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**DEVELOPMENT AGREEMENT
326 NORTH 20th STREET
Billings, Montana**

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 2015, by and between CYNTHIA R. JOHNSON, 1228 Maurine Street, Billings, MT 59105, hereinafter referred to as “OWNER” and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, Billings, Montana, 59101, hereinafter referred to as the “CITY.”

WHEREAS, the OWNER owns and desires to develop certain real property located in the City of Billings, Yellowstone County, Montana, described as follows:

Lots 11 and 12, Block 37, Billings Original Town (Tax Code A00196A)

WHEREAS, OWNER desires to construct a restaurant offering drive-thru window service on the property, and

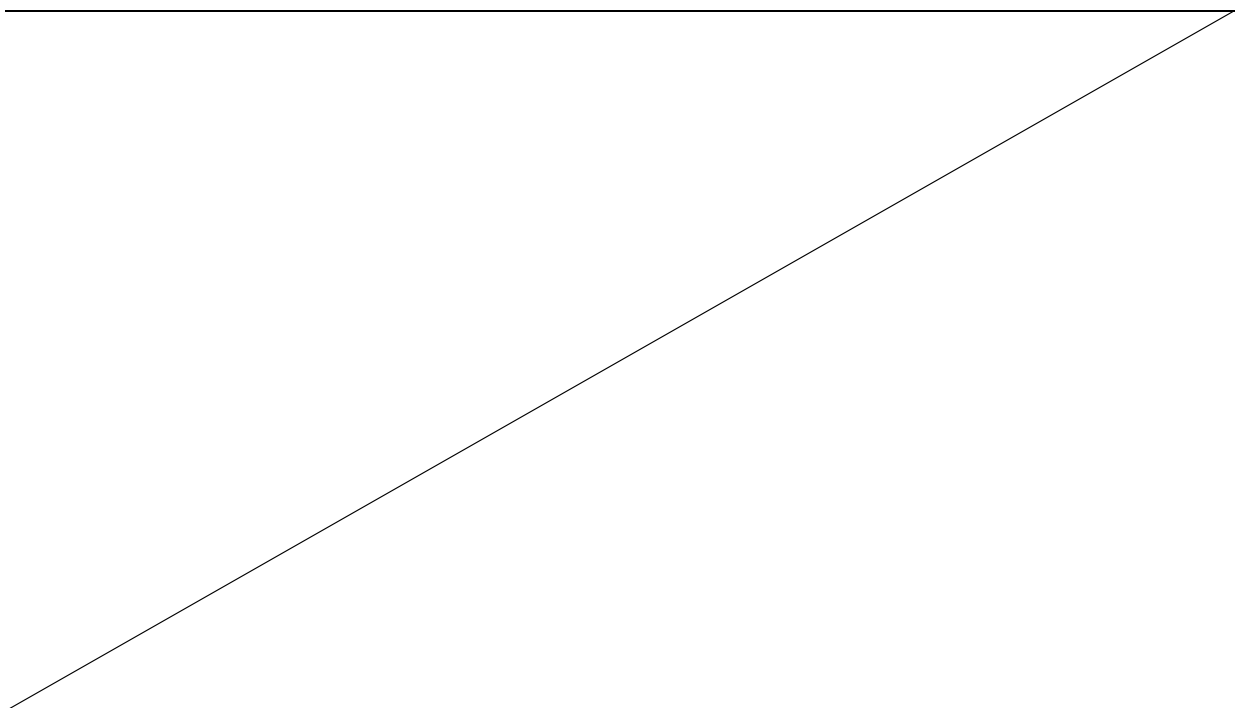
WHEREAS, OWNER has submitted conceptual plans for the drive-thru to the CITY, and

WHEREAS, CITY desires to insure that the drive-thru operation does not negatively impact traffic flow on 4th Avenue North,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. OWNER shall be allowed a 75 calendar day startup period to adjust and fine tune drive-thru window operations. Said period shall start on the day after a certificate of occupancy is issued by CITY for the restaurant.
2. Following the startup period, if vehicular queues from the drive-thru extend into the driving lanes of 4th Avenue North for three (3) or more separate occurrences during any 7-day period, CITY reserves the right to require OWNER to modify the drive-thru operation to reduce queuing. An “occurrence” shall be defined as drive-thru traffic extending into the driving lanes of 4th Avenue North one or more times within an hour.

- a. For example, traffic extending into 4th Avenue three times between Noon and 1:00 pm on the same day would be one occurrence. Traffic extending into 4th Avenue once between Noon and 1:00 pm and again between 4:00 pm and 5:00 pm would be two occurrences
3. CITY may require a new analysis and review of drive-thru queuing for any substantial change in operation of the drive-thru window. “Substantial change” includes, but is not limited to, a change in use such as change to a coffee shop, drive-thru banking, or a dry cleaning pickup window.
4. Compliance. Nothing herein shall be deemed to exempt OWNER from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property
5. Runs with Land. The covenants, agreements, and all statement in this Agreement shall run with the land and shall be binding on the heirs, personal representative, successors and assigns of the respective parties.
6. Attorney’s Fees. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs, including those fees and costs of in-house counsel.
7. Amendments and Modifications. Any amendments or modifications of this Agreement shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

“OWNER”

CYNTHIA R. JOHNSON

Signed: _____

STATE OF _____)

:ss.

County of _____)

This instrument was acknowledged before me on _____, 20__ by Cynthia R. Johnson, owner of the herein described property

Signed _____

(SEAL)

Print Name

Notary Public for the State of Montana

Residing in: _____

My Commission expires: ____/____/ 20 ____

