

## LEASE AGREEMENT

This lease agreement ("Lease Agreement") is made and entered into this \_\_\_ day of May, 2011 ("Commencement Date"), by and between the **CITY OF BILLINGS, MONTANA**, hereinafter referred to as "Landlord" and **ZOOTIST HOSPITALITY, LLC**, a Montana limited liability company, 555 Zoot Enterprises Lane, Bozeman, Montana, 59718, hereinafter referred to as "Tenant."

### Recitals

A. On the Commencement Date, Landlord has purchased the premises described in this Lease Agreement for the purpose of assembling land to demolish the existing Northern Hotel parking garage ("Existing Facility") and to construct a new mixed use parking garage facility ("New Facility").

B. Landlord and Tenant have contemporaneously entered into the Empire Garage Option Agreement ("Option Agreement") which sets forth their respective rights and responsibilities with regard to demolition of the Existing Facility and construction of the New Facility and options granted to Tenant. Unless otherwise indicated, capitalized terms used herein shall have the same defined meaning as set forth in the Option Agreement.

### Agreement

That in consideration of the covenants hereinafter contained on the part of the Landlord and Tenant to be observed and performed, the parties hereby agree:

#### 1. LEASE

The Landlord does hereby grant, demise and lease unto the Tenant, for and in consideration of the rents, covenants, and agreements hereinafter specified to be paid, kept and performed by the Tenant, the premises at 11 North Broadway, Billings, Montana, and specifically described as:

Lots 8, 9, 10, 11 and 12, 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, under Document No. 16312.

TOGETHER WITH all improvements and fixtures attached to the above-described Premises and attached buildings or structures.

**2. TERM AND POSSESSION**

The term of this lease shall commence on the Commencement Date and continue uninterrupted through May \_\_, 2013, unless earlier terminated by Landlord in the manner described in the following paragraph by Notice of Commencement of Construction or Notice of Termination of Project to Zootist as provided and defined in the Option Agreement.

This Lease Agreement shall terminate: (a) 60 days after the date of the Notice of Commencement of Construction; or (b) 90 days after the date of the Notice of Termination of Project. In the event Landlord provides Notice of Termination of Project after giving Notice of Commencement of Construction, the Lease Agreement shall automatically be reinstated and shall then terminate 90 days after the Notice of Termination.

Upon termination of this Lease Agreement, Tenant shall surrender possession of the premises to Landlord free of any liens, encumbrances, and leases or subleases of the premises.

**3. RENT**

Rent for the entire lease term shall be \$1.00.

**4. INSURANCE**

Landlord shall provide fire and hazard insurance for the protection of the premises. If the premises are damaged by fire or other casualty so as to render the premises unusable as a parking garage, Landlord shall determine in its sole discretion whether to repair the premises taking into consideration the extent of insured damage, and the status of demolition or Commencement of Construction under the Option Agreement. If the premises are damaged by fire or other casualty so as to render the premises unusable as a parking garage, and Landlord elects not to repair the premises, this Lease Agreement shall terminate and Landlord shall provide Tenant with temporary replacement parking as provided in Section 11 of the Option Agreement.

Tenant shall obtain and maintain at all times during the term hereof, with a responsible insurer, naming the Landlord as an additional insured, comprehensive general liability insurance against any loss or liability, personal injury or property damages, and any expenses of the parties against any claim, demands, payments, suits, actions, recoveries or judgments for damages which might result from the use, occupation or condition of the premises in the amount of \$750,000 for each claim and \$1.5 million per occurrence. Tenant shall furnish Landlord with proof of insurance and renewals thereof and proof of endorsement as additional insured and that such policy shall not be canceled without a 30-day written notice to the Landlord.

**5. UTILITIES SERVICES**

Tenant agrees, at its own expense to pay for all utilities used by the Tenant on the premises during the term of this lease.

**6. IDEMNIFICATION OF LANDLORD BY TENANT**

Tenant agrees to indemnify, defend and save Landlord, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Tenant, its contractors, subcontractors, agents and employees.

Conversely, Landlord agrees to indemnify, defend and save Tenant, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of the Landlord, its contractors, subcontractors, agents and employees.

**7. ADVERTISING SIGNS**

The Tenant shall be allowed to provide, at his own expense, such advertising displays on the exterior of the building as may be appurtenant to his business, provided however that such displays will be in accordance with the laws and regulations of the State of Montana and the City of Billings, Montana, and that such displays will not deface, damage or devalue the demised property during their use or after their removal, reasonable wear and tear expected. All signs must be approved in writing by the Landlord prior to installation which approval shall not be unreasonably withheld.

**8. IMPROVEMENTS BY TENANT**

All improvements, alterations, additions and all such work shall be done at Tenant's expense and shall, unless Landlord elects otherwise, become the property of the Landlord at the conclusion of the lease, and shall remain upon and be surrendered with said premises, as a part thereof, at the end of the term or renewal of this lease. No improvements, alterations or additions shall be made by Tenant without the written consent of Landlord, which consent shall not be unreasonably withheld.

**9. FIXTURES AND PERSONAL PROPERTY**

All trade fixtures, equipment, signs, cabinets, shelves and other moveable personal property, shall remain the property of the Tenant and may be removed by Tenant at any time during, or at the termination of this Lease Agreement, provided, however, that the same can be removed without serious injury to the leased premises.

Prior to the date of termination of this Lease Agreement pursuant to Notice of Commencement of Construction or Notice of Termination of Project, Tenant shall remove all of its trade fixtures and moveable personal property from the premises.

