

SALE AND PURCHASE AGREEMENT

This Real Estate Sale and Purchase Agreement (this "Agreement") is made this 28th day of APRIL, 2014, by and between **The Estate Of Ernest R Schmitt, Claude Adamson, personal representative** ("the Seller"), and _____
of _____ (the "Buyer").

Recitals

The background of this Agreement is as follows:

A. The Seller is the owner of real property located in Fromberg, Montana, including the real property more particularly described below as the "Property."

B. The Seller is interested in selling the Property to the Buyer, and the Buyer is interested in purchasing the Property from the Seller, pursuant to the following terms and conditions.

Agreement

1. Sale. The Seller shall sell to the Buyer, and the Buyer shall purchase from the Seller, on the terms and conditions contained in this Agreement, all of the Seller's right, title and interest in the following (collectively, the "Property"):

a. The real property legally described as: 116 Woeppler Lane, Fromberg, MT 59029;

Township 5 South, Range 23 East, MPM, Carbon County, Montana, within the Town of Fromberg: Beginning at a point 542.7 feet due South of the quarter corner between Sections 17 and 20, and running thence due South 208.7 feet; thence due North 208.7 feet; thence due West 208.7 feet to the place of beginning. ALSO, a tract of land lying East of the above tract and described as follows: Beginning at a point 542.7 feet due South and 208.7 feet due East to the quarter corner between Sections 17 and 20; thence due South 208.7 feet; thence due East 208.7 feet; thence due North 208.7 feet; thence due West 208.7 feet to the place of beginning. Said tracts also described as Lots 4 and 5 according to a private survey made for W J Swallow by Charles A. Dowar, C.S., April 7, 1899.

b. All improvements (including buildings and other structures), fixtures, systems, facilities, and conduits attached to the Land, and hereditaments and all appurtenances (including rights in streets, alleys, passages and other rights of way) on or adjacent to the Land.

2. Water Rights. To the extent Seller owns any water rights relating to the Property, they will be transferred to Buyer and included in the definition of Property. As used herein, the term "water rights" includes, but is not limited to, all water, including surface or ground water, and

any legal entitlement to water, including statements of claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins, or any ditches, ditch rights or ditch easements, appurtenant to or used in connection with the Property. WATER RIGHT OWNERSHIP UPDATE DISCLOSURE: By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with Mont. Code Ann. § 85-2-424, could result in a penalty against the transferee and rejection of the deed for recording. The parties acknowledge and agree that the Buyer shall pay the fee required to be paid in connection with the transfer of the water rights.

3. Tangible Personal Property. The tangible personal property of the Seller located on the property as of April 28th, 2014, shall be included in the sale.

4. Purchase Price and Term. Buyer agrees to pay to Seller the successful bid price of \$ _____ for the real estate described herein plus a 5% buyer's fee of \$ _____, for a total contract purchase price of \$ _____. At time of signing, Buyer shall pay ten percent (10%) of the contract purchase price or \$ _____, as earnest money to be held in a non-interest bearing trust account of Carbon County Abstract & Title as escrow agent hereunder for delivery to Seller at the time of closing. The balance of the contract purchase price, adjusted by pro-rations and credits, allowed the parties by this Contract, shall be paid to Seller at closing by cash, wire transfer of funds, cashier's check, or other form of payment acceptable to Seller. The Purchase Price, as adjusted as required hereunder, shall be payable to the Seller as follows:

- a. At the time this Agreement is executed by the Buyer, the Buyer shall pay ten percent (10%) of the Purchase Price as earnest money (the "Earnest Money") to be held in a non-interest bearing trust account of Carbon County Abstract & Title of Red Lodge, Montana (the "Closing Agent") for delivery to the Seller at the time of Closing.
- b. The balance of the Purchase Price shall be paid by the Buyer to the Seller at Closing in one of the following ways, as determined by the Buyer:
 - i. The Buyer shall pay to the Seller the balance of the Purchase Price at Closing in cash or its equivalent.

5. Title Insurance. The Buyer acknowledges that it has been provided a commitment from the Closing Agent with respect to the issuance of a standard American Land Title Association (ALTA) Owner's Title Insurance Policy for the Property in the amount of the Purchase Price (the "Title Commitment") as shown on Exhibit A attached hereto and incorporated by this reference. The title insurance shall be subject to any exceptions to coverage outlined on the Title Commitment, and easements and rights-of-way of record or apparent on the Property, applicable building, use, zoning, health, sanitation, environmental and similar laws, restrictions, ordinances, rules, and regulations as well as all waiver or agreements given to or entered into with governmental entities, unpatented mining claims, all prior conveyances, leases or transfers of any

interest in minerals, mineral rights, metals, stone, methane, oil, gas, coal and other hydrocarbons, or easement rights or other matters relating thereto whether expressed or implied, all covenants, conditions, restrictions, agreements, and instruments of record, taxes and assessments for the year 2013 and all subsequent years, discrepancies or conflicts in boundary lines and the like, and zoning and subdivision matters (the "Permitted Exceptions").

