



2021-771048 7/27/2021 3:53 PM PAGE: 1 OF 7  
FEES: \$30.00 PK MORTGAGE  
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK

After Recording Return To:

Affordable Housing & Neighborhood Development Dep't  
WCDA  
155 N. Beech Street  
P.O. Box 634  
Casper, WY 82602

(Space Above This Line for Recording Data)

## HOME MORTGAGE (MULTIPLE ADVANCING LINE OF CREDIT)

THIS HOME Investment Partnership Program (HOME) Mortgage (hereinafter "Mortgage") is made this 27 day of July, 2021 between the Mortgagor, Bighorn Flats, LLC (hereinafter "Borrower"), and the Mortgagee, WYOMING COMMUNITY DEVELOPMENT AUTHORITY (hereinafter "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of **One Million Three Hundred Thirty Thousand and No/100 U.S. Dollars (\$1,330,000.00)** which indebtedness is evidenced by Borrower's promissory note of even date herewith (hereinafter "Note"); and,

To secure to Lender the repayment of the indebtedness evidenced by the Note, plus interest, and any extensions or renewals thereof, the payment of all other sums payable in accordance herewith and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender, with power to sell, the following described property located in the County of Sheridan, State of Wyoming:

**Lot 6 of the Wilkerson Subdivision as shown in the Plat that was recorded on July 21, 2004 Drawer W, Plat number 52 in the official land records of the Sheridan County Clerk and Recorder.**

Together with all improvements now or hereafter erected on the property, and all easements, rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, are hereinafter referred to as the "Property" or "Project".

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, liens and encumbrances. Further, Borrower warrants that there has been no construction or work on the Property prior to the date of the Mortgage or that lien waivers have been obtained and copies supplied to Lender with respect to such construction work.

**MUTUAL COVENANTS** by and between Borrower and Lender:

- 1. Payment of Principal, Interest, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note, and late charges due under the Note or amounts due under this Mortgage if the outstanding loan secured by this Mortgage is refinanced, or upon sale or transfer of the Property to a party not already obligated on the Note. Payments due under the Note and this Mortgage shall be made in U.S. currency, check, or other instrument, including payment methods authorized by Lender. However, if any check or other instrument received by Lender as payment under the Note or this Mortgage is returned to the Lender unpaid, Lender may require that any or all subsequent payments under the Note and this Mortgage be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer. Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender.
- 2. Maximum Obligation Limit.** The total principal amount of the indebtedness evidenced by the Note together with any other payment required thereunder secured by this Mortgage at any one shall not exceed **One Million Three Hundred Thirty Thousand and No/100 U.S. Dollars**

**(\$1,330,000.00).** This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees, and other charges validly made pursuant to this Mortgage, and does not apply to advances made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment shall be agreed to in writing and must be made pursuant to Lender-approved construction draw request(s).

3. **Disbursement of Loan Proceeds.** The following provisions govern the disbursement of loan funds:
  - a. **Application for Advances.** Advances of loan proceeds are contemplated no more frequently than on a monthly basis. The application for advance shall include a completed draw request updated as necessary to reflect amounts previously paid and the amount currently requested, a standard AIA payment request form, and any other documentation as Lender may reasonably require. Borrower shall apply only for disbursement of loan proceeds with respect to work actually done by the general contractor and for materials and equipment actually incorporated into the Project.
  - b. **Permitted Costs.** Borrower may apply for and receive loan proceeds for reimbursement of Acquisition Costs, Hard Construction Costs, and eligible Soft Costs, subject to Lender's review and approval of the same. No Interim Costs, Financing Costs, Syndication Costs, Developer Fees, or Reserves will be funded with HOME funds.
  - c. **Lien Waivers.** Borrower shall have obtained and attached to each draw request of loan proceeds, including the payment to cover final payment to the general contractor, executed acknowledgments of payments of all sums due and releases of mechanics' and materialmen's liens, satisfactory to Lender, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work and labor performed, and all equipment and materials, supplied or furnished prior to such application for an advance.
  - d. **Change Orders.** All requests for changes in the Project in excess of a 10% variation from the individual budget line item must be in writing, signed by Borrower, and delivered to Lender for its approval in advance. Borrower may advise Lender of any line item modification which amounts to a 10% variation or less at the time of payment request. (Any increase in one line-item must result in a reduction in another item so that the overall project budget remains the same). Borrower will not permit the performance of any work pursuant to any change order or modifications of its construction contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.
4. **Application of Payments or Proceeds.** Unless applicable law provides otherwise, all payments received by Lender due under the Note shall be applied by Lender first to interest due, if any, under the Note; next to principal due under the Note; and then to fees, costs, late charges, attorneys' fees, and any other amounts payable pursuant to this Mortgage.
5. **Compliance with HOME Requirements.** Borrower shall comply with all terms and conditions (including but not limited to rent restrictions) set forth in the HOME Agreement between Borrower and Lender, the terms of which are incorporated herein.
6. **Charges & Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and Borrower shall promptly furnish to Lender receipt evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.
7. **Hazard Insurance.** Borrower shall maintain, or shall require its general contractor to maintain

