

RESOLUTION NO. 98- 17322

A RESOLUTION PURSUANT TO BILLINGS MONTANA CITY CODE SECTION 22-902: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING PROPERTIES TO BE SOLD AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings entered into a Standard Listing Agreement on the **13th** day of **November, 1997**, to sell certain real property described as follows:

Lots 19-21, Block 172 O.T. and Lots 3-5, Block 171, O.T.

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the **10th** day of **November, 1997**; and,

WHEREAS, the City of Billings entered into a Buy-Sell Agreement on the **2nd** day of **January, 1998**, and the **21st** day of **November, 1997** to sell certain real property as described above; and,

WHEREAS, City officials should be authorized to proceed to carry out the terms of said Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. That City staff is authorized to proceed with the sale of said real property under the terms and conditions contained in the Buy-Sell Agreement attached hereto as Exhibit "A".

APPROVED AND PASSED by the City Council of the City of Billings, this **12th** day of **January, 1998**.



THE CITY OF BILLINGS:

BY:

Charles F. Tooley
Charles F. Tooley MAYOR

ATTEST:

BY: Marita Herold
Marita Herold, CMC CITY CLERK

AGREEMENT TO SELL AND PURCHASE

and Receipt for Earnest Money
COMMERCIAL AND INVESTMENT PROPERTIES

Date January 2, 1998

3 THE EXECUTION OF THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD SEEK COMPETENT LEGAL
4 ADVICE IF NOT UNDERSTOOD. THIS IS A LEGAL AND BINDING CONTRACT.

5 1. PARTIES AND PROPERTY.

6 Robert J. Esser and Wallace E. Hall Buyer, taking title as:

7 Joint tenants with rights of survivorship, Tenants in common, Single in his/her own name, Other _____

8 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

9 City of Billings, County Yellowstone, State Montana

10 Property commonly known as: 317 South 25th Street

11
12 Legal description of the Property: Lots 19, 20, 21 Block 172 Original Town of Billings

13
14

15 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
16 or corrected to meet the requirements of the title company referred to in Section 10.

17
18 2. PURCHASE PRICE AND TERMS: The purchase price shall be \$Ninety Three Thousand Five Hundred payable in U.S. Dollars by
19 Buyer as follows:

20 \$ 500.00 (A) Earnest Money in the form of Personal Check Cashiers Check Other to be:

21 1) Held and not deposited until acceptance by all parties.

22 2) Deposited within 3 days of acceptance.

23
24 Earnest Money to be held by Business Properties, Broker Attorney Title Company 25
in a trust account on behalf of both Seller and Buyer. Broker is authorized to deliver the earnest money deposit to the
26 closing agent, if any, at or before closing. Parties agree that interest accruing on earnest money, if any, while deposited
27 shall be payable to Broker in consideration for services rendered. The undersigned sales representative hereby
28 acknowledges receipt from Buyer of the above noted Earnest Money _____

29 \$ 93,000.00 (B) Cash at closing, plus Buyer's closing costs, to be paid by Buyer at closing by cashier, certified check or electronic
30 funds transfer or _____

31
32 \$ _____ (C) Seller to finance Buyer's purchase under the following terms and conditions: _____
33 _____
34 _____

35
36 \$ _____ (D) Assumption of Existing Financing _____
37 _____

38 \$ 93,500.00 TOTAL PURCHASE PRICE.

39 Additional Provisions: _____
40 _____
41 _____

42 3. PERSONAL PROPERTY AND FIXTURES:

43 The following personal property shall be included in this sale and transferred by Bill of Sale at closing.

44 Security Deposits Signs Dumpster(s) N/A _____

45 The following personal property and fixtures shall be excluded from the sale: None

46
47 Fixtures: All permanently installed fixtures and fittings that are attached to the Property are included in the purchase price, such as electrical,
48 plumbing, and heating fixtures, built in appliances, attached floor coverings, antennas, coolers or air conditioners, mailbox, and trees and shrubs,
49 if any, except None

50 All personal property and fixtures sold with the Property described above are sold "AS IS" without warranty by the Seller, either expressed or
51 implied NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS MADE.

