

**City – Zootist
Empire Garage Option Agreement**

This Agreement (“Agreement”) is made and entered into this ____ day of May, 2011 (“Effective Date”), by and between the City of Billings, Montana, a municipality of the State of Montana (“City”) and Zootist Garage, LLC (“Zootist Garage”) and Zootist Hospitality, LLC (“Zootist Hospitality”) (Zootist Garage and Zootist Hospitality are collectively referred to herein as “Zootist”). City and Zootist are individually a “Party” and collectively the “Parties”.

Recitals

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

Lots 8, 9, 10, 11 and 12, Block 109 of Town of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #16312,

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

B. Zootist Hospitality operates and manages the Northern Hotel which is owned by its affiliate Zootist Hotel, LLC. The Northern Hotel is located adjacent to the Property and is served by the existing parking garage located on the Property (“Existing Facility”).

C. Contemporaneously with this Agreement, City has entered into a development agreement with Zootist Hotel, LLC to provide tax increment assistance for qualified improvements as part of the renovation and rehabilitation of the Northern Hotel (“Development Agreement”). Zootist Hospitality is presently managing the renovation and rehabilitation of the Northern Hotel.

D. Zootist Hospitality previously leased the Existing Facility from Zootist Garage and has sublet parking spaces within the Existing Facility to commercial parking tenants and construction workers.

E. Contemporaneously with this Agreement, City has entered into a lease agreement with Zootist Hospitality to lease the Property and the Existing Facility to Zootist Hospitality (“Lease Agreement”). Under the Lease Agreement Zootist Hospitality will sublet parking to its commercial and construction parking tenants on a month to month basis.

F. In addition to the Property, City has also purchased adjacent property on the north side of Montana Avenue (Lots 1 through 7 of Block 109) to assemble land for the purpose of constructing a mixed use parking structure on Lots 1 through 12 of Block 109 (“New Facility”).

G. 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, condominium documents and 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.

H. The Parties wish to set forth the terms of their agreements regarding the Project, Zootist’s right of first refusal and option to repurchase the Property, Zootist’s options to purchase parking and retail space in the New Facility, and provisions for temporary replacement parking.

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 physical 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 a certificate of occupancy for the garage portion of the New Facility.

d. “Notice of Commencement of Construction” means written notice from City to Zootist that City intends to Commence Construction on the Project. The Notice of Commencement of Construction shall notify Zootist of the approximate date that City will Commence Construction which date shall be within 120 days of the date of the Notice.

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

f. “Notice of Termination of Project” means written notice from City to Zootist that City has determined to terminate the Project and not to construct the New Facility.

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 Zootist advised of the status and progress on these matters. Upon determination that it will proceed with construction of the Project, City shall provide Zootist with Notice of Commencement of Construction at least 60 days but not more than 120 days prior to Commencement of Construction.

4. Completion and Acceptance of Design Work. City will not commit itself to any particular design or plan regarding the New Facility until Zootist has provided its prior written consent to the design and scope of the New Facility, including subsequent material changes to the design and scope of the New Facility, provided such consent shall not be unreasonably withheld. City will notify Zootist 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 prepare draft Condominium Declaration and Bylaws for the New Facility. City will submit the design plans and the draft Condominium Declaration and Bylaws documents to Zootist. The Parties, and any other necessary parties, will meet and confer in good faith to review the design plans and to negotiate the terms of the condominium documents. The Parties shall have 30 days after City’s submission of these plans and documents to Zootist to complete the following items: (a) obtain Zootist’s written consent to the design plans and scope of the Project; (b) mutually agree to and finalize the form of Condominium Declaration and Bylaws, including all terms and conditions thereof except the final legal descriptions of units (“Condominium Documents”); and (c) finalize Zootist’s identification, in its discretion in writing, of the unit of 187 parking spaces subject to Zootist’s Parking Option as set forth in Section 8 of this Agreement. “Completion and Acceptance of Design Work” shall be deemed to occur on the date that the last of items (a) – (c) above is fully executed by all parties thereto.

