

REAL PROPERTY LEASE AGREEMENT
Coffee Shop at the Billings Public Library

This LEASE AGREEMENT (“Lease”) was entered into as of October 15, 2013 between the City of Billings/Billings Public Library (referred to herein as the “City”) and Tanya Weinreis (“Contractor”). Contractor is in the coffee shop business, and operates a sole proprietorship known as Sweet Café, and desires to lease space from City.

1. LEASE AND DESCRIPTION OF PREMISES; USE AS A COFFEE SHOP.

a. City agrees to lease to Contractor and Contractor agrees to lease from City an area on the main floor of the Billings Public Library (the “Library”) located at 510 North Broadway, Billings, Montana in the approximate size of 580 square feet (the “Premises”), under the terms and conditions set forth in this Lease. It is understood and acknowledged by Contractor that the Premises is a portion of a building the remainder of which is occupied by the City or its tenants, invitees, or licensees.

b. The coffee shop is intended to provide an enhancement to the library experience for its customers. Therefore, the Contractor must be committed to providing a positive user experience for customers. This will be achieved with friendly staff, excellent customer service, and quality products at fair prices. City does not wish to prescribe which specific products should be offered, but generally would like to see coffee, soft drinks in containers with lids and light snacks, including healthy and child-friendly options (smaller portions, or child favorite flavors, etc.). No alcoholic beverages are permitted in City facilities. Contractor’s business expertise and knowledge should be applied to make choices that permit a successful and financially sound operation. Contractor shall not use or knowingly permit any part of the Premises to be used for any unlawful purposes, and shall comply with all of the laws applicable to it and its operations. City shall possess the discretion, but not the obligation, to determine the appropriateness of Contractor’s inventory, products and merchandise and therefore restrict the same on the Premises; provided however, such restrictions shall not be unreasonably applied.

c. Upon expiration or termination of this Lease and upon related eviction or move out of Contractor, all leasehold improvements shall become property of the City and remain on the Premises (except the non-fixtured items as mentioned in subparagraph 5.c, below).

2. TERM.

The term of this Lease shall be for a period of five (5) years, commencing on the ___ day of January, 2014, and terminating the ___ day of January, 2019 unless sooner terminated as set forth in this Lease.

3. RENT AND SALE OF MERCHANDISE; ACCOUNTING; LATE FEES; AND SERVICE CHARGE.

a. Contractor shall pay a monthly rent of \$350 (Three Hundred Fifty Dollars) payable in advance due on the 1st day of each month for that upcoming month’s rental. Payments shall be made

payable to Billings Public Library. Contractor agrees to a review and adjustment of the rental rate based on the first year's experience compared to Contractor's sale forecast and cash flow, as outlined in Contractor's response to RFP. The adjusted rate will go into effect July 1, 2015, and remain in effect for the remaining term of the lease.

b. As partial consideration for the monthly rental fee to City, Contractor hereby agrees to allow the Friends of the Billings Public Library (the "Friends") to occupy for no charge a total of approximately twenty-seven (27) lineal feet of wall space in the form of shelving and cabinets along the north and west walls of the Premises. Said shelving and cabinets shall be and always remain the property of the City and the Friends shall purchase, supply and designate the merchandise displayed and sold on said shelves or cabinets in the Friends sole and absolute discretion.

c. As partial consideration for the monthly rental fee to City, Contractor agrees to sell Friends' merchandise and separately itemize such sales on Contractor's financial records. Contractor shall provide Friends of the Billings Public Library with monthly statements of financial activity and merchandise sold. Contractor also agrees to allow City and Friends of the Billings Public Library access to its bookkeeping records regarding merchandise sales during reasonable business hours to investigate the same. Amounts collected for merchandise sales are due monthly, payable within 10 days of the end of each month for the prior month's sales.

d. If rent or merchandise sale payments are four or more days late there shall be a service charge of ten dollars plus a late fee equal to (5%) of the amount due. In addition, interest per month shall accrue on the unpaid balance (including service charges and late fees) at ten percent (10%) per annum. Payment for service charge and interest on rent shall be made to City. Payment for service charges and interest on past due merchandise sales payments shall be made to Friends.

