

**HYALITE RURAL FIRE DISTRICT
BOARD OF TRUSTEES SPECIAL PUBLIC MEETING**

DATE: TUESDAY, DECEMBER 13, 2022

TIME: 8:00 a.m.

LOCATION: Sourdough Fire Station, 4541 S. 3rd Rd., Bozeman, MT

CALL TO ORDER OF HYALITE RURAL FIRE DISTRICT

Reminder to the public that meetings are being recorded.

PUBLIC COMMENT ON MATTERS NOT INCLUDED IN THE AGENDA

REGULAR AGENDA

1. Discussion and Decision – Updated Agreement with Mountain Hot Tub – *See Attachment (Lease Agreement)*.

ADJOURNMENT

This notice is posted on the door of the Administrative Building of the Sourdough Fire Station, the Rae Fire Station, and the Cottonwood Fire Station, and is posted on the Hyalite website and/or Facebook Page at least 48 hours prior to the meeting. Notice of the meeting is published in the Bozeman Daily Chronicle at least 48 hours prior to the meeting.

**HYALITE RURAL FIRE DISTRICT – SPENCER JO, LLC
(DBA MOUNTAIN HOT TUB) LEASE**

THIS LEASE, entered into this _____ day of _____, 2022 by and between the Lessor and Lessee as named in Article 1 below.

DEFINITIONS AND PROVISION

Lessor: Hyalite Rural Fire District
Lessor's Address: 4541 South 3rd Road, Bozeman Montana, 59715
Lessee: Spencer Jo, LLC (dba Mountain Hot Tub)
Lessee's Address: 1186 Agate Ave., Bozeman Montana, 59718

Leased Premises is that portion depicted on the attached **Exhibit A** being a portion of the tract of land described in Quit Claim Deed recorded as Doc. No. 2669546 records of Gallatin County Montana described as:

All that part of Section Sixteen (16) in Township 2 South, Range 5 East, M.P.M, Gallatin County Montana including within the following metes and bounds to wit:

Commencing at a point on the West line of the abode described Section 16, located 440 feet South of the Northwest corner thereof, thence running East parallel to the North line of said Section a distance of 198 feet; thence South parallel to the West line of said Section 440 feet; thence West parallel to the North line of said Section 198 feet to the West line of said Section; thence North along the west line of said section 440 feet to the point of beginning.

Lease Term: Commencing on the "Commencement Date" of December 13th, 2022 and continuing for not less than 1 years. Thereafter the Lease Term shall continue until terminated consistent with this agreement.

Rental Rate: For each month shall be \$0 for payment made to Lessor, recognizing that Lessor shall receive ownership interest on a monthly increment in the parking lot improvements placed on Lessor's property within the Leased Premises by Lessee. The consideration for this Lease is further defined herein.

Permitted Use: Lessee may occupy the Leased Premises, constructed and improved by Lessee for a gravel automobile and vehicle parking and storage.

GRANTING CLAUSE

In consideration of Lessee's improvement to Lessor's Leased Premises attributed as rent and in consideration of the other terms, covenants, and conditions hereof, Lessor warrants that it has the legal right to enter into this Lease Agreement and hereby non-exclusively demises and leases to Lessee, and Lessee hereby takes from Lessor, the Leased Premises as described above, TO HAVE AND TO HOLD said Leased Premises for the Lease Term specified above, all on the terms and conditions set forth in this Lease Agreement.

RENT AND CONSIDERATION

Rent shall accrue hereunder from the Commencement Date and shall be credited at a monthly installment rate in the amount of \$___ for the value of improvements, including costs of design, including submittal to the appropriate entity ensuring modification of the ground meets stormwater laws and regulations as well as obtaining necessary approval from the appropriate governmental entity to ensure zoning regulations are met and complied with and soils removal, leveling and installation and compaction of gravel, as well as payment of professional fees to draft, review, edit and work on this Agreement all other documents, not to exceed \$31,868.00. Additional consideration to Lessor is Lessee's agreement and consent of Lessor to utilize the Leased Premises for vehicle and automobile parking which does not interfere with Lessee's use.

USE AND CARE OF LEASED PREMISES

The Leased Premises may be used for the design and construction of gravel vehicular parking lot, which upon completion shall be considered appurtenant to the property of Lessor and Lessee may use the Leased Premises for vehicular parking purposes. Lessee acknowledges that upon completion of improvements, Lessor may utilize the Leased Premises for the same purposes so long as Lessor's use does not limit Lessee's use.

