

COMMITTEE OF THE WHOLE

NOVEMBER 6, 2023

6:00 P.M.

THERE WILL BE NO COMMITTEE OF THE WHOLE
REGULAR MEETING STARTS AT 7 PM

NOTICE FOR, AND AGENDA FOR, A MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, NOVEMBER 6, 2023 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To participate virtually the options are as follows:

To join by zoom: <https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

To participate by phone: dial (253) 215-8782 Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – October 2, 2023 & October 16, 2023

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non agenda items

CONSENT AGENDA

Acknowledgment of the claims that have been paid from October 14, 2023 to October 31, 2023 for a total of \$662,883.13

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion and action on approving Resolution No. 4144, a resolution awarding TIF District Funds to Brandon Overland for property located at 704 W Broadway as approved by the Lewistown Tax Increment Financing District Board (**Action: approve, disapprove or amend Resolution No. 4144**) City Manager Holly Phelps
2. Discussion and action on approving the 2023-2024 School District No. 1 recreation agreement (**Action: approve, disapprove or amend the 2023-2024 School District No. 1 agreement**) City Manager Holly Phelps
3. Discussion and action on approving the declaration of restrictive covenants on real property for, a portion of the former Berg Lumber property (**Action: approve, disapprove or amend approving the declaration of restrictive covenants on real property**) City Manager Holly Phelps
4. Discussion and action on allowing the City Manager to enter into intent to exclusively negotiate real estate purchase agreement (**Action: approve, disapprove or amend allowing City Manager to enter into the real estate purchase agreement**) City Manager Holly Phelps

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comment on any agenda item prior to action being taken by the Commission

RESOLUTION NO. 4144

A RESOLUTION AWARDING TIF DISTRICT FUNDS TO
BRANDON OVERLAND APPROVED BY THE
LEWISTOWN TAX INCREMENT FINANCING DISTRICT
BOARD

WHEREAS, the Lewistown City Commission has adopted Ordinance No. 1748 – An Ordinance establishing the Lewistown Urban Renewal Area, creating the Lewistown Urban Renewal District and adopting the Lewistown Urban Renewal District Plan; and

WHEREAS, by Resolution number 3903 the City created an Urban Renewal Agency per 7-15-4232 Montana Codes Annotated (MCA), which was designated as the “Lewistown Improvement District Board” to engage in activities authorized in 7-15-4234 MCA and provide administrative functions; and

WHEREAS, the Commission re-designated the “Lewistown Improvement District Board” as the “Lewistown Tax Increment Financing District Board” by Resolution 3923; and,

WHEREAS, the Commission appointed a Lewistown Tax Increment Financing District Board (hereafter, the “TIF Board”) in order to manage the Lewistown Urban Renewal District created by Ordinance 1748; and,

WHEREAS, the TIF Board oversees the operation of the Lewistown Urban Renewal District, including public purpose activities; promotional activities; façade building conservation and loan programs; and administrative functions; and,

WHEREAS, the TIF Board exercises those powers authorized by law as specified in Resolution 3923; and,

WHEREAS, the TIF Board has developed the Lewistown TIF District (LTD) Program whereby qualified applicants may apply for TIF District Program Funds for assistance in redevelopment or rehabilitation of properties within the Urban Renewal District; and,

WHEREAS, through its LTD Program the TIF Board has received numerous applications for TIF District Program Funds, has reviewed the same and, has recommended approval of several applicants for those funds; and,

WHEREAS, the City Commission has retained final budgetary authority for TIF program activities.

NOW, THEREFORE, BE IT RESOLVED, that the Lewistown City Commission hereby awards TIF District Program Funds as recommended by the TIF Board to:

1. Brandon Overland DBA Overland Property Management, LLC, applicant for facade improvements, at 704 W. Broadway St.; up to \$20,000 grant

BE IT FURTHER RESOLVED, that prior to disbursement of any TIF funds, all applicants shall enter into such Development Agreements as established and approved by the TIF Board.

PASSED AND APPROVED this 6th day of November, 2023.

