

SALE AND PURCHASE AGREEMENT¹

THIS SALE AND PURCHASE AGREEMENT (this “**Agreement**”) is dated _____, 2017, and is between **ZOOT PROPERTIES, L.L.C.**, a Montana limited liability company (the “**Buyer**”)², and **BIG SKY ECONOMIC DEVELOPMENT AUTHORITY**, a Montana local port authority (the “**Seller**”).

Seller owns the following (the “**Property**”): (1) the real property described on **Exhibit A** (the “**Real Property**”); and (2) the personal property (the “**Personal Property**”) described in the form of Bill of Sale (the “**Bill of Sale**”) attached as **Exhibit B**.³ The Real Property is subject to two lease agreements dated January 9, 2009 (the “**Leases**”) that terminate on December 31, 2017 (the “**Termination Date**”) under a Termination of Leases and Release Agreement dated March 31, 2017 (the “**Termination Agreement**”); together with the Leases, the “**Lease Documents**”). Seller wants to sell the Property to the Buyer, but retain its interest in the Leases as provided in the form of Lease Relationship Agreement attached as **Exhibit C** (the “**Lease Relationship Agreement**”).

The parties therefore agree as follows:

1. **Purchase and Sale of Property.** Subject to and on the terms conditions stated in this Agreement, Seller shall sell the Property to Buyer, and Buyer shall purchase that Property from Seller.
2. **Purchase Price.**⁴ The purchase price for the Property is EIGHT MILLION DOLLARS AND NO CENTS (\$8,000,000.00) (the “**Purchase Price**”), which Buyer shall pay Seller in cash or certified funds at the closing of the sale and purchase of the Property (the “**Closing**”).
3. **Closing Date.** The parties shall cause the Closing to occur (the date upon which the Closing occurs, the “**Closing Date**”) at the office of American Title & Escrow (the “**Closing Agent**”) in Billings, Montana, no later than July 6, 2017.⁵ The parties shall equally share the Closing Agent’s fees and each party shall pay its own professional and legal fees and expenses.
4. **Title.**⁶ Seller shall convey fee simple title to the Real Property to the Buyer by warranty deed in the form of **Exhibit D** (the “**Warranty Deed**”), free and clear of all liens and encumbrances excepting

¹The revisions and related comments created some formatting and font issues, so we reformatted the document. Many revisions are primarily stylistic - some intended to eliminate redundant language and some to state a particular concept more concisely. If there is any trepidation with those types of revisions, we can certainly use the language from the initial draft in those instances.

²To alleviate any ambiguity, I prefer to address all assignment issues in the Assignment provision. If there is a permitted assignment in accordance with that provision, the permitted assignee necessarily becomes the Buyer.

³I prefer to incorporate the Personal Property list one time with the Bill of Sale as opposed to stating it twice. We can certainly list it twice, but this approach introduces some brevity and reduces the possibility of error inherent in dealing with two lists as opposed to one. With respect to fixtures, the Real Property description includes fixtures and those will transfer under the Warranty Deed so I removed the reference to fixtures in the Personal Property description.

⁴We address the incentives in the Incentives Agreement, which will be a Conveyance Document. The Incentives Agreement provides that the transfer of Incentive funds will occur concurrently with Closing. We believe this approach will help to distinguish the two related but separate transactions.

⁵Because the parties can agree to change the Closing Date at any time, the language to that effect is probably unnecessary. We moved the closing costs language from section 9 of the initial draft to this provision.

⁶This section incorporates the concepts from sections 6(a), 8 and 10 from the initial draft.

only those stated in the Warranty Deed (those exceptions, the “**Title Exceptions**”). Within 15 days following the date stated in the introductory clause, Seller shall cause Closing Agent to issue Buyer title evidence to the Real 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 customarily contained in title commitments issued in the location of the Real Property, 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 15 days after it receives the Commitment (that notice, the “**Objection Notice**”). If Seller is unable to cure or remove the Commitment Objections by Closing, then either party may terminate this Agreement by providing written notice to the other party. Within 30 days following Closing, Seller shall cause Closing Agent to issue a title policy to Buyer under the Commitment and in accordance with this Agreement (that policy, the “**Title Policy**”). The parties shall equally share the cost of the premium for the Title Policy at Closing, but Buyer shall pay the additional premium charged for extended coverage or other coverage enhancements Buyer may elect to purchase.⁷

