

**LEASE**  
**(with Option to Purchase)**  
**Missoula Food Bank and City of Missoula**

THIS SUB-SUBLEASE (the “**Lease**”) is made as of \_\_\_\_\_, 2017 (the “**Effective Date**”) by and between the Missoula Food Bank, Incorporated, a Montana nonprofit public benefit corporation, whose principal address is 1720 Wyoming St., Missoula, Montana 59801 (the “**Landlord**”) and the City of Missoula, whose principal address is 435 Ryman Street, Missoula, Montana 59802, Attn: John Engen, Mayor (the “**Tenant**”).

**1. Premises.** The term “**Building**” means that building located at 1720 Wyoming St., Missoula, Montana, owned by the Missoula Food Bank, Incorporated. The “**Premises**” consists of all of Suite 118 located on the first floor of the Building located on that certain property legally described on Exhibit A (the “**Property**”), and as more specifically outlined and depicted on Exhibit A. There exists approximately one thousand two hundred thirty-three (1,233) square feet on the Premises. On the terms stated in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord for the term beginning on the Lease Commencement Date and ending on the Termination Date unless extended or sooner terminated pursuant to this Lease.

**2. Occupancy.**

**a. Term.** The term (“**Term**”) of this Lease shall be for eight (8) year term, commencing on the date upon which Landlord has completed the Tenant improvements with respect to the Premises described under Section 11.a, below, and the Premises are available for occupancy (the “**Commencement Date**”) and continuing through midnight on the day on the 8<sup>th</sup> anniversary of the Commencement Date (the “**Expiration Date**”).

**b. Possession.** Tenant’s right to possession and obligations under this Lease shall commence on the Commencement Date. Landlord shall have no liability for delays in delivery of possession and Tenant will not have the right to terminate this Lease because of delay in delivery of possession except as hereinafter provided, it being understood that occupancy cannot occur until Landlord has completed the improvements to the Premises which will be in control of the Tenant, and Landlord has obtained a Certificate of Occupancy from the City of Missoula for the Building and the Premises.

**3. Rent.** During the Term, Tenant shall pay to Landlord an annual rental payment in advance in the amount of One Dollar (\$1.00) payable on the Commencement Date and thereafter on the anniversary date of the Commencement Date (the “**Rent**”).

**4. Option to Purchase.** So long as the Property is no longer subject to any financing, Landlord hereby grants Tenant an option to purchase the Premises as a condominium purchase within 180 days after the Expiration Date. Tenant must provide Landlord with written notice of its intent to exercise such option at least ninety (90) days prior to the Expiration Date. Landlord shall allow Tenant continuous occupancy of the Premises during the acquisition period as set forth in Section 18, below.

Upon Tenant’s exercise of the option to purchase and the actual transfer of legal title of the Premises to Tenant, this Lease shall expire and be of no further force and effect, provided that all sums owing to Landlord upon such expiration shall be paid prior to the actual transfer of legal title to the Premises from Landlord to Tenant. The notice requirements of this Section

may be waived at the sole discretion of Landlord, provided that such waiver is in writing. Landlord's execution of a Purchase and Sale Agreement with Tenant as the purchasing party shall constitute such written waiver. The price at which Tenant may purchase the Premises shall be determined by a certified MAI appraisal conducted by a certified MAI appraiser to be agreed upon by Landlord and Tenant at the time of Tenant's notice of exercise of such option. In the event that a certified MAI appraiser cannot be agreed upon by the parties, the parties shall petition a district court judge sitting in and for the Fourth Judicial District for the State of Montana, Missoula County, for the selection of a certified MAI appraiser. In no event, however, shall the purchase price be less than that as determined by the most current appraisal covering the Premises at the time of execution hereof. Additionally, Tenant shall receive a credit against the purchase price under the option for an amount equal to the amount Tenant provided for construction under Section 11.a for the initial alterations and certain furnishings and educational exhibits.

The close of the sale of the Premises shall occur no later than ninety (90) days following the certified MAI appraiser's report. All costs of closing the sale shall be borne by Tenant, with the exception of standard title insurance. The terms of this purchase not specifically covered under this Agreement will be negotiated at the time the option to purchase is exercised. At Landlord's option, Landlord may terminate this option to purchase if the option is not exercised within one hundred eighty (180) days of the Expiration Date or upon any default of the Tenant hereunder that remains uncured after the applicable cure period. A time extension may be granted if mutually agreed upon in writing by both parties. Should Landlord terminate this option to purchase, Landlord shall immediately reimburse in full all tax increment financing provided through the Missoula Redevelopment Agency, described under Section 11.a. The termination of the option to purchase hereunder shall be a separate remedy and shall have no effect upon the rights or obligations of the parties hereunder with respect to any other provision of this Lease.

