

## MODIFICATION TO THE

### **AGREEMENT TO LEASE, SELL AND PURCHASE REAL PROPERTY**

**COTTONWOOD ALC, INC**, (“Seller”) 724 North Ewing Street, Helena, Montana 59601, and the **CITY OF HELENA, MONTANA**, a municipal corporation, 316 North Park Avenue, Helena, Montana 59623, and **LEWIS AND CLARK COUNTY**, a political subdivision of the State of Montana, 316 North Park Avenue, Helena, Montana 59623 (collectively “Buyers”) agree to **MODIFY THEIR PRIOR AGREEMENT TO LEASE, SELL AND PURCHASE REAL PROPERTY**:

### PURPOSE

Seller and Buyers executed an Agreement to Lease, Sell and Purchase Real Property in May of 2018 (“Agreement”) to lease and ultimately purchase Seller’s property with a street address of 406-420 Fuller Avenue.

Seller and Buyers desire to modify the Agreement to include the purchase of Seller’s adjacent property as described below, and shown in the attached Exhibit A. These modifications to the Agreement do not affect the terms of the lease agreement for 406-420 Fuller Avenue contained in the Agreement, or the ultimate purchase of that property, except to accommodate the additional acquisition and to remove terms of the Agreement made extraneous or unnecessary by these modifications. The Seller and the Buyers agree to modify the Agreement in its entirety as follows, where underlines are insertions and strikethroughs are deletions:

### LEGAL DESCRIPTION:

#### Seller’s Adjoining Property

Lots 1, 2, 3, and the west 24.8 feet of Lot 4, as shown on the Certificate of Survey filed under Doc. No. 308195; and

Lots 5, 6, and 7, all in Block 404 of the Original Townsite of Helena, Lewis and Clark County, Montana; and

That certain strip of land lying between the east line of Lot Number Seven (7) in said Block Number Four Hundred Four (404) of the Original Townsite of said City of Helena, Lewis and Clark County, Montana, and the west line of Fuller Avenue, as now used, and particularly described as follows, to-wit: Beginning at a point 98/100 feet east of the southeast corner of said Lot Number Seven (7) in Block Number Four Hundred Four (404), as said lot is numbered,

designated and described on the plat of said Townsite, and from said point of beginning running west to said southeast corner of said Lot Number Seven (7); thence running northerly along the easterly boundary line of said Lot Number Seven (7) to the northeast corner of said Lot Number Seven (7); thence east along the north line of the Helena Townsite 10.3 feet to the west boundary line of Fuller Avenue as now laid out; thence southwesterly along the west boundary line of Fuller Avenue as now laid out, 93.83 feet to the place of beginning, being all that certain strip of ground formerly comprising a part of Fuller Avenue, lying between the east boundary line of said Lot Number Seven (7) and the west boundary line of Fuller Avenue as now laid out and used. (Ref: 38 Deeds, page 7) And also shown on the Certificate of Survey filed under Doc. No. 308196.

**The Property:**

All that portion of what is known as Lot Number Twenty-five (25) of the Henry Thompson Placer Mining Claim in Government Lot No. Three (3), being in the northwest one-quarter of the southwest one-quarter (NW1/4SW1/4) of Section Thil1y (30), Township Ten (10) North, Range Three (3) West, M.P.M., in said City of Helena, Lewis and Clark County, Montana, lying west of the west line of Fuller Avenue, as now used, and particularly described as follows, to-wit: Beginning at a point 10.3 feet east of the northeast corner of said Lot Number Seven (7) in Block Number Four Hundred Four (404) of the Original Townsite of Helena, which point is situated on the west side of Fuller Avenue as now used and is northeast corner of the parcel of ground conveyed by said City of Helena last above described; thence running west along the north line of said Helena Townsite, 106.8 feet, more or less, to the easterly boundary line of the alley immediately west of the property hereby conveyed; thence running N. 5°30' E., along the easterly boundary line of said alley, 76 feet, more or less, to the northerly boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim; thence running S. 77°50' E. along the north line of said Placer Lot Number Twenty-five (25), to the west line of Fuller Avenue as now used; thence southwesterly along the west line of Fuller Avenue as now used, 46.2 feet, more or less, to the place of beginning. (Ref: 229 Deeds, page 102) And also shown on the Certificate of Survey filed under Doc. No. 308196; and

That portion of Placer Lot Number Fourteen (14) of the Henry Thompson Placer Mining Claim in the City of Helena, Lewis and Clark County, Montana, lying west of the west line of Fuller Avenue as now used and described as follows, to-wit: Beginning at a point on the west side of Fuller Avenue north of and adjoining the land hereby conveyed in Placer Lot Number Twenty-five (25) as above described, which point is 139.48 feet north of a point 98/100 feet east of the southeast corner of said Block Number Four Hundred Four (404) of the Original Townsite of Helena, as described in that certain deed from the City of Helena to John B. Sanford and Christmas G. Evans hereinabove referred to; running thence northerly along the west line of Fuller Avenue as now used, 12.02 feet, more or less, to the

southeast corner of a certain tract of land conveyed by John N. Glass, Trustee, to Bertha M. Evans, et al, dated July 30, 1921, and recorded August 5, 1921 in Volume Ninety-one (91) of Deeds, page Two Hundred Eighty-one (281), records of said Lewis and Clark County; thence running northwesterly parallel with the said north boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim, 106.8 feet, more or less, to the east line of said alley lying immediately west of the property hereby conveyed; thence running southerly along the said east line of said alley, 12.02 feet, more or less, to the said north boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim; thence running southeasterly along said north boundary line of said Lot Number Twenty-five (25), 106.8 feet, more or less, to the place of beginning. (Ref: 229 Deeds. page 102) And also shown on the Certificate of Survey filed under Doc. No. 308196; and