KellyAnne Terry, Chairperson
Lewistown City Commission

Attest:

Nikki Brummond
City Financial Officer/Clerk

City of Lewistown
Application
Tax Increment Financing District (TIF)

Project Name: 704 Exterior Date Submitted: 10/12/23

A) Applicant Information:

Name: Branden Overland
Address: 522 W. Erie St
City/ST/Zip: Lewistown
Telephone Number(s): 406 459 8742
Email: Branden.Overland@hotmail.com

If the applicant is not an individual doing business under his/her own name, the applicant has the status indicated below and is organized or operating under the laws of:

- ☐ A Corporation
☐ A nonprofit or charitable institution or corporation
☐ A partnership known as
☒ Other (explain) LLC Overland Property Management, LLC

B) Project Information:

Building Address: 704 W. Broadway, Lewistown
Legal Description: STAFFORD ADD, S15, T15N, R18E
Lot & Block Location: Block 10, Lot 011-012

Existing/Proposed Business: Commercial Apartment building (fully occupied)

Business Description:

6 unit apartment complex, fully occupied
Building was originally "Officers Quarters" at Fort Maginnis

City of Lewistown
Application
Tax Increment Financing District (TIF)

Property Ownership:

Do you own the property or are you currently purchasing it? (N) N

Property Owner (If property is not owned by Applicant, list leasehold interests)

Name of Owner(s): _____

Address: _____

City/ST/Zip: _____

Telephone Number(s): _____

Email: _____

Project Architectural Firm: _____

Address: _____

City/ST/Zip: _____

Telephone Number(s): _____

Email: _____

Project Contractor(s): Pace Picture - Perfect

Address: 704 W. Broadway

City/ST/Zip: Lewistown, MT

Telephone Number(s): 406 799-0907

Email: pace.ethan.0907.ep@gmail.com

Project Financial Lending Institution: _____

Address: _____

City/ST/Zip: _____

Telephone Number(s): _____

Email: _____

City of Lewistown
Application
Tax Increment Financing District (TIF)

Job Creation: Will there be any new permanent or part-time jobs created as a result of this project excluding construction jobs associated with the development of the project? If so, how many? 0

Project Completion: What is the expected completion date of the project?

Nov 2024

Property Taxes:

How much are the annual property taxes including any improvements? \$ 3000

Are the taxes current? Yes

Do you intend to apply for tax abatement? No

Has tax abatement been awarded on the property prior to your ownership? No

Project Financing: Briefly describe how the project will be financed:

Self w/ TIF support

Description of Project: Please provide a full written description of your project, including type of use, square footage, number of stories, number of parking spaces, general building materials, etc. (Attach to application)

Project Renderings: Please submit design schematic and/or site and landscaping plans for the project. (Attach to application)

- Repair/Replace South facing siding
- Rebuild Front and side decks which are rotted out.
- Replace windows with new windows for building
- Repaint all siding New and old
- Remove bushes which are too close to foundation
- Install gravel ~~garden~~ beds edging perimeter with New landscaping

City of Lewistown
Application
Tax Increment Financing District (TIF)

Eligible Improvements Cost Worksheet Under TIF Program

List eligible items that pertain to the project that falls under TIF Program Policies (list beginning on page 1). If in doubt about an item's eligibility, include it, the board will review items and help determine eligibility. Please include formal contractor bids to establish costs. *There is no guarantee that additional costs beyond what is listed here will be covered.*

1. Replacement Siding	\$ 5770
2. New Windows 24 windows	\$ 18,718
3. New Paint	\$ 6185
4. Front Deck	\$ 12,413
5. East Deck	\$ 3239
6. Debris Removal for project	\$ 250
7. Landscaping	\$ 1217
8.	\$
9.	\$
10.	\$
11.	\$
12.	\$
13.	\$
14. Permitting Fees	\$ 250
15. Other Fees	\$
Total Lewistown TIF District Program Request	\$ 48,042

TIF District Program Award (to be filled out by TIF Administrator)

