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Attorneys for Debtors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

IN RE: JEFFREY W. BERGER and TAMI M. BERGER, Debtors.	Case No. 18-60032-11 MOTION TO SELL FREE AND CLEAR OF LIENS
------------------------------------------------------------------------	-------------------------------------------------------------------------------

JEFFREY W. BERGER and TAMI M. BERGER, Debtors and Debtor-in-Possession above-named (“Debtors”), by and through counsel, James A. Patten, move this Court, pursuant to 11 U.S.C. §363(f), to sell real and property in Wibaux County, Montana, free and clear of liens. In support hereof, the Debtors state as follows:

1. The Debtors are voluntary Chapter 11 Debtors. This case was commenced on January 16, 2018. No committee has been appointed in this case pursuant to 11 U.S.C. § 1102. The Debtors are Debtors-in-Possession pursuant to 11 U.S.C. § 1107.

2. At the time this case was commenced, the Debtors had received but had not executed a Buy/Sell Agreement, a copy of which is attached hereto marked as Exhibit A, to sell real property described as: Township 18 North, Range 58 East, M.P.M. – Section 24 (all);

Township 18 North, Range 59 East, M.P.M.- Sections 10 (all), 15 (all), 19 (all), 20 (all), 21 (all), 28 – South ½, 29 (all), 30 (fractional – 618 acres), 32 (all), and 33 (all) for a total of 6700 acres more or less; State of Montana leases numbers 1023, 7938, 7939, and 2294 are also being assigned (the “Property”). The sale also includes personal property consisting of 26 bale feeders, 8 feed bunks, and 100 bales of straw (the “Personal Property”).

3. The purchasers under the sale is Derik J. Pierce and Tina M. Pierce. The purchase price is \$5,000,000.

4. The Purchasers are not related to or affiliated with the Debtors.

5. The Bank of Colorado holds the only liens on the Property other than property taxes due, and accrued but not due, owing to Wibaux County, Montana. The Bank of Colorado holds a perfected, and the only, lien on the Personal Property.

6. The lien holders on the Property are (i) past due property taxes totaling \$7938 due to the Wibaux County, Montana treasurer; (ii) accrued but not yet due property tax due to the Wibaux County, Montana treasurer, estimated to total \$3300, and (iii) Bank of Colorado, whose claim is currently scheduled at \$24,215,775 pursuant to promissory notes originally (x) dated December 30, 2013 as modified by a Change in Terms Agreement dated March 30, 2016 and as further modified by a Change in Terms Agreement dated August 24, 2016, and/or (y) a promissory note originally dated October 2, 2015, and/or (z) a promissory note dated November 25, 2015, all of which are secured by the mortgages securing the Property and security interests which secure the Personal Property, and all of which contain cross- collateralization clauses such that the Property and Personal Property are collateral for all of the Debtors’ indebtedness to the Bank of Colorado. The Debtors contend the remaining collateral held by the Bank of Colorado has a value of \$48,664,550.

7. The Debtors contend the bale feeders and feed bunks and straw have a value of \$10,000.00.

8. The Bank of Colorado does not have a lien on Section 30 of the Property.

9. The Debtors entered into a listing contract with Bill Bahny and Bill Bahny and Associates, pre-petition. The Debtors have filed an application to approve their employment of Bill Bahny and Bill Bahny and Associates [Doc. # 30].

10. It is in the best interest of the creditors of this case that the Court approve the sale as described herein. The property being sold is not necessary for the Debtors' ongoing business operations.

11. The Debtor projects the proceeds of sale to be paid as follows:

Gross sales proceeds:	\$5,000,000
Less estimated commissions (6.0%):	-\$300,000
Less past due property tax	-\$7,938
Less accrued but not due and prorated property taxes (est.):	-\$3,300
Less Estimated closing costs (est.):	<u>-\$ 10,400</u>
Net sale proceeds	\$4,678,362

12. The Debtors propose to prorate the net sales proceeds between themselves and the Bank of Colorado as follows:

a. Bank of Colorado: \$4,243,672; and

b. Debtors: \$434,690.

13. A sale under §363(f) is appropriate because the price to be paid reflects the fair market value of the property. The sale is permitted under §363(f) because (i) the lienholders will be paid in full, with respect to any property taxes due to Wibaux County, or (ii) the lienholder consents to the sale with respect to the Bank of Colorado.

14. The Debtors contend that after sale, the Bank of Colorado will continue to have perfected liens on real estate and personal property collateral valued in excess of \$48,000,000.00.

15. As described above, the estimated net sales proceeds to be paid the Bank of Colorado based upon the proration above, is \$4,243,672. The proration is based on estimated costs of closing and property taxes; in the event these estimates are not correct, the sales proceeds at closing to the Bank of Colorado under the above allocation shall not be less than \$4,240,000 nor the distribution to the Debtors be more than \$434,690, without further order of the Court.

