

**ITEM: 152-2009-R0911**  
**Burgard/MSU Lease**  
**705 Osterman Drive, Suite A, Bozeman, MT**

## **COMMERCIAL LEASE AGREEMENT**

THIS COMMERCIAL LEASE AGREEMENT is made and entered into effective February 1, 2012, by and between **FRONTAGE ROAD COMMERCIAL PROPERTIES, LLC**, with mailing address of 607 Triple Tree Road, Bozeman, Montana, 59715, hereinafter referred to as "Landlord," and **MSU Extension, Housing & Environmental Health Program**, a division of Montana State University, a state institution of higher education, hereinafter referred to as "Tenant."

### RECITALS

- A. Whereas, the parties entered into a Commercial Lease Agreement dated January 14, 2011, under which Tenant leased 15,505 square feet of commercial space in the premises leased hereunder and that Agreement terminated on January 31, 2012; and
- B. Whereas, the parties wish enter into a longer term lease and renew and replace the referenced existing lease with this new lease.

### WITNESSETH:

In consideration of the agreements hereinafter set forth, the parties hereby terminate the Commercial Lease Agreement of January 14, 2011, effective the date hereof and Landlord does hereby lease and let to Tenant, and Tenant does hereby lease from Landlord the leased premises, hereinafter described, for the period, at the rental rate, and upon the terms and conditions set forth below.

#### 1. LEASED PREMISES

The leased premises shall consist of 15,505 total rentable square feet, being Unit A (5,373 square feet), Unit B (2,983 square feet), Unit F (2,418 square feet), Unit C (2,006 square feet), and Unit D (2,725 square feet), all being a portion of that certain building (the "Building") located at 705 Osterman Drive, Bozeman, Montana, and associated common property including parking and as depicted in the floor plan Exhibit "A" attached hereto and incorporated herein by reference. The parties agree and acknowledge that the square footage figure stipulated herein is a general figure which shall serve as the square footage of the leased premises for the purpose of calculating base rent under this Lease, regardless of any actual measurements of the interior space of the leased premises, and regardless of any permitted alterations which the Tenant may make to the interior of the leased premises. The ground floor footprint of 15,505 rentable square feet (again, a stipulated figure which shall not be adjusted by virtue of actual measurement or alteration) shall be used for all other purposes under this Lease, including, but not limited to, the calculation of Tenant's prorata Triple Net Expenses hereunder as defined in Paragraph 4 hereof. The leased premises shall enjoy the right to use the parking lot and other common

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areas of the Building in common with other tenants in the Building, which common areas shall be deemed appurtenances to the leased premises, but such spaces shall not be deemed part of the “leased premises” hereunder in order that the respective obligations (repairs, maintenance, insurance, etc.) of the parties as to the “leased premises” shall not be confused.

2. TENANT IMPROVEMENT ALLOWANCE

Landlord shall perform no Tenant Improvements. The leased premises shall be delivered “as is” condition, but broom and mop clean.

3. COMMENCEMENT; TERM OF LEASE; AND OPTION TO RENEW

The initial term of this Lease shall be for a period of Five (5) years commencing on February 1, 2012, (the “Lease Commencement Date”) and expiring on January 31, 2017 (the “Initial Lease Term”). In this connection, a period from February 1 - January 31 shall be termed a “Lease Year” under this Lease. Lessee shall be entitled to possession and occupancy of the leased premises on February 1, 2012 (the “Occupancy Date”); provided that this Lease Agreement has been executed by all parties and that the payment of the first month’s rental rate for all units for February-2012, the Triple Net Expenses for all units for February-2012, and the Security Deposit has been made by Tenant. Acceptance of possession of the leased premises by Tenant pursuant to Paragraph 15 herein below shall be construed as recognition that the leased premises are satisfactory to Tenant and fit for Tenant’s intended use.

Provided Tenant is not in default hereunder, Tenant shall have the right and option, to be exercised in its sole discretion, to extend the term of this Lease for three consecutive 1-year Renewal Terms, the first of which shall commence on February 1, 2017 and end on January 31, 2018, with the successive optional Renewal Terms following likewise and ending January 31, 2019, and January 31, 2020. All terms and conditions of this Lease shall remain in effect for all such Renewal Terms, save and except the base rent which shall be adjusted as applicable annually by the annual inflation rate as defined by the CPI (calculated by using the Bureau of Labor Statistics CPI-All Urban Consumers, West Urban Area published at [http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUUR0400SA0,CUUS0400SA0](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0400SA0,CUUS0400SA0)), which increase or decrease shall not exceed 5%, from the preceding Lease Year’s base rental rate for each Lease Year of the Renewal Term. The method of calculation to be used is as follows: The Annual CPI adjustment to the rents shall be calculated as follows, in accordance with Exhibit B hereto: The rent for the coming Option Year, if so elected, shall be calculated as  $(100\% + \text{CPI}\%) * \text{Prior Year Base Rent}$ . EXAMPLE: if the Prior Year rent is \$8.25, and the CPI is hypothetically 1.5%, the calculation would be  $(100\% + 1.5\%) * \$8.25$ , or  $(1.015 * \$8.25)$ , or \$8.37. For the purpose of providing Tenant the revised base rental rate for the Renewal Term in a timely fashion,

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the Landlord will calculate the CPI “12 Months Percent Change” at least one month prior to the end of each Lease Year.