\$ 20,000

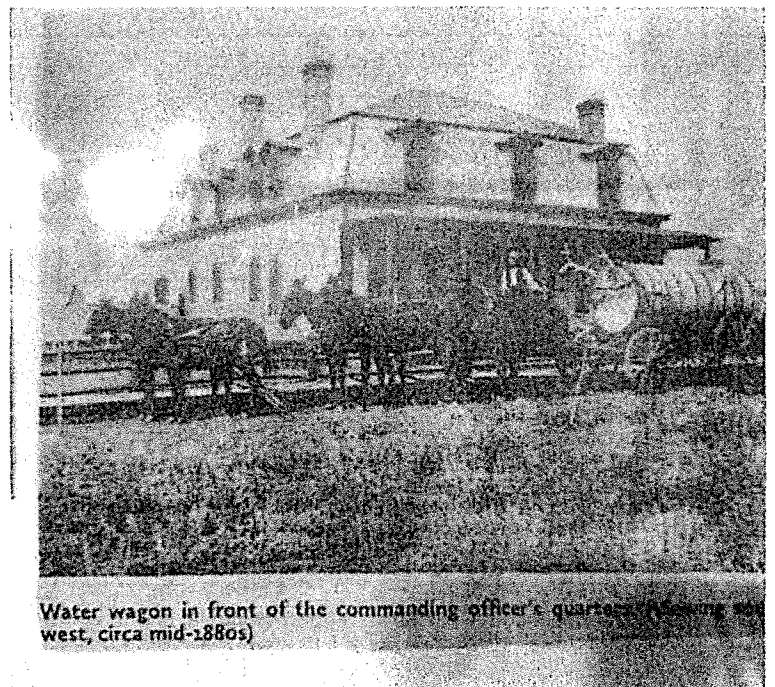
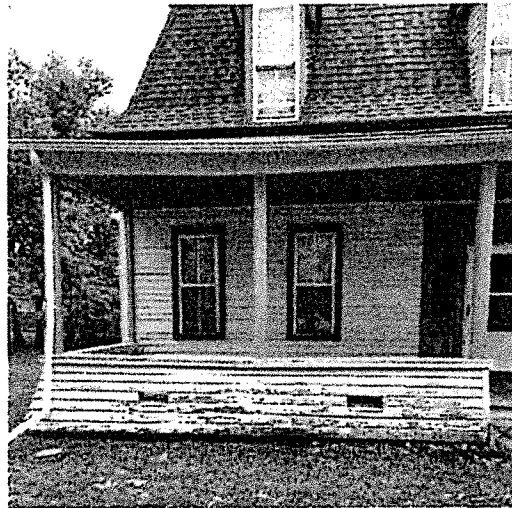
To the best of my knowledge and belief, the information provided in this application and in the attached documents is true and correct. The signature attests to my having read, understand and agree to all terms in the Lewistown Tax Increment Financing District Investment Plan.

Signature of Applicant: Brandi Overst

Date: 10/12/23

Signature of TIF Board Chair: [Signature]

Date: 10/30/31



Water wagon in front of the commanding officer's quarters (looking west, circa mid-1880s)

**AGREEMENT BETWEEN THE CITY OF LEWISTOWN AND SCHOOL
DISTRICT NUMBER ONE FOR USE OF RECREATION
FACILITIES/EQUIPMENT AND OPERATION OF VARIOUS
RECREATIONAL PROGRAMS**

WHEREAS THIS AGREEMENT is made and entered into the date of the last signature hereto, by and between the CITY OF LEWISTOWN, hereinafter referred to as the CITY, and SCHOOL DISTRICT NO. ONE of Lewistown, Fergus County, Montana, hereinafter referred to as the SCHOOL, and is meant to define and describe the rights and obligations of the parties with respect to the use of facilities and equipment for the operation of various recreational programs for the **2023-2024 school year**.

PROGRAM DESCRIPTION

Recreational programs covered under this agreement may include, but shall not be limited to: basketball, volleyball, softball, soccer, badminton, snowshoeing, pickleball, swimming, cross-country skiing, and table tennis.

FACILITIES USE

Activities may take place at the Lewistown Civic Center or at any of the various city parks. The CITY hereby agrees that such facilities will be made available for use by the program participants and for other school extracurricular activities, but the schedule must be approved in advance. In addition, city activities may take place upon any property owned by the SCHOOL, provided the property or facility is available for use and any such use is approved by the school.

SUPERVISION/ OPERATION

Supervision and operation of the recreational programs shall include the following individuals and/ or groups. Contact information for these groups or individuals should be exchanged on an annual basis.

1. Activity Director. The Activity Director shall be an employee of the SCHOOL, and such person shall be responsible for various School sponsored recreational programs. This includes the organization, scheduling, and overall supervision of these programs.

2. Recreation Director. The Recreation Director shall be an employee of the CITY, and shall be responsible for operation of City owned facilities, the organization, scheduling, overall supervision of City sponsored recreational programs, supervision of City staff and shall coordinate use of city owned equipment.