WHEREFORE the foregoing reasons, the Debtors, JEFFREY W. BERGER and TAMI M. BERGER, respectfully move this Court, pursuant to 11 U.S.C. §363(f) to sell the Property free and clear of liens to Derik J. Pierce and Tina M. Pierce for the sum of \$5,000,000 and direct that the sale proceeds be used to satisfy (i) costs of closing, (ii) property taxes, (iii) real estate commission owed to Bill Bahny and Bill Bahny and Associates as approved by the Court, (iv) \$434,690 paid to the Debtors, and (v) the remainder, at least \$4,240,000, paid to the Bank of Colorado.

DATED this 30th day of January, 2018.

PATTEN, PETERMAN, BEKKEDAHL & GREEN, PLLC
2817 2nd Avenue North, Suite 300
P.O. Box 1239
Billings, MT 59103-1239

By: /s/ JA Patten
James A. Patten,
Attorney for Debtors

NOTICE OF OPPORTUNITY TO RESPOND AND REQUEST A HEARING

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the notice. The responding party shall schedule the hearing on the application at least 21 days after the date of the response and request for hearing and shall include in the caption of the responsive pleading, the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no response and request for hearing are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 30th day of January, 2018.

PATTEN, PETERMAN, BEKKEDAHL & GREEN, PLLC
2817 2nd Avenue North, Suite 300
P.O. Box 1239
Billings, MT 59103-1239

By: /s/JA Patten

James A. Patten
Attorney for Debtors

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify, under penalty of perjury, that on the 30th day January, 2018, a copy of the foregoing was served by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court's ECF transmission facilities and/or by mail on the following parties:

See attached Mailing Matrix

*The attached list will not be mailed out to creditors but will be on file with the United States Bankruptcy Court. A copy will be provided upon Request.

By: /s/JA Patten
For Patten, Peterman, Bekkedahl & Green, PLLC



BUY-SELL AGREEMENT (Farm & Ranch)
(Including Earnest Money Receipt)

1 This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally
2 binding contract, if not understood seek, competent advice.

3 Date: 01/12/2018

4 Derik J. Pierce And Tina M. Pierce

5 as joint tenants with rights of a survivorship tenants in common single in his/her own right,

6 other _____ (hereinafter called "Buyer") agrees to purchase, and the

7 Seller agrees to sell the following described real property (hereinafter referred to as "Property") commonly known

8 as Big Valley Ranch

9 located in Wibaux County, Montana, legally described as: _____

10 See attached, subject to title insurance policy.

11 6,700+/- deeded acres and 1,760+/- acres of State of Montana leases.

12 _____

13 _____

14 **INCLUSIONS/EXCEPTIONS:** For the purchase price stated herein, the Property, identified above, also includes the

15 following: State of Montana leases

16 _____

17 _____

18 **APPURTENANCES:** All interests of Seller in easements, appurtenances and improvements to the Property are included

19 with the Property, except: No exceptions

20 _____

21 _____

22 **FIXTURES:** All existing permanently installed fixtures are included with the Property and transfer to the Buyer. Certain

23 fixtures and fittings are included in the purchase price and transfer to the Buyer regardless of whether they are in fact

24 permanently installed and attached to the Property. These fixtures and fittings are, electrical, plumbing and heating

25 fixtures, wood, pellet, or gas stoves, built-in appliances, screens, storm doors, storm windows, curtain rods and

26 hardware, window treatments, attached floor coverings, television antennas, satellite dish, hot tub, air cooler or

27 conditioner, garage door openers and controls, fireplace inserts, mailbox, storage sheds, trees and shrubs and

28 perennials attached to the Property, and attached buildings or structures unless otherwise excluded below:

29 No exclusions

30 _____

31 _____

32 **LEASES/USE PERMITS:** The leases, use permits and allotments as checked below are included with the Property:

33 Montana lease number(s) TBD 1,760+/- acres in 4 separate leases per broker

34 Forest Permit number(s) _____

35 B.L.M. Allotment number(s) _____

36 Private _____

37 Other _____

38 _____

39 **CULTIVATED LANDS:** All crops in the ground (annuals and perennials), and standing timber, are included with the

40 Property, except: No exceptions

41 _____

42 _____

43 _____

44 **MINERAL RIGHTS:** All mineral rights appurtenant to the Property and owned by the Seller are included with the

45 Property, except: No exceptions

46 _____

47 _____

48 _____

49 **GOVERNMENT PROGRAMS:** All transferrable government program benefits/obligations as checked below are

50 included with the Property:

51 Conservation Reserve Program (CRP) _____

52 Agricultural Risk Loss (ARC) _____

53 Price Loss Coverage Program (PLC) _____

54 Environmental Quality Incentives Program (EQIP) _____

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55 Crop Insurance
 56 Other Any assignable government programs in place.
 57 _____
 58 _____
 59 _____

60 **PERSONAL PROPERTY:** The following personal property is also included with the Property:
 61 Household appliances, propane tanks, cattle guards, pumps, well
 62 controls, water tanks, fuel storage tanks, solar well kits, Oil burning
 63 stoves, wood stoves.
 64 _____
 65 _____
 66 _____

67 **OTHER:** Any other property, not referenced above, but included with the Property is described as follows:
 68 _____
 69 _____
 70 _____
 71 _____
 72 _____
 73 _____

74 **LEASED/RENTED PERSONAL PROPERTY:** The following personal property is leased/rented: water softener
 75 water conditioner propane tank satellite dish satellite control alarm system other _____
 76 _____

