

**Fifth Amendment to Purchase and Sale Agreement**

**Seller: The City of Billings**

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

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

**THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT** (“PSA Amendment”) is made effective as of the last 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, executed a Third Amendment to Purchase and Sale Agreement on December 18, 2024 to extend certain Contingency Period matters until January 31, 2025, and executed a Fourth Amendment on December 18, 2024 to extend certain Contingency Period matters until March 31, 2025.
- D. The parties again desire to extend the Contingency Period for certain Contingency Period 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 the following Contingencies within the Agreement at Section 11 will be extended until June 16, 2025, without additional consideration:

(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(g) above or any prior specifically waived item in the First, Second and Third Amendments to the Purchase and Sale Agreement.

The following Contingency within the Agreement at Section 11 will be extended until on or before the Closing Date without additional consideration: Buyer obtaining and putting into place financing deemed satisfactory by it for the acquisition and development of the Property.

**2. Closing Date/Vacating Date by Seller from Property.** Despite the extensions to the Contingency Period as set forth above, provided that the Contingencies are satisfied, the Closing

Date will be on June 16, 2025 (“Closing Date”), although Buyer may elect to close at a time between June 2, 2025 and June 16, 2025 if its Contingencies are, or will be, satisfied by an earlier 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 30, 2025 in order to qualify for certain material aspects of its funding for the Project, thus Buyer will not be able to accord Seller any extension of the Closing Date beyond the June 16, 2025 date 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 appearing 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: \_\_\_\_\_