The Parties acknowledge that City may determine, in its discretion, to record a preliminary condominium declaration for the New Facility, that is identical in form and substance to the Condominium Documents as agreed by the Parties pursuant to the previous paragraph.

5. Termination of Project; Termination of Agreement.

a. At any time prior to Commencement of Construction or prior to demolition of the Existing Facility by City to the extent that it cannot practically be restored to its pre-demolition condition, City may, in its sole discretion, determine that it

will not proceed with the Project. If City determines not to proceed with the Project, it will promptly provide Zootist with Notice of Termination of Project.

b. In the event City gives Zootist Notice of Termination of Project, the following shall occur:

(i) The Parties' rights and obligations under Sections 3 and 4 of this Agreement shall immediately terminate and City shall have no obligation, whether contractual, implied or otherwise, to proceed with or complete the Project or to construct the New Facility;

(ii) the Parking Option in Section 8, the Retail Space Option in Section 9 and the Retail Space Right of First Refusal in Section 10 of this Agreement shall all immediately terminate and be of no further force and effect, regardless of whether Zootist has given notice of exercise;

(iii) the Repurchase Right of First Refusal in Section 6, the Repurchase Option in Section 7, and the Temporary Replacement Parking provisions in Section 11 and Exhibit B of this Agreement shall each automatically terminate at the times indicated therein for termination based on Notice of Termination of Project;

(iv) the Lease Agreement shall automatically terminate at the time indicated therein for termination based on Notice of Termination of Project;

(v) unless the provisions of Section 5.c below are triggered, all other provisions of this Agreement shall terminate and the Parties shall have no further rights, obligations or duties under the Agreement, upon the date of automatic termination of the last of Sections 6, 7 and 11 of this Agreement;

(vi) if the provisions of Section 5.c below are triggered, all other provisions of this Agreement shall terminate and the Parties shall have no further rights, obligations or duties under the Agreement upon City and Zootist fulfilling all of their obligations under Section 5.c below.

c. In the event City provides Notice of Termination of Project after Commencement of Construction and partial demolition of the Existing Facility, and if City does not restore the Existing Facility to its pre-demolition condition within 90 days after the date of Notice of Termination of Project: (i) Zootist shall exercise the Repurchase Option; (ii) City shall fully compensate Zootist for the amount necessary to complete demolition of the Existing Facility and rebuild up to a 187 parking space garage on the Property; and (iii) City shall provide replacement parking as provided in Section 11 of this Agreement for the time period required to rebuild the garage. Compensation of Zootist for rebuilding the garage pursuant to (ii) of this paragraph shall include costs of site preparation, project design and construction. The costs of rebuilding the garage shall be paid monthly as they are incurred and as documented by invoices provided by Zootist to City. In the event City provides Notice of Termination of Project after

Commencement of Construction and partial demolition of the Existing Facility, and then restores the Existing Facility to its pre-demolition condition within 90 days after the date of the Notice, City shall have no obligation to rebuild a garage for Zootist.

d. City's and Zootist's duties to indemnify under the Lease Agreement and Exhibit B to this Agreement shall survive termination of this Agreement.

6. Zootist Right of First Refusal to Repurchase. Commencing on the Effective Date, and continuing until the earlier of: (i) the date of Notice of Completion of the Project; or (ii) 90 days after the date of Notice of Termination of Project, City grants Zootist a continuing right of first refusal to purchase the entire Property on the following terms and conditions ("Repurchase Right of First Refusal"):

a. If City receives a bona fide offer to purchase the Property, or any portion thereof, from a person or entity (a "Transferee"), and City determines to accept such offer, then City shall give to Zootist a written statement which identifies the Property, the economic and other relevant terms of the proposed transaction ("Repurchase First Refusal Statement").

b. If Zootist provides written notice to City of the exercise of its Repurchase Right of First Refusal ("Repurchase Notice of Exercise") within thirty (30) days from the date a Repurchase First Refusal Statement is duly given to Zootist pursuant to this Section (and terminating at midnight, on the thirtieth (30th) day thereafter), the purchase price to be paid by Zootist shall be \$810,000 and the terms for payment and closing shall be substantially similar to those set forth in the Purchase and Sale Agreement between City and Zootist Garage for the Property dated May __, 2011.

c. If Zootist waives its Right of First Refusal in writing or fails to timely and properly give its Repurchase Notice of Exercise as required herein or materially defaults in the purchase terms, City may transfer the Property to the Transferee in accordance with the material terms set forth in the Repurchase First Refusal Statement; provided that the consideration given and received for the assets matches or exceeds the economic terms set forth in the Repurchase First Refusal Statement.