77 Buyer is responsible for making arrangements concerning Buyer's right to lease/rent said items and Seller makes no
 78 representations or warranties concerning the transferability of said items or the assignment of any agreements relating
 79 to the lease/rental of said items.
 80 _____

81 **PURCHASE PRICE AND TERMS:**

82 \$ 5,000,000.00 Purchase Price: Five Million (U.S. Dollars)

83 \$ 50,000.00 Earnest Money (credited to Buyer at closing)

84 \$ 4,950,000.00 Balance Due (not including closing costs, prepaids and prorations) payable as follows

85 (check one):

86 All cash at closing (no financing contingency); OR

87 Additional cash down payment at closing in the minimum amount of:

88 \$ 2,200,000.00 OR _____ % of the Purchase Price.

89 Balance to be financed as indicated below:

90 Conventional Seller Financing Other Institutional Financing Assumption

91 Other _____

92 **Commercial lender.**

93 **Cash proceeds are contingent on the sale of the buyers existing property**
 94 **and the completion of an IRC 1031 exchange.**
 95 _____

96 **See additional provisions for complete purchase terms.**
 97 _____
 98 _____

99 **ALLOCATION OF PURCHASE PRICE:** The total purchase price shall be allocated as set forth on the attached
 100 addendum or as follows:

Item	Allocation
Real Estate	\$ _____
Buildings	\$ _____
Fencing	\$ _____
Personal Property (Equipment)	\$ _____
Personal Property (Vehicles)	\$ _____
Personal Property (Other: _____)	\$ _____
Leases/Permits/Allotments	\$ _____
Other: _____	\$ _____
Other: _____	\$ _____
Total Purchase Price	\$ _____

101 _____
 102 _____
 103 _____
 104 _____
 105 _____
 106 _____
 107 _____
 108 _____
 109 _____
 110 _____
 111 _____

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112 **CLOSING DATE:** The date of closing shall be (date) 60 days from acceptance (the "Closing Date"). The
113 parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date
114 specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete the
115 purchase in accordance with this Agreement. If third party financing is required by the terms of this Agreement
116 (including assumptions, contracts for deed, and lender financing), the Closing Date may be extended without
117 amendment by not more than 30 days to accommodate delays attributable solely to such third party financing.

118
119 **POSSESSION DATE:** Seller shall deliver to Buyer possession of the Property and allow occupancy:
120 when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR
121 on the date of recording the deed, notice of purchaser's interest, OR
122 upon the effective date of transfer the following lease(s): _____; OR
123 other _____

124
125 Property shall be vacant unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all
126 locks, mailboxes, security systems, alarms and garage door opener(s), as applicable. If Seller, after closing fails to
127 deliver possession on the date herein specified, Seller shall be subject to eviction and shall be additionally liable to
128 Buyer for payment of \$ _____ per day from the date of agreed possession until possession is
129 delivered, together with all of Buyer's costs and attorney fees incurred in Buyer's efforts to obtain possession.

130
131 **PAYMENT/RECEIPT OF EARNEST MONEY:** Buyer agrees to provide Earnest Money in the amount of _____
132 Fifty Thousand U.S. Dollars (\$ 50,000.00) as evidenced by Cash; OR Check,
133 the receipt of which is acknowledged by the undersigned Broker/Salesperson; OR, _____
134 _____

135
136 Montgomery Lesh (406) 853-1523 _____
137 (Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson) Montgomery Lesh
138 **To be signed only if in actual receipt of cash or check**
139

140 If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall
141 be entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be
142 forfeited.

143
144 **DEPOSIT OF EARNEST MONEY:** All parties to this transaction agree, unless otherwise provided herein, that the
145 earnest monies will be deposited or delivered by the Broker/Salesperson listed above within (7) business
146 days of the date all parties have signed the Agreement or _____
147 and such funds will be held in a trust account by Prairie County Abstract.

148
149 The parties agree that interest accruing on earnest money, if any, while deposited shall be payable to the holder of the
150 earnest money unless otherwise agreed herein. If interest is payable to the holder of the earnest money it is agreed
151 that sums so paid are consideration for services rendered.

152
153 The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any
154 portion of the earnest money required to complete the closing of the transaction.

155
156 **FINANCING CONDITIONS AND OBLIGATIONS:**
157 **BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that they have sufficient funds for the down
158 payment and closing costs to close this sale in accordance with this Agreement and are not relying upon
159 any contingent source of such funds unless otherwise expressly set forth herein.

160 **LOAN APPLICATION:** If Buyer fails to make written application for financing and pay to the lender any
161 required fees, apply for assumption of an existing loan or contract, or initiate any action required for
162 completion of a seller financing by 5:00 P.M. (Mountain Time) (date) has applied Buyer will
163 be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.

164
165 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, special improvement
166 assessments for the current tax year, as well as prepaid rents and permit fees, government program entitlements and
170 obligations, water and sewer charges, irrigation assessments, common maintenance fees, as of the date of closing,
171 unless otherwise agreed as set forth in the additional provisions.