6. Conditions to Closing. There are NO conditions to Closing. The Buyer expressly acknowledges that there are no contingencies to Closing. The Buyer is required to close by May 29th, 2014, or the Buyer will forfeit all Earnest Money to the Seller.

7. Representations and Warranties. With the exception of any warranties of title made to the Buyer in the Deed (described below), if any, and this section, the Property is transferred in its **AS-IS, WHERE-IS** condition without any representation or warranty of any kind, whether express or implied, on the part of the Seller. The Buyer represents and warrants to the Seller as follows: (a) the Buyer has the legal capacity, right, power, and authority to enter into this Agreement and consummate the transactions contemplated thereby; (b) this Agreement constitutes the legal, valid and binding obligation of the Buyer, enforceable against it in accordance with its terms; (c) the execution and performance of this Agreement will not conflict with, or result in a breach of, any agreement or order to which the Buyer is subject; and (d) the Buyer expressly represents and warrants that the Buyer has investigated the status of the zoning and subdivision of the Property to the Buyer's satisfaction and has consulted such experts regarding the same as the Buyer deems prudent.

8. Disclaimer of Warranties; Independent Investigation.

- a. The Buyer represents and warrants to Seller that the Buyer has carefully examined and made an independent investigation of the Property, including but not limited to zoning, subdivision statutes, permitted uses, etc., and has entered into this Agreement placing full reliance on such examination and independent investigation. The Buyer represents and warrants that it has had full opportunity to inspect the Property to its satisfaction.
- b. The Buyer understands and agrees that there are no guaranties, representations or warranties, other than those herein expressed, on the part of the Seller. The Buyer specifically acknowledges that the Seller has made no representations or warranties to induce the Buyer into purchasing the Property, including but not limited to any representations and warranties regarding the value, future value, income to be derived therefrom, condition, or any other representation or warranty regarding the character or the condition of the Property. **THE BUYER ACCEPTS THE PROPERTY AND IS PURCHASING THE PROPERTY IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS OR DEFECTS, PATENT, LATENT, OR OTHERWISE, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY ENVIRONMENTAL CONTAMINATION OR DAMAGE WHICH MAY HAVE OCCURRED ON THE PROPERTY. THE BUYER EXPRESSLY ASSUMES ALL RISK OF PROPERTY**

DAMAGE AND/OR LOSS, ENVIRONMENTAL LIABILITY, AND/OR PERSONAL INJURY AND/OR DEATH RELATING TO THE PROPERTY ON OR AFTER CLOSING, REGARDLESS OF WHETHER SUCH PROPERTY DAMAGE AND/OR LOSS OR ENVIRONMENTAL LIABILITY, AND/OR PERSONAL INJURY AND/OR DEATH IS TO THE BUYER, ITS EMPLOYEES, OR ANY THIRD PARTY, AND REGARDLESS OF WHETHER SUCH LOSS, DAMAGE, ENVIRONMENTAL LIABILITY, PERSONAL INJURY, AND/OR DEATH IS RELATED TO THE CONDITION OF THE PROPERTY (PATENT OR LATENT) OR WHETHER SUCH CONDITION AROSE BEFORE OR AFTER THE CLOSING.

- c. The Buyer acknowledges that the Seller makes no warranty or representation as to the zoning or subdivision of the Property.
 - d. Except with respect to any obligations of the Seller under this Agreement, and without in any way limiting the generality of the foregoing, effective as of Closing, the Buyer specifically acknowledges and agrees that the Buyer hereby waives, releases, and forever discharges any claim it has, might have in the future, had, or may have against the Seller and/or the Seller's agents with respect to the condition of the Property, either patent or latent, the actual or potential income or profits derived or to be derived from the Property, the taxes or assessments now or hereafter payable thereon, the compliance with any laws, and any other state of facts that exists with respect to the Property.
 - e. Except with respect to any obligations of the Seller under this Agreement, effective as of Closing, the Buyer does hereby release, and forever discharge the Seller, its employees, representatives, agents, sub-agents, successors, assigns, and attorneys from any and all claims for damages and other causes of action at law or equity for injury, destruction, loss, or damage of any kind or character, to the person or property of the Buyer and the Buyer's employees, agents, and representatives arising out of or in any way relating to any of the foregoing matters referred to in this section.
9. Indemnification. The Buyer agrees to defend, indemnify, and hold harmless the Seller from and against any and all claims, liabilities, obligations, costs, expenses, and reasonable attorney fees (collectively, "Damages") arising out of or related to: (a) any breach or inaccuracy of any representation or warranty of the Buyer made in this Agreement; (b) any failure by the Buyer to perform any covenant required to be performed by it pursuant to this Agreement; (c) any liability or obligation of the Seller to any third party expressly assumed by the Buyer in accordance with the terms of this Agreement, (d) the use or non-use of the Property after Closing, or (e) any liability or obligation related to the Property and accruing after Closing. This provision shall survive Closing.
10. Allocations and Prorations. The Seller and the Buyer agree to the following prorations and allocations of costs:

- a. Title Insurance and Closing Fee. The Seller shall pay all costs of the Title Commitment and the premium for a standard American Land Title Association (ALTA) Owner's Title Insurance Policy for the Property issued by the Closing Agent (the "Title Policy"). The Buyer shall pay any additional premiums required for the issuance of any mortgagee's title policy required by the Buyer and the costs for any special endorsements to the Title Policy including endorsements for zoning (including parking), access, restrictions, utility, comprehensive, survey, tax parcel, contiguity, subdivision and location, if any. The Seller and the Buyer will each pay one-half of any reasonable and customary closing fee, escrow fee, or charge imposed by the Closing Agent.
- b. Recording Costs. The Buyer shall pay the cost of recording the Deed and all other documents.
- c. Real Estate Taxes and Special Assessments. The Buyer and the Seller shall prorate all real property taxes, levies, and assessments as of the Closing. Upon Closing, the Buyer shall pay and discharge in a timely manner all taxes, assessments, common area maintenance fees, expenses, costs, liens, or encumbrances now or hereinafter affecting any part of the Property; until the Purchase Price is paid in full, the Buyer shall annually furnish to the Seller evidence satisfactory to the Seller of payment of the taxes and assessments, contemporaneously with their payment, and shall authorize the appropriate governmental official to deliver to the Seller at any time a written statement of the taxes and assessments against the Property.
11. Closing.
- a. Closing Date. The consummation and closing of this Agreement (the "Closing") shall occur on or before May 29, 2014, at the offices of the Closing Agent.
- b. Seller's Closing Performances. At the Closing, the Seller shall execute, acknowledge and deliver or deliver, as the case may be, the following to the Buyer.
- i. A Warranty Deed conveying the Property, free and clear of all liens and encumbrances, except the Permitted Exceptions.
 - ii. The Title Policy.
 - iii. Any other documents and instruments necessary to complete the Closing in accordance with this Agreement.
- c. Buyer's Closing Performances. At the Closing, the Buyer shall execute, acknowledge and deliver or deliver, as the case may be, the following to the Seller.
- i. The Purchase Price.

- ii. Any other documents and instruments necessary to complete the Closing in accordance with this Agreement.
12. Possession and Risk of Loss. Possession and the risk of any loss or damage to the Property shall remain with the Seller until the Closing, unless otherwise specified herein.
13. Drafting Costs. Each party shall be solely responsible for payment of their respective attorney's fees incurred in drafting the sale documents.
14. Termination. Upon termination of this Agreement for any reason permitted hereunder, the Earnest Money, together with interest accrued, shall be forfeited and shall stay with the Seller. This Agreement may be terminated as follows.
- a. Mutual Agreement. By the mutual agreement of the parties in writing;
 - b. Failure of Condition Precedent. By either party if any condition precedent to the terminating party's obligation to perform this Agreement is not satisfied and such condition is not waived (or deemed waived) by the terminating party at or prior to Closing, in which case the terminating party shall give written notice of such termination to the other party;
 - c. Breach of Agreement. By either party if the other party refuses, neglects or otherwise fails to perform in material breach of this Agreement, in which case the non-breaching party shall provide written notice of such termination to the breaching party; or
 - d. Permitted Termination. By any other method expressly permitted under this Agreement.
15. Default and Remedies. Except as otherwise provided within this Agreement, the rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights and remedies provided by law. Accordingly, either party may pursue all rights and remedies at law or in equity under Montana law, including the remedy of specific performance; provided, however, that in no event shall any party be liable for any punitive, consequential, special, or exemplary damages.
16. Casualty and Condemnation. If prior to the Closing, all or any part of the Property is condemned, damaged or destroyed, Buyer shall have the option of either (a) terminating this Agreement by delivering written notice of termination pursuant to this section to Seller within ten (10) days of the date Seller notifies Buyer in writing of such condemnation, damage or destruction, or (b) proceeding to Closing and applying the condemnation award or proceeds of any insurance policies to reduce the total consideration provided herein. In the event Buyer elects to proceed to closing and any such award or proceeds has not been paid to Seller by closing, Seller shall, at closing, assign to Buyer all of Seller's rights to awards or insurance proceeds relating thereto.