In order to exercise this renewal option at the end of the Lease Term or applicable Renewal Term, Tenant must give written notice of such renewal to Landlord not later than 180 calendar days prior to the expiration of the then current Lease Term or Renewal Term. Failure to give timely written notice of the exercise of the renewal option in this manner shall constitute a waiver and relinquishment of the renewal option and such renewal option shall be of no further force or effect.

4. RENT

a. For the first Lease Year of 2012-2013 in the Initial Lease Term Tenant shall pay base rent in the annual sum of \$134,991.96 as adjusted for 2012 by the CPI formula set forth above, payable in twelve equal monthly amounts. Base Rent shall adjust annually for all Lease Years during the Initial Lease Term pursuant to the CPI formula set forth above. Rent shall commence February 1, 2012, (the “Rent Commencement Date”) and shall be payable in advance on the first day of each and every month over the Initial Lease Term and any Renewal Term as applicable.

b. Tenant shall pay said monthly rent in said amounts in advance commencing on the Rent Commencement Date, and on the first day of each and every month thereafter during the term of this Lease.

c. This is a Triple Net Lease. In addition to its monthly base rent payment, and except as otherwise expressly provided herein, Tenant shall pay its proportionate share of all real property taxes and assessments, insurance, common area maintenance and repair expenses associated with its tenancy and the property generally. Common area maintenance expenses include by way of example, but are not limited to: Parking lot and exterior building lighting, parking lot snow plowing/shoveling, lawn mowing/fertilization/aeration, tree and shrub trimming/fertilization/replacement, sprinkler system including well start-up, shut-down and repair, building exterior maintenance including painting, siding repair or replacement, parking lot seal coating, striping, parking sign repair or replacement, sidewalk and parking lot curb repair or replacement, roof and gutter repairs, and sewer line clean-out. Triple Net Expenses shall additionally include water, garbage, and recycling services common to the building. Tenant acknowledges that Landlord shall manage the building and property generally with respect to common area maintenance and repair issues, insurance and common utility issues, etc. and shall have sole authority in this regard, with such authority to be exercised in Landlord’s reasonable discretion.

As used here, Tenant’s “proportionate share” shall be calculated with Tenant’s stipulated square footage of the footprint of the leased premises (15,505

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rentable square feet) as the numerator and the total square footage of the building as the denominator. It is acknowledged that the amount assessed for common area maintenance and repair may change from time to time. Such variations of actual cost in relation to the actual amount of Triple Net fees paid by Tenant will be reviewed and accounted for by Landlord and reported to Tenant by April 30 of the following year. Based on Landlord's annual review and accounting, any surplus or deficit of Tenant Triple Net payments paid in the prior year shall be credited or debited, respectively, to the Tenant by the Landlord. The Landlord shall set the new estimated Triple Net Expenses amount for the coming year based on anticipated costs, and Tenant shall agree to pay one-twelfth of such annual prorata charges concurrently with the base rent. All of such additional charges shall be termed the "Triple Net Expenses." Tenant shall remain liable to pay to Landlord upon demand any deficiency in the Triple Net Expenses as may be determined to exist by the Landlord's end-of-year review and reconciliation of actual expenses, notwithstanding the termination or expiration of the Lease prior to the date of such end-of-year review; and conversely, Landlord shall remain obligated to reimburse Tenant any sum as Tenant may have overpaid in Triple Net Expenses as may be determined by such end-of-year review, notwithstanding the termination or expiration of the Lease prior to such determination.

Triple Net Expense Records: Landlord will maintain appropriate and complete accounts, records, documents and other evidence showing and supporting all calculation of Triple Net Expenses. Landlord will allow access to Tenant, the Montana Legislative Auditor and/or the Montana Legislative Fiscal Analyst, or other designated persons to all records as may be necessary for audit purposes and to determine compliance with this Lease, on reasonable prior written notice. All records pertaining to Triple Net Expenses must be retained by the Landlord for a period of three years from the completion date. If any litigation, claim, or audit pertaining to this Lease is started before the expiration of the three year period, the records must be retained until the litigation, claim, or audit findings have been resolved.

d. Triple Net Expenses are estimated for the 2012 portion of the first Lease Year of the Initial Lease Term to be \$1.95 per square foot per year (\$30,234.75/yr for the leased premises), payable monthly with the base rent in an amount of \$2,519.56. Triple Net Expenses shall be in effect and payable upon occupancy February 1, 2012, and continuing through the Initial Lease Term and Renewal Terms if applicable.

e. Tenant shall pay a late fee of five percent (5%) of any base rent or Triple Net Expense payment that is not paid (regardless of delivery method) on or

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before the end of the business day (5:00 pm MST) on the tenth (10<sup>th</sup>) of each month.

f. The base rents shall increase or decrease pursuant to Paragraph 3 above for the one-year Renewal Terms (possible Lease Years 6, 7, and 8). For clarification, the base rental amounts do not include the monthly triple net expense charges also to be paid monthly described in Paragraph 4c-d above.

