



After Recording Return To:

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

(Space Above This Line for Recording Data)

NHTF AGREEMENT

This Agreement is made and executed this 27 day of July, 2021, by and between Wyoming Community Development Authority ("WCDA"), a Wyoming Statutory Corporation whose mailing address is P. O. Box 634, Casper, Wyoming 82602, and Bighorn Flats, LLC, whose mailing address is 1004 South Ave West, Missoula, MT 59801 (the "Developer").

WITNESSETH:

WHEREAS: The National Housing Trust Fund ("NHTF") Program ("Program") was created under Title I of the Housing and Economic Recovery Act of 2008, among other purposes, to provide for the expansion of the supply of decent, safe, sanitary and affordable housing, particularly rental housing for extremely low income and low income Americans; to strengthen the abilities of State and local governments to design and implement strategies for providing such housing; and to provide for cooperation among various levels of government and the private sector for the production and operation of such housing; and,

WHEREAS: The Developer has designed a project ("Project") which meets the goals and requirements of the NHTF Program, and has submitted an application to WCDA for NHTF Program funds which has been approved for funding.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter set forth it is agreed as follows:

1. **The Project:** The Project shall consist of the new construction of 60 Units, 4 of which will be NHTF unit(s) for extremely low-income households in Sheridan, Wyoming as more particularly described in the Application for NHTF Funds. A description of the Project is marked Exhibit "A" and is attached hereto and incorporated herein.
2. **NHTF Funds:** The Developer shall receive NHTF Funds for the Project in the amount of **Six Hundred Four Thousand Six Hundred Eight-One and No/100 Dollars (\$604,681.00)** ("Loan"), consisting of two promissory notes as follows:
 - A. In order to facilitate the construction of the units, an NHTF Promissory Note (Multiple Advancing Line of Credit) ("Construction Loan") in the maximum amount of **Six Hundred Four Thousand Six Hundred Eight-One and No/100 Dollars (\$604,681.00)** together with interest at the rate of Zero Percent per annum (0%) and a maturity date of April 1, 2023, shall be executed.
Upon maturity of the Construction Loan, assuming construction is complete and the units have been placed in service, monthly repayment of the Construction Loan is contemplated. In the event there have been no events of default as set forth in the provisions of the Construction Loan or its related mortgage, and/or in this NHTF Agreement, the Construction Loan will be modified to reflect:

- (1) An interest rate of Zero Percent;
- (2) Amortization of the unpaid principal balance of the Construction Loan, to be repaid in **(40)** equal monthly installments. Principal shall be paid on the 1st day of each calendar month, beginning the month following the date of the last signatory on the modification of the NHTF Loan, until the entire unpaid principal amount has been paid in full. All annual payments of principal hereunder are payable to the extent of Cash Flow, as defined in the Owner's First Amended and Restated Operating Agreement (the "Operating Agreement") in the amount and in the priority set forth in Exhibit A-4 of the Operating Agreement;
- (3) Principal shall be paid on the 1st day of each calendar month, beginning the month following the date of the last signatory on the modification of the NHTF Loan, until the entire unpaid principal amount has been paid in full. All annual payments of principal hereunder are payable to the extent of Cash Flow, as defined in the Owner's First Amended and Restated Operating Agreement (the "Operating Agreement") in the amount and in the priority set forth in Exhibit A-4 of the Operating Agreement;
- (4) In the event the Owner receives an additional award of Low Income Housing Tax Credits ("LIHTC") under Internal Revenue Code of 1986 Section 42 from the Wyoming Community Development Authority at WCDA's July 2021 Board Meeting, which is currently scheduled for July 21, 2021 but could be subject to change, and said additional award is sufficient to meet a Required Debt Service Coverage, as that term is defined in the Operating Agreement, equal to or greater than one hundred fifteen percent (115%) then the NHTF Loan will be further modified to reflect:
 - a. Interest rate to remain Zero Percent (0.0%)
 - b. Amortization of the unpaid principal balance of the NHTF Loan to be repaid in **480** equal monthly installments of **One Thousand Two Hundred Fifty-Nine and 75/100 Dollars (\$1,259.75)** due and payable on the 1st of each calendar month, beginning the month following the date of the last signatory on the modification of the HOME Loan, until the entire unpaid principal amount has been paid in full.

In addition to the loans described in paragraph 2A, the Developer may make application for such additional NHTF funds as may be necessary to complete and operate the Project as long as such request is within one year of the placed in service date. In the event said application for additional funds is accepted by WCDA, said additional funds may be in the form of loans or grants, added to the amounts specified in paragraph 2A, and subject to all terms and conditions of this Agreement.

