

# AGREEMENT TO SELL AND PURCHASE

## AND RECEIPT FOR EARNEST MONEY COMMERCIAL AND INVESTMENT PROPERTIES

Date 2/19/2025

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:

Seller, City of Billings, agrees to sell to TD Properties and/or assigns, Buyer, taking title as:  
 Joint tenants with rights of survivorship,  Tenants in common,  Individually in his/her own name,  Other \_\_\_\_\_  
agrees to buy, and the Seller agrees to sell on the terms and conditions set forth in this Agreement, the following described real property  
in the City of Billings County of Yellowstone State of MT  
Property commonly known as: Retail and Office Condo's located at 2912 3<sup>rd</sup> Ave North more particularly described as Retail Unit West and Retail Unit East in the Declaration of Unit Ownership for Park 1 3rd Avenue Garage ("Condo Declaration").  
Legal description of the Property: To be determined upon recording of the condo documents  
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 conform to the legal description in the Commitment (defined below).

### 2. PURCHASE PRICE AND TERMS:

The purchase price shall be \$ 991,300.00 payable in U.S. Dollars by Buyers as follows:

\$ 10,000.00 (A) **Earnest Money** ("Earnest Money") to be deposited with the Closing Agent (defined below) within 3 Business Days after the date of the execution of this Agreement.

\$ 981,300.00 (B) **Cash at closing**, plus Buyer's closing costs, to be paid by Buyer at closing by cashier, certified check or electronic funds and the proceeds from a new loan to be secured by Buyer on terms acceptable to Buyer.

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

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

\$ \_\_\_\_\_ **TOTAL PURCHASE PRICE**

### Additional Provisions:

See attached Exhibit B

### 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)  \_\_\_\_\_

The following personal property is leased and not included in the sale: N/A

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 as otherwise identified as common areas or common elements in the Condo Declaration.

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:



Release Date: 45 days from execution date at 5:00 pm (Mountain Time).

**FINANCING CONTINGENCY:**

This Agreement is contingent upon Buyer obtaining financing satisfactory to Buyer as specified in Section 2(B) of this Agreement.

Release Date: \_\_\_\_\_ at 5:00 pm (Mountain Time).

**APPRAISAL CONTINGENCY:**

This Agreement is contingent upon the Property appraising for at least the  Purchase Price OR at least  \$ \_\_\_\_\_

Release Date: \_\_\_\_\_ at 5:00 pm (Mountain Time).

**INSURANCE CONTINGENCY:**

This Agreement is contingent upon Buyer's ability to acquire, at a rate acceptable to Buyer, hazard insurance on the Property.

Release Date: \_\_\_\_\_ at 5:00 pm (Mountain Time).

**ADDITIONAL CONTINGENCIES:**

This Agreement is contingent upon the approval and due recording of the Bylaws and the Condo Declaration in accordance with the Unit Ownership Act (Mont. Code Ann. § 70-23-101 et seq.) This agreement shall be terminated, and the Earnest Money will be returned to the Buyer, if the Property cannot be separated into the units described in the Condo Declaration.

Release Date: \_\_\_\_\_ at 5:00 pm (Mountain Time).

This Agreement is contingent upon \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Release Date: \_\_\_\_\_ at 5:00 pm (Mountain Time).

**11. SELLER'S REPRESENTATIONS AND WARRANTIES:**

(a) Seller hereby represents and warrants to Buyer the following:

(i) Seller expressly disclaims any warranties of condition, fitness for particular use or purpose, and all other warranties concerning the Property, except those warranties specifically made in the **Warranty Deed** and any other conveyance documents to be delivered at Closing.

(ii) Except as otherwise specified hereunder, during Seller's ownership of the Property to the best of Seller's actual knowledge, information and belief, no portion of the Property has been used as a landfill or for the storage or disposal of any hazardous or toxic materials, and to the best of Seller's actual knowledge, information and belief, no portion of the Property has ever been used as a landfill or for the storage or disposal of any hazardous or toxic materials. Except as otherwise specified hereunder, to the best of Seller's actual knowledge, information and belief, there are no underground fuel tanks located under the Property.

