

## LEASE AGREEMENT

THIS LEASE is made and entered into this 11th day of March, 2013, by and between MILLER TROIS, LLC, a Montana limited liability company, of Billings, Montana, hereinafter referred to as "Lessor" and CITY OF BILLINGS, MONTANA, of Billings, Montana, hereinafter referred to as "Lessee".

### WITNESSETH

1. **Premises and leasehold.** Lessor does lease, let and demise unto Lessee a portion of the commercial space and premises commonly known as 2825 Third Avenue North, Billings, Montana, further commonly known as the Miller Building, being that portion of the building particularly described as follows:

The entire fourth floor (comprising approximately 9785 sq. ft.); that certain portion of the sixth floor (comprising approximately 4579 sq. ft.); and the first floor conference room, all as set forth on the floor plans attached hereto as Exhibit "A".

2. **Term.** The parties agree that the term of this lease shall be for a period of five (5) years, commencing August 1, 2013. Should the premises be sooner ready for occupancy by Lessee, by mutual agreement, Lessee may occupy the premises prior to the commencement of the five-year term, and shall pay rent for such prior occupancy on a pro-rated basis at the first-year rental rate.

3. **Rent.** Commencing August 1, 2013, or upon the sooner occupancy of the premises by Lessee as provided above, the annual rent shall be One Hundred Ninety-One Thousand Five Hundred Twenty and No/100 Dollars (\$191,520.00), such that the monthly rent shall be Fifteen Thousand Nine Hundred Sixty and No/100 Dollars (\$15,960.00). On August 1st of each successive year in the lease, including any option term or extension, the annual rent shall be increased by 2% above the rent paid in the preceding year, that is an annual 2% compounded rental escalation. The monthly rent shall be payable at Lessor's address set forth herein, and shall be due and payable in advance on the first day of each and every month during the duration of this lease.

4. **Options to Renew.** Lessee shall have two (2) successive options to renew and extend this lease for two (2) additional three-year extension terms, the first of which three-year option term shall commence August 1, 2018, and the second

three-year option term, provided the first option has been exercised, shall commence August 1, 2021. The option renewal shall be upon the same terms and conditions as herein contained, including the rental rate, provided that the rent shall be increased at the beginning and during each option term by the 2% annual increase as provided above. Lessee shall exercise each such option by written notice to Lessor at least sixty (60) days prior to the end of the current term.

5. **Parking.** Lessee, without further rent, shall be entitled to an allocation of twelve (12) assigned parking spaces in the building's north parking lot.

6. **Lessee Obligations.** Lessee does hereby covenant and agree with Lessor that Lessee shall:

- a) Pay the rent at the time and place in the manner aforesaid;
- b) Use and occupy the leased premises in a careful and proper manner;
- c) Not commit any waste therein;
- d) Not use or occupy the leased premises for any unlawful purpose and will conform to and obey all present and future laws and ordinances and all rules, regulations, requirements and orders of all governmental authorities or agencies respecting the use and occupation of the leased premises;
- e) Make no structural alterations or additions in or to the leased real estate premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld;
- f) Permit Lessor to enter on the leased real estate premises at commercially reasonable times to examine the condition of the same;
- g) Assume all risk of loss as to Lessee's own fixtures, contents and personal property, and in this regard, Lessee shall repair and maintain the same at Lessee's expense. Lessee shall insure all personal property and fixtures, not belonging to Lessor, situated on or in the demised premises against damage by fire or other casualty (all risk) in an amount sufficient to cover replacement or repair, with waiver of subrogation in favor of Lessor;
- h) Not assign or sublet, in whole or in part, this lease or the leased premises, without the prior written consent of Lessor, which consent shall not be unreasonably withheld;
- i) Pay all personal property taxes and license fees levied on its personal property and leasehold improvements situated upon the premises;

- j) Provide and use chair mats under all rolling chairs such as to protect the carpet;
- k) Lessee shall pay for its own replacement security badges from Fiserv, or its successors and assigns.

