

**RESOLUTION NO. 3561**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO SELL CERTAIN REAL PROPERTY TO BAM LLC, A MONTANA LIMITED LIABILITY COMPANY**

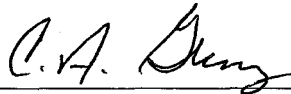
*WHEREAS*, BAM LLC, a Montana limited liability company, has requested to purchase from to the City of Miles City the following described real property currently owned by the City of Miles City: The West 35 feet of Lot 1 of Legion Addition No. 2 to the City of Miles City, according to the plat and survey thereof on file in the office of the Custer County Clerk and Recorder;

*AND WHEREAS* the City Council finds that it is the best interest of the City of Miles City to sell such land to BAM LLC, for the sum of \$5,000.00, pursuant to the terms and conditions set forth in the Agreement to Sell and Purchase attached hereto as Exhibit "A" and made a part hereof;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AS FOLLOWS:**

1. The City Council hereby approves of the sale of The West 35 feet of Lot 1 of Legion Addition No. 2 to the City of Miles City, according to the plat and survey thereof on file in the office of the Custer County Clerk and Recorder, to BAM LLC, a Montana limited liability company, for the sum of \$5,000.00, subject to the terms and conditions set forth in the Agreement to Sell and Purchase attached hereto as Exhibit "A" and made a part hereof.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement to Sell and Purchase on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such other and further documents as may be necessary or convenient to implement such Agreement to Sell and Purchase on behalf of the City of Miles City and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY AT LEAST A TWO-THIRDS VOTE OF ALL OF THE MEMBERS OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING OF THE CITY COUNCIL THIS 13TH DAY OF NOVEMBER, 2012.**



C.A. Grenz, Mayor

ATTEST:

  
Rebecca Stanton, City Clerk

**AGREEMENT TO SELL AND PURCHASE**

THIS AGREEMENT TO SELL AND PURCHASE made and entered into this 3<sup>RD</sup> day of ~~November~~ <sup>December</sup>, 2012, by and between **THE CITY OF MILES CITY, MONTANA**, a Montana municipal corporation, of 17 S. 8<sup>th</sup> Street, Miles City, Montana 59301, hereinafter referred to as "SELLER", and **BAM, LLC**, a Montana limited liability company, of 73 Balsam Circle, Miles City, Montana 59301, hereinafter referred to as "PURCHASER".

WITNESSETH:

WHEREAS, SELLER is the owner of certain real property located in Custer County, Montana and desires to sell the same to PURCHASER;

WHEREAS, PURCHASER desires to purchase the aforementioned real property from SELLER;

WHEREAS, the parties hereto desire to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. DESCRIPTION OF REAL PROPERTY SOLD. SELLER agrees to sell to PURCHASER and PURCHASER agrees to purchase from SELLER, upon the terms and conditions hereinafter set forth, the following described real property, hereinafter "Property," located in Custer County, Montana and described as follows:

West 35 feet of Lot 1 of Legion Addition No. 2 to the City of Miles City according to the plat and survey thereof on file in the office of the Custer County Clerk and Recorder.

2. PURCHASE PRICE. PURCHASER agrees to pay a purchase price of FIVE THOUSAND DOLLARS (5,000.00), payable as at closing.

3. APPRAISAL AND INSPECTION CONTINGENCIES. This agreement

shall not be contingent on appraisal or any other contingency.

4. CLOSING. Closing shall occur at the offices of Security Abstract & Title Company in Miles City, Montana, no later than December 31, 2012. The closing agent's fees shall be paid by PURCHASER.

5. POSSESSION. SELLER shall deliver possession of the Property upon closing.

6. DELIVERY OF DEED. At time of closing and contemporaneously with receiving the final payment hereunder, SELLER will execute and deliver to PURCHASER a good and sufficient warranty deed conveying marketable title to the Property. PURCHASER shall be responsible for all costs associated with the preparation of said warranty deed.

7. PRORATION OF TAXES. PURCHASER shall be responsible for all taxes and assessments which become due following final closing.

8. SELLERS' REPRESENTATIONS AND WARRANTIES. SELLER represents and warrants to PURCHASER, which representations and warranties shall be true as of the closing date, as follows:

- (a) SELLER has full power and authority, and has been authorized by the City Council of Miles City, Montana, to enter into this contract and to carry out the transactions contemplated by this contract.
- (b) All mortgages, judgments, and liens shall be paid or satisfied by the SELLER. SELLER agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of the preliminary title insurance commitment approved by PURCHASER.

The foregoing representations, warranties and covenants shall survive closing and shall not be deemed merged in any other contract, document or instrument. There are no other representations, warranties express or implied, except as set forth herein.

9. RESERVATION OF EASEMENTS AND MINERALS. The conveyance hereunder shall reserve to SELLER an easement for that portion of Sewell Avenue which lies upon and runs across the Property, in its existing location, as well as an easement for all existing utilities in their current locations. The City shall reserve all minerals to itself.

10. RESERVATIONS AND EXCEPTIONS. Except as herein provided, any conveyance hereunder shall also be subject to:

- (a) All prior oil, mineral and royalty reservations and conveyances of record;
- (b) Recorded and visible easements and rights-of-way;
- (c) Reservations and exceptions in patents and other conveyances of record;  
and
- (d) All building, use, zoning, sanitary and environmental restrictions, if any.