It is expressly agreed that the provisions of this Section 4 are subject to the provisions of Section 30 and Section 31 of this Lease.

**5. Subletting.** By signing this Lease, Landlord agrees that Tenant may immediately sub-sub-lease the whole of the Premises (the "Sublease") to the University of Montana's spectrUM Discovery Area (the "**Sublessee**") for the purposes of operating free education programming for children, and; *provided, further*, the Sublease to Sublessee shall be subject in its entirety to the terms and conditions of this Lease, including that upon any termination or expiration of this Lease any sublease shall also terminate. Sublessee shall have no right to occupy the Premises until such time as the Landlord has reviewed and approved the Sublease. Tenant may not otherwise assign or sublease this Lease except as expressly provided herein.

## **6. Use of the Premises**

**a. Permitted Use.** The Premises shall be used only for the purpose of providing free educational programming for children as describe in Section 5 above, or other free community-benefit programs as mutually agreed upon by the Landlord and Tenant.

**b. Restrictions on Use.** In connection with the use of the Premises, Tenant and Sublessee shall:

**i.** Conform to all applicable laws and regulations of any public authority affecting the Premises, and correct at Tenant's or Sublessee's own expense any failure of compliance created through Tenant's or Sublessee's fault or by reason of Tenant's or

Sublessee's use, but Tenant or Sublessee shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's or Sublessee's specific use and are otherwise approved in accordance with the agreements described in Section 30.

**ii.** Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Montana Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant or Sublessee pays the additional cost of the insurance.

**iii.** Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

**iv.** Refrain from loading the electrical system beyond the point considered safe by a competent engineer or architect selected by Landlord.

**v.** Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the written consent of Landlord.

**vi.** In no event shall Sublessee's use of the Property consist of the operation of any of the following prohibited activities or businesses: (i) rental of residential real property (as defined under Section 168 (e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"); (ii) development or holding of intangibles for sale or license; (iii) farming; (iv) a massage parlor, hot tub facility, suntan facility, country club, racetrack or other facility used for gambling, or private or commercial golf course; (v) any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or (vi) unimproved real property.

**c. Hazardous Substances.** Tenant or Sublessee shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of in or near the Building or Premises unless Landlord has consented to such storage or use in its sole and absolute discretion. The term "**Hazardous Substance**" shall mean and include but not be limited to, lead-based paint and asbestos, substances defined as hazardous substances, hazardous materials, or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, or any other federal, state or local environmental law, regulation, ordinance, rule or law, whether existing as of the date hereof, previously enforced or subsequently enacted.

## **7. Building Services.**

**a. Heating and Air Conditioning.** Landlord shall furnish heating and air conditioning to the Premises. Notwithstanding the foregoing, Tenant or Sublessee shall have control over the temperature therein through Tenant's or Sublessee's use of the existing thermostats within the Premises.

**b. Water.** Landlord shall pay for hot and cold tap water for the Premises. Tenant

or Sublessee shall not permit water to be wasted.

**c. Janitorial Service.** Landlord shall provide janitorial and waste removal services for the Premises on a five (5) day a week, Monday through Friday, basis.

**d. Interruption of Services.** Landlord will not, under any circumstances, be held liable for damages to either person or property or for interruption or loss to Tenant's or Sublessee's business, nor be construed as an eviction of Tenant or Sublessee, nor will Tenant or Sublessee be relieved from fulfillment of any covenant or agreement hereof, due to interruption of utilities or services, unless the same is caused by Landlord's willful misconduct; *provided, however,* that Landlord shall use commercially reasonable efforts in concert with Tenant and Sublessee, as applicable, to avoid, minimize and remedy any material disruptions to normal use and occupancy.

**e. Parking and Common Areas.** During the Term, Tenant and Sublessee and its invitees shall have the non-exclusive right to the use of the common areas, bathrooms, corridors, hallways, parking areas, and facilities in, surrounding, and adjacent to the Building. Landlord has the right, from time to time, to close any part of the common areas as may be necessary to prevent a dedication thereof to the public or to prevent the acquisition of any rights therein by any other person or for the purposes of making improvements, performing maintenance or doing repairs. Except for reasonable and necessary interruptions in connection with construction, maintenance and repair work or causes beyond the control of Landlord, Landlord will at all times make available to Tenant and Sublessee and its invitees, reasonable access to the Premises.