The Parties acknowledge and agree that prior to Completion of the Project, City may enter into pre-sale agreements and arrangements to sell condominium units in the New Facility (including for the Retail Space described in Section 9 below after the expiration of the Retail Space Option), that will close following Completion of the Project, without triggering this Repurchase Right of First Refusal.

7. Grant of Option to Repurchase to Zootist. In the event City provides Zootist with Notice of Termination of Project, or City does not Commence Construction of the Project by April 29, 2013, Zootist 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, Zootist shall notify the City in writing as applicable: (1) within ninety (90) days following the date of Notice of Termination of Project (even if such date falls after the date set forth in subsection (2) below); or (2) within ninety (90) days following April 29, 2013 if City has not Commenced Construction by April 29, 2013. For clarification, if City gives Zootist Notice of Termination of Project, the Repurchase Option shall terminate 90 days after the date of the Notice of Termination of Project.
- b. Option Price. The Repurchase Option price for the Property shall be \$810,000.
- c. Payment. The Repurchase Option price shall be paid in cash at closing.
- d. Evidence of Title. If the Repurchase Option is properly exercised by Zootist, City agrees to execute and deliver to Zootist a standard Warranty Deed conveying fee simple absolute title for the Property 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 Repurchase 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 Zootist 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 Zootist 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 Zootist and City within thirty (30) days after the exercise of the Repurchase Option.
- h. Assignability. Except as provided in Section 19, the Repurchase Option shall only be assignable to the owner or purchaser of the Northern Hotel in Billings, Yellowstone County, Montana, or upon written approval of City.

8. Grant of Option to Purchase Parking Spaces to Zootist. Commencing upon the Effective Date, and continuing until sixty (60) days after Completion and Acceptance of Design Work, City hereby grants Zootist an exclusive option to purchase a condominium unit consisting of one hundred eighty-seven (187) contiguous parking spaces within the New Facility from City, in accordance with and upon the following terms (“Parking Option”):

- a. Conditions to Exercise. The Parking Option can only be exercised for the unit of one hundred eighty-seven (187) contiguous parking spaces as identified by Zootist pursuant to Section 4(c), and finally described in the Final Condominium Declaration for the garage portion of the New Facility.
- b. Exercise of Option. In order to exercise the Parking Option, Zootist shall notify the City in writing within sixty (60) days of the date of Notice from City of Completion and Acceptance of Design Work.
- c. Option Price. The Parking Option price for the interests under the Parking Option shall be \$810,000.
- d. Payment. Zootist shall pay the Parking Option price in cash at closing.
- e. Evidence of Title. If the Parking Option is properly exercised by Zootist, City agrees to execute and deliver to Zootist 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 garage portion of the New Facility.
- f. Title Insurance. If the Parking Option is exercised, City agrees to provide to Zootist 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 Parking Option is exercised, the City and Zootist shall prorate all real property taxes, levies and assessments as of the date of closing.
- h. Closing. Closing following the exercise of the Parking Option shall occur at the time and place mutually agreed to between Zootist and City within thirty

(30) days after the later of: (i) the date of Notice of Completion of the Project; or (ii) filing of final Condominium Documents for the garage portion of the New Facility.

i. Assignability. Except as provided in Section 19, this Parking Option shall only be assignable to the owner or purchaser of the Northern Hotel in Billings, Yellowstone County, Montana, or upon written approval of City.