52
53 4. CLOSING AND RELATED PROVISIONS:

54 (A) The date of closing shall be March 13, 19 98. The parties may, by mutual agreement, agree to close the transaction at any
55 time prior to the date specified. If third party financing is required by the terms of this Agreement (includes assumptions, contracts for deed, and
56 lender financing), the closing shall occur on the date specified or as soon thereafter as financing is complete but no later than 30 days
57 after the stated closing date. Buyer and Seller will deposit with the closing agent all instruments and moneys necessary to complete the purchase
58 in accordance with this Agreement.

59 (B) Possession and Keys: Seller shall deliver to Buyer possession of the Property and allow occupancy at the date of closing or: _____

60 (C) Closing Costs, Documents and Services: Buyer and Seller shall pay their respective closing costs and all other items required to be paid at
61 closing except as otherwise provided herein. Buyer and Seller shall sign and complete customary or required document at or before closing.
62 Fees for real estate closing services shall be split equally between the Parties.

63 (D) Place of closing shall be: Chicago Title


Buyers initials Sellers initials

64 5. PRORATION: As of the date of closing Seller and Buyer agree to prorate real estate taxes, special improvement assessments for the current tax year, pre-paid rents, private water and sewer system charge, if any, and interest on any assumed loan, as well as: _____

65 6. CONTINGENCIES:

66 The closing of this agreement and sale of the property between Buyer and Seller is contingent upon the following, and
67 this sale to terminate and earnest money shall be returned to the Buyer if not satisfied in writing on or before _____
68 February 13, 1998 or as noted below: (Check those which apply)

- 69 Buyer receipt of any City / County approval for proposed buildings / remodeling and related cost estimates.
70 Buyer receipt of written City approval for Buyer's use of the property.
71 Buyer receipt of acceptable zone change or special review.
72 Buyer approval of preliminary title report including subdivision restrictions and S.I.D.'s, and future S.I.D.'s.
73 Buyer approval of curb valve inspection report, or condition of well and septic system.
74 Buyer approval of Lead Base Paint report, Radon Report, and Americans with Disabilities Audit.
75 Buyer approval of leases and contracts.
76 Buyer approval of property and subsoil conditions.
77 Buyer approval of survey or boundaries. Cost of Survey Corner identification, paid by Buyer Seller Shared Equally.
78 Buyer approval of Phase One Environmental Report, Cost paid by Buyer Seller Shared Equally.
79 Both parties attorney and accountant approval of this Agreement
80 Buyer receipt of acceptable loan commitment.
 Buyer completion of sales under Section 1031 of the I.R.C. noted in Paragraph 11.
81 _____

82 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
83 date noted above that the contingencies checked have not been satisfied then it shall be conclusively presumed that the Buyer has waived those
84 contingencies for which no notice has been given. If Buyer, after due diligence, shall timely Notify Seller, Buyer's Broker or Seller's Broker,
85 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
86 Money deposit, less escrow holder or title cancellation fees.

87 The Seller shall have the option of:

- 88 a) Making said items operational
89 b) Giving the Buyer(s) a credit for the items, or
90 c) Canceling the Agreement to Sell and Purchase and refunding to the Buyer(s) any Earnest Money deposit or similar payments previously
91 made to Seller.

92 Should Seller cancel the Agreement because of environmental condition, then Seller shall, shall not pay, or reimburse Buyer for the
93 cost of the Phase One Environmental Audit.

94 7. CONDITION OF PROPERTY AND RELATED ISSUES:

95 Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement
96 up to the time Buyer takes possession of the Property. Seller has no knowledge of any notice of violations of City, County, State, Federal, Building,
97 Zoning, Fire, Health Codes or ordinances, condemnation, hazardous waste, underground storage tanks, special improvement districts or other
98 governmental regulation filed or issued against the Property, except herein noted: _____
99 _____

100 If the Property is damaged by fire, hail, or other casualty prior to time of closing. Seller shall be, shall not be obligated to repair the same before
101 the date of closing. If such damage is not repaired within said time, this Contract may be terminated at the option of the Buyer and the
102 Earnest Money shall be returned to Buyer. Should Buyer elect to carry out the Contract despite such damage, Buyer shall be entitled to credit for
103 all the insurance proceeds resulting from such damage to the Property and Inclusions, not exceeding, however, the total purchase price. Should
104 any Inclusion(s) or service(s) fail or be damaged between the date of this Contract and the date of closing or the date of possession, whichever
105 shall be earlier, then Seller shall be liable for the repair or replacement of such inclusion(s) or service(s) with a unit of similar size, age, and quality,
106 or an equivalent credit, less any insurance proceeds received by Buyer covering such repair or replacement. Buyer agrees to accept property
107 in "AS IS, WHERE IS" condition except as herein provided.

