

First Amendment to Purchase and Sale Agreement

Seller: The City of Billings

Buyer: Honaker Realty, LLC & JWT Capital, LLC

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST 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. While the parties recognize that the Agreement permits extensions of the Contingency Period upon the payment of additional money from Buyer to Seller, pursuant to Section 11(f), the parties agree that based both upon Buyer’s ability to waive certain contingencies by September 18, 2024, as described below, and factors involving Contingencies outside of the control of Buyer, the agreement for the extension of the Contingency Period for certain matters defined below without additional consideration is warranted.
- C. In addition, the Agreement provides at Section 3(a) for a Closing Date within thirty (30) days of the satisfaction of Buyer’s Contingencies within the Contingency Period, provided, however, that such Section permits the parties to extend the Closing by mutual agreement. The parties agree that the Seller will not vacate the City Hall Property being purchased by the later of the potential Closing Date in Section 3(a) or February 1, 2025, as called for under the Agreement, Section 11(c)(7), and that it is beneficial to Seller that such Closing Date be extended to permit it additional time to vacate the City Hall Property, rather than create a lease structure for continued short term occupancy of the City Hall Property by Seller pending its vacating of such Property. Therefore, the parties believe that an extension of the Closing Date, as outlined below, to permit the orderly vacating of the City Hall Property by Seller, is warranted.
- D. 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 set forth in the Agreement may be deemed to be waived by Buyer effective as of September 18, 2024:
 - (a) environmental inspection and testing concerns referenced in Sections 10 and 11(c)(1) and (3) of the Agreement;
 - (b) structural and mechanical inspections and testing referenced in Sections 11(c)(1) and (3) of the Agreement;
 - (c) physical condition of the Property referenced in Section 11(c)(2) of the Agreement, except for the parking structure located on Parcel B of the Property for which repair

improvements are to be made by Seller as previously disclosed to Buyer by Seller, with agreed completion of such repair improvements by Buyer and Seller remaining a contingency for Buyer until completion of the same prior to Closing;

(d) execution of an acceptable Development Agreement between DBP and Buyer to develop Parcel A referenced in Section 11(c)(4);

(e) approval of Tax Increment Funds from DBP and Seller to Buyer referenced in Section 11(c)(5) of the Agreement;

(f) satisfaction of the encroachment of the Grand Building to the south of Parcel A referenced in Section 11(c)(11) of the Agreement.

The following Contingencies within the Agreement will be extended until November 15, 2024, 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;

(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);

(i) Seller will provide approvals for suitable loading and unloading areas from 2nd Ave. North for hotel guests, as referenced in Section 11(c)(8);

(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 not specifically deemed to be waived by Buyer in subsections 1(a) through (f) above or in subsections below.

The following Contingency within the Agreement will be extended until the later of February 1, 2025, or Closing, as amended herein, without additional consideration:

(m) financing deemed suitable by Buyer, and completion of financing, including those requirements imposed by Buyer's lender or lenders;

The following Contingencies within the Agreement will be extended without additional consideration until the Closing, as amended herein:

(n) title review and Seller's compliance with the state of title for the Property to be conveyed by Seller to Buyer;

(o) Seller vacates the Property within the Permitted Time to Vacate set out in Section 2 below; and

(p) Seller is in compliance with its requirements, agreements and commitments under the Agreement and herein.

2. Seller's Date to Vacate Property. Seller and Buyer agree that the Seller will vacate the Property, together with removal of its personal property therefrom, no earlier than February 1, 2025, and no later than April 1, 2025 (the "Permitted Time to Vacate"). Seller will give Buyer not less than sixty (60) days notice in writing of the date within the Permitted Time to Vacate on which it will have completely vacated the Property. Once Seller has completely vacated the Property during the Permitted Time to Vacate it will give written notice to Buyer of the completion of the same ("Notice of Completion of the Vacating of the Property"). Provided that the Contingencies permitted to Buyer are satisfied, Buyer will Close on the purchase of all of the Property within sixty (60) days of the date of the Notice of Completion of the Vacating of the Property.

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: _____