9. Zootist Option to Purchase Retail Space. Commencing upon the Effective Date, and continuing until sixty (60) days after Completion and Acceptance of Design Work, City hereby grants Zootist an exclusive option to purchase first floor retail space in the New Facility located on the corner of North 28th Street and Montana Avenue as indicated by the “Proposed Zootist Retail Option” on the attached Exhibit A in the minimum amount of 1,500 square feet (the “Retail Space”), 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 described on Exhibit A and to be finally described in the final Condominium Declaration including the retail portion of the New Facility.

b. Exercise of Option. In order to exercise the Retail Space Option, Zootist shall notify the City in writing within sixty (60) days after the later of: (i) Zootist’s receipt of written notice from City that specifies the Retail Space Purchase Price as defined in subsection c. below; or, (ii) Completion and Acceptance of Design Work.

c. Option Price. The price to be paid by Zootist for the interests under the Retail Space Option shall be the fair market value of the Retail Space as determined by independent professional valuation (“Retail Space Purchase Price”). City shall provide Zootist with the documentation relied upon and provided to City by the person providing the independent professional valuation when it provides notice of the the Retail Space Purchase Price.

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 Zootist, City agrees to execute and deliver to Zootist 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 and Bylaws for the retail space portion of the New Facility.

f. Title Insurance. If the Retail Space Option is exercised, City agrees to provide to Zootist 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 Zootist 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 Zootist and City within thirty (30) days after the later of: (i) the date of Notice of Completion of the Project; or (ii) filing of final Condominium Documents that include the retail portion of the New Facility.

i. Assignability. Except as provided in Section 19, the Retail Space Option shall only be assignable to the owner or purchaser of the Northern Hotel in Billings, Yellowstone County, Montana, or upon written approval of City.

10. Zootist Right of First Refusal to Purchase Retail Space. Commencing on the Effective Date, and continuing until 30 days after Notice of Completion of the Project, City grants Zootist a continuing right of first refusal to purchase the Retail Space as described in the Retail Space Option in Section 9 of this Agreement on the following terms and conditions ("Retail Space Right of First Refusal"):

a. If City receives a bona fide offer to purchase the Retail Space from a person or entity (a "Transferee"), and City determines to accept such offer, then City shall give to Zootist a written statement which identifies the Retail Space, the economic and other relevant terms of the proposed transaction ("Retail First Refusal Statement").

b. If Zootist provides written notice to City of the exercise of its Retail Space Right of First Refusal ("Retail Notice of Exercise") within thirty (30) days from the date a First Refusal Statement is duly given to Zootist pursuant to this Section (and terminating at midnight, on the thirtieth (30th) day thereafter), the purchase price to be paid by Zootist and the terms for payment and closing shall be as set forth in the Retail First Refusal Statement.

c. If Zootist waives its Right of First Refusal or fails to timely and properly give its Retail Notice of Exercise or defaults in the purchase terms, City may transfer the Retail Space property to the Transferee in accordance with the

material terms set forth in the Retail First Refusal Statement; provided that the consideration given and received for the assets matches or exceeds the economic terms set forth in the Retail First Refusal Statement.

11. Temporary Replacement Parking. In connection with City's construction of the New Facility, City will provide temporary replacement parking to Zootist as follows:

a. **Construction Parking.** Beginning 60 days after Notice of Commencement of Construction, City agrees to provide, at its sole expense, an alternative parking arrangement for up to 100 construction workers for the renovation and rehabilitation of the Northern Hotel in accordance with the requirements for construction parking set forth in Exhibit B to this Agreement ("Construction Parking"). City's obligation to provide Construction Parking shall terminate as follows:

(i) If Zootist exercises the Parking Option, then Construction Parking shall terminate on the earlier of: (A) the closing of the Parking Option; or (B) such earlier time that Zootist is provided with occupancy of the garage portion of the New Facility by City pursuant to written agreement;

(ii) If Zootist does not exercise the Parking Option, then Construction Parking shall terminate on the date of Notice of Completion of Project; or

(iii) If City gives Zootist Notice of Termination of Project, then Construction Parking shall terminate the later of: (A) 90 days after the date of the Notice of Termination of Project; or (B) if the provisions of Section 5.c are triggered, upon Zootist's receipt of a certificate of occupancy for the rebuilt garage referenced in Section 5.c.

