

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made this \_\_\_\_ day of November, 2019 (the "Effective Date"), by and between MCDONALD LAND HOLDINGS LLC, a Nevada series limited liability company (the "Seller") and the CITY OF BILLINGS, an incorporated municipality in the State of Montana (the "Purchaser").

### **ARTICLE I -- PROPERTY TO BE CONVEYED**

Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, upon the terms and conditions hereinafter set forth, the following property (collectively, the "Property"):

- A. The "Real Property" being that certain parcel of land located in Yellowstone County, Montana, described in **Exhibit A** attached hereto and incorporated herein by this reference, together with any and all improvements and fixtures located on the Real Property; all and singular rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in any way appertaining to such Real Property; all right, title, and interest of the Seller in and to all stripes and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining such Real Property, and all mineral, water, irrigation, and other property rights of Seller, if any, running with or appertaining to such Real Property;
- B. Seller's interest in any leases with respect to the Real Property (the "Leases"), including but not limited to those listed on the attached **Exhibit B**, including any and all amendments and supplements thereto, and any and all guaranties and security received by Seller or its agents in connection there with; and
- C. The "Intangible Property," being all right, title and interest of Seller, if any, in and to all (i) intangible personal property now or hereafter used exclusively in connection with the operation, ownership, maintenance, management, or occupancy of the Real Property (to the extent assignable); (ii) plans and specifications for the improvements on the Real Property; (iii) development rights, utility capabilities, and real estate related approvals, and certificates of occupancy; (iv) warranties, guarantees, indemnities, applications, permits, approvals, and licenses (to the extent applicable in any way to the above-referenced Real Property or the Buildings and to the extent assignable); and (v) insurance proceeds and condemnation awards or claims thereto to the extent required to be assigned to Purchaser hereunder.

### **ARTICLE II -- PURCHASE PRICE**

The purchase price (the "Purchase Price") for the Property shall be EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$875,000.00). Subject to all prorations and adjustments provided herein, the Purchase Price shall be paid as follows:

A. Within three (3) days after the execution of this Agreement, Purchaser shall deliver Ten Thousand and No/100 Dollars (\$10,000.00) to First American Title Company, 1001 S. 24<sup>th</sup> Street W #200, Billings, MT (in this capacity herein called "Escrow Agent"), to be deposited by Escrow Agent in an interest-bearing money market account with a bank of Escrow Agent's choosing having an office in Billings, Montana. This \$10,000, together with all interest earned thereon, is herein referred to as the "Deposit." The Deposit shall be applied towards the Purchase Price due at Closing or shall be otherwise paid by Escrow Agent as herein provided. Any interest earned on the Deposit shall be paid to or credited to the person receiving such Deposit.

B. An amount equal to the Purchase Price, less the amount of the Deposit paid by Escrow Agent to Seller at Closing, shall be paid by Purchaser to Seller at Closing by wire-transfer to Seller of immediately available funds.

### **ARTICLE III -- DELIVERIES BY SELLER**

If Seller has not already delivered the same to Purchaser, Seller covenants to deliver the following (collectively herein referred to as the "Delivery Items") to Purchaser no later than three (3) business days after the Effective Date, which delivery may be accomplished by providing access to an online data room:

A. A copy of the most recent survey of the Property in Seller's possession or control, if any, and a copy of the most recent owner's and mortgagee's title insurance policies in respect to the Property in Seller's possession or control, if any.

B. Any surveys, environmental surveys, property condition reports, soil or subsurface condition reports, geotechnical reports and environmental studies relating to the Property (including the Environmental Site Assessment referenced in Section IVH of this Agreement), if in Seller's possession or control.

C. Copies of all Leases, including amendments and guaranties thereto, if any, with respect to the Property or any portion thereof.

D. All books, notices, documents, and agreements pertaining to the condition of the Property that are in Seller's possession, excepting internal correspondence or privileged communications.

E. In the event this transaction fails to close for any reason, Purchaser shall return to Seller all items which are delivered to Purchaser and copies of any and all reports (whether in final or draft form) obtained by Purchaser related to the Property without warranty or representation of any kind.