(iii) Seller has no knowledge of any condemnation proceedings affecting the Property.

(iv) Seller has no knowledge of any federal, state or local governmental effort claiming or asserting violation of any laws, ordinances, statutes, or regulations affecting the Property, including, but not limited to, environmental concerns.

(v) Seller has no knowledge of any federal, state, or local proceeding or effort to close, restrict or change any highway or road providing access to the Property, and Seller has no knowledge of any easements or rights-of-way on the Property which are claimed by the County in which the Real Property is located for which no constructed road exists.

(vi) Seller has no knowledge of any claims against the Property by any federal, state or local authority, or any third party.

(vii) Seller has no knowledge of any claims by a third party for prescriptive rights across, through, or on the Property.

- (viii) Execution of this Agreement by Seller will not give rise to any causes of action on the part of any third parties or result in breach of any other agreements to which Seller is a party.
- (ix) Seller has no knowledge of any leases or other rights of third parties affecting the Property that have not been disclosed in writing to Buyer.
- (x) Seller makes no representations regarding the precise location of boundaries of the Property.

Seller's exception(s) to the above representations and warranties: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- (b) Seller agrees to immediately notify Buyer of any changes to the representations and warranties set forth above between the date of execution of this Agreement and the Closing Date.
- (c) The representations and warranties of Seller shall be true and correct as of the Closing Date and shall survive the Closing.

**12. OPERATION OF THE PROPERTY:**

From the date of this Agreement through the Closing Date, Seller: (a) shall operate the Property prudently and in substantially the same manner as previously conducted, and (b) shall not grant or convey and interest in any of the Property to a third party.

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

The parties agree that the Property is being sold and conveyed in "as is, where is" condition except as herein specifically provided. Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, on the Closing Date as existed on the date of the execution of this Agreement. Seller agrees to remove all of its personal property not included in this sale and purchase from the Property by the Closing Date. All units within the Property being sold to Buyer shall be in clean condition. Buyer is entitled to inspect the Property prior to Closing to ensure that the Property is in the condition required by this Section and that any personal property included in this Agreement remains on the Property.

**14. BUYER'S INDEPENDENT INVESTIGATION:**

Buyer enters into this Agreement in full reliance upon Buyer's independent investigation and judgment.

**15. ASSIGNABILITY:**

This Agreement  shall  shall not be assignable by Buyer without Seller's prior written consent, but only if such assignment is to a limited liability company or other entity owned by Buyer or its principals and created to take title to the Property to be purchased under this Agreement, and such assignment shall not be unreasonably withheld by Seller. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**16. CONVEYANCE:**

Seller shall convey the Property by **Warranty Deed** conveying fee simple merchantable title to the Property to Buyer free and clear of all liens and encumbrances except: (i) reservation in federal and state patents; (ii) existing easements and rights-of-way, visible or of record; (iii) building, use, zoning, sanitary and environmental restrictions; (iv) mineral and royalty reservations or conveyances of record, and oil, gas, and mineral leases of record; (v) real estate taxes and assessments for the year in which Closing occurs, (vi) water, water rights, and ditch rights for which Seller makes no warranties whatsoever; (vii) county road rights-of-way not recorded or indexed as a conveyance in the office of the Clerk and Recorder of the County in which the Property is located; and (viii) any other liens, encumbrances or exceptions expressly agreed to herein, included but not limited to unrecorded leases affecting the property. Seller makes no warranty regarding water rights.

**17. TITLE EVIDENCE:**

Within a reasonable time after the date of the execution of this Agreement, Seller shall furnish to Buyer title evidence to the Real Property in the form of a commitment for a standard owner's policy of title insurance ("Commitment") in the amount of the purchase price, together with copies of all documents shown as special exceptions in the Commitment, showing that Seller owns fee simple marketable title to the Real Property. Buyer shall have 10 days after the Commitment and copies of all special exceptions are delivered to Buyer or Buyer's broker/salesperson to review the Commitment and all issues of title to the Property (the "Title Review Period"), and Buyer shall have the right to approve or disapprove of any aspect of title to the Property, in Buyer's discretion. At the end of, or at any time during, the Title Review Period: (a) Buyer may give written notice to Seller or Seller's broker/salesperson that Buyer has elected to terminate this Agreement based upon Buyer's review of the Commitment, in

\_\_\_\_\_/\_\_\_\_\_  
 Buyers initials / Sellers initials









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Buyer

**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

**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT  
and/or LEAD-BASED PAINT HAZARDS**

**Lead Warning Statement**

*Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessments or inspection for possible lead-based paint hazards is recommended prior to purchase.*

**Seller's Disclosure (initial)**

- \_\_\_\_\_ (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
- \_\_\_\_\_ (i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain)
- \_\_\_\_\_ (ii) Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- \_\_\_\_\_ (b) Records and reports available to the seller (check (i) or (ii) below):
- \_\_\_\_\_ (i) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below:)
- \_\_\_\_\_ (ii) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgement (initial)**

- \_\_\_\_\_ (c) Purchaser has received copies of all information listed above.
- \_\_\_\_\_ (d) Purchaser has received the pamphlet *Protect Your Family from Lead in Your home*.
- \_\_\_\_\_ (e) Purchaser has [check (i) or (ii) below]:
- \_\_\_\_\_ (i) received a 10-day opportunity (or mutually agreed upon period) to Conduct a risk assessment or inspection for the presence of lead-based Paint and/or lead-based paint and/or lead based paint hazards; or
- \_\_\_\_\_ (ii) waived the opportunity to conduct a risk assessment or inspection for The presence of lead-based paint and/or lead-based paint hazards.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

Seller	Date	Seller	Date
Seller	Date	Seller	Date
Seller	Date	Seller	Date

## **Exhibit A**

### *Seller's Deliverables*

- A. Existing ALTA Survey.
- B. Income & Expense Statements for 2022, 2023 and 2024.
- C. Copy of the existing tenant Leases and any amendments thereto.
- D. Copies of all service contracts and any warranties relating to the property.
- E. Any environmental surveys or reports relating to the property in Seller's possession or control.
- F. Preliminary Title Report relating to the property, subject to any reasonable delays caused by the title company.
- G. Plans and specifications of the property "as built", including floor and site plans.
- H. Summary of insurance cost and coverage.
- I. Licenses, permits and certificates of occupancy.
- J. List of any concessions or obligations required of Landlord which are not shown in the Lease.
- K. Copies of all current financial information on Tenants in Seller's possession.
- L. Copies of the draft Condo Association Documents, to be recorded at or before closing.
- M. Proposed lease guarantee by the City of Billings for the Crime Prevention Office (Suite 5 containing 4,179 square feet). Said lease to contain the following basic provisions: Term of one (1) year, rental rate of \$10/SF/YR, NNN. City of Billings to be relieved of its obligation to guarantee the rent at the expiration of the lease term or as soon as another tenant or tenants are secured to lease the space and said tenant(s) commence paying rent.
- N. Estoppel Certificates at least ten (10) days prior to Closing.
- O. Proposed Right of First Refusal to purchase the parking garage.

## **Exhibit B**

### *Additional Provisions/Closing Conditions*

- A. Purchaser and Seller shall each pay one-half of the escrow fees and pay other costs as customarily allocated between Purchaser and Seller.
- B. Seller shall pay the following:
1. ALTA Owner's Standard Coverage Title Policy insuring the Purchaser for the amount of the Purchase Price.
  2. Transfer Tax, if any
  3. Brokerage commissions which shall be split equally between NAI Business Properties and SVN | Intermountain Investments, Inc.
- C. Purchaser shall pay the following:
1. Special endorsements requested by Purchaser to Title Insurance Policy, if any.
  2. All costs associated with securing the loan to purchase the property.
- D. Purchaser and Seller shall pay other costs and expenses as is customary in Montana.
- E. Seller shall endeavor to finalize and record condo documents.
- F. Buyer shall be granted a Right of First Refusal to purchase the Commercial Parking Unit (as defined in the Condo Declaration) should the City of Billings decide to sell it in the future.

Purchase and Sale agreement shall be fully contingent upon Billings City Council approval. Seller commits to act earnestly to obtain City Council approval of both Letter of Intent and Buyer's submittal of Purchase and Sale Agreement.