

## PURCHASE AGREEMENT

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (hereinafter the “Effective Date”), between the City of Moorhead, whose post office address is P.O. Box 779, 500 Center Avenue, Moorhead, Minnesota 56561-0779 (“Seller” or the “City”), and COMPANY NAME, a \_\_\_\_\_ company, whose address is \_\_\_\_\_, (“Buyer”).

**WHEREAS**, Seller is the owner of property in Clay County, Minnesota; and

**WHEREAS**, the Parties recognize that the Property (defined below) contains public rights of way and parcels that will be dedicated or retained by the City of Moorhead, pursuant to the platting process; and

**WHEREAS**, the City, pursuant to a petition for installation of improvements, previously installed municipal infrastructure consisting of streets, sanitary sewer, water, storm water retention pond and storm water improvements (hereinafter the “Improvements”) under, on and through the Property, but no local improvements within the Property have been petitioned or installed; and

**WHEREAS**, in order to finance the Improvements, the City levied and apportioned special assessments (hereinafter referred to as the “Prior Special Assessments”) against the Property; and

**WHEREAS**, the prior owner of the Property failed to pay the annual installments of special assessments and general real estate taxes; and

**WHEREAS**, as a result the City assumed ownership of the Property; and

**WHEREAS**, in order to provide clear and marketable title to the Property, the City commenced, prosecuted and successfully completed a quiet title action identified as Clay County District Court Case No. 14-CV-13-1364; and

**WHEREAS**, the City acknowledges that recorded on November 2, 2005, is a Declaration of Covenants, Restrictions, and Reservation of Public Utility Easements for Johnson Farms First Addition to the City of Moorhead, Clay County, Minnesota, Document No. 620157 in the Clay County Recorder’s Office; and

**WHEREAS**, Developer intends to construct up to one hundred nine (109) single family housing units upon the Property; and

**WHEREAS**, the City and Developer desire to levy and reapportion the Prior Special Assessments in a fair and equitable manner; and

**WHEREAS**, the City desires to have security in the form of a letter of credit in order to assure that the annual installments of special assessments are paid in full in a timely manner; and

**WHEREAS**, Seller is willing to sell, and Buyer is willing to purchase the Property on the terms and conditions of this Agreement;

**NOW THEREFORE**, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. **The Property.** Seller agrees to sell and Buyer agrees to purchase the following-described real property and all appurtenances thereunto belonging located in the County of Clay, State of Minnesota, and legally described as follows:

**Lots 1-16 Block 10, Lots 1-32 Block 11, Lots 1-26 Block 12, Lots 14-26 Block 13, Lots 2-12 Block 14, all in Johnson Farms First Addition to the City of Moorhead, Clay County, Minnesota** (hereinafter referred to as the “Property”); and

2. **Purchase Price.** The purchase price for the Property will be the sum of one million six hundred thousand (\$1,600,000.00) dollars, payable as follows:

- a. Cash in the amount of four hundred thousand (\$400,000.00) dollars; and,
- b. Assumption of special assessments in the amount of one million two hundred thousand (\$1,200,000.00) dollars pursuant to the terms of a Development Agreement to be executed between the parties.
  - i. **Earnest Money.** Upon execution of this Agreement by both parties, Buyer will pay a deposit in the amount of sixteen thousand dollars (\$16,000.00) as earnest money to be credited towards the purchase price, the receipt of which is hereby acknowledged by Seller. **Should Buyer fail to perform any of Buyer’s obligations hereunder, Seller may terminate this Agreement in writing delivered to Buyer, and upon such termination retain the earnest money as liquidated damages for breach of this Agreement and both parties’ obligations hereunder will thereupon cease. Seller does not waive any other right it has to enforce any of the provisions of this Agreement.**
  - ii. **Purchase Price.** Upon the delivery of a Warranty Deed by Seller, conveying the Property to Buyer, the entire purchase price, less earnest money received, and the amount of special assessments assumed as set forth in Section 2 (b) of this Agreement, will be payable in cash upon closing.