Tenant and Sublessee agree to conform to all reasonable rules and regulations that may be promulgated by Landlord from time to time concerning Tenant's or Sublessee's use of the Premises and the common areas of the Building and its grounds. Landlord shall not have any obligation to monitor or enforce Tenant's or Sublessee's parking rights. Except for the gross negligence or willful misconduct of Landlord, neither Landlord nor its operators, agents, servants, licensees or employees shall be liable for: (i) loss or damage to any vehicle or other personal property parked or located upon or within such parking spaces or any parking areas and whether caused by fire, theft, explosion, strikes, riots or any other cause whatsoever; or (ii) injury to or death of any person in, about or around such parking spaces or any parking areas or any vehicles parking therein or in proximity thereto whether caused by fire, theft, assault, explosion, riot or any other cause whatsoever and Tenant and Sublessee hereby waive any claim for or in respect to the above.

**8. Landlord's Representations.** Landlord represents to and covenants with Tenant that:

**a.** Landlord owns a leasehold interest in the Premises, subject to no liens except for (1) any liens which Landlord has previously disclosed to Tenant and (2) assessments for the current year and subsequent years, not yet due and payable;

**b.** Landlord has obtained all consents or approvals which Landlord may require from any and all third parties or governmental agencies and as needed to fulfill its obligations to Tenant and Sublessee under this Lease;

**c.** There are no agreements, restrictions, restrictive covenants or the like, whether of record or not, to which Landlord is a party or which would affect the Building or the Premises

and Tenant's quiet and peaceful possession thereof, which would in any way prohibit or restrict Tenant's proposed use of the Building and the Premises;

**d.** As of the Commencement Date, Tenant's proposed use of the Premises is permitted under all applicable land use laws, ordinances, bylaws and regulations.

**9. Waiver of Claims; Insurance; Subrogation; Indemnity.**

**a. Waiver of Claims.** To the extent permitted by law, Tenant waives any claims it may have against Landlord or its members, managers, officers, directors, employees or agents for business interruption or damage to property sustained by Tenant or Sublessee as the result of any act or omission of Landlord, absent gross negligence or any intentional act or omission.

**b. General Provisions of Insurance.** All insurance policies required to be maintained hereunder shall be procured from insurance companies rated at (A-/VII) or better by the then current edition of Best's Insurance Reports published by A.M. Best Co. and licensed to do business in the State of Montana. All policies shall provide that they shall not be canceled or materially changed without at least providing thirty (30) days prior written notice to the other party. Liability insurance limits may be provided through any combination of primary and/or excess insurance policies.

**c. Landlord's Insurance.**

**i.** Landlord shall maintain All Risk Property Insurance upon the Building and building improvements owned by Landlord. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement and debris removal coverage.

**ii.** Landlord shall maintain Commercial General Liability Insurance, including Contractual Liability Insurance coverage, covering the Property and Landlord's operations with combined single limits of not less than \$2,000,000.00 per occurrence for bodily injury or property damage.

**d. Tenant's Insurance.**

**i.** Tenant shall maintain Commercial General Liability Insurance, covering Tenant's operations within the Premises with combined single limits of not less than \$750,000.00 for each claimant and \$1,500,000.00 per occurrence for bodily injury or property damage, naming Landlord and Landlord's lender as additional insureds. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by Landlord, and shall contain a severability of interest clause.

**ii.** Sublessee shall bear the expense of any insurance insuring the property of Sublessee on the Premises, and on its personal property and tenant improvements, against such risks.

**e. Property Waiver of Subrogation.** Landlord and Tenant hereby waive and release any and all right of recovery against the other, including employees and agent (whether in contract or tort), arising during the Term for any and all loss of or damage to any property located within or constituting part of the Building or the Premises (whether or not the party

suffering the loss or damage actually carries any insurance, recovers under any insurance or self-insures the loss or damage) resulting from loss of or damage to any such property by reason of an insured casualty loss. Landlord and Tenant shall each have their insurance policies issued in such form as to waive any right of subrogation as might otherwise exist. This mutual waiver is in addition to any other waiver or release contained in this Lease.

**f. Indemnity.**

**i.** Subject to the provisions of Section 9.e above and 9.f.ii, below, Landlord shall protect, defend, indemnify and hold Tenant harmless from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities except for those caused by the intentional misconduct or gross negligent acts or omissions of Tenant, Sublessee, contractors, agents and invitees, arising out of or relating to injury to any person or loss of or damage to property which occurs on or in the Building excluding the Premises.

**ii.** Subject to the provisions of Section 9.e and 9.f.i, above, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all claims, damages, losses, liens, judgments, penalties, expenses (including reasonable attorneys and consultants fees), and/or liabilities except for those caused by the intentional misconduct or gross negligent acts or omissions of Landlord, arising out of or relating to injury to any person or loss of or damage to property which occurs in the Premises.