108 8. ASSIGNABILITY: This Contract shall not be assignable by Buyer without Seller's prior written consent, which assignment shall not be unreasonably
109 withheld by Seller. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives,
110 successors and assigns of the parties.

111 9. CONVEYANCE: Seller shall convey the real Property by Warranty Deed, including all interest of Seller in vacated alleys and streets,
112 easements, other apportionments and improvements free of all liens and encumbrances except those described in the title insurance section of this
113 agreement, and reservations or conveyances of record.

114 10. TITLE INSURANCE: Seller, at Seller's expense, shall furnish Buyer title insurance from Chicago Title (Title Company)
115 pursuant to a standard form American Land Title Association title insurance commitment in the amount equal to the purchase price, committing to
116 to insure merchantable title to the real Property in Buyer's name, free and clear of all liens and encumbrances except: encumbrances hereinabove
117 mentioned, zoning ordinances, building and use restrictions, reservations and exceptions in patents from the United States and the State of Montana,
118 all standard ALTA exceptions, beneficial utility easements apparent or of record, other easements of record, real estate taxes for the year in which
119 closing occurs, Special Improvement Districts (including rural SID's) either noticed to seller by the city / county but not spread, or currently assessed,
120 if any, which will be: PAID OFF BY SELLER AT CLOSING ASSUMED BY BUYER AT CLOSING, the following loans N/A
121 the following leases N/A and the following: _____

122 be assigned to Buyer at closing, if the Seller's title is not merchantable and cannot be made merchantable before the stated closing date,
123 30 ADDITIONAL DAYS SHALL BE ALLOWED FOR THE SELLER TO MAKE SUCH TITLE MERCHANTABLE. If at that time the title is still not
124 merchantable, this Contract may be terminated by Buyer with no penalty, and the earnest money will be returned to Buyer. Encumbrances to be
125 discharged by Seller shall either be satisfied prior to closing or from Seller's proceeds at time of closing.

REW DM
Buyer's initials Seller's initials

126 **11. TAX DEFERRED EXCHANGE:** (check, where applicable)

- 127 Buyer herein acknowledges that it is the intention of Seller to create IRC Section 1031 tax deferred exchange and that Seller's rights
128 and obligations under this agreement may be assigned to facilitate such exchange. Buyer agrees to cooperate with Seller in any manner
129 necessary to enable Seller to qualify for said exchange at no additional cost or liability to Buyer.
- 130 Seller herein acknowledges that it is the intention of Buyer to complete IRC Section 1031 tax deferred exchange and that Buyer may
131 assign his rights and obligations under this agreement for the purpose of completing such exchange. Seller agrees to cooperate with Buyer
132 in any manner necessary in order to complete said exchange at no additional cost or liability to Seller.

133 **12. RADON GAS:** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN
134 SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT
135 EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND
136 RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. BUYER ACKNOWLEDGES RECEIPT OF
137 A COPY OF THIS STATEMENT PRIOR TO ENTERING INTO THE AGREEMENT TO SELL AND PURCHASE - COMMERCIAL. IF TESTING HAS
138 BEEN PERFORMED FOR RADON GAS AND RADON PROGENY SELLER SHALL PROVIDE COPIES OF TEST RESULTS AND EVIDENCE OF
139 SUBSEQUENT MITIGATION OR TREATMENT, IF ANY, TO BUYER WITH THIS CONTRACT.

