

# AGREEMENT TO SELL AND PURCHASE AND RECEIPT FOR EARNEST MONEY COMMERCIAL AND INVESTMENT PROPERTIES

Date 9/8/2022

THE EXECUTION OF THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD SEEK COMPETENT LEGAL ADVICE IF NOT UNDERSTOOD. THIS IS A LEGAL AND BINDING CONTRACT.

### 1. PARTIES AND PROPERTY:

**City of Billings with right to assign.** Buyer, taking title as:

Joint tenants with rights of survivorship,  Tenants in common,  Single in his/her own name,  Other \_\_\_\_\_

agrees to buy, and the Seller agrees to sell on the terms and conditions set forth in this Contract, the following described real property in the City of Billings County of Yellowstone State of Montana

Property commonly known as: 760 Lake Elmo Drive

Legal description of the Property: SMOKY SUBD, S27, T01 N, R26 E, BLOCK 1, Lot 1, LESS .21 AC FOR RD & LESS 5371 SQ FT OF LT 1 W OF RAMP RD

If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid and the legal description shall be completed or corrected to meet the requirements of the title company referred to in Section 10.

### 2. PURCHASE PRICE AND TERMS:

The purchase price shall be \$ 575,000.00 payable in U.S. Dollars by Buyer as follows:

\$ 5,000.00 (A) Earnest Money in the form of  Personal Check  Cashiers Check  Other To be:

1) Held and not deposited until acceptance by all parties. \_\_\_\_\_

2) Deposited within 3 business days of acceptance. \_\_\_\_\_

Earnest Money to be held by Stewart Title  Broker  Attorney  Title Company in a trust account on behalf of both Seller and Buyer. Broker is authorized to deliver the earnest money deposit to the closing agent, if any, at or before closing. Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to Broker in consideration for services rendered. The undersigned sales representative hereby acknowledges receipt from Buyer of the above noted Earnest Money. \_\_\_\_\_

\$ 570,000.00 (B) Cash at closing, plus Buyer's closing costs, to be paid by Buyer at closing by cashier, certified check or electronic funds.

\$ \_\_\_\_\_ (C) Seller to finance Buyer's purchase under the following terms and conditions: \_\_\_\_\_

\$ \_\_\_\_\_ (D) Assumption of Existing Financing: \_\_\_\_\_

\$ 575,000.00 TOTAL PURCHASE PRICE

### Additional Provisions:

See attached Addendum

### 3. PERSONAL PROPERTY AND FIXTURES:

The following personal property shall be included in this sale and transferred by Bill of Sale at closing.

Security Deposits  Signs  Dumpster(s)  NA

The following personal property is leased and not included in the sale: \_\_\_\_\_

Buyers initials

W EV [Signature] [Signature]  
Sellers initials

Fixtures: All permanently installed fixtures and fittings that are attached to the Property are included in the purchase price, such as electrical, plumbing, and heating fixtures, built in appliances, attached floor coverings, antennas, coolers or air conditioners, mailbox, and trees and shrubs, if any, except \_\_\_\_\_

All personal property and fixtures sold with the Property described above are sold "AS IS" without warranty by the Seller, either expressed or implied **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS MADE.**

**4. CLOSING AND RELATED PROVISIONS:**

(A) The date of closing shall be See attached Addendum The parties may, by mutual agreement, agree to close the transaction at any time prior to the date specified. If third party financing is required by the terms of this Agreement (includes assumptions, contracts for deed, and lender financing), the closing shall occur on the date specified or as soon thereafter as financing is complete but no later than 45 days after the stated closing date. Buyer and Seller will deposit with the closing agent all instruments and moneys necessary to complete the purchase in accordance with this Agreement.

(B) Possession and Keys: Seller shall deliver to Buyer possession of the Property and allow occupancy at the date of closing.

(C) Closing Costs, Documents and Services: Seller shall pay their respective closing costs and all other items required to be paid at closing except as otherwise provided herein. Buyer and Seller shall sign and complete customary or required document at or before closing. Fees for real estate closing services shall be split equally between the Parties.