**iii.** The indemnities set forth in this Section shall survive the expiration or earlier termination of this Lease.

**10. Repairs and Maintenance**

**a. Landlord's Obligations.** The following shall be the responsibility of Landlord to perform:

**i.** Repairs and maintenance of the roof and gutters, exterior walls (including painting), bearing walls, structural members, floor slabs, and foundation.

**ii.** Repair and maintenance (including snow removal) of sidewalks, driveways, curbs, parking areas, and areas used in common by Landlord, Tenant, and Sublessee.

**iii.** Repair and maintenance of exterior water, sewage, gas, and electrical services up to the point of entry to the leased Premises.

**iv.** Repair of the heating and air conditioning system.

**v.** Striping of the parking lots, landscape maintenance and common area maintenance.

**vi.** All other repairs to the Premises that Tenant or Sublessee are not required to make under Section 10.b below.

**b. Tenant's Obligations.** The following shall be the obligation of Tenant:

**i.** Repair and maintain all interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing in good order and condition of the Premises; provided, however, such repairs are not made necessary through the gross negligence or willful misconduct of Landlord or its agents.

**ii.** Any repairs necessitated by the gross negligence of Tenant or Tenant's Sublessee, its employees, and invitees, except as provided in Section 9.e dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 10.a.

**iii.** Any other repairs and maintenance to maintain the Premises in its condition as of the Commencement Date, loss or damage caused by the elements, ordinary wear and tear and fire and other casualty excluded.

**c. Landlord's Interference with Tenant or Sublessee.** In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with the use of the Premises by Tenant or Sublessee. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

**d. Inspection of Premises.** Landlord shall have the right to inspect the Premises at any reasonable time or times without giving advance notice to determine the necessity of repair, maintenance or compliance with this Lease. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant or Sublessee written notice of the repairs that are required.

## **11. Improvements; Alterations.**

**a. Initial Alterations.** Tenant, through the Missoula Redevelopment Agency, is providing Two Hundred and Ninety-Eight Thousand Three Hundred and No/100 Dollars (\$298,300.00) in tax increment financing to Landlord for the purpose of (i) construction of the interior of the Premises, including, without limitation, interior walls, commercial grade carpet and other interior finishes; and (ii) certain furnishings and educational exhibits to be used in Sublessee's operations. Landlord shall be responsible for all construction activities and installation of furnishings and educational exhibits.

**b. Additional Alterations Prohibited.** Except as otherwise set forth in Section 11.a, neither Tenant nor Sublessee shall make additional improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent, which shall not be unreasonably withheld. All improvements and alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

**c. Ownership and Removal of Alterations.** All improvements and alterations performed on the Premises by either Landlord or Tenant shall be conveyed with the Premises when and if Tenant purchases the Premises as set forth herein. If Tenant does not exercise its option to purchase the Premises or such option is terminated by Landlord, all improvements and alterations shall be Property of Landlord and neither Tenant nor Sublessee shall have any right to remove such improvements or alternations.

## **12. Taxes; Utilities**

**a.** Landlord, Tenant and Sublessee are tax-exempt entities.

**b. Payment of Utilities Charges.** Landlord shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including but not limited to charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning and janitorial services; *provided, however*, Tenant or Sublessee shall pay all utility charges associated with telephone, internet, cable and television in the Premises only. If any of telephone, internet, cable or television services are provided by or through Landlord, Tenant or Sublessee shall reimburse Landlord for Tenant's or Sublessee's pro rata share of such charges based on the square feet of the Premises in relation to the square feet of the remainder of the Building receiving such services through Landlord.

### **13. Damage and Destruction.**

**a. Partial Damage.** If the Premises are partly damaged and Section 13.b does not apply, and the damage was not due to Tenant's or Sublessee's actions or omissions, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord.

**b. Destruction.** If the Premises are destroyed or damaged such that the cost of repair exceeds twenty-five (25%) of the value of the Premises before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than forty-five (45) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Landlord shall reimburse in full all tax increment financing provided through the Missoula Redevelopment Agency, described under Section 11.a. If neither party elects to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

### **14. Eminent Domain**

**a. Partial Taking.** If a portion of the Premises is condemned and Section 13.b does not apply, the Lease shall continue on the following terms:

**i.** Landlord shall be entitled to all of the proceeds of condemnation, and shall reimburse a percentage of the tax increment financing provided through the Missoula Redevelopment Agency described under Section 11.a, that is commensurate with the percentage of the portion of the Premises that has been condemned.