7. **Lessor Obligations.** Lessor covenants and agrees with Lessee that Lessor at Lessor's expense shall:

- a) Pay all utility charges for heat (natural gas), lights (electricity) and water rendered to the leased commercial space;
- b) Pay the real estate property taxes and special assessments on the leased real estate during the duration of this lease agreement;
- c) Provide five-nights-per-week standard commercial janitorial service to the leased premises and common areas;
- d) Maintain the interior and exterior of the leased premises including any glass in a safe condition, and as good condition in keeping with the same at the commencement of this lease. Lessor's obligation shall include normal and everyday building repairs, in addition to structural repairs and replacements, maintenance, janitorial, and exterior grounds maintenance including cleaning and snow removal. Lessor shall provide restroom supplies and products and light bulbs. Lessee shall repair and maintain Lessee's own personal property and fixtures.

8. **Restroom Remodel.** Prior to occupancy by Lessee, Lessor, at Lessor's expense, shall cause the restrooms on the sixth floor and the restrooms on the fourth floor to be remodeled and upgraded to current code and ADA compliance.

9. **Phone and Data Costs.** Lessee, at Lessee's expense, shall be responsible for its own data, internet and phone costs, including any wiring or improvements necessary toward that purpose. Any additional or upgraded data lineage to the building, which may be desired by Lessee or necessary for its intended usage of the premises, such as any dedicated service lines to the City Administration Building or otherwise, shall be the responsibility of, and at the sole expense of, Lessee.

10. **Signage.** Lessee, at Lessee's expense, shall be entitled to build and/or put up appropriate interior and exterior signage regarding its use and occupancy of the premises, with Lessor's prior consent and approval, which consent and approval shall be liberally granted.

11. **Liability Insurance.** Lessee shall obtain and maintain at all times during the duration of this lease, with a responsible insurer, naming Lessor as an additional covered party, comprehensive general liability insurance against loss or liability arising from the negligent acts or omissions of Lessee, its agents or employees resulting in personal injury or property damages, in the minimum amount of \$1,000,000 per claim. Lessee shall indemnify, defend and hold Lessor, its owners, agents, employees, successors and assigns harmless from any loss, damage or liability, including attorney's fees and costs, resulting from any accident or occurrence on the premises which results from the negligent acts or omission of Lessee, its agents or employees as the same relates to the leased commercial space. Lessor shall at all times be entitled to demand and receive immediate written proof of such insurance coverage including such additional insured endorsement.

Lessor shall indemnify, defend, and hold Lessee and its agents, employees, successors, and assigns harmless from any loss, damage or liability, including attorney's fees and costs, resulting from any accident or occurrence on the premises which arises from the negligent acts or omissions of Lessor or its assigns, successors, agents, employees, contractors or subcontractors.

12. **Fixtures.** All fixtures and equipment which Lessee may install on the leased premises which are permanently affixed shall be and remain the property of Lessor at the end of this lease and shall not be removed by Lessee at the end of this lease or any renewal or extension hereof, provided, however, that any trade fixtures, shelving, display counters or the like, may be removed by Lessee at the end of this lease, provided that the condition of the premises shall be left in the same condition that existed at the commencement of the lease, reasonable wear and tear excepted.

13. **Default.** In the event Lessee fails to pay any rent due hereunder or fails to keep or perform any of the other terms or conditions hereof, or otherwise breaches this lease or defaults hereunder, then ten (10) days after written notice of default of the payment of rent, or thirty (30) days after written notice of any other default, Lessor may, if such default has not been corrected, declare Lessee's right of possession under this lease canceled, whereupon Lessee shall peaceably deliver possession of the premises, and in this regard, it shall be lawful for Lessor to enter upon the leased premises and again have, repossess and enjoy the same, as if this lease had not been made, without prejudice, however, to the rights of Lessor to recover from Lessee all rent retained under this lease. In cases of any such default and forfeiture of possession, Lessor may relet the leased premises for the remainder of said term for the highest rent reasonably obtainable and may recover from Lessee any deficiency between the amounts obtained and the rent herein reserved. Any specification of remedy herein shall not be exclusive, and either party shall have any remedy for breach of this lease allowed by law.

14. **Binding Effect.** It is agreed and understood that the provisions of this lease shall apply to and bind the heirs, executors, personal representatives, successors and assigns of the respective parties hereto as if in each provision particularly mentioned.