3. Title and Acquisition of Project: The Developer has acquired fee simple title to the Project. Title shall be subject to and in compliance with the terms and conditions of this

Agreement, which shall be set forth in a deed restriction incorporating this Agreement by reference and the terms and conditions of the mortgage given to secure repayment of the amounts set forth in paragraph 2A.

4. Rehabilitation, Repair, Maintenance and New Construction: The Developer hereby covenants and warrants to WCDA as follows:

A. Rehabilitation and or New Construction Work.

- (1) Scope of Work: The Developer shall furnish all of the material and perform all of the work on the Project, as shown on the drawings and described in the specifications, all in accordance with the terms of the Contract Documents, all of which are collectively incorporated herein by reference.
- (2) Change Orders: The Developer shall not make any changes in the Scope of Work without written approval from WCDA or its agent. WCDA must approve any change order exceeding 10% of the original budgeted amount in advance of any work related to such change order being performed.
- (3) Time of Completion: The Developer or Developer's subcontractor(s) shall commence work no later than August 1, 2021, and work shall be completed no later than November 1, 2022. In the event the Developer does not commence or complete the work as stated above, WCDA has the option of terminating this Agreement for failure to commence or complete work within the time allowed. In the event WCDA reasonably determines at any time during the construction period that the prospect of the Developer's completion of the tasks within the terms outlined in Exhibit A "Schedule of Tasks" or as agreed to in the application, is materially impaired, WCDA shall be entitled to declare a default of this Agreement and to exercise the rights and remedies granted to it in paragraph 4.D. (4) below.
- (4) Contract Sum: Upon authorization by WCDA's agent, WCDA shall draw down NHTF Funds to pay the Developer for the performance of the Contract.
- (5) Method of Payment: NHTF funds may only be used for reimbursement of acquisition, hard construction new or rehabilitation costs, general requirements, contractor overhead and profit, architect fees and/or surveyor costs. NHTF Funds are not advanced for materials or labor in advance of actual performance, but are disbursed as work is completed. WCDA or its agent can authorize progress payments on account of the contract, upon requisition by the Developer, and conditioned upon inspection and approval by WCDA or its agent, as follows:
 - Payment of the funds will be made to the Developer by the end of the month provided a request for a progress payment is submitted by the 15th of the month and provided that the Developer is not then in default of any term or condition of this

Agreement and that the work is inspected and approved by WCDA or its agent.

- Before each progress payment is made, the Developer or Developer's subcontractor(s) may be required to furnish WCDA or its agent good and sufficient evidence (such as lien waivers/releases) that the premises are free from all liens, damages, and everything chargeable to subcontractor(s).
- WCDA may at its option pay funds directly to contractors, subcontractors, materialmen or the Developer or by joint check or require such lien waivers or releases or a performance bond in an amount sufficient to guarantee the completion of all work.

(6) Retainage and Final Payment: A ten percent (10%) retainage may be withheld from each payment. Final payment shall be due no sooner than 25 days after completion of the work, provided the Developer has satisfactorily performed the described work in accordance with the contract, all NHTF and WCDA requirements have been met, and, if applicable, all Low Income Housing Tax Credit requirements have been met. Prior to final payment, the Developer shall submit to WCDA or its agent a release or waiver of all mechanics' and materialmen's liens, a local government occupancy certificate, and Architect's and Contractor's certificates that the Project meets as applicable:

- the applicable edition of the International Building Code and National Electric Code;
- the local code adopted by the presiding jurisdiction;
- the Minimum Property Standards [MPS] set forth in 24 CFR 200.925 or 200.926, along with compliance with all current zoning, environmental and other applicable laws, ordinances, rules and regulations, restrictions and requirements, including without limitation the accessibility requirements set forth at 24 CFR part 8, which implements, Section 504 of the Rehabilitation Act of 1973;
- the design and construction requirements set forth at 24 CFR 100.205, which implements Title II of the Americans with Disabilities Act of 1990 and the Fair Housing Act; and
- the current edition of the Model Energy Code Published by the Council of American Building Officials (for new construction).

The making and acceptance of the final payment shall constitute a waiver of all claims by the Developer, other than those arising from unsettled liens or from faulty work appearing thereafter, and all claims by the subcontractor(s), except any previously made and still unsettled. Payments otherwise due may be withheld on account of defective work not remedied, liens being filed, or threatened, damage by the subcontractor(s) to others not adjusted, or failure to make payments properly to agents or for material or labor.