5. SECURITY DEPOSIT

A Security Deposit of \$11,186.66 will be paid by the Tenant upon the Commencement Date and held by the Landlord at all times while this Lease is in effect. The parties acknowledge that this amount is already in the possession of Landlord, being the Security Deposit amount from the previous lease term. The Security Deposit shall be held by Landlord without liability for interest and as security for the full and timely performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure or limitation of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may co-mingle the Security Deposit with Landlord's other funds.

If the Landlord must apply any part of the Security Deposit to cure any default of Tenant hereunder, but the Lease remains in effect, the Tenant shall promptly pay to the Landlord upon demand such amount as will restore the full balance of the Security Deposit to its original \$11,186.66 amount.

If the leased premises are in substantially as good a condition, reasonable and normal wear and tear excepted, as exists upon the commencement of this tenancy, and Tenant is not in default under any other provisions of this Lease and is current in all payments owed to Landlord, the entire Security Deposit, or balance thereof after any such application to cure any default, shall be returned without interest to Tenant within a reasonable time after the expiration or termination of this Lease. Landlord may, however, retain an amount from the Security Deposit as is reasonably estimated to cover any projected shortfall in Tenant's Triple Net payments as have not been reconciled at the time of the termination of this Lease.

6. USE

Tenant agrees to use the leased premises for general professional purposes relating to Tenant's business, described as Classroom and Training Facility. Any other use requires the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed. In this connection, Tenant covenants and warrants unto Landlord that Tenant has all applicable governmental licenses for the conduct of such business, and that Tenant will not use the premises for any illegal or unlawful purpose or purposes, nor for any purpose or purposes which may unreasonably affect the general public's or building

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occupant's health, safety, and welfare, or the welfare of the leased premises, nor for any purpose which will increase risks covered by insurance on the premises and result in an increase of the rate of insurance or cancellation of any insurance policy. Tenant specifically acknowledges and agrees that Tenant shall be responsible for taking such steps as are necessary to insure that the walls, flooring, and ceiling of the leased premises are adequately protected from any moisture or water damage as might result from Tenant's operations in the leased premises, including making such alterations or installing certain coverings or coatings on walls, floors, and or ceilings as will protect same, subject to Landlord's prior approval as to such measures under Paragraph 9 below.

7. PARKING

Tenant acknowledges that the parking lot in front and rear of the building is for the joint use by all of the tenants in the building and their guests and invitees and that there are no designated or reserved parking spaces. Parking spaces may not be used for storage of any kind including non-operating vehicles without the expressed written consent of the Landlord.

Tenant acknowledges that snow removal activities during the winter may cause an accumulation of plowed snow in one or more areas of the parking lot (including the Loading Zone) which may reduce the amount of parking available to the building's tenants and their guests and invitees and or which may impact the available space of the Loading Zone, on this seasonal basis.

8. 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 particular use of the leased premises. It is understood, however, that the Landlord is responsible for building modifications required by governmental agencies to ensure that the leased premises are in compliance with the ADA and its regulations as of the Lease Commencement Date. If any alteration to the leased premises desired by Tenant would trigger any obligation on the part of the Landlord to make other changes to the building to comply with any law or regulation from which the building is otherwise exempted or grandfathered, then the Landlord shall have the discretion to refuse Tenant's desired alteration.

9. TENANT'S ALTERATIONS

Tenant shall be responsible for the interior improvements of the leased premises after occupancy by Tenant, and except for the installation and location of signs, equipment, counters, and other removable trade fixtures, and except as herein mentioned, Tenant shall neither make any alteration nor addition to the leased premises, nor make any agreement or contract therefore, without first obtaining Landlord's prior written consent,

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said consent shall not be unreasonably withheld or delayed, and which consent may be conditioned upon the Tenant's removal of such fixture and restoration of the leased premises to their original condition at Tenant's sole expense at the termination of the tenancy. Tenant shall use a licensed contractor for all such work (unless excused from this requirement by Landlord in writing), which contractor must be approved in advance by Landlord in writing, with Landlord's consent in this regard not to be unreasonably withheld or delayed. Prior to undertaking any such alteration work, Tenant shall request in writing Landlord's permission for such work, and such request must include a reasonably detailed written description of the scope of the desired work, plus plans and schematics if available. Tenant shall be responsible for obtaining and shall obtain all required building permits for such work, and shall provide a copy of same to Landlord. At the conclusion of such work, Landlord shall have the right to inspect same, and Tenant shall provide "as-built" drawings and plans to Landlord reflecting the changes made.

All alterations, additions, or improvements made by Tenant to or upon the leased premises, (except signs, equipment, counters, other removable trade fixtures, interior decorations and surveillance video equipment which shall remain the property of Tenant and are removable by them) shall at once, when made or installed, be deemed to have attached to the freehold as permanent fixtures and shall become Landlord's property. Tenant shall not make any roof/wall holes or penetrations to the outside without written permission from the Landlord. Subsequent water damage to any part of the building caused by a roof or wall penetration (approved or not) will be the responsibility of the Tenant.