5. **Taxes, Assessments and Prorations.** Except as otherwise provided in this section, the parties shall prorate taxes and assessments on the Real Property for the current tax year between one another as of the Closing Date. Notwithstanding the foregoing: (1) Seller shall retain and the parties will not prorate the rent payable under the Lease Documents; and (2) the parties shall equally share the cost of any special improvement district assessment assessed to improve/pave Conrad Road, which is the gravel road located immediately north of the Real Property (such assessment, the “**Conrad Road Assessment**”). Subject to Closing, each party is responsible for its share of the Conrad Road Assessment regardless of whether the assessment occurs before or after the Closing Date except that: (1) if the Conrad Road Assessment does not occur within one year of the Closing Date, Seller’s obligation to contribute to any portion thereof expires; and (2) Seller’s obligation for its share of the Conrad Road Assessment shall not exceed \$100,000.00. If the Conrad Road Assessment occurs within one year of the Closing Date, Buyer shall provide Seller with written notice and Seller shall then pay its share of the Conrad Road Assessment to Buyer up to the \$100,000.00 cap within 30 days of Seller’s receipt of that notice. The provisions in this section pertaining to the Conrad Road Assessment will survive Closing.

6. **Conveyance Documents.** At or before the Closing, the parties shall deliver the following documents to the Closing Agent (the “**Conveyance Documents**”): (1) the Bill of Sale; (2) the Lease Relationship Agreement; (3) the Warranty Deed; (4) the Easement Agreement in the form attached as **Exhibit E** (the “**Easement Agreement**”); and (5) any other documents reasonably necessary to convey the Property to the Buyer. The parties shall sign but not date the Bill of Sale and cause the Closing Agent to hold it in escrow pending Seller’s receipt of the bill of sale for the Personal Property as provided in the Termination Agreement (the “**GE Bill of Sale**”). When Seller receives the GE Bill of Sale, Seller shall notify Buyer and instruct Closing Agent to insert the date on the Bill of Sale and release it to Buyer. The provisions in this section pertaining to the delivery of the Bill of Sale will survive Closing. In conjunction with Closing, the parties shall cause the Closing Agent to record the Warranty Deed prior to recording the Easement Agreement.

7. **Conditions to Closing.** The Seller’s obligation to consummate Closing is contingent on the

⁷ We propose splitting the cost of title insurance.

following: (1) Closing Agent's receipt of the Purchase Price and the Conveyance Documents, signed, dated and notarized, as applicable; (2) Seller's receipt all approvals necessary for it to consummate Closing (collectively, "**Approval**"); and (3) obtaining the release of the Agreement and Mortgage encumbering a portion of the Real Property in exchange for the successful recordation of the Easement Agreement.

The Buyer's obligation to consummate Closing is contingent on the following: (1) Closing Agent's receipt of the Conveyance Documents, signed, dated and notarized, as applicable; (2) receipt of an acceptable incentive agreement from Seller; ⁸(3) Buyer's independent investigation (the "**Buyer Review**") of the Personal Property and the following conditions relating to the Real Property, including but not limited to: covenants, zoning, access, easements, well depths, septic and sanitation restrictions, surveys or other means of establishing the corners and boundaries, special improvement districts, restrictions affecting use, special building requirements, future assessments, utility hook up and installation costs, environmental hazards, airport affected area, road maintenance obligations, or anything else Buyer deems appropriate. Buyer will have 20 days from the dated stated in the introductory section of this Agreement (the "**Review Period**") to conduct the Buyer Review. Buyer may terminate this Agreement by providing Seller with written notice any time prior to the expiration of the Review Period if the Buyer Review reveals that any unacceptable condition exists pertaining to the Property.

⁹¹⁰ ¹¹ ¹² ¹³ ¹⁴¹⁵

8. **Seller's Representations.** Seller represents and warrants to Buyer that : (1) Buyer is a Montana local port authority validly existing under the laws of the State of Montana; and (2) upon obtaining Approval, Buyer will have full power and authority to execute, deliver, and perform its obligations under this Agreement . ¹⁶This section shall survive for a period of six months following the Closing Date.

9. **Buyer's Representations.** Buyer represents and warrants to Seller that Seller is a limited liability company that is validly existing under the laws of the State of Montana and has full power and authority to execute, deliver, and perform its obligations under this Agreement. This section shall survive for a period of six months following the Closing Date.