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172 **HEATING FUEL/PROPANE PRORATION:** Seller and Buyer agree to prorate the heating fuel/propane at the current
173 market price as provided by a heating fuel/propane company within 7 days of closing, OR at the price charged for the
174 last refill per a receipt to be provided by the seller prior to closing, whichever is LESS.

175
176 If the heating fuel/propane tank is rented, proration will be based on the most current rental fee charged or owing at the
177 time of closing.

178
179 **PROPERTY INSPECTIONS:** The Buyer is aware that any Brokerage Firm(s) and Salespersons involved in the
180 transaction anticipated by this Agreement have not conducted an expert inspection or analysis of the Property or its
181 condition and make no representations to the Buyer as to its condition, do not assure that the Property will be
182 satisfactory to the Buyer in all respects, that all equipment will operate properly or that the Property and/or
183 improvements comply with the current building and zoning codes and ARE NOT building inspectors, building
184 contractors, structural engineers, electricians, plumbers, sanitarians, septic or cesspool experts, well drillers or well
185 experts, water rights experts, land surveyors, civil engineers, flood plain or water drainage experts, roofing contractors
186 or roofing experts, accountants, attorneys, title examiners or experts in identifying hazardous waste and/or toxic
187 materials.

188
189 **CONTINGENCIES:** The contingencies set forth in this Agreement or on attached addenda shall be deemed to have
190 been released, waived, or satisfied, and the Agreement shall continue to closing, unless by 5:00 p.m. (Mountain Time)
191 on the date specified for each contingency, the party requesting that contingency has notified the other party or the
192 other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party has
193 notified the other party on or before the release date that a contingency is not released, waived or satisfied, this
194 Agreement is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other
195 terms or provisions.

196
197 **FINANCING CONTINGENCY:**

198 This Agreement is contingent upon Buyer obtaining the financing specified in the section of this Agreement
199 entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Closing Date this
200 Agreement is terminated and the earnest money will be refunded to the Buyer; OR

201
202 This Agreement is contingent upon the Buyer obtaining financing specified in the section of this Agreement
203 entitled "PURCHASE PRICE AND TERMS." Release Date: _____

204
205 **APPRAISAL CONTINGENCY:**

206 Property must appraise for at least the Purchase Price OR at least \$ _____ . If the
207 Property does not appraise for at least the specified amount, this Agreement is terminated and earnest
208 money refunded to the Buyer unless of Buyer's election to proceed shall be given to Seller or Seller's
209 Broker/Salesperson within 5 days of Buyer or Buyer's Broker/Salesperson receiving notice of
210 appraised value; OR

211 This agreement is contingent upon the Property appraising for at least the Purchase Price OR at least
212 \$ _____ . Release Date: _____

213
214 **TITLE CONTINGENCY:** This Agreement is contingent upon Buyer's receipt and approval (to Buyer's
215 satisfaction) of the preliminary title commitment (the "Commitment") issued for the Property. Release Date:
216 7 business days from Buyer's or Buyer Broker's/Salesperson's receipt of the Commitment.

217
218 Buyer may approve the Commitment subject to the removal of specified exceptions. However, Buyer may not
219 object to the standard pre-printed exceptions (general exceptions not unique to the Property). If Buyer provides
220 Seller written objections to the Commitment prior to the release date above, Seller shall have ten (10) days
221 from receipt of those objections to satisfy said objections or propose to Buyer a plan by which the objections
222 would be satisfied within a time frame satisfactory to Buyer. If within said ten (10) day period Seller has not
223 either satisfied Buyer's objection to the Commitment or proposed to Buyer a plan by which the objections would
224 be satisfied, Buyer shall have three (3) days after expiration of said ten (10) day period to notify Seller whether
225 Buyer desires to (i) terminate this Agreement in which case the earnest money shall be returned to the Buyer or
226 (ii) waive said objections in which case this Agreement shall remain in full force and effect. The two remedies
227 stated above shall be Buyer's sole remedies if Seller and Buyer are unable to resolve Buyer's objections to the
228 Commitment.


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Seller's Initials

229 **BUYER'S INSPECTION CONTINGENCY:** This offer is contingent upon Buyer's personal inspection of the
230 Property. Release Date: na

231
232 **PROFESSIONAL INSPECTION CONTINGENCY:** This offer is contingent upon Buyer's professional,
233 independent investigation of all conditions relating to the Property, including but not limited to the following:
234 covenants, zoning, access, easements, conservation easements, water rights, leases, permits, allotments,
235 government programs affecting the Property, mineral rights, well depths, septic and sanitation restrictions,
236 surveys or other means of establishing the corners and boundaries, special improvement districts, restrictions
237 affecting use, special building requirements, future assessments, utility hook up and installation costs,
238 environmental hazards, airport affected area, road maintenance obligations or anything else Buyer deems
239 appropriate. In carrying out the independent investigations desired, Buyer may acquire, in Buyer's sole
240 discretion and at Buyer's sole expense, independent inspections or advice from qualified inspectors or
241 professional advisors of the Buyer's choice. Release Date: 20 days after acceptance

242
243 **LEAD BASED PAINT CONTINGENCY:** For housing built prior to 1978, if Seller is required by applicable law
244 to provide a Lead Based Paint Disclosure and pamphlet entitled "Protect Your Family from Lead in Your Home"
245 (the LBP Documents), and if said LBP Documents have been provided to Buyer **after** the full execution of this
246 Agreement by all parties, Buyer shall have the unconditional right to cancel this Agreement (without risk of loss
247 or other adverse effects) within three (3) days after electronic or hand delivery of the LBP Documents, or five
248 (5) days after deposit of the LBP Documents in the mail, by giving written notice of cancellation to Seller or
249 Seller's Broker/Salesperson.

