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9 **IN THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT**
10 **FLATHEAD COUNTY, STATE OF MONTANA**

11 COLUMBIA FALLS COMMUNITY,
12 MARKET, a Montana nonprofit corporation,

13 Plaintiff,

14 -vs-

15 O'BRIEN BYRD, individually and d/b/a, THREE
16 THREE BYRD'S PROPERTIES, LLC, a Montana
17 limited liability company, NORTH FORK INTUITION,
18 LLC, Montana limited liability company,
19 and JOHN DOES 1-100,

20 Defendants.

21 Cause No.: DV-23-_____

22 Hon. _____

23 **COMPLAINT AND**
24 **DEMAND FOR**
25 **JURY TRIAL**

26 For its Complaint, the Columbia Falls Community Market, LLC, alleges as
27 follows:

28 **Jurisdiction & Venue**

1. Plaintiff, Columbia Falls Community Market, Inc., (CFC Market) is a Montana nonprofit corporation, located and conducting business in Flathead County, Montana.
2. O'Brien Byrd (Byrd) lives and resides in Flathead County, Montana.

- 1 3. Three Byrd's Properties, LLC, (TBP) is a Montana limited liability company,
2 located and conducting business in Flathead County, Montana.
- 3 4. North Fork Intuition, LLC, (NFI) is a Montana limited liability company located
4 and conducting business in Flathead County Montana.
- 5 5. The leasehold real property which is the subject of this action is located in
6 Flathead County, Montana.
- 7 6. The tortious actions in this matter occurred within the jurisdictional limits of
8 Flathead County, Montana.
- 9 7. The contract for the leasehold which is the subject of this action was entered into
10 and performed Flathead County, Montana.
- 11 8. Other individuals and/or entities that may share in liability and whose identities
12 are currently unknown and have been identified as JOHN DOES 1-100. If and
13 when the identity of any party and/or entity that may share in the liabilities
14 discussed herein is discovered, CFC Market may move to amend its Complaint
15 and Demand for Jury Trial to specifically identify such persons or entities.
- 16 9. JOHN DOES 1-100 are named as Defendants pursuant to Mont. Code Ann. §25-
17 5-103 (2021) in the event discovery reveals, after the statute of limitations
18 expires, that persons and/or entities are responsible to CFC Market for some or
19 all of the causes of action set forth in this Complaint and Demand for Jury Trial.
- 20 10. Venue is therefore proper. §25-2-117, §§25-2-121 – 25-2-123 MCA.

General Allegations

- 25 11. CFC Market re-alleges and incorporates by reference the facts contained in
26 Paragraphs 1 through 10 hereinabove as though specifically stated herein
27
28

1 12. CFC Market operates a community market at which local farmers, food
2 producers, artists, and craftsmen to sell their products from CFC's market stalls.
3 The CFC Market is host to community events supporting civic groups, promoting
4 Flathead Valley businesses, and offers a gathering place for live music &
5 entertainment.
6

7 13. The weekly market event is held Thursdays evenings throughout the summer
8 from 5:00 p.m. until twilight, beginning in May at the "Co-op," 830 First Avenue
9 West, Columbia Falls, Montana between May and October yearly.

10 14. CFC Market has leased the Co-op and adjoining real property from Byrd and his
11 real estate entities since 2015.

12
13 15. On or about March 28, 2022, CFC Market renewed its lease to operate the
14 market at the Co-op with Defendant NFI at the request of Defendant Byrd. Byrd
15 owns membership interests in NFI and TBP. Byrd, NFI and TBP (NFI, *et al*) are
16 one and the same entity.

17 16. NFI, *et al*, leased CFC Market the Co-op, parking (including nonexclusive
18 parking in front of O'Brien's Liquor Store) and vendor spaces associated
19 therewith located 830 1st Avenue West, Columbia Falls, Montana 59912" for
20 which NFI provided the legal description of,
21

22 PARCEL 1

23 LOTS 4 AND 5 OF BLOCK 59 OF COLUMBIA FALLS, MONTANA,
24 ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF
25 RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF
26 FLATHEAD COUNTY, MONTANA.

27 TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS
28 DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5,
1987, AS DOC. NO. 87-309-14110, RECORDS OF FLATHEAD
COUNTY, MONTANA.

1 PARCEL 2:

2 LOT 10 OF THE AMENDED PLAT OF LOTS 6 THROUGH 10 OF BLOCK
3 59 OF COLUMBIA FALLS, MONTANA, ACCORDING TO THE MAP OR
4 PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE
CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

5 TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS
6 DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5, 1987, AS
7 DOC. NO. 87-309-14110, RECORDS OF FLATHEAD COUNTY, MONTANA

- 8 17. The lease including the color exhibit delineating the property leased is attached
9 and incorporated herein as Exhibit "1."
- 10 18. The term of the lease was five years, including a "grant unto CFCM the
11 exclusive right and option to renew this Lease for a further term of five (5) years."
- 12 19. In April 2023, NFI, *et al*, presented CFC Market with an Amended and Restated
13 lease, a copy of which is attached and incorporated herein as Exhibit "2."
- 14 20. In addition to adding Three Byrd's Properties, LLC, as a party landlord, the
15 amended lease changed the legal description of premises leased while
16 continuing to describe the premises "all of the Coop, parking, and vendor spaces
17 associated therewith located 830 1st Avenue West, Columbia Falls, Montana
18 59912.
- 19 21. The legal description for the leasehold premises in NFI, *et al*,'s amended lease
20 was:
21
22

23 PARCEL 1

24 LOTS 4 AND 5 OF BLOCK 59 OF COLUMBIA FALLS,
25 MONTANA, ACCORDING TO THE MAP OR PLAT
26 THEREOF ON FILE AND OF RECORD IN THE OFFICE
OF THE CLERK AND RECORDER OF FLATHEAD
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11 ORDINANCE NO. 501, RECORDED NOVEMBER 5,
12 1987, AS DOC. NO. 87-309-14110, RECORDS OF
13 FLATHEAD COUNTY, MONTANA.