### **ARTICLE IV - SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller hereby makes to Purchaser the following representations and warranties:

A. Seller is a series limited liability company duly organized and validly existing and in good standing under the laws of the State of its formation; is validly existing, in good standing, and authorized to do business in the State of its principal place of business, and has the authority to own and convey the Property. This Agreement and all documents executed by Seller which are to be delivered to Purchaser are, or at the time of Closing will be, duly authorized, executed, and delivered by Seller and constitute, or will constitute, as appropriate, the valid and binding obligations of Seller, enforceable in accordance with their terms. Seller has obtained any and all consents required to enter into this Agreement and has obtained or will obtain prior to Closing any and all consents required to consummate or cause to be consummated the transactions contemplated hereby.

B. To the best of Seller's knowledge, the conveyance of the Property to Purchaser pursuant to this Agreement will not be a violation by Seller of any applicable statute, ordinance, governmental restriction, or regulation, or any private restriction or agreement.

C. To the best of Seller's knowledge, no special assessments have been levied or are threatened or pending against all or any part of the Property, and Seller has no knowledge of any intended assessments.

D. There are no oral or written tenant occupancy leases or rental agreements in force with respect to the Property other than the Leases.

E. There is no litigation pending or threatened which does or will materially or adversely affect the Property.

F. There are no actions or proceedings pending or, to the best of Seller's knowledge, threatened against Seller before any court or administrative agency which do or will materially or adversely affect the Property.

G. To the Seller's knowledge, the use and operation of the Property now is, and at the time of Closing will be, in material compliance with applicable building codes, safety, fire, environmental, zoning, and land use laws, and other applicable local, state, and federal laws, ordinances, regulations, and requirements. Seller knows of no facts, nor has Seller failed to disclose to Purchaser any fact which would prevent Purchaser from using and operating the Property after the Closing in the manner in which the Property has been used, leased, and operated prior to the date of this Agreement. Seller has all material licenses, permits, and certificates necessary for the use and operation of the Property in the manner in which it is being used or operated by the Seller as of the Effective Date, including, without limitation, all certificates of occupancy necessary for the lawful occupancy of the Buildings. Seller has received no written notice that the Property or the use thereof violates any governmental law or regulation or any covenants or restrictions encumbering the Property. Seller has not received any written notices of violations or alleged violations of any laws, rules, regulations, or codes, including building codes, with respect to the Property which have not been corrected to the satisfaction of the issuer of the notice.

H. To Seller's knowledge there are no service contracts that will be binding on Purchaser after the Closing except as disclosed in writing to Purchaser at least ten (10) days prior to the Out Date (as defined below).

I. Seller warrants that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate as such terms are defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

J. To the best of Seller's knowledge, no areas on the Property exist where Hazardous Substances or Waste have been generated, disposed of, released or found in violation of applicable laws and Seller has no knowledge of the existence of any areas for the storage or disposal of any Hazardous Substance or Waste on the Property in violation of applicable laws. Except as set forth in the Environmental Report, Seller has received no written notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of zoning, health, environmental or other statutes, ordinances or regulations affecting the Property, and Seller has no knowledge of any such violations. In the event Seller receives notice of any such Hazardous Substances or Waste on the Property or any such violations affecting the Property prior to the Closing, Seller shall promptly notify Purchaser thereof. "Hazardous Substances or Waste" means petroleum (including gasoline, crude oil or any crude oil fraction), waste, trash, garbage, industrial bi-product, and chemical or hazardous substance of any nature, including, without limitation, radioactive materials, PCB's, asbestos, pesticides, herbicides, pesticide or herbicide containers, untreated sewage, industrial processed sludge and any other substance identified as a hazardous substance or waste, toxic substance or waste, pollutant or contaminant in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA") as amended, the Superfund Amendment and Reauthorization Act (commonly known as "SARA"), the Resource Conservation and Recovery Act (commonly known as "RCRA"), or any other federal, state, county or city legislation or ordinances applicable to the Property.

K. Neither Seller, nor any person controlling or controlled by Seller, is a country, territory, individual or entity named on a Government List, and the monies used in connection with this Contract and amounts committed with respect thereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)). For purposes of this paragraph "Government List" means any of (a) the two lists maintained by the United States Department of Commerce (Denied Persons and Entities), (b) the list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons), and (c) the two lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties). Seller is not a person or an entity described by Section 1 of the Executive Order (No. 13224) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49079 (September 24, 2001) and does not engage in any dealings or transactions and is not otherwise associated with any such persons or entities.

In the event that prior to Closing Seller obtains knowledge that any of the foregoing covenants, representations or warranties is no longer true, Seller shall so notify Purchaser and Purchaser shall have ten (10) days from receipt of such notice to elect to terminate this Agreement and receive a refund of the Deposit.