10. **Drainage Correction.** Water occasionally collects in the [*describe location*] area of the Real Property due to inadequate drainage. Seller shall address that issue within one year following the Closing Date by causing and paying for its engineers and contractors (the "**Contractors**") to perform the

⁸ Moved this concept to the title objections to Title section.

⁹ Because the appraisal is complete, we can eliminate this particular contingency. The due diligence contingency is broad enough to cover Buyer's review of the appraisal, so if the Buyer has any concerns in that regard it can utilize the broader due diligence contingency.

¹⁰ Components moved to introductory clause, Title section and Conveyance Documents section.

¹¹ City water serves the Real Property and the definition Real Property includes any water and ditch rights, so this provision should not be necessary.

¹² Moved to Title section.

¹³ Moved to Closing Date section.

¹⁴ Moved to Title section.

¹⁵ Moved to Taxes and Prorations section.

¹⁶ These representations appear redundant or the Approval will encompass them. In the interest of reciprocity, we removed them from the Buyer Representations as well. We have also provided for a mutual 6-month survival period in both the Seller and Buyer representation provisions.

scope of work described on the attached **Exhibit F** (the “**Drainage Work**”). Buyer shall grant Seller and Contractors access to the Real Property to perform the Drainage Work and the parties shall coordinate the timing of the Drainage Work timing to minimize disruption. Seller disclaims all express and implied warranties with respect to the Drainage Work, including the implied warranties of merchantability and fitness for a particular purpose. However, Seller will assign to Buyer any assignable warranties Seller receives from the Contractors relating to the Drainage Work. The provisions in this section will survive Closing.

11. **Possession.** Subject to the Lease Documents and Lease Relationship Agreement, Seller shall deliver possession of the Real Property to Buyer upon Closing. Seller shall deliver possession of the Personal Property to Buyer following the Termination Date when Closing Agent delivers the Bill of Sale to Buyer. This section will survive Closing.

12. **Environmental Representations and Disclosures.** Seller represents and warrants to Buyer that to the best of Seller’s knowledge: (1) neither Seller nor any previous owner, tenant, occupant or user of the Real Property has engaged in or permitted any operation or activities upon, or any use or occupancy of any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any asbestos, oil or petroleum products, or “hazardous materials” (as defined under federal and Montana law) on, under, in or about the Real Property in violation of those federal or Montana laws; (2) there are no “hazardous materials” presently deposited, stored or otherwise located on, under, in or about the Real Property; (3) no portion of the Real Property has even been used for a dump or landfill; and (4) there are no underground storage tanks located on the Real Property, and no underground storage tanks have been removed from the property except in compliance with applicable Montana and federal law.

13. **Remedies on Default.** If Seller fails to consummate the Closing in accordance with the terms of this Agreement, Buyer shall have as Buyer’s sole remedy against Seller the option of either of the following: (1) terminating this Agreement by giving written notice to Seller; or (2) enforcing specific performance by Seller of Seller’s obligations hereunder if that remedy is available under the circumstances. If Buyer fails to consummate this Agreement in accordance with its terms for any reason within the control of Buyer, Seller shall have as Seller’s sole remedy against Buyer the option of terminating this Agreement by giving written notice to Buyer and pursuing damages occasioned by the Buyer’s failure.¹⁷

14. **Attorney Fees.** If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the other party because of the default.

15. **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 stated below. A party wishing to change its 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.

¹⁷ Specific performance in a real estate context is an appropriate remedy for Buyer due to the unique nature of real estate. However, with respect to Seller, the more appropriate remedy is termination and pursuing damages (as opposed to specific performance).

Buyer's Address: Zoot Properties, L.L.C.
555 Zoot Enterprises Lane
Bozeman, MT 59718
Attn: Legal Department

Seller's Address: 222 North 32nd Street Suite 200
Billings, MT 59101
Attn.: Steve Arveschoug, Executive Director

16. **Facsimiles and Counterparts.** A facsimile copy of this Agreement containing the signature of either party shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute the same document.

17. **Time.** Time shall be of the essence of this Agreement.

18. **Assignment.** Neither Seller nor Buyer may assign this Agreement and any purported assignment will be void..¹⁸

19. **Entire Agreement.** This Agreement embodies the entire Agreement between the parties, and supersedes all prior negotiations, understandings and agreements, if any, relating to the Property. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

20. **Mold Disclosure.** There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The Seller cannot and does not represent or warrant the absence of mold. It is the Buyer's obligation to determine whether a mold problem is present. To do so, Buyer should hire a qualified inspector and make any contract to purchase contingent upon the results of that inspection. A seller who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase.