14 22. On August 8, 2023, TBP leased the physical real estate located at 129 9th St.
15 West (Parcel 1 of CFC Market's leasehold) and 118 8th St. W., Columbia Falls, to
16 Johnathan D. Schockey.

17 23. On November 30, 2022, NFI, *et al*, filed a boundary line adjustment removing
18 the Co-op building and its paved lot from the Market's leasehold property and
19 attaching it to the property abutting to the north and leased to Shockey-i.e. 118
20 8th St. W., Columbia Falls, Montana.

21 **Count One**
22 **(Breach of Contract)**

23 24. CFC Market re-alleges and incorporates by reference the facts contained in
24 Paragraphs 1 through 23 as though specifically stated herein.

25 25. On or about April 26, 2023, CFC Market gave written notice to NFI that it would
26 not amend its lease and gave notice that it would commence market
27 preparations and operation as provided in its March 2022 lease.

28 26. On May 18, 2023, NFI failed to deliver possession to the leasehold premises,
specifically failing to deliver possession of the Co-op and the real estate
associated therewith.

- 1 27. NFI has breached its lease obligations to CFC Market causing proximate general
2 and special damages in an amount to be proven at trial.
- 3 28. CFC Market contracts with sponsors for each market season. These “Market
4 Partners” commitments are based upon the leasehold containing the Co-op. For
5 the 2023, BNSF, Weyerhaeuser, Logan, Health, NOMAD GCS, PURSUIT,
6 Christies Pure West Realty, VFW Post 276, Columbia Falls Estate Planning,
7 Kalispell Auto Group, Bish’s RV, and Freedom Bank, Columbia Falls, Montana
8 contracted for sponsorship which are acknowledged in the Co-op. All loss of
9 corporate sponsorships, donors, refunds and reimbursement of the same are
10 proximately caused by Defendants’ conduct.

11
12
13 **COUNT II**
14 **(Breach of Covenant of Good Faith and Fair Dealing)**

- 15 29. CFC Market realleges and incorporates by reference the facts contained in
16 Paragraphs 1 through 28 above as if specifically stated herein.
- 17 30. The commercial lease agreement between CFC Market and NFI includes an
18 implied covenant of good faith and fair dealing that neither party would do
19 anything which would injure the right of the other party to receive the benefits of
20 the lease agreement.
- 21 31. NFI, *et al*, breached the implied covenant of good faith and fair dealing by their
22 refusal to provide peaceful possession of the Co-op leasehold premises to CFC
23 Market and leasing the same to a third-party.
- 24 32. As a direct and proximate result of NFI, *et al*,’s breaches of the implied covenant
25 of good faith and fair dealing, CFC Market has sustained general damages and
26 special damages in an amount to be proven at trial.
27
28

COUNT III
(Intentional and Negligent Misrepresentation)

33. CFC Market realleges and incorporates by reference the facts contained in Paragraphs 1 through 31 above as if specifically stated herein.

34. In March 2022, NFI, *et al*, leased CFC the real property described as LOTS 4 AND 5 OF BLOCK 59 OF COLUMBIA FALLS, MONTANA, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA, representing that it had the right to do so.

35. NFI, *et al*, 's representations to CFC Market of the right to rent the Co-op described in the March 2022 were false or rendered false by their subsequent actions.

36. NFI, *et al*, 's representations were material as CFC Market would not have entered the March 2022 lease absent their representations and omissions about the rental of the leasehold premises.

37. NFI, *et al*, made their representations and omissions about leasehold premises without reasonable grounds for believing the representations to be true and knew or should have known they had no right to lease the property, change the legal description and rent the Co-op to another.

38. NFI, *et al*, made the representations and omissions intending CFC Market to rely on the representations in their lease of the Co-op and associated real property.

39. CFC Market was ignorant of the truth of NFI, *et al*, 's right to lease the Co-op and associated property. CFC Market was unaware of NFI, *et al*, 's misrepresentations regarding their lease rights to Co-op and associated realty until NFI, *et al*, attempted to amend the March 2022 lease.

1 40. CFC Market relied on the truth of NFI, *et al*, 's representations and omissions
2 when leasing the Co-op property represented to by 830 1st Ave W., Columbia
3 Falls, Montana.

4 41. CFC Market was justified in relying on NFI, *et al*, 's representations and
5 omissions regarding the Co-op leasehold, having previously leased the identical
6 premises from Byrd and TBP.

7
8 42. As a direct and proximate result of NFI, *et al*, 's negligent and intentional
9 misrepresentations, CFC Market has sustained general damages and special
10 damages in an amount to be proven at trial.

11
12 **COUNT V**
13 **(Actual Fraud)**

14 43. CFC Market realleges and incorporates by reference the facts contained in
15 Paragraphs 1 through 42 above as if specifically stated herein.

