

**City – Alley Cat
Empire Garage Option Agreement**

This Agreement (“Agreement”) is made and entered into this 29th day of April, 2011 (“Effective Date”), by and between the City of Billings, Montana, a municipality of the State of Montana (“City”) and Alley Cat Investments, LLC (“Alley Cat”) Alley Cat. City and Alley Cat are individually a “Party” and collectively the “Parties”.

Recitals

A. On the Effective Date of this Agreement, City has purchased from Alley Cat the real property and improvements thereon described below (“Property”):

Lots 1-7, Block 109, Original Town, now City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana under Document #16312,

together with all rights (including without limitation development rights), privileges, easements, structures, appurtenances, improvements and fixtures appurtenant thereto.

B. Contemporaneously with this Agreement, City has entered into a lease agreement with Alley Cat to lease a portion of the Property back to Alley Cat (“Lease Agreement”). Under the Lease Agreement Alley Cat will sublet parking to its affiliate, Securities Building, LLC, on a month to month basis.

C. In addition to the Property, City has also purchased, or plans to purchase, adjacent property on the north side of Montana Avenue (Lots 8 through 12 of Block 109) to assemble land for the purpose of constructing a mixed use parking structure (“New Facility”).

D. City desires to proceed with the construction of the New Facility (the “Project”); however, the Parties acknowledge that there are unresolved contingencies regarding the Project, including without limitation, design and specification requirements, bonding requirements, unit ownership agreement requirements, construction cost and financing considerations, that may result in the City determining that it will not construct the New Facility and will terminate the Project.

E. The Parties wish to set forth the terms of their agreements regarding the Project, Alley Cat’s right of first refusal and option to repurchase the Property, and options to purchase parking and retail space in the New Facility.

AGREEMENT

Now, therefore, the Parties agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and incorporated into this Agreement.

2. **Definitions.** The following terms as used in this Agreement are defined as set forth below:

a. “Commence(d) Construction” or “Commencement of Construction” means City or its contractor commencing actual demolition or construction work on the Project.

b. “Completion and Acceptance of Design Work” means completion and acceptance of design work for the Project as set forth in Section 4 of this Agreement.

c. “Completion of the Project” means completion of construction of the New Facility and issuance of an occupancy permit for the garage portion of the New Facility.

d. “Notice of Commencement of Construction” means written notice from City to Alley Cat that City intends to Commence Construction on the Project. The Notice of Commencement of Construction shall notify Alley Cat of the approximate date that City will Commence Construction and City shall be entitled to Commence Construction 60 days after the date of the Notice.

e. “Notice of Completion of Project” means the written notice from City to Alley Cat of Completion of the Project.

f. “Notice of Termination of Project” means written notice from City to Alley Cat that City has determined to terminate the Project.

3. **City’s Obligations.** City will proceed with its due diligence and investigation for the Project. City will obtain design work, consultation on issuance of bonds for the Project, and prepare a draft Condominium Declaration and Bylaws. City will keep Alley Cat advised of the status and progress on these matters. Upon determination that it will proceed with construction of the Project, City shall provide Alley Cat with Notice of Commencement of Construction at least 60 days prior to Commencement of Construction.

4. **Completion and Acceptance of Design Work.** The parties acknowledge that it is the intent for the Project and New Facility to be designed and constructed in a manner substantially similar to and consistent with the preliminary plan and drawings set forth on the attached Exhibit A, including without limitation substantially similar design, quality, and grade, and consisting of a mixed use building with parking and retail space components as that set forth on Exhibit A. Accordingly, City agrees to consult with and keep Alley Cat informed with respect to the Project design details and any material changes thereto throughout the entire design process. City will notify Alley Cat when it has received design plans for the Project that it believes are acceptable to identify units in the New Facility and to proceed with obtaining bids for construction. City will submit

the design plans to Alley Cat together with the draft Condominium Declaration and Bylaws documents for the New Facility. The Parties shall have 30 days after City's submission of these plans and documents to Alley Cat to complete the following: (a) obtain Alley Cat's written consent to the design plans and scope of the Project; (b) reach agreement on the terms of the draft Condominium Declaration and Bylaws; and (c) finalize Alley Cat's identification of the unit of parking spaces subject to Alley Cat's Parking Option as set forth in Section 8 of this Agreement. Completion of these items shall constitute "Completion and Acceptance of Design Work".

