” means the period commencing upon formation of the Company and terminating upon Final Closing.

“Push-Out Election” has the meaning set forth in Section 11.08(f).

“Put Option” has the meaning set forth in the Section 9.05(a).

“Put Option Election Notice” has the meaning set forth in the Section 9.05(b).

“Put Option Period” has the meaning set forth in the Section 9.05(a).

“Put Price” has the meaning set forth in the Section 9.05(a).

“QREs” means “qualified rehabilitation expenditures” as such term is defined in Section 47(c)(2) of the Code, as determined by the Accountants.

“Recapture Adjustment Amount” means an amount equal to any increase in taxes payable by the Investor Member as a result of any Recapture Event due to Managing Member Acts or Omissions plus any interest and penalties due to the IRS or the State in connection therewith.

“Recapture Differential Amount” has the meaning set forth in Section 5.01(f)(iv).

“Recapture Event” means any event that results in the recapture or disallowance of Federal Historic Tax Credits and/or State Historic Tax Credits under the Code and/or State HTC Statute, as applicable (other than a recapture arising as a result of a sale or disposition of the Company Interest of the Investor Member).

“Rehabilitation” means the development, construction, renovation, and rehabilitation work on the Building described in the Part 2 Approval, together with any other work on the Property contemplated in the Construction Contract or the Projections.

“Repurchase Event” means any of the following events: (i) the Property has not achieved Substantial Completion by December 31, 2025; (ii) the Company has not received Part 3 Approval within 9 months of Substantial Completion, or such later date as may be Consented to by the Investor Member; (iii) Final Closing has not occurred within 12 months of Substantial Completion of the Rehabilitation or such other later date as may be agreed to by the Investor Member; (iv) an event of default described in clauses (a), (b), (c) or (f) of Section 5.03 occurs prior to Final Closing, and any such event of default is (x) not cured within 60 days of the Managing Member’s receipt of Notice of such default and (y) has a material adverse effect on the Tax Credits or the Investor Member; (v) the Property will qualify for less than 80% of the Projected Federal Historic Tax Credits and/or Projected State Historic Tax Credits; or (vi) an event of Bankruptcy has occurred with respect to any Developer Entity prior to the Final Closing and not dismissed within 60 days.

“Reviewed Year” shall have the meaning set forth in Section 6225(d) of the Code.

“Reviewed Year Member” means any Person who held an interest in the Company at any time during the Reviewed Year.

“Revised Partnership Audit Rules” means the partnership audit rules contained in Subchapter 63C of the Code, as amended by the Bipartisan Budget Act of 2015, Pub L. No. 114-74 (the “2015 Budget Act”) and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, the Treasury Regulations promulgated thereunder, and any applicable forms, instructions and other guidance prescribed by the IRS related thereto.

“Second Installment” has the meaning set forth in Section 5.01(c)(ii).

“Secretary” means the Secretary of the U.S. Department of the Interior or any authorized representative thereof, including the National Park Service.

“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.

“Special Tax Distribution” means in any Company Fiscal Year in which taxable income or taxable gain is allocated to an Investor Member by the Company, pursuant to this Agreement, whether on the Company’s tax return or after audit by the IRS beginning in the taxable year that includes the Admission Date, Net Cash Flow in a cumulative amount equal to the product of (i) the amount of such net taxable income and taxable gain allocated to such Investor Member for such year, and (ii) the Applicable Tax Rate, payable annually.

“State” has the meaning set forth in the Recitals.

“State Historic Tax Credits” means the tax credit allowable pursuant to the State HTC Statute for projects that qualify for State Historic Tax Credits.

“State HTC Statute” means Section 15-31-151 of the Montana Code Annotated, and any successor provisions of Montana law governing the State Historic Tax Credits.

“Subordinated Loan” has the meaning set forth in Section 5.06(a); provided, however, that the Loan shall not be deemed to be a Subordinated Loan for this purpose.

“Substantial Completion” means with respect to the Rehabilitation or any phase thereof, the date upon which the Investor Member has received from the Company each of the following: (i) a certificate of substantial completion as certified by the Architect; (ii) all necessary certificates of occupancy (whether temporary or permanent) from the applicable governmental jurisdictions or authorities for 100% of the improvements therein; and (iii) any other documentation necessary to establish placement in service for purposes of Section 47(b) of the Code.

“Substitute Investor Member” means any Person admitted to the Company as an Investor Member pursuant to Section 9.03.

“Survey” means the ALTA (or an equivalent) survey prepared, certified, and submitted to the Investor Member.

“Tax Credits” means the Federal Historic Tax Credits and State Historic Tax Credits.

“Tax Dispute” has the meaning set forth in Section 11.08(d).

“Tax Reform Act” means the Act to Provide for Reconciliation Pursuant to Title II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (originally known as the Tax Cuts and Jobs Act), Pub. L. No. 115-97.

“Third Installment” has the meaning set forth in Section 5.01(c)(iii).

“Title Policy” means the ALTA extended coverage owner’s leasehold policy of title insurance issued to the Company in an amount equal to the 115% of the Investor Member’s expected Capital Contributions plus the Development Fee, in the form approved by the Investor Member.

“Treasury Regulations” or “Treasury Reg.” means the final and temporary regulations promulgated from time to time under the Code.

“Withdrawal Event” means the occurrence of any of the following events: (a) the withdrawal of any Managing Member or, unless otherwise approved herein or by Investor Member, the sale, assignment, transfer or encumbrance by a Managing Member of any portion of such Managing Member’s Interest; (b) the death or adjudication of incompetency of any individual Managing Member; (c) the voluntary or involuntary dissolution of a Managing Member which is not a natural person; (d) unless otherwise approved herein or by Investor Member, the sale, assignment, transfer or encumbrance of a Controlling Interest in a corporate Managing Member, of a partner interest in a Managing Member which is a partnership or of a member interest in a Managing Member which is a limited liability company; (e) a Bankruptcy with respect to any Managing Member or with respect to the holder of any Controlling Interest in any Managing Member; or (f) without limitation of the foregoing, any event occurring as to a partner of a Managing Member which is a partnership or as to a member of a Managing Member which is a limited liability company which would constitute a Withdrawal Event as provided above, if such Person were a Managing Member.

1.02 Construction.

As used herein, singular shall include the plural, the masculine gender shall include the feminine and neuter, feminine gender shall include the masculine and neuter and the neuter gender shall include the masculine and feminine unless the context otherwise indicates.

1.03 References.

Unless otherwise expressly specified, references to Articles and Sections are intended to refer to Articles and Sections of this Agreement, and all references to Exhibits and Schedules are intended to refer to Exhibits and Schedules attached to this Agreement, each of which is made a part of this Agreement for all purposes. Information contained in any Schedule shall be deemed contained in each and every other Schedule without requiring repetition thereof. The term “including” means “including, without limitation.” Any date specified for action that is not a Business Day shall mean the first Business Day after such date. Any reference to a Person shall

be deemed to include such Person's permitted successors and assigns. Any reference to any document or documents shall be deemed to refer to such document or documents as amended, modified, supplemented, or replaced from time to time.

ARTICLE II.
PURPOSE AND BUSINESS OF THE COMPANY

. The Company has been organized exclusively for the purpose of owning, constructing, developing, leasing, improving, and disposing of the Project in accordance with Section 47 of the Code and the State HTC Statute and engaging in any other activity necessary, appropriate, desirable, or incidental thereto, all in order to generate profits in the form of cash income and long-term appreciation in value as well as return of capital. Notwithstanding anything contained herein to the contrary, the Company shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property or otherwise in furtherance of the purposes of the Company.

. In order to carry out its purpose, the Company is empowered and authorized to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of its purpose, and for the protection and benefit of the Company, including but not limited to the following:

- (a) acquire and maintain the Property;
- (b) rehabilitate, develop, operate, maintain, improve, buy, own, sell, convey, assign, mortgage, rent or lease any real estate and any personal property necessary to the operation of the Property;
- (c) operate the Property consistent with the requirements of the Operating Documents;
- (d) enter into any kind of activity, and perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Company;
- (e) borrow money and issue evidences of indebtedness in furtherance of the Company's business and secure any such indebtedness by mortgage, pledge, or other lien;
- (f) maintain and operate the Property;
- (g) subject to the approval of FIB, if required, and to other limitations expressly set forth elsewhere in this Agreement, negotiate for and conclude agreements for the sale, exchange, assignment, or other disposition of all or substantially all of the property of the Company, or for the refinancing of any loan secured by a mortgage;
- (h) enter into the Operating Documents to which it is a party; and
- (i) do any and all other acts and things necessary or proper in furtherance of the Company's business.

ARTICLE III.
REPRESENTATIONS, WARRANTIES AND COVENANTS;
DUTIES AND OBLIGATIONS

. The Managing Member hereby represents, warrants, and covenants to the Company and to the Members as follows:

(a) at the time of commencement of Rehabilitation of the Building and as of the date hereof, the Land was and is properly zoned for the uses contemplated herein, by the date of Substantial Completion it has or will have all permits, consents, permissions and licenses required by all applicable governmental entities for the operation of the Property, and the Property conforms and will continue to conform in all material respects to all applicable federal, state and local land use, zoning, building, environmental and other governmental laws and regulations;

(b) all appropriate public utilities, including sanitary and storm sewers, water, gas, and electricity, are currently or will be available to the Property and will be operating properly for the Property at the time of first occupancy of the Property. The Property has direct access to a public street or highway and will have adequate parking to comply with Applicable Laws and make it viable;

(c) good and marketable leasehold title to the Property is held solely by the Company, free and clear of any liens, charges or encumbrances other than the matters set forth in the Title Policy, the Operating Documents, the Lease Purchase Finance Documents, and mechanics' or other liens which have been bonded or insured against in such manner to preclude the holder of such lien or such surety or insurer from having any recourse to the Property or the Company for payment of any debt secured thereby. None of the liens, charges, encumbrances, or exceptions set forth in the Title Policy has or will have a material adverse effect upon the Rehabilitation or operation of the Property;

(d) to the Managing Member's actual knowledge after due inquiry, no default by any Developer Entity has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the Operating Documents, and the Operating Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms);

(e) to the Managing Member's actual knowledge after due inquiry, the execution and delivery of this Agreement, the incurrence of the obligations set forth in this Agreement, and the consummation of the transactions contemplated by this Agreement do not violate or conflict with any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on any Developer Entity, or its assets (including the Property), nor do they conflict with, result in a conflict under, result in a material breach of, constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice (which notice has not been furnished) under any agreement, contract, lease, license, instrument, or other arrangement to which the Company or any Developer Entity is a party, or by which it is bound or to which any of its assets is subject;

(f) neither the Company nor any Developer Entity has incurred any financial responsibility with respect to the Property prior to the date of execution of this Agreement, other than as set forth in the Operating Documents or the Lease Purchase Finance Documents, as reflected in the Contribution Agreement, or that has been otherwise disclosed to the Investor Member;

(g) the Company is and will continue to be a limited liability company, duly organized and validly existing under the laws of the State and had, has and shall continue to have full power and authority to acquire, develop, construct, hold, operate and maintain its leasehold interest in the Property in accordance with the terms of this Agreement;

(h) [reserved];

(i) no restrictions on the sale or refinancing of the Property, other than the restrictions set forth in the Operating Documents or the Lease Purchase Finance Documents, exist as of the date hereof, and no such restrictions shall (except as may be set forth in the Operating Documents or the Lease Purchase Finance Documents), at any time while the Investor Member is a Member, be placed upon the sale or refinancing of the Property;

(j) if required by any Operating Document, all payments for real estate taxes as determined by the Managing Member and included in the approved Budget shall be deposited monthly in a segregated escrow account in an amount equal to one-twelfth the yearly aggregate of such payments;

(k) neither the Managing Member nor any of its direct or indirect members is a “tax-exempt entity” or “tax-exempt controlled entity” as those terms are used in Section 168(h) of the Code that has not made the election to be taxed pursuant to Section 168(h)(6)(F) of the Code;

(l) the Managing Member is duly and validly organized and is validly existing in good standing as a limited liability company under the laws of the State of Montana, with full power and authority to enter into and perform its obligations hereunder;

(m) the Property shall be operated in a manner that satisfies and shall continue to satisfy, all restrictions applicable to the Property and projects generating Tax Credits and which shall be in conformity with the description of the Property set forth in Part 2 of the Certification Application;

(n) the Property shall be operated in a manner that complies with the Applicable Laws;

(o) subject to Section 13.06, the Company’s fiscal year is and shall be the calendar year;

(p) no Developer Entity is Bankrupt or contemplating a Bankruptcy;

(q) except as described in the Environmental Reports, to the Managing Member’s actual knowledge after due inquiry, no Developer Entity has ever received notification from any federal, state or other governmental authority of (i) any potential, known, or threat of

release of any Hazardous Substance from the Property or (ii) the incurrence of any expense or loss by any such governmental authority or by any other Person in connection with the assessment, containment or removal of any release or threat of release of any Hazardous Substances from the Property, and no Hazardous Substance was, to the Managing Member's actual knowledge upon due inquiry, prior to the Company's ownership of the Property ever stored on, transported, or disposed of on the Property except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto; and subsequent to the Company's ownership of the Property, and no Hazardous Substance was ever or is now stored on, transported, or disposed of on the Property except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto;

(r) no portion of the Property constituting QREs was placed in service by the Company prior to the Admission Date and the QREs incurred in connection with the Rehabilitation of the Building would under the Code constitute "new section 38 property" to the Company if the Company had actually incurred such QREs;

(s) each Developer Entity has complied with all Applicable Laws with respect to the Project, and no action, suit, proceeding, hearing, government investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any Developer Entity alleging any failure to so comply;

(t) the computations included in the Projections are correct in all material respects and are based on assumptions believed by the Managing Member to be reasonable as to all legal and factual matters material to such Projections, are consistent with the provisions of the Operating Documents, take into consideration the relevant provisions, as currently in effect, of federal income tax law and regulations material to the Projections and represent the Managing Member's best, good-faith estimates of the matters reflected therein;

(u) to the Managing Member's best knowledge, the Managing Member has disclosed to the Investor Member all material actions with respect to the Company taken by the Managing Member prior to the date hereof;

(v) to the Managing Member's best knowledge, a copy of all material documents relating to the Company and the Property have been delivered to the Investor Member;

(w) as of the date hereof, no certificates of occupancy or temporary certificate of occupancy relating to the Rehabilitation have been issued with respect to the portion of the Building comprising QREs;

(x) to the Managing Member's best knowledge, the Architect has demonstrated expertise in the area of historic preservation and compliance with the Secretary's Standards;

(y) the Construction Contract has been entered into between the Developer and the Contractor; no other consideration or fee shall be paid to the Contractor in its capacity as the Contractor other than the amounts set forth in the Construction Contract or as evidenced by change orders approved by the Developer (and the National Park Service to the extent the proposed changes would be deemed to constitute an amendment to the Certification Application) and as

otherwise disclosed in writing to the Investor Member; and all change orders to date have been paid in full or adequate provision has been made for payment;

(z) if the Developer defers recognizing the Development Fee as income, such deferral will be in the Developer's regular course of business in accordance with the applicable requirements of the Code, and not from a manipulation of the cash method of accounting with respect to Developer, the Company, or any members or Affiliates thereof;

(aa) there is, or there will be, sufficient reasonable and adequate documentation that provides objective evidence that details the time and effort spent by Developer on any of the services described in the Development Agreement (e.g., time records or memoranda recounting meetings or other efforts as to such services);

(bb) none of the Developer's obligations provided, or to be provided, for the Development Fee are duplicative (including, but not limited to, the services performed, or to be performed, by Developer under such Development Agreement or by Contractor or any other contractor, subcontractor, or material supplier). No portion of the Development Fee is for, or incident to: (i) syndication expenses; (ii) organization costs; (iii) acquisition costs; (iv) rent/lease-up costs; (v) rental management; or (vi) any similar type costs;

(cc) the Development Fee is, and will be, capitalized as part of the Property's depreciable basis. No portion of the Development Fee is required to be, or will be treated as an expense and deducted in the year incurred. The Company is legally bound to pay the Development Fee;

(dd) the fair market value of the Property attributable to QREs as of the date the Rehabilitation is Placed in Service will exceed the adjusted basis of the Company therein as of such date;

(ee) upon Placement in Service, the Building will be eligible for depreciation (or amortization in lieu of depreciation). The QREs that form the basis for Tax Credits generated by the Rehabilitation will not include (i) any expenditure with respect to which a method other than the straight-line method for depreciation over a recovery period determined under Section 168(c) or (g) of the Code for nonresidential real property or an addition or improvement thereto will be used, (ii) the cost of acquiring the Building or any interest therein, or (iii) the cost of enlargement of the Building, excluding any increase in floor space resulting solely from interior remodeling; and

(ff) for federal income tax purposes, the Company (acting by and through Investor Member) and the Managing Member each reports its income on the accrual method of accounting.

The Managing Member shall be solely responsible for the representations, warranties, and covenants hereunder, and shall not assert as a defense in any action by the Company or the Investor Member the fact that the Managing Member may have relied on other parties in connection with matters addressed therein.

. The Managing Member shall have the following duties and obligations with respect to the Property and the Company:

(a) it shall cause to be met all requirements applicable to the Company, if any, which are necessary to obtain, achieve and maintain (i) issuance of all necessary certificates of occupancy, including all governmental approvals required to permit occupancy of the Property, (ii) Final Closing, and (iii) compliance with all provisions of the Operating Documents;

(b) while conducting the business of the Company, it shall not act in any manner which it knows or should have known after due inquiry will (i) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or (ii) cause any Investor Member to lose its limited liability protection;

(c) it shall prepare and submit to the Secretary, the Secretary of the Treasury or the IRS (or any other governmental authority designated for such purpose), on a timely basis, any and all annual reports, information returns and other certifications and information required (i) to ensure that the Company will qualify for Federal Historic Tax Credits and State Historic Tax Credits and (ii) to avoid any Recapture Event or the imposition of penalties or interest on the Company or the Investor Member for failure to comply with the requirements of the Code, State HTC Statute or any other applicable laws relating to the Federal Historic Tax Credits and/or State Historic Tax Credits;

(d) it shall exercise good faith in all activities relating to the conduct of the business of the Company, including the development, operation, and maintenance of the Property, and it shall take no action with respect to the business and property of the Company which is not reasonably related to the achievement of the purpose of the Company;

(e) all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of the Property, as well as (ii) the rents, revenues and profits earned by the Company from the operation of the Project, will be free and clear of all security interests and encumbrances except as provided in the Operating Documents or Lease Purchase Finance Documents;

(f) it will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743 and 754 of the Code, to adjust the basis of the Company's property upon the request of the Investor Member, if, in the sole opinion of the Investor Member, such election would be advantageous to the Investor Member or any of its members;

(g) it shall, during and after the period in which it is a Managing Member, provide the Company with such information and sign such documents as are necessary for the Company and the Investor Member to make timely, accurate and complete submissions of (i) federal and state income tax returns, (ii) reports to governmental agencies, and (iii) any other reports required to be delivered to the members of the Investor Member or their members;

(h) it shall comply and cause the Company to comply in all material respects with the provisions of all state and local zoning laws, building codes, health and safety codes and all other applicable governmental and contractual obligations;

(i) it shall use commercially reasonable efforts consistent with sound management practice and with the terms of the Operating Documents to maximize Net Cash Flow available for distribution to the Members;

(j) [reserved];

(k) it shall provide the Investor Member with Notice of any written notice of any (i) default or failure of compliance with respect to any financial, contractual or governmental obligation of the Company or the Managing Member; (ii) IRS proceeding regarding the Property or the Company or any intention on the part of the Secretary to revoke, cancel or amend Part 1 Approval, Part 2 Approval or Part 3 Approval; (iii) litigation, criminal action or administrative proceeding against the Managing Member or the Company; or (iv) communication from the Secretary or any other Person or governmental authority which is not in the ordinary course of business;

(l) in operating the Property, it shall use commercially reasonable efforts to obtain all contracts, materials, supplies, utilities, and services required by the project on the most advantageous terms available. Except as otherwise approved by the Consent of the Investor Member, the Managing Member shall secure and credit to the Company, and not receive or retain for itself, its agents, employees or Affiliates, any discounts, compensation, rebates, or commissions obtainable with respect to any and all purchases, service contracts, and all other transactions affecting the project, including any compensation received from the assignment or transfer of any contracts affecting the Property;

(m) Reserved;

(n) it shall operate the Property in a manner that (i) satisfies, and shall continue to satisfy in all material respects, all restrictions applicable to the Property for projects generating Tax Credits and (ii) shall be in conformity with the description of the Property set forth in Part 2 of the Company's Certification Application;

(o) it shall not enter into any sublease with any "tax-exempt entity" as that term is defined in Section 168(h) of the Code, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; or any foreign person or entity, if such sublease results in any portion of the Property being treated as "tax-exempt use property" as that term is defined in Section 168(h) of the Code (as modified by Section 47(c)(2)(B)(v) of the Code); the parties recognize that the Master Lease (and the County Lease referenced therein) does not violate this provision;

(p) it shall cause the Company to conduct its own business through the Managing Member, as applicable, and that business has been and will be conducted solely in the name of the Company and in such a way as to not mislead others as to the identity of the entity with which they are dealing. In that regard, all written communications by the Company or the Managing Member, including letters, invoices, purchase order and contracts, have been and will be made solely in the name of the Company or the Managing Member, as appropriate. The Company has described and will always describe itself as a separate legal entity and not as a division or department of any Developer Entity. The Company has and will have its own invoices,

checks and other business forms, separate from those of any Developer Entity. Each of the Company and any Developer Entity will pay its own expenses and liabilities from its own funds. Invoices and other statements of account from creditors of the Company will be addressed and mailed directly to the Company. The Company and the Managing Member allocate and will allocate all other overhead expenses for items shared with any Developer Entity (if any) on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on an equitable basis reasonably related to the actual use;

(q) it shall keep the Managing Member and the Company in good standing in accordance with the requirements of the State;

(r) it shall furnish to the Investor Member such other approvals, opinions, certificates, documents, or agreements as Investor Member may reasonably request, in form and substance reasonably acceptable to Investor Member;

(s) it agrees to provide notice to the Investor Member of any change in the financial condition of the Managing Member that could have a material adverse effect on the ability of the Managing Member to satisfy their respective obligations under the Operating Documents or this Agreement;

(t) except as disclosed in the Environmental Reports, the Managing Member represents and warrants that, to the best of its knowledge, (i) it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Substances at, upon, under or within the Land or any contiguous real estate, and (ii) it has not caused nor permitted to occur, and it shall use commercially reasonable efforts to not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Land or on any contiguous real estate in violation of applicable Environmental Laws;

(u) the Managing Member further represents and warrants that (i) it has not been, nor will it be involved in operations at or, pursuant to its commercially reasonable efforts, near the Land, which operations could lead to (A) the imposition of liability under applicable Environmental Laws on the Company or (B) the creation of a lien on the Property under applicable Environmental Laws or under any similar laws or regulations; and (ii) the Managing Member has not permitted, and will use commercially reasonable efforts to not permit, any tenant or occupant of the Property to engage in any activity that could impose liability under applicable Environmental Laws on such tenant or occupant, on the Land or on the Company;

(v) the Managing Member shall comply in all respects with the requirements of applicable Environmental Laws and related regulations and with all similar laws and regulations. In addition, the Managing Member shall provide the Investor Member with prompt written notice (i) upon any Managing Member or Affiliate thereof obtaining knowledge of any potential or known release, or threat of release, of any hazardous material in violation of applicable law at or from the Property may result in a lien on the Property, (ii) upon any Managing Member or Affiliate thereof receiving any notice to such effect from any federal, state, or other governmental authority, or (iii) upon any Managing Member or Affiliate thereof obtaining knowledge of any incurrence of any expense or loss by any such governmental authority in connection with the assessment,

containment, or removal of any hazardous material for which expense or loss a lien may be imposed on the Property;

(w) to the extent permitted by law, the Managing Member shall at all times indemnify, defend and hold harmless the Investor Member and its members against and from any and all claims, suits, actions, debts, damages, costs, charges, losses, obligations, judgments, and expenses, of any nature whatsoever, suffered or incurred by the Investor Member or its members, under or on account of the Environmental Laws or any similar laws or regulations, including the assertion of any lien thereunder, on or under the Project. The foregoing indemnification shall be a recourse obligation of the Managing Member and shall survive the dissolution of the Company and the death, retirement, incompetency, insolvency, Bankruptcy, or withdrawal of the Managing Member;

(x) it shall maintain insurance in form and amounts satisfactory to the Investor Member, as specified in Exhibit A to this Agreement; provided that the Managing Member may comply with its obligations to maintain such insurance if such insurance is maintained by the City as the owner of a fee interest in the Property or as the tenant under the Master Lease or is maintained by one or more contractors;

(y) it shall not enter into any lease, other than the Master Lease, with any tenant unless (i) the terms thereunder (including rental rates) are reasonable, (ii) a copy of such lease is provided to the Investor Member at least 10 days prior to execution, and (iii) the Consent of the Investor Member is obtained prior to entering into any lease which is for more than 30% of the rentable space of the Property; and

(z) the Rehabilitation shall be completed in a timely manner in accordance with (i) all applicable requirements of the Operating Documents, (ii) all applicable requirements of all appropriate governmental entities, and (iii) the Plans and Specifications of the Property that have been or shall be hereafter approved by FIB and any applicable governmental entities, as the Plans and Specifications may be changed from time to time with the approval of FIB, if any approval shall be required, and any applicable governmental entities, if any approval shall be required.

