

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (the “**Agreement**”) is dated \_\_\_\_\_, 2019 (the “**Agreement Date**”) and is between Zoot Properties, L.L.C., a Montana limited liability company (the “**Seller**”), and Big Sky Economic Development Corporation, a Montana nonprofit corporation (the “**Buyer**”).

The Seller owns the real property (with all structures, improvements, and fixtures thereon the “**Property**”) described in the warranty deed attached as **Exhibit A** (the “**Deed**”) and wants to sell it to the Buyer.

The parties therefore agree as follows:

1. **Purchase Price.** The Buyer shall purchase the Property from the Seller for \$1,000,000 (the “**Purchase Price**”) and pay the Purchase Price by: (1) depositing \$5,000 in earnest money (together with any other earnest money deposit the Buyer makes, the “**Earnest Money**”) within five days after the Agreement Date with First American Title Company in Billings, Montana (the “**Closing Agent**”); and (2) paying the balance of the Purchase Price at the closing of the transactions described in this Agreement (the “**Transaction**”; the moment the parties consummate the Transaction, the “**Closing**”; the date upon which the Closing occurs, the “**Closing Date**”). The parties shall cause the Closing Agent to hold and disburse the Earnest Money as provided in this Agreement.

2. **Bargain Sale.** The Transaction is a bargain sale where the Seller is selling the Property to the Buyer for less than the Property’s fair market value (the difference between the Purchase Price and the Property’s fair market value, the “**Gift**”). The Gift will be a charitable donation from the Seller to the Buyer. The Seller may obtain and pay for an appraisal to determine the Gift and take the other steps under the Internal Revenue Code to claim the benefit of any tax deduction the Gift may generate for the Seller. Any such appraisal is for the Seller’s own benefit and use and it has no obligation to share it with the Buyer. The Buyer will obtain its own appraisal of the Property (the “**Buyer Appraisal**”). The Buyer Appraisal is for the Buyer’s internal purposes and is inapplicable in determining the Gift unless the Seller wants to use it for that purpose, which it may do in its discretion. The Buyer will ensure that its agreement with its appraiser does not preclude the Buyer from sharing the Buyer Appraisal with the Seller. If the Seller wants to use the Buyer Appraisal for purposes of determining the Gift, the Buyer will cooperate with the Seller in attempting to obtain the appraiser’s consent for the Seller to use the Buyer Appraisal for that purpose. In the event the Seller wishes to obtain its appraisal after Closing, the Buyer will reasonably cooperate with the Seller and the Seller’s third party appraiser to permit such appraisal to be completed.

3. **Federal Grant.** If the Closing occurs, the Buyer will sell the Property to Big Sky Economic Development Authority, a Montana local port Authority (“**Big Sky EDA**”). Big Sky EDA is applying for a grant (the “**Grant**”) from the United States Economic Development Administration (the “**US EDA**”) for funds to defray the expense of buying and improving the Property (the “**Grant Funds**”). The Grant application will include a budget estimating the expenses Big Sky EDA will incur to complete improvements on the Property, prepare it for occupancy, and move its business to the Property (the “**Improvement Budget**”). If the US EDA does not award the Grant to Big Sky EDA, the Buyer: (1) will notify the Seller within ten days after Big Sky EDA receives a formal denial letter from the US EDA (the date of that letter, the “**Denial Date**”); and (2) may terminate this Agreement within 30 days after the Denial Date. If the US EDA awards the Grant to Big Sky EDA, the Buyer will notify the Seller within ten

days after Big Sky EDA receives a formal award letter from the US EDA (the date of that letter, the "**Award Date**"). If the Grant Funds are less than the amount of the Grant request, the Buyer will cause Big Sky EDA to explore reducing the Improvement Budget. The Buyer may terminate this Agreement within 30 days after the Award Date if Big Sky EDA concludes that due to the reductions the Property will not meet its needs.

4. **Closing Date.** The parties shall cause the Closing to occur at the Closing Agent's office on the Closing Date, which shall be within 30 days after the Award Date. If the Closing does not occur by September 30, 2019, the Buyer may extend the Closing Date for up to 30 days by: (1) notifying the Seller; and (2) increasing the Earnest Money by an additional \$2,500.