At the termination of this Lease, and without notice, Tenant shall immediately remove all its personal property and removable trade fixtures. If Tenant fails to do so, Landlord may (upon notice) remove and store the same at Tenant's expense. Tenant will promptly reimburse Landlord for the expense of such removal and storage, upon receiving Landlord's statement. If Tenant fails to pay for such expense within thirty (30) days of receiving Landlord's statement therefore, Landlord may sell Tenant's property to pay such expenses and any other amounts owing to Landlord by Tenant.

It is further agreed that anything remaining upon or removed from the leased premises thirty (30) days after the termination of this Lease shall become the property of Landlord, at Landlord's option, subject to the rights reserved to Landlord in this Lease hereinbefore set forth.

**10. SIGNS**

Landlord and Tenant shall mutually agree upon the design and location of Tenant's exterior sign. The sign shall be of professional quality and of similar quality and size as the signs of the other tenants in the building and shall comply with all applicable state, county or local laws, city ordinances and zoning. The design of the sign shall be

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submitted to Landlord prior to the placement and installation for Landlord's approval and such approval shall not be unreasonably withheld or delayed.

11. UTILITIES

Tenant shall be responsible for and pay for all utilities provided to the leased premises and assessed by virtue of Tenant's use and occupancy of the leased premises, including any hook-up charges as of February 1, 2012. Tenant shall place all such utility accounts in its own name where possible and shall make timely payment for all such utility services provided. In the event any utility service provided to the leased premises is on a common meter or sub-meter from a common meter with other units within the leased premises, Tenant shall pay its actual share of such utility based upon actual reading of sub-meter of its space, as determined by Landlord within 30 (thirty) days of receipt of invoice. Landlord's good faith calculations in this regard shall be available for tenant review and final and binding upon Tenant.

12. INDEMNITY

Tenant assumes all risk of injury or damages to persons or property within the leased premises and shall hold Landlord harmless and indemnify Landlord against any claim, damage, suit or demand for injury to persons or property resulting from, or arising out of in any manner, the use of the leased premises by Tenant, its agents, employees, or business invitees, or the operation of Tenant's business. Notwithstanding the foregoing, however, Tenant shall not be liable for the negligent or intentional acts or omissions of Landlord or its contractors, agents, servants, or employees. Tenant shall not be liable for any liability arising out of or in connection with any structural defects of the leased premises or the building and improvements upon or adjacent to the leased premises. The parties further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Montana; (2) the consent of the State of Montana or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Montana beyond the waiver provided in Title 2, Ch. 9, Montana Codes Annotated.

13. INSURANCE

(a) Liability Insurance. Tenant shall carry, maintain, and deposit proof with Landlord of general liability insurance or self-insurance in the amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) combined single limit coverage of bodily injury, property damage, or some combination thereof, for damages caused or occurring on or about the leased premises or caused by Tenant, its agents, employees, or business invitees. Tenant shall, at least annually, furnish Landlord with certificates or other documentation evidencing such insurance.



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(b) Public Liability, Fire, and Casualty Insurance. Landlord shall maintain fire and standard casualty insurance upon the building, including the leased premises and General Liability Insurance on the common areas outside the leased premises and such expense shall be part of the common Triple Net Expenses.

(c) Tenant's Personal Property. Tenant shall be responsible for maintaining its own insurance upon its own personal property, inventory, equipment, leasehold improvements, and trade fixtures owned or claimed by it in an amount to be determined by Tenant. Landlord shall not be required or obligated to maintain any insurance against loss to Tenant's personal property by fire, theft, or other casualty.

**14. WAIVER OF SUBROGATION**

Notwithstanding anything herein to the contrary, Landlord hereby releases Tenant, and Tenant hereby releases Landlord and their respective officers, agents and employees, 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 resulting from 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 and amount permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby, or the expense of such insurance is not thereby increased and further provided that such waiver shall be effective only to the extent of insurance proceeds actually received.

**15. CONDITION OF LEASED PREMISES**

Upon taking possession of the leased premises on the Occupancy Date, Tenant shall inspect the same and shall advise Landlord within fifteen (15) days of any material defects affecting Tenant's use and enjoyment of the premises, which might reasonably be discovered upon an inspection. If Landlord does not promptly repair or correct these defects, then Tenant may terminate this Lease without liability and receive a refund of any unearned rent and of its security deposit per the terms of Paragraph 5 above. Notwithstanding the foregoing, the refrigerator and stove/oven in the leased premises are accepted in their "AS IS" condition, with all faults as noted in Paragraph 17 below or as may otherwise exist, and Landlord may not be required to repair or correct any such defects with either such appliance at any time under this Lease, nor may Tenant terminate this Lease by reason of any defects with either such appliance.

If Tenant does not give Landlord notice of any such defects within said fifteen (15) day period, Tenant shall have been deemed to acknowledge receipt of the leased premises in good condition and repair and in all respects satisfactory and acceptable to Tenant.