140 **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
141 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
142 shall be the following remedies:

- 143 (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
144 the time period provided in this Agreement, Seller may:
- 145 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
146 sum, as the actual damages to Seller would be extremely difficult or impractical to ascertain; or
 - 147 2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; or
 - 148 3) Demand Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.
- 149 (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
150 returned to Buyer. If Seller accepts the offer contained in this Agreement but refuses or neglects to consummate the transaction within the time
151 period provided in this Agreement, Buyer may:
- 152 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
153 of Buyer and Seller under this Agreement shall be terminated; or
 - 154 2) Demand that Seller specifically perform Seller's obligations under this Agreement; or
 - 155 3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

156 **14. EARNEST MONEY DISPUTE:** Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy
157 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
158 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
159 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
160 and shall recover court costs and reasonable attorney fees.

161 **15. BUYER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Buyer represents that he/she
162 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
163 a corporation, partnership, or other non-human entity, that he/ she is duly authorized to enter into the Agreement on behalf of such entity.

164 **16. SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Seller represents that he/she
165 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
166 encumbrances except those described in this Agreement; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/
167 she is duly authorized to enter into the Agreement on behalf of such entity.

168 **17. ALTERNATIVE DISPUTE RESOLUTION: MEDIATION:** If a dispute arises between the parties relating to this Contract, the parties may agree
169 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
170 mediator proves unsuccessful, the parties may then proceed with such other means of dispute resolution as they so chose.

171 **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,
172 the defaulting party agrees to pay, on demand, all costs, charges, and expenses, including reasonable attorney's fees, reasonably incurred at any
173 time by the other party because of the default.

174 **19. ENTIRE CONTRACT:** All prior Agreements between the parties are incorporated in this Agreement which constitutes the entire Contract. Its
175 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
176 contradicted by evidence of any prior Agreement or contemporaneous oral Agreement. The parties further intend that this Agreement constitutes
177 the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding,
178 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
179 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
180 of the parties.

181 **20. BROKER RELATIONSHIPS:** The following agency relationship(s) are hereby confirmed for this transaction.

182

183 Listing Agent Business Properties Patrick Connealy is the agent of (check one): Seller exclusively both Buyer and Seller
184 (Print Firm Name and Agent name)

185 Selling Agent Business Properties Patrick Connealy is the agent of (check one): Buyer exclusively; limited Buyer agent;
(Print Firm Name and Agent name) or Statutory Broker; or both Buyer & Seller.

RE WH PA
Buyer's initials Sellers initials

186 21. ADDENDUM ATTACHED: None

187

188

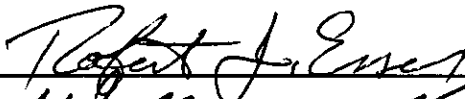
189 22. CONSENT TO DISCLOSE: Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, Broker, and their attorneys, 1
190 closing agents, and other parties having interest essential to this Agreement, of any and all information reasonably necessary to consummate the
191 transaction described in this Agreement, specifically including access to escrow agents and lenders for review of contracts, deeds, trust indentures,
192 inspections, or similar documents of prior transaction concerning this property or underlying obligations pertaining thereto.

193 23. COUNTERPARTS / FACSIMILE: A copy of this document may be executed by each party, separately, and when each party has executed a copy
194 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
195 of this Agreement to Sell and Purchase which contains the parties' signatures may be used as the original.

196 24. BUYER'S COMMITMENT: Buyer agrees to purchase the above described Property on the terms and conditions set forth in the above offer and
197 grants said sales representative until January 6, 1998, at 5:00 am/pm to secure Seller's written acceptance. Buyer may
198 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.
199 Buyer hereby acknowledges receipt of a copy of this "Agreement of Sell and Purchase-Commercial and Investment Properties", bearing Buyer's
200 signature(s) and that Buyers have read and understand this Agreement.

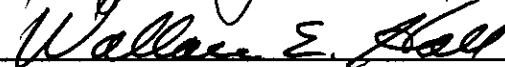
201 Buyer's Phone: (406) 245-2078

Buyer Signature:



202 Address: 2402 Minnesota

Buyer Signature:



203 25. SELLER'S COMMITMENT: Seller agree to sell and convey to Buyer the above described Property on the terms and conditions hereinabove
stated.