5. **Closing.** Before the Closing, the parties shall cause the Closing Agent to prepare their respective settlement statements reflecting (each, a "**Settlement Statement**"): (1) a credit to the Buyer for the Earnest Money, all of which is applicable to the Purchase Price; (2) the proration of the taxes and assessments on Property between the parties as of the Closing Date, except that the Seller will be entitled to a refund of those prorations applicable to the period after the Property is no longer subject to real estate taxes; (3) other prorations, expenses, or charges this Agreement allocates to or between the parties; and (4) other matters applicable to the Transaction customarily found on real estate closing settlement statements. The parties shall: (1) equally share the Closing Agent's fees; and (2) each pay their own professional and legal fees and expenses. At or before the Closing: (1) the Seller shall deliver to the Closing Agent (i) the original signed, dated and notarized Deed; and (ii) a signed, dated, and populated Montana Department of Revenue Realty Transfer Certificate (the "**RTC**") for the Property; and (2) the Buyer shall deliver to the Closing Agent (i) in cash or certified funds, the amount the Buyer's Settlement Statement reflects, and (ii) the signed and dated RTC. The parties shall take other actions and sign other documents to consummate the Transaction in a manner consistent with this Agreement. In conjunction with the Closing, the parties shall cause the Closing Agent to: (1) record the Deed; (2) submit the RTC to the Montana Department of Revenue; and (3) deliver to the Seller, in cash or certified funds, the amount the Seller's Settlement Statement reflects.

6. **Title.** Seller shall convey fee simple title to the Property to the Buyer by warranty deed in the form of the Deed (the "**Warranty Deed**"), free and clear of all liens and encumbrances excepting only those stated in the Deed (those exceptions, the "**Title Exceptions**"). Within ten days after the Agreement Date, the Buyer shall cause Closing Agent to issue Buyer title evidence to the Property in the form of a title commitment for a standard coverage owner's policy of title insurance in the amount of the Purchase Price showing Buyer as the proposed insured (that commitment, the "**Commitment**"; the printed standard exceptions contained in the Commitment, the "**Standard Exceptions**"). If the Commitment reveals any exceptions, liens, encumbrances, title defects or title irregularities beyond the Title Exceptions and Standard Exceptions which render the title unmerchantable (those matters, the "**Commitment Exceptions**"), then Buyer shall provide written notice to Seller specifying any Commitment Exceptions to which Buyer objects (those matters, the "**Commitment Objections**") within ten days after the Buyer receives the Commitment (that notice, the "**Objection Notice**"). If the Buyer issues an Objection Notice, the Seller will then have ten days after receiving it to notify the Buyer (that notice, the "**Seller Notice**") what Commitment Objections the Seller shall: (1) cause to be removed from the Commitment at or before the Closing, in which event the removal will be at the Seller's expense; or (2) not cause to be removed from the Commitment, in which event the Buyer will then have ten days from the date it receives the Seller Notice to notify the Seller it will (i) proceed to the Closing, in which case the Commitment Objections disapproved by the Seller in the Seller Notice are withdrawn, or (ii) terminate this Agreement. If the Closing Agent issues any updates to the Commitment with

Commitment Exceptions not revealed in the Commitment or any prior updates to the Commitment, then the Buyer may issue an Objection Notice and the Seller may issue a Seller Notice in response. In that event, if the time this Agreement allocates for the parties to undertake that process is longer than the time remaining until the Closing Date, the parties shall extend the Closing Date to the date ten days after the last day this Agreement allocates for the parties to conclude that process.

7. **Title Policy.** Within 30 days after the Closing, the Buyer shall cause the Closing Agent to issue a title policy to the Buyer under the Commitment and the sections of this Agreement with the descriptive headings Title and Title Commitment Objections (the “**Title Policy**”). The Buyer and the Seller shall each pay half the cost of the premium for the Title Policy at the Closing. If the Buyer wants coverage endorsements or increased, extended or enhanced coverage (those matters, “**Coverage Enhancements**”), the Buyer shall pay the additional premium associated with the Coverage Enhancements at the Closing.