4. CONDITION OF PREMISES; RULES FOR AND RESTRICTIONS ON USE.

a. The coffee shop space is in a highly-visible central location on the first floor of the new Library building. It is next to the north entrance and with a direct line of vision to the south entrance. It is co-located with the retail space for the Friends. See drawing in Exhibit A showing the layout of this space. There will be some seating available within this retail space, and an additional seating area of 262 square feet in the adjacent space in the Library itself. These seating areas shall remain available to all library patrons whether or not they purchase refreshments from the coffee shop. The flooring surface within the coffee shop is a polished concrete. There is a high row of windows along the north wall, offering some natural light.

b. The coffee shop is wholly enclosed within the Library, and may not be operated independently of Library hours. The Library will provide a lockable metal security curtain that can close off the coffee shop and retail space during any hours that the Library is open, but the coffee shop is closed.

- c. The space provided will allow for light refreshments only. A full-service kitchen facility is not available. Cooking will be permitted only with a microwave oven.
- d. All furniture and fixtures will be provided by the City outside of the preparation and vending area. Preparation and vending area décor may be adjusted by Contractor with the approval of Library administration. City will have control and approval over any signage and décor on its site.
- e. No outside sidewalk seating is available. No “drive-thru” or window service is available for the coffee shop due to the building’s configuration.
- f. Storage availability within the coffee shop itself will be limited to cupboards under the counter.
- g. City will provide free wireless internet access throughout the facility. This service will be available in the coffee shop area.
- h. City will be responsible for electricity, water, and wastewater costs in the facility, along with trash removal and general cleaning in the public seating area .Contractor will be responsible for the coffee shop’s telephone and data communication costs. Cleaning in the counter and preparation area will be the responsibility of the Contractor. Contractor must at all times keep the coffee shop area clean, neat and inviting.
- i. The Library will not have a dock for deliveries. Contractor must receive deliveries through the adjacent north entrance, and is responsible for all deliveries of goods and services needed by the coffee shop. Regular deliveries may take place during regular library hours, but should be scheduled so as to avoid the busiest hours of the day.
- j. Food service provision by the Contractor will not be exclusive in the Library, except within the coffee shop area. Meetings and events held in within the Library building may be catered by others.
- k. The Library will not furnish parking for Coffee Shop employees.
- l. In case of default by Contractor or failure to deliver the goods or services within the time specified, the City Purchasing Agent, after written notice, may procure them from other sources and hold Contractor responsible for excess costs occasioned thereby.
- m. No alteration in any of the terms, conditions, delivery, quality, or specifications will be effective without prior written consent of the City.
- n. No exception to service dates shall be allowed unless prior written approval is first obtained from the City.
- o. The Contractor may not assign, sublease or subcontract this agreement, without prior approval of the City.

5. ALTERATIONS AND MODIFICATION; REPAIRS; FIXTURES.

a. Alterations and Modification.

i. City shall not have any obligation to make any alterations or improvements of any kind in or about the Premises. Contractor shall repair or replace promptly all damages to the Premises due to the acts of the Contractor, its agents, or its invitees.

ii. Contractor will make no alterations in or additions to the Premises without first obtaining the City's written consent and the Contractor will not erect or permit to be erected upon the Premises any signs without the written consent and approval of the City.

iii. With respect to all alterations or improvements to the Premises which the Contractor undertakes at its own expense as contemplated herein and with the written consent of the City for subsequent improvements, the Contractor shall in each instance indemnify, defend and save City forever harmless and free from any and all damages, losses, claims, demands, causes of action, lawsuits, judgments, liens and liability of every kind and character which may be or are claimed, asserted or charged against the City, including liability to adjacent property owners and Contractors, based upon the intentional or negligent acts or omissions the Contractor or its agents, contractors, or employees. Contractor will preserve and hold the City and the said Premises forever free, clear and harmless from any and all liens of any type including but not limited to liens for labor and materials furnished.

b. Cost of Repairs. Except as set forth herein, Contractor shall be responsible for the cost of repairs and maintenance of all leasehold improvements and all fixtures and equipment described in Section 5.c, below, including all shelves, tables, and chairs owned by City.

c. Fixtures. Counters, sinks and equipment installed on the Premise are permanent fixtures and will remain with the Premises upon termination of this Lease. Any coffee brewing equipment, and other items owned by contractor which are readily removable without significant damage to the Premises, shall not be considered fixtures and shall be removed and retained by Contractor upon termination of the Lease. The parties agree that all seating and shelving within in the eating area of the coffee shop and all tables, chairs, and seating in the adjacent seating area of the Library belong to City. Contractor shall clean and reasonably maintain all such furniture.