16 44. Prior to directing CFC Market to renew its Co-op lease with NFI and the signing
17 the lease agreement, NFI, *et al*, were aware of NFI's lack of right to lease the
18 property and change of the legal description of the Co-op removing the building
19 from the March 2022 lease.

20 45. NFI, *et al*, were aware that the lack of lease right, and change in legal
21 description, would result in loss of the lease or reduction of the rental.

22 46. NFI, *et al*, 's representations were of the extent of the leasehold premises were
23 false and known to be false as Byrd owns membership interests in both NFI and
24 TBP.

25
26 47. CFC Market would not have leased the premises or leased the premises for the
27 price negotiated without the representation of the entire leasehold.

28 48. NFI, *et al*, knew the representations omissions were false when made.

1 49. NFI, *et al*, intended CFC Market to rely on their representations and omissions
2 in negotiating and executing the lease agreement

3 50. CFC Market was ignorant of the true circumstances and condition of the
4 leasehold rights and premises and did not discover the intentional
5 misrepresentations and change in legal description excluding the Co-op until
6 April 2023 when NFI/TBP demanded an amended and restated lease.
7

8 51. CFC Market relied on the truth of NFI, *et al*,’s representations and omission in
9 entering the March 2022 lease.

10 52. CFC Market was entitled to rely on NFI, *et al*,’s representations and omissions
11 leasing the Co-op.
12

13 53. As a direct and proximate result of NFI, *et al*,’s representations, CFC Market has
14 sustained general damages and special damages in an amount to be proven at
15 trial.

16 54. NFI, *et al*,’s misrepresentations, acts and omissions were made under conditions
17 constituting actual fraud as they possessed knowledge of facts, or intentionally
18 disregarded facts, that created a high probability of injury to CFC Market by their
19 conduct.
20

21 55. The Court should impose punitive damages for the sake of example and to
22 punish NFI, *et al*,’s for their conduct.
23

24 **COUNT V**
(Declaratory Judgment)

25 56. CFC Market realleges and incorporates by reference the facts contained in
26 Paragraphs 1 through 55 above as if specifically stated herein.

27 57. CFC Market is a person under the Montana Uniform Declaratory Judgment Act,
28 Mont. Code Ann. § 27-8-101, *et. seq.*, whose rights or other legal duties and

1 relations are affected by NFI, et al's, and John Does 1- 100 actions and
2 interpretation and actions taken in relation to the March 2022 Commercial Lease,
3 alteration of the legal description and re-letting of the Co-op, entitling them to
4 have the Court determine questions of construction or validity arising under the
5 March 2022 Commercial Lease and to obtain a declaration of rights, status or
6 other legal relations thereunder.
7

8 58. CFC Market is entitled to a declaratory judgment and equitable relief from NFI, et
9 al's, and John Does 1- 100 unlawful and baseless interference with CFC rights at
10 law and in equity to have possession and use of the Co-op and associated realty
11 for operation of the community market.
12

13 59. The Court should enter an order granting CFC Market access to and possession
14 of the leasehold premises from 7:00 through close and clean up of the market
15 every Thursday between April 1 and October 1 for balance of the lease term and
16 to bear the damages, cost and expenses of obtaining control of the leasehold.
17

18 60. Under the make whole policy of the UDJA, the Court should order NFI, O'Brien
19 Byrd's, TBP's and John Does 1-100 to pay CFC Market's reasonable attorneys'
20 fees and costs under the supplemental relief provisions of the UDJA.
21

22 **COUNT VI**
23 **(Attorneys' Fees)**

24 61. CFC Market hereby incorporates by reference the facts contained in Paragraphs
25 1 through 60 as though specifically stated herein.
26

27 62. CFC Market is entitled to recover its costs and reasonable attorney fees of
28 bringing and pursuing this action as allowed by Montana law, statutory,
contractual or otherwise.

1 63. CFC Market has incurred, and will continue to incur, attorney fees and costs
2 pursuing and defending its rights through entry and collection of judgment in full.

3 64. The proximately caused damages in this matter are sums certain or sums that
4 can be made certain, entitling CFC Market to prejudgment interest.
5

6 **WHEREFORE PLAINTIFF, THE COLUMBIA FALLS COMMUNITY MARKET,**
7 **INC., PRAYS FOR RELIEF AS FOLLOWS:**

8 65. For possession of the leasehold premises including the “Co-op” building as
9 provided in the March 2022 Commercial Lease with NFI;

10 66. For proximate damages arising from the Defendants’ breaches of contract,
11 implied covenants of good faith and fair dealing, negligent or intentional
12 misrepresentation and/or actual fraud, and other tortious conduct;
13

14 67. For imposition of punitive damages;

15 68. For attorneys’ fees;

16 69. For costs;

17 70. For such other relief as the Court deems necessary and proper under the facts
18 and circumstances of this matter.
19

20 **PLAINTIFF COLUMBIA FALLS COMMUNITY MARKET, INC.**
21 **DEMANDS A JURY TRIAL OF ALL ISSUES.**

22 Dated this 26th day of May 2023

23 LAW OFFICE OF CLIFTON W. HAYDEN

24 */s/ Clifton W. Hayden*

25 _____
26 Clifton W. Hayden,
27 Attorney for Plaintiff,
28 Columbia Falls Community Market, Inc.

EXHIBIT "1"

COMMERCIAL LEASE

THIS AGREEMENT is made and entered into this ___ day of March, 2022, by and between North Fork Intuition, LLC, 555 Walker Meadow Road, Whitefish, Montana 59937, a Montana limited liability company, hereinafter "NFI"; and Columbia Falls Community Market, Inc., P.O. Box 130070, Coram, Montana 59913, hereinafter "CFCM".