**ii.** Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

**iii.** After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking.



**b. Total Taking.** If a condemning authority takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Landlord under Section 18.a. Landlord shall be entitled to all of the proceeds of condemnation, and shall reimburse in full all tax increment financing provided through the Missoula Redevelopment Agency, described under Section 11.a.

**c. Sale in Lieu of Condemnation.** Sale of all or part of the Premises by Landlord to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 14 as a taking by condemnation, and Landlord shall reimburse in full all tax increment financing provided through the Missoula Redevelopment Agency, described under Section 11.a

**15. Liens.** (i) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost from Tenant. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default. (ii) Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**16. Attornment.** Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Property, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease provided such purchaser expressly assumes all of the Landlord's obligations hereunder in writing. If this should occur, the Landlord shall immediately reimburse in full all tax increment financing provided through the Missoula Redevelopment Agency, described under Section 11.a.

**17. Default.** The following shall be events of default:

**a. Default in Other Covenants.** Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity shall constitute a default of the Lease. If the default is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Tenant begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable, but in no event more than ninety (90) days after written notice is received by Tenant.

**18. Remedies on Default**

**a. Termination.** In the event of a default the Lease may be terminated at the option of Landlord by written notice to Tenant. Should the Landlord terminate the Lease, the Landlord shall immediately reimburse in full all tax increment financing received from the Missoula Redevelopment Agency, described under Section 11.a; provided, however, if the Tenant terminates the lease, abandons the Premises or otherwise no longer occupies the Premises under this Lease (notwithstanding the Tenant's purchase of the Premises), Landlord shall have no obligation to reimburse any portion of the tax increment financing received from the Missoula Redevelopment Agency

**b. Reletting.** Landlord may relet the Premises only upon full reimbursement of tax increment financing to the Missoula Redevelopment Agency, described under Section 11.a.

**c. Landlord's Right to Cure Defaults.** If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after thirty (30) days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

**d. Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

**19. Holdover During Acquisition Period or Upon Failure to Exercise Option.** During the acquisition period, or if Tenant fails to exercise the option to purchase set forth in Section 4, above, Landlord shall have the option to treat Tenant as a tenant in six month (6 month) increments, subject to all of the provisions of this Lease except the provisions for term, or to eject Tenant from the Premises. Should Landlord eject Tenant from the Premises, Landlord shall reimburse in full all tax increment financing received from the Missoula Redevelopment Agency, described under Section 11.a.

**20. Successors and Assigns.** This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors, and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been consented to by Landlord or as permitted by this Lease.

**21. Nonwaiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**22. Attorney Fees.** If any legal action or any other dispute, is brought or raised for the enforcement of this Lease or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or dispute, including appeals, in addition to any other relief to which the prevailing party may be entitled. "Prevailing party" shall include without limitation: (i) a party dismissing an action or dispute in exchange for sums allegedly due; (ii) a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action or dispute; or (iii) the prevailing party as determined by a court of law.

**23. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in United States mail as certified

mail addressed to the address first given in this Lease or to such other address as may be specified from time to time by either of the parties in writing.

**24. Recordation.** This Lease shall not be recorded without the written consent of Landlord *provided that*, Tenant or Landlord shall have the right to record a Memorandum of Lease in the real estate records of Missoula County, Montana, providing notice of Tenant's rights hereunder, specifically including Tenant's right to possession and the option to purchase granted hereunder.

**25. Time of Essence.** Time is of the essence of the performance of each of Tenant's obligations under this Lease.

**26. Entire Agreement.** This Lease shall be combined with i) Development Agreement Between Missoula Food Bank and Missoula Redevelopment Agency, dated \_\_\_\_\_, 2017, and ii) Sublease Between City of Missoula and University of Montana, dated \_\_\_\_\_, 2017, to constitute the entire agreement for the Premises. These combined documents set forth all the promises, agreements, conditions, and understandings between Landlord, Tenant, and Sublessee relative to the Property, Building and/or Premises, and there are no promises, agreements, conditions, or understandings, either oral or written, expressed or implied, except as set forth in these documents. Except as herein otherwise provided, no subsequent alterations, amendment, change, or additions to these documents shall be binding upon Landlord, Tenant, or Sublessee unless reduced to writing and signed by Landlord, Tenant and Sublessee.

**27. Construction of Agreement.** This Lease shall be constructed under the laws of the state in which the Premises are located. All headings preceding the text of the several provisions and sub provisions are inserted solely for convenience of reference and none of them shall constitute a part of this Lease or affect its meaning, construction, or effect.