3. Buildings & Grounds Supervisor. The Buildings & Grounds Supervisor shall be an employee of the SCHOOL and shall be responsible for scheduling and supervision of SCHOOL maintenance equipment. Under this agreement this equipment may be used by either party.

The SCHOOL will be responsible for paying a flat fee of \$6,000.00 for the 2023-2024 school year for the use of City owned facilities and equipment. Each year following, the total amount will be increased by the Consumer Price Index (CPI) rate (US average rate from the previous year).

TERM

The term of this Agreement shall be for one year, commencing on July 1, 2023 and ending on June 30, 2024.

RELEASE/INDEMNIFICATION

Each party expressly agrees to release, hold harmless and indemnify the other party from any liability, claims, losses, or demands arising out of the acts or omissions of their own employees or agents, provided, however, that such released party or their employees or agents have not contributed to such claims, loss, or demand.

Dated this 9th day of October 2023.

ATTEST:

CITY OF LEWISTOWN

NIKKI BRUMMOND, City Clerk

HOLLY PHELPS, City Manager

ATTEST:

Rebekah Rhoades

SCHOOL DISTRICT NO ONE

CJ Bailey

REBEKAH RHOADES, Board Clerk

CJ BAILEY, Board Chair

DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY

THIS DECLARATION OF RESTRICTIVE COVENANTS ON REAL PROPERTY is made by the Lewistown City Commission as of November 6, 2023.

RECITALS

WHEREAS, City of Lewistown is the owner of certain real property (the Subject Property) located in Fergus County, Montana, is shown on Attachment 1 and is more particularly described as:

S09, T15 N, R18E, TRACT #1 OF SURVEY #495 & THOSE INTERESTS AS SHOWN ON COS #665 IN NWNE

Geocode: 08-2467-09-1-02-01-0000

WHEREAS, City of Lewistown is the owner of certain real property (the Subject Property) located in Fergus County, Montana, is shown on Attachment 2 and is more particularly described as:

S09, T15 N, R18E, TRACT BEING REMAINDER OF TRACT #212 TOGETHER WITH REMAINDER OF TRACT BK 158 PG 252 KNOWN AS PT OF S2NE4

Geocode: 08-2467-09-4-36-01-0000

WHEREAS, the Subject Property is located within the Berg Lumber Mill, Lewistown Water Quality Act (WQA) site (Site), and the Montana Department of Environmental Quality (DEQ) has determined that the presence of sawdust and wood waste from past operations at the Subject Property present a risk to the public health, safety, and welfare and the environment; and

WHEREAS, the City of Lewistown has addressed the Subject Property pursuant to the WQA, §§ 75-5-101 *et seq.*, Montana Code Annotated (MCA). In order to finalize this matter and remove the Site from DEQ's WQA Priority List, the City of Lewistown, and its officers, employees, agents, representatives, predecessors, successors in interest, and assignees desires to restrict development on the Subject Property, pursuant to § 75-10-727, MCA.

NOW, THEREFORE, the City of Lewistown hereby agrees and declares:

1. No residential development or use, including but not limited to permanent residential use; temporary residential use; limited residential use; short-term residential use; children's day care; mobile homes with or without footing; mobile home with or without a pad; or camping shall occur upon the Subject Property. It is the City of Lewistown's intent that this limitation be construed as broadly as possible to prohibit any type of residential use whatsoever.

No recreational development of a campground or use as such.