- (7) Permit/Codes/Licenses: The Developer shall obtain at Developer's expense, all permits and licenses necessary for the completion and execution of the work described in the contract documents. The Developer shall ensure that all work is performed in conformance with applicable State and local codes and ordinances. The Developer shall furnish a Final Inspection and/or Occupancy Certificate from the City of Sheridan and/or the County of Sheridan, Wyoming, to show that all work has been done in accordance with local codes and ordinances.

All general contractors and subcontractors shall be licensed in accordance with the requirements of local codes and ordinances. All general contractors and subcontractors shall carry liability and Worker's Compensation insurance in the amounts prescribed by state and local code and ordinance.

- (8) Materials: All materials installed shall be new unless otherwise specified. All work shall be a finished product unless specified to the contrary. Materials and/or workmanship failing to meet these requirements shall be replaced at the Developer's expense. Acceptance of materials and/or workmanship by an authorized representative of WCDA prior to completion of the contract shall not relieve the Developer from the Developer's obligation to produce materials and/or workmanship in first-class condition at the completion of the contract.

- (9) Protection of Work/Property/Persons: The Developer shall adequately protect the work, adjacent property, and the public and shall be responsible for any damage or injury caused by the Developer's acts or negligence or those of its agents, employees, contractors or subcontractors. The Developer shall supervise the work with special attention to adequate safety precautions especially where hazardous work is involved.

The Developer agrees to indemnify and hold harmless WCDA and its agents and employees for any damages related to the performance of this Agreement, or in connection with acts performed which are reasonably associated with consultation, technical advice, financial counseling, property inspection, and other related activities or for any claims for property damage or personal injury arising from the Project or any work performed thereon.

- (10) Property Standards: All housing that is constructed or rehabilitated with NHTF funds shall meet all applicable State and local codes, rehabilitation standards, ordinances, zoning ordinances and regulations at the time of Project Completion. In the absence of a local code for new construction or rehabilitation, NHTF-assisted new construction or rehabilitation shall meet, as applicable: the applicable edition of the International Building Code and National Electric Code and the Minimum Property Standards (MPS) set forth in 24 CFR

200.925 or 200.926. Newly constructed housing shall meet the current edition of the Model Energy Code published by the Council of American Building Officials.

All other NHTF-assisted housing shall meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing shall meet the housing quality standards set forth in 24 CFR 982.401. The housing shall meet the accessibility requirements set forth in the regulations referenced in 24 CFR 5.105 (a) which implement the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

In order to ensure that the Federal lead-based paint (LBP) hazard removal requirements are met, the Developer shall be responsible for compliance with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 USC 4821, et. seq.) and HUD regulations 24 CFR Part 35. The lead-based paint provisions of 24 CFR 982.401 (j) also shall apply, regardless of the applicable property standard under 24 CFR Part 93.301. In a Project in which not all units are assisted with NHTF funds, the lead-based paint requirements shall apply to all units and common areas in the Project.

The Developer agrees to indemnify and hold harmless WCDA from any liability arising out of or in any way connected with the Developer's failure to perform its obligations under this Agreement with respect to: the elimination of LBP health hazards, the prohibition against the use of LBP, and/or compliance with applicable Federal, State and local LBP laws and regulations.

(11) Other Federal Requirements: The Developer shall be in compliance with the Federal requirements set forth in 24 CFR 5.105: Nondiscrimination and equal opportunity, debarred, suspended or ineligible contractors, and Drug-Free Workplace, including, but not limited to, the following laws and regulations:

(a) Equal Employment Opportunity: The Developer shall comply with all applicable provisions of federal statutes and regulations concerning equal employment opportunities and Executive Order 11246 in hiring persons engaged in the construction and/or rehabilitation work undertaken in connection with NHTF projects.

(b) Equal Opportunity and Fair Housing: The Developer shall not exclude, deny participation in, or discriminate against, on the grounds of race, color, national origin, religion, handicap, familial status or sex, any person from the benefits of this Project.

(c) Minority Owned Business and Women Owned Business: The Developer is encouraged to solicit bids from minority-owned business enterprises and from women- owned business enterprises in accordance with Executive Orders 11625 and 12432.

