

RESOLUTION NO. 97- 17258

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, DISCONTINUING AND VACATING THE WEST ONE-HALF (W 1/2) OF NORTH 24TH STREET, ADJACENT TO LOT 1, BLOCK 112. O.T.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of THE WEST ONE HALF (W 1/2) OF NORTH 24TH STREET, ADJACENT TO LOT 1, BLOCK 112, O.T. as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., the following portion(s) of **the West One-Half (W 1/2) of North 24th Street, adjacent to Lot 1, Block 112, O.T.** is/are hereby discontinued, abandoned and vacated subject to conditions outlined in the Development Agreement, attached hereto as EXHIBIT "A" and made a part hereof.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described portion of **the West One-Half (W 1/2) of North 24th Street, adjacent to Lot 1, Block 112 O.T.** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 11th day of **August**, 1997.



THE CITY OF BILLINGS:

BY: Charles F. Tooley  
MAYOR

ATTEST:

BY: Marita Herold  
Marita Herold, CMC CITY CLERK

DEVELOPMENT AGREEMENT  
FOR THE VACATION AND DISCONTINUANCE OF A PORTION OF NORTH 24TH STREET,  
IN BILLINGS ORIGINAL TOWNSITE, FOR THE PURPOSE OF CREATING AN INDOOR/  
OUTDOOR DINING AND BEVERAGE PLAZA

This agreement made this 11<sup>th</sup> day of August, 1997 by and between the City of Billings, MT., a municipal corporation, hereinafter called the "CITY," whose address is City Hall, Billings, MT, 59101 and the Rex Hotel Partnership, hereinafter called the "REX", whose mailing address is 2401 Montana Ave., Billings, MT, 59101.

WHEREAS the REX has petitioned the City of Billings to discontinue North 24th Street between Montana Avenue and the alley between Montana Avenue and 1st Avenue North. The discontinuance is from the northerly right-of-way line of Montana Avenue on the south to the southerly right-of-way line of the alley on the north, said right-of-way lines being extended between Block 112 and Block 113 Billings Original Town. This will be herein after referred to as the "discontinued street area."

**NOW, THEREFORE, the parties agree as follows:**

The westerly one-half of the discontinued street area adjacent to Lot 1, Block 112, Billings, O.T. (an area 40' x 130') shall be vacated with ownership being transferred to the REX. The REX shall pay the CITY \$26,000; the amount established by an independent appraisal as the market value, for the portion being vacated.

The easterly one-half of the discontinued street area, an area 40' x 130' adjacent to Lot 12, Block 113, O.T. shall remain public right-of-way, but shall be closed to travel by motor vehicles. The REX will improve and maintain said easterly one-half of the discontinued street area with lawn, an underground sprinkler system, a minimum five (5) foot wide sidewalk open to the public, and trees or shrubs. Incidental street furniture such as benches or planters shall also be allowed as long as it is easily removable. The REX will improve and maintain said easterly one-half of the discontinued street area under the terms of a CITY standard encroachment permit. The location and specifications for all improvements to said easterly half will be subject to CITY approval, allowing for utility access. The REX shall pay all costs of said improvements and their maintenance, including any future removal or replacement necessary for underground utility work.

As this is zoned Central Business District, the CITY will allow the REX zero building setbacks on the north, south, and east property lines of the vacated area (being the westerly one-half of the discontinued street area), subject to the applicable provisions of the Uniform Building Code.

The REX agrees to build no structures on the existing parking lot on lots 11 & 12, Block 113, O.T., adjacent to the discontinued street area in order to allow sufficient area for fire trucks to set up in. The REX will provide adequate fire lanes and access for fire trucks. This is to be approved by the Fire Department.

The REX will provide an unrestricted pedestrian corridor within the area covered by the encroachment permit, between the future dead end on North 24th at the alley and Montana Avenue.

The REX will provide necessary signage to warn motorists westbound on 1st Avenue North and southbound on North 24th Street that the street is dead-ended and does not go through. Final signing to conform to the *Manual on Uniform Traffic Control Devices* and be approved by the CITY Traffic Engineer.