. The Investor Member shall have the following duties and obligations with respect to the Property and the Company:

(a) The Investor Member (i) intends for the Company to be treated as a partnership for federal income tax purposes and for the Investor Member to be treated as a member of the Company for federal income tax purposes, (ii) will report its distributive share of all items of income, gain, loss, deductions and credits with respect to its Interest in the Company for federal income tax purposes in a consistent manner as reasonably determined by the Investor Member's accountants;

(b) as of the date hereof, and for so long as it is a member of the Company, the Investor Member will keep books and records that are separate from the books and records of the Company and the Managing Member;

(c) the Investor Member has not received any loans (or guarantees or other insurance of any indebtedness) from the Managing Member, the Company, or any person related

to such entities within the meaning of Section 267(b) or Section 707(b)(1) of the Code, to acquire its Interest in the Company;

(d) the Investor Member did not acquire its Interest in the Company with the intent of abandoning it and has no prior agreement, plan, or intention to abandon its Interest in the Company; and

(e) the Investor Member has no prior agreement, plan, or intention to exercise the Put Option.

ARTICLE IV.

MEMBERS, COMPANY INTERESTS AND OBLIGATIONS OF THE COMPANY

4.01 Members, Managing Member, Capital Contributions and Company Interests.

(a) The Managing Member, its principal address or place of business, its Capital Contribution and its Percentage Interest are set forth in Schedule A attached hereto. Prior to the Admission Date, the Managing Member made a combination of in-kind contributions of property, work-in-process, development entitlements and cash contributions to the Company in the aggregate amount of \$[_____], and as reflected in the Projections.

(b) The Investor Member, its principal office or place of business, its Capital Contribution and its Percentage Interest are set forth in Schedule A attached hereto.

(c) Subject to the provisions of this Agreement, including the provisions of Sections 5.01(f) and 5.03, the Investor Member shall be obligated to make a Capital Contribution to the Company in the aggregate amount of \$[_____] in 3 Installments, which Installments shall be due and payable in cash by the Investor Member, solely from the capital contributions received by the Investor Member for such purposes, as follows:

(i) \$[_____] (the “First Installment”) upon the latest to occur of (A) the Admission Date; (B) receipt of evidence of Part 1 Approval and Part 2 Approval; (C) receipt of Title Policy and Survey; (D) receipt by the Investor Member of the Architect’s Certificate that the Plans and Specifications are consistent with the Part 2 Approval; (E) receipt by the Investor Member of the Preservation Consultant’s certificate that the Plans and Specifications are consistent with the Part 2 Approval as amended; (F) closing of the Loan; (G) evidence of receipt of all capital contributions of the Managing Member as provided in the Projections; (H) execution and delivery of the Ground Lease by the Developer and the Company; (I) receipt of a reasonableness opinion with respect to any fees paid to any Developer Entity, including but not limited to the Development Fee, in each case satisfactory to the Investor Member; and (J) the satisfaction of any requirements set forth in this Agreement as prerequisites to the payment of the First Installment, including but not limited to the opinions described in Section 5.04 hereof.

(ii) \$[_____] (the “Second Installment”) shall be paid within 15 days after the end of the month in which the Investor Member receives all of the following: (A) receipt of evidence of Placement in Service of the Building; (B) receipt of a draft Cost Certification prepared by the Accountants evidencing Actual Federal Historic Tax Credits in an amount no less than 75% of the Projected Federal Historic Tax Credits and otherwise in form and substance

acceptable to the Investor Member; (C) delivery to the Investor Member of the Managing Member's Certificate, updated to reflect the status of events described therein and signed by the Managing Member; (D) receipt by the Investor Member of the Architect's Certificate that the Project has been built and construction change orders, if any, in a manner consistent with the Secretary's Standards, the Plans and Specifications, and the Part 2 Approval (as amended); (E) receipt by the Investor Member of the Preservation Consultant's certificate that the Project has been built and construction change orders, if any, in a manner consistent with the Secretary's Standards, the Plans and Specifications, and the Part 2 Approval (as amended); (F) receipt of evidence of Part 3 Approval; (G) receipt of evidence satisfactory to the Investor Member that no uncured defaults exist under the Operating Documents; (H) receipt of evidence satisfactory to the Investor Member that all required insurance is in full force and effect; (I) no adverse Change of Law has occurred; (J) receipt of a date-down endorsement to the Title Policy acceptable to Investor Member; (K) receipt of prior year's tax return and K-1, if applicable; and (L) satisfaction of the requirements for the payment by the Investor Member of the First Installment.

(iii) \$[_____] (the "Third Installment") shall be paid within 15 days after the end of the month in which the Investor Member receives of all of the following: (A) achievement of Final Closing; (B) receipt of a final Cost Certification prepared by the Accountants evidencing Actual Federal Historic Tax Credits in an amount no less than 75% of the Projected Federal Historic Tax Credits and otherwise in form and substance acceptable to the Investor Member; (C) delivery to the Investor Member of the Managing Member's Certificate, updated to reflect the status of events described therein and signed by the Managing Member; (D) receipt of a date-down endorsement to the Title Policy acceptable to Investor Member; (E) receipt of final audit and tax return for the year in which the Building achieved Placement in Service; (F) receipt of a K-1 (or Montana equivalent) evidencing allocation of 100% of the Actual State Historic Tax Credits to Investor Member; (G) receipt of evidence satisfactory to the Investor Member that no uncured defaults exist under the Operating Documents; (H) receipt of evidence satisfactory to the Investor Member that all required insurance is in full force and effect; (I) no adverse Change of Law has occurred; and (J) satisfaction of the requirements for the payment by the Investor Member of the Second Installment.

No Installment shall be due or payable prior to receipt by the Investor Member of the Installment Payment Notice in the form set forth in Exhibit B1 from the Managing Member at least 10 Business Days and not more than 30 calendar days prior to the due date of the Installment specifying the amount of such Installment and the Managing Member's Certificate from the Managing Member in the form set forth in Exhibit B2.

The Investor Member shall have the right to pay itself, at any time and from any Installment, on behalf of the Company, any Special Tax Distribution. Any third party reasonable legal, accounting, or other related costs incurred by the Investor Member with respect to any other post-closing documents, may be deducted from any Installment.

(d) Reserved.

(e) The Investor Member, in its sole and absolute discretion, may waive, in whole or in part, any one or more conditions to the payment of any Installment and may pay all or a portion of the amount of such Installment that would have been due had all of the conditions been

satisfied. The waiver of any condition, in whole or in part, shall not prevent the Investor Member from asserting the failure of such condition as a defense against the requirement of paying any portion of such Installment that the Investor Member determines not to fund or paying any other Installment at any subsequent time so long as such condition remains unsatisfied. Upon request from the Investor Member, the Managing Member, with the assistance of the Accountants, shall provide the information necessary for the Investor Member to determine the timing and amount of any accelerated Installment. By executing this Agreement, the Managing Member agrees to the operation of this provision.

(f) Credit Adjustments to Capital Contributions.

(i) If, as a result of a reduction or increase in QREs, a reallocation of Profits or Losses, or for any other reason other than (A) a Recapture Event; (B) an event which would be a Recapture Event but for the fact it resulted from a sale or disposition of the Company Interest of the Investor Member; or (C) an Excluded Event, either the Accountants shall determine in preparing the Company's tax returns (or an amended return), or there shall be a Final Determination, that the Actual Federal Historic Tax Credits and/or Actual State Historic Tax Credits are more or less than the Projected Federal Historic Tax Credits and/or Projected State Historic Tax Credits (such determination being referred to herein as the "Credit Determination"), the provisions of Sections 5.01(f)(ii) and 5.01(f)(iii) shall apply.

(ii) After the Credit Determination is made, the Accountants shall calculate the difference between: (i) the Actual Federal Historic Tax Credits and the Projected Federal Historic Tax Credits, and (ii) the Actual State Historic Tax Credits and the Projected State Historic Tax Credits. Such difference shall be multiplied by the Capital Index and the product shall be referred to herein as the "Credit Adjustment." If the amount of the Credit Adjustment is positive, the Third Installment shall be increased by the amount of such positive Credit Adjustment. If there are no remaining unpaid Installments, the Investor Member shall contribute the amount of such positive Credit Adjustment to the capital of the Company within 30 days following the receipt of notice of the positive Credit Adjustment. Prior to any such increase in the amount of a remaining Installment or obligation to contribute additional capital, the Investor Member shall be provided with evidence reasonably sufficient to enable it to verify the calculation of such positive Credit Adjustment. Notwithstanding the foregoing, positive Credit Adjustments shall not in the aggregate exceed 15% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in this Section 5.01(f)(ii)).

(iii) In the case of a negative Credit Adjustment, the amount of the next succeeding Installment (and any Installments thereafter if necessary) to be paid by the Investor Member after the Credit Determination has been made shall be reduced by the amount of the negative Credit Adjustment. If the negative Credit Adjustment exceeds the amount of all remaining Installments, the Managing Member shall pay the amount necessary to achieve the total Credit Adjustment by contributing to the Company the difference between the Credit Adjustment and the amount by which such Installments were reduced (the "Adjuster Differential Amount"), which amount shall then be immediately distributed to the Investor Member as a return of capital. Notwithstanding the foregoing, if the effect of such a contribution of capital would be to prevent the Investor Member from being allocated 99% of Profits, Federal Historic Tax Credits, and/or State Historic Tax Credits, then the Adjuster Differential Amount that was to be contributed to the

Company as aforesaid (recalculated on an After-Tax Basis) shall be paid directly by the Managing Member to the Investor Member as compensation for a breach of warranty. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full.

(iv) If a Recapture Event due to Managing Members Acts or Omissions occurs prior to the time the Investor Member has paid in its Capital Contribution in full, the amount of the next succeeding Installment (and any Installments thereafter if necessary) of the Investor Member shall be reduced by the Recapture Adjustment Amount. If no further Installment remains, or if the Recapture Adjustment Amount is greater than the aggregate amount of the remaining Installments, then the Managing Member shall pay the difference between the Recapture Adjustment Amount and the amount by which such Installments were reduced (the “Recapture Differential Amount”), by contributing to the Company the Recapture Differential Amount, which amount shall then be immediately distributed to the Investor Member as a return of capital. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full.

(v) In addition to any adjustment described in Section 5.01(f)(i) through (iv):

(A) to the extent at least 80% of the Projected Federal Historic Tax Credits has not achieved Placement in Service by December 31, 2024, then the amount of the next succeeding Installment (and any Installment thereafter if necessary) to be paid by the Investor Member shall be calculated by reducing the Capital Index by 3%, which Capital Index shall be further reduced by 1% for each full or partial calendar quarter that Placement in Service delay occurs beyond March 31, 2025 (the “2024 Delay Amount”); or

(B) to the extent at least 80% of the Projected Federal Historic Tax Credits has achieved Placement in Service by December 31, 2024 but any further portion of the Rehabilitation of the Building has not achieved Placement in Service by March 31, 2025, then the amount of the next succeeding Installment (and any Installment thereafter if necessary) to be paid by the Investor Member with respect to such portion of the Rehabilitation of the Building shall be calculated by reducing the Capital Index by 3%, which Capital Index shall be further reduced by 1% for each full or partial calendar quarter that such Placement in Service delay with respect to such portion of the Rehabilitation of the Building occurs beyond June 30, 2025 (the “2025 Delay Amount”).

If the 2024 Delay Amount or the 2025 Delay Amount exceeds the amount of all remaining Installments, the difference between the 2024 Delay Amount or the 2025 Delay Amount, as the case may be, and the amount by which such Installments were reduced pursuant to clause (A) or (B) above (the “Delay Differential Amount”) shall be paid by the Managing Member by contributing to the Company the Delay Differential Amount, which amount shall then be immediately distributed to the Investor Member as a return of capital. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full. Notwithstanding the foregoing, if the effect of such a contribution of capital would be to cause Company Profits or Losses or credits arising during the Compliance Period to be allocated among the Members other than in accordance with their Percentage Interests as set forth in Schedule A, then the Delay

Differential Amount (recalculated on an After-Tax Basis) that was to be contributed to the Company as aforesaid shall be paid directly by the Managing Member to the Investor Member promptly after demand is made therefor.

(vi) Notwithstanding anything to the contrary in this Agreement, the aggregate amount of the reductions to the Installments pursuant to Sections 5.01(f)(iii) and 5.01(f)(v) and payments by the Managing Member pursuant to Section 5.01(f)(iii) and 5.01(f)(v) shall be limited to 25% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in Section 5.01(f)). To the extent the aggregate amount of the negative Credit Adjustments pursuant to Section 5.01(f)(iii), and the 2024 Delay Amount or the 2025 Delay Amount, as the case may be, pursuant to Section 5.01(f)(v), exceed 25% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in Section 5.01(f)), such excess amount shall be treated as a Capital Contribution Adjustment payable pursuant to Section 11.01(b).

4.02 Return of Capital Contribution.

Except as provided in this Agreement, no Member shall be entitled to demand or receive the return of any portion of its Capital Contribution. Except as provided in Section 9.02 hereof, without the Consent of all of the Members, no additional Person may be admitted as an additional Member and a Capital Contribution may be accepted only as and to the extent expressly provided for in this Article V.

4.03 Withholding of Capital Contribution Upon Default.

In the event that: (a) the Managing Member has not substantially complied with any material provisions of this Agreement, beyond any cure period, and remains in non-compliance (b) any agreement entered into by the Company for financing related to the Property is in default, or a default under the Ground Lease or the Lease Purchase Finance Documents has occurred and is continuing in default beyond any applicable cure period, (c) any events described in Section 8.12 herein has occurred, and are continuing in default beyond any cure period, (d) foreclosure proceedings have been commenced against the Property or any portion thereof, (e) the Managing Member has not made its capital contribution to the Company as required by this Agreement and pursuant to the Projections and such failure shall be continuing beyond any cure period or (f) any default exists under any material provisions of the Operating Documents and such failure shall be continuing beyond any cure period (provided that if the counterparty under such Operating Document shall waive such default then such default shall be deemed cured for purposes of this Agreement), then the Company and the Managing Member shall be in default of this Agreement, and the Investor Member, at its sole election, may withhold payment of any Installment otherwise payable to the Company; provided, however, that if a payment of all or any portion of the then due Installment will cure the event justifying the withholding, then the Investor Member shall pay such Installment otherwise payable if it is applied to cure such event.

Unless applied as set forth above, all amounts so withheld by the Investor Member under this Section 5.03 shall be promptly released to the Company only after the Managing Member or the Company has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member.

4.04 Legal Opinions.

As a condition precedent to payment of the First Installment, the Investor Member shall have received such legal opinions as it may require, in its reasonable discretion. Any opinion shall explicitly state that Kutak Rock LLP, of Kansas City, Missouri, counsel to the Investor Member, may rely upon it.

4.05 Repurchase Obligation.

If a Repurchase Event occurs and such Repurchase Event results from either (i) the direct or indirect actions or inactions of any Developer Entity in violation of this Agreement or (ii) a Change of Law, then the Managing Member shall, within 30 days of the occurrence or notification thereof, as applicable, send to the Investor Member Notice of such event and of its obligation to purchase the Interest of the Investor Member hereunder and shall return to the Investor Member in payment therefor an amount equal to 100% of the Investor Member's paid-in Capital Contribution (which amount shall be reduced by any amount paid to the Investor Member pursuant to the downward adjustment described in Section 5.01(f)(iii), 5.01(f)(iv), or 5.01(f)(v), in the event the Investor Member in its sole discretion requires such purchase of its Interest), plus interest during the time such amount was outstanding at a rate equal to the lesser of 8% per annum or the maximum rate of interest chargeable under Montana law. The Managing Member, within 30 days of the mailing date of Notice by the Investor Member of such election, shall acquire the entire Interest of the Investor Member in the Company by making payment to the Investor Member of the amount described above, in cash. Any amounts not paid under this Section 5.05 within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full. Upon the purchase of the Interest of the Investor Member, the Interest of the Investor Member in the Company shall terminate, and the Managing Member shall indemnify and hold harmless, to the extent permitted by law, the Investor Member from any losses, damages, and liabilities to which the Investor Member (as a result of its participation hereunder) may be subject arising from membership in the Company and subject to the provisions of this Agreement as a result of the Acts or Omissions of the Managing Member (except any loss, damage or liability attributable solely to the Investor Member's gross negligence, recklessness or willful misconduct). For the avoidance of doubt, the Managing Member shall not be obligated to purchase the Investor Member's interest or indemnify the Investment Member pursuant to this Section 5.05 if the Repurchase Event results from an Excluded Event.

4.06 Subordinated Loans.

(a) The Managing Member shall have the right, but not the obligation, after funding all other obligations under this Agreement, including its obligation to fund Operating Deficits pursuant to Section 8.09 hereof, to make "Subordinated Loans" pursuant to this Section 5.06(a) to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company. The Investor Member shall also have the right, in its sole and absolute discretion to make Subordinated Loans to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company.

(b) At the request of a Member, which request may be made quarterly, any Subordinated Loan shall be evidenced by a non-negotiable promissory note or notes reflecting any

such Subordinated Loans made during the preceding calendar quarter. Subordinated Loans shall be on the following terms: (i) interest shall accrue on Subordinated Loans at an annual interest rate of 8%; and (ii) Subordinated Loans shall be repayable solely as set forth in Sections 11.01 and 11.04 of this Agreement. Subordinated Loans shall be unsecured loans. Subordinated Loans shall not be considered a part of a Member's Capital Contribution and shall not increase such Member's Capital Account.

ARTICLE V.
CHANGES IN MANAGING MEMBER

5.01 Resignation of a Managing Member.

(a) A Managing Member may resign from the Company or sell, transfer, or assign its Interest as Managing Member (or a Controlling Interest in the Managing Member) only (i) with the Consent of the Investor Member and (ii) only after the requirements of Section 6.02 have been met.

(b) In the event that a Managing Member resigns from the Company or sells, transfers or assigns its entire Interest in compliance with Section 6.01(a), it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member before such resignation, sale, transfer or assignment shall have become effective, but shall be free of any obligation or liability incurred on account of the activities of the Company from and after the time such resignation, sale, transfer or assignment shall have become effective. Notwithstanding the foregoing, such Managing Member shall continue to be liable with respect to its acts or omission taken as "partnership representative" (as defined by the Revised Partnership Audit Rules) of the Company after such resignation, sale, transfer, or assignment is effective, other than notification of the IRS of its resignation as partnership representative.

. A Person shall be appointed as a Managing Member of the Company only if the following terms and conditions are satisfied:

(a) the appointment of such Person shall have been Consented to by the Managing Member or its successors and the Investor Member;

(b) the successor or additional Person shall have accepted and agreed to be bound by (i) all the terms and provisions of this Agreement, by executing a counterpart thereof, and (ii) all the terms and provisions of the Operating Documents, to the extent applicable, by executing a counterpart thereof, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to effect the appointment of such Person as a Managing Member, and an appropriate document evidencing the appointment of such Person as a Managing Member shall have been filed, if required, and all other actions required by Section 1.05 in connection with such appointment shall have been performed;

(c) if the successor or additional Person is a limited liability company or corporation, it shall have provided the Company with evidence satisfactory to Counsel for the Company of its authority to become a Managing Member, to do business in the State and to be bound by the terms and provisions of this Agreement; and

(d) Counsel shall have rendered an opinion that the appointment of the successor or additional Person is in conformity with the Act and that none of the actions taken in connection with the appointment of such Person will cause the termination or dissolution of the Company or will cause it to be treated for federal income tax purposes as an association taxable as a corporation.

