

Lease
Moss Mansion
914 Division Street, Billings, Montana 59101

THIS LEASE is made and executed this day of _____, 2018 by and among the **STATE OF MONTANA**, acting through the Montana Historical Society, and the **CITY OF BILLINGS**, a Montana municipal corporation, (Owners) and the **BILLINGS PRESERVATION SOCIETY**, a division of the Billings Park, Recreation and Preservation Foundation, a Montana charitable corporation (Society).

RECITALS

- A. The P.B. Moss Home (Home) at 914 Division Street, Billings, Montana is listed in the National Register of Historic Places, and has been determined by the State of Montana and the City of Billings to be of unique value as an historic resource, and, as such, should be made available to the public.
- B. The Society has had possession and use of the Home and associated property to preserve, maintain and restore the Home and its contents for the public as an historical and educational edifice and to engage in related activities.
- C. The owners have obtained ownership of the Home and associated property in the names of the State and the City through funds provided by both the public and private sectors.
- D. The State and City intend that the Society should continue to use and operate the Home as an historical building for the public's benefit and intend that the use, operation, preservation and restoration of the Home shall be solely at the Society's expense.

NOW, THEREFORE, the parties agree as follows:

1. **PREMISES.** The Owners lease to the Society, the Home and associated property more particularly described in Schedule "A" attached, and its furnishings and contents as described in Schedule "B" attached.
2. **TERM AND POSSESSION.** The Lease term is for ten (10) years, with two (10) year renewal options, commencing on the date of this lease and ending on December 31, 2048. The Society shall have quiet possession of the Home and associated property during the Lease term.
3. **RENT.** Owners recognize the value to the citizens of the State and the City of the use of the premises for historical and educational purposes. Rent for the entire period is THIRTY DOLLARS (\$30.00), payable at the rate of ONE DOLLAR (\$1.00) per year in advance on the first day of January of each year.
4. **USE.**
 - a. During the Lease term, the Society shall manage and operate the Home and associated property for the public's benefit and may not use or permit the Home and associated property to be used for any purpose other than as an historical building. Additionally, it is understood that the Society may use the facility as outlined in Section 4.
 - b. The Society may charge reasonable fees from person touring the building and may conduct special events and revenue-producing activities at the Home. The Society may use such fees only for the Society's reasonable operating expenses, and for use, operation, preservation and restoration of the Home, its furnishings and grounds. The Society shall determine the kind, duration, and number of revenue-producing activities at the Home, but the uses must be compatible with the purpose of

preserving the Home and associated property as an historic structure for the public's benefit.

5. **WASTE AND NUISANCE.** The Society shall comply with all applicable laws affecting the Home and associated property. The Society shall neither commit nor suffer to be committed any waste on the premises or any nuisance.
6. **SECURITY.** The Society shall provide and maintain fire and intrusion detection alarm systems. The Society shall provide monitors in the Home when the public is touring.
7. **NET LEASE.** This Lease is a net lease in that the Society is responsible for maintenance (Section 8), liability insurance (Section 13) and applicable taxes (Section 10). The State of Montana, however, shall provide property insurance as described in Section 11.
8. **UTILITIES, MAINTENANCE, AND REPAIR.**
 - a. The Society is responsible and shall pay for all water, gas, heat, light, telephone services and other public utilities provided to the Home and associated property.
 - b. The Society shall bear all other costs and expenses relating to the use, operation, maintenance, repair, preservation and restoration of the Home, its contents, the sidewalks, parking lots, and all activity conducted thereon. The Society shall make all repairs and improvements consistent with applicable City of Billings and other applicable government codes, ordinances, statutes and regulations.
 - c. Owners have no responsibility for any of the above-described expenses or to make any repairs or improvements of any kind or description to the Home, its improvements or contents. Further, the Society understands that it shall not request the City of Billings for any assistance for the above-described expenses.
 - d. Owners reserve the right to enter the Home to make repairs necessary for preservation of the Home and associated property. The cost of such Owners-made

repairs is the Society's obligation, provided that Owners have first given notice to the Society of the conditions needing repair, and the Society has not acted to make the necessary repairs within forty-five (45) days after receipt of such notice. Should one of the Owners undertake to make repairs necessary for preservation of the Home without the other Owner's prior consent, then the other Owner has no obligation to contribute to the cost of such repair.

