

Return to:
City Clerk
City of Billings
PO Box 1178
Billings MT 59103

SKYBRIDGE EASEMENT AGREEMENT

This Skybridge Easement Agreement (the “Agreement”) dated as of the 27 day of August, 2014, is made by and between **ZOOTIST HOTEL, LLC**, a Montana limited liability company whose address is 19 North Broadway, Billings, MT 59101 (“Zootist Hotel”), **ZOOTIST HOSPITALITY, LLC**, a Montana limited liability company whose address is 19 North Broadway, Billings, MT 59101 (“Zootist Hospitality”), and the **CITY OF BILLINGS**, a municipality of the State of Montana whose address is 210 North 27th Street Billings, Montana 59103 (the “City”) and all owners of the units and common elements in the Empire Garage (the “Owners”).

WITNESSETH:

WHEREAS, Zootist Hotel is the owner of the Northern Hotel located between First Avenue North and Montana Avenue, Billings, Montana and located on the following described real property (herein “Northern Hotel”):

Lots 13, 14, 15, 16, 17 and 18, 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.

WHEREAS, the Owners executing this Agreement are the owners of all units and common elements in the Empire Garage, a mixed use parking garage and retail facility developed as a condominium project located on the following described real property (herein “Empire Garage”):

Lots 1, 2, 3, 4, 5, 6, 7, 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, Montana, under Document #16312.

WHEREAS, Zootist Hospitality presently leases and operates the Northern Hotel and will lease and operate the Hotel Parking Unit in the Empire Garage from Zootist Garage, LLC.

WHEREAS, City has constructed and is the owner of a completed and existing pedestrian overpass over a City alley which connects the Empire Garage and the Northern Hotel at the second level of the Empire Garage (the "Skybridge").

WHEREAS, the Empire Garage was constructed by the City in part to provide parking for the Northern Hotel and the Skybridge was constructed by the City to provide a convenient overhead pedestrian walkway from the Empire Garage to the Northern Hotel.

WHEREAS, City, Owners, Zootist Hotel and Zootist Hospitality wish to enter into an agreement to provide easements for attachment of the Skybridge, access to and across the Skybridge, and for maintenance and repair of the Skybridge.

NOW THEREFORE, City, Owners, Zootist Hotel and Zootist Hospitality agree, covenant and represent as follows:

1. Zootist Hotel, Owners and City hereby grant unto one another, and to their successors and assigns, an easement for access to and use of the Skybridge subject to the provisions of this Agreement.

2. Zootist Hotel and the Owners hereby grant unto the City, and to its successors and assigns, an easement for proper support of the Skybridge, in the respective locations where the Skybridge connects to the Northern Hotel and to the Empire Garage.

3. City hereby grants to Zootist Hotel and to Owners an easement in, over, across and upon the Skybridge for pedestrian ingress and egress to and from the Northern Hotel.

4. Zootist Hotel hereby grants to City an easement in, over, across and upon the Northern Hotel for access to inspect, maintain and repair the Skybridge.

5. The Skybridge shall be available for reasonable City and public access and use between the Empire Garage and the Northern Hotel between 6:00 a.m. and 6:00 p.m., provided that:

a. Zootist Hotel and Zootist Hospitality may determine and enforce reasonable rules, regulations and access schedules to control access to the Skybridge for Northern Hotel special events, and for maintenance, repair and cleaning purposes; and

b. Zootist Hotel and Zootist Hospitality may determine and enforce reasonable rules and regulations to provide for safety and security of patrons and guests of the Northern Hotel and any other persons using the Skybridge. City will cooperate

with Zootist Hotel and Zootist Hospitality regarding access schedules to the Skybridge in the event security and safety issues arise from the access schedule.

6. The easements granted by Zootist Hotel and Owners for access to and use of the Skybridge, shall apply only to the Skybridge and to those areas in the Empire Garage and the Northern Hotel which provide reasonable access to the Skybridge.

7. Zootist Hotel and Zootist Hospitality shall maintain the interior of the Skybridge, including its entryways, doorways, locks and access control systems, at its sole expense, in good condition both as to safety and appearance, which condition shall be satisfactory to City. Zootist Hotel and Zootist Hospitality shall repair any damage or injury done to the interior of the Skybridge during the term of this Agreement.