b. **Northern Hotel Guest Parking.** Beginning the later of: (i) 60 days after Notice of Commencement of Construction; or, (ii) issuance of a certificate of occupancy for the completed Northern Hotel, City agrees to provide, at its sole expense, valet parking for up to 110 hotel guests of the completed Northern Hotel in a paved, 24 hour secured parking lot in accordance with the requirements for guest parking set forth in Exhibit B to this Agreement ("Guest Parking"). City's obligation to provide Guest Parking shall terminate as follows:

(i) If Zootist exercises the Parking Option, then Guest Parking shall terminate on the earlier of: (A) the closing of the Parking Option; or (B) such earlier time that Zootist is provided with occupancy of the garage portion of the New Facility by City pursuant to written agreement;

(ii) If Zootist does not exercise the Parking Option, then Guest Parking shall terminate on the date of Notice of Completion of Project; or

(iii) If City gives Zootist Notice of Termination of Project, then Guest Parking shall terminate the later of: (A) 90 days after the date of the Notice of Termination of Project; or (B) if the provisions of Section 5.c are triggered, upon Zootist's receipt of a certificate of occupancy for the rebuilt garage referenced in Section 5.c.

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

13. 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 Zootist:
Zootist Hospitality, LLC
Attn: Mike Nelson, President
19 North Broadway
Billings, MT 59101

To City:
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

14. 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.

15. Entire Agreement. This Agreement and the Lease Agreement collectively embody the entire agreement between the parties regarding the subject matter hereof and thereof, and supersede all prior negotiations, understandings and agreements, if any, relating to the subject matter hereof and thereof. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

16. 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.

17. No Partnership Third Party Rights. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between City and Zootist. 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.

18. 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.

19. Collateral Assignment. Notwithstanding anything to the contrary in this Agreement, Zootist may grant a collateral assignment, security interest or similar lien or interest in all of its right or interest in this Agreement to Zootist's unaffiliated lender(s) in connection with the financing of Zootist's and Zootist's affiliates' rehabilitation and operation of the Northern Hotel.

20. Risk of Loss. Risk of loss of the Property shall remain with City, provided that upon Zootist obtaining title to any specific portion of the Property pursuant to an option or right of first refusal set forth herein, the risk of loss as that specific portion of the Property shall transfer to Zootist.

City of Billings

By: _____
Name: _____
Its: _____

Zootist Garage, LLC

By: _____
Mike Nelson, President

Zootist Hospitality, LLC

By: _____
Mike Nelson, President

EXHIBIT "A"