Seller will not cause any action be taken which would cause any of the foregoing representations and warranties to be untrue as of the Closing Date. Seller agrees to immediately notify Purchaser in writing ("Representation Notice") of any event or condition which occurs prior to Closing of which Seller has received notice, which causes a change in the facts related to or the truth of any of the above representations. If Seller sends Purchaser a Representation Notice and provided that the event giving rise to the Representation Notice was not caused by Seller or Purchaser, Purchaser may terminate this Agreement and receive a return of the Deposit, as its sole recourse and remedy. Purchaser shall send its notice of termination to Seller within five (5) Business Days after receipt of the Representation Notice; failing which, the affected representation(s) shall be deemed modified to account for the matter so that such representation is true and correct in all respects notwithstanding the existence of the matters disclosed in such Representation Notice and Purchaser shall be deemed to have agreed to Close without recourse against Seller, or reduction in Purchase Price, with respect to the matters set forth in such Representation Notice.

Notwithstanding anything to the contrary in this Agreement, Purchaser's rights to enforce the representations and warranties and covenants of Seller in this Article IV shall survive the Closing for a period of three (3) months only.

#### **ARTICLE V -- ITEMS TO BE DELIVERED BY SELLER AT CLOSING**

At Closing Seller agrees to deliver the following items to Purchaser.

A. A duly executed warranty deed in recordable form reasonably acceptable to Purchaser (the "Deed"), of the type customarily used for commercial real estate transactions in the State of Montana, conveying to Purchaser fee simple title to the Property, subject only to (i) the lien for ad valorem taxes not yet due and payable; and (ii) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building, zoning and land use laws, ordinances and regulations, now or hereafter in effect relating to the Property; and (iii) those exceptions to title not objected to or waived pursuant to Article VII hereof (collectively, the "*Permitted Exceptions*").

B. Evidence reasonably acceptable to Purchaser and acceptable to American Title, or such other national title company selected by Seller (in its capacity as title insurer, the "Title Company") as to the due organization and existence of Seller.

C. Evidence reasonably acceptable to Purchaser and acceptable to the Title Company that those acting for Seller have full authority to execute documents on behalf of Seller and consummate this transaction in accordance with the terms of this Agreement as modified through the Closing.

D. A Certificate that Seller is not a foreign person or entity as defined in the Internal Revenue Code of 1986, as amended, and Income Tax Regulations and an Affidavit that no withholding is due as respects O.C.G.A. § 48-7-128.

E. Such affidavits, lien waivers and other evidence as may reasonably be required by the Title Company, including, without limitation, a title affidavit in the form customarily utilized in Montana commercial real estate transactions, so as to enable the Title Company to furnish Purchaser with a title insurance policy without exception for mechanics' and materialmen's liens and broker's liens.

F. Acknowledgment signed or authenticated by the tenant under any Lease releasing or terminating the Lease, in form reasonably satisfactory to Purchaser.

G. A Closing Statement evidencing the prorations between Seller and Purchaser and disbursements made in connection with this transaction.

H. Any other items or documents required to be delivered pursuant to this Agreement or deemed reasonably necessary or appropriate by Purchaser's and Seller's counsel in connection with this transaction.

#### **ARTICLE VI -- ITEMS TO BE DELIVERED BY PURCHASER AT CLOSING**

At Closing, Purchaser agrees to deliver the following items to Seller:

A. The Purchase Price in the manner specified in Article II hereof.

B. A Closing Statement evidencing the prorations between Seller and Purchaser and disbursements made in connection with this transaction.

C. Evidence reasonably acceptable to the Title Company that those acting for Purchaser have full authority to execute documents on behalf of Purchaser and consummate this transaction in accordance with the terms of this Agreement as modified through the Closing.

F. Any other items and documents required to be delivered pursuant to this Agreement or deemed reasonably necessary or appropriate by Purchaser's and Seller's counsel in connection with this transaction.

#### **ARTICLE VII -- TITLE AND SURVEY**

A. Purchaser may, at Purchaser's sole cost and expense, (i) cause an accurate survey (the "Survey") to be made of the Property by a licensed Montana surveyor, which shall be certified to Seller, Purchaser and the Title Company, and which shall contain a legal description accurate to 1/100<sup>th</sup> of an acre, and (ii) deliver a copy of the Survey to Seller. Purchaser shall advise Seller, concurrently with its notice of title objections delivered pursuant to Section VII B hereof, of any objections to matters of survey. If Purchaser so requests, at the Closing Seller shall execute a

quitclaim deed in favor of Purchaser using the legal description of the Property based on the Survey.