8. **Review.** For 30 days after the Agreement Date (that period, the “**Review Period**”), the Seller shall allow the Buyer and its agents (the “**Buyer Parties**”) to inspect, investigate, survey, test and conduct due diligence on the Property at the Buyer’s expense (that activity, the “**Review**”). If the Buyer Parties physically disturb the Property in the Review, the Buyer shall: (1) restore the Property to its condition prior to the physical disturbance; and (2) indemnify the Seller against all damages resulting from that physical disturbance. Within ten days of the Agreement Date, the Seller shall provide the Buyer with copies of any surveys, plans, construction documents, blueprints, environmental site assessments and other similar materials pertaining to the Property in the Seller’s possession. Buyer acknowledges and agrees that: (a) the Property is currently subject to certain lease agreements and any on-site inspection may require coordination with the applicable tenants to minimize the impact such on-site Reviews have on such tenants and their respective businesses; (b) Seller’s affiliate currently maintains a secure data center at the Property and that, given the security obligations Seller’s affiliate owes its clients relating to such data center, Buyer may require that it and/or its affiliate’s personnel be present during any onsite Review of the Property; and (c) Buyer and any person conducting an onsite Review of the Property on behalf of Buyer will be required to comply with all of Seller’s and its affiliate’s security requirements relating to the data center. The Buyer shall provide the Seller with a copy of the Buyer Appraisal within five days of the date the Buyer receives it. If the Buyer Appraisal values the Property at less than \$1,250,000, the Seller may terminate this Agreement by notifying the Buyer within five days after the Seller receives the Buyer Appraisal.

9. **Property Condition.** The Seller shall deliver possession of the Property to the Buyer upon the Closing in substantially the same condition the Property was in on the Agreement Date, free from tenants and occupants. Risk of loss to the Property remains with the Seller until the Closing. If the Property suffers damage prior to the Closing, the Buyer may terminate this Agreement by notifying the Seller.

10. **Buyer Representations.** The Buyer represents to the Seller as follows and will be deemed to have so represented again at the Closing (the “**Buyer Representations**”): (1) it is a nonprofit corporation duly organized, validly existing, and in good standing under Montana law; (2) it has the authority to sign this Agreement and consummate the Transaction and doing so will not breach any contract to which it is party or any document or instrument to which it is bound; (3) for purposes of the Gift, the Buyer represents to the Seller that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and (4) it has not engaged a broker or agent relating to the Transaction that might claim a fee or commission.

11. **Seller Representations.** The Seller represents to the Buyer as follows and will be deemed to have so represented again at the Closing (the “**Seller Representations**”):

- (1) to the Seller’s knowledge (i) there is no judicial, administrative or arbitration action, suit, claim, order, investigation or proceeding or any related investigation or negotiation (whether pending, in effect or threatened, a “**Proceeding**”) against or relating to the Property, and (ii) the Seller is in compliance with all laws, statutes, codes, ordinances, orders, permits, licenses, rules, regulations or judgments (“**Laws**”) pertaining to the Property;
- (2) the Seller is a limited liability company validly existing under Montana law and has (i) the authority to sign this Agreement and consummate the Transaction and doing so will not breach any contract to which it is a party or any document or instrument to which it is bound, and (ii) not engaged a broker or agent relating to the Transaction that might claim a fee or commission;
- (3) (i) there are no Encumbrances that will survive Closing, (ii) there are no unrecorded liens, financing statements, encumbrances or agreements affecting the Property, and the Seller has committed no acts which would cause the creation thereof, (iii) there has been no work done on or services performed, and no materials have been furnished to, the Property for which a lien could be filed, and at the Closing it shall provide the Buyer with an affidavit and agreement affirming that, and (iv) there are no taxes or assessments affecting the Property not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real estate, and it is not aware of any Proceedings contemplated or commenced by any governmental or taxing authority that could cause any taxes or assessments affecting the Property; and
- (4) the Seller has legal and unrestricted access to the Property and, to the best of Seller’s actual knowledge, except for any of the following items (i) through (v) that are identified in the Commitment other than as Standard Exceptions, there are no (i) easements, rights-of-way, or claims thereof over or across the Property not recorded in the office of the Clerk and Recorder of the County where the Property is situated, (ii) encroachments upon the Property, nor do any improvements on the Property encroach, (iii) boundary line, fence, use or easement disputes concerning the Property, (iv) service, installation or connection charges owing for any utilities affecting the Property, or (v) petroleum products, asbestos or hazardous materials within or potentially affecting the Property.