6. SPECIAL PROVISIONS RELATED TO OPERATION OF THE PREMISES.

a. Independent Contractor Status. The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

b. Hours of Operation. Contractor agrees to open for operation to the public no less than 30 hours per week during the library's regular hours of operation. Hours of operation will be determined by the Contractor in consultation with Library Administration.

c. Friends of the Library Merchandise. The Friends of the Billings Public Library will be responsible for providing and stocking merchandise sold for the Friends.

d. Clean and Sanitary Condition. Contractor shall keep the Premises in clean and sanitary condition. Contractor will provide adequate receptacles for trash and recycling and ensure that receptacles do not become overfilled during public hours. Contractor shall not allow boxes, cartons, barrels, or other similar items to remain in view of public areas. Contractor shall be responsible for cleaning the leased Premises and surrounding areas impacted by the operations.

7. PEACEFUL POSSESSION.

Except as provided in paragraph 8, as long as Contractor pays the rent and performs the covenants and agreements herein contained and to be performed, Contractor shall peacefully and quietly have, hold and enjoy the Premises for the term aforesaid. Contractor expressly authorizes City to enter the Premises during normal business hours for the purpose of restocking Friends of the Library or other types of library merchandise. Contractor will also permit the City at all reasonable times to enter the Premises to inspect its condition and, at City's election to make reasonable and necessary repairs thereon for the protection and for the preservation of the City's building and personal property, also the City shall have the right to enter upon the Premises to ascertain its condition or to ascertain the performance or non-performance of any of the covenants of this Lease or to show the Premises to persons who may wish to rent the same after the expiration of this Lease.

8. DESTRUCTION OF PREMISES.

a. If during the term of this Lease the Premises or the improvements thereupon shall be injured or destroyed by fire or other unavoidable casualty or rendered untenable by a public authority without the failure of City, so as to render the Premises unfit for occupancy, or to such an extent that the Premises cannot be repaired with reasonable diligence, within sixty (60) days from the happening of such injury, or act, then the City may terminate this Lease as of the date of such

damage, act or destruction and the Contractor shall immediately surrender the Premises and all interest therein to the City, and the Contractor shall pay rent only to the time of the destructive act or injury.

b. If the Premises can be restored within sixty (60) days from the happening of such injury thereto and the City within fifteen (15) days from the occurrence elects in writing to repair and restore said Premises within the sixty (60) days from the happening of the injury thereto, then this Lease shall not end or terminate, but the rent shall not run or accrue after injury and during the process of repairs, except only that the Contractor shall during such time pay a pro-rated portion of such rent apportioned to that portion or percentage of the Premises which are in condition for occupancy or which may actually be occupied during such repairing periods.

c. If, however, the Premises shall be so slightly injured by any cause aforesaid as not to be rendered unfit for occupancy, then the City shall repair the same with reasonable promptness, and in that case, the rent shall not cease or be abated during such repairing.

d. All equipment, appliances, fixtures, improvements, or betterments placed by the Contractor on the Premises which shall be damaged or destroyed in any of the events aforementioned, shall be repaired and replaced by the Contractor at its sole expense and not at the expense of the City.

9. KEY AGREEMENT, ACCESS.

a. Contractor shall have keys to the Premises, but will not have keys to access the rest of the Library building, except as mutually agreed upon in writing with Library Administration. Contractor acknowledges and agrees that, as a condition of this Lease that Contractor is physically and financially responsible for the safekeeping of such keys. In the event of loss of key(s), Contractor further acknowledges responsibility for the full cost of the replacement of such key(s) and if necessary, the cost of rekeying locks and cutting new keys for the entire building and/or for specific building tenants. Upon termination of this Lease, Contractor shall voluntarily surrender the assigned key(s).

b. Contractor may have access to the Premises at all times the Library is open, and as mutually agreed upon in writing with Library Administration. In connection with Contractor's business, Contractor shall have the duty of keeping the entry to the Library secure during such times Contractor is not open for operation.