204 Seller acknowledge receipt of a copy of this Agreement bearing the signature(s) of Buyer and Seller.

205 Dated this _____ day of _____, 19____, at _____ am/pm.

206 Seller's Phone: _____

Seller Signature:



207 Address: _____

Seller Signature: _____

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

209 Date _____ 19 _____

Date _____ 19 _____

210 The undersigned buyer acknowledges receipt of a copy of this
211 Contract bearing his / her signature and that of the Seller.

A copy of this Contract bearing Buyer(s) signature and that of the Seller(s)
was sent via ordinary or certified mail to Buyer.

212

213 _____

214 Buyer

Agent

1 **AGREEMENT TO SELL AND PURCHASE**

2 and Receipt for Earnest Money
COMMERCIAL AND INVESTMENT PROPERTIES

Date November 21, 1997

3 THE EXECUTION OF THIS AGREEMENT HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD SEEK COMPETENT LEGAL
4 ADVICE IF NOT UNDERSTOOD. THIS IS A LEGAL AND BINDING CONTRACT.

5 **1. PARTIES AND PROPERTY.**

6 Stephen L. Stokke and Deborah A. Stokke Buyer, taking title as:

7 Joint tenants with rights of survivorship, Tenants in common, Single in his/her own name, Other _____

8 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

9 City of Billings, County Yellowstone, State Montana

10 Property commonly known as: 300 Block South 25th Street

11
12 Legal description of the Property: Lots 3, 4 and 5 Original Town of Billings Block 171

13
14
15 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
16 or corrected to meet the requirements of the title company referred to in Section 10.

17
18 **2. PURCHASE PRICE AND TERMS:** The purchase price shall be \$ ~~Even ten thousand~~ Ten Thousand ^{TEN THOUSAND} payable in U.S. Dollars

19 Buyer as follows:

20 \$ 250.00 (A) Earnest Money in the form of Personal Check Cashiers Check Other to be:

21 1) Held and not deposited until acceptance by all parties.

22 2) Deposited within 3 days of acceptance.

23
24 Earnest Money to be held by _____, Broker Attorney Title Company 25
26 in a trust account on behalf of both Seller and Buyer. Broker is authorized to deliver the earnest money deposit to the
27 closing agent, if any, at or before closing. Parties agree that interest accruing on earnest money, if any, while deposited
28 shall be payable to Broker in consideration for services rendered. The undersigned sales representative hereby
29 acknowledges receipt from Buyer of the above noted Earnest Money _____

30 (B) Cash at closing, plus Buyer's closing costs, to be paid by Buyer at closing by cashier, certified check or electronic
31 funds transfer or _____

32 (C) Seller to finance Buyer's purchase under the following terms and conditions: _____

33
34
35
36 (D) Assumption of Existing Financing _____

37
38 **TOTAL PURCHASE PRICE.**

39 Additional Provisions: None

40
41
42 **3. PERSONAL PROPERTY AND FIXTURES:**

43 The following personal property shall be included in this sale and transferred by Bill of Sale at closing.

44 Security Deposits Signs Dumpster(s) N/A _____

45 The following personal property and fixtures shall be excluded from the sale: N/A

46
47 Fixtures: All permanently installed fixtures and fittings that are attached to the Property are included in the purchase price, such as electrical,
48 plumbing, and heating fixtures, built in appliances, attached floor coverings, antennas, coolers or air conditioners, mailbox, and trees and shrubs,
49 if any, except N/A

50 All personal property and fixtures sold with the Property described above are sold "AS IS" without warranty by the Seller, either expressed or
51 implied **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS MADE.**

52
53 **4. CLOSING AND RELATED PROVISIONS:**

54 (A) The date of closing shall be Dec. 12, 1997. The parties may, by mutual agreement, agree to close the transaction at any
55 time prior to the date specified. If third party financing is required by the terms of this Agreement (includes assumptions, contracts for deed, and
56 lender financing), the closing shall occur on the date specified or as soon thereafter as financing is complete but no later than 30 days
57 after the stated closing date. Buyer and Seller will deposit with the closing agent all instruments and moneys necessary to complete the purchase
58 in accordance with this Agreement.