**10. ASSIGNING AND SUBLETTING**

Except as provided below, Tenant shall not assign this agreement or sublet the premises in whole or in part without first obtaining the concurrence in writing from Landlord which shall not be unreasonably withheld. Landlord consents to Tenant: (a) subletting parking spaces to its commercial and construction parking tenants on a month to month basis; and (b) granting a collateral assignment or similar lien or interest of Tenant's interest in this Lease Agreement to Tenant's lender(s) in connection with the financing of Tenant's and Tenant's affiliates' rehabilitation of the Northern Hotel.

**11. LANDLORD'S ACCESS TO INSPECT**

Landlord or its agent, at all reasonable times during business hours, shall have free access to the demised premises, for the purpose of examining and inspecting the same. In such case Landlord will make every reasonable effort not to interfere with the Tenant's operation of business.

**12. TENANT TO HAVE PEACEABLE POSSESSION**

Landlord covenants that Tenant shall peaceably hold and enjoy the premises so long as they are in faithful compliance with the terms hereof and the covenants thereof.

**13. TRASH AND RUBBISH**

The Landlord shall at its expense provide an area for the collection of and pickup of all trash and rubbish. The tenant shall provide containers for the collection of said rubbish. Said area may be a common area within or outside the premises.

**14. REPAIR AND MAINTENANCE**

Tenant shall be responsible in its discretion for determining the necessity and scope of, and shall pay for all repair and maintenance of the improvements located on the leased premises during the term of this Lease Agreement.

**15. ATTORNEY FEES AND COSTS ON VIOLATION OF LEASE**

In the event that either party shall be required to commence any action, retain an attorney, or use in-house counsel to enforce the covenants or agreements of this lease, the party whose failure to perform occasioned such action shall pay and discharge all reasonable costs, expenses, and attorney fees, including fees of in-house counsel, which shall be made or incurred by the other party.

## **16. DEFAULT AND RE-ENTRY**

If the Tenant shall neglect or fail to perform or observe any of the covenants contained herein on their part to be observed and performed for thirty (30) days after written notice by the Landlord of such breach, or if tenant shall be adjudicated bankrupt or insolvent, or shall make an assignment for the benefit of creditors, or permit any mechanics or materialman's liens to be filed against the demised premises for labor or material furnished, which Tenant does not in good faith defend against, then and in any of said cases the Landlord may lawfully enter into and upon said premises or any part thereof and repossess the same, and expel the Tenant and those claiming under and through them and remove their effects, forcibly if necessary, without being deemed guilty of any manner of trespass, without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant, and upon entry of the aforesaid, this Lease shall terminate and wholly expire.

## **17. CONDUCT OF BUSINESS BY TENANT**

Recognizing that it is in the interest of Tenant's successful operation of his business, Landlord shall allow Tenant at Tenant's election to be open for business daily, including Sundays and Holidays, and Landlord shall not interfere, by regulation or other imposition, with the hours or the days of business operation by the Tenant. The Tenant covenants and agrees that during the term of this Lease Agreement, it will not operate and conduct any business within the premises other than a parking garage.

## **18. NOTICES**

All notices to be given hereunder by either party hereto shall be in writing and given by personal service or by first class mailing by registered or certified mail, return receipt requested. Said method of notice is deemed sufficient service thereof, and shall be deemed given as to the date when served or deposited in any post office. Either party may change address by written notice by certified or registered mail to the other. The initial address for receipt of notices is as follows:

Tenant name & address info:  
Zootist Hospitality, LLC  
Attn: Mike Nelson, President  
19 North Broadway  
Billings, MT 59101

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

With copy to:

Zootist Hospitality, LLC  
Attn: Legal Department  
555 Zoot Enterprises Lane  
Bozeman, MT 59718

**19. MUTUAL RELEASE FOR HAZARDS COVERED BY INSURANCE**

The Landlord and Tenant and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the leased property, or covered by insurance, in connection with the property on or activities conducted on the leased property, regardless of the cause of the damage or loss to the extent such waiver of subrogation can be reasonably obtained.

**20. COMPLIANCE WITH ALL EXISTING CITY ORDINANCES AND POLICE, FIRE, AND SANITARY MEASURES**

Tenant agrees to use and occupy the above described premises in accordance with all lawful police, fire and sanitary regulations imposed by a municipal, state or federal authority, and will observe and obey the laws, City ordinances and other requirements governing the conduct of Tenant's business with respect to the use of said premises.

**21. WAIVER**

A waiver of any breach or default by either Landlord or Tenant shall not be a waiver of any other breach or default. Landlord or Tenant approval of any act by the other requiring consent or approval shall not be deemed to waive or render unnecessary Landlord or Tenant consent to or approval of any other subsequent similar act by Landlord or Tenant.

**22. TAXES AND ASSESSMENTS**

Tenant shall pay and discharge all taxes, assessments, penalties, charges, rates, or liens of any nature whatsoever, that may, during the term hereof or any renewal, be levied, assessed, charged, imposed, or claimed on or against the demised premises or any improvements or fixtures thereon or appurtenances thereto, or any part thereof, or against the owner or owners of such land or the improvements, by reason of such ownership or tenancy, by whatsoever authority levied, assessed, charged, imposed, claimed, and whether the same is on or against the property herein leased, its improvements, fixtures, or appurtenances, or any part thereof, or on or against the income from the property or its improvements.

**23. BINDING EFFECTS**

The Covenants and agreements herein contained shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Lease on this \_\_\_\_ day of May, 2011.

CITY OF BILLINGS (LANDLORD)

BY: \_\_\_\_\_  
ITS (MAYOR)

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
(TENANT)

BY: \_\_\_\_\_

ITS \_\_\_\_\_