Those certain tracts and parcels of land lying in Lot 14 of the Henry Thompson Placer Claim in the City of Helena, Lewis and Clark County, Montana, which said Lot 14 is particularly described in a certain deed from Henry Thompson to James Rodda and Joseph Pierce recorded in Book "N" of Deeds, page 71, which said parcels are more particularly described by metes and bounds in certain deed from Bertha M. Evans, Margaret C. Evans Scott and Lewis C. Evans to Charles Eybel, recorded in Book 97 of Deeds, page 316, and described as follows, to wit: Beginning at a point on the west side of Fuller Avenue, which point is 151.5 feet north of a point 98/100 feet east of the southeast corner of Block Number Four Hundred and Four (404) of the Original Townsite of Helena, as described in the McIntyre plat of said Townsite on file in the office of the County Clerk and Recorded of said county, said point 98/100 feet east of the southeast corner of said block being at the intersection of the westerly boundary line of Fuller Avenue as now used and the northerly boundary line of Lawrence Street and which point of beginning is also the northeast corner of land belonging to the Montana Life Insurance Company; running thence northerly along the west line of Fuller Avenue 85.5 feet, more or less, to the northeast corner of that portion of said Lot Number Fourteen (14) heretofore owned by John B. Sanford and Christmas C. Evans, and which is also the southeast corner of property in said Placer Lot Number Fourteen (14) on the west side of Fuller Avenue, as now used, now owned by John H. Empson Estate; running thence northwesterly along the north line of property formerly owned by John B. Sanford and Christmas G. Evans and the south line of property now owned by John H. Empson Estate, 140.6 feet, more or less, to the west line of Placer Lot Number Fourteen (14); thence running southerly along the west line of Placer Lot Number Fourteen (14), 85.5 feet, more or less, to the northwest corner of land now owned by Montana Life Insurance Company; thence running southeasterly along the north line of property now owned by the said Montana Life Insurance Company, 140.6 feet, more or less, to the west line of Fuller Avenue, the place of beginning, and in certain deed from Montana Life Insurance Company, now named Western Life Insurance Company, to said Charles Eybel, recorded in Book 97 of Deeds, page 454, described as follows: Beginning at a point

on the west line of Fuller Avenue, a distance of 152.06 feet N. 5°43' E. along the west line of said Fuller Avenue from the southeast corner of Lot 7 in Block 404 of the Original Townsite of the said City of Helena; thence N. 79°25' W. along the north line of said mentioned tract, 120 feet, to the wall at the west end of said tract; thence S. 10 21• E., 23.35 feet; thence S. 89°40' E., 117.15 feet to a point on the west line of said Fuller Avenue which is 150 feet N. 5°43' E. along the west line of said Fuller Avenue from said southeast corner of said Lot 7 in Block 404 of said Original Townsite of the City of Helena; thence N. 5°43' E., 2.06 feet to the place of beginning, saving and excepting that certain parcel of land described in certain deed to Grand Lodge Ancient Free Accepted Masons of Montana, a corporation, recorded in Book 116 of Deeds, page 73, and saving and excepting all land embraced within the alleyway lying in the rear of these premises, which said alley is more particularly described in a certain final order of Condemnation heretofore made and entered by the District Court of Lewis and Clark County, Montana, in an action entitled "The City of Helena, a municipal corporation, Plaintiff, vs. The Realty Company of Massachusetts, a corporation, et al", said Order having been made on September 16, 1918, and recorded in Book 86 of Deeds, page 565, the property herein described being those certain premises which are bounded on the east by the west line of Fuller Avenue in the City of Helena, as now used, on the north by property described in that certain deed from George Vucanovich and Emily F. Vucanovich to Montana Physicians' Service, a Montana corporation, dated March 23, 1979, and recorded in Book 199 of Deeds, page 592, on the west by the alley above mentioned, and on the south by property formerly owned by said Western Life Insurance Company, and now owned by Montana Physicians' Service of Helena, Montana, a Montana corporation, as shown on the Certificate of Survey filed under Doc. No. 308196; and

A tract of land in Lot 14, sometimes shown as Plat Mark 25B, of the Henry Thompson Placer Mining Claim in the SW 1/4 of Section 30, T. 10 N., R. 3 W., City of Helena, Lewis and Clark County, Montana, described as follows: The tract being more particularly described as beginning at the southwest corner of Placer Avenue and Fuller Avenue, a steel spike; thence N. 78°13' W., 152.8 feet along the south boundary of Placer Avenue to a cross cut in the concrete sidewalk; thence S. 00°30' W., 242.06 feet to a cross cut in the top of a stone wall; thence S. 78°50' E., 130.5 feet to a steel spike; thence N. 05°43' E., 237.3 feet along the west boundary of Fuller Avenue to the point of beginning. (Ref: 299 Deeds, page 592) And also shown on the Certificate of Survey filed under Doc. No. 308196.

~~The Legal Description is subject to a forthcoming Amended Plat by survey, common area boundary adjustment or utility exemption necessary to create and legally describe the parcel(s) as shown in Exhibit "A" that is attached and incorporated into this contract and generally described as:~~

~~The "Property" with an address of 406—420 Fuller Avenue, consisting of a 1970 and 1980 building addition(s) and parking lot of approximately 94 spaces. The parcel is generally bounded by its foundation wall to the south that is adjacent to an annex structure and following adjoining columns and walls to include a stairwell and tunnel to the western edge of an existing boiler/utility room and its above grade concrete pad, then north to the property line, returning east to the foundation line then northerly along the alley to its corner (Placer Avenue) then easterly to its corner (Fuller Avenue) and returning in a southerly direction to the point of origin in line with its foundation wall. The Amended Plat shall have and allow for existing roof eave and building façade encroachments over and above the annex building that is part of Seller's Adjoining Property.~~

~~Seller's Adjoining Property, with an address of 404 Fuller Avenue, consists of a 1920's era building, its 1970's annex structure and related parking lot(s) west of the alley bordered by Lawrence and Park Avenues. The annex building's north and west boundary is its foundation line described above (the south boundary of the Property) as further depicted on Exhibit "A".~~

For and in consideration of the terms and provisions of this agreement, the Seller and Buyers agree as follows:

1. **Lease of the Property:** Seller grants to Buyers a lease of the Property commencing on approval by Seller and Buyers of the Agreement and ending upon closing of the purchase of the Property, and Buyers agree to lease the Property, pursuant to the following terms:
  - a. Buyers shall pay to Seller a rental payment of \$12,500 per month for the Property. Payment shall be due on the 1<sup>st</sup> of each month, commencing with the month during which approval by Seller and Buyers of this Agreement ~~the contract~~ occurs, with a pro-rated payment due for that portion of the month during which approval of the Agreement ~~contract~~ occurs.
  - b. Seller shall deliver possession of the Property to Buyers on approval of this Agreement ~~contract~~ by the Seller and Buyers.
  - c. Seller shall credit the full rental amount paid by Buyers between approval of this Agreement ~~contract~~ and either the actual date of closing, or the expected date of closing as described in section 2(c) of December 28, 2018, whichever first occurs, against the purchase price. Seller shall credit fifty percent (50%) of payments made by Buyers to Seller after December 28, 2018 until the actual date of closing against the purchase price.
  - d. Seller permits Buyers to make improvements to the Property that Buyers deem necessary for their occupancy and in preparation of their ownership of the Property.
  - e. During the term of the Lease, Buyers shall be responsible for the Occupancy Costs for both the Property and seller's adjoining real property, subject to the following terms:

- i. Occupancy Costs include the expenses related to the Property and Seller's adjoining real property for gas, electricity, water, sewer, trash, taxes, management, maintenance, janitorial, elevator(s), boiler, interior service agreements, and exterior service agreements for parking lot and sidewalk maintenance and lawn care.
- ii. Sellers shall reimburse Buyers for the equitable share of the monthly Occupancy Costs of Seller's adjoining property. The equitable share is calculated as follows during the term of the lease:
  1. The monthly Baseline Operating costs are the documented monthly Occupancy costs established during the last year of vacancy of the Property and Seller's adjoining property and shown in the attached Exhibit "B". Seller and Buyers will equitably distribute the Baseline Operating costs based on proportionate square footage of the relative properties as follows; Sellers shall pay 35% of the monthly Baseline Operating costs to Buyers.
  2. While Seller's property remains vacant, Buyers are solely responsible for monthly Occupancy costs additional to the monthly Baseline Operating costs. Buyers shall document this increase to establish the operating costs for the Property as costs attributable to Buyers use and occupancy of the Property. Should Seller, or a third party, occupy and use Seller's adjoining property, increases to the Occupancy costs above the combined Baseline Operating costs and those attributable to the Buyers use of the Property are attributable to Sellers adjoining property, and Seller shall reimburse Buyers for these additional Occupancy costs.
  3. The equitable distribution of Occupancy costs shall continue for those enumerated costs while they remain shared, until the Occupancy costs are separately metered, or Seller and Buyers enter into a separate and mutually agreed upon equitable distribution formula.
- iii. Buyers shall be entitled to the perpetual use of personal property located on the Property. Seller shall remove personal property from the Property that is not identified by Buyers and Sellers are responsible for its use or disposition.

**2. Purchase of the Property and Seller's Adjoining Property:**

- a. **Purchase Price.** The total purchase price is One Million Two ~~Nine~~ Ninety ~~Hundred~~ Fifty Thousand Dollars (\$1,290,00.00 1,950,000) to be paid at closing, less any offsets for credits as provided for in Section 1(c) of this agreement.

Seller's obligation to sell the Property and Seller's Adjoining Property will not be effective or enforceable unless Buyers have paid this purchase price to Seller.

- b. **Conditions.** This sale and purchase is subject to the following conditions being met at the time of closing:
- i. **Commission Approval.** The Buyers' obligation to close on the purchase is contingent upon approval by both the Helena City Commission and the Lewis and Clark Board of County Commissioners. If either the Helena City Commission or the Lewis and Clark Board of County Commissioners do not approve this purchase, the Buyers obligation to purchase the Property is terminated.
  - ii. **Title and Title Insurance.** Seller will provide title to the Property and Seller's Adjoining Property to Buyers by Warranty Deed. Buyers will bear the cost of the title insurance.
  - iii. **Inspections.** The Buyers may, at Buyers' expense, conduct structural, roof, electrical, and mechanical inspections of the Property, Seller's adjoining property, and secondary buildings, structures, and areas that are appurtenant to the Property. Closing is contingent upon Buyers' approval of the results and findings of those inspections.
  - iv. **Hazardous Materials.** The Buyers may, at Buyers' expense, have the Property and Seller's adjoining property inspected for hazardous materials including but not limited to asbestos, lead, mercury, polychlorinated biphenyls, chlorofluorocarbons, radioactive sources, and any solid, liquid, or gas that can harm people, other living organisms, property, or the environment. Closing is contingent upon Buyer's approval of the results and findings of any such inspection.
  - v. **Taxes.** Seller assumes all responsibility for payment of taxes, and assessments on the Property and Seller's Adjoining Property up to the date of closing, reimbursed by Buyer as described in section 1(e), and Buyers assume all responsibility for payment of taxes and assessments on the Property and Seller's Adjoining Property from and after the date of closing.
  - vi. ~~**Separate Lot.** Seller shall legally separate the Property from Seller's adjoining real property via common boundary line relocation, or other method that satisfies the division depicted on Exhibit "A".~~

