

STATE OF ALABAMA
COUNTY OF BALDWIN

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is made effective as of the ____ day of _____, 2020 by and between the **City of Foley**, a municipal corporation of the State of Alabama (hereinafter called the “City”) and **Lindsay Driskell** (hereinafter called the “Subtenant”).

RECITALS:

WHEREAS, the City is the lessee under that certain Lease Agreement dated August 3, 2009 (the “Lease Agreement”) by and among the City, as lessee, and South Baldwin Museum Foundation, Inc., as lessor, for the lease of that certain improved real property located at 111 West Laurel Avenue, Foley, Alabama, containing 1,480 square feet +/-, together with the right of use of all means of ingress and egress and all other general common facilities contained in the building, as well as the sidewalks and parking facilities (the “Leased Premises”); and

WHEREAS, the City and the Subtenant desire to memorialize an agreement for sublease of the Leased Premises to Subtenant, as set forth herein.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Subtenant agree as follows:

1. **LEASED PREMISES.** The City does hereby sublease to Subtenant, and Subtenant hereby subleases from the City the said Leased Premises, commencing retroactively on the 30th day of September, 2020 (the “Commencement Date”).

2. **TERM.** The term of this Sublease shall commence on the Commencement Date and shall coincide with the term of the Lease Agreement, which is currently due to expire on September 30, 2023, as the same may be extended or renewed from time to time. This Sublease Agreement is for a period of two consecutive years and will be automatically renewed on September 30, 2021 and September 30, 2022. Notwithstanding any other provisions of this Sublease, either party can terminate this agreement with a 90 day notice on each anniversary date.

3. **RENT.** In addition to the covenants and agreements set forth herein, the Subtenant shall pay rent to the City in the amount of \$800.00 per month, due by the 10th day of each month. Monthly rental shall commence upon the earlier of (a) the opening of Subtenant’s business, or (b) sixty (60) days after the Commencement Date. Rent for any partial month shall be prorated.

4. **USE.** The Leased Premises shall be used and occupied by Subtenant for a Coffee Shop selling items you would find in a Starbucks or other 1st Class Coffee Shop, doing business as “**Gypsy Queen Java**” and for no other purpose without the express written consent of the City, which consent may be withheld or conditioned in the City’s sole discretion. Subtenant shall open for business as a fully stocked and staffed business within sixty (60) days after the Commencement Date.

5. **ALTERATIONS.** The Subtenant will make no material alterations in or to the Leased Premises without the prior written consent of the City, Community Development Department as well as any

other required government agency. Subtenant shall submit any requested alterations to Sidney Kaiser, President of the Baldwin Museum Foundation, P.O. Box 546, Foley, Alabama 35636.

6. **MAINTENANCE AND REPAIRS.** Subtenant shall maintain the interior of the Leased Premises in good condition and repair, reasonable wear and tear excepted. The Subtenant shall also be responsible to maintain, at the Subtenant's expense: (a) the store front doors and windows; (b) heating and air conditioning unit that exclusively services the portion of the building exclusively occupied and subleased by the Subtenant; and (c) the toilet and sink fixtures in the bathroom located in the portion of the building exclusively occupied and leased by the Subtenant.

7. **JANITORIAL SERVICES.** Subtenant shall provide and pay for janitorial services for the portion of the building exclusively occupied and subleased by the Subtenant.

8. **UTILITIES.** The Tenant will be responsible to pay for all utilities that is separately metered by Riviera Utilities for the Leased Premises and all utilities will be in Tenants name.

9. **SIGNAGE.** All signage is subject to the City's prior written approval and compliance with all laws and ordinances. All costs associated with the fabrication and installation of Subtenant's signage shall be paid solely by Subtenant.

10. **PARKING.** There is no reserved parking for Subtenant.

11. **LESSOR RELEASED.** The City and City's lessor under the Lease Agreement shall not be liable for any loss or damage caused by, or growing out of, any breakage, leakage, getting out of order or defective conditions of any heating, air conditioning, other mechanical installations and/or systems, electric wiring, pipes, water closets or plumbing, or any of them, nor shall the City or the City's lessor under the Lease Agreement be liable for any damage to any property on the Leased Premises caused by, or growing out of, fire, rain, lightning, wind, high water, over-flow water, freezing or other causes.

12. **FIRE/WIND AND OTHER CASUALTIES.** This Sublease is subject to the terms of the Lease Agreement in the event the premises shall be damaged or destroyed by fire, flood, windstorm, riot, insurrection or other cause.