B. On or before fifteen (15) days after the Effective Date, Purchaser, at Purchaser's sole cost and expense, shall obtain an owner's title insurance commitment (the "Commitment") from the Title Company, together with legible copies of the deed(s) vesting title in Seller and all matters referred to therein as exceptions to title. On or before the date that is thirty (30) days after the Effective Date, Purchaser shall deliver to Seller a copy of the Commitment and a statement of any objections to Seller's title to the Property and any objections as to matters disclosed by the Survey. Seller shall have a reasonable time after Seller's receipt of such statement (not to exceed five (5) days) within which to cure or commit to cure any such objections, and Seller shall provide Purchaser with written notice prior to the end of such five (5) day period of which objections, if any, Seller commits to cure. In the event that Seller fails or refuses to cure or commit to cure such objections within such five (5) days, then Purchaser shall elect by written notice to Seller within five (5) days after such five (5) day period to either (i) terminate this Agreement and receive a full refund of the Deposit, and thereafter this Agreement shall be of no further force or effect, and neither Purchaser nor Seller shall have any further rights, duties, liabilities or obligations to the other by reason hereof except for those matters that specifically survive termination of the Agreement; or (ii) waive such objections and consummate the transaction contemplated herein without reduction of the Purchase Price. If Purchaser does not provide Seller written notice of Purchaser's election within the five (5) day period as above provided, then Purchaser shall be deemed to have elected to waive such objections as provided in the aforesaid item (ii).

C. Purchaser shall have the right to have its title examination and Survey updated until the Closing Date (hereinafter defined), and if any such update discloses any new title exceptions or survey matters as to which Purchaser has an objection and which were not of record as of the date of the Commitment, as to title matters, or which were not capable of being shown on the Survey, as to survey matters (any such new matter being referred to as a "new objection"), Purchaser shall deliver to Seller a statement of any such new objection and Seller shall have until the Closing Date to cure all such new objection. In the event that Seller fails to cure such new objection on or before the Closing Date (i) Purchaser may terminate this Agreement by written notice to Seller given on or before the Closing Date, whereupon Purchaser shall receive a full refund of the Deposit, and thereafter this Agreement shall be null and void and of no further force or effect, and neither Purchaser nor Seller shall have any further rights, duties, liabilities or obligations to the other by reason hereof except for those matters that specifically survive termination of the Agreement; (ii) Purchaser may cure such new objections voluntarily created by Seller and deduct the reasonable cost thereof from the Purchase Price otherwise payable by Purchaser at Closing; or (iii) Purchaser may waive such objections and consummate the transaction contemplated herein without reduction of the Purchase Price.

#### **ARTICLE VIII -- TIME AND PLACE OF CLOSING, CLOSING COSTS AND POSSESSION**

A. The consummation of the transaction contemplated herein shall take place at and through an escrow Closing conducted by the Escrow Agent on the date that is twenty-one (21) days after the Effective Date, or such earlier date as Seller and Purchaser may agree. The

consummation of the transaction contemplated herein and the day such occurs are referred to in this Agreement as the "Closing" and the "Closing Date".

B. Seller shall pay the Montana transfer tax and the costs incident to this transaction specified in this Agreement to be paid by Seller and Seller's attorneys' fees. Purchaser shall pay the costs associated with the title examination, title commitment and owner's title insurance policy, all of the costs associated with Purchaser's due diligence inspection, the Survey, the recording fees in connection with the recording of the Deed, the costs incident to this transaction specified in this Agreement to be paid by Purchaser and Purchaser's attorneys' fees.

C. Possession of the Property shall be given by Seller to Purchaser at Closing, subject to the Permitted Exceptions.

#### **ARTICLE IX -- PRORATIONS**

Seller shall be entitled to receive any income in respect of the Property and shall be obligated to pay all expenses in respect of the Property for all time periods prior to the day of the Closing Date. Purchaser shall be entitled to receive all such income and shall be obligated to pay all such expenses for all time periods commencing on the day of the Closing Date. In the event that any income or any expense item relating to the period prior to the Closing Date is received or appears after the Closing, such item(s) shall be adjusted between the Seller and the Purchaser within ten (10) days after such is discovered. Without limitation to the foregoing, the following items shall be apportioned at Closing:

A. Collected rents;

B. Fees for transferable licenses and permits, if any;

C. All real property taxes, including the current installment for any assessment (special, bond, or otherwise). In the event that the current year's taxes are not available as of the Closing Date, the proration shall be based upon such taxes for the preceding year, but such taxes shall be re prorated between Purchaser and Seller as soon as the current year's taxes are available, immediately upon demand being made therefor by either Purchaser or Seller.