250
251 **OTHER CONTINGENCIES:**
252 This offer is contingent upon Buyers sale and close of their existing ranch and the completion of
253 an IRC 1031 tax free exchange for subject property. Release Date: closing
254 This offer is contingent upon _____ Release Date: _____
255 _____ Release Date: _____
256 This offer is contingent upon _____ Release Date: _____
257 _____ Release Date: _____
258

259 **ADDITIONAL PROVISIONS:**
260 **All terms and conditions of this buy/sell agreement will survive the**
261 **closing.**

262
263 **Acceptance of this agreement is contingent on the approval of the**
264 **~~sellers lender.~~ COURT.**

COURT.
[Handwritten initials]

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272
273 **CONVEYANCE:** The Seller shall convey the real property by warranty deed,
274 free of all liens and encumbrances except those described in the preliminary title commitment, as approved by the
275 Buyer. Seller shall convey any personal property by bill of sale. Seller shall convey any interests in leases, permits,
276 allotments, governmental programs or other Property by appropriate assignment and transfer documents for the
277 interest being conveyed.

278
279 **WATER:** All water, including surface water or ground water, any legal entitlement to water, including statements of
280 claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches,
281 ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the
282 Property, except: No exceptions

283
284 Filing or transfer fees will be paid by Seller, Buyer, split equally between Buyer and Seller.
285 Documents for transfer will be prepared by Closing agent

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Buyer's Initials

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[Handwritten initials]
Seller's Initials

286 **WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:** By Montana law, failure of the parties at closing or transfer
287 of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for
288 updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in
289 the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424,
290 MCA, could result in a penalty against the transferee and rejection of the deed for recording.

291
292 **MINERAL RIGHTS:** "Mineral rights" is a term used to describe the rights the owner of those rights has to use, mine,
293 and/or produce any or all of the minerals and hydrocarbons including oil, gas, coal, sand, gravel, etc. lying below the
294 property. In some cases, these mineral rights have been transferred to a party other than the property owner and as a
295 result the subsurface mineral rights have been severed from the property owner's surface rights. If the mineral rights
296 have been severed from the surface rights, the owner of the mineral rights has the right to enter the land and occupy it
297 in order to surface of property. These mineral rights may be separate from the rights a property owner has for the
298 surface of a mine the minerals even though they don't own the property. The undersigned Buyer acknowledges and
299 agrees that neither the Seller nor the brokerage firms, brokers and salespersons involved in the transaction anticipated
300 by this Agreement warrant or make any representations concerning the mineral rights, if any, for this Property and that
301 neither the Seller nor the brokerage firms, brokers and salespersons involved in the Buyer's purchase of the Property
302 have conducted an inspection or analysis of the mineral rights to and for the Property.

303
304 **CLOSING AGENT'S FEES:** Closing fee will be paid by Seller Buyer shared equally. The parties agree that the
305 closing agent shall be: Prairie County Abstract or as requested.

306
307 **TITLE INSURANCE:** Seller, at Seller's expense, and from a title insurance company chosen by Seller, shall furnish
308 Buyer with an American Land Title Association, (ALTA) Standard Coverage Owners Title Insurance Policy (as
309 evidenced by a standard form title insurance commitment) in an amount equal to the purchase price. Buyer may
310 purchase additional owner's title insurance coverage in the form of "Extended Coverage", "Enhanced Coverage"
311 and/or "Mineral Guarantee" for an additional cost to the Buyer. It is recommended that Buyer obtain details from a title
312 company.

313
314 **CONDITION OF TITLE:** All mortgages, judgments, and liens shall be paid or satisfied by the Seller at or prior to
315 closing, unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements,
316 conservation easements, or other adverse title conditions will be placed against the title to the Property subsequent to
317 the effective date of the preliminary title commitment approved by the Buyer, unless otherwise provided herein.

318
319 **SECTION 1031 LIKE-KIND EXCHANGE:** If either Buyer or Seller intends for this transaction to be part of a Section
320 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange provided the
321 cooperating party does not incur any additional liability or cost in doing so. Any party who intends for this transaction to
322 be part of a Section 1031 like-kind exchange may assign their rights under this Agreement to a qualified intermediary
323 or any entity expressly created for the purposes of completing a Section 1031 like-kind exchange, notwithstanding the
324 prohibition against the Buyer's assignment of this Agreement set forth in the "Binding Effect and Non-Assignability"
325 section below.