5.03 Effect of Bankruptcy, Withdrawal, or Dissolution of a Managing Member.

(a) In the event of the Bankruptcy of the Managing Member, the termination, resignation, or dissolution of the Managing Member, the business of the Company shall be continued by the other Members unless the Company is terminated as otherwise provided for herein.

(b) Upon the Bankruptcy or dissolution of a Managing Member, such Person shall immediately cease to be a Managing Member. Promptly thereafter, the Investor Member may appoint a Non-Member Manager in the same manner as provided for in Section 8.12(b). The Non-Member Manager shall have all rights and responsibilities of a Non-Member Manager under Section 8.12(b) which arise following the date of appointment of such Non-Member Manager. Until the Investor Member has appointed a Non-Member Manager, the Investor Member shall have all rights and responsibilities as a Non-Member Manager as if it were appointed pursuant to Section 8.12(b).

(c) A Managing Member that ceases to be a Managing Member in accordance with the provisions of this Section 6.03 shall cease to have any further rights under this Agreement, except as expressly set forth in this Section 6.03. A Managing Member that ceases to be a Managing Member in accordance with the provisions of this Section 6.03 shall (i) be entitled to reimbursement of expenses or any fees or compensation provided for in this Agreement arising or earned before ceasing to be a Managing Member, and (ii) shall remain liable for all of its obligations and liabilities as Managing Member that accrued before the date which the Managing Member ceased to be a Managing Member and for any acts or omissions taken by the Managing Member as “partnership representative” (as defined by the Revised Partnership Audit Rules) of the Company after such date, other than notification of the IRS of its resignation as partnership representative.

(d) If, at the time of termination, resignation, Bankruptcy, or dissolution of the Managing Member, the Managing Member was not the sole Managing Member, then the remaining Managing Members shall immediately (i) give Notice to the Investor Member of such termination, resignation, Bankruptcy, or dissolution and (ii) make such amendments to this Agreement and execute and file for recordation such amendments or documents or other instruments necessary to reflect that such Managing Member is no longer a Managing Member.

(e) All parties hereto hereby agree to take all actions and to execute all documents as shall be necessary or appropriate to effect the foregoing provisions of this Section 6.03.

(f) The Managing Member, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that in the event the Managing Member

should make application for or seek protection or relief under any of the Sections or Chapters of the United States Bankruptcy Code (the “Bankruptcy Code”), or in the event that any involuntary petition is filed against the Managing Member, which is not dismissed within 60 days, then, in such event, any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Agreement, or otherwise. The foregoing shall in no way preclude, restrict, or prevent the Managing Member from filing for protection under the Bankruptcy Code.

(g) The Members acknowledge and agree that this Agreement is a contract under which the Investor Member is excused from accepting performance from the Managing Member, its assignee or trustee, in the event that the Managing Member makes application for or seeks protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that an involuntary petition is filed against such Managing Member which is not dismissed within 60 days. The effect of this Paragraph shall be that this Agreement is hereby deemed to be subject to the exceptions to assumption and assignment of contracts set forth in Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code and that the Investor Member, by its refusal to consent to an assumption or assignment of this Agreement by the Managing Member after the filing of a petition in bankruptcy by or against such Managing Member, shall be able to prevent such assumption or assignment.

(h) In the event that the Managing Member makes application for or seeks relief or protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that any involuntary petition is filed against said Managing Member, then, in such event, any Member may apply or move to the bankruptcy court in which such petition is filed for a change of venue to the bankruptcy court where the Company has its principal place of business, and the Managing Member hereby agrees not to oppose or object to such application or motion in any way.

ARTICLE VI. **ASSIGNMENT TO THE COMPANY**

The Managing Member acknowledges, it has transferred and assigned to the Company all of its rights, title, and interest in and to the Property, including the following:

(a) all contracts with architects, engineers, surveyors, contractors, and supervising architects with respect to the Company’s development of the Property;

(b) all plans, specifications, and working drawings, prepared, or obtained in connection with the Property and all governmental approvals obtained, including planning, zoning, environmental, and building permits to the extent assignable;

(c) all commitments with respect to the Tax Credits, the Ground Lease, and the Operating Documents; and

(d) all contracts with respect to the Company’s operation of the Property;

(e) all governmental approvals obtained in connection with the Company’s operation of the Property; and

- (f) any Operating Documents and other work product related to the Property.

The foregoing rights, title and interest are deemed to have no value for purposes hereof.

ARTICLE VII.
RIGHTS, OBLIGATIONS AND POWERS OF THE MANAGING MEMBER

7.01 Management of the Company.

(a) Except as otherwise set forth in this Agreement, the Managing Member, within the authority granted to it under this Agreement, shall have full, complete and exclusive discretion to manage and control the business of the Company for the purposes stated in Article III, shall make all decisions affecting the business of the Company and shall manage and control the affairs of the Company to the best of its ability and use its best efforts to carry out the purpose of the Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member and of the Company. The Managing Member shall devote such of its time as is necessary to the affairs of the Company. The Managing Member shall not be paid any compensation for serving as managing member.

(b) Except as otherwise set forth in this Agreement and subject to the provisions of the Operating Documents, the Managing Member (acting for and on behalf of the Company), in extension and not in limitation of the rights and powers given by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority in the management of the Company business to do any and all acts and things necessary, proper, convenient or advisable to effectuate the purpose of the Company. In furtherance and not in limitation of the foregoing provisions, the Managing Member is specifically authorized and empowered to execute and deliver, on behalf of the Company, the Operating Documents and any bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith. All decisions made for and on behalf of the Company by the Managing Member shall be binding upon the Company. No person dealing with the Managing Member shall be required to determine its authority to make any undertaking on behalf of the Company, nor to determine any facts or circumstances bearing upon the existence of such authority. The Managing Member shall take all actions on behalf of the Company which pertain to the acquisition of the Property and the admission of the Investor Member to the Company.

7.02 Limitations Upon the Authority of the Managing Member.

- (a) The Managing Member shall not have any authority to:
 - (i) perform any act in violation of any Applicable Law or regulations thereunder;
 - (ii) perform any act in violation of the provisions of any of the Operating Documents;
 - (iii) do any act required to be approved or ratified in writing by the Investor Member under the Act unless the right to do so is expressly given in this Agreement; or

(iv) borrow from the Company or commingle Company funds with funds of any other Person.

(b) The Managing Member shall not, without the Consent of the Investor Member, have any authority to:

(i) sell, refinance, or otherwise dispose of all or substantially all of the assets of the Company, including the Property; grant or refinance any mortgage or other indebtedness of the Company; permit a disposition of the Property, or the Company's sub-leasehold interest therein, within the meaning of Section 50 of the Code, or take any action that would cause a Recapture Event;

(ii) supplement, replace, renew, cancel, or materially amend any of the Operating Documents (including any increase in the Debt Service);

(iii) incur debt in excess of \$25,000 in the aggregate at any one time outstanding on the general credit of the Company, except borrowings constituting Subordinated Loans or Operating Deficit Loans, or which are provided for in an approved Budget, if any;

(iv) undertake any rehabilitation, repairs or other work on the Building inconsistent with the Secretary's Standards; or construct any new or replacement capital improvements on the Property which substantially alter the Property or its use, except (A) replacements and remodeling in the ordinary course of business or under emergency conditions, (B) reconstruction paid for from insurance proceeds, or (C) as and to the extent provided for in an approved Budget, if any;

(v) acquire any real property in addition to the Property (other than easements or servitudes or other rights benefiting and necessary or convenient for the operation and maintenance of the Property);

(vi) make any filing to begin Bankruptcy proceedings on behalf of the Company;

(vii) make application for or accept any grant funds on behalf of the Company regardless of the source of the grant;

(viii) except as provided for in the Operating Documents or the Lease Purchase Finance Documents, pledge or assign any of the assets of the Company, including the right to receive the Investor Member's Capital Contribution or the proceeds thereof;

(ix) cause the Company to settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Company rights in any litigation or arbitration matter involving a claim in excess of \$25,000;

(x) change the nature of the Company's business;

(xi) dissolve and wind up the Company;

(xii) permit the merger or termination of the Company;

(xiii) enter into any sublease with any “tax-exempt entity” as that term is defined in Section 168(h) of the Code, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; or any foreign person or entity, if such sublease results in any portion of the Property being treated as “tax-exempt use property” as that term is defined in Section 168(h) of the Code (as modified by Section 47(c)(2)(B)(v) of the Code); the parties recognize that the Master Lease (and the County Lease referenced therein) does not violate this provision;

(xiv) take any action that causes or is likely to cause the Building to be delisted from the National Register of Historic Places or to be certified as noncontributing to the historic district in which it is located, as applicable;

(xv) guarantee or cause the Company to guarantee the indebtedness of any Person;

(xvi) grant or request on behalf of the Company any approval, removal or consent provided for in the Operating Documents;

(xvii) take any action or fail to take any action that would prevent the Company from being eligible to claim Tax Credits with respect to the Property; or

(xviii) make any payment for or enter into any contract or other agreement for the management or operation of the Property or any other contract or other agreement with an Affiliate that is not on arms’ length terms.

7.03 Management Purposes.

In conducting the business of the Company, the Managing Member shall be bound by the Company’s purposes set forth in Article III.

7.04 Delegation of Authority.

The Managing Member may delegate all or any of its powers, rights, and obligations hereunder, and may appoint, employ, contract, or otherwise deal with any Person for the transaction of the business of the Company, which Person may, under supervision of the Managing Member, perform any acts or services for the Company as the Managing Member may approve. Any such delegation of authority shall not limit or decrease the Managing Member’s obligations and responsibilities under this Agreement.

7.05 Developer Entity Dealings with the Company.

(a) Reserved.

(b) Neither the Company nor the Managing Member shall enter into any agreement with any Developer Entity for the sale of goods or services to the Company not specifically provided for in this Agreement unless (i) the compensation paid for such goods or

services is reasonable (i.e., at Fair Market Value) and is paid only for goods or services actually furnished to the Company, (ii) the goods or services to be furnished are reasonable for and necessary to the Company, (iii) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm's-length transaction, and (iv) no agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by any Developer Entity shall be compensated by the Company for his or her services without the Consent of the Investor Member.

Any contract covering such transactions shall be in writing and shall be terminable without penalty on 60 days' Notice. Any payment made to a Developer Entity for such goods or services shall be fully disclosed to the Investor Member in the reports required under Section 13.04. The Company shall not, by the making of lump-sum payments to any Person for disbursement by such Person, circumvent the provisions of this Section 8.05(b).

Notwithstanding the foregoing provisions of this Section 8.05 or Section 8.02(b)(xviii), the Investor Member hereby consents to the Construction Contract, the Development Agreement, the Master Lease, and the Forbearance Agreement.

7.06 Reserved.

7.07 Liability of Managing Member.

No Managing Member shall be liable, responsible or accountable in damages or otherwise to any of the Members for any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interest of the Company, except for gross negligence, willful misconduct, or fraud as Managing Member with respect to such acts or omissions as determined by a nonappealable judgment of court of competent jurisdiction. Any loss or damage incurred by the Managing Member by reason of any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority granted to it by this Agreement and in the best interests of the Company (but not, in any event, any loss or damage incurred by any Managing Member by reason of gross negligence, willful misconduct, or fraud as Managing Member with respect to such acts or omissions as determined by a nonappealable judgment of court of competent jurisdiction) shall be paid from Company assets to the extent available (but the Investor Member shall not have any personal liability to the Managing Member under any circumstances on account of any such loss or damage incurred by the Managing Member or on account of the payment thereof).

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

To the extent permitted by law, the Managing Member shall indemnify, defend, and hold harmless the Investor Member from any Transfer Taxes (as hereinafter defined) incurred by the Investor Member as a result of the Investor Member's admission to, or becoming a Member of, the

Company. For the avoidance of doubt, the Managing Member shall not be obligated to indemnify, defend and hold harmless the Investment Member pursuant to this paragraph if the Transfer Taxes are as a result of an Excluded Event. As used herein, “Transfer Taxes” means any real property transfer taxes assessed by or within the State or the city or county in which the Property is located, including any taxes imposed on the transfer of an interest in an entity that owns real property.

The indemnification rights contained in this Section 8.07 shall (i) be joint and several recourse obligations of the Managing Members (if more than one); (ii) survive dissolution of the Company, the withdrawal, bankruptcy, or insolvency of the Managing Member and the withdrawal, insolvency, dissolution or bankruptcy of the Investor Member; and (iii) be cumulative of and in addition to any and all rights, remedies and recourses to which the Investor Member shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

Notwithstanding anything in this Agreement to the contrary, no Developer Entity shall have any liability under this Agreement or any other Operating Document for special, incidental, consequential, or indirect damages or lost profits.

The Investor Member and its Affiliates and members acknowledge and agree that the obligations of the Managing Member hereunder are solely the obligations of the Managing Member. The City, as the sole member of the Managing Member, has no obligation to make capital contributions or loan money to the Company or the Managing Member. Any such capital contributions by the City, directly or indirectly, to the Company or the Managing Member would be payable only upon appropriation by the City 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 City has not pledged the full faith and credit or taxing power of the City to payment of any amounts to the Company or the Managing Member under this Agreement or pursuant to the Lease Purchase Finance Documents or the other Operating Documents.

No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against the City or any officer, member of the governing body or employee of the City, 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 City or any such officer, member of the governing body or employee of the City is hereby expressly waived and released by the Members and their respective Affiliates and members.

7.08 Company Taxable as Partnership.

(a) The Managing Member shall take such steps and comply with such other requirements as may from time to time be necessary to assure that all provisions of the Code (as now or hereafter interpreted by the IRS or the courts) are met that are necessary to assure that the Company is classified as a partnership for federal income tax purposes (including, but not limited to, not making an election under Treasury Regulation Section 301.7701-3 to be classified as anything other than a partnership).

(b) Upon request, the Managing Member shall deliver to the Investor Member financial statements or other evidence reasonably satisfactory to the Investor Member of compliance with the requirements of Section 8.08(a). If the Managing Member is unable to

comply with the requirements of Section 8.08(a) then, at the request of the Investor Member, and subject to Section 6.01, an additional or substitute Managing Member shall be admitted who shall cause the Managing Member to be in compliance with Section 8.08(a).

7.09 Excess Development Costs, Operating Deficits.

(a) The Managing Member shall be responsible for: (i) meeting all requirements for obtaining all necessary temporary and permanent certificates of occupancy for all the rental units in the Property; (ii) fulfilling all actions required of the Company to assure that the Property receives Part 3 Approval; and (iii) achieving Final Closing. The Managing Member hereby is obligated to fund all Excess Development Costs by making a Capital Contribution to the Company. In the event that the Managing Member shall fail to pay any such Excess Development Costs as required in this Section 8.09(a), the Investor Member may, in its sole discretion, cause the Company to pay such Excess Development Costs using the Investor Member's Capital Contribution.

(b) Any Operating Deficits occurring prior to the achievement of Final Closing shall be considered a Development Costs and shall be governed by Section 8.09(a). Thereafter, in the event that an Operating Deficit exists at any time during the Initial Operating Period, the Managing Member shall provide such funds to the Company as shall be necessary to pay such Operating Deficit in the form of a loan to the Company (the "Operating Deficit Loan"). The Managing Member shall make Operating Deficit Loans in such amounts and at such intervals so as to allow the Company to cover accrued accounts payable on a 90-day current basis. An Operating Deficit Loan shall be treated as if it were a Subordinated Loan in accordance with the provisions of Section 5.06(b); provided, however, that an Operating Deficit Loan shall bear no interest, and shall be repaid only if no event described in Section 8.12 has occurred and shall then be continuing. Notwithstanding anything herein to the contrary, any Operating Deficits occurring after the establishment of the Operating Reserve shall first be satisfied with proceeds maintained in the Operating Reserve.

(c) Notwithstanding anything in this Agreement to the contrary, the Managing Member shall not be required to fund (including by way of making a Subordinated Loan or Operating Deficit Loan to the Company) any Excess Development Costs or Operating Deficit to the extent attributable to deficiencies in the Operating Reserve.

(d) Development Fee.

(i) The Company has entered into the Development Agreement with the Developer for its services in connection with the development and Rehabilitation of the Property (which services do not include, and the Developer shall take no actions which pertain to, the admission of the Investor Member). In consideration for these services, a Development Fee in the total amount of \$[] shall be payable by the Company to the Developer in installments, which installments shall be due and payable in cash by the Company as follows: (1) \$[] upon the Company's receipt of the First Installment pursuant to Section 5.01(c)(i); (2) \$[] upon the Company's receipt of the Second Installment pursuant to Section 5.01(c)(ii); and (3) \$[] upon the Company's receipt of the Third Installment pursuant to Section 5.01(c)(iii).

(ii) Any amount of the Development Fee that is not paid pursuant to Section 8.09(c)(i) shall be earned upon Placement in Service, subject to interest at the applicable federal rate, and payable from Net Cash Flow pursuant to Section 11.01 or proceeds from a Capital Transaction pursuant to Section 11.04. If any portion of the Development Fee is not paid prior to the expiration of the fifth anniversary of Substantial Completion, the Managing Member shall make a Capital Contribution in the amount of any unpaid Development Fee in order that the Development Fee may be paid in full prior to such anniversary.

7. Net Interim Cash Flow.

Subject to the Consent of the Investor Member, which shall not be unreasonably conditioned, delayed, or withheld, Net Interim Cash Flow with shall be added to Net Cash Flow for the first Company Fiscal Year in which Net Cash Flow is to be determined.

7. Withholding of Fee Payments.

Without limitation on any other provision in this Agreement, upon the occurrence of any of the events described in Section 5.03, the Managing Member shall be in default of this Agreement, and the Company shall withhold payment of any amounts otherwise payable to it hereunder until such time as such default shall have been cured; provided, however, if a payment of all or any portion of such amounts then otherwise due would cure the event justifying the withholding, then the Company shall pay such amounts otherwise payable if it is applied to cure such event.

7. Conversion to Economic Interest; Appointment of a Non-Member Manager.

(a) The Investor Member shall have the right to convert the Interest of a Managing Member to an Economic Interest and appoint a Non-Member Manager in accordance with the procedures set forth in Section 8.12(b) in the event the Investor Member shall reasonably determine that one or more of the following conditions shall exist:

(i) for any gross negligence, malfeasance, or fraud, in the discharge of its duties and obligations as Managing Member (provided the same has, or reasonably may have, a material adverse effect on the Tax Credits or the Investor Member's ability to claim the Tax Credits); or

(ii) upon the occurrence of any of the following:

(1) the Company or the Managing Member shall have violated any provisions of any of the Operating Documents or any Applicable Laws, any of which has a material adverse effect on the Tax Credits or the Investor Member's ability to claim the Tax Credits, or the Managing Member fails to pay the Put Price as required by Section 9.05;

(2) a default shall have occurred under the Lease Purchase Finance Documents and shall not have been cured within any applicable notice and cure period under the Lease Purchase Finance Documents, provided

that if FIB shall waive such default, then such default shall be deemed cured for purposes of this Agreement;

(3) the Managing Member shall have conducted its own affairs or the affairs of the Company in such manner as would:

(A) cause the Company to fail to qualify as a limited liability company under the Act;

(B) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or

(C) cause a Recapture Event; or

(4) an event of Bankruptcy shall have occurred with respect to the Company or the Managing Member.

(b) The Investor Member shall give Notice to all Members of its determination that the Managing Member's Interest shall be converted to an Economic Interest and a Non-Member Manager shall be appointed to succeed to the rights, duties, and obligations of the Managing Member hereunder. The Managing Member shall have the lesser of (x) 60 days after receipt of such Notice or (y) the cure period applicable to the event of default as determined by the operative document, to cure any default or other reason for such removal (if susceptible to cure); provided, however, that if upon the expiration of said 60-day period, the Managing Member shall not have cured such default and, if in the reasonable judgment of the Investor Member, (A) the Managing Member has made reasonable progress towards cure, and (B) the default was not capable of being cured within said 60-day period, then unless and to the extent the nature of the default is such that there is a likelihood of material loss, liability or prejudice to the Investor Member from any such delay in removal, the Managing Member shall have 60 additional days in which to cure any such default, in which event it shall remain as Managing Member for such period. If the default or other cause for removal shall not be susceptible to cure or shall not have been cured within any applicable cure period, then (i) the rights, duties, and obligations conferred on the Managing Member as Managing Member under this Agreement shall cease, and the Interest of such Managing Member shall without further action (but with Notice to the Managing Member of the same) be converted to an Economic Interest; (ii) the Managing Member shall continue to provide to the Investor Member any such reports, contracts, and other relevant information as the Investor Member may reasonably require with respect to the Project and the Company solely with respect to periods prior to such date; (iii) the Investor Member will have the right to appoint a Person as a non-member manager of the Company (the "Non-Member Manager"); and (iv) the Non-Member Manager shall be paid a fee for its services in an amount not exceeding a reasonable and customary fee for a non-member manager performing like services, which shall first be paid from any other amount otherwise payable to the Managing Member. Upon its appointment as Non-Member Manager to the Company, such Non-Member Manager shall have all the rights, duties, and obligations of the Managing Member hereunder; provided that the Managing Member shall retain its all rights with respect to its Economic Interest as provided in Section 8.12(a).

(c) (i) In the event that the Managing Member's Interest is converted to an Economic Interest prior to Final Closing, it shall be and shall remain liable for all obligations and

liabilities incurred by it as Managing Member of the Company before such conversion became effective, including but not limited to the obligations and liabilities of the Managing Member with respect to its obligations set forth in Section 8.09 of this Agreement with regard to Excess Development Costs; provided, however, that if amounts otherwise payable to the Managing Member as fees are applied to meet the Managing Member's obligations stated in Article VIII of this Agreement, such application shall serve to reduce any such liabilities of the Managing Member or any successor, except for any liability incurred as the result of its gross negligence, misconduct, fraud or breach of fiduciary duty as Managing Member of the Company. The Managing Member shall have no liability for obligations arising after such conversion unless related to any period prior to such conversion.