17. Detectors. The Property ____ is X is not equipped with one or more smoke detectors. The Property ____ is X is not equipped with one or more carbon monoxide detectors.

18. Radon Disclosure Statement. The following disclosure is given pursuant to the Montana Radon Control Act, Montana Code Annotate Section 75-3-606 RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIMES. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT.

19. Megan's Law Disclosure. Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their addresses with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the information concerning registered offenders available to the public. If the Buyer desires further information, the Buyer should contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers assigned to the area.

20. Noxious Weed Disclosure. The Buyer is aware that some properties contain noxious weeds. The laws of the State of Montana, Title 7, Chapter 22, Section 2116 of the Montana Code Annotated, require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and the obligations of an owner of property, the Buyer should contact either the local County extension agent or Weed Control Bureau.

21. Mold Disclosure. Pursuant to the provisions of Title 70, Chapter 16, Section 703 of the Montana Code Annotated, the following disclosure is provided. There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to the mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any

subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease.

22. Miscellaneous.

- a. Assignment. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party which shall not be unreasonably withheld.
- b. Binding Effect. Subject to the preceding provision regarding assignment, this Agreement is binding upon, and shall inure to the benefit of, the heirs, personal representatives, successors, and assigns of each of the parties hereto.
- c. Notices. Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when hand-delivered or sent by certified or registered mail if sent to the respective address of each party as set forth above. The address of a party to which notices or other communications must be mailed may be changed from time to time by giving notice to the other parties in accordance with this section. Notice served by mail shall be deemed complete when deposited in the United States mail, postage prepaid. The addresses of the parties for these purposes and for all purposes hereunder are as set forth above.
- d. Waiver. Except as otherwise expressly set forth herein, a party's failure require strict performance of any provision of this Agreement, or the waiver of any breach of any provision, shall not be construed as thereafter waiving any such provision, but such provision shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. Time is of the essence in this Agreement and all clauses herein.
- e. Amendment; Entire Agreement. No amendment to this Agreement shall be effective unless in writing and signed by all parties hereto. This Agreement, together with any exhibits, schedules or other instruments attached (or to be attached) constitutes the entire agreement of the parties pertaining to the subject matter of this Agreement, and supersedes any other written or oral agreements between the parties in respect thereto.
- f. Real Estate Broker. Each party shall indemnify and hold harmless the other against any claim of commission by any broker or agent which claim is founded upon an alleged agency relationship with the indemnifying party.
- g. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and disbursements in addition to any other relief to which such party may be entitled, including fees, costs, and disbursements at trial and on appeal.

- h. Further Assurances. Each party covenants that at any time, and from time to time after the Closing, it will execute such additional instruments and take such actions as may be reasonably requested by the other party to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.
- i. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana. The parties consent to jurisdiction of any federal or state court located within Yellowstone County, State of Montana having proper venue and also consent to service of process by any means authorized by Montana or federal law. The place of performance shall be deemed to be the State of Montana.
- j. Invalidity. The invalidity of any provision of this Agreement will not and shall not be deemed to affect the validity or enforcement of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- k. Counterparts; Facsimile. A copy of this Agreement may be executed by each party separately, and when each has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the parties. Signature pages may be detached from counterparts and attached to a single original of this Agreement to physically form one document. A signature to this Agreement or a counterpart may be delivered by facsimile and any such facsimile signature shall be deemed an original signature hereto.
- l. Construction. This Agreement and the documents to be executed pursuant to this Agreement are the result of negotiations between the parties. Accordingly, neither party shall be deemed to be the author of this Agreement nor the resulting documents, and there shall be no presumption that this Agreement or any of such documents are to be construed for or against any such party on the basis of the authorship of the documents. Words importing the singular number only shall include the plural and vice-versa, and words importing gender shall include all genders. Use of the word “including” shall mean “including without limitation”.
- m. Headings. The headings of articles, sections, paragraphs, subsections, and subparagraphs in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.
- n. Authority. Each individual executing this agreement on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this agreement constitutes a legally binding obligation of the corporation or other entity that the individual represents.

- o. Recitals and Attachments. The recitals to this Agreement and all exhibits, schedules, and other instruments attached to this Agreement, if any, are incorporated into and made an integral part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date set forth above.

The Buyer:

X _____

X _____

Dated _____

The Seller:

THE ESTATE OF ERNEST R SCHMITT, CLAUDE ADAMSON, personal representative

X _____

Dated _____

Sample

EXHIBIT A
Title Commitment

To be attached

Sample