- (d) Civil Rights Act of 1964: No persons may be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin.
- (e) Fair Housing Act: Prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status.
- (f) Age Discrimination Act of 1975: Prohibits age discrimination in programs receiving Federal financial assistance.
- (g) Section 504 of the Rehabilitation Act of 1973: Prohibits discrimination in Federally assisted programs on the basis of disability.
- (h) Displacement, Relocation and Acquisition: The Developer shall be responsible for compliance with the Uniform Relocation Act and Real Property Acquisition Policies of 49 CFR part 24 and 24 CFR part 92.353.
- (i) Labor Standards, Contract Work, Safety Standards: The Developer shall agree to comply with applicable federal laws and regulations pertaining to labor standards.
- (j) Section 3 Rule - Economic Opportunities for Low- and Very Low-Income Persons 24 CFR Part 135: Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended by the Housing and Community Development Act of 1992 (1992 Act), requires that economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing and to businesses that provide economic opportunities for these persons. Section 3 covers assisted housing (including public and Indian housing) and community development programs. Numerical goals are established as a safe harbor for compliance with Section 3.

The Developer, to the greatest extent feasible, shall be responsible for attempting to meet the following numerical goals:

Training and Employment:

- The Developer shall require that its contractors' new hires consist of at least 10 percent low-income individuals.
- The Developer shall ensure that at least 10 percent of the total dollar amount of all Section 3 covered contracts arising in connection with building trades work of maintenance, repair, modernization or development of public or Indian housing, other housing construction and housing rehabilitation, and other public construction are awarded to Section 3 business concerns.

- The Developer shall report all Section 3 activity occurring through December 31st of each year of construction by January 15th of the following year.
- (k) Debarred, Suspended or ineligible contractors: The Developer will comply with all applicable provisions of 24 CFR Part 24 on the use of debarred, suspended or ineligible contractors.
- (l) Drug-Free Workplace: The Developer shall maintain the Project as a Drug-Free workplace.
- (m) Violence Against Women Act: The Developer shall comply with all provisions of The Violence Against Women Act (VAWA) which prohibits the denial of housing or rental assistance based on the fact that the applicant is/has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- (12) Maintenance and Required Repairs.
 - (a) Project Maintenance: The Developer/owner must maintain the Project and its grounds and equipment in compliance with all applicable State and local housing quality standards and code requirements. If there are no such standards or code requirements, the housing must meet the housing quality standards set forth in 24 CFR 982.401.
 - (b) Destruction of Project: In the event that any or all of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied to rebuild or replace the property destroyed or damaged, unless WCDA shall give prior written approval to use the insurance proceeds for other purposes.
 - (c) Hazard Insurance: Hazard insurance shall be maintained in a type and amount acceptable to WCDA and WCDA must be listed on the policy as a mortgagee.
 - (d) Condemnation: All payments or awards resulting from a taking, for any public or quasi-public purpose, by any lawful power or authority by exercise of the power of condemnation or eminent domain ("taking") shall be applied toward the restoration, replacement or rebuilding of the Project, or any part thereof, as nearly as possible to its value, condition and operational character immediately prior to any such damage, destruction or taking ("Restoration"), provided sufficient funds are available from all sources to complete such Restoration.
 - (e) Demolition of Project Property: The Developer shall not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs) without the prior written approval of WCDA
- (13) Environmental Provisions: The Developer agrees to abide by the environmental requirements of 24 CFR 93.301(f), including:
 - (a) The award of HTF to the Project requires compliance with the

environmental provisions of 24 CFR 93.301(f). Owner certifies that it has submitted documentation to the Corporation demonstrating compliance with, and has disclosed all material information relative to, the Project's compliance with all such provisions. Owner further agrees to notify the Corporation immediately of any additional information pertaining to the Project's compliance with these requirements. Disclosure of material information will include but not be limited to:

- Any latent defects, unforeseen construction or rehabilitation activities, or other actions that may affect any features of the Project or Property determined material to its listing in or eligibility for listing in the National Register of Historic Places;
- Discovery of any human remains, bones, artifacts, foundations, or other indications of past human occupation, in which case the Owner also agrees to stop work immediately pending further instruction from the Corporation which may be required to consult with any affected tribes and/or descendant communities and comply with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013); and
- Any changes in the scope of work, including but not limited to the addition of previously unplanned site work or construction activity, affecting any portion of the Property that is within a 100-year flood plain or that is a wetland. For purposes of this provision, the definition of a wetland is contained within 24 CFR 93.301(f)(1)(vii)(B) for new construction projects or 24 CFR 93.301(f)(2)(vii) for rehabilitation projects and is independent of the definition of jurisdictional wetland used by the U. S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.).