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Further, at all times during the term of this tenancy, Tenant shall immediately notify Landlord of any subsequent damages, defects or conditions occurring upon the leased premises which may, if continued, further damage the leased premises (such as water leaks, plumbing or electrical problems, heating failures, and the like).

**16. TENANT'S POSSESSION; LANDLORD'S RIGHT TO INSPECT**

Landlord covenants with Tenant that upon paying the rent and performing the terms, covenants and agreements in this Lease set forth, Tenant shall, at all times during the term or any extension of the term hereof, be entitled peacefully and quietly to have, hold, and enjoy the leased premises.

Tenant agrees to allow Landlord, or its agents, reasonable access at reasonable times to show the premises to prospective buyers or lenders at any time during the term hereof; or to prospective successor tenants if Tenant's lease will be expiring within six (6) months. Further, Landlord and its agents shall have the right to reasonable access to the leased premises at reasonable times upon no less than twenty-four hours prior notice to ascertain whether the leased premises are in good repair and or to make such repairs or maintenance which Landlord may be required to make or feel desirable. The requirement of advance notice shall not apply in situations deemed to be an emergency by the Landlord (fire, water leaks, or other situations which may affect or endanger the building or its tenants, etc.). The parties acknowledge that an alarm system for the premises is present and may be used by the Tenant. Activation, repair service and monthly monitoring fees for this alarm are the responsibility of the Tenant. *At all times during the term of this Lease*, should the alarm system be activated, Tenant shall insure that Landlord has the current alarm access code in order that Landlord may enter the leased premises for the purposes contemplated by this Lease, and Tenant shall provide such code to Landlord upon request at any time.

Further, Tenant understands and acknowledges that an interior fire sprinkler system has been constructed in the Building prior to the outset of this Lease and has its riser station and controls located within unit "A" of the leased premises. Landlord, and its contractors, shall have reasonable access to this space as needed to service and maintain such fire sprinkler control station, and or to permit the periodic inspection of the system by Service Contractors, the City and or Fire Department officials as may be required.

**17. REPAIR AND MAINTENANCE**

At its expense, Tenant shall keep the interior of the leased premises in good condition and repair, including by way of example, but not limitation, windows, service doors, garage doors and openers, interior wall surfaces, lighting fixtures, replacement bulbs and fluorescent tubes, pest control. If Tenant refuses or neglects to commence or complete such repairs promptly and adequately, Landlord may, but shall not be required to do so, make or complete the repairs; and Tenant shall pay the cost thereof to Landlord

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upon demand. Tenant shall pay the cost to maintain and repair its leased space's, non-common mechanical systems, including but not limited to, HVAC, plumbing, electrical, and lighting located upon the leased premises, after all manufacturer warranties have been exhausted. HVAC for units F and B is not a common system, but routine scheduled maintenance is handled by the landlord and billed to tenant via triple net reconciliation at year end. Tenant shall further be responsible and pay for any damages to the interior or exterior of the leased premises caused by Tenant, its employees, agents, and business invitees. Quarterly HVAC roof-top unit maintenance is ordered and paid by the Landlord. These annual fees and charges are included in Tenant's year-end triple-net charge reconciliation. Overhead gas blower heater and electric baseboard heater maintenance in units C and D are the responsibility of the tenant.

Except as herein set forth, Landlord shall repair all structural defects and exterior damages to the leased premises and shall keep the foundation, exterior walls and roof in good order and repair. In addition, Landlord shall be responsible for maintenance and repair of common elements of mechanical systems, including but not limited to, plumbing, electrical, and lighting located upon the leased premises. Landlord shall be responsible for scheduling maintenance of non-common unit HVAC, but charges and fees for such maintenance will be paid by the Tenant at year-end reconciliation. However, in the event of window or door breakage caused by burglary or vandalism, or by unknown cause, or by Tenant, its employees, agents, or business invitees whether by tenant abuse or misuse, Tenant shall repair the damages.

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

It is the Landlord's responsibility to contract for snow removal in the winter. The contractor is required to remove snow on the parking lots and sidewalks when snow accumulations equal or exceed 2". Since snow fall is random and often frequent, and snow removal contractors typically have many accounts, the Landlord does not guarantee in any way the parking lots or walkways will be cleared of snow immediately after any snow fall or be cleared by any specific time of day. Therefore, it is recommended that the Tenant have a hand snow shovel and at times be willing and able to clear its own walkway in from of its unit's door, should the need arise. Osterman Drive is a city street and is not required to be cleared of snow by the Landlord, and the Landlord makes no guarantee as to the navigability of the street in the winter. However, on rare occasion, the snow removal contractor will partially clear the street if absolutely necessary at the Landlord's request. Any additional fee charged for such service will be considered a common area maintenance fee and the Tenant agrees to pay its pro-rata share. The snow removal contractor is requested to place snow outside the parking area and not block parking stalls or the designated Loading Zone with accumulated or plowed snow. However, since snow fall is unpredictable the Landlord makes no guarantee that some portion of parking spaces or the Loading Zone will not be partially or completely obstructed by snow piles.