If the Managing Member's Interest is converted to an Economic Interest prior to Final Closing, it shall not be entitled to payment of any further installments of any fees which otherwise would have been due and payable under various Sections of this Article VIII.

(ii) In the event that the Managing Member's Interest is converted to an Economic Interest after Final Closing, it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member of the Company before such conversion became effective, including but not limited to the Managing Member's obligations and liabilities under Section 8.09(b) of this Agreement; provided, however, that if amounts otherwise payable to the Managing Member as fees are applied by the Company at the request of the Investor Member to pay Operating Deficits, such application shall serve to reduce any such liabilities after Final Closing, except for any liability incurred as the result of its gross negligence, misconduct, fraud or breach of fiduciary duty as Managing Member of the Company. The Managing Member shall have no liability for obligations arising after such conversion unless related to any period prior to such conversion.

(iii) In the event that the Managing Member's Interest is converted to an Economic Interest, it shall be and shall remain liable for all its acts or omissions taken by the Managing Member as "partnership representative" (as defined by the Revised Partnership Audit Rules) of the Company after such conversion became effective, other than notification of the IRS of its resignation as partnership representative.

(d) The election by the Investor Member to convert the Managing Member's Interest to an Economic Interest under this Section 8.12 shall not limit or restrict the availability and use of any other remedy which the Investor Member or any other Member might have with respect to the Managing Member in connection with their undertakings and responsibilities under this Agreement. Nothing in this Section 8.12 shall reduce or otherwise limit the rights, remedies, or other actions available to the Investor Member against the Managing Member.

8. Reserved.

8. Reserved.

8. Reserved.

The annual operating budget and the capital budget for the Property (the “Budget”) shall be prepared by the Managing Member and submitted to the Investor Member for its review at least 60 days prior to the proposed effective date of such Budget; any such proposed Budget shall be subject to the Consent of the Investor Member before it becomes effective, which Consent shall not be unreasonably withheld. Such Budget shall specifically provide for all budget expenses in all major categories, including, but not limited to, administration, operation, repairs and maintenance, utilities, capital improvements, taxes, insurance, interest, and all budgeted expenses which are to be paid to any Developer Entity. The review and approval of the Budget by the Investor Member, or its objections to the Budget, shall be made and delivered to the Managing Member within 30 days of the Investor Member’s receipt of the proposed Budget. After commencement of the Company Fiscal Year covered by such Budget, the Managing Member shall notify the Investor Member in writing of any proposed modification in the allocation of funds among the specific categories in the Budget approved by the Investor Member by more than (i) the greater of 10% or \$2,500 in any category; or (ii) more than 5% of the overall Budget. In the event Investor Member fails to approve the Budget for any given Company Fiscal Year, the prior Fiscal Year’s Budget shall govern until such time as Investor Member approves the Budget.

The Managing Member shall cause a reserve to fund Operating Deficits and Debt Service (the “Operating Reserve”) shall be maintained by the Company and may be utilized for other purposes solely with the Consent of the Investor Member. The Operating Reserve shall be initially funded from proceeds of the Third Installment in the amount equal to \$[_____] (the “Operating Reserve Amount”). To the extent the balance of the Operating Reserve is less than the Operating Reserve Amount, the Operating Reserve shall be replenished solely from Net Cash Flow in accordance with Section 11.01. The funds in the Operating Reserve shall be held in a segregated account with FIB. All earnings on the Operating Reserve shall accrue to the benefit of the Operating Reserve. The Consent of the Investor Member shall be required for any withdrawals from the Operating Reserve other than in accordance with Section 8.09(b). At no time shall the aggregate amount of the Operating Reserve exceed the Company’s reasonably projected Operating Expenses (including the Operating Reserve) for a 6-month period.

ARTICLE IX.
TRANSFERS OF, AND RESTRICTIONS ON TRANSFERS
OF INTERESTS OF INVESTOR MEMBER

9. Purchase for Investment.

(c) Investor Member hereby represents and warrants to the Managing Member, to the Company and to any other Member that the acquisition of its Interest is made as principal for its account for investment purposes only and not with a view to the resale or distribution of such Interest, except insofar as Applicable Securities Laws permit such acquisitions to be made for the account of others or with a view to the resale or distribution of such Interest without requiring that such Interest, or the acquisition, resale or distribution thereof, be registered under Applicable Securities Laws.

(d) Investor Member agrees that it will not sell, assign, or otherwise transfer its Interest or any fraction thereof to any Person who does not similarly represent and warrant and similarly agree not to sell, assign, or transfer such Interest or fraction thereof to any Person who does not similarly represent and warrant and agree.

9. Restrictions on Transfer of Investor Member's Interest.

(c) The offer, sale, transfer, assignment, hypothecation, or pledge of any Interest of the Investor Member to any Affiliate of the Investor Member shall be permitted without the Managing Member's Consent provided that the Investor Member is not in default under Section 5.01 with respect to its Capital Contributions to the Company. Any other offer, sale, transfer, assignment, by hypothecation or pledge of any Interest of the Investor Member, or any offer, sale, transfer, assignment, hypothecation, or pledge of any Interest by any other Investor Member shall be subject to the Consent of the Managing Member in its reasonable discretion.

(d) The Investor Member whose Interest is being transferred shall pay such reasonable expenses as may be incurred by the Company in connection with such transfer (including, notwithstanding Section 8.07, with respect to any Transfer Taxes).

(e) Nothing in this Section 9.02 shall limit the authority of any member of the Investor Member to offer, sell, transfer, or assign its interest in the Investor Member in such member's sole discretion.

9. Admission of Substitute Investor Member.

(c) Subject to the other provisions of this Article IX, an assignee of all or a portion of the Interest of an Investor Member (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company only upon the satisfactory completion of the following:

(ii) each assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof or an appropriate amendment hereto, and such other documents or instruments as the Managing Member may require in order to effect the admission of each such Person as an Investor Member;

(iii) an amended Agreement and Articles evidencing the admission, if necessary, of each such Person as an Investor Member shall have been filed for recording, if necessary, pursuant to the requirements to the Act;

(iv) each assignee shall have represented and agreed in writing as required by Section 9.01;

(v) if any assignee is an entity, the assignee shall have provided the Managing Member with evidence satisfactory to Counsel of its authority to become an Investor Member under the terms and provisions of this Agreement; and

(vi) each assignee or the assignor shall have reimbursed the Company for all reasonable expenses, including all reasonable legal fees and recording charges, incurred by the Company in connection with such assignment (including, notwithstanding Section 8.07, with respect to any Transfer Taxes).

(d) For the purpose of allocation of Profits or Losses and credits, and for the purpose of distributing Net Cash Flow of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon its signing of an amendment to this Agreement, agreeing to be bound hereby.

(e) The Managing Member shall cooperate with each Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section 9.03 and making any official filings and publications. The Company shall take all such action, including the filing of any amended Agreement and Articles evidencing the admission of any Person as an Investor Member, if required, and the making of any other official filings and publications, if required, as promptly as practicable after the satisfaction by the assignee of the Interest of an Investor Member of the conditions contained in this Article IX to the admission of each such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission shall be borne by each Substitute Investor Member.

9. Rights of Assignee of Company Interest.

(c) Except as provided in this Article and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

(d) Any Person who is the assignee of all or any portion of an Investor Member's Interest, but does not become a Substitute Investor Member and desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article IX to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

9. Investor Member Put Option.

(c) The Managing Member hereby grants to the Investor Member an option, at any time during the 6-month period commencing upon the later of (i) the 61st-month anniversary of Placement in Service of the Project, (ii) the last day of the Compliance Period, and (iii) 60 days after receiving written notice from Managing Member of confirmation of the Put Option start date, but in no event during the Compliance Period (the "Put Option Period"), to sell the Interest of the Investor Member (the "Put Option") to the Managing Member for an amount (the "Put Price") equal to the lesser of (i) 5% of the Investor Member's paid-in Capital Contribution plus any unpaid amounts and charges owed to or on behalf of the Investor Member by the Company pursuant to the Operating Documents through the date of payment of the Put Price (including any accrued and unpaid Special Tax Distribution or Priority Return owed to or on behalf of the Investor Member through the date of payment of the Put Price); or (ii) the fair market value of the Investor Member's Interest, as determined by an independent appraiser (taking into account any accrued and unpaid Special Tax Distribution or Priority Return owed to or on behalf of the Investor Member through

the date of payment of the Put Price); provided, however, that if there shall be any uncured default existing under the Operating Agreement, the Put Option Period shall not terminate until such default shall have been cured.

(d) If, at any time during the Put Option Period, the Investor Member elects to sell its Interest pursuant to the provisions of this Section 9.05, it shall give the Managing Member written notice of such election (an “Put Option Election Notice”).

(e) Within (i) 120 days after the delivery to the Managing Member of a Put Option Election Notice from the Investor Member; or (ii) 60 days after the date on which the parties receive the appraisal described below, whichever occurs later, the Managing Member shall pay the Put Price to the Investor Member in immediately available funds. Any amount of the Put Price not paid within such period shall accrue interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law until paid.

(f) As soon as practicable and in any event within 30 days following the delivery by the Investor Member of the Put Option Election Notice to the Managing Member, the Managing Member and the Investor Member shall select an independent appraiser. In the event the parties are unable to agree upon an independent appraiser within such 30-day period, the Managing Member and the Investor Member each shall select an independent appraiser. If the difference between the two appraisals is within 10% of the lower of the two appraisals, the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than 10% of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two appraisers are unable jointly to select a third appraiser, either the Purchaser or the Investor Member may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Billings, Montana for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of independent appraisers submitted by the Managing Member and by the Investor Member. Each list of names of independent appraisers shall be submitted within 10 days after the date on which the appraisal proceeding is invoked, and the appraiser shall be selected from the lists provided. The Managing Member shall pay the cost of any appraisers selected by the Managing Member pursuant to this Section 9.05(d), as well as any Transfer Taxes or other closing costs attributable to the exercise of the Put Option.

(g) Notwithstanding anything to the contrary in this Agreement, in the event the Investor Member has exercised its Put Option hereunder but the Managing Member has failed to pay the Put Price to the Investor Member, then the Put Option shall be of no force and effect.

(h) Upon receipt of the Put Price, the Investor Member shall execute and deliver such documents, assignments, instruments, and other items, and shall take such other action, as shall be necessary to transfer and assign its Interest to the Managing Member. The Managing Member shall have the right to cause another party to effect payment provided that any such assignment shall not relieve the Managing Member of its obligation to honor the Put Option Election Notice in accordance with the terms hereof in the event that such acts are not otherwise performed by the Managing Member’s assignee.

(i) Upon the delivery of a Put Option Election Notice to the Managing Member, the Investor Member shall have no further obligations under this Agreement. The Managing Member shall take all action and shall pay all costs necessary to enable the Investor Member to receive and retain the Put Price, as against any creditor of the Managing Member or of the Company. Notwithstanding the purchase by the Managing Member of the Interest of the Investor Member pursuant to this Section 9.05, to the extent permitted under the applicable provisions of the Code, the Investor Member shall be allocated any Profits or Losses or Tax Credits in respect of such Interest for the period prior to the date of the receipt by the Investor Member of the Put Price. Anything herein to the contrary notwithstanding, title to the Interest of the Investor Member shall not vest in the Managing Member until payment in full of the Put Price therefor. Upon such payment, the Managing Member shall forthwith cause an amendment to the Articles, if required, and any other necessary papers to be filed, recorded, and published wherever required showing such substitution.

ARTICLE X.
RIGHTS AND OBLIGATIONS OF INVESTOR MEMBER

10. Management of the Company.

The Investor Member shall not take part in the management or control of the business of the Company nor transact any business in the name of the Company. Except as otherwise expressly provided in this Agreement, the Investor Member shall not have the power or authority to bind the Company or to sign any agreement or document in the name of the Company. The Investor Member shall not have any power or authority with respect to the Company except insofar as the Consent of the Investor Member shall be expressly required and except as otherwise expressly provided in this Agreement.

10. Limitation on Liability of Investor Member.

The liability of the Investor Member shall be limited to its Capital Contribution as and when payable under the provisions of this Agreement. The Investor Member shall not have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall the Investor Member be personally liable for any obligations of the Company. The Investor Member shall not be obligated to make loans to the Company.

10. Other Activities.

The Investor Member may engage in or possess interests in other business ventures of every kind and description for its own account, including serving as a member of other limited liability companies which own, either directly or through interests in other limited liability companies, projects similar to the Property. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom.

ARTICLE XI.
PROFITS, LOSSES, CREDITS, AND DISTRIBUTIONS

11. Allocation of Profits, Losses, Credits and Cash Distributions.

(c) After application of Section 11.10, all Operating Profits and Operating Losses, except those gains and losses referred to in Section 11.03, and all credits (except State Historic Tax Credits) shall be allocated among the Members in accordance with their Percentage Interests as set forth in Schedule A.

(d) All Net Cash Flow available for distribution shall be paid on a quarterly basis as follows:

(ii) to the Investor Member to pay any outstanding Capital Contribution Adjustments;

(iii) to the Investor Member to pay any outstanding Special Tax Distribution;

(iv) to the Investor Member to pay any outstanding Priority Return;

(v) to the Operating Reserve, to the extent the balance of the Operating Reserve is less than the Operating Reserve Amount;

(vi) 95% to the payment of any accrued and unpaid Development Fee;

(vii) to the repayment, on a pari passu basis, of any Subordinated Loans (and accrued interest thereon) made by the Investor Member;

(viii) to the repayment, on a pari passu basis, of any Subordinated Loans (and accrued interest thereon) made by the Managing Member;

(ix) to the repayment, on a pari passu basis, of any Operating Deficit Loans;

(x) 95% to the Managing Member, as a return of capital; and

(xi) the balance shall be distributed to the Members in accordance with their respective Percentage Interests.

(e) In any year in which a Member sells, assigns or transfers all or any portion of an Interest to any Person who during such year is admitted as a substitute Member, the share of all Profits or Losses allocated to, and of all Net Cash Flow and of all cash proceeds distributable under Section 11.04 distributed to, all Members which is attributable to the Interest sold, assigned or transferred shall be allocated and distributed to the assignee from and after the first day of the calendar month following the month in which the assignee executes this Agreement; provided, however, that the assignor and the assignee may, by agreement, make special provisions for the allocation of items of Profits or Losses, deduction or credit as may from time to time be permitted

under the Code, and for the distributions of Net Cash Flow and the proceeds of Capital Transactions, but such allocation shall be binding as to the Company only after it shall have received Notice thereof from the assignor and assignee.

(f) Reserved.

(g) In the event that there is a determination that there is any original issue discount, imputed interest or stated interest attributable to the Capital Contribution of any Member, or any loan between a Member and the Company, any income or deduction of the Company attributable to such imputed interest, stated interest or original issue discount on such Capital Contribution or loan (whether stated or unstated) shall be allocated solely to such Member.

(h) If any Member's Interest in the Company is reduced but not eliminated because of the admission of new Members or otherwise, or if any Member is treated as receiving any items of property described in Section 751(a) of the Code, the Member's Interest in such items of Section 751(a) property that was property of the Company while such Person was a Member shall not be reduced, but shall be retained by the Member so long as the Member has an Interest in the Company and so long as the Company has an Interest in such property.

(i) In accordance with Section 704(c) of the Code (relating to allocations with respect to appreciated contributed property) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall be allocated, solely for tax purposes, among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Fair Market Value. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement.

(j) In the event that the Managing Member makes any loan to the Company, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member.

(k) No distributions or return of Capital Contributions shall be made and paid from Company assets if, after the distribution or return of contribution is made, either: (i) the Company would be insolvent, or (ii) the net assets of the Company would be less than zero.

11. Determination of Profits or Losses.

Profits or Losses for all purposes of this Agreement shall be determined in accordance with the accrual method of accounting for federal income tax purposes.

11. Allocation of Profits or Losses from a Capital Transaction.

After application of Section 11.10, Profits or Losses from a Capital Transaction recognized by the Company shall be allocated in the following manner:

(c) All Profits shall be allocated (i) first, to the Members with negative Capital Account balances, in proportion to such balances, that portion of gains (including any Profits

treated as ordinary income for federal income tax purposes) which is equal in amount to such Members' negative Capital Accounts in the Company; (ii) second, Profits in excess of the amount allocated under clause (i) shall be allocated to the Members in the amount, and to the extent necessary, to increase the Members' respective Capital Accounts so that the proceeds distributed in accordance with the Members' respective Capital Account balances would equal the amounts distributable under Section 11.04.

(d) Losses shall be allocated (i) first, to the extent of and pro rata in proportion to the positive Capital Accounts of the Members with positive Capital Accounts; and (ii) second, the amount of any Losses that remain after the allocations in subparagraph (b)(i) to the Members in accordance with the manner in which they bear the economic risk of loss associated with such Losses. In the event that no Member bears an economic risk of loss, then all Members shall be allocated Losses in excess of the amounts allocated under (b)(i) in accordance with their Percentage Interests.

(e) Any portion of the gains treated as ordinary income for federal income tax purposes under Sections 1245 and 1250 of the Code ("Ordinary Income Amount") shall be allocated on a dollar-for-dollar basis to those Members to whom the items of Company deduction or loss giving rise to the Ordinary Income Amount had been previously allocated.

11. Distribution of Proceeds from a Capital Transaction.

Except as may be required under Section 12.02(b), the proceeds resulting from any Capital Transaction, as the case may be, shall be distributed and applied in the following order of priority:

(c) to the payment of all matured debts and liabilities of the Company, and all expenses of the Company incident to any Capital Transaction, excluding (i) debts and liabilities of the Company to the Members or their Affiliates, and (ii) all unpaid fees owing to any Developer Entity under this Agreement;

(d) to the setting up of any reserves which the Liquidator (or the Managing Member if the distribution is not pursuant to the liquidation of the Company with the Consent of the Investor Member) deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company;

(e) to the Investor Member to pay any outstanding Capital Contribution Adjustments;

(f) to the Investor Member to pay any outstanding Special Tax Distribution;

(g) to the Investor Member to pay any outstanding Priority Return;

(h) to the Investor Member in an amount equal to any projected federal income tax incurred as a result of the transaction giving rise to such proceeds; plus an amount equal, on an After-Tax Basis, to the local, state and federal taxes projected (at the Applicable Tax Rate) to be imposed on the members of the Investor Member from the allocation by the Company to the Investor Member of the Profits (if any) from the Capital Transaction to which the net proceeds relate pursuant to Section 11.03 above, but only to the extent that such allocation of Profits (if any)

from a Capital Transaction exceed all Losses from such Capital Transaction allocated to the Investor Member by the Company;

- (i) to the payment of any accrued and unpaid Development Fee;
- (j) to the repayment of any unrepaid debts and liabilities (including unpaid fees) owed to the Investor Member or its Affiliates by the Company for Company obligations, including any loans made pursuant to Section 5.06;
- (k) to the Investor Member in an amount equal to any excess or additional Capital Contributions made by the Investor Member;
- (l) to the repayment of any unrepaid debts and liabilities (including unpaid fees) owed to the other Members or their Affiliates by the Company for Company obligations, including any loans made pursuant to Section 5.06, and any Operating Deficit Loans; and
- (m) to the Members in accordance with their respective Percentage Interests.

Notwithstanding the foregoing, no proceeds resulting from a Capital Transaction shall be distributed if, after the distribution is made, either: (i) the Company would be insolvent, or (ii) the net assets of the Company would be less than zero.

If there is more than one Managing Member, any distribution to the Managing Member shall be made pro rata in accordance with their Interests.

11. Capital Accounts.

A separate Capital Account shall be maintained and adjusted for each Member. There shall be credited to each Member's Capital Account the amount of its Capital Contribution, the Fair Market Value of any property contributed to the Company (net of any liabilities secured by such property) and such Member's distributive share of the Profits for tax purposes of the Company; and there shall be charged against each Member's Capital Account the amount of all Net Cash Flow distributed to such Member, the Fair Market Value of any property distributed to such Member (net of any liabilities secured by such property), the net proceeds resulting from the liquidation of the Company's assets or from any Capital Transaction distributed to such Member, and such Member's distributive share of the Losses for tax purposes of the Company. Each Member's Capital Account shall be maintained and adjusted in accordance with the Code and the Treasury Regulations thereunder. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Reg. §1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations. It is the intention of the Members that the Capital Accounts maintained under this Agreement be determined and maintained throughout the full term of this Agreement in accordance with the accounting rules of Treasury Reg. §1.704-1(b)(2)(iv). In the event that the Company is liquidated within the meaning of Treasury Reg. § 1.704-1(b)(2)(ii)(g), if the Investor Member's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations), the Investor Member shall increase its Capital Contribution in compliance with Treasury Reg. § 1.704-1(b)(2)(ii)(b)(3), provided, however, that the Investor Member's deficit restoration obligation shall not exceed the difference between: (i) the amount of

Capital Contributions the Investor Member is required to make pursuant to Section 5.01 hereof (as adjusted), less (ii) the Investor Member's actual paid-in Capital Contributions. Additionally, the Investor Member shall have the right (exercisable in its sole discretion) at any time, upon giving written notice to the Managing Member, to increase and/or extend the years in which it may be obligated to restore any deficit balance in its Capital Account, and any deficit restoration obligation undertaken by the Investor Member shall be automatically decreased to the extent the deficit balance in such Investor Member's Capital Account is moved closer to zero when compared to the deficit balance in such Investor Member's Capital Account, if any, at the close of the previous taxable year.

11. Authority of Managing Member to Vary Allocations to Preserve and Protect Members' Intent.

It is the intent of the Members that each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined and allocated in accordance with this Article XI to the fullest extent permitted by Section 704(b) of the Code. Subject to the Consent of the Investor Member, the Managing Member hereby is authorized and directed to allocate income, gain, loss, deduction, or credit (or item thereof) arising in any year differently than otherwise provided for in this Article XI to the extent that allocating income, gain, loss, deduction or credit (or item thereof) in the manner provided for in Article XI would, in the opinion of the tax advisor to the Company (tax counsel or the Accountants) cause the determinations and allocations of each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) not to be permitted by Section 704(b) of the Code and Treasury Regulations promulgated thereunder. Any allocation made pursuant to this Section 11.06 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article XI and no amendment of this Agreement or approval of any Member shall be required.