RECITALS

WHEREAS, NFI owns the real property and improvements located at 830 1st Avenue West, Columbia Falls, Montana 59912; and,

WHEREAS, CFCM is desirous of leasing the portion of the premises known as the "Co-op" for use as a community market along with related vendor and parking areas;

NOW, THEREFORE, in consideration of the terms, conditions and obligations to be performed, all as more particularly hereinafter set forth, the Parties agree as follows:

1. DESCRIPTION OF LEASED PREMISES.

NFI demises, leases and lets, and by these presents does demise, lease and let, unto CFCM all of the Co-op, parking (including nonexclusive parking in front of O'Brien's Liquor Store) and vendor spaces associated therewith located 830 1st Avenue West, Columbia Falls, Montana 59912, which is more particularly described, to wit:

PARCEL 1

LOTS 4 AND 5 OF BLOCK 59 OF COLUMBIA FALLS, MONTANA,
ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD

IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY,
MONTANA.

TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS
DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5, 1987, AS
DOC. NO. 87-309-14110, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 2:

LOT 10 OF THE AMENDED PLAT OF LOTS 6 THROUGH 10 OF BLOCK 59 OF
COLUMBIA FALLS, MONTANA, ACCORDING TO THE MAP OR PLAT
THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND
RECORDER OF FLATHEAD COUNTY, MONTANA.

TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS
DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5, 1987, AS
DOC. NO. 87-309-14110, RECORDS OF FLATHEAD COUNTY, MONTANA.

See Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the premises unto CFCM every Thursday from April 1
through October 30 each year for the term of this Lease, including renewals, if any, as
hereinafter set forth. Notwithstanding the foregoing, NFI shall retain exclusive
possession of the building currently occupied by O'Brien's Liquor and Wine, along with
four parking spaces located on the east side thereof. CFCM shall have possession of
the property beginning at 7:00 a.m. on each market Thursday during the season. CFCM
may use the personal property listed in Exhibit "B" attached and incorporate herein by
reference.

2. TERM.

The primary term of this Lease shall be for a period of five (5) years,
commencing on the 1st day of March, 2022, and ending on the 31st day of March, 2027.
Upon the expiration or sooner termination of this Lease, CFCM shall quit and surrender
the premises hereby demised and shall remove therefrom all fixtures and leasehold

improvements, except as otherwise stated hereinbelow. This Agreement may be terminated at any time by CMCF giving not less than fourteen (14) days written notice to the NFI, at which time rental will abate as of the date stated in the notice.

3. OPTION TO RENEW LEASE.

NFI hereby grants unto CFCM the exclusive right and option to renew this Lease for a further term of five (5) years, commencing at the expiration of the primary term, upon the same terms and conditions as herein provided, except that the Parties may renegotiate the amount of rent. To engage this option to renew, CFCM shall provide written notice of its intent to continue, directed to NFI at the address listed above, at least one hundred twenty (120) days prior to the expiration of the primary term of the Lease.

4. RENT TO BE PAID.

CFCM shall pay Three Hundred Fifty Dollars and no/100th's (\$350.00) rental for each Market Thursday CFCM uses the leased premises. Rental shall be mailed to 24 1st Ave. East, Kalispell, Montana 59901. CFCM shall collect a \$10.00 utility use fee from each vendor that connects to the Co-op's electricity for each market day of use by the vendor. CFCM shall pay to NFI said fees at the close of the market season in the fall.

5. NOTICES.

Any and all notices, requests or demands required hereunder shall be in writing and shall be delivered in person or sent by United States certified or registered mail, return receipt requested, to the addressed first listed hereinabove. Any such notice, request or demand shall be effective as of the date the same is mailed. The address of

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either party hereinabove set forth may be changed from time to time by giving written notice in that regard.

6. TAXES.

NFI agrees to pay all Flathead County taxes, including fire district levies, levied upon the real property during the term of the Lease. CFCM shall pay all personal property taxes assessed by Flathead County upon CFCM equipment and contents located or used upon the premises.

7. SAVE HARMLESS, INSURANCE & DESTROYED PREMISES.

A. Landlord

NFI shall maintain fire and extended coverage insurance upon the real property and improvements herein demised. NFI shall maintain its own insurance on the contents of the building and for the protection of its own property. If during the term of this Lease, the described premises are destroyed by fire or by the elements or if said premises are partially destroyed so as to render them unfit for use, NFI shall have the option of determining whether or not to repair and refurbish said premises and restore them to substantially the original condition. If NFI chooses not to repair or refurbish the building, then this Lease shall automatically and forthwith be terminated. If NFI elects to repair and refurbish said premises, then CFCM's use shall resume as soon as the building is repaired and ready for occupancy.

NFI shall hold CFCM harmless from any and all liability, damages or claims of damages of any nature or description for injuries arising out of or in connection with the operation of NFI's business or any other business upon the demised premises or arising from any violation of any national, state, county or municipal law or regulation by

NFI or any duty which may be owing by NFI to any person or any damage by reason of the condition of the premises or any equipment, furniture or fixtures therein or by reason of the operation or maintenance thereof or by reason of the condition of the sidewalks or parking areas adjacent thereto under the control of NFI or generally arising out of the condition or possession of the premises leased hereunder. In furtherance of the intent of this provision, NFI shall carry good and sufficient liability insurance to fully protect CFCM in the manner set forth in this paragraph, which said insurance shall provide coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) per person injured, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and ONE MILLION DOLLARS (\$1,000,000.00) for property damage.