15. **Non-Waiver.** It is agreed that any failure or delay of Lessor to declare a default for breach of this lease, or assert any right hereunder, shall not operate as a bar or waiver to declare such default or assert such right in the future.

16. **Inspection and Intended Use.** Lessee acknowledges that Lessee has personally inspected and examined the property covered by this lease and that it is fit and proper for Lessee's intended usage. Lessee is thoroughly familiar with the same and acknowledges that Lessee is entering into this lease based upon Lessee's own examination, inspection and determinations. Except as otherwise expressly set forth in this agreement, Lessee rents the space as-is, and shall be responsible for Lessee's own desired upgrades, modifications and/or improvements to the leased property.

17. **Notice.** Any notice to be given pursuant to this lease may be served upon the party personally, or by regular first class or certified mail, directed to such party at its address below, or at such other address as notice in writing may be given, similarly served, and notice served by mail shall be deemed complete when deposited in the U.S. mail, postage prepaid. The addresses of the parties for notice purposes pursuant to this lease are as follows:

Lessor:

Miller Trois, LLC  
Attn: Norman Miller  
3507 Palisades Park Drive  
Billings, Montana 59106

Lessee:

City of Billings  
Attn: Candi Beaudry  
P.O. Box 1178  
Billings, MT 59103

18. **Interpretation.** The parties having substantially equal bargaining power, and equal opportunity for advice of legal counsel with regard to this lease, each party waives any right or rule of construction or interpretation that this lease be most strictly construed against the party furnishing or drafting the same.

19. **Holdover.** In the event that Lessee shall remain in possession of the premises upon expiration of the term of this lease, without said tenancy being terminated or term extended, the tenancy shall be deemed a month-to-month tenancy, upon the same terms as last herein contained until changed pursuant to the agreement of the parties or pursuant to law, which month-to-month tenancy may be terminated by either party upon thirty (30) days written notice to the other.

20. **Environmental.** Lessor shall be responsible for, and shall remain exclusively responsible for, the environmental condition of the real property as of the commencement of this lease. Lessee shall not cause or permit any hazardous waste or substance to be used, stored, generated or disposed of on or in the building or real estate upon which the building is situated. Each party shall be responsible for any environmental concerns or hazards caused by its own acts, and each shall abide by and follow all state and federal laws, rules and environmental regulations regarding the property, and each shall indemnify, defend and hold the other harmless, for or on account of all liability asserted or arising out of each party's actions, violations or negligence in this regard, or that of its owners, agents, officers, employees, successors or assigns.

21. **Attorney Fees and Costs.** In the event that either party may institute legal action for the enforcement or construction of any right, obligation, provision or covenant of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to costs of suit.

**IN WITNESS WHEREOF**, the parties have hereunto executed this lease the day and year first above written.

LESSOR

LESSEE

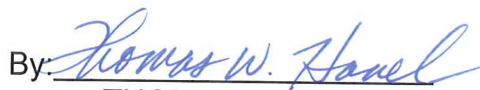
MILLER TROIS, LLC

CITY OF BILLINGS, MONTANA

By:

  
NORMAN F. MILLER  
Manager

By:

  
THOMAS W. HANEL  
Its Mayor

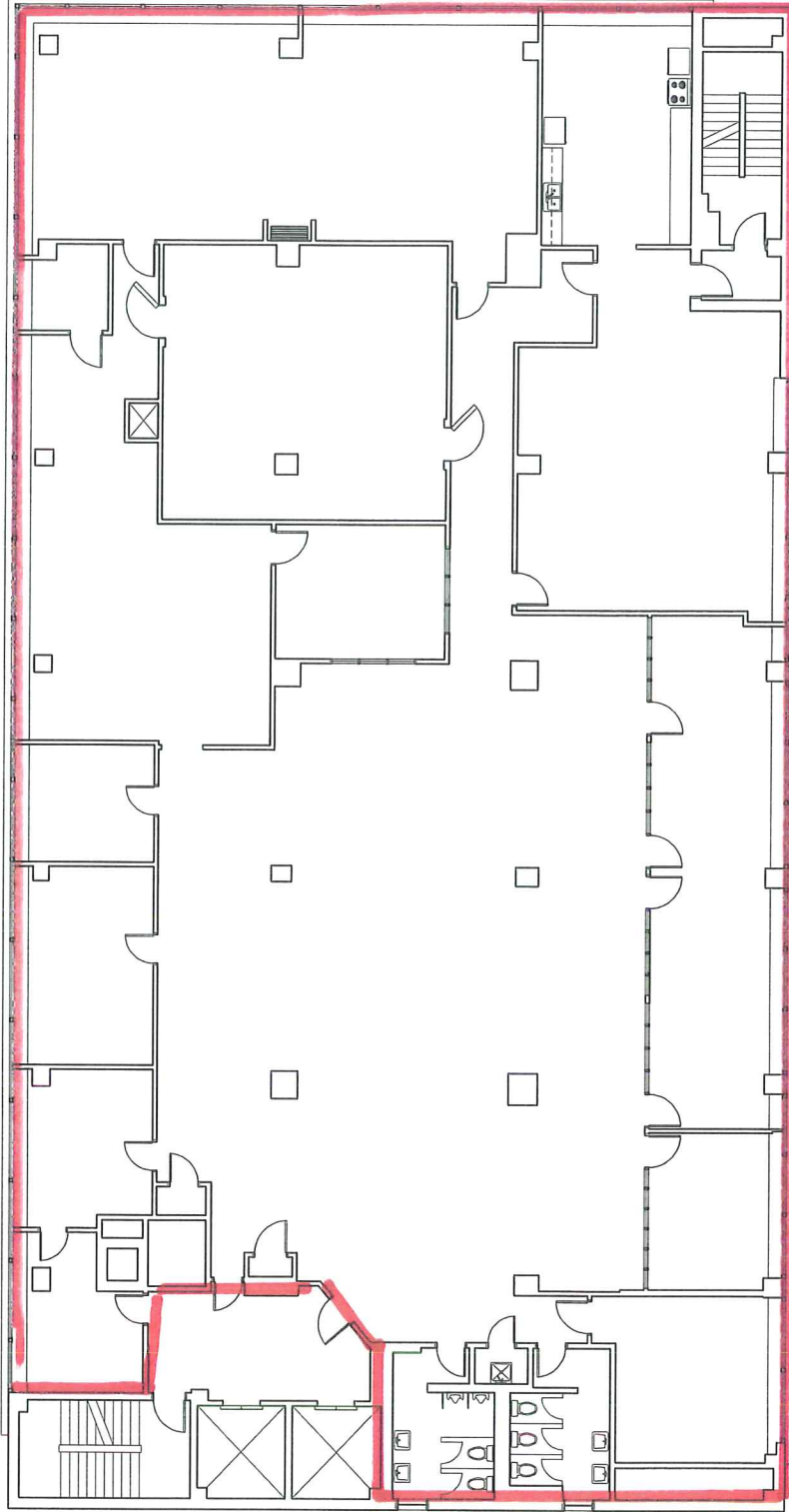
APPROVED AS TO FORM:

By:

  
BRENT BROOKS  
Billings City Attorney

Exhibit A - Usable SF exclusive to TENANT

1  
EXISTING 4th FLOOR PLAN  
SCALE: 3/8" = 1'-0"



4<sup>th</sup> Floor

A3.4

EXISTING 4TH FLOOR PLAN

DESIGNLAB

AS-BUILT FLOOR PLANS FOR THE MILLER BUILDING

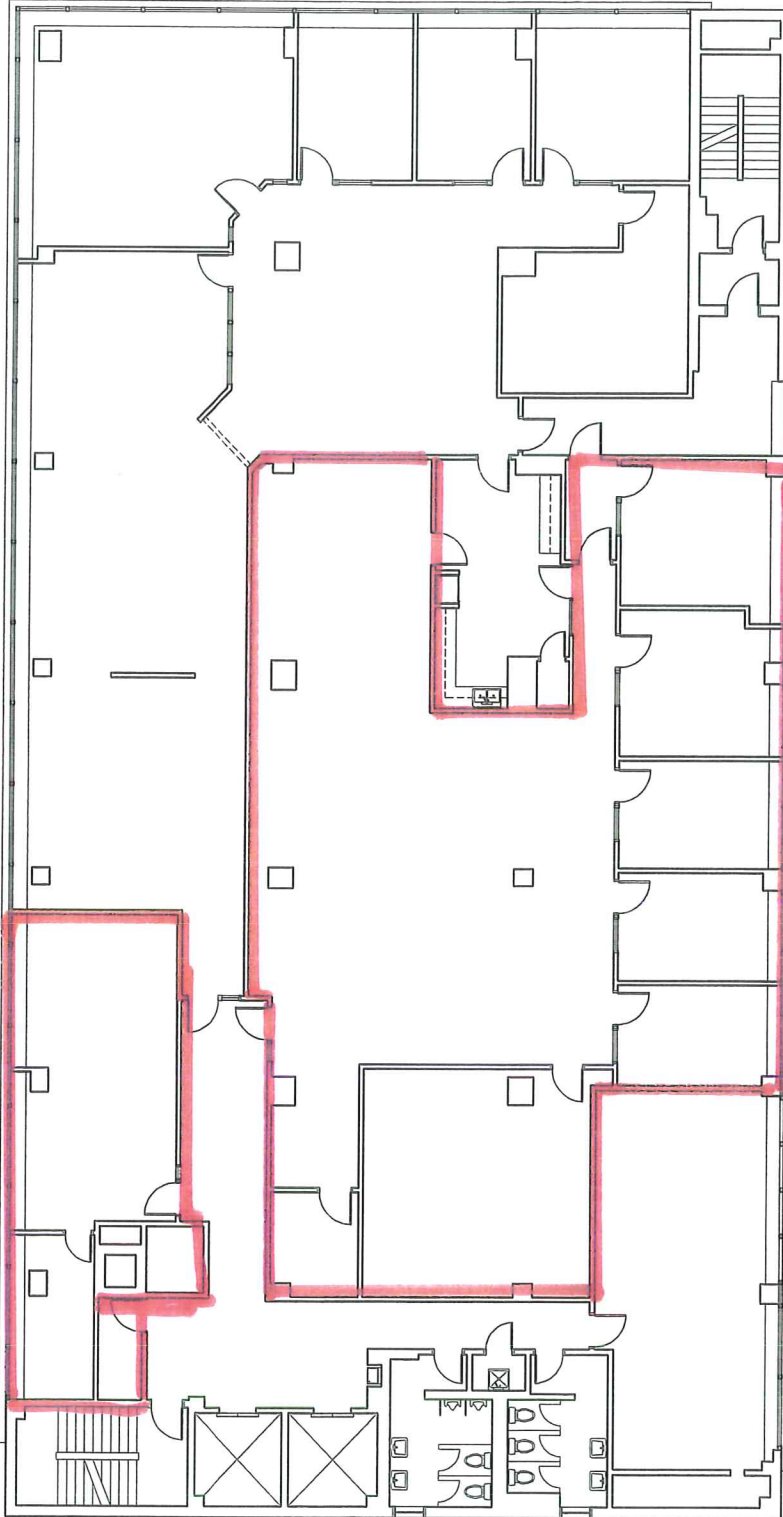
2825 3RD AVE. NORTH BILLINGS, MT 59101

PROJECT: 1901  
DRAWN BY: JPM  
REVISIONS:

PROJECT: 1901  
DRAWN BY: JPM  
REVISIONS:

Exhibit A - p. 2

1  
AS-BUILT  
SCALE: 3/8" = 1'-0"  
EXISTING 6TH FLOOR PLAN



6<sup>th</sup> Floor

A3.6

EXISTING 6TH  
FLOOR PLAN



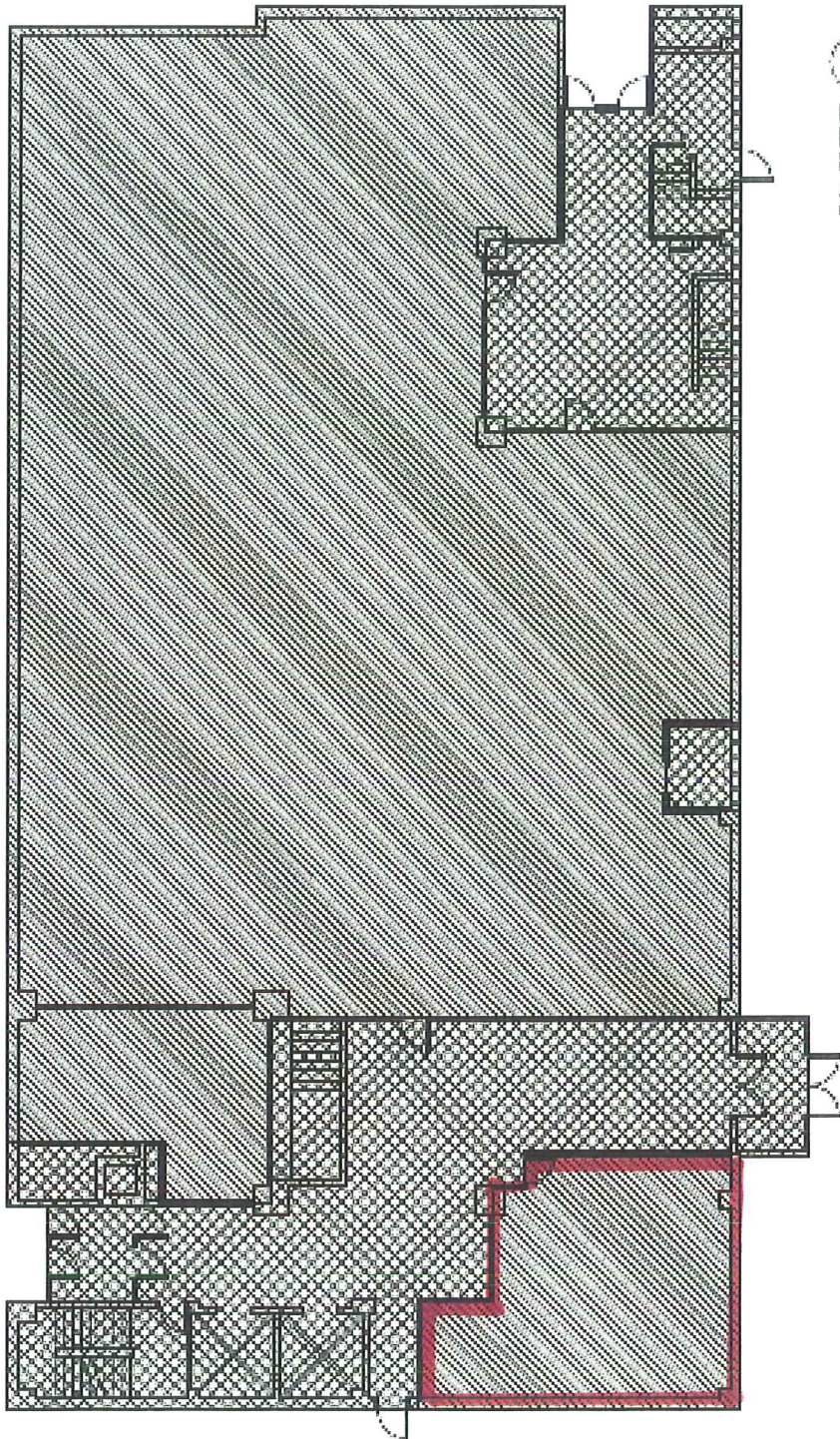
# AS-BUILT FLOOR PLANS FOR THE MILLER BUILDING

2825 3RD AVE. NORTH BILLINGS, MT 59101

COMPANION FLOOR PLANS:  
 1ST FLOOR AS-BUILT FLOOR PLAN  
 2ND FLOOR AS-BUILT FLOOR PLAN  
 3RD FLOOR AS-BUILT FLOOR PLAN  
 4TH FLOOR AS-BUILT FLOOR PLAN  
 5TH FLOOR AS-BUILT FLOOR PLAN  
 6TH FLOOR AS-BUILT FLOOR PLAN  
 7TH FLOOR AS-BUILT FLOOR PLAN  
 8TH FLOOR AS-BUILT FLOOR PLAN  
 9TH FLOOR AS-BUILT FLOOR PLAN  
 10TH FLOOR AS-BUILT FLOOR PLAN

PROJECT #: 1001  
 DATE: 1/20/12  
 DRAWN BY: GT  
 REVISIONS:

1 EXISTING 1st FLOOR PLAN



1st Floor  
conference room