5. Termination of Project. City reserves the right, in its sole discretion, to determine that it will not proceed with the Project or construction of the New Facility. If City determines not to proceed with the Project or construction of the New Facility, it will promptly provide Alley Cat with Notice of Termination of Project. Upon City providing Alley Cat with Notice of Termination of Project: (a) the options set forth in Sections 8 and 9 and the right of first refusal set forth in Section 10 of this Agreement shall terminate and be of no further force and effect; (b) the Lease Agreement shall terminate 60 days after the date of the Notice; and, (c) City shall have no further obligation to Alley Cat under this Agreement or related to the Project, except those obligations under the Right of First Refusal and the Repurchase Option set forth in Sections 6 and 7 of this Agreement.

6. Alley Cat Right of First Refusal to Repurchase. Commencing on the Effective Date, and continuing until Completion of the Project, City grants Alley Cat a continuing right of first refusal to reacquire the Property in the sole event City receives a bona fide offer to purchase the Property, and City determines to accept such offer, in which case the purchase price to reacquire the Property shall be the lesser of (i) the purchase price paid by the City to Alley Cat for the Property or (ii) the purchase price set forth in the bona fide offer received by the City. The Parties acknowledge and agree that City may enter into pre-sale agreements and arrangements to sell condominium units in the New Facility, that would close following Completion of the Project, without triggering this Right of First Refusal.

7. Grant of Option to Repurchase to Alley Cat. In the event (i) City provides Alley Cat with Notice of Termination of Project, (ii) City does not Commence Construction of the Project within two (2) years from the Effective Date, or (iii) the parties are unable to agree upon final design or otherwise complete any of the items required for "Completion and Acceptance of Design Work" under Section 4, then Alley Cat shall have an exclusive option to repurchase the Property from City, in accordance with and upon the following terms ("Repurchase Option"):

a. **Exercise of Option.** In order to exercise the Repurchase Option, Alley Cat shall notify the City in writing as applicable: (1) within ninety (90) days following the date of Notice of Termination of Project; (2) within ninety (90) days following April 29, 2013 if City has not Commenced Construction by April 29, 2013; or (3) within ninety (90) days following the expiration of the 30-day period for "Completion and Acceptance of Design Work"

b. Option Price. The Option Price for the Property shall be the lesser of (i) the purchase price paid by the City to Alley Cat for the Property or (ii) the fair market value of the Property determined by independent appraisal at the election of either party, in which case the parties shall mutually approve the selected appraiser.

c. Payment. The Option Price shall be paid in cash at closing.

d. Evidence of Title. If the Repurchase Option is properly exercised by Alley Cat, City agrees to execute and deliver to Alley Cat a standard Warranty Deed conveying fee simple absolute title for the undivided interests to be purchased, subject only to the following exceptions: (i) all reservations and exceptions in patents from the United States or the State of Montana; (ii) all existing easements and rights-of-way record; (iii) all building, use and zoning restrictions and ordinances, and sanitary and environmental restrictions; (iv) taxes and assessments for the year the Option is exercised and subsequent years; and (v) all mineral rights and prior conveyances or transfers of any interest in minerals, including but not limited to oil, gas and other hydrocarbons.

e. Title Insurance. If the Repurchase Option is exercised, City agrees to provide to Alley Cat a commitment for title insurance covering the Property to be purchased in an amount at least equal to the purchase price of the Property. The commitment shall show that City is vested with merchantable title subject only to those exceptions allowable in the paragraph above entitled "Evidence of Title." The Parties will share equally the cost of the title insurance policy.

f. Prorations. If the Repurchase Option is exercised, the City and Alley Cat shall prorate all real property taxes, levies and assessments as of the date of closing.

g. Closing. Closing following the exercise of the Repurchase Option shall occur at the time and place mutually agreed to between the Alley Cat and City within thirty (30) days after the exercise of the Repurchase Option.

h. Assignability. The Repurchase Option shall be only be assignable to (i) an owner or purchaser of the Securities Building in Billings, Yellowstone County, Montana, (ii) an entity owned by William Honaker, principal owner of Alley Cat, (iii) or upon written approval of City.

