

## **Commercial Net Lease for Part of Building**

This lease is made by Joe Bailey and Michelle Bailey dba Bailey Enterprises with their principal place of business at PO Box 254, Belgrade, MT 59714, Landlord, and Montana State University's Western Transportation Institute, Tenant.

### **1. Premises Being Leased.**

Landlord is leasing to Tenant and Tenant is leasing from Landlord a portion of the following premises:

251 Sunfield Drive, Unit 3, Belgrade, MT 59714

#### **A. Part of the Building:**

Specifically, Tenant is leasing the Unit 3, 4000 square feet of the building as more particularly described on the attached Exhibit A which is hereby incorporated by reference.

#### **B. Shared Facilities:**

As part of this lease, Tenant and Tenant's employees and customers may use the following additional facilities in common with other tenants, employees, and customers:

Parking Spaces as shown on Exhibit A.

### **2. Term of Lease.**

This lease begins on October 1, 2009 and ends on February 29, 2012.

### **3. Rent.**

Tenant will pay rent in advance on the 1<sup>st</sup> day of each month. Tenant's first rent payment in the amount of \$1,500.00 will be due October 1, 2009. Tenant will pay rent of \$1,500.00 per month thereafter for the entire term of the lease.

### **4. Option to Extend Lease.**

Landlord grants Tenant the option to extend this lease for an additional one (1) year. To exercise this option, Tenant must give Landlord written notice on or before February 1, 2012. Tenant may exercise this option only if Tenant is in substantial compliance with the terms of this lease. Tenant will lease the premises on the same terms as in this lease.

**5. Security Deposit.**

Tenant has deposited \$1,500.00 with Landlord as security for Tenant's performance of this lease. Landlord will refund the full security deposit to Tenant within 14 days following the end of the lease if Tenant returns the premises to Landlord in good condition (except for reasonable wear and tear) and Tenant has paid Landlord all sums due under the lease.

**6. Improvement by Landlord.**

Before the lease term begins, Landlord (at Landlord's expense) will install 480 Volt 3 phase power.

**7. Improvements by Tenant.**

Tenant may make alterations and improvements to the premises after obtaining the Landlord's written consent. At any time before this lease ends, Tenant may remove any of Tenant's alterations or improvements, as long as Tenant repairs any damage caused by attaching the items to or removing them from the premises.

**8. Tenant's Use of Premises.**

Tenant will use the premises for the purpose of transportation research.

**9. Landlord's Representations.**

Landlord represents that:

- A. At the beginning of the lease term, the premises will be properly zoned for Tenant's stated use and will be in compliance with all applicable laws and regulations.
- B. The premises have not been used for the storage or disposal of any toxic or hazardous substance, and Landlord has received no notice from any governmental authority concerning removal of any toxic or hazardous substance from the property.

**10. Utilities and Services.**

Separately Metered Utilities: Tenant will pay for the following utilities and services that are separately metered or billed to Tenant:

- A. Electricity and Natural Gas
- B. Trash Collection
- C. Telephone

**11. Maintenance and Repair of Common Areas.**

At no additional cost, Landlord will maintain and make all necessary repairs to the common areas of the building, onsite and off-site parking areas, adjacent premises and keep these areas safe and free of trash. Landlord will also perform snow removal for these premises.

**12. Maintenance and Repair of Leased Premises.**

Landlord will maintain and make all necessary repairs to the following parts of the building in which the leased premises are located:

- A. Roof
- B. Foundation and structural components
- C. Exterior Walls
- D. Exterior doors and windows
- E. Plumbing system
- F. Sewage disposal system
- G. Electrical system
- H. Heating, ventilating, and air-conditioning systems
- I. Sprinkler system

Tenant will maintain and repair the leased premises and keep the leased premises in good repair except for those items specified above as being Landlord's responsibility.

**13. Insurance.**

- A. Landlord will carry fire and extended coverage insurance on the building at Landlord's expense.
- B. Tenant is an agency of the State of Montana and as such maintains and will continue to maintain such liability and other insurance as outlined in Title 2 Chapter 9, of the Montana Code Annotated. The parties acknowledge and agree that the property will be used for a research laboratory.
- C. Landlord and Tenant release each other from any liability to the other for any property loss, property damage, or personal injury.
- D. Tenant will give Landlord a copy of all insurance policies that this lease requires Tenant to obtain.

**14. Subletting and Assignment.**

Tenant will not assign this lease or sublet any part of the premises without the written consent of Landlord. Landlord will not unreasonably withhold such consent.

**15. Damage to Premises.**

- A. If the premises are damaged through fire or other cause not the fault of Tenant, Tenant will owe no rent for any period during which Tenant is substantially deprived of the use of the premises.
- B. If Tenant is substantially deprived of the use of the premises for more than 90 days because of such damage, Tenant may terminate this lease by delivering written notice of termination to Landlord.

**16. Notice of Default.**

Before starting a legal action to recover possession of the premises based on Tenant's default, Landlord will notify Tenant in writing of the default. Landlord will take legal action only if Tenant does not correct the default or provide reasonable assurances within ten days after written notice is given or mailed to Tenant.

**17. Quiet Enjoyment.**

As long as Tenant is not in default under the terms of this lease, Tenant will have the right to occupy the premises peacefully and without interference.

**18. Eminent Domain.**

This lease will become void if any part of the leased premises or the building in which the leased premises are located are taken by eminent domain. Tenant has the right to receive and keep any amount of money that the agency taking the premises by eminent domain pays for the value of Tenant's lease, its loss of business, and for moving and relocation expenses.

**19. Holding Over.**

If Tenant remains in possession after this lease ends, the continuing tenancy will be from month to month.

**20. Disputes.**

**Mediation and Possible Litigation.** If a dispute arises, the parties will try in good faith to settle it through mediation conducted by a mediator to be mutually selected. The parties will share the costs of the mediator equally. Each party will cooperate fully and fairly with the mediator and will attempt to reach a mutually satisfactory compromise to the dispute. If the dispute is not resolved within 30 days after it is referred to the mediator, it will be arbitrated by arbitrator to be mutually selected.

Judgment on the arbitration award may be entered in any court that has jurisdiction over the matter. Costs of arbitration, including lawyers' fees will be allocated by the arbitrator.

Landlord need not participate in mediation or arbitration of a dispute unless Tenant has paid the rent called for by this lease or has placed any unpaid rent in escrow with an agreed upon mediator or arbitrator.

**21. Entire Agreement.**

This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings.

**22. Successors and Assignees.**

This lease binds and benefits the heirs, successors, and assignees of the parties.

**23. Notices.**

All notices must be in writing. A notice may be delivered to a party at the address that follows a party's signature or to a new address that a party designates in writing. A notice may be delivered:

- A. In person
- B. By certified mail, or
- C. By overnight courier.

**24. Governing Law.**

This lease will be governed by and construed in accordance with the laws of the State of Montana.

**25. Counterparts.**

The parties may sign several identical counterparts of this lease. Any fully signed counterpart shall be treated as an original.

**26. Modification.**

This lease may be modified only by a writing signed by the party against whom such modification is sought to be enforced.

**27. Waiver.**

If one party waives any term or provision of this lease at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its right or remedies under this lease, that party retains the right to enforce that term or provision at a later time.

**28. Severability.**

If any court determines that any provision of this lease is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this lease invalid or unenforceable, and shall be modified, amended, or limited only to the extent necessary to render it valid and enforceable.

Dated: August , 2009.

**LANDLORD:**

**TENANT:**

**BAILEY ENTERPRISES**

**MONTANA STATE UNIVERSITY**

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

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

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

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

Address:\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### EXHIBIT A