This Article IX shall survive the Closing of the transaction contemplated herein for a period of time ending on the date that is twelve (12) months after the Closing Date.

#### **ARTICLE X -- CONDITIONS PRECEDENT**

A. Prior to the Effective Date, the Purchaser has satisfied itself as to the condition of the Property and the suitability of the Property to the Purchaser's use, without reliance on any representation or warranty by the Seller as to the condition or suitability of the Property. Accordingly, there shall be no due diligence contingency on the Purchaser's obligation to Close.

Additionally, Purchaser has obtained all governmental or other approvals necessary to consummate the transactions contemplated by this Agreement prior to the Effective Date.

B. Purchaser's obligation to purchase the Property is expressly conditioned upon each of the following:

- i. Timely performance of each obligation, covenant, and delivery required by Seller, including delivery of each of the Seller's documents required by this Agreement.
- ii. All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct at the Closing;
- iii. Seller shall not be in default under any agreement to be assigned to, or obligations to be assumed by, Purchaser under this Agreement.
- iv. The physical condition of the Property shall be substantially the same on the Closing Date as on the Effective Date, reasonable wear and tear excepted, unless the alteration of said physical condition is the result of a casualty loss or proceeding in eminent domain.
- v. Any Lease that the Purchaser shall not have agreed to assume having been terminated;
- vi. Upon the sole condition of payment of the premium, at Closing, the Title Company shall have irrevocably committed to issue to Purchaser an ALTA Owner's Policy of title insurance, dated as of the date and time of the recording of the Deed for the Property vesting title in Purchaser, in the amount of the Purchase Price, insuring Purchaser as owner of good, marketable, and indefensible fee simple title to such Property, subject only to the Permitted Exceptions for the Property.
- vii. Seller shall have cured all exceptions to title that it agreed to cure, or was deemed to have agreed to cure pursuant to the terms of this Agreement.
- viii. No proceeding has been commenced against Seller under the federal Bankruptcy Code or any state law for relief of debtors.
- ix. No moratorium, statute, or regulation of any governmental agency or order or ruling of any court has been enacted, adopted, or issued which would adversely affected Purchaser's use or development of the Property.

C. So long as a party is not in default beyond applicable notice and cure periods hereunder, if any condition to such party's obligation to proceed with the Closing has not been satisfied as of the Closing Date or other applicable date, and such condition is not cured within five (5) days after receipt of notice of default from the non-defaulting party, such non-defaulting

party may, in its sole discretion, (i) pursue its contractual rights and remedies under this Agreement; (ii) terminate this Agreement, in which case the Deposit shall be returned to Purchaser if Seller is the defaulting party or paid to Seller if Purchaser is the defaulting party; or (iii) elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition.

## **ARTICLE XI – CONDEMNATION AND CASUALTY**

A. If prior to the Closing any material part of the Property is taken by condemnation or eminent domain or there is a bona fide threat thereof which impacts the use of the building on the Property or parking for the Property, then Purchaser may, at its option, terminate this Agreement, in which event the Deposit shall be returned to Purchaser and thereupon this Agreement shall be null and void and of no further force or effect, and neither Purchaser nor Seller shall have any further rights, duties, liabilities and obligations to the other by reason thereof, except for those matters that specifically survive the termination of this Agreement. If this Agreement is not terminated, at the Closing the proceeds of the award or payment shall be assigned by Seller to Purchaser and any moneys theretofore received by Seller in connection with such taking shall be paid over to Purchaser.