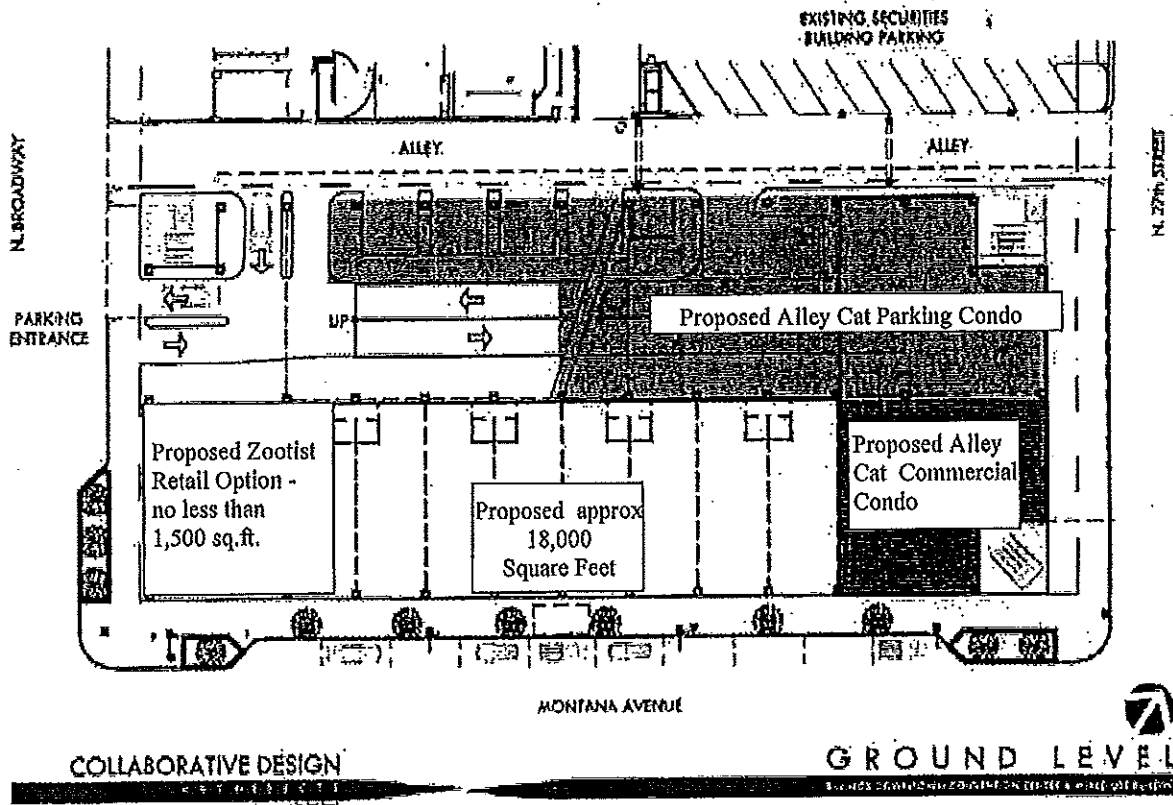
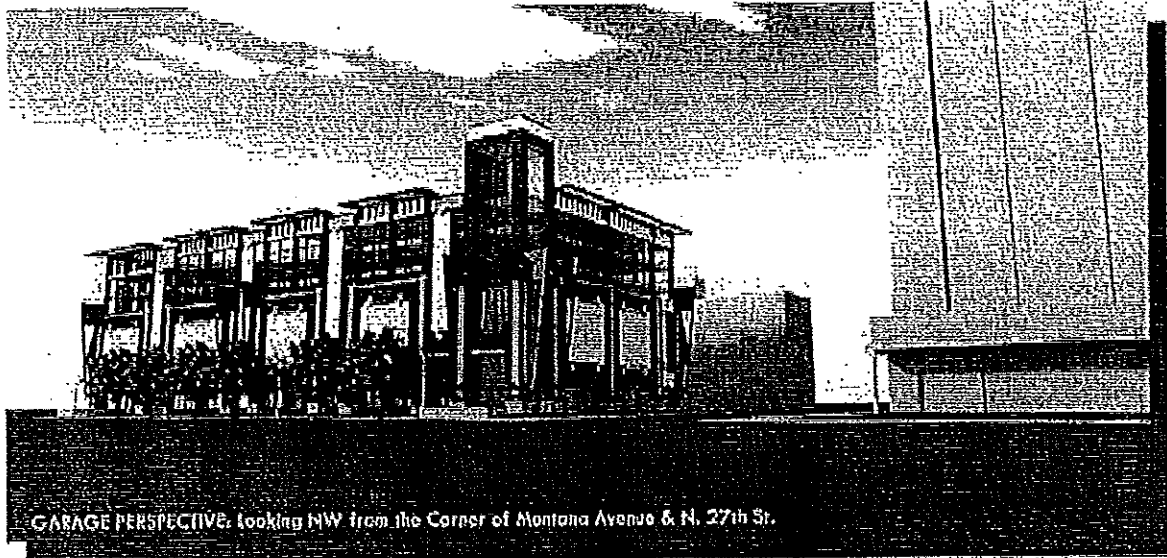


EXHIBIT
A

Exhibit B

Requirements of Temporary Replacement Parking

1. Construction Parking arrangement. The Construction Parking described and defined in Section 11 of the Agreement will be available between the hours of **[5:00 a.m. to 10:00 p.m. mountain time]**, seven days a week, 365 days a year. In addition, all such parking must (i) be provided within a single parking lot or structure, or at clearly identified and reserved metered parking spaces unless otherwise agreed by Zootist in writing; (ii) comply all federal, state and local laws, regulations and requirements, including any applicable union rules; and (iii) be not more than **[1,000]** feet walking distance (measured using normal sidewalks and intended walkways) from the entrance of the Northern Hotel located at 19 N. Broadway in Billings.