11. Designation of Partnership Representative.

(c) The Managing Member hereby is designated as the Partnership Representative of the Company for each taxable year, and shall engage in such undertakings as are required of the Partnership Representative of the Company, as provided in Treasury Regulations pursuant to Sections 6233 and 6241, respectively, of the Code. Each Member, by the execution of this Agreement, Consents to such designation of the Partnership Representative and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such Consent.

(d) For each taxable year, the Partnership Representative shall appoint as Designated Individual an individual who meets the requirements of the Revised Partnership Audit Rules for a "designated individual," has sufficient experience and authority to represent the Partnership in all dealings with the IRS, and for taxable years beginning prior to the Adjustment Date, is consented to by the Investor Member. No later than the effective date of the designation of the Designated Individual, such Designated Individual must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this **Article XI** prior to and as condition of such designation. If a Designated Individual for any taxable year becomes unable to perform the tasks required of a Designated Individual, no longer has the "capacity to act" within the meaning of the Revised Partnership Audit Rules, or the Managing

Member otherwise determines that such person should be removed as the Designated Individual, the Managing Member shall promptly notify the Members of such determination and take all necessary actions to effectuate the resignation (or revocation) of such person as Designated Individual for all taxable years such designation was in effect (including obtaining any required IRS notification of such resignation from such person to be held in trust and delivered to the IRS at the time specified in the Revised Partnership Audit Rules). The designation of the Designated Individual shall also automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative.

(e) In the event of a withdrawal of the Managing Member pursuant to Article VI or conversion of the Managing Member's Interest to an Economic Interest pursuant to Section 8.12 hereof, the Company shall revoke the designation of the Managing Member as the Partnership Representative for all taxable years such designation was in effect and the Managing Member shall take all necessary actions to effectuate its resignation as Partnership Representative in accordance with the Revised Partnership Audit Rules, including updating the Partnership Representative contact information for the IRS as the Investor Member may specify or providing any required IRS notification to the Investor Member to be delivered to the IRS at the time specified in the Revised Partnership Audit Rules. Notice of such revocation or resignation shall be given to the IRS in the time and manner prescribed by the IRS and shall include the designation of another person selected by the Investor Member as the successor Partnership Representative for the applicable taxable years and the designation of another individual as Designated Individual in accordance with Section 11.07(b). The resigning or removed Partnership Representative and Designated Individual shall remain obligated hereunder in such capacity until the replacement is accepted by the IRS. In furtherance hereof, the Investor Member hereby is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Managing Member as shall be legally necessary and sufficient to affect all of the foregoing provisions of this Section 11.07(c).

(f) Notwithstanding any other provision of this Agreement, the Investor Member hereby is granted authority at any time to designate itself or its manager as the Partnership Representative for any taxable year it is a Member of the Company. The Investor Member may exercise its right to designate the Partnership Representative for specified taxable years, as provided herewith, upon 10 days' Notice to the then-existing Partnership Representative and Managing Member. In the event that the Investor Member exercises its right to designate the Partnership Representative, the pre-existing Partnership Representative will resign as the Partnership Representative for the specified taxable years and shall take all necessary actions to effectuate its resignation as Partnership Representative in accordance with the Revised Partnership Audit Rules, including updating the Partnership Representative contact information for the IRS as the Investor Member may specify or providing any required IRS notification to the Investor Member (or its designee) to be delivered to the IRS at the time specified in the Revised Partnership Audit Rules. Notice of such resignation shall be given to the IRS in the time and manner prescribed by the IRS and shall include the designation of the Investor Member (or its designee) as the successor Partnership Representative for the specified taxable years and the designation of another individual as Designated Individual in accordance with Section 11.07(b). No later than the effective date of such designation, the Investor Member (or its designee) must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Article XI prior to and as condition of such designation. The Investor Member (or its

designee), upon such redesignation as the Partnership Representative, shall have thereafter all the authority and powers given to the Partnership Representative of the Company under the Revised Partnership Audit Rules and under this Agreement. Each Member, by its execution of this Agreement, consents to such admission and designation, as the case may be, and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. Upon any exit of the Investor Member from the Partnership, if it or its designee is has been designated as the Partnership Representative for any taxable year, it shall either (i) affirm that it remains obligated as Partnership Representative with respect to any Tax Disputes arising with respect to such taxable year or (ii) resign simultaneous with any such exit and the Managing Member shall designate a replacement Partnership Representative as provided for herein.

11. Authority of Partnership Representative.

(c) The Partnership Representative shall have and perform all of the duties required under the Code, including the following duties:

(ii) within 15 calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the IRS, shall forward to each Member a photocopy of all such correspondence or communications and shall within 15 calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the IRS;

(iii) inform the Members of any matter which requires their consent pursuant to this Article XI, along with any applicable deadlines imposed pursuant to the Revised Partnership Audit Rules or the IRS in its conduct of any particular Tax Dispute;

(iv) provide the Investor Member with a draft copy of any correspondence, filing or other materials to be submitted by the Company or the Partnership Representative in connection with any administrative or judicial proceedings relating to the determination of Company items level reasonably in advance of such submission, incorporate all reasonable changes or comments to such correspondence or filing requested by the Investor Member to the extent such review and comments are provided in a timely manner such that it would allow the Company to comply with any deadline imposed under applicable law, and provide the Investor Member with a final copy of such correspondence, filing or other materials; and

(v) represent the Company in all dealings with the IRS and state and local taxing authorities in accordance with the obligations and restrictions imposed by this Agreement.

(d) The Partnership Representative shall, upon request by a Member, permit a Member to include its attorney in the power of attorney (Form 2848) for the Company for any taxable years under a tax audit or in a tax administrative appeals process, provided the inclusion is permitted by the Revised Partnership Audit Rules.

(e) The Partnership Representative shall not without the Consent of the Members:

(ii) extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount of character of any Company tax items);

(iii) settle any audit with the IRS concerning the adjustment or readjustment of any partnership items or remit any imputed underpayment amounts (within the meaning of Revised Partnership Audit Rules);

(iv) file a request for an administrative adjustment with the IRS at any time or file a petition for judicial review with respect to any such request;

(v) initiate or settle any judicial review or action concerning the amount or character of any Company tax item;

(vi) intervene in any action brought by any other Member for judicial review of a final adjustment;

(vii) engage an accounting firm or counsel to represent the Company before the IRS; or

(viii) take any other action not expressly permitted by this Article XI on behalf of the Company or any Member in connection with any adjustment, election, or administrative or judicial tax proceeding.

(f) The Partnership Representative shall keep the other Members advised of any dispute the Company may have with any federal, state or local taxing authority (a “Tax Dispute”), shall consult with the Members regarding the nature and content of all actions to be taken and defenses to be raised and elections to be made by the Company in response to such Tax Dispute, shall not act without the Consent of the Members, and shall afford the other Members the opportunity to participate directly in the negotiation of the Tax Dispute, to the extent permitted by law. The Partnership Representative also shall consult with Members regarding the nature and content of any Tax Dispute instituted by or on behalf of the Company (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Tax Dispute against the Company, or otherwise), and shall not act without the Consent of the Members. Reasonable legal fees incurred in connection with any Tax Dispute (including any Tax Dispute arising at the Investor Member level, to the extent that such Tax Dispute is the result of a Tax Dispute of the Company) shall be paid solely from the assets of the Company, except that if the Company lacks sufficient funds to undertake or prosecute any litigation relating to such Tax Dispute (including, without limitation, any appeal) and either the Managing Member or Investor Member in good faith does not reasonably consent to a settlement or resolution of such tax dispute, then the legal fees and other costs and expenses associated with such litigation shall be funded by the Member(s) refusing to consent to such settlement or resolution, through one or more Subordinated Loans to the Company. The Partnership Representative shall take such actions as may be reasonably necessary in order for the Members and the Company to achieve the desired intent of this Section 11.08(d).

(g) If the Company or the Partnership Representative receives notice of a proposed Company Adjustment from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions of Section 11.08(a)(i) and, if requested to do so by a

Member, shall request modification of the Imputed Underpayment proposed in such notice in accordance with the Revised Partnership Audit Rules. Any such request by a Member shall describe the modifications or adjustment factors that the Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification. All information required to support a requested modification shall be submitted by the Members to the Partnership Representative prior to the applicable deadline, subject to any extension granted by the IRS.

(h) If the Company receives notice of a final Company Adjustment from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions of Section 11.08(a)(i) and, if requested to do so by Investor Member, shall make an election (a “Push-Out Election”) under Section 6226 of the Code with respect to one or more Imputed Underpayments set forth in the final partnership adjustment notice. If a Push-Out Election is made, each Reviewed Year Member shall take into account its allocable share of the Company Adjustments that relate to the specified Imputed Underpayment (as determined with the Consent of the Investor Member for such Reviewed Year) and shall be liable for any taxes as described in Section 6226 of the Code and any applicable Treasury Regulations or other guidance prescribed by the IRS. Notwithstanding the foregoing, to the extent permitted by law, any Reviewed Year Member that is a partnership or S corporation may, at its option and in accordance with any applicable Treasury Regulations or other guidance prescribed by the IRS, elect (in lieu of paying its allocable share of such Company Adjustments) to push out the liability for taxes attributable to such Company Adjustments to its partners (including indirect partners). Any Push-Out Election shall be filed prior to the applicable deadline, shall be in such form, and shall contain such information, as required by the Revised Partnership Audit Rules. If a Push-Out Election is made, the Partnership Representative shall furnish to each Reviewed Year Member and the IRS, for each Reviewed Year prior to the applicable deadline, a statement that includes all items and information required under the Revised Partnership Audit Rules.

(i) If the Company becomes obligated to make an Imputed Underpayment, within 30 days after written notice from the Partnership Representative:

(ii) To the extent such Imputed Underpayment relates to an Excluded Event, each of the Members (including any Former Member) to whom such liability relates shall be obligated to pay an amount that is equal to its allocable share (determined in accordance with its Percentage Interest prior to the Adjustment Date) of such Imputed Underpayment to the Company;

(iii) To the extent such Imputed Underpayment is caused by Managing Member Acts or Omissions, the Managing Member shall be obligated to pay an amount that is equal to such Imputed Underpayment to the Company; and

(iv) Otherwise, each of the Members (including any Former Member) to whom such liability relates shall be obligated to make a Subordinated Loan to the Company in an amount that is equal to its allocable share of such Imputed Underpayment to the Company.

Any amount not paid by a Member (or Former Member) within such 30-day period shall accrue interest at the rate of the lesser of 18% annually and the maximum interest permitted

under Montana law until paid. Any such payment made by any Member pursuant to Section 11.08(g)(i) or 11.08(g)(ii) shall be treated as a Capital Contribution and, if and to the extent permitted by the Code and Regulations, any Capital Account reduction attributable to the Imputed Underpayment shall be allocated to the Members in proportion to such Capital Contributions. Any such payment made by any Former Partner pursuant to Section 11.08(g)(i) or 11.08(g)(ii) shall be treated as an indemnity payment and not as a Capital Contribution or loan to the Company, but any payment made pursuant to Section 11.08(g)(iii) shall be treated as a loan to the Company and subject to repayment pursuant to Sections 11.01 or 11.04 as if it were still a Member.

(h) The obligations of each Member or Former Member under Sections 11.07 and 11.08 shall survive the transfer, redemption or liquidation by such Member of its Company Interest and the termination of this Agreement or the dissolution of the Company. For the avoidance of doubt, to the extent a Former Member has potential liability for amounts pursuant to Sections 11.08(f) or 11.08(g) with respect to a Tax Dispute, such Former Member shall retain its rights pursuant Sections 11.07 and 11.08 to with respect to such Tax Dispute.

11. Expenses of Partnership Representative.

The Company shall indemnify and reimburse the Partnership Representative and the Investor Member for all expenses, including legal and accounting fees, claims, liabilities, losses, and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liabilities of the Members or Company. The payment of all such expenses shall be made before any distributions are made from Net Cash Flow or net proceeds from a Capital Transaction or any discretionary reserves are set aside by the Managing Member. The taking of any action and the incurring of any expense by the Partnership Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Partnership Representative and the provisions on limitations of liability of the Members and indemnification set forth in Sections 8.07 or 10.02 of this Agreement shall be fully applicable to the Partnership Representative in its capacity as such.

11. Special Allocations.

(c) Notwithstanding any other provision of this Agreement, if there is a net decrease in the Company's minimum gain attributable to nonrecourse liabilities during any taxable year, each Member shall be specifically allocated a pro rata portion of each of the Company's items of income and gain for such year (and, if necessary for subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in such minimum gain during such taxable year as determined in accordance with the provisions of Treasury Reg. §§ 1.704-2(f), 1.704-2(g)(2).

(d) Notwithstanding any other provision of this Agreement, if there is a net decrease in the amount of the Company's minimum gain during any taxable year with respect to a Member nonrecourse debt, the Member bearing the economic risk of loss with respect to such Member nonrecourse debt shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such taxable year (and, if necessary, for subsequent years) in proportion to, and to the extent of the amount of such Member's share of the net decrease in such

minimum gain during such taxable year as determined in accordance with the provisions of Treasury Reg. §§1.704-2(i)(4), 1.704-2(j)(2)(ii).

(e) If in any taxable year there is a net increase in the amount of Company minimum gain attributable to a Member nonrecourse debt, the Member bearing the economic risk of loss attributable to such Member nonrecourse debt shall be specially allocated items of Company deduction and loss in proportion to and to the extent of the excess of:

(ii) the amount of such net increase, over

(iii) the aggregate amount of any distributions during such taxable year to such Member of the proceeds of such Member nonrecourse debt that are allocable to such increase in Company minimum gain. Items to be so allocated shall be determined in accordance with Treasury Reg. §1.704-2(j)(1).

The allocations provided for in this Section 11.10(c) are intended to comply with the allocations required by Treasury Reg. §1.704-2(i) and shall be applied consistently therewith. The Company's minimum gain shall be determined in accordance with Treasury Reg. § 1.704-2(d).

(f) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Reg. §§1.704-1(b)(2)(ii)(d)(4), (5) or (6) which cause or increase an Adjusted Capital Account Deficit (as defined below) of such Member, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate (to the extent required by the Treasury Regulations under Code Section 704(b)) such Member's Adjusted Capital Account Deficit as quickly as possible.

(g) For purposes of this Section 11.10, the term "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Company Fiscal Year, after giving effect to the following adjustments:

(ii) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is otherwise treated as being obligated to restore under Treasury Reg. §1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Reg. §§1.704-2(g)(1) and 1.704-2(i)(5); and

(iii) Debit to such Capital Account the items described in Treasury Reg. §1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(h) Notwithstanding any other provision of this Section 11.10, in no event shall Losses of the Company be allocated to any Member if such allocation would result in such Member having an Adjusted Capital Account Deficit at the end of any taxable year. All Losses in excess

of the limitation set forth in this Section 11.10(f) shall be allocated to each other Member that does not have an Adjusted Capital Account Deficit.

(i) Notwithstanding any other provision of this Article XI, in no event shall the Investor Member be allocated more than 99% or less than 5% of each material item of Company income, gain, loss, deduction, and credit (including Profits and Losses from a Capital Transaction, Operating Profits and Operating Losses, and Profits and Losses allocated pursuant to this Section 11.10).

(j) Any (i) downward adjustment to the Capital Accounts from the downward adjustment to the basis of the Project required under Treasury Reg. §1.704-1(b)(2)(iv)(j), and (ii) any upward adjustment to the Capital Accounts from the upward adjustment to the basis of the Project upon recapture of Federal Historic Tax Credits (which shall be made in the manner described in Treasury Reg. §1.704-1(b)(2)(iv)(j)), shall be allocated to the Members in accordance with their Percentage Interests as set forth in Schedule A.

(k) State Historic Tax Credits shall be specially allocated 100% to the Investor Member. Any taxable income, profit or gain of the Company resulting from the allocation, distribution, sale or deemed sale of State Historic Tax Credits shall be specifically allocated one hundred percent (100%) to the Managing Member as a nonrecurring item not affecting the allocation of general profits. Notwithstanding anything else to the contrary in this Agreement, in no event shall any profit, income or gain of the Company resulting directly or indirectly from the receipt, allocation, sale, deemed sale or transfer of the State Historic Tax Credits be allocated to the Investor Member. The Managing Member agrees, to the extent permitted by law, to protect, indemnify, defend, and hold harmless the Company and the Investor Member from and against any and all liabilities, costs and expenses actually incurred, including, but not limited to, any tax liability owed by the Investor Member, reasonable costs and expenses of litigation and appeal, reasonable attorneys' and accountants' fees, penalties, fines, loss or damage of any kind or nature, in connection with or resulting from, the allocation of income or gain to the Investor Member attributable to a sale, or deemed sale, of the State Historic Tax Credits (such calculation to be made assuming the Investor Member is subject to the highest federal and state rates imposed on corporate taxpayers under the Code and state tax law at that time for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member). For the avoidance of doubt, nothing in this Section 11.10(i) shall be construed to obligate the Managing Member to incur any liability whatsoever in connection with any income recognized by the Investor Member as a result of the Investor Member or any of its members subsequently claiming the State Historic Tax Credits.

(l) Any taxable income of the Company resulting from its receipt of donations, contributions, grants, subsidies, or capital contributions of the Members shall be specifically allocated one hundred percent (100%) to the Managing Member as a nonrecurring item not affecting the allocation of general profits.

ARTICLE XII.
SALE, DISSOLUTION AND LIQUIDATION

. The Company shall be dissolved upon:

- (c) the sale or other disposition of all or substantially all of the assets of the Company;
- (d) any other event causing the dissolution of the Company under the laws of the State; or
- (e) the agreement of the Investor Member and the Managing Member.

12. Winding Up and Distribution.

(c) Upon the dissolution of the Company pursuant to Section 12.01, (i) Articles of Termination shall be filed in such offices within the State as may be required or appropriate, and (ii) the Company business shall be wound up and its assets liquidated as provided in this Section 12.02 and the net proceeds of such liquidation shall be distributed in accordance with Section 12.02(b).

(d) It is the intent of the Members, that upon liquidation of the Company, any liquidation proceeds available for distribution to the Members be distributed to the Members with positive Capital Accounts, pro rata in proportion to the balances in their respective positive Capital Accounts. The Members believe that distributions under Section 11.04 will effectuate such intent. In the event that, upon liquidation, there would otherwise be any conflict between a distribution pursuant to the Members' respective positive Capital Account balances and the intent of the Members with respect to distribution proceeds as provided in Section 11.04, the Liquidator shall, notwithstanding the provisions of Sections 11.01, 11.02 and 11.03 (but after all of the allocations provided for in Section 11.10 shall have been made) allocate the Company's items of income, gain, loss and deduction in a manner that will, as nearly as possible, cause the distribution of liquidation proceeds to the Members to be in accordance both with the Members' economic expectations as set forth in Section 11.04 and their respective Capital Account balances. If the Company's items of income, gain, loss and deduction are insufficient to cause the Members' Capital Accounts to be in such amounts as will permit liquidation proceeds to be distributed both in accordance with the Members' respective positive Capital Account balances and Section 11.04, then liquidation proceeds shall be distributed in accordance with the Members' respective positive Capital Account balances after the allocations described herein have been made.

(e) The Liquidator shall file all certificates and notices of the dissolution of the Company required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Company's property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Company property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent provided by the Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company assets, the Investor Member shall cease to be the Investor Member of the Company and the Managing Member shall cease to be Managing Member, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company.

(f) Upon the dissolution of the Company pursuant to Section 12.01, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Accountants shall prepare, and the Liquidator shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

ARTICLE XIII.
BOOKS AND RECORDS, ACCOUNTING TAX ELECTIONS, ETC.

13. Books and Records; Accounting Method.

The books and records of the Company shall be maintained on an accrual basis in accordance with generally accepted accounting principles (“GAAP”) or federal income tax basis of accounting, consistently applied, and retained for such period required by law or if longer, such period recommended by the Accountants. These and all other records and financial statements of the Company, including information relating to the status of the Property and information with respect to the sale by any Developer Entity of goods or services to the Company, shall be kept at the principal office of the Company and shall be available for examination there by any Member or by any member of the Investor Member, or its duly authorized representative, at any and all reasonable times and upon reasonable advance notice. Any Member, or its duly authorized representative, upon paying the costs of collection, duplication, and mailing, shall be entitled to a copy of the list of names and addresses of Investor Member. The Managing Member agrees to cooperate with the Investor Member to provide information in a timely manner to facilitate audits conducted by independent auditors selected by the Investor Member in its sole discretion and expense.

13. Bank Accounts.

All funds of the Company not otherwise invested shall be deposited in one or more federally insured accounts maintained with FIB, and withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may, from time to time, determine. No funds of the Company shall be deposited in any financial institution in which any Developer Entity is an officer, director, or holder of a propriety interest.

13. Accountants.

(c) With the Consent of the Investor Member, the Managing Member, at the Company’s expense, shall hire the Accountants and provide them with such information in its possession and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns (and in all events such returns shall be filed with respect to the year of the Investor Member’s admission to the Company and each year thereafter). The Accountants shall be the accountants for the Company for the purposes of preparing income tax returns, the audit of the Company and the other relevant matters set forth in this Article XIII. The Managing Member and the Company hereby agree, authorize, and direct the Accountants to provide contemporaneous copies to the Investor Member of all tax returns,

audits, and any other information that the Accountants deliver to the Managing Member or to the Company.

(d) The Accountants shall annually prepare for execution by the Managing Member any tax returns of the Company, and shall certify, in accordance with GAAP, a balance sheet, a profits and losses statement, and a cash flow statement. The Accountants shall annually audit the books of the Company. With respect to each Company Fiscal Year during the Company's operations, at such time as the Accountants shall have prepared the proposed tax return for such year, the Accountants shall provide copies of such proposed tax return to the Investor Member's accountants for their review and comment. Any changes in such proposed tax return recommended by the Investor Member's accountants and consistent with this Agreement shall be made by the Accountants prior to the completion of such tax return for execution by the Managing Member. A full detailed statement shall be furnished to all Members, showing such assets, properties, and net worth and the profits and losses of the Company for the preceding Company Fiscal Year. All Members shall have the right and power to examine and copy, at any and all reasonable times upon reasonable advance notice, the books, records, and accounts of the Company.