B. *Tenant*

CFCM shall maintain its own insurance on the contents of the building and for the protection of its own property. If during the term of this Lease, the described premises are destroyed by fire or by the elements or if said premises are partially destroyed so as to render them unfit for use between April 1st and October 30th, CFCM may elect to terminate this Lease.

CFCM shall hold NFI harmless from any and all liability, damages or claims of damages of any nature or description for injuries arising out of or in connection with the operation of CFCM's business or any other business upon the demised premises or arising from any violation of any national, state, county or municipal law or regulation by CFCM or any duty which may be owing by CFCM to any person or any damage by reason of the condition of the premises or any equipment, furniture or fixtures therein or by reason of the operation or maintenance thereof or by reason of the condition of the

sidewalks or parking areas adjacent thereto under the control of CFCM or generally arising out of the possession of the said premises by CFCM during the term hereof. In furtherance of the intent of this provision, CFCM shall carry good and sufficient liability insurance to fully protect NFI in the manner set forth in this paragraph, which said insurance shall provide coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) per person injured, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and ONE MILLION DOLLARS (\$1,000,000.00) for property damage.

C. *Landlord and Tenant*

All policies of insurance provided for herein shall be issued by insurance companies qualified to do business in the State of Montana and shall be for the mutual and joint benefit and protection of NFI and CFCM, and executed copies of such policies of insurance or certificates thereof shall be delivered to the other Party within ten (10) days after execution hereof by CFCM and renewals thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that NFI and CFCM, although named as insureds, shall nevertheless be entitled to recover under said policies for any loss occasioned by them, their servants, agents and employees by reason of the negligence of NFI or CFCM. As often as any such policy shall expire or terminate, renewal of additional policies shall be procured and maintained by CFCM in like manner and like extent. All policies of insurance delivered to the Parties must contain a provision that the company writing said policy will give to the other Party thirty (30) days notice in writing in advance of any cancellation or lapse in the effective date or any reduction in the amount of insurance. All public liability, property damage and other casualty

policies shall be written as primary policies, not contributing with and not in excess of coverage which NFI or CFCM may carry.

8. USE AND CONDITION OF PREMISES.

CFCM contemplates using the demised premises as a community market and to hold CFCM Board Meetings. No other use of the premises shall be permitted without the prior written consent of NFI. During its use of the premises, CFCM shall maintain the premises in a clean, safe and sanitary condition. CFCM shall comply with all federal, state and local regulations in conducting its operations and not permit any use of the premises, or any part thereof, which is in violation of any federal, state, county or municipal law, ordinance or regulation.

CFCM acknowledges NFI is currently remodeling the building portion of the premises being leased hereunder and that the work will not be complete by opening Market day, May 3, 2022. However, NFI hereby guarantees the building will be in a useable condition, that its contractors and subcontractors will remove all equipment, tools, scaffolding, etc., such that CFMC will be able to start setup by 7:30 a.m. each Thursday Market Morning of the season. NFI further guarantees all materials will be stockpiled and all garbage, trash or other debris from construction will be removed by that same time and the premises will be safe for market attendees.

9. MAINTENANCE.

NFI shall perform, at its expense, all repairs and maintenance of leased premises. Notwithstanding anything contained herein to the contrary, CFCM shall have the obligation to repair any damage or destruction to the exterior of the building in which the leased premises are located, including both the structural and nonstructural portions

thereof, the exterior walls, the roof and all glass, resulting whether directly or indirectly from any act of CFCM, its employees, agents or customers during the term of this Lease.

10. IMPROVEMENTS, ALTERATIONS, FIXTURES AND SIGNS.

CFCM accepts the leased premises in their present condition. CFCM represents that the premises have been examined by it prior to its taking possession hereunder. CFCM accepts the same in the condition in which it is, without representation or warranty, expressed or implied, in fact or by law, by NFI.

Subject to NFI's prior approval, CFCM shall have the right to place on the leased premises, at locations selected by CFCM, any signs which are permitted by applicable zoning ordinances and private restrictions. NFI may refuse consent to any proposed signage that is in NFI's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the leased premises. NFI shall assist and cooperate with CFCM in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for CFCM to place or construct the foregoing signs. CFCM shall repair all damage to the leased premises resulting from the removal of signs installed by CFCM.

11. SUBLETTING OR SUBLEASING.

This Lease is not assignable in whole or in part except for stall rentals for each market day. This Lease shall terminate immediately upon any attempted transfer by CFCM, voluntarily or by operation of law.

In the event of a breach of this Lease, the Party at fault shall and will pay to the other Party all costs, reasonable attorney's fees and other expenses which may be

incurred by the other Party in enforcing its rights hereunder. The remedies hereinabove mentioned or the election of any thereof by each Party shall in no case be deemed or considered exclusive of any other remedy or action hereunder or which may otherwise be appropriate, each Party having the right to pursue any and all other rights and remedies which they may have at law or in equity.

12. TIME OF ESSENCE.

Time shall be of the essence of this Lease, and all the terms, covenants and conditions hereof shall be performed at or before the times herein set forth. Any forbearance on the part of either Party in the enforcement of the terms and conditions of this Lease shall in no way be construed as a waiver of default thereof or waiver of the obligatory effect of such provision.