**28. Severability.** If any term, provision, condition or covenant contained in this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, or be held to be invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, the application of such term, provision, condition or covenant to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and all such remaining terms, provisions, conditions and covenants in this Lease shall be deemed to be valid and enforceable.

**29. Arbitration.** If any dispute arises between the parties, either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of the choosing of the prior arbitrator, then either party may apply to the Fourth Judicial District for the State of Montana, Missoula County to appoint the required arbitrator. The arbitrator shall proceed according to the Montana statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

**30. Subordination.** Subject to Landlord's performance of the obligations to Tenant as set forth in this Section 30, Tenant agrees that, the rights of Tenant under this Lease shall be and

are subject and subordinate to the lien of any bank or institutional mortgage or mortgages now or hereafter in force against the Premises, which shall expressly be deemed to include MFB Sub CDE, LLC, a Montana limited liability company, its successors and assigns, or upon any buildings now existing or hereafter placed upon the Property of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof. Should Landlord allow the Building to be foreclosed on by any default on any lien of any bank or other lending institutional mortgage, Landlord shall immediately reimburse in full all tax increment financing received from the Missoula Redevelopment Agency, described under Section 11.a.

**31. Subject to Ground Lease and Sublease.** This Lease is subject to all of the terms, covenants, and restrictions (including without limitation the use restrictions) contained in that certain Ground Lease by and between Landlord, as landlord and Missoula Food Bank QALICB, a Montana nonprofit public benefit corporation as tenant (the “**Ground Lease**”) and that certain Sublease by and between Landlord, as tenant and Missoula Food Bank QALICB, a Montana nonprofit public benefit corporation, as landlord (the “**QALICB Sublease**”). To the extent a term or condition in this Lease conflicts with a term or condition of the Ground Lease or the QALICB Sublease, the Ground Lease or QALICB Sublease, respectively, shall apply. Likewise, in no event shall Landlord exercise any right to terminate the QALICB Sublease, so long as this Lease remains in effect.

**32. Counterparts.** This Lease may be executed in multiple counterparts, and each counterpart, when fully executed and delivered, shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument.

***[Signature page follows]***

**SIGNATURE PAGE  
TO  
LEASE  
(with Option to Purchase)**

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Lease to be executed in their names by their duly authorized officers as of the Effective Date.

**LANDLORD:**

**TENANT:**

**Missoula Food Bank, Incorporated**

**City of Missoula**

By: \_\_\_\_\_  
Name: Aaron Brock  
Its: Executive Director

By: \_\_\_\_\_  
Name: John Engen  
Its: Mayor

STATE OF MONTANA     )  
  ) ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ known to me personally (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

(Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

STATE OF MONTANA     )  
  ) ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ known to me personally (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

(Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION AND PREMISES DEPICTION**





# EXHIBIT A



**Mike Kadas**  
Director

## Montana Department of Revenue



**Steve Bullock**  
Governor

October 21, 2016

Missoula Food Bank  
219 S 3<sup>rd</sup> St W  
Missoula MT 59801

**RE: Property Tax Exemption**  
**Application Number: 0403416**  
**Property ID: 04-2200-20-1-08-01-0000**

**County: Missoula**

**Property Legal Description: Lot 13B Amended Plat of Riverside Addition,  
Block 15 Lots 1 & 2 and 13A**

Dear Applicant:

Processing has been completed on the above referenced application and an exemption is hereby granted in accordance with Part 2, Chapter 6, Title 15 M.C.A., as amended. Exempt status continues so long as the statute and the circumstances set forth in the above referenced application remain unchanged. If circumstances do change, please notify the Department immediately to prevent jeopardizing future applications.

### **Effective: Tax Year 2016 for Charitable**

Please include the application number listed above, for any correspondence regarding this exemption. If you have any questions, feel free to contact me at (406) 444-5698.

