

## 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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: Shaw, Gulick, Neese, Owen, Joy, Kennedy, Aspenlieder, Tidswell, Boyett, Rupsis and Mayor Cole; voted against the same: N/A; abstained from voting thereon: N/A; or were absent: N/A.

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

Denise R. Bohlman  
Denise R. Bohlman, City Clerk



## RESOLUTION 24-11245

### 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 26<sup>th</sup> 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.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana,  
on the 12<sup>th</sup> day of November, 2024.



CITY OF BILLINGS

By: William A. Cole  
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohman  
Denise R. Bohman, City Clerk

EXHIBIT A

FORM OF GROUND LEASE

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**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**

a) 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**

b) Representations and Covenants of the City. 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).

c) Representations and Covenants of the Bank. 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

Section 3.1. Termination Events. 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.

Section 3.2. Use of Sublease and/or Lease Rentals. 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.

Section 3.3. Reports. 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, the Bank shall keep complete and accurate records regarding any sublease and/or lease of the Project and shall, within sixty (60) days of the end of the Fiscal Year of the City, deliver a written report to the City showing: 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 3.4. 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.

### ARTICLE IV

#### USE OF PROJECT; ADDITIONAL COVENANTS

Section 4.1. Use of Project. 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.

Section 4.2. Quiet Enjoyment. 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.

Section 4.3. Assignment. 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 4.4. 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 4.5. 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 V**

### **DEFAULT BY BANK; CITY REMEDIES**

Section 5.1. Default by Bank. 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.

Section 5.2. City Remedies. 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 VI**

### **MISCELLANEOUS**

Section 6.1. Severability. 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.

Section 6.2. Binding Effect. This Ground Lease is binding upon, and inures to the benefit of, the parties hereto, and their respective successors and assigns.

Section 6.3. Counterparts; Electronic Execution and Counterparts. 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.

Section 6.4. Applicable Law. 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.

Section 6.5. Recording. 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.

Section 6.6. Amendments, Changes and Modifications. 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.

Section 6.7. Captions. 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.

Section 6.8. No Additional Waiver Implied by One Waiver. 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.

Section 6.9. Agreement to Pay Attorneys' Fees and Expenses. 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.

Section 6.10. No Merger of Title. 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.

Section 6.11. Notices. 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

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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

Section 1.1. 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 [\_\_\_\_]%<sup>1</sup> 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.

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<sup>1</sup> 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%.

"Closing Date" means [\_\_\_\_], 2024.

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

"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 lessor.

"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

Section 2.1. Representations and Covenants of the City. 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.

Section 2.2. Representations and Covenants of the Bank. 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**

##### Section 3.1. Payment of Costs; Disbursements.

(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.

Section 3.2. City to Act as Agent; Acquisition and Construction of Improvements. 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.

Section 3.3. Sublease of Land; Lease of 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.

Section 3.4. Possession and Enjoyment. 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.

Section 3.5. Bank Access to Project. 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.

Section 3.6. Payment and Performance Bonds. 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.

Section 3.7. City Liability. 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.

Section 3.8. Default in Contractor Performance. 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**

Section 4.1. Lease Term. This Lease shall be in effect for a term commencing upon the execution and delivery hereof and ending as provided in Section 4.2.

Section 4.2. Termination of Lease. 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.

Section 4.3. Transfer of Project to the City. 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.

Section 4.4. Surrender of Project to the Bank. 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.

Section 4.5. Termination by the City. 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.

Section 4.6. Effect of Nonappropriation. 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

#### Section 5.1. 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.

Section 5.2. Current Expense. 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.

Section 5.3. Interest Component. 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".

Section 5.4. Rental Payments to be Unconditional. 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**

Section 6.1. Liability Insurance. 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.

Section 6.2. Property Insurance. 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.

Section 6.3. Worker's Compensation Insurance. 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.

Section 6.4. Requirements for All Insurance; Reporting. 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.

Section 6.5. Risk of Loss; City Negligence. 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.

Section 6.6. Damage, Destruction and Condemnation. 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.

Section 6.7. Insufficiency of Net Proceeds. 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.

Section 6.8. Cooperation of Bank. 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

Section 7.1. Use; Permits. 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.

Section 7.2. Maintenance and Modification of Project by City. 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.

Section 7.3. Taxes, Other Governmental Charges and Utility Charges; Compliance with Governmental Requirements. 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.

Section 7.4. Financial Information. 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

Section 8.1. 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.

Section 8.2. Security Interest. 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.

Section 8.3. Liens. 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.

Section 8.4. Installation of Personal Property. 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

Section 9.1. Maintenance of Project. 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.

Section 9.2. Contractor's Warranties. 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.

Section 9.3. Patent Infringement. 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.

Section 9.4. Disclaimer of Warranties. 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

Section 10.1. Option to Prepay in Whole or in Part. 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 <sup>2</sup>	Prepayment Price
[November 21, 2024 through November 20], 2025	Principal Portion to be prepaid x 103% plus interest accrued thereon
[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.

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<sup>2</sup> NTD: Assumes closing on November 20, 2024.

Section 10.3. Exercise of Option to Prepay. 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**

Section 11.1. Delegation and Assignment by Bank. 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.

Section 11.2. Assignment and Subleasing by 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.

Section 11.3. Restriction on Mortgage or Sale of Project by City. 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

Section 12.1. Events of Default Defined. 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.

Section 12.2. Remedies on Default. 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.

Section 12.3. No Remedy Exclusive. 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

Section 13.1. Notices. 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

Section 13.2. Severability. 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.

Section 13.3. Binding Effect. 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.

Section 13.5. Applicable Law. 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.

Section 13.6. Recording. 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.

Section 13.7. Amendments, Changes and Modifications. 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.

Section 13.8. Captions. 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.

Section 13.9. No Additional Waiver Implied by One Waiver. 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.

Section 13.10. Financing Statements; Further Assurances and Corrective Instruments. 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.

Section 13.11. Agreement to Pay Attorneys' Fees and Expenses. 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 26<sup>th</sup> 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>
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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: \_\_\_\_\_