¹⁸ Because a number of features of this transaction are by Zoot being the purchaser (*i.e.*, the Incentives Agreement, Easement Agreement), we would not want Zoot to be able to assign it to any third party. If Zoot wants to assign it to a different Zoot entity, we can certainly accommodate any sort of intracompany assignment,

[signatures located on the following page]

¹⁹The parties are signing this Agreement on the date stated in the introductory clause

Zoot Properties, L.L.C.

By: _____

Chris Nelson, President

Big Sky Economic Development Authority

By: _____

Steve Arveschoug, Executive Director

By: _____

Sheri Nicholson, Board Chair

¹⁹ We are comfortable removing the acceptance and deadline provision.

List of Exhibits

- Exhibit A: Real Property Description**
- Exhibit B: Form of Bill of Sale**
- Exhibit C: Form of Lease Relationship Agreement**
- Exhibit D: Form of Warranty Deed**
- Exhibit E: Form of Easement Agreement**
- Exhibit F: Scope of Work – Drainage Work**

Exhibit A
Real Property Description

The Real Property consists of the following real estate located in Yellowstone County, Montana:

Lot 6A and Lot 6B of the Amended Plat of Lot 6, Block 1, Gabel Subdivision, Second Filing, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3493451;

together with all: (1) structures, improvements and fixtures on or within the Real Property; (2) all appurtenances, mineral rights, water, water rights and ditch rights appurtenant to the Real Property; and (3) all rights, privileges and easements appurtenant to or benefiting the Real Property;

however, excluding the landlord's interest in the Lease Documents as described in the Lease Relationship Agreement.

**Exhibit B
Form of Bill of Sale**

BILL OF SALE

This Bill of Sale (this “**Bill of Sale**”) is dated [insert], 2017, and is between Big Sky Economic Development Authority, a Montana local port authority, (“**Seller**”), and Zoot Properties, L.L.C., a Montana limited liability corporation (“**Buyer**”).

In accordance with a Sale and Purchase Agreement dated _____, 2017 between Buyer and Seller (the “**Agreement**”), Seller agreed to sell and the Buyer agreed to purchase the personal property described on **Schedule 1** attached hereto (the “**Personal Property**”).

The parties therefore agree as follows:

1. Seller hereby sells to Buyer all of Seller’s right, title, and interest in and to the Personal Property.
2. The Personal Property is being sold on an “AS IS” basis. In connection with the Personal Property, except for the warranty of title, Seller disclaims any express or implied warranty or indemnity of any kind whatsoever, including without limitation the implied warranties of merchantability and fitness for a particular purpose.
3. Seller represents and warrants to Buyer that Seller has the right, power, and authority to sell and transfer the Personal Property and to make, execute, and deliver this Bill of Sale, and that Seller holds title to all of such Personal Property free and clear of all liens, encumbrances, and other interests of third parties.
4. This Bill of Sale shall be governed by and construed in accordance with the internal laws of the State of Montana applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.
5. Montana law governs this Bill of Sale.

[Signatures located on following page]

The parties are signing this Bill of Sale as of the dated stated in the introductory clause.

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Steve Arveschoug, Executive Director

By: _____
Sheri Nicholson, Board Chair

ZOOT PROPERTIES, L.L.C.

By: _____
Chris Nelson, President

Schedule 1 to Bill of Sale

- Building Entry, Main Hall and Reception – All desks, chairs and tables
- General Work Space – Includes all desks, desk chairs and filing cabinets
- Closed Door Offices – Includes desks, chairs, bookshelves and file cabinets
- Training Room – Includes training tables, chairs, built-in projector, book case and DVD presentation system
- Meeting Rooms – Includes meeting table, chairs, collaboration equipment and built in projector in the Elkhorn
- Cafeteria – Includes all tables and chairs, sound system and microphones, stand-alone refrigerators (2)
- Vault Area and Online Room – Includes all desks, desk chairs, filing cabinets and title shelves
- Patio – Tables and umbrellas
- Artwork (but excluding 8 prints by Karen Lucky and 1 print by Thelma Servod)
- Kitchen Equipment
 - Lockers, prep tables and all shelving
 - Utility carts and mop buckets
 - Ice Maker
 - Food Mixer and stand
 - Hobart Food Slicer
 - All built in Freezers, coolers and cooking equipment
 - Rolling refrigerated sandwich counter
 - Combi Alto Sham Electric Oven – Model 10-10ES/STD
 - Electric Toaster Conveyer Oven
 - Built-in Soda dispenser
- Generac Diesel Building Generator MD 1000 GEM:
 - Generator Serial Number: 2100437
 - Engine A and B Serial Number: 35200; 35250
 - Power Manager Serial Number: 5225602