326
327 **SPECIAL IMPROVEMENT DISTRICTS:** All special improvement districts, including rural special improvement districts
328 and those that have been noticed to Seller by the city/county but not yet spread or assessed, will be:

329 paid off by Seller at closing;
330 assumed by Buyer at closing; OR
331 other: None know to exist

332 All perpetual SIDS shall be assumed by Buyer.

333
334 **ASSOCIATION SPECIAL ASSESSMENTS:** Any special or non-recurring assessments of any non-governmental
335 association, including those that have been approved but not yet billed or assessed, will be:

336 paid off by Seller at closing;
337 assumed by Buyer at closing; OR
338 None known to exist

DP, TP
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[Signature]
Seller's Initials

339 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear
340 excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property.
341 Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through inspection of
342 said Property prior to closing to insure that all appurtenances and personal property included in the sale remain on the
343 Property.

344

345 **NOXIOUS WEED DISCLOSURE:** Buyers of property in the State of Montana should be aware that some properties
346 contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to
347 the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an
348 owner of property, contact either your local County extension agent or Weed Control Board.

349

350 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code
351 Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of
352 Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the
353 information concerning registered offenders available to the public. If you desire further information, please contact the
354 local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and/or the probation officers
355 assigned to the area. If Broker/Salesperson has any actual knowledge of sexual or violent offender registration
356 information that pertains to the Property, such knowledge is as follows: _____

357

358

359 **RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control Act,
360 Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE
361 GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT
362 HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED
363 FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION
364 REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC
365 HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test results concurrent
366 with an executed copy of this Agreement. If the Property has received radon mitigation treatment, the Seller will
367 provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.

368

369 **DETECTION DEVICES:** The Property is equipped with the following detection devices:

370

Smoke Detector(s)

371

Carbon monoxide detector(s)

372

Other fire detection device(s): _____

373

Unknown

374

375 **BUYER'S REMEDIES:**

376 (A) If a Seller fails to accept the offer contained in this Agreement within the time period provided in the BUYER'S
377 COMMITMENT section, all earnest monies shall be returned to the Buyer.

378 (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction
379 anticipated by this Agreement within the time period provided in this Agreement, the Buyer may:

380

(1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of
381 such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; **OR**

382

(2) Demand that Seller specifically perform Seller's obligation under this Agreement; **OR**

383

(3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.

384

385 **SELLER'S REMEDIES:**

386 If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the
387 transaction anticipated by this Agreement within the time period provided in this Agreement, the Seller may:

388

(1) Declare the earnest money paid by Buyer be forfeited; **OR**

389

(2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; **OR**

390

(3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.

391

392 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this
393 Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and
394 legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation,
395 partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such
396 entity.

DP TP
Buyer's Initials

Page 7 of 10
Seller's Initials

397 **FOREIGN PERSON OR ENTITY:** Section 1445 of the Internal Revenue Code provides for the withholding of tax upon
398 the sale of U.S. real property owned by a foreign entity or foreign person unless the amount realized (usually the sales
399 price) does not exceed \$300,000 and the Buyer intends to use the property as a residence. If the Seller is a foreign
400 entity or foreign person, Seller acknowledges and agrees that the Buyer or closing agent is required to deduct and
401 withhold the applicable tax from the proceeds of sale at closing and submit the tax to the Internal Revenue Service
402 unless the transfer of the property satisfies an exception provided for in Section 1445 of the Internal Revenue Code.
403

404 **AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT:** The Agricultural Foreign Investment Disclosure Act
405 of 1978 (AFIDA) requires any foreign person who acquires or transfers any interest, other than a security interest, in
406 agricultural land to submit a report to the Secretary of Agriculture not later than 90 days after the date of the acquisition
407 or transfer. If Buyer or Seller is or may be considered a foreign person under the AFIDA they are advised to consult
408 with an appropriate professional concerning any reporting that may be required by the AFIDA.
409

410 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by
411 Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this
412 Agreement, of any and all information reasonably necessary to consummate the transaction anticipated by this
413 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar
414 documents concerning this Property or underlying obligations pertaining thereto. The Seller further authorizes Buyer,
415 Brokers and Salespersons to obtain any information necessary for the sale of this Property from County, State or
416 Federal Agencies.
417

418 **RISK OF LOSS:** All loss or damage to any of the above-described Property or personal property to any cause is
419 assumed by Seller through the time of closing unless otherwise specified.
420

421 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.
422

423 **BINDING EFFECT AND NON-ASSIGNABILITY:** The Agreement is binding upon the heirs, successors and assigns of
424 each of the parties hereto. However, Buyer's rights under this Agreement are not assignable without the Seller's
425 express written consent.
426


427 **ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the
428 prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall
429 determine just.
430

431 **COMMISSION:** The Seller's and/or Buyer's commitment to pay a commission in connection with the transaction
432 anticipated by this Agreement is an integral part of this Agreement.
433

434 **FAX/COUNTERPARTS/ELECTRONIC SIGNATURES:** This Agreement may be executed in counterparts and, when all
435 counterpart documents are executed, the counterparts shall constitute a single binding instrument. Moreover, a
436 signature transmitted by fax or other electronic means will be enforceable against any party, who executes the
437 Agreement and transmits the signature by fax or other electronic means. The parties hereto, all agree that the
438 transaction contemplated by this document may be conducted by electronic means in accordance with the Montana
439 Uniform Electronic Transaction Act.
440

441 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments signed
442 by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral
443 agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the Seller and Buyer.
444

445 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the earnest
446 money and things of value held by the Broker, closing agent, or any person or entity holding such money or property,
447 unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or
448 closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing agent's
449 option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of competent
450 jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the cost and fees
451 required for filing such action. For the purposes of this Agreement, the parties agree that each of them is "found" within
452 the county in which the Property is primarily located, for the purposes of jurisdiction and venue in any actions arising
453 out of this Agreement.