9. APPROVAL REQUIREMENT AND EXPECTATIONS.

- a. The Society shall use, operate, preserve, and restore the Home and associated property in conformance with the Secretary of Interior's "Standards for Historic Preservation Projects with Guidelines for Applying the Standards" and generally accepted museum practices and ethics established by the America Association of State and Local History and the American Association of Museums. No work of any kind whatsoever shall be undertaken which affects the fabric of the Home or its furnishings without the written concurrence of the Montana Historical Society.
- b. To ensure that the Society meets the standards outlined above, the Montana Historical Society shall provide professional advice to guide the Society in the use, operation, preservation, and restoration of the Home and associated property. This requirement neither binds the Montana Historical Society to provide professional architectural, engineering or contracting services nor precludes the Billings Preservation Society from seeking such professional service from other sources. The parties further agree that a designee from the Montana Historical Society and a designee from the City of Billings will be named to act as liaisons between the Owners and the Society. Such designees shall serve as ex-officio members of the Board of Directors of the Billings Preservation Society.

c. The Owners may require the Society to deposit in a local financial institution all profits, revenue, royalties, or fees received or all gifts, grants, bequests, or other contributions collected by the Society for the benefit of the property. All funds must be accounted for pursuant to the management contract and reviewed biennially by the Society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property. The Owners or its designee may conduct an audit of the funds when determined necessary by the Owners. Additionally, the Owners may visit the Society for on-site review of the use, operation, preservation and restoration of the Home and associated property.

10. TAXES AND ASSESSMENTS. The Society shall pay and discharge all taxes, assessments, charges, license fees, and liens, whether general or special, ordinary or extraordinary, of every nature as they become due.

11. PROPERTY INSURANCE. The State of Montana shall at its sole expense insure the Home and its contents with fire and extended coverage insurance. The Owners agree that the Home and associated property may be insured under any insurance policy maintained by the State or in the name of State and the applicable portion of any premium due from the Owners that relates to the Home and associated property shall be paid by the State.

12. DAMAGES TO PREMISES. Because of the uniqueness of the historic and architectural value of the Home and associated property, if there is significant damage, destruction or partial destruction to the Home and/or associated property, it is agreed that it may not be feasible to repair and restore the Home and/or associated property to an authentic condition as good or better than existed prior to the damage or destruction. In case of such damage or destruction, if the Owners in consultation with the Society should determine that it wishes

to repair, restore or replace the Home or its contents, then the proceeds of any insurance coverage shall be made available to the Society for such repair, restoration or replacement. Should the Owners in consultation with the Society decide not to repair, restore or replace the premises or the contents, then the insurance proceeds may be applied towards similar projects determined jointly by the Owners and the Society.

13. LIABILITY INSURANCE. The Society shall maintain liability insurance covering the Home and associated property, sidewalks and parking lots in the amount of ONE MILLION DOLLARS (\$1,000,000) combined single limits of liability for each occurrence for bodily injury or property damage regardless of the number of persons or organizations who sustained bodily injury or property damage or the number of claims made, or suits brought. Such insurance shall specifically insure the Society against all liability assumed by it under this Lease, and shall insure both the Owners and the Society against all liability imposed by law against them. In addition, the policy or policies shall contain a provision that no cancellation thereof is effective by the insurer without thirty (30) days written notice to the Owners. The Owners agree that the House and associated property may be insured under any insurance policy maintained by the Society; however, the premium due shall be paid by the Society within thirty (30) days after notice to the Society that the premium is due.

Unless the above insurance coverages are provided under policies maintained by or in the name of the Owners, at least twenty (20) days prior to the date of expiration of any insurance policies, the Society shall deliver to the Owners the certificate of renewal of such policies indicating payment of the premiums. All policies shall require the insurance companies to notify the Owners in writing prior to any cancellation of the insurance.

14. DEFENSE/INDEMNITY/HOLD HARMLESS. The State of Montana, the Montana Historical Society, and the City of Billings, their administrators, council members, officers, agents and

employees shall not be liable for any demands, suits, liabilities, damages or judgments arising from death or injury to any person, or damage to property of any kind, whether to the person or property of the Society, its agents or employees, or third persons, from any cause whatsoever while at the Home and associated property during the Lease term. The Society shall defend, indemnify and save harmless the State of Montana, the Montana Historical Society, the City of Billings, their administrators, council members, officers, agents and employees from all demands, suits, liabilities, damages, judgements, expenses (including reasonable attorney and expert fees) and court costs arising from death, injury, property damage or loss however occurring. However, these defense and indemnity obligations do not apply to any injury, death, or damage arising from the negligence of the Owners, their agents, or employees.