B. Restricted Units.

- (1) Rental Rates: All NHTF-assisted units in the Project shall, at a minimum, be restricted for use by extremely low-income households as more particularly described in Exhibit "A" attached hereto and incorporated herein, so that at least One Hundred Percent (100%) of the NHTF-assisted units are occupied by households having an annual income that is 30 Percent (30%) or less of area median incomes. The household incomes of tenants shall be re-examined at least annually, along with family size and composition. The Developer shall submit an NHTF Compliance Report to WCDA annually. Income determinations shall be calculated using the Section 8 Program definition and by using the definitions of annual income, adjusted income, monthly income and monthly adjusted income as those terms are defined in 24 CFR Part

93.151. The rental rates for these units should be equal to or less than the unrestricted units in the Project. The following chart lists the size and number of NHTF-assisted, Restricted Units and their corresponding monthly rent that may be charged:

No. Units	Bedroom Size	Monthly Rent
1	1	\$ 385
1	2	\$ 466
2	3	\$ 539

- (2) Rental Charges for Restricted Units: Extremely low-income households will pay monthly rent as set forth in paragraph 4.B.(1) above. The monthly rental amount shall include the owner paying water, sewer, and trash, and the tenant paying heating, hot water, cooking, lighting and air conditioning.

- (3) Floating Rent Restrictions: Rent restrictions float within the Project. When a household's income increases above the limit for that unit, the next available unit must be rented at the lower level. Every effort must be made to ensure the income and rent levels are attained at all times throughout the compliance period.

In the event a tenant's, family's or household's income increases above 50 percent of median income, the rent will be increased to the amount established by either HOME Investment Partnership Act ("HOME") or low income housing tax credits, if those funding sources were utilized in the Project.

- (5) Admission to Restricted Units: At all times during the term of restriction prescribed in paragraph 4.D.(2) below, admission to dwelling units covered by this Agreement shall be restricted to extremely low-income households (see Exhibit "A") on a first-come, first-served basis.

- (6) Tenant Selection Plan: Owner must develop a tenant selection plan meeting the requirements of 24 CFR 93.33(d). The tenant selection plan will be subject to review and approval by WCDA both prior to initial occupancy of the NHTF-assisted units and during the term of this Agreement.

Owner cannot refuse to lease a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, State, or local program solely because of the tenant or prospective tenant's participation in such program.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

- (6) Affirmative Marketing: The Developer shall maintain a plan for affirmative marketing which shall include the following:

(a) Maintain affordability and availability of rental units to extremely low-income households for a period of 55 years.

- (b) Publicly advertise vacancies and notify WCDA or its local agent of vacancies annually via the Procorem upload.
- (c) Use the Equal Housing Opportunity logo on all public advertising, with the exception of classified advertisements.
- (d) The Developer will not discriminate against households by refusing to rent to them solely on the basis that they receive Section 8 rental assistance.
- (e) The Developer will maintain for a period of 5 years copies of all written applications received from prospective tenants, along with any written rejection notifications and notes documenting the reasons given to any prospective tenants who were refused a vacant rental unit.
- (f) Maintain records of tenant characteristics before and after rehabilitation or construction for a period of 5 years with data regarding income, family size, and minority status.
- (g) The Developer will contact the Salvation Army, Department of Public Assistance and other service organizations when a unit becomes available if there is no one on their waiting list.

This Agreement in no way restricts the Developer's rights to screen and select tenants, as long as the process is free of bias on the basis of race, color, religion, sex, handicap, age, familial status, national origin or Section 8 status.

- (7) Floating NHTF units: The NHTF-assisted units are Floating Units. Floating Units are changed to maintain conformity with the requirements of 24 CFR 93.302(g) during the period of affordability so that the total number of housing units meeting the requirements of 24 CFR 93.302(g) remains the same and each substituted unit is comparable to the originally designated NHTF-assisted unit in terms of size, features, and number of bedrooms

C. Program Requirements: NHTF funds provided to the Developer shall be used in accordance with the Program requirements as described in the Application for NHTF Funds, including the tasks to be performed, schedule for completion, budget for the Program, affordability requirements set forth in 24 CFR 93.302, the uniform administrative requirements set forth in 24 CFR 93.404 and 93.405 (as applicable), the requirements for use of funds by religious organizations set forth in 24 CFR 5.109 and all other Program requirements.

