

LEASE

This **LEASE** (“**Lease**” or “**Agreement**”) is entered into and effective as of this ___ day of _____, 2025 (“**Effective Date**”), by and between **CAPEHON DEVELOPMENT, LLC**, a Montana limited liability company, and its assigns (collectively, “**Landlord**”), and **THE CITY OF BILLINGS** (the “**City**” or “**Tenant**”).

Subject to the terms and conditions set forth in this Agreement, Landlord leases to Tenant, and Tenant leases from Landlord, certain portions of the real property legally described in “**Exhibit A**” with an address of 210 North 27th Street, Billings, MT 59101. Specifically, Tenant Leases those portions of the building formerly known as Billings City Hall which consist of the Park 3 Parking Garage, along with the associated attendant station within the garage, and the secured parking located below the Park 3 Parking Garage (the “**Property**”).

1. Term. The term of this Lease shall be two (2) years (“**Term**”). The Lease shall expire on June __, 2027. Neither party is required to give the other party notice of the Lease termination.

2. Rent. Tenant shall pay Landlord Twelve Thousand Two Hundred Thirty-One and 25/100 Dollars (\$12,231.25) per month as base rent for the Property (“**Rent**”). Rent for any partial month shall be prorated based on the number of days remaining in the partial month. Any Rent payment that is not received by the fifth (5th) of the month for which it is to be made shall be a late payment, and Tenant shall pay a late payment fee of Two Hundred Dollars (\$200.00) in addition to Rent due. The late payment fee must be remitted with the late payment, and failure to do so shall render Tenant in default under this Agreement.

3. Utilities. Tenant shall pay and discharge all charges made by any public or private utility or others for gas, electric, or other services to the Property. Because utilities are not separately metered from other contiguous property owned by Landlord, Landlord and Tenant have agreed that Tenant’s electricity and water bill shall be calculated based upon \$56.05 per parking space, with 274 parking spaces being agreed as present in the Property, for a total annual electricity and water cost to be paid by Tenant to Landlord of \$15,357.00, and with the charge for gas calculated at the rate of \$0.29 per square foot, based upon 8,878 square feet in the Property, for a total annual gas cost to be paid by Tenant to Landlord of \$2,575.00. The combined total of Utilities costs attributable to Tenant’s interest of \$17,932.00 (\$15,357.00 plus \$2,575.00) will be divided into, and paid in, twelve equal monthly installments of \$1,495.00 each by Tenant to Landlord, payable in advance, on the first day of each month during the Term of this Lease. Tenant recognizes that because Landlord has owned the Property for a short period of time, Landlord must estimate the utility costs to be charged to Tenant provided herein because it does not have a history of experience with the actual utility costs attributable to the Property. Thus, Tenant agrees that the utility costs assessed to Tenant are based upon Landlord’s good faith estimate of utility costs for Tenant, as of the date of this Lease, and that, to the extent utility costs to Landlord are increased by providers or the estimate proves to be inadequate to account for actual utility charges incurred by Landlord, then the utility amounts charged to Tenant may be increased by Landlord for Tenant during the Term of the Lease based upon actual charges experienced by Landlord for the Property. Tenant shall pay for any and all other services furnished or provided to the Tenant or the Property, including trash services, at the request of Tenant during the Lease term.

4. Landscaping and Snow Removal. Tenant shall maintain in good condition and repair, any landscaping on the Property during the Term of the Lease. Tenant shall sand, salt, or otherwise remove snow and ice from parking areas, sidewalks, and other areas abutting the roadways or walkways on the Leased Property. Tenant shall pay all costs incurred upon the Property for landscaping or snow removal.