13. **Buyer Conditions.** The Buyer’s obligation to consummate the Transaction is subject to the satisfaction of these conditions (the “**Buyer Conditions**”): (1) the US EDA awarding the Grant to Big Sky EDA; (2) Big Sky EDA receiving the Grant Funds; (3) the Closing Agent irrevocably commits to issue the Title Policy with the Coverage Enhancements showing only the Commitment Exceptions the Seller does not agree to remove from the Commitment at or before the Closing; (4) the Seller Representations were accurate on the Agreement Date and are accurate at the Closing; and (5) the Seller has complied with those of its obligations under this Agreement with which it must comply before the Closing. The Seller shall use reasonable efforts to cause the Buyer Conditions to be satisfied. The Buyer may terminate this Agreement: (1) if the Award Date or the Denial Date does not occur by September 30, 2019; (2) as provided in the sections with the descriptive headings Federal Grant, Title Commitment Objections, and Property Condition; (3) before the expiration of the Review Period if it is not satisfied with the results of the Review; (4) if the Closing does not occur on the Closing Date, except that right to terminate will not

be available if the Buyer's failure to comply with any obligation under the Agreement resulted in the Closing not occurring on the Closing Date; (5) any Seller Representation was inaccurate when made such that a Buyer Condition could not be satisfied; (6) any Seller Representation made as of the Agreement Date could not be made again on any date after the Agreement Date and before the Closing Date so as to satisfy a Buyer Condition; or (7) the Seller fails to comply with any of its obligations under this Agreement such that a Buyer Condition could not be satisfied.

14. **Seller Conditions.** The Seller's obligation to consummate the Transaction is subject to the satisfaction of these conditions (the "**Seller Conditions**"): (1) the Buyer Representations were accurate on the Agreement Date and are accurate at the Closing; (2) the Buyer has complied with those of its obligations under this Agreement with which it must comply before the Closing; and (3) the Buyer causing Big Sky EDA to execute a commercial lease agreement in the form attached as **Exhibit B** hereto. The Buyer shall use reasonable efforts to cause the Seller Conditions to be satisfied;. The Seller may terminate this Agreement: (1) if the Award Date or the Denial Date does not occur by September 30, 2019; (2) if the Closing does not occur on the Closing Date, except this right to terminate will not be available if the Seller's failure to comply with any obligation under this Agreement resulted in the Closing not occurring on the Closing Date; (3) if any Buyer Representation was inaccurate when made such that a Seller Condition could not be satisfied; (4) if any Buyer Representation made as of the Agreement Date could not be made again on any date after the Agreement Date and before the Closing Date so as to satisfy a Seller Condition; (5) if the Buyer fails to comply with any of its obligations under this Agreement such that a Seller Condition could not be satisfied; or (6) as provided in the section with the descriptive heading Review.

15. **Remedies.** If the Buyer breaches this Agreement, the Seller's remedies are cumulative and include: (1) forcing the Buyer to specifically perform its obligations; (2) the termination rights in section with the descriptive headings Seller Conditions; and (3) those in the section with the descriptive heading Indemnification. If the Seller breaches this Agreement, the Buyer's remedies are cumulative and include: (1) forcing the Seller to specifically perform its obligations; (2) the termination rights in section with the descriptive headings Buyer Conditions; and (3) those in the section with the descriptive heading Indemnification.

16. **Indemnification.** Except to the extent relating to the Buyer's negligence, misconduct or breach of this Agreement, the Seller shall indemnify the Buyer against all damages, claims and losses, including legal fees and costs (collectively, the "**Indemnifiable Losses**") arising out of: (1) the Seller's breach of this Agreement; (2) the inaccuracy of any Seller Representations; and (3) the negligence or misconduct of the Seller or the Seller's representatives or agents (the "**Seller Parties**"). Except to the extent relating to the Seller's negligence, misconduct, or breach of this Agreement, the Buyer shall indemnify the Seller against Indemnifiable Losses arising out of: (1) the Buyer's breach of this Agreement; (2) the inaccuracy of any Buyer Representations; and (3) the negligence or misconduct of the Buyer or the Buyer's representatives or agents.

17. **Recovery of Expenses.** In any Proceeding between the parties arising out of this Agreement, the prevailing party may recover from the other party, besides any other relief awarded, all court filing fees, court costs, witness fees, and attorneys' and other professionals' fees and disbursements including legal fees and expenses the prevailing party incurs.