(D) Place of closing shall be: Stewart Title

**5. PRORATION:**

As of the date of closing Seller and Buyer agree to prorate current real estate taxes, pre-paid rents, current year assessments for special improvement debt that is assumed, and interest on any assumed loan(s), as well as: \_\_\_\_\_

**6. CONTINGENCIES:**

The closing of this agreement and sale of the property between Buyer and Seller is contingent upon the following, with this sale to terminate and earnest money returned to the Buyer if not satisfied in writing on or before See attached Addendum  
(Check those which apply)

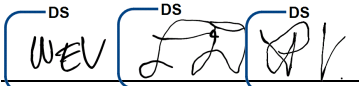
- Buyer receipt and approval of any reports and or property inspections conducted by the Buyer.
- Buyer receipt of written City approval for Buyer's use of the property.
- Buyer receipt of acceptable zone change or special review.
- Buyer approval of preliminary title report including subdivision restrictions and S.I.D.'s, and future S.I.D.'s.
- Buyer approval of curb valve inspection report and access to water/sewer/gas/elec. services.
- Buyer approval of Lead Base Paint, Radon, Asbestos and Mold Reports, and Americans with Disabilities Audit.
- Buyer approval of leases, contracts, income/expenses information.
- Buyer approval of Property Condition and of subsoil conditions, measurements, access, ditches, and of floodplain exclusion.
- Buyer approval of:      Survey    Corner identification, Paid by    Buyer    Seller    Shared Equally.
- Buyer approval of Phase One Environmental Report, Cost paid by    Buyer    Seller    Shared Equally.
- Buyer closing of exchange property.
- Buyer's legal counsel review of this Agreement.
- Buyer receipt of acceptable funding and commercial appraisal.
- Any due diligence deemed necessary**

Buyer agrees to diligently pursue each contingency checked. If Buyer shall fail to notify its Broker, Seller, or Seller's Broker, in writing, by the date noted above that the contingencies checked have not been satisfied then it shall be conclusively presumed that the Buyer has waived those contingencies for which no notice has been given. If Buyer, after due diligence, shall timely Notify Seller, Buyer's Broker or Seller's Broker, in writing, of a deficiency, then in such event this Agreement shall terminate and Buyer shall be entitled to prompt return of Buyer's Earnest Money deposit, less escrow holder or title cancellation fees

The Seller shall have the option of:

- a) Making said items operational
- b) Giving the Buyer(s) a credit for the items, or

\_\_\_\_\_  
Buyers initials

  
\_\_\_\_\_  
Sellers initials

c) Canceling the Agreement to Sell and Purchase and refunding to the Buyer(s) any Earnest Money deposit or similar payments previously made to Seller.

Should Seller cancel the Agreement because of environmental condition, then Seller  shall,  shall not pay, or reimburse Buyer for the cost of the Phase One Environmental Audit.

**7. CONDITION OF PROPERTY AND RELATED ISSUES:**

Seller agrees that the Property shall be in the same condition, broom clean, normal wear and tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property. Seller has no knowledge of any notice of violations of City, County, State, Federal, Building Zoning, Fire, Health Codes or ordinances, condemnation, hazardous waste, underground storage tanks, special improvement districts or other governmental regulation filed or issued against the Property, except noted herein:

If the property is damaged by fire, hail, or other casualty prior to time of closing. Seller  shall be,  shall not be obligated to repair the same **before the date of closing**. If such damage is not repaired within said time, this Contract may be terminated at the option of the Buyer and the Earnest Money shall be returned to Buyer. Should Buyer elect to carry out the Contract despite such damage, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property and Inclusions, not exceeding, however, the total purchase price. Should any Inclusion(s) or service(s) fail or be damaged between the date of this Contract and the date of closing or the date of possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age, and quality, or an equivalent credit, less any insurance proceeds received by Buyer covering such repair or replacement. **Buyer agrees to accept property in "AS IS, WHERE IS" condition except as herein provided.**

**8. ASSIGNABILITY:**

~~This Contract shall not be assignable by Buyer without Seller's prior written consent, which assignment shall not be unreasonably withheld by Seller. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.~~

**9. CONVEYANCE:**

Seller shall convey the real Property by Warranty Deed including all interest of Seller in vacated alleys and streets, easements, other apportionments and improvements free of all liens and encumbrances except those described in the title insurance section of this agreement, and reservations or conveyances of record. All water rights, entitlements, claims, certificates and permits are included with the property, **with any transfer fees split equally.**