The Leased Premises parking lot area must be approved through the appropriate regulatory agency, if any, at the sole cost and expense of Lessee.

As part of the consideration for rent, Lessee shall pay, at its sole cost and expense, for removal or relocation of materials, engineering design to ensure stormwater for the Leased Premises meets all regulations, cost of labor, materials and construction of a gravel parking surface consistent with this Agreement.

The Leased Premises shall not be used or operated for no other purpose or purposes without the prior written consent of Lessor. Lessee shall operate its business in an efficient, dignified, and reputable manner.

Lessee shall not keep anything within or upon the Leased Premises for any purpose, which increases the insurance premium cost or invalidate any insurance policy carried on the Leased Premises or real property. All property kept, stored or maintained within the Leased Premises by Lessee shall be at Lessee's sole risk.

Lessee shall not permit any unusually objectionable or unpleasant odors to emanate from the Leased Premises; nor place or permit any radio, television, loud-speaker, or amplifier inside or outside the Leased Premises where the same can be heard by other Lessees or from outside the

Leased Premises; nor take any other action which would constitute a nuisance or would disturb or endanger other Lessees of the real property upon which the facility is located or unreasonably interfere with their use of their respective premises; nor do anything which would tend to injure the reputation of the real property.

Lessee shall procure at its sole expense any permits and licenses required for the Leased Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

At all times Lessee shall ensure the Leased Premises remains free from claims and liens arising out of the terms of this Agreement. Lessee shall hold harmless, defend and indemnify Lessor of all claims for and liens filed associated in any way with the Leased Premises and improvements made thereto.

REPAIR OF LEASED PREMISES

Lessee shall keep the Leased Premises in good clean condition and shall at its sole cost and expense make all needed repairs and replacements of any and all damages to the Leased Premises created as a result of Lessee's negligent use and care of the Leased Premises. If any repairs required to be made by lessee hereunder are not made within ten (10) days after written notice delivered to Lessee by Lessor, Lessor may at its option make such repairs without liability to Lessee for any loss or damage which may result in its business by reason of such repairs, and Lessee shall pay to Lessor on demand as additional rental hereunder the cost of such repairs plus interest at the rate of ten percent (10%) per annum from the date of payment by Lessor until repaid by Lessee. At the expiration of this Lease, Lessee shall surrender the Leased Premises in the original good clean condition, reasonable wear and tear and loss by fire or other casualty excepted.

ALTERATIONS

Lessee shall not make any alterations, additions, or improvements to the Leased Premises, after approval and construction of the parking lot, without the prior written consent of Lessor. All construction, alterations, additions, improvements, and fixtures which may be made or installed by either party on the Leased Premises shall remain on and be surrendered with the Leased Premises and become the property of Lessor at the termination of the Lease, unless Lessor requests their removal, in which event Lessee shall remove the same and restore the Leased Premises to its original condition at Lessee's expense.

All work done by Lessee within the Leased Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements. Lessee agrees to indemnify Lessor and hold it harmless against any loans, liability or damage resulting from such work, and Lessee shall, if requested by Lessor, furnish bond or other security satisfactory to

Lessor against any such loss, liability or damage.

LESSOR'S RIGHT OF ACCESS

Lessor shall have the right to enter on the Leased Premises at any time.

UTILITIES

Utilities shall not be installed within the Leased Premises. Lessee agrees to pay for the utilities provided to the Leased Premises by Lessor or other utility providers.

INDEMNITY AND PUBLIC LIABILITY INSURANCE

Lessor shall not be liable to Lessee or to Lessee's employees, agents or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Leased Premises caused by the negligence or misconduct of Lessee, its employees, sub-lessees, licenses, or concessionaires, or any other person utilizing or accessing the Leased Premises under express or implied invitation of Lessee, or arising out of the use of the Leased Premises by Lessee and the conduct of its business therein, or arising out of any breach or default by Lessee in the performance of its obligations hereunder, unless caused by the willful misconduct of Lessor, or by the failure of Lessor to meet the currently-accepted "duty of reasonable care" standard, and Lessee hereby agrees to indemnify Lessor and to hold it harmless from any loss, expense or claims arising out of such damage or injury.