18. **Notices.** For a notice or other communication under this Agreement to be valid, it must be in writing and delivered: (1) by hand; (2) by a national transportation company, with all fees prepaid; or (3)

by registered or certified mail, return receipt requested and postage prepaid. For a notice or other communication to a party under this Agreement to be valid, the party sending the notice must address the notice using the information specified below for that party. A party wishing to change that party's address designated below shall do so by providing notice as provided in this section and upon providing valid notification of that change, later notices or other communications to that party must reflect changed address to be valid.

To the Buyer: Attn: Steve Arveschoug  
222 N. 32<sup>nd</sup> Street, #200  
Billings, Montana 59101

To the Seller: Attn: Legal Department  
555 Zoot Enterprise Lane  
Bozeman, Montana 59718

19. **Modification; Waiver.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to follow an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and that waiver will not be a waiver of satisfaction of any other condition or failure to follow any other obligation.

20. **Severability.** The parties intend as follows: (1) that if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (2) that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of this Agreement will remain in effect as written; and (3) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

21. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties regarding the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties.

22. **Assignment.** Neither party may assign this Agreement.

23. **Governing Law.** Montana law governs this Agreement.

24. **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one instrument. The signatures of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by fax or by scanned image as an attachment to electronic mail is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement.

25. **Survival.** The Buyer's obligation to restore the Property to its prior condition under the section with the descriptive heading Review will survive the termination of this Agreement. The sections with these descriptive headings will survive the Closing or termination of this Agreement: Bargain Sale, Title Policy, Property Condition, Buyer Representations, Seller Representations, Remedies, and Indemnification.

[signatures on the following page]

The parties are signing this Agreement as of the Agreement Date.

Zoot Properties, L.L.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Big Sky Economic Development Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_





**Exhibit B**

**COMMERCIAL LEASE AGREEMENT**

THIS COMMERCIAL LEASE AGREEMENT (the "**Lease**"), is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Big Sky Economic Development Authority, a Montana local port authority, hereinafter referred to as "**Landlord**", and Zoot Enterprises, Inc., a Montana corporation, hereinafter referred to as "**Tenant**".

**WITNESSETH:**

In consideration of the agreements hereinafter set forth, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord the leased premises, hereinafter described, for the period, at the rental and upon the terms and conditions set forth below:

**1. LEASED PREMISES**

Landlord hereby leases to Tenant the second floor of the building having a physical street address of 201 28th Street, Billings, Montana, Montana, 59101 (the "**Building**"; the \_\_\_\_ floor of the Building, together with the right of ingress to and egress from the Building, the "**Leased Premises**"). The Leased Premises is approximately 4,600 square feet. The real property on which the Building is situated is more specifically described as follows:

Section 03, Township 01 South, Range 26 E, Lot 22, Block 058, Billings Original Townsite

**2. COMMENCEMENT AND TERM OF LEASE**

The Tenant and Big Sky Economic Development Corporation ("**EDC**") are parties to a Real Estate Purchase Agreement relating to EDC's purchase of the Building and related real estate from the Tenant (the "**Agreement**"). Capitalized terms this Lease uses but does not define have the meaning the Agreement ascribes. Immediately after the Closing, EDC will convey the Property to the Landlord. This Lease shall commence on upon the Closing and shall continue until February 1, 2020 (the "**Term**"). Tenant shall vacate the Leased Premises and shall have all Tenant's property removed from the Leased Premises on the last day of the Term of the Lease.

**3. BASE RENT**

The total rent for the entire term of this Lease shall be ONE DOLLAR (\$1.00).

**4. SECURITY DEPOSIT**

Tenant will not be required to pay a security deposit. However, Landlord may choose to require a security deposit equal to one month's rent at any time with thirty (30) days written notice.

**5. INSURANCE**

Tenant shall obtain, at its sole cost and expense, such insurance coverage as it deems necessary and desirable with respect to its fixtures and personal property situated in the Leased Premises.

**6. USE**

Tenant shall be entitled to use the Leased Premises for the purpose of operating its business and maintaining a data center. Any other use will require Landlord's prior written consent.

**7. COMPLIANCE WITH PUBLIC AUTHORITIES**

Tenant agrees, at Tenant's cost, to comply with all applicable municipal, County, State and Federal laws and regulations now in force or which may hereafter be enforced concerning Tenant's use of the Leased Premises.