11. DEFAULT. This Agreement shall be enforceable by either party by means of the remedy of specific performance.

12. PURCHASER'S INVESTIGATION. PURCHASER acknowledges that PURCHASER has made a full and complete investigation and inspection of the Property, and is, or will be at closing, thoroughly acquainted with its condition and status. PURCHASER acknowledges that neither SELLER nor anyone acting, or purporting to act, on behalf of SELLER has made any representation with respect to the Property, including but not limited to physical condition, boundaries, encroachments, the state of repair or maintenance of the Property, or any other matter concerning the Property. PURCHASER acknowledges that any information or documentation provided by SELLER with respect to ownership of the Property, or matters pertaining to any of the Property is not warranted by SELLER to be complete or accurate. **PURCHASER SPECIFICALLY UNDERSTANDS THAT THE PROPERTY IS**

BEING SOLD "AS IS", EXCEPT AS PROVIDED HEREIN, AND AGREES TO ACCEPT THE PROPERTY "AS IS", EXCEPT AS PROVIDED HEREIN, AND IN ITS PRESENT CONDITION AND STATE OF REPAIR, AND ACKNOWLEDGES THAT SELLER IS MAKING NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS OR A PARTICULAR PURPOSE, EXCEPT THE WARRANTIES OF TITLE AS HEREINBEFORE SET FORTH. The provisions of this paragraph shall survive Closing or termination of this Agreement.

13. LEGAL COSTS AND EXPENSES. In the event legal or equitable action is taken to enforce any provision of this Sale and Purchase Agreement, the prevailing party is to be awarded their court costs and reasonable attorneys' fees, all as determined by the appropriate court.

14. RISK OF LOSS UNTIL POSSESSION. SELLER agrees to keep said property in at least the condition as the same existed on the date of the full signing of this Agreement. The risk of loss or damage from any cause shall be in SELLER until possession is delivered to PURCHASER. In the event of minor damage, SELLER shall restore the premises to the condition they were in at the time of sale, and this Agreement shall remain in full force and effect.

15. GOVERNING LAW. This contract shall be governed by and construed in accordance with the laws of Montana. The parties agree to confer jurisdiction and venue for any actions with the District Court of the Sixteenth Judicial District of the State of Montana in and for the County of CUSTER.

16. NOTICE. All notices hereunder may be given by registered or certified mail, or by personal service thereof, and the time shall commence to run on the date of mailing, if mailed, or the date of service, if served. Until written notice is given of change of address, any notice to any of the parties may be given as hereinbefore provided to the parties at the following addresses:

SELLER:                   **City Of Miles City**  
                                  17 S. 8<sup>th</sup>  
                                  Miles City, MT 59301

PURCHASER:           **BAM, LLC**  
                                  73 Balsam Circle  
                                  Miles City, MT 59301

Notice shall be deemed complete when deposited in the United States Post Office.

Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice. Any change of address must be by notice pursuant to this paragraph.

17. PURCHASER'S AND SELLER'S CERTIFICATION. By entering into this Agreement, each person or persons executing this Agreement, as PURCHASER or SELLER represent that they have the legal capacity and authority to own or transfer real property in the State of Montana.

18. ENTIRE AGREEMENT - MERGER OF PREVIOUS UNDERSTANDING.  
This Agreement embodies and constitutes the entire understanding between the parties hereto with respect to the transaction contemplated herein, and all prior or contemporaneous negotiations, communications, conversations, understandings and agreements had between the parties hereto, oral or written, are merged in this Agreement.

19. TITLE INSURANCE. SELLER agrees to furnish a standard Purchaser's

Title Insurance Policy with standard printed exceptions, in the sum of \$5,000.00 disclosing merchantable title to said lands as of the date of this contract, except as may be herein otherwise provided. Said title insurance premium shall be paid by PURCHASER.

20. ADDITIONAL COSTS. PURCHASER shall be responsible for any costs associated with PURCHASER'S financing, to include lender's title premiums, inspections, appraisals, and any costs not directly attributed to SELLER herein.

21. PARAGRAPH HEADINGS. The paragraph headings herein are for convenience only and do not define, limit or construe the contents of such paragraphs.

22. COUNTERPARTS. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein "counterparts" shall include full copies of this Agreement signed and delivered by facsimile transmission as well as photocopies of such facsimile transmission.

23. TIME AND BINDING EFFECT. It is mutually agreed that the time of payment shall be an essential part of this contract and that all of the terms and conditions herein contained shall extend to and be obligatory upon the heirs, executors, administrators, personal representatives and assigns of the respective parties hereto.

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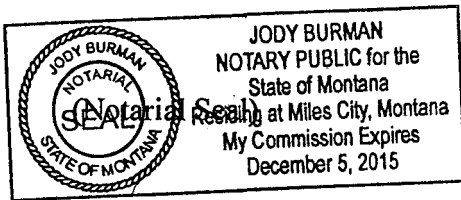




STATE OF MONTANA            )  
  ) ss  
COUNTY OF CUSTER         )

On this 3<sup>rd</sup> day of ~~November~~<sup>December</sup>, 2012 before me, the undersigned, a Notary Public for the State of Montana, personally appeared **BARRIE L. MATTHEWS**, known to me to be the person whose name is subscribed to the within instrument, and to be a Member of BAM, LLC, and acknowledged to me that he executed the same on behalf of BAM, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Jody Burman  
Printed Name of Notary: Jody Burman  
Notary Public for the State of Montana  
Residing at Miles City, Montana  
My Commission Expires: 12-5-2015