5. Taxes. Tenant agrees to pay directly to the taxing authority the real estate taxes and assessments levied against the Property for the period beginning on the Effective Date and for the remainder of the Term of the Lease. Landlord shall provide Tenant with all property tax bills as soon as practical upon receipt, and Tenant shall promptly pay the outstanding taxes owing against the Property. Alternatively, at Landlord's sole election, if tax statements are delivered to and paid by Landlord, then Tenant shall reimburse Landlord in full after demand is made by Landlord for payment of such taxes. Landlord shall provide Tenant with copies of any tax bill or other documentation reflecting real and personal property tax assessments as soon as practicable upon receipt. To the extent that taxes owed on the Property are not separately assessed from other contiguous property owned by Landlord, Landlord shall calculate and bill Tenant for, and Tenant shall pay promptly to Landlord, its proportionate share of the taxes owed on the Property.

Tenant agrees to pay all taxes levied or assessed against any personal property or fixtures placed on the Property directly to the appropriate taxing authority and shall not permit the same to become a lien against the Property unless the same is discharged promptly by Tenant. Special assessments for improvements to be constructed after the Effective Date shall be divided between the parties based on the useful life of the improvements, with Tenants paying any portion attributable to the Term, and the Landlord paying the remainder.

6. Insurance. During the Lease term, Tenant shall obtain the following insurance coverage at its cost, with coverage amounts subject to increase as determined to be reasonably necessary by Landlord, for the Property and for Landlord's contiguous real property commonly known, at the time of the parties' execution of this Lease as the Old City Hall Building and adjoining City Administrative Building (collectively, for the purpose of this paragraph, the Property, Old City Hall Building and City Administrative Building are referenced as the "Combined Property") :

a. "All Risk" Property Insurance covering physical loss or damage to the Combined Property, and insuring Landlord's interest therein. The insurance shall cover the Combined Property and shall be through Tenant's blanket property insurance policy for its properties in its prevailing total coverage amount in an amount which is presently set in the amount of \$21,000,000.00, with a \$100,000.00 deductible amount, or as the deductible may be reasonably modified later by Tenant from time to time during the term with notice to Landlord. Landlord shall reimburse Tenant for the costs associated with the insurance policies for the Old City Hall Building and City Administrative Building portion of the Combined Property (the "Landlord Portion") above by paying Tenant one-twelfth (1/12) of the annual policy costs for the Landlord Portion in estimated monthly installments. Tenant and Landlord shall periodically reconcile the amount received and may adjust Landlord's and Tenant's payments accordingly. In the event of underpayment or overpayment, Landlord and Tenant shall cooperate to adjust future monthly payments accordingly.

During the Lease term, Tenant shall maintain the following insurance coverage:

- b. Commercial General Liability Insurance in amounts no less than Two Million Dollars (\$2,000,000) per occurrence, Four Million Dollars (\$4,000,000) aggregate limit.

Insurance policies required under this Lease shall be in a form acceptable to Landlord. Policies shall contain provisions causing insurance proceeds for any damage to the Property to be made payable to Landlord, name Landlord as an additional insured, and contain provisions notifying Landlord in writing before any material change, cancellation, or termination of coverage.

7. Quiet Enjoyment. Tenant shall at all times during the Term of this Lease peaceably have, hold, and enjoy the Property without any manner of suit, trouble, or hindrance of or from Landlord or any person or persons under the control of Landlord, provided Tenant is not in default.

8. Right of Entry and Inspection. Landlord reserves the right to enter the Property upon reasonable notice to Tenant (except in case of an emergency, in which case no notice would be required) to inspect the Property or the performance by Tenant of the terms and conditions of this Lease.

9. Repair and Maintenance. Tenant shall be responsible for all normal cleaning, maintenance, and upkeep of the Property during the term of this Agreement. Any major repair or replacement of the structural components of the building shall be the responsibility of Landlord, unless the need for the major repair or replacement arose due to the negligent or intentional misconduct of Tenant or Tenant's permitted guests or customers. Landlord shall be responsible for all exterior painting and structural repairs, including roof, electrical, heating systems, and bearing walls during the term of this Agreement. Provided, however, that the repairs, alterations, additions, replacements and improvements stated in the attached **Exhibit "B"** shall be completed by Tenant at its sole cost during its tenancy herein and, upon completion, shall become the property of Landlord without abatement of Rent or other reimbursement or compensation due to Tenant.