15. EFFECT OF EMINENT DOMAIN. If the Home and/or associated property or any part thereof, are taken under the power of eminent domain or conveyed under the threat of eminent domain by any public or quasi-public authority so that the Home and/or associated property no longer be operated as an historic home in the manner operated at the time of such taking, the Lease shall terminate, and the Society shall have the following rights:

- a. To consult with the Owners to have the condemnation award applied toward similar projects as determined jointly by the Owners and the Society; and
- b. To recover such compensation from the condemning authority for any loss or damage caused by such condemnation.

16. TERMINATION BY OWNERS. The Owners may terminate this Lease upon the happening of any one of the following:

- a. Upon the Society's breach of any material term or condition, provided that the Owners have first given written notice to the Society of any such breach and the

same has not been corrected or remedied within sixty (60) days after receipt of such notice; or

- b. Upon the Society's voluntary filing a petition in bankruptcy or being involuntary adjudicated as a bankrupt; making of a general assignment for the benefit of creditors, becoming permanently unable to perform its obligations under this Lease; or abandoning the property and discontinuing its operations at the Home and/or associated property.

17. TERMINATION BY SOCIETY. The Society may terminate this Lease upon the Owners' breach of any material term or condition provided that the Society has first given notice to the Owners of any such breach and the same has not been corrected or remedied within sixty (60) days after receipt of such notice.

18. HOLDING OVER. Should the Society hold-over after the Lease has terminated in any manner, such holding over is deemed a tenancy from month-to-month at a rental of ONE DOLLAR (\$1.00) per month, payable monthly in advance, but otherwise on the same terms and conditions as provided in this LEASE.

19. RENEWAL OF LEASE. If the Society has performed all the terms and conditions of this Lease, then at the expiration of the Lease term, this Lease shall be automatically renewed for an additional ten (10) year term on the same terms and conditions as provided in this Lease. If the Society has performed all the terms and conditions of this Lease in the second ten (10) year term, this Lease shall automatically renew for a third (10) year term on the same terms and conditions as provided in this Lease. In the event of a non-renewal, the Owners shall provide written notice 180 days prior to expiration of this Lease.

20. NON-ASSIGNMENT OF LEASE. The Society shall not sublet or assign or transfer the lease, or any part thereof, to any person, firm or corporation, without the Owner's prior written consent.

21. MORTGAGES. The Owners may not place mortgages or have liens placed on the Home or associated property without the Society's prior written consent. Likewise, the Society may not place mortgages or have liens placed on the Home or associated property without the Owners' prior written consent.

22. NOTICES. Any notice to be given under this Lease shall be sent by certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

OWNERS:

Montana Historical Society
225 North Roberts Street
Helena, Montana 59620

City of Billings
210 North 27th Street
Billings, Montana 59101

THE SOCIETY:

President, Billings Preservation Society
914 Division Street
Billings, Montana 59101

The address of any party may be changed by written notice given by such party as above provided. Notice is effective upon receipt.

23. RELATIONSHIP OF PARTIES. The relationship of the parties is strictly that of landlord and Tenant. This Lease shall not be construed as a joint venture or partnership. The Society is not, and shall not be deemed to be, an agent or representative of the Owners.

24. INSPECTION. Owners have free access to the Home and associated property at all reasonable times for the purpose of examining or inspecting the condition of the Home and associated property.

- 25. **ATTORNEY FEES AND COSTS.** The successful party in any litigation resulting from the dispute among the parties regarding this Lease shall be entitled to reasonable attorney's fees and costs of litigation.
- 26. **SUCCESSORS.** Subject to Section 20, terms and conditions of this Lease apply to and bind the successors, assigns, transferees, or trustees of the parties.
- 27. **TIME OF ESSENCE.** Time is of the essence in all provisions of this Lease.
- 28. **GOVERNING LAW.** The Lease terms and conditions are governed by the laws of the State of Montana.
- 29. **AMENDMENTS.** This Lease may be amended only by a written agreement signed by all of the parties.

The Owners and the Society have executed this Lease the date and year first above written.

Montana Historical Society

Approved as to Form by:

Bruce Whittenberg, Director

City of Billings

Attest:

William A. Cole, Mayor

Billings Preservation Society

Attest:

Brent Sumner, President