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Also, the use of any snow removal chemical or salt substance such as “ice melt” or other snow or ice melting products on the sidewalks by the Tenant is strictly prohibited. The Landlord provides each tenant a container of traction sand for the purpose of increasing safety on potentially slippery walkways. The traction sand is free of charge to all tenants in the building and is to be used by the Tenant in reasonable amounts at its discretion.

**18. CLEANLINESS AND WASTE**

Tenant shall keep the leased premises, inside and outside, in a neat, clean, and sanitary condition, free from waste and other debris. Receptacles are provided for trash and recycling cardboard and must be used accordingly. Tenant shall not place trash or cardboard outside the receptacles. Tenant shall not allow any hazardous substances to be deposited or remain in or about the leased premises. Tenant shall store all items pertaining to its business operations inside the leased premises and not in common parking or walk areas. Tenant shall not allow hazardous or legally prohibited liquids or solids to be placed in the sewer system or in the grounds in the area of the leased premises. At the termination of this Lease, Tenant shall clean and repair any and all soiling and/or damages to the leased premises, including marks, scratches, holes, dirt, and grease, and damages to the walls, floors, floor coverings, ceilings, and fixtures, normal wear and tear excepted.

It is a general management policy of the Landlord that pets are not allowed in the building or on the premises, with the exception of bona fide service animals and other animals specifically approved by Landlord

Cigarette or cigar smoking is not allowed at any time in the building and is only permitted outside the building at a distance of at least 30 feet from doorways or windows. All cigarettes and cigars must be extinguished and disposed of properly and safely. Littering the premises is not permitted.

**19. LIENS**

Tenant shall not permit any lien 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.

If any lien does attach and any claim of lien is made and shall not be released within fifteen (15) days after notice from Landlord to Tenant to release the same, Landlord, at its option, may pay and discharge the same. In this case, the amount paid by Landlord shall be added to and become part of the next succeeding installment of rent, shall be deemed rent payable hereunder, and shall bear interest at the rate of twelve percent (12%) from the date advanced by Landlord until paid; provided, however, if Tenant desires in good faith to contest the validity of any such lien, it may do so and in such event Landlord shall not discharge the lien and assess additional rent until the validity of the lien is legally established. However, if Landlord’s mortgagor legally

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requires and demands that the lien be released or paid, Tenant shall, upon demand, cause the lien to be released by furnishing bond or otherwise.

20. DEFAULT

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

(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 (10) days following written notice, delivered by Landlord to Tenant, advising of the default and demanding a cure of same; or,

(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 such default shall continue for a period of thirty (30) days following written notice given after such default, unless within said thirty (30) days Tenant shall cure such default, or if such default cannot be cured within thirty (30) days, Tenant shall, within said thirty (30) day period, commence to cure such default and shall thereafter continue to use reasonable due diligence in the curing thereof, provided that as to any event of default which is not ongoing and not capable of cure by the Tenant, no such notice and cure period shall be applicable.

If an event of default occurs which remains uncured after any applicable notice and cure period, or which is not capable of cure, then Landlord, upon further written notice to Tenant, shall have the right to pursue any one or more of the following remedies, consistent with and subject to applicable law, at Landlord's discretion and election:

(a) Landlord shall have the immediate right to terminate and cancel Tenant's rights under this lease and re-enter, recover, and resume possession of the leased premises, or

(b) 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 agrees to proceed in a commercially reasonable manner in re-letting the leased premises. Upon such re-letting, Tenant shall immediately be liable to pay Landlord the reasonable costs and expenses of such re-letting, (including reasonable agents' or brokers' commissions and attorney's fees for the new lease), the reasonable costs and expenses of any alterations or repairs resulting from Tenant's use and reasonably required to be made to the leased premises to make it rentable, 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

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premises for such period of re-letting. 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 at the time that such payments become due. No such termination, unlawful detainer action, re-entry, or taking of possession of the leased premises by Landlord shall be construed as an election on their part to terminate Tenant's other obligations under this Lease unless a written notice of such intention is given to Tenant; and or

(c) Landlord shall have recourse to any other remedy provided at law or in equity.

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

Tenant recognizes and agrees that the obligation to pay rent and all other payments as are required to be paid by Tenant hereunder is independent of all other covenants and agreements herein contained. If Landlord shall commence any proceeding for nonpayment of any rent to which Landlord may be entitled or for breach of this Lease or for termination of this Lease by reason of Tenant's failure to timely cure a default, Tenant agrees that if Tenant does not pay the rent due hereunder during the pendency of the action or deposit the same with the Court, the Court shall immediately return possession of the leased premises to Landlord to enable Landlord to immediately rent the leased premises to third parties.