B. If, prior to the Closing Date, there is \$500,000.00 or more of damage to the Property by fire or other casualty whether or not insured against by Seller under its property damage insurance policy, Seller shall promptly give Purchaser notice of such fact, and Purchaser may elect to terminate this Agreement within ten (10) days after receiving written notice from Seller of the occurrence of such casualty. If Purchaser so elects to terminate this Agreement, it shall give Seller and Escrow Agent written notice thereof and so much of the Deposit as is then held by Escrow Agent shall be returned by Escrow Agent to Purchaser, and this Agreement shall terminate and be of no further force or effect, and neither Purchaser nor Seller shall have any further rights, duties, liabilities or obligations to the other hereunder except for the Inspection Indemnity and the Broker's Indemnity which shall expressly survive the expiration or termination of this Agreement. Failure of Purchaser to so notify Seller and Escrow Agent within said ten (10) days that Purchaser has elected to terminate this Agreement shall be deemed to mean that Purchaser has elected not to terminate this Agreement. If Purchaser has elected not to terminate this Agreement in the event of \$500,000.00 or more of damage to the Property, Purchaser shall proceed to the Closing and shall pay the full Purchase Price less the amount of any deductible under Seller's insurance policy in excess of \$10,000.00, and shall receive all insurance proceeds payable as a result of such damage or destruction, except for the amount of rental loss insurance applicable to the period prior to the Closing Date, which shall be paid to and retained by Seller. If prior to the Closing Date there is less than \$500,000.00 of damage or destruction to the Property by fire or other casualty which is covered by insurance, this Agreement shall not terminate, and Purchaser shall proceed to Closing, and shall pay the full Purchase Price less the amount of any deductible under Seller's insurance policy in excess of \$10,000.00, and receive all insurance proceeds payable as a result of such damage or destruction, except for the amount of rental loss insurance applicable to the period prior to the Closing Date which shall be retained by Seller. Until the Closing, Seller agrees to maintain in respect of the Land and Improvements hazard insurance and rental loss insurance and until Closing all risk of loss shall be on the Seller, subject to the provisions above.

## **ARTICLE XII – REMEDIES**

A. Seller's only remedy for Purchaser's default in consummating this transaction contemplated in this Agreement shall be to obtain the Deposit from Escrow Agent, the amount of which shall be and constitute Seller's liquidated damages, it being otherwise difficult or impossible to estimate Seller's actual damages. Seller hereby waives any right to specific performance, injunctive relief or other relief to cause Purchaser to perform its obligations under this Agreement, and Seller hereby waives any right to damages in excess of said liquidated damages occasioned by Purchaser's default under this Agreement. Seller and Purchaser acknowledge that it is impossible to estimate the actual damages Seller would suffer because of Purchaser's default, but that the liquidated damages provided herein represent a reasonable pre-estimate of such actual damages and Seller and Purchaser therefore intend to provide for liquidated damages as herein provided, and that the agreed upon liquidated damages are not punitive or penalties and are just, fair and reasonable, all in accordance with applicable Montana law. This Section XII A shall have no application respecting the Purchaser's indemnification obligations contained herein.

B. In the event that the transaction contemplated herein is not closed and consummated because of Seller's failure or breach to perform its obligations hereunder or because of a breach by Seller of any of the representations and warranties made herein by Seller, Purchaser shall have the right only (i) to terminate this Agreement by giving notice thereof to Seller and Escrow Agent, and upon receipt of such notice Escrow Agent shall return the Deposit to Purchaser and thereafter this Agreement shall terminate and be null and void and of no further force or effect, and neither Seller nor Purchaser shall have any further rights, remedies, duties, liabilities or obligations to the other hereunder except for those provisions which by their terms shall survive the termination, or (ii) to sue Seller for specific performance of its obligations under this Agreement; which remedies specified in (i) and (ii) shall be in lieu of any other rights or remedies for Purchaser, including without limitation any right or claim for damages.

## **ARTICLE XIII -- NOTICES**

All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be either hand-delivered or sent by FedEx or other similar overnight delivery service, charges prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when hand-delivered or the day after delivery to FedEx or similar overnight courier service and shall be effective if executed by and sent by and to the parties' counsel.