10. Alterations. Except for the alterations, additions, replacements and improvements set forth on Exhibit "B", Tenant shall not make any alterations, additions, or replacements on or to the Property during the Term of this Agreement without the written approval of the Landlord.

11. Signs. Tenant shall have the right to install or place signs or other advertising material in, on, or about the Property, to the extent permitted by all local zoning regulations, ordinances, and any covenants, conditions, restrictions, and other documents of record related to the Property. All signage installed by Tenant must be approved by Landlord prior to installation. All costs and expenses related to Tenant's signs, or other advertising materials, including without limitation, maintenance, shall be at Tenant's sole responsibility. Nothing stated herein shall prevent Landlord from installing its own legally compliant signage on the Property and the parties shall cooperate to minimize any conflict between the signage of the two parties.

12. Permitted Uses. Tenant shall use and occupy the Property as a commercial parking structure, including the leasing of individual parking spaces for hourly or monthly use by third parties. Tenant shall not occupy or use the Property or permit any portion of the Property to be occupied or used, for any business or purpose that is unlawful, or permit anything to be done that would in any way increase the rate of liability or any other insurance coverage on the Property. Tenant

recognizes that Landlord may require parking spaces during Tenant's tenancy, and Tenant shall endeavor to provide Landlord with the required number of spaces, with Landlord to pay Tenant its standard parking rate for the same.

13. Liens. Tenant shall, during the term of this Lease, promptly remove or release, by the posting of a bond as either required or permitted by law, any lien against the Property or any portion thereof arising by reason of any fault or omission on the part of Tenant, and shall save and hold Landlord harmless from or against any such lien. In the event any such lien does attach against the Property, and shall not be released within fifteen (15) days after notice thereof, Landlord, in Landlord's sole discretion, may pay and discharge the same and relieve the Property therefrom; thereafter Tenant shall pay and reimburse Landlord upon demand for or on account of any cost or expense (including reasonable attorneys' fees) incurred by Landlord in discharging such lien, which sum shall include interest at a rate of twelve percent (12%) per annum, but not to exceed the highest lawful rate, from the date such lien is paid by Landlord until the date Landlord is reimbursed by Tenant.

14. Indemnification. Tenant indemnifies and agrees to hold Landlord harmless from and against any and all actions, claims, damages, and demands arising out of the use, occupancy, or non-use of the Property by Tenant or the failure of Tenant to maintain the Property as provided in this agreement, including, without limitation, any carelessness, negligence, improper conduct, or breach of this Lease by Tenant or its agents, guests, pets, employees, patrons, suppliers or licensees, and any and all costs, expenses and fees, including attorneys' fees, incurred by Landlord incident thereto or incurred by Landlord to enforce its rights or remedies against Tenant under this Agreement.

15. Assignment and Subletting; Additional Tenants. Tenant shall not assign this Lease or any part without the express written consent of Landlord, subject to Landlord's sole and absolute discretion. Any such consent shall not release Tenant from its covenants and obligations under this Agreement, and Tenant shall continue to be responsible for the performance of the covenants and obligations unless Landlord expressly releases Tenant in writing. Tenant is expressly permitted to offer short-term paid parking, monthly leased parking, or other paid use of the Property for the purpose of parking without violating this Section or this Lease.

16. Default. The occurrence of any of the following shall constitute an event of default:

- a. Tenant fails to pay the Rent or any other payment provided for in this Lease when due.
- b. Tenant fails to observe or perform any of the obligations of Tenant provided for in this Lease.
- c. A petition in bankruptcy or an application for any relief under any provision of the Bankruptcy Act is filed by or against Tenant.
- d. Tenant makes an assignment for the benefit of creditors.
- e. A receiver is appointed for the assets or affairs of Tenant.
- f. Tenant shall commit any act of bankruptcy.

g. Tenant's interest under this Agreement shall be levied upon under execution or seized by virtue of any writ of any court of law or equity.

h. Any assignment of this Lease, either in whole or in part, is effected by operation of law.

