

BUY-SELL AGREEMENT

PARTIES/PROPERTY

SELLER:

Popelka Enterprises, LLC
Attn: Robert Popelka
P.O. Box 50126
Billings, MT 59105

BUYER:

City of Billings

Attn: _____

210 N 27th St.
Billings, MT 59101

PROPERTY:

lot 3A-1, Lot 3A-4, Lot 3A-5 of the Popelka Commerce Center Sub containing approx. 10.137 gross acres of land (See attached Exhibit "A"); together with all rights, privileges and appurtenances pertaining thereto.

AGREEMENT

In consideration of the mutual covenants contained herein, and pursuant to the terms set forth herein, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the above-described Property. This Buy-Sell Agreement is referred to herein as the "Contract."

1. Sales Price and Terms. The Sales Price of the Property is \$934,500.00, based on \$2.116/square foot based on a survey of the Property if obtained by Buyer.
2. Earnest Money. As Earnest Money, Buyer, within seven days of the mutual execution of this Contract by Buyer and Seller (herein, the "Effective Date"), will deposit the sum of \$10,000.00 together with a fully executed copy of this Contract in escrow with First Montana Title Company ("Title Company"). The Title Company shall hold the Earnest Money in a noninterest bearing account. The Earnest Money shall be applied against the Sales Price at closing, or if the transaction fails to close, paid to Seller or refunded to Buyer as provided for herein.
3. Payment of the Balance of Purchase Price. The Purchase Price shall be paid as follows: the balance of the Purchase Price shall be paid readily available funds at closing.
4. Title Policy/Commitment.
 - a. Seller shall furnish to Buyer at Seller's expense an Owner Policy of Title Insurance ("Title Policy") naming Buyer as the insured, and in the amount of the Sales Price, dated at or after closing, subject only to those title exceptions

permitted by this Contract or approved by Buyer in writing and the standard printed exceptions contained in the promulgated form of the Title Policy (“Permitted Exceptions”).

- b. Within 15 days from the Effective Date, or as soon thereafter as practicable, Title Company shall cause to be delivered to Seller and Buyer a current Title Commitment from the Title Company, together with legible copies of all documents (other than the standard exceptions), referenced in the Title Commitment to Buyer.
- c. Buyer shall have 15 days from the date of receipt of such Title Commitment to object in writing to exceptions disclosed in the Title Commitment, provided exceptions not objected to by Buyer shall be deemed to be acceptable to Buyer as specified herein.
- d. Seller shall have the right, but not the obligation, within a reasonable time, not to exceed 20 days from the date of receipt of such written notice, in which to remedy or remove such exception(s) objected to by Buyer. In the event any such exception(s) objected to by Buyer have not been removed from the Title Commitment within said 20-day period, Buyer may either (i) waive its objections and proceed to closing without any reduction in the Consideration, or (ii) terminate this Contract and receive a refund of the Earnest Money, less \$100.00 which shall be retained by the Seller as independent consideration.

5. Inspection/Due Diligence Period.

- a. Buyer shall have 90 days from the Effective Date to conduct such inspections and investigations of the Property as Buyer deems necessary or appropriate in connection with the condition of the Property.
- b. If Buyer determines, in its reasonable discretion, that the Property is not suitable for its intended purpose, Buyer may, on written notice to Seller on or before the end of the Inspection Period, terminate this Contract, and receive a refund of the Earnest Money, less \$100.00 which shall be retained by the Seller as independent consideration.

6. Contingencies.

- a. This Contract shall be subject to the contingency set forth in subsection b., below (herein, the “Contingency”). The Contingency shall be deemed to have been released, waived or satisfied and the transaction shall proceed to Closing unless by the release date for each Contingency, Buyer has notified the Seller that the Contingency has not been released, waived or satisfied.
- b. Approval of the expenditure of funds by the City of Billings at a regular city council meeting on or before September 10, 2018.

7. Property Documents. Within 15 business days of the Effective Date, Seller shall

deliver to Purchaser the following documents:

- a. Copies of all easements, including reciprocal easements, encumbrances, and other agreements pertinent to the Property usage and restrictions.
 - b. In addition, Seller shall provide Purchaser with copies of any of the information identified on Exhibit "B" in its possession and control.
8. Closing Date. The closing of the transaction contemplated hereby shall be held no later than 30 days after the Contingency Period Expiration Date with the closing to be held in the offices of the Title Company or at such other place upon which the parties may agree. The terms "closing" and "time of closing" as used in this Contract shall refer to the date and place of closing as determined by the terms of this paragraph.
9. Deliveries at Closing. Seller agrees to execute and deliver at closing (a) a special warranty deed conveying to Buyer good and indefeasible fee simple title to the Property, subject to the Permitted Exceptions, and with no reservation by Seller of any mineral rights; (b) the Title Policy as provided for in Paragraph 4 herein; (c) an affidavit required under Section 1445 of the Internal Revenue Code; (d) evidence of the existence, organization, and authority of Seller and of the authority of the persons executing documents on behalf of Seller to consummate this transaction; (e) an affidavit as to debts and liens against the Property; and (f) such other documents as may be reasonably required by the Title Company for closing.
10. Default.
 - a. Should Buyer fail to carry out the terms of this Contract for any reason except the failure of any condition to Buyer's obligations hereunder, Seller, as its sole and exclusive remedy, shall have the right to retain said Earnest Money as liquidated damages and not as a penalty. The parties acknowledge that Seller's actual damages in the event of a default by Buyer under this Contract would be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages.
 - b. Should Seller fail to comply with any of the requirements of this Contract, Buyer shall have the option of (a) canceling this Contract by giving Seller written notice thereof, and in such event the Earnest Money shall be returned to Buyer; or (b) Buyer may waive obtain specific performance of this Contract.
11. Possession. Possession of the Property shall be delivered to Buyer on the date of closing.
12. Prorations and Fees.
 - a. Real estate taxes, rentals, interest on any assumed operating expenses (for service contracts or other obligations assumed by Buyer), if any, shall be prorated through the date of closing. Any SIDs or RSIDs or other related