Lessee shall procure and maintain throughout the term of this Lease a policy or policies of insurance, at its sole cost and expense, insuring Lessee and Lessor (as additional insured) against all claims, demands or actions arising out of or in connection with Lessee's use or occupancy of the Leased Premises, or by the condition of the Leased Premises, the limit of such policy or policies to be in an amount no less than \$1,000,000 with respect to injuries to or death of any one person, and in an amount no less than \$2,000,000 with respect to any one accident or disaster, and in an amount no less than \$500,000 with respect to property damaged or destroyed, and to be written by insurance companies satisfactory to Lessor. Lessee shall obtain a written obligation on the part of each insurance company to notify Lessor at least ten (10) days prior to cancellation of such insurance. Copies of all policies or duly executed certificates of insurance shall be promptly delivered to Lessor and renewals thereof as required shall be delivered to Lessor at least (30) days prior to the expiration of the respective policy terms. If Lessee should fail to comply with the foregoing requirements relating to insurance, Lessor may obtain such insurance and Lessee shall pay to Lessor on demand as additional rental hereunder the premium cost thereof plus interest at the rate of ten percent (10%) per annum from the date of payment by Lessor until repaid by Lessee. Or Lessor may require Lessee to stop operation and remove all vehicles immediately.

To the extent that a claim is covered by the injured parties insurance, the parties release each other from any claims any party has against another.

NON-LIABILITY FOR CERTAIN DAMAGES

Agents and employees of Lessor shall not be liable to Lessee for any injury to person or

damage to property caused to the Leased Premises arising out of repair or by defect construction and maintenance of the Leased Premises (except where due to Lessor's willful failure to make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Lessor of the need for such repairs, or because of Lessor's failure to meet the currently-accepted "duty of reasonable care" standard), nor shall Lessor be liable to Lessee for any loss or damage that may be occasioned by or through the acts or omissions of other Lessees of the Leased Premises or of any other persons whomsoever, excepting only duly authorized employees and agents of Lessor.

The Lessee accepts the Leased Premises AS-IS and Lessee agrees and covenants that Lessor will not be liable for any loss of use or damages to Lessee for any reason. And this agreement will be binding whether such damage or loss be caused by negligence of either party or their agents, employees, or visitors.

DAMAGE BY FIRE OR OTHER CASUALTY

Lessee shall give immediate written notice to Lessor of any damage caused to the Leased Premises by fire or other casualty.

In the event that the Leased Premises shall be damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Lessor does not elect to terminate this Lease as hereinafter provided, Lessee with Lessor's consent may proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Leased Premises.

Lessor's obligation to rebuild and repair shall in any event be limited to restoring any improvement constructed or installed by Lessor to the conditions which existed prior to the casualty.

Lessee agrees to assume the risk for its failure to purchase fire, flood, and extended coverage insurance on the Lease Premises and all vehicles located thereon.

ASSIGNMENT AND SUBLETTING

No assignment or sublet or transfer of this Lease may be made without the prior written consent of Lessor. Consent by Lessor to one or more assignments or subletting shall not operate as a waiver of Lessor's rights as to any subsequent assignments and subletting. Lessee and any grantor of Lessee's obligations under this Lease shall at all times remain fully responsible and liable for compliance with all of its other obligations under this Lease.

Lessee shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Leased Premises, without the prior written consent of Lessor.

PROPERTY TAXES

Lessee shall be liable for all taxes levied against personal property and trade fixtures placed by Lessee in the Leased Premises. If any such taxes are levied against Lessor or Lessor's property and if Lessor elects to pay the same or if the assessed value of Lessor's property is

increased by inclusion or personal property and trade fixtures placed by Lessee in the Leased Premises and Lessor elects to pay the taxes based on such increase, Lessee shall pay to lessor on demand that part of such taxes for which Lessee is primarily liable hereunder.

Lessee may, at its option, and at its cost and expense, in the name of Lessor, as applicable, protest, appeal or institute such proceedings as it may consider appropriate to effect a reduction or abatement in any real estate assessment, tax rate, or taxes, and to this end, Lessor shall cooperate fully with Lessee, including without limitation, the furnishing of any dates, documents, information and assistance, and making such appearances as may be reasonably required by Lessee. In the event a refund is obtained for any year in which Lessee contributed towards reimbursement of taxes hereunder, Lessor, as applicable, shall promptly pay Lessee its pro-rata share of such refund or any part thereof from future rentals in the event Lessee is unsuccessful in obtaining a refund, Lessor shall have no liability for Lessee's costs, expenses or fees in attempting to secure such refund.