3. **Date of Closing.** This transaction will close: (a) ten (10) days after the replat of the Property has been finally approved by the City of Moorhead; or (b) \_\_\_\_\_, 2016, whichever occurs later (hereinafter referred to as the “Date of Closing”). Possession of the Property shall be delivered at the conclusion of the closing on the Date of Closing.

4. **Seller’s Obligations.** Subject to performance by Buyer, Seller agrees to execute and deliver a Warranty Deed conveying marketable title to the Property, including mineral rights, subject only to the following:

- a. Building and zoning laws, ordinances, state and federal regulations.

- b. “Permitted Encumbrances” which collectively include: (a) utility and drainage easements of record that do not interfere with present or proposed use or improvements of or on the Property; (b) protective covenants recorded on the Property; (c) ingress and egress easements of record; and (d) any other encumbrance not objected to by Buyer pursuant to Section 5 hereof.

5. **Buyer’s Obligations.** Buyer's obligation to consummate the transaction contemplated by this Agreement is contingent upon the following:

- a. Seller's ability to convey marketable title to the Property on the Date of Closing, free and clear of any and all liens or encumbrances whatsoever except Permitted Encumbrances.
- b. Buyer being able to replat the Property together with certain streets previously dedicated to the public in such form as is acceptable to Buyer and which has been finally approved by the City of Moorhead.
- c. Buyer and Seller negotiating a mutually-acceptable Development Agreement which provides among other things that (i) no parkland requirements; (2) the City will consult with and allow Buyer input in the reallocation, re apportionment, and levying of the Prior Special Assessments and any new special assessments petitioned for and installed to service the lots within the Property; (iii) that all engineering fees and expenses charged in conjunction with planning and installing the local improvements following the platting shall be specially assessed against the lots; and (iv) the first installment of the Prior Special Assessments shall be certified in 2016 for payable year 2017.
- d. Upon the failure of any of the foregoing contingencies, at the option of Buyer exercised by written notice to Seller given not later than the Date of Closing, this Agreement will terminate and be of no further force or effect, in which case any earnest money paid will be immediately returned to Buyer.

6. **Inspection of the Property.** Seller authorizes Buyer, or such other person as Buyer may designate, to enter the Property for inspection prior to the Date of Closing at any time between the Effective Date of this Agreement and the Date of Closing.

With respect to such inspections and investigations, Buyer shall: immediately pay or cause to be removed any liens filed against the Property as a result of any actions taken by or on behalf of Buyer; and protect, indemnify, defend and hold Seller harmless from and against all claims, damages or losses incurred to the Property, anyone on the Property, or to Seller as a result of the action taken by Buyer, or any of its agents, representatives or contractors. Buyer agrees to reimburse Seller, Seller’s officers, employees, agents and representatives for any costs or expenses, including reasonable attorneys’ fees, expended or incurred in response to or in defense of any claim, demand, action, cause of action, or claim for relief made or asserted by any person or party, natural or not, for any alleged action or omission of Seller, Seller’s officers, employees, agents, or representatives, relating to Buyer’s, or Buyer’s agents, employee’s, representative’s or contractor’s presence on the

Property. If the purchase and sale contemplated by this Agreement is not closed, Buyer shall repair and restore any damage to the Property caused by Buyer's investigation or testing, at Buyer's expense and shall return the Property to the same condition as it existed prior to such entry.

7. **Closing.** On the Date of Closing:

a. Seller will execute and deliver to Buyer the following:

- i. A Warranty Deed conveying the Property to Buyer, free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.
- ii. A mutually-acceptable Development Agreement between the parties.
- iii. All other documents affecting title to and possession of the Property and necessary to transfer or assign the same to Buyer, free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.
- iv. Abstract of Title covering the Property.
- v. Seller shall deliver funds to pay, or evidence of payment of, all taxes and assessments and other charges and fees to be paid by Seller pursuant to this Agreement.
- vi. Seller shall also sign such other documents and/or affidavits reasonably required by Northern Title or Buyer's title insurance agent to close this transaction.

b. Buyer will:

- i. Deliver to Seller that portion of the purchase price in cash as required by Section 2(a) above.
- ii. Execute a mutually-acceptable Development Agreement between the parties.
- iii. Buyer shall deliver funds, in cash or such other form acceptable to Seller, sufficient to satisfy the Buyer's obligations under this Agreement.
- iv. Provide the Letter of Credit as set forth in paragraph 9 below.
- v. Buyer shall also sign such other documents and/or affidavits reasonably required by Northern Title or Buyer's title insurance agent to close this transaction.