17. Landlord's Rights. If Tenant shall be in default under this Agreement, then Landlord shall have the right to make any payment or perform any act required by Tenant under any provision of this Lease, and, in exercising such right, to incur necessary and incidental costs and expenses, including reasonable fees and costs for Landlord's professionals and attorneys. All payments made and all costs, fees and expenses incurred by Landlord in connection with any exercise of such right, together with interest thereon at the maximum rate of interest then permitted by law from the respective dates of the making of such payments or the incurring of such costs and expenses, shall be reimbursed by Tenant immediately upon demand. Notwithstanding the foregoing, nothing herein shall imply any obligation on the part of Landlord to make any payment or perform any act required by Tenant.

18. Landlord's Remedies. In the event of default by Tenant which shall remain uncured after forty five (45) days' notice of the default, or fifteen (15) days in the case of non-payment of rent or any other sum due under the Lease (which shall not require notice of default from Landlord), in addition to any remedies permitted to Landlord under Montana law, Landlord may at once thereafter or at any time subsequently during the existence of such breach or default: (a) enter into and upon the Property or any part thereof and repossess the Property, expelling and removing all persons and property (which property may be removed and stored at the cost of, and for the account of Tenant), using such force as may be necessary, and (b) terminate this Lease, holding Tenant for damages for its breach.

19. Miscellaneous Default Clauses. In the event of breach of this Lease, the party at fault shall and shall pay to the other party all costs, reasonable attorneys' fees and costs, and other expenses which may be incurred by the other party in enforcing its rights under this Lease. The remedies described in this Lease, or the election of any remedy by either party is not exclusive of any other remedy or action which may otherwise be appropriate, each party having the right to pursue any and all other rights and remedies which it may have at law or in equity. The failure of either party to terminate this Lease at any time during the breach of any of the terms shall not be construed to be a waiver of the rights of the party as to any further or subsequent breach. Landlord's act of taking possession of the Property is not a termination of this Lease unless written notice of termination has been served on Tenant.

20. Time of the Essence. Time is of the essence in respect of the performance of each provision of this Lease.

21. Surrender. Upon the expiration or sooner termination of this Lease, Tenant, at its sole expense, shall remove from the Property all property of Tenant which is not affixed or attached to any part of the Property and shall quietly and peaceably surrender possession of the Property in good order and repair.

22. Holding Over. There shall not be any holding over by Tenant or any permitted assignee or subtenant of Tenant beyond the expiration or sooner termination of the Lease term. If Tenant does not surrender possession of the Property at the termination of the Lease, then such holding over by Tenant shall be a tenancy at the sufferance of Landlord upon the same terms and conditions as are provided for in this Agreement with a rental for the period of such holding over proportionate to the monthly installment of Rent last paid by Tenant during the term of this Lease, multiplied by one hundred twenty-five percent (125%).

23. Condemnation. In the event of any taking by condemnation or eminent domain of any portion of the Property, Landlord shall be entitled to all compensation paid, or award given, for the property taken. If all of the Property is taken, or if a portion thereof is taken so that the operation of the business conducted on the Property is not economically feasible, then, as of the date possession is taken under such condemnation or exercise of the right of eminent domain, this Lease shall cease and terminate and the obligations of the parties for the unexpired term of this Lease likewise shall cease and terminate.

24. Casualty. If the Property is damaged by fire, unavoidable accident, or other casualty covered by fire and extended coverage insurance and the damage is not caused by the act, or failure to act, of Tenant, its employees, agents, licensees, permittees, or invitees, then the parties shall each be entitled to terminate this Agreement and abate rent from and after such date of the damage or destruction. Notwithstanding the foregoing, the parties shall reasonably cooperate to minimize any Tenant liability relating to monthly or other parking leases outstanding at the time of any casualty (however, Landlord shall not be liable for any obligation of Tenant under any parking leases). If neither party elects to terminate this Agreement following damage or destruction of the Property, then Landlord shall keep Tenant reasonably informed of Landlord's restoration of the Property.