Buyer's Initials

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Seller's Initials

454 **ADDENDA AND/OR DISCLOSURES ATTACHED:** (check all that apply):

- 455 Lead Based Paint Disclosure Contingency for Sale of Buyer's Property
- 456 Addendum for Additional Provisions Back-up Offer
- 457 Mold Disclosure Water Rights Acknowledgement
- 458 _____
- 459 _____

460
461 **RELATIONSHIP CONFIRMATION:** The parties to this Agreement confirm that the real estate licensees identified
462 hereafter have been involved in the capacities indicated below and the parties have previously received the required
463 statutory disclosures setting forth the licensees duties and the limits of their obligations to each party:

464
465 Bill Bahny of Bill Bahny & Associates
466 (name of licensee) (name of Brokerage company)

467 is acting as Seller's Agent/Salesperson Dual Agent/Salesperson Statutory Broker.

468
469 Montgomery Lesh of Lesh & Company LLC
470 (name of licensee) (name of Brokerage company)

471 is acting as Buyer's Agent/Salesperson Dual Agent/Salesperson Statutory Broker;
472 Seller's Agent/Salesperson (including Seller's Sub-Agent or Salesperson).

473
474 **BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that prior verbal representations by the Seller or Seller's
475 representatives do not modify or affect this Agreement. Buyer acknowledges that by signing this Agreement he/she
476 has examined the subject real and personal Property; has entered into this Agreement in full reliance upon his/her
477 independent investigation and judgment; and has read and understood this entire Agreement.

478
479 **BUYER'S COMMITMENT:** I/We agree to purchase the above-described Property on the terms and conditions set forth
480 in this Agreement and grant to said Salesperson until (date) 01/26/2018, at
481 2 am pm (Mountain Time) to secure Seller's written acceptance, whether or not that deadline falls
482 on a Saturday, Sunday or holiday. Buyer may withdraw his/her offer at any time prior to Buyer's being notified of
483 Seller's written acceptance. If Seller has not accepted by the time specified, the Buyer's offer is automatically
484 withdrawn.

485
486 **I/WE HEREBY ACKNOWLEDGE** receipt of a copy of this Agreement bearing my/our signature(s).

487 Buyer's Address: 5627 HWY 59 S City Miles City

488
489 State MT, Zip Code 59301

490 Buyer's Name Printed: Derik J. Pierce Tina M. Pierce

491
492
493 Dated this January 12, at 3:50 am pm (Mountain Time).

494 [Signature] [Signature]
495 (Buyer's Signature) (Buyer's Signature)
496
497

DP MP
Buyer's Initials

Page 9 of 10 [Signature]
Seller's Initials

498 OFFER PRESENTATION: This offer was presented to the Seller(s) on

499

500 Date: _____ Time _____ am pm By: _____

501

(Signature of person presenting the offer)

202

503 SELLER'S COMMITMENT: I/We agree to sell and convey to Buyer the above-described Property on the terms and
504 conditions herein above stated. I/We acknowledge receipt of a copy of this Agreement bearing my/our signature(s) and
505 that of the Buyer(s) named above.

506

507 Seller's Address: _____ PO Box 1104 _____ City _____ Williston _____

508

509 State _____ ND _____, Zip Code _____ 58802 _____

510

511 Seller's Name Printed: _____ Jeffrey W. Berger _____ And _____ Tami M. Berger _____

512

513 Dated this 1/26/18, at _____ am pm (Mountain Time).

514

515 _____
516 (Seller's Signature)

_____ Tami M Berger
(Seller's Signature)

517

518 ACTION TAKEN, IF OTHER THAN ACCEPTANCE:

519

520 I/We acknowledge receipt of this Agreement bearing my/our initial(s) and the signature(s) of the Buyer(s) named
521 above.

522

523 Rejected by Seller _____ / _____ / _____ Modified per Attached Counter _____ / _____ / _____

524

Seller's Initials _____ Date _____

Seller's Initials _____ Date _____

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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ADDENDUM # 1 BETWEEN PARTIES FOR ADDITIONAL PROVISIONS



1 Date 01/12/18

2 This addendum adds additional provisions to a document between _____

3 Jeff Berger And Tami Berger ("Seller/Landlord") and

4 Derik Pierce And Tina Pierce ("Buyer/Tenant") and

5 concerns the following described property:

6 Big valley ranch Wibaux county

7 Refer to buy sell.

9 The document to which additional provisions are being added is/are as follows:

10 Buy-Sell Agreement _____ 01/12/18

11 Counter Offer _____ 2 _____ Date

12 Agreement to Manage Property _____ Date

13 Other (specify document) _____ Date

14 Additional provisions:

15 ~~Calving barn portable panels, alleys, gates, maternity pens, head catches,~~
16 ~~water tanks.~~