- vii. ~~**Eneroachment and License.** Upon closing of the sale, Seller shall record an Eneroachment and License Agreement in the form attached hereto as Exhibit "C", allowing eneroachment of portions of the Property into Seller's adjacent property and for Buyers' use of that portion of their respective properties known as the Cafeteria Area. Seller shall file the attached "Equitable Distribution of Utility Costs", Exhibit "D", that establishes the equitable distribution of Occupancy costs between the Property and Seller's adjoining property until the properties are separately metered. Exhibits C and D shall be referenced in the Deed and shall run with the land until terminated as provided therein.~~
- viii. **Other Fees.** Buyers will pay any necessary recording or filing fees for deeds or other documents filed or recorded on behalf of either party due to this transaction. ~~Buyers will pay all costs in connection with the relocation of common boundary lines and filing of an amended plat.~~
- c. **Closing.** Closing will take place at Helena Abstract & Title Insurance Company ("the Title Company"), unless otherwise changed in writing by the parties on or before December 28, 2018, unless mutually extended by the parties. Any closing and recording fees charged by the closing agent will be shared equally by the parties.
- d. **Possession.** Seller shall deliver title of the Property and Seller's Adjoining Property at Closing in "as is" condition. Buyers will possess and lease the Property and Seller's Adjoining Property prior to closing pursuant the lease terms under Section 1 of this agreement. Risk of loss as to the Property and Seller's Adjoining Property is assumed by the party entitled to possession.
- e. ~~**Right of First Refusal.** In the event Seller desires to sell all or a portion of Seller's Adjoining Property, Seller shall first offer Seller's Adjoining Property, or the portion thereof to be sold, to Buyers at a price and terms agreeable to both parties, supported by an appraisal. Buyers shall be responsible for the cost of the appraisal and must engage an appraiser within 15 business days of notice of Seller's intent to sell. For 15 business days following the appraiser's report, Buyers, either collectively or individually, shall have the option and exclusive right to purchase the Seller's interest in Seller's Adjoining Property, or the portion thereof to be sold. In the event Buyers do not elect to purchase Seller's Adjoining Property, or the portion thereof to be sold, within the time allotted, Buyers' option shall lapse and Seller may sell its property without any right, option or restriction as to Buyers under this Agreement.~~



- f. **Independent Inspection; No Other Agreements.** Buyers have conducted an independent investigation and inspection of the Property and Seller's Adjoining Property and have entered into this Agreement in full reliance thereon. Buyers are satisfied in all respects with the condition of the Property and Seller's Adjoining Property. There are no other agreements, verbal or otherwise, which modify or affect the terms of Buyers' acceptance of the Property and Seller's Adjoining Property. Buyers acknowledge they have been provided the opportunity to conduct such inspections and tests of the Property and Seller's Adjoining Property as they deemed appropriate in exercising their due diligence. Except as expressly set forth in this Agreement, no representations or express or implied warranties have been made by Seller or anyone on Seller's behalf to Buyers as to the condition of the Property or its value. There are no implied warranties, whether of habitability, merchantability or fitness for a particular purpose, or otherwise in connection with this transaction. The Property and Seller's Adjoining Property is sold "AS IS". Buyers acknowledge Seller acquired the Property and Seller's Adjoining Property by means of a gift.
- g. **Representations and Warranties of Seller.** Seller represents and warrants as of the date of execution of this Agreement:
- i. Seller is the owner of the Property and Seller's Adjoining Property.
  - ii. Seller has the power, authority and legal right to execute, deliver, and perform its obligations under this Agreement and all related documents. Execution and performance of this Agreement does not violate any agreement to which Seller is a party, or any law or regulation applicable to Seller, including but not limited to the Charitable Gift Agreement dated December 31, 2017, by which Seller acquired the Property.
  - iii. Seller has not received notice of any violation of any applicable federal, state or local statute, law, regulation or ordinance affecting the Property or Seller's Adjoining Property and rights which are the subject of this Agreement. To the best of Seller's knowledge there are no such violations.
  - iv. The Property and Seller's Adjoining Property ~~is~~ are not subject to any leases, tenancies, rental agreements, or other contracts, claims, or rights of any kind excepting only monthly permits for parking in the adjoining lots, which permits will terminate on May 1, 2018, upon Buyers entering into the short-term lease referred to herein.
  - v. There are no actions, suits, judgments, claims, bankruptcy proceedings, or other matters pending or threatened, against or affecting Seller or the Property or Seller's Adjoining Property, at law or at equity, which would

affect in any way Seller's title to or right to sell the Property or Seller's Adjoining Property.

- vi. On Seller's information and belief, excepting only chemicals and other substances customarily used in commercial operations in quantities and in a manner allowed by applicable law, to the best of Seller's knowledge: (i) the Property and Seller's Adjoining Property ~~was~~ were not used and ~~is~~ are not being used for the manufacture, storage, treatment, processing, formulation or other handling of any hazardous substance, hazardous waste, solid waste, pollutant, toxic material, substance or other material regulated under any federal, state or local environmental statute, regulation or ordinance, (ii) the Property and Seller's Adjoining Property ~~is~~ are and at all times ~~has~~ have been operated by Seller in compliance with all applicable environmental laws; (iii) there are no underground fuel tanks, storage tanks, or other tanks containing hazardous or toxic materials, located on the Property or Seller's Adjoining Property; (iv) there has been no discharge or release of any hazardous material, hazardous substance, or other hazardous or toxic waste or pollutant regulated by any Environmental Law at, on or under the Property or Seller's Adjoining Property; and (v) Seller has not received written or other notice from any governmental entity, business entity, or person of alleged, actual or potential responsibility for any release at, on or under the Property or Seller's Adjoining Property of any hazardous substance, hazardous waste or other pollutant regulated under environmental laws, or of any alleged violation of or non-compliance with the conditions of any permit required under applicable environmental laws. Buyers acknowledge receipt from Seller of the due diligence reports, including a Phase I environmental assessment, obtained by Seller's immediately preceding owner of record.

- vii. Seller's representations and warranties shall survive the closing date and shall not be merged into any documents of conveyance delivered at closing.

h. **Representations and Warranties of Buyers.** Buyers each represent and warrant that as of the date of execution of this Agreement:

- i. They have the power, authority, financial ability and legal right to execute, deliver, and perform its obligations under each of the documents to which it is a party under this Agreement and all related documents.
- ii. The Buyers' representations and warranties shall survive the closing date and shall not be merged into any documents of conveyance delivered at closing.

