

**Third Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

**Buyer: Honaker Realty, LLC & JWT Capital, LLC**

## **THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT**

**THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the latest date set out below in the signature block (“Effective Date”), by and between **Honaker Realty, LLC** and **JWT Capital, LLC** or their assigns (“Buyer”), and the **City of Billings** (“Seller”).

### **RECITALS**

- A. Effective March 1, 2024, Buyer and Seller executed that certain Purchase and Sale Agreement concerning Real and Personal Property referenced therein (“Agreement”).
- B. The Agreement provides certain matters for due diligence review by Buyer within the “Contingency Period” referenced at Section 11 of the Agreement, certain deadlines for which the parties agree should be extended. The parties originally extended certain deadlines to November 15, 2024 through the First Amendment to Purchase and Sale Agreement.
- C. Following execution of the First Amendment to Purchase and Sale Agreement, the parties, on November 14, 2024, executed a Second Amendment to Purchase and Sale Agreement to extend the Contingency Period for certain matters until December 6, 2024.
- D. The parties again desire to extend the Contingency Period for certain contingency items, as more particularly described below.
- E. Consequently, the parties agree that the Agreement should be amended as provided below.

### **FOR VALUABLE CONSIDERATION, IT IS AGREED:**

**1. Contingency Period.** Seller and Buyer agree that, in addition to any Contingencies previously waived specifically by Buyer in the First and Second Amendments to the Purchase and Sale Agreement, the following Contingencies set forth in the Agreement may be deemed to be waived by Buyer effective as of November, 25, 2024:

(h) execution of suitable Franchise Agreements with the hotel company involved in Phase 1 of the project located on Parcel A as referenced in Section 11(c)(6).

The following Contingencies within the Agreement will be extended until January 31, 2025, or later date by mutual agreement, without additional consideration:

(g) approval of DBP for removal or use of the portable rest room located on Parcel B referenced in Section 11(c)(10) of the Agreement;

(j) Seller will provide an agreement acceptable to Buyer for management of the parking on Parcels A and B as required in Section 11(c)(9);

(k) agreements satisfactory to Buyer regarding the sky bridge encroachments and title to the same as referenced in Section 11(c)(11); and

(l) any other due diligence type matter either not specifically deemed to be waived by Buyer in subsection 1(h) above or any prior specifically waived item in the First and Second Amendments to the Purchase and Sale Agreement. Such due diligence matters not specifically waived as of the date hereof will include, but not be limited to, Buyer obtaining financing deemed satisfactory by it for the acquisition and development of the Property, and the parties agree that the financing requirements of Buyer and its lender may require the extension of the Contingency Period beyond January 31, 2025, in order to accommodate this contingency for final designs, bidding, appraisal and loan approval matters attendant to the loan for Buyer from lender, and that the parties will cooperate reasonably to reset and extend such Contingency Period for the same.

2. Closing Date/Vacating Date by Seller from Property. In order to facilitate the timing and acquisition of financing by Buyer, the Closing Date for Buyer’s purchase of the Property will be on or before May 15, 2025 (“Closing Date”). Seller will vacate the Property by no later than the Closing Date. Seller will retain possession and risk of loss for the Property until the Closing Date, and Buyer will assume possession and risk of loss for the Property following the Closing Date. It is understood and agreed by Seller that, provided that its Contingencies are satisfied, Buyer must complete its purchase of the Property on or before June 1, 2025 in order to qualify for certain aspects of its funding for the project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond that set out herein.
3. Full Force and Effect. Unless expressly amended herein, all terms, agreements, conditions, covenants, warranties and representations of the parties within the Agreement will remain in full force and effect and are deemed to be incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereunto have set their hands the date and time appearing office at their respective signatures.

**SELLER**

**The City of Billings**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
William A. Cole  
Mayor

By: \_\_\_\_\_  
Denise R. Bohlman  
City Clerk

**BUYER**

**Honaker Realty, LLC**

\_\_\_\_\_  
Date

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

**JWT Capital, LLC**

\_\_\_\_\_

Date

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