#### **8. ASSUMPTION OF RISK AND INDEMNITY**

Tenant assumes all risk of injury or damages to persons or property arising from Tenant's business and use of the Leased Premises. Tenant shall hold Landlord harmless and indemnify Landlord against any claim, damage, suit or demand for injury to persons or property resulting from acts or omissions or the use of the Leased Premises by Tenant, its agents, employees, business invitees, contractors or the operation of Tenant's business.

#### **9. TENANT'S ALTERATIONS**

Tenant shall neither make any alteration on or additions to the Leased Premises nor make any agreement or contract therefore without first obtaining Landlord's prior written consent. The Landlord's consent may be conditioned upon the following: (a) Tenant's compliance with the regulations and requirements of any public authority having jurisdiction over the Leased Premises, (b) Tenant providing plans to Landlord for the project, (c) Tenant providing Landlord with the name, address and telephone number for the contractor who will be doing the alterations, (d) Tenant providing Landlord with documentation that the contractor selected to perform the alterations is properly licensed and insured, and (e) Tenant providing Landlord with evidence of Tenant's ability to pay for the project to avoid the filing of construction liens.

All permanent alterations, additions or improvements made by Tenant to or upon the Leased Premises shall at once, when made or installed, be deemed to have attached to and become Landlord's property. Equipment, counters, other removable trade fixtures and interior decorations shall remain the property of Tenant and removable by it.

All of Tenant's improvements, interior modifications, fixtures, and modifications approved by Landlord shall be done at Tenant's sole cost and expense.

At the termination of this Lease, and without notice, Tenant shall remove its property and removable fixtures and repair any damages to the Leased Premises caused by such removal. If Tenant fails to do so, Landlord may remove the same and repair the damages at Tenant's expense. Tenant will promptly reimburse Landlord for such expense, upon receiving Landlord's statement. It is further agreed that any property remaining upon the Leased Premises 15 days after the termination of this Lease shall become the property of Landlord, at Landlord's option, and may be disposed of as Landlord sees fit.

#### **10. REPAIR AND MAINTENANCE**

At its expense, Tenant shall keep the Leased Premises in good condition and repair. Tenant shall be responsible for its proportionate share of the regular and annual maintenance of the Leased Premises, including but not limited to maintaining the heating, ventilating, air conditioning, electrical, plumbing, lighting, and replacing furnace and all air conditioning filters annually. If Tenant refuses or neglects to commence or complete repairs or maintenance it is responsible for hereunder promptly and adequately, Landlord may, but shall not be required to, make or complete the repairs and maintenance; and Tenant shall pay the cost thereof to Landlord upon demand.

Landlord shall be responsible for the repair or replacement of the structural portions of the Leased Premises including the roof, when such replacement is needed provided such replacement or repair is not required because of damages caused by Tenant, Tenant's contractors, employees, agents or customers. Landlord shall also be responsible for maintaining and operating the exterior underground sprinkling system, mowing the grass, trimming the trees and bushes as needed and snow plowing the parking lot at Landlord's sole cost and expense. Tenant shall be responsible for snow removal from the

sidewalks at Tenant's sole cost and expense.

If any damage is covered by either Landlord's or Tenant's insurance, then the proceeds from the insurance shall be used to make the repairs.

### **11. CLEANLINESS AND WASTE**

At its expense, Tenant shall keep the Leased Premises in a neat, clean and sanitary condition. At the termination of this Lease, Tenant shall repair any and all damages to the Leased Premises, including marks, scratches, holes and damages to the walls, floors, ceilings and fixtures, normal wear and tear excepted.

### **12. LIENS**

Tenant shall not permit any lien, including construction liens, to be attached to the Leased Premises by reason of any act or omission on its part and agrees to save and hold Landlord harmless from or against such lien or claim of lien.

### **13. RIGHTS ON DEFAULT**

Occurrence of one or more of the following events shall constitute an event of default:

(a) If Tenant shall fail or neglect to pay the rent when due, or shall fail to pay any other money required to be paid by Tenant, and such default(s) shall continue for a period of ten days following written notice, delivered by Landlord to Tenant, describing in general terms such default.

(b) If Tenant shall default in the performance of any other obligation or duty of Tenant under this Lease, or if Tenant shall commit waste or allow a nuisance to exist on the Leased Premises, and default shall continue for a period of thirty days following written notice given after such default, unless within said thirty days Tenant shall cure such default.

(c) If Tenant ceases to use the Leased Premises in the manner herein set forth, or closes the business for a period of fifteen (15) days or more, or vacates or abandons the Leased Premises.