59 (B) Possession and Keys: Seller shall deliver to Buyer possession of the Property and allow occupancy at the date of closing or: _____

60 (C) Closing Costs, Documents and Services: Buyer and Seller shall pay their respective closing costs and all other items required to be paid at
61 closing except as otherwise provided herein. Buyer and Seller shall sign and complete customary or required document at or before closing.
62 Fees for real estate closing services shall be split equally between the Parties.

63 (D) Place of closing shall be: Chicago Title

[Signature] [Signature]
Buyers initials Sellers initials

65 **6. CONTINGENCIES:**

- 66 The closing of this agreement and sale of the property between Buyer and Seller is contingent upon the following, and
 67 this sale to terminate and earnest money shall be returned to the Buyer if not satisfied in writing on or before _____
 68 December 10, 1997 or as noted below: (Check those which apply)
- 69 Buyer receipt of any City / County approval for proposed buildings / remodeling and related cost estimates.
 - 70 Buyer receipt of written City approval for Buyer's use of the property.
 - 71 Buyer receipt of acceptable zone change or special review.
 - 72 Buyer approval of preliminary title report including subdivision restrictions and S.I.D.'s, and future S.I.D.'s.
 - 73 Buyer approval of curb valve inspection report, or condition of well and septic system.
 - 74 Buyer approval of Lead Base Paint report, Radon Report, and Americans with Disabilities Audit.
 - 75 Buyer approval of leases and contracts.
 - 76 Buyer approval of property and subsoil conditions.
 - 77 Buyer approval of survey or boundaries. Cost of Survey Corner identification, paid by Buyer Seller Shared Equally.
 - 78 Buyer approval of Phase One Environmental Report, Cost paid by Buyer Seller Shared Equally.
 - 79 Both parties attorney and accountant approval of this Agreement
 - 80 Buyer receipt of acceptable loan commitment.
 - 81 Buyer completion of sales under Section 1031 of the I.R.C. noted in Paragraph 11.

82 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
 83 date noted above that the contingencies checked have not been satisfied then it shall be conclusively presumed that the Buyer has waived those
 84 contingencies for which no notice has been given. If Buyer, after due diligence, shall timely Notify Seller, Buyer's Broker or Seller's Broker,
 85 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
 86 Money deposit, less escrow holder or title cancellation fees.

- 87 The Seller shall have the option of:
- 88 a) Making said items operational
 - 89 b) Giving the Buyer(s) a credit for the items, or
 - 90 c) Canceling the Agreement to Sell and Purchase and refunding to the Buyer(s) any Earnest Money deposit or similar payments previously
 91 made to Seller.

92 Should Seller cancel the Agreement because of environmental condition, then Seller shall, shall not pay, or reimburse Buyer for the
 93 cost of the Phase One Environmental Audit.

94 **7. CONDITION OF PROPERTY AND RELATED ISSUES:**

95 Seller agrees that the Property shall be in the same condition, normal wear and tear excepted, from the date of the execution of this Agreement
 96 up to the time Buyer takes possession of the Property. Seller has no knowledge of any notice of violations of City, County, State, Federal, Building,
 97 Zoning, Fire, Health Codes or ordinances, condemnation, hazardous waste, underground storage tanks, special improvement districts or other
 98 governmental regulation filed or issued against the Property, except herein noted: N/A
 99 _____

100 If the Property is damaged by fire, hail, or other casualty prior to time of closing. Seller shall be, shall not be obligated to repair the same before
 101 the date of closing. If such damage is not repaired within said time, this Contract may be terminated at the option of the Buyer and the
 102 Earnest Money shall be returned to Buyer. Should Buyer elect to carry out the Contract despite such damage, Buyer shall be entitled to credit for
 103 all the insurance proceeds resulting from such damage to the Property and Inclusions, not exceeding, however, the total purchase price. Should
 104 any Inclusion(s) or service(s) fail or be damaged between the date of this Contract and the date of closing or the date of possession, whichever
 105 shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion(s) or service(s) with a unit of similar size, age, and quality,
 106 or an equivalent credit, less any insurance proceeds received by Buyer covering such repair or replacement. Buyer agrees to accept property
 107 in "AS IS, WHERE IS" condition except as herein provided.