8. City shall maintain the exterior of the Skybridge in good condition both as to safety and appearance. City shall repair any damage or injury done to the exterior of the Skybridge during the term of this Agreement.

9. In the event any party fails to properly maintain or repair the portion of the Skybridge that it is responsible to maintain or repair, the other party may perform such maintenance or repairs without liability to the responsible party or parties, and the responsible party or parties shall pay all costs thereof.

10. Zootist Hotel and Zootist Hospitality on the one hand, and City on the other hand shall indemnify, defend and hold one another harmless, from and against any and all third party actions, claims, liability or liabilities, and demands to the extent arising out of their ownership, use, maintenance or occupancy of the Skybridge, due to recklessness, negligence, or unlawful conduct, or breach of this Agreement.

11. City, Zootist Hotel and Zootist Hospitality shall purchase and maintain public liability and property damage insurance, insuring themselves for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use, maintenance or occupancy of the Skybridge, with policy limits no less than \$1,000,000 per occurrence and \$2,000,000 per aggregate. If insurance is provided under separate policies, each policy of insurance shall name the other parties as additional insureds.

12. City, Zootist Hotel and Zootist Hospitality shall insure the Skybridge against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a reasonable deductible amount. If insurance is provided under separate policies, each policy of insurance shall name the other parties as additional insureds.

13. The easements and related obligations herein shall be fully assignable in connection with the sale or other transfer of the Northern Hotel as an appurtenance thereto and shall be binding upon the successors and assigns of Zootist Hotel, Zootist Hospitality, Owners and the City.

14. If the Northern Hotel is no longer operated as a hotel, or if the owner or operator of the Northern Hotel is in breach of this Agreement, then City may suspend or restrict access to and/or use of the Skybridge.

15. The easements and obligations in this Agreement shall run with the land, for the benefit of the public, the present and future owners of the Northern Hotel and each Unit in the Empire Garage, and their employees and guests, using the Northern Hotel and/or the Empire Garage. The easements and obligations in this Agreement shall terminate when the Skybridge ceases to connect the Empire Garage and the Northern Hotel, or as otherwise provided in the terms and conditions set forth herein.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS
Owner of Public Parking Unit,
Owner of Skybridge

By: _____
Mayor

Attest: _____
City Clerk

ACKNOWLEDGEMENT

STATE OF MONTANA)
 :ss
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2014, by _____ and _____, respectively as Mayor and City Clerk of the City of Billings.

SEAL

Sign: _____
Print Name: _____
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: _____

ALLEY CAT INVESTMENTS, LLC
Owner of Alley Cat Parking Unit,
Owner of Retail Unit H

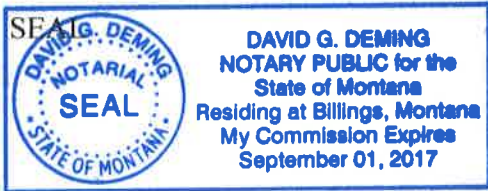
By: [Signature]

Its, Managing Member

STATE OF MONTANA)
):ss
County of Yellowstone)

This instrument was acknowledged before me on the 27 day of August,
2014, by William Honaker, the Managing Member.

Sign: [Signature]
Print Name: David S Deming
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: 9/1/2017

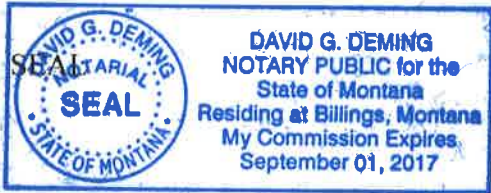


WU PROPERTIES, LLC
Owner of Retail Units F & G

By: _____
Its, LLC Member

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was acknowledged before me on the 27 day of August,
2014, by Tina Wu, the LLC Member,



Sign: _____
Print Name: David G Deming
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: 9/1/2017

DONOVAN PROPERTIES LLC
Owner of Retail Units A-E

By: *Kelly J. Donovan*
Its, *member*

STATE OF MONTANA)
):ss
County of Yellowstone)

This instrument was acknowledged before me on the 27 day of August
2014, by Kelly J. Donovan, the member,

Sign: *[Signature]*
Print Name: DAVID G. DEMING
Notary Public for the State of Montana
Residing at Billings, MT
My Commission expires: 9/1/2017