Exhibit C
Form of Lease Relationship Agreement

LEASE RELATIONSHIP AGREEMENT

This Lease Relationship Agreement (the “**Agreement**”) is dated _____, 2017 and is between **ZOOT PROPERTIES, L.L.C.**, a Montana limited liability company (the “**Zoot Properties**”), and **BIG SKY ECONOMIC DEVELOPMENT AUTHORITY**, a Montana local port authority (the “**BSED**”).

Zoot Properties and BSED are parties to a Sale and Purchase Agreement dated _____, 2017 (the “**Purchase Agreement**”; the purchase and sale described therein, the “**Transaction**”). All capitalized terms used but not defined in this Agreement have the meaning ascribed to that term in the Purchase Agreement. In the Transaction, Zoot Properties purchased the Real Property subject to the Lease Documents and BSED’s retention of the landlord’s interest in those Lease Documents and all rights thereunder (the “**Lease Interests**”). The Leases will terminate on the Termination Date as provided in the Termination Agreement between BSED and GE Capital US Holdings, Inc. (“**GE**”). Because the owner of the Real Property is different from the owner of the Lease Interests, the parties want to enter this Agreement to address any issues that separate ownership may create.

The parties therefore agree as follows:

1. **Term.** The term of this Agreement (the “**Term**”) begins on the Closing Date and ends on Termination Date.
2. **No Assignment.** BSED continues to own and hold the Lease Interests and continues to be a party to the Lease Documents and Zoot Properties hereby grants BSED an interest in the Real Property during the Term to the sole, limited and minimum extent necessary for BSED to do so. BSED did not assign the Lease Documents to Zoot Properties and except to the extent assumed under this Agreement Zoot Properties did not assume any obligations thereunder.
3. **BSED Obligations.** Until the Termination Date, BSED shall fulfill the obligations under the Lease Documents that GE requires it to fulfill (the “**Obligations**”). BSED will maintain the management agreement it has with a property manager to manage the Real Property and terminate it effective as of the Termination Date.
4. **Lease Modification.** BSED shall not modify the Lease Documents without first obtaining written consent from Zoot Properties.
5. **Access.** Zoot Properties hereby grants BSED and its agents and contractors all access to the Real Property necessary to fulfill the Obligations. If Zoot Properties wants to access or occupy the Real Property for any reason prior to the Termination Date, it may do so with GE’s consent and Zoot Properties may communicate directly with GE to obtain that consent. The parties shall deem any such consent from GE as consent from BSED. The section in the Termination Agreement with the descriptive heading Potential Occupants addresses GE’s obligation to cooperate in that regard.
6. **Zoot Obligations.** Zoot Properties shall not commit or fail to commit any act that will cause BSED to violate the Lease Documents or increase any Obligations and shall indemnify BSED against any

liability, loss, claim and damage arising therefrom or relating thereto. Zoot Properties shall cooperate with and accommodate BSED as necessary to enable BSED to fulfill the Obligations. The provisions of this section survive the expiration of the Term. Because the Real Property and Lease Interests have different owners, the parties hereby address the following aspects of the Lease Documents:

- (1) **Taxes.** The Lease Documents obligate GE to pay real property taxes, assessments, beneficial use taxes and privilege taxes pertaining to the Real Property (the “**Impositions**”). Subject to the section in the Purchase Agreement with the descriptive heading Taxes, Assessments and Prorations, Zoot Properties shall pay any taxes or assessments on the Real Property the Lease Documents do not obligate GE to pay. When BSED owned the Real Property, it was not subject to property tax assessments but was subject to a beneficial use tax payable by GE in lieu of property taxes. If ownership of the Real Property by Zoot Properties increases the Impositions payable by GE and GE refuses to pay the difference, Zoot Properties shall pay that difference.
- (2) **Insurance.** Zoot Properties shall obtain and pay for the insurance coverage the Leases obligate BSED to obtain and name BSED as an additional insured and promptly furnish BSED with a certificate of those insurance policies.
- (3) **Utilities.** With respect to any utilities serving the Real Property that are in the name of BSED (the “**Utilities**”), the parties shall transfer those Utilities into the name of Zoot Properties. As Zoot Properties receives invoices or other charges pertaining to the Utilities, it shall forward those to BSED and BSED shall pay them until the Termination Date as provided in the Lease Documents. If GE grants Zoot Properties access to the Real Property to install improvements, Zoot Properties shall bear the cost of any material increase in utility charges occasioned by that activity that GE refuses to pay.

7. **Rent and Operating Costs.** The parties did not prorate rent or additional rent under the Leases (the “**Rent**”) at the Closing of the Transaction because BSED is entitled to collect and retain all Rent. GE did not pay a security deposit under the Leases, which alleviates the need to address any security deposit application or refund following the Termination Date. The Leases require GE to pay estimated operating costs (the “**Operating Costs**”) and provide the reconciliation procedure if estimated Operating Costs differ from actual Operating Costs. BSED shall complete that reconciliation procedure following the Termination Date as provided in the Termination Agreement and is responsible to refund any overage owed to GE, but may retain and collect any shortage GE may owe. The provisions of this section survive the expiration of the Term.

8. **Default.** If a party violates this Agreement, then the non-defaulting party is entitled to pursue all rights and remedies available at law or in equity, including the right to seek specific performance. In any adversarial proceedings between the parties arising out of this Agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs, including legal fees and expenses. BSED’s liability for any breach of this Agreement is limited to one-half of the Rent it collects during the Term.

9. **Notice.** 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.

Zoot Properties: 555 Zoot Enterprises Lane BSED: 222 North 32nd Street, Ste. 200

Bozeman, MT 59718
Attn: Legal Department

Billings, MT 59101
Attn: Executive Director

10. **Assignment.** Neither BSED nor Zoot Properties may assign this Agreement and any purported assignment will be void.

11. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the parties.

12. **Waiver.** No waiver of satisfaction of a condition or failure to comply with 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 constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

13. **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

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

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

16. **Counterparts.** If the parties sign this agreement in several counterparts, the parties shall deem each as original but all counterparts together will constitute one instrument.

The parties are signing this Agreement as of the dated stated in the introductory clause.

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Steve Arveschoug, Executive Director

By: _____
Sheri Nicholson, Board Chair

ZOOT PROPERTIES, L.L.C.

By: _____
Chris Nelson, President

**Exhibit D
Form of Warranty Deed**

After recording, return to:
Zoot Properties, L.L.C.
Attn: Legal Department
555 Zoot Enterprises Lane
Bozeman, MT 59718

WARRANTY DEED

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY, a Montana local port authority (the “Grantor”), with mailing address at 222 North 32nd Street, Billings, Montana 59101, hereby grants to ZOOT PROPERTIES, L.L.C., a Montana limited liability company (the “Grantee”), with a mailing address of 555 Zoot Enterprises Lane, Bozeman, Montana 59718, real property in Yellowstone County, Montana, described as follows:

Lot 6A and Lot 6B of the Amended Plat of Lot 6, Block 1, Gabel Subdivision, Second Filing, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3493451.

To have and to hold unto the Grantee and the Grantee’s successors and assigns, forever, subject to the following:

- (a) Reservations and exceptions in patents from the United States and the State of Montana;
- (b) Existing easements of record and rights-of-way of record;
- (c) Building, use, zoning, sanitary and environmental restrictions and waivers;
- (d) Taxes and assessments for 2017 and subsequent years;
- (e) Declaration of Access and Parking Easement and Covenant dated _____, ___17, made by the Grantee as declarant; and
- (f) Lease Agreements dated January 9, 2009 and the following documents pertaining to those leases: (i) Termination of Leases and Release Agreement dated March 31, 2017; and (ii) Lease Relationship Agreement dated _____, 2017 between the Grantor and the Grantee.

Except with reference to the items referred to in subparagraphs (a) through (f), the Grantor provides this warranty deed with the usual covenants expressed in Montana Code Annotated § 30-11-110.