- c. The closing and delivery of such documents will take place at TRN Abstract in Moorhead. Buyer will be responsible for the title opinion and or title insurance premium, recording of the deed tax and Warranty Deed, the survey and platting costs, and one-half of the closing fee to TRN Abstract. Seller will be responsible for the costs of providing an updated abstract of title to Buyer, providing clear and marketable title, preparation of the Warranty Deed, recording of releases and satisfactions, and one-half of the closing fee to TRN Abstract. Each party will pay their own attorney's fees in this matter.

8. **Condition of the Property.** Buyer accepts the Property in **as is, where as**, and with **all faults** condition. Further study should be conducted prior to design and construction of specific residential projects within this development. It is recommended these studies be performed at each lot to accommodate varying soil conditions and individual structure and foundations plans.

9. **Taxes and Special Assessments.**

- a. The real estate taxes and special assessments will be prorated to the Date of Closing.
- b. The Prior Special Assessments are to be apportioned and levied as a special assessment against the Property. Seller will consult with Buyer to allow Buyer input regarding the reallocation and apportionment of the Prior Special Assessments following the platting of the Property. The total principal amount of the Prior Special Assessments to be reallocated, levied and apportioned on the Property is one million two hundred thousand dollars (\$1,200,000.00) (hereinafter the "Reallocated Special Assessments"). Buyer agrees and acknowledges that the Reallocated Special Assessments shall be amortized in annual installments over a period of twenty (20) years. The City shall charge interest at the same rates as the Prior Special Assessments on any unpaid balance of special assessments for the Reallocated Special Assessments.
- c. Parties agree that on the Date of Closing described in Section 3 above, the Buyer shall provide an irrevocable standby Letter of Credit from a responsible financial institution to the City in the amount of seven hundred sixty thousand dollars (\$760,000.00). Said Letter of Credit shall contain an auto renewing clause or evergreen clause. Parties agree and acknowledge that the Seller shall have the sole authority to determine whether a financial institution is responsible. Parties acknowledge that the amount of the Letter of Credit set forth in this paragraph is equal to five years of annual installments of the Reallocated Special Assessments.

Buyer acknowledges and agrees that Buyer is contractually obligated to make each and every yearly installment of special assessments on each and every lot covered by this Agreement that is not "developed" as defined in paragraph (iii) below. The sale, transfer, gift or conveyance of a lot shall not relieve

Buyer of this contractual obligation; furthermore, this obligation cannot be assigned without prior written approval of the Moorhead City Council.

Buyer acknowledges and agrees that draws against the Letter of Credit shall be paid directly to the City in conformance with paragraph (i) set forth below. The bank issuing the Letter of Credit shall extend it automatically without amendment for a period of one (1) year from the expiry date hereof, or any future expiry date, unless sixty (60) days prior to any expiration date, the issuing bank notifies the City's Director of Finance and City Manager by registered mail that it elects not to renew the Letter of Credit. This provision is commonly referred to as an "evergreen clause," which any Letter of Credit provided by Buyer shall contain. The Buyer will have until 30 days prior to any expiration date of the existing letter of credit to supply the City with a replacement letter of credit for one year from the expiry date, meeting all the terms within this Agreement. The Letter of Credit is deemed to be in default thirty (30) days prior to the expiration date, at which time the City's Director of Finance will notify the bank of the default and order the draw on the entire balance of the letter of credit.