13. CONSTRUCTION AND BINDING EFFECT.

This Lease shall be construed under the laws of the State of Montana and shall be binding upon and inure to the benefit of the respective Parties, their heirs, executors, successors and assigns.

14. MODIFICATION OF AGREEMENT.

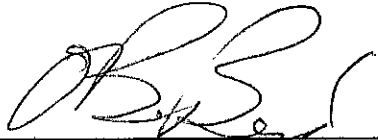
This Lease shall be deemed to include the entire agreement between the Parties hereto. No variation, alteration or modifications of the terms or provisions of this Agreement shall be binding upon either Party hereto unless such variation, alteration or modification is reduced to writing and signed by both Parties, and this provision shall apply notwithstanding the recognition of, or reliance upon, an oral variation by either Party.



IN WITNESS WHEREOF, NFI and CFCM have caused their proper officers and agents to execute this Lease on the day and year first above written.

North Fork Intuition, LLC:


Columbia Falls Comm. Mkt., Inc.

BY: 
O'Brien Byrd, Member

By: 
Melissa Ellis, Pres.

By: 
Melanie Byrd, Member

By: _____
Its _____

By: 
Kevin T Bostock, Member

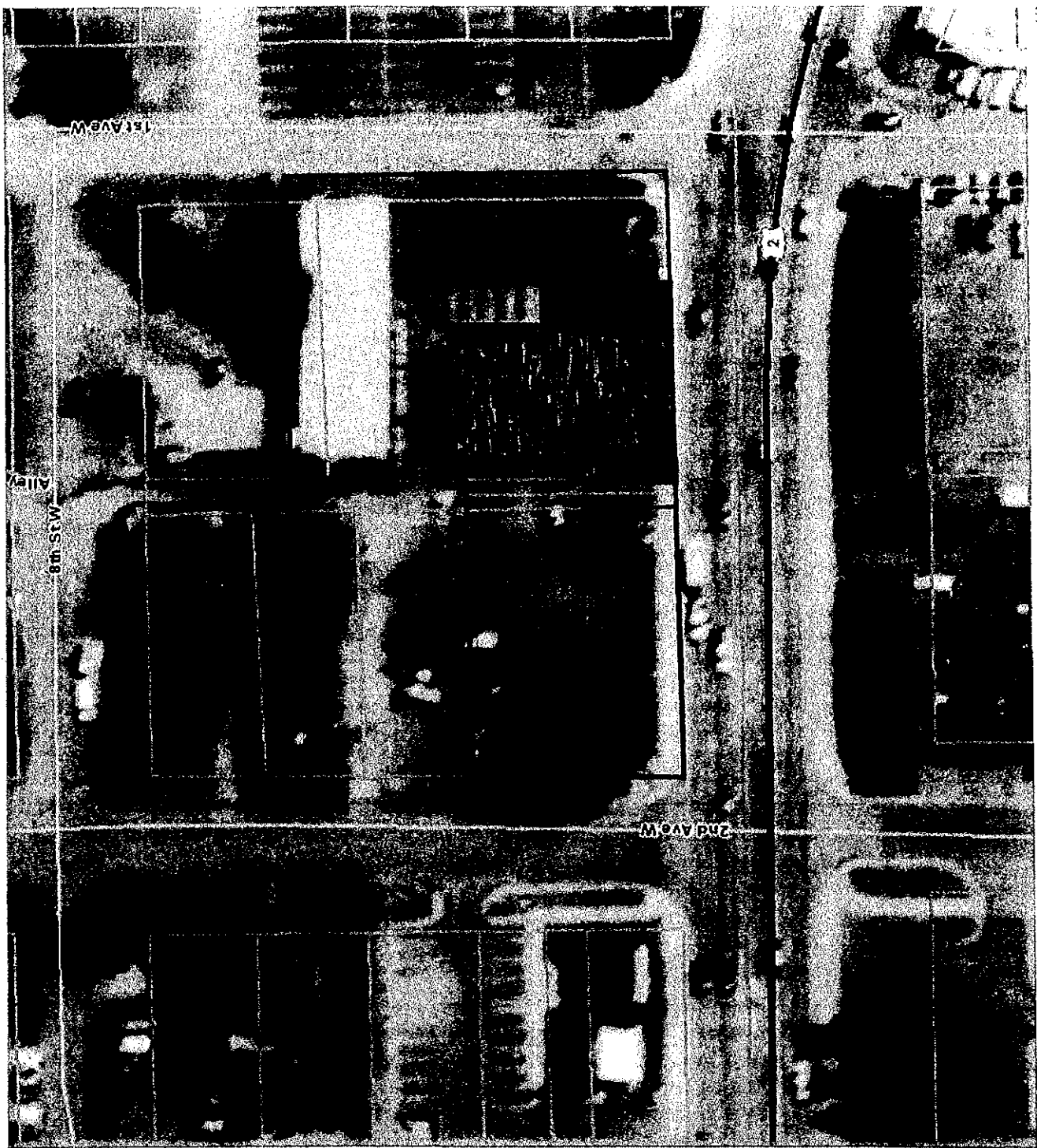
By: 
Jody A Bostock, Member

1/27/2021

Three Byrd
Properties/
Columbia Falls
Comm. Mkt. Lease

Exhibit "A"
Excluded From
Lease

Montana Cadastral



<https://svc.mt.gov/msl/mtcadastral>

AMENDED AND RESTATED COMMERCIAL LEASE

THIS AGREEMENT is made and entered into this ___ day of April, 2023, by and between North Fork Intuition, LLC, 555 Walker Meadow Road Whitefish, MT 59937, a Montana limited liability company, hereinafter "NFI"; Three Byrd's Properties, LLC, a Montana limited liability company, P.O. Box 260138, Martin City, MT 59926, hereinafter "TBP;" and Columbia Falls Community Market, Inc., P.O. Box 130070, Coram, Montana 59913, hereinafter "CFCM;"