D. General Provisions:

- (1) Term of Agreement / Affordability Period: This Agreement shall be in effect for a term of 55 years from **the date of Project Completion**. Project Completion is defined as all construction completed, all required documentation provided to the appropriate parties, all NHTF requirements met including information input into HUD's computer system, and if applicable, all Low Income Housing Tax Credit requirements met. The affordability period as required by NHTF Rules and Regulations set forth at 24 CFR Part 93 of the United States

Department of Housing and Urban Development shall be a minimum of 30 years and at the end of said period, the HUD affordability period as required in said rules and regulations shall terminate. This affordability period shall commence upon the completion of the NHTF Program Rental Completion Report Form and its corresponding data input into IDIS by WCDA, which changes the project status to complete in that system. Upon expiration of the HUD affordability period, this Agreement shall continue for an additional 25 years as committed to by the Developer in its Application for funding of the Project with WCDA. This extended period is known as the WCDA affordability period.

During the complete term of this Agreement and the periods set forth above, the Developer shall maintain the Project as "affordable rental housing".

- (2) Term of Restriction for Extremely Low Income Units Use: From the date of Project Completion, for no less than 30 plus any WCDA affordability period committed to by the Developer in its Application for funding of the Project with WCDA, all of the NHTF-assisted units shall be restricted for occupancy and re-occupancy by extremely low-income households as described in Section 4.B (1). In the event all of the NHTF-assisted units included in the Project shall not be constructed and rented or sold, as applicable, to income-eligible households as per Exhibit A or if the rents charged are in excess of the amounts agreed to in Section 4. B. (except for annual rent increases approved by WCDA), then WCDA shall be entitled to declare a default of this Agreement and exercise the rights and remedies granted to it in paragraph 4.D.(4) below. The Developer shall maintain a waiting list of extremely low-income applicants and shall fill vacancies in these units from this list on a first-come, first-served basis.
- (3) Conveyance of Project: The Developer shall not, without the prior written approval of WCDA, convey or permit the conveyance of the Project, or any part thereof. Transfers of interests in Developer shall be permitted and will not be grounds for acceleration or otherwise constitute a default or impermissible transfer.
- (4) Remedies for Default: An Event of Default is defined as the Developer's failure to perform or observe any term, covenant or agreement contained in this Agreement or any representation, warranty or other statement made on or on behalf of the Developer that is untrue or materially misleading at the time it is made. If an Event of Default occurs, WCDA at any time and at its option, may provide written notice thereof to the Developer by registered or certified mail, addressed to the address stated in this Agreement, or to such other address as subsequently designated in writing by the Developer to WCDA.

Because the injury to the WCDA arising from an Event of Default would be irreparable and the amount of damage would be

difficult to ascertain, if such event of default is not cured to the satisfaction of WCDA within 10 days after the date such notice is mailed, or within such further time as WCDA reasonably determines is necessary to cure the event of default, then WCDA may, without further notice, declare a default under this Agreement and may apply to any state or federal court for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other and relief as may be appropriate. In such event, WCDA may declare its obligation to make any further advances to the Developer under paragraph 4.A.(5) above to be immediately terminated, may declare the amount of any loan or grant to be immediately due and payable, and may foreclose any mortgage given to secure repayment by advertisement and sale or by judicial foreclosure pursuant to Wyoming law. WCDA agrees to accept cures within the time parameters set forth herein tendered by Developer's members pursuant to the same terms and conditions as are provided to Developer.

The availability of any remedy under this Agreement shall not preclude the exercise of any other remedy under any provision of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

- (5) Successors and Assigns: This Agreement shall be binding upon the Developer and the Developer's heirs, successors and assigns. The Developer agrees that if title to the Project is conveyed during the term of this Agreement, the Developer will require its grantee to assume its obligations under this Agreement. The Developer further agrees there will be no such conveyance, unless WCDA has agreed thereto in writing.
- (6) Contradictory Agreements: The Developer certifies that it has not, and agrees that it will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that, in any event, the requirements of this Agreement shall be paramount and controlling as to the rights and obligations set forth herein and shall supersede any other agreements in conflict with this Agreement.
- (7) Separability: The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
- (8) Amendment: This Agreement may be amended only by the mutual written consent of the parties hereto, except for those provisions required by statute.
- (9) Property Subject to Examination: The Project property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records,

documents, and other papers relating thereto shall, at all times, be maintained in reasonable condition for proper audit, and shall be subject to examination and inspection at any reasonable time by WCDA. The Developer shall keep copies of all written contracts or other instruments affecting the Project property, all or any of which may be subject to inspection and examination by WCDA or its duly authorized agents.

- (10) Conflict of Interest: No Member of Congress or Delegate to Congress or Resident Commissioner of HUD shall be admitted to any share or part of the benefits of this Agreement. No WCDA Board member, employee, or agent shall have any interest, direct or indirect, in the proceeds of any NHTF Funds loans or grants or in any contract entered into by the Developer for the performance of work financed, in whole or in part, with the proceeds of NHTF Funds.