13. Reports to Members.

The Managing Member shall, at Company expense, cause to be prepared and delivered to the Investor Member all such reports requested by the Investor Member as shall be necessary for the Investor Member to comply with its Tax Credit requirements in connection with the Company and:

- (c) Within 45 days after the end of each calendar quarter thereafter:
 - (ii) unaudited financial statements for the Company, including a balance sheet, statement of income or loss and statement of cash sources and applications;
 - (iii) reports of Company operations;
 - (iv) a report of any construction activity;
 - (v) a reconciliation of the differences between the tax basis and GAAP basis statements;
 - (vi) a report of any Excess Development Costs or Operating Deficits or anticipated Excess Development Costs or Operating Deficits of the Company and the manner in which such Excess Development Costs or Operating Deficits will be funded;
 - (vii) a report of any material default by the Company under any Operating Documents or in payment of any mortgage, taxes, interest, or other obligation on secured or unsecured debt;
 - (viii) a report of any reduction or termination of any reserve by application of funds therein for purposes materially different from those for which such reserve was established;

(ix) a report of any notice of a material fact which may substantially affect distributions pursuant to this Agreement;

(x) a report of any pledge or collateralization of any asset of the Company;

(xi) a report of fees, commissions, compensation, and other remuneration and reimbursed expenses paid by the Company to any Developer Entity and the services and goods provided to the Company; and

(xii) a report of the activities and investments of the Company during the quarter including a description of all transactions between the Company and any Developer Entity.

(d) Within 120 days after the expiration of each Company Fiscal Year:

(ii) all necessary tax reporting information regarding the Company required by the Investor Member for preparation of its respective federal, state, and local income or franchise tax or information returns, for the preceding Company Fiscal Year; provided, however, that if applicable extensions are filed with respect to any such reporting, such tax reporting information shall be provided no later than June 30 of the applicable Company Fiscal Year;

(iii) a copy of the Company's (if applicable), and Managing Member's federal, state, and local tax or information returns for the prior Company Fiscal Year, and proof of payment of property taxes and insurance premiums for the preceding Company Fiscal Year; provided, however, that if applicable extensions are filed with respect to any such returns, such returns shall be provided no later than June 30 of the applicable Company Fiscal Year;

(iv) with the first tax return prepared following Substantial Completion, a table comparing the actual total depreciable basis with the depreciable basis indicated in the Projections;

(v) a statement summarizing the distributions, fees, commissions, compensation and other remuneration and reimbursed expenses paid for such year to any Member or Developer Entity and the services performed or goods provided therefor;

(vi) a report on the balance of the Operating Reserve as of the end of the Company Fiscal Year;

(vii) a report on any Operating Deficit Loans and Subordinated Loans made during such year and repayments thereof; and

(viii) unaudited financial statements for the Company, including a balance sheet, statement of income or loss and statement of cash sources and applications.

(e) Within 30 days:

(ii) upon the occurrence of any natural disaster, incident, or widespread property damage having a material adverse impact on the Property, a report of the extent of the damage to the Property, any expected delay in the Rehabilitation, and the effect such damage might have on the operations or marketing and lease-up activity of the Property;

(iii) upon the occurrence of a Withdrawal Event;

(iv) from time to time, as may be reasonably requested by the Investor Member, information on the state of the business, financial condition, and affairs of the Company or the Property or any other information required to be delivered to the Investor Member;

(v) upon learning of a condition or circumstance which is expected to reduce below the projected levels the amount of Tax Credits available to the Company, a detailed statement describing such matters; or

(vi) upon learning of any violation of any health, safety, building code, or other statute or regulation by the Company that would have a material adverse effect on the Company or the Property, a detailed statement describing such matters along with any written notices thereof received by the Company from any federal, state, or local governmental entity.

(f) Within 10 Business Days after receipt by the Company:

(ii) copies of all reports, notices, filings or correspondence sent or received regarding the occurrence of any event which has or may have a material adverse effect on the Company or the Property (including any reports, notices, filings or correspondence with any governmental agency regarding the Tax Credits; default notices, notices of reductions or elimination of benefits under any federal, state, or local program previously enjoyed by the Company; any default or failure of compliance with respect to the Loan or any other financial, contractual or governmental obligation of the Company or the Managing Member; notice of any IRS or Secretary proceeding involving the Company; notice of any demand for payment or draw under any construction completion guarantee, performance bond, or letter of credit regarding the Company; and notices regarding the Property's compliance with any regulatory restrictions imposed thereon); and

(iii) copies of all lawsuits or legal proceedings or alleged violations of law, and notices of all actions taken, or proposed to be taken, affecting the Company or the Managing Member.

(g) It shall also furnish to the Investor Member within 10 Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificate, partnership agreement, operating agreement or other organizational documents of the Managing Member and the Company. In addition, it shall promptly respond to any reasonable requests or inquiries made in writing by the Investor Member regarding matters affecting the Property or the Company;

(h) Prior to November 1 of each year, an estimate of the Investor Member's share of Tax Credits, Net Cash Flow, distributions and Profits or Losses of the Company for federal income tax purposes for the current Company Fiscal Year. Such estimate shall be prepared by the Managing Member or the Accountants.

(i) The Investor Member agrees that any of the reports required to be delivered in Sections 13.04(a) or 13.04(b) shall be deemed to be delivered to the Investor Member to extent such information is contained in public filings published by the Company, the Managing Member, or the City.

13. Tax Elections.

(c) In the event of a transfer of all or any part of the Interest of a Member (or a member or partner thereof), the Company shall elect, pursuant to Sections 743 and 754 of the Code (or any corresponding provision of succeeding law), to adjust the basis of the Company property if, in the opinion of the Investor Member, based upon the advice of the Accountants, such election would be most advantageous to the Investor Member, to the extent that it is not at the detriment of the Managing Member. Each Member agrees to furnish the Company with all information necessary to give effect to such election. The Managing Member shall not make other elections permitted under the Code unless it has received the direction or prior Consent of the Investor Member.

(d) The Company shall make an election to be treated as an “electing real property trade or business” under Section 163(j)(7)(B) of the Code and provide evidence of making such election effective no later than the end of the taxable year ending December 31, 2024. Except as expressly provided in this Agreement, the Company has not made and will not make any elections under the Code, including pursuant to the Tax Reform Act or the Treasury Regulations thereunder, without the Consent of the Investor Member. The Company will file an election to opt-out of bonus depreciation that is otherwise available with respect to property owned by the Company pursuant to Section 168(k) of the Code.

13. Company Fiscal Year.

Except as the Code may otherwise require, the Company Fiscal Year shall be the fiscal year of the Investor Member. The fiscal year of the Investor Member is currently the calendar year. The Investor Member will inform the Managing Member of any change in its fiscal year.

13. Investor Member Inspection.

The Investor Member shall have the right to physically inspect the interior and exterior of the Property and the Company’s books, records, and sublease documents during normal business hours. The Investor Member shall provide written notice to the Managing Member of any such inspection not less than two weeks prior to the inspection. The Managing Member shall correct any inaccuracies or deficiencies in the Company’s books and records as agreed by the Managing Member and the Investor Member.

ARTICLE XIV.
AMENDMENTS

14. Proposal and Adoption of Amendments.

(c) This Agreement may be amended by the Managing Member with the Consent of the Investor Member or by the Investor Member with the Consent of the Managing Member.

(d) The Company shall bear the expense, including attorneys' fees and filing expenses, of amendments to this Agreement; provided, however, that if the Company does not have sufficient Operating Income to bear such expenses the party proposing an amendment to this Agreement shall bear the expenses thereof.

ARTICLE XV.
CONSENTS, VOTING AND MEETINGS

15. Method of Giving Consent.

Any Consent required by this Agreement may be given by a written Consent of the consenting Member and received by the Managing Member at or prior to the doing of the act or thing for which the Consent is solicited.

15. Submissions to Investor Member.

The Managing Member shall give the Investor Member Notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for consideration and approval of such Investor Member. Such Notice shall include any information required by the relevant provision or by law.

ARTICLE XVI.
GENERAL PROVISIONS

16. Burden and Benefit.

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

16. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State.

16. Safe Harbor.

The Members acknowledge that IRS Revenue Procedure 2014-12 establishes a safe harbor (the "Safe Harbor") under which the IRS will not challenge a partnership's allocations of validly claimed Federal Historic Tax Credits provided the partnership and its partners satisfy all the

requirements of the Safe Harbor. The Members agree that each intends to satisfy each of the requirements of the Safe Harbor and that in that regard, Investor Member is intended to constitute an “Investor” and the Company is intended to constitute a Partnership, and more specifically a “Developer Partnership,” as those terms are defined in the Revenue Procedure. The Members also agree that this Agreement shall be interpreted in a manner that would tend to cause the Company and its Members to comply with the requirements of the Safe Harbor.

16. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

16. Separability of Provisions.

Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

16. Entire Agreement.

This Agreement and the documents referred to herein set forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company business and the property of the Company, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein or therein.

16. Liability of the Investor Member.

Notwithstanding anything to the contrary contained herein, neither the Investor Member nor any of its partners, general or limited, or members shall have any personal liability to any of the parties to this Agreement with regard to the representations and covenants extended, or the obligations undertaken, by the Investor Member under this Agreement. Except as otherwise expressly stated herein, in the event that the Investor Member shall be in default under any of the terms of this Agreement, the sole recourse of any party hereto for any indebtedness due hereunder, or for any damages resulting from any such default by the Investor Member, shall be against the unpaid Capital Contribution of the Investor Member.

16. Notices.

(c) Any and all notices, consents, approvals and other communications required or permitted under this Agreement shall be deemed adequately given only if in writing delivered either in hand, by mail or by expedited commercial carrier which provides evidence of delivery or refusal, addressed to the recipient, postage prepaid and certified or registered with return receipt requested, if by mail, or with all freight charges prepaid, if by commercial carrier or by electronic transmission provided that such electronic transmission is received prior to 5:00 p.m. Mountain Time on a Business Day. All notices and other communications shall be deemed to have been

given for all purposes of this Agreement upon the date of receipt or refusal. All such notices and other communications shall be addressed to the Members at their respective addresses set forth below or at such other addresses as any of them may designate by notice to the other Members.

(d) Any Notice required by the provisions of this Agreement to be given to the Investor Member shall be addressed as follows:

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116
Attention: [_____]]
Email: [_____]]

With a copy to:

Kutak Rock LLP
2405 Grand Boulevard, Suite 600
Kansas City, MO 64108
Attention: Nicholas Irmen
Email: Nicholas.Irmen@kutakrock.com

(e) Any Notice required by the provisions of this Agreement to be given to the Company or the Managing Member shall be addressed as follows:

Former Federal Building Landlord, LLC
c/o City of Billings
PO Box 1178
Billings, MT 59103
Attention: Andy Zoeller
Email: zoellera@billingsmt.gov

With a copy to:

Dorsey & Whitney LLP
Millennium Building
125 Bank Street, Suite 600
Missoula, MT 59802-4407
Attention: Erin McCrady
Email: mccrady.erin@dorsey.com

(c) In the event an action, suit or proceeding is commenced by one Member against the other in connection with this Agreement or the transaction contemplated hereby, the non-prevailing Member shall be required to reimburse the prevailing Member for all reasonable legal fees, costs and expenses incurred by the prevailing Member in connection therewith.

(d) Except as provided in Section 16.09(a), the Managing Member shall pay for any and all reasonable legal fees or costs incurred by the Investor Member in connection with any waiver or amendment request made by the Managing Member or in connection with any default by the Managing Member hereunder.

(c) Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the Members shall be enforceable in equity as well as at law or otherwise.

(d) To the extent permitted by law, each Member hereby irrevocably:

(ii) consents to any suit, action, or proceeding with respect to this Agreement being, if brought by the Investor Member, brought in any State court of competent jurisdiction located in Billings, Montana, as the Investor Member may elect and, if brought by the Managing Member, brought in any State court of competent jurisdiction located in Billings, Montana as the Managing Member may elect;

(iii) waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing have been brought in any inconvenient forum;

(iv) (A) acknowledges the competence of any such court, (B) submits to the exclusive jurisdiction of any such court in any such suit, action or proceeding, and (C) agrees that the final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is or may be subject by a suit upon such judgment, a certified copy of which shall be conclusive evidence of its liability;

(v) agrees that service of process in any suit, action or proceeding brought in any such court may be made at its address set forth in Section 16.08, or such other address designated by it pursuant to the terms of Section 16.08;

(vi) waives all claims of error by reason of any service effected in accordance with the provisions of subparagraph (iv) above and agrees that such service shall in every respect effect service upon it in any suit, action or proceeding and shall be taken and held to be valid personal service upon or personal delivery to it, to the fullest extent permitted by law; and

(vii) waives trial by jury in any action related to this Agreement.

All monetary obligations of the Company or the Managing Member to the Investor Member hereunder shall survive the sale by the Investor Member of its Interest or the termination of the Company until satisfied by the Company or the Managing Member, as the case may be.

Nothing contained in this Agreement is intended or shall be deemed to benefit any creditor of the Company or any creditor of any Member, and no creditor of the Company shall be entitled to require the Company or the Members to solicit or accept any Capital Contribution for the Company or to enforce any right which the Company or any Member may have against any Member under this Agreement or otherwise or under any guaranty.

Signature page follows

IN WITNESS WHEREOF, the parties have set their signatures to this Operating Agreement as of the date first written above.

MANAGING MEMBER:

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

By: _____
Andy Zoeller, Manager

INVESTOR MEMBER:

FIB BATTIN, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE A

MEMBERS, CAPITAL CONTRIBUTIONS, AND PERCENTAGE INTERESTS

	<u>Capital Contribution</u>	<u>Percentage Interest</u>
<u>Investor Member</u> FIB Battin, LLC c/o First Interstate Bank 401 N. 31st St. P.O. Box 30918 Billings, MT 59116 Attention: [_____]	\$[_____]*	99% Admission Date 5% Adjustment Date
<u>Managing Member</u> Former Federal Building Manager, LLC 210 North 27th Street Billings, Montana 59101 Attention: Andy Zoeller	\$[_____]	1% Admission Date 95% Adjustment Date

*Payable as and when provided in the Agreement. Subject to adjustment as provided for in the Agreement.

SCHEDULE A

EXHIBIT A

INSURANCE PROVISIONS

SUMMARY OF REQUIREMENTS

Hazard insurance certificates and policy confirmations meeting the Investor Member's requirements should be obtained in favor of the Company and listing "*FIB Battin, LLC, and each of its members, successors and assigns, as their interests may appear*" as additional insureds, with respect to the following items: (i) Builder's Risk coverage in an amount at least equal to the amount of the hard cost construction contract (i.e., the Insurable Value); (ii) Workmen's Compensation insurance; (iii) fire and extended coverage insurance in an amount equal to at least the full replacement cost of the Project, or if under construction, to replace work completed to date; (iv) single limit comprehensive general liability insurance on an "occurrence basis" against claims for personal injury in an amount of at least \$1,000,000 for any single occurrence and \$5,000,000 in aggregate coverage for any single year.

All Asset Management and Insurance Notifications and Certificates should be identified and sent to:

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116
Attention: [_____]
Email: [_____]

INSURANCE FORMAT

Unless self-insurance is provided by the City, all insurance policies (or riders) required by this Exhibit A are to be taken out and maintained (i) with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or (ii) with Montana Municipal Interlocal Authority.

THESE REQUIREMENTS MAY BE FORWARDED TO YOUR INSURANCE AGENT OR BROKER AS WELL AS THE GENERAL CONTRACTOR.

PROPERTY INSURANCE REQUIREMENT

Evidence of Property Insurance **ACORD 27**, **ACORD 28** or equivalent which conveys to the Company all the rights and privileges afforded under the policy in a manner acceptable to the Investor Member. An endorsement naming FIB Battin, LLC as an additional insured is required in addition to acceptable evidence. The policy must contain provisions acceptable to the Investor Member.

Note: **ACORD 25** is **not** acceptable as evidence of property coverage. ACORD forms or other forms with disclaimers similar to ACORD 25 are not acceptable. Therefore, ACORD 27 & ACORD 28 forms (**version 07/2006**) are not acceptable.

Evidence of Property Insurance must indicate all of the following coverage:

- Include a description of the property insured in addition to the property address.
- *Former Federal Building Landlord, LLC and its successors and assigns, as its interests may appear* must be listed as Named Insured.
- The policy limit for Hard Costs must be sufficient to cover the full cost to rebuild the building(s).
- Deductible of \$50,000 maximum.
- A certified copy of the insurance policy will be required prior to investment and loan closing. If this is a new insurance policy, a certified copy will be required within 90 days from the effective date.
- The insurance policy form must be Builders Risk.
- The policy must be written on Special Form (also known as All Risk).
- Acts of Terrorism—the insurance policy must not contain an exclusion for acts of terrorism. The evidence of insurance must include the following: *Acts of Terrorism are not specifically excluded.*
- Completed Value form is required. Reporting Form is not acceptable.
- Builders Risk policies void coverage when the building in the course of construction is partially occupied prior to being 100% complete. This clause is commonly known as the Occupancy Clause. We require this clause to be deleted by endorsement.
- 30-day cancellation clause, with 10 days for non-payment of premium.
- FIB Battin, LLC must be named as an additional insured.
- Vandalism and Malicious Mischief (V&MM) and Theft on construction materials on site prior to installation must be included.
- The Builders Risk policy must include coverage for Soft Costs including construction loan interest payments and other expenses that could be incurred again during the reconstruction period after a loss.

EXHIBIT A

PARTNERSHIP'S LIABILITY INSURANCE REQUIREMENTS
(Use ACORD 25 form)

Primary liability insurance and excess liability insurance limits are acceptable to comply with the per occurrence policy limit requirement.

- The Company must be a Named Insured.
- *FIB Battin, LLC and its successors and assigns, as its interests may appear* must be listed as an additional insured.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made Form is not acceptable. The policy limit must be \$1,000,000 per occurrence and \$5,000,000 in the aggregate, and include the following coverage:
 - Products/Completed Operations coverage.
 - Protective Liability (a.k.a. Owners and Contractors Protective liability) covering borrower for liability claims stemming from the general contractor's actions.
- 30-day cancellation clause, with 10 days for non-payment of premium.

BUILDER'S INSURANCE REQUIREMENTS
(Use ACORD 25 form)

If a general contractor is hired to do the construction work, insurance from the contractor is required as follows:

- The certificate of insurance must include a description of the property insured and the property address.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made form is not acceptable. The policy limit must be **\$10,000,000** per occurrence and must include the following coverage:
 - Products/Completed Operations coverage must be included.
 - Protective Liability (a.k.a. Independent Contractors Protective liability) covering all subcontractors.
 - *FIB Battin, LLC and its successors and assigns, as its interests may appear* must be listed as an additional insured.
 - An additional insured endorsement naming the Company as an additional insured.
- 30-day cancellation clause, with 10 days for non-payment of premium.
- Statutory Workers' Compensation insurance.
- Employers' Liability coverage (**\$1,000,000** Minimum)
- FIB Battin, LLC must be the certificate holder.

EXHIBIT A

All of the conditions listed above are requirements of the Investor Member and must be indicated on the Proof of Insurance. The insurance requirements listed above do not modify any provisions of the loan or equity documents regarding insurance. They represent the minimum requirements of the Investor Member and should not be accepted as advice of counsel concerning an adequate property and casualty insurance program to meet your personal needs. We urge you to seek advice from your insurance adviser in this regard.

EXHIBIT A

EXHIBIT B-1

FORM OF INSTALLMENT PAYMENT NOTICE

[Date of Notice]

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116

Re: Capital Contribution as per the Operating Agreement of Former Federal Building Landlord, LLC (the "Agreement") dated [_____] by and between the undersigned and the addressee hereof ("Investor Member")

To whom it may concern:

The undersigned on behalf of Former Federal Building Landlord, LLC confirms that all of the requirements for the payment of the [**First/Second/Third**] Installment have been satisfied and requests, subject to the terms and conditions of the Agreement, that the Investor Member contribute \$[**Installment Amount**] constituting the [**First/Second/Third**] Installment and in accordance with the Agreement, on [**Installment Payment Date**].

Terms not otherwise defined herein shall have the meanings given them in the Agreement.

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

By: _____

EXHIBIT B-1

EXHIBIT B-2

FORM OF MANAGING MEMBER’S CERTIFICATE

[Note: This certificate must be revised when reissued in connection with a request for the Second or Third Installments to reflect the passage of time, closing on the permanent financing, receipt of updated title insurance documentation, and similar events]

All capitalized terms used herein and not otherwise defined, shall have the meanings attributed to them in the Operating Agreement of Former Federal Building Landlord, LLC (the “Company”), dated as of [_____] (the “Operating Agreement”).

The undersigned, Former Federal Building Manager, LLC, a Montana limited liability company (the “Managing Member”), as of [**Date of Certificate**] being the sole Managing Member of the Company, hereby represents, warrants, and covenants to the Company and to the Members that with respect to the Company:

All representations and warranties of the Managing Member contained in Section 4.01 of the Operating Agreement are true and correct in all material respects as of the date hereof. All covenants of the Managing Member as set forth in Section 4.02 of the Operating Agreement are true and correct in all material respects as of the date hereof.

No event shall have occurred entitling the Investor Member to convert the Managing Member’s Interest to an Economic Interest pursuant to Section 8.12 of the Operating Agreement nor has any event occurred which, with the passage of time, would entitle the Investor Member to convert the Managing Member’s Interest to an Economic Interest.

The Managing Member and the Company are in good standing and authorized to engage in the activities as set forth in the Operating Agreement. In addition, there have been no changes or amendments to the articles, by-laws, certificates, or other organizational documents, as appropriate, of the Managing Member and the Company, except as provided to the Investor Member.

All obligations of the Managing Member set forth in the Operating Agreement (including the delivery of all financial and other reports required to be delivered as of the date hereof pursuant to Article XIII of the Operating Agreement) have been satisfied.