- i. Parties agree that the certified annual installments of special assessments on undeveloped lots covered by this Agreement shall be paid by November 15 of each and every year that they are levied. If the certified annual installment of special assessments are not paid by November 15, the Director of Finance shall give written notice to the Buyer that, if the delinquent special assessments are not paid by the December 31 of that year or within 14 days of mailing of the notice, whichever is later, he/she shall give the issuing bank written demand for the payment out of the letter of credit to the City of an amount sufficient to satisfy the deficiency. Said payment shall be made directly to the City and the City shall place it into the sinking fund of the special improvement districts. The City shall use those funds to pay the principal and interest debt service on outstanding bonds for the districts covered by the letter of credit. In addition, the City shall reduce the level of uncertified special assessments on lots owned by the Buyer and covered by the letter of credit by the amount of funds received from the Letter of Credit<sup>1</sup>. The Letter of Credit obligation is only extinguished when a lot is "developed" as that term is defined in paragraph (iii) below, or when all special assessments for that lot, whether certified or uncertified, are paid.
- ii. When the amount of unpaid certified and uncertified special assessments covered by this Agreement is less than the principle balance in the Letter of Credit, the City, upon request of the Buyer,

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<sup>1</sup> The funds drawn from the Letter of Credit shall not be applied to special assessment installments which have been certified but are delinquent.

may give written notice to the bank to reduce the balance of the Letter of Credit so that the balance equals the amount of unpaid certified and uncertified special assessments covered by this agreement. Buyer may make said requests only once in any six month period. In the event that all of the lots are developed or the amount of certified and uncertified specials becomes zero, the City will provide the Buyer and the issuer of the Letter of Credit notice that the obligation to maintain a Letter of Credit has been extinguished.

- iii. The Buyer agrees that the Letter of Credit issued pursuant to this Agreement is to be used to pay city debt service obligations in the event that Buyer fails to pay certified special assessments on all lots covered by this Agreement. Buyer's obligation to pay delinquent assessments on lots is only extinguished when the lots are "developed". For purposes of this Agreement, the term "developed" means that a structure for which a building permit has been issued by the City has been constructed on the lot. The sale, tax sale, transfer or other disposition of any lot covered by this Agreement shall have no effect on the obligation of the Letter of Credit.
- iv. Parties agree that additional infrastructure is needed to service the property and a new Letter of Credit, or adjustment in aforementioned Letter of Credit, will be required.

10. **Representations and Warranties.** Seller represents and warrants to Buyer that:

- a. On the Date of Closing, Seller will own the Property free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.
- b. There is no action, litigation, investigation, condemnation or proceeding of any kind pending against the Seller or the Property.
- c. Seller, on the Date of Closing, will have complied with all of its obligations hereunder, unless such compliance has been waived in writing by Buyer, and all representations and warranties made hereunder will be true and correct on said date.
- d. There are no underground wells, buried underground storage tanks as defined in Minn. Stat. 116.46, subd. 8, or private septic systems on, under or upon the Property.
- e. With the exception of the special assessments which constitute part of the Purchase Price, there will be no other special assessments levied against the Property as of the Date of Closing. The Buyer agrees and acknowledges that the Property may be subject to future special assessments as more fully discussed in the Development Agreement and as may be specially assessed in

connection with future projects pursuant to and in accordance with Minnesota Statutes Chapter 429.

Seller hereby agrees that the truthfulness of each of said representations and warranties and all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder.

11. **Brokerage Fees.** Each party hereto warrants that it has not incurred any real estate brokerage fees, finders' fees, or any other fees to any third party in connection with this purchase and sale, except as provided herein. In the event that any third party institutes legal action in an effort to recover such fees, the parties shall jointly defend such action. If a judgment is obtained against the parties jointly, the party responsible for breach of this warranty shall reimburse the other or the latter's attorneys' fees, court costs, expenses, and share of the judgment.

12. **Breach of Representation or Warranty.** Upon the breach of any representation or warranty hereof, Buyer may, prior to the Date of Closing, declare this Agreement to be null and void, or Buyer may elect to close this sale. If Buyer elects to declare this Agreement null and void in writing (citing the express breach by Seller), any earnest money paid will be immediately refunded to Buyer and, upon such refund, neither party will have any further rights or obligations hereunder. All representations, warranties and covenants of Seller will survive the Date of Closing. In the event any representation or warranty will be discovered to have been untrue as of the Date of Closing, Seller will indemnify, defend and hold Buyer, its successors and assigns, harmless with respect to any loss, cost, expense, damage or liability (including reasonable attorneys' fees) arising out of or relating to said representation or warranty being untrue.