RECITALS

WHEREAS, NFI and TBI own the real property and improvements located at 830 1st Avenue West, Columbia Falls, Montana 59912; and,

WHEREAS, NFI and CFCM entered a Commercial Lease regarding the premises in March, 2022;

WHEREAS, the parties desire to enter this Amended and Restated Commercial Lease of the premises known as the "Coop" for use as a community market along with related vendor and parking areas;

NOW, THEREFORE, in consideration of the terms, conditions and obligations to be performed, all as more particularly hereinafter set forth, the parties agree as follows:

1. DESCRIPTION OF LEASED PREMISES.

NFI and TBP demise, lease and let, and by these presents do demise, lease and let, unto CFCM all of the Coop, parking, and vendor spaces associated therewith located 830 1st Avenue West, Columbia Falls, Montana 59912, which is more particularly described, to wit:

PARCEL 1

LOTS 4 AND 5 OF BLOCK 59 OF COLUMBIA FALLS, MONTANA, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5, 1987, AS DOC. NO. 87-309-14110, RECORDS OF FLATHEAD COUNTY, MONTANA.

PARCEL 2:

LOT 10 OF THE AMENDED PLAT OF LOTS 6 THROUGH 10 OF BLOCK 59 OF COLUMBIA FALLS, MONTANA, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY, MONTANA.

TOGETHER WITH THAT PORTION OF THE ABANDONED ALLEY AS DISCLOSED BY ORDINANCE NO. 501, RECORDED NOVEMBER 5, 1987, AS DOC. NO. 87-309-14110, RECORDS OF FLATHEAD COUNTY, MONTANA.

TO HAVE AND TO HOLD the premises unto CFCM every Thursday from May 1 through September 30 each year for the term of this lease, including renewals, if any, as hereinafter set forth. Notwithstanding the foregoing, NFI and TBP shall retain exclusive possession of the building currently occupied by O'Brien's Liquor and Wine, along with four parking spaces located on the east side thereof. CFCM shall have possession of the property beginning 7:00 a.m. on each market Thursday during the season. CFCM may use the bathrooms, tables and benches located on the premises.

2. TERM.

The primary term of this lease shall be for a period of four (4) years, commencing on the 1st day of May, 2023 and ending on the 30th day of September 2026. Upon the expiration or sooner termination of this Lease, CFCM shall quit and surrender the premises hereby demised and shall remove therefrom all fixtures and leasehold improvements, except as otherwise stated hereinbelow. This Agreement may be terminated at any time by either party giving not less than fourteen (14) days written notice to the other party, at which time rent will abate as of the date stated in the Notice.

3. OPTION TO RENEW LEASE.

NFI and TBP hereby grant unto CFCM the exclusive right and option to renew this lease for a further term of five (5) years, commencing at the expiration of the primary term, upon the same terms and conditions as herein provided, except that the parties may renegotiate the amount of rent. To engage this option to renew, CFCM shall provide written notice of its intent to continue, directed to NFI and TBP at the address listed above, at least one hundred twenty (120) days prior to the expiration of the primary term of the lease.

4. RENT TO BE PAID.

Excepting utility use fees, CFCM shall pay rent for use of the leased premises in the amount of \$350 per market Thursday to North Fork Intuition, LLC. Please send check to 24 1st Ave. E, Suite A Kalispell, MT 59901. CFCM shall collect a \$10.00 utility use fee from each vendor that connects to the Coop's electricity for each market day of use by the vendor. CFCM shall pay to NFI said fees at the close of the market season in the fall. In addition, CFCM will pay \$85.00 each market day to have the coop swamper clean the premises after each market and remove trash from inside and outside the coop building after each market.

5. NOTICES.

Any and all notices, requests or demands required hereunder shall be in writing and shall be delivered in person or sent by United States certified or registered mail, return receipt requested, to the addressed first listed hereinabove. Any such notice, request or demand shall be effective as of the date the same is mailed. The address of either party hereinabove set forth may be changed from time to time by giving written notice in that regard.

6. TAXES.

NFI and TBP agree to pay all Flathead County taxes, including fire district levies, levied upon the real property during the term of the lease. CFCM shall pay all personal property taxes assessed by Flathead County upon CFCM equipment and contents located or used upon the premises.

7. SAVE HARMLESS, INSURANCE & DESTROYED PREMISES. NFI and TBP shall maintain fire and extended coverage insurance upon the real property and improvements herein demised. CFCM shall maintain its own insurance on the contents of the building and for the protection of its own property. If during the term of this lease, the described premises are destroyed by fire or by the elements or if said premises are partially destroyed so as to render them unfit for use, NFI shall have the option of determining whether or not to repair and refurbish said premises and restore them to substantially the original condition. If NFI chooses not to repair or refurbish the building, then this lease shall automatically and forthwith be

terminated. If NFI elects to repair and refurbish said premises, then CFCM' s use shall resume as soon as the building is repaired and ready for occupancy.