**10. TITLE INSURANCE:**

Seller, at Sellers expense, shall furnish Buyer title insurance from Stewart Title (Title Company) pursuant to a standard form American Land Title Association title insurance commitment in the amount equal to the purchase price, committing to insure merchantable title to the real Property in Buyer's name, free and clear of all liens and encumbrances except: encumbrances hereinabove mentioned, zoning ordinances, building and use restrictions, reservations and exceptions in patents from the United States and the State of Montana, all standard ALTA exceptions, beneficial utility easements apparent or of record, other easements of record, real estate taxes for the year in which closing occurs, Special Improvement Districts (including rural SID's) either noticed to seller by the city / county but not spread, or currently assessed, if any which will be:

PAID OFF BY SELLER AT CLOSING  ASSUMED BY BUYER AT CLOSING,

The following loans NA the following leases NA should be assigned to Buyer at closing. If the Seller's title is not merchantable and cannot be made merchantable before the stated closing date, 30 ADDITIONAL DAYS SHALL BE ALLOWED FOR THE SELLER TO MAKE SUCH TITLE MERCHANTABLE. If at that time the title is still not merchantable, this Contract may be terminated by Buyer with no penalty, and the earnest money will be returned to Buyer. Encumbrances to be discharged by Seller shall either be satisfied prior to closing or from Sellers' proceeds at time of closing.

**11. TAX DEFERRED EXCHANGE:** (check, where applicable)

Buyer herein acknowledges that it is the intention of Seller to create IRC Section 1031 tax deferred exchange and that Seller's rights and obligations under this agreement may be assigned to facilitate such exchange. Buyer agrees to cooperate with Seller in any manner necessary to enable Seller to qualify for said exchange at no additional cost or liability to Buyer, including the execution of an Assignment Agreement.

Buyers initials WEV Sellers initials [Signature] [Signature] [Signature]



Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy regarding the Earnest Money and things of value held by Broker or Closing Agent, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or Closing Agent shall not be required to take any action but may await any proceeding, or at Broker's or Closing Agent's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees.

**15. BUYER'S CERTIFICATION:**

By entering into this Agreement, each person or persons executing this Agreement as Buyer represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own real property in the State of Montana; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/ she is duly authorized to enter into the Agreement on behalf of such entity.

**16. SELLER'S CERTIFICATION:**

By entering into this Agreement, each person or persons executing this Agreement as Seller represents that he/she is eighteen (18) years of age or older, of sound mind, and legally entitled at this time to transfer title to the real property free and clear of all liens and encumbrances except those described in this Agreement; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into the Agreement on behalf of such entity.

**17. ALTERNATIVE DISPUTE RESOLUTION:**

**MEDIATION:** If a dispute arises between the parties relating to this Contract, the parties may agree to submit the dispute to mediation. The parties may jointly appoint an acceptable mediator and may share equally in the cost of such mediator. If mediator proves unsuccessful, the parties may then proceed with such other means of dispute resolution as they so choose.

**18. ATTORNEY'S FEES:**

If either party defaults in its performance of this Agreement and the other party employs an attorney because of such default, the defaulting party agrees to pay, on demand, all costs, charges, and expenses, including reasonable attorney's fees, reasonably incurred at any time by the other party because of the default.

**19. ENTIRE CONTRACT:**

All prior Agreements between the parties are incorporated in this Agreement, which constitutes the entire Contract. Its terms are intended by the parties as a final expression of their Agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior Agreement or contemporaneous oral Agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any involving this Agreement. If any portion of this Agreement shall be held to be void or unenforceable, the balance hereof shall nonetheless be effective. This Agreement shall be governed by the laws of the State of Montana and shall be binding upon the heirs, successors and permit assigns of the parties.