- i. **Commissions and Finders' Fees.** Each Buyer is representing itself and through its own counsel but without a realtor or broker. Seller is represented by Trimac Group, LLC as broker. Broker's principal member is related to Seller's principal shareholders. Broker will receive compensation from Seller based upon separate Listing and Property Management agreements. ~~Purchaser~~ Buyers will not be responsible for any fee to Seller's broker and Seller agrees to indemnify and hold harmless Buyers from any claims from Seller's broker or other agent for commission or compensation in relation to this Agreement. Buyers agree to execute a Montana Relationships in Real Estate Disclosure form.
  - j. ~~**Seller's reimbursement of Buyers' Expenses.** Upon closing, Seller shall credit to Buyers allowable professional fees and allowable expenses and for specific improvements necessary to establish, separate and accomplish legal separation of the Property and Seller's adjoining property. Allowable expenses include, but are not limited to, separating or sub-metering utilities, removal of furniture, fixtures, equipment, cables, wires, pipes, demising walls, doors, exit hardware, related building or fire code requirements and improvements affecting the two parcels and adjoining common area, so long as each are deemed necessary and of mutual benefit or as may be otherwise agreed in writing between the parties. Allowable professional fees include, but are not limited to appraisal, survey, architectural and mechanical plans and specifications (including construction, modification or design necessary to establish Sellers and Buyers properties). Buyers shall account for all costs for professional fees and allowable expenses. The amount of Seller's credit to Buyers shall not exceed Ninety Thousand Dollars (\$90,000) and shall be payable only from Seller's proceeds of sale at closing.~~
3. **Attorneys' Fees.** In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any monies' due, the prevailing party will be entitled to recover as a cost reimbursement its reasonable attorney fees, court costs, costs of investigation and other related expenses incurred in connection therewith.
4. **Notices.** Any notice hereunder will be given in writing in person or by certified or registered mail, return receipt requested, directed to the party at the address appearing in the first paragraph of this instrument, or such future address as may be designated in writing. Mailed notice will be deemed given at the time of mailing.
5. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the matters addressed herein and supersedes all

prior contracts, agreements, understandings or arrangements between the parties concerning the sale of the Property.

6. **Modification.** This Agreement may not be changed, modified, amended or rescinded except in a writing signed by all parties hereto. Any attempt at oral modification of this Agreement will be void and of no effect. The terms of this Agreement will survive closing.
7. **Time of the Essence.** Time is of the essence of each and every term, provision, covenant and obligation of the parties under this Agreement.
8. **Governing Law, Jurisdiction and Venue.** This Agreement will be governed under the laws of the State of Montana. Jurisdiction for any dispute hereunder will be in the district court and venue will be in Lewis and Clark County, Montana.
9. **Assignment.** Any party to this Agreement may assign its rights to this Agreement only with the prior express written consent of other party, which consent will not be unreasonably withheld.
10. **Binding Effect.** This Agreement inures to the benefit of and is binding upon the successors and assigns of the parties hereto.
11. **Severability.** Seller and Buyers intend as follows:
  - a. That if any provision of this ~~agreement~~ Agreement is held to be unenforceable by a court of competent jurisdiction, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
  - b. That if an unenforceable provision is modified or disregarded in accordance with this Section 11, then the rest of this Agreement will remain in effect as written; and
  - c. That any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.
12. **Survival.** Those provisions of this Agreement that by their terms, sense or nature survive the closing date of this Agreement shall so survive, including but not limited to the section entitled Right of First Refusal.

13. **Waiver.** The waiver by either party or any breach of any provision under this Agreement will not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right in this Agreement will not operate as a waiver of such right. All rights and remedies provided in this Agreement are cumulative.

14. **Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and shall constitute one and the same instrument. Facsimile or pdf copies of this Agreement and its signatures shall be as binding upon the parties as originals.

IN WITNESS WHEREOF, the parties hereto have executed this Modification to the Agreement as of \_\_\_\_\_.

Cottonwood ALC, Inc.

By \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Debbie Havens, City Clerk

City of Helena, Montana

By \_\_\_\_\_

~~Ronald J. Alles~~ Dennis Taylor, City Manager

ATTEST:

By \_\_\_\_\_

Paulette Dehart, Board Clerk

Lewis and Clark County, Montana

By \_\_\_\_\_

Andy Hunthausen, Chairman

**Site Plan/Tax Map/Survey**

**NOTE:** Lot #2 shown above is the combined lots #2 & 3 previously discussed. Lots are considered as a single entity for the purpose of this report.

**Sale History:**

The subject was purchased, along with several other properties, in November 2014. The total price was \$7,500,000 with no breakdown provided as to any values attributed to the individual buildings. Sale at that time included furniture, fixtures and equipment. Again, no value was estimated for FF&E.

Property has been listed for the past four months at \$1,995,000 according to listing Broker. No offers were reported to have been made during the listing period.

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**PROPERTY**


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<b>Land Area:</b>	Subject is recorded under three separate geo code numbers. #1 – 58,734 square feet; 1.348 acres #2 – 7,708 square feet; 0.177 acres #3 – 6,401 square feet; 0.147 acres Total site size is 1.672 acres or 72,843 square feet.
<b>Improvements:</b>	66,892 square foot, three story office building with a full basement and partial sub-basement areas. Building was constructed in three phases, the oldest being three stories with the two additions having only two stories. Average quality construction in average overall condition. See property description for additional discussion.
<b>Zoning:</b>	B-2 – General Commercial District & R-O – Residential/Office
<b>Highest and Best Use of the Site as Vacant:</b>	As developed with some type of commercial use
<b>Highest and Best Use as Improved:</b>	Continued as office use – multi-tenant.

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**VALUE INDICATIONS**


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<b>Land Value:</b>	\$17.00/ft or \$1,240,000
<b>Cost Approach:</b>	Not Completed
<b>Sales Comparison Approach:</b>	\$2,000,000
<b>Income Approach:</b>	
<b>Direct Capitalization</b>	\$1,880,000
<b>Reconciled Value(s):</b>	<u>As Is</u>
<b>Value Conclusion(s)</b>	\$1,950,000
<b>Effective Date(s)</b>	December 13, 2017
<b>Property Rights</b>	Fee Simple

EXHIBIT A  
LEGAL DESCRIPTION

Parcel 4:

Lots 1 and 2 in Block 404 of the Original Townsite of Helena, Lewis and Clark County, Montana.