108 **8. ASSIGNABILITY:** This Contract shall not be assignable by Buyer without Seller's prior written consent, which assignment shall not be unreasonably
 109 withheld by Seller. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives,
 110 successors and assigns of the parties.

111 **9. CONVEYANCE:** Seller shall convey the real Property by Warranty Deed, including all interest of Seller in vacated alleys and streets,
 112 easements, other apportionments and improvements free of all liens and encumbrances except those described in the title insurance section of this
 113 agreement, and reservations or conveyances of record.

114 **10. TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer title insurance from Chicago Title (Title Company)
 115 pursuant to a standard form American Land Title Association title insurance commitment in the amount equal to the purchase price, committing to
 116 to insure merchantable title to the real Property in Buyer's name, free and clear of all liens and encumbrances except: encumbrances hereinabove
 117 mentioned, zoning ordinances, building and use restrictions, reservations and exceptions in patents from the United States and the State of Montana,
 118 all standard ALTA exceptions, beneficial utility easements apparent or of record, other easements of record, real estate taxes for the year in which
 119 closing occurs, Special Improvement Districts (including rural SID's) either noticed to seller by the city / county but not spread, or currently assessed,
 120 if any, which will be: PAID DFF BY SELLER AT CLOSING ASSUMED BY BUYER AT CLDSING, the following loans N/A
 121 the following leases N/A and the following: _____
 122 be assigned to Buyer at closing, if the Seller's title is not merchantable and cannot be made merchantable before the stated closing date,
 123 30 ADDITIONAL DAYS SHALL BE ALLOWED FOR THE SELLER TO MAKE SUCH TITLE MERCHANTABLE. If at that time the title is still not
 124 merchantable, this Contract may be terminated by Buyer with no penalty, and the earnest money will be returned to Buyer. Encumbrances to be
 125 discharged by Seller shall either be satisfied prior to closing or from Seller's proceeds at time of closing.

[Signature] [Signature]
 Buyer's initials Sellers initials

126 **11. TAX DEFERRED EXCHANGE:** (check, where applicable)

- 127 Buyer herein acknowledges that it is the intention of Seller to create IRC Section 1031 tax deferred exchange and that Seller's rights
 128 and obligations under this agreement may be assigned to facilitate such exchange. Buyer agrees to cooperate with Seller in any manner
 129 necessary to enable Seller to qualify for said exchange at no additional cost or liability to Buyer.
 130 Seller herein acknowledges that it is the intention of Buyer to complete IRC Section 1031 tax deferred exchange and that Buyer may
 131 assign his rights and obligations under this agreement for the purpose of completing such exchange. Seller agrees to cooperate with Buyer
 132 in any manner necessary in order to complete said exchange at no additional cost or liability to Seller.

133 **12. RADON GAS:** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN
 134 SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT
 135 EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND
 136 RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT. BUYER ACKNOWLEDGES RECEIPT OF
 137 A COPY OF THIS STATEMENT PRIOR TO ENTERING INTO THE AGREEMENT TO SELL AND PURCHASE - COMMERCIAL. IF TESTING HAS
 138 BEEN PERFORMED FOR RADON GAS AND RADON PROGENY SELLER SHALL PROVIDE COPIES OF TEST RESULTS AND EVIDENCE OF
 139 SUBSEQUENT MITIGATION OR TREATMENT, IF ANY, TO BUYER WITH THIS CONTRACT.

140 **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
 141 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
 142 shall be the following remedies:

143 (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
 144 the time period provided in this Agreement, Seller may:

- 145 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
 146 sum, as the actual damages to Seller would be extremely difficult or impractical to ascertain; or
 147 2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; or
 148 3) Demand Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

149 (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
 150 returned to Buyer. If Seller accepts the offer contained in this Agreement but refuses or neglects to consummate the transaction within the time
 151 period provided in this Agreement, Buyer may:

- 152 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
 153 of Buyer and Seller under this Agreement shall be terminated; or
 154 2) Demand that Seller specifically perform Seller's obligations under this Agreement; or
 155 3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

156 **14. EARNEST MONEY DISPUTE:** Notwithstanding any termination of this Contract, Buyer and Seller agree that, in the event of any controversy
 157 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
 158 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
 159 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
 160 and shall recover court costs and reasonable attorney fees.