CFCM shall hold NFI and TBP harmless from any and all liability, damages or claims of damages of any nature or description for injuries arising out of or in connection with the operation of CFCM's business or any other business upon the demised premises or arising from any violation of any national, state, county or municipal law or regulation by CFCM or any duty which may be owing by CFCM to any person or any damage by reason of the condition of the premises or any equipment, furniture or fixtures therein or by reason of the operation or maintenance thereof or by reason of the condition of the sidewalks or parking areas adjacent thereto under the control of CFCM or generally arising out of the possession of the said premises by CFCM during the term hereof. In furtherance of the intent of this provision, CFCM shall carry good and sufficient liability insurance to fully protect NFI and TBP in the manner set forth in this paragraph, which said insurance shall provide coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, and ONE MILLION DOLLARS (\$1,000,000.00) for property damage. All policies of insurance provided for herein shall be issued by insurance companies qualified to do business in the State of Montana and shall be for the mutual and joint benefit and protection of NFI, TBP and CFCM, and executed copies of such policies of insurance or certificates thereof shall be delivered to NFI and TBP within ten (10) days after execution hereof by CFCM and renewals thereafter within thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage policies shall contain a provision that NFI and TBP, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by

reason of the negligence of CFCM. As often as any such policy shall expire or terminate, renewal of additional policies shall be procured and maintained by CFCM in like manner and like extent. All policies of insurance delivered to NFI and TBP must contain a provision that the company writing said policy will give to NFI thirty (30) days notice in writing in advance of any cancellation or lapse in the effective date or any reduction in the amount of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which NFI may carry.

8. USE AND CONDITION OF PREMISES.

CFCM contemplates using the demised premises as a community market. No other use of the premises shall be permitted without the prior written consent of NFI and TBP. During its use of the premises, CFCM shall maintain the premises in a clean, safe and sanitary condition. CFCM shall comply with all federal, state and local regulations in conducting its operations and not permit any use of the premises, or any part thereof, which is in violation of any federal, state, county or municipal law, ordinance or regulation. CFCM may remove panels from the market Thursdays and shall replace all panels removed at the conclusion of each market. CFCM shall repair all damage caused to such panels during the removal and replacement process and shall indemnify and save NFI and TBP harmless from liability for any damage to panels during the removal and replacement process.

9. MAINTENANCE.

NFI shall perform, at its expense, all repairs and maintenance of leased premises. Notwithstanding anything contained herein to the contrary, CFCM shall have the obligation to repair any damage or destruction to the exterior of the building in which the leased premises are located, including both the structural and nonstructural portions thereof, the exterior walls, the

roof and all glass, tables and benches, resulting whether directly or indirectly from any act of CFCM, its employees, agents or customers during the term of this lease.

10. IMPROVEMENTS, ALTERATIONS, FIXTURES AND SIGNS.

CFCM accepts the leased premises in their present condition. CFCM represents that the premises have been examined by it prior to its taking possession hereunder. CFCM accepts the same in the condition in which it is, without representation or warranty, expressed or implied, in fact or by law, by NFI or TBP. Subject to NFI's prior approval, CFCM shall have the right to place on the leased premises, at locations selected by CFCM, any signs which are permitted by applicable zoning ordinances and private restrictions. NFI may refuse consent to any proposed signage that is in NFI's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the leased premises. NFI shall assist and cooperate with CFCM in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for CFCM to place or construct the foregoing signs. CFCM shall repair all damage to the leased premises resulting from the removal of signs installed by CFCM.

11. SUBLETTING OR SUBLEASING.

This lease is not assignable in whole or in part except for stall rentals for each market day. This Lease shall terminate immediately upon any attempted transfer by CFCM, voluntarily or by operation of law.

In the event of a breach of this Lease, the party at fault shall and will pay to the other party all costs, reasonable attorney's fees and other expenses which may be incurred by the other party in enforcing its rights hereunder. The remedies hereinabove mentioned or the

election of any thereof by each party shall in no case be deemed or considered exclusive of any other remedy or action hereunder or which may otherwise be appropriate, each party having the right to pursue any and all other rights and remedies which they may have at law or in equity.

12. TIME OF ESSENCE.

Time shall be of the essence of this lease, and all the terms, covenants and conditions hereof shall be performed at or before the times herein set forth. Any forbearance on the part of either party in the enforcement of the terms and conditions of this lease shall in no way be construed as a waiver of default thereof or waiver of the obligatory effect of such provision.

13. CONSTRUCTION AND BINDING EFFECT.

This lease shall be construed under the laws of the State of Montana and shall be binding upon and inure to the benefit of the respective parties, their heirs, executors, successors and assigns.

14. MODIFICATION OF AGREEMENT.

This Lease shall be deemed to include the entire agreement between the parties hereto. No variation, alteration or modifications of the terms or provisions of this agreement shall be binding upon either party hereto unless such variation, alteration or modification is reduced to writing and signed by both parties, and this provision shall apply notwithstanding the recognition of, or reliance upon, an oral variation by either party.

This Amended and Restated Commercial Lease supersedes and entirely replaces the Commercial Lease between NFI and CFCM dated March, 2022.

IN WITNESS WHEREOF, NFI, TBP and CFM have caused their proper officers and agents to execute this lease on the day and year first above written.

North Fork Intuition, LLC, a Montana limited liability company:

By: _____
Kevin Bostock, Member

Three Byrd's Properties, LLC, a Montana limited liability company

By: _____
O'Brien Byrd, Manager

Columbia Falls Community Market, Inc.

By: _____
Mellisa Ellis, President