17 26 ~~Seller will leave 40 metal bunks and 15 double bale feeders for 500 head~~
18 ~~of cows and 100 yearlings.~~

20 All harvested feed in round or square bales.

22 ~~Five year Lease, commencing at closing of Big Valley ranch sale, with~~
23 ~~first right of refusal on the Long Coulee ranch, 4,480+/- deeded acres.~~

25 ~~Lease terms on the Long Coulee ranch will be negotiated and reduced to~~
26 ~~writing prior to the closing of this transaction.~~

28 Any existing EQUIP contracts outstanding to be paid in full by seller at
29 closing.

31 Derik Pierce _____ 01/18/18 _____ 1/26/2018
32 (Buyer/Tenant) Date (Seller/Landlord) Date

33 Tina Pierce _____ 01/18/18 _____ 1/26/2018
34 (Buyer/Tenant) Date (Seller/Landlord) Date

NOTE: Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

Kane Ranch – Wibaux County, Montana

TOWNSHIP 18 NORTH, RANGE 58 EAST, M.P.M.

Section 24: All

TOWNSHIP 18 NORTH, RANGE 59 EAST, M.P.M.

Section 10: All
Section 15: All
Section 19: All
Section 20: All
Section 21: All
Section 28: S1/2
Section 29: All
Section 30: All
Section 32: All
Section 33: All

State of Montana leases - #1023, #7938, #7939, #2294

AMERICREDIT COMPANY FINANCIAL
PO BOX 183853
ARLINGTON TX 76096-3853

BANK OF COLORADO-EATON
55 SOUTH ELM AVENUE
EATON CO 80615-8270

BOWMAN COUNTY TREASURER
104 1ST STREET NW SUITE 2
BOWMAN ND 58623-4342

DENBURY ONSHORE LLC
5320 LEGACY DRIVE
PLANO TX 75024-3127

FALLON COUNTY TREASURER
PO BOX 787
BAKER MT 59313-0787

GOLDEN VALLEY TREASURER
PO BOX 896
BEACH ND 58621-0896

HARDING COUNTY TREASURER
PO BOX 125
BUFFALO SD 57720-0125

INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA PA 19101-7346

JOHN O'BRIEN
SPENCER FANE LLP
1700 Lincoln St., Ste. 2000
DENVER, CO 80203

Kleven Feed Lot-Brent Kleven
4990 38TH STREET SE
MEDINA ND 58467-9703

Knife River Corp - North Central
33-3 ROCK ISLAND PLACE
BISMARCK ND 58504

MCKENZIE COUNTY TREASURER
201 5TH ST NW SUITE 504
WATFORD CITY ND 58854-7118

MONTANA DEPT OF REVENUE
BANKRUPTCY SPECIALIST
PO BOX 7701
HELENA MT 59604-7701

MONY
100 MADISON STREET
TWR 2 5TH FL MD 35-70
SYRACUSE NY 13202-2701

ND DEPT. OF TRUST LANDS
1707 N. 9TH ST.
PO BOX 5523
BISMARCK ND 58506-5523

Office Of The Commissioner Of
School & Public Lands
500 EAST CAPITOL AVE.
PIERRE SD 57501-5007

PRAIRIE COUNTY TREASURER
PO BOX 566
TERRY MT 59349-0566

Pro-Frac Heating & Trucking LLC
P.O. BOX 2758
WILLISTON ND 58802-2758

RICHARD EFTA
C/O RAY BANISTER, P.R.
293 W. EDGE HILL RD
WIBAUX MT 59353-9127

SCHLEMMER FARMS INC.
51 LESLIE ROAD
JOLIET MT 59041-9567

South Dakota Real Estate Leases
PO BOX 125
BUFFALO SD 57720-0125

STATE OF MONTANA
Dept Of Natural Resources & Cons
PO BOX 201601
HELENA MT 59620-1601

US DEPT OF INTERIOR BLM
111 GARRYOWEN RD.
MILES CITY MT 59301-7000

WELLS FARGO BANK
600 SOUTH 4TH STREET
MINNEAPOLIS MN 55415-1526

WIBAUX COUNTY TREASURER
PO BOX 237
WIBAUX MT 59353-0237

WILLIAMS COUNTY TREASURER
PO BOX 2047
WILLISTON ND 58802-2047

YELLOWSTONE BANK
120 2ND STREET NW
SIDNEY MT 59270-4112

Yellowstone County Treasurer
ROOM 108
PO BOX 35010
BILLINGS MT 59107-5010

TAMI M. BERGER
PO BOX 1104
WILLISTON, ND 58802-1104

JEFFREY W. BERGER
PO BOX 1104
WILLISTON, ND 58802-1104

GEOFFREY KELLER
2812 First Ave. N., Ste. 225
PO BOX 1098
BILLINGS, MT 59103-1098

SCOTT SANDBERG
SPENCER FANE LLP
1700 Lincoln St. Ste. 2000
DENVER, CO 80203