Landlord's failure to perform or observe any or its obligations under this Lease shall constitute a default by Landlord under this Lease only if such failure shall continue for a period of thirty (30) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after Landlord receives written notice from Tenant specifying the default. The notice shall give in reasonable detail the nature and extent of the failure and shall identify the Lease provision(s) containing the obligations(s). If Landlord shall default in the performance of any of its obligations under this Lease (after notice and opportunity to cure as provided herein), Tenant may pursue any remedies available to it under law and this Lease, provided that Tenant's obligation to pay Rent during any such cure period shall not be excused, tolled, or suspended in any way, such obligation to pay Rent being an independent covenant of Tenant hereunder, in recognition that Landlord must receive timely payments of Rent in order to operate the building. In the event of any failure, refusal or neglect on the part of the Landlord to cure or correct any defect or deficiency within a reasonable time frame, depending on the nature of the defect or deficiency, and for which the Landlord had received notice, Tenant may, but is not obligated to, cure or correct such deficiency or defect and seek recourse as against the Landlord for the recovery of any such sums expended. In no event, however, may Tenant offset, reduce, or deduct from the successive monthly rent any amounts expended by the

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Tenant to correct or cure such defect of deficiency. Tenant's obligation to pay Rent hereunder is an independent covenant. Notwithstanding the foregoing, if Landlord's default continues beyond the thirty (30) day cure period described above, then Tenant, at Tenant's option, may elect to terminate this Lease by giving written notice thereof to Landlord, such termination to be effective immediately upon Tenant's notice to Landlord. In the event of such termination, Tenant's obligations hereunder shall cease.

**21. SUSPENSION OF LEASE IN CASE OF CASUALTY DAMAGE OR PUBLIC AUTHORITY**

Landlord and Tenant agree that if, during the term of this Lease the leased premises shall be injured or destroyed by fire or other casualty or condemned or rendered untenable by public authority, so as to render the leased premises unfit for occupancy, to such an extent that the leased premises cannot be repaired or replaced with reasonable diligence within ninety (90) days from the happening of such injury or act, then either Landlord or Tenant may terminate this Lease as of the date of such damage or act by written notice delivered to the other within fifteen (15) days from 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 ninety (90) days from the happening of the damage or act and if Landlord, within fifteen (15) days from occurrence, elects, in writing, to repair and restore the leased premises within the said ninety 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 and Triple Net Expenses shall not run or accrue after injury and during the process of repairs, except only that Tenant shall, during such time, pay a prorated portion of such rent and Triple Net Expenses apportioned 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 periods.

If, however, the leased premises shall be damaged, but Tenant can use the leased premises to their fullest extent, then Landlord shall repair the same with reasonable promptness. In this case, the rent shall not cease or be abated during such repairing. All equipment, appliances, fixtures, improvements or betterments 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.

Except as otherwise herein set forth, 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 not reasonably attributable to the intentional or negligent acts or omissions of Landlord or its agents and employees; provided, however, Tenant shall promptly report any failure or defect to Landlord who shall repair or correct such defects with reasonable diligence.

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22. 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 land and buildings of which the leased premises forms a part; 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, or as may be required by Landlord in connection with a sale of the building. If there is more than one instrument, release, estoppel certificate, or other such document requested in any given Lease Year, and if legal fees are involved on the part of the Tenant to review such documents, the Landlord will reimburse Tenant for its reasonable legal fees to the extent such are reasonable and standard fees for such review.

23. 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:                      Frontage Road Commercial Properties, LLC  
   c/o Double B Properties, LLC  
   607 Triple Tree Road  
   Bozeman, MT 59715

TENANT:                              Office of Legal Counsel  
   211 Montana Hall  
   P.O. Box 172420  
   Bozeman, MT 59717-2420

Either party may change the above addresses by giving written notice to the other party of such change. If a party's address is changed without such written notice, notice may be addressed to a party's last known address. Notice given in accordance with this provision shall be deemed effective on the earlier of (i) actual receipt, or (ii) three calendar days from the date of mailing.

24. TERMINATION BY TENANT FOR LOSS OF FUNDING



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The Landlord acknowledges that the Tenant's ability to fund this Lease is based on grants from the U.S. Department of Energy, through the Montana Department of Public Health and Human Services. The Tenant, at its sole discretion, may terminate this Lease or reduce the premises leased hereunder if, and only if, available funding is eliminated or reduced for any reason, provided that: (i) Tenant must give at least one hundred eighty (90) days prior written notice to Landlord of its election to terminate this Lease as to any or all of the leased premises for this reason, and (ii) if Tenant elects to reduce the premises leased hereunder, Tenant may only terminate this Lease and surrender possession as to an entire defined unit in the Building, e.g. either A, B, C, D, and or F, and not merely as to a portion of such a unit, and the square footages for purposes of base rent and Triple Net Expenses shall then be recalculated accordingly from and after the effective date of termination 180 days following notice thereof from Tenant.

25. RELATIONSHIP BETWEEN PARTIES

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

26. WAIVER.

No waiver of any breach of any agreement, 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 agreement, term, condition, or covenant.

27. ASSIGNABILITY AND SUBLEASING

Tenant shall not have the right to sublease or assign all or any portion of the leased premises during the Lease Term, without Landlord's prior written approval, which shall not be unreasonably withheld or delayed. Any such approved assignment or sublease shall be with recourse to Tenant.