10. INDEMNIFICATION/ INSURANCE.

Without limiting any of the Contractor's obligations hereunder and to the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, the Friends of the Billings Public Library and the officers, employees, and agents of both entities harmless against any and all liabilities, claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City, and the Friends of the Billings Public Library, and the

officers, employees, and agents of all three by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission or the willful misconduct of Contractor or Contractor's agents or employees or agents.

Contractor must provide proof of compliance with the City of Billings minimum liability insurance requirements of Commercial General Liability (CGL) insurance in the minimum amounts of \$1,500,000 per occurrence, with the City being named as an additional insured on a primary and non-contributory basis. Contractor will provide Worker's Compensation insurance for all employees, as required by Montana Law and shall provide written proof of such to the City or a State of Montana exemption from such requirement.. City shall be provided reasonable notice not less than thirty (30) days prior to any cancellation of said policies. Failure of Contractor to maintain insurance as required herein shall be a breach of this Lease.

11. SURRENDER UPON TERMINATION.

- a. Contractor, upon leaving the Premises, shall at its own expense repair any damage occasioned by Contractor's occupancy and remove all dirt, rubbish and refuse, and upon the Contractor's failure to do so, the City may immediately, without further notice, do so at the Contractor's expense, which the Contractor shall immediately pay upon receipt of a bill for the same from the City. Failure to pay upon demand is grounds for withholding the same from the Security Deposit.
- b. Contractor agrees to return the Premises peacefully and promptly to the City at the end of term of this Lease, or at any previous termination in as good condition as the same are in or hereafter put in, ordinary wear excepted.
- c. Subject to City's discretion, Contractor shall remove all of its property so that City can repossess and enjoy the Premises not later than noon on the day upon which the Lease ends, whether upon notice or by holdover or otherwise. City shall have the same right to enforce this covenant by ejectment for damages. Contractor may at any time before or upon termination of this Lease remove from the leased property all equipment, property and fixtures as installed by Contractor provided such property is moved without substantial injury of the Premises. Any such property not removed shall become the property of the City. Any injury not repaired may be corrected by City, and Contractor shall promptly reimburse City upon receipt of its statement therefore.

12. SECURITY DEPOSIT.

Contractor shall deposit a sum of six months' rent with City as security for return of the demised Premises in proper condition at the end of the Lease term or on earlier termination and forfeiture as provided in this Lease. City may transfer or deliver the security to any bona fide purchaser of the real property in the event that the property is sold. City shall be discharged from any further liability in reference to the security upon giving written notice of that transfer to Contractor.

13. HOLDING OVER.

If Contractor shall remain in possession of the Premises after the expiration of the term of this Lease, Contractor shall become a tenant from month-to-month on the terms specified in this Lease, except that the monthly rental shall increase by 10%. Contractor shall continue to be a month-to-month tenant until the tenancy shall be terminated by City, or until Contractor has given to City a written notice at least one month prior to the date of termination of the monthly tenancy of Contractor's intention to terminate the tenancy.

14. NOTICE.

a. All notices, demands, or other writings in this Lease Agreement required to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To City: Billings Public Library
510 N Broadway
Billings, MT 59101

To Contractor: Sweet Café
595 Main Street
Billings, MT 59101

b. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as provided.

c. Contractor shall provide City with a contact list to include at least one person that can be reached in the event of an emergency or for any occasion when Contractor is out of town or otherwise unavailable. Such list will be kept current and updated as necessary.

15. BINDING EFFECT.

The covenants, agreements and all statements in this Lease apply to and shall be binding on the heirs, personal representatives, administrators, successors and assigns, if any, of the parties.

16. TIME OF ESSENCE:

Time is of the essence of this Lease with respect to the performance by the Contractor of its obligations thereunder.

17. ENTIRE AGREEMENT:

This Lease constitutes the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease are superseded by the terms of this Lease.

18. COMPLIANCE WITH ALL LAWS.

Contractor agrees not to be discriminate against any client, employee or applicant for employment or for services, because of race, creed, color, national origin, disability, sex or age with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoffs and termination; rates of pay or other forms of compensation; selection for training; rendition of services.

19. ENFORCEMENT OF AGREEMENT.

Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this contract, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorneys' fees, including fees for in-house attorneys, expended or incurred in connection therewith.