8. Grant of Option to Purchase Parking Spaces to Alley Cat. Commencing upon the Effective Date, and continuing until sixty (60) days after Completion and Acceptance of Design Work, City hereby grants Alley Cat an exclusive option to purchase from City a condominium unit consisting of all of the first-floor, ground level parking spaces within the New Facility, which shall consist of a minimum of twenty-five (25) parking spaces as indicated by the "Proposed Parking Area" on Exhibit A, in accordance with and upon the following terms ("Parking Option"):

a. Conditions to Exercise. The Parking Option can only be exercised for all of the first-floor parking spaces within the New Facility, to be initially located and described in the design plans for the New Facility, and finally described in the Final Condominium Declaration for the New Facility.

b. Exercise of Option. In order to exercise the Parking Option, Alley Cat shall notify the City in writing within sixty (60) days of receipt of Notice of from City of Completion and Acceptance of Design Work.

b. Option Price. The Option Price for the interests under the Parking Option shall be \$4,331.55 per space..

c. Payment. Alley Cat shall pay \$5,000_ as earnest money. The balance of the Option Price shall be paid in cash at closing.

d. Evidence of Title. If the Parking Option is properly exercised by Alley Cat, City agrees to execute and deliver to Alley Cat at closing a standard Warranty Deed conveying fee simple absolute title for the interests to be purchased, subject only to the following exceptions: (i) all reservations and exceptions in patents from the United States or the State of Montana; (ii) all existing easements and rights-of-way record; (iii) all building, use and zoning restrictions and ordinances, and sanitary and environmental restrictions; (iv) taxes and assessments for the year the Parking Option is exercised and subsequent years; (v) all mineral rights and prior conveyances or transfers of any interest in minerals, including but not limited to oil, gas and other hydrocarbons; and (vi) the Final Condominium Declaration and Bylaws for the New Facility.

e. Title Insurance. If the Parking Option is exercised, City agrees to provide to Alley Cat a commitment for title insurance covering the interests to be purchased in an amount at least equal to the purchase price of the interests. The commitment shall show that City is vested with merchantable title subject only to those exceptions allowable in the paragraph above entitled "Evidence of Title." The Parties will share equally the cost of the title insurance policy.

f. Prorations. If the Parking Option is exercised, the City and Alley Cat shall prorate all real property taxes, levies and assessments as of the date of closing.

g. Closing. Closing following the exercise of the Parking Option shall occur at the time and place mutually agreed to between the Alley Cat and City within thirty (30) days after Completion of the Project.

h. Assignability. This Parking Option shall only be assignable to (i) an owner or purchaser of the Securities Building in Billings, Yellowstone County, Montana, (ii) an entity owned by William Honaker, principal owner of Alley Cat, (iii) or upon written approval of City.

9. Alley Cat Option to Purchase Retail Space. Commencing upon the Effective Date, and continuing until ninety (90) days after Completion and Acceptance of Design Work, City hereby grants Alley Cat an exclusive option to purchase first floor retail space in the New Facility located on the corner of North 27th Street and Montana Avenue as indicated by the “Proposed Retail Option” on the attached Exhibit A in the minimum amount of 4,000 square feet, in accordance with and upon the following terms (“Retail Space Option”):

a. Conditions to Exercise. The Retail Space Option can only be exercised for the Retail Space approximately depicted on Exhibit A and to be finally described in the Final Condominium Declaration for the New Facility.

b. Exercise of Option. In order to exercise the Retail Space Option, Alley Cat shall notify the City in writing within ninety (90) days after receipt of Notice of Completion of the Project from City.

c. Option Price. The Option Price for the interests under the Retail Space Option shall be the fair market value of the Retail Space as determined by appraisal from an appraiser mutually approved by the parties.

d. Payment. The Retail Space Option Price shall be paid in cash at closing.

e. Evidence of Title. If the Retail Space Option is properly exercised by Alley Cat, City agrees to execute and deliver to Alley Cat at closing a standard Warranty Deed conveying fee simple absolute title for the interests to be purchased, subject only to the following exceptions: (i) all reservations and exceptions in patents from the United States or the State of Montana; (ii) all existing easements and rights-of-way record; (iii) all building, use and zoning restrictions and ordinances, and sanitary and environmental restrictions; (iv) taxes and assessments for the year the Option is exercised and subsequent years; (v) all mineral rights and prior conveyances or transfers of any interest in minerals, including but not limited to oil, gas and other hydrocarbons; and (vi) the Final Condominium Declaration for the New Facility.