To Seller:

McDonald Land Holdings LLC  
PO Box 19  
Molt, MT 59057

With a copy to:

Kent P. Woods, Esq.  
Law Office of Kent P. Woods LLC  
1746 W. Horizon Ridge Parkway  
Henderson, NV 89012

To Purchaser:

City of Billings  
210 North 27<sup>th</sup> Street  
Billings, MT 59101  
Attn: David Mumford

To Escrow Agent

American Title & Escrow  
1001 S 24<sup>th</sup> St W  
Billings, MT 59102

#### **ARTICLE XIV – BROKERS**

Seller and Purchaser each hereby warrants to the other that the warranting party has not dealt with any investment advisor, real estate agent, or broker in connection with the transaction contemplated in this Agreement

#### **ARTICLE XV – OPERATION OF THE PROPERTY**

Seller covenants that between the date of this Agreement and the Closing:

A. Seller shall not enter into any new leases (each a “New Lease” and collectively, the “New Leases”).

B. On or prior to the Closing, Seller shall terminate all Service Contracts with respect to the Property.

C. Seller shall maintain its existing property insurance coverage with respect to the Property.

D. Seller shall continue to operate the Property in the manner in which it has been operating the Property.

## ARTICLE XVI -- MISCELLANEOUS

A. This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified other than by a written agreement executed by both parties.

B. The provisions of this Agreement shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns.

C. The Agreement may not be assigned by Purchaser without the prior written consent of Seller which may be given or withheld by Seller in its sole discretion; provided, however, that Purchaser may assign the Agreement to an affiliate directly related to Purchaser upon written notice to Seller and without Seller's written consent. Any such assignee shall assume in writing the obligations and liabilities of Purchaser hereunder. No assignment by Purchaser shall relieve Purchaser of any of Purchaser's obligations under the Agreement.

D. Purchaser reserves the right to waive, in whole or in part, any provision hereof which is for the benefit of Purchaser. Seller reserves the right to waive, in whole or in part, any provision hereof which is for the benefit of Seller.

E. Irrespective of the place of execution or performance, this Agreement shall be governed by and construed in accordance with the laws of the State of Montana. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. Time is of the essence of this Agreement and each term and provision hereof. In the event that the last day for performance of any matter under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance automatically shall be extended to the next business day. In the event of any litigation between Seller and Purchaser concerning the subject matter of this Agreement, each party shall be responsible for all its costs and expenses, including without limitation actual attorney's fees incurred incident to such litigation.

F. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

G. The captions of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term hereof.

## ARTICLE XVII -- 1031 EXCHANGE

A. Notwithstanding any provisions to the contrary set forth herein, Seller hereby notifies Purchaser that Seller may desire to effectuate a tax deferred exchange or exchanges under Section 1031 of the Internal Revenue Code with Purchaser with respect to the Property. Purchaser agrees to cooperate in good faith with Seller in effectuating such exchange or exchanges, provided that Purchaser shall not be required to incur any additional obligation, cost, expense, or liability or delay in connection with such exchange or exchanges and that Purchaser shall not be required to acquire legal title to any exchange property designated by Seller. Purchaser agrees that such exchange or exchanges may be either simultaneous or deferred. If deferred, Seller shall have the right to assign Seller's rights and obligations under this Agreement to a qualified intermediary, as a part of, and in furtherance of any such exchange.

B Notwithstanding any provisions to the contrary set forth herein, Purchaser hereby notifies Seller that Purchaser may desire to effectuate a tax deferred exchange or exchanges under Section 1031 of the Internal Revenue Code with Seller with respect to the Property. Seller agrees to cooperate in good faith with Purchaser in effectuating such exchange or exchanges, provided that Seller shall not be required to incur any additional obligation, cost, expense, or liability or delay in connection with such exchange or exchanges and that Seller shall not be required to acquire legal title to any exchange property designated by Purchaser. Seller agrees that such exchange or exchanges may be either simultaneous or deferred. If deferred, Purchaser shall have the right to assign Purchaser's rights and obligations under this Agreement to a qualified intermediary, as a part of, and in furtherance of any such exchange.

*[Signatures Commence on Next Page]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, sealed and delivered as of the Effective Date.

**SELLER:**

MCDONALD LAND HOLDINGS LLC,  
a Nevada series limited liability company

By:   
Kent P. Woods, Manager

**PURCHASER:**

CITY OF BILLINGS

By: \_\_\_\_\_  
Name:  
Title:

Escrow Agent joins in the execution of this Agreement under seal solely for the purpose of agreeing to hold and disburse the Deposit in accordance with the terms and provisions of this Agreement.

AMERICAN TITLE & ESCROW

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**(Legal Description)**

Lot 5, Block 1, Western Sky Sub., situated in the NW4 of Sec. 15, T1S, R25E, P.M.M., Yellowstone County, Montana. Said parcel contains a total of 20.4977 acres, more or less

**EXHIBIT B**  
**(Leases)**