[Signature located on following page]

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY

Date: _____, 2017

By: _____
Steve Arveschoug, Executive Director

By: _____
Sheri Nicholson, Board Chair

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on _____, 2017, by Steve Arveschoug as the Executive Director of Big Sky Economic Development Association and on _____, 2017 by Sheri Nicholson as the Board Chair of Big Sky Economic Development Association.

Print Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____, 20_

[SEAL]

Exhibit E
Form of Easement Agreement

After recording, return to:
Big Sky Economic Development Association
222 North 32nd Street
Billings, Montana 59101

EASEMENT AGREEMENT

This Easement Agreement (the “**Agreement**”) is dated _____, 2017 and is between **ZOOT PROPERTIES, L.L.C.**, a Montana limited liability company (the “**Grantor**”), and **BIG SKY ECONOMIC DEVELOPMENT AUTHORITY**, a Montana local port authority (the “**Grantee**”).

The Grantor purchased two parcels of real property from the Grantee (that sale and purchase, the “**Transaction**”), one of which has a parking lot facility located thereon (the “**Parking Lot Parcel**”; the parking lot facility, the “**Parking Lot**”). The Parking Lot Parcel surrounds the other parcel, which has a commercial building thereon (the “**Building**”). The Grantee constructed Parking Lot with the assistance of a grant from the United States Department of Commerce, Economic Development Administration (the “**EDA**”). To secure that grant, the Grantee issued an Agreement and Mortgage (the “**EDA Mortgage**”) in favor of the EDA encumbering the Parking Lot Parcel. As part of the Transaction, the EDA released the EDA Mortgage on the condition that the Grantor grant the easement described in this Agreement in favor of the Grantee.

The parties therefore agree as follows:

1. **Legal Description.** The legal description of the Parking Lot Parcel is as follows:

Lot 6B of the Amended Plat of Lot 6, Block 1, Gabel Subdivision, Second Filing, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 3493451.

2. **Easement.** The Grantor hereby grants the Grantee a non-exclusive easement for the benefit of the members of the public (the “**Users**”) to park motor vehicles (each, a “**Vehicle**”) in designated surface parking spaces within the area of the Parking Lot depicted on the attached **Exhibit 1** as the Easement Area (the “**Easement Area**”), together with the right of ingress and egress over existing drive approaches to access the Easement Area from adjacent public streets.

3. **Permitted Use.** The Users may use the Easement Area to park Vehicles and for no other purpose (that use, subject to the following exclusions, the “**Permitted Use**”). The Users may engage in the Permitted Use in common with one another and on a first-come, first-served basis. The Permitted Use excludes: (1) parking any unlicensed or unregistered Vehicle; (2) use between 1:00 a.m. and 6:00 a.m. local time; (3) any activity such as camping, storage, loitering, congregating or any other activities reasonably similar thereto; (4) any activity in violation of any present or future laws, statutes, codes or ordinances; (5) any activity that requires a permit; (6) any right to enter or use any part of the Parking Lot Parcel that is not within the Easement Area except as necessary for ingress and egress as described in the section of this Agreement with the descriptive heading Easement; and (7) use by the owners or occupants of any real estate located within a .5 mile radius of the perimeter of the Parking Lot Parcel, including use by any of their employees or agents while engaging in employment or other activity on

behalf of those owners or occupants. The Grantor or its agents may preclude any Vehicle or User from the Easement Area or remove any Vehicle or User from the Easement Area that does not comply with the Permitted Use.

4. **Building Users.** Those using the Easement Area in their capacity as an owner or occupant of the Building or as a guest, invitee or licensee of such owner or occupant (those parties, the “**Building Users**”) are not Users for purposes of this Agreement. The use of the Easement Area by Building Users is not limited to the Permitted Use, but use of the Easement Area by Building Users is subject to any rules or regulations the owners or occupants of the Building may impose on them with respect to using the Easement Area. Subject to the preceding sentence, the Building Users have the right to use the Easement Area in common with the Users on a first-come, first-served basis.

5. **Term.** The term of this Agreement begins on January 1, 2018 and terminates automatically on September 20, 2028. Although no action is necessary to make that termination effective, the Grantee will furnish the Grantor with any reasonably necessary instruments or releases the Grantor may request.