13. **Contract.** This Agreement will be held by Seller for the mutual benefit of the parties.

14. **Future Warranty.** Neither Seller nor Seller's agent makes any representation or warranty about the amount of future real estate taxes on the property.

15. **Title to the Property.** Seller and Buyer acknowledge that title to the Property is currently in the name of the City of Moorhead, a Minnesota municipal corporation. Within ten (10) days after the Effective Date, Seller will furnish an Abstract of Title or a Registered Property Abstract certified to date to include proper searches covering bankruptcies and state and federal judgments and liens. Buyer will have fifteen (15) days after receipt of the abstract to examine the title and to make any objections to the title. Buyer must make any objections in writing. Any objections not made in writing will be ineffective. If Buyer makes any objections, Seller will have one hundred twenty (120) days to make the title marketable. Pending correction of title, the payments required by this Agreement will be postponed. Within thirty (30) days after written notice to Buyer that Seller has corrected the title, the parties will perform this Agreement according to its terms. If the title is not marketable and is not made so within one hundred twenty (120) days from the date of written objections, this Agreement will be null and void at option of Buyer, and neither party will be liable for damages to the other. Seller will refund all earnest money paid by Buyer. If the title to Property is marketable or is made so within the time allowed, and Buyer defaults in any of the agreements and continues in default for ten (10) days, then Seller may terminate this Agreement.



16. **Time is of the Essence.** Time is of the essence of each provision of this entire Agreement and of all the conditions thereof.

17. **Notice.** Any notice or election required or permitted to be given or served by any party hereto upon any other will be deemed given or served in accordance with the provisions of this Purchase Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to Seller: City of Moorhead  
P.O. Box 779  
500 Center Avenue  
Moorhead, MN 56561-0779

If to Buyer: COMPANY NAME  
ADDRESS LINE 1  
ADDRESS LINE 2  
CITY STATE ZIP

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner above specified.

18. **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

19. **Amendments.** No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound or a duly authorized representative and specifying with particularity the extent and nature of such amendment, modification or waiver.

20. **No Forbearance.** The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.

21. **Default.** If either party defaults in the performance of any material covenant or agreement contained herein for any reason, the other party may, at its option: (a) terminate this Agreement by giving written notice of termination to the other party; or (b) seek to enforce specific performance of this Agreement. Any action to enforce specific performance must be started within six (6) months after the right of action arises.

22. **Binding Effect.** All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns, and will continue in force and effect and be binding after the Date of Closing and delivery of the Warranty Deed.

23. **Grammatical Construction.** When used herein, the singular will include the plural, the plural will include the singular, and the use of one gender will include all other genders, as and when the context so requires.

24. **Governing Law.** This Agreement has been made and entered into under the laws of the State of Minnesota, and said laws will control its interpretation.

25. **Rules of Construction.** The parties acknowledge that they have both had the opportunity to have this Agreement reviewed by their respective attorneys, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against either Buyer or Seller.

26. **Headings.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

27. **Authorization.** Buyer represents and warrants that the individuals signing on behalf of Buyer have been duly authorized and have the authority to execute this Agreement on Buyer's behalf.

28. **Survival of Terms and Conditions.** Buyer and Seller agree and acknowledge that the terms and conditions of this Agreement shall survive the Date of Closing and Buyer's obligation to maintain an irrevocable standby Letter of Credit shall not terminate unless and until the Seller provides Buyer written notice signed by the Moorhead City Finance Director that the obligation to maintain a letter of Credit set forth in Section 9 of this Agreement has been reduced or terminated.

(Signatures appear on the following page)

**SELLER:**

**CITY OF MOORHEAD**

BY: \_\_\_\_\_  
Del Rae Williams, Mayor

BY: \_\_\_\_\_  
Michael Redlinger, City Manager

**BUYER:**

**COMPANY NAME**

\_\_\_\_\_  
NAME 1, President

\_\_\_\_\_  
NAME 2, Secretary/Treasurer

DRAFT