a Builder's Risk policy in an amount equal to the Project's total construction cost throughout the construction period of the Project.

Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and hazards included within the term "extended coverage," and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

The insurance carrier providing the insurance shall be chosen by Borrower subject to the approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender otherwise elects in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided that, if such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the payments referred to in paragraph 1 hereof or change the amount of such payments. If the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

8. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not permit waste or impairment or deterioration of the Property.
9. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to the Lender's interest in the Property.
10. **Protection of Lender's Interest in the Property and Rights Under this Mortgage.** If (a) Borrower fails to perform the covenants and agreements contained in this Mortgage; (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Mortgage (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Mortgage or to enforce laws or regulations); or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Mortgage, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (1) paying any sums secured by a lien which has priority over this Mortgage; (2) appearing in court; and (3) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Mortgage, including its secured position in a bankruptcy proceeding. Securing the Property includes but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Paragraph 10, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this paragraph.

Any amounts disbursed by Lender under this Paragraph 10 shall become additional debt of Borrower secured by this Mortgage. These amounts shall bear interest at the Note rate from

the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

11. **Condemnation.** Borrower shall provide WCDA with prompt notice of any notice the Borrower receives regarding a condemnation or eminent domain action concerning the mortgaged property. Borrower hereby irrevocably assigns to WCDA any award or payment which becomes payable by reason of any taking of the Property, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

The Borrower will file and prosecute in good faith and with due diligence that which would otherwise be its claim to any such award or payment, will cause the same to be collected and paid over to WCDA, and the Borrower irrevocably authorizes and empowers WCDA, in the name of the Borrower or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for, and retain the same. Notwithstanding the foregoing, Borrower shall not accept any award without the written consent of WCDA.

The proceeds of any award or payment shall be applied to either restoration of the property if restoration is feasible in WCDA's sole discretion, or to the indebtedness secured by this Mortgage and all reasonable costs, expenses, and attorneys' fees associated with either the servicing of this Mortgage or that may have been incurred by WCDA in the collection in connection with such condemnation or eminent domain, with any excess to be released to the Borrower.

12. **Borrower Not Released.** Extension of the time for payment or modification of the sums secured by this Mortgage granted by Lender to the Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.
13. **Forbearance by Lender not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy or remaining remedies available under the law. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.
14. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct or cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
15. **Successors and Assigns Bound: Joint and Several Liability.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several.
16. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower, provided for in this Mortgage, shall be given by delivering it personally or by mailing such notice by certified mail; and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address at:

P.O. Box 10100  
Casper, WY 82602

or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

17. **Governing Law: Severability.** This Mortgage shall be governed by the laws of Wyoming. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

18. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage; (b) a transfer by devise, descent or by operation of law upon the dissolution of a business organization or death of any partner/member/etc.; or (c) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person or entity to whom the Property is to be sold or transferred reach an agreement in writing that the credit of such person or entity is satisfactory to Lender and if Borrower's successor in interest has executed a written assumption agreement. Lender's consent to assumption shall not be unreasonably withheld. Notwithstanding the foregoing, transfers of interests in Borrower, including the removal and replacement of Borrower's managing member, shall be permitted and will not constitute a default.