If an event of default occurs, a default on the part of Tenant shall be deemed to exist under this Lease; and Landlord, without further notice to Tenant, shall have, consistent with applicable law, any one of the following remedies at Landlord's election:

(i) Landlord shall have the immediate right to terminate and cancel Tenant's rights of tenancy under this Lease and re-enter, recover and resume possession of the Leased Premises. Landlord may force entry into the Leased Premises to obtain possession if it can be done without a breach of peace. Tenant shall yield up quiet and peaceful possession to Landlord and Tenant shall forfeit its rights under this Lease.

(ii) Landlord may continue to assert the validity of the Lease, take possession of the Leased Premises pursuant to applicable law, (including unlawful detainer or action for possession), and re-let the Leased Premises, or any part thereof, for such term or terms, (which may be for a term extending beyond the term of this Lease), at such rent and upon such terms and conditions as Landlord may, in its sole discretion, deem advisable, provided Landlord proceeds in a commercially reasonable manner.

Upon such re-letting, Tenant shall immediately be liable to pay to Landlord the costs and expenses of such re-letting, (including reasonable attorney's fees for the new lease), the reasonable costs and expenses of any alterations or repairs required to be made to the Leased Premises, and shall be liable to pay to Landlord the amount, if any, by which the rental required to be paid by Tenant in this Lease for the period of such re-letting, (up to, but not beyond, the term of this Lease), exceeds the amount agreed to be paid by the new Tenant as rent for the Leased Premises for such period of reletting. If Landlord cannot re-let the Leased Premises for the entire balance of Tenant's term, Tenant shall be liable to pay

Landlord for the balance of the rental required by this Lease. No such unlawful detainer action, re-entry or taking of possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate Tenant's other obligations under this Lease unless a written notice of such intention is given to Tenant.

(iii) In the event of any termination of this Lease or upon the expiration of the term thereof, Tenant shall yield up quiet, immediate and peaceful possession to Landlord.

(d) Tenant recognizes and agrees that the rent required to be paid by Tenant hereunder is independent of all other covenants and agreements herein contained. In the event of a legal action to enforce the terms of this Lease or for damages for breach of this Lease, the Tenant shall be required to continue to pay the rent and insurance when due during the pendency of the action.

#### **14. TENANT'S POSSESSION**

Landlord covenants with Tenant that upon paying the rent and performing the terms, covenants and agreements in this Lease, Tenant shall, at all times during the term, be entitled peacefully and quietly to have, hold and enjoy the Leased Premises. However, Tenant agrees to allow Landlord, or its agents, reasonable access to inspect the Leased Premises, or show the Leased Premises to prospective buyers or lenders or to prospective Tenants if Tenant's lease will be expiring within four months, upon twenty-four hours' prior notice to Tenant.

#### **15. WAIVER**

No waiver of any breach of any term, covenant or condition of this Lease shall be construed to be a waiver of any preceding or succeeding breach of the same or any other term, condition or covenant.

#### **16. SERVICE OF NOTICE**

Any notice required to be given by one party to the other shall be in writing and must be personally served upon a party or served by registered or certified mail, postage prepaid, through the United States Postal Service, and addressed to the respective parties at the following addresses:

##### **LANDLORD:**

**Attn: Steve Arveschoug  
222 N. 32nd Street, #200  
Billings, Montana 59101**

##### **TENANT:**

**Attn: Legal Department  
555 Zoot Enterprises Lane  
Bozeman, MT 59718**

Either party may change the above addresses by giving written notice to the other party. Notice shall be deemed delivered three days after mailing the same to the recipient's addresses as set forth herein with the proper postage.

#### **17. LANDLORD - TENANT**

The relationship between the parties hereto is that of Landlord and Tenant and nothing shall be construed or interpreted to make their relationship otherwise.

## **18. UTILITIES**

Landlord and Tenant shall each pay one half of the charges for all utilities, garbage removal, telephone, snow removal from sidewalks, water, and sewer. Notwithstanding the forgoing sentence, the Tenant shall pay the entire cost of electricity. If the Landlord or others occupy parts of the Building, the Landlord shall be responsible to pay for the electricity the Landlord or those other parties consume, which the Landlord and Tenant shall prorate based upon the electricity and gas each consumes.