28. SUCCESSORS AND ASSIGNS

Subject to the provisions 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 permitted assigns.

29. ALL AGREEMENTS CONTAINED HEREIN

This Lease along with the Exhibits attached hereto, contains all of the agreements of the parties relating to the subject matter; and it supersedes and cancels all prior written or oral agreements between them with reference to the subject real property and premises, including all improvements thereon.

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30. TIME

It is mutually agreed by and between the parties that TIME IS OF THE ESSENCE OF THIS LEASE AGREEMENT, AND OF EACH AND EVERY PROVISION HEREIN.

31. 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 constructions thereof.

32. ATTORNEY'S FEES AND COSTS

If either party defaults in its performance, the defaulting party agrees to pay, on demand, the other party's reasonable Attorney's fees and costs for the preparation and serving of the written notices of default and in the enforcement of this Lease, including all legal actions. In the event that either party brings any action to enforce or interpret any of the terms of this Lease agreement, the substantially prevailing party shall be entitled to an award of all of its costs incurred in such action, including but not limited to, its reasonable attorney's fees, paralegal fees, and expert witness fees.

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

**LANDLORD:** FRONTAGE ROAD COMMERCIAL PROPERTIES, LLC

By: Double B Properties, LLC  
Its Member

By: \_\_\_\_\_  
Its Member

**TENANT:** Montana State University

By: \_\_\_\_\_  
Tom McCoy, Ph.D,  
Its: Vice President Research, Creativity and Technology Transfer

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**Exhibit B**

The screenshot shows the Bureau of Labor Statistics website with the following navigation links: Home, Subject Areas, Newsrooms & Events, Publications, Economic Releases. The page title is "Databases, Tables & Calculators by Subject". The selected table is "Consumer Price Index - All Urban Consumers".

**Consumer Price Index - All Urban Consumers**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1999	165.4	166.0	167.2	168.0	168.7	169.3	169.8	169.2	170.0	170.4	170.4	170.5	169.9	167.8	170.0
2000	171.8	172.0	173.5	173.7	174.0	174.3	175.2	175.8	176.6	177.2	177.2	177.1	174.8	173.3	176.9
2001	178.3	179.3	180.1	180.4	181.3	182.0	182.0	181.9	182.5	182.5	182.3	181.8	181.2	180.2	182.1
2002	182.4	183.2	184.0	185.1	184.8	184.3	184.7	185.3	185.7	185.8	185.8	185.0	184.7	184.6	185.5
2003	188.4	188.1	188.3	188.8	188.3	188.1	188.4	188.2	189.0	189.4	188.9	188.2	188.0	188.2	188.9
2004	184.4	188.8	183.2	181.3	181.4	181.3	182.9	183.0	183.0	183.2	183.1	184.2	183.0	181.8	184.0
2005	184.3	185.7	187.1	188.8	188.6	188.0	188.8	189.6	191.7	192.8	191.4	190.0	189.9	187.1	190.7
2006	181.7	182.7	183.8	183.3	183.8	183.8	184.7	185.3	185.8	187.1	186.3	186.2	185.7	184.8	186.9
2007	207.790	208.993	210.778	212.036	212.683	212.680	212.543	212.436	212.920	213.817	214.894	214.732	212.238	210.890	212.570
2008	215.739	216.339	216.533	219.437	221.099	223.044	225.867	222.623	222.132	221.834	217.315	214.645	219.644	219.416	224.230
2009	213.823														

**12 Month Percent Change**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1999	2.1	2.3	2.4	2.3	2.7	2.9	2.8	2.9	3.0	3.0	2.8	2.7	2.0	2.9	
2000	2.9	3.1	3.7	3.8	3.1	3.4	3.3	3.8	3.9	4.0	4.0	3.9	3.3	3.2	3.8
2001	4.3	4.3	3.9	3.9	4.3	4.4	3.9	3.4	3.3	3.0	2.9	2.9	3.7	4.1	3.3
2002	2.3	2.2	2.2	2.6	1.8	1.4	1.3	1.8	1.8	2.0	2.1	1.9	2.1	1.9	
2003	2.3	2.7	2.9	2.0	1.0	2.8	0.0	1.1	1.9	1.5	1.3	2.1	3.3	1.8	
2004	1.8	3.4	1.8	1.9	3.8	2.8	2.4	2.0	3.3	3.0	3.3	3.3	2.3	2.0	3.7
2005	2.7	2.4	2.9	3.3	2.8	2.4	3.0	3.4	4.1	3.9	3.2	3.0	3.1	2.7	3.3
2006	3.7	3.4	3.4	3.4	4.1	4.2	4.3	4.0	3.0	2.3	2.4	3.1	3.4	3.8	3.1
2007	3.9	2.1	3.4	3.9	3.0	3.8	3.2	2.4	2.8	3.9	4.2	4.1	3.2	3.1	3.7
2008	3.8	3.1	3.7	3.5	2.7	4.9	5.3	4.9	4.3	1.3	2.0	2.8	3.8	3.9	3.1
2009	0.1														