MANAGING MEMBER:

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

By: _____
Name: _____
Title: _____

EXHIBIT B-2

EXHIBIT C

ARCHITECT'S CERTIFICATE

(See attached)

EXHIBIT C

EXHIBIT D
PROJECTIONS

(See attached)

EXHIBIT D

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.

.

- (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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of [_____, 2024], by and between Former Federal Building Landlord, LLC, a Montana limited liability company (the “Lessor”), and the City of Billings, Montana (the “Developer”).

RECITALS

WHEREAS, the Lessor is the owner of a sub-leasehold 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(s) of land upon which the Building is located (collectively, the “Land” and, together with the Building, the “Property”); and

WHEREAS, the 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 and improvements that will qualify for Historic Tax Credits (collectively, the “Project”); and

WHEREAS, the Lessor is governed by that certain Operating Agreement of the Lessor, dated as of even date herewith (the “Operating Agreement”), by and between FIB Battin, LLC, a Delaware limited liability company (the “Investor”), and Former Federal Building Manager, LLC, a Montana limited liability company (the “Managing Member”); and

WHEREAS, the Lessor desires to appoint the Developer to provide certain services for the Lessor with respect to overseeing the development of the Building until all development work is completed.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment. The Lessor hereby appoints the Developer to render services for the Lessor, and confirms and ratifies the appointment of the Developer with respect to services rendered for the Lessor to date, in supervising and overseeing the rehabilitation of the Building as herein contemplated.

2. Authority. The Developer shall have, and has had, the authority and the obligation to:

(a) act on behalf of the Lessor in its relation with any governmental agency or authority and any lender with respect to all matters relating to the Rehabilitation;

(b) help select the Architect, coordinate the preparation of the plans and specifications (the “Plans and Specs”) and recommend alternative solutions whenever design details affect construction feasibility or schedules;

- (c) ensure that the Plans and Specs are in compliance with all applicable codes, laws, ordinances, rules and regulations;
- (d) negotiate all necessary contracts and subcontracts (including the Construction Contract) for the Rehabilitation;
- (e) choose the products and materials necessary to equip the Building in a manner which satisfies all requirements of the Plans and Specs;
- (f) monitor disbursement and payment of amounts owed the Architects and the subcontractors;
- (g) insure that the Building is rehabilitated free and clear of all mechanics' and materialmen's liens;
- (h) obtain an Architect's certificate that the work on the Building is substantially complete, and inspect the Architect's work;
- (i) secure all building code approvals and obtain certificates of occupancy for the Building;
- (j) cause the Rehabilitation to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:
 - (i) the Plans and Specs as they may be amended by the agreement of the parties hereto;
 - (ii) any and all obligations of the Lessor under any financing transaction; and
 - (iii) any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to construction of the Building;
- (k) cause to be performed in a diligent and efficient manner the following:
 - (i) Rehabilitation of the Building; and
 - (ii) general administration and supervision of the Rehabilitation, including but not limited to activities of subcontractors and their employees and agents, and others employed as to the Building in a manner which complies in all respects with the Plans and Specs;
- (l) keep, or cause to be kept, accounts and cost records as to the Rehabilitation;
- (m) maintain, or cause to be maintained, at its expense, all office and accounting facilities and equipment necessary to adequately perform the foregoing functions;

(n) make available to the Lessor, during normal business hours and upon the Lessor's written request, copies of all material contracts and subcontracts;

(o) deliver to the Lessor a dimensioned as-built survey of the real property and as-built drawings of the Building construction;

(p) provide, and periodically update a Building construction time schedule which coordinates and integrates the Architect's services with construction schedules;

(q) investigate and recommend a schedule for purchase by the Lessor of all materials and equipment requiring long lead time procurement, coordinate the schedule with the Architect and expedite and coordinate delivery of such purchases;

(r) prepare pre-qualification criteria for subcontractors interested in the Rehabilitation, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods;

(s) receive bids, prepare bid analyses and make recommendations to the Lessor for award of contracts or rejection of bids;

(t) coordinate the work of the Architect to complete the Rehabilitation in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Property with authority to achieve such objectives;

(u) provide a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples;

(v) provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete, recommend to the Lessor adjustments in the schedule to meet the probable completion date, provide summary reports of such monitoring, and document all changes in the schedule;

(w) recommend courses of action to the Lessor when requirements of subcontracts are not being fulfilled;

(x) revise and refine the approved estimate of Rehabilitation cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;

(y) provide regular monitoring of the approved estimate of Rehabilitation cost, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise the Lessor whenever projected costs exceed budgets or estimates;

(z) develop and implement a system for review and processing of change orders as to the Rehabilitation;

(aa) develop and implement a procedure for the review and processing of applications by subcontractors for progress and final payments;

(bb) in collaboration with the Architect, establish and implement procedures for expediting the processing and approval of shop drawings and samples;

(cc) record the progress of the Building and, upon Lessor's written request, submitting written progress reports to the Lessor, including the percentage of completion and the number and amounts of change orders;

(dd) select the preservation consultant for the historical components of the development and Rehabilitation, if necessary;

(ee) complete and submit all forms necessary for the Part 1 and Part 2 designations, and incorporate all recommendations from the National Park Service in the plans and specifications as they relate to the Building;

(ff) assist with the documentation of the pre-rehabilitation conditions of the interior and exterior of the Building; and

(gg) coordinate and consult with the State Historic Preservation Office to fulfill the eligibility requirements of the Rehabilitation.

3. Development Fee. For services performed and to be performed under Sections 1 and 2 of this Agreement (which services do not include, and the Developer shall take no actions which pertain to, the acquisition of the Land, the admission of the Investor as a member of the Lessor and/or the obtaining of any loan), the Lessor agrees to pay the Developer a development fee in the aggregate amount of \$[] (the "Development Fee"), subject to the terms and conditions of the Operating Agreement. The entire Development Fee shall be deemed to have been earned upon Placement in Service of the Building. Any Development Fee remaining after application of all Development Sources shall be deferred with interest at the applicable federal rate and shall be paid as provided in the Operating Agreement. Notwithstanding the foregoing, the entire unpaid balance of the Development Fee shall be due and payable in all events by the Lessor not later than the fifth anniversary of Placement in Service of the Building in accordance with the Projections and the Operating Agreement.

4. Withholding of Fee Payments. In the event that the Developer shall not have substantially complied with any material provisions under this Agreement, then the Developer shall be in default of this Agreement. In the event that the Developer shall remain in default of this Agreement after Notice and a sixty (60) day opportunity to cure such default (unless a longer period is reasonably required for such cure and Developer is diligently pursuing such cure, such longer period not to exceed one hundred twenty (120) additional days), the Lessor may terminate this Agreement and/or withhold any payments due hereunder.

All amounts so withheld by the Lessor under this Section 4 shall be promptly released to the Developer only after the Developer has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Lessor.

5. Accounts and Records.

(a) The Developer on behalf of the Lessor, shall keep such books of account and other records as may be required and approved by the Managing Member, including, but not limited to, records relating to the costs of construction advances. The Developer shall keep vouchers, statements, receipted bills and invoices and all other records, in the form approved by the Managing Member, covering all collections, if any, disbursements and other data in connection with the Project prior to final completion of construction and rehabilitation. All accounts and records relating to the Project, including all correspondence, shall be surrendered to the Lessor, upon demand without charge therefor.

(b) All books and records prepared or maintained by the Developer shall be kept and maintained at all times at the place or places approved by the Managing Member, and shall be available for and subject to audit, inspection and copying by the Managing Member or any representative or auditor thereof or supervisory or regulatory authority, at the times and in the manner set forth in the Operating Agreement.

6. Assignment of Fees. The Developer shall not assign, pledge or otherwise encumber, for security or otherwise, the Development Fee set forth above to be made by the Lessor, or any portion(s) thereof or any right(s) of the Developer thereto, without prior Consent of and Notice to the Lessor.

7. Reserved.

8. Termination. If the Managing Member withdraws from the Lessor for any reason whatsoever, including the removal of the Managing Member as the managing member of the Lessor and/or the Managing Member interest in Lessor being converted into a non-managing member interest, this Agreement shall terminate effective on the date of such withdrawal (an “Early Termination”) unless the Lessor and the Investor otherwise elect in writing. Notwithstanding any Early Termination, the Developer shall be entitled to receive payments of the Development Fee to the extent earned when and as specified under this Agreement. The Developer shall have no right to terminate this Agreement without the Consent of the Lessor and the Investor, which Consent may be withheld in the sole discretion of either party.

9. No Lien Filings. The Developer hereby represents, warrants and covenants that neither it nor its Affiliates shall file a mechanic’s lien, materialmen’s lien or other lien against the Project or any other assets of the Lessor (other than as permitted by the Operating Documents or the Lease Purchase Finance Documents), and hereby waives and releases any right it may have or may hereafter acquire to file such a lien against the Project or any other assets of the Lessor. The Developer shall indemnify and hold harmless the Lessor and the Investor from any losses, damages, and/or liabilities, to or as a result of a breach of this provision.

10. Successors and Assigns, Termination. This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. However, this Agreement may not be assigned by any party hereto without the Consent of the Lessor and the Investor, nor may it be terminated without the Consent of the Lessor and the Investor.

11. Defined Terms. Capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to them in the Operating Agreement.

12. Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

14. No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

15. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana.

16. Waiver of Jury Trial. **EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT THEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.**

17. Third Party Beneficiary. The Investor is a third-party beneficiary of this Agreement, and the Lessor and the Developer hereby expressly agree that any amendment to this Agreement shall not be effective unless and until same is Consented to by the Investor.

Signature page follows

IN WITNESS WHEREOF, the parties have caused this Development Agreement to be duly executed as of the date first written above.

LESSOR:

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

By: _____
Name: _____
Title: _____

DEVELOPER:

CITY OF BILLINGS, MONTANA

By: _____
Name: _____
Title: _____

CONTRIBUTION AND REIMBURSEMENT AGREEMENT

This CONTRIBUTION AND REIMBURSEMENT AGREEMENT (this “*Agreement*”) dated as of [____], 2024 (the “*Effective Date*”), is by and among CITY OF BILLINGS, MONTANA, a municipality and political subdivision of the State of Montana (“*Owner*”), FORMER FEDERAL BUILDING MANAGER, LLC, a Montana limited liability company (the “*Manager*”), and FORMER FEDERAL BUILDING LANDLORD, LLC, a Montana limited liability company (the “*Landlord*”).

RECITALS

A. Owner is the owner of all of that tract of land located at 316 N. 26th Street, Billings, MT 59101, together with all rights, alleys, ways, waters, privileges, roads, appurtenances, and advantages, to the same belonging or in any way appertaining thereto (collectively, the “*Land*”) and the historic building or buildings located on the Land, together with all fixtures and personal property, all off-street parking areas on the Land, all common areas at the Land, and all replacements, additions, and alterations thereto (collectively, the “*Improvements*” and, together with the Land, the “*Property*”).

B. Owner has agreed to lease to Landlord pursuant to that certain Ground Lease Agreement dated as of the date hereof (the “*Ground Lease*”) with respect to the Property.

C. Landlord desires to cause the acquisition, renovation, rehabilitation, construction, and development of the Property into a city hall and related uses (the “*Project*”), and for the financing of the Project.

D. Prior to the date hereof, Owner has expended certain funds in connection with the Project in the amount of \$____, including, but not limited to, costs incurred in connection with the construction contract, architect’s agreement and all other contracts entered into in connection with the Project (the “*Pre-Incurred Costs*”), as summarized on **Exhibit A**, attached hereto and incorporated herein by this reference.

E. Owner is the managing member and sole member of Manager.

F. Manager owns a 1% membership interest in the Landlord and is the managing member of Landlord.

G. The parties desire for the Pre-Incurred Costs to be transferred to Landlord (the “*Contribution*”), as a capital contribution from Owner to Manager and Manager desires to make a capital contribution to the Landlord in the amount of the Pre-Incurred Costs in connection with its membership interest in the Landlord.

H. Accordingly, the parties are accounting for the Pre-Incurred Costs as a capital contribution from Owner to Manager in the amount of \$____, followed by net capital contribution by Manager to Landlord in the same amount pursuant to Section 721(a) of the Internal Revenue Code of 1986, as amended (the “*Code*”).

I. THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Contribution of Pre-Incurred Costs. The parties hereto agree that the Pre-Incurred Costs will be deemed to be a capital contribution from Owner to Manager and from Manager to Landlord.

2. Capital Account Credit. The parties agree that Manager will receive capital account credit on the books of Landlord in the amount of the Pre-Incurred Costs.

3. Governing Law. This Agreement is governed by and construed in accordance with the internal, substantive laws of the State of Montana applicable to agreements made and to be performed entirely within such State, without regard to its conflicts of law provisions.

4. Severability. In the event that any covenant, condition, or other term herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same will be deemed to be severable from the remainder of this Agreement and will in no way affect, impair, or invalidate any other covenant, condition, or other term contained herein.

5. Further Assurances. From time to time on and after the date hereof, each party hereto will promptly execute and deliver all such further instruments and assurances, and will promptly take all such further actions, as the other parties hereto may reasonably request (but at the requesting party's expense) in order more effectively to effect or confirm the transactions hereby contemplated and to carry out the purposes of this Agreement.

6. Tax Treatment. All of the parties will treat and report the transactions contemplated in accordance with this Agreement in the manner described herein. The parties will not take any actions or positions which are inconsistent with this Agreement and the obligations set forth herein.

7. No Third-Party Beneficiaries. This Agreement binds and inures to the benefit of the parties hereto and their respective successors and permitted assigns. Except as expressly set forth herein, nothing in this Agreement is intended to or does confer any rights or remedies on any person other than the parties hereto and their respective successors and permitted assigns.

8. Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same agreement. In pleading or proving this Agreement, it will not be necessary to produce or account for more than one copy of this Agreement executed (in counterparts or otherwise) by all of the parties.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, parties have caused this Contribution and Reimbursement Agreement to be duly executed effective as of the Effective Date.

OWNER: CITY OF BILLINGS, MONTANA,
a municipality and political subdivision of the State of
Montana

By: _____
Name: _____
Title: _____

MANAGER: FORMER FEDERAL BUILDING MANAGER, LLC,
a Montana limited liability company

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

EXHIBIT A

DESCRIPTION OF PRE-INCURRED COSTS

All costs to date incurred by Landlord in connection with the rehabilitation of the Project including, but not limited to, costs incurred in connection with the construction contract, architect's agreement and all other contracts entered into in connection with the Project.

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

City Council Work Session

Date: 11/04/2024
Title: Downtown Angle Parking Discussion
Presented by: Debi Meling
Department: Public Works
Presentation: Yes
Legal Review: Not Applicable
Project Number: N/A

RECOMMENDATION

Staff recommends constructing the angle parking as designed, which includes constructing back-in angle parking on streets within the two-way conversion where angle parking is designated. This is consistent with the recommendation of the design engineer (DOWL).

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

W.O. 23-11 will construct the conversion of 2nd Avenue North, 3rd Avenue North, and the remaining north-south one-way streets from one-way to two-way traffic within downtown Billings. North 29th Street and North 30th Street were converted to two-way operations in 2021. The angle parking stalls on North 29th Street and North 30th Street were converted from pull-in to back-in angle with the conversion to two-way traffic. Back-in angle parking was designed and is proposed to be installed with the current project on portions of the following roadways: North 25th Street, North 26th Street, North Broadway, North 32nd Street, North 33rd Street, North 34th Street, North 35th Street, and 2nd Avenue North.

Basis for Initial Recommendation (2021)

Back-in angle parking was considered on North 29th Street and North 30th Street mainly due to the safety benefits. Back-in angle parking allows drivers to pull past an open parking space and then reverse into it. This means that when they leave the parking spot, they drive forward into the traffic flow. This maneuver provides better visibility for both the driver and the other road users. When pulling out of a parking space, drivers have a clearer view of pedestrians, cyclists, and other vehicles. This reduces the risk of crashes and improves overall safety. A back-in parking configuration also minimizes the chance of cyclists being surprised by a car backing out of a parking space directly into their path. Other benefits include improved access to the trunk of a car for loading and doors directing car users back towards the sidewalk rather than towards the street.

Back-in angle parking was also considered with North 29th Street and North 30th Street to provide consistency with an anticipated change to Montana Avenue. The City and Montana Department of Transportation (MDT) have been in discussion on a potential road diet on Montana Avenue. A road diet would reduce the driving lanes between North 27th Street and North 21st Street from three lanes to two lanes. Angle parking could feasibly be added to Montana Avenue with the space gained by a reduction in travel lanes. Generally, MDT prefers parallel parking on their roadways. MDT's stated order of preference for existing angle parking is as follows: eliminate; convert to parallel parking; change to back-in angle parking; change the angle; leave as is. Based off their stated preferences, as well as conversions with MDT specifically on Montana Avenue, MDT would require back-in angle parking if angle parking is added to Montana Avenue. Input is needed from the local business community on Montana Avenue before continuing design efforts on the Montana Avenue road diet. Angle parking on Montana Avenue would substantially increase the number of parking spaces and improve safety. Both improvements are supported by businesses in this thriving business district.

User Feedback from North 29th Street and North 30th Street

Feedback from the public on the existing back-in angle parking downtown appears to be mixed. Back-in angle parking compliance has been consistent on both roadways. The parking stalls on North 29th Street are fairly consistently utilized. North 30th Street, which has less business activity and fewer retail spaces fronting the roadway, appears to have less consistent utilization. Business owners downtown, however, have reported negative feedback on the parking configuration to both the City of Billings and the Downtown Billings Association (DBA). A handful of business owners on North Broadway and 2nd Avenue North have expressed their preference for pull-in parking to remain in-place through the design process. Notably, back-in angle parking also exists throughout the East Billings Urban Renewal District (EBURD). Public Works has not heard of complaints about the angle-parking configuration within the EBURD from the public or the business owners in the area. There is a known issue of parking meters being damaged if they are too close to the curb, or do not align with the parking stripes. To mitigate this issue, the parking meters are proposed to be relocated a minimum of three feet from the curb with the project.

Basis for Current Recommendation and Alternatives (2024)

Back-in angle parking continues to be the design engineer (DOWL) and Public Works' recommendation for the parking configuration in downtown Billings due to the safety benefits noted above as well as providing consistency in parking. The current project adds buffered bike lanes and/or shared lane markings on three corridors in downtown Billings: 2nd Avenue North, North Broadway, and North 25th Street. By providing enhanced bicycle facilities in downtown Billings while also expecting bicyclists to navigate a vehicle backing blindly into the travel lane puts the more vulnerable bicycle user at an increased safety risk. For these reasons, Public Works does not recommend mixing pull-in angle parking with a shared lane marking or bike lane. Additionally, consistency and predictability are two important concepts for making streets safer. Adopting a uniform parking approach - whether it's all back-in or all front-in - creates consistency for all users. Predictability is essential for safe navigation of roadways. When parking behavior is consistent, pedestrians, cyclists, and drivers can anticipate each other's movements more effectively. This reduces confusion and potential conflicts. All alternatives, listed in order of staff recommendation, are listed below:

1. Public Works' recommendation is for all angle parking downtown to be back-in angle parking with limited exceptions to avoid confusion for users and all modes. The situation where pull-in parking is proposed to remain includes locations where ADA stalls are specifically set up for a front-in angle configuration and are isolated from other angle parking stalls. The rationale behind this recommendation is twofold:

- **Multi-Modal Emphasis:** Given the project's focus on multi-modal transportation, including bicyclists, back-in angle parking aligns well. It enhances safety by providing better visibility for both drivers and other road users.
- **Consistency:** Uniformity in parking behavior reduces confusion. When all parking spaces follow the same approach, pedestrians, cyclists, and drivers can predict each other's movements more effectively.

The project has been designed, bid, and awarded with back-in angle parking included, so there are **no cost implications** for this recommendation.

2. Redesign parking within the current project to pull-in angle, and convert the angle parking on North 29th Street and North 30th Street to pull-in angle parking. All angle parking downtown will be pull-in angle. A consistent parking layout will create a predictable environment for all users, enhancing safety. Public Works does not recommend pull-in angle parking with shared lane markings, so the bike facilities would be removed on the following roadways: 2nd Ave N (Division to N 25th St), N 30th St (6th Ave N to Montana Ave), and N Broadway (6th Ave N to Montana Ave). The cost implications are as follows:

- The parking within the current project and on North 29th Street and North 30th Street would require redesign. This will cost \$50,000, which was budgeted in the Contract Administration Amendment that was previously approved by Council. If this change is not made, the \$50,000 budgeted will not be spent.
- A change from back-in to pull-in angle parking will result in less signage for the project, which will result in a construction savings of approximately \$52,000.
- A change in parking configuration on North 29th Street and North 30th Street is more involved, and multiple options were considered to accomplish this change. The work is best accomplished by providing a new scrub seal between 6th Avenue North and Montana Avenue on North 29th Street and North 30th Street. This is estimated to cost an additional \$380,000. Other solutions explored either won't be effective long-term, have anticipated continual maintenance costs, or are less cost-effective.
- Net project cost: \$378,000 additional cost

3. Maintain back-in angle parking on streets with bicycle facilities. Safety for all modes will be optimized by allowing all modes to see all users when navigating the parking and thoroughfares within the project limits. This recommendation applies to 2nd Avenue North, North 25th Street, North 30th Street, and North Broadway. The majority of the streets with pull-in angle parking under this recommendation will be outside the downtown core: North 35th Street, North 34th Street, North 33rd Street, North 32nd Street, North 29th Street (existing) and North 26th Street.