25. Hazardous Materials. As used in this Section, Hazardous Material means any chemical, substance, or material that is or may be hazardous to human health or to the safety of the environment, which are now or in the future become listed, defined, or regulated in any manner by any environmental law.

a. Tenant shall not use or allow the use of the Property in a manner that may cause Hazardous Materials to be released or to become present on, under, or about the Property or other properties in the vicinity of the Property.

b. Tenant shall indemnify, protect, defend, and hold Landlord harmless from all claims, judgments, causes of action, damages, penalties, fines, taxes, and expenses arising (directly or indirectly) as a result of or in connection with Tenant's breach of any prohibition or provision of this Section.

26. Acceptance of Property. Tenant represents that Tenant has examined the Property prior to taking possession or had the opportunity to inspect the Property and waived the right to do so. Tenant accepts the Property in its present condition, without representation or warranty, express or implied, in fact or by law, by the Landlord, and without recourse to the Landlord as to the nature, condition, or usability thereof, or the uses to which the Property may be put.

27. Entire Agreement; Changes or Waivers. This Lease constitutes the entire agreement between the parties and no waiver of any right, agreement, or condition and no modification of this Lease shall be binding upon either of the parties unless in writing and signed by the party to be bound.

28. Headings. Section headings are for convenience and are in no way to be construed as part of this Lease or as a limitation on the scope of the particular articles or sections to which they refer.

29. Partial Invalidity. In the event any provision of this Lease or part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby, it being understood that such remaining provisions shall be construed in a manner most clearly approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.

30. Construction. Wherever any neuter or singular term is used herein, such term shall be construed to include the masculine or feminine gender or the plural and so to include any party, whether male or female as may be appropriate.

31. Notices. Any and all notices, requests, or demands required under this Lease shall be in writing and shall be delivered in person or sent by United States certified or registered mail (return receipt requested), addressed as follows:

If to Landlord: CapeHon Development, LLC
P.O. Box 2094
Billings, MT 59103

With a copy to: Malcolm Goodrich
Goodrich & Reely, PLLC
2812 1st Avenue North, Suite 301
Billings, MT 59103

If to Tenant: City of Billings
Parking Manager
City Hall
316 N 26th Street
Billings, MT 59101

With a copy to: City Attorney
City of Billings
City Hall
PO Box 1178
Billings, MT 59103

Notice served by mail shall be complete when deposited in the United States Post Office. Any change of address shall not be effective unless served upon the parties in the same manner as the notice referred to under this Agreement.

32. Binding Effect; Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors, and authorized assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

LANDLORD

CAPEHON DEVELOPMENT, LLC
a Montana limited liability company

By: William D. Honaker
Its: Managing Member

By: Donald E. Cape Jr.
Its: Managing Member

TENANT

THE CITY OF BILLINGS

By: William A. Cole
Its: Mayor

EXHIBIT A – REAL PROPERTY DESCRIPTION

All the following shall constitute the Property, together with all improvements thereon:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 58 of the Original Town, Now City of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in office of the Clerk and Recorder of said County.

LESS AND EXCEPTING all portions of the Garage Building consisting of office space or other space not specifically utilized for parking or an ancillary use associated with the parking garage. Tenant expressly acknowledges and consents to Landlord retaining the sole and exclusive use of the City Administrative Building and Old City Hall Building portions of the real property.

The Property has a street address of 210 North 27th Street, Billings, MT 59101.

EXHIBIT B – TENANT REPAIRS

The tenant repairs identified in Sections 9 and 10 are highlighted and summarized on the attached Engineer's Opinion of Estimated Probable Repair Costs and are more particularly described in the Condition Audit of Park 3 of the City of Billings, Montana, dated as of April 2024.