20. APPLICABLE LAW AND VENUE FOR LEGAL DISPUTES OR LITIGATION.

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County, Billings, Montana

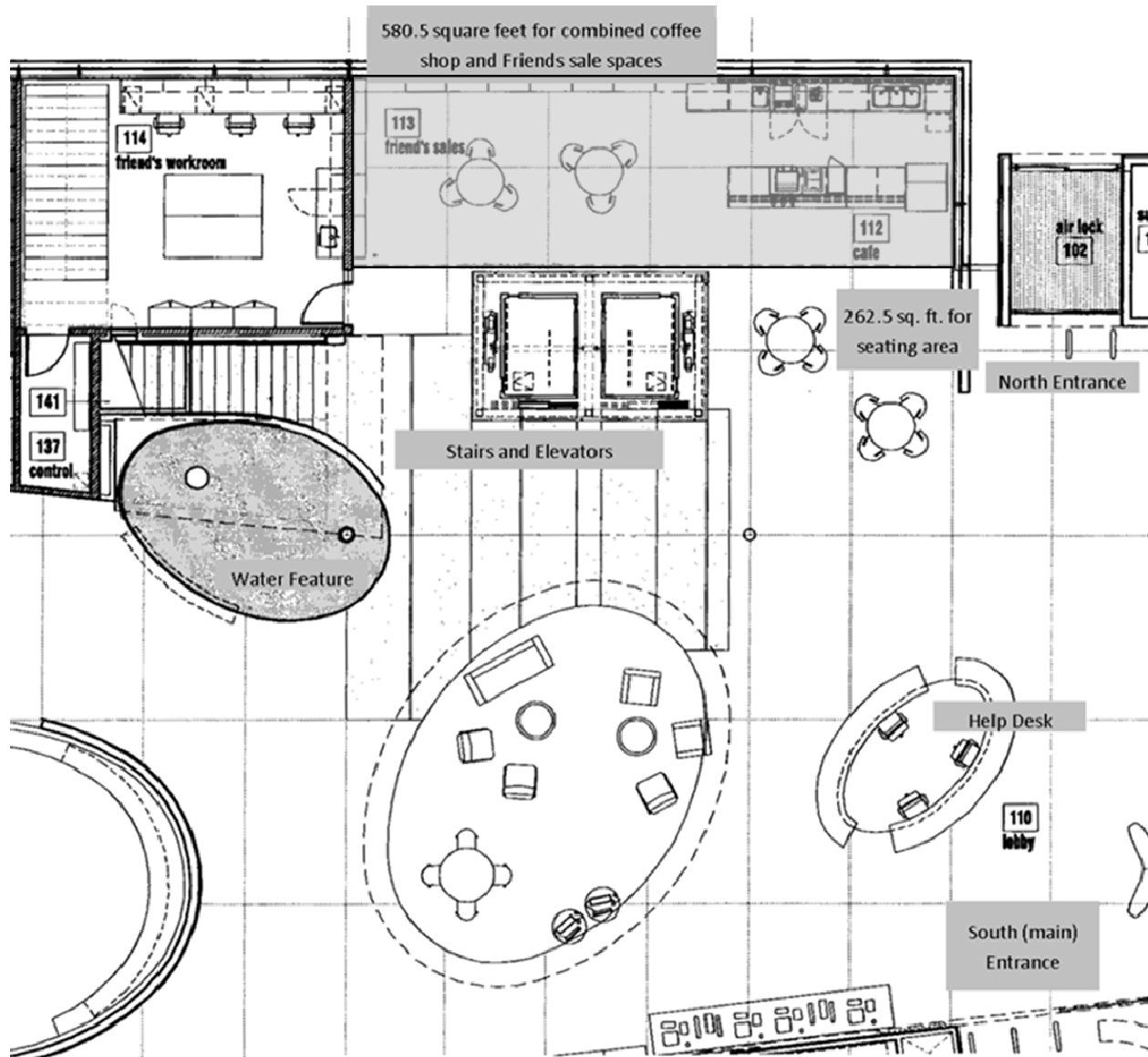
21. SEVERABILITY.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

22. PARAGRAPH HEADINGS.

The paragraph headings in this instrument are for convenience only, and do not limit or construe the contents of any paragraphs.

EXHIBIT A



IN WITNESS WHEREOF, this Agreement is effective as of the date of the last signature.

CITY:

Mayor, City of Billings

By: _____

Thomas W. Hanel, Mayor

Date: _____

CONTRACTOR:

By: _____

Date: _____