2. Guest Parking arrangement. The Guest Parking described and defined in Section 11 of the Agreement will be available 24 hours a day, seven days a week, 365 days a year. In addition, such parking must: (i) comply with all federal, state and local laws, regulations and requirements; and (ii) be located close enough to the Northern Hotel entrance and make available a sufficient number of valet parkers to ensure the Average Valet Time (as defined below) is not more than eight (8) minutes.

For purposes of this Exhibit B, "Average Valet Time" means the average number of minutes it takes for a hotel guest's car to be made available at the entrance of the Northern Hotel once the hotel guest has requested his or her car **[and Zootist requests the car from the valet parker]**. Average Valet Time shall be calculated hourly. City will consult with Zootist to determine the number of valet parkers and the hours to be worked by valet parkers to meet the eight (8) minute Average Valet Time requirement. City shall maintain a sufficient pool of available valet parkers to allow Zootist to maintain an Average Valet Time of not more than eight (8) minutes.

3. Personnel. All valet parkers and any other individuals hired or employed in connection with the Guest Parking will be employees of City or employees of independent contractors of City, within the meaning or application of any federal, state or local laws or regulations, and not of Zootist. City or its independent contractors shall pay any applicable workers compensation or other insurance and payment of any applicable federal, state or local employment, social security or similar employment taxes. City will consult with Zootist regarding the work schedule, dress code, code of conduct and other standards and policies by which City's employees or independent contractors will provide the parking services. City will consult with Zootist regarding concerns or complaints concerning conduct or performance of such employees or independent contractors and will take reasonable steps to alleviate any such concerns or complaints. City will confirm that persons hired or employed in connection with the Guest Parking are properly licensed and will take reasonable steps to ensure such persons are fit for their job duties.

4. Indemnification. City will hold Zootist, and its owners, members, managers, officers, employees, agents and representatives (the "Zootist Parties"), harmless from, and will indemnify the Zootist Parties against, any and all claims, damages, losses, suits, settlements, fines, taxes, liabilities, demands or causes of action (including legal fees and expenses) ("Liabilities") sustained by or involving the Zootist Parties arising in connection with, or as a result of City's operation of the parking arrangements contemplated by this Exhibit B, the parking facilities utilized by City in connection with such parking arrangements, and any actions or omissions of any employees or any independent contractors of City.

Conversely, Zootist agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all Liabilities arising or resulting from any intentionally harmful or negligent act on the part of any Zootist Parties, or Zootist's contractors, subcontractors, agents and employees.

5. Insurance. City shall obtain and maintain at all times during the term hereof, with a responsible insurer, 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 any parking facility used in connection with the parking arrangements described in this Exhibit B, as well as City's operation of the parking arrangements contemplated hereby in the amount of \$750,000 for each claim and \$1.5 million per occurrence. City shall not be required to obtain any additional insurance policies or to name Zootist as an additional insured; however if it is permitted pursuant to City's existing liability insurance, Zootist will be named as an additional insured under such liability insurance. City shall furnish Zootist with proof of insurance and renewals thereof; proof of endorsement as additional insured if permitted under existing insurance; and will not permit cancellation of insurance without a 30-day written notice to Zootist.

6. Assignment/Delegation. City may assign or delegate all or any part of its obligations under this Exhibit B, in its sole discretion, to an independent contractor(s); provided that such independent contractor(s) shall assume in writing the assigned or delegated obligations of City, and City shall remain responsible for performance of all obligations under this Exhibit B.

ACKNOWLEDGED AND AGREED THIS ___ DAY OF MAY, 2011

THE CITY OF BILLINGS

By: _____

Name: _____

Its: _____

Zootist Garage, LLC

By: _____
Mike Nelson, President

Zootist Hospitality, LLC

By: _____
Mike Nelson, President