DEFAULT BY LESSEE, TERMINATION AND REMEDIES

Remedies: Lessor in addition to other remedies given in this Lease or under the law, may do any one of more of the following if Lessee commits a default hereunder.

- a. end this Lease, and Lessee shall then surrender the Premises to Lessor;
- b. enter and take possession of the Premises without notice and either with or without process of law and remove Lessee, with or without having ended the Lease;
- c. alter locks and other security devices at the Premises.

Lessee waives claims for damages by reason of Lessor's reentry, repossession, or alteration of locks or other security devices and for damages by reason of any legal process.

No Surrender: Lessor's exercise of any of its remedies or its receipt of Lessee's keys shall not be considered an acceptance or surrender of the Premises by Lessee. A Surrender must be agreed to in writing signed by both parties.

Termination: At the end of the Lease Term without default, Lessor shall give Lessee notice of termination of the Lease Period. Within ninety (90) days Lessee shall fully vacate and cease using the Lease Premises.

Rent and Consideration: Lessee shall complete all improvements consistent with this Agreement noting that time of the essence.

If Lessor or Lessee is required to retain an attorney to enforce or defend its rights under this Lease, then the prevailing party shall be entitled to an award from the other parties of its reasonable attorney fees and all costs and expenses.

HOLDING OVER

If Lessee should hold over after the expiration of this Lease, and if Lessee has not previously exercised Lessee's rights and options hereinunder to renew and extend this Lease,

then the provisions of Section 70-26-204, MCA, shall apply.

OPTION TO RENEW LEASE

Lessee shall have the option to renew the lease term beyond the original term upon terms and conditions which may be mutually agreed to in writing.

NOTICES

Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice of document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, hereto at the respective addresses set forth above or at such other addresses as they have heretofore specified by written notice delivered in accordance herewith.

MISCELLANEOUS

Nothing herein contained shall be deemed or construed by the parties hereto as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, nor shall it be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each others gender.

The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

One or more waivers of any covenant, term or condition of this Lease by any party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by any party to or of any act by another party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Whenever a period of time is prescribed for action to be taken by any party hereunder, any party shall be liable or responsible for, and there shall be excepted from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, other causes of any kind whatsoever which are beyond the reasonable control of the parties, except payment of rent by Lessee. At any time when there is outstanding a mortgage, Deed of Trust, or similar security instrument covering Lessor's interest in the Leased Premises, Lessee may not exercise any remedies for default by Lessor hereunder unless and until the holder of the indebtedness secured by such mortgage, Deed of Trust, or other similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

Lessor agrees that Lessee shall perform all of the covenants and agreements herein required to be performed by Lessee, Lessee shall, subject to the terms of this Lease, at all times during the continuance of this Lease have the peaceable and quiet enjoyment and possession of the Leased Premises.

This Lease contains the entire agreement between the parties, and no agreement shall be

effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

Lessee agrees that it will, from time to time on request by execute and deliver to Lessor a statement in recordable form certifying that this Lease is unmodified and in full force and effect, or if there have been any modifications, that the same is in full force and effect so modified.

The laws of the State of Montana shall govern the interpretation, validity, performance, and enforcement of this Lease. If any provision of this Lease should be held invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. If there is a conflict between the laws of the State of Montana and any of the terms or conditions of this Lease, then the laws of the State of Montana shall prevail. Furthermore, it is specifically agreed and understood between the parties that this Lease, nor any of its terms or conditions, is meant to bargain away, or otherwise dilute the rights, duties, and obligations of parties to a commercial lease arrangement as set forth in Title 70, Chapters 25 & 26, MCA.

The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, successors in interest, and legal representatives, except as herein expressly provided.

This Lease shall not be recorded in any public record; however, Lessor, upon request of Lessee, shall execute for recording such short form lease as Lessor, deems necessary to apprise any interested party of the beginning and terminating dates of this Lease.

EXECUTED as of the date herein above stated:

Lessor:

Hyalite Rural Fire District

By:_____

Lessee:

By:_____

Exhibit A