The Developer shall not pay any bonus, commission or fee or other payment for the purpose of obtaining approval of this Agreement or any other approval or concurrence required to complete the rehabilitation work.

- (11) Nondiscrimination Against Section 8 Certificate Holders and Voucher Holders: The Developer shall not refuse unreasonably to lease a dwelling unit offered for rent, offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under 24 CFR Part 982--Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or a comparable document evidencing participation in any program designated by HUD as a successor program to the Section 8 program. This provision is limited to those tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers) and to those units that rent for an amount not greater than the Section 8 fair market rent for a comparable unit in the area as determined by HUD.
- (12) Lease Form: The Developer shall utilize a lease that meets HUD requirements. The Developer shall obtain the prior written approval from WCDA for such lease.
- (13) Security Deposits: The Developer shall not require as a condition of the occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit, as set forth in the terms of each tenant's lease.
- (14) Commercial Units (Spaces): Any changes to the use or number of commercial units in the Project, from the use or number as of the date of this Agreement, must receive the prior written approval of WCDA.

- (15) Drug-Free Workplace and Housing: At all times during the rehabilitation or new construction of the Project and thereafter during the remainder of the term of this Agreement, the Developer shall maintain the Project as a Drug-Free workplace and Drug-Free housing and shall provide certification of compliance as required by WCDA.
- (16) Records and Reports: Upon request by WCDA, the owner of the rental housing must annually provide information on rents and occupancy of NHTF-assisted units, as well as project financial statements, to facilitate compliance with 24 CFR 93.302, 24 CFR 93.404(e), and 24 CFR 93.407. If the Project has floating NHTF units, the owner must provide WCDA with information regarding unit substitution and filling vacancies so that the project remains in compliance with NHTF rental occupancy requirements.
- (17) Enforcement: Enforcement of this Agreement and the affordability requirements in 24 CFR 93.302 and 24 CFR 93.304 will be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD. In the event all of the NHTF-assisted units included in the Project shall not be constructed and rented or sold, as applicable, to income-eligible households as per Exhibit A or if the rents charged are in excess of the amounts agreed to in Section 4. B., then WCDA shall be entitled to declare a default of this Agreement and exercise the rights and remedies granted to it in paragraph 4.D.(4).
- (18) Regulations, Conflict with Regulations and Definitions: This Agreement is entered into pursuant to the WCDA State of Wyoming NHTF PROGRAM Description for Fiscal Year 2020, and any subsequent amendments thereto, and the HUD Housing Trust Fund program (24 CFR Part 93), and any subsequent amendments thereto (collectively "the Regulations"). In the event that any provision of this Agreement shall be deemed to conflict with the Regulations, the provisions of the Regulations shall be deemed paramount and controlling and shall be substituted for the conflicting provisions of this Agreement. In addition, the Regulations shall be deemed incorporated by reference into this Agreement as if fully set forth herein and specifically agreed to by the parties, and the Developer shall comply with each and every provision, term or requirement of the Regulations.

Definition of terms under this Agreement shall have the same meaning as contained in the Regulations.

IN WITNESS WHEREOF, the parties hereto execute this Agreement the day and year first above written.

DEVELOPER

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, Member

WYOMING COMMUNITY DEVELOPMENT AUTHORITY

By: John R. Batey

Its: Director of Housing & Neighborhood Development

Signature

Attest By: _____

Its: _____

Attest Signature

STATE OF MONTANA

COUNTY OF Missoula

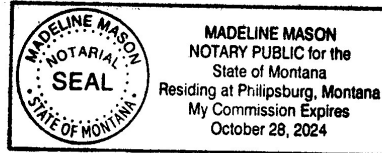
This instrument was acknowledged before me on July 22nd, 2021 by Kelly Gill, in her capacity as member of Franklin's Tower, LLC, the Sole Member of BHF Development, LLC, the Managing Member of Bighorn Flats, LLC.

Witness my hand and official seal.

Madeline Mason
Notary Public

My Commission Expires:

Oct. 28, 2024



STATE OF WYOMING

COUNTY OF _____

This instrument was acknowledged before me on _____, 2021 by John R. Batey as Director of Housing & Neighborhood Development of Wyoming Community Development Authority.

Witness my hand and official seal.