## **19. SUSPENSION OF LEASE IN CASE OF FIRE, CASUALTY OR PUBLIC AUTHORITY**

If the Leased Premises or the improvements thereupon are damaged or destroyed by fire or other casualty, so as to render the Leased Premises unfit for occupancy, or to such an extent that the Leased Premises cannot be repaired or replaced with reasonable diligence within 30 days from the happening of such injury or act, either Landlord or Tenant may terminate this Lease as of the date of such damage or act by written notice delivered to the other party within fifteen days of the occurrence. Tenant shall immediately surrender the Leased Premises and all interest therein to Landlord and Tenant shall pay rent only to the time of the said damage or act.

If the Leased Premises can be restored within 30 days from the happening of the damage or act and if Landlord, within fifteen days from the occurrence, elects, in writing, to repair and restore the Leased Premises within the said 30 days from the happening of the damage or act, then this Lease shall not end or terminate on account of such injury or act. However, the rent shall not run or accrue after such damage and during the process of repairs, except only that Tenant shall, during such time, pay a prorated portion of such rent allocated to that portion of the Leased Premises which are in condition for occupancy and can be effectively used or may actually be occupied by Tenant during such repairing period.

All equipment, stock in trade, appliances, fixtures, improvements, personal property or betterments owned or placed by Tenant on the Leased Premises which shall be damaged or destroyed in any of the events aforementioned shall be repaired and replaced by Tenant at its own expense and not at the expense of Landlord.

Landlord shall not be held to account for any damages to Tenant attributable to fire, acts of God or any failure or defect in the Leased Premises unless such failure or defect is the result of the intentional or negligent acts or omissions of Landlord or its agents and employees.

## **20. SUBORDINATION**

Notwithstanding anything herein to the contrary, Tenant agrees this Lease is and shall be subordinate to any mortgage, trust indenture or other instrument of security which shall have been or shall be placed against the Property; and said subordination is hereby made effective without any further act by Tenant. Tenant agrees that at any time, or from time to time, upon request by Landlord, it will execute and deliver any instruments, releases, estoppel certificates or other documents that may be required in connection with the subjecting and subordinating of this Lease to the lien of any of said mortgages, trust indentures or other instruments of security.

## **21. WAIVER OF SUBROGATION**

Notwithstanding anything herein to the contrary, Landlord hereby releases Tenant, and Tenant hereby releases Landlord from any and all claims or demands for damages, loss, expense or injury to the Leased Premises, or to the furnishings, fixtures, equipment or inventory or other property of either Landlord or Tenant in, about or upon the Leased Premises, as the case may be, caused by or result from fire, perils, events or happenings which are covered by the insurance carried by the respective parties and in force at the time of any such loss; provided, however, that such waiver shall be effective only to

the extent permitted by law and the insurance covering such loss and to the extent such insurance is not prejudiced thereby.

## **22. ASSIGNABILITY AND SUBLEASING**

This Lease shall not be assignable, nor the property subleased by Tenant to anyone in whole or in part, without Landlord's prior written consent. Notwithstanding the Landlord's consent to an assignment of this Lease, Tenant shall remain jointly and severally liable for all financial obligations and duties set forth in this Lease.

## **23. SUCCESSORS AND ASSIGNS**

Subject to the restrictions and prohibitions of the preceding Paragraph, entitled "Assignability and Subleasing", this Lease shall be binding upon and inure to the benefit of the respective parties, their successors and assigns.

## **24. ALL AGREEMENTS CONTAINED HEREIN**

This Lease contains all of the agreements of the parties relating to the subject matter; and it supersedes all prior written or oral negotiations or agreements between them with reference to the Leased Premises.

## **25. TIME**

It is agreed by the parties that TIME IS OF THE ESSENCE OF THIS LEASE.

## **26. HEADINGS**

The headings and titles of sections and paragraphs of this Lease are inserted merely for convenience and are not to be used in the construction thereof.

## **27. ATTORNEY'S FEES AND COSTS**

If either party defaults in its performance, or if an action is brought to enforce the terms of this Lease, the defaulting party agrees to pay, on demand, the other party's reasonable attorney's fees and costs.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the day and year first above written.

**LANDLORD:**

Big Sky Economic Development Authority

By:     *Exhibit – do not sign*     \_\_\_\_\_  
Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

Zoot Enterprises, Inc.

By:     *Exhibit – do not sign*     \_\_\_\_\_  
Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_