Very truly yours,

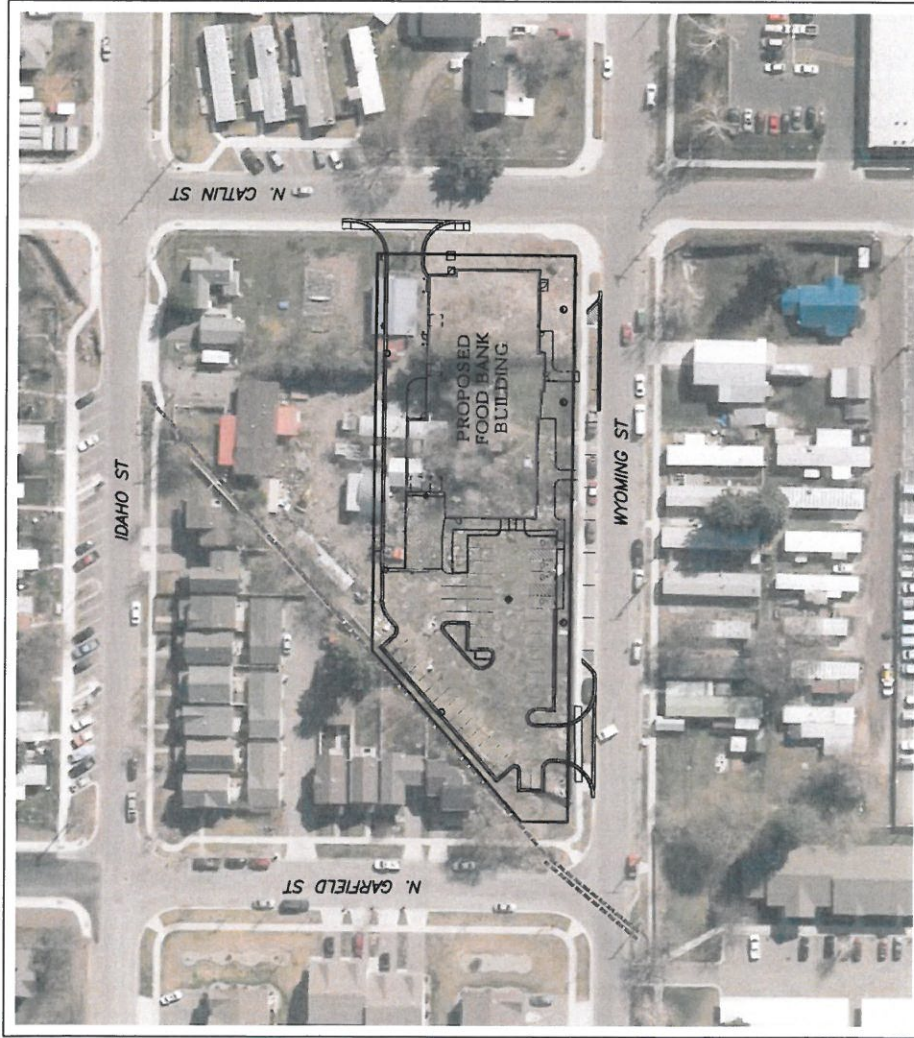
Linda Sather, Management Analyst  
Property Assessment Division

\* This is a final decision of the Department of Revenue. You have the right to appeal this decision to the State Tax Appeal Board (within 30 days of the date of this letter).

**AB-32 Rev. 4/12**

# CIVIL CONSTRUCTION PLANS

NEW CONSTRUCTION FOR THE MISSOULA FOOD BANK  
LOCATED IN SECTION 20, T13N, R19W, P.M.M., MISSOULA COUNTY, MONTANA.



## EXHIBIT A



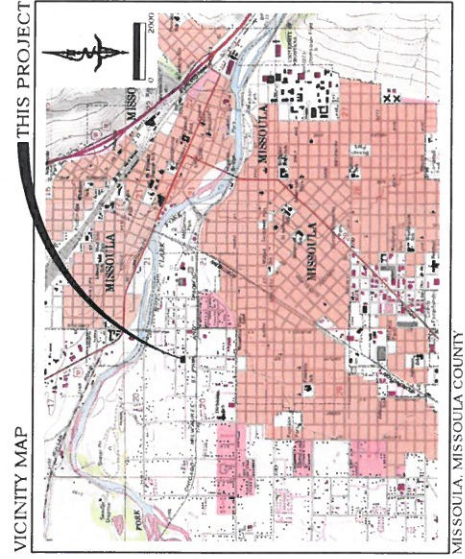
CALL UTILITY NOTIFICATION  
CENTER OF MONTANA  
1-800-424-5555

CALL 48 HOURS BEFORE  
ANY EXCAVATION OR  
UNDERGROUND UTILITIES  
ARE TO BE LOCATED



### SHEET INDEX

DESCRIPTION	SHEET NO.
LEGEND AND NOTES	C1.1
PROPOSED BUILDING	C1.2
GRADING AND DRAINAGE PLAN	C1.3
DETAIL SHEET	C1.4
DETAIL SHEET	C1.5
DETAIL SHEET	C1.6



**EXHIBIT B**  
**RESTRICTIVE COVENANTS**





After Recording Return to:  
Missoula Food Bank, Inc.  
219 S. 3<sup>rd</sup> St. West  
Missoula, MT 59801

## **DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY**

THIS DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY (Restrictive Covenants) is made by the Missoula Food Bank, Inc. as of June 7, 2016.