6. **Maintenance.** This Agreement does not obligate the Grantor to install any signage or otherwise identify the Easement Area. At its own expense, the Grantor shall: (1) operate, maintain and repair the Easement Area; (2) as necessary, stripe and resurface the Easement Area; (3) if necessary, replace the Easement Area; and (4) remove snow, ice and debris from the Easement Area. The Grantor shall fulfill its obligations under this section in a commercially reasonable manner.

7. **Obstructions.** Except as reasonably necessary to perform its obligations described in the sections of this Agreement with the descriptive headings Maintenance and Changes, the Grantor shall not construct or place, or allow others to construct or place, any type of structure or object within the Easement Area that unreasonably interferes with the Permitted Use.

8. **Changes.** The Grantor may make changes or revisions to the Parking Lot Parcel and may reconfigure the Easement Area, so long as those changes do not reduce the number of parking spaces in the Easement Area. If the Easement Area does not have a sufficient number handicap accessible parking spaces, then from time to time the Grantor may designate additional handicap accessible parking spaces within the Easement Area and any such re-designation is not a violation of this Agreement if doing so reduces the number of parking spaces in the Easement Area.

9. **Encumbrances.** The Grantor may encumber the Parking Lot Parcel, but any such encumbrance: (1) will be subordinate to this Agreement; and (2) must not interfere with the Permitted Use.

10. **Appurtenance.** This Agreement: (1) is binding upon the Grantor’s successors and assigns; (2) runs with the Parking Lot Parcel; and (3) is included in any Parking Lot Parcel transfers whether or not any transfer instrument mentions or includes this Agreement.

11. **Insurance.** The Grantor shall obtain and maintain comprehensive general liability insurance against any loss or liability which might result from the use or condition of Easement Area: (1) with commercially reasonable limits; (2) naming the Grantee as an additional insured; (3) in a manner precluding cancellation or nonrenewal without 30 days written notice from the insurance carrier to the Grantee; and (4) with a waiver of the insurer’s right of subrogation against the Grantee. The Grantor shall promptly furnish the Grantee with a certificate of the insurance policy.

12. **Indemnification.** Except to the extent attributable to the Grantee's negligence or misconduct, the Grantor shall indemnify the Grantee against any liability, loss, claim, damage and reasonable attorney and paralegal fees and costs incurred by the Grantee arising from or related to this Agreement.

13. **Enforcement; Default.** The EDA is an intended third party-beneficiary hereunder and may enforce any material default committed hereunder by either the Grantor or the Grantor. The Users are incidental third-party beneficiaries hereunder and therefore have no right to enforce or otherwise bring any legal proceeding against the Grantee or the Grantor for any matter arising out of or relating to this Agreement. If a party breaches this Agreement, then the non-defaulting party is entitled to pursue all rights and remedies available at law or in equity, including the right to seek specific performance. In any adversarial proceedings between the parties arising out of this Agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs, including legal fees and expenses.

14. **Notice.** For a notice or other communication under this Agreement to be valid, it must be in writing and delivered to the address below: (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.

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

Grantee: 222 North 32nd Street, Ste. 200
Billings, MT 59101
Attn: Executive Director

15. **Amendment.** No amendment of this Agreement will be effective unless: (1) it is in writing and signed by the parties; and (2) the EDA consents in writing.

16. **Waiver.** No waiver of satisfaction of a condition or failure to comply with 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 constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

17. **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

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

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

20. **Counterparts.** If the parties sign this agreement in several counterparts, the parties shall deem each as original but all counterparts together will constitute one instrument.

[Signatures located on following page]

The parties are signing this Agreement as of the dated stated in the introductory clause.

ZOOT PROPERTIES, L.L.C.

By: _____
Chris Nelson, President

BIG SKY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Steve Arveschoug, Executive Director

By: _____
Sheri Nicholson, Board Chair

STATE OF MONTANA)
 : ss.
County of _____)

This instrument was acknowledged before me on _____, 2017, by Chris Nelson as the President of Zoot Properties, L.L.C.

Print Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____, 20_

[SEAL]

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on _____, 2017, by Steve Arveschoug as the Executive Director of Big Sky Economic Development Association and on _____, 2017 by Sheri Nicholson as the Board Chair of Big Sky Economic Development Association.

Print Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____, 20_

[SEAL]

Exhibit 1 to Easement Agreement

The following map depicts the Easement Area within the Parking Lot Parcel:

[insert map designating Easement Area and parking spaces]

Exhibit G: Scope of Work – Drainage Correction

[insert description of scope of work]