Parcel 5:

All of Lot 3 and the west 24.8 feet of Lot 4 in Block 404 of the Original Townsite of Helena, Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Doc. No. 308195.

Parcel 6:

All of Lots 5, 6, and 7 in Block 404 of the Original Townsite of Helena, Lewis and Clark County, Montana.  
AND,

Also all that certain strip of land lying between the east line of Lot Number Seven (7) in said Block Number Four Hundred Four (404) of the Original Townsite of said City of Helena, Lewis and Clark County, Montana, and the west line of Fuller Avenue, as now used, and particularly described as follows, to-wit: Beginning at a point 98/100 feet east of the southeast corner of said Lot Number Seven (7) in Block Number Four Hundred Four (404); as said lot is numbered, designated and described on the plat of said Townsite, and from said point of beginning running west to said southeast corner of said Lot Number Seven (7); thence running northerly along the easterly boundary line of said Lot Number Seven (7) to the northeast corner of said Lot Number Seven (7); thence east along the north line of the Helena Townsite 10.3 feet to the west boundary line of Fuller Avenue as now laid out; thence southwesterly along the west boundary line of Fuller Avenue as now laid out, 93.83 feet to the place of beginning, being all that certain strip of ground formerly comprising a part of Fuller Avenue, lying between the east boundary line of said Lot Number Seven (7) and the west boundary line of Fuller Avenue as now laid out and used. (Ref: 38 Deeds, page 7) And also shown on the Certificate of Survey filed under Doc. No. 308196.

Parcel 7:

All that portion of what is known as Lot Number Twenty-five (25) of the Henry Thompson Placer Mining Claim in Government Lot No. Three (3), being in the northwest one-quarter of the southwest one-quarter (NW1/4SW1/4) of Section Thirty (30), Township Ten (10) North, Range Three (3) West, M.P.M., in said City of Helena, Lewis and Clark County, Montana, lying west of the west line of Fuller Avenue, as now used, and particularly described as follows, to-wit: Beginning at a point 10.3 feet east of the northeast corner of said Lot Number Seven (7) in Block Number Four Hundred Four (404) of the Original Townsite of Helena, which point is situated on the west side of Fuller Avenue as now used and is northeast corner of the parcel of ground conveyed by said City of Helena last above described; thence running west along the north line of said Helena Townsite, 106.8 feet, more or less, to the easterly boundary line of the alley immediately west of the property hereby conveyed; thence running N. 5°30' E., along the easterly boundary line of said alley, 76 feet, more or less, to the northerly boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim; thence running S. 77°50' E. along the north line of said Placer Lot Number Twenty-five (25), to the west line of Fuller Avenue as now used; thence southwesterly along the west line of Fuller Avenue as now used, 46.2 feet, more or less, to the place of beginning. (Ref: 229 Deeds, page 102) And also shown on the Certificate of Survey filed under Doc. No. 308196.

Parcel 8:

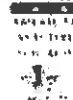
Also all that portion of Placer Lot Number Fourteen (14) of the Henry Thompson Placer Mining Claim in the

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File No. 1775945

MT ALTA Commitment Sch A HA5





City of Helena, Lewis and Clark County, Montana, lying west of the west line of Fuller Avenue as now used and described as follows, to-wit: Beginning at a point on the west side of Fuller Avenue north of and adjoining the land hereby conveyed in Placer Lot Number Twenty-five (25) as above described, which point is 139.48 feet north of a point 98/100 feet east of the southeast corner of said Block Number Four Hundred Four (404) of the Original Townsite of Helena, as described in that certain deed from the City of Helena to John B. Sanford and Christmas G. Evans hereinabove referred to; running thence northerly along the west line of Fuller Avenue as now used, 12.02 feet, more or less, to the southeast corner of a certain tract of land conveyed by John N. Glass, Trustee, to Bertha M. Evans, et al, dated July 30, 1921, and recorded August 5, 1921 in Volume Ninety-one (91) of Deeds, page Two Hundred Eighty-one (281), records of said Lewis and Clark County; thence running northwesterly parallel with the said north boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim, 106.8 feet, more or less, to the east line of said alley lying immediately west of the property hereby conveyed; thence running southerly along the said east line of said alley, 12.02 feet, more or less, to the said north boundary line of said Lot Number Twenty-five (25) of said Henry Thompson Placer Mining Claim; thence running southeasterly along said north boundary line of said Lot Number Twenty-five (25), 106.8 feet, more or less, to the place of beginning. (Ref: 229 Deeds, page 102) And also shown on the Certificate of Survey filed under Doc. No. 308196.