### **RECITALS**

WHEREAS, the Missoula Food Bank, Inc. is the owner of certain real property, referred to herein as the "Subject Property", located at 1720 Wyoming Street, Missoula County, Montana, more particularly described as:

Riverside Addition, Section 20, Township 13 North, Range 19 West, Lot 13B, 49527 square feet of Riverside Addition, Block 15, of Lots 1, 2, and 13A.

WHEREAS, the Missoula Food Bank, Inc., conducted remediation on the Subject Property to address hazardous or deleterious substances using an Environmental Protection Agency (EPA) Brownfields Grant; however, within the Subject Property, there are remaining areas with identified soil vapor contamination from air phase petroleum hydrocarbons (APH) and volatile organic compounds (VOCs) that have the potential for vapor intrusion if a structure were constructed in those areas;

WHEREAS, the Missoula Food Bank, Inc., is restricting use of the Subject Property in order to mitigate the risk to public health, safety, or welfare or the environment as provided for in § 75-10-727, MCA;

NOW, THEREFORE, the Missoula Food Bank, Inc. hereby declares and agrees:

1. The Missoula Food Bank, Inc. will install a vapor mitigation system that has been designed and approved by a Montana licensed professional engineer below the foundation pad on any and all structures constructed on the Subject Property. The Missoula Food Bank, Inc. will ensure that any and all vapor mitigation systems have an

integral alarm system to notify the occupants of the building that the system is not working.

2. The Missoula Food Bank, Inc. will test the vapor mitigation system upon completion of construction and upon pressurization of any and all buildings to ensure that there are no APH or VOCs entering the indoor air in any building. Testing will include vapor samples from the vapor mitigation system collection pit below the slab and from multiple locations within the building. Test results will be transmitted directly from the testing agency to the EPA Brownfields Program and the Missoula City/County Health Department.
3. The Missoula Food Bank, Inc. will operate and maintain the vapor mitigation system(s). All ongoing operation and maintenance expenses of the soil vapor mitigation system are the responsibility of the Missoula Food Bank, Inc. The Missoula Food Bank, Inc. will establish and maintain a specific capital reserve account that is adequate to operate and maintain the vapor mitigation system.
4. If the Missoula Food Bank, Inc. conveys its interest in all or any portion of the Subject Property, it must continue to maintain and operate the vapor mitigation system(s) in compliance with these covenants, including but not limited to establishment of a specific capital reserve account that is adequate to operate and maintain the vapor mitigation system.
5. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of hazardous or deleterious substances or a potential hazard to public health, safety, or welfare or the environment.
6. At all times after the Missoula Food Bank, Inc. conveys its interest in all or any portion of the Subject Property and no matter what person or entity holds title to or is in possession of the Subject Property, the Missoula Food Bank, Inc. shall retain the right to enter the Subject Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Restrictive Covenants contained herein and to maintain and monitor the vapor mitigation system(s). If the Missoula Food Bank, Inc. conveys all or any portion of its interest in the Subject Property, it retains the right and obligation to comply with and enforce these Restrictive Covenants.
7. The provisions of this Declaration governing these use restrictions and requirements of the Subject Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of all or any portion of the Subject Property. These restrictive covenants apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall include these Restrictive Covenants, unless or until they are removed or revised in accordance with § 75-10-727, MCA.
8. The Missoula Food Bank, Inc. shall cause the requirements of these Restrictive Covenants to be placed in all instruments that convey an interest in the Subject Property

and shall file this document with the Missoula County, Montana, clerk and recorder.

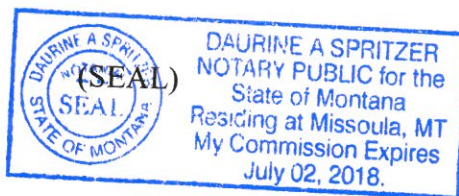
IN WITNESS WHEREOF, the Montana Food Bank, Inc. has executed this Declaration of Restrictive Covenants on Real Property as of the first date written above.

By: *aBane*

State of Montana                     )  
  :SS.  
County of Missoula                )

On this 7 day of June 2016, personally appeared Aaron Brock, before me, a Notary Public for the State of Montana, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he is authorized to and did execute the same, as a duly authorized representative of the Montana Food Bank, Inc., the owner of the property being restricted here.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.



*Daurine A Spritzer*  
NOTARY PUBLIC FOR THE STATE OF MONTANA  
Residing at MISSOULA  
My Commission Expires: 07-02-18