If Lender exercises its option to accelerate, Lender shall mail Borrower a Notice of Acceleration in accordance with paragraph 16 hereof. Such Notice shall provide a period of not less than 30 days from the date the Notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by this Mortgage.

19. **Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower contained in the Note, this Mortgage, or the HOME Agreement, including the covenants to pay when due any sums secured by this Mortgage, Lender may proceed with the remedies of acceleration and/or foreclosure.

Lender may require immediate payment in full of all sums secured by this Mortgage upon:

- a. **Default.** Borrower defaults by failing, for a period of thirty (30) days, to perform any obligation contained in this Mortgage, the Note, or the HOME Agreement, including:
1. Failure to pay any payment as described in paragraph 1 above;
  2. Any default under the provisions of the Note, this Mortgage, or the HOME Agreement;
  3. Ineligibility of Borrower for funds under the HOME Program or discovery that Borrower's application for funds is fraudulent or materially inaccurate;
  4. Any change in the ownership of the Property described in this Mortgage unless prior written consent from Lender is obtained; provided, however, that transfers of interests in the Borrower are permitted pursuant to the terms of the TCAP Agreement;
  5. The appointment of a receiver of the Property described in this Mortgage or any part thereof, or for the Borrower or owner of such Property;
  6. The filing of a petition against the Borrower, or the owner of such Property for relief under any bankruptcy or insolvency law;
  7. An assignment by the Borrower or the owner of such Property for the benefit of creditors; or
  8. Borrower abandons the property.
  9. Failure of Borrower from the date of this Mortgage to meet the HOME compliance requirements as defined in 24 CFR Part 92.
- b. **Sale or Transfer.** Repayment may be required if all or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent) to a party not already obligated on the Note and as further described in Paragraph 18.
- c. **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events and remedies.

Prior to acceleration, Lender shall mail a Notice of Acceleration to Borrower as provided in paragraph 16 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 10 days from the date the Notice is mailed to Borrower, upon which date Lender may accelerate the sums secured by this Mortgage. If the breach is not cured on or before the date specified in the Notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable and may foreclose by the power

of sale authorized by Wyoming statutes and pursue any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees and costs. Notwithstanding anything to the contrary contained in this Mortgage or the Note being secured hereby, USA Institutional Bighorn Flats LLC, as Borrower's Investor Member, shall have the right, but not the obligation, to cure defaults of the Borrower.

If Lender invokes the power of sale, Lender shall give Notice of Intent to foreclose to Borrower and to the person in possession of the Property, if different, in accordance with applicable law. Lender shall mail a copy of a notice of sale of Borrower in the manner provided in the Wyoming statutes. Lender shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorneys' fees and costs of title evidence; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

20. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to the earlier of: (i) the tenth working day before the sale of the Property pursuant of the power of sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 19 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonable require to assure that the lien of this Mortgage, Lender's interest in the Property and the Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.
21. **Appointment of Receiver; Lender in Possession.** Upon acceleration as provided in this Mortgage and at any time prior to the expiration of any period of redemption following sale, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.
22. **Release.** Upon payment of the sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower except for all costs of recordation, if any.
23. **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the Property.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Bighorn Flats, LLC, a Wyoming Limited Liability Company  
By: BHF Development, LLC, a Wyoming Limited Liability Company  
It's: Managing Member  
By: Franklin's Tower, LLC, a Montana Limited Liability Company  
Its: Sole Member

BY: Kelly Gill  
Kelly Gill, Member

STATE OF MONTANA

COUNTY OF Missoula

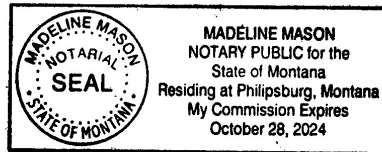
This instrument was acknowledged before me on July 22nd, 2021 by Kelly Gill, in his capacity as member of Franklin's Tower, LLC, the Sole Member of BHF Development, LLC, the Managing Member of Bighorn Flats, LLC.

Witness my hand and official seal.

Madeline Mason  
Notary Public

My Commission Expires:

Oct. 28, 2024



**NO. 2021-771048 MORTGAGE**

EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK  
FIRST AMERICAN TITLE INSURANCE COM 4909 S. 135 STREET, S  
OMAHA NE 68137