**Parcel 9:**

Those certain tracts and parcels of land lying in Lot 14 of the Henry Thompson Placer Claim in the City of Helena, Lewis and Clark County, Montana, which said Lot 14 is particularly described in a certain deed from Henry Thompson to James Rodda and Joseph Pierce recorded in Book "N" of Deeds, page 71, which said parcels are more particularly described by metes and bounds in certain deed from Bertha M. Evans, Margaret C. Evans Scott and Lewis C. Evans to Charles Eybel, recorded in Book 97 of Deeds, page 316, and described as follows, to wit: Beginning at a point on the west side of Fuller Avenue, which point is 151.5 feet north of a point 98/100 feet east of the southeast corner of Block Number Four Hundred and Four (404) of the Original Townsite of Helena, as described in the McIntyre plat of said Townsite on file in the office of the County Clerk and Recorded of said county, said point 98/100 feet east of the southeast corner of said block being at the intersection of the westerly boundary line of Fuller Avenue as now used and the northerly boundary line of Lawrence Street and which point of beginning is also the northeast corner of land belonging to the Montana Life Insurance Company; running thence northerly along the west line of Fuller Avenue 85.5 feet, more or less, to the northeast corner of that portion of said Lot Number Fourteen (14) heretofore owned by John B. Sanford and Christmas C. Evans, and which is also the southeast corner of property in said Placer Lot Number Fourteen (14) on the west side of Fuller Avenue, as now used, now owned by John H. Empson Estate; running thence northwesterly along the north line of property formerly owned by John B. Sanford and Christmas G. Evans and the south line of property now owned by John H. Empson Estate, 140.6 feet, more or less, to the west line of Placer Lot Number Fourteen (14); thence running southerly along the west line of Placer Lot Number Fourteen (14), 85.5 feet, more or less, to the northwest corner of land now owned by Montana Life Insurance Company; thence running southeasterly along the north line of property now owned by the said Montana Life Insurance Company, 140.6 feet, more or less, to the west line of Fuller Avenue, the place of beginning, and in certain deed from Montana Life Insurance Company, now named Western Life Insurance Company, to said Charles Eybel, recorded in Book 97 of Deeds, page 454, described as follows: Beginning at a point on the west line of Fuller Avenue, a distance of 152.06 feet N. 5°43' E. along the west line of said Fuller Avenue from the southeast corner of Lot 7 in Block 404 of the Original Townsite of the said City of Helena; thence N. 79°25' W. along the north line of said mentioned tract, 120 feet, to the wall at the west end of said tract; thence S. 1°21' E., 23.35 feet; thence S. 89°40' E., 117.15 feet to a point on the west line of said Fuller Avenue which is 150 feet N. 5°43' E. along the west line of said Fuller Avenue from said southeast corner of said Lot 7 in Block 404 of said

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Original Townsite of the City of Helena; thence N. 5°43' E., 2.06 feet to the place of beginning, saving and excepting that certain parcel of land described in certain deed to Grand Lodge Ancient Free Accepted Masons of Montana, a corporation, recorded in Book 116 of Deeds, page 73, and saving and excepting all land embraced within the alleyway lying in the rear of these premises, which said alley is more particularly described in a certain final order of Condemnation heretofore made and entered by the District Court of Lewis and Clark County, Montana, in an action entitled "The City of Helena, a municipal corporation, Plaintiff, vs. The Realty Company of Massachusetts, a corporation, et al", said Order having been made on September 16, 1918, and recorded in Book 86 of Deeds, page 565, the property herein described being those certain premises which are bounded on the east by the west line of Fuller Avenue in the City of Helena, as now used, on the north by property described in that certain deed from George Vucanovich and Emily F. Vucanovich to Montana Physicians' Service, a Montana corporation, dated March 23, 1979, and recorded in Book 199 of Deeds, page 592, on the west by the alley above mentioned, and on the south by property formerly owned by said Western Life Insurance Company, and now owned by Montana Physicians' Service of Helena, Montana, a Montana corporation, as shown on the Certificate of Survey filed under Doc. No. 308196.

**Parcel 10:**

A tract of land in Lot 14, sometimes shown as Plat Mark 25B, of the Henry Thompson Placer Mining Claim in the SW1/4 of Section 30, T. 10 N., R. 3 W., City of Helena, Lewis and Clark County, Montana, described as follows: The tract being more particularly described as beginning at the southwest corner of Placer Avenue and Fuller Avenue, a steel spike; thence N. 78°13' W., 152.8 feet along the south boundary of Placer Avenue to a cross cut in the concrete sidewalk; thence S. 00°30' W., 242.06 feet to a cross cut in the top of a stone wall; thence S. 78°50' E., 130.5 feet to a steel spike; thence N. 05°43' E., 237.3 feet along the west boundary of Fuller Avenue to the point of beginning. (Ref: 299 Deeds, page 592) And also shown on the Certificate of Survey filed under Doc. No. 308196.

END

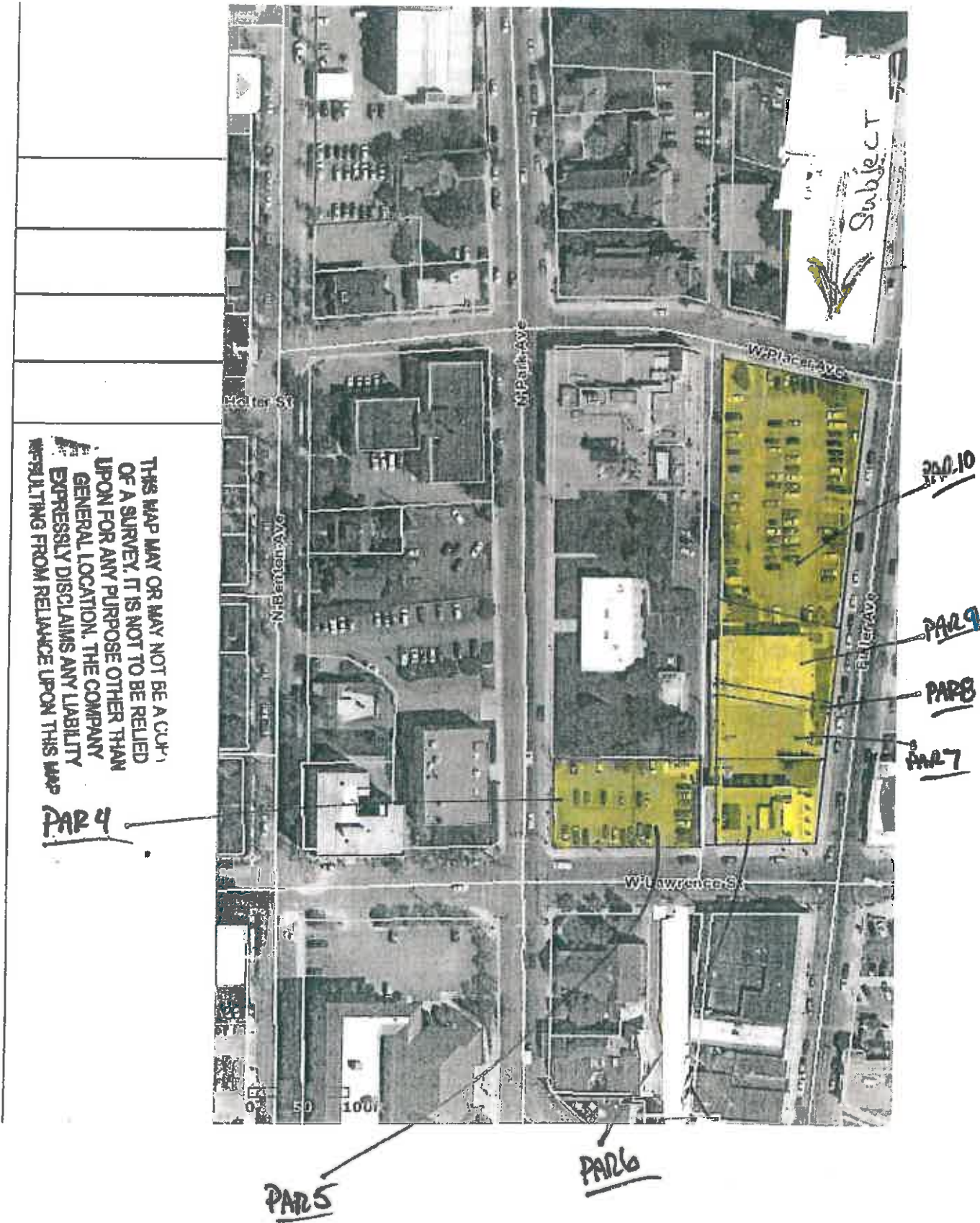
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File No. 1775945