2. No structures, containments, footings for any purpose, or similar below ground appurtenances may be constructed upon the Subject Property.
3. No action shall be taken, allowed, suffered, or omitted on the Subject Property if such action or omission is reasonably likely to create a risk of migration of sawdust or wood waste or a potential hazard to public health, safety, or welfare or the environment or result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Site to contain sawdust or wood waste or limit human or environmental exposure to the hazardous or deleterious substances.
4. The City of Lewistown agrees to provide DEQ and its representatives and contractors, and all representatives and contractors of any person conducting DEQ-approved remedial actions on the Subject Property access at all reasonable times to the Subject Property.
5. At all times after the City of Lewistown conveys its interest in the Subject Property and no matter what person or entity is in title to or in possession of the Subject Property, the City of Lewistown and its agents shall retain the right to enter the Subject Property at reasonable intervals and at reasonable times of the day in order to inspect for violations of the Restrictive Covenants contained herein. In addition, if the City of Lewistown conveys all or any portion of its interest in the Subject Property, the City of Lewistown retains the right and obligation to enforce these Restrictive Covenants as an intended beneficiary.
6. The City of Lewistown has agreed to enforce the requirements of these Restrictive Covenants and take prompt action to correct any violations of these Restrictive Covenants. The City of Lewistown has also agreed to notify DEQ within 30 calendar days of receiving actual or constructive notice of any violation or potential violation of these Restrictive Covenants.
7. DEQ shall also be entitled to enforce these Restrictive Covenants as an intended beneficiary thereof. The City of Lewistown specifically agrees that the remedy of "specific performance" of these Restrictive Covenants shall be available to DEQ in such proceedings. Venue for enforcement of these Restrictive Covenants by DEQ shall be in the state First Judicial District Court, Montana.
8. The provisions of these Restrictive Covenants of the Subject Property shall run with the land and bind all holders, owners, lessees, occupiers, and purchasers of the Subject Property. These restrictive covenants apply in perpetuity and every subsequent instrument conveying an interest in all or any portion of the Subject Property shall include these Restrictive Covenants. The City of Lewistown will notify DEQ of any proposed conveyance of all or a portion of the Subject

Property at least 30 days prior to any such conveyance. The City of Lewistown and all future owners will provide notice to all potential purchasers by providing a copy of these Restrictive Covenants prior to the conveyance of all or a portion of the Subject Property and shall provide a copy of this notice to DEQ.

9. The City of Lewistown and all future owners shall cause the requirements of these Restrictive Covenants to be placed in all instruments that convey an interest in the Subject Property and shall file this document with the county clerk and recorder in Fergus County, Montana.
10. The rights provided to DEQ in this declaration include any successor agencies of DEQ.

IN WITNESS WHEREOF, Lewistown City Commission has executed this Declaration of Restrictive Covenants on Real Property as of the first date written above.

KellyAnne Terry
Chairman of the Commission

ATTEST:

Nikki Brummond, City Clerk

State of Montana)

:ss.

County of [insert county name])

On this ___ day of _____, 20___, personally appeared _____, before me, a Notary Public for the State of Montana, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

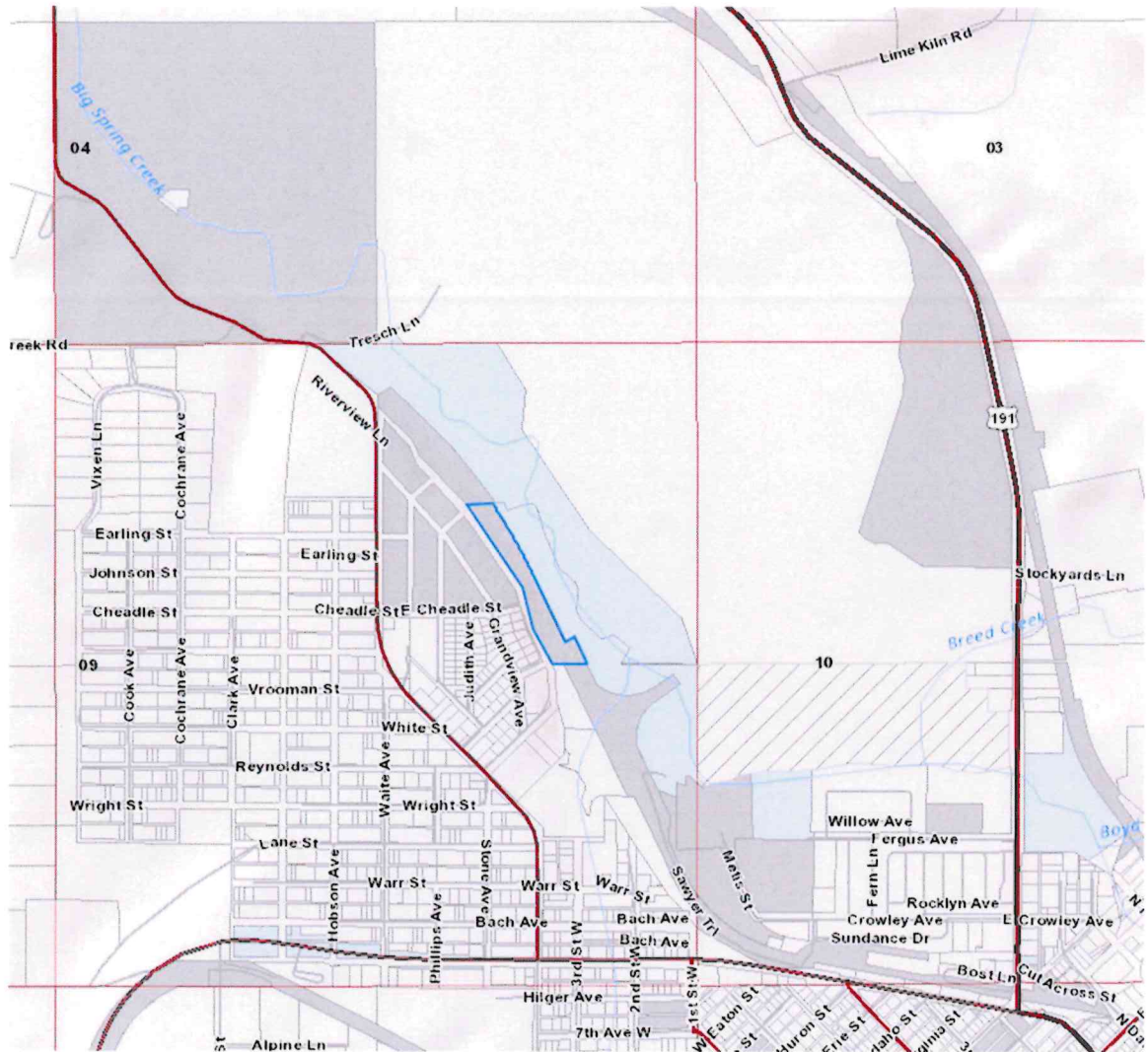
(SEAL)

NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing at _____
My Commission Expires: _____

Attachment #1



Attachment #2



INTENT TO EXCLUSIVELY NEGOTIATE REAL ESTATE PURCHASE AGREEMENT

BIG SPRING MEADOWS, LLC, a Montana limited liability company ("Big Spring"), and the City of Lewistown ("Owner") are entering into this Agreement to affirm their mutual intent to negotiate exclusively with each other regarding the sale and purchase of certain real estate (the "Premises" or "Real Estate") located at the corner of Joyland Road and East Cheadle Street, Lewistown, Fergus County, Montana, that is more particularly depicted and described on Exhibit A attached hereto and made a part hereof.

Anticipated salient terms pertaining to the anticipated, definitive sale and purchase contract are as follows:

1. The purchase price ("Purchase Price") for the Premises shall be One Hundred Five Thousand Dollars (\$105,000.00).
2. The closing (the "Closing") would be thirty (30) days following the expiration of the Inspection Period.
3. Possession of the Premises would be provided at Closing unoccupied and free of any lease or other right of possession.
4. Conveyance of the Premises would be by General Warranty Deed ("Deed"), conveying good and marketable title of record to the Real Estate, in fee simple, free and clear of all liens and encumbrances except for a lien of real property taxes not yet due and payable and other exceptions approved in writing by Buyer.
5. Owner will provide to Big Spring a standard form owner's policy of title insurance in the amount of the Purchase Price. Title will be satisfactory to Big Spring.
6. Real Estate taxes are to be prorated as of Closing.
7. The contract shall set forth conditions to closing that are mutually satisfactory to Owner and Big Spring.
8. The contract will provide to Big Spring an inspection period of at least 120 days together with two (2) extensions of the inspection period of ninety (90) days each.
9. The contract shall allocate Closing costs.
10. The contract shall set forth representations and warranties that are mutually acceptable.

11. The contract will contain such other provisions as are mutually acceptable.

Simultaneously with its execution hereof, Big Spring tenders to Owner the sum of Ten Thousand Dollars (\$10,000.00), which sum Owner acknowledges shall be deemed "earnest money" and adequate consideration to make this a binding agreement to conduct the above-described exclusive negotiation for the sale and purchase of the Real Estate. In the event Big Spring moves forward to Closing, this payment shall be credited towards the final agreed upon purchase price.

BIG SPRING MEADOWS, LLC

THE CITY OF LEWISTOWN:

By: _____
Mark Taylor, Member

By: _____
As Its: _____

EXHIBIT A