assessments shall be allocated to and paid in full at closing by Seller, provided, however, that any perpetual SIDs shall be assumed by Buyer with the current year assessments prorated through the Closing Date.

- b. Seller shall pay Seller's legal fees, cost of obtaining releases of any existing liens, tax certificates, preparation of the deed, one-half of any escrow fees, and other expenses stipulated to be paid by the Seller under this Contract.
 - c. Buyer shall pay for all loan fees and expenses, recording fees, one-half of any escrow fees, fees for copies and delivery of the Title Commitment, and other expenses stipulated to be paid by Buyer under this Contract.
13. Casualty and Condemnation. If prior to the closing of this transaction, all or any substantial part of the Property is condemned, damaged or destroyed, Buyer shall have the option of either (i) terminating this Contract by delivering written notice of termination pursuant to this Paragraph to Seller within 10 days of the date Seller notifies Buyer in writing of such condemnation, damage or destruction, in which event the Earnest Money shall be returned to Buyer, or (ii) proceeding to closing and applying the condemnation award or proceeds of any insurance policies to reduce the total consideration provided herein. In the event Buyer elects to proceed to closing and any such award or proceeds has not been paid to Seller by closing, Seller shall, at closing, assign to Buyer all of Seller's rights to awards or insurance proceeds relating thereto.
14. Seller's Representations and Warranties. Seller represents and warrants to Buyer that:
- a. Seller has been duly organized, is validly existing and is in good standing as a limited liability company organized under the laws of the State of Montana. Seller has the full right, power and authority to enter into this Contract and to perform all of Seller's obligations hereunder.
 - b. Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the internal revenue code and the regulations promulgated thereunder.
 - c. To the best of Seller's knowledge, except the items referenced below, there are no legal actions, suits or similar proceedings pending and served, or threatened against Seller or the Property which are not adequately covered by existing insurance or, if adversely determined, would adversely affect the value of the Property, the continued operations thereof, or Seller's ability to consummate the transactions contemplated thereby.
 - d. To the best of Seller's knowledge, Seller has not received any written notification from any authority that the Property is in violation of any applicable occupancy laws.
 - e. Seller has not received written notice of violation of any environmental law from any authorities, and Seller has no knowledge of any violation of any

With copies to: Christensen Fulton & Filz, PLLC
PO Box 339
Billings, MT 59103-0339
Attn: Tim Filz
Phone: 406-248-3100
Fax: 406-248-7908

Buyer: City of Billings

210 N. 27th St.
Billings, MT 59101

With copies to:

- g. This Contract may be executed in one or more counterparts, each of which shall be considered an original but when taken together shall constitute one Contract.
- h. If either Buyer or Seller employs attorneys to enforce any of the provisions hereof, the party prevailing in any final judgment shall be entitled to collect from the other party all costs, charges and expenses, including reasonable attorneys' fees expended or incurred in connection therewith.
- i. In computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
- j. Buyer understands that Seller may elect to sell the Property as part of a tax deferred like-kind exchange of real property pursuant to IRC Section 1031 ("Exchange"), and Buyer agrees to cooperate fully with Seller in connection with the structuring of this transaction in order to comply to the fullest extent possible with the requirements of an Exchange. Buyer consents to Seller's assignment of Seller's rights under this Contract in connection with the consummation of an Exchange. All costs relating to the Exchange shall be borne by Seller.
- k. Seller and Buyer each represent that they have dealt with no real estate brokers or third parties in connection with this transaction and that there are no commissions or fees payable in connection with this Contract except as follows:

Seller: George Warmer, Blaine Poppler - Coldwell Banker Commercial

Buyer: Mike Walker - NAI Business Properties

Other than as stated in this paragraph, Buyer and Seller represent to the other that no real estate brokers, agents fees or commissions are due or will be due or arise in conjunction with the execution of this Contract or consummation of this transaction by reason of the acts of any such person, and Buyer and Seller will indemnify and hereby agree to hold the other party harmless from any brokerage or agent's fee or commission claimed by any such person asserting his or her entitlement thereto at the alleged instigation of the indemnifying party for or on account of this Contract or the transactions contemplated thereby. The terms of this paragraph shall survive closing.

Executed as follows. Buyer has until September 14, 2018, to accept this Contract or it will be withdrawn.

SELLER:
Popelka Enterprises, LLC

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

BUYER:
City of Billings

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

EXHIBIT B

Seller shall provide Purchaser with copies of any of the following items currently in its possession and control:

1. A full set of filed plats.
2. Copies of all reciprocal easement agreements, operating easement agreements and declarations related to the development.
3. Copies of any existing surveys, including most current ALTA.