MT ALTA Commitment Sch A HA5

Page 4 of 4



**FULLER AVENUE BUILDING UTILITIES EXECUTIVE SUMMARY**

The former Blue Cross/Blue Shield Building located on Fuller Avenue in downtown Helena was vacated in December 2016. Below are the utility costs for the last 12 months. These costs are for the building in its entirety.

**404/406/420 Fuller Ave  
12 MONTHS DATA FOR VACANT BUILDING**

	Usage	Billed
Electric 420 North Bldg	184000	\$19,936.03
Electric 404/406 South Bldgs	262680	\$22,562.54
Gas - 1 meter	26486	\$18,008.19
Solid Waste		\$1,664.28
Waste Water		\$1,481.42
Water		\$1,942.93
Taxes		\$37,457.89
<b>Total Costs</b>		<b>\$103,053.34</b>

**404/406 Fuller Ave - South Buildings**

Month	Usage kWh	\$ Billed
Feb 2018	1280	\$394.73
Jan 2018	11200	\$1,157.21
Dec 2017	22080	\$2,217.43
Nov 2017	12480	\$1,286.78
Oct 2017	11840	\$1,196.73
Sep 2017	32800	\$3,274.21
Aug 2017	29440	\$2,841.08
Jul 2017	35520	\$3,532.19
Jun 2017	28160	\$2,913.30
May 2017	25080	\$2,747.97
Apr 2017	25120	\$837.49
Mar 2017	27680	\$163.42
<b>Total</b>	<b>262680</b>	<b>\$22,562.54</b>

**404/406/420 Fuller Ave Natural Gas**

Month	Usage Therms	\$ Billed
Feb 2018	3604	\$2,500.78
Jan 2018	1663	\$1,156.74
Dec 2017	7713	\$4,507.87
Nov 2017	951	\$751.11
Oct 2017	16	\$75.96
Sep 2017	0	\$65.61
Aug 2017	0	\$48.40
Jul 2017	0	\$66.00
Jun 2017	0	\$66.00
May 2017	3596	\$2,483.49
Apr 2017	4355	\$3,056.83
Mar 2017	4588	\$3,229.40
<b>Total</b>	<b>26486</b>	<b>\$18,008.19</b>

**420 Fuller Ave - North Building**

Month	Usage kWh	\$ Billed
Feb 2018	10560	\$1,233.66
Jan 2018	4160	\$408.34
Dec 2017	21760	\$2,344.65
Nov 2017	9760	\$1,018.23
Oct 2017	9440	\$958.23
Sep 2017	20080	\$2,046.50
Aug 2017	17680	\$1,729.19
Jul 2017	19440	\$1,796.05
Jun 2017	16880	\$1,783.96
May 2017	20080	\$2,075.70
Apr 2017	20960	\$2,130.52
Mar 2017	23600	\$2,411.00
<b>Total</b>	<b>194400</b>	<b>\$19,936.03</b>

**Year 2017 Real Estate Taxes**

<b>404/406 Fuller Building</b>	<b>\$33,495.14</b>
<b>Parking Lot (28098)</b>	<b>\$1,810.34</b>
<b>Parking Lot (6698)</b>	<b>\$2,152.41</b>
<b>Total</b>	<b>\$37,457.89</b>

**404/406/420 Fuller Ave Water/Wastewater/SolidWaste**

Month	Water	Wastewater	Solid Waste	Total
Dec 2017				\$0.00
Nov 2017	\$0.00	\$19.34	\$53.20	\$72.54
Oct 2017	\$0.00	\$170.07	\$197.30	\$367.37
Sep 2017	\$0.00	\$443.61	\$484.00	\$927.61
Aug 2017	\$0.00	\$132.24	\$157.65	\$289.89
Jul 2017	\$0.00	\$589.11	\$636.50	\$1,225.61
Jun 2017	\$0.00	\$15.84	\$35.65	\$51.49
May 2017	\$13.66	\$12.93	\$199.49	\$226.08
Apr 2017	\$420.86	\$15.84	\$35.65	\$472.35
Mar 2017	\$409.92	\$12.93	\$32.60	\$455.45
Feb 2017	\$409.92	\$15.84	\$35.65	\$461.41
Jan 2017	\$409.92	\$53.67	\$75.30	\$538.89
<b>Totals</b>	<b>\$1,664.28</b>	<b>\$1,481.42</b>	<b>\$1,942.99</b>	<b>\$5,088.69</b>