Notary Public

My Commission Expires:

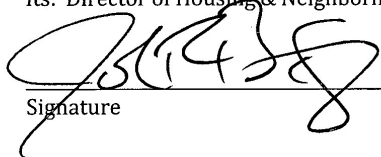
DEVELOPER

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, Member

WYOMING COMMUNITY DEVELOPMENT AUTHORITY

By: John R. Batey
Its: Director of Housing & Neighborhood Development



Signature

Attest By: Stephanie Smith

Its: Secondary Market & Operations officer



Attest Signature

STATE OF MONTANA

COUNTY OF _____

This instrument was acknowledged before me on July _____, 2021 by Kelly Gill, in her 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.

Notary Public

My Commission Expires:

STATE OF WYOMING

COUNTY OF Natrona

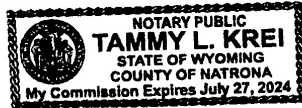
This instrument was acknowledged before me on July 22, 2021 by John R. Batey as Director of Housing & Neighborhood Development of Wyoming Community Development Authority.

Witness my hand and official seal.

Tammy L. Krei
Notary Public

My Commission Expires:

7.27.2024



NHTF AGREEMENT EXHIBIT A

PROJECT NAME: Bighorn Flats

PROJECT ADDRESS: 508 Brundage Lane, Sheridan, WY 82801

PROJECT LEGAL DESCRIPTION: 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. Section 2, Township 55N, Range 84W

NUMBER OF NHTF UNITS: 4

PROJECT DESCRIPTION: New construction 4 NHTF units as described below and in Section 4B for extremely low-income households in Sheridan, Wyoming:

Description	Square Footage	Number of Units	Description	Number of Units
Total 1-Bedroom Units	750	10	Total Units	60
Total NHTF 1-Bedroom Units	750	1	Total Restricted Units	59
Total 2-Bedroom Units	950	32	Total NHTF Units	4
Total NHTF 2-Bedroom Units	950	2	Total HOME Units	9
Total 3-Bedroom Units	1050	17	Total TCAP/LIHTC Units	9
Total NHTF 3-Bedroom Units	1050	2	Total LIHTC Units	59
			Total Staff Units	1

AMENITIES INCLUDED IN THE PROJECT ARE:

The buildings at Bighorn Flats will offer a low-maintenance energy efficient design and the units will feature washers and dryers, air conditioning, high-speed internet and cable TV wiring, Energy Star-rated appliances, in-sink garbage disposals and dishwashers.

The development will also provide a children's play area with playground equipment. These amenities will offer a convenient, safe and comfortable environment and a design that is energy efficient and advantageous to ongoing building operating maintenance.

TASKS TO BE PERFORMED BY DEVELOPER:

New construction of property, completion of documentation required for NHTF program, execution of the NHTF Agreement, mortgage(s), and promissory note(s) with WCDA, commencement of construction, completion of construction, rent-up of property, closeout of NHTF documentation, operation of Project including responsibility of compliance with applicable rules and regulations.

SCHEDULE OF TASKS:

Acquisition of Property: March 17, 2021	Completion of EA: Completed
Execution of HOME docs: July 22, 2021	Commence Construction: August 1, 2021
Complete Construction: August 1, 2022	Rent-up of Property: November 1, 2022
Closeout HOME docs: December 31, 2022	Estimated Affordability Period: 2022 – 2077

PROJECT BUDGET/USES OF FUNDS:

Acquisition	\$1,125,000.00
Rehabilitation	\$
Hard Construction Costs	\$9,507,600
Other Costs	\$4,658,533
Total	\$14,166,133

PROJECT BUDGET/SOURCES OF FUNDS:

Private Financing	\$1,415,000
HOME Amortizing Loan	\$1,330,000.00
HOME Deferred Loan	\$N/A
NHTF Amortizing Loan	\$ 604,681.00
TCAP	\$660,319.00
Deferred Developer Fee	\$ 355,529
Other: LIHTC Proceeds	\$9,800,604
Total	\$11,802,699.00

NHTF funds will be used for any combination of new/rehabilitation construction costs, and eligible soft costs up to 90% of the NHTF loan, with the remaining 10% held as a retainage and not released until all conditions as outlined in the NHTF Agreement are met.

ONLY EXPENSES OBLIGATED AND INCURRED AFTER ARE ELIGIBLE FOR FUNDING UNDER THIS AGREEMENT.

BENEFICIARIES: 100% of the NHTF-assisted Units will provide affordable housing for households whose annual incomes do not exceed Fifty Percent (50%) of the Median Family Income for the area, as determined by HUD with adjustments for smaller and larger households.

AFFORDABILITY PERIOD: 30 Years NHTF Program Requirement
 25 Years Additional Committed in Funding Request
 55 Years Total Affordability Period