

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: _____

WAC Buyers initials 1 W EP LDV 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 City Council Approval.
- 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

DS
WAC

Buyers initials

DS DS DS
[Handwritten initials]

Sellers initials

Seller herein acknowledges that it is the intention of Buyer to complete IRC Section 1031 tax deferred exchange and that Buyer may assign his rights and obligations under this agreement for the purpose of completing such exchange. Seller agrees to cooperate with Buyer in any manner necessary in order to complete said exchange at no additional cost or liability to Seller, including the execution of an Assignment Agreement.

12. STATUTORY DISCLOSURES:

METHAMPHETAMINE: If the property is inhabitable real property, the Seller represents to the best of Seller's knowledge that the Property has has not been used as a clandestine Methamphetamine drug lab. If the Property has been used as a clandestine Methamphetamine drug lab Seller agrees to execute and provide any documents or other information that may be required under Montana law concerning the use of the Property as a clandestine Methamphetamine drug lab.

RADON: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal guidelines have been found in buildings in Montana. Additional information regarding radon and radon testing may be obtained from your county or state public health unit. Buyer acknowledges receipt of a copy of this statement prior to entering into the agreement to sell and purchase – commercial

If the Property is inhabitable real property as defined in the Montana Radon Control Act, Seller(s) represent that to the best of Seller's knowledge the Property has has not been tested for radon gas and/or radon progeny and the Property has has not received mitigation or treatment for the same. If the Property has been tested for radon gas and/or radon progeny, Seller agrees to provide, as available, test results to Broker along with any evidence of mitigation or treatment.

LEAD-BASED PAINT: If a residential dwelling exists on the Property and was built before the year 1978, the Seller has has no knowledge of lead-based paint and/or lead-based paint hazards on the Property. If Seller has knowledge of lead-based paint and/or lead-based paint hazards on the Property Seller agrees to provide all pertinent reports and records concerning that knowledge. Seller acknowledges that the Broker has advised the Seller of Seller's obligation to make lead-based paint disclosures and Broker's obligation to ensure that the Seller satisfies this obligation.

MOLD: If the Property is inhabitable real property as defined in the Montana Mold Disclosure Act the Seller represents to the best of Seller's knowledge that the Property has has not been tested for mold and that the Property has has not received mitigation or treatment for mold. If the Property has been tested for mold or has received mitigation or treatment for mold Seller agrees to provide any documents or other information that may be required under Montana law concerning such testing, treatment or mitigation.

MEGAN'S LAW: Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If you desire further information please contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

13. TIME OF ESSENCE / REMEDIES:

Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(A) If Buyer is in default: If Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the transaction within the time period provided in this agreement, Seller may:

- 1) Declare the earnest money paid by Buyer to Broker to be forfeited to Seller as liquidated damages, which sum the parties agree is a reasonable sum, as the actual damages to Seller would be extremely difficult or impractical to ascertain; **or**
- 2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; **or**
- 3) Demand Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

(B) If Seller is in default: If Seller fails to accept the offer contained in this Agreement within the time period provided, all earnest moneys shall be returned to Buyer. If Seller accepts the offer contained in this Agreement but refuses or neglects to consummate the transaction within the time period provided in this Agreement, Buyer may:

- 1) Demand immediate repayment of all moneys that Buyer has paid to Broker as earnest money, and upon return of such money the rights and duties of Buyer and Seller under this agreement shall be terminated.
- 2) Demand that Seller specifically perform Seller's obligations under this Agreement; **or**
- 3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

14. EARNEST MONEY DISPUTE:




Buyers initials
Sellers initials

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: 657-8271

Buyer's Signature:

DocuSigned by:
William A Cole
2CA11D5423334EE...

Address: 210 N 27th St
Billings, MT 59101

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 9/26/2022 day of _____ At _____ am/pm.

Seller's Phone: _____

Seller's Signature:

DocuSigned by:
Lucretia D. Valdez
2F1E8BEEDDC1482...
DocuSigned by:
[Signature]
A110940929AB4B1...
DocuSigned by:
[Signature]
A6E4B4F6989C4E3...

Address: _____

Seller Signature: _____

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

Date 9/30/2022

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.

DocuSigned by:

William A Cole

2CA11D5423334EE...

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 _____ / _____ / _____
Seller's Initials Date

Modified per Attached Counter _____ / _____ / _____
Seller's Initials Date

DS
WAC

Buyers initials

DS DS DS
[Signature] [Signature] [Signature]

Sellers Initials

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.

DocuSigned by:
William D Cole
Buyer(s)
9/30/2022
Date

DocuSigned by:
Lucretia D. Vanderloos
Seller(s)
9/26/2022
Date

DS WAC Buyers initials
DS DS DS Sellers initials