The REX will install the curb & gutter necessary to close off the discontinued street area at the alley and along Montana Avenue. The REX will install sidewalk across the discontinued street area along the north side of Montana Avenue. The REX will provide any street (curb, gutter, and sidewalk) or storm drainage improvements necessary to provide proper drainage for the remaining segment of North 24th between the alley and 1st Avenue North.

The REX will provide any necessary adjustment to the street lighting or street light wiring.

The REX will submit plans of the existing building to be sure the street vacation does not reduce the open yard requirement needed to support the existing building area under the requirements of the Uniform Building Code.

In recognition of the remaining value of the water line to be abandoned, the REX will pay the City of Billings Public Utilities Department \$9,000 toward the replacement of said water line in another location. In addition, the REX shall provide and pay for termination of the existing water line in accordance with Public Utilities Department standards at both ends of the discontinued street area, including installation of a fire hydrant at the alley.

The REX will follow all codes relating to utility easements within the area being vacated.

It is acknowledged that a Special Review is required for expansion of an existing liquor sales and consumption area by more than 10% or to allow liquor sales on an open patio/plaza. The REX will apply and pay for any such Special Reviews under the normal Planning Department rules and procedures. It is understood that approval of this agreement does not constitute CITY approval of any required Special Reviews.

The REX has paid for a traffic study to be done by an independent engineer and has provided the CITY with a copy of the study. This study shows there are no significant adverse affects related to the proposed street discontinuance.

The REX will submit detailed plans for all proposed improvements within the discontinued street area or directly related to the street closure. All plans and work will be subject to the CITY's review and approval under the Uniform Building Code and applicable CITY codes and standards.

This agreement shall become effective upon the final adoption by the Billings, Montana City Council of a resolution discontinuing that portion of North 24th Street between Montana Avenue and the alley to the north, as herein described. Title to the vacated portion of the discontinued street area shall not pass to the REX until the CITY has received the full \$35,000 payment outlined above (\$26,000 market value plus \$9,000 residual water line value). Recordation of the official copy of said City Council resolution in the Office of the Clerk and Recorder of Yellowstone County, Montana, shall constitute transfer of ownership of the vacated portion of the discontinued street area from the CITY to the REX.

This agreement shall be recorded with the Clerk and Recorder of Yellowstone County, Montana.

The provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors in interest and assigns.

This agreement shall be construed under and in accordance with the laws of the state of Montana.

Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, and expenses, including attorney's fees expended or incurred in connection therewith.

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IN WITNESS WHEREOF, the parties have set their hand and seals the day and year first above written.

ATTEST:

Marita Herold  
Marita Herold, CMC, City Clerk



CITY OF BILLINGS, MONTANA

by: Charles F. Tooley  
Charles F Tooley, Mayor

APPROVED

AS TO FORM

[Signature]  
CITY ATTORNEY

THE REX HOTEL PARTNERSHIP INC.

By: Eugene F. Burgad  
Eugene F. Burgad, Sec.- Treas.

STATE OF MONTANA )

: ss.

County of Yellowstone )

On this 11<sup>th</sup> day of Aug, 1997, before me, the undersigned, a Notary Public for the State of Montana personally appeared Charles F. Tooley, known to me to be the Mayor of the City of Billings and 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 on the day and year in this certificate first above written.



Kathleen R. Russell  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: 3-15-00

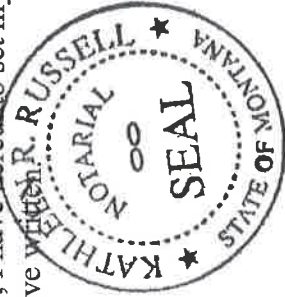
STATE OF MONTANA )

: ss.

County of Yellowstone )

On this 3<sup>rd</sup> day of Sept, 1997, before me, the undersigned, a Notary Public for the State of Montana, personally appeared EUGENE F. BURGAD, known to me to be the Secretary-Treasurer of The Rex Hotel Partnership and the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal on the day and year in this certificate first above written.



Kathleen R. Russell  
Notary Public for the State of Montana  
Residing at Billings, Montana  
My commission expires: 3-15-00