- Parking on a portion of the streets would require redesign. It is estimated this will cost \$26,000. This money has been budgeted in the Construction Administration Amendment and will only be spent if a design change occurs.
- A change from back-in to pull-in on select streets will reduce signage for the project, which will result in construction savings of approximately \$28,000
- A change in parking configuration on North 29th Street will result in additional construction cost of approximately \$190,000
- Net project cost: \$188,000 additional cost

4. Maintain back-in angle parking on streets with existing back-in angle parking, including North 29th Street and North

30th Street, and construct pull-in angle parking on all other streets where angle parking is proposed. Public Works does not recommend pull-in angle parking with shared lane markings, so the bike facilities would be removed on the following roadways: 2nd Ave N (Division to N 25th St) and N Broadway (6th Ave N to Montana Ave). Additionally, businesses on North 29th Street and North 30th Street may see this as an unfair option, and future costs may be incurred to change the parking configuration. The cost implications are as follows:

- Redesign the parking configuration within the current project only, which is estimated to cost an additional \$26,000 in engineering fees.
- A change from back-in to pull-in angle parking will result in less signage for the project, which will result in a construction savings of approximately \$52,000.
- Net project cost: \$26,000 in savings

ALTERNATIVES

Staff is requesting direction from City Council regarding the angle parking within the Downtown Two-Way Street Conversion project. Alternatives include the following (in order of staff and consultant recommendation):

1. Proceed with back-in angle parking as designed (all angle parking will be back-in angle, with limited exceptions).
2. Redesign parking within the current project to pull-in angle, and convert the angle parking on North 29th Street and North 30th Street to pull-in angle parking (all angle parking downtown will be pull-in angle). Planned bicycle facilities will be impacted.
3. Provide back-in angle parking on streets with bicycle facilities, including 2nd Avenue North, North 30th Street, North Broadway, and North 25th Street. Redesign parking on North 35th Street, North 34th Street, North 33rd Street, North 32nd Street, North 29th Street, and North 26th Street to pull-in angle parking (mix of pull-in and back-in angle parking).
4. Redesign parking within the current project to pull-in angle, and leave the parking on North 29th Street and North 30th Street as back-in angle parking (mix of pull-in and back-in angle parking). Planned bicycle facilities will be impacted.

FISCAL EFFECTS

Fiscal effects for each alternative are estimated as follows:

Alternative	Fiscal Effect	Notes
1: Back-in Angle Parking on All Streets	\$0	Aligns with current design, no construction or engineering cost implications
2: Pull-in Angle on All Streets	\$380,000	Requires \$50,000 to redesign streets within the project as well as North 29th Street and North 30th Street, and approximately \$330,000 in additional construction costs to convert North 29th Street and North 30th Street
3: Back-in Angle Parking on Streets with Bike Facilities	\$188,000	Requires between \$26,000 in additional design fee and \$162,000 in additional construction fee
4: Pull-in Angle on Streets within Current Project, Back-in Angle on North 29th Street and North 30th Street	Savings of \$26,000	Requires a design fee of \$26,000 to update the current plans to pull-in angle parking; approximate cost savings of \$52,000 due to reduction in signing

Attachments

Angle Parking Presentation

Downtown Angle Parking

**WO 23-11 Downtown 2-Way
Street Restoration Project**

November 4th, 2024

WO 23-11 Project Map

Work on ADA ramps and signal improvements began fall of 2024





Back-in Angle Parking Background

- ▶ Installed on North 29th St and North 30th Street in 2021
- ▶ Safety benefits
 - ▶ Trunk Access
 - ▶ Exit vehicle towards sidewalk
 - ▶ Better visibility when exiting space
- ▶ Consistency with anticipated Montana Ave road diet (future) and EBURD (existing)

Consistency as a Safety Strategy



Adopting a uniform parking approach, whether it's all back-in or all front-in, creates consistency for all users



When parking behavior is consistent, pedestrians, cyclists, and drivers can anticipate each other's movements more effectively



Predictability is essential for safe navigation



Back-in Angle Parking with Bicycles

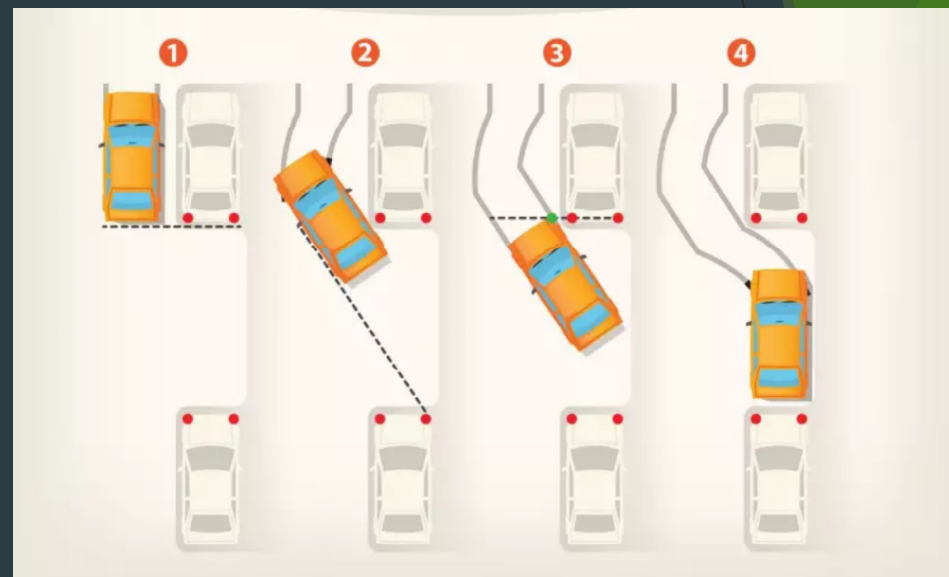
- ▶ Better visibility when exiting parking space
- ▶ Drivers have a clearer view of pedestrians, cyclists, and other vehicles in the roadway when exiting
- ▶ Minimizes the chance of a cyclist being surprised by a car backing out of a parking space directly in their path
- ▶ **Recommended parking configuration when mixing angle parking with bicycles**

Back-in Angle Parking & Parallel Parking

Back-in Angle Parking Steps



Parallel Parking Steps



- ▶ Motions are very similar
- ▶ Learning curve for most drivers

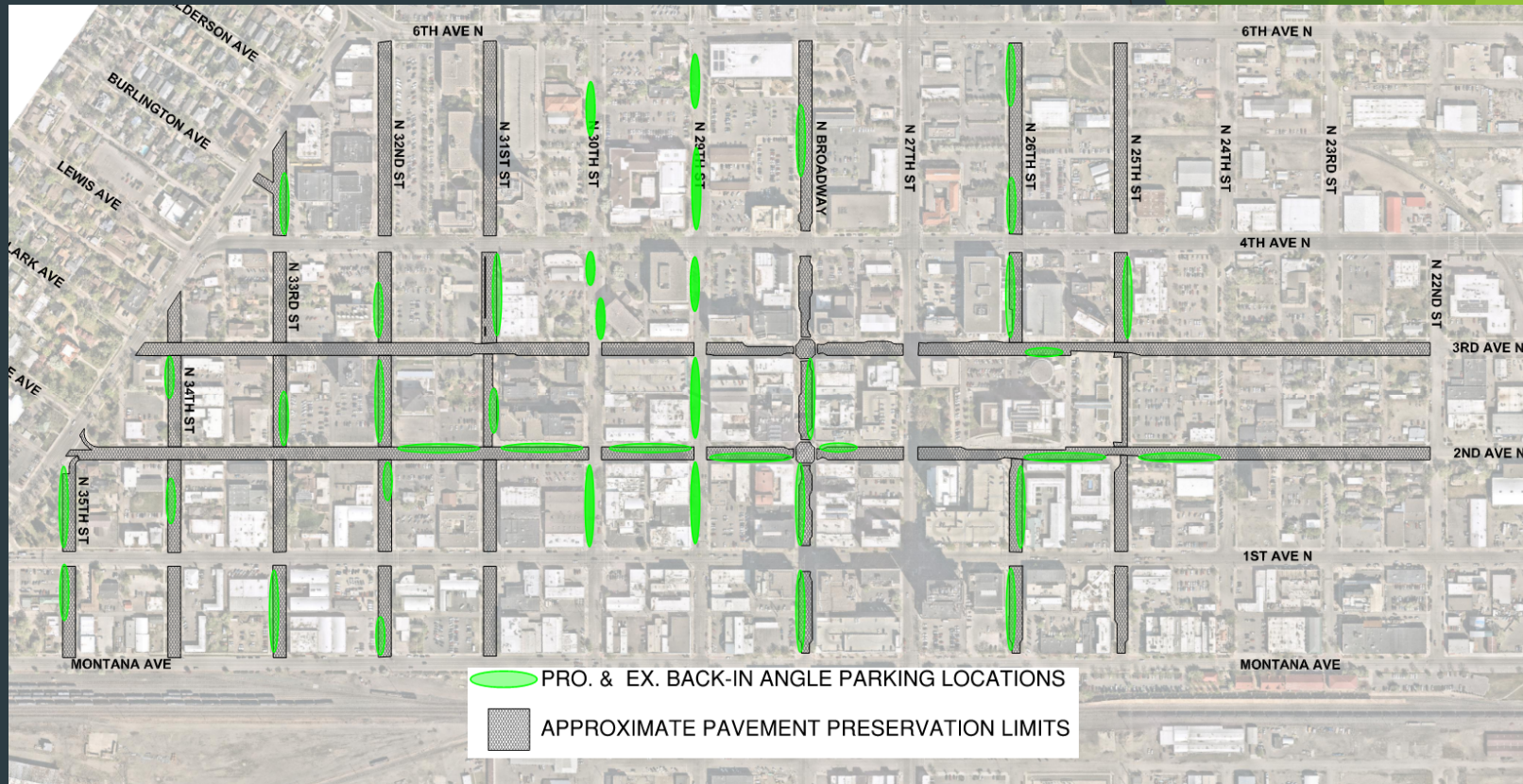
Back-in Angle Parking Feedback

- ▶ North 29th St and North 30th St
 - ▶ Compliance is high
 - ▶ Utilization is high
 - ▶ Feedback from downtown business customers is mostly negative
- ▶ Existing back-in angle parking in Billings
 - ▶ EBURD
 - ▶ McKinley Elementary School
 - ▶ Do not hear complaints
- ▶ Parking Meter Issues
 - ▶ Meters proposed to be set back minimum 3-ft with next project
 - ▶ Meters placed in line with parking stripe



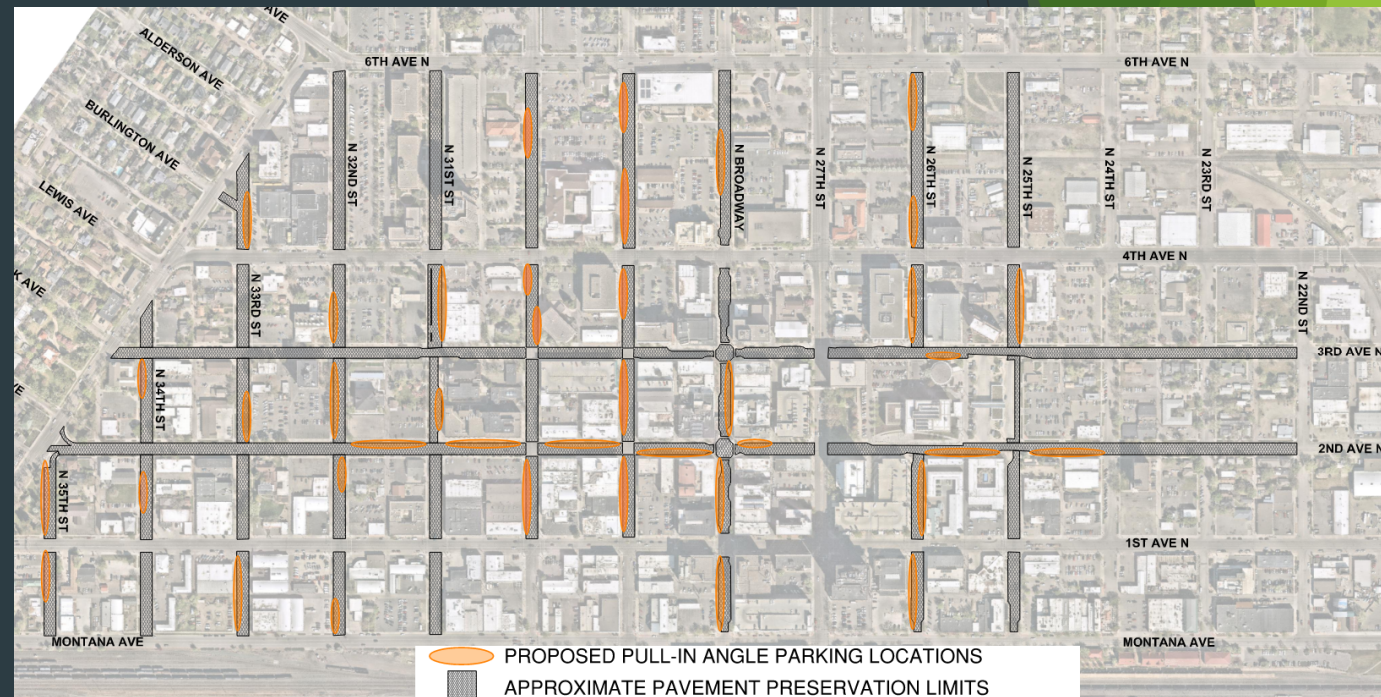
Alternate 1: All Back-in Angle Parking - Preferred

- ▶ Where angle parking is installed, install back-in angle parking
- ▶ North 29th Street and North 30th Street remain as is
- ▶ No impacts to design or construction costs (designed and bid this way)



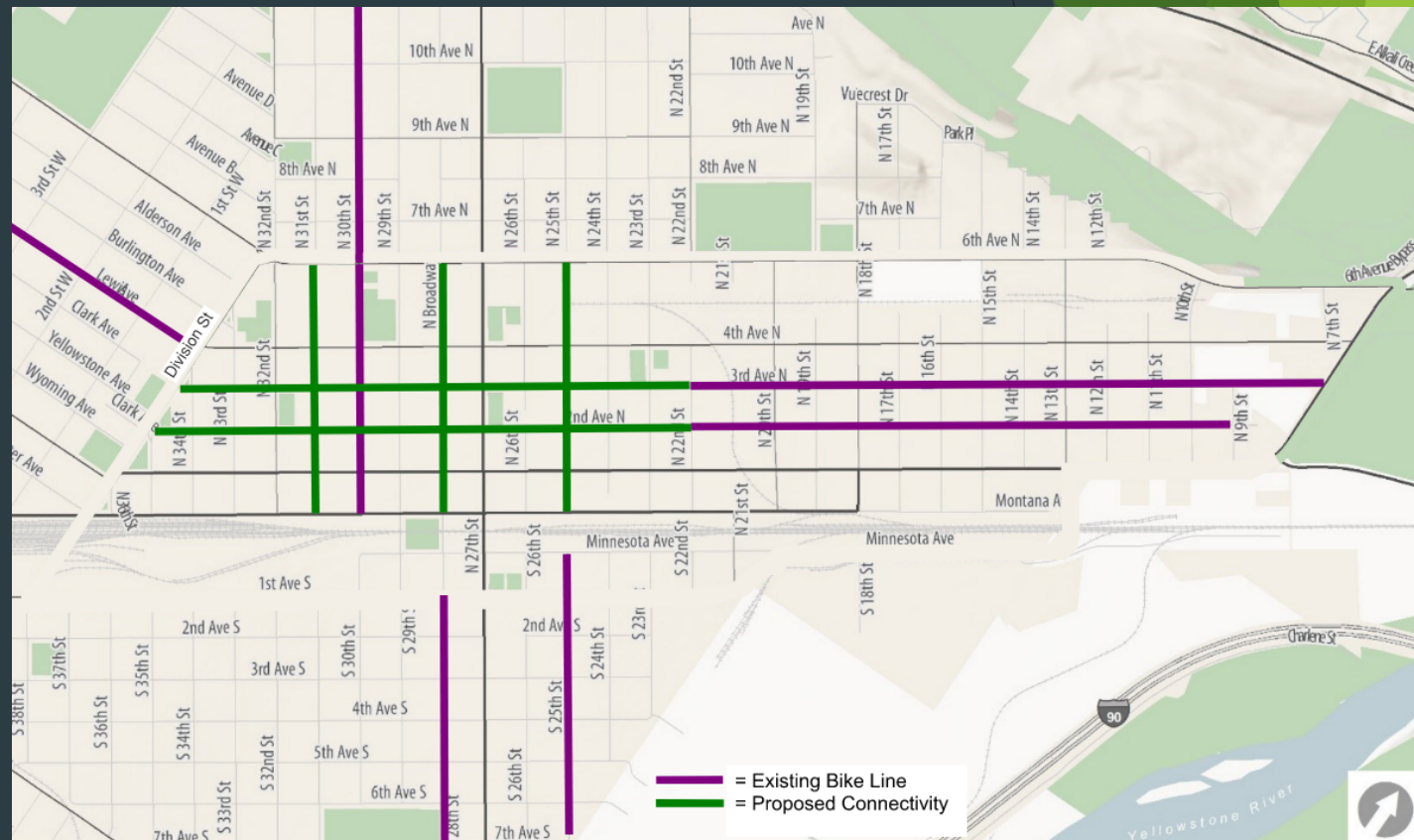
Alternate 2: All Pull-in Angle Parking

- ▶ Where angle parking is installed, install pull-in angle parking
- ▶ Consistent parking layout will create a predictable environment for all users, enhancing safety
- ▶ Public Works does not recommend mixing pull-in parking with shared lane markings or bike lanes
 - ▶ Remove bike lane and shared lane markings on 2nd Ave N from Division to N 25th St
 - ▶ Remove shared lane markings on N Broadway and N 30th St
- ▶ Cost implications: \$378,000
 - ▶ \$50,000 in engineering fee (already budgeted in Construction Administration Amendment)
 - ▶ \$52,000 in savings due to reduction in signs
 - ▶ \$380,000 in construction costs for new scrub seal and striping on North 29th Street and North 30th Street



Bike Connectivity - As Designed

- ▶ Currently: limited bike infrastructure downtown
- ▶ Proposed Connectivity
 - ▶ 2nd Ave N
 - ▶ 3rd Ave N
 - ▶ N 25th St
 - ▶ North Broadway
 - ▶ N 30th St (existing)
 - ▶ N 31st St



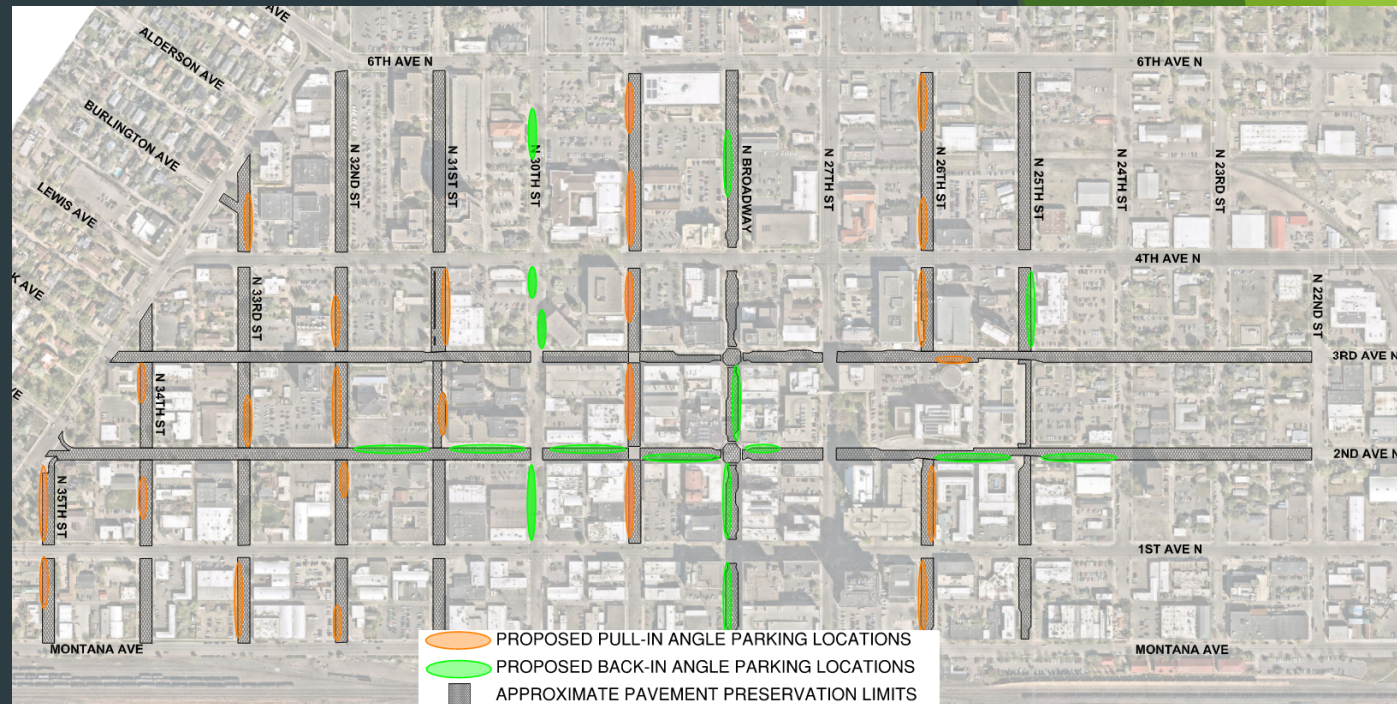
Bike Connectivity - Revised for Pull-in Angle Parking

- ▶ Bicycle Connectivity
 - ▶ ~~2nd Ave N~~
 - ▶ 3rd Ave N (cycle track)
 - ▶ N 25th St
 - ▶ N Broadway
 - ▶ ~~N Broadway~~
 - ▶ ~~N 30th St (existing)~~
 - ▶ N 31st St (cycle track)
- ▶ Pull-in angle parking provided throughout downtown



Alternate 3 : Back-in Angle Parking on Streets with Shared Bicycle Lanes

- ▶ Where shared lane markings are installed, install back-in angle parking
- ▶ Safety for all modes optimized
- ▶ Shared lane markings currently designed on the majority of streets within downtown core
 - ▶ Most of downtown core would have back-in angle parking, except N 29th St
- ▶ Cost implications: \$188,000
 - ▶ \$26,000 in design fee
 - ▶ \$28,000 savings in signs
 - ▶ \$190,000 in North 29th St modifications



Alternate Summary

Alternate	Description	Safety - Consistency (Safe Navigation)	Safety for Bicycles on Designated Facilities	Bicycle Facility Connectivity per Plan	Addresses Downtown Business Concerns	Cost (1=least amount of additional cost)
1	All Back-In	X	X	X		2
2	All Pull-In	X	X		X	4
3	Back-in on bicycle facilities, Pull-in everywhere else		X	X		3
4	Back-in on N 29th St and N 30th St, Pull-in at all other locations		X			1



Questions?