**20. BROKER RELATIONSHIPS:** The following agency relationship(s) are hereby confirmed for this transaction.

Listing Agent Haley Vannatta of NAI Business Properties  Is the agent of (check one):  Seller exclusively  
(Print Agent name)  Both /Buyer & Seller

Selling Agent Matt Robertson of NAI Business Properties  Is the agent of (check one):  Buyer exclusively  
(Print Agent name)  Both /Buyer & Seller

**21. ADDENDUM ATTACHED:** \_\_\_\_\_

**22. CONSENT TO DISCLOSE:** Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, Broker, and their attorneys, closing agents, and other parties having interest essential to this Agreement, of any and all information reasonably necessary to consummate the transaction described in this Agreement, specifically including access to escrow agents and lenders for review of contracts, deeds, trust indentures, inspections, or similar documents of prior transaction concerning this property or underlying obligations pertaining thereto.

**23. COUNTERPARTS / FACSIMILE:**

\_\_\_\_\_  
Buyers initials

                                                                
Sellers initials

A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Contract between the parties. The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the parties' signatures may be used as the original.

**24. BUYER'S COMMITMENT:**

Buyer agrees to purchase the above-described Property on the terms and conditions set forth in the above offer and grants said sales

Representative until 9/27/2022 at 5:00 PM to secure Seller's written acceptance.

Buyer may withdraw this offer at anytime prior to Seller's written acceptance. If Seller has not accepted by the time specified, this offer is automatically withdrawn. Buyer hereby acknowledges receipt of a copy of this Agreement of Sell and Purchase-Commercial and Investment Properties, bearing Buyer's signature(s) and that Buyers have read and understand this Agreement.

Buyer's Phone: \_\_\_\_\_ Buyer's Signature: \_\_\_\_\_

Address: \_\_\_\_\_ Buyer's Signature: \_\_\_\_\_

**25. SELLER'S COMMITMENT:**

Seller agrees to sell and convey to Buyer the above-described Property on the terms and conditions hereinabove stated.

Seller acknowledges receipt of a copy of this Agreement bearing the signature(s) of Buyer and Seller.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ At \_\_\_\_\_ am/pm.

Seller's Phone: \_\_\_\_\_ Seller's Signature: \_\_\_\_\_

Address: \_\_\_\_\_ Seller Signature: \_\_\_\_\_

**26. DELIVERY TO BUYER OF A COPY OF ACCEPTED OFFER** (use one of the following:)

Date \_\_\_\_\_  
The undersigned buyer acknowledges receipt of a copy of this Contract bearing his / her signature and that of the Seller.

Date \_\_\_\_\_  
A copy of this Contract bearing Buyer(s) signature and that of the Seller(s) was sent via ordinary or certified mail to Buyer.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Agent

**ACTION TAKEN, IF OTHER THAN ACCEPTANCE:**

I/We acknowledge receipt of this agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named above.

Rejected by the Seller \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  Modified per Attached Counter \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
*Seller's Initials Date Seller's Initials Date*

\_\_\_\_\_  
Buyers initials

\_\_\_\_\_  
Sellers initials

*(Handwritten initials in boxes with 'DS' above each box)*

## ADDENDUM FOR AGREEMENT TO SELL AND PURCHASE

This is an addendum to a Buy/Sell Agreement dated 9/8/2022, between Vanderloos Properties, LLC. (Seller) and City of Billings with right to assign (Buyer) concerning the following described property: 760 Lake Elmo Road, Billings, MT.

**Additional Provisions:** The above-mentioned Sell and Purchase agreement represents the interest and motivation of the City of Billings, once executed by the Seller the document will be sent to the City Council for approval. The Agreement is subject to the approval of the City of Billings City Council. Should approval not be granted this agreement shall be considered null and void.

**Contingency Date:** Buyer's Due diligence shall begin upon acceptance and execution by City Council and expire 60 days thereafter or upon the City of Billings City Council's vote to remove said contingencies.

**Closing Date:** 10 Business Days from Contingency Release.

\_\_\_\_\_  
Buyer(s)  
\_\_\_\_\_  
Date

DocuSigned by: WILLIAM E. VANDERLOOS / DocuSigned by: S. Vanderloos  
DocuSigned by: City of Billings / DocuSigned by: W.E.V.  
A110940929AB4B1... / 2F1E8BEEDDC1482...  
Sellers /  
9/13/2022  
Date

\_\_\_\_\_  
Buyers initials / <sup>DS</sup>WEV  
\_\_\_\_\_  
Sellers initials