Repairs and Preventive Maintenance
Engineer's Opinion of Estimated Probable Repair Costs
DESMAN Project # 60-23110-2

Recommended Repairs					Repairs Quantities & Costs		
					Repair Quantities	2024 Repair Costs	2025 -2028 Repair Cost (Note 6)
Item No.	Description	Unit Price	Unit Type				
1	Structural & Waterproofing Repair Work - Structurally Supported (Year 1, Priority Repairs)						
a.	Concrete Floor repair (partial depth) All levels	\$ 125.00	sf	x	10 =	\$ 1,250	\$ -
b.	Traffic topping (Levels 2-3)	\$ 12.00	sf	x	500 =	\$ 6,000	\$ -
c.	Concrete Ceiling Repairs (Level 2 soffit)	\$ 300.00	sf	x	20 =	\$ 6,000	\$ -
d.	Replace Seals/Expansion Joints (at Stair Towers)	\$ 175.00	lf	x	60 =	\$ 10,500	\$ -
e.	Fog Sealer for Top Deck	\$ 0.20	sf	x	22,000 =	\$ 4,400	\$ -
f.	Methacrylate Sealer (Top Deck on Ramp)	\$ 2.50	sf	x	1,500 =	\$ 3,750	\$ -
g.	Concrete Wall Demo/Repair	\$ 300.00	sf	x	20 =	\$ 6,000	\$ -
	Subtotal				=	\$ 37,900	\$ -
2	Structural & Waterproofing Repair Work - Structurally Supported (Year 2 & Beyond)						
a.	Concrete Floor repair (partial depth) All levels	\$ 125.00	sf	x	10 =	\$ -	\$ 1,250
b.	Traffic topping (Levels 2-3)	\$ 12.00	sf	x	3,000 =	\$ -	\$ 36,000
c.	Route & Seal Cracks (Floor)	\$ 8.00	lf	x	100 =	\$ -	\$ 800
d.	Route & Seal Cracks (Column)	\$ 20.00	lf	x	75 =	\$ -	\$ 1,500
e.	Replace Seals (at other locations)	\$ 20.00	lf	x	85 =	\$ -	\$ 1,700
f.	Epoxy injection (soffit of roof level)	\$ 115.00	lf	x	20 =	\$ -	\$ 2,300
g.	Cove Sealant Replacement (roof level)	\$ 8.00	lf	x	1,200 =	\$ -	\$ 9,600
	Subtotal				=	\$ -	\$ 53,150
3	Architectural, Mechanical, Electrical (Years 1 +)						
a.	Mechanical ADA Assist Door repair	\$ 1,500.00	ea	x	2 =	\$ 3,000	\$ -
b.	Re-Striping, Stenciling Allowance	\$ 32.00	ea/stall	x	300 =	\$ 9,600	\$ -
c.	Barrier Cable Re-tightening	\$ 150.00	ea	x	6 =	\$ 900	\$ -
d.	Electrical Allowance	\$ 4,000.00	ls	x	1 =	\$ 4,000	\$ -
	Subtotal				=	\$ 17,500	\$ -
	Recommended Repair & Preventive Total				=	\$ 55,400	\$ 53,150
3	10% Contingency for Unknown/Unanticipated Conditions						
	Subtotal			ls	=	\$ 5,600	\$ 5,400
4	Repair Work & Contingency						
	Subtotal				=	\$ 61,000	\$ 58,550
5	Mobilization, General Conditions, Overhead (15% of Total)						
	Subtotal			ls	=	\$ 9,200	\$ 8,800
	Recommended Total				=	\$ 70,200	\$ 67,350

Notes:

- Construction costs do not include engineering fee
- The costs do not include construction administration, material testing, or permitting fees.
- Contingency is for project conditions beyond Owner's control such as variation in quantities, hidden conditions, bidding climate and regulatory costs.
- Estimate is based on normal business working hours and does not account for restricted/limited work hours
- Costs do not include M/E/P/FP repairs or improvements including drainage, lighting, ventilation, carbon monoxide monitoring system and fire suppression systems or repairs to the elevators, unless specifically mentioned in the report and opinion of probable costs
- Escalation of 5% should be added to the above cost for repairs performed in 2025 and beyond.

sf = Square Feet
lf = Lineal Feet
ea = Each Unit
ls = Lump Sum