13. **DEFAULT.** The City may terminate this Sublease in the event: (a) Subtenant breaches or fails to perform any of its obligations or agreements as set forth herein, and after ten (10) days written notice by the City to Subtenant, Subtenant fails to cure said breach or default or fails to perform those acts required by it hereunder to be performed; (b) Subtenant shall become insolvent or if bankruptcy proceeding shall be begun by or against the Subtenant, or any assignment of assets is made for the benefit of creditors or a receiver or trustee or other judicial officer is appointed to manage or operate the assets of Subtenant; or (c) Subtenant shall cease operation of its business in, vacates or abandons the Leased Premises. In the event the City terminates this Sublease, the Subtenant shall immediately surrender possession of the Leased Premises to the City. The City's right of termination for default is in addition to all other rights and remedies given hereunder, or by law or equity. In the event of employment of an attorney for the institution of any suit for possession of the Leased Premises, or otherwise arising from Subtenant's breach or failure to perform its obligations hereunder, the Subtenant agrees to pay and shall be taxed with a reasonable attorney's fee, which fee shall be a part of the debt evidenced and secured by this Sublease.

14. **INDEMNITY.** The Subtenant shall indemnify, defend and hold harmless the City and the City's lessor under the Lease Agreement from and against any and all claims, damages, losses and

reasonable expenses, including reasonable attorneys' fees, arising out of or resulting from Subtenant's sublease and occupancy of the Leased Premises, including any injuries to persons or property while in, on or about the Leased Premises.

15. **NOTICES.** Any notice, demand, communication, or election to exercise any option hereunder, whether intended for Subtenant or for the City, shall be in writing, and may be served or delivered in person, or by prepaid U.S. Registered or Certified mail, to the following address, or to such other address as the parties hereto may at any time, and from time to time, designate in writing:

If to the City:

City Clerk

Post Office Box 1750

Foley, Alabama 36536

If to the Subtenant:

Lindsay Driskell

16. **SURRENDER.** At the expiration of the tenancy herein created, the Subtenant shall surrender the Leased Premises in the same condition of repair and sightliness as the Leased Premises were in upon the commencement of this Sublease unless meanwhile repaired or improved, in which event, from the time of such repairs or improvements as to that portion so repaired or improved, reasonable wear and tear and damage by unavoidable casualty excepted.

17. **LIABILITY INSURANCE.** The Subtenant shall maintain at the Subtenant's expense public liability insurance with an "A" rated or better insurance company licensed to operate in the State of Alabama covering the Subtenant's operations on the Leased Premises having limits of liability of not less than \$1,000,000.00 bodily injury per occurrence and \$1,000,000.00 in the aggregate. The Subtenant shall furnish to the City a Certificate of Insurance as evidence of compliance with this requirement and shall name the City, the City's lessor under the Lease Agreement and any other party designated by the City as an additional insured under such policy. Said insurance shall be non-cancellable without written notice to the City at least thirty (30) days prior to cancellation.

18. **CONTENTS PROPERTY AND CASUALTY INSURANCE.** Any and all property of Subtenant which may be located at the Leased Premises shall be at the sole risk of Subtenant. The Subtenant shall carry fire, extended coverage, vandalism and malicious mischief insurance on all personal property owned by the Subtenant at the Leased Premises to the extent of its full insurable value. The Subtenant shall furnish to the City a Certificate of Insurance as evidence of compliance with this requirement.

19. **WAIVER OF SUBROGATION.** Anything in this Sublease to the contrary notwithstanding, Subtenant and the City each hereby waives (to the extent that the party sustaining such loss is compensated by insurance proceeds) any and all rights of recovery, claim, action or cause of action, against the other or against the City's lessor under the Lease Agreement, its agents, officers, or employees, for any loss or damage that may occur to the premises, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other cause which would be insured against under the terms of the fire and extended coverage insurance policies referred to above, regardless of cause or origin, including, without limitation, negligence of the other party hereto, its agents, officers or employees, and covenants that no insurer shall hold any right of subrogation against such other party, and to endeavor to procure a waiver of subrogation on the

part of each of their insurers by an endorsement to all insurance policies whereby an insurer recognizes the agreements made by Subtenant and the City herein provided, however, this Section 18 shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Subtenant or the City.

20. **ASSIGNMENT: SUB-LEASING.** Each and every transfer, assignment or sublease of this Sublease by the Subtenant, or any interest therein, shall be null and void, unless the written consent of the City be first obtained thereto, which consent may be withheld in the City's sole discretion.

21. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement, oral or in writing, between the parties hereto relating to the Leased Premises.

IN WITNESS WHEREOF, the parties have caused this Sublease to be executed on the date appearing together with their signatures below.

CITY OF FOLEY, ALABAMA

By: John Koniar
As Its: Mayor
Date:_____

ATTEST:

By: _____
As Its: City Clerk
Date:_____

Lindsay Driskell
Date:_____