f. Title Insurance. If the Retail Space Option is exercised, City agrees to provide to Alley Cat a commitment for title insurance covering the interests to be purchased in an amount at least equal to the purchase price of the interests. The commitment shall show that City is vested with merchantable title subject only to those exceptions allowable in the paragraph above entitled “Evidence of Title.” The Parties will share equally the cost of the title insurance policy.

g. Prorations. If the Retail Space Option is exercised, the City and Alley Cat shall prorate all real property taxes, levies and assessments as of the date of closing.

h. Closing. Closing following the exercise of the Retail Space Option shall occur at the time and place mutually agreed to between the Alley Cat and City within thirty (30) days after the Completion of the Project.

i. Assignability. The Retail Space Option shall only be assignable to (i) an owner or purchaser of the Securities Building in Billings, Yellowstone County, Montana, (ii) an entity owned by William Honaker, principal owner of Alley Cat, (iii) or upon written approval of City.

10. Alley Cat Right of First Refusal to Purchase Retail Space. Commencing on the Effective Date, City grants Alley Cat a continuing right of first refusal to purchase the retail space as described in the Retail Space Option in Section 9 for the offered price in the sole event City receives a bona fide offer to purchase the Property, and City determines to accept such offer.

11. Design Input. City will not commit itself to any particular design or plan regarding the New Facility until Alley Cat has provided its prior written consent to the design and scope of the New Facility, including subsequent changes to the design and scope of the New Facility, provided such consent shall not be unreasonably withheld. However, it is acknowledged and agreed that any material changes to the design from that contemplated under Section 4 may result in Alley Cat's withholding of consent, in which case Alley Cat shall have the option to repurchase the Property under Section 7. The Parties shall finalize this design input and consent prior to Completion and Acceptance of Design Work.

12. Intentionally Omitted.

13. Condominium Provisions. The Parties acknowledge that mutually acceptable Final Condominium Declaration and Bylaws will be required for the New Facility that address the unit for parking spaces and the retail space. City will prepare drafts of the Condominium Declaration and Bylaws and submit them to Alley Cat for review and comment. The Parties, and any other parties to the documents, will meet and confer in good faith to negotiate the terms of the draft Condominium Declaration and Bylaws. City may determine, in its discretion, to complete and record a preliminary condominium declaration for the New Facility before construction is completed.

14. Liens. Except to the extent diligently contested in good faith, City shall keep the Property free from any liens and real estate taxes or assessments arising out of any work performed, materials furnished, or obligations incurred by City.

15. Recording. The Parties may record abstracts of the options and rights of first refusal set forth in this Agreement.

16. Notice. Any notice to be given hereunder shall be in writing and shall either be served upon a party personally, or served by registered or certified mail, return receipt requested, directed to the party to be served at the address of the party set forth below. A party wishing to change his designated address shall do so by notice in writing to the other party. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid.

To Alley Cat:

To City:

Alley Cat, LLC
Attn: William Honaker

Billings, MT 59101

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

17. Time and Binding Effect. Time shall be of the essence of this Agreement. The terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

18. Entire Agreement. This Agreement and the Lease Agreement, each dated concurrently herewith and entered by and between City and Alley Cat, collectively embody the entire agreement between the parties, and supersede all prior negotiations, understandings and agreements, if any, relating to the Property. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

19. Waiver. Waiver by any party hereto of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same, or of any other term, covenant or condition contained in this Agreement. The consent to, or approval of, any act of any the parties hereto by any other party shall not be deemed to render unnecessary the obtaining of the consent to, or approval of, any subsequent act by any party hereto, as the case may be, by the other party.

20. No Partnership Third Party Rights. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between City and Alley Cat. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

21. Interpretation. If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Agreement has been made and entered into in the State of Montana and shall be governed by the laws of the State of Montana.

City of Billings

By: _____
Name: _____
Its: _____

Alley Cat, LLC

By: _____
William Honaker, Member

EXHIBIT "A"