161 **15. BUYER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Buyer represents that he/she
 162 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
 163 a corporation, partnership, or other non-human entity, that he/ she is duly authorized to enter into the Agreement on behalf of such entity.

164 **16. SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this Agreement as Seller represents that he/she
 165 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
 166 encumbrances except those described in this Agreement; and if acting on behalf of a corporation, partnership, or other non-human entity, that he/
 167 she is duly authorized to enter into the Agreement on behalf of such entity.

168 **17. ALTERNATIVE DISPUTE RESOLUTION: MEDIATION:** If a dispute arises between the parties relating to this Contract, the parties may agree
 169 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
 170 mediator proves unsuccessful, the parties may then proceed with such other means of dispute resolution as they so chose.

171 **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,
 172 the defaulting party agrees to pay, on demand, all costs, charges, and expenses, including reasonable attorney's fees, reasonably incurred at any
 173 time by the other party because of the default.

174 **19. ENTIRE CONTRACT:** All prior Agreements between the parties are incorporated in this Agreement which constitutes the entire Contract. Its
 175 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
 176 contradicted by evidence of any prior Agreement or contemporaneous oral Agreement. The parties further intend that this Agreement constitutes
 177 the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding,
 178 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
 179 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
 180 of the parties.

181 **20. BROKER RELATIONSHIPS:** The following agency relationship(s) are hereby confirmed for this transaction.

182

183 Listing Agent Patrick Connealy Business Properties is the agent of (check one): Seller exclusively both Buyer and Seller
 184 (Print Firm Name and Agent name)

185 Selling Agent Patrick Connealy Business Prop. is the agent of (check one): Buyer exclusively; limited Buyer agent;
 (Print Firm Name and Agent name) or Statutory Broker; or both Buyer & Seller.

AS PM
 Buyer's initials Sellers initials

186 21. ADDENDUM ATTACHED: None

187

188

189 22. CONSENT TO DISCLOSE: Buyer and Seller hereby consent to the procurement and disclosure by Buyer, Seller, Broker, and their attorneys, 1
190 closing agents, and other parties having interest essential to this Agreement, of any and all information reasonably necessary to consummate the
191 transaction described in this Agreement, specifically including access to escrow agents and lenders for review of contracts, deeds, trust indentures,
192 inspections, or similar documents of prior transaction concerning this property or underlying obligations pertaining thereto.

193 23. COUNTERPARTS / FACSIMILE: A copy of this document may be executed by each party, separately, and when each party has executed a copy
194 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
195 of this Agreement to Sell and Purchase which contains the parties' signatures may be used as the original.

196 24. BUYER'S COMMITMENT: Buyer agrees to purchase the above described Property on the terms and conditions set forth in the above offer and
197 grants said sales representative until December 9, 19 97, at 5:00 am/pm to secure Seller's written acceptance. Buyer may
198 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.
199 Buyer hereby acknowledges receipt of a copy of this "Agreement of Sell and Purchase-Commercial and Investment Properties", bearing Buyer's
200 signature(s) and that Buyers have read and understand this Agreement.

201 Buyer's Phone: (406) 245-5003

Buyer Signature: *Deborah J. Stolke*

202 Address: Billings

Buyer Signature: *Stephen J. Stolke*

203 25. SELLER'S COMMITMENT: Seller agree to sell and convey to Buyer the above described Property on the terms and conditions hereinabove
stated.

204 Seller acknowledge receipt of a copy of this Agreement bearing the signature(s) of Buyer and Seller.

205 Dated this _____ day of _____, 19 _____, at _____ am/pm.

206 Seller's Phone: _____

Seller Signature: *Ronald C. Wynn*

207 Address: _____

Seller Signature: _____

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

209 Date _____ 19 _____

Date _____ 19 _____

210 The undersigned buyer acknowledges receipt of a copy of this
211 Contract bearing his / her signature and that of the Seller.

A copy of this Contract bearing Buyer(s) signature and that of the Seller(s)
was sent via ordinary or certified mail